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TRIBUNAL DE JUSTICIA DE LA UNIÓN EUROPEA  
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EUROOPA LIIDU KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ  
COURT OF JUSTICE OF THE EUROPEAN UNION  
COUR DE JUSTICE DE L'UNION EUROPÉENNE  
CÚIRT BHREITHIÚNAIS AN AONTAIS EORPAIGH  
SUD EUROPSKE UNIE  
CORTE DI GIUSTIZIA DELL'UNIONE EUROPEA



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EIROPAS SAVIENĪBAS TIESA  
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IL-QORTI TAL-ĠUSTIZZJA TAL-UNJONI EWROPEA  
HOF VAN JUSTITIE VAN DE EUROPESE UNIE  
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ  
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA  
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE  
SÚDNY DVOR EURÓPSKEJ ÚNIE  
SODIŠČE EVROPSKE UNIJE  
EUROOPAN UNIONIN TUOMIOISTUIN  
EUROPEISKA UNIONENS DOMSTOL

## JUDGMENT OF THE COURT (Third Chamber)

18 July 2013 \*

(Appeals – Television broadcasting – Directive 89/552/EEC – Article 3a – Measures taken by the United Kingdom concerning events of major importance for the society of that Member State – European Football Championship – Decision declaring the measures compatible with European Union law – Statement of reasons – Articles 49 EC and 86 EC – Right to property)

In Case C-201/11 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 27 April 2011,

**Union des associations européennes de football (UEFA)**, represented by D. Anderson QC, and D. Piccinin, Barrister, instructed by B. Keane and T. McQuail, Solicitors,

appellant,

the other parties to the proceedings being:

**European Commission**, represented by E. Montaguti, N. Yerrell and A. Dawes, acting as Agents, and M. Gray, Barrister, with an address for service in Luxembourg,

defendant at first instance,

**Kingdom of Belgium**,

**United Kingdom of Great Britain and Northern Ireland**, represented by L. Seeboruth and J. Beeko, acting as Agents, and T. de la Mare, Barrister,

interveners at first instance,

THE COURT (Third Chamber),

\* Language of the case: English.

ECR

EN

composed of R. Silva de Lapuerta, acting as President of the Third Chamber, K. Lenaerts, E. Juhász, J. Malenovský (Rapporteur) and D. Šváby, Judges,

Advocate General: N. Jääskinen,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 13 September 2012,

after hearing the Opinion of the Advocate General at the sitting on 12 December 2012,

gives the following

### **Judgment**

- 1 By its appeal, the Union des associations européennes de football (UEFA) requests the Court of Justice to set aside the judgment of the General Court of the European Union in Case T-55/08 *UEFA v Commission* [2011] ECR II-271 ('the judgment under appeal'), by which the General Court dismissed its application for annulment in part of Commission Decision 2007/730/EC of 16 October 2007 on the compatibility with Community law of measures taken by the United Kingdom pursuant to Article 3a(1) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 2007 L 295, p. 12; 'the contested decision').

### **Legal context**

- 2 Article 3a of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23), as inserted by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Directive 89/552/EEC (OJ 1997 L 202, p. 60) ('Directive 89/552'), provided:

'1. Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear

and transparent manner in due and effective time. In so doing the Member State concerned shall also determine whether these events should be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of three months from the notification, the Commission shall verify that such measures are compatible with Community law and communicate them to the other Member States. It shall seek the opinion of the Committee established pursuant to Article 23a. It shall forthwith publish the measures taken in the *Official Journal of the European Communities* and at least once a year the consolidated list of the measures taken by Member States.

3. Member States shall ensure, by appropriate means, within the framework of their legislation that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters following the date of publication of this Directive in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State in accordance with the preceding paragraphs via whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.’

3 Recitals 18 to 22 in the preamble to Directive 97/36 were worded as follows:

‘(18) Whereas it is essential that Member States should be able to take measures to protect the right to information and to ensure wide access by the public to television coverage of national or non-national events of major importance for society, such as the Olympic games, the football World Cup and European football championship [“the EURO”]; whereas to this end Member States retain the right to take measures compatible with Community law aimed at regulating the exercise by broadcasters under their jurisdiction of exclusive broadcasting rights to such events;

(19) Whereas it is necessary to make arrangements within a Community framework, in order to avoid potential legal uncertainty and market distortions and to reconcile free circulation of television services with the need to prevent the possibility of circumvention of national measures protecting a legitimate general interest;

(20) Whereas, in particular, it is appropriate to lay down in this Directive provisions concerning the exercise by broadcasters of exclusive broadcasting rights that they may have purchased to events considered to be of major

importance for society in a Member State other than that having jurisdiction over the broadcasters, ...

- (21) Whereas events of major importance for society should, for the purposes of this Directive, meet certain criteria, that is to say be outstanding events which are of interest to the general public in the European Union or in a given Member State or in an important component part of a given Member State and are organised in advance by an event organiser who is legally entitled to sell the rights pertaining to that event;
- (22) Whereas for the purposes of this Directive, “free television” means broadcasting on a channel, either public or commercial, of programmes which are accessible to the public without payment in addition to the modes of funding of broadcasting that are widely prevailing in each Member State (such as licence fee and/or the basic tier subscription fee to a cable network).’

### **Background to the dispute**

- 4 The background to the dispute was set out by the General Court in paragraphs 5 to 15 of the judgment under appeal, as follows:
- ‘5 [UEFA] is the governing body for European football. Its core mission is to safeguard the development of European football and it organises a number of international football competitions, including the final stage of the European Football Championship ([“final stage of the EURO”]), in which 16 national teams play each other once every four years in a total of 31 matches. It is the revenues generated by the sale of the commercial rights associated with those competitions that enable [UEFA] to promote the development of European football. UEFA states that 64% of the revenue generated by the sale of the commercial rights relating to [the final stage of] the EURO come from the sale of television broadcasting rights for the matches.
- 6 By decision of 25 June 1998, the Secretary of State for Culture, Media and Sports of the United Kingdom of Great Britain and Northern Ireland (“the Secretary of State”), acting pursuant to Part IV of the Broadcasting Act 1996, drew up a list of events of major importance for United Kingdom society, including [the final stage of] the EURO.
- 7 The adoption of that list was preceded by a consultation of 42 different bodies launched by the Secretary of State in July 1997 concerning the criteria in the light of which the importance of various events for United Kingdom society was to be assessed. That procedure led to the adoption of a list of criteria contained in a document from the Ministry of Culture, Media and Sports dated November 1997, which the Secretary of State was to apply

for the purpose of drawing up a list of events of major importance for United Kingdom society. According to that document, an event is particularly liable to be included in the list when it has a special national resonance, not simply a significance to those who ordinarily follow the sport concerned. According to that same document, in order to qualify as such, a national or international sport must be pre-eminent or involve the national team or athletes from the United Kingdom. Of the events which fulfil those criteria, those which command large television audiences or which are traditionally broadcast live on free television channels stand a greater chance of being included in the list. For the purposes of the assessment, the Secretary of State also takes into account other factors relating to the consequences for the sport concerned, such as the suitability of live broadcasting of an event in its entirety, the impact on income for the sport in question, the consequences for the broadcasting market and whether there are arrangements to ensure that access to the event is available by means of delayed coverage or radio commentary.

- 8 Subsequently, the Secretary of State launched a consultation procedure pursuant to section 97 of the Broadcasting Act 1996 concerning which specific events to include in the list. During that consultation procedure, the Secretary of State sought the views of a number of bodies and interested parties and of holders of television broadcasting rights, such as UEFA. Moreover, the Advisory Group on listed events, established by the Secretary of State, delivered its opinion on the events to be included, proposing with respect to [the final stage of] the EURO the inclusion of the final, the semi-finals and matches involving the national teams of the United Kingdom.
- 9 Under section 98 of the Broadcasting Act 1996, as amended by the Television Broadcasting Regulations 2000, broadcasters are divided into two categories. The first category includes broadcasters providing a free service which, in addition, can be received by at least 95% of the population of the United Kingdom [“broadcasters operating free television channels”]. The second category includes broadcasters which do not fulfil those conditions [and covers, inter alia, broadcasters operating pay television channels].
- 10 Moreover, under section 101 of the Broadcasting Act 1996, as amended by the Television Broadcasting Regulations 2000, a television programme provider coming within one of those categories can broadcast live all or part of an event included in the list only if a provider coming within the other category can broadcast live, in whole or in part, the same event in the same, or essentially the same, region. If that condition is not fulfilled, a broadcaster wishing to broadcast all or part of the event in question must obtain prior authorisation from the Office of Communications.

- 11 According to section 3 of the Code on Sports and Other Listed and Designated Events, as in force in 2000, the events included in the list of events of major importance for society are divided into two groups. “Group A” includes events which cannot be covered live on an exclusive basis if certain criteria are not met. “Group B” includes events which may be broadcast live on an exclusive basis only if arrangements have been made to ensure deferred broadcast.
- 12 Under section 13 of the Code on Sports and Other Listed and Designated Events, an authorisation may be granted by the Office of Communications for listed “Group A” events, which includes [the final stage of] the EURO, where the relevant broadcasting rights have been openly offered on equitable and reasonable terms to all television broadcasting bodies and no body in the other category has expressed its interest in acquiring them.
- 13 By letter of 25 September 1998, the United Kingdom provided the Commission of the European Communities with the list of events drawn up by the Secretary of State, as required by Article 3a(2) of Directive 89/552. Following an exchange of correspondence between the United Kingdom and the Commission and a fresh notification of measures on 5 May 2000, the Director-General of the Directorate-General (DG) Education and Culture informed the United Kingdom, by letter of 28 July 2000, that the Commission would not raise objections to the United Kingdom measures, which would, accordingly, be published shortly thereafter in the *Official Journal of the European Communities*.
- 14 By judgment of 15 December 2005 in Case T-33/01 *Infront WM v Commission* [2005] ECR II-5897, [the General] Court annulled the decision contained in the letter of 28 July 2000, on the ground that it constituted a formal decision within the meaning of Article 249 EC that the College of Commissioners itself ought to have adopted [...].
- 15 Following [that judgment], the Commission adopted [the contested decision].’

**The contested decision**

- 5 Article 1 of the contested decision provides that:

‘The measures taken pursuant to Article 3a(1) of Directive [89/552] and notified by the United Kingdom to the Commission on 5 May 2000, as published in the *Official Journal of the European Communities* C-328 of 18 November 2000, are compatible with Community law.’

- 6 In accordance with Article 3 thereof, the decision ‘shall apply as from 18 November 2000’.

7 Recitals 3 to 6, 18 to 21 and 24 and 25 of the contested decision are worded as follows:

- ‘(3) In its examination, the Commission took into consideration the available data on the UK media landscape.
- (4) The list of events of major importance for society included in the UK measures was drawn up in a clear and transparent manner and a far-reaching consultation had been launched in the [United Kingdom].
- (5) The Commission was satisfied that the events listed in the UK measures met at least two of the following criteria considered to be reliable indicators of the importance of events for society: (i) a special general resonance within the Member State, and not simply a significance to those who ordinarily follow the sport or activity concerned; (ii) a generally recognised, distinct cultural importance for the population in the Member State, in particular as a catalyst of cultural identity; (iii) involvement of the national team in the event concerned in the context of a competition or tournament of international importance; and (iv) the fact that the event has traditionally been broadcast on free television and has commanded large television audiences.
- (6) A significant number of the events listed in the UK measures, including the summer and winter Olympic Games as well as the World Cup Finals and [the final stages of] the EURO, fall within the category of events traditionally considered to be of major importance for society, as referred to explicitly in recital 18 of Directive 97/36 ... These events have a special general resonance in the [United Kingdom] in their entirety, as they are particularly popular with the general public (irrespective of the nationality of the participants), not just with those who usually follow sports events.
- ...
- (18) The listed events, including those to be considered as a whole and not as a series of individual events, have traditionally been broadcast on free television and have commanded large television audiences. Where, exceptionally, this has not been the case (the listed matches of the Cricket World Cup), the listing is limited (as it includes the final, semi-finals and matches involving national teams) and requires only adequate secondary coverage, and, in any case, fulfils two of the criteria considered to be reliable indicators of the importance of events for society (recital 13).
- (19) The UK measures appear proportionate so as to justify a derogation from the fundamental EC Treaty freedom to provide services on the basis of an overriding reason of public interest, [which is to ensure wide public access to broadcasts of events of major importance for society].

- (20) The UK measures are compatible with [European Community] competition rules in that the definition of qualified broadcasters for the broadcasting of listed events is based on objective criteria that allow actual and potential competition for the acquisition of the rights to broadcast these events. In addition, the number of listed events is not disproportionate so as to distort competition on the downstream free television and pay television markets.
- (21) The proportionality of the UK measures is reinforced by the fact that a number of the events listed require adequate secondary coverage only.
- ...
- (24) It follows from the judgment of the [General] Court in [*Infront WM v Commission*], that the declaration that measures taken pursuant to Article 3a(1) of Directive 89/552 ... are compatible with Community law constitutes a decision, which must therefore be adopted by the Commission. Accordingly, it is necessary to declare by this Decision that the measures notified by the UK are compatible with Community law. The measures, as set out in the Annex to this Decision, should be published in the *Official Journal of the European Union* in accordance with Article 3a(2) of Directive 89/552 ...
- (25) In order to guarantee legal certainty, this Decision should apply as from the date of the first publication in the *Official Journal of the European Union* of the measures notified by the [United Kingdom].’

### **The procedure before the General Court and the judgment under appeal**

- 8 In support of its application for annulment in part of the contested decision, UEFA put forward eight pleas in law before the General Court. By the judgment under appeal, the General Court rejected each of those pleas and dismissed the action in its entirety. It also rejected a request for measures of organisation of procedure, by which UEFA requested the General Court to invite the Commission to produce a number of documents.

### **The appeal**

- 9 In the context of its appeal, UEFA relies, in essence, on seven grounds of appeal alleging (i) errors of law and assessment regarding the requirement of clarity and transparency, (ii) errors of law and assessment in relation to the characterisation of the final stage of the EURO as an event of major importance for United Kingdom society, (iii) errors of law in the application of Treaty provisions relating to public undertakings and undertakings to which Member States grant special or exclusive rights, (iv) errors of law in the application of other Treaty provisions relating to competition, (v) errors of law in the application of the Treaty provisions



concerning the freedom to provide services and the principle of proportionality, (vi) errors of law in the application of the right to property, and (vii) errors of law in relation to the grounds for the contested decision.

*Preliminary observations*

- 10 First of all, the Court of Justice notes that, by Article 3a(1) of Directive 89/552, the European Union legislature authorised the Member States to designate certain events which they consider to be of major importance for society in the Member State concerned ('event of major importance') and expressly authorised, in accordance with the discretion it is granted by the Treaty, obstacles to the freedom to provide services, the freedom of establishment, the freedom of competition and the right to property, which are an unavoidable consequence of such a designation. As is apparent from recital 18 in the preamble to Directive 97/36, the legislature considered that such obstacles are justified by the objective of protecting the right to information and ensuring wide public access to television coverage of those events.
- 11 The legitimacy of pursuing such an objective has also been recognised by the Court, which has stated that the marketing on an exclusive basis of events of high interest to the public is liable to restrict considerably the access of the general public to information relating to those events. However, in a democratic and pluralistic society, the right to receive information is of particular importance, and its importance is all the more evident in the case of such events (see Case C-283/11 *Sky Österreich* [2013] ECR I-0000, paragraphs 51 and 52).
- 12 Secondly, the Court notes that, pursuant to Article 3a(1) of Directive 89/552, it is for the Member States alone to determine the events which are of major importance; they have a broad discretion in that respect.
- 13 Instead of harmonising the list of such events, Directive 89/552 is based on the premiss that considerable social and cultural differences exist within the European Union in so far as concerns their importance for the general public. Consequently, Article 3a(1) of that directive provides that each Member State is to draw up a list of designated events 'which it considers to be of major importance' for society in that State. Recital 18 in the preamble to Directive 97/36 also underlines the discretion accorded to the Member States, in stating that it is 'essential' that they be able to take measures to protect the right to information and to ensure wide access by the public to television coverage of events of major importance.
- 14 The significance of that margin of discretion is further apparent from the fact that Directives 89/552 and 97/36 do not set out detailed criteria for its exercise. In fact, the only criteria which they lay down for the Member State concerned to be able to designate an event as being of major importance are referred to in recital 21 in the preamble to Directive 97/36, namely that they must be extraordinary events which are of interest to the general public in the European Union or in a given

Member State or in an important component part of a given Member State and are organised in advance by an event organiser who is legally entitled to sell the rights pertaining to that event.

- 15 Given their relatively imprecise nature, it is for each Member State to give substance to the criteria and to assess the interest of the general public in the events concerned, taking account of the social and cultural particularities of society in that Member State.
- 16 Thirdly, the Court notes that, pursuant to Article 3a(2) of Directive 89/552, the Commission has the power to examine the legality of national measures designating events as being of major importance, which enables it to reject any measures which are incompatible with European Union law.
- 17 In the context of that examination, the Commission is required, in particular, to verify whether the following conditions are satisfied:
  - The event concerned has been added to the list provided for in Article 3a(1) of Directive 89/552 in accordance with a clear and transparent procedure in due and effective time;
  - Such an event may validly be regarded as being of major importance;
  - The designation of the event concerned as being of major importance is compatible with the general principles of European Union law, such as the principles of proportionality and non-discrimination, with the principles of the freedom to provide services and the freedom of establishment, and with the rules of free competition.
- 18 None the less, such a power of review is limited, in particular in so far as concerns the examination of the second and third conditions set out in paragraph 17 above.
- 19 First, it is apparent from the significance of the discretion accorded to the Member States, referred to in paragraph 12 above, that the Commission's power of review must be limited to determining whether the Member States have committed any manifest errors of assessment in designating events of major importance. In order to verify whether such an error of assessment has been committed, the Commission must therefore, inter alia, examine, carefully and impartially, all the relevant facts of the individual case, facts which support the conclusions reached (see, by analogy, Case C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 14, and Case C-77/09 *Gowan Comércio Internacional e Serviços* [2010] ECR I-13533, paragraphs 56 and 57).
- 20 Second, as regards, more specifically, the third condition referred to in paragraph 17 above, it is undeniable that a valid designation of an event as being of major importance leads to inevitable obstacles to the freedom to provide services, the freedom of establishment, the freedom of competition and the right to

property, obstacles which the European Union legislature has considered and regards, as noted in paragraph 10 above, as justified by the objective in the general interest of protecting the right to information and ensuring wide access by the public to television coverage of those events.

- 21 In order to ensure the effectiveness of Article 3a of Directive 89/552, it must thus be found that, if an event has validly been designated by the Member State concerned as being of major importance, the Commission is required to examine only the effects of that designation on the freedom to provide services, the freedom of establishment, the freedom of competition and the right to property which exceed those which are intrinsically linked to the inclusion of that event in the list provided for in Article 3a(1).

*The first ground of appeal, alleging errors of law and assessment regarding the requirement of clarity and transparency*

#### Arguments of the parties

- 22 The first ground of appeal concerns paragraph 94 of the judgment under appeal, in which the General Court held that the requirement of clarity and transparency laid down in Article 3a of Directive 89/552 does not have either the object or effect of obliging the competent national authority to set out the reasons why it did not follow the opinions or observations put forward to it during the consultation procedure. UEFA submits that, in accordance with that requirement, a Member State cannot, without providing any explanation, reject the consistent advice of several independent parties, including that of the very Advisory Group that it had itself established for the purpose of advising it on the list provided for in Article 3a(1), and that of the Office of Fair Trading, on a very significant issue.
- 23 The United Kingdom and the Commission contend that the first ground of appeal is unfounded.

#### Findings of the Court

- 24 It is apparent from paragraph 12 above that the national authority in charge of designating events as being of major importance enjoys a broad margin of discretion. Accordingly, it is not required to follow the advice of the advisory bodies which it consulted prior to making its decision.
- 25 In so far as concerns the reasons why such advice was not followed by that authority, it is true that, as is required of the European Union institutions when adopting measures (see Case C-413/06 P *Bertelsmann and Sony Corporation of America v Impala* [2008] ECR I-4951, paragraph 166), that authority must disclose the reasons for designating an event as one of major importance in such a way as, on the one hand, to make the persons concerned aware of the reasons for the measure and thereby enable them to defend their rights and, on the other, to

enable the Commission and the competent Courts to exercise their power of review.

- 26 However, contrary to what UEFA submits, in order to achieve that objective, the authority does not have to set out the specific reasons for not following the advice of certain advisory bodies even in circumstances where it is not required to follow such advice. The fact that that advice comes from several advisory bodies which all adopt the same approach is irrelevant in that respect.
- 27 In those circumstances, the first ground of appeal must be rejected as unfounded.

*The second ground of appeal, alleging errors of law and assessment in relation to the characterisation of the final stage of the EURO as an event of major importance*

- 28 In so far as concerns the characterisation of the final stage of the EURO as an event of major importance, the General Court reasoned as follows in paragraph 103 of the judgment under appeal:

‘... there is no valid consideration leading to the conclusion that, in principle, only “gala” matches and matches involving a national team of the United Kingdom may be thus categorised for the society of that Member State and therefore included in such a list. In fact, [the final stage of] the EURO is a competition which may reasonably be regarded as a single event as a whole rather than as a series of individual events divided up into “gala” and “non-gala” matches and into matches involving the relevant national team. It is well known that, in [the final stage of] the EURO, the participation of the teams in “gala” matches or in matches involving the relevant national team may depend on the results of “non-gala” matches, which determine the fate of those teams. Thus “non-gala” matches determine the opponents of the relevant national team in the subsequent stages of the competition. In addition, the results of “non-gala” matches may even determine whether or not that national team advances to the subsequent stage of the competition.’

- 29 In paragraph 120 of the judgment under appeal, the General Court found as follows:

‘... the reference to [the final stage of] the EURO in recital 18 in the preamble to Directive 97/36 implies that the Commission cannot consider the inclusion of EURO matches in a list of events to be contrary to Community law on the ground that the Member State concerned did not notify it of the specific reasons justifying them as an event of major importance for society ... However, any finding by the Commission that the inclusion of the entire [final stage of the] EURO in a list of events of major importance ... is compatible with Community law, on the ground that the EURO is, by its nature, legitimately regarded as a single event, may be called in question on the basis of specific factors showing that the “non-gala” matches are not of such importance for the society of that Member State.’

## Arguments of the parties

- 30 UEFA criticises the General Court for having rejected its argument that the Commission could not conclude that the United Kingdom had validly considered the entire final stage of the EURO to be an event of major importance. In UEFA's view, the United Kingdom could designate as events of major importance only so-called 'gala' matches, namely the final and semi-finals and the matches involving the national teams of that Member State. Thus, the list of such events established by the United Kingdom should not have included so-called 'non-gala' matches, namely all the other matches in the final stage of the tournament.
- 31 In that regard, UEFA submits, by the first part of its second ground of appeal, that the General Court wrongly held that the mere reference by the European Union legislature to the EURO in recital 18 in the preamble to Directive 97/36 implied that the Commission did not need to require Member States to provide any specific reasons to support the inclusion of the tournament in its entirety in their national lists of events of major importance. Such an analysis wrongly seeks to free the Commission of its duty to assess whether the event concerned is actually an event of major importance. Recital 18 provides only an indicative list of the type of events which might be of major importance, with the result that it does not establish a presumption that the events listed therein are of major importance.
- 32 By the second part of its second ground of appeal, UEFA accuses the General Court of having based several of its conclusions on the analysis of factors that the Commission itself had not taken into consideration.
- 33 By the third part of that ground of appeal, UEFA submits that the General Court carried out its analysis on the basis of factors which had been assessed in a manifestly erroneous manner.
- 34 The Commission contends that the second ground of appeal is inadmissible in part in so far as it calls into question the General Court's assessment of the facts. Moreover, it submits that that ground of appeal is unfounded, a conclusion shared by the United Kingdom.

## Findings of the Court

- 35 As regards the first part of the second ground of appeal, the Court notes, at the outset, that the General Court found, in paragraph 103 of the judgment under appeal, that the EURO is a competition which may reasonably be regarded as a single event as a whole rather than as a series of individual events divided up into 'gala' and 'non-gala' matches and into matches involving the relevant national team. Moreover, as is apparent from paragraph 5 of the judgment under appeal, it understood the terms 'European Football Championship', referred to in recital 18 in the preamble to Directive 97/36, as including only the final stage of that competition.

- 36 However, neither that recital nor any other part of Directives 85/552 or 97/36 contains any indication that the term ‘European Football Championship’ includes only the final stage of that competition. Thus, the term must, in principle, also include the initial stage of the competition, that is to say all the matches in the qualifying stage. It is not disputed that the qualifying matches prior to the final stage do not, in general, attract a level of interest from the general public of a Member State which is comparable to that generated during the final stage. Only certain specific qualifying matches, namely those involving the national team of the Member State concerned or those of other teams in the same qualification group as that team, are likely to generate such interest.
- 37 In addition, it cannot reasonably be disputed that the importance of ‘gala’ matches is, in general, superior to that accorded to matches in the final stage of the EURO which precede them, namely matches in the group stage. It can thus not, *a priori*, be submitted that the importance accorded to matches in the group stage is equivalent to that of gala matches and, therefore, that all the matches in the group stage, without distinction, form part of a single event of major importance, just like ‘gala’ matches. Thus, the designation of each match as being an event of major importance may differ from one Member State to another.
- 38 It follows from the foregoing considerations that the European Union legislature did not intend to specify that the ‘European Football Championship’, within the meaning of recital 18 in the preamble to Directive 97/36, is limited to only the final stage and that it constitutes a single and indivisible event. On the contrary, the EURO must be regarded as an event which is, in principle, divisible into different matches or stages, not all of which are necessarily capable of being characterised as an event of major importance.
- 39 It should be pointed out, however, that such an erroneous reading by the General Court of recital 18 in the preamble to Directive 97/36, in particular of the notion of ‘the EURO’, did not have any impact in the present case.
- 40 As regards, first of all, the exclusion of qualifying matches from the definition of the EURO, suffice it to note that the United Kingdom did not include those matches in the list of events of major importance and that, consequently, the contested decision does not concern such matches.
- 41 Next, the Court of Justice finds that the General Court examined, in paragraphs 128 to 139 of the judgment under appeal, on the basis of the information provided by UEFA and in the light of the actual perception of the United Kingdom public, whether all the matches in the final stage of the EURO actually attract sufficient attention from the public to form part of an event of major importance. In concluding that that was the case, the General Court was legitimately able to find that all the matches which take place in the final stage of the EURO could be considered, in the United Kingdom, to be a single event of

major importance. Ultimately, its assessment was thus in line with what this Court has found in paragraph 38 above.

- 42 Finally, it is apparent from the considerations set out in paragraphs 107 to 114 below that the erroneous reading of recital 18 in the preamble to Directive 97/36 did not affect the General Court's conclusion that the grounds for the contested decision satisfied the conditions laid down in Article 253 EC.
- 43 That said, in following the reasoning set out in paragraph 35 above, the General Court concluded, in paragraph 120 of the judgment under appeal, that no Member State is required to communicate to the Commission the specific reasons justifying the designation of the entire final stage of the EURO as a single event of major importance in the Member State concerned.
- 44 However, given that the final stage of the EURO cannot validly be included in its entirety in a list of events of major importance, irrespective of the interest generated by the individual matches in the Member State concerned, that State is not freed from its obligation to communicate to the Commission the reasons justifying the designation, in the specific context of the society of the Member State concerned, of the final stage of the EURO as a unique event which must be regarded in its entirety as being of major importance for that society, rather than a compilation of individual events divided into matches of different levels of interest.
- 45 Consequently, the General Court erred in law, in paragraph 120 of the judgment under appeal, in finding that the Commission could not consider the inclusion of matches in the final stage of the EURO in a list of events of major importance to be contrary to European Union law on the ground that the Member State concerned did not notify it of the specific reasons justifying their being an event of major importance for society.
- 46 In those circumstances, it needs to be examined whether, in the light of that error, the judgment under appeal must be set aside.
- 47 In that regard, it is apparent from the case-law of the Court of Justice that an error of law committed by the General Court does not invalidate the judgment under appeal if its operative part is well founded on other legal grounds (see, to that effect, Case C-367/95 P *Commission v Sytraval and Brink's France* [1998] ECR I-1719, paragraph 47, and Case C-352/09 P *ThyssenKrupp Nirodata v Commission* [2011] ECR I-2359, paragraph 136).
- 48 In the present case, it should be noted, first of all, that, for the Commission to be able to exercise its power of review, the statement of reasons which led a Member State to designate an event as being of major importance may be succinct, so long as it is appropriate. Thus, it cannot be required, in particular, that the Member State provide, in the actual notification of the measures concerned, detailed

information and figures regarding each element or part of the event which has been notified to the Commission.

- 49 In that regard, the Court points out that, if the Commission has doubts, on the basis of the evidence at its disposal, in relation to the designation of an event as one of major importance, it is required to seek clarification from the Member State which designated the event as such (see, by analogy, Case C-505/09 P *Commission v Estonia* [2012] ECR I-0000, paragraph 67).
- 50 In the present case, it is clear, in particular from the communication of the measures taken by the United Kingdom, which were notified to the Commission on 5 May 2000 and which are annexed to the contested decision, that that Member State designated the final stage of the EURO, in its entirety, as an event of major importance on the grounds that all of the matches in that stage, thus including ‘non-gala’ matches, had special general resonance at national level and were also of specific interest for those who do not generally follow football, that there would undoubtedly be a large number of television viewers and that the matches in the final stage were traditionally broadcasted direct on free television channels.
- 51 In providing such information, in accordance with the requirements of Article 3a(2) of Directive 89/552, the United Kingdom enabled the Commission to exercise its power of review and to seek, where it deemed necessary or appropriate, additional clarification from that Member State or request the submission of more information in addition to that provided in its notification.
- 52 Secondly, there is nothing to indicate that the Commission did not exercise its limited power of review and that it failed to examine, in the light of the grounds referred to in paragraph 50 above, whether the Secretary of State had committed a manifest error of assessment in designating the matches in the final stage of the EURO, in their entirety, as an event of major importance.
- 53 In that regard, it is apparent, first of all, from recital 6 of the contested decision, that the Commission did verify whether the whole of the final stage of the EURO, thus including ‘non-gala’ matches, had a special general resonance in the United Kingdom, that is to say whether the matches in that tournament were very popular for the general public and not only viewers who generally follow football matches on television. Similarly, it is apparent from recital 18 of that decision that the Commission took account of the fact that the tournament taken as a whole, thus including ‘non-gala matches’, had traditionally been broadcast on free television channels and had commanded large television audiences.
- 54 Next, it is apparent from the file that, before the General Court, the Commission annexed to its defence several documents containing figures on which it had relied to assess whether the measures notified by the United Kingdom were lawful, including those which emanated from that Member State and made a distinction between ‘gala’ and ‘non-gala’ matches and matches involving the national teams.



UEFA has not disputed that those documents constituted the basis of the contested decision and has even recognised that the Commission did take account of such statistical data (see paragraph 58 below).

- 55 Finally, UEFA cannot reasonably claim that the Commission's supposedly inadequate review resulted from the fact that the figures in those documents related to the period prior to 2000 and that the Commission failed to take account of the information relating to 2000-2007, whereas it should have based the contested decision on the information available at the time the decision was adopted, namely on 16 October 2007.
- 56 The Court points out, in that regard, that the contested decision was adopted with a view to replacing the decision contained in the letter of 28 July 2000 sent to the United Kingdom by the Director General of the Directorate General for 'Education and Culture', which was annulled by the judgment in *WM v Commission*, on the ground that it had not been adopted by the College of Commissioners. Thus, in order to ensure legal certainty, the Commission granted retroactive effect to the contested decision by examining the same national measures, namely those notified by the United Kingdom on 5 May 2000, and in providing that that decision applied from 18 November 2000, namely after the publication of those measures in the *Official Journal of the European Communities*.
- 57 It is evident from the case-law that the Commission was able to give such retroactive effect to the contested decision (see Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraphs 45 to 47), and UEFA does not dispute that retroactive effect.
- 58 In those circumstances, the Commission was required to carry out its examination in relation to the situation in 2000. In the absence of any challenge by UEFA in that regard, it is not necessary to examine whether the Commission was required to take account of that situation on the date of adoption of the decision which was replaced by the contested decision or on the date of publication of the notified national measures. Thus, it was required to assess whether, at that time, the matches forming part of the final stage of the EURO could be regarded, in their entirety, as an event of major importance. It is apparent from the file that UEFA did not submit any evidence to the General Court which could have enabled it to find that the Commission had not adopted the contested decision in the light of the information available in 2000. On the contrary, it recognised that the Commission relied on statistical information which existed at the time of adoption of the decision contained in the letter of 28 July 2000.
- 59 Thirdly, it was open to UEFA to show before the General Court that, on the basis of that information, the Commission should have concluded that the United Kingdom had committed a manifest error of assessment in designating the

matches in the final stage of the EURO, in their entirety, as an event of major importance.

- 60 To that end, UEFA submitted to the General Court figures relating, *inter alia*, to television audiences during the final stages of EURO 1996 and EURO 2000, and submitted that those figures showed that the ‘non-gala’ matches did not have special general resonance in the United Kingdom among television viewers who do not follow football on a regular basis.
- 61 The General Court examined those figures in paragraphs 131 and 132 of the judgment under appeal, but did not confirm the assessment proposed by UEFA.
- 62 It concluded in paragraph 139 of the judgment under appeal, also taking account of the other data submitted by UEFA relating to the post-2000 period (paragraphs 128 to 130, 135 and 136 of that judgment), that UEFA had not shown that the findings in recitals 6 and 18 of the contested decision and referred to in paragraph 53 above are vitiated by error, nor that, as a result, the Commission should have concluded that the United Kingdom had committed a manifest error of assessment in designating the matches in the final stage of the EURO, in their entirety, as an event of major importance.
- 63 It follows from the foregoing that the error of law committed by the General Court is not such as to invalidate the judgment under appeal, since its operative part is well founded on other legal grounds. Consequently, the first part of the second ground of appeal must be rejected as ineffective.
- 64 By the second part of the second ground of appeal, UEFA accuses the General Court of having based, in the context of its assessment referred to in paragraphs 60 and 62 above, several of its conclusions on factors which the Commission itself had not taken into consideration.
- 65 In that regard, the Court points out that, in the context of the review of legality provided for in Article 263 TFEU, the General Court cannot substitute its own reasoning for that of the author of the contested act and cannot fill, by means of its own reasoning, a gap in the reasoning in that act in such a way that its examination does not relate to any assessment carried out in that act (see, to that effect, Case C-73/11 P *Frucona Košice v Commission* [2013] ECR I-0000, paragraphs 87 to 90 and the case-law cited).
- 66 However, in the present case, the General Court’s examination in paragraphs 126 to 139 of the judgment under appeal relates to the assessments in recitals 6 and 18 of the contested decision and serves only to corroborate the findings made in those recitals.
- 67 By the third part of the second ground of appeal, UEFA submits that the General Court carried out the analysis referred to in paragraphs 60 and 62 above on the basis of information which it assessed in a manifestly erroneous manner.

- 68 In reality, that part of the ground of appeal amounts to a request that the Court of Justice substitute its own assessment of the facts for that of the General Court, without UEFA having claimed that the General Court distorted the facts and evidence submitted to it. In accordance with the settled case-law of the Court of Justice, that part must therefore be rejected as inadmissible (see Case C-397/03 P *Archer Daniels Midland and Archer Daniels Midland Ingredients v Commission* [2006] ECR I-4429, paragraph 85, and *ThyssenKrupp Nirosta v Commission*, paragraph 180).
- 69 In the light of the foregoing, the second ground of appeal must be rejected in its entirety.

*The third ground of appeal, alleging errors of law committed by the General Court in the application of the Treaty provisions relating to public undertakings and undertakings to which Member States grant special or exclusive rights*

#### Arguments of the parties

- 70 By the first part of its third ground of appeal, UEFA claims that the General Court erred in that it remained silent on the preliminary question of whether Article 86(1) EC is relevant in this case. In particular, although the General Court concluded that the measures taken by the United Kingdom did not amount to the grant of special or exclusive rights, the issue is not resolved, since the undertakings concerned, namely the BBC and Channel 4, are public undertakings within the meaning of that provision.
- 71 By the second part of the third ground of appeal, UEFA considers that the General Court's analysis was based on an erroneous interpretation of the notion of 'special rights' referred to in Article 86(1) EC, as a result of which it wrongly concluded that the measures taken by the United Kingdom did not amount to the grant of special rights to broadcasters operating free television channels. In particular, the General Court took a formalistic and theoretical approach in assessing whether the United Kingdom legislation granted special rights to such broadcasters. The Court disregarded the economic reality, since the practical effect of the legislation would be that broadcasters operating free television channels would be able to acquire exclusive rights to broadcast, in the United Kingdom, matches in the final stage of the EURO, while broadcasters operating pay television channels would not in practice be able to acquire any such rights.
- 72 By the third part of that ground of appeal, UEFA submits that the General Court should have found that special rights had been granted to broadcasters operating free television channels, on the ground that the United Kingdom clearly conferred 'legal privileges' on them. If a pay channel operator acquires from UEFA the right to broadcast in the United Kingdom a match in the final stage of the EURO, it will not be permitted to exercise that right unless it also offers the right in question to

those free channel broadcasters on reasonable terms. However, there is no requirement for that operator to offer those rights to other pay television operators.

- 73 According to the Commission, the third ground of appeal is inadmissible in so far as UEFA puts forward several arguments which it did not raise in its initial application before the General Court. Moreover, the ground of appeal is unfounded, a conclusion shared by the United Kingdom.

#### Findings of the Court

- 74 In so far as concerns the first part of the third ground of appeal, the Court notes, first, that, contrary to what UEFA claims, the General Court did not ‘remain silent’ on the preliminary question of whether Article 86(1) EC was applicable in this case. It examined that issue in paragraphs 165 to 171 of the judgment under appeal and concluded that that provision was not relevant and thus did not apply.
- 75 Secondly, the Court points out that UEFA did not raise any plea before the General Court alleging that Article 86(1) EC was applicable on the ground that certain broadcasters operating free television channels were public undertakings within the meaning of Article 86(1) EC.
- 76 In accordance with the Court’s settled case-law, that argument must therefore be rejected as inadmissible (see Joined Cases C-628/10 P and C-14/11 P *Alliance One International and Standard Commercial Tobacco v Commission and Commission v Alliance One International and Others* [2012] ECR I-0000, paragraphs 111 and the case-law cited).
- 77 As regards the second part of the third ground of appeal, it is common ground that the wording of Articles 98 and 101 of the Broadcasting Act 1996, as amended by Television Broadcasting Regulations 2000, does not draw any distinction between the different categories of broadcasters and, in particular, does not grant broadcasters operating free television channels protection which would be refused to those operating pay television channels, since all those broadcasters are free to acquire, inter alia, non-exclusive broadcasting rights for events of major importance and to broadcast them on a non-exclusive basis.
- 78 It is true that it cannot be ruled out that, in practice, only certain broadcasters operating free television channels, such as the BBC and ITV, will ultimately broadcast in the United Kingdom all of the matches in the final stage of the EURO after gaining authorisation from the Office of Communications, since broadcasters operating pay television channels are interested only in broadcasting on an exclusive basis and, as a result, will not submit offers to acquire the relevant rights.
- 79 However, as the General Court essentially found in paragraph 171 of the judgment under appeal, such an effect is the result of the commercial strategy of broadcasters operating pay television channels, which have opted for a business

model focusing on exclusive rights, with the result that they are less likely to agree to non-exclusive broadcasts of events of major importance than broadcasters operating free television channels. That effect is thus primarily the result of the commercial choice of broadcasters operating pay television channels and can thus not be attributed to the United Kingdom legislation.

80 In so far as concerns the third part of the third ground of appeal, the Court notes that UEFA did not argue before the General Court that broadcasters operating free television channels enjoy a privilege on the ground that broadcasters operating pay television channels are required to offer them broadcasting rights for all of the matches in the final stage of the EURO. In accordance with the case-law cited in paragraph 76 above, such an argument must thus be rejected as inadmissible.

81 In the light of the foregoing, the third ground of appeal must be rejected as partly unfounded and partly inadmissible.

*The fourth ground of appeal, alleging infringement of other Treaty provisions relating to competition*

82 UEFA claims that, given that Article 86(1) EC is clearly applicable in this case, the General Court committed an error of law in failing to examine whether the measures taken by the United Kingdom have the effect of putting the BBC and ITV in a position that they could not have obtained themselves without infringing competition law or otherwise facilitated infringements of competition law on their part.

83 According to the Commission, the fourth ground of appeal is ineffective.

Findings of the Court

84 UEFA accuses the General Court of having infringed several articles of the Treaty relating to competition, whilst recognising that the application of those articles presupposes, in the context of the present case, that Article 86(1) EC is applicable.

85 However, in paragraphs 165 to 171 of the judgment under appeal, the General Court found that Article 86(1) EC was not applicable. Since UEFA has not succeeded in calling that conclusion into question in the context of this appeal, the fourth ground of appeal is ineffective and must, consequently, be rejected.

*The fifth ground of appeal, alleging errors of law committed by the General Court in the application of the Treaty provisions concerning the freedom to provide services and the principle of proportionality*

Arguments of the parties

86 By the first part of the fifth ground of appeal, UEFA submits that the General Court distorted its plea related to the freedom to provide services, since it

submitted, before that court, first, that the measures taken by the United Kingdom were discriminatory towards broadcasters established in other Member States and, second, that the definition of what is a ‘qualifying broadcaster’ within the meaning of the United Kingdom legislation was too strict to be proportionate to the aim of the legislation. The General Court should have found that the United Kingdom measures were disproportionate for each of those reasons.

- 87 By the second part of the fifth ground of appeal, UEFA submits that the General Court’s analysis is erroneous on the ground that that court assumed – on the mere basis that the final stage of the EURO may be regarded as a unitary event and that, taken as a whole, it is an event of major importance – that the objective of ensuring wide public access to a television broadcast of that event could not be adequately obtained by a lesser restriction than that resulting from the measures taken by the United Kingdom, such as a list that included only certain specific matches in the final stage of the EURO.
- 88 By the third part of the fifth ground of appeal, UEFA submits that, even if the final stage of the EURO may be regarded as a single event of major importance for United Kingdom society, the Commission was required to carry out a detailed assessment of the compatibility of the national measures with the Treaty provisions on the freedom to provide services and competition.
- 89 According to the United Kingdom and the Commission, the fifth ground of appeal lacks any basis.

#### Findings of the Court

- 90 By the first part of its fifth ground of appeal, UEFA accuses the General Court, in reality, of having infringed its duty to state reasons, on the ground that it allegedly failed to respond to the arguments which UEFA raised before it alleging that the measures taken by the United Kingdom were discriminatory and that its definition of ‘qualifying broadcaster’ was too strict.
- 91 In that regard, it is settled case-law of the Court of Justice that the General Court is not required to address exhaustively and one by one all the arguments put forward by the parties to the case. Consequently, the reasoning may be implicit on condition that it enables the persons concerned to know why the General Court has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review. In particular, the General Court is not required to respond to the arguments of a party which are not sufficiently clear and precise, in that they have not been expanded upon or accompanied by a specific line of argument intended to support them (see, to that effect, Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others v Council and Commission* [2008] ECR I-6513, paragraphs 91 and 96, and Case C-263/09 P *Edwin v OHIM* [2011] ECR I-0000, paragraph 64).

- 92 In so far as concerns the argument alleging that the United Kingdom legislation is discriminatory, the Court points out that, in paragraphs 148 and 149 of the judgment under appeal, the General Court recognised, first, that that legislation constituted a restriction on the freedom to provide services on the ground that, in reality, it is more likely that a broadcaster operating a free television channel, ‘most probably established in [that Member State]’, will broadcast all of the matches in the final stage of the EURO in practice on an exclusive basis, and not a competitor established in another Member State. Second, the General Court stated that such a restriction could be justified since it is intended to protect the right to information and to ensure wide public access to television broadcasts of events, national or non-national, of major importance for society.
- 93 In so finding, the General Court provided sufficient grounds, even if implicitly, to enable UEFA to understand why it did not uphold its arguments and to enable the Court of Justice to exercise its power of review.
- 94 In so far as concerns the argument relating to the alleged narrow definition of ‘qualifying broadcaster’, the Court points out that that definition was mentioned in only one of a total of 176 points in the initial application. Moreover, that argument was based only on the claim that that definition was significantly narrower than that adopted by the other Member States and that, in practice, it limits the number of bodies able to satisfy the requisite criteria to just three. Finally, in its reply, UEFA set out its argument in just two succinct sentences.
- 95 Consequently, in the light of the fact that that argument was not expanded upon in the pleadings before the General Court, the latter was not required to address it.
- 96 As regards the second part of the fifth ground of appeal, the Court points out, at the outset, that that part is based on an erroneous reading of paragraph 152 of the judgment under appeal. In that paragraph, the General Court did not rely on the presumption that the objective of ensuring wide public access to television broadcasts of a single event of major importance could not be adequately obtained by a lesser restriction. The General Court rejected UEFA’s plea as being founded on an erroneous presumption, namely that the measures taken by the United Kingdom were disproportionate in that ‘non-gala’ matches in the final stage of the EURO were not of major importance. The General Court’s finding was justified since it had concluded, in paragraphs 123 to 141 of the judgment under appeal, that the final stage of the EURO, in its entirety, and thus including ‘non-gala matches’, could be regarded as being of major importance for United Kingdom society.
- 97 Finally, in so far as concerns the third part of that ground of appeal, it is apparent from paragraph 19 above that the Commission is required to carry out a restricted examination, limited to determining whether the Member States have committed any manifest errors of assessment in drawing up their national lists of events of major importance.

- 98 In the light of the foregoing, the fifth ground of appeal must be rejected as unfounded.

*The sixth ground of appeal, alleging errors of law committed by the General Court in the application of the right to property*

Arguments of the parties

- 99 According to UEFA, the General Court erred in law by considering, first, that, simply because the final stage of the EURO might be considered as a single event of major importance, the infringement of UEFA's property rights in relation to every single match of the tournament must necessarily be regarded as proportionate. It further claims that the General Court made a more fundamental error in failing to assess the extent of the restrictions on UEFA's property rights, and was therefore unable to conduct an adequate analysis of whether or not the disadvantages caused by the measures taken by the United Kingdom were disproportionate to the aims pursued.
- 100 The United Kingdom and the Commission contend that the ground of appeal is unfounded.

Findings of the Court

- 101 Pursuant to Article 17(1) of the Charter of Fundamental Rights of the European Union, everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. The use of property may be regulated by law in so far as is necessary for the general interest.
- 102 In that regard, it is clear from the considerations set out in paragraphs 10, 20 and 21 above, first, that UEFA's property rights were affected already by Article 3a of Directive 85/552 and that that effect may, in principle, be justified by the objective of protecting the right to information and ensuring wide access by the public to television coverage of events of major importance. Second, given that the matches in the final stage of the EURO, in their entirety, were validly designated by the United Kingdom as an event of major importance, the Commission was required to examine only the effects of that designation on UEFA's property rights which went beyond those which are intrinsically linked to the inclusion of that event in the list of events designated by those authorities.
- 103 UEFA's only claims regarding such effects are based on the fact that potential purchasers of the broadcasting rights in question at auction, namely the BBC and ITV, would form an alliance and would make a joint offer. However, it is apparent from the initial application before the General Court that such an argument was not raised before that court. In the light of the case-law set out in paragraph 76 above, UEFA can thus not rely on it in the context of this appeal.
- 104 In those circumstances, the sixth ground of appeal must be rejected.



*The seventh ground of appeal, alleging errors of law in relation to the grounds for the contested decision*

Arguments of the parties

105 UEFA submits that the General Court erred in law in failing to hold the Commission to the required standard of reasoning in respect of each of six substantive issues raised in the appeal. The contested decision should have been annulled, first, because it did not provide sufficient reasons with respect to the characterisation of the final stage of the EURO as an event of major importance. Secondly, the grounds for that decision were also insufficient in relation to the restrictions on the freedom to provide services, the freedom of competition and UEFA's property rights. Finally, the General Court should not have relied on what it perceived to be the privileged position of UEFA as the rights holder in determining whether the Commission's reasons were sufficient.

106 According to the United Kingdom and the Commission, the seventh ground of appeal is unfounded.

Findings of the Court

107 It is clear from the settled case-law of the Court that the statement of reasons required by Article 253 EC must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent European Union Court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure at issue, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see *Bertelsmann and Sony Corporation of America v Impala*, paragraph 166 and the case-law cited).

108 It is also apparent from the case-law that, when the measure at issue is adopted in a context with which the persons concerned are familiar, summary reasons may be given (see, to that effect, Case C-335/09 P *Poland v Commission* [2012] ECR I-0000, paragraph 152 and the case-law cited).

109 In so far as concerns decisions adopted under Article 3a(2) of Directive 89/552, the Court points out, first, that, in adopting such decisions, the Commission does not exercise its own power of decision as such, but its power of review, which is restricted and limited to determining whether the Member States have committed any manifest errors of assessment in designating events as being of major

importance (see paragraphs 12 and 19 above). Those decisions must thus be read in the light of the notified national measures.

- 110 Secondly, the Court notes that, in addition to the Member State which notifies them to the Commission, such decisions concern, *inter alia*, broadcasters operating television channels in that State and the holders of the exclusive broadcasting rights for the events concerned. It is undeniable that the main interested parties have an in-depth knowledge of the context in which those decisions were adopted, since, at the very least in negotiating the price of those rights, they are deemed to be aware of all the factors which appreciably affect their value and, in particular, the interest which the event in question presents for the public of the Member State concerned.
- 111 In those circumstances, the statement of reasons for a Commission decision adopted pursuant to Article 3a(2) of Directive 89/552 may be succinct. In particular, it is permissible for the Commission to indicate only succinct grounds for having considered an event to be of major importance. Moreover, it is apparent from the considerations set out in paragraphs 20 and 21 above that the grounds for finding the measures taken by the United Kingdom to be compatible with the rules on the freedom to provide services, the freedom of competition and the right to property may be implicit. More specifically, where the effects on the freedom to provide services, the freedom of competition and the right to property do not go beyond those which are intrinsically linked to the inclusion of the event concerned in the list provided for in Article 3a(1) of Directive 89/552, it is not necessary, in principle, to provide specific grounds for such a conclusion.
- 112 In the present case, the Court points out that recitals 5, 6 and 18 of the contested decision set out the reasons why the Commission considered that the matches in the final stage of the EURO, in their entirety, could be regarded as an event of major importance. Thus, it is stated in recital 6, *inter alia*, that that event has a special general resonance in the United Kingdom, as it is particularly popular with the general public, not just with those who usually follow sports events on television. That finding is also set out in recital 18, from which it is apparent that that event has traditionally been broadcast on free television channels and, as such, has commanded large television audiences.
- 113 In the light of the foregoing, the General Court did not err in law in considering that the contested decision contained the necessary information to enable, first, UEFA to understand the Commission's reasons for concluding that the matches in the final stage of the EURO in their entirety could be regarded as an event of major importance and, secondly, the General Court to exercise its power of review as to whether that conclusion was well founded.
- 114 As regards the other aspects of the grounds for the contested decision, there is nothing in the present case to suggest that the effects on the freedom to provide services and on the freedom of competition go beyond those which are

intrinsically linked to the inclusion of the final stage of the EURO in the list of events of major importance. In so far as concerns an alleged infringement of the right to property going beyond that caused by the mere inclusion of that event in the list, the Court recalls that such an argument has been raised by UEFA only before the Court of Justice.

- 115 In the light of the foregoing, the seventh ground of appeal must be rejected as unfounded.
- 116 Since none of the seven grounds of appeal raised by UEFA in support of its appeal can be upheld, the appeal must be dismissed in its entirety as being partly inadmissible and partly unfounded.

### **Costs**

- 117 In accordance with Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those Rules, which applies to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against UEFA, and as the latter has been unsuccessful, UEFA must be ordered to pay the costs of these proceedings.

On those grounds, the Court (Third Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders the Union des associations européennes de football (UEFA) to pay the costs.**

[Signatures]