# A FOOTBALL ODYSSEY: THE *FOOTBALL AGENTS* JUDGMENTS IN CASE C-428/23 *ROGON V. DFB* AND CASE C-209/23 *RRC SPORTS V. FIFA*

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ABSTRACT

*This article examines the judgments of the EU Court of Justice in Rogon and RRC Sports – the "Football Agents" cases – relating to the regulation of football agents by FIFA and national football associations, in particular the FIFA Football Agents Regulations (FFAR). It describes the evolution of the FFAR and summarises its main objectives and provisions. It sets out the relevant legal tests to be applied under EU competition law to sports regulations such as the FFAR. It explains why these tests were applied by the EU Court of Justice to the regulation of football agents who are not direct members of FIFA (or national football associations) in the Rogon case. It then examines the findings of the EU Court of Justice in the RRC Sports case with respect to the lawfulness under EU competition and free movement laws of specific provisions of the FFAR, in particular those relating to the conflict of interest rules, the service fee cap and the ethical requirements. It highlights the reasonableness test to be applied to claims of abuse of dominance against sports federations. It also analyses the judgment of the EU Court of Justice with respect to the compliance of the FFAR rules with EU data protection law. It concludes that the judgment is a strong endorsement of the FFAR that will have a major impact on pending cases in Europe and around the world.*

KEYWORDS

EU Court of Justice, Football Agents, FFAR, EU competition law, EU free movement law, EU privacy law.

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# A FOOTBALL ODYSSEY: THE *FOOTBALL AGENTS* JUDGMENTS

> "*Sing to me of the man, Muse, the man of twists and turns, driven time and again off course…*" ***The Odyssey*** (Homer, translation of the opening lines by Robert Fagles)

After a legal journey lasting almost ten years, judges at the EU Court of Justice delivered judgments that will affect the governance of football agents – and indeed sports governance – for years to come. Whereas other sports cases have concerned specific rules, the *Rogon* and *RRC Sports* judgments (collectively, "*Football Agents*") ranged from existential questions about whether FIFA and national associations can regulate agents at all to specific questions covering almost the entire rulebook of the FIFA Football Agents Regulations ("FFAR"). The rulings establish important principles on the scope of the regulatory authority of sports federations under EU law. The EU Court of Justice also assessed the rules governing agents in relation to conflicts of interest, player welfare and – most controversially – service fees under EU competition, free movement and data protection law. So extensive is the judgment on the FFAR that it runs to 385 paragraphs. A veritable epic but, in the end, the verdict is clear.

## 1. BACKGROUND

The origins of the *Football Agents* cases lie, strangely, in the decision by FIFA in 2015 *not* to regulate agents. FIFA had previously operated a licensing system for football agents which had been in place since the 1990s (the "FIFA Players' Agents Regulations"). This system had been challenged in an antitrust complaint before the European Commission and subsequently before the EU General Court. In the 2005 judgment in *Piau*, the EU General Court – albeit with some reservations – recognised that FIFA could regulate football agents, given the absence of EU or national legislation. The EU General Court observed that "*certain practices on the part of players' agents could, in the past, have harmed players and clubs, financially and professionally*". Accordingly, the EU General Court accepted that FIFA could regulate agents to achieve "*the dual objectives of raising professional and ethical standards for the occupation of players' agent in order to protect players, who have a short career*".[2] FIFA was, at this point, in a strong legal position to regulate agents.

[2] Case T-193/02, *Laurent Piau v. European Commission*, EU:T:2005:22 ("Piau"), paragraph 102.

Then, in 2015, FIFA abandoned the licensing system in favour of a deregulatory model. The FIFA Regulations on Working with Intermediaries ("RWI") allowed any natural or legal person to act as an "intermediary", provided they were registered with national associations and adhered to certain minimum criteria. FIFA's rationale for this deregulatory approach was that agents were involved in only a small proportion of all international transfers. However, critics pointed out that FIFA lacked the will or resources to regulate agents, deciding to walk away rather than address the regulatory gap.[3] Whatever the reasons, FIFA lost control.

Even agents conceded that deregulation had turned football agency into a "wild west".[4] Anyone could become a registered intermediary – and anyone did. Systemic problems soon became apparent. With regulation devolved to national associations, a fragmented regulatory system emerged, with each country applying different rules. The lack of uniform regulation encouraged conflicts of interest, with agents able to act not just for a player and the engaging club but even for the releasing club at the same time.[5] Owing to information asymmetry and the gatekeeper role of agents, transfers could be engineered in the interests of agents rather than of the players they represented. Data showed a huge increase in expenditure on agents,[6] giving rise to concerns that fees were no longer commensurate with the services being provided to clubs and players. Most seriously, agents were being associated with illegal activities such as corruption, money laundering, fraud and human trafficking involving minors. An EU report on agents led by Professor Parrish concluded: "*Whilst the old licensing system was flawed, many respondents argued that it was underpinned with sound principles and a return to it, or a similar system, is necessary in order to ensure that players and clubs are engaging a professional agent*."[7]

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3 De Marco, "The End of the Licensed Football Agent?", *Blackstone Chambers Sports Law Bulletin*, 21 October 2014.

4 *The Guardian*, "Football agents fear 'wild west' as Fifa reforms seek to cap fees", 31 March 2015.

5 The 2016 transfer of French player Paul Pogba is perhaps the best-known example, with the player's agent acting for the player, the engaging club (Manchester United) and the releasing club (Juventus FC). See: *Financial Times*, "Mino Raiola: meet the super-agent behind Pogba and Ibrahimovic", 28 October 2016.

6 See for example: FIFA Global Transfer Market Report 2017 showing that club expenditure on intermediary commissions had increased from USD 218.4 m in 2013 to 369 m in 2016. The FIFA Intermediaries in International Transfers Report (2017) estimated total expenditure to club intermediaries between 2013 and 2017 to be USD 1.59 billion.

7 Prof. Parrish, Dr Cattaneo, Prof. Lindholm, Prof. Mittag, Prof. Perez-Gonzalez, Assistant Prof. Smokvina, "Promoting and Supporting Good Governance in the European Football Agents Industry", Final Report, 2019 ("Parrish Report").

Under new leadership, FIFA conceded that deregulation had been a mistake. FIFA embarked upon a programme of reform aimed at reconnecting the regulation of agents with the proper functioning of the football transfer system. In March 2017, the FIFA Football Stakeholders Committee discussed the establishment of a task force to review and improve the international transfer system.[8] The task force subsequently identified the regulation of agents as a priority, and in September 2018 the Committee endorsed proposals for a new regulatory framework, including the reintroduction of a licensing system for agents.[9]

From 2017 to 2022, FIFA conducted a wide-ranging consultation process on the regulation of agents involving clubs, players, leagues, confederations and agents. Some agent organisations, however, were highly critical of the consultation process and refused to take part. Notwithstanding this, FIFA received hundreds of comments and proposals on draft regulations.[10] The Council of Europe[11] and the European Parliament[12] also called upon FIFA to put in place a sound framework for the exercise of the profession of agent in order to protect the integrity of the football transfer system. The result of this extensive consultation was the adoption by FIFA of the FFAR in December 2022.

## 2. FFAR: KEY PROVISIONS

The core objectives of the FFAR, set out in Article 1, are linked to the objectives of FIFA's regulation of the football transfer system, notably the protection of contractual stability, competitive balance and the regularity of football competitions.[13] The FFAR aims, amongst other objectives, to set and

8 FIFA Press Release "First Meeting of FIFA Football Stakeholders Committee", March, 23 2017

9 FIFA Press Release "FIFA Holds Talks with Agents on Possible Revision of Football Intermediaries System", April, 20 2018; FIFA Press Release "Football Stakeholders Endorse Landmark Reforms of the Transfer System", September, 25 2018.

10 FIFA Circular 1827 states: "*The FFAR were adopted following a comprehensive, genuine, and inclusive consultation process where over 300 proposals regarding the FFAR were considered and analysed over the last four years.*"

11 Council of Europe Committee Report, "Football Governance: Business and Values" (2021).

12 European Parliament resolution of 23 November 2021 on EU sports policy: assessment and possible ways forward (2021/2058(INI)), OJ C 224, 8.6.2022, pp. 2–10.

13 Article 1(1) FFAR states: "*FIFA has a statutory obligation to regulate all matters relating to the football transfer system. The core objectives of the football transfer system are to: a) protect the contractual stability between professional players and*

raise minimum professional and ethical standards for agents, limit conflicts of interest and protect football players. Article 2, which defines the scope of the FFAR, provides that it regulates "Football Agent Services"[14] connected to a transfer (defined as a "Transaction"[15]) with an international dimension.

The FFAR reintroduces a licensing system, with Article 4 requiring natural persons to pass an examination administered by FIFA in order to become a "Football Agent".[16] The licence is issued for an indefinite period (subject to continuing professional development) and permits the agent to conduct "Football Agent Services" on a worldwide basis.[17] Indeed, only football agents may provide such services.[18] Agents are required to adhere to FIFA's Statutes, regulations, directives and decisions as well as those of the competent bodies of national federations and confederations.[19]

In addition, the FFAR introduces new governance features for agents. FIFA created a representative group for agents, the Football Agent Working Group. The FFAR establishes the Agents Chamber as part of the FIFA Football Tribunal, which agents may use on a voluntary basis to settle disputes. Details of registered football agents are to be provided to FIFA and published on its website so that players and clubs can verify that a person is in fact a registered football agent.

The FFAR rules governing the representation of players and clubs fall, broadly speaking, into the following categories: (i) conflict of interest rules; (ii) remuneration; and (iii) player welfare. While each has distinct objectives, they are also interlinked in terms of the overall application of the FFAR. Each is considered in turn below.

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*clubs; b) encourage the training of young players; c) promote a spirit of solidarity between elite and grassroots football; d) protect minors; e) maintain competitive balance; and f) ensure the regularity of sporting competitions*."

14 Football Agent Services are defined as: "*football-related services performed for or on behalf of a Client, including any negotiation, communication relating or preparatory to the same, or other related activity, with the purpose, objective and/or intention of concluding a Transaction*."

15 A Transaction is defined as: "*(i) the employment, registration or deregistration of a player with a club or a Single-Entity League; (ii) the employment of a coach with a club, Single-Entity League or a member association; (iii) the transfer of the registration of a player from one club to another; (iv) the creation, termination or variation of an Individual's terms of employment*."

16 Article 23 FFAR provides an exception for agents who were licensed under the previous FIFA Players' Agents Regulations.

17 Articles 8 and 9 FFAR.

18 Article 11 FFAR.

19 Article 16(1) FFAR.

## 2.1. CONFLICTS OF INTEREST

The FFAR introduces new measures to prohibit or limit conflicts of interest. As a general rule, a football agent is prohibited from representing more than one party.[20]

This means that a football agent may not act for all parties, as the conflict is irreconcilable. Likewise, a football agent may not act for both a releasing club and a player, as the club's interest is to maximise the transfer fee (and, if necessary, to block the transfer), whereas the player's interest is to have a lower transfer fee in order to maximise the potential salary at the engaging club. For similar reasons, an agent may not act for both the releasing club and the engaging club.[21]

The only exception to this general rule is that a football agent may act for both the player and the engaging club in the same transfer, provided that both clients give their explicit written consent. Although there is a potential conflict even in such a relationship (as the club may wish to lower the player's salary while the player will wish to increase it), FIFA considered this limited exception acceptable following its consultations, because the engaging club and the player share an interest in the successful conclusion of the transfer and in keeping any transfer fee payable to the releasing club as low as possible.

To safeguard the integrity of the conflict of interest rules, connected football agents may not act in the same transfer.[22]

## 2.2. REMUNERATION

The FFAR regulates the service fees of football agents.

The service fee is to be based on the player's remuneration where the agent represents the player (and the engaging club, where relevant), or on the transfer compensation where the agent represents the releasing club.[23] The remuneration may not be calculated on the basis of future transfer compensation received by the club from a subsequent transfer of the player.[24]

The guiding principle is 'client pays', namely that an agent should be paid by the person or club that the agent represents; payment of the fee by

20 Article 12(8) FFAR.
21 Article 12(9) FFAR.
22 Article 12(10) FFAR.
23 Article 15(1) FFAR.
24 Article 15 FFAR.

any third party is prohibited.[25] The exception to this principle relates to the limited conflict of interest permitted where an agent acts for both the player and the engaging club. However, to safeguard the football agent's fiduciary duty to the player, the engaging club may pay no more than 50% of the total service fee due.[26] There are also exceptions for low-value representations but, again, the fiduciary duty to the player must remain unaffected.[27]

The service fee must be paid incrementally over the course of the player's contract. Only the remuneration actually received by a player is subject to the payment of a service fee, calculated on a pro rata basis. This means that, if the player leaves a club mid-contract, the service fee is no longer due to the agent concerned.[28]

Perhaps the most controversial element of the FFAR is the introduction of the "Service Fee Cap" in Article 15 FFAR, which limits the amount of remuneration that football agents can receive. The FFAR sets out the following table:

| **Client** | **SERVICE FEE CAP** | |
|---|---|---|
| | **Remuneration less than or equal to USD 200,000 (or equivalent)** | **Remuneration above USD 200,000 (or equivalent)** |
| **Individual** | 5% of the Individual's Remuneration | 3% of the Individual's Remuneration |
| **Engaging Entity** | 5% of the Individual's Remuneration | 3% of the Individual's Remuneration |
| **Engaging Entity and Individual (permitted dual representation)** | 10% of the Individual's Remuneration | 6% of the Individual's Remuneration |
| **Releasing Entity (Transfer compensation)** | 10% of the transfer compensation | |

That said, the service fee cap relates only to the transfer and does not apply to 'other services' provided by the football agent to players or clubs.

25 Article 14(2) FFAR.
26 Article 14(10) FFAR.
27 Article 14(3) FFAR. The exception applies where the player earns less than USD 200,000 per annum.
28 Article 14(7) FFAR.

These include legal advice, financial planning, scouting, consultancy, the management of image rights and the negotiation of commercial contracts. However, services provided in the 24 months before or after the transfer are presumed to form part of the football agent's services unless proven otherwise.[29]

## 2.3. PLAYER WELFARE

A key objective of the FFAR is to protect the interests of players who, as the EU General Court had previously recognised in *Piau*, have short careers.

Article 5 FFAR sets out ethical requirements that football agents must satisfy at all times, both when submitting their application and after receiving a licence. A football agent must never have been convicted of a serious criminal charge.[30] Likewise, persons who have been suspended by a regulatory body or sports governing body for two years or more for ethical or professional misconduct may not act as agents. The FFAR also prohibits agents from holding positions at clubs, leagues or federations – or indeed from holding any interest in a club, academy or league.[31]

In order to be valid, representation agreements must be in writing (with specified details to be included[32]) and may not exceed two years in duration.[33] Where the representation is exclusive, the FFAR provides that other football agents may approach the player only in the final two months of the representation agreement.[34] However, players always have the right

29 Article 15(3) and (4) FFAR.

30 Article 5(ii) FFAR: [...] "*never have been convicted of a criminal charge, including any related settlements, regarding matters related to organised crime, drug trafficking, corruption, bribery, money laundering, tax evasion, fraud, match manipulation, misappropriation of funds, conversion, breach of fiduciary duty, forgery, legal malpractice, sexual abuse, violent crimes, harassment, exploitation or child or vulnerable young adult trafficking*."

31 Article 5 FFAR: [...] "(iv.) *not be an official or employee of FIFA, a confederation, a member association, a league, a club, a body that represents the interests of clubs or leagues or any organisation connected directly or indirectly with such organisations and entities; the only exception is where an applicant has been appointed or elected to a body of FIFA, a confederation or a member association, representing the interests of Football Agents; (v.) not hold, either personally or through their Agency, any Interest in a club, academy, league or Single-Entity League*."

32 Article 12(7) FFAR states: "*A Representation Agreement is valid only if it contains the following minimum requirements: a) The names of the parties b) The duration (if applicable) c) The amount of the service fee due to the Football Agent d) The nature of the Football Agent Services to be provided e) The parties' signatures*."

33 Article 12(3) FFAR.

34 Article 16(1) FFAR.

to represent themselves.[35] The FFAR also has specific rules relating to minors.[36]

The FFAR sets out disclosure requirements under which football agents must submit to FIFA's platform the representation agreement, any agreements relating to other services, information on the service fee and on fees for other services, and any cooperation agreement with other football agents to share revenues. In addition, the football agent must disclose any information that may affect compliance with the ethical requirements (and other eligibility requirements). Any settlement agreement with a client should also be uploaded.[37]

As a complement to the disclosure requirements, FIFA publishes information relating to football agents and their services. In accordance with Article 19 FFAR, FIFA makes available information on all agents, including their names and details, as well as on the clients they represent, specifying whether the representation is exclusive or non-exclusive, the end date of the representation agreement, the services provided to the respective clients, any sanctions imposed on agents and their clients, and details of all transactions involving agents, including the amounts of service fees paid to them.[38]

Many of these rules came under scrutiny before the EU Court of Justice in *RRC Sports*.

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35 In accordance with Article 12(13) FFAR, players always have the right to represent themselves in negotiations for a transfer with the FFAR deeming as null and void any provision in the representation agreement that limits the player's ability to autonomously negotiate and conclude an employment contract without the involvement of a football agent.

36 The FFAR introduces special rules for the protection of minors, requiring agents to have completed a designated course to represent minors. A football agent may approach a minor only in the six months before the minor reaches the age at which they may sign their first professional contract with the written consent of the minor's guardians. The FFAR prohibits the remuneration of agents for representation of a minor unless it relates to the minor player's first or subsequent professional contract. While the subject of other cases, these rules were not challenged in the *RRC Sports* case. See: Article 13 FFAR and Article 14(9) FFAR.

37 Article 16(1)(j)–(k) FFAR.

38 Article 19 FFAR states: "*FIFA shall make available: a) the names and details of all Football Agents; b) the Clients that Football Agents represent, the exclusivity or non-exclusivity of their representation and the expiry date of the Representation Agreement; c) the Football Agent Services provided to each Client; d) any sanctions imposed on Football Agents and Clients; and e) details of all Transactions involving Football Agents, including the service fee amounts paid to Football Agents.*"

## 3. BACKGROUND TO THE CASES

FIFA's decision to return as regulator was greeted with hostility by some agents. Cases were launched in jurisdictions across Europe and, indeed, around the world.[39] Some cases challenged specific provisions of the FFAR, such as the conflict of interest rules or the remuneration provisions; others challenged almost the entire rulebook. The adoption of the FFAR turned out to be just the start of its legal journey.

In a case before the Court of Arbitration for Sport (CAS), the panel decided that the FFAR remuneration provisions were not anti-competitive.[40] By contrast, an English arbitral panel came to the opposite view in a case brought by major football agencies against the Football Association's national regulations.[41] Both arbitral panels, however, agreed that the conflict of interest provisions were valid.

The *RRC Sports* case, brought by an agency before the German courts, was just one of many in which almost the entire rulebook was challenged. The case was referred to the EU Court of Justice at the request of FIFA on 31 March 2023.[42] By coincidence, the German Bundesgerichtshof (Federal Supreme Court) referred questions at around the same time in the *Rogon* case[43] relating to the right of national federations to regulate non-members such as agents. Although not joined, these two *Football Agents* cases shared the same procedural pathway, being heard on the same day and assigned to the same Advocate General, who delivered his Opinions on the same day.[44] The judgments were delivered just one week apart, with suspense building from the *Rogon* judgment on 9 July 2026 to the *RRC Sports* judgment on 16 July 2026. Coinciding with the film release of *The Odyssey,*[45] the rulings promised an epic finale.

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39 Cases have been filed in Argentina, Belgium, Brazil, Germany, the Netherlands and Spain. A complaint was filed with the European Commission (Case AT.40837 FFAR) but was closed in September 2025. A number of other complaints have been filed with competition authorities.

40 CAS 2023/O/9370, *Professional Football Agents Association (PROFAA) v. FIFA* ("PROFAA").

41 Arbitral award, *CAA Base Limited, Key Stone Management Ltd (t/a Wasserman), Stellar Football Limited, Areté Management Limited v. The Football Association*, 30 November 2023 ("CAA Base").

42 Case C-209/23, *RRC Sports v. FIFA*, EU:C:2026:597 ("RRC Sports").

43 Case C-428/23, *Rogon v. Deutscher Fußball-Bund* (DFB), EU:C:2026:563 ("Rogon").

44 The hearing was held on 12 February 2025 and Advocate General Emiliou's Opinions were delivered on 15 May 2025.

45 *The Odyssey*, Directed by Christopher Nolan, Universal Pictures, 2026.

## 4. LEGAL ANALYSIS

Before addressing the substance, it is necessary to recall the principles underlying the EU Court of Justice's judgments in the respective *Football Agents* cases.

As a preliminary point, sport is subject to EU law in so far as it constitutes an economic activity. While certain purely sporting rules are not of an economic nature,[46] the same cannot be said of regulations on agents, which relate to the supply of services to clubs and players.[47] EU competition law applies to the conduct of enterprises (or "undertakings" in the English text).[48] There are two key provisions underpinning EU competition law in the Treaty on the Functioning of the European Union ("TFEU"): Article 101 TFEU prohibits in particular agreements between undertakings or decisions by associations of undertakings that have as their object or effect the prevention, restriction or distortion of competition; Article 102 TFEU prohibits the abuse by an undertaking of a dominant market position. In both cases, there must be an effect on trade between EU Member States.

Consolidating long-standing case law, the EU Court of Justice outlined in *Rogon* how EU competition law applies to sports organisations or sports federations:

> "*Article 101(1) TFEU is applicable to any entity where it carries out an economic activity and which, for that purpose, must be classified as an 'undertaking', including any entity that is created in the form of an association which, according to its statutes, has as its associative purpose the organisation and control of a given sport, provided that it carries out an economic activity in relation to that sport. Moreover, that provision is also applicable to any entity which, although not necessarily constituting an undertaking, may be classified as an 'association of undertakings' because it brings together operators active on that market.*"[49]

Consequently, FIFA and national associations (such as the DFB) are considered to have the status of an "association of undertakings", in this case in the upstream agency markets relating to the recruitment of players

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46 According to long-standing case law of the EU Court of Justice, this is the case in particular with respect to rules on the exclusion of foreign players from the composition of teams participating in national team competitions or the determination of ranking criteria used to select the athletes participating individually in competitions.

47 *Rogon*, paragraph 25.

48 The French version uses the term "*entreprise*". The term "*enterprise*" was actually used in the original English translation of the Treaty of Rome establishing the European Economic Community (1958) submitted to the United Nations (UNTS vol. 298), but the term "undertaking" was later used in official English versions.

49 *Rogon*, paragraph 28. See also: *RRC Sports*, paragraphs 83–89.

or coaches.[50] It follows that the regulations on agents constitute a decision by an association of undertakings falling within the scope of Article 101 TFEU.[51] For completeness, restrictions must have an effect on trade between EU Member States, but this condition is easily met, even where regulations are limited to a single Member State, as the EU Court of Justice confirmed in *Rogon*.[52] The main question is usually whether there is a restriction of competition by object or by effect arising from the sports regulation, and, if so, whether the restriction is justified.

Restrictions 'by object' are those which, by their very nature, are regarded as being harmful to the proper functioning of normal competition; there is no need to examine their effects. For this reason, the concept of a restriction by object must be interpreted strictly.[53] Classic examples of such restrictions are price-fixing and market-sharing cartels. However, other types of conduct may also be considered to have an anti-competitive object, even if they are not as harmful to competition as hardcore restrictions. To determine whether there is a restriction by object, it is necessary to examine, first, the content of the agreement, decision or practice in question; second, the economic and legal context of which it forms a part; and, third, its objectives.[54] In its recent ruling in *CD Tondela* (concerning COVID-19 measures adopted by the Portuguese league),[55] the EU Court of Justice stressed the importance of taking account of the context in which a decision is adopted, with Advocate General Emiliou memorably stating that "*context always matters*".[56] In *Football Agents*, the EU Court of Justice also highlighted the importance of context in the analysis.

As regards a restriction of competition by effect, this requires an analysis of the effect upon the relevant product and geographic markets (having regard to a realistic counterfactual). The EU Court of Justice noted in its rulings that the following relevant markets could be affected: (i) the market for agents' services in the international transfer of professional players and coaches; and (ii) the labour market for players and coaches.[57] The EU Court

50 *Rogon*, paragraph 32; *RRC Sports*, paragraph 86.
51 FIFA and other sports federations may also be considered to be undertakings in their own right for the purpose of Article 102 TFEU. See further Section 8 below.
52 *Rogon*, paragraphs 45–46.
53 Case C-333/21, *European Superleague Company*, EU:C:2023:1011 ("Superleague"), paragraph 161.
54 *Superleague*, paragraph 165.
55 Case C-133/24, *CD Tondela, Liga Portuguesa et al.*, EU:C:2026:361 ("CD Tondela"), paragraph 43, citing in particular *Superleague*, paragraph 165.
56 *CD Tondela*, Opinion of Advocate General Emiliou, EU:2025:364, paragraph 66.
57 *RRC Sports*, paragraphs 171–173.

of Justice left the effects analysis to the national courts, proceeding on the assumption that there is an effect.

Not all measures that restrict freedom of action are necessarily prohibited. In *Wouters*,[58] concerning professional regulations, and subsequently in *Meca Medina*,[59] concerning anti-doping regulations, the EU Court of Justice held that a restriction is permitted where it is inherent in, and proportionate to, the pursuit of a legitimate objective. In *Superleague*, the EU Court of Justice held that this exception for legitimate objectives in the public interest applied only to restrictions by effect, not to those by object.[60] Whereas previously the categorisation of the restriction did not matter, it is now necessary first to establish its nature.[61]

In the *Football Agents* cases, the EU Court of Justice seems to have consolidated the tests, stating:

> "[...] *not every agreement between undertakings, every decision by an association of undertakings or every concerted practice which restricts the freedom of action of the undertakings party to that agreement or subject to compliance with that decision or participating in that practice necessarily falls within the prohibition laid down in Article 101(1) TFEU. Indeed, the examination of the economic and legal context of which some of those agreements, decisions and practices form a part may lead to a finding, first, that they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anti-competitive in nature; second, that the specific means used to pursue those objectives are genuinely necessary for that purpose; and, third, that, even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition.*"[62]

Irrespective of whether there is a restriction of competition by object or by effect (including where there is no public interest objective), the EU Court of Justice confirmed in *Superleague* that Article 101(3) TFEU

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58 Case C-309/99, *J.C.J. Wouters, J.W. Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten*, EU:C:2002:98 ("Wouters").

59 Case C-519/04 P, *Meca-Medina and Majcen v. Commission*, EU:C:2006:492 ("Meca Medina").

60 *Superleague*, paragraphs 183 and 195.

61 Professor Weatherill neatly sums up the change in the legal test post-Superleague: "*The point is that if a practice escapes the reach of Article 101(1) according to this formula, there is no need to assess whether it is a restriction of competition by object or by effect. It is not a restriction of competition within the meaning of Article 101(1) at all. This is now changed.*" See: Weatherill, "The impact of the rulings of 21 December 2023 on the structure of EU sports law", *International Sports Law Journal* (2023), pp. 409–415, at p. 411.

62 *Rogon*, paragraph 36; *RRC Sports*, paragraph 183.

potentially provides an exemption[63] where the restriction is indispensable to promoting economic progress while allowing consumers a fair share of the resulting benefits without eliminating competition.[64] Accordingly, this route to exemption is available for regulations found to restrict competition by object. In *Superleague*, the EU Court of Justice accepted that objectives in the public interest could be 'translated' into economic benefits[65] – a point followed in *RRC Sports*.[66] This exemption also applies, however, to regulations (by effect) that do not pursue a public interest objective but are instead implemented by a sports federation to achieve economic efficiencies (such as the collective sale of media rights relating to a sports competition).[67]

There is now a large degree of overlap between the public interest test and the economic benefit test[68], with both requiring an assessment of the necessity (or, in the case of Article 101(3) TFEU, the indispensability) of the restriction, in that there should be no less restrictive genuine alternative, as well as of its proportionality (in particular, no elimination of competition).[69]

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63 *Superleague*, paragraph 189.

64 An exemption pursuant to Article 101(3) TFEU is subject to four cumulative conditions as set out by the EU Court of Justice in *Superleague* at paragraph 190: "*First, it must be demonstrated with a sufficient degree of probability that the agreement, decision by an association of undertakings or concerted practice in question makes it possible to achieve efficiency gains, by contributing either to improving the production or distribution of the products or services concerned, or to promoting technical or economic progress. Second, it must be demonstrated, to the same degree of probability, that an equitable part of the profit resulting from those efficiency gains is reserved for the users. Third, the agreement, decision or practice in question must not impose on the participating undertakings restrictions which are not indispensable for achieving such efficiency gains. Fourth, that agreement, decision or practice must not give the participating undertakings the opportunity to eliminate all effective competition for a substantial part of the products or services concerned.*"

65 *Superleague*, paragraph 196.

66 *RRC Sports*, paragraphs 223 and 224.

67 As confirmed in *Superleague*, paragraphs 231 *et seq.*

68 See further: Keane, "Balancing autonomy and legality: the proportionality challenge in EU law post Topfit, Superleague and Royal Antwerp" in Colucci and Bastianon (eds), *Twenty Years after Meca Medina* (SLPC, 2026). That chapter was submitted for publication before the delivery of the *Football Agents* cases.

69 *Rogon*, paragraph 38. The EU Court of Justice stated: "*Furthermore, in view of the requirement that the conduct at issue must, strictly speaking, be necessary and proportionate, it should be noted that the examination of that requirement involves [...] first of all, determining whether the specific means used in a given case to pursue a legitimate objective in the public interest are appropriate for ensuring the attainment of that objective, next, assessing whether recourse to those means is necessary in order to attain that objective, which implies that there are no other*

In summary, where a regulation falls within the scope of EU competition law as a decision by an association of undertakings that affects trade between Member States, the legal test can be set out as involving the following steps:

- **Step 1:** Does the regulation restrict competition by object or effect?
- **Step 2:** If by effect, is the regulation necessary and proportionate to the achievement of a legitimate objective in the public interest?
- **Step 3:** If by object, or by effect where no public interest objective is pursued, is it justified under Article 101(3) TFEU as an economic benefit to consumers that is indispensable and does not eliminate competition?

It is against these principles that the EU Court of Justice assessed first the governance of agents by sports federations and then the detailed provisions of the FFAR in the respective *Football Agents* cases.

## 5. REGULATION AND LICENSING OF FOOTBALL AGENTS

The central question in the *Rogon* case was whether a sports federation could adopt regulations that are not only addressed to its members but also govern the use of services provided by non-member undertakings, such as football agents.[70] The EU Court of Justice answered in the affirmative.

The EU Court of Justice recognised the application of EU competition law to the regulation of agents.[71] However, the regulation of non-members – such as agents – does not in itself constitute a 'by object' restriction of competition. The EU Court of Justice stated: "*the mere fact that regulations adopted by a sports federation are addressed to its members, whilst also*

*measures that would be as effective for that purpose whilst being less restrictive of competition, and, finally, verifying that the restrictive effects of the measures adopted are not disproportionate to such an objective, in particular by eliminating all competition on the relevant market.*" A similar finding was made in *RRC Sports*, at paragraph 227, which refers to "*alternative measures which might genuinely be envisaged.*"

70 *Rogon*, paragraph 20. The first question referred was framed around the application of the *Wouters/Meca Medina* test: "*Do the principles developed by the Court of Justice of the European Union in the judgments in Wouters of 19 February 2002 (C-309/99) and Meca Medina of 18 July 2006 (C-519/04) [...] apply to the regulations of a sports association, which are addressed to members of the association and regulate the use of services of undertakings outside the association on a market upstream of the association's activities?*"

71 *Rogon*, paragraphs 26–34.

*regulating the use of the services of third-party undertakings not belonging to that federation, cannot, in itself, [...] be regarded, by its very nature, in the economic and legal context at issue in the main proceedings, as being particularly harmful to the proper functioning of normal competition*."[72]

The EU Court of Justice recognised, in particular, the governance role of sports federations, stating that a sports federation "*is required to adopt regulations capable of having implications for the eco-system which they regulate and control*".[73] In this ecosystem, the EU Court of Justice noted that "*clubs, national federations, players and agents, must interact and, to a certain extent, cooperate in order to ensure the viability of the sector and its attractiveness to supporters and spectators*".[74]

The fact that a sports regulation governs the activities of non-members of a sports federation does not prevent such a regulation from being justified by legitimate objectives in the public interest.[75] Nor does it mean that such regulation cannot be necessary[76] or, for that matter, proportionate.[77] Indeed, the EU Court of Justice noted that, in previous cases relating to the legitimate objectives pursued by professional regulations, those regulations had affected non-members, such as final consumers in the case of minimum fees put in place to ensure quality of service.[78]

With respect to agents, the EU Court of Justice observed that "*the reciprocal competitive position of [football] clubs on the various markets in which they are present, such as sports ticketing, sponsorship or merchandising markets, depends primarily on their performances when participating in sporting competitions*". The EU Court of Justice recognised that this sporting performance "*is closely linked to the composition of the teams over which the agents exercise a certain influence*". Thus, football agents are not merely "*inputs*" providing services to clubs in an upstream market but exert influence over the key competitive component of clubs: the team.[79]

In short, the EU Court of Justice confirmed that sports federations can regulate the activities of non-members. The judgment does not require an

72 *Rogon*, paragraph 51.
73 *Rogon*, paragraph 58.
74 *Rogon*, paragraph 59.
75 *Rogon*, paragraph 53.
76 *Rogon*, paragraphs 54 and 60.
77 *Rogon*, paragraph 55.
78 Citing Case C-136/12, *Consiglio Nazionale dei Geologi*, EU:C:2013:489, paragraphs 53 and 54, and Joined Cases C-427/16 and C-428/16, *CHEZ Elektro Bulgaria and FrontEx International*, EU:C:2017:890, paragraphs 53–55.
79 *Rogon*, paragraph 44.

assessment of direct and significant influence to determine whether the activity concerned by the sports regulation relates to a sports federation's mission.[80] Nor is there any suggestion that the regulations must be adopted following consultation with, let alone the approval of, non-members. Instead, the EU Court of Justice leaves the analysis to the established legitimate objective, necessity and proportionality test.

This finding was followed in *RRC Sports*, in which FIFA was recognised as having the right to govern football agents. The EU Court of Justice stated:

> "*Since the organisation and conduct of such competitions may give rise to the pursuit of ancillary economic activities, which may themselves influence those competitions, it cannot be regarded as necessarily unlawful for an association such as FIFA to adopt rules intended to regulate relations between, on the one hand, its members and their affiliates and, on the other, undertakings liable to have an economic interest in the organisation of those competitions*."[81]

Consequently, the mere requirement that agents submit to FIFA's regulations and to the jurisdiction of the CAS was not considered to restrict competition by object.[82] Moreover, any restriction may be considered justified by the objective of ensuring a higher level of protection for the agents' clients and, indeed, for the agents themselves, in particular by providing, on a global scale, a uniform legal framework with a single decision-making mechanism.[83]

## 6. COMPETITION ANALYSIS OF FFAR PROVISIONS

In response to the second question referred in *Rogon*, the EU Court of Justice held that the competition analysis may relate to specific rules which have different objectives. However, the EU Court of Justice agreed with the Advocate General that it may be *"artificial"* to split up a set of rules. Instead, a holistic approach may be more appropriate in some cases. The EU Court of Justice concluded that the public interest "*does not necessarily have to be assessed with regard to each of the provisions of the regulations at issue, but with regard to a set of provisions pursuing a distinct objective or producing a distinct effect*".[84] This finding had a significant impact on

[80] *Rogon*, paragraph 69. The Advocate General had suggested that there be a significant link to the activity concerned but was not followed on this point, arguably because it forms part of the necessity test in any event.
[81] *RRC Sports*, paragraph 81.
[82] *RRC Sports*, paragraph 143.
[83] *RRC Sports*, paragraph 209.
[84] *Rogon*, paragraph 78, citing the Opinion of Advocate General Emiliou, paragraph 79.

the approach of the EU Court of Justice in the subsequent *RRC Sports* judgment, in which it took a more holistic approach to the review of the FFAR. This article accordingly addresses the competition analysis by subject matter: (i) conflicts of interest; (ii) remuneration; and (iii) ethical requirements.

### 6.1. COMPETITION ANALYSIS OF THE CONFLICT OF INTEREST RULES IN THE FFAR

The EU Court of Justice dismissed the proposition that the conflict of interest rules in Article 12(8)–(10) FFAR restricted competition by object. The mere requirement that agents act for their client and may, exceptionally, act in dual representation for both the player (or coach) and the engaging club is not harmful to competition. On the contrary, the EU Court of Justice recalled that "*the EU antitrust rules are not directly intended to ensure that economic operators are free to pursue their commercial activities*" but rather to ensure that businesses do not distort competition on a given market to the detriment of consumers and EU citizens.[85] In going back to first principles, the EU Court of Justice is essentially saying that EU competition law does not create a regulatory race to the bottom.

Even if such rules are found to restrict competition by effect,[86] the EU Court of Justice held that they were justified by the legitimate objective of protecting agents' clients against possible behaviour of agents contrary to the ethical requirements applicable to this activity.[87] While leaving it to the national court to assess whether informed consent would be as effective, the EU Court of Justice considered the conflict of interest rules to be proportionate, given the different approach taken to less serious forms of conflict:

> *"Article 12(8) to (10) of the FFAR merely requires informed consent in situations where potential conflicts of interest are less serious, in particular between players or coaches, on the one hand, and engaging entities, on the other, and prohibits dual representation only in cases where the existence of a conflict of interest is manifest, such as in the case of dual representation of a player or coach and the releasing entity, the releasing entity and the engaging entity, or where the agent intends to represent all the parties to the same transaction."*[88]

85 *RRC Sports*, paragraph 117, citing Article 3 of the Treaty on European Union (TEU).
86 The English panel in the *CAA Base* case considered there to be no effect upon competition. See: *CAA Base*, paragraph 354.
87 *RRC Sports*, paragraph 192.
88 *RRC Sports*, paragraph 194.

In the free movement analysis, the EU Court of Justice also found the rules on connected football agents[89] to be justified, holding such rules to be necessary to limit the possibility of an agent simultaneously representing a player as well as the releasing and engaging clubs within the same transfer. Thus, the EU Court of Justice endorsed the conflict of interest rules in the FFAR, a finding that, incidentally, is consistent with other agent cases, including the decisions of the English panel in *CAA Base*[90] and the CAS panel in *PROFAA*.[91]

## 6.2. COMPETITION ANALYSIS OF THE REMUNERATION PROVISIONS IN THE FFAR

Central to the legal arguments between the parties was the nature of the service fee cap, which the football agents characterised as a buyers' cartel. Following the *Superleague* judgment, the EU Court of Justice invited the parties to submit additional written observations on the point, given that, if the service fee cap did restrict competition by object, it would now be justifiable only if it satisfied the conditions for an exemption under Article 101(3) TFEU (and no longer as a legitimate objective in the public interest pursuant to the *Meca Medina* test).

In his Opinion, Advocate General Emiliou considered that the service fee cap could not be equated with a buyers' cartel that restricts competition by object, given its dynamic nature:

> "*Moreover – and this is, for me, of the utmost importance – the rules at issue do not set any specific binding maximum level of fees. In fact, there is no given ceiling which the agents' fees cannot exceed. The rules at issue only require that the fees be linked to the transfer cost or to the salary of the player assisted by the agent, through a percentage cap thereon. Yet, in so far as no maximum in respect of those two parameters exists, and football clubs can and do compete to sign up new players by offering higher transfer fees to the releasing clubs and salaries to the players in question, the agents' fees can also, as a consequence, increase with no upper limit acting as a constraint. That is why, in these proceedings,*

89 A 'Connected Football Agent' is defined in the FFAR as: "*a Football Agent is connected to another Football Agent as a result of their: (i) being employed or contractually retained by the same Agency through which Football Agent Services are conducted; (ii) both being directors, shareholders in, or co-owners of the same Agency through which Football Agent Services are conducted; (iii) being married to one another, domestic partners, siblings of one another, or parent and child or stepchild; or (iv) them having made any contractual or other arrangements, whether formal or informal, to cooperate, on more than one occasion, in the provision of any services or to share the revenue or profits of any part of their Football Agent Services.*"

90 *CAA Base*, paragraph 355.

91 *PROFAA*, section 3.7.

*certain parties referred to the cap set out in the FFAR as a dynamic maximum price*."[92]

The EU Court of Justice observed that horizontal price collusion is, by its very nature, detrimental to the proper functioning of the normal game of competition, in particular with respect to the free determination of price, quantity or quality. However, the EU Court of Justice recalled that not all forms of price regulation are necessarily harmful to competition, notably where it relates to a maximum price. Citing the Advocate General, the EU Court of Justice continued:

> "*Since such a rule [as the service fee cap] does not establish a fixed remuneration cap, but provides for a relative limit, being proportional, depending on the case, either to the remuneration which the player or coach will receive when the agent represents that individual or the engaging entity, or to the compensation paid by the engaging entity to the releasing entity where the agent represents the latter, it does not appear that rule is likely to prevent agents from offsetting the efforts they make in order, in particular, to improve the quality of their service by securing higher remuneration, or that it is capable of dissuading them from offering their services on the market concerned*."[93]

Moreover, the EU Court of Justice found the service fee cap to be justified by a legitimate objective in the public interest in so far as it gives rise to restrictive effects upon competition. Interestingly, the EU Court of Justice noted the economic analysis provided by FIFA relating to market failures in the market for agents' services, particularly the information asymmetry between agents and players, the 'gatekeeper' problem and 'hold-up' problem.[94] However, the EU Court of Justice considered these to be justifications of a purely economic nature that could not be regarded as legitimate objectives in the public interest (but which would presumably fall to be assessed under Article 101(3) TFEU as economic benefits arising from the correction of market failures).[95]

Instead, the EU Court of Justice recognised that the service fee cap pursued the legitimate objectives of protecting clients against conduct by agents contrary to the ethical requirements and of protecting players lacking experience of, or information about, the functioning of the football transfer system.[96] The service fee cap was considered to be necessary to

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92 *RRC Sports*, Opinion of Advocate General Emiliou, paragraph 63.
93 *RRC Sports*, paragraph 122.
94 *RRC Sports*, paragraph 182.
95 *RRC Sports*, paragraph 196. Indeed, the EU Court of Justice observes at paragraph 224 that "*the correction of a market failure is, in principle, capable of generating such economic efficiency gains...*"
96 *RRC Sports*, paragraph 197.

achieve these legitimate objectives. Indeed, the EU Court of Justice stated: "*Such rules are capable of preventing situations in which agents would be motivated to act in an interest separate from that of their clients and, therefore, reducing the risk that they are faced with a conflict of interest*."[97]

The service fee cap was deemed to be proportionate as it "*is determined in proportion either to the remuneration received by the player or coach where the agent represents an individual or the engaging entity or to the compensation paid by the engaging entity to the releasing entity, where the agent represents the latter and that, in so doing, the operators concerned retain the right to compete both on prices and on any other relevant parameter, such as the quality of the services provided or innovation*".[98]

In addition, the EU Court of Justice observed that there is no limitation on the revenues that an agent may generate from other services (not related to the transfer) provided to players. The EU Court of Justice accepted that the rebuttable presumption – that fees relating to other services provided to players in the 24 months before or after a transfer are connected to the agent's service fee – was necessary to prevent circumvention of the service fee cap.[99]

Similar findings were made with respect to the 'client pays' rule and the 50% limit in cases of dual representation.[100] In rejecting the 'by object' classification, the EU Court of Justice considered that the rule prevented collusive conduct by agents.[101] The fact that players and coaches were deprived of the advantage of not having to pay the service fees themselves was not disproportionate to the legitimate objective of preventing unethical conduct or conflicts of interest. In particular, it ensured that agents acted in the interest of the player, not of the person paying the service fee.[102]

The prohibition on fees derived from future transfers[103] was considered by the EU Court of Justice to relate merely to the calculation of service fees. It does not prevent agents from competing on price.[104]

The same conclusion was reached with respect to the requirement that the service fee be based either on a player's remuneration or on the transfer fee, as appropriate, since this requirement did not prevent competition

97 *RRC Sports*, paragraph 199.
98 *RRC Sports*, paragraph 204.
99 *RRC Sports*, paragraph 201.
100 Article 14(2) and (3) FFAR.
101 *RRC Sports*, paragraph 130.
102 *RRC Sports*, paragraph 205.
103 Article 15(1) FFAR read in conjunction with Article 18(1) of the FIFA Regulations on the Status and Transfer of Players (RSTP).
104 *RRC Sports*, paragraphs 126–127.

on price. Indeed, the EU Court of Justice stated that the rule was pro-competitive because it encourages agents to endeavour to guarantee their clients the effective payment of their remuneration.[105]

While accepting that the payment of agents pro rata throughout the duration of the player's contract was necessary to ensure that the agent was paid for services actually provided to the player, the EU Court of Justice raised a concern about the termination of payments to agents where a player transfers. According to the EU Court of Justice, the prohibition on payment where the agent had no role in the termination by a former client player of his contract with a club (where the player is represented by a new agent) would be "arbitrary" and a restriction of competition by object that does not appear to be outweighed by economic benefits.[106] That said, the EU Court of Justice accepted that it would be appropriate to stop pro rata payments where the same agent remains instructed by the departing player concerned.

In summary, the EU Court of Justice endorsed the following FFAR rules relating to agents' service fees:

- service fee to be based on the player's salary or the transfer fee
- service fee cap (and anti-circumvention measures)
- 'client pays' rules
- no interest in future transfers
- pro rata rule, except where the agent had no role in the early termination by a player

### 6.3. COMPETITION ANALYSIS OF THE ETHICAL REQUIREMENTS IN THE FFAR

The claim that the ethical requirements set out in Article 5 FFAR were, by their very nature, harmful to competition was rejected. The EU Court of Justice even doubted that the ethical requirements would have a significant effect upon the market for agents' services, noting that these requirements were unlikely to deter most applicants.[107] In any event, the ethical requirements were justified.

The EU Court of Justice accepted that there was a legitimate rationale for the no-approach rule (Article 16(1)(b) and (c) FFAR, which prohibits agents from approaching players during an exclusive representation period until

[105] *RRC Sports*, paragraph 131.
[106] *RRC Sports*, paragraphs 136–138.
[107] *RRC Sports*, paragraphs 146–149.

two months before the end of the representation agreement). Such rules are likely to strengthen the stability of contracts, in particular the effectiveness of the duration of exclusive representation contracts already concluded.[108] Provided that the no-approach period is not manifestly excessive, such rules are not, by their very nature, harmful to competition.

However, the EU Court of Justice took issue with a potential interpretation of the rule that would give incumbent agents an advantage by enabling them simply to extend a representation contract before the window opened to competition. Such an approach would restrict competition by object and may not be justified.[109] The EU Court of Justice made no firm finding, and the interpretation of that rule will have to be settled by the national court – subject to any clarification by FIFA as to its application.

## 7. DISCLOSURE AND PUBLICATION

A number of disclosure and publication requirements (relating to the agency[110] as well as the service fee and fees for other services[111]) were challenged under EU competition law and, separately, under EU data protection law.

### 7.1. DISCLOSURE AND PUBLICATION: COMPETITION ANALYSIS

From a competition perspective, the contested disclosure requirements do not restrict competition by object. The requirements were put in place to ensure adherence to the FFAR. The EU Court of Justice held that "*Since FIFA*

[108] In the free movement analysis, the EU Court of Justice acknowledged that the window may benefit players, who now have a clear time frame in which to consider various options. See: *RRC Sports*, paragraph 307.

[109] *RRC Sports*, paragraph 158.

[110] Article 16(2)(k)(ii) FFAR: "*within 14 days of the first Transaction involving the Agency: the number of Football Agents that use the same Agency to conduct their business affairs and the name of all its employees*".

[111] Article 16(2)(j)(ii)–(v) FFAR: *"(ii) within 14 days of execution: any agreement with a Client other than a Representation Agreement, including but not limited to agreements relating to Other Services and the information requested on the Platform; (iii.) within 14 days of payment of a service fee: the information requested on the Platform; (iv.) within 14 days of payment of a fee related to any agreement entered into with a Client other than a Representation Agreement: the information requested on the Platform; (v.) within 14 days of occurrence: any contractual or other arrangement between Football Agents to cooperate in the provision of any services or to share the revenue or profits of any part of their Football Agent Services*."

*is not active in any of the markets in question, such a mechanism for collecting information does not, in itself – subject to the possible dissemination or use of that information – have any impact on the operation of competition*."[112]

As for the publication requirements, the EU Court of Justice considered that the information was not necessarily confidential, in particular as it may relate to historical information, and that, "*given that such information relates to transactions that have already taken place, it cannot, in principle, reveal the strategy which those persons intend to implement with regard to what constitutes one or more parameters in the light of which competition on those markets is established, with the result that it also cannot, in principle, be regarded as strategic*".[113] Indeed, the information may encourage competition since, "*on a market characterised by a spread of market participants, the disclosure and publication of such information may, conversely, help to stimulate competition*".[114]

In any event, the contested disclosure and publication requirements are justified by the legitimate objectives pursued by the FFAR, as they may be regarded as part of the means necessary to achieve those objectives. Simply put, the disclosure requirements enable FIFA "*first … to verify compliance with those regulations and, second, to enable the addressees of those regulations to comply with them*".[115] From the EU Court of Justice's perspective, there do not appear to be any less restrictive measures available that would be as effective. Nor can it be assumed that the disclosure would result in disproportionate restrictions of competition.[116]

The exception to these findings from a competition law perspective relates to the requirement upon FIFA at Article 19(e) FFAR[117] to make available details of "*all transactions involving player agents*". According to the EU Court of Justice, such broad wording leaves too much room for the possibility that the disclosure of the information covered by it is not necessary to achieve the objective of ensuring the proper application of the FFAR. In particular, it may enable competing agents to learn the amount of compensation paid to agents. However, the EU Court of Justice did not dismiss the legitimacy of this disclosure rule entirely, noting that "*some price transparency is necessary in order to enable agents wishing to approach new clients to offer competitive prices…*" Instead, the EU Court of Justice considered that "*access to anonymised data, such as the spread of the prices charged by all*

112 *RRC Sports*, paragraph 160.
113 *RRC Sports*, paragraph 165.
114 *RRC Sports*, paragraph 167.
115 *RRC Sports*, paragraph 214.
116 *RRC Sports*, paragraph 215.
117 Now Article 19(1)(e) FFAR.

*agents in relation to average prices, might prove sufficient for the purposes of achieving that objective*".[118]

## 7.2. DISCLOSURE AND PUBLICATION: DATA PROTECTION ANALYSIS

From a data protection perspective, the processing of personal data is lawful pursuant to Article 6(1)(f) GDPR[119] if it satisfies three cumulative conditions: (i) the controller or a third party must have a legitimate interest; (ii) the processing must be necessary to pursue that legitimate interest; and (iii) the interests or fundamental rights and freedoms of the data subjects whose data is to be protected must not override the legitimate interest of the controller or a third party.[120]

As for a legitimate interest, the EU Court of Justice held that there was a 'relevant and appropriate relationship',[121] given that "*the natural persons whose data agents may provide to FIFA, on the basis of Article 16(2)(j)(ii) to (v) and (k)(ii) of the FFAR, are all involved in competitions organised by FIFA or by confederations or federations affiliated to it, and the data that may be so provided relate to the professional activities of those natural persons carried out in connection with those sporting competitions...*"[122]

The processing of the data listed in Article 16(2)(j)(ii) to (v) and (k)(ii) – albeit numerous – is limited to what is necessary to ensure compliance with the FFAR. In particular, the requirement in Article 16(2)(j)(ii) FFAR to report any agreement with a client that is not a representation agreement – notably

118 *RRC Sports*, paragraph 217.

119 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC OJ L 119, 4.5.2016, p. 1 ("General Data Protection Regulation" or "GDPR").

120 *RRC Sports*, paragraphs 317–319.

121 Recital 47 GDPR states: "*The legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller. Such legitimate interest could exist for example where there is a relevant and appropriate relationship between the data subject and the controller in situations such as where the data subject is a client or in the service of the controller. At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place.* [...]"

122 *RRC Sports*, paragraph 331.

contracts for other services – makes it possible to ensure that the service fee cap and other FFAR requirements[123] are not circumvented.[124]

In terms of balancing the interests, the EU Court of Justice acknowledged that compliance with the FFAR is of "*considerable importance to FIFA*".[125] Subject to verification by the national court, the judgment concluded that "*the processing of personal data provided for in Article 16(2)(j)(ii) to (v) and (k)(ii) of the FFAR is based on a fair balance between, on the one hand, the interests and fundamental rights and freedoms of the data subjects and, on the other, the legitimate interests pursued by the controller*".[126] Thus, it is likely that the provisions comply with Article 6(1) GDPR.

Turning to the publication of data pursuant to Article 19 FFAR (e.g. information on agents, their clients, nature and duration of representation, transactions, service fees), the EU Court of Justice considered that the dissemination of the data fell within the scope of the GDPR. As with disclosure, the EU Court of Justice recognised compliance with the FFAR as a legitimate objective.[127]

In terms of necessity, the EU Court of Justice observed that the provisions of Article 19 FFAR do not specify which category of persons may have access to the different categories of information. However, the EU Court of Justice took a pragmatic approach, finding that "*lack of precision cannot, in itself, render that article contrary to [Article 6(1)(f) GDPR], if and in so far as the referring court finds that such a lack of precision does not mean that all those categories of persons will have indiscriminate access to all of that information*".[128] Nor does the lack of precision prevent the EU Court of Justice from making observations as to the categories of persons in respect of whom each personal data processing operation provided for in Article 19 FFAR could be justified.[129]

In fact, the EU Court of Justice considered the disclosure of the following information under Article 19(a)–(c) FFAR to be necessary and proportionate[130] to the achievement of the objectives of the FFAR, for the following reasons:

- disclosure of the names and details of agents to other agents (Article 19(a) FFAR[131]), to enable agents to fulfil their obligations under the

123 Notably those at Article 12(8) and (9) FFAR.
124 *RRC Sports*, paragraph 334.
125 *RRC Sports*, paragraph 341.
126 *RRC Sports*, paragraph 342.
127 *RRC Sports*, paragraph 354.
128 *RRC Sports*, paragraph 356.
129 *RRC Sports*, paragraph 357.
130 *RRC Sports*, paragraph 371.
131 Now Article 19(1)(a) FFAR.

FFAR, since this data is in any case necessary to contact an agent representing a player or coach regarding a potential recruitment.[132]

- disclosure and publication of this information to clubs, single-entity leagues, players and coaches, since there is no other means for persons wishing to be represented by an agent to verify, in accordance with Article 18(1)(c) FFAR, whether the service provider with whom they intend to enter into an agency agreement has in fact been licensed by FIFA.[133]
- disclosure of the identity of the clients represented by each football agent as well as the exclusivity or non-exclusivity of the representation and the term of the agency agreement, which is required to enable compliance with the no-approach rule pursuant to Article 16 FFAR[134] as well as to ensure compliance with Article 18bis RSTP (relating to third-party influence).[135]

However, the EU Court of Justice considered that the publication of all transactions would not be in line with the GDPR and, in particular, with the principle of data minimisation.[136]

With respect to the publication of sanctions specifically under Article 19(d) FFAR[137], the EU Court of Justice doubted that Article 10 GDPR (relating to criminal convictions and offences) was applicable as the sanctions concerned were not imposed pursuant to criminal proceedings.[138] Publication therefore also had to be justified pursuant to Article 6(1) GDPR. In this respect, the EU Court of Justice followed its recent ruling in *NADA* (relating to publication of anti-doping sanctions),[139] noting that publication can have an important dissuasive effect:

> "*as regards the processing provided for in Article 19(d) of the FFAR, consisting of the disclosure and publication of any sanctions imposed on agents or clients, it should be noted that such processing may be necessary, in that it may constitute a more effective and dissuasive sanction than a fine, in so far as the consequences of disclosing such sanctions are difficult to predict, thus rendering unreliable any cost-benefit assessment of non-compliance with the rule in question. Furthermore, such processing may prove necessary to enable persons who may have been*

[132] *RRC Sports*, paragraph 358.
[133] *RRC Sports*, paragraph 359.
[134] *RRC Sports*, paragraph 362.
[135] *RRC Sports*, paragraph 361.
[136] *RRC Sports*, paragraph 370.
[137] Now Article 19(1)(d) FFAR.
[138] *RRC Sports*, paragraphs 348–352.
[139] Case C-474/24, *Nationale Anti-Doping Agentur Austria GmbH*, EU:C:2026:579 ("NADA").

*harmed by the breach of the FFAR that led to the sanction to become aware of the matter."*[140]

Publication of the sanctions was found to be an integral part of the sanction itself, and therefore suitable for restoring confidence in the relevant markets and facilitating the exercise of claims for damages by potentially aggrieved persons.[141] That said, the publication of all information relating to sanctions may not be proportionate, with the EU Court of Justice requiring an assessment of the gravity and relevance of the sanction before publication. Similarly, the publication of sanctions after their completion may not be proportionate.[142] Other than this narrow concern, the publication of sanctions pursuant to Article 19 FFAR is compatible with data protection rights.

## 8. FFAR AND CLAIMS OF ABUSE OF DOMINANCE

Much like Odysseus landing in Ithaca only to be confronted with new challenges, sports federations often face claims not just under Article 101 TFEU but also under Article 102 TFEU and the free movement rules. The allegations of abuse are usually almost identical – presumably thrown in by claimants in the hope that any rule escaping prohibition under Article 101 TFEU will instead be caught as an abuse of dominance or restriction of free movement. In practice, the exercise usually involves similar considerations with the same arguments being made and considered in triplicate. This article therefore focuses on the distinguishing features of the EU Court of Justice's analysis.

As the EU Court of Justice recalled in *RRC Sports*, Articles 101 and 102 TFEU must be applied coherently, having regard to the specific features of each provision.[143] There is, however, an important difference: for Article 102 TFEU to apply to sports federations, dominance must be established. There has been a lazy tendency to assume that sports federations are dominant in all cases merely by virtue of their regulatory functions. However, in *RRC Sports* the EU Court of Justice provided some detail on the factors to be considered in establishing dominance.

First, the EU Court of Justice accepted that FIFA is not itself an economic operator active in the relevant markets primarily affected by the FFAR, namely

140 *RRC Sports*, paragraph 371.
141 *RRC Sports*, paragraph 378.
142 *RRC Sports*, paragraph 382.
143 *RRC Sports*, paragraph 235, citing *Superleague*, paragraph 119.

the market for agents' services as well as the labour market for players and coaches.[144] The situation therefore differs from that in *Superleague*. However, in his Opinion, Advocate General Emiliou stated that "*an undertaking can, de jure or de facto, exercise a regulatory role, determining the conditions in which undertakings may access a given market and shaping the conditions in which those undertakings can then compete*..."[145] The EU Court of Justice agreed with this analysis, finding that FIFA may affect access to the relevant market for agents' services.[146] Later in the judgment, the EU Court of Justice explained that this position of dominance "*stems from the regulatory, supervisory, and sanctioning powers it exercises in those markets*".[147] This finding also presupposes that, for dominance to be established, there must be a genuine impact upon access to the relevant markets concerned, not just an ancillary link.

Holding a position of dominance is not prohibited by Article 102 TFEU; there must be an abuse.[148] The test for abuse of a dominant position is based on determining whether the conduct in question deviates from competition on the merits and whether it is capable of actually or potentially restricting competition by driving equally capable competitors out of the relevant market(s) or by preventing their development in those markets.[149]

The mere regulation of agents by FIFA is not an abuse. The EU Court of Justice considered that, if FIFA were to use its regulatory powers "*to limit, steer or regulate the growth of competition on the market for agents' services in accordance with the economic or competitive interests of ... clubs that are members of the national associations affiliated to it, such conduct could be classified as abuse of a dominant position and, more specifically, exclusionary abuse, even if the effects of that conduct were to manifest themselves on related or neighbouring markets to those on which FIFA carries on its own economic activities*".[150] The same applies if FIFA does so in its own economic interests. This must be established on the basis of a detailed, comprehensive and overall analysis of the conduct in question,

144 *RRC Sports*, paragraph 242.
145 *RRC Sports*, Opinion of Advocate General Emiliou, paragraph 137.
146 *RRC Sports*, paragraph 243.
147 *RRC Sports*, paragraphs 244 and 261. While not directly addressed, the EU Court of Justice seems to take a functional approach, noting FIFA's regulatory and review powers and the power to impose sanctions on the relevant markets for football agents' services.
148 *RRC Sports*, paragraph 251.
149 *RRC Sports*, paragraph 257, citing the legal test set out in *Superleague*, paragraph 129, and Case C-48/22 P, *Google and Alphabet v. Commission*, EU:C:2024:726 ("Google Shopping"), paragraph 165.
150 *RRC Sports*, paragraph 265.

which presupposes an examination of the nature, content and actual or potential effects of the rules adopted by FIFA.[151]

To establish an abuse, as the EU Court of Justice states: "*it is necessary to demonstrate that the undertaking in a dominant position imposed, in its interest, on its customers or on other trading partners, conditions for the pursuit of their activity which have no objective economic, technical or legal justification*."[152] The existence of an abuse of a dominant position could thus be established if "*a reasonably efficient sports federation, in a comparable situation, would have been led to adopt rules different from those at issue, which, while suitable for attaining the objectives pursued, would have been significantly less harmful to the agents' own interests*".[153]

This is a high standard for a claimant to meet. It requires proving that no sports association would reasonably have put in place the contested regulations. It recognises that it is not the role of courts to 'step into the shoes' of sports federations. A sports federation may choose between a number of different regulatory options. The fact that it chooses one approach rather than another does not mean that there is an abuse: the choice must be one which no reasonable sports federation would have taken. This reasonableness standard has been central to the approach of the EU Court of Justice since the *Wouters* and *Meca Medina* cases.

Even if an abuse is established, FIFA is entitled to put forward justifications. These may include public interest objectives, economic efficiencies or other objective justifications.

## 9. FFAR AND FREE MOVEMENT

A feature of the application of EU law to sports regulation is that the free movement rules may apply in parallel with EU competition law. In *RRC Sports*, the EU Court of Justice noted that the provision on freedom to provide services "*is primarily addressed to the Member States*" but that it may "*nevertheless apply where a group or organization exercises certain powers over individuals and may subject them to conditions equivalent to those which a Member State might impose on them*".[154] As Advocate

151 *RRC Sports*, paragraph 266.
152 *RRC Sports*, paragraph 272.
153 *RRC Sports*, paragraph 273.
154 *RRC Sports*, paragraph 285, citing Case 36/74, *Walrave and Koch*, EU:C:1974:140, paragraph 17; Joined Cases C-51/96 and C-191/97, *Deliège*, EU:C:2000:199, paragraph 47, and Case C-22/18, *TopFit and Biffi*, EU:C:2019:497, paragraph 39.

General Szpunar observed in the *Diarra* case, this parallel application gives rise to some tension in terms of retaining a coherent approach with EU competition law.[155]

For the free movement rules to apply, it must first be established that there is an obstacle to free movement. In his Opinion, Advocate General Emiliou observed that the FFAR arguably removed obstacles by providing for a uniform system across the European Union:

> *"First, it is true that, to some extent, the rules at issue have the effect of harmonising, at EU level, the requirements for exercising the activity of an agent. In a way, this body of rules favours the free movement of services, since agents established in one Member State can, almost automatically, provide their services as agents in any other Member State. Indeed, although some Member States do have legislation which diverges from the FFAR (and which thus obliges the relevant national football associations to adopt rules which partly complement or supersede the FFAR), I understand that the key rules of the FFAR are applicable throughout the European Union."*[156]

However, the Advocate General considered that some provisions may make it more difficult to provide cross-border services. The EU Court of Justice followed this line of thinking.

The EU Court of Justice recalled that an obstacle does not necessarily arise simply because "*less strict or more commercially favourable rules could have applied if those rules had not been adopted*".[157] On this basis, the EU Court of Justice stated that the FFAR remuneration rules "*cannot be regarded as imposing a restriction on that freedom to provide services solely because they regulate the remuneration of agents and coaches or the methods for calculating or paying that remuneration*".[158] The effects of

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155 Advocate General Szpunar stated at paragraph 34 of his Opinion in Case C-650/22, *FIFA v. BZ*, Opinion of AG Szpunar, EU:C:2024:375; Judgment EU:C:2024:824 ("Diarra"): "*In addition, in some instances, the Court has found the same set of facts to be subject to both the fundamental freedoms and the rules on competition. In other words, the approach was no longer a binary choice (either competition rules or fundamental freedoms), but a parallel (or cumulative) one. Given the initial rationale of the Treaties described above, the question may arise as to which reasons have led the Court to this approach. Obviously, while such a parallel application of provisions may lead to the desirable situation that no rules adopted by an entity such as FIFA escape the remit of Union law, it does not come without difficulties: what happens when, say, a contested provision is found to be compatible with Article 101 TFEU, but incompatible with Article 45 TFEU, or vice versa? The intuitive answer is clear: both sets of rules (competition and fundamental freedoms) must be appraised independently on their merits.*"

156 *RRC Sports*, Opinion of Advocate General Emiliou, paragraph 148.

157 *RRC Sports*, paragraph 289.

158 *RRC Sports*, paragraph 290.

other provisions, such as the disclosure and publication provisions, were too uncertain to give rise to a restriction on freedom of movement.[159]

The EU Court of Justice doubted that the requirement to adhere to FIFA regulations or to submit to the CAS was likely to deter agents from providing their services in other Member States.[160] However, it left this matter for the national court to determine. Notwithstanding this, the judgment recognised that it is legitimate to have "*a uniform legal framework, together with a mechanism of supervision by a single decision-making body*".[161] The EU Court of Justice also stated that such requirements relating to the licensing of agents may be justified by the need "*to guarantee the integrity of the transfer system and of sporting competitions more broadly, and to improve the professional standards applicable to that activity*".[162]

It is only with respect to certain FFAR provisions that the EU Court of Justice found that there may be obstacles to agents in the manner in which they provide their services, notably the ethical requirements for licensing, the no-approach rule and the restrictions on multiple representation.[163] In this respect, the EU Court of Justice essentially applied, *mutatis mutandis*, the same reasoning as in the EU competition law analysis to the relevant FFAR provisions.[164]

## 10. RETURN TO NATIONAL COURTS

After the English arbitral decision relating to the Football Association's national rules, the FFAR was declared by some commentators "*to be almost certainly dead*".[165] Blown off course, the FFAR persevered and continued its legal journey. The judgment of the EU Court of Justice is an emphatic victory for FIFA. The *Football Agents* cases questioned the legitimacy of almost all the provisions in the FFAR. The right to regulate agents, to require licences, to require adherence to FIFA's regulations, to apply a service fee cap, to prohibit conflicts of interest, to require disclosure, to publish information – all upheld.

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159 *RRC Sports*, paragraph 291.
160 RRC Sports, paragraph 295.
161 *RRC Sports*, paragraph 303.
162 *RRC Sports*, paragraph 304.
163 *RRC Sports*, paragraph 288.
164 *RRC Sports*, paragraphs 299–302.
165 De Marco, "The end of the FIFA Agents Cap and the beginning of a less restrained standard of competition review in sport?" LawinSport.com, first published 14 December 2023 (accessed 24 July 2026).

Strangely, much has been made in commentary following the delivery of the *Football Agents* judgments of the fact that it will now fall to the referring national court to resolve the case. However, this is a basic feature of the EU preliminary ruling procedure:[166] it is not an appeal but rather a judicial dialogue between national courts and the EU Court of Justice on the interpretation of EU law.[167] Likewise, the European Commission and Member States all intervene in cases to assist the EU Court of Justice. It will be for the national court to resolve the case having regard to the facts, but it must do so in accordance with the judgment of the EU Court of Justice, which is binding upon it.

So, the case will return for final resolution to the German court in Mainz that referred it. The judgment will also be binding upon other courts in the EU hearing similar cases that have stayed their proceedings pending the judgment. It is likely to be highly influential in other jurisdictions, being by far the most important judicial authority on the compatibility of the FFAR with competition law principles, many of which are based on concepts similar to those in the EU. Notwithstanding the judgment, FIFA has announced its intention to proceed with a further consultation with agents to refine the FFAR.[168] Perhaps the *Football Agents* judgments will bring that most precious of judicial outcomes at the end of this epic legal journey: reconciliation.

> "*So Athena commanded. Odysseus obeyed her, glad at heart. And Athena handed down her pacts of peace between both sides for all the years to come...*"
> ***The Odyssey*** (Homer, translation of the final lines by Robert Fagles)

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[166] Article 267 TFEU.

[167] Indeed, the preliminary ruling procedure before the EU Court of Justice is not, technically speaking, an adversarial process, but rather a procedure by which the parties assist the EU Court of Justice in coming to its judgment. It is for this reason that written observations before the EU Court of Justice are not exchanged in sequence (e.g. with a claim and defence) but rather submitted simultaneously, subject to some minor variations to account for rules on service or for technical amendments to written observations requested by the Registry to conform with the standards of the EU Court of Justice. The parties receive copies of the other parties' written observations at the same time, so no party has advance notice of the arguments of the other party.

[168] FIFA Press Release, "FIFA welcomes Court of Justice of the European Union decision on FIFA Football Agent Regulations", 16 July 2026.