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Stretching the pitch: the *ROGON* judgment and the bounds of competition law

What are the limits of a sporting body's ability to regulate economic activity off-the-pitch under EU competition law? That was one of the questions facing the European Court of Justice (CJ) in the recent case of *ROGON*, which concerned regulations adopted by the German Football Association (DFB) affecting players' agents.

The CJ's answer, together with its ruling in the *Tondela* case earlier this year (reported in our previous briefing) and its subsequent ruling in *RRC Sports*, suggests that sports governing bodies may have more room to manoeuvre than appeared to be the case following the CJ's landmark *European Super League* (ESL) judgment in 2023 and decisions in other forums.

The "ancillary restraints" doctrine

As far back as the 1970s, the CJ has been called upon to determine the limits for the application of EU law in sport. The CJ has consistently held that, insofar as it constitutes an economic activity, sporting activity is susceptible to EU law, including competition law,[1] save for a very limited set of rules of a purely sporting nature.

That simple distinction has proven extremely difficult to apply in practice, particularly with the growing professionalisation and commercialisation of sport. One area of tension has been the application of a competition law doctrine known as the *Wouters* or *Meca-Medina* doctrine, according to which certain professional or regulatory rules which restrict commercial freedom may nevertheless escape the prohibition on anti-competitive agreements under EU law (Article 101 TFEU) where they are necessary and proportionate to the pursuit of a legitimate public interest objective. This margin of discretion for regulatory bodies forms part of the so-called "ancillary restraints" doctrine.

Judicial treatment of anti-doping rules provides an example of this doctrine at work: doping rules restrict what professional athletes can do (i.e. they restrict economic activity), but because they seek to protect the fairness and integrity of sporting competition itself, and do so in a necessary and proportionate way, the CJ has held that they fall outside Article 101 entirely.[2] A practical question in recent years is how far that doctrine extends – and whether it can apply to economic activities that are adjacent to, but separate from, the sporting activity in question.

The *ESL* judgment: limiting the ancillary restraints doctrine

The CJ's judgment in *ESL* provided some clarity on the application of the ancillary restraints doctrine. In that case, the CJ held that FIFA/UEFA rules making any new interclub football competition subject to their prior approval, and banning clubs and players from playing in those competitions, could constitute "by object" restrictions under Article 101 and abuses of a dominant position (under Article 102 TFEU), unless the rules are subject to a transparent, objective, non-discriminatory and proportionate framework (see our previous briefing).

Crucially, in *ESL* the CJ held that once a rule is categorised as restricting competition "by object", the ancillary restraints doctrine is inapplicable. The sporting body's only defence then is to show that its conduct should be individually exempt under Article 101(3) or is objectively justifiable under Article 102, both of which represent a high bar.

Following *ESL*, therefore, it seemed the CJ was taking a strict view on the application of the ancillary restraints doctrine to rules applied by sporting bodies on commercial matters that are "adjacent" to the sport they regulate, given the risk that such rules would be considered restrictive "by object".

ROGON: expanding regulatory discretion

The *ROGON* case concerned the DFB's adoption of regulations on players' agents which amongst other things:

(a) prohibited agents from sharing in future inward transfer proceeds;

(b) prohibited commissions for transfers of minors;

[1] *ESL*, paragraphs 83-85.

[2] *Meca-Medina*, paragraphs 43-45.

(c) imposed mandatory registration;

(d) required submission to the DFB's jurisdiction, and to various statutes, regulations and rules of FIFA, the DFB and the German football league;

(e) imposed disclosure obligations in respect of fees paid and payments made to agents; and

(f) introduced a penalties regime in the event of infringements.

These rules are addressed to clubs and players but directly affect agents' ability to operate – even though agents stand outside the DFB's own membership. Two companies involved in providing consultancy and representation services to football players, and the managing director of one of those firms, challenged the rules as being contrary to Article 101. The Bundesgerichtshof (Germany's Federal Court of Justice) asked the CJ whether the rules could nevertheless benefit from the ancillary restraints doctrine.

On 9 July 2026, the CJ confirmed that the ancillary restraints exception may, in principle, apply to regulations adopted by a sporting body which, while addressed to the organisation's members, have the effect of regulating the services of third parties, such as players' agents. In so doing, the CJ signalled that – given the context in which sports governing bodies make their rules – many would not constitute "by object" restrictions under Article 101.

The CJ's rationale relied on what it described as the sporting "ecosystem": in professional football, there are multiple economic operators (such as clubs, national federations, players and agents) which must interact and, to some degree, cooperate in order to ensure the viability of the sector and its attractiveness to supporters and spectators. Because a sports governing body may need to adopt regulations capable of having implications across this entire ecosystem in order to pursue legitimate objectives, the ancillary restraints exception therefore cannot be confined to rules affecting members alone. The CJ also clarified that, where a set of provisions in sporting regulations pursue a distinct objective or produce a distinct effect, those provisions should be assessed against the criteria of the ancillary restraints doctrine as a whole.

It will now be for the referring German court to assess whether the DFB's rules satisfy the criteria for application of the ancillary restraints doctrine. But the CJ's judgment nonetheless signals a more generous starting point than might have been expected given the court's stance in *ESL*.

Diverging decisions on agents' fees regulations

This is not the first time rules regulating agents' fees have been under the spotlight. In 2023, FIFA's football agent regulations (FFAR) were unsuccessfully challenged on competition law grounds before the Court of Arbitration for Sport.[3] But later in 2023, in *CAA Base*, an English tribunal found in favour of the claimant agents.[4]

The CJ's decision in *ROGON* can be contrasted with *CAA Base*. In that case, the tribunal held that the relevant rules fell entirely outside the ancillary restraints exception: they were "purely economic" pricing measures with no genuine connection to sporting fairness on the pitch and in any event amounted to a "by object" price-fixing restriction. *CAA Base* is an (English) arbitral award binding only as between the parties – but the development in *ROGON* three years later suggests that (at least) the CJ may be softening what had appeared to be a narrow approach to the ancillary restraints exception post-*ESL*.

Last week's judgment in *RRC Sports* generally appears to confirm the more permissive approach in *ROGON*. In *RRC Sports*, the CJ was of the view that, in most cases, the FFAR rules in question did not restrict competition "by object", leaving open the possibility for the referring national court to find they are justified under the ancillary restraints doctrine. The CJ also provided some commentary on the factors that could comprise a "legitimate interest" for such purposes, which included: (i) protecting clients against unethical conduct by agents; and (ii) protecting inexperienced or poorly informed players.

Breathing room post-*ESL*

The renewed practical relevance of the ancillary restraints doctrine in *ROGON* (reinforced by the subsequent decision in *RRC Sports*) serves as a reminder that well-designed, proportionate rules that genuinely serve the sporting ecosystem are not automatically prohibited by competition law, even where they impact third parties.

However, these cases should not be seen as a blank cheque for sports governing bodies. Whilst these judgments signal more scope to argue against a characterisation of sporting rules as restrictive "by object", the conditions for applying the ancillary restraints doctrine must still be present, central to which is the existence of a legitimate public interest objective, and rules that are necessary and proportionate to that objective. When adopting new rules, sporting bodies should ensure that they clearly and consistently document the objective that

[3] CAS 2023/O/9370 *Professional Football Agents Association* v *FIFA* (2023).

[4] *CAA Base Limited and others* v *the Football Association Limited* (Rule K Arbitration) (2023).

the new rule seeks to promote, and why other, potentially less restrictive, measures would not have been effective.

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