



MASTER THESIS | MASTER'S THESIS

Titel | Title

The Compatibility of FIFA's FFAR Rules with EU Law

verfasst von | submitted by

Can Kurt

angestrebter akademischer Grad | in partial fulfilment of the requirements for the degree of
Master of Laws (LL.M.)

Wien | Vienna, 2025

Studienkennzahl lt. Studienblatt | Degree
programme code as it appears on the
student record sheet:

UA 999 082

Universitätslehrgang lt. Studienblatt |
Postgraduate programme as it appears on
the student record sheet:

Europäisches und Internationales Wirtschaftsrecht
[Vollzeit Englisch]

Betreut von | Supervisor:

ao. Univ.-Prof. Mag. Dr. Siegfried Fina

Abstract

Der Markt für die Dienste von Spielerberatern hat sich zu einer lukrativen Branche mit jährlich steigenden Umsätzen entwickelt. Auf dem Transfermarkt sind Spielerberater zu wichtigen Akteuren geworden, da sie an der Zusammenstellung von Mannschaften beteiligt sind, obwohl sie nicht der FIFA angehören. Um dieses Problem lösen, hat die FIFA in den letzten Jahrzehnten mehrere Vorschriften erlassen, darunter die FFAR 2022. Diese Vorschriften haben zu mehreren Rechtsstreitigkeiten geführt, die interessante rechtliche Fragen aufwerfen.

Zu diesen Fragen gehören die Zuständigkeit der FIFA für die Regulierung von verbandsunabhängiger Dritter sowie der Anwendungsbereich des Meca-Medina-Tests und die Vereinbarkeit der FFAR mit dem EU-Wettbewerbsrecht und dem EU-Binnenmarktrecht. In dieser Arbeit werden die wichtigsten Bestimmungen der FFAR auf der Grundlage von Art. 101 Abs. 1 AEUV, Art. 102 AEUV und Art. 56 AEUV analysiert.

Als Ergebnis dieser Arbeit wird erarbeitet, dass die FIFA zwar für die Regulierung von Diensten von Spielerberatern zuständig ist, die verschiedenen Regelungen selbst jedoch gegen Art. 101 Abs. 1 AEUV, Art. 102 AEUV und Art. 56 AEUV verstoßen. Obwohl die FIFA einige potenziell vereinbar erscheinende Ideen innerhalb der FFAR, wie beispielsweise die Lizenzpflicht, hat, steht die konkrete Ausgestaltung der FFAR 2022, die die Grundlage für die Fälle vor dem Europäischen Gerichtshof bildet, im Widerspruch zum europäischen Recht.

Abstract

The market for football agent services has grown into a lucrative industry with increasing revenues annually. For the transfer market, football agents have become important players because they are involved in the composition of teams, despite not being associated within the FIFA. To address this issue, FIFA has issued several regulations, such as the FFAR 2022, over the past few decades. These regulations have led to several legal disputes involving interesting legal issues.

These legal issues include the competence of the FIFA to regulate third-party matters, as well as the scope of the *Meca-Medina-Test*, and the compatibility of the FFAR with EU Competition Law and EU Internal Market Law. This work will analyse the most important provisions regulated within the FFAR based on Art. 101 (1) TFEU, Art. 102 TFEU and Art. 56 TFEU.

As a result, the work will conclude that the FIFA has the competence to regulate football agent services, but the different regulations themselves breach Art. 101 (1) TFEU, Art. 102 TFEU and Art. 56 TFEU. Although, the FIFA has some potentially compatible ideas within the FFAR like the license obligation, the concrete form of the FFAR 2022 which is the basis for the cases at the European Court of Justice stays in contrast to European law.

Table of Contents

Table of Contents.....	I
Table of Abbreviations	VII
Table of Cases	VIII
Table of Legislation.....	XIII
A. Introduction	1
I. Research question and structure.....	2
II. Methodology.....	3
B. The case law	3
I. ECJ Case C-209/23	3
II. ECJ Case C-428/23.....	4
III. Court of Arbitration for Sport case 2023/O/9370.....	4
IV. Court of Arbitration for Sport (UK), 30 November 2023, Rev 12/12/23	4
V. Summary	5
C. The interplay of sports and EU Law	5
I. The FIFA and EU Competition Law	6
II. Football regulations and Internal Market Law	6
D. The competence of the FIFA to regulate the Football Agent Market	7
I. National competence (Germany as an example)	7
1. Freedom of association and direct legitimization	8
2. Private autonomy.....	8
3. Conclusion.....	9
II. Competence on the EU level	9
III. Competence for the regulation of matters which concern non-associated individuals ..	11
1. Arguments against a competence	12
2. Arguments for a competence.....	13
3. Opinion.....	15

4. Conclusion.....	16
E. The FFAR under EU Competition Law	16
I. The FIFA as an undertaking of Art. 101 (1) TFEU and Art. 102 TFEU	17
II. Prohibited agreement under Art. 101 (1) TFEU	18
III. The football agent services market as a relevant market under Art. 102 TFEU	19
IV. Exploitative and exclusionary abuses.....	20
V. The FIFA as an exception of Art. 165 TFEU	21
VI. The <i>Meca-Medina</i> -Test	23
1. Conditions	24
a. Regulation in the pursuit of legitimate objectives	24
aa. Contractual stability, Art. 1 (1) a) FFAR	25
bb. Encourage the training of young players, Art. 1 (1) b) FFAR.....	26
cc. Promoting a spirit of solidarity between elite and grassroots football, Art. 1 (1) c) FFAR	27
dd. Protect minors, Art. 1 (1) d) FFAR.....	28
ee. Competitive balance, Art. 1 (1) e) FFAR.....	28
ff. Ensuring the regularity of sporting conditions, Art. 1 (1) f) FFAR	30
gg. Raising and setting minimum professional and ethical standards for the occupation of Football Agent, Art. 1 (2) a) FFAR.....	31
hh. Ensuring the quality of the service provided by Football Agents to Clients at fair and reasonable service fees that are uniformly applicable, Art. 1 (2) b) FFAR	31
ii. Limiting conflicts of interest to protect Clients from unethical conduct, Art. 1 (2) c) FFAR	32
jj. Improving financial and administrative transparency, Art. 1 (2) d) FFAR	33
kk. Protecting players who lack experience or information relating to the football transfer system, Art. 1 (2) e) FFAR.....	33
ll. Enhancing contractual stability between players, coaches and clubs, Art. 1 (2) f) FFAR	34
mm. Preventing abusive, excessive and speculative practices, Art. 1 (2) g) FFAR	34

nn. Conclusion.....	35
b. Inherence	35
c. Proportionality	35
2. Justification or restriction?	35
3. Applicability of the <i>Meca-Medina</i> -Test	37
a. Applicability only to sports related matter	38
b. Applicability even to commercial related matter	42
c. Combined approach by AG Emiliou	43
d. Opinion and general assessment	44
4. The <i>Meca-Medina</i> -Test for the FFAR	47
a. Applicability to rejections by object.....	47
b. Restriction by object or by effect	48
c. Relation to Art. 102 TFEU	48
VII. Justification under Art. 101 (3) TFEU	48
1. Conditions	49
2. Relation to the <i>Meca-Medina</i> -Test	49
VIII. The regulations of the FIFA Football Agent Regulations under EU Competition Law	50
1. Art. 15, 14 (7) (12) FFAR - The Service Fee Cap	50
a. Restriction by object or effect	51
b. <i>Meca-Medina</i> -Test and the Service Fee Cap.....	54
aa. Legitimate goals for the Service Fee Cap.....	54
bb. Inherence and proportionality of the goals for the Service Fee Cap.....	55
c. Justification under Art. 101 (3) TFEU	57
d. Art. 102 TFEU	59
2. Art. 14 (2), (3) FFAR - Client-Pays-Rule	59
a. Restriction by object or effect	59
b. <i>Meca-Medina</i> conditions.....	60

c. Justification under Art. 101 (3) TFEU	61
d. Art. 102 TFEU	61
3. Art. 14 (10) FFAR - 50%-Payment-Rule.....	61
a. Restriction by object or effect	61
b. <i>Meca-Medina</i> conditions.....	62
c. Justification under Art. 101 (3) TFEU.....	62
d. Art. 102 TFEU	62
4. Art. 4 (1) (2), 16 (2) lit. b), 20 FFAR - License obligation and compliance rules	62
a. Restriction by object or effect	63
b. <i>Meca-Medina</i> conditions.....	63
c. Justification under Art. 101 (3) TFEU	64
d. Art. 102 TFEU	65
5. Art. 5 (1) lit. a) ii., iii. FFAR - License eligibility requirements	65
a. Restriction by object or effect	65
b. <i>Meca-Medina</i> conditions.....	65
c. Justification under Art. 101 (3) TFEU.....	66
d. Art. 102 TFEU	66
6. Art. 12 (8) - (10) FFAR - Multi-party representation	66
a. Restriction by object or effect	66
b. <i>Meca-Medina</i> conditions.....	67
c. Justification under Art. 101 (3) TFEU.....	67
d. Art. 102 TFEU	68
7. Art. 12 (2) FFAR and Art. 16 (1) lit. b) and c) FFAR - No-Approach-Rules.....	68
a. Restriction by object or effect	68
b. <i>Meca-Medina</i> conditions.....	69
c. Justification under Art. 101 (3) TFEU	69
d. Art. 102 TFEU	69
8. Art. 19 FFAR - Transparency rules	69

a. Restriction by object or effect	69
b. <i>Meca-Medina</i> conditions	70
c. Justification under Art. 101 (3) TFEU	71
d. Art. 102 TFEU	71
9. Art. 16 (2) lit. j), ii. - v. lit. k), ii. FFAR - Disclosure rules	71
a. Restriction by object or effect	71
b. <i>Meca-Medina</i> conditions	71
c. Justification under Art. 101 (3) TFEU	72
d. Art. 102 TFEU	72
10. Art. 16 (3) lit. e) FFAR - Prohibition of following payments	72
a. Restriction by object or effect	72
b. <i>Meca-Medina</i> conditions	73
c. Justification under Art. 101 (3) TFEU	73
d. Art. 102 TFEU	73
11. Art. 14 (6) - (8), (12), (11) FFAR - Payment regulations	73
a. Restriction by object or effect	74
b. <i>Meca-Medina</i> conditions	74
c. Justification under Art. 101 (3) TFEU	74
d. Art. 102 TFEU	74
12. Art. 14 (13) FFAR - Clearing-House-Rule	74
a. Restriction by object or effect	75
b. <i>Meca-Medina</i> conditions	75
c. Justification under Art. 101 (3) TFEU	75
d. Art. 102 TFEU	75
IX. Conclusion	76
F. Assessment of the regulations of the FIFA Football Agent Regulations under EU Internal Market Law	76
I. The FFAR under the Freedom of Movement for Workers, Art. 45 TFEU	78

II. The FFAR under the Freedom to Provide Services, Art. 56 TFEU	79
1. Personal scope of application	79
2. Material scope of application	79
3. Comprehensive prohibition of restriction	80
4. Justification	82
a. Justifications by virtue of the autonomy of the associations	82
b. Justification under Art. 62 TFEU with Art. 52 (1) TFEU	82
c. Justification for objective reasons	83
G. Results	84
Bibliography	86

Table of Abbreviations

AG	= Advocate General
BGH	= Bundesgerichtshof
CAS	= Court of Arbitration for Sport
CFI	= Court of First Instance of the European Communities
CFR	= Charter of Fundamental Rights of the European Union
ECHR	= European Court of Human Rights
ECJ	= European Court of Justice
EU	= European Union
EUR	= Euro
FFAR	= FIFA Football Agent Regulations
FIFA	= Fédération Internationale de Football Association
GC	= General Court
IOC	= International Olympic Committee
LG	= Landgericht (German regional court)
NFAR	= National Football Agent Regulation
OLG	= Oberlandesgericht (German higher regional court)
PROFAA	= Professional Football Agents Association
TEU	= Treaty on European Union
TFEU	= Treaty on the Functioning of the European Union
USD	= US Dollar

Table of Cases

Cases of European courts

CFI (Court of First Instance), Case T-219/99 (British Airways), British Airways plc v Commission of the European Communities, judgement of 17 December 2003, ECLI:EU:T:2003:343

CFI (Court of First Instance), later GC (General Court), Case T-193/02 (Piau), Laurent Piau v Commission of the European Communities, judgement of 26 January 2005, ECLI:EU:T:2005:22

ECJ (European Court of Justice), Case C-36/74 (Walrave Koch), B.N.O. Walrave and L.J.N. Koch v Association Union cycliste internationale, Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo, judgement of 12 December 1974, ECLI:EU:C:1974:140

ECJ (European Court of Justice), Case C-27/76 (United Brands), United Brands Company and United Brands Continentaal BV v Commission of the European Communities, judgement of 14 February 1978, ECLI:EU:C:1978:22

ECJ (European Court of Justice), Case C-120/78 (Rewe-Zentral), Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein, judgement of 20 February 1979, ECLI:EU:C:1979:42

ECJ (European Court of Justice), Case C-161/84 (Pronuptia) Pronuptia de Paris GmbH v Pronuptia de Paris Irmgard Schillgallis, judgement of 28 January 1986, ECLI:EU:C:1986:41

ECJ (European Court of Justice), Case C-113/89 (Rush Portuguesa), Rush Portuguesa Ld^a v Office national d'immigration, judgement of 27 March 1990, ECLI:EU:C:1990:142

ECJ (European Court of Justice), Case C-154/89 (Commission v France), Commission of the European Communities v French Republic, judgement of 26 February 1991, ECLI:EU:C:1991:76

ECJ (European Court of Justice), Case C-41/90 (Höfner), Klaus Höfner and Fritz Elser v Macrotron GmbH, judgement of 23 April 1991, ECLI:EU:C:1991:161

ECJ (European Court of Justice), Case C-76/90 (Säger), Manfred Säger v Dennemeyer & Co. Ltd., judgement of 25 July 1991, ECLI:EU:C:1991:331

ECJ (European Court of Justice), Case C-381/93 (Commission v France), Commission of the European Communities v French Republic, judgement of 05 October 1994, ECLI:EU:C:1994:370

ECJ (European Court of Justice), Case C-415/93 (Bosmann), Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman, judgement of 15 December 1995, ECLI:EU:C:1995:463

ECJ (European Court of Justice), Case C-55/94 (Gebhard), Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano, judgement of 30 November 1995, ECLI:EU:C:1995:411

ECJ (European Court of Justice), Case C-176/96 (Lehtonen and Castors Braine), Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basketball ASBL (FRBSB), judgement of 13 April 2000, ECLI:EU:C:2000:201

ECJ (European Court of Justice), Case C-281/98 (Angonese), Roman Angonese v Cassa di Risparmio di Bolzano SpA, judgement of 06 June 2000, ECLI:EU:C:2000:296

ECJ (European Court of Justice), Case C-309/99 (Wouters), J. C. J. Wouters, J. W. Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten, intervenier: Raad van de Balies van de Europese Gemeenschap, judgement of 19 February 2002, ECLI:EU:C:2002:98

ECJ (European Court of Justice), Case C-519/04 P (Meca-Medina and Majcen), David Meca-Medina and Igor Majcen v Commission of the European Communities, judgement of 18 July 2006, ECLI:EU:C:2006:492

ECJ (European Court of Justice), Case C-208/05 (ITC), ITC Innovative Technology Center GmbH v Bundesagentur für Arbeit, judgement of 11 January 2007, ECLI:EU:C:2007:16

ECJ (European Court of Justice), Case C-68/12 (Slovenská sporiteľňa), Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s., judgement of 07 February 2013, ECLI:EU:C:2013:71

ECJ (European Court of Justice), Case C-681/17 (slewo), slewo - schlafen leben wohnen GmbH v Sascha Ledowski, judgement of 27 March 2019, ECLI:EU:C:2019:255

ECJ (European Court of Justice), Case C-124/21 P (ISU), International Skating Union v Commission, judgement of 21 December 2023, ECLI:EU:C:2023:1012

ECJ (European Court of Justice), Case C-333/21 (European Superleague Company), European Superleague Company SL (‘ESLC’) v Fédération internationale de football association (‘FIFA’) and the Union of European Football Associations (‘UEFA’), judgement of 21 December 2023, ECLI:EU:C:2023:1011

ECJ (European Court of Justice), Case C-211/22 (Super Bock Bebidas), Super Bock Bebidas SA (‘Super Bock’), AN and BQ v Autoridade da Concorrência (Competition Authority, Portugal), judgement of 29 June 2023, ECLI:EU:C:2023:529

ECJ (European Court of Justice), Case C-650/22 (Diarra), Fédération internationale de football association (FIFA) v BZ, judgement of 4 October 2024, ECLI:EU:C:2024:824

ECJ (European Court of Justice), Case C-209/23 (RRC Sports), FT and RRC Sports GmbH v Fédération Internationale de Football Association (FIFA), Request or a preliminary ruling from the Landgericht Mainz lodged on 31 March 2023

ECJ (European Court of Justice), Case C-233/23 (Alphabet and Others), Alphabet Inc., Google LLC and Google Italy Srl v Autorità Garante della Concorrenza e del Mercato (Competition and Market Authority, Italy) (‘the AGCM’), judgement of 25 February 2025, ECLI:EU:C:2025:110

ECJ (European Court of Justice), Case C-365/23 (Arce), SIA ‘A’ v C, D and E concerning a claim for payment of remuneration under a contract for services for development and career support for a sportsperson, judgement of 20 March 2025, ECLI:EU:C:2025:192

ECJ (European Court of Justice), Case C-428/23 (ROGON), ROGON GmbH & Co. KG, MVI Management GmbH, DC v Deutscher Fußballbund e. V. (DFB), Request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany) lodged on 11 July 2023

ECJ (European Court of Justice), Cases C-600/23 (Royal Football Club Seraing), Royal Football Club Seraing v Fédération Internationale de Football Association (FIFA), Union européenne des Sociétés de Football Association (UEFA), Union Royale Belge des Sociétés de Football-Association (URBSFA) ASBL, Request for a preliminary ruling from the Court de cassation (Belgium) lodged on 02 October 2023

EFTA Court, Case E-8/17 (Kristoffersen), Henrik Kristoffersen v The Norwegian Ski Federation (*Norges Skiforbund*), supported by the Norwegian Olympic and Paralympic Committee and Confederation of Sports (*Norges idrettsforbund og olympiske og paralympiske komité*), judgement of 16 November 2018

GC (General Court), Case T-93/18 (ISU), International Skating Union v European Commission, judgement of 16 December 2020, ECLI:EU:T:2020:610

LG Dortmund (Landgericht Dortmund - Regional Court Dortmund), Case 8 O 1/23 (Kart), judgement of 24 May 2023

LG Frankfurt am Main (Landgericht Frankfurt am Main - Regional Court Frankfurt), Case 2-03 O 517/18, judgement of 24 October 2019

OLG Düsseldorf (Oberlandesgericht Düsseldorf - Higher Regional Court Düsseldorf), Case U (Kart) 2/23, judgement of 13 March 2024

Opinions of Advocate Generals on ECJ cases

Advocate General Emiliou, Opinion on ECJ Case C-209/23 (RRC Sports), FT and RRC Sports GmbH v Fédération Internationale de Football Association (FIFA), delivered on 15 May 2025, ECLI:EU:C:2025:362

Advocate General Emiliou, Opinion on ECJ Case C-428/23 (ROGON), ROGON GmbH & Co. KG, MVI Management GmbH, DC v Deutscher Fußballbund e. V. (DFB), delivered on 15 May 2025, ECLI:EU:C:2025:363

Advocate General Rantos, Opinion on ECJ Case C-333/21 (European Superleague Company), European Superleague Company SL ('ESLC') v Fédération internationale de football association ('FIFA') and the Union of European Football Associations ('UEFA'), delivered on 15 December 2022, ECLI:EU:C:2022:993

Awards by Arbitration courts

CAS (Court of Arbitration for Sport), CAS 2023/O/9370 Professional Football Agents Association (PROFAA) vs. FIFA, Arbitral award of the 24 July 2023

CAS (UK) (Court of Arbitration for Sport of the United Kingdom), Case [Rev 12/12/23], CAA BASE LIMITED, Key Sports Manafement Ltd (t/a Wassermann), Stellar Football Limited, Areté Management Limited v FA (Football Association Limited) and FIFA (Fédération Internaitonale de Football Association), partial final award of 30 November 2023

Table of Legislation

Legal Documents of the FIFA

FIFA, Code of Ethics, edition 2023

FIFA, FIFA Football Agent Regulations 2022, version of December 2022

FIFA, FIFA Football Agent Regulations 2024, version of December 2024

FIFA, FIFA Football Agent Regulations FAQs, version of March 2023

FIFA, Enclosure 1, Explanatory notes on the FIFA Football Agent Regulations, version of January 2023

FIFA, Enclosure 2, Information Concerning the Application of the FIFA Football Agent Regulations, version of January 2023

FIFA, FIFA Clearing House Regulations, version of January 2025

Other documents of the FIFA

FIFA, Intermediaries in International Transfers 2016, version of 2016

FIFA, Global Transfer Market Report 2018 - A review of all international football transfers in 2017, version of 2018

FIFA, Football Agents Report, version of December 2024

FIFA, Global Transfer Report 2024, version of January 2025

FIFA, FIFA Clearing House: The first 24 months, version of November 2024

European Legislation

Consolidated version of the Treaty on European Union [2012] OJ C 326

Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C 326

Consolidated version of the Charter of Fundamental Rights of the European Union [2012] OJ C 326

Consolidated version of the European Convention on Human Rights [1950]

Consolidated text: Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty [2002] OJ L 1

Documents of the Commission of the European Union

White Paper, White Paper on Sport [2007] COM(2007) 391 final {SEC(2007) 932} {SEC(2007) 934} {SEC(2007) 935} {SEC(2007) 936}

Commission Staff Working Document, ‘The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport {COM(2007) 391 final} {SEC(2007)932} {SEC(2007)934} {SEC(2007)936} /* SEC/2007/0935 final */’ [2007] SEC(2007) 935

Commission Decision (EU) C(2017) 8240 final of 08 December 2017 on proceedings under Article 101 of the Treaty on the Functioning of the European Union (the Treaty) and Article 53 of the EEA Agreement Case AT.40208 – International Skating Union's Eligibility rules [2017] OJ C 148

Commission, Communication from the Commission - Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings [2009] 2009/C 45/02

Commission, Communication from the Commission - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements [2023] 2023/C 259/01

German Legislation

Basic Law for the Federal Republic of Germany [2025] Federal Law Gazette 2025 I, No. 94

A. Introduction

The tension between the FIFA and football agents has been going on for decades now. Since the early 1990's, the Fédération Internationale de Football Association, in short: FIFA, tried to regulate and set rules for football agents.¹ The first regulation was implemented in 1991 when the football agent market began to evolve into a professional field.² It got revised several times over the years,³ with versions from the years 1995, 2001, 2008, 2015 and 2022 and most recently 2024.⁴ Just from 2022 to 2023 the amounts that were paid were around 600 million EUR for 2022 and around 888 million USD for 2023 in agent fees, even though experts expected the real fees paid to be as high as 1 billion EUR just for the year of 2022.⁵ Adding up, especially the bigger leagues are generating more and more revenues per year⁶, and transfers make up a great portion of that. The regulations from 2015 on ultimately led to the situation now that several cases are pending at the European Court of Justice and some proceedings concerning the FFAR in arbitration have even been finished already.⁷ This shows that the field of football agent regulation is highly fought about at the moment and especially the *ECJ* has a high burden to show that on the one side it is strong enough to show boundaries to entities that are in the position to issue such regulations as well as soft enough to still pay the reasonable respect for the development, financially and culturally, of football in general.

¹ Martin Stopper and Simon Karlin, in: Martin Stopper and Gregor Lentze, *Handbuch Fußball-Recht* (2025), sec. 22, para. 6; Espen Auberg, *From football agents to intermediaries*, <<https://www.easportslaw.com/news/from-football-agents-to-intermediaries#:~:text=The%20first%20FIFA%20agent%20regulations,completion%20of%20a%20written%20examination>>, accessed 19 July 2025.

² cf FIFA, *Global Transfer Market Report 18*, <<https://digitalhub.fifa.com/m/112e254581b4be76/original/ei8vww6oeolwl2sxn0p-pdf.pdf>>, 36 (24), accessed 19 July 2025; cf FIFA, *Football Agents Report 2024*, p. 13, <<https://digitalhub.fifa.com/m/13f391e61065a845/original/Football-Agents-Report-2024.pdf>>, accessed 19 July 2025.

³ Martin Stopper and Simon Karlin, in: Martin Stopper and Gregor Lentze, *Handbuch Fußball-Recht* (2025), sec. 22, para. 6; Espen Auberg, *From football agents to intermediaries*, <<https://www.easportslaw.com/news/from-football-agents-to-intermediaries#:~:text=The%20first%20FIFA%20agent%20regulations,completion%20of%20a%20written%20examination>>, accessed 19 July 2025.

⁴ FIFA, *FIFA Football Agents FAQs March 2023*, <<https://digitalhub.fifa.com/m/4bf6e9f1b91d90a8/original/FIFA-Football-Agent-Regulations-FAQs.pdf>>, accessed 19 July 2025.

⁵ Martin Stopper and Simon Karlin, in: Martin Stopper and Gregor Lentze, *Handbuch Fußball-Recht* (2025), sec. 22, para. 2; Benni Hofmann, *Millionenschwerer Fall: Klage gegen die FIFA wandert vor den EuGH*, <<https://www.kicker.at/millionenschwerer-fall-klage-gegen-die-fifa-wandert-vor-den-eugh-946308/artikel>>, accessed 19 July 2025.

⁶ Hanno Beck et al., *The league system, competitive balance, and the future of European football*, MSL 30 (2022), p. 22 - 23 and fig. 1.

⁷ cf ECJ, Case C-209/23 and Case C-428/23; CAS, Case 2023/O/9370 PROFAA vs. FIFA; Court of Arbitration for Sport (UK), 30 November 2023, Rev 12/12/23 which are especially important for this work.

Even now, seeing all the pending cases at the *ECJ*, but also having enough confidence from a positive outcome in the *CAS* proceedings,⁸ the FIFA issued an updated version of the FIFA Football Agent Regulations in December 2024 which came into force in January 2025.⁹ With these regulations the FIFA imposes legal obligations on player agents concerning the representation of players and minors and includes them under their jurisdiction within the association. It also regulates several topics concerning the performance of player transfers like the fee cap, an internal mechanism for the purchase or other licensing matters.

This work will focus on showing the multiple legal issues on this field and assessing whether the FFAR is in line with these legal issues coming from EU competition law and the internal market law of the EU.

I. Research question and structure

Following the ongoing legal proceedings between major law-making bodies, like the FIFA, several issues arose. This thesis will focus on the latest awaited decision by the European Court of Justice and will try to analyse and give an opinion on the issue whether the FIFA, or also other law-making sports associations, have the right to do it parallel to EU legislation and therefore have a wider margin of discretion or if they are bound closer than wanted. For that purpose, the FIFA Football Agent Regulations will be elaborated regarding the most important regulations that were made, to show whether they are compatible with EU competition law and the internal market law of the EU or if law-making bodies like the FIFA have to find other solutions.

To do so, in the first part of the thesis, a general overview over the most important cases as well as a general assessment of legal issues regarding the FFAR itself will be provided. Afterwards, in the second part of the work, the important and relevant provisions of the FFAR will be assessed by the author. For each provision a result whether it is compatible with relevant EU legislation, especially EU Competition Law and the Freedom of Service will be given.

In the third part, the work will provide a general result for the outcome of the compatibility of the FFAR with relevant EU law and based on that will give an opinion on the regulation of the agent market and the possibilities, how law-making sports entities have to provide an environment that provides enough legal certainty and stability to all parties involved

⁸ cf for a detailed look *CAS*, Case 2023/O/9370 *PROFAA vs. FIFA*, paras. 170 - 454.

⁹ cf FIFA, FIFA Football Agent Regulations 2024, <<https://digitalhub.fifa.com/m/1e7b741fa0fac779/original/FIFA-Football-Agent-Regulations.pdf>>, accessed 19 July 2025.

II. Methodology

For the methodological approach, the most important provisions within the FFAR framework will be analysed including the relevant legal opinions and views of national courts as well as international courts as far as published. The state of the work will be until the end of July of 2025. Adding to that, the relevant legal literature will also be elaborated and used to find a solution for every provision that was regulated by the FIFA. As though the new version of 2024¹⁰ is not content of the legal proceedings it will also share the fate of what will be decided by the *ECJ*. If necessary - meaning if there are major differences or changes to the provisions - the work will also incorporate them and give an opinion for those provisions. To find a proper legal conclusion that is based on profound research, the work will combine court views and literature views with new ideas by the author. For the last chapter, based on the findings of the chapters before, the work by combining the opinions and court views will give a result for the compatibility of the FFAR with EU Competition Law and EU Internal Market Law as well as the different legal issues that are in connection with these provisions. Providing that, the work will give an opinion and an elaboration of the relevant views on the most recent and highly awaited decision in sports law - the *ECJ* decision on the FFAR rules by the FIFA.

B. The case law

Before the FFAR rules became relevant for international courts, there were several proceedings on domestic level. The regulation of player agents was part of legal proceedings since they were first introduced.¹¹ Several domestic cases were already ongoing when one case went a different path and directly addressed the international applicable FFAR rules.¹²

I. ECJ Case C-209/23

In ECJ case C-209/23 that was filed in by the German *LG Mainz*.¹³ RRC Sports - a German limited liability company led by Roger Wittmann who is also the president of the agent association 'The Football Forum' - filed in a lawsuit against the FIFA to have it decided whether

¹⁰ cf FIFA, FIFA Football Agent Regulations 2024, <<https://digitalhub.fifa.com/m/1e7b741fa0fae779/original/FIFA-Football-Agent-Regulations.pdf>>, accessed 19 July 2025.

¹¹ cf Christian Mixa, Nächste Niederlage für die FIFA vor Gericht, <<https://www.sportschau.de/fussball/naechste-niederlage-fuer-die-fifa-vor-gericht,ffar-spielervermittler-reglement-klage-100.html>>, accessed 19 July 2025, for detailed information.

¹² cf LG Mainz, Request for a preliminary ruling, Case C-209/23; Benni Hofmann, Millionenschwerer Fall: Klage gegen die FIFA wandert vor den EuGH, <<https://www.kicker.at/millionenschwerer-fall-klage-gegen-die-fifa-wandert-vor-den-eugh-946308/artikel>>, accessed 19 July 2025; cf for an overview also Martin Stopper and Simon Karlin, Rechtlicher Status Quo der Regulierung von Spielervermittlung, SpuRt 2024, p. 170 - 173.

¹³ cf LG Mainz, Request for a preliminary ruling, Case C-209/23; Martin Stopper and Simon Karlin, Rechtlicher Status Quo der Regulierung von Spielervermittlung, SpuRt 2024, p. 172.

the FFAR rules are compatible with Artt. 101 and 102 TFEU, Art. 56 TFEU as well as the GDPR.¹⁴ The *LG Mainz* then decided to give this case to the *ECJ* and filed in a request for a preliminary ruling.

II. ECJ Case C-428/23

The second relevant case that is still pending is ECJ Case 428/23 in which ROGON and others which are sports agent companies went against the German version of the FFAR, especially the fee cap for sports agents.¹⁵ The *BGH* there especially raised questions around the *Meca-Medina-Test* and its applicability to sports regulations and boundaries.¹⁶ The details will be assessed at a later stage as here just the fundamentals are laid out.

III. Court of Arbitration for Sport case 2023/O/9370

CAS case 2023/O/9370 is about a request to have legal certainty before the enforcement of the - then new - FFAR rules of 2022. The case was filed in at the Court of Arbitration for Sport (CAS) by the PROFAA on the 19th of December 2022 after lasting negotiations about the topics and goals of the proceedings.¹⁷ The PROFAA is one of several football agent associations and agreed with the FIFA on the proceedings. Other associations stated that the PROFAA did and does not represent the majority of football agents.¹⁸ For that reason and because the findings could only be issued based on the parties' submissions, the legal findings of this award have to be seen in a critical light.¹⁹

IV. Court of Arbitration for Sport (UK), 30 November 2023, Rev 12/12/23

In the arbitration proceedings at the CAS (UK) several football agencies operating in the United Kingdom and abroad filed in a lawsuit when the FA - the national football association of the United Kingdom - implemented national football agent regulations ('NFAR'). In this case the

¹⁴ cf *LG Mainz*, Request for a preliminary ruling, Case C-209/23.

¹⁵ cf Request for a preliminary ruling by the Bundesgerichtshof, ECJ Case C-428/23, p. 2 - 3.

¹⁶ *Ibid.*

¹⁷ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 11.

¹⁸ Rupperecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 6 -7; The Football Forum, Media release 25 July 2023, <<https://tfforum.org/media-release-25-july-2023/>>, accessed 19 July 2025, where they also questioned the impartiality of the whole proceedings.

¹⁹ Rupperecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 7.

difference was that the award was based on the national regulation, but which was based on the international applicable FFAR regulation.²⁰ It was decided in the favour of the agencies.²¹

V. Summary

To conclude the various legal cases that all revolve and revolved around the FFAR or national versions of it show that there is an enormous legal uncertainty, and many questions have to be answered. Sports associations, especially the FIFA, have been under strong judicial review over the past years as sports evolved more and more into an economically relevant sector.²² Coming with this development however, there are a lot of unanswered questions that the *ECJ* now decides one after another to give answers to the increasing need of clarity.²³

C. The interplay of sports and EU Law

As the world of sports in the past few years became more relevant for legal proceedings, the industry is changing quickly and on a wide range. Recent decisions like ECJ cases C-333/21 (Super League), C-650/22 (Diarra), C-600/23 (Seraing) or C-365/23 (Arce)²⁴ show that a lot of tension arose in the world of professional sports as it grew bigger over the decades.²⁵ The more professionalized it got, the lesser were the probabilities to be free from complying with national and international laws. This development peaked in the past few years in Europe especially, as the *ECJ* started issuing several decisions against the professional sports associations.²⁶ By that, the *ECJ* laid down the fundament to have professional sports more under its jurisdiction for it to keep complying with laws and regulations. Especially the transfer market has gone through some changes over the past few years with it growing into a multi-billion-dollar business.²⁷ Even private equity saw the opportunities and started to invest into the football market as examples like the purchase of Paris Saint Germain by a Qatari investment company in 2011²⁸

²⁰ cf Court of Arbitration for Sport (UK), 30 November 2023, Rev 12/12/23.

²¹ Court of Arbitration for Sport (UK), 30 November 2023, Rev 12/12/23, p. 110.

²² Ulrich Forsthoff and Jörg Eisendle, in: Eberhard Grabitz and Meinhard Hilf and Martin Nettesheim, *Das Recht der EU*, vol. 1 ed. 84 (2025), Art. 45 TFEU, para. 85.

²³ cf just exemplary ECJ, Case C-333/21; ECJ, Case C-650/22.

²⁴ cf ECJ, Case C-333/21; ECJ, Case C-650/22; ECJ, Case C-600/23; ECJ, Case C-365/23.

²⁵ cf FIFA, *Global Transfer Report 2024*, <<https://digitalhub.fifa.com/m/142077cfbb75c2b0/original/Global-Transfer-Report-2024.pdf>>, accessed 19 July 2025, where the total amount of paid transfer fees went up from 4.1 bn USD in 2015 to 8.6 bn USD in 2024; Ulrich Forsthoff and Jörg Eisendle, in: Eberhard Grabitz and Meinhard Hilf and Martin Nettesheim, *Das Recht der EU*, vol. 1 ed. 84 (2025), Art. 45 TFEU, para. 85.

²⁶ cf Ulrich Forsthoff and Jörg Eisendle, in: Eberhard Grabitz and Meinhard Hilf and Martin Nettesheim, *Das Recht der EU*, vol. 1 ed. 84 (2025), Art. 45 TFEU, paras. 85 - 87; exemplary ECJ, Case C-333/21.

²⁷ cf FIFA, *Global Transfer Report 2024*, <<https://digitalhub.fifa.com/m/142077cfbb75c2b0/original/Global-Transfer-Report-2024.pdf>>, accessed 19 July 2025, where the total amount of paid transfer fees went up from 4.1 bn USD in 2015 to 8.6 bn USD in 2024 and the overall amount of transfers with intermediaries is steadily growing.

²⁸ cf John Sinnot, *Qatari takeover heralds new dawn for Paris Saint-Germain*, <<https://www.bbc.com/sport/football/14393012>>, accessed 19 July 2025.

or more recent examples like the purchase of Newcastle United by a Saudi-Arabian investment fund in 2021 show.²⁹ This development, as stated before, led to a professionalization of the transfer markets and sports markets in general with the reason being that with more money, more players enter the market and the dynamics change. By that, the tension between sports and judicature started to rise because the old understanding of sports being more of a cultural than an economic institution changed.³⁰

I. The FIFA and EU Competition Law

Over a long time, the sports industry in Europe was not an important part of EU law scrutiny. As the market and thereby the economic dimension and impact grew, this perspective has changed. The cases that were mentioned before³¹ show that on the one hand judicature saw this issue and on the other hand and more importantly the market players themselves led to this development. As the FIFA issued more legislation on football related matters, market actors that were impacted by them as well as the FIFA itself started proceedings.³² With the FIFA and the global football market - including the transfer market - growing into a global economic, the FIFA thought it would be indispensable to regulate the football agent market.

II. Football regulations and Internal Market Law

Sports regulations are mostly drafted by sports associations. Those regulations can have great impact on the rights of their subjects. The first issue to assess is the competence of sports associations to draft such regulations. For a quick overview, it shall be said that the competence of associations derives from private autonomy which derives from an overview of the provisions of the EU.³³ Only the inner associative matters are protected by the freedom of association in Art. 12 (1) CFR and Art. 11 (1) ECHR.³⁴

²⁹ Sky Sports, Newcastle takeover completed: Saudi-led consortium end Mike Ashley's 14-year ownership, <<https://www.skysports.com/football/news/11678/12427983/newcastle-takeover-completed-saudi-led-consortium-end-mike-ashleys-14-year-ownership>>, accessed 19 July 2025.

³⁰ cf Karen M. Lent/Anthony J. Dreyer/Bill Batchelor, EU rulings reflect increased antitrust scrutiny of sports governance in parallel with the US, <<https://www.reuters.com/legal/legalindustry/eu-rulings-reflect-increased-antitrust-scrutiny-sports-governance-parallel-with-2024-12-16/>>, accessed 19 July 2025; Rupperecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 2, who also come to the same conclusion.

³¹ cf section D.

³² cf cases explained above under B.

³³ Carsten Herresthal, in: Beate Gsell/Wolfgang Krüger/Stephan Lorenz/Christoph Reymann, beck-online.GROSSKOMMENTAR BGB (2025), § 311, para. 13; Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 125 - 126; Peter W. Heermann, Verbandsautonomie im Sport (2022), p. 69 - 70.

³⁴ Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 125 - 126.

For the Fundamental Freedoms the *Bosmann* decision was pathbreaking on the field of football.³⁵ In that decision the *ECJ* recurred an earlier decision, namely *Walrave*³⁶ in which it decided that the Fundamental Freedoms - that case was about the applicability of Articles 7, 48 and 59 of the EEC to a regulation by a cycling association³⁷ - are also applicable in cases where there are ‘*rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services.*’³⁸

Where associations regulate matters for athletes or for other possible subjects that are undertakings it is possible to assess these rules based on the general prohibition of discrimination set out in the framework of EU Law.³⁹ Otherwise provisions like the freedom of movement for persons or the freedom to provide services would be ‘*compromised if the abolition of barriers of national origin could be neutralized by obstacles resulting from the exercise of their legal autonomy by associations or organisations which do not come under public law.*’⁴⁰ So, combining both cases the *ECJ* decided that in the field of sports associations and here in football, the autonomy of associations is subject to the Fundamental Freedoms of the EU Internal Market.⁴¹

D. The competence of the FIFA to regulate the Football Agent Market

The first question that arises when asking whether the FIFA’s FFAR regulations are compatible with EU law is if the FIFA has the competence to regulate such matter.⁴² To determine that, it has to be distinguished between the national and international scope of competences of sports associations.⁴³

I. National competence (Germany as an example)

On the national scope Germany serves as an example for the matters that are concerned within this work. In Germany there has been an ongoing debate for the competence of sports

³⁵ cf *ECJ*, Case C-415/93.

³⁶ cf *ECJ*, Case C-36/74.

³⁷ *ECJ*, Case C-36/74, para. 2.

³⁸ *Ibid*, para. 17; *ECJ*, Case C-415/93, paras. 82 - 83.

³⁹ *ECJ*, Case C-36/74, paras. 17 - 18; Hans D. Jarass, *Charta der Grundrechte der EU*, ed. 4 (2021), Art. 12, para. 28; *ECJ*, Case C-333/21, para. 85.

⁴⁰ *ECJ*, Case C-36/74, para. 18.

⁴¹ Hans D. Jarass, *Charta der Grundrechte der EU*, ed. 4 (2021), Art. 12, para. 28; *ECJ*, Case C-415/93, para. 80.

⁴² cf Vito Esposito, *Private Sportordnung und EU-Kartellrecht* (2014), p. 106 - 107; Alexander Seyb, *Autonomie der Sportverbände* (2020), p. 18 - 19; Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 61 - 62; CFI (later GC), Case T-193/02, paras. 76 - 77.

⁴³ cf exemplarily Vito Esposito, *Private Sportordnung und EU-Kartellrecht* (2014), p. 23 and 107.

associations ever since sports matters became relevant for courts. Two major opinions are established in this regard.⁴⁴

1. Freedom of association and direct legitimization

The first opinion is that the competence for sports associations relies on a state-given competence to regulate their own affairs that is directly linked to the right to associate themselves in Art. 9 (1) GG.⁴⁵ Because the state does not regulate matters on that behalf and thereby leaves some open space for private regulation, it tolerates the rules that associations themselves set.⁴⁶ According to that, associations have a right to regulate their own affairs directly coming from the state.⁴⁷

If that was the case, associations - at least for the case of Germany - would be in a good position when it comes to the interpretation in cases of dispute. Associations would have a justification for regulating the relevant matters directly coming from the constitutional rights and therefore, could be in a position of better protection against a decision made by the members of the association.⁴⁸ Another argument against this approach is, that in this case the burden of proof and depth of justification in cases of infringement would be significantly higher because the fundament of the regulation by the association lays on a constitutional fundament.⁴⁹

2. Private autonomy

The main approach in Germany is to have the autonomy of associations and the competence for self-regulation as an offspring of the principle of private autonomy.⁵⁰ This principle in Germany is found in Art. 2 (1) GG and the competence to regulate such matters is rooted within the freedom of action. Because of that, there is no need to find a special legitimization by the state. Associations can simply regulate their own affairs based on the freedom of action because the principle of private autonomy is rooted therein.⁵¹

⁴⁴ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 69.

⁴⁵ Ibid; Klaus Vieweg, *Normsetzung und -anwendung deutscher und internationaler Verbände* (1990), p. 164.

⁴⁶ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 69; Klaus Vieweg, *Normsetzung und -anwendung deutscher und internationaler Verbände* (1990), p. 164; connotative Rupprecht Podszun and Alexander Kirk, *FIFA's Football Agent Regulations and European Competition Law*, JAE (2024), p. 6, who use the freedom of association as a rationale for the *Meca-Medina*-Test and as a border for the regulatory power of associations.

⁴⁷ Rupprecht Podszun and Alexander Kirk, *FIFA's Football Agent Regulations and European Competition Law*, JAE (2024), p. 6; Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 69.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid; Vito Esposito, *Private Sportordnung und EU-Kartellrecht* (2014), p. 115; Alexander Seyb, *Autonomie der Sportverbände* (2020), p. 39.

⁵¹ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 71.

The concrete reasoning for this result varies diversly within German literature⁵², but they all have in common that the actual competence for regulation follows the principle of private autonomy and therefore finds its boundaries in the relation to its members. It is also a necessity that these regulations are, even though with special requirements, subject to state court jurisdiction and therefore, challengeable.⁵³

3. Conclusion

To conclude, the situation in Germany is still far from being completely finalized. But the situation is that sports associations do have the competence to regulate their own affairs. Otherwise, sports matters could possibly not be regulated as effective because the FIFA as the body that is located the nearest to the sport knows where problems arise and consequently can regulate these matters with the best regards to the sport itself.⁵⁴ Sports associations must have the freedom to regulate their own affairs in this regard because of the simple connection of them to the sport. This logic is found in the basic principle of individuals acting self-responsibly in a free society.⁵⁵ The connection of sports associations and the self-responsibility of individuals merges here and lets the associations regulate their own matters based on private autonomy.

II. Competence on the EU level

This competence for self-regulation has to have its foundation on EU level as well. As in the case of football agents, cases which cross borders do happen regularly and especially when it comes to transfers with Europe being the most active region.⁵⁶ For the European level, the exemplary discussion as it is in Germany can also be made. As the actual scope will be elaborated later,⁵⁷ the EU has recognized the special position of sports in Art. 165 TFEU.⁵⁸ So, it might be obvious to understand it as the relevant provision in the contracts of the EU for sports associations to regulate their own affairs and therefore hand over the competence for drafting regulations. However, regarding the wording of the provision it is only mentioned that

⁵² cf exemplary Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 70 - 71.

⁵³ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 91

⁵⁴ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 61.

⁵⁵ *Ibid.*, p. 546.

⁵⁶ cf FIFA, *Football Agents Report 2024*, fig. 2, p. 14 - 15, <<https://digitalhub.fifa.com/m/13f391e61065a845/original/Football-Agents-Report-2024.pdf>>, accessed 19 July 2025, which shows that in 2024 a total amount of 2,185 transfers were international transfers with agents, and European clubs being the dominant ones; FIFA, *Global Transfer Report 2024*, fig. 19, p. 20, <<https://digitalhub.fifa.com/m/142077cfbb75c2b0/original/Global-Transfer-Report-2024.pdf>>, accessed 19 July 2025, which shows that a total of 9,657 transfers happened between two members of the UEFA in 2024. It is to mention that not every member of the UEFA is also a member of the EU, but the numbers show that the possibility of intra-EU transfers in football are very likely to happen regularly.

⁵⁷ cf F.III.

⁵⁸ Vito Esposito, *Private Sportordnung und EU-Kartellrecht* (2014), p. 123.

the EU shall ‘*contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.*’⁵⁹ Complemented by the tasks the EU has received and regarding their goal, it is - at first view - not clear if the EU wanted to grant complete freedom for sports or not. By really looking at the tasks however, it becomes clear that the EU limits itself to the support in exchange and educational goals mainly.⁶⁰ Art. 165 TFEU can be understood as a policy driven regulation that recognizes the specifics of sports rather than a provision which grants freedom at all matters for sports associations. Logically, if the EU limits its own powers to integrative policy work on that field, it requires an already given framework that shall be trusted.⁶¹

Therefore, the foundation for self-regulation has to be found in other provisions within the EU framework. Just as the national competence is rooted within the autonomy of associations, on the EU level the roots are the same.⁶² On the EU level, the autonomy of associations is also rooted in the freedom of action and out of that follows the competence of associations to regulate their own affairs.⁶³

The freedom of contract or private autonomy is an unmentioned but recognized concept within the understanding of the EU contracts.⁶⁴ It derives from the basic evaluations of the TEU and TFEU, as the result of an interplay between the functioning of the internal market and EU competition law.⁶⁵ The functioning of competition as well as the functioning of the internal market depend on the requirement that market actors are free to shape their own relations.⁶⁶ Functioning competition leads to a limitation of the market powers and by that helps to create a space of shaping these relations.⁶⁷ Private autonomy in this regard has to be understood as the

⁵⁹ Art. 165 (1) TFEU.

⁶⁰ Matthias Ruffert, in: Christian Callies and Matthias Ruffert, EUV/AEUV, ed. 6 (2022), Art. 165 TFEU, paras. 17 - 20; Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 132.

⁶¹ Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 132.

⁶² Peter W. Heermann, Verbandsautonomie im Sport (2022), p. 70; Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 125.

⁶³ Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 125; Jürgen Basedow, Freedom of Contract in the European Union, ERPL 2008, p. 908 - 909.

⁶⁴ Carsten Herresthal, in: Beate Gsell/Wolfgang Krüger/Stephan Lorenz/Christoph Reymann, beck-online.GROSSKOMMENTAR BGB (2025), § 311, para. 13; Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 125 - 126; Jürgen Basedow, Freedom of Contract in the European Union, ERPL 2008, p. 907.

⁶⁵ Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 125 - 126; Jürgen Basedow, Freedom of Contract in the European Union, ERPL 2008, p. 909.

⁶⁶ Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 125 - 126.

⁶⁷ Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 125 - 126.

core provision that is found within the EU fundamental freedoms because thereby intra-EU trade can be shaped.⁶⁸

With this observation it can be said that associations - in particular here sports associations - also on the European level do have the competence to regulate their own affairs. Thereby they have a right to draft frameworks and regulations within the scope of their private autonomy. However, this does not mean they are free from EU law scrutiny.⁶⁹ Certain boundaries are set by the EU fundamental rights as well as EU competition law or also other EU provisions.⁷⁰ The FIFA has to comply with those provisions in order to correctly use its private autonomy. Consequently, the right for self-regulation is granted to the FIFA by EU law. This is also rooted within the national scopes as long as the Member States have a harmonized or similar understanding of these freedoms. Within the EU this can be seen as a given fact. As stated before, when using the power to assess matters on that field, authorities and courts always have to keep in mind the specifics of the sport of football as it is written down in Art. 165 TFEU.⁷¹

III. Competence for the regulation of matters which concern non-associated individuals

The findings made above are applicable to the connection of associations and their members - in this regard the FIFA and the continental associations, the continental and the national associations, the national associations and the clubs - as well as third parties that are connected by contract. As football agents do not have any contractual relation to the FIFA, it is highly questionable whether the FIFA has the competence to regulate matters regarding football agents.⁷² The reason is that as though private autonomy is provided⁷³, it cannot be tolerated that associations like the FIFA misuse or overuse their given freedom.

⁶⁸ Vito Esposito, *Private Sportordnung und EU-Kartellrecht* (2014), p. 125 - 126; Carsten Herresthal, in: Beate Gsell/Wolfgang Krüger/Stephan Lorenz/Christoph Reymann, *beck-online.GROSSKOMMENTAR BGB* (2025), § 311, para. 13.

⁶⁹ Klaus Vieweg, *Normsetzung und -anwendung deutscher und internationaler Verbände* (1990), p. 165 who sees the same for Germany. As the reasoning is similar, this argument also should be recognized on the EU level.

⁷⁰ Vito Esposito, *Private Sportordnung und EU-Kartellrecht* (2014), p. 125 - 126.

⁷¹ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 180.

⁷² Peter W. Heermann, *Will the football agents' service fee cap survive the current legal attacks?*, ISLJ (2024), p. 193; Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 543 - 544; Martin Stopper and Simon Karlin, *Rechtlicher Status Quo der Regulierung von Spielervermittlung*, SpuRt 2024, p. 174.

⁷³ Carsten Herresthal, in: Beate Gsell/Wolfgang Krüger/Stephan Lorenz/Christoph Reymann, *beck-online.GROSSKOMMENTAR BGB* (2025), § 311, para. 13.

So, before all the question arises whether the FIFA can expand its competence for private regulation to third parties. To sum it up, there are two major possibilities. The decision can go either the way to disallow such competence or allow it.

1. Arguments against a competence

In favour of disallowing the competence to regulate third parties within the scope of self-regulation provided by the private autonomy of sports associations firstly speaks that there is no more than only a factual connection between the parties.⁷⁴ The FIFA is the global football association with its continental associations and the national associations as the members.⁷⁵ Therefore, there is a direct link between the FIFA and the executing national associations.⁷⁶ They are connected to the FIFA and the FIFA does have jurisdiction over them because of how the organisation is structured. The same goes for actors like players or managers. Even though they are not organized within the structure of the FIFA, they are still bound to the football clubs or national teams by contract. Football clubs are members of the national associations which themselves are members of the FIFA.⁷⁷ As they have obligations and participate in the tournaments organized by the FIFA or members of the FIFA, there is a direct link between the players or managers and the FIFA. Therefore, the FIFA is allowed to regulate certain matters concerning those groups. However, football agents are not even contractually bound to neither the FIFA itself, nor the national associations. Matters that are not within the organisational scope of sports associations, could also not constitute binding regulations for third parties.⁷⁸ The lack of connection to the football organisations may lead to the disallowance of such a competence. This is also backed by the theoretical background of the self-regulating competence as such.⁷⁹ The freedom of action and in this regard the freedom of association is based on the concept that private parties shall structure their relations on their own to allow the proper functioning of the markets and the fundamental freedoms.⁸⁰

⁷⁴ This concern was also raised by the *Court of First Instance* in CFI (later GC), Case T-193/02, para. 77.

⁷⁵ CFI (later GC), Case T-193/02, para. 75; FIFA, Organisation, <<https://www.fifafoundation.org/organisation>>, accessed 19 July 2025.

⁷⁶ As the authors also state here while arguing against the application of the *Meca-Medina-Test* Rupperecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 11.

⁷⁷ Rupperecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 4; FIFA, Organisation, <<https://www.fifafoundation.org/organisation>>, accessed 19 July 2025.

⁷⁸ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 180; ECJ, Case C-124/21 P, paras. 92 - 96.

⁷⁹ cf chapter E.I. and II.

⁸⁰ Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 125 - 126.

Another argument is the impact such regulations have on the fundamental freedoms of football agents.⁸¹ Regulations that limit the possibility of performing an economic activity directly impact the freedom of work, Art. 15 CFR and the freedom of business, Art. 16 CFR.⁸² The intensity of such impact on these freedoms in the case of the FFAR is enormous. It sets rules on the performance of a whole profession which here are football agents because the FIFA requires applicants for being licensed football agents to comply with eligibility regulations, Art. 4 FFAR 2022 in connection with Art. 5 (1) FFAR 2022, and pass exams, Art. 4 (1) c) FFAR 2022.⁸³ The impact of the infringement is even stronger because the FIFA sets rules for third parties that are not actually associated to the FIFA itself.⁸⁴ When parties do not comply with these rules, transfers will not be accepted and therefore be void. The principle of ‘legal reservation’ would be breached in cases like these where private actors - as the FIFA is one - regulate and limit the fundamental rights handed to individuals.⁸⁵

2. Arguments for a competence

At first it must be seen that although the FIFA regulates matters that relate to third parties, in this regard there is a complete absence of regulation.⁸⁶ In that absence it is understandable that the FIFA as the major organisation in football tries to regulate at least some matters in this regard. Football agents even though they are not direct subject to the FIFA as an association, engage in a major economic activity the FIFA relies upon. In the end, the transfer market has a direct effect on revenues which include transfer fees, marketing, merchandise, tv rights and more by the establishment of teams and the economic impact a transfer can have on clubs and leagues. Without any regulation the FIFA would simply lose a relevant part of its own “product” if it only stood by the side.⁸⁷ Consequently, it is the organisation that is the nearest structurally and mindfully and therefore can give the best-suitable and fastest replies on the legislative side for question that arise.⁸⁸ The argumentative backing for the disallowance of such a competence when it comes to private autonomy goes to the wrong direction. Although it is true that there is a lack of direct connection, it is undeniable that at least a factual connection is given between

⁸¹ *Breuer* sees the breach of Art. 15 CFR and Art. 16 CFR Ludger Breuer, *Das EU-Kartellrecht im Kraftfeld der Unionsziele* (2012), p. 696 - 697.

⁸² *Ibid*, p. 696.

⁸³ Ludger Breuer, *Das EU-Kartellrecht im Kraftfeld der Unionsziele* (2012), p. 696.

⁸⁴ Ludger Breuer, *Das EU-Kartellrecht im Kraftfeld der Unionsziele* (2012), p. 696; cf also D.III. and D.III.1.

⁸⁵ Ludger Breuer, *Das EU-Kartellrecht im Kraftfeld der Unionsziele* (2012), p. 697.

⁸⁶ CFI (later GC), Case T-193/02, para. 78.

⁸⁷ Peter W. Heermann, *Will the football agents’ service fee cap survive the current legal attacks?*, ISLJ (2024), p. 193.

⁸⁸ Peter W. Heermann, *Will the football agents’ service fee cap survive the current legal attacks?*, ISLJ (2024), p. 193; Ludger Breuer, *Das EU-Kartellrecht im Kraftfeld der Unionsziele* (2012), p. 696 - 697.

football agents and the sport of football. This combined with the absence of any other general legislation by states leaves the question what legal boundaries there could be.⁸⁹ In this vacuum of legislation the FIFA should at least have the possibility to give parties some legal certainty and not only be a bystander.⁹⁰ And here, private autonomy plays its biggest role by providing the right to regulate the relation between private parties.

In 2023, the *CAS* also gave its opinion on this topic.⁹¹ In a questionable decision⁹², it stated that the performance of the profession of football agents is ‘*as far as they represent the interests of clubs and players, directly engage in the organisation and functioning of the market of players’ services, with respect to their employment and transfer - i.e., with respect to one of the core aspects of the entire football system*’.⁹³ In combination with a lack of reasoning by the applicant, the panel decided that the FIFA does have competence to regulate third party matters.⁹⁴ The fact that football agents do not have any lawful connection was simply left aside. The *CFI*, in a case which concerned an earlier version of the FFAR, saw all the issues but did not give an answer and left it open whether the FIFA had the competence to draft the FFAR.⁹⁵ Consequently, as it judged on other questions of that case, it at least must have assumed a competence.⁹⁶ Even though theoretically this is in line with the decision of the *CFI*,⁹⁷ there is a lack of profound reasoning. However, it is undeniable, as shown, that the work of football agents is not as far away from the FIFA as some want it to be.

Regarding all these arguments it is not to be forgotten, that although the principle of reserve of law exists and there is matter that is highly impactful on the fundamental rights, there is still a well-functioning judicial system. So, as long as the FIFA regulates matters on which it questionably has no jurisdiction on, there will always be the possibility of judicial scrutiny on the basis of the European provisions. From that follows that the FIFA has the jurisdiction based on the mere fact that there is no other legislation, but the decisions made are under strong and

⁸⁹ Peter W. Heermann, Will the football agents’ service fee cap survive the current legal attacks?, ISLJ (2024), p. 193; CFI (later GC), Case T-193/02, para. 78.

⁹⁰ Peter W. Heermann, Will the football agents’ service fee cap survive the current legal attacks?, ISLJ (2024), p. 193.

⁹¹ CAS, Case 2023/O/9370 PROFAA v. FIFA.

⁹² cf Rupperecht Podszun and Alexander Kirk, FIFA’s Football Agent Regulations and European Competition Law, JAE (2024), p. 6.

⁹³ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 179.

⁹⁴ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 181.

⁹⁵ CFI (later GC), Case T-193/02, para. 75; Peter W. Heermann, ISLJ (2024), Will the football agents’ service fee cap survive the current legal attacks?, p. 193.

⁹⁶ One German Regional Court did so similarly LG Frankfurt am Main, judgement 24 October 2019, 2-03 O 517/18, <<https://openjur.de/u/2261681.html>>, accessed 19 July 2025; Peter W. Heermann, ISLJ (2024), Will the football agents’ service fee cap survive the current legal attacks?, p. 193.

⁹⁷ cf CFI (later GC), Case T-193/02, para. 76 - 81.

fair judicial overview. In this regard, the specifics of the sport, Art. 165 TFEU, receive the best recognition because they can be perfectly used as a tool for interpreting the relevant provisions of the FIFA which may breach other European law - especially competition law and the fundamental freedoms of the internal market.⁹⁸

3. Opinion

The author has his own opinion on this matter. As stated, several times now, the sport of football grew into a globally relevant economic part with its revenues⁹⁹ and social impact.¹⁰⁰ This development especially happened in Europe. Associations like the FIFA do not have the right to regulate matters that concern third parties because they are protected by the freedom of association in Art. 11 ECHR and Art. 12 CFR. Private Autonomy which also protects associations gives the competence for associations like the FIFA to regulate matters that also concern third parties.¹⁰¹ However, the reasoning of the competence differs. The FIFA over time and with the developments of the sport simply had to concern topics that are not solely sports related. This can be seen as an outflow of the various developments that impacted football over time. In that regard the nearest body, as long as there is no higher standing jurisdiction that engages, should be able to regulate the matter. This competence results from the various matters related to modern football and the unstoppable developments are recognized in the best way. It is the best solution to find the quickest and most suitable legal solutions for the relevant issues.

To find out whether the FIFA has a competence for regulation, it should first be assessed if there is any legal framework by a state or international body with legitimacy.¹⁰² Afterwards, it should be looked at, if following the developments of the sport, there is a link between the matter regulated and the sport and economic background of the sport. These matters must be regulatable by the relevant sports association. So, for football agents, as they are engaging in transfers and the lives of athletes generally, it is strongly related to the sport, but also the economic scope which became relevant for football over time. This also takes Art. 165 TFEU into account in the best way because it recognizes the important changes in sports. Also, as

⁹⁸ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 70; Alexander Seyb, *Autonomie der Sportverbände* (2020), p. 179.

⁹⁹ Hanno Beck et al., *The league system, competitive balance, and the future of European football*, MSL 30 (2022), p. 22 - 23 and fig. 1; just for the agent market cf. Martin Stopper and Simon Karlin, in: Martin Stopper and Gregor Lentze, *Handbuch Fußball-Recht* (2025), sec. 22, para. 3, fig. 1.

¹⁰⁰ Ulrich Forsthoff and Jörg Eisendle, in: Eberhard Grabitz and Meinhard Hilf and Martin Nettesheim, *Das Recht der EU*, vol. 1 ed. 84 (2025), Art. 45 TFEU, para. 85.

¹⁰¹ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 560 - 562.

¹⁰² Martin Stopper and Simon Karlin, *Rechtlicher Status Quo der Regulierung von Spielervermittlung*, SpuRt 2024, p. 174 see a vacuum of regulation.

sports related matters are still relevant, it is in line with decisions like *Meca-Medina*. Sports have an important impact on society and should be understood as a dynamic field on which social and economic developments go hand in hand. This leads to an ongoing change within the sport itself.

However, this does not mean that the associations should be awarded an open field. Regulations that are the result of such a competence can only be valid and lawful as long as they are under strong legal scrutiny. Especially the *Meca-Medina*-Test should be used. Therefore, as the judicial solutions as well as most voices in literature are, it is important to scrutinize legal frameworks by associations that are limiting the fundamental rights of non-associated third parties on the relevant laws - in this case especially European Competition Law and Internal Market Law.

4. Conclusion

To conclude, the author is of the opinion that the FIFA can indeed regulate matters like the football agent market. Following the developments of the sport they became more relevant and therefore have direct impact on the sport in regards of the teams and economics of clubs and players. To still have the power over the sport of football and still follow the one federation principle in football¹⁰³, the FIFA must be able to draft regulations for them. However, this competence follows a strong judicial review possibility. As shown, if the legislators become unsatisfied by the situation of regulations, they should publish own regulations to reform the sports world while respecting the specifics of the sport.

In the end it is not decisive how the competence is justified. The relevant point is that there is a competence on which the FIFA may regulate such matters. All of this happens under the strict review of national and European courts because thereby the specifics of the sport in Art. 165 TFEU, which is the result of the autonomy of associations, are respected the most.¹⁰⁴ The FIFA has the competence to regulate football agents.

E. The FFAR under EU Competition Law

After considering the general elements of how sports and EU law are interwoven and concluding that there is a competence of the FIFA to regulate non-associated third parties, the question arises whether the FFAR itself and the specific provisions mentioned in case C-209/23

¹⁰³ cf Rupperecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 3.

¹⁰⁴ Similar Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 556 - 557 and 561 - 562.

comply with specific law or not. In the first phase the focus will be laid onto EU Competition Law. Then it will be assessed how the fundamental freedoms could possibly be breached.

I. The FIFA as an undertaking of Art. 101 (1) TFEU and Art. 102 TFEU

With the developments mentioned, the FIFA also became a target of European judicature, and especially EU Competition Law.¹⁰⁵ The ECJ decided that an undertaking can be *‘every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed’*.¹⁰⁶ That means an economic activity is to be examined when the question whether the FIFA is an undertaking arises.

The FIFA in the past few years engaged in many areas of economic value. It organizes global events like the FIFA World Cup or the FIFA Club World Cup and generates huge revenues with them.¹⁰⁷ It gives out licenses to use their trademarks, it sells the broadcasting rights for its events, makes revenue with the sale of official merchandise and tickets for the tournaments and sells equipment. Professional football players serve as representants for brands and are the faces of media campaigns.¹⁰⁸

Even actions that are not directly economic activities - as the examples mentioned - can be subject to EU competition law scrutiny. In that regard, the possibility of a connection to economic interests even when for rules and regulations that only relate to non-economic activities at first sight is recognized.¹⁰⁹ This means that an undertaking in the area of sports and the relevant act that is subject to review needs to be elaborated on any possible economic impact. The scope of that elaboration is wide. It is understandable that the *ECJ* wants as many acts as possible under its jurisdiction to have EU competition law applied as effective as possible. The reason is EU Competition Law being an important part of the *ordre public* principle.¹¹⁰

¹⁰⁵ cf exemplary ECJ, Case C-333/21, para. 87; ECJ, Case C-519/04 P, paras. 30 - 33; Ulrich Forsthoff and Jörg Eisendle, in: Eberhard Grabitz and Meinhard Hilf and Martin Nettesheim, *Das Recht der EU*, vol. 1 ed. 84 (2025), Art. 45 TFEU, para. 85.

¹⁰⁶ ECJ, Case C-41/90, para. 21; for sports associations in general see ECJ, Case 36/74, p. 1418; also ECJ, Case C-333/21, para. 112.

¹⁰⁷ The FIFA expects to make a total revenue of 13 billion dollars in the cycle of 2023 - 2026, FIFA, <<https://inside.fifa.com/organisation/fifa-council/media-releases/council-approves-unprecedented-prize-money-pot-club-world-cup-key-decisions-womens-competitions>>, accessed 19 July 2025.

¹⁰⁸ With the same result ECJ, Case C-333/21, para. 139;

¹⁰⁹ Rupperecht Podszun and Alexander Kirk, *FIFA's Football Agent Regulations and European Competition Law*, JAE (2024), p. 4; ECJ, Case C-519/04 P, paras. 27 and 32; ECJ, Case C-333/21, para. 90.

¹¹⁰ Rupperecht Podszun and Alexander Kirk, *FIFA's Football Agent Regulations and European Competition Law*, JAE (2024), p. 5.

The decision to regulate the market of football agents is closely related to the transfer market. Player transfers are an important part of generating revenue for football clubs because of the financial impact just one transfer of a highly talented player can have for the club. Numbers also tell that the transfer market became a multi-billion-dollar market and generates revenues for amateur clubs¹¹¹ and other associated economic actors on the football market.¹¹² Especially for transfers where high amounts of money are paid, football agents play an important role.¹¹³ They orchestrate contacts, find interested clubs, offer the players to clubs that might be interested or negotiate the contracts and transfers. All these activities are core economic activities as they have major commercial value. Therefore, the decision to regulate the matter of football agents has to be an economic activity. As the abovementioned principles are also applicable to associations ‘which, according to their statutes, have as their purpose the organisation and control of a given sport, in so far as those entities exercise an economic activity in relation to that sport, by offering products or services’¹¹⁴, the FIFA is an undertaking in the understanding of Art. 101 (1) TFEU and Art. 102 TFEU.

II. Prohibited agreement under Art. 101 (1) TFEU

For Art. 101 (1) TFEU to be applicable, it is also necessary that there must be an agreement between undertakings, decisions by associations of undertakings or concerted practices. In this case as the FIFA is an international football association, there could be a decision by an association. The FIFA Council usually agrees on the legal texts and issues when the formal process is done. Art. 2 (1) FFAR states that the FFAR regulations are applicable whenever a transfer has an international dimension. In Art. 2 (2) and (3) FFAR the cases are specified in which a transfer has an international dimension. In Art. 3 FFAR, the FIFA obligates national football associations to implement and enforce the rules of the FFAR. As the FIFA is the umbrella association which the continental and national football associations are members of¹¹⁵, the FFAR is legally binding within the organisational construct of international football.

¹¹¹ cf FIFA, Global Clearing House Report 2024, 6.4.2, <<https://digitalhub.fifa.com/m/428eb58ffd3e7dd/original/Clearing-House-Report-2023-24-V12.pdf>>, accessed 19 July 2025.

¹¹² cf FIFA, Global Transfer Report 2024, <<https://digitalhub.fifa.com/m/142077cfbb75c2b0/original/Global-Transfer-Report-2024.pdf>>, fig. 1 and 2, accessed 19 July 2025, which shows that the only the transfer market alone grew into a business worth roughly 8,6 bn USD; Martin Stopper and Simon Karlin, in: Martin Stopper and Gregor Lentze, Handbuch Fußball-Recht (2025), sec. 22, paras. 2 - 3 who also come to this finding.

¹¹³ cf FIFA, Football Agents Report 2024, fig. 3, <<https://digitalhub.fifa.com/m/13f391e61065a845/original/Football-Agents-Report-2024.pdf>>, accessed 19 July 2025.

¹¹⁴ ECJ, Case C-333/21, para. 113; Opinion of AG Emiliou, ECJ Case C-209/23, para. 115; also ECJ, Case C-124/21 P, paras. 92 - 96.

¹¹⁵ CFI (later GC), Case T-193/02, para. 75; FIFA, Organisation, <<https://www.fifafoundation.org/organisation>>, accessed 19 July 2025.

Although the FFAR, as other regulations issued by the FIFA, is published out of the own authority of the FIFA,¹¹⁶ the FIFA's core task is to regulate international football.¹¹⁷

A decision made by the FIFA on the field of football is legally binding for the members. Therefore, a decision by an association is given in the case of the FFAR which means that Art. 101 (1) TFEU is applicable.¹¹⁸

III. The football agent services market as a relevant market under Art. 102 TFEU

For Art. 102 TFEU to be applicable, the relevant market and whether the FIFA has a dominant position on that market have to be assessed. For the relevant market, there is the distinction between the factual, geographic and temporal market.¹¹⁹ The geographic market would here be the European market for football agent services. Factually, the most important condition to determine the relevant market is how interchangeable a product is.¹²⁰ As here, the FFAR regulates the working circumstances of football agents, and there is no real interchangeability of them, the relevant market is the market for football agent services in Europe.

A dominant position is defined as '*a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, of its customers and ultimately of its consumers.*'¹²¹ The FIFA is the only body that organizes relevant football competitions globally and can exploit the rights following from those, and all continental associations and clubs in those association are associated within the FIFA.¹²² So, all transfers in football that could be performed with the services of football agents are within this scope of the FIFA. As the FIFA and its continental subsidiaries are the only bodies that organize the relevant football competitions, the market for football agent services is a neighbouring

¹¹⁶ CFI (later GC), Case T-193/02, para. 74.

¹¹⁷ cf Art. 1 (1) FFAR; CFI (later GC) Case T-193/02, para. 75.

¹¹⁸ CFI (later GC), Case T-193/02, para. 75; Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 3; ECJ, Case C-333/21, para. 87.

¹¹⁹ Andreas Fuchs and Andreas Heinemann, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1, (2025), Art. 102 TFEU, para. 53.

¹²⁰ Ibid.

¹²¹ Andreas Fuchs and Andreas Heinemann, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1, (2025), Art. 102 TFEU, para. 108; CFI (later GC), Case T-219/99, para. 189; Com., Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, (2009/C 45/02), para. 10.

¹²² ECJ, Case C-333/21, para. 117; Rupprecht Podszun, Anwendbarkeit des Kartellrechts auf die Regulierung von Spielervermittlern durch Sportverbände, NZKart (2021), p. 146.

market. Those markets are included within the scope of Art. 102 TFEU.¹²³ To conclude, the relevant market is the market for football agent services on which the clubs compete, and the FIFA has a dominant position for that market as it provides the only competitions for which these players can be relevant.

IV. Exploitative and exclusionary abuses

The provisions of the FFAR must either have an exploitative or exclusionary effect, for them to breach Art. 102 TFEU. The fact that the measures, the FIFA introduced does not have impact on the football market directly, does not exclude the applicability of Art. 102 TFEU, as also measures that impact connected third markets are included.¹²⁴ The overall goal is to protect the proper functioning of competition.¹²⁵ Here, the measures the FIFA took impact the football agent market which, as shown, is connected to the football market the FIFA influences and provides. Without the FIFA providing an internationally oriented market for football, the football agent services market would not exist.

Exploitative abuse of a measure means that certain measures of market actors negatively impact economic players either upstream or downstream.¹²⁶ Such abuses can have different variations. An exclusionary abuse can be found in cases where a dominant undertaking tries to exclude other competitors or potential competitors from the relevant market.¹²⁷ An important consideration when assessing markets that are dominated or provided by sports associations like the FIFA is that the introduced measures are not in favour of their own structures or offerings.¹²⁸ The assessment based on these fundamentals will be done at a later stage.¹²⁹

¹²³ Andreas Fuchs and Andreas Heinemann, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1, (2025), Art. 102 TFEU, para. 513; ECJ, Case C-233/23, para. 54; Opinion of AG Emiliou, ECJ Case C-209/23, para. 116.

¹²⁴ Andreas Fuchs, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 102 TFEU, paras. 188 - 189; Opinion of AG Emiliou, ECJ Case C-209/23, para. 116.

¹²⁵ Andreas Fuchs, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 102 TFEU, para. 175.

¹²⁶ Andreas Fuchs, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 102 TFEU, para. 219.

¹²⁷ Andreas Fuchs, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 102 TFEU, para. 253; Com., Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, 2009/C 45/02 (2009), para. 6.

¹²⁸ Andreas Fuchs, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 102 TFEU, para. 514.

¹²⁹ For a preliminary examination see Opinion of AG Emiliou, ECJ Case C-209/23, paras. 122 - 142.

V. The FIFA as an exception of Art. 165 TFEU

The European Union has recognized the special position of sports in the European society within the TFEU.¹³⁰ Art. 165 (1) TFEU states that the Union has to support European sports under the perspective that it has a specific nature, and its structures are based on voluntary work as well as its social and educational function for the society. On that behalf, the EU shall develop the European dimension in sport by promoting fairness and openness in sporting competitions as well as cooperation.¹³¹

It follows that there is a special duty of the European Union to foster all aspects regarding sports, so that these goals can be achieved. But likewise, it is also needed that the European Union does not allow the market players in sports to use this special provision of the contracts to act outside of primary union law.¹³² Actors on the sports market must adhere to EU law as long as they perform economic activity,¹³³ so they do not act against European Union law. Especially the commercial side of sports is not exempted by Art. 165 TFEU when it comes to scrutiny by European judicature.¹³⁴

The *ECJ* went even further and interpreted that even though the special position and nature of sports have to be taken into account, it is of high importance to also look at “*the nature, organisation or functioning of the sport concerned and, more specifically, how professionalized it is, the manner in which it is practiced, the manner of interaction between the various participating stakeholders and the role played by the structures and bodies responsible for it at all levels, with which the Union is to foster cooperation, in accordance with Article 165(3) TFEU*“.¹³⁵ This indicates that the higher the professionalization grade for a sport is, the more likely it is that the European judicature has to assess specific acts under EU law and not exempt it from scrutiny because of Art. 165 TFEU.¹³⁶

¹³⁰ cf Art. 165 (1) TFEU.

¹³¹ cf Art. 165 (2) TFEU.

¹³² Rupperecht Podszun and Alexander Kirk, FIFA’s Football Agent Regulations and European Competition Law, JAE (2024), p. 3.

¹³³ Opinion of AG Rantos, ECJ Case C-333/21, para. 39; Opinion of AG Emiliou, ECJ Case C-209/23, para. 16.

¹³⁴ Ibid; Opinion of AG Emiliou, ECJ Case C-209/23, paras. 22 and 33.

¹³⁵ Tim Lichtenberg, International Skating Union, European Super League and Royal Antwerp: The beautiful game and skating before the CJEU (2024), <<https://competitionlawblog.kluwercompetitionlaw.com/2024/01/08/international-skating-union-european-super-league-and-royal-antwerp-the-beautiful-game-and-skating-before-the-cjeu/#comments>>, accessed 19 July 2025; ECJ, Case C-333/21, para. 105.

¹³⁶ Rupperecht Podszun and Alexander Kirk, FIFA’s Football Agent Regulations and European Competition Law, JAE (2024), p. 3; Tim Lichtenberg, International Skating Union, European Super League and Royal Antwerp: The beautiful game and skating before the CJEU (2024), <<https://competitionlawblog.kluwercompetitionlaw.com/2024/01/08/international-skating-union-european-super-league-and-royal-antwerp-the-beautiful-game-and-skating-before-the-cjeu/#comments>>, accessed 19 July 2025;

It was also decided that even the regulation of matters that can have any relation to the economic activity performed by the associations that set rules like the assembling of teams can be subject to EU law scrutiny.¹³⁷

Some even saw a pyramidal system of European sports - with the amateur level clubs being the base level and professional clubs being the peak of the pyramid - laid down in Art. 165 TFEU.¹³⁸ Although international football is organized in such a pyramid with the FIFA being the one association that serves as an umbrella for all continental associations who then also include the national and regional associations as well as the clubs¹³⁹, the EU did not introduce Art. 165 TFEU to preclude EU law from applicability to sports organisations.¹⁴⁰

As shown, the environment in which the FIFA works is highly commercialized and therefore became professionalized over the past decades.¹⁴¹ The more money there was that entered the market, the more the FIFA acted as a law-making body.¹⁴² With this stronger activity, the FIFA entered a stage where there is a conflict between its duty to regulate the competition which here are the tournaments and the game of football in general and the performance of an economic activity like marketing, sale of products, ticketing, licensing or the organisation of tournaments.¹⁴³ Out of that follows that EU law, especially competition law scrutiny, as the FIFA sets rules for the competition of football itself, is applicable and therefore the acts of the

Opinion of AG Rantos, ECJ Case C-333/21, para. 39; Matthias Ruffert, in: Christian Callies and Matthias Ruffert, EUV/AEUV, ed. 6 (2022), Art. 165 TFEU, paras. 6 and 16.

¹³⁷ Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 4.

¹³⁸ ECJ, Case C-333/21, para. 101 - 104; Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 180; Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 3 - 4.

¹³⁹ FIFA, Organisation, <<https://www.fifafoundation.org/organisation>>, accessed 19 July 2025; CFI (later GC) Case T-193/02, para. 69.

¹⁴⁰ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 180; ECJ, Case C-333/21, para. 101 - 104.

¹⁴¹ cf FIFA, Global Transfer Report 2024, <<https://digitalhub.fifa.com/m/142077cfbb75c2b0/original/Global-Transfer-Report-2024.pdf>>, accessed 19 July 2025; Espen Auberg, From football agents to intermediaries, <<https://www.easportslaw.com/news/from-football-agents-to-intermediaries#:~:text=The%20first%20FIFA%20agent%20regulations,completion%20of%20a%20written%20examination>>, accessed 19 July 2025.

¹⁴² cf the InsideFIFA webpage and the recent legal work that has been issued, FIFA, <<https://inside.fifa.com/official-documents?filterId=SLTc69e07f1-f1cc-4f42-8ad3-b1bfa096a3f8&selectedSubIds=1Ik5980rsO4CRiqjqlXUS&selectedSubIds=5C9pqQMUA8iGOzIL5R3JHk>>, accessed 19 July 2025; FIFA, Organisation, <<https://www.fifafoundation.org/organisation>>, accessed 19 July 2025.

¹⁴³ Opinion of AG Rantos, ECJ Case C-333/21, paras. 43 and 44; Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 4 - 5.

FIFA need to be subject to EU law and the jurisdiction of the *ECJ*. Art. 165 TFEU does not exclude sports from the applicability, nor the judicial review.¹⁴⁴

To sum it up, Art. 165 TFEU recognizes the special position and historical development of sports, in this case the strong role of football, in Europe. But the provision does not mean the FIFA can regulate football without any review. As the *ECJ* stated, Art. 165 TFEU should be understood as a tool to interpret the relevant EU law.¹⁴⁵ Having that in mind and considering the economic impact and relevance of the FIFA itself, it is without a doubt that Art. 165 TFEU does not preclude the FIFA from EU Competition Law scrutiny.

VI. The *Meca-Medina*-Test

Although Art. 165 TFEU does not serve as an exception for sports matters in EU law, the tension between regulatory work of bodies that are allowed to set certain rules, and their economic interests still exists. For the reasons of competitive fairness,¹⁴⁶ the *ECJ* decided to allow a restriction of the provision of Art. 101 (1) TFEU on the level of the offense itself.¹⁴⁷ In ‘*Meca-Medina*’¹⁴⁸ two professional sportsmen wanted to have certain rules and regulations by the International Olympic Committee on anti-doping matters dismissed with regards to EU law.¹⁴⁹

The *ECJ* recognized that even matters that are purely related to the sport in question - here it repeated the importance of recognizing the special position of sports - do not dislodge the regulating body from having to comply with EU law and specifically EU Competition Law.¹⁵⁰

¹⁴⁴ This is a generally accepted view *ECJ*, Case C-333/21, paras. 105 - 107; Rupprecht Podszun and Alexander Kirk, FIFA’s Football Agent Regulations and European Competition Law, *JA* (2024), p. 4; Tim Lichtenberg, International Skating Union, European Super League and Royal Antwerp: The beautiful game and skating before the *CJEU* (2024), <<https://competitionlawblog.kluwercompetitionlaw.com/2024/01/08/international-skating-union-european-super-league-and-royal-antwerp-the-beautiful-game-and-skating-before-the-cjeu/#comments>>, accessed 19 July 2025; Opinion of AG Emiliou, *ECJ* Case C-209/23, para. 33.

¹⁴⁵ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 180; *ECJ*, Case C-333/21, paras. 101 - 104; Matthias Ruffert, in: Christian Callies and Matthias Ruffert, *EUV/AEUV*, ed. 6 (2022), Art. 165 TFEU, para. 6.

¹⁴⁶ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 181.

¹⁴⁷ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 181; cf *ECJ*, Case C-519/04 P.

¹⁴⁸ cf *ECJ*, Case C-519/04 P.

¹⁴⁹ cf *ECJ*, Case C-519/04 P, para. 1; Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 181.

¹⁵⁰ *ECJ*, Case C-519/04 P, paras. 27 and 31; also very strongly Peter W. Heermann, *Zur Anwendbarkeit des Meca-Medina-Tests*, *WuW* (2022), p. 314.

1. Conditions

To determine whether a regulation of a sport connected matter is only sports related, three requirements have to be assessed with a positive result cumulatively.¹⁵¹ The *ECJ* set the borders between economic activity of sports associations and the rules that are necessary for a proper functioning and the organisation of international football that are issued with the aim to ensure the competition in sports.¹⁵²

a. Regulation in the pursuit of legitimate objectives

First, it has to be elaborated whether the regulation is justified by the pursuit of one or more legitimate goals that are not anti-competitive per se.¹⁵³ In *Meca-Medina* the *ECJ*, after only speaking about objectives first,¹⁵⁴ later in the case specified that ‘*a limitation is inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes.*’¹⁵⁵ However, a final definition was not provided by the court.¹⁵⁶ It is not finally clear what is to be understood under the condition ‘*legitimate objectives*’.

Because of that there is an ongoing debate about what kinds of different goals can be qualified as legitimate when it comes to cases from sports.¹⁵⁷ Following the opinion that is also supported by the author, in this regard, the specifics of the sport in question are to be taken into consideration.¹⁵⁸ As a reasoning it can be said that Art. 165 TFEU does work as a tool for interpreting sports-related cases. Here, it requires this understanding to have the possibility for sports associations to regulate certain matters without a strict and narrowminded approach. In that regard it is also to be noted that within the conditions, the scrutiny by courts should be stricter in order to not let the effect of judicial review dilute. As stated before, at least a connection to the requirements the *ECJ* set in its decision, should always be given.¹⁵⁹

It is also questionable whether there are further requirements, a legitimate objective must fulfil to be found as such. In that regard, it could be recommendable that the goals have to be pursued in a stringent and coherent manner which means they must be consistent and non-

¹⁵¹ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 181.

¹⁵² Rupperecht Podszun and Alexander Kirk, FIFA’s Football Agent Regulations and European Competition Law, JAE (2024), p. 10.

¹⁵³ Opinion of AG Emiliou, ECJ, Case C-209/23, para. 49.

¹⁵⁴ ECJ, Case C-519/04 P, paras. 42 - 44.

¹⁵⁵ ECJ, Case C-519/04 P, para. 45; Tassilo Mürtz, Der Meca-Medina-Test des EuGH (2023), p. 244.

¹⁵⁶ Tassilo Mürtz, Der Meca-Medina-Test des EuGH (2023), p. 244.

¹⁵⁷ For a broad overview see Peter W. Heermann, Verbandsautonomie im Sport (2022), p. 356 - 392.

¹⁵⁸ Like this Peter W. Heermann, Verbandsautonomie im Sport (2022), p. 357.

¹⁵⁹ Commission Staff Working Document, COM(2007) 391 final, Annex I, 2.1.5; Peter W. Heermann, Verbandsautonomie im Sport (2022), p. 360.

discriminatory.¹⁶⁰ This criterion was not mentioned in the *Meca-Medina* decision but supposedly follows the recent developments.¹⁶¹

However, as the supporters of that perspective also recognize,¹⁶² the review can be denser within the conditions that follow. In the end, the *ECJ* in the initial decision only required legitimate objectives.¹⁶³ The different goals that supposedly shall be achieved by the regulation in question have to be seen in the light of the different provisions.¹⁶⁴ Based on these results, the goals set out in the FFAR will be assessed in the following for their approval as a legitimate objective. In Art. 1 (1) FFAR, the FIFA set out the primary goals and in Art. 1 (2) FFAR, it set out the subsidiary goals.

aa. Contractual stability, Art. 1 (1) a) FFAR

The first relevant goal is the contractual stability between players and clubs.¹⁶⁵ It is already at this stage of the test questionable how the connection between the goal for contractual stability would serve as a legitimate goal. Although the *CAS*, notably without further explanation, simply accepted the goal as recognized by the *ECJ*¹⁶⁶ while referring to *Rush Portuguesa* which was about labour regulations in Portugal, it there decided to accept regulations that intend to prevent disturbances on the labour market.¹⁶⁷ Notwithstanding the fact that in this case the regulation was drafted by Portugal when accessing the EU and the facts are very different, it is at least to be seen that the *ECJ* accepted this kind of measure. However, in sports the circumstances are different. Although there is also an interest in maintaining contractual balance in sports¹⁶⁸, it is first not clear how the impact on the internal market of the EU would be as big as when a state

¹⁶⁰ Peter W. Heermann, Will the football agents' service fee cap survive the current legal attacks?, ISLJ (2024), p. 199; EFTA Court, 16 November 2018, E-8/17, para. 117.

¹⁶¹ Peter W. Heermann, Will the football agents' service fee cap survive the current legal attacks?, ISLJ (2024), p. 199; ECJ, C-519/04, para. 42; ECJ, Case C-309/99, para. 97.

¹⁶² Peter W. Heermann, Will the football agents' service fee cap survive the current legal attacks?, ISLJ (2024), p. 200.

¹⁶³ ECJ, Case C-519/04 P, paras. 42 - 45.

¹⁶⁴ Rupperecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 20; Peter W. Heermann, Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive, WRP (2023), p. 527.

¹⁶⁵ cf Art. 1 (1) a) FFAR; for Heermann this goal is irrelevant in connection to the service fee cap Peter W. Heermann, Will the football agents' service fee cap survive the current legal attacks?, ISLJ (2024), p. 197; FIFA used this goal in the CAS proceedings CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 284; LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 10.

¹⁶⁶ CAS, Case 2023/O/9370 PROFAA v. FIFA, paras. 284 - 285 and 287 (iv).

¹⁶⁷ CAS, Case 2023/O/9370 PROFAA v. FIFA, paras. 284 - 285 and 287 (iv); ECJ, Case C-113/89, para. 13.

¹⁶⁸ The *LG Mainz* also saw this connection LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 10.

accesses the European Union and second, it is at least highly questionable how limiting the monetary reward for sports agent services would increase contract stability.¹⁶⁹

It is also frequently mentioned there would be no connection to the sport while recurring to *Piau*.¹⁷⁰ While for the problem of the competence it was shown that there is a certain connection that can be recognized, at this point, the assessment shall be stricter because the conditions of the test should be assessed narrowly.¹⁷¹ Although because of the developments of football there is a further need of regulation, this need should not lead to a broad and therefore lose scrutiny of actions by undertakings which here are sports associations. In the end, the wider understanding of the applicability leads to a stricter interpretation of the conditions. Another aspect in that regard is the legal status of the FIFA as an association. It needs to be seen that an association does not have the task to regulate labour markets and, in the decision, mentioned by the *CAS*, the *ECJ* was deciding on a regulation by a state.¹⁷²

In the opinion of the author, there are strong arguments to not allow this goal as a legitimate objective, especially when it comes to fee caps because of the intensity of the impact on the profession of sports agents.

bb. Encourage the training of young players, Art. 1 (1) b) FFAR

Sports associations in Europe are the primary organisations when it comes to sports and its hierarchy. In every sport, there are either one or more associations that are recognized to organize the functioning and performance of the relevant sport. Therefore, they should follow the goal to train young players from within.¹⁷³ Without the youth interested in a specific sport, the loss of interest would lead to discontinuing the sport and later to the end for the work of the relevant association of that sport.¹⁷⁴ For this reason, Art. 165 (1) sentence 2 TFEU, when including the ‘social and educational’ function of sports, legitimizes the performance of such goals in regards of the association that wants to regulate the relevant sport.¹⁷⁵ The connection to the sport is undoubtedly given and the public interest is laid down in Art. 165 (1) sentence 2

¹⁶⁹ For Heermann contractual stability does not even stand in any connection to service fee caps Peter W. Heermann, Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive, WRP (2023), p. 527.

¹⁷⁰ LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 95; CFI (later GC) Case T-193/02, paras. 76 - 77.

¹⁷¹ cf G.V.1.a. and G.V.3.

¹⁷² ECJ, Case C-68/12, para. 20; Rupprecht Podszun and Alexander Kirk, FIFA’s Football Agent Regulations and European Competition Law, JAE (2024), p. 19.

¹⁷³ Peter W. Heermann, Verbandsautonomie im Sport (2022), p. 370 - 371.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

TFEU.¹⁷⁶ Therefore, it is possible to justify restrictions of the conditions of the *Meca-Medina*-Test based on the goal of encouraging the training of young players. However, and especially in connection with football agents this connection does not seem profoundly traceable. If at all, it seems like it will not withhold the other conditions of the test.

cc. Promoting a spirit of solidarity between elite and grassroots football, Art. 1 (1) c) FFAR

Another goal used by the FIFA for the FFAR that is in connection with the service fee cap is promoting ‘*a spirit of solidarity between the elite and grassroots football*.’¹⁷⁷ With this goal the FIFA raises the European sports model which is laid out in Art. 165 TFEU.¹⁷⁸ Even though the *ECJ* did not exactly follow the European sports model¹⁷⁹, Art. 165 (1) TFEU still mentions the sportive specifics. As regulated within the TFEU, this specific goal could be legitimate.¹⁸⁰

However, there are major concerns regarding this goal when it comes to the question whether it is definite enough to be accepted as a goal for the *Meca-Medina*-Test.¹⁸¹ The expression is so loose, that it does not give enough certainty when trying to interpret it.¹⁸² The spirit of solidarity could be anything, but also nothing depending on how broad it is interpreted. Therefore, there are serious doubts if such an uncertain expression can be used as a justification for the application of a restriction of EU competition law.

But regarding the specifics of the sport, especially when thinking about the structure of European football with the amateur clubs being the foundation, it can still be seen as enough for being used as a legitimate objective.¹⁸³ On that behalf speaks that *AG Rantos* also saw the need and the specific that the solidarity between the professional and amateur clubs lays in the redistribution of revenues from above to the lower levels.¹⁸⁴ The specifics of sports require the FIFA to be able to justify certain regulations with the need of solidarity between the different

¹⁷⁶ Opinion of AG Emiliou, ECJ Case C-209/23, para. 70; Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 370 - 371.

¹⁷⁷ cf Art. 1 (1) c) FFAR.

¹⁷⁸ Peter W. Heermann, *Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive*, WRP (2023), p. 527.

¹⁷⁹ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 184.

¹⁸⁰ From a different perspective but with the same result also Opinion of AG Emiliou, ECJ Case C-209/23, para. 71.

¹⁸¹ Peter W. Heermann, *Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive*, WRP (2023), p. 527; LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 10.

¹⁸² Ibid; Opinion of AG Emiliou, ECJ Case C-209/23, para. 71.

¹⁸³ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 287 (v).

¹⁸⁴ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 287 (v); Opinion of AG Rantos, ECJ Case C-333/21, para. 30.

levels of the sporting structure. Because of that it is also clear that there is a connection to the performance and organisation of the sport. Further assessments will be made at later stage.

dd. Protect minors, Art. 1 (1) d) FFAR

The protection of minors is an important aspect on the field of football agents. The *EU Commission* found that there are reports on negative conduct towards minors in regards of their safety and well-being.¹⁸⁵ So, one of the major bodies of the EU has recognized the protection of minors as important. It is also not to be overlooked that minors were part of transfer activities of clubs in the recent years.¹⁸⁶ For the case of player agents the protection of minors sure falls into public interest as the youth play the biggest part in the functioning of sports. Not protecting them, as the Commission also recognized, would ultimately lead to a dissolution of the sport. This is included in Art. 165 (2) TFEU. However, Art. 165 (2) TFEU does only have the EU as its addressee¹⁸⁷ and therefore, the protection of minors cannot be used as a legitimization for regulation by private entities.¹⁸⁸

ee. Competitive balance, Art. 1 (1) e) FFAR

The next relevant goal for serving as a legitimate objective could be maintaining the competitive balance. With this goal, the FIFA probably wants to ensure that the regulations made within the FFAR lead to a better functioning competition leading to more interest in the sport due to the higher balance between clubs. Providing or maintaining competitive balance may lead to a better product but is also highly questionable when it comes to the different actors on the market.¹⁸⁹ When regarding Art. 165 TFEU this can serve as a legitimate objective because there is a public interest in at least maintaining the sporting infrastructure of Europe.¹⁹⁰

In favour of that speaks the need of national leagues to balance out the different clubs for the purpose of having an exciting league.¹⁹¹ With different actors - clubs, spectators and players - being more passionate about a league or a tournament, it could be more appealing. This could

¹⁸⁵ Com., Com(2007) 391 final, White Paper on Sport, p. 16; Commission Staff Working Document, COM(2007) 391 final, 4.2.

¹⁸⁶ cf exemplary the case of Jaka Cuber Potocnik and his transfer to the club 1. FC Köln, dpa, <<https://www.zeit.de/news/2023-12/21/fall-potocnik-cas-bestaetigt-transferbann-gegen-1-fc-koeln>>, accessed 19 July 2025.

¹⁸⁷ Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 19.

¹⁸⁸ Like this also Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 19; LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 168.

¹⁸⁹ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 373.

¹⁹⁰ Like this also Tassilo Mürtz, *Der Meca-Medina-Test des EuGH* (2023), p. 272.

¹⁹¹ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 379; Tassilo Mürtz, *Der Meca-Medina-Test des EuGH* (2023), p. 272.

be supported when all teams have the same opportunities for winning. However, the opposite is the case. It is not finally clear if all the clubs in a league or a tournament always are interested in such conditions. *Heermann* assessed the German Bundesliga and showed that the huge imbalances within the league over the last two decades grew with FC Bayern München winning the title most of the times, but without major harm for the interest of the spectators.¹⁹² Coming along with that there are also the different perspectives of club officials who have interests towards lesser balance because of reasons of success.¹⁹³

So, there is a distinction between the sportive and the economic side of competitive balance.¹⁹⁴ There is a certain interest of some groups to lower the sportive competitive balance to a detriment where there is only balance on paper and the - in these cases big clubs - can calculate with their success.¹⁹⁵ *Mürtz* saw rightfully that the economic reach of competitive balance might under some circumstances even be eligible to be a legitimate objective.¹⁹⁶ The sportive side of it can, as shown, be a legitimate objective when it comes to the proper performance and organisation of football.

Some voices tried to come up with the reasoning that the *ECJ* in *Bosmann* found competitive balance as a specific of the sport and therefore, every case that was grounded on competitive balance was to be seen as a legitimate objective.¹⁹⁷ The *CAS* also referred to a different decision by the *ECJ* in which it stated that there is a deep connection between late transfers and the proper functioning of championships.¹⁹⁸ However, the *ECJ* in both decisions was not aware of the *Meca-Medina*-Test for the simple reason that it was not yet published.¹⁹⁹ There might be a connection to the sport itself, especially when it comes to transfers and the composition of sports, as the author also assessed above, but in this case and at this point of the assessment, there needs to be a distinction between seeing the link between some matter and sports and being able to use it as a legitimate objective when it comes to the restriction of the prerequisites of a provision of the TFEU. The *CAS* was too quick and fails to profoundly show that in this case there was also a legitimacy to use competitive balance as a legitimate objective. The simple

¹⁹² Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 376.

¹⁹³ Tassilo Mürtz, *Der Meca-Medina-Test des EuGH* (2023), p. 272 - 273; Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 375 - 376.

¹⁹⁴ Tassilo Mürtz, *Der Meca-Medina-Test des EuGH* (2023), p. 273.

¹⁹⁵ This can be seen in *Heermann's* assessment of the opinions regarding competitive balance Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 373.

¹⁹⁶ Tassilo Mürtz, *Der Meca-Medina-Test des EuGH* (2023), p. 273.

¹⁹⁷ Chris Watson and Christine Graham, in James A R Nafziger/Stephen F Ross, *Handbook on International Sports Law* (2011), p. 405.

¹⁹⁸ *CAS*, Case 2023/O/9370 *PROFAA v. FIFA*, para. 286; *ECJ*, Case C-176/96, para. 54.

¹⁹⁹ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 376.

connection between transfers and the proper functioning of the competition is given here, as the author also saw before and used to widen the scope of the *Meca-Medina*-Test, but the looser the scope is, the stricter the conditions have to be assessed. Only so, it is possible to take into consideration the specifics of the relevant sport, which here is football, and by that conclude a result that is based on a sports-oriented assessment.

From the view of sports economists there are no real indications of how the maintenance of competitive balance supports the interest in a sport.²⁰⁰ This shows that there is also the issue of missing contours with the expression of maintaining competitive balance. This issue when defining the word, as seen above, is a strong indicator for not reaching the threshold to serve as a legitimate objective. This threshold especially when it comes to more economic measures can only be reached when there are extraordinary circumstances that connect this goal with the relevant sport and its organisation.

In conclusion it is to be said that there is an issue with defining and assessing the scope of competitive balance. However, it might under extraordinary circumstances and when regarding the specifics of the sport be a legitimate objective. This has to be seen in the light of the relevant provision that is assessed. Simply referring to a paragraph in which the *ECJ* once saw a connection between a behaviour and a sport is therefore, not enough. For football agents because they only engage in transfers and managing of players, this aspect is hardly met. Because of that, here there is no extraordinary connection to football which depending on the circumstances could be found.

ff. Ensuring the regularity of sporting conditions, Art. 1 (1) f)

FFAR

This goal could possibly be assessed with the same arguments as maintaining competitive balance. However, it is also not clear how to determine this expression. The regularity of sporting conditions could be linked to competitive balance in the meaning of a sportive and an economic factor. For both there is an element of regulatory stability that could be wanted to ensure the clear and proper functioning of the sport in question. Looked at closer, it shows that with this goal, the functioning and performance of the sport overall is meant.²⁰¹ This follows from the specifics of the relevant sport itself and its connection to the proper conduct of competitions and their rules.²⁰² The regular compliance and enforcement of these rules is

²⁰⁰ For a further assessment see Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 377.

²⁰¹ Tassilo Mürtz, *Der Meca-Medina-Test des EuGH* (2023), p. 273.

²⁰² *Ibid.*, p. 275 -276.

inherent to any sport. Accordingly, with more information for the specific provision, it could be possible to use ‘*ensuring the regularity of sporting conditions*’ as a legitimate objective.

gg. Raising and setting minimum professional and ethical standards for the occupation of Football Agent, Art. 1 (2) a) FFAR

Raising and setting minimum standards for professions is a strongly needed topic when it comes to the regulation of professions. However, the FIFA uses this goal to introduce regulations of different matters. It is also not the governing body when it comes to regulating these types of profession rules as it is solely bound to the performance and organisation of the sport. Although the FIFA itself does have an Ethics Code²⁰³, the issue here is that the FIFA includes football agents even in its ethics code without them being members of the association.²⁰⁴ Although, also supported by this work, the work that football agents perform in the modern world of football does belong to the football universe, this does not mean the FIFA can use the one federation principle to regulate matters it is not entitled to regulate. Indeed, there might be a need to protect players by certainly regulating standards or simple obligations. As it was already shown and still will be shown, there is a public interest in the protection of players. Here the FIFA seems to overinterpret its possibilities.

The *CFI* and the *European Commission* in other cases denied the use of this goal or the regulation of sports related matters for the reason of lack of contour and missing explanation of how the relation to the relevant sport was.²⁰⁵ Here, as there is also no explanation in the *CAS* proceedings, it does not seem possible to interpret it as legitimate based on the given data.

hh. Ensuring the quality of the service provided by Football Agents to Clients at fair and reasonable service fees that are uniformly applicable, Art. 1 (2) b) FFAR

With this goal, the FIFA tries to raise the barriers for agents, so the players are protected. For the *CAS*, this is a part of consumer protection.²⁰⁶ Although some of the decisions, the *CAS* mentioned in this regard also were published before *Meca-Medina*, this goal is far beyond, as it was recognized several times and belongs to basic EU protective standards. However, in the

²⁰³ cf FIFA, Code of Ethics, ed. 2023.

²⁰⁴ The FIFA itself does only mention the national associations FIFA, Organisation, <<https://www.fifafoundation.org/organisation>>, accessed 19 July 2025.

²⁰⁵ GC, Case T-93/18, para. 85; Com, C(2017) 8240 final, para. 224; Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 392

²⁰⁶ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 287 (i).

further assessment when it comes to the coherence and proportionality, it seems at least problematic whether this goal can be achieved by a fee cap. For *Heermann*, this goal is not legitimate when it comes to the service fee cap.²⁰⁷ As he includes the inherence criterion into the assessment of the legitimate objective, he sees no connection for football agents.²⁰⁸ Therefore, under other circumstances, it is thinkable as a legitimate objective.

ii. Limiting conflicts of interest to protect Clients from unethical conduct, Art. 1 (2) c) FFAR

Unethical conduct seems to be a major concern the FIFA wants to have lifted. In the *CAS* decision, it is mentioned that the FIFA saw significant market failures, such as the exploitation of their role as intermediaries which supposedly led to the distortion of the transfer market.²⁰⁹ In its decision it again referred to the protection of consumers and with this finding accepted the goal as legitimate.²¹⁰ However, it always has to be kept in mind that with most of the decisions the *CAS* referred to²¹¹, and even though the goal of consumer protection itself is well accepted to be a legitimate objective, the *ECJ* did not have in mind the connection to the sport. The *CAS* simply accepted the goals for the sport even though there is no explanation of why or how there is a connection to the sport. The FIFA argued that without a fee cap, agents would rather negotiate to gain more money for themselves than for their clients.²¹² A link to the sport can be drawn because of the connection of football agents to the composition of teams. But looked at specifically, as at this point restrictions of the prerequisites are assessed, the threshold should be high, as stated before. The protection of athletes from unethical conduct is a brave goal that is aimed at helping athletes to not fall into a net where agents act on their own and not the players interests. For *AG Emiliou* this protection falls into the scope of non-economic public interests.²¹³ Agents who represent all or more than one side could potentially just want to capitalize from this position and could not work within the interests of the athletes, but their own benefit. By having this position, they could potentially act in unethical manners in the sense of morally unwanted behaviour. So, having their powerful position in mind, it could still be accepted as a legitimate goal.²¹⁴

²⁰⁷ Peter W. Heermann, Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive, WRP (2023), p. 527.

²⁰⁸ Ibid.

²⁰⁹ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 283.

²¹⁰ Ibid. ECJ, Case C-309/99, para. 97.

²¹¹ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 287 for more case law.

²¹² LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 11.

²¹³ Opinion of AG Emiliou, ECJ Case C-209/23, para. 70.

²¹⁴ Like this but without further arguments Opinion of AG Emiliou, ECJ Case C-209/23, para. 70.

jj. Improving financial and administrative transparency, Art. 1 (2) d) FFAR

With this goal the FIFA possibly wants to prevent unclear systems in which the football agents could possibly act. The *CAS* again referred to consumer protection.²¹⁵ As before, the reasoning of the connection to the sport of football lacks. Transparency can help the proper functioning and the organisation of the sport. In the end, the core of the sport is protected by the European Fundamental Freedoms as well as the European Human Rights Convention²¹⁶ and therefore, associations need to fulfil certain requirements to maintain their protection. If the associations would ongoingly breach the law or behaviour within the given association would lead to that breach, this protection could potentially be erased. Therefore, for the proper functioning of the sport and its organisation, maintaining transparency can be a legitimate goal.²¹⁷

kk. Protecting players who lack experience or information relating to the football transfer system, Art. 1 (2) e) FFAR

This goal stands in line with the goal to protect clients from unethical conduct²¹⁸ and therefore could also be explained with the superior goal of consumer protection, as the *CAS* found.²¹⁹ For the connection to sport, it can be said that for players who are from countries that do not have the highest standards when it comes to education or players who are from lower income areas, there is a great imbalance in knowledge compared to football agents. There is a public interest²²⁰ of protecting players that are endangered by actions of agents that could potentially have in mind to only bargain from this imbalance of knowledge when it comes to contractual drafting, negotiations or football knowledge from an economic viewpoint. Especially football contracts and their highly juridical contents present a great potential risk factor for the futures of young athletes. With the wrong clauses, the players could potentially for years endanger their own futures for the simple reason of someone representing them having only his or her revenue in mind. Therefore, the protection of players who lack experience or information relating to the football transfer system is a possible legitimate objective.

²¹⁵ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 287 (i).

²¹⁶ cf D.II.

²¹⁷ Like this Peter W. Heermann, Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive, WRP (2023), p. 527.

²¹⁷ Ibid.

²¹⁸ Art. 1 (2) c) FFAR.

²¹⁹ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 287 (i) again without any further explanation for the connection to the sport of football.

²²⁰ Similar cf Opinion of AG Emiliou, ECJ Case C-209/23, para. 70.

II. Enhancing contractual stability between players, coaches and clubs, Art. 1 (2) f) FFAR

Here, the FIFA regulated the contractual stability again, specifically for the subsidiary goals for football agents. The observations made above regarding contractual stability are applicable here as well.²²¹ The difference is that here, the FIFA mentioned the contractual stability between clubs, agents and players. It can be interpreted solely as a specification of the different possible parties of the contracts. FIFA wants to keep track on this field by using the expression ‘enhancing’ which shows that there is an interest to increase stability in the relation of the different parties possibly involved in football transfers. By doing so, an overall increase in conditions of employment was intended by the FIFA.²²² All these considerations finally should help the aim to protect the players and integrity of the transfer market and therefore, an important factor for the proper performance of the sport. This could, for the reasons mentioned, serve as a legitimate objective.

mm. Preventing abusive, excessive and speculative practices, Art. 1 (2) g) FFAR

Lastly, within the subsidiary goals of the FFAR, the prevention of abusive, excessive and speculative practices shall be protected by the FFAR. The *CAS*, also here without further explanation of the connection to the sport, accepts the goal as legitimate with reference to consumer protection.²²³ For the *LG Dortmund* there is a lack of coherence and proportionality in regards of the fee cap, but it left open if this could be a legitimate goal. As the prevention stands in line with other goals like the protection of players or from unawareness or unethical conduct, the connection to the sport can be seen. There is also a public interest²²⁴ behind this goal, because without preventing such measure, the autonomy of associations would be endangered. Therefore, it could also be accepted as a legitimate objective in the understanding of the *Meca-Medina-Test*.

²²¹ cf G.VI.1.b.aa.ii.

²²² According to the findings of the CAS CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 287 (iv).

²²³ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 287 (i).

²²⁴ cf Opinion of AG Emiliou, ECJ Case C-209/23, para. 70.

nn. Conclusion

In conclusion, it shows that principally the goals set out by the FIFA in the FFAR could serve as legitimate objectives. However, they have to be assessed further at a later stage in connection with the relevant provision.

b. Inherence

Secondly, it has to be elaborated whether the hindering effects on competition are inherent for achieving the goal.²²⁵ It must be given that the regulation is necessary to achieve the set-out goals.²²⁶ In the view of the author this condition has to be interpreted strictly and narrowly. This criterion has to be assessed in connection to the relevant provision of the regulation.

c. Proportionality

Thirdly, whether these effects are proportionate for achieving the goal must be elaborated.²²⁷ For this condition the author is of the view that it has to be interpreted strictly as well. As the inherence criterion, the proportionality has to be seen in connection to the relevant provisions.

2. Justification or restriction?

Before the actual assessment of the *Meca-Medina*-Test it is noteworthy that it is still discussed whether the test is to be understood as an exemption of the prerequisites of Art. 101 TFEU and Art. 102 TFEU²²⁸ or a justification.²²⁹ The discussion is more of an academic dispute because in the end it is clear that one way or another the *Meca-Medina*-Test would be applicable.

There are two major views on this dogmatic issue. In the end, both views come to the same result which is that at least some kind of relief from scrutiny can be given, but the legal approach is different.

²²⁵ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 181.

²²⁶ Peter W. Heermann, Verbandsautonomie im Sport (2022), p. 406; Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 20.

²²⁷ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 181.

²²⁸ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, paras. 181 - 184; Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 6; Peter W. Heermann, Zur Anwendbarkeit des Meca-Medina-Tests, WuW (2022), p. 308; Vito Esposito, Private Sportordnung und EU-Kartellrecht (2014), p. 224; Andreas Klees, Die so genannte "50+1"-Regel im deutschen Profifußball im Lichte des europäischen Wettbewerbsrechts, EuZW (2008), p. 393.

²²⁹ Martin Stopper and David Bischoff, in: Martin Stopper and Gregor Lentze, Handbuch Fußballrecht (2025), sec. 7, para. 18a; Tassilo Mürtz, Der Meca-Medina-Test des EuGH (2023), p. 195.

One opinion sees the test as an unwritten justification in the understanding of the justification of the *Cassis de Dijon* judgement.²³⁰ Taking into consideration the three stages of the test that are that there (i) has to be one or several objectives that are not anti-competitive per se, (ii) necessary for achieving that goal and (iii) if it is proportionate for achieving the goal,²³¹ they are similar to typical justification requirements.²³² Also, as there is a justification possibility incorporated into Art. 101 (3) TFEU, the EU legislator supposedly wanted to have exceptions.²³³ Another argument is that the considerations that are behind the *Meca-Medina*-Test are alien to competition law itself.²³⁴

The other view interprets the *Meca-Medina*-Test as a restriction of the conditions of Art. 101 (1) TFEU.²³⁵ For this view speaks that the ECJ in the recent years has decided repeatedly that the *Meca-Medina*-Test is not applicable in cases where the effects on competition are by object.²³⁶ These concepts are somehow considerations of a rule of reason approach and therefore not eligible to qualify as a justification.²³⁷ Also, although there are some similarities to the *Cassis de Dijon* decision, it is to be understood that the EU legislator decided to have written grounds for a justification within Art. 101 (3) TFEU.²³⁸ The autonomy of associations and EU Competition Law are on the same level on the legislation hierarchy and because of that it shall not be possible to have a regulation that is protected by the autonomy of associations under EU Competition Law scrutiny.²³⁹

Another big aspect of this discussion is always the burden of proof. But *Heermann* showed that in either case, the burden for proving the facts that make the regulation exemptible would be on the FIFA's side.²⁴⁰ If the exemption would be understood as a justification, the burden of

²³⁰ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 352; cf ECJ, Case C-120/78, paras. 14 - 15.

²³¹ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 181.

²³² Martin Stopper and David Bischoff, in: Martin Stopper and Gregor Lentze, *Handbuch Fußballrecht* (2025), sec. 7, paras. 18a - 18g.

²³³ Ibid.

²³⁴ Tassilo Mürtz, *Der Meca-Medina-Test des EuGH* (2023), p. 195.

²³⁵ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 182; Rupprecht Podszun and Alexander Kirk, *FIFA's Football Agent Regulations and European Competition Law*, JAE (2024), p. 6; Peter W. Heermann, *Zur Anwendbarkeit des Meca-Medina-Tests*, WuW (2022), p. 308; Vito Esposito, *Private Sportordnung und EU-Kartellrecht* (2014), p. 224; Andreas Klees, *Die so genannte "50+1"-Regel im deutschen Profifußball im Lichte des europäischen Wettbewerbsrechts*, EuZW (2008), p. 393; OLG Düsseldorf, U (Kart) 2/23, judgement of 13 March 2024, para. 110.

²³⁶ Rupprecht Podszun and Alexander Kirk, *FIFA's Football Agent Regulations and European Competition Law*, JAE (2024), p. 20; ECJ, Case C-333/21, paras. 185 - 186; ECJ, Case C-124/21 P, para. 113.

²³⁷ Andreas Klees, *Die so genannte "50+1"-Regel im deutschen Profifußball im Lichte des europäischen Wettbewerbsrechts*, EuZW (2008), p. 393.

²³⁸ Vito Esposito, *Private Sportordnung und EU-Kartellrecht* (2014), p. 224.

²³⁹ Ibid.

²⁴⁰ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 352 - 353.

proof would be on the FIFA's side because of an analogy to Art. 2 Reg. No. 1/2003 of the EU which hands the burden of proof to the party or the authority alleging the infringement.²⁴¹ If it would be understood as a restriction of the prerequisites, the FIFA would have to prove the facts for the exemption.²⁴²

In conclusion, it can be said that even though the theory is similar to that of justifications, the *Meca-Medina*-Test should be understood as a restriction of the conditions of the norm. For that speaks on the one side the shown hierarchy of norms and the similarities to rule of reason considerations. Another strong argument in this regard is that from the fact that the EU legislator decided to have justification grounds in Art. 101 (3) TFEU, it should not be understood that *Meca-Medina* should be interpreted as a justification. The opposite is the case because the considerations of *Meca-Medina* are there to have the specifics respected when it comes to matters of sport. The nature of sports is not completely similar to regular competition cases and therefore, in cases where the specifics do not justify scrutiny by competition law it would not be justifiable to have them under EU Competition Law scrutiny.²⁴³ Another consideration in that regard is that the *Meca-Medina*-Test is not only a specific of Art. 101 TFEU but also for other EU norms. As the EU legislator decided to have no justification ground within Art. 102 TFEU, it decided that theoretically there shall be none - even though they are accepted today.²⁴⁴ But because of that, the legislator did not think about justifiable sports law cases. This systematic argument together with the task of respecting sports specifics shows that an understanding of the *Meca-Medina*-Test being a restriction of conditions is favourable. Also, the *ECJ* decided that the *Meca-Medina*-Test is not applicable in cases where there is a restriction by object. This shows that the court locates the test on the level of the conditions of the norm. It will therefore be understood as such in the following.

3. Applicability of the *Meca-Medina*-Test

The *Meca-Medina*-Test has to be applicable to this case. In that sense, in *Super League*, the *ECJ* decided that restrictions to competition by object are not subject to the *Meca-Medina*-Test and therefore cannot be exempted from EU law scrutiny.²⁴⁵ Although there is some debate about the applicability of the *Meca-Medina*-Test, the *ECJ* at least set the boundaries of the

²⁴¹ Art. 2 Reg. No. 1/2003 of the EU.

²⁴² Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 352 - 353.

²⁴³ Like this also Vito Esposito, *Private Sportordnung und EU-Kartellrecht* (2014), p. 224.

²⁴⁴ Andreas Fuchs, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 102 TFEU, para. 214.

²⁴⁵ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 180; *ECJ Case C-333/21*, paras. 186 - 187.

applicability of the *Meca-Medina*-Test which would lead to an exemption from EU law to where there are restrictions of competition by object.²⁴⁶ This can be considered as a minimum in other cases where there is debate about the applicability.

For restrictions by effect, the current state of judicature is unclear.²⁴⁷ As in this case the rules are not specifically concerned with the sport itself like it was in *Meca-Medina*, different views have emerged of how narrow the scope of the *Meca-Medina* judgement is in cases where there are rules that concern third parties that engage in the sporting business.

a. Applicability only to sports related matter

The first opinion in this regard states that the *Meca-Medina*-Test is solely applicable when the rules and regulations are only pursuing purely sports related or sport-specific objectives.²⁴⁸ In consequence, that would mean regulated matters that are not directly connected to the relevant sport would be outside of the scope of the *Meca-Medina* judgement.²⁴⁹

One of the arguments comes directly from the power of associations to regulate their own affairs which supposedly indicates that the *Meca-Medina* exception comes from the freedom of association and the inherent right of associations to regulate their own affairs, Art. 12 (1) CFR, Art. 11 ECHR.²⁵⁰ When private organisations are entrusted with self-regulation without the delegation of a public interest, they act in their own private interest and therefore, their power to regulate is limited to only those matters which leads to the conclusion that football associations are only entitled to regulate football affairs.²⁵¹

In contrary to that argument, it can be said that on the one hand, the *ECJ* itself does not mention this kind of restriction when stating that in *Meca-Medina* the Anti-Doping-Regulation was of a sportive matter.²⁵² In the decision, the *ECJ* rejected a submission of a claimant that the IOC did only follow commercial interests when regulating the doping matter without saying it is not only a sportive matter and the *Meca-Medina*-Test was not applicable but solely with the reason

²⁴⁶ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 180; Opinion of AG Emiliou, ECJ Case C-209/23, para. 48.

²⁴⁷ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 18; ECJ Case C-333/21, paras. 186 - 187; Opinion of AG Emiliou, ECJ Case C-428/23, paras. 59 - 60, para. 6; LG Mainz, Request for a preliminary ruling, ECJ Case C-209/23, p. 8.

²⁴⁸ Opinion of AG Emiliou, ECJ Case C-428/23, para. 60; Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 12.

²⁴⁹ AG Emiliou also sees that consequence Opinion of AG Emiliou, ECJ Case C-428/23, para. 60.

²⁵⁰ Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 11; Florian Bien and Björn Christian Becker, Regelungsautonomie der Sportverbände vs. Kartellverbot - Zum Anwendungsbereich der Meca-Medina-Ausnahme, ZWeR 2021, p. 572 - 576.

²⁵¹ Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 11.

²⁵² Peter W. Heermann, Zur Anwendbarkeit des Meca-Medina-Tests, WuW (2022), p. 311.

that there were not enough grounds for this submission.²⁵³ Consequently, it should be possible to include matters that are not only related to the sport itself because there was no juridical examination of the submission.²⁵⁴ Also, by limiting the power of associations to only having the competence of regulating sportive matters, a real recognition of the specifics of certain sports become too vague. It would be an erosion of Art. 165 TFEU if the *ECJ* would have decided that only sports related matters have the possibility to be exempted from the scope of EU law because that means only the core of a sport could be regulated by associations. Consequently, that would imply an obligation for Member States to regulate far more matters in regards of professional sports than they have until this point. But the more the state would engage, the lesser would be the meaning of Art. 165 TFEU as well as the right of association and self-regulation. Limiting the right to regulate only sportive matters cuts it to remains that would not be able to sufficiently consider the needs of modern sports and especially highly professionalized and commercialized sports as football is.²⁵⁵

Another argument is that derogations for the prerequisites of provisions have to be interpreted narrowly which follows out of the logic of being a derogation.²⁵⁶ Generally, it is accepted to have derogations interpreted narrowly,²⁵⁷ but in this regard, it has to be mentioned that the EU has decided to recognize the specifics and needs of sports within Art. 165 TFEU. This indicates that courts have the obligation to take that into account.²⁵⁸ The general principle of law that derogations must be interpreted narrowly²⁵⁹ should always be respected but in these cases is achieved by narrowly interpreting the different requirements the *ECJ* set in the *Meca-Medina* decision. *AG Emiliou* also sees this and tries to outweigh the different approaches of restriction in another way by setting rules for the scope of application of matters that are not solely sports related.²⁶⁰ But he also sees the need of an applicability of the requirements in a broader way than just the sports related matters. As stated, balance can be achieved when courts do have the possibility to include regulations that are not only related to the sport itself but also in the

²⁵³ ECJ Case C-519/04 P, paras. 10 and 36; Peter W. Heermann, *Zur Anwendbarkeit des Meca-Medina-Tests*, WuW (2022), p. 311 - 312.

²⁵⁴ The AG Emiliou saw that as well: Opinion of AG Emiliou, ECJ Case C-428/23, para. 62.

²⁵⁵ This lack of coherence is also seen by Peter W. Heermann, *Zur Anwendbarkeit des Meca-Medina-Tests*, WuW (2022), p. 311; and by AG Emiliou but without further reasoning: Opinion of AG Emiliou, ECJ Case C-428/23, paras. 68 - 69.

²⁵⁶ Rupperecht Podszun and Alexander Kirk, *FIFA's Football Agent Regulations and European Competition Law*, JAE (2024), p. 10.

²⁵⁷ As the authors argue in Rupperecht Podszun and Alexander Kirk, *FIFA's Football Agent Regulations and European Competition Law*, JAE (2024), p. 10.

²⁵⁸ ECJ, Case C-333/21, para. 101.

²⁵⁹ Rupperecht Podszun and Alexander Kirk, *FIFA's Football Agent Regulations and European Competition Law*, JAE (2024), p. 10; ECJ, Case C-681/17, paras. 32 and 34.

²⁶⁰ Opinion of AG Emiliou, ECJ Case C-428/23, paras. 68 - 69.

periphery of the regulative matters. Afterwards within the requirements a narrow approach can still be taken. By that, sports associations and their specific needs are respected but also assessed on a case-by-case analysis which helps individual justice more than simply withholding a majority of regulations by associations from a derogation.

In favour of that also speaks that, as shown in the sections above, as professional sports grew over time and still grows - especially the sport of football²⁶¹ - it is nearly impossible to find a matter that is solely related to the sport itself.²⁶² Also, modern sport does have areas to regulate itself in which usually the state would - and regarding contracts does - regulate. For example, in modern sport the youth plays an important role and therefore, young people oftentimes get in the focus of the successful clubs.²⁶³

The ancillary restraints doctrine is also used to support the theory that the *Meca-Medina* conditions only apply to sports related matters.²⁶⁴ According to that, there has to be a direct link of the regulated matter to the main matter concerned.²⁶⁵ It is said that the FIFA may only regulate ancillary restraints considering the regulation of football agents if it is directly related to the non-commercial function of football.²⁶⁶

As shown, sports matters that are only sports related in professional sports are very rarely found. Especially speaking about the matter of football transfers which is highly related to the establishment of football teams and therefore stays in direct lineage to the competitive success, it can be said that the matter is not as far away from core football matters as others might see it. This means the ancillary restraints doctrine serves as an argument for the *Meca-Medina* conditions but does not speak against the regulation of transfer related matter. The regulation of football agents who are heavily involved, especially in transfers with higher fees, is therefore

²⁶¹ Just the total transfer fees spent nearly doubled between 2015 and 2024 Raffaele Poli/Loïc Ravenel/Roger Besson, Global economic analysis of the transfer market (2015 - 2024), CIES Football Observatory Monthly Report, nr. 97, fig. 1, <<https://football-observatory.com/MonthlyReport97>>, accessed 19 July 2025; Hanno Beck et al., The league system, competitive balance, and the future of European football, MSL 30 (2022), p. 22 - 23 and fig. 1.

²⁶² Peter W. Heermann, Zur Anwendbarkeit des Meca-Medina-Tests, WuW (2022), p. 312; Florian Bien and Björn Christian Becker, Regelungsautonomie der Sportverbände vs. Kartellverbot - Zum Anwendungsbereich der Meca-Medina-Ausnahme, ZWeR 2021, p. 570 - 571.

²⁶³ Peter W. Heermann, Zur Anwendbarkeit des Meca-Medina-Tests, WuW (2022), p. 314..

²⁶⁴ Opinion of AG Emiliou, ECJ Case C-428/23, para. 31; Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 11 - 12; Opinion of AG Rantos, ECJ Case C-333/21, paras. 87 - 91; Martin Stopper and David Bischoff, in: Martin Stopper and Gregor Lentze, Handbuch Fußballrecht (2025), sec. 7, para. 18c.

²⁶⁵ Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 12; Martin Stopper and David Bischoff, in: Martin Stopper and Gregor Lentze, Handbuch Fußballrecht (2025), sec. 7, para. 18c.

²⁶⁶ Ibid.

closely tied to football. Also, there might be other reasons to regulate side matters that are not simply overlaying the sportive character of the regulation, like the protection of minors.²⁶⁷

As though the ancillary restraints doctrine is commonly accepted in competition law it is not as obvious that it leads to the conclusion only sports related matter could be regulatable. Before all it is questionable if this institution even is the basis of the *Meca-Medina*-Test.²⁶⁸ If the cases are looked at, it appears that the cases in which the ancillary restraints doctrine are differing from the case of the regulation of matters by a sports association - here by the FIFA. One example for that is the case of franchising contracts where the *ECJ* said that several clauses of a franchising contract are not to be assessed on the basis of Art. 101 I TFEU because without them the whole contract would be impossible to be performed.²⁶⁹ This indicates a commercially based approach, rather than one concerning sports.²⁷⁰ Even though the sport of football developed into an economically important sector, it is still not comparable to other areas of the economy because of the specifics of the sport. The TFEU recognizes this in Art. 165 TFEU.²⁷¹

For the application of the ancillary restraints doctrine, it is necessary that as an example a contract is not thinkable without a certain clause because otherwise there would be no sense in entering that contract.²⁷² From that logic, only matters that are completely necessary to be regulated would be included. That limits the scope of the *Meca-Medina*-Test too strong because the specifics of sports could not be recognized as well as when including also side matters. Also, the last decades have shown that for some provisions like the service fee cap, the sport of football was still able to function without it.²⁷³ In general, the also mentioned regulatory ancillary restraints doctrine is to be abolished because it is too vague to determine a privilege for a whole branch to be exempted from a restriction.²⁷⁴

To conclude, it is not advisable to restrict the *Meca-Medina*-Test to only sports related matter. The different legal approaches to justify the exemption are either too vague or too narrow. As

²⁶⁷ Peter W. Heermann, Zur Anwendbarkeit des Meca-Medina-Tests, WuW (2022), p. 314.

²⁶⁸ Peter W. Heermann, Will the football agents' service fee cap survive the current legal attacks?, ISLJ (2024), p. 195.

²⁶⁹ ECJ, Case C-161/84, para. 15; Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 318.

²⁷⁰ Peter W. Heermann, Will the football agents' service fee cap survive the current legal attacks?, ISLJ (2024), p. 194.

²⁷¹ Similar Peter W. Heermann, Will the football agents' service fee cap survive the current legal attacks?, ISLJ (2024), p. 196.

²⁷² ECJ, Case C-161/84, para. 15; Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 318.

²⁷³ Peter W. Heermann, Will the football agents' service fee cap survive the current legal attacks?, ISLJ (2024), p. 194.

²⁷⁴ Peter W. Heermann, Will the football agents' service fee cap survive the current legal attacks?, ISLJ (2024), p. 194.

shown, they all have their shortcomings. Exempting sports associations from the possibility to not be subjected by EU law - here competition law - needs to be understood more broadly than just when it comes to sports related matters. Otherwise, the specifics of the sport cannot be recognized properly.

b. Applicability even to commercial related matter

The second position would be that the *Meca-Medina* requirements would be applicable when any connection between the association's regulations and the organisation and proper conduct of a sporting competition.²⁷⁵ This view states that it is enough if there is a sportive matter given in the relevant case.²⁷⁶ This is to be understood as a rule that can possibly either directly or indirectly support a sportive goal.²⁷⁷ In consequence, that would mean that nearly every regulation by a sports association would fall into the scope of the *Meca-Medina* requirements because there can always be a link to the performance of the sport, even if the regulations are only purposed to regulate commercial matters.

The associations by granting them such a margin of discretion could always try to get their regulations exempted even when there is no real sportive factor behind a regulation. This would put sports associations in a stronger position than they were supposed to be in. Even though the specifics of the sport are to be respected, this does not mean anything that can possibly have an impact on the sport that is concerned can be exempted from EU Law scrutiny.

Another argument against this broad view is that it does not give a clear and strict answer. Immediately the question arises what a sportive matter is and how deep must the connection to it be for it to gain the possibility of an exemption. Or the other way around, how far does it have to be away for it to not being eligible for the exemption. This would lead to an unjustified and too far-reaching exemption. Also, as the competence for regulation was already granted under the understanding of the author, the further conditions have to be interpreted narrowly.

An argument for this view is the *Meca-Medina* decision itself. The Court there constructs the link to sportive matters which have to be understood in a way that any sportive matter can be enough for the exemption of Art. 101 (1) TFEU to be applicable²⁷⁸.

This interpretation of the *Meca-Medina* judgement seems to be in line with what the Court wanted to say when deciding. It is undeniable that there needs to be a link to the sporting matter

²⁷⁵ Opinion of AG Emiliou, ECJ Case C-428/23, para. 61.

²⁷⁶ Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 125 - 126.

²⁷⁷ Ibid.

²⁷⁸ Ibid, p. 123 - 124; ECJ Case C-519/04 P, para. 42.

as the court stated also.²⁷⁹ It also is in line with the Commission's interpretation of the judgement.²⁸⁰ The Commission there interpreted the *Meca-Medina* decision and stated that rules regulating matter ancillary to the sport - and here using football agents as an example - can possibly also be justified by EU Competition Law.²⁸¹ This implies that regulations that concern football agents can be subject to regulation on the one hand and on the other it shows that the Commission also interpreted the decision in a way that not only purely sports related matters could possibly be eligible for the exemption regarding sports. The distinction between sportive matter and organisational sportive matter would be too indifferent.²⁸²

As already mentioned, these views go too far. They give the associations such as the FIFA a margin of discretion which could be overused by the FIFA. In the end, the FIFA receives its competence from the principle of private autonomy. Therefore, a too broad understanding of the exemption would overreach the goal of recognizing the specifics of the sport when even accepting only commercially relevant matters. As *Knauer*²⁸³ correctly interpreted, there has to be a link to the sport. However, he drew the line too broad on that regard. The decision there simply gives the FIFA too many options to try to get exempted from EU Law scrutiny.

c. Combined approach by AG Emiliou

In his joint opinion on cases C-209/23 and C-428/23 where he gave his opinion to the questions risen by the preliminary rulings to both cases together because the matter in both is connected, *Advocate General (AG) Emiliou* proposed a combined approach of both views.²⁸⁴

AG Emiliou proposes that the *Meca-Medina*-Test should be applicable when there is a direct and significant influence on the fairness of competition and athletes' performance and health.²⁸⁵ To determine whether a court can assess a regulation under the *Meca-Medina* requirements, *AG Emiliou* comes up with three questions. The first question is whether the interest protected by such rules can be recognized under EU law as actually constituting a matter of public interest.²⁸⁶ The second question shall than be if the pursuit of that objective falls within the mission of the association, as recognized by the competent public authorities²⁸⁷ and the last question should

²⁷⁹ ECJ Case C-519/04 P, para. 42.

²⁸⁰ cf Com., Com(2007) 391 final, White Paper on Sport, p. 14.

²⁸¹ Commission Staff Working Document, COM(2007) 391 final, 3.4.b); Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 440 - 441.

²⁸² Peter W. Heermann, *Will the football agents' service fee cap survive the current legal attacks?*, ISLJ (2024), p. 196.

²⁸³ Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 125 - 126.

²⁸⁴ cf Opinion of AG Emiliou, ECJ Case C-428/23, paras. 62 - 76.

²⁸⁵ Opinion of AG Emiliou, ECJ Case C-428/23, para. 66.

²⁸⁶ Ibid, para. 68.

²⁸⁷ Opinion of AG Emiliou, ECJ Case C-428/23.

be if the association's regulations genuinely pursue the interest in question.²⁸⁸ After assessing these questions, the respective court shall then, if the questions were answered positive, go on and apply the *Meca-Medina*-Test.

To underline that opinion, first the rationale of the *Meca-Medina* case is used. *AG Emiliou* states that the rationale of *Meca-Medina* is to 'enable the public authorities to leave certain matters to self-regulation' when it comes to the specific matter and the pursuance of an economic activity and therefore, it would be self-evident that this entrustment only goes until the limit that the regulation only concerns the undertakings of that association.²⁸⁹ Consequently, rules for third parties should not be able to be exempted from Art. 101 (1) TFEU.

Stating this, he still sees the need for some possibilities of exceptions because of the strong connection between the FIFA and third parties that fall within the scope of the association's - here the FIFA - core missions and uses the *Wouters* judgement as an example for a regulation of an entity that has an impact on a connected group.²⁹⁰ He concludes that because of that, on markets which are even interdependent from each other, the likelihood of this supposed connection is even higher in order to ensure the existence of the final product which here would be the 'football ecosystem'.²⁹¹ For the functioning of that, interaction between all market actors is needed to present the final product of football to the end consumer.²⁹²

He criticizes the other approaches as too far reaching for the broader understanding and too strict for the narrow approach.²⁹³ At this point he fails to further put an argumentative fundament to this statement. The arguments mentioned above²⁹⁴ should undermine these statements.

d. Opinion and general assessment

The opinions that support a farer reaching understanding for the application of the *Meca-Medina*-Test seem to be too loose for matters of legal certainty and the overall aim of letting associations regulate certain matter. They are in line with the Commission's view and understand the *Meca-Medina* requirements correctly. But the regulatory competence and its judicial review possibilities would be too broad and overreach the object of having associations

²⁸⁸ Opinion of AG Emiliou, ECJ Case C-428/23, para. 68; ECJ Case C-309/99, paras. 24 and 73.

²⁸⁹ Ibid, para. 63.

²⁹⁰ Ibid, para. 64

²⁹¹ Ibid, para. 65.

²⁹² Ibid.

²⁹³ Opinion of AG Emiliou, ECJ Case C-428/23, para. 62.

²⁹⁴ cf F.IV.2.a. and F.IV.2.b.

self-regulate. In conclusion, a combined approach as AG Rantos proposed is favourable and should be applied here.²⁹⁵

However, the difference lays in the nuances. As the *ECJ* already stated and the *European Commission* also interpreted, there needs to be a connection to the sport.²⁹⁶ This means that also matters that are not only sports related are eligible to be exempted. As Art. 165 TFEU generally states, the specifics of the sport have to be respected by the authorities. In that regard it needs to be understood that over time matters that once were unthinkable to be related to the sport itself, became an important part of football. These matters can also be heavily economically driven, as in modern football generating revenue plays a significant role. Thereby, matters in that development became important for the sport itself even though they are economic at first sight.

To determine whether a regulation can be exempted from EU Law scrutiny therefore, there needs to be a *direct connection to the sport itself*.²⁹⁷ At this point one view states that there is no direct link to football itself because agents only engage in the employment and everyday life of professional footballers.²⁹⁸ But in football only matters that have direct effect to the sport like the composition of teams, the governing of clubs or the game itself is also touched. In the relevant case here, football agents do play a significant role on the transfer market, as they offer players and work on the negotiations on new contract. Representing teams and searching for new players but also helping players to find new teams to play for, is also a core of their work. This decision because it concerns the composition of teams is always sports related. Deciding whether to enter or leave a club is driven by the personal will of athletes to play in better leagues or to be more successful and make use of possibilities.²⁹⁹ With this understanding, the specifics of the sport are respected in the best manner because the need of coordination between the different market actors makes it nearly impossible for the regulating body - here the FIFA - to not only regulate matters with a direct coordinative link.³⁰⁰ This is also the reason why a direct

²⁹⁵ Also cf Opinion of AG Emiliou, ECJ Case C-428/23, paras. 62 - 76; Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 184.

²⁹⁶ cf the same logic as in ECJ Case C-309/99, para. 24; ECJ Case C-519/04 P, para. 31.

²⁹⁷ For *Zimmer* there must be a direct sporting coordination purpose Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 184.

²⁹⁸ Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 13.

²⁹⁹ Contrary Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 13.

³⁰⁰ AG Emiliou also sees this aspect, but from the perspective of the end consumer Opinion of AG Emiliou, ECJ Case C-428/23, paras. 64 - 65.

impact on the sporting coordination purpose by *Zimmer* is still too narrow.³⁰¹ Regulations that only by reflex would regulate sportive matters would not be included by that understanding.³⁰² The FIFA has the option to regulate these matters, but it is also possible that these regulations may be exempted, and the FIFA has some margin of discretion while regulating. Courts can simply investigate the *connection of a measure to the sport itself* and then on the basis of a *sports focused elaboration* decide whether a regulation can be exempted or not. By this understanding the private autonomy of associations is also respected. Associations are the nearest body when it comes to the regulation of sports and know where and how to make solutions for arising issues.³⁰³ Even if by this understanding regulations that only by reflex regulate sportive matters are included, the prerequisites of the *Meca-Medina-Test* shall be interpreted restrictively. By doing so, matters which primarily regulate economic matters will not withstand those requirements.³⁰⁴ This is also in favour of individual justice.³⁰⁵

However, this does not mean the FIFA has the freedom to regulate every matter.³⁰⁶ The possibility for the exemption ends where there is no direct link to the sport of football itself. This is where the line should be drawn.³⁰⁷ Also, all regulations that do not comply with the requirements of the *Meca-Medina-Test* still stand under strict EU law scrutiny and have to be assessed one-by-one.³⁰⁸ This understanding is also in line with the interpretation of the Commission that regulations on football agents might - even after not fulfilling the *Meca-Medina-Test* - still under certain conditions be justifiable under Art. 101 (3) TFEU.³⁰⁹

Consequently, the FFAR itself can possibly be exempted by the *Meca-Medina-Test*³¹⁰ after already having assessed whether there is a connection to the sport itself.

³⁰¹ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 184.

³⁰² Ibid.

³⁰³ Peter W. Heermann, Verbandsautonomie im Sport (2022), p. 61.

³⁰⁴ Peter W. Heermann, Zur Anwendbarkeit des Meca-Medina-Tests, WuW (2022), p. 314.

³⁰⁵ Com., Com(2007) 391 final, White Paper on Sport, p. 14.

³⁰⁶ AG Emiliou says the FIFA does not have a ‚blank cheque‘ Opinion of AG Emiliou, ECJ Case C-428/23, para. 70.

³⁰⁷ For Zimmer the line is drawn where sporting matters are only regulated by reflex of the regulation Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 184.

³⁰⁸ Opinion of AG Emiliou, ECJ Case C-428/23, para. 78; Com., Com(2007) 391 final, White Paper on Sport, p. 14.

³⁰⁹ Commission Staff Working Document, COM(2007) 391 final, 3.4.b); Peter W. Heermann, Verbandsautonomie im Sport (2022), p. 440 - 441.

³¹⁰ Commission Staff Working Document, COM(2007) 391 final, 3.4.b).

4. The *Meca-Medina*-Test for the FFAR

After assessing the several legal questions that come with the *Meca-Medina*-Test, it is now the question whether the FFAR itself matches the requirements. For that, the conditions should be applied to the case.

a. Applicability to rejections by object

Beforehand, it is important to see that the *ECJ* in several decisions over the last few years has decided ongoingly that it is not applicable when there is an effect on competition by object.³¹¹ Contrary to that the *General Court* still used the *Meca-Medina*-Test even after finding that there was a restriction of competition by object.³¹² Regarding the slightly broader scope that was recommended above³¹³, it makes sense to restrict the applicability of the *Meca-Medina*-Test only to cases where there is a restriction of competition by object.³¹⁴ By doing so, the test will not get diluted. The recent judgements of the *ECJ* should consequently be read as complete in regard of *Meca-Medina*.³¹⁵ Another argument in favour of that is, that with Art. 101 (3) TFEU there is a possibility to justify some cases.³¹⁶ It also has to be seen that in cases where there is a restriction of competition by object, the breach of competition law goes far. Even though some may say breaches in sports are inherent to the matter³¹⁷, the conditions of Art. 101 (3) TFEU are stronger than the ones of the test itself. Therefore, it should not be possible for cases to not apply to the written conditions of Art. 101 (3) TFEU, but to the unwritten conditions of the *Meca-Medina*-Test. This view is also in line with Art. 165 TFEU because the specifics of sports may not result in a complete blank cheque for sports.³¹⁸ Therefore, it is first to be assessed if the FIFA when drafting the FIFA Football Agent Regulations had in mind to restrict competition by object and not only on the merits.

³¹¹ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, paras. 182 - 183; ECJ, Case C-333/21, para. 186; ECJ, Case C-124/21 P, para. 148.

³¹² cf GC, Case T-93/18, paras. 100 - 104.

³¹³ cf G.V.2.d.

³¹⁴ Similar also Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 184; Martin Stopper and David Bischoff, in: Martin Stopper and Gregor Lentze, Handbuch Fußballrecht (2025), sec. 7, paras. 18a and 18b.

³¹⁵ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 184.

³¹⁶ Ibid.

³¹⁷ Exemplary Tassilo Mürtz, Der *Meca-Medina*-Test des EuGH (2023), p. 223.

³¹⁸ As AG Emiliou says the FIFA shall not have a ‚blank cheque‘, Opinion of AG Emiliou, ECJ Case C-428/23, para. 70.

b. Restriction by object or by effect

There has to be a restriction by effect or by object.³¹⁹ For the assessment of the restriction by object or effect, it is important to take the economic circumstances of the case into consideration because the relation of both conditions is alternative.³²⁰ Because of that nature it is also necessary to consider the object of the agreement or decision.³²¹ An objectively possible restrictive nature to the collusion is sufficient to find a restriction of competition by object.³²² The condition ‘*restriction by object*’ must be interpreted strictly and it applies only to cases where the coordination between undertakings reaches such a sufficient degree that their effect does not need to be examined further.³²³ It is sufficient if the coordination between undertakings has as its aim the restriction of competition.³²⁴ In order to determine whether that is the case, it is necessary to assess the different provisions one by one.

c. Relation to Art. 102 TFEU

In relation to the assessment of Art. 101 TFEU, the considerations made for the *Meca-Medina-Test* there, are also applicable for Art. 102 TFEU.³²⁵ Otherwise there would be a logic imbalance within the application of the *Meca-Medina-Test*.³²⁶

VII. Justification under Art. 101 (3) TFEU

Even after assessing the *Meca-Medina-Test*, measures might still be possible to be justified by Art. 101 (3) TFEU. According to that, Art. 101 (1) TFEU is not applicable when a decision by an association of undertakings contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and does not impose indispensable restrictions to the attainment of those objectives or afford these undertakings the possibility to eliminate competition in respect of a substantial part of the product in question.³²⁷

³¹⁹ cf Art. 101 (1) TFEU

³²⁰ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 143.

³²¹ ECJ, Case C-211/22, para. 31.

³²² ECJ, Case C-211/22, para. 144.

³²³ Ibid, para. 32.

³²⁴ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 145.

³²⁵ Tassilo Mürtz, Der Meca-Medina-Test des EuGH (2023), p. 410 - 415.

³²⁶ Tassilo Mürtz, Der Meca-Medina-Test des EuGH (2023), p. 410.

³²⁷ cf Art. 101 (3) TFEU.

1. Conditions

Apart from the wording, the provision is also applicable to services and not only products.³²⁸ For an improvement or a promotion, objective advantages have to lead to benefits in efficiency for the general public.³²⁹ These have to be beneficiary for any party on any trading level³³⁰ and can result in the monetary or qualitative participation by the relevant parties³³¹. These benefits are shared fairly when they at least equalize the disadvantages of the given act.³³² The condition of indispensability requires the act in question to be appropriate for achieving the relevant goal and requires a strict assessment of the proportionality.³³³ It is necessary to assess the different provisions and their inherent regulations on whether they could be beneficiary and if they also let the consumers participate. It seems, however, unlikely that a measure that does not meet the conditions of *Meca-Medina*, could be qualified as justified under Art. 101 (3) TFEU. As under the understanding of this work, the conditions of the test are to be assessed strictly, the results will likely be similar.³³⁴

2. Relation to the *Meca-Medina*-Test

Some want to include an assessment of the beneficiary efficiencies within the condition ‘*legitimate objective*’ of the *Meca-Medina*-Test.³³⁵ As an argument it is said that if there already exists a restriction within the provision, unmentioned exceptions have to be oriented on the regulated exception.³³⁶ Otherwise, the actual exception would lose its meaning.³³⁷ Another opinion is of the view that only the sportive matters are to be assessed and therefore, for the FFAR, only Art. 101 (3) TFEU would be applicable.³³⁸

³²⁸ Reinhard Ellger, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 Abs. 3 TFEU, para. 132.

³²⁹ Ibid, paras. 135 - 137.

³³⁰ Ibid, paras. 240 - 241.

³³¹ Reinhard Ellger, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 Abs. 3 TFEU, para. 245.

³³² Reinhard Ellger, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 Abs. 3 TFEU, para. 266.

³³³ Ibid, paras. 271 - 273.

³³⁴ Under the understanding of Heermenn, this is also the case Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 438.

³³⁵ Hail, *Spitzensport im Licht des Europäischen Kartellrechts* (2014), p. 278, Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 437, for more references.

³³⁶ Hail, *Spitzensport im Licht des Europäischen Kartellrechts* (2014), p. 278.

³³⁷ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 438, Hail, *Spitzensport im Licht des Europäischen Kartellrechts* (2014), p. 278.

³³⁸ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 438; LG Frankfurt am Main, judgement 24 October 2019, 2-03 O 517/18, <<https://openjur.de/u/2261681.html>>, accessed 19 July 2025, para. 99.

However, the *ECJ* itself did not mention such a condition in the decision but spoke about legitimate objectives.³³⁹ Also, if unmentioned exceptions would have to be interpreted in the context of written ones, there would be no or only barely any substantial matter left for unwritten exceptions which would make them unnecessary. If the *ECJ* would have wanted this, it would have assessed the matter in *Meca-Medina* within Art. 101 (3) TFEU. It appears also, when looked at closely, that the conditions of both exceptions are very similar.³⁴⁰ The difference is - under the understanding of this work - that the basic idea of the *Meca-Medina*-Test comes from the specific needs of sports which can possibly exclude measures from EU competition law. In contrary, Art. 101 (3) TFEU is based on the idea that some restrictions of competition can have beneficiary effects and are therefore, when the conditions are met, justified.³⁴¹ Therefore, they have different connecting points which is that one excepts behaviours from the prerequisites, and one justifies them. As more than only core sportive matters are to be assessed under the conditions of the test, in the understanding of this work, it is consequential to understand the relation of both exceptions as parallel.³⁴²

VIII. The regulations of the FIFA Football Agent Regulations under EU Competition Law

In the following, the different provisions of the FFAR will be assessed based on the list the *LG Mainz* gave in its preliminary request to the *ECJ*.³⁴³ The assessment will be done based on the current state of knowledge coming from the different cases that already took place and are published.

1. Art. 15, 14 (7) (12) FFAR - The Service Fee Cap

The most relevant provisions of the FFAR framework are Art. 15 (1) and (2) FFAR and Art. 14 (7) (12) FFAR. Art. 15 FFAR regulates the service fee cap and says that the service fee should be based on either the individual's remuneration or the relevant transactions depending on who is represented. The maximum service fee that could be paid depends on the representation and the annual income of an individual or the total amount of a transaction. The concrete threshold would vary between 3% and 10% of the individual's remuneration. Service fee caps for

³³⁹ ECJ, Case C-519/04 P, paras. 43 - 44.

³⁴⁰ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 438.

³⁴¹ Reinhard Ellger, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 Abs. 3 TFEU, paras. 7 - 8.

³⁴² Like this Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 436 - 437.

³⁴³ cf *LG Mainz*, Request for a preliminary ruling, Case C-209/23, p. 2 - 6. However, other provisions will also be assessed.

transactions would be possible of up to 10% of the total volume of that transaction. It also regulates some general principles on how the service fee cap should be calculated and the conditions on which payments should not be included for the calculation of the service fee cap. Art. 14 (7) and (12) FFAR regulate the basis for the calculation of the service fee cap.³⁴⁴ Compared to the usual 8 - 12 % of the contractual salary of a player³⁴⁵, these cuts play a significant role in agent remuneration and because of that are highly contested.

It has to be assessed whether this article, regulating the fee cap and payments in connection to transfers, establishes a restriction of object or effect. Depending on the outcome of that assessment, it could be possible that the provision may be exempted by the *Meca-Medina-Test*.

a. Restriction by object or effect

The relevant conditions for the determination of a restriction of competition by object have been shown already.³⁴⁶ First of all, it must be seen that the fee cap regulation in the first paragraph sets rules for the possibilities of how the fee can be regulated. By that, the FIFA takes away the contractual freedom of both, the represented party, as well as the agent, when it comes to the concrete arrangement of the individual contracts of agent services. This has to be understood as an impactful intervention into the contractual freedom. Both parties of the contract are heavily restricted when it comes to negotiating the remuneration for services provided by the agent.

In consideration of this, the overall fee cap which limits the fee for football agents to either 3%, 5%, 6% or 10%, changing based on the relevant circumstances, sets a maximum cap. The *CAS* stated that such a regulation does not establish a restriction by object because of two reasons.³⁴⁷ The first is that the relevant claimant in that case which was the PROFAA simply did not substantiate sufficiently why there could be a restriction by object.³⁴⁸ The second - and in this regard the only relevant reason - was that in the understanding of the *CAS* and the FIFA, football agents could still compete for prices below that limit.³⁴⁹ The issue with this view is that, especially when also looking at the different goals set out in the FFAR, it goes to the wrong direction. In Art. 1 (2) b) FFAR it says:

³⁴⁴ LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 17.

³⁴⁵ Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 219; Peter W. Heermann, *Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive*, WRP (2023), p. 525.

³⁴⁶ cf G.V.3.b.

³⁴⁷ *CAS*, Case 2023/O/9370 PROFAA v. FIFA, para. 238.

³⁴⁸ *Ibid*.

³⁴⁹ *Ibid*; AG Emiliou also sees this in Opinion of AG Emiliou, ECJ Case C-209/23, paras. 57 - 58.

,Regulation of the occupation of Football Agent ensures that the conduct of a Football Agent is consistent with both the core objectives of the football transfer system and the following objectives:

b) Ensuring the quality of the service provided by Football Agents to Clients at fair and reasonable service fees that are uniformly applicable;‘.

By this regulated goal, the FIFA shows that it at least also had in mind to somehow make an impact on the agents' market to influence the quality. Thereby, it can be interpreted that the FIFA had in mind to restrict competition based on the fees for agents. Otherwise, there is no explanation of why there should be an increase of the quality of a service when its price gets reduced.³⁵⁰ Subjective intentions to limit competition can be seen as an indicator for a restriction by object.

Prices usually depend on the quality of a service in correlation to supply and demand. In the regards of football agents, the most requested agents can, because of the market circumstances, ask for a higher remuneration for their services. The FIFA, by engaging in that market mechanism distorts the competition in a way that for all market players on the football agents market requesting this service, it is only possible to act in the way how it is determined by Art. 15 (1) and (2) FFAR.³⁵¹ Parties, here the clubs and players as undertakings of the FIFA, are forced to enact the monetary remuneration for the relevant services how the FIFA wants it to be, and therefore, are significantly limited in their freedom to liberally create contracts that are suitable for the given circumstances. On the one hand, benefits of having a strict framework for this purpose can be seen³⁵², but on the other hand however, this disregards the dynamics of the football market.³⁵³ On the football market the best players want to be with the best agents because of their talent for negotiation, their network or other relevant assets. But because of that, they are extremely limited in the way to reward these assets and skills. It is a core function of markets that if a market player is good or has advantages at a relevant behaviour, he or she is on the one side highly requested for that and on the other side can also ask for an appropriate reward. By setting the rules in Art. 15 (1) and (2) FFAR, the FIFA limited this possibility to a degree that strongly leads to the distortion of competition. Seeing the arguments made above,

³⁵⁰ Like this but in a different context Peter W. Heermann, Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive, WRP (2023), p. 528.

³⁵¹ LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 98.

³⁵² AG Emiliou also sees this in Opinion of AG Emiliou, ECJ Case C-209/23, paras. 57 - 58.

³⁵³ AG Emiliou interprets these dynamics in a wrong way by only seeing that there is no factual pricing limit Opinion of AG Emiliou, ECJ Case C-209/23, para. 63.

it is obvious that the *CAS* failed to take these thoughts into consideration when it simply referred on the possibility to compete below the percental limit.³⁵⁴

The issue here is also that such a provision states a price cartel in the sense of Art. 101 (1) a) TFEU which is the most dominant form of the restriction of competition.³⁵⁵ Direct and indirect restrictions to autonomous price setting are forbidden.³⁵⁶ Even though *AG Emiliou* states that competition would still be possible below the percentage thresholds that were set in Art. 15 (2) FFAR³⁵⁷, he misinterprets the fact that by this mechanism the FIFA restricts the remuneration possibilities for clubs, players and agents in the sense of a monetary border.³⁵⁸ It was simply decided by the entity that has the factual power, to determine how much providing football agent services is worth.³⁵⁹ The fact that below that threshold competition would be possible does not change the anti-competitiveness of Art. 15 (2) FFAR, because by setting the pricing limit, the FIFA engaged in the usual price finding mechanism. As seen, even a look into the written goals of the regulation does not explain this restriction. It was also decided that the possibility to compete below a certain level does not remove the restrictive background of such an agreement.³⁶⁰ Self-determination is limited to a detriment of what once was, and at this moment still is, an open market where competition functioned.³⁶¹

Paragraphs 3 and 4 of this provision regulate payments in connection with agent services. The mere presumption that every payment made 24 months before or after a transaction are part of that transaction simply serves the protection of the service fee cap.³⁶² Both rules completely turn the burden of proof in disfavour of football agents and because of that restrict the freedom of contract in regards of the transfer itself but also regarding other services that can be provided.

³⁵⁴ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 238 and 240.

³⁵⁵ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, paras. 235 - 236; Peter W. Heermann, Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive, WRP (2023), p. 526.

³⁵⁶ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 236.

³⁵⁷ Opinion of AG Emiliou, ECJ Case C-209/23, para. 58.

³⁵⁸ Orth is also stunned by the perspective of AG Emiliou on this Mark-E. Orth, Luxemburg prüft Spielervermittler-Regularen: Nicht jeder Schritt ist ein Fortschritt (2025), <<https://rsw.beck.de/aktuell/daily/meldung/detail/eugh-c209-23-spielervermittler-regularen-fifa-dfb-wettbewerbsbeschaenkung>>, accessed 19 July 2025.

³⁵⁹ Like this Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 23.

³⁶⁰ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, Wettbewerbsrecht, vol. 1 (2025), Art. 101 TFEU, para. 237; cf CFI, T-05/00 and T-06/00. It has to be noted however that in this case the prices were fixed based on absolute prices and not percentages. This, however, does not take away the theoretical similarities.

³⁶¹ Similar Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 23.

³⁶² LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 17.

It is also noteworthy, that in the past when fee caps were introduced by the FIFA, it openly had the idea in mind to restrict the - in the view of the FIFA - high agent fees that were getting out of hand.³⁶³ So, there is also a historic argument speaking in favour of having a subjective element that indicates a restriction by object.

All the arguments mentioned above show that with regulating a percentage threshold, until which the prices for providing football agent services in the view of the FIFA are worth the action, the FIFA used mechanisms of a price cartel and therefore, restricted competition by object. The specifics of sports cannot be recognized in this sense when a restriction by object was found because otherwise the proper functioning of competition law would be threatened. The rules of Art. 14 (7) and (12) FFAR are strictly bound to the Service Fee Cap, as they only regulate the basis for the calculation of the service fee.³⁶⁴ Therefore, both share the same destiny. Consequently, and in line with the recent decisions of the *ECJ*³⁶⁵, an exception from EU law scrutiny cannot be provided by the *Meca-Medina*-Test.

b. *Meca-Medina*-Test and the Service Fee Cap

Even if the *Meca-Medina*-Test was to be applied, as *AG Emiliou* sees that possibility³⁶⁶, the conditions would still have to be assessed properly. In this case it is questionable if the exception is applicable or not. With the understanding of the author, in cases where there is a direct connection to the sport itself, the test is applicable.³⁶⁷ As shown, agents engage in one of the most important mechanisms in football which is the composition of the teams. They also perform other activities like consulting players. For the service fee cap, if it would not already be seen as a restriction by object, it engages directly to the performance of the activity of agents which is in direct connection to the composition of teams. Therefore, if it was not understood as a restriction by object, the *Meca-Medina*-Test could possibly be applicable. In the following only the most important goals in relation to the relevant provision will be assessed.

aa. Legitimate goals for the Service Fee Cap

The first stage when assessing the *Meca-Medina*-Test is to have a legitimate objective for the provision which here is the Service Fee Cap. In Art. 1 FFAR, the FIFA set out the goals that

³⁶³ LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 100; similar Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 23.

³⁶⁴ Also LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 17.

³⁶⁵ cf ECJ, Case C-333/21, para. 186; ECJ, Case C-124/21 P, para. 148.

³⁶⁶ cf Opinion of AG Emiliou, ECJ Case C-209/23, para. 58.

³⁶⁷ cf G.V.2.d.

were assessed before.³⁶⁸ An assessment of whether the proposed goals could possibly be used as legitimate objectives will follow.³⁶⁹

To receive the benefits of the *Meca-Medina-Test*, the FIFA in the *CAS* proceedings and before the *LG Mainz* tried to use the goals of Art. 1 (1) a), c), e) FFAR and Art. 1 (2) b), c), d), e), f), g) FFAR. As shown³⁷⁰, some of these goals might be acceptable as legitimate objectives. Following the understanding of this work, the relation between the measure and the goal are more suitable within the next conditions.³⁷¹

bb. Inherence and proportionality of the goals for the Service Fee Cap

At the second stage, the goals have to be assessed in relation to the Service Fee Cap. If it would be appropriate to reach these goals, the assessment of the inherence would be positive.

The first goal which is the protection of contractual stability can be assessed together with the goal of enhancing contractual stability. The FIFA with this wanted to provide a framework that withholds unwanted conduct which, according to FIFA, showed in too many transfers and the interests of the players not being respected.³⁷² Another argument in favour is that the Service Fee Cap provides a reliable remuneration framework for the duration of player contracts.³⁷³

However, transfers are based on the will of players. In that process, all parties agree on the essential points and based on that find a decision. So, without an agreement there would be no transfer.³⁷⁴ Players who do not feel respected by their agent usually change their representatives. This mechanism would lead to a complete drought of requests for agents. Also, as the recent years and decades have shown, the system worked without a service fee cap.³⁷⁵ The agent market providing the services became highly professional over the years. By this development, there is a certain quality within the market which usually gets rewarded in terms of money. There is no reason why such a hard cut into this settled system with a tool like the fee cap should support the goal of contractual stability. Within negotiations, time plays an important role, and

³⁶⁸ cf G.V.1.a.aa - mm.

³⁶⁹ For a short assessment of the irrelevant goals considering the agent fee cap cf Peter W. Heermann, *Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive*, WRP (2023), p. 527.

³⁷⁰ cf E.VI.1.a.aa. - II.

³⁷¹ cf G.V.1.a.

³⁷² *LG Mainz*, Request for a preliminary ruling, Case C-209/23, p. 11.

³⁷³ *CAS*, Case 2023/O/9370 *PROFAA v. FIFA*, para. 238.

³⁷⁴ Like this also Rupprecht Podszun and Alexander Kirk, *FIFA's Football Agent Regulations and European Competition Law*, JAE (2024), p. 19.

³⁷⁵ Martin Stopper and Simon Karlin, in: Martin Stopper and Gregor Lentze, *Handbuch Fußball-Recht* (2025), sec. 22, para. 9.

it can be used as a tactical tool for bargaining.³⁷⁶ Therefore, the transfer period and its timeframe can be used for the means of negotiations which also is allowed and provided by the FIFA itself.³⁷⁷ Without that, there would be a danger to not being able to use this window anymore. The argument that a limitation would lead to less transfers because of less money there would be to be earned, goes to the wrong direction, because the lesser there is money to be earned, the bigger is the incentive to make more transfers happen.³⁷⁸

For the spirit of solidarity, it can be said that even the FIFA accepted that there is no explanation of how a service fee cap would be appropriate to reach that goal.³⁷⁹ The Service Fee Cap could potentially lead to lesser transfer amounts, but there is no evidence that this would lead to big clubs spending more money towards amateur football. It would probably happen that the big clubs would simply invest more money into the salaries of athletes.³⁸⁰ Also, especially when it comes to professional football and the big clubs, the connection to the sport is only very limited. This counts even more for football agents, as they mostly engage in bigger transfers.³⁸¹

Maintaining competitive balance might be a legitimate objective under extraordinary circumstances. However, a better achievement of this goal can be reached through transfers. As agents try to find the best possible solution for their clients, they engage in the composition of teams. This ultimately leads to differing compositions within the club framework of football. A service fee cap would incentivize the performance of more unnecessary transfers, as shown above. Some say the connection of football agents to maintaining competitive balance is very limited to none, as their profession is to make transfers happen.³⁸² However, as they engage in the composition of teams, a line that connects them with the sport can be drawn. But as they have no sportive interests, as in the means of the football clubs, there is at least no inherence.

How the Service Fee Cap would increase the quality of a service is not explainable. With a fee cap that would lead to the agents having the same amount of work while being rewarded less than before, possibly more transfers would happen. This means, there would be the opposite reaction of the market to this goal. The same goes for the goals that are looking towards

³⁷⁶ Ibid.

³⁷⁷ Similar Rupperecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 19.

³⁷⁸ LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 95.

³⁷⁹ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 295.

³⁸⁰ Peter W. Heermann, Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive, WRP (2023), p. 527 - 528.

³⁸¹ cf FIFA, Football Agents Report 2024, fig. 2, p. 14 - 15, <<https://digitalhub.fifa.com/m/13f391e61065a845/original/Football-Agents-Report-2024.pdf>>, accessed 19 July 2025.

³⁸² LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 149; Rupperecht Podszun, Anwendbarkeit des Kartellrechts auf die Regulierung von Spielervermittlern durch Sportverbände, NZKart (2021), p. 147.

protecting the players. Even though they might be acceptable as goals, the Service Fee Cap is not suitable for protecting the players. There is no connection that comes from the dangers of unaware players or unethical conduct like tax issues to a service fee cap. In contrary, the Service Fee Cap could even incentivize the unethical conduct for the means of increasing the amount of money that could be earned with one transfer.

Lastly, transparency is not achieved by forcing rules on the remuneration for services. The Service Fee Cap is supposed to increase transparency by giving a framework that is known mutually.³⁸³ However, even without having specific data, there supposedly was some information for the relevant market players that were in the need for the services of football agents. Also, the system has been working in the past without a service fee cap. If there was an issue with transparency on that regard, there would have been at least some outcry in the past.

For paragraphs 3 and 4 it is already not understandable how the change of burden of proof helps parties that request agent services in any of the goals. These provisions lead to the danger for agents that any transaction could be seen as in connection with the transfer. For the clubs and players this would have no real impact, as the agents would have to bear with this burden. It is therefore inappropriate to reach the goals. Also, switching the burden of proof completely on football agents changes the dynamics of their relationship to the FIFA, as the FIFA would always have the possibility to sanction football agents. It is therefore, at least because of that consideration, not proportionate.

Seemingly no goal is appropriate for achieving the goal that the FIFA set out for the Service Fee Cap. Proportionality can at least be argued away with the fact that a private association sets monetary boundaries for professions not even associated to itself. This is impacting the economic activity of football agents so strong that sports associations should not be allowed to introduce fee caps for third parties. The Service Fee Cap therefore does not survive the *Meca-Medina-Test*.

c. Justification under Art. 101 (3) TFEU

The Service Fee Cap limits the financial capabilities of football agents when they provide the services. It strictly limits the parties that request such services in their ability to choose and negotiate the circumstances of the possible transaction. The benefit could here be that the clubs would have more money left to spend on transfers or on higher salaries for players. So, the benefit could be found in a higher reward for players. However, the issue is that first, there is

³⁸³ LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 11.

no certain probability for this possibility and second, the players are themselves bound to the FIFA by being contracting parties of the clubs. So, the benefit would stay within the FIFA. Another argument is that the regulation for football agents does never give any benefits because the service fees are subject to negotiation and based on these negotiations, the parties conclude a price that will always be proportionate to the value of the player agents' work.³⁸⁴ With these strict price regulations, the competition to serve the best price would be limited to the detriment of a minimum threshold under the FFAR. These price regulations might also be beneficiary in some cases³⁸⁵, however here, it is barely thinkable that the clubs who want to generate as much revenue as possible would lower their prices for tickets or merchandising.³⁸⁶ Another aspect would be that prices for subscriptions to watch matches would probably also not fall because of the interests of the broadcasters. Also, these media broadcasters could benefit by the savings, in regards of the prices for the media rights. But, as stated, it seems unlikely that these savings would directly influence the prices at which the associations would sell the media rights.

It might also be possible to take into consideration the loss of integrity and regularity of the sport in the recent years.³⁸⁷ But even when considering the benefits of having a whole profession being limited by the measures of a private body, it does not seem to be adequate to regain these core matters based on the regulation of football agents. FIFA itself is responsible for a major part of the loss of both mentioned matters because of its strictly revenue-oriented approach to its competitions during the past decades. This development led to a disbalance between the spectators and the sport of football and even is a reason why the football agent market grew so fast over the past years with clubs being able to spend more in general. By this development, contracts of athletes became assets of noteworthy economic value for the clubs. Football agents only participated in the developments the FIFA itself has made possible, and they should not be held accountable for that with the harsh limitations of their possibilities to earn money by the FIFA. A justification of the Service Fee Cap is not possible under Art. 101 (3) TFEU.

³⁸⁴ Like this Rupperecht Podszun, Anwendbarkeit des Kartellrechts auf die Regulierung von Spielervermittlern durch Sportverbände, NZKart (2021), p. 144 and 147; LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 167.

³⁸⁵ Very restrictively Peter W. Heermann, Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive, WRP (2023), p. 529.

³⁸⁶ Peter W. Heermann, Vergütungsdeckel für Football Agents nach den FFAR aus kartellrechtlicher Perspektive, WRP (2023), p. 529.

³⁸⁷ Opinion of AG Emiliou, ECJ Case C-209/23, para. 94.

d. Art. 102 TFEU

The Service Fee Cap, as it is a remuneration related provision³⁸⁸, is an exploitative as well as an exclusionary abuse of dominance by the FIFA. Under normal conditions, the market would simply result in fair contract conditions by functioning properly³⁸⁹. By setting such rules, the FIFA takes away the possibility for the parties to freely negotiate on the remuneration of football agent services. It also excludes competition, as the relevant market actors do not have to compete for the best prices anymore and simply can rely on the given framework. Price finding would not relate to the market conditions and competition anymore but would be bound to thresholds and regulation. A justification cannot be possible, as it has already been rejected for Art. 101 TFEU.³⁹⁰

2. Art. 14 (2), (3) FFAR - Client-Pays-Rule

The Client-Pays-Rule is regulated in Art. 14 (2) and (3) FFAR. It states that only the client shall pay service fees that are due. Under strict conditions the rule also allows one exception for the case when a player earns less than 200,000 USD annually. Clubs are not allowed to deduct any service fee payments from the salary of a player they engage. In the past, it has been common practice within the sector of transfers in football that clubs which engage a player also pay the remuneration of the football agent.³⁹¹ In that case the negotiation could be based on the transfer fee, an individual sum or the salary of the player.³⁹² It seems, the FIFA with the Client-Pays-Rule had in mind to relief clubs and lower prices by handing this obligation to the players.³⁹³

a. Restriction by object or effect

With the Client-Pays-Rule, the FIFA obliges the players to pay for the services of football agents. By doing so, players and clubs who are the requesters for such services are heavily limited regarding their freedom of action. Before this rule, the general practice was that the remuneration for agents was paid by the engaging body which are the clubs.³⁹⁴ This mechanism was based on the negotiations and ongoing practice within the market of player agents. The Client-Pays-Rule cuts deep into this established mechanism. In a reward issued by the *Court of*

³⁸⁸ With the same evaluation Opinion of AG Emiliou, ECJ Case C-209/23, paras. 122 - 123.

³⁸⁹ This consideration is mentioned also by *AG Emiliou* Opinion of AG Emiliou, ECJ Case C-209/23, para. 125.

³⁹⁰ A differing assessment of the justification for Art. 102 TFEU than in Art. 101 TFEU would not make sense, see Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 143; Alexander Seyb, *Autonomie der Sportverbände* (2020), p. 179.

³⁹¹ Gennaro Giulio Tedeschi, *Inside the World of a Football Agent* (2021), p. 25 - 26.

³⁹² *Ibid.*

³⁹³ LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 167.

³⁹⁴ Gennaro Giulio Tedeschi, *Inside the World of a Football Agent* (2021), p. 25 - 26.

Arbitration of Sports (UK), the panel found that the Client-Pays-Rule was neither a restriction of object, nor by effect because the rule would help with confusions and that there was a mutual need for this kind of rule.³⁹⁵ It has to be seen that with limiting the options on how the service can be paid, the FIFA detracts the negotiations and therefore, the market to a minimum with strict boundaries. There would be no more options for contractual drafting or negotiation. The FIFA uses this rule to ensure that the overall Service Fee Cap functions well because by using the Client-Pays-Rule, the financially lesser potent party is obliged and therefore, the Service Fee Cap could work better. With the possibility to sanction the use of other options, the FIFA restricts competition on the player agent market. The fact that there still could be competition below the threshold does not change this result.³⁹⁶ So, because the rule limits contractual freedom on the market of player agents which is the relevant market itself and the connection to Art. 15 (1), (2) FFAR, the Client-Pays-Rule is also a restriction of competition by object.

b. Meca-Medina conditions

The FIFA wants to prevent the conflict of interests and the results coming from that.³⁹⁷ Those are regulated in Art. 1 (2) c), f) and g) FFAR. As shown, if there is a real strong connection to the sport, these could serve as legitimate objectives.³⁹⁸ However, the further conditions must also be fulfilled. As shown above, there is a connection to the Service Fee Cap. The FIFA wants to protect the athletes by limiting the remuneration possibilities for the agents. With that logic, again, player agents could be incentivized to push for even more transfers as this is their major income source. The rule would lead to the opposite. It is clear that the FIFA did not want to help the players but the clubs to be relieved from obligations concerning the payment.³⁹⁹ *AG Emiliou* argues that there would still be the option to compete for services below the threshold, but he oversees the risk that the Client-Pays-Rule together with the Service Fee Cap could lead to even higher financial burdens for the clubs. The rules set an incentive to raise the total amount of money in the system to gain more while being under the percentage thresholds. Concluding, this, it shows that the rules are not appropriate to achieve the given objective, but it shows that the FIFA had in mind to at least limit the player agent market in a harsh way which would

³⁹⁵ Court of Arbitration for Sport (UK), award of November 30, 2023 (Rev 12/12/23), paras. 362 - 373.

³⁹⁶ cf Opinion of AG Emiliou, ECJ Case C-209/23, para. 58.

³⁹⁷ LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 11.

³⁹⁸ G.V.1.a.ii., ll. and mm.

³⁹⁹ LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 167.

benefit the clubs.⁴⁰⁰ These clubs however are associated to the FIFA.⁴⁰¹ These provisions also do not survive the *Meca-Medina-Test*.

c. Justification under Art. 101 (3) TFEU

For the Client-Pays-Rule similar thoughts like with the Service Fee Cap are applicable. It stays in the dark, how a rule that obligates the players to pay the fees of football agents should benefit any consumer. As *AG Emiliou* mentioned the loss of integrity of the sport⁴⁰², this thought is dangerous, as it switches the responsibility for that loss to the football agents and lets non-economic thoughts enter the justification provision. It remains highly questionable if such matters should be able to justify anti-competitive behaviour and if the FIFA should be allowed to hand over any budgetary benefit to clubs which would not benefit the consumers that are required to either buy tickets or merchandise. A justification is not possible.

d. Art. 102 TFEU

The Client-Pays-Rule does also state an exploitative abuse of dominance as the FIFA imposes conditions regarding the payment of the service fee. Players are mostly required to pay the fee themselves which is a strong change of the usual practice.

3. Art. 14 (10) FFAR - 50%-Payment-Rule

Art. 14 (10) FFAR introduces the 50%-Payment-Rule. It says that in the only case where dual representation is permitted, the engaging entity may only pay up to 50 % of the total service fee. This rule stands in line with the framework of the rules assessed before regarding the remuneration of football agents. It is a mechanism to ensure in cases where dual representation is permitted, that clubs are only able to pay 50% of the total owed service fee.

a. Restriction by object or effect

As the rule stands in line with the Service Fee Cap and the Client-Pays-Rule, and it limits the freedom to act on a neighbouring market, it has to be assessed in that context. A restriction by object can be found here as well.

⁴⁰⁰ LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 11.

⁴⁰¹ Ibid, the court concludes that the benefitted party cannot be party for serving the legitimate objective that is wanted to be reached.

⁴⁰² Opinion of AG Emiliou, ECJ Case C-209/23, para. 94.

b. *Meca-Medina* conditions

The same objectives are used to justify this provision as for the Service Fee Cap and the Client-Pays-Rule.⁴⁰³ The 50%-Payment-Rule is another tool to secure the Client-Pays-Rule. The FIFA allows, specifically in the case of permitted dual representations, that the clubs would be able to only pay 50% of what the fee that is owed would be. It shows, repeatedly at this point, that the FIFA does state to protect the athletes but in reality, helps the clubs. The *LG Mainz* raises the question of why only the clubs would be entitled to use this tool and not the athletes.⁴⁰⁴ Also, without such a rule, the system has been working for decades. In the end, the players acquired agents and knew about the obligations in consequence of that.⁴⁰⁵ This shows, protecting players from misconduct by the conflict of interest, cannot be achieved with this rule.

c. Justification under Art. 101 (3) TFEU

For the goal of hindering the conflict of interests, the beneficiary effect cannot be found. The other goals that are tried to be reached share the same fate, as the abovementioned is applicable. The limitation of representation possibilities even seems to work in the opposite direction. As requesters of agent services would not be able to hire the same football agents anymore, they would need to hire different ones. A benefit for outer consumers can be rejected with the arguments made above.

d. Art. 102 TFEU

The 50%-Payment-Rule is also an exploitative abuse of dominance. As the players are taken away options for properly negotiating payment conditions, their position is worsened. Clubs benefit the most, as they do not have to pay the fee in most cases anymore and even in the case of dual representation, the payment is limited to 50%. Unfair conditions are imposed on the relevant market actors by the FIFA.

4. Art. 4 (1) (2), 16 (2) lit. b), 20 FFAR - License obligation and compliance rules

The compliance provisions require football agents to comply with several FIFA statutes and rules regarding ethical conduct and other related matters. Art. 4 (1) and (2) FFAR regulate the license obligation which requires the applying football agents to comply with the provisions of

⁴⁰³ cf Art. 1 (2) c, f) and g).

⁴⁰⁴ *LG Mainz*, Request for a preliminary ruling, Case C-209/23, p. 14.

⁴⁰⁵ *OLG Düsseldorf*, U (Kart) 2/23, judgement of 13 March 2024, para. 126.

Art. 16 (2) lit. b) and Art. 20 FFAR. Art. 20 FFAR regulates the jurisdiction which the football agents also must accept in order to receive a license. Compliance, when regulating a global profession is an important tool. With these rules the FIFA requires football agents to become licensed and in consequence comply with several behavioural codes and regulations of the FIFA. Also, football agents are required to accept the jurisdiction with the possibility to agree on a different jurisdiction. The FIFA wants to ensure the regularity of the transfer market and the sporting competition.⁴⁰⁶

a. Restriction by object or effect

With the obligation for a license and the following compliance rules, the FIFA, together with the possibilities to sanction misconduct⁴⁰⁷, sets high barriers for people wanting to enter the football agent market.⁴⁰⁸ Although it might be useful to provide some kind of legal certainty within this matter,⁴⁰⁹ and it is common to have self-governing bodies that issue licensing rules,⁴¹⁰ the FIFA completely shuts down a neighbouring market because itself is the only provider of the football transfer market. It decides, as if it was a public authority or had a direct obligation from states to regulate certain markets.⁴¹¹ The assessment of a compliance with all the rules would overreach the purpose of this work. However, as the football agents are not members of the FIFA⁴¹², first a denial of compliance with all rules would ban the football agent completely from performing that occupation. And second, the danger of not receiving a license would mean the same. So, a restriction of competition by object is given in the current form of the mandatory license in connection with the compliance requirements.⁴¹³ Still, there can be a need to ensure the quality of the work, as the work of football agents is connected to the sport itself and even contributes to the reputation of the FIFA in a loose way.

b. Meca-Medina conditions

Compliance with certain rules can ensure the goal of the regularity of the transfer system. When it comes to a mandatory license and coming with that the duty to comply with several international and national rules, these rules might be impossible to be complied with. As the

⁴⁰⁶ LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 14.

⁴⁰⁷ cf Art. 21 FFAR.

⁴⁰⁸ LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 132.

⁴⁰⁹ LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 14; the *Court of First Instance* found the licensing obligation as not contrary to competition itself CFI (later GC), Case T-193/02, para. 92.

⁴¹⁰ Opinion of AG Emiliou, ECJ Case C-209/23, para. 97.

⁴¹¹ The FIFA does not have a direct competence as assessed before in D.

⁴¹² FIFA, Organisation, <<https://www.fifaoundation.org/organisation>>, accessed 19 July 2025.

⁴¹³ Like this LG Dortmund for the German football agent regulation, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 132; *AG Emiliou* makes the assessment dependent on the circumstances Opinion of AG Emiliou, ECJ Case C-209/23, para. 103.

mandatory license in connection with the strict compliance requirements for agents set extreme boundaries on entering the market, it possibly withholds agents from the performance of their occupation. So, isolated the licensing rule might even be appropriate,⁴¹⁴ but in the context of the compliance requirements with other provisions and the danger of a prohibition of working, it is certainly not appropriate, nor proportionate to reach the goal of regularity. With just having a licensing requirement, there is already a more appropriate and less threatening way to regulate this matter.⁴¹⁵ With the sanctions, the requesters for football agent services are being restricted to make use of only a certain group of professionals.

c. Justification under Art. 101 (3) TFEU

A licensing system itself without having national regulations or a self-governing body of football agents that sets certain standards was already found lawful in the past.⁴¹⁶ Under these circumstances, and out of the mere need for any regulation, the *CFI* found that there is a need for some qualitative regulation to ensure a proper functioning of the sport.⁴¹⁷ Even today, this need, although there are some associations like the PROFFA, still exists. There are still few national regulations that regulate the matter of football agents which shows that there is an urgent need for the Member States to get active on this field to provide some basic legal certainty for clubs, players and football agents. Even a greater, more representative association of football agents that sets certain standards would be thinkable. In this regard *AG Emiliou* mentions an OECS policy paper that says there are expanding professions that require licensing.⁴¹⁸ However, it only shows the need for regulation, but not the justification of a regulation that restricts a profession harshly. The need for regulation cannot justify any regulatory act that breaches rules. Under the circumstances here, it is also not to be forgotten that the FIFA and football agents are not connected legally, although factually they are.

However, under the current form of regulation with the license obligation being bound to strict compliance rules and the sanction options for the FIFA, there are no real economic benefits for the users. A license obligation with sanctions being possible does not provide any monetary advantages for clubs but provides the FIFA itself with the power to decide who can or cannot perform the profession. The benefit, again, goes towards the body that put out the regulation.

⁴¹⁴ The *LG Mainz* saw this possibility as well *LG Mainz*, Request for a preliminary ruling, Case C-209/23, p. 14; *CFI* (later *GC*), Case T-193/02, paras. 100 - 106.

⁴¹⁵ This was already decided by the *CFI* and remains valid today *CFI* (later *GC*), Case T-193/02, paras. 100 - 106.

⁴¹⁶ *CFI* (later *GC*), Case T-193/02, paras. 100 - 106.

⁴¹⁷ *CFI* (later *GC*), Case T-193/02, para. 100.

⁴¹⁸ Opinion of *AG Emiliou*, *ECJ* Case C-209/23, para. 98.

d. Art. 102 TFEU

The license obligation and compliance rules under their current form are an exclusionary abuse of dominance by the FIFA. It by these rules gives itself the ability to decide and, in the case of misbehaviour, sanction the market actors and decide on who can be a football agent as well as the possibilities on the football agent market for requesting parties. The FIFA thereby excludes competition, as only the licensed and complying individuals can participate in football transfers. However, understood as a quality seal, the licensing obligation could be considered as justified.

5. Art. 5 (1) lit. a) ii., iii. FFAR - License eligibility requirements

In these provisions, the FIFA set the requirements that a candidate that wants to receive a license has to fulfil. Without fulfilling these conditions, a license would not be issued and therefore, the person in question could not perform football agent services because of the possible sanctions within the infrastructure of the association. The requirements include to have never been convicted of criminal charge in specified areas or not holding any interest in a club. Licensees are required to always and ongoingly fulfil the requirements. Protection of clients and the development of the profession are the thinkable objectives followed by the FIFA.

a. Restriction by object or effect

As the conditions for the issue of a license are stated, the findings of above are also valid and applicable here. In the current form with the threat of a ban on the performance of the profession of a football agent, it is a restriction by object.

b. *Meca-Medina* conditions

Although there is a well-founded interest in agents that engage in the transfer market, and therefore in the sport of football⁴¹⁹, this rule has to be seen in the context of the compliance rules, as they are the foundation of Art. 5 FFAR. To reach the goal of the development of a profession, although this goal can be questionable, at least the goal for the protection of clients might be seen as legitimate. In that case, there certainly is room for a lawful regulation. However, threatening agents for the case of non-fulfilment of just one of the conditions is not appropriate to reach the goal. There could be other ways like a non-mandatory license that could serve as a quality signal for requesters. It is even thinkable to have a license rule with lesser compliance obligations and no threat for a ban on working. Both would serve the qualitative development of football agents, as players would know that an agent is licensed by the FIFA

⁴¹⁹ The LG Mainz saw this as well LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 15.

and therefore can be trusted further than other ones. The FIFA, for that purpose, could by that also influence the ongoing education on the basis of courses or seminars for the agents. In that case a regulation could be appropriate. Under the current circumstances with the connection to the compliance obligation, however, the rules, even if interpreted as only a restriction by effect, are neither appropriate, nor proportionate because of the above-mentioned aspects.

c. Justification under Art. 101 (3) TFEU

The same thoughts as for the license obligation are applicable here as well. However, with having a less striking measure regarding the license for football agents, there also must be some regulation regarding the eligibility for persons wanting to become football agents. Under those circumstances, that here are not the case, such rules could be justifiable, as they would provide legal certainty in the trust of the quality of an agent. The monetary benefit of that would be less costs for having to find out who is a proper football agent. If these benefits would be handed on to the consumers, seems at least questionable. Also, to prove such benefits, the parties would have to provide concrete evidence in order to show real effects of such a measure.

d. Art. 102 TFEU

As for the license obligation and compliance rules, the rules on the eligibility for receiving a license do in context of the sanction options stem an exclusionary effect. They could lead to some individuals not being able to receive a license which would exclude competition. However, also for this rule, a less breaching approach would seem justifiable.

6. Art. 12 (8) - (10) FFAR - Multi-party representation

With these provisions the FIFA regulates a prohibition of the possibility to represent more than one party. There is only one exception in the case that the client and the engaging entity consent to dual representation. When drafted, avoiding the conflict of interests was the main consideration.⁴²⁰ There is only one case in which that would be possible and thereby this regulation would serve this goal. Using connected football agents⁴²¹ is also prohibited.

a. Restriction by object or effect

Here, the FIFA restricts the possibilities of the parties to negotiate the contract individually. The only case, and only with permission by both parties, where dual representation is allowed, is

⁴²⁰ LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 15; cf CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 362 for more reasons.

⁴²¹ cf cf FIFA, FFAR (2022), Definitions, ‘*Connected Football Agent*’.

the relation of the individual and the engaging entity. *AG Emiliou* without further assessment seems to accept the provision as at least only restrictive by effect.⁴²² The FIFA does not want to allow the representation of more than one party, even though there might be reasons for this. On the other side, the parties requesting agent services for transfers are limited in their freedom to choose who they want to be represented by because agents would be blocked if they are already representing one party.⁴²³ With this rule, it would not be possible for the requesters to benefit from the use of one agent in the case of a transaction anymore. Thereby, the FIFA even takes away positive aspects of free competition and free structuring of transfers from the market for football agent services. As there is a restriction of contractual freedom, a restriction by object is given here as well.⁴²⁴

b. *Meca-Medina* conditions

To achieve the goals that is mainly the avoidance of conflict of interest, at first sight, a ban on multi-party representation seems reasonable.⁴²⁵ However, the issue is that with this ban, options for parties are limited of how transfers can be performed. Especially in the context of the Service Fee Cap it shows that this rule mainly serves to restrict the possibilities of the parties. Parties of a transfer would be forced to make use of different agents or, maybe in the best case for the FIFA, not use agents at all, to make a deal happen. The players who are to be protected by such rules could be put in the position that they would have to use a different agent. The same goes for the clubs. It shows that the prevention of the conflict of interests here is also pointed towards restricting agent services in order to relief clubs which are themselves part of the association.⁴²⁶ In the end, all parties involved in a transfer know at least by physical appearance in the negotiations who is involved and thereby can assess their own endangerment. It is therefore not appropriate to achieve the goal of hindering the conflict of interests to protect individuals.

c. Justification under Art. 101 (3) TFEU

There are no economic benefits for the parties within this rule. *AG Emiliou* wants to allow non-economic interests also and sees a possible way to justify the multi-party representation limitation.⁴²⁷ However, a transaction or the representation of a player always is bound to the negotiations of the parties involved. It is not for the FIFA to predetermine the possible

⁴²² Opinion of AG Emiliou, ECJ Case C-209/23, para. 107.

⁴²³ LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 114.

⁴²⁴ As the German LG Dortmund concluded also for the German case LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), paras. 102, 106, 108 and 114.

⁴²⁵ CAS, Case 2023/O/9370 PROFAA v. FIFA, para. 367.

⁴²⁶ LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 11.

⁴²⁷ Opinion of AG Emiliou, ECJ Case C-209/23, paras. 94, 107 and 108.

constellations for third parties. A measure like providing more information about football agent services would benefit the players more, so they had a bright foundation for negotiations with football agents. Even if all the other conditions were accepted, at least the indispensability requirement of Art. 101 (3) lit. a) TFEU is to be rejected.

Even if non-economic measures were to be accepted, at least the consumer participation is not given here. Between the limitation of possible representation constellations and the final consumers are too many steps, so that there can be no possible participation of the consumers.

d. Art. 102 TFEU

The prohibition of multi-party representation would lead to the forced acquiring of more football agents or the complete abandonment of them which excludes fair market conditions. The FIFA might have had in mind to make the use of football agents as unattractive as possible for the clubs not to make use of them. Considering this, it shows that under the prohibition of multi-party representation, competition would not exercise properly anymore. The abuse has exclusionary effect.

7. Art. 12 (2) FFAR and Art. 16 (1) lit. b) and c) FFAR - No-Approach-Rules

Within these rules, it is regulated that an agent may not enter an agreement with a client that already has an exclusive agreement with another football agent and only licensed agents may do so. It goes even further and forbids the approach of these clients at all. The FIFA with these rules wanted to ensure the stability of contracts.⁴²⁸

a. Restriction by object or effect

A prohibition of entering contracts and even approaching potential clients is headed towards a limitation of the contractual freedom of the parties. Even though, this regulation could also be seen as a declarative rule that only forbids a situation that is already protected by other measures like the contracts themselves, it still restricts the freedom of the parties to make an approach. In football, when for example a player wants to change the football agent, he or she may be limited by this type of regulation. Clauses that oblige the party who leaves the contract to pay a certain fee could be thinkable. Such a measure would be more adequate when it comes to the freedom of contract drafting. Therefore, it can also be seen as a restriction by object.

⁴²⁸ LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 15.

b. *Meca-Medina* conditions

Even if it would be seen as a restriction by effect and the goal would be considered as a possible justification ground, it remains unclear how a rule that states the obvious is appropriate to achieve contractual stability.⁴²⁹ As the nature of this rule is declarative, there is no need for it to exist and with its existence, it restricts the freedoms of the relevant parties. Parties usually should be protected by clauses within the exclusive contracts negotiated by the parties. Even there, it could be possible that parties agree on clauses that regulate the situation in which a party wants to leave the contract. There is also no information within the FFAR about the cases in which the agents would have to submit which concrete information.⁴³⁰ Overall, there is no necessity for this regulation to achieve contractual stability.

c. Justification under Art. 101 (3) TFEU

As in the conditions of the *Meca-Medina*-Test, it remains open, how, next to the contractual protection, there is a need for such a regulation.

d. Art. 102 TFEU

The No-Approach-Rules overregulate an area where contractual clauses already protect the interests, the FIFA wants to have protected. As when trying to change agents, requesters of such services would be somehow limited in their choice of agents, an exclusionary abuse is inherent to this regulation.

8. Art. 19 FFAR - Transparency rules

Art. 19 FFAR regulates the disclosure of information about football agents, like their names or the service provided by them for each client as well as information about all transactions and the payments to a football agent, by the FIFA itself. The goal of securing transparency is tried to be achieved with this article.⁴³¹

a. Restriction by object or effect

When it comes to the disclosure of and coordination based on information, in the recent years, this has become relevant for competition law because of the availability of data.⁴³² The purpose

⁴²⁹ The *LG Mainz* questions the necessity of the rule because of the contractual securities *LG Mainz*, Request for a preliminary ruling, Case C-209/23, p. 15.

⁴³⁰ The *LG Mainz* saw this danger *LG Mainz*, Request for a preliminary ruling, Case C-209/23, p. 18.

⁴³¹ *LG Mainz* saw this danger *LG Mainz*, Request for a preliminary ruling, Case C-209/23, p. 16.

⁴³² Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 272.

is to collect as much relevant information for market parameters as possible and interchange it with each other, to coordinate behaviour on markets.⁴³³ When it is sensitive business information which is the information that a company on a functioning market has to protect in order to maintain or improve its market position and it gets published, it can be a threat for the market players.⁴³⁴ The FIFA plans to issue the names and details of football agents, the clients, the exclusivity and expiry of their clientship, each service that is provided to a client, any sanctions imposed and details on all transactions, including the exact fees and agents involved as well as the legal constructions of the companies.⁴³⁵ For football agents the information about their exact services and the service fees as well the exact information about their clients is essential in order to maintain or improve their market position because by withholding these, agents might be more attractive to be hired or also can base their negotiations in terms of service fees on this information. This rule would help clubs in such way that they could know about all internal information and based on that could, theoretically even below the percentage threshold of the Service Fee Cap, act regarding the amount that would be paid. It is therefore clearly a market information system⁴³⁶ for the clubs which are associated in the FIFA and would decrease the market position of football agents.⁴³⁷ Therefore, there is a restriction by object.

b. *Meca-Medina* conditions

Even if a market information system would be refused, the system as regulated by FIFA would not help the players in any regard. As there is always a competition of football agents about getting players to sign with them, it is to be presumed that there are some relevant numbers on that market. Players also always have to agree on the fees that would be paid in case of hiring a football agent. So, the players would not be helped with this rule. Another aspect of transparency is that the goal itself requires the information to be given to the players to protect them and not uninvolved third parties.⁴³⁸ However, the clubs by knowing all this information, could easily decrease the amounts of fees that would have to be paid because of the overreaching availability of data about the football agents and their business practices. It shows that the rule would be inappropriate to reach the goal of transparency. Still, there could be an

⁴³³ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 271.

⁴³⁴ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 274; Com., 2023/C 259/01, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, para. 284.

⁴³⁵ cf Art. 19 FFAR.

⁴³⁶ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 271.

⁴³⁷ Like this also OLG Düsseldorf, U (Kart) 2/23, judgement of 13 March 2024, para. 130.

⁴³⁸ OLG Düsseldorf, U (Kart) 2/23, judgement of 13 March 2024, para. 130.

interest in at least publishing the parties to a contract. That would be a less intervening measure which shows that Art. 19 FFAR is also not proportionate in relation to the goal of transparency. Art. 19 FFAR also would not survive the *Meca-Medina* conditions.

c. Justification under Art. 101 (3) TFEU

Transparency is not only reached when there is complete information about a party on a market. Even the need for the disclosure of all the information that is wanted by the FIFA is to be rejected, but also the benefit from this would be the total indiscretion of football agents and their business constellations. As shown, there can be an interest for some disclosure, simply for the reason to trace back transactions. But this can, as a less restrictive measure, also be rejected at least for the indispensability condition of Art. 101 (3) lit. a) FFAR. This is not justifiable.

d. Art. 102 TFEU

The transparency rules, as in the FFAR, lead to a full informational overview for the FIFA on the football agent market which is not a part of its own universe. Thereby, it makes it harder for agents to act and make use of certain advantages they have on their specific field. Especially for clubs this would mean a huge informational advantage on the football agent services market. They make the professional life of football agents certainly harder and are exploitative.

9. Art. 16 (2) lit. j), ii. - v. lit. k), ii. FFAR - Disclosure rules

With all the rules mentioned in Art. 16 (2) lit. j), ii - v. lit. k), ii. FFAR, that constitute disclosure rules of different matters, the FIFA wants to make sure the FFAR is complied with and the measure of Art. 19 FFAR is well supported.⁴³⁹ These rules have to be seen in relation to Art. 19 FFAR because they secure the publishing and availability of the collected data.

a. Restriction by object or effect

As the rules are only there for the functioning of Art. 19 FFAR and the overall FFAR system, especially the Service Fee Cap, they have to be seen in that context⁴⁴⁰. Therefore, they constitute a restriction of object.⁴⁴¹

b. *Meca-Medina* conditions

Even if the Service Fee Cap would be considered as justified by all measures, it has to be seen that these rules state a complete dismantle of the agency structures. If the FFAR would be

⁴³⁹ LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 17.

⁴⁴⁰ As here OLG Düsseldorf, U (Kart) 2/23, judgement of 13 March 2024, para. 130.

⁴⁴¹ cf G.VI.8.

justified, it would not be appropriate that football agents have to disclose every information about their business. Under different circumstances, it might be possible to think about a general disclosure obligation about the contract itself, so it is at least clear who made the transfer happen and what parties were involved. In that sense, it would be thinkable that a possible licensing obligation and the referred license could be issued by the FIFA. For that however, a complete disclosure of all data regarding the football agents would not be necessary⁴⁴², as the FIFA already would have the information about the license itself, nor would it be proportionate because the FIFA acts as if it was an investigation body. But the duty to disclose whole business structures, shows that it had in mind to make the work for football agents as disadvantageous as possible. Because of that, the rules are neither appropriate, nor proportionate.

c. Justification under Art. 101 (3) TFEU

The same considerations made above are applicable here. As the Service Fee Cap itself does not survive the conditions of Art. 101 (3) TFEU, also measures that are in place to secure its functioning may not be able to withstand. The benefits of the total disclosure of information mainly goes beneficiary to the side of the FIFA which cannot be the subject of benefits. By receiving all the information, the FIFA would be able to trace back transactions and secure the functioning of the Service Fee Cap and other restrictive measures on football agents. So, it gave itself beneficiary effects. This behaviour by the FIFA is not justifiable under Art. 101 (3) TFEU.

d. Art. 102 TFEU

The disclosure rules help the FIFA ensuring the compliance with the transparency rules and therefore should also be assessed as exploitative abuses.

10. Art. 16 (3) lit. e) FFAR - Prohibition of following payments

With this rule, the FIFA prohibits payments that could be paid towards football agents in connection to transfers in the future regarding represented individuals. By this rule, contractual stability and the autonomy of clubs is tried to be achieved by the FIFA.⁴⁴³

a. Restriction by object or effect

For this provision, similar thoughts as with Art. 15 FFAR are applicable.⁴⁴⁴ As in this case, the FIFA sets boundaries for the contractual freedom of the parties involved as well, it restricts the

⁴⁴² OLG Düsseldorf, U (Kart) 2/23, judgement of 13 March 2024, para. 130.

⁴⁴³ LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 18.

⁴⁴⁴ cf LG Mainz, Request for a preliminary ruling, Case C-209/23, p. 18; G.VI.1.a.

economic possibilities of the parties requesting football agent services. Therefore, a restriction by object is conducted by the FIFA.

b. *Meca-Medina* conditions

As though the FIFA mentions the autonomy of clubs in connection to this provision, it oversees that itself restricts the clubs from their freedom. Because of that rule, clubs are bound to certain ways of performing the payments for the requested services. Acting in accordance with the rule would mean for the clubs to not be able to use contractual possibilities in order to properly draft their contracts. If the FIFA understands contractual stability as a one size fits all approach, the prohibition of following payments would maybe make sense, and it would be appropriate if it was not already a restriction by object. However, under the understanding of contractual freedom as giving different possibilities to solve contractual issues, the measures are in no way appropriate, nor proportionate for achieving contractual freedom or the autonomy of clubs. The only goal that would be reached would be the autonomy of clubs from football agents which would certainly not even be a legitimate objective, as it is solely an economic measure.

c. Justification under Art. 101 (3) TFEU

The benefit of this rule only goes towards the clubs and their autonomy. As the clubs are subjects of the FIFA, there is no real participation of the users or consumers. Even for the requesters, the only benefit would be that they do not have to negotiate on this matter anymore. Considerations regarding the saving of revenue were already made above and are to be dismissed.

d. Art. 102 TFEU

The contractual freedom of the parties involved is once again diminished, as the FIFA sets rules for contract drafting. It thereby, as also assessed before for other articles of the FFAR, is an exclusionary abuse of dominance.

11. Art. 14 (6) - (8), (12), (11) FFAR - Payment regulations

Within these rules, the FIFA set certain conditions considering the payment of the fee. These regulations include the due date or the benchmark for calculating the service fee. Reasons for these regulations are contractual stability, the hindering of the conflict of interests and the protection of uninformed players.⁴⁴⁵

⁴⁴⁵ OLG Düsseldorf, U (Kart) 2/23, judgement of 13 March 2024, para. 125.

a. Restriction by object or effect

Here, the FIFA, similar to other provisions, made the overall negotiation and finding of solutions harder for the parties in question. The contractual freedom is limited to a detriment where the football agents do not even have the possibility to receive the money before the payment of the transfer fee itself happens. They do not have any influence on this circumstance.⁴⁴⁶ Therefore, a restriction by effect is also given in this case.

b. *Meca-Medina* conditions

As mentioned before, such protection was already provided by the contracts themselves. There is no real need for such a regulation. It only makes it harder for football agents to receive the appropriate remuneration for the provided services. For clubs such regulations would be advantageous, as they could influence the time when football agents receive the fee. For football agents this would limit the options in contract drafting and make their work less attractive while giving power to the clubs which are subjects of the FIFA. Another important argument is that, without any need, the FIFA switches the usual practice that remuneration becomes due when the service is performed.⁴⁴⁷ The payment regulations are neither appropriate, nor proportionate.

c. Justification under Art. 101 (3) TFEU

Only in cases where there would be practices that exploit players, such regulations could maybe be justifiable. However, given the strong, negative impact on the contractual freedom of the parties, a justification is not possible.

d. Art. 102 TFEU

For the payment regulations, the FIFA again disturbs the contractual freedom of the parties involved. By doing so and with the regulations, it puts clubs in an advantageous position. An exploitative behaviour can be found there.

12. Art. 14 (13) FFAR - Clearing-House-Rule

The Clearing-House-Rule states that every payment to a football agent shall be made through the FIFA Clearing House⁴⁴⁸ and in accordance with the FIFA Clearing House Regulations.⁴⁴⁹

⁴⁴⁶ OLG Düsseldorf, U (Kart) 2/23, judgement of 13 March 2024, para. 125.

⁴⁴⁷ Ibid.

⁴⁴⁸ The FIFA Clearing House is operated by the FIFA Gennaro Giulio Tedeschi, Inside the World of a Football Agent (2021), p. 20.

⁴⁴⁹ cf for the most recent version FIFA, FIFA Clearing House Regulations (2025), <<https://digitalhub.fifa.com/m/7c9e9c5185db9eb6/original/FIFA-Clearing-House-Regulations-January-2025-edition.pdf>>, accessed 19 July 2025.

With this regulation, the FIFA tries to ensure the compliance with several payment rules as well as the Service Fee Cap and the transparency rules overall.⁴⁵⁰

a. Restriction by object or effect

The Clearing House is the ultimate mechanism to restrict the freedom of the parties involved regarding the free negotiation and drafting of the contract because it gives complete power over payments to the FIFA. Payment rules also belong to the core matters of a contract. As the provision was drafted in order to assure the functioning of the Service Fee Cap and it restricts the contractual freedom of the parties who would request services by agents, it shares its fate and is therefore also to be seen as a restriction by object.⁴⁵¹

b. *Meca-Medina* conditions

Payments have previously been done through banks.⁴⁵² Where the need for a separate payment system to provide transparency comes from, remains in the dark. As bank regulations on the national level are quite strict, there already is a much tested and balanced system in order to perform transactions. Also, as stated before, it is a fundamental limitation of possibilities for clubs and players to negotiate on the payment procedure.⁴⁵³ The requirement to use the FIFA Clearing House for payments towards football agents is neither appropriate, nor proportionate.

c. Justification under Art. 101 (3) TFEU

A thinkable benefit would be the certainty it provides for the parties and therefore they could save costs of negotiation. However, these savings would likely not be handed over to the consumers. The transparency goal, even if non-economic interests would be accepted, could also be reached with less restrictive measures like the simple obligation to disclose the parties and sums that were negotiated. So, at least also the indispensability condition is not met.

d. Art. 102 TFEU

With the Clearing House Rule, the FIFA sets a general obligation that has to be complied with to properly pay the agents. The freedom of the parties is heavily disturbed here. When parties would not comply, the transfer would not be valid. Having access to all financial data of a given transfer would also be a great advantage for the FIFA. A proper functioning of competition

⁴⁵⁰ OLG Düsseldorf, U (Kart) 2/23, judgement of 13 March 2024, para. 128.

⁴⁵¹ Like this also OLG Düsseldorf, U (Kart) 2/23, judgement of 13 March 2024, para. 128.

⁴⁵² Gennaro Giulio Tedeschi, *Inside the World of a Football Agent* (2021), p. 25.

⁴⁵³ Gennaro Giulio Tedeschi, *Inside the World of a Football Agent* (2021), p. 21.

which would lead to an according price for the service is disturbed in such way that the parties are hindered to properly perform the service as a football agent or enter the relevant market.

IX. Conclusion

With the FFAR, the FIFA wanted to implement a framework to have the work of football agents regulated. As, according to the one federation principle⁴⁵⁴, the FIFA is the only global football governing body. All professional football contracts are under its umbrella. This means the FIFA enjoys a 100% market share for the global football market⁴⁵⁵ and because of that the market for transfers. The different provisions made by the FIFA within the FFAR are not compatible with Art. 101 (1) TFEU and Art. 102 TFEU, as they neither withstand the *Meca-Medina-Test*, nor can be justified by Art. 101 (3) TFEU. However, there might be some possibilities for the FIFA to still regulate matters on the market for football agent services. Especially the licensing mechanism could be introduced in a non-mandatory way and more as a sign of quality and trust which could be handed out by the FIFA to football agents. This measure for example would be in favour of the protection of players and the development of the quality of the profession without a severe impact on the contractual freedom of individuals and clubs in regards of their options for contract drafting. With such a measure, the FIFA would also not - under the understanding of this work - be in breach of EU competition law.

F. Assessment of the regulations of the FIFA Football Agent

Regulations under EU Internal Market Law

After having assessed the FFAR under EU Competition law, the internal market regulations of the EU become relevant. Before assessing the FFAR, it is questionable whether the fundamental freedoms are applicable to private regulations.⁴⁵⁶

There is one view that states, the fundamental freedoms are only applicable to state or authority measures and not private regulations, especially for the understanding of Art. 45 TFEU.⁴⁵⁷ It is argued that the articles of the TFEU by their wording are not designed to include regulations of

⁴⁵⁴ cf Rupprecht Podszun and Alexander Kirk, FIFA's Football Agent Regulations and European Competition Law, JAE (2024), p. 3.

⁴⁵⁵ LG Dortmund, judgement of 24 May 2023, 8 O 1/23 (Kart), para. 95.

⁴⁵⁶ cf Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 89 and 255 - 281 for a complete historical overview.

⁴⁵⁷ Alexander Seyb, *Autonomie der Sportverbände* (2020), p. 79; Martin Franzen, in: Rudolf Streinz, *EUV/AEUV*, ed. 3 (2018), Art. 45 TFEU, para. 95.

private parties and is directly addressing states and authorities.⁴⁵⁸ However, there is no such limitation within the wording of the articles.⁴⁵⁹ The argument of the other view goes into the void, as it has no real connection to the articles concerned.

Another argument is that the reasons for possible justification within the fundamental freedoms are specified for the application to Member States or authorities and not - unlike Art. 101 (3) TFEU - formulated to be applicable to undertakings.⁴⁶⁰ But with this view it is overlooked that the performance of fundamental rights like the freedom of action belongs to the understanding of public security which is also grounded in Art. 2 TEU.⁴⁶¹ In *Bosman*, the *ECJ* decided that as long as there is an economic factor, the fundamental freedoms would be applicable to sports as well.⁴⁶² It seems that over time, the *ECJ* has wanted to make the fundamental freedoms applicable to sports.⁴⁶³ The FIFA is in a position to be able to regulate the football-concerning matter on its own and therefore is in a powerful position⁴⁶⁴ when it comes to the different players that act on the football market. As shown, the wording of the articles does not constitute a limitation to state or authority measures. Also, some argue that the rules on competition - which became more relevant during the past decades⁴⁶⁵ - exclude the applicability of the fundamental freedoms because they are more specific for the matter.⁴⁶⁶ However, there is no foundation within the TFEU for that because the regulatory matters are appealing different issues which are on the one side the opening of the market and on the other side the regulation of the market.⁴⁶⁷ The *ECJ* for a long period of time now, has concluded that the fundamental freedoms - at least Art. 45 TFEU and Art. 56 TFEU - are applicable to private regulations, especially in sports.⁴⁶⁸ This parallel view - in line with the *ECJ* - is also supported within this work.

⁴⁵⁸ Alexander Seyb, *Autonomie der Sportverbände* (2020), p. 77; Martin Franzen, in: Rudolf Streinz, *EUV/AEUV*, ed. 3 (2018), Art. 45 TFEU, para. 95.

⁴⁵⁹ *ECJ*, Case C-36/74, paras. 20 - 21.

⁴⁶⁰ Alexander Seyb, *Autonomie der Sportverbände* (2020), p. 79 - 80; Peter-Christian Müller-Graff, *Die horizontale Direktwirkung der Grundfreiheiten*, *EuR* (2014), p. 7.

⁴⁶¹ Peter-Christian Müller-Graff, *Die horizontale Direktwirkung der Grundfreiheiten*, *EuR* (2014), p. 12.

⁴⁶² *ECJ*, Case C-415/93, para. 73; Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 267; Stephen Weatherill, *Principles and practice in EU sports law* (2017), p. 85 - 91.

⁴⁶³ With this conclusion also Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 280.

⁴⁶⁴ Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 150; *ECJ*, Case C-36/74, para. 13.

⁴⁶⁵ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 281.

⁴⁶⁶ Peter-Christian Müller-Graff, *Die horizontale Direktwirkung der Grundfreiheiten*, *EuR* (2014), p. 13 with more sources.

⁴⁶⁷ Peter-Christian Müller-Graff, *Die horizontale Direktwirkung der Grundfreiheiten*, *EuR* (2014), p. 13; Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 145 - 146.

⁴⁶⁸ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 268; Opinion of AG Emiliou, *ECJ* Case C-209/23, para. 145; Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 145; Peter-Christian Müller-Graff, in: Rudolf Streinz, *EUV/AEUV*, ed. 3 (2018), Art. 56 AEUV, para. 67; *ECJ*, Case C-36/74, paras. 20 - 21; *ECJ*, Case C-519/04 P.

I. The FFAR under the Freedom of Movement for Workers, Art. 45 TFEU

The first issue arising in connection with Art. 45 TFEU is whether football agents can be understood as workers. Workers are individuals that over a definite period of time provide services for someone under their instruction and receive a remuneration for that.⁴⁶⁹

For the *ECJ*, recruitment agencies do also fall into the scope of Art. 45 TFEU, as they engage in the job applications of workers and therefore, enjoy the protection of the Freedom of Movement of Workers.⁴⁷⁰ It relies on the effectiveness of the enforcement of EU law, so, the *effet utile* principle.⁴⁷¹ The *ECJ* saw that intermediaries serve the function of helping the workers who are in the process of finding a place to work at.⁴⁷²

However, some voices reject this view.⁴⁷³ Intermediaries as well as employers do fall into the scope of Art. 56 TFEU and therefore enjoy their own securities by that provision.⁴⁷⁴ Therefore, there would be no need for an inclusion of these groups in the provision of Art. 45 TFEU. Most football agents are working on their own behalf and therefore, are not bound by any instructions of an employer. Even when employed, the issue would rather concern the individual that employed them and not the football agent, as they provide their agency services on request of players or clubs. However, Art. 45 TFEU from its understanding protects the right of workers within the European market to freely choose their working place and is complementary to the freedom of services which both together protect the functioning and effectiveness of the internal market.⁴⁷⁵ The fact pattern compared to private-sector recruitment agencies⁴⁷⁶ is also different, as football agents provide other services like every day managing or consultation on intellectual property rights, marketing contracts and other similar matters. To provide these services, football agents may have to travel to other Member States and the core of their profession does not concern working dependent for others. Therefore, even though the *ECJ* accepts intermediaries as protected by Art. 45 TFEU, the better arguments speak for a denial of that

⁴⁶⁹ Martin Franzen, in: Rudolf Streinz, EUV/AEUV, ed. 3 (2018), Art. 45 TFEU, para. 16.

⁴⁷⁰ ECJ, Case C-208/05, paras. 22 - 26.

⁴⁷¹ ECJ, Case C-208/05, para. 26; Sven Knauer, Das Recht der Spielervermittler im deutschen Berufsfußball (2022), p. 147.

⁴⁷² ECJ, Case C-208/05, para. 24.

⁴⁷³ Sven Knauer, Das Recht der Spielervermittler im deutschen Berufsfußball (2022), p. 148; Winfried Brechmann, in: Christian Callies and Matthias Ruffert (2022), EUV/AEUV, ed. 6, Art. 45 TFEU, para. 22.

⁴⁷⁴ Sven Knauer, Das Recht der Spielervermittler im deutschen Berufsfußball (2022), p. 148; Winfried Brechmann, in: Christian Callies and Matthias Ruffert (2022), EUV/AEUV, ed. 6, Art. 45 TFEU, para. 22.

⁴⁷⁵ Martin Franzen, in: Rudolf Streinz, EUV/AEUV, ed. 3 (2018), Art. 45 TFEU, para. 1.

⁴⁷⁶ cf ECJ, Case C-208/05, paras. 22 - 26.

protection. Also, the fact pattern here is slightly different which makes Art. 45 TFEU unapplicable for football agents because of Art. 56 TFEU.

II. The FFAR under the Freedom to Provide Services, Art. 56 TFEU

The FFAR may also violate the Freedom to Provide Services of Art. 56 TFEU.⁴⁷⁷ Art. 56 TFEU protects the comparative pricing advantages which is laid down in Art. 26 (2) TFEU and requires free movement of services within the internal market of the European Union.⁴⁷⁸

1. Personal scope of application

Addressees of Art. 56 TFEU are EU citizens that provide cross-border services to individuals in the internal market.⁴⁷⁹ The active freedom to provide services is engaged in here with the FFAR. Football agents that want to provide their services to player who could be EU citizens always have to comply with all rules of the FFAR and accept remuneration thresholds as well as other provisions that are regulated within the FFAR.

2. Material scope of application

Football agent services also would have to be services in the understanding of Art. 56 TFEU. Services are interpreted as any self-employed economic activity over a certain period of time that crosses borders and is not subject to other fundamental freedoms.⁴⁸⁰

Football agents begin working after acquiring clients that request certain services from them. These services may include the consultation on transfers, finding suitable clubs, management services regarding players' day-to-day lives, consultation on intellectual property rights, marketing agreements and similar other matters.

They mostly work on their own, as the market is dominated by agents that work in their own tempo and depending on the needs of the client. Even when employed, the proper performance of the work requires football agents to individually regard every request their client has and then based on the individual case and freely find solutions that suit the situation, as the FFAR itself shows when defining it 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'*⁴⁸¹ and *'any*

⁴⁷⁷ For the CAS, Art. 56 TFEU was not applicable for the simple reason that the complainant did not sufficiently reason such a breach CAS, Case 2023/O/9370 PROFAR vs. FIFA, para. 70.

⁴⁷⁸ Peter-Christian Müller-Graff, in: Rudolf Streinz, EUV/AEUV, ed. 3 (2018), Art. 56 AEUV, para. 7.

⁴⁷⁹ Peter-Christian Müller-Graff, in: Rudolf Streinz, EUV/AEUV, ed. 3 (2018), Art. 56 AEUV, para. 45.

⁴⁸⁰ Peter-Christian Müller-Graff, in: Rudolf Streinz, EUV/AEUV, ed. 3 (2018), Art. 56 AEUV, para. 15.

⁴⁸¹ cf FIFA, FFAR (2022), Definitions, *'Football Agent Services'*.

*services performed by a Football Agent for or on behalf of a Client other than Football Agent Services, including but not limited to, providing legal advice, financial planning, scouting, consultancy, management of image rights and negotiating commercial contracts.*⁴⁸² All of these matters require a free and flexible approach to the requested service and not a bound and certain procedure like in usual jobs. With finding such solutions the service usually ends which shows that it is only limited in time.⁴⁸³

The cross-border element is possible to be found positively in multiple occasions. Exemplary, there are cross-border transfers of players within the EU, players from other Member States requesting the services from agents living in other countries or also agents trying to find clients from other Member States.

As shown, the services football agents provide, are not subject to other fundamental freedoms of the TFEU. In conclusion, football agent services are services in the understanding of the Freedom to Provide services under Art. 56 TFEU.

3. Comprehensive prohibition of restriction

The Freedom to Provide Services prohibits discriminations of the service providers based on their nationality or habitual place of origin.⁴⁸⁴ It can either be based on the discrimination by nationality or by connecting factors that indirectly concern the nationality.⁴⁸⁵ Complementary, as other fundamental freedoms, the Freedom to Provide Services is also understood as a prohibition of restriction for all measures that are able to hinder cross-border performance of the regulated matter directly, indirectly, actually or potentially.⁴⁸⁶ Therefore, *‘Article 59 of the Treaty requires not only the elimination of all discrimination against a person providing services on the ground of his nationality but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, when it is liable to prohibit or otherwise impede the activities of a provider of services established in another Member State where he lawfully provides similar services.’*⁴⁸⁷ So, Art. 56 TFEU is not only a prohibition of discrimination, but also a prohibition of limitation of the

⁴⁸² cf FIFA, FFAR (2022), Definitions, ‘Other Services’.

⁴⁸³ Regarding the limitation by time also Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 148.

⁴⁸⁴ Peter-Christian Müller-Graff, in: Rudolf Streinz, EUV/AEUV, ed. 3 (2018), Art. 56 AEUV, para. 72; ECJ, Case C-154/89, para. 12; ECJ, Case C-33/74, para. 10.

⁴⁸⁵ Peter-Christian Müller-Graff, in: Rudolf Streinz, EUV/AEUV, ed. 3 (2018), Art. 56 AEUV, para. 73.

⁴⁸⁶ Winfried Kluth, in: Christian Callies and Matthias Ruffert, EUV/AEUV, ed. 6 (2022), Art. 57 TFEU, para. 59; ECJ, Case C-33/74, paras. 10 - 12.

⁴⁸⁷ ECJ, Case C-76/90, para. 12; Peter-Christian Müller-Graff, in: Rudolf Streinz, EUV/AEUV, ed. 3 (2018), Art. 56 AEUV, para. 86.

Freedom to Provide Services. It is enough when the restriction makes providing the service less attractive, or more challenging than compared to providing the service inside of a Member State.⁴⁸⁸ Whether there should be a limitation of this principle is still unclear following the *ECJ*.⁴⁸⁹ Even though some uncertainty regarding the use of the *Keck* principles - which would put the use of selling arrangements in line with the fundamental freedoms⁴⁹⁰ - still exists, at least for measures that completely hinder market access, these principles are not applicable.⁴⁹¹

The FFAR has to be seen in total for the determination here because of the interdependencies between the articles that also have been shown in the foregoing parts. The main issue here is the licensing obligation together with the several compliance rules, Art. 4 (1) (2), 16, 20 FFAR.⁴⁹² Within these regulations, the FIFA made it dependable on high hurdles whether a football agent can perform his or her profession. Together with the eligibility rules it shows that when not complying with only one of these rules, the profession is completely foreclosed from being free to operate in. As clubs and players would only contract with agents that do comply with these rules because of the several sanction options for the FIFA, which is the party that provides the possibilities of a transfer market, for all others the access to the market would be completely restricted.⁴⁹³ Therein lies a restriction of the freedom to provide services.

The rules on remuneration have to be seen in context as well. With the agent fee cap, the FIFA puts a barrier to the freedom of the requesters and offerors of agent services. However, this does not itself lead to a restriction of the freedom to provide services, as the sole possibility to provide a certain service is not limited by setting ceilings for the remuneration.⁴⁹⁴ But together with the sanction options by the FIFA in Art. 21 FFAR and in line with the risk that clubs and players would take by hiring such football agents, it is likely that those would not be hired anymore. So, in context of the whole regulation, even the remuneration states a restriction of the freedom to provide services.

⁴⁸⁸ ECJ, Case C-55/94, para. 37; ECJ, Case C-381/93, para. 17; Peter-Christian Müller-Graff, in: Rudolf Streinz, EUV/AEUV, ed. 3 (2018), Art. 56 AEUV, para. 87 for more sources.

⁴⁸⁹ Stephen Weatherill, After Keck, CML Rev. (1996), p. 906; Sven Knauer, Das Recht der Spielervermittler im deutschen Berufsfußball (2022), p. 153; Winfried Kluth, in: Christian Callies and Matthias Ruffert, EUV/AEUV, ed. 6 (2022), Art. 57 TFEU, para. 59; Peter-Christian Müller-Graff, in: Rudolf Streinz, EUV/AEUV, ed. 3 (2018), Art. 56 AEUV, para. 88 with more sources.

⁴⁹⁰ Stephen Weatherill, After Keck, CML Rev. (1996), p. 885 and 894.

⁴⁹¹ Peter-Christian Müller-Graff, in: Rudolf Streinz, EUV/AEUV, ed. 3 (2018), Art. 56 AEUV, para. 88; Winfried Kluth, in: Christian Callies and Matthias Ruffert, EUV/AEUV, ed. 6 (2022), Art. 57 TFEU, para. 63; Sven Knauer, Das Recht der Spielervermittler im deutschen Berufsfußball (2022), p. 153.

⁴⁹² See also Opinion of AG Emiliou, ECJ Case C-209/23, paras. 149 - 151; Sven Knauer, Das Recht der Spielervermittler im deutschen Berufsfußball (2022), p. 154.

⁴⁹³ Like this also Sven Knauer, Das Recht der Spielervermittler im deutschen Berufsfußball (2022), p. 154.

⁴⁹⁴ AG Emiliou saw this as well Opinion of AG Emiliou, ECJ Case C-209/23, para. 151.

The same goes for the several other regulations that were implemented to ensure the enforcement of the service fee cap like the Clearing House Rule, the rules on disclosure of information or the Client-Pays-Rule. They all themselves are not restricting the freedom to provide services as the performance of football agent services would still be possible in theory. However, they all serve the upper goal to implement limitation to the service.

4. Justification

The breaches found in the paragraphs of the foregoing, in order to be compliant with the freedom to provide services have to be justified.

a. Justifications by virtue of the autonomy of the associations

There are several possible ways to have such behaviour justified. *Knauer* sums them up and rightfully rejects them.⁴⁹⁵ The ordre-public measures are neither applicable to private organisations, nor should they be accepted for matters like football agent regulation. In these areas the FIFA regulates matters of third parties and consequently the scrutiny should be high.⁴⁹⁶

Especially a justification only on the grounds of Art. 165 TFEU which regulate the specifics of the sport should not be possible.⁴⁹⁷ Art. 165 TFEU only states the recognition of the specifics of the sports but from its wording alone is not written as a justification ground. In line with the interpretation of the *ECJ*⁴⁹⁸, the values regulated within Art. 165 TFEU can however be integrated into the justification grounds that the TFEU has incorporated for the freedom of services.⁴⁹⁹ This can be done similarly to the justification within the test for the applicability of the FFAR with EU competition law.

b. Justification under Art. 62 TFEU with Art. 52 (1) TFEU

The FFAR may be justified by the grounds laid down in the TFEU itself. The FFAR therefore would be required to serve either a public policy, public security or public health. None of these justification grounds are applicable in this case.⁵⁰⁰ Therefore, the FFAR is not justifiable by Art. 62 TFEU with Art. 52 (1) TFEU.

⁴⁹⁵ cf Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 156 - 159.

⁴⁹⁶ Also also Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 156 - 157.

⁴⁹⁷ cf Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 158 - 159, who saw a slight indication of such justification in some ECJ rulings; see also G.IV.

⁴⁹⁸ Daniel Zimmer, in: Ulrich Immenga and Ernst-Joachim Mestmäcker, *Wettbewerbsrecht*, vol. 1 (2025), Art. 101 TFEU, para. 180; ECJ, Case C-333/21, paras. 101 - 104.

⁴⁹⁹ Peter W. Heermann, *Verbandsautonomie im Sport* (2022), p. 561 - 562.

⁵⁰⁰ AG Emiliou indicates this as well Opinion of AG Emiliou, ECJ Case C-209/23, para. 154.

c. Justification for objective reasons

It is generally accepted to allow private parties to ground their justification on objective reasons, as long as they are accomplished without discrimination and in a proportionate manner.⁵⁰¹

Private parties are not at the same level as state actors and therefore, the reasons for a justification of a breach of the fundamental freedoms should not only be limited to these grounds.⁵⁰² While accepting these objective reasons, the private parties which are in breach of a fundamental freedom are still bound to the principle of proportionality.⁵⁰³

So, line with the *Meca-Medina*-Test for EU competition law, it is necessary to also allow the use of justification grounds that are interconnected with the sport of football. There would be no sense in accepting such an exemption within EU competition law and completely disregarding these same values within the justification when it comes to the fundamental freedoms. This serves individual justice⁵⁰⁴, as the matters of the sport can be considered for each case separately and the courts can assess the given cases better.

The assessment of the different goals and regulations have already been made at an earlier stage in this work. Similar thoughts and conclusions would be found at this point. Therefore, as the results of before, the FFAR is not justifiable considering the fundamental freedoms for the mentioned reasons. Here, only for the licensing obligation, it seems possible that under other circumstances and without a far-reaching compliance obligation and sanction options, a regulation that only states a license obligation would be possibly compatible with the freedom to provide services of the football agents. It firstly would be a less breaching measure and would therefore be more appropriate than the regulation as it is in the FFAR 2022 or 2025. Second, such regulation would also be less breaching and, as the intensity of the breach would be lower, proportionate. When assessing the FFAR, it has always to be kept in mind, that the FIFA with the FFAR regulated a matter of third parties. Even though, as stated before, the FIFA does have the possibility to regulate such matter, it has to obey to the principle of proportionality even more. The reason is, that it regulates a non-associated group of professionals.

However, a regulation that would give some legal certainty to the players, without limiting their options in hiring football agents, is in favour of that goal. Like the *GC* found in *Piau*, such

⁵⁰¹ cf ECJ, Case C-281/98, para. 42; Ulrich Forsthoff and Jörg Eisendle, in: Eberhard Grabitz and Meinhard Hilf and Martin Nettesheim, *Das Recht der EU*, vol. 1 ed. 84 (2025), Art. 45 TFEU, paras. 173 - 174.

⁵⁰² Ulrich Forsthoff and Jörg Eisendle, in: Eberhard Grabitz and Meinhard Hilf and Martin Nettesheim, *Das Recht der EU*, vol. 1 ed. 84 (2025), Art. 45 TFEU, para. 174.

⁵⁰³ Ulrich Forsthoff and Jörg Eisendle, in: Eberhard Grabitz and Meinhard Hilf and Martin Nettesheim, *Das Recht der EU*, vol. 1 ed. 84 (2025), Art. 45 TFEU, para. 177.

⁵⁰⁴ Also Sven Knauer, *Das Recht der Spielervermittler im deutschen Berufsfußball* (2022), p. 161.

regulation - under the circumstance that there is still no supranational regulation about that - a licensing obligation does give more quality to the work and can help in a general gain of trust for the profession of football agents. Therefore, the FFAR under its current form is not justifiable. Consequently, Art. 56 TFEU has to be found as breached.

G. Results

As shown, the FIFA with the FFAR did lawfully try to regulate a highly problematic field, as they have the competence to regulate at least some matters of the football agent services market.⁵⁰⁵ For this field it is to mention, that in the past decades the sport of football grew into an economic factor globally. This has to be recognized when assessing the different issues regarding the FFAR. A need for regulation cannot be denied and while assessing, it has to be seen that economically, at least for the sport of football, the classification of the sport being only a social field cannot be the same as a few decades ago. All of that counts, while strictly applying European law and having the different rules under narrow understanding of the different exemptions and justification grounds given within the European provisions. Especially when regulating third party areas like the market of football agent services, this application needs to be as strict as possible because of these third parties, which here are the football agents, not being part of the FIFA. The biggest problem, however, is that while regulating, the FIFA did not comply with neither European competition law, nor the fundamental freedoms of the European Union. By doing so, it is in breach of these provisions of EU law and the whole FFAR under its versions of 2022, as well as 2024, as there are only marginal changes, are not compatible with EU law. The reasons for that are multiple, as it has been shown in this work. On the one hand Art. 101 (1) TFEU and Art. 102 TFEU are breached and, even if considered as applicable, the FIFA would not prevail with any justification or exemption attempts. This assessment, as found, counts for every provision of the FFAR that has been assessed throughout this work. From the Service Fee Cap to the Clearing House Rule, European law was not complied with. The different grounds the FIFA mentioned in order to make use of the benefits of the *Meca-Medina*-Test did not withhold which shows that there were great misconceptions within the FIFA when it regulated the matter. On the other hand, the FIFA is also in breach of the Freedom to Provide Services and therein, a justification is not possible under the current form of regulation.

⁵⁰⁵ The *General Court* also saw this in its decision CFI (later GC), Case T-193/02.

However, the FIFA would be well-advised to change the FFAR to a less breaching regulation which could be considered as compatible with EU law. Some ideas, especially considering the license obligation, have been shown to possibly be able to be compatible with the legislation of the European Union. The need to have at least some regulation that provides legal certainty and is in favour of the players would be justifiable if done correctly.

As stated before, under the current form this is not the case. It seems clear that the FIFA had its own benefit in mind when it regulated the matter. Even though this is a strong allegation, under the interpretation of this work, the FIFA with most rules simply foreclosed the football agent market or made it harder for this market to develop freely or at least free from limiting interventions. With that, it would be made unjustifiably difficult to either act according to the needs of the market of football agents or, in the first place, enter and be able to work within that market for interested individuals. The FIFA, several times, showed its interest in protecting players and the integrity of the sport of football, but on the way only protected itself and, its position on the global football market in the first place.

Sports associations do have the opportunity and task to regulate their own matters, but only as long as they comply with European law. Handing out too much freedom could lead to the misuse of that freedom by private parties. As the sport of football grew into a global multi-billion-dollar market, and especially the transfer market being an important part of this business, the FIFA naturally and by development through time also followed financial goals. As there is a need of regulation, however, the law still needs to be complied with.

In the view of the author, an option for the regulation of the field of football agents would either go through a further professionalization or a state-given, harmonized framework. With that, all parties would know what the general obligations would be. Even though there are some national laws that apply to the various contractual possibilities, there is no clear and general solution as of now. The FIFA tried to path the way but with open eyes disregarded several European rules. The FIFA Football Agent Regulations, how they are regulated as of now, do not comply with neither European Competition Law, nor European Internal Market Law. Because of that, it should be considered as invalid and therefore, not applicable.

Bibliography

Academic literature

Brechmann W, *Commentary on Art. 45 TFEU*, in Christian Callies and Matthias Ruffert, 'EUV/AEUV - Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta' ed. 6 (C.H. Beck, 2022)

Breuer L, 'Das EU-Kartellrecht im Kraftfeld der Unionsziele - Die finale Programmierung der Unionstätigkeit durch die Querschnittsklauseln am Beispiel des Art. 101 AEUV', *Europäisches Wirtschaftsrecht* ed. 56 (Nomos 2012)

Ellger R, *Commentary on Art. 101 TFEU*, in Ulrich Immenga and Ernst-Joachim Mestmäcker, 'Wettbewerbsrecht', vol. 1 ed. 7 (C.H. Beck 2025)

Esposito V, 'Private Sportordnung und EU-Kartellrecht - Eine Untersuchung unter besonderer Berücksichtigung der „50+1“-Regel und der „Break-even“-Rule im Profi-Fußball', *Deutsches, Europäisches und Vergleichendes Wirtschaftsrecht* ed. 85 (Nomos 2014)

Forsthoff U and Eisendle D, *Commentary on Art. 45 TFEU*, in Eberhard Grabitz and Meinhard Hilf and Martin Nettesheim, 'Das Recht der Europäischen Union' vol. 1 ed. 85 (C.H. Beck 2025)

Franzen M, *Commentary in Art. 45 TFEU*, in Rudolf Streinz 'EUV/AEUV', Beck'sche Kurzkommentare vol. 57 ed. 3 (C.H. Beck 2018)

Fuchs A and Heinemann A, *Commentary on Art. 102 TFEU*, in Ulrich Immenga and Ernst-Joachim Mestmäcker, 'Wettbewerbsrecht', vol. 1 ed. 7 (C.H. Beck 2025)

Heermann P W, 'Verbandsautonomie im Sport - Bestimmung der rechtlichen Grenzen unter besonderer Berücksichtigung des europäischen Kartellrechts' ed. 1 (Neue Schriften zum Zivilrecht ed. 12, Nomos 2022)

Herresthal C, *Commentary on § 311 BGB [German Civil Code]*, in Beate Gsell, Wolfgang Krüger, Stephan Lorenz and Christoph Reymann, 'beck-online.GROSSKOMMENTAR zum Zivilrecht' book 2 (C.H. Beck 2025)

Jarass H D, 'Charta der Grundrechte der Europäischen Union unter Einbeziehung der sonstigen Grundrechtsregelungen des Primärrechts und der EMRK' ed. 4 (C.H. Beck 2021)

Kluth W, *Commentary on Art. 57 TFEU*, in Christian Callies and Matthias Ruffert, 'EUV/AEUV - Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta' ed. 6 (C.H. Beck, 2022)

Knauer S, 'Das Recht der Spielervermittlung im deutschen Berufsfußball', *Schriften zum Sportrecht* ed. 58 (Nomos 2022)

Müller-Graff P-C, *Commentary in Art. 56 TFEU*, in Rudolf Streinz 'EUV/AEUV', Beck'sche Kurzkommentare vol. 57 ed. 3 (C.H. Beck 2018)

Mürtz T, 'Meca-Medina-Test des EuGH - Berücksichtigung sportspezifischer außerwettbewerblicher Faktoren im europäischen Kartellrecht', *Schriften zum Sportrecht* ed. 63 (Nomos 2023)

Ruffert M, *Commentary on Art. 165 TFEU*, in Christian Callies and Matthias Ruffert, 'EUV/AEUV - Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta' ed. 6 (C.H. Beck, 2022)

Seyb A, 'Autonomie der Sportverbände - Eine Untersuchung zu wettbewerbsrechtlichen Grenzen der Sportverbandsautonomie insbesondere im Verhältnis gegenüber Dritten', *Geistiges Eigentum und Wettbewerb* ed. 157 (Mohr Siebeck 2020)

Stopper M and Bischoff D, in Martin Stopper and Gregor Lentze, 'Handbuch Fußball-Recht - Rechte - Vermarktung - Organisation', sec. 7, ed. 3 (Erich Schmidt Verlag 2025)

Stopper M and Karlin S, in Martin Stopper and Gregor Lentze, 'Handbuch Fußball-Recht - Rechte - Vermarktung - Organisation', sec. 22, ed. 3 (Erich Schmidt Verlag 2025)

Vieweg K, 'Normsetzung und -anwendung deutscher und internationaler Verbände - Eine rechtstatsächliche und rechtliche Untersuchung unter besonderer Berücksichtigung der Sportverbände', *Schriften zum Bürgerlichen Recht* ed. 132 (Duncker und Humboldt 1990)

Watson C and Graham C, 'European regulation of media rights', in James A.R. Nafziger and Stephen F. Ross, 'Handbook on International Sports Law', (Edward Elgar 2011)

Weatherill S, 'Principles and practice in EU sports law', (ed. 1 Oxford University Press 2017)

Zimmer D, *Commentary on Art. 101 TFEU*, in Ulrich Immenga and Ernst-Joachim Mestmäcker, 'Wettbewerbsrecht', vol. 1 ed. 7 (C.H. Beck 2025)

Academic journals

Basedow J, 'Freedom of Contract in the European Union', European Review of Private Law (ed. 6 2008), p. 901 - 923

Beck H and Prinz A and van der Burg T, 'The league system, competitive balance, and the future of European football', Managing Sport and Leisure (ed. 30 2025), p. 21 - 44, <<https://doi.org/10.1080/23750472.2022.2137056>> accessed 20 July 2025

Bien F and Becker B C, 'Regelungsautonomie der Sportverbände vs. Kartellverbot – Zum Anwendungsbereich der Meca-Medina-Ausnahme', Zeitschrift für Wettbewerbsrecht (ed. 4 2021), p. 565 - 600

Heermann P W, 'Vergütungsdeckel für Football Agents nach den FIFA Football Agent Regulations aus kartellrechtlicher Perspektive', Wettbewerb in Recht und Praxis (ed. 5 2023), p. 524 - 530

Heermann P W, 'Will the football agents' service fee cap survive the current legal attacks? - Regulation of football agents between the poles of autonomy of sports organisations and EU antitrust law', The International Sports Law Journal (ed. 24 2024), p. 188 - 203, <<https://doi.org/10.1007/s40318-024-00279-4>> accessed 20 July 2025

Heermann P W, 'Zum Anwendungsbereich des Meca-Medina-Tests auf wettbewerbsbeschränkende Statuten und Maßnahmen der Sportverbände', Wirtschaft und Wettbewerb (ed. 6 2022), p. 308 - 314

Klees A, 'Die so genannte "50+1"-Regel im deutschen Profifußball im Lichte des europäischen Wettbewerbsrechts', Europäische Zeitschrift für Wirtschaftsrecht (ed. 13 2008), p. 391 - 396

Müller-Graff P-C, 'Die horizontale Direktwirkung der Grundfreiheiten', Europarecht (ed. 1 2014), p. 3 - 29

Podszun R, 'Anwendbarkeit des Kartellrechts auf die Regulierung von Spielervermittlern durch Sportverbände', Neue Zeitschrift für Kartellrecht (ed. 3 2021), p. 138 - 146

Podszun R and Kirk A, 'FIFA's Football Agent Regulations and European Competition Law', Journal of Antitrust Enforcement (Vol. 00 2024), p. 1 - 26

Stopper M and Karlin S, 'Rechtlicher Status Quo der Regulierung von Spielervermittlung', Sport und Recht (ed. 3 2024), p. 169 - 174

Weatherill S, 'After Keck: Some Thoughts on How to Clarify the Clarification', *Common Market Law Review* (ed. 33 1996), p. 885 - 906

Reports and other sources

Poli R, Ravenel L and Besson R, 'Global economic analysis of the transfer market (2015-2024)', (CIES Football Observatory Monthly Report, nr. 97 2024), <<https://football-observatory.com/MonthlyReport97>> accessed 19 July 2025

Tedeschi G G, 'Inside the World of a Football Agent (ed. 1 Business Expert Press 2021)

Websites and blogs

Auberg E, 'From football agents to intermediaries' (*EA sports law News*, 18 February 2020) <<https://www.easportslaw.com/news/from-football-agents-to-intermediaries#:~:text=The%20first%20FIFA%20agent%20regulations,completion%20of%20a%20written%20examination>>, accessed 19 July 2025

FIFA, 'Organisation' (*InsideFIFA web page - Organisation*, 2025) <<https://www.fifaoundation.org/organisation>> accessed 19 July 2025

FIFA, 'FIFA Council approves unprecedented prize money pot for the FIFA Club World Cup 2025™ and takes key decisions on women's competitions' (*InsideFIFA Media Release*, 05 March 2025 <<https://inside.fifa.com/organisation/fifa-council/media-releases/council-approves-unprecedented-prize-money-pot-club-world-cup-key-decisions-womens-competitions>> accessed 19 July 2025

FIFA, (*InsideFIFA web page - Reportws & Documents*, 2025) <<https://inside.fifa.com/official-documents?filterId=SLTc69e07f1-f1cc-4f42-8ad3-b1bfa096a3f8&selectedSubIds=1Ik5980rsO4CRiqjqrIXUS&selectedSubIds=5C9pqQMUA8iGOzIL5R3JHk>> accessed 19 July 2025

Lent K M, Dreyer A J and Batchelor B, 'EU rulings reflect increased antitrust scrutiny of sports governance in parallel with the US' (*Reuters Commentary - Legal Industry*, 16 December 2024) <<https://www.reuters.com/legal/legalindustry/eu-rulings-reflect-increased-antitrust-scrutiny-sports-governance-parallel-with-2024-12-16/>> accessed 19 July 2025

Lichtenberg T, 'International Skating Union, European Super League and Royal Antwerp: The beautiful game and skating before the CJEU' (*Kluwer Competition Law Blog*, 08 January 2024) <<https://competitionlawblog.kluwercompetitionlaw.com/2024/01/08/international-skating-union-european-super-league-and-royal-antwerp-the-beautiful-game-and-skating-before-the-cjeu/#comments>> accessed 19 July 2025

The Football Forum, 'Media release 25 July 2023' (*The Football Forum Media Releases*, 25 July 2023) <<https://tfforum.org/media-release-25-july-2023/>> accessed 19 July

Orth M E, 'Luxemburg prüft Spielervermittler-Regularien: Nicht jeder Schritt ist ein Fortschritt' (*beck-aktuell Heute im Recht*, 19 May 2025) <<https://rsw.beck.de/aktuell/daily/meldung/detail/eugh-c209-23-spielervermittler-regulieren-fifa-dfb-wettbewerbsbeschraenkung>> accessed 19 July 2025

News articles

Deutsche Presse-Agentur Nordrhein-Westfalen (dpa), 'Fall Potocnik: Cas bestätigt Transferbann gegen 1. FC Köln' (*Die Zeit directly cited from the dpa Newskanal*, 21 December 2023) <<https://www.zeit.de/news/2023-12/21/fall-potocnik-cas-bestaetigt-transferbann-gegen-1-fc-koeln>>, accessed 19 July 2025.

Hofmann B, 'Millionenschwerer Fall: Klage gegen die FIFA wandert vor den EuGH' (*kicker News*, 11 April 2023) <<https://www.kicker.at/millionenschwerer-fall-klage-gegen-die-fifa-wandert-vor-den-eugh-946308/artikel>> accessed 19 July 2025

Sky Sports, 'Newcastle takeover completed: Saudi-led consortium end Mike Ashley's 14-year ownership' (*Sky Sport News*, 08 October 2021) <<https://www.skysports.com/football/news/11678/12427983/newcastle-takeover-completed-saudi-led-consortium-end-mike-ashleys-14-year-ownership>> accessed 19 July 2025.

Sinnot J, 'Qatari takeover heralds new dawn for Paris Saint-Germain' (*BBC Football*, 03 August 2011) <<https://www.bbc.com/sport/football/14393012>>, accessed 19 July 2025.

Mixa C, 'Nächste Niederlage für die FIFA vor Gericht' (*Sportschau Fußball*, 13 March 2024) <<https://www.sportschau.de/fussball/naechste-niederlage-fuer-die-fifa-vor-gericht,ffar-spielervermittler-reglement-klage-100.html>> accessed 19 July 2025