

## [ECJ Super League: Judges corner EC on its Super League stance as hearing ends](#) |

- Judge Wahl asks why sports market should be special
  - EC insists stance in Super League in line with ISU decision
  - Advocate General to deliver non-binding opinion on 15 December
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Several judges of the European Court of Justice (ECJ) today (12 July) questioned the European Commission (EC) on its position regarding the dispute between the **Super League** football project and European soccer body **UEFA** as the oral hearing before the EU top court ended.

The ECJ was hearing a case stemming from a [request](#) for guidance on competition rules sent by a Madrid commercial court after the European Super League football project sued associations **FIFA** and **UEFA** alleging they illegally prohibited their members from participating in alternative competitions.

The hearing before a 15-judge Grand Chamber [started](#) on 11 July afternoon and saw the intervention of 21 European countries, all opposing the creation of the Super League and defending a “European sports model”.

In the morning session of 12 July, the EC provided comments on the case during its intervention, which was [followed](#) by several questions from judge-rapporteur Jan Passer to the parties.

In the afternoon session, Advocate General (AG) Athanasios Rantos asked the EC about its position regarding Article 165 TFEU, which entered into force in 2009, and was frequently cited by member states in their interventions. “We have heard very little about it from the EC,” the AG noted.

Rantos specifically quizzed on the paragraph of the Article saying that “The Union 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”.

EC agent Sergio Baches Opi replied that the provision from the Treaty broadens the powers of the Union in sports issues and identifies important principles already identified by the EU top court’s case law. He added that it is a “source of inspiration” to determine legitimate objectives to justify restrictions of competition and fundamental freedoms.

Judge Nils Wahl stated that “the fact remains” that the ECJ must reply to the questions asked by the Madrid court and those questions do not really concern the Super League project, but whether FIFA and UEFA statutes violate Article 101 TFEU, which prohibits anticompetitive agreements.

However, Justice Wahl said that the EC, in its submissions to the court, said that FIFA and UEFA statutes constituted a “by object” restriction of Article 101 TFEU. Unlike “by effect” restrictions, a restriction of competition by object is considered so harmful for free competition that it is considered unnecessary to assess their effects.

According to Wahl, in such a situation the only justification for accepting such restriction of competition is paragraph three of Article 101 TFEU, which provides for exceptions to the prohibition of anticompetitive agreements. But instead, Wahl said, the EC is referring to sports values and says that UEFA restrictions are necessary and important, the judge added.

The judge considered that the EC is therefore introducing a “different category of exemptions” and asked the EC for clarification on its position.

EC agent Sergio Baches Opi replied that the agency considers that several elements of UEFA’s pre-authorisation system seem to be a by object restriction and that there does not seem to be a link between the pre-authorisation system and the objectives it pursues. He added that UEFA has great discretion to allow access to the market for third parties.

Accepting that UEFA’s conduct ‘could’ constitute a restriction, the EC analysed whether it would be justified by legitimate objectives and whether these measures would be necessary to pursue those objectives, Baches Opi noted.

But Wahl insisted that the EC position was unclear, and asked whether the EC believes that Article 165 constitutes a new exemption for sports cases.

The EC agent replied that it identifies some sports objectives, such as the protection of sports merits and equal opportunity, while the EC 2007 White Paper on Sport recognises sports’ specific characteristics such as a pyramid structure of competitions and organised solidarity mechanisms between different competing levels.

However, judge Wahl said that an agreement between operators to exclude a competitor in any other market would be considered a “boycott” and wondered why adding the element of sport to the equation would change anything.

Additionally, judge-rapporteur Jan Passer asked the EC to explain in its final pleadings the difference between the Super League case and its decision in the **International Skating Union (ISU)** case, in which the EU agency [concluded](#) that sanctions imposed by ISU on skaters that participated in non-authorized competitions breached competition law.

According to agent Carlos Urraca Caviedes, the EC position on the Super League is “perfectly in line” with the ISU case, because in both cases the EC defended authorisation criteria from sports associations based on objective, transparent and non-discriminatory criteria.

The point is not whether one federation’s system is preferable to another, but whether UEFA’s authorisation rules are compatible with ECJ case law, which required guarantees against arbitrariness and unfair restrictions, Urraca Caviedes noted.

AG Rantos told the court that he will deliver his non-binding opinion with advice for the ECJ on this case on 15 December, as in the parallel sports case involving ISU, whose oral hearing [took](#) place immediately before Super League’s.

The chamber was chaired by ECJ president Koen Lenaerts, while Jan Passer acted as judge-rapporteur. The remaining judges were the court’s vice-president Lars Bay Larsen as well as Alexander Arabadjiev, Jean-Claude Bonichot, Miroslav Gavalec, Niilo Jääskinen, Irmantas Jarukaitis, Küllike Jürimäe, Andreas Kumin, Alexandra Prechal, Lucia Serena Rossi, Marek Safjan, Octavia Spineanu-Matei and Nils Wahl.

The case is *C-333/21 European Superleague Company before the European Court of Justice*.

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