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COURT OF JUSTICE OF THE EUROPEAN UNION  
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LUXEMBOURG

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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 Kingdom of Belgium concerning events of major  
importance for the society of that Member State – Football World Cup – Decision  
declaring the measures compatible with European Union law – Statement of  
reasons – Articles 43 EC and 49 EC – Right to property)

In Case C-204/11 P,

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

**Fédération internationale de football association (FIFA)**, represented by  
A. Barav and D. Reymond, avocats,

appellant,

the other parties to the proceedings being:

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

defendant at first instance,

**Kingdom of Belgium**, represented by C. Pochet and J.-C. Halleux, acting as  
Agents, assisted by A. Joachimowicz and J. Stuyck, advocaten,

**United Kingdom of Great Britain and Northern Ireland**, represented by  
S. Ossowski and J. Beeko, acting as Agents, assisted by T. de la Mare QC,

interveners at first instance,

THE COURT (Third Chamber),

\* Language of the case: English.

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: A. Impellizzeri, 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 Fédération internationale de football association (FIFA) requests the Court of Justice to set aside the judgment of the General Court of the European Union in Case T-385/07 *FIFA v Commission* [2011] ECR II-205 (‘the judgment under appeal’), by which the General Court dismissed its application for partial annulment of Commission Decision 2007/479/EC of 25 June 2007 on the compatibility with Community law of measures taken by Belgium 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 180, p. 24) (‘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; 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 17 of the judgment under appeal, as follows:

‘5 [FIFA] is an association of 208 national football associations and is the world governing body of football. Its objectives are, inter alia, to promote football globally and to organise its international competitions. The applicant’s primary source of income is the sale of television broadcasting rights to the finals of the football World Cup (“[the final stage of] the World Cup”), which it organises.

6 In Belgium, the Flemish Community and the French Community are competent to adopt measures for the purposes of Article 3a of Directive 89/552. Thus, the authorities of each community adopted separate measures, which were then notified to the Commission of the European Communities by the Belgian federal authorities.

7 Under Article 76(1) of the Decrees relating to radio broadcasting and television (décrets relatifs à la radiodiffusion et à la télévision), consolidated on 25 January 1995, which were adopted by the Flemish Council (*Moniteur belge* of 30 May 1995, p. 15092), “the Flemish Government shall draw up a list of events considered to be of major importance for the public and which, for this reason, may not be broadcast on an exclusive basis so that a substantial proportion of the public of the Flemish Community cannot watch them live or deferred on free television”.

8 By Order of 28 May 2004 (*Moniteur belge* of 19 August 2004, p. 62207), the Flemish Government designated the events to be regarded as of major importance for society, including the World Cup. In order for an event to be

- eligible for inclusion in the list of events of major importance for society, it must, under the terms of that order, fulfill at least two of the following criteria:
- have great topical value and attract considerable public interest;
  - take place in the context of an important international competition or be a competition in which the national team, a Belgian club team or one or more Belgian athlete(s) is/are taking part;
  - belong to an important sporting discipline and represent an important cultural asset to the Flemish Community;
  - be broadcast traditionally by free television and have a high viewer rating for its category.
- 9 Under Article 1 of the Order of 28 May 2004, certain events included in the list, including [the final stage of] the World Cup, must be broadcast via whole live coverage. Under Article 2 of the order, the exclusive rights over the events included in the list may not be exercised in such a way as to prevent a substantial proportion of the population from following those events on free television. Moreover, under the second paragraph of Article 2, a substantial proportion of the population of the Flemish Community is considered to be able to follow an event of major importance for society on free television when the event is broadcast by a television station transmitting in the Dutch language and can be received by at least 90% of the population without any payment in excess of the television distribution subscription price.
- 10 Under Article 3 of the Order of 28 May 2004, television broadcasters which do not satisfy the requirements of Article 2 thereof and which acquire exclusive broadcasting rights in the Dutch-speaking region and the bilingual Brussels Capital region for the events included in the list may not exercise those rights unless they can guarantee, on the basis of contracts concluded, that a substantial proportion of the population will not be prevented from following those events on free television. To that end, the broadcasters in question may grant sub-licenses, at reasonable market prices, to broadcasters which fulfill those conditions. If, however, no broadcaster fulfilling the conditions in question declares itself willing to take such sub-licenses, the broadcaster having acquired exclusive rights may make use of them.
- 11 Under Article 4(1) of the Decree of 27 February 2003 (*Moniteur belge* of 17 April 2003, p. 19637), adopted by the Parliament of the French Community, the Government of the French Community may, after consulting the Conseil supérieur de l'audiovisuel (Broadcasting Authority), adopt a list of events which it considers to be of major importance for the public of that community. Such events may not be subject to the exercise of exclusive

- rights by a television broadcaster or by the RTBF in such a way as to deprive a substantial proportion of the public in that community of access to these events via a free television service.
- 12 In order for an event to be eligible for inclusion in the list of events of major importance for society, it must, under Article 4(2) of the Decree of 27 February 2003, fulfill at least two of the following criteria:
    - be particularly popular with the public of the French Community in general, not just those who follow such events as a matter of course;
    - have a cultural importance generally recognised by the public of the French Community and be part of that community’s cultural identity;
    - involve a Belgian personality or team participating in the event concerned in the context of a competition or event of international importance;
    - be traditionally broadcast in a program of a free television service in the French Community and attract a wide public.
  - 13 Under Article 4(3) of the decree, a television broadcasting service is considered to be “free” if it broadcasts in the French language and can be received by 90% of households with television reception equipment that are located in the French speaking region or the bilingual Brussels-Capital region. Apart from the technical costs, reception of this service cannot be subject to payment other than the subscription price for the basic cable package.
  - 14 Under Article 2 of the Order of 8 June 2004 (*Moniteur belge* of 6 September 2004, p. 65247), adopted by the Government of the French Community, “[a] television broadcaster service in the French Community intending to exercise the exclusive broadcasting rights it holds to an event of major importance must broadcast it on a free television service in accordance with the Annex to this Order”.
  - 15 The annex to the Order of 8 June 2004 and the consolidated list of events of major importance for the Kingdom of Belgium include [the final stage of] the World Cup, live and in full.
  - 16 By letters of 15 January 2001 and 16 May 2002, FIFA submitted its observations to the ministry of the Flemish Community concerning the possible inclusion of [the final stage of] the World Cup in a list of events of major importance for Belgian society, expressing opposition to the inclusion of the entire World Cup in such a list.

17 By letter of 10 December 2003, the Kingdom of Belgium notified the Commission of the measures taken pursuant to Article 3a of Directive 89/552.’

### **The contested decision**

5 On 25 July 2007, the Commission adopted the contested decision, Article 1 of which states that ‘[t]he measures pursuant to Article 3a(1) of [Directive 89/552] notified by [the Kingdom of] Belgium to the Commission on 10 December 2003, as published in the *Official Journal of the European Union* C 158 of 29 June 2005, are compatible with Community law’.

6 Recitals 3 to 6, 8, 16 to 18 and 22 of the contested decision are worded as follows:

‘(3) In its examination, the Commission took into consideration the available data on the Belgian media landscape.

(4) The list of events of major importance for society included in the ... measures [notified by the Kingdom of Belgium] was drawn up in a clear and transparent manner and a far-reaching consultation process had been launched in Belgium.

(5) The Commission was satisfied that the events listed in the ... measures [notified by the Kingdom of Belgium] 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 number of the events listed in the ... measures [notified by the Kingdom of Belgium], including the summer and winter Olympic Games as well as the World Cup Finals and the European Football Championship Finals tournaments (men), 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 Belgium, as they are particularly popular with the general public, not just with those who usually follow sport events.

...

- (8) The listed football events involving national teams have a special general resonance in Belgium as they give Belgian teams the opportunity to promote Belgian football at international level.

...

- (16) 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, no specific viewing data is available (European Football Championship Finals tournament), the inclusion of the event is further justified by its generally recognised, distinct cultural importance for the Belgian population, given its important contribution to understanding between peoples, as well as the importance of football for the Belgian society as a whole and for the national pride, as it provides the occasion for top Belgian sportsmen to succeed in this important international competition.

- (17) The ... measures [notified by the Kingdom of Belgium] 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.

- (18) The ... measures [notified by the Kingdom of Belgium] are compatible with [the] competition rules [of the European Community] 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.

...

- (22) It follows from the judgment of [the General Court of 15 December 2005 in Case T-33/01 *Infront WM v Commission* [2005] ECR II-5897] that the declaration that measures taken pursuant to Article 3a(1) of Directive [89/552] are compatible with Community law constitutes a decision within the meaning of Article 249 [EC], which must therefore be adopted by the Commission. Accordingly, it is necessary to declare by this Decision that the measures notified by [the Kingdom of] Belgium are compatible with Community law. The measures, as finally taken by [the Kingdom of] Belgium and set out in the Annex to this Decision, should be published in the Official Journal in accordance with Article 3a(2) of Directive [89/552].’



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

- 7 FIFA brought an action against the contested decision before the General Court, on the ground that, in that decision, the Commission approved the designation of the final stage of the World Cup in its entirety as an event of major importance and thus accepted the inclusion of all the matches in that tournament in the list of events of major importance established by the authorities in the Kingdom of Belgium. According to FIFA, that Member State could designate as such an event only so-called ‘prime’ or ‘gala’ matches, namely the final, the semi-finals and the matches involving the Belgian national team (‘gala matches’). Accordingly, it claims that that list should not have included the other matches of the World Cup (‘non-gala matches’).
- 8 In support of its application for partial annulment of the contested decision, FIFA put forward six pleas in law. Those pleas concerned, first, infringement of Article 3a(2) of Directive 89/552 on the ground that the Commission incorrectly concluded that the Belgian measures were compatible with Article 49 EC; secondly, infringement of Article 49 EC; thirdly, infringement of Article 3a(2) of Directive 89/552 on the ground that the Commission incorrectly concluded that the Belgian measures were compatible with Article 43 EC; fourthly, infringement of Article 3a(2) of Directive 89/552 on the ground that the Commission incorrectly concluded that the Belgian measures were compatible with FIFA’s right to property; fifthly, infringement of Article 3a(2) of Directive 89/552 on the ground that the Commission incorrectly concluded that the procedure which led to the adoption of the Belgian measures was clear and transparent; and, sixthly, failure to state reasons in the contested decision.
- 9 By the judgment under appeal, the General Court rejected each of FIFA’s pleas and dismissed the action in its entirety.
- 10 It also rejected a request for measures of organisation of procedure, by which FIFA asked the General Court to invite the Commission to produce a number of documents.

### **The appeal**

#### *Preliminary observations*

- 11 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.

- 12 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).
- 13 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.
- 14 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.
- 15 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.
- 16 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.
- 17 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.

- 18 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.
- 19 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 18 above.
- 20 First, it is apparent from the significance of the discretion accorded to the Member States, referred to in paragraph 13 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).
- 21 Secondly, as regards, more specifically, the third condition referred to in paragraph 18 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 11 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.
- 22 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*

Arguments of the parties

- 23 The first ground of appeal comprises in essence six parts. By the first part, FIFA submits that the General Court gave inconsistent reasoning as regards the true character, according to it, of the final stage of the World Cup.
- 24 By the second part of the first ground of appeal it alleges that the General Court seems to have taken inconsistent and irreconcilable views in stating, on the one hand, that by nature the World Cup is a single event and, on the other hand, that specific factors may show that it is not.
- 25 The third part of the ground of appeal concerns paragraph 95 of the judgment under appeal, pursuant to which the notifying Member State is not required to provide specific reasons for including the final stage of the World Cup in its entirety in its list of events of major importance. In coming to that conclusion, the General Court prevents the Commission from carrying out a thorough verification and a detailed assessment of the compatibility of the notified measures with European Union law.
- 26 In the context of the fourth part of the first ground of appeal, FIFA argues that, contrary to what was found in the judgment under appeal, the Commission is required to substantiate before the General Court its conclusion that the matches in the final stage of the World Cup, in their entirety, constitute a single event of major importance. Thus, it is not for FIFA, or any other interested party, to demonstrate by specific factors that that is not the case.
- 27 By the fifth part of the first ground of appeal FIFA submits that, in giving reasons not contained in the contested decision, the General Court exceeded the ambit of the judicial review which it is required to carry out.
- 28 By the sixth part of this ground of appeal it claims that the General Court erred in considering that the Commission provided sufficient grounds for including the final stage of the World Cup in its entirety in the Belgian list of events of major importance.
- 29 The Commission, the Kingdom of Belgium and the United Kingdom contest the validity of the first ground of appeal raised by FIFA in support of its appeal.

Findings of the Court

- 30 Given the importance for the General Court's reasoning of the findings in paragraph 95 of the judgment under appeal, the third part of the first ground of appeal needs to be examined first of all.

– The third part of the first ground of appeal

- 31 The Court notes, at the outset, that the General Court found, in paragraph 72 of the judgment under appeal, that the World Cup 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. Moreover, as is apparent from paragraph 5 of the judgment under appeal, it understood the term ‘World Cup’, referred to in recital 18 in the preamble to Directive 97/36, as including only the final stage of that competition.
- 32 However, neither that recital nor any other part of Directives 85/552 or 97/36 contains any indication that the term ‘World Cup’ 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.
- 33 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 World Cup 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.
- 34 It follows from the foregoing considerations that the European Union legislature did not intend to specify that the ‘World Cup’, 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 World Cup 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.
- 35 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 World Cup’, did not have any bearing in the present case.
- 36 As regards, first of all, the exclusion of qualifying matches from the definition of the World Cup, suffice it to note that the Belgian authorities did not include those matches in the list of events of major importance and that, consequently, the contested decision does not concern such matches.

- 37 Next, the Court of Justice finds that the General Court examined, in paragraphs 102 to 108 of the judgment under appeal, on the basis of the information provided by FIFA and in the light of the actual perception of the public in the Flemish Community and the French Community, whether all the matches in the final stage of the World Cup actually attract sufficient attention from the public to form part of an event of major importance (see paragraphs 55 to 57 below). 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 World Cup could be considered, in the Flemish Community and the French Community, to be a single event of major importance. Ultimately, its assessment was thus in line with what this Court has found in paragraph 34 above.
- 38 Finally, it is apparent from the considerations set out in paragraph 66 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.
- 39 That said, in following the reasoning set out in paragraph 31 above, the General Court concluded, in paragraph 95 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 World Cup as a single event of major importance in the Member State concerned.
- 40 However, given that the final stage of the World Cup 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 World Cup 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.
- 41 Consequently, the General Court erred in law, in paragraph 95 of the judgment under appeal, in finding that the Commission could not consider the inclusion of matches in the final stage of the World Cup 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 in that State.
- 42 In those circumstances, it needs to be examined whether, in the light of that error, the judgment under appeal must be set aside.
- 43 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).

- 44 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.
- 45 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, the judgment of 29 March 2012 in Case C-505/09 P *Commission v Estonia* [2012] ECR I-0000, paragraph 67).
- 46 In the present case, it is clear, in particular from the notification letter sent by the Kingdom of Belgium to the Commission on 10 December 2003, referred to in recital 1 of the contested decision and annexed to the defence lodged before the General Court, that the Flemish Government designated the matches in the final stage of the World Cup, in their entirety, as an event of major importance, on the grounds that the matches in that stage have traditionally been broadcast on free television channels and have commanded large television audiences. By way of example, that notification states that, in the Flemish Community, programs showing various matches of the final stage of the World Cup 2002 had viewing figures of between 1.8% and 9.9% of television viewers, that is 101 200 and 546 800 viewers respectively, with a market share of between 22.9% and 86.6%.
- 47 In parallel, the Government of the French Community designated, according to the notification of 10 December 2003, the matches in the final stage of the World Cup, in their entirety, as being an event of major importance, on the ground that those matches had been particularly popular among the general public in that Community and not only among those who generally follow football competitions. Moreover, those matches have traditionally been broadcast on free television channels and viewing figures of those broadcasts have been very high. In that regard, that notification also refers to programs showing various matches in the final stage of the World Cup 2002, which had viewing figures, in the French Community, of between 4.7% and 30.1% of television viewers, with a market share of between 50.8% and 63.4%.
- 48 In providing such information, in accordance with the requirements of Article 3a(2) of Directive 89/552, the Kingdom of Belgium 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.

- 49 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 paragraphs 46 and 47 above, whether the Belgian authorities committed a manifest error of assessment in designating the matches in the final stage of the World Cup, in their entirety, as an event of major importance.
- 50 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 World Cup, thus including ‘non-gala’ matches, had a special general resonance in the Flemish Community and the French Community, 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 16 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.
- 51 Next, the notification referred to in paragraphs 46 and 47 above enabled the Commission to determine, in particular, the viewing figures and the market shares of the programs showing the least popular matches in the final stage of the World Cup, which together make up the ‘non-gala’ matches. Moreover, the notification of 10 December 2003 explained why the viewing figures for certain matches might appear to be low, while making it clear that even those matches commanded a sufficient level of interest for them to form part of an event of major importance.
- 52 FIFA did not dispute that that notification constituted the basis of the contested decision.
- 53 Finally, FIFA cannot reasonably claim that the Commission’s supposedly inadequate review resulted from the fact that the Commission carried out its examination in the light of the information available when it received the notification from the Kingdom of Belgium, namely on 10 December 2003, and did not take account of subsequent data, such as that available on the date on which the contested decision was adopted.
- 54 In that regard, the Court points out that such a head of claim was not raised at first instance. Before the General Court, FIFA merely criticised the grounds of the contested decision, claiming that the decision was silent on the nature and the date of the information relating to the Belgian media landscape as taken into account by the Commission. FIFA thus did not criticise the Commission’s supposedly inadequate review, which is a head of claim relating to the substance of the case. In accordance with settled case-law, to allow a party to put forward for the first



time before the Court of Justice a plea in law which it has not raised before the General Court would in effect allow that party to bring before the Court a wider case than that heard by the General Court. In an appeal, the Court's jurisdiction is, as a general rule, confined to a review of the assessment by the General Court of the pleas argued before it (see the judgment of 19 July 2012 in 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, paragraph 111 and the case-law cited). Consequently, the head of claim referred to above must be dismissed as inadmissible.

- 55 Thirdly, it was open to FIFA to show before the General Court that the Commission should have concluded that the Belgian authorities had committed a manifest error of assessment in designating the matches in the final stage of the World Cup, in their entirety, as an event of major importance.
- 56 To that end, FIFA submitted to the General Court figures relating, inter alia, to viewing figures during the final stages of the World Cup between 1998 to 2006, and submitted that those figures showed that the 'non-gala' matches did not have special general resonance in the Flemish Community and the French Community among television viewers who do not follow football on a regular basis.
- 57 The General Court examined those figures in paragraphs 102 to 108 of the judgment under appeal, but did not confirm the assessment proposed by FIFA. It concluded that FIFA had not shown that the findings in recitals 6 and 18 of the contested decision and referred to in paragraph 50 above are vitiated by error, nor that, as a result, the Commission should have concluded that the Belgian authorities had committed a manifest error of assessment in designating the matches in the final stage of the World Cup, in their entirety, as an event of major importance.
- 58 It follows from the foregoing that the error of law committed by the General Court, as found in paragraph 41 above, is not such as to invalidate the judgment under appeal, since its operative part is well founded on other legal grounds. Consequently, the third part of the first ground of appeal must be rejected as ineffective.
- The other parts of the first ground of appeal
- 59 In so far as concerns the first and second parts of the first ground of appeal, the Court notes that the question whether the grounds of a judgment of the General Court are incoherent is indeed a question of law which may be raised on appeal, since the statement of the reasons on which a judgment is based must clearly and unequivocally disclose the General Court's reasoning (see, to that effect, the order of 29 November 2011 in Case C-235/11 P *Evropäiki Dynamiki v Commission* [2011] ECR I-0000, paragraphs 29 and 30, and the judgment of 19 December

2012 in Case C-314/11 P *Commission v Planet* [2012] ECR I-0000, paragraphs 63 and 64).

- 60 However, the obligation that the statement of the reasons must be coherent does not constitute an objective in itself, but seeks to enable the persons concerned to ascertain the reasons for the decision taken (see, to that effect, *Evropäiki Dynamiki v Commission*, paragraph 30, and *Commission v Planet*, paragraph 64).
- 61 In the present case, the Court notes that the grounds criticised in the context of the first and second parts were intended to support the findings set out in paragraphs 72 and 95 of the judgment under appeal. However, having concluded in paragraphs 31 to 41 above that those findings were erroneous, the Court then substituted grounds which justify the decision taken.
- 62 Thus, since the grounds criticised are ancillary to findings considered to be erroneous by the Court, which has substituted other grounds for them, they no longer constitute the basis for the decision taken, with the result that it is no longer necessary to examine their alleged incoherency.
- 63 In order to respond to the fourth part of the first ground of appeal, the Court notes that the notification by the Kingdom of Belgium of 10 December 2003 and the contested decision set out the reasons why the matches in the final stage of the World Cup, in their entirety, were designated as an event of major importance. Thus, given that acts of the European Union institutions are presumed to be lawful (Case C-177/06 *Commission v Spain* [2007] ECR I-7689, paragraph 36), and having regard to the limited review carried out by the Commission and the General Court, it was for FIFA to dispute those reasons before the General Court and to demonstrate that the Commission should have concluded that the Belgian authorities had committed a manifest error in including all of those matches in the list of events of major importance. Moreover, FIFA has unsuccessfully tried to challenge those reasons (see paragraphs 55 to 57 above).
- 64 Accordingly, the fourth part of the first ground of appeal cannot succeed.
- 65 As regards the fifth part of the first ground of appeal, the Court notes that FIFA has not set out the precise reasons why it considers that the General Court went beyond the judicial review which it is required to exercise. Moreover, it has not stated the precise paragraphs of the judgment under appeal containing the grounds which it criticises. In accordance with the Court's settled case-law, that part must be rejected as inadmissible (see Case C-202/07 P *France Télécom v Commission* [2009] ECR I-2369, paragraph 55, and the order of 2 February 2012 in Case C-404/11 P *Elf Aquitaine v Commission* [2012] ECR I-0000, paragraph 15).
- 66 As for the sixth part of the first ground of appeal, it is apparent from the general considerations set out in paragraphs 107 to 111 of the judgment delivered today in Case C-201/11 P *UEFA v Commission*, that the grounds of the contested decision satisfy the conditions laid down in Article 253 EC. In the light of those

considerations, it is sufficient that recitals 6 and 16 of that decision set out succinctly the reasons why the Commission considered that the matches in the final stage of the World Cup, in their entirety, could validly be included in the list of events of major importance for Belgian society, given that those reasons enable FIFA to understand the justification for the measure taken and the General Court to review the merits of that assessment.

- 67 In the light of the foregoing, the first ground of appeal must be rejected as being partly inadmissible and partly unfounded.

*The second ground of appeal*

Arguments of the parties

- 68 The second ground of appeal consists, in essence, of four parts. By the first part FIFA submits that the General Court did not examine its argument relating to the reference, in the contested decision, to the type and date of data of which the Commission took account in adopting that decision. The General Court should actually have considered that the opaque expression ‘the available data on the Belgian media landscape’, referred to in recital 3 of that decision, did not satisfy the requirement that sufficient grounds be given. In particular, since one World Cup took place after the adoption of the Commission’s decision of 7 April 2004 and before the adoption of the contested decision, which replaced the decision of 7 April 2004 following the judgment of the General Court in *Infront WM v Commission*, the Commission should have indicated which viewing figures and which World Cups were examined and taken into account.
- 69 By the second part of that ground of appeal FIFA claims that the General Court based its findings, in paragraphs 71 to 73 of the judgment under appeal, on reasons not appearing anywhere in the contested decision when it held that the matches in the final stage of the World Cup, in their entirety, may be regarded as a single event and that the Commission was not required to provide further reasons to justify its decision to approve the inclusion of the entire tournament in the Belgian list of events of major importance.
- 70 By the third part of the second ground of appeal FIFA accuses the General Court of having erred in law in refusing to give any importance to the practices of other Member States which have not included ‘non-gala’ matches in their lists of events of major importance.
- 71 The fourth part of the second ground of appeal relates to the interpretation and application of the criteria on the basis of which the matches in the final stage of the World Cup, in their entirety, were found to constitute an event of major importance. First of all, FIFA considers that the General Court erred in approving the Commission’s finding that, in Belgium, the entire World Cup fulfilled the criterion relating to its ‘special general resonance’ and in considering that the Commission had given sufficient and adequate reasons for that finding. In this

respect, FIFA claims, inter alia, that the General Court assimilated the criterion of the ‘special general resonance’ of an event to that of its popularity. However, the ‘popularity’ of an event is not a relevant criterion and is insufficient for considering it to be an ‘outstanding event’, as required by recital 21 in the preamble to Directive 97/36. Moreover, the General Court misapplied Article 253 EC in considering that the Commission gave sufficient and adequate reasons for its finding relating to the ‘special general resonance’ criterion.

- 72 Secondly, FIFA submits that the General Court erred in endorsing the Commission’s findings that the matches in the final stage of the World Cup, in their entirety, satisfied the requirements of the criterion referred to in recital 16 of the contested decision, relating to the traditional broadcasting in the past of all matches in the final stage of the World Cup and large television audiences commanded by ‘non-gala’ matches. According to FIFA, the findings of the General Court are unfounded and contradicted by the facts. Moreover, the General Court wrongly considered that the Commission gave sufficient and adequate reasons for its conclusion that those requirements were satisfied.
- 73 In that regard, FIFA submits that the General Court presented viewing figures of a non-representative sample of those matches and ignored matches with lower viewing figures. In addition, it should have found that the viewing figures for ‘non-gala’ matches in Belgium did not constitute ‘very large audiences’. Likewise, it erred in its explanations of the small viewing figures of certain ‘non-gala’ matches.
- 74 Finally, FIFA takes issue with paragraph 117 of the judgment under appeal, in which the General Court ruled on the arguments challenging the proportionality of the inclusion of all of the matches in the final stage of the World Cup in the list of events of major importance. FIFA submits that the General Court erred in considering that the viewing figures confirmed that the World Cup could legitimately be regarded as a single event of major importance and that, consequently, the proportionality of the notified measures was *ipso facto* established.
- 75 According to the Commission, the second ground of appeal is partly inadmissible and partly ineffective. Moreover, it contends that this ground of appeal is entirely unfounded, a conclusion shared by the Kingdom of Belgium and the United Kingdom.

#### Findings of the Court

- 76 As regards the reference to the type and dates of the data taken into account in the contested decision, it is apparent from the considerations set out in paragraph 66 above that the Commission was not required to specify, in that decision, the type and dates of such data.

- 77 In those circumstances, it is not necessary to examine – as has been held in paragraphs 59 to 62 above – whether the General Court sufficiently responded to FIFA’s argument regarding the reference to the type and dates of that data.
- 78 Consequently, the first part of the second ground of appeal cannot be upheld.
- 79 In so far as concerns the second part of the second ground of appeal, 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).
- 80 However, in the present case, the considerations set out in paragraphs 71 to 73 of the judgment under appeal do not fill a gap in the reasoning of the contested decision, but seek to determine the required level of that reasoning in the light of the requirements of the European Union legislation in the area. Thus, the General Court did not substitute its own reasoning for that of the author of the contested decision, but merely reviewed the legality thereof as is required of it.
- 81 Consequently, the second part of the second ground of appeal must be rejected as unfounded.
- 82 In so far as concerns the third part of that ground of appeal, the Court notes that, before the General Court, FIFA did not raise a plea claiming that, in assessing whether ‘non-gala’ matches were of major importance for Belgian society, account needed to be taken of the practice of other Member States. In its initial application FIFA merely made reference to that practice without submitting that the contested decision was unlawful on the ground that the Belgian authorities and the Commission did not attach any importance to such a practice.
- 83 In accordance with the case-law cited in paragraph 54 above, the third part of this ground of appeal must therefore be rejected as inadmissible.
- 84 In the context of the fourth part of the second ground of appeal, FIFA raises, first of all, a series of arguments by which it seeks to show that the parameters for ‘non-gala’ matches did not satisfy the criteria set out in recitals 6 and 16 of the contested decision and fixed by the Belgian authorities for the purposes of designating events as being of major importance.
- 85 However, by those arguments, FIFA, in reality, requests the Court of Justice to substitute its own assessment of the facts for that of the General Court, without 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, those arguments 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).

- 86 Next, as regards the argument alleging that the ‘special general resonance’ criterion for an event was assimilated to that of its popularity, the Court points out that FIFA did not raise such a plea before the General Court. In accordance with the case-law cited in paragraph 54 above, that argument must be rejected as inadmissible.
- 87 In so far as concerns the complaints alleging that the formal grounds for the contested decision were insufficient, those complaints overlap, in reality, with the sixth part of the first ground of appeal and must therefore be rejected for the reasons given in paragraph 66 above.
- 88 Finally, the Court points out that the argument relating to the proportionality of the inclusion of the matches in the final stage of the World Cup, in their entirety, in the list of events of major importance for Belgian society is based on an erroneous reading of paragraph 117 of the judgment under appeal. In that paragraph, the General Court did not reject that argument on the basis of the fact that the proportionality of the notified measures was *ipso facto* established since the matches in the final stage of the World Cup, in their entirety, could validly be regarded as a single event of major importance. The General Court rejected that plea as being founded on an erroneous presumption, since it alleged that the measures taken by the Belgian authorities were disproportionate in that ‘non-gala’ matches were not of major importance. The General Court’s finding was justified since it had concluded, in paragraphs 98 to 119 of the judgment under appeal, that the matches in the final stage of the World Cup, in their entirety, could be regarded as being of major importance for Belgian society.
- 89 In those circumstances, that argument of FIFA cannot be upheld.
- 90 Having regard to the foregoing considerations, the second ground of appeal must be rejected as partly inadmissible and partly unfounded.

### *The third ground of appeal*

#### Arguments of the parties

- 91 The third ground of appeal comprises, in essence, seven parts. By the first part, FIFA submits that the General Court erred, in paragraphs 129 and 130 of the judgment under appeal, in considering, on the basis of reasons which it had itself advanced, that the contested decision established the proportionality of the restrictions on the freedom to provide services and the right of establishment which arise from the notified measures. According to FIFA, it was for the Commission, and not the General Court to assess such restrictions. Hence, the General Court could not have found that, since the World Cup was ‘by nature, a

single event', the Commission, which did not rely on that alleged nature, was dispensed from the obligation to show that the restrictions entailed by the contested decision were necessary, appropriate, and proportionate.

- 92 According to the second part of the third ground of appeal, the General Court erred in holding, in paragraphs 55, 56 and 127 of the judgment under appeal, that the objective of ensuring wide public access to televised events of major importance for society and the right to information justified the restrictions entailed by the contested decision. Wide public access is not limitless access. Thus, the right to information does not encompass the right to watch on free television all the matches in the final stage of the World Cup, nor does it justify the prohibition on broadcasting any of those matches on an exclusive basis by any broadcaster other than broadcasters operating free television channels.
- 93 By the third part of that ground of appeal, FIFA considers that the General Court should have held that the Commission was bound to explore whether less restrictive measures than those approved in the contested decision allowed the attainment of the objective pursued by Article 3a of Directive 89/552.
- 94 By the fourth part of the third ground of appeal, FIFA submits that the Commission could not carry out a limited verification of the compatibility of the notified measures with European Union law. The General Court should have ruled that the Commission was bound to undertake a thorough verification and conduct a detailed assessment.
- 95 By the fifth part of that ground of appeal, FIFA claims that the General Court erred in ruling that the Commission had given sufficient reasons for its findings concerning the proportionality of the restrictions on the freedom to provide services.
- 96 By the sixth part of this ground of appeal, FIFA submits that the General Court should have held that the Commission was bound to explore whether measures less destructive of property rights than those approved of in the contested decision allowed the attainment of the objective pursued by Article 3a of Directive 89/552. Where two fundamental rights are concerned, restrictions on the exercise of one should be subject to a balancing operation, which, in the contested decision, the Commission did not undertake and which, in the judgment under appeal, the General Court did not consider.
- 97 By the seventh part of the third ground of appeal, FIFA submits that the General Court relied on insufficient grounds in considering that the restrictions on the freedom to provide services, the freedom of establishment and the right to property were justified.
- 98 According to the Commission, the Kingdom of Belgium and the United Kingdom, the third ground of appeal is unfounded.

## Findings of the Court

- 99 The first part of the third ground of appeal is based on an erroneous reading of paragraphs 129 and 130 of the judgment under appeal. The General Court did not consider that the contested decision had established that the restrictions on the freedom to provide services and on the freedom of establishment which resulted from the measures notified by the Kingdom of Belgium were proportionate. Just as with the argument set out in paragraph 88 above, the General Court rejected FIFA's plea as being based on an erroneous premiss, namely that, to be proportionate, the list of events of major importance should have been limited to the inclusion of 'gala' matches, since those are the only matches of major importance for Belgian society. The General Court was legitimately able to rule as it did since it found, in paragraphs 98 to 119 of the judgment under appeal, that the matches in the final stage of the World Cup, in their entirety, could be regarded as being of major importance for Belgian society.
- 100 Therefore, the first part of the third ground of appeal must be rejected as unfounded.
- 101 As regards the second part of that ground of appeal, the Court notes that, in paragraphs 54 to 58 and 127 of the judgment under appeal, the General Court did not conclude that the objective of ensuring broad public access to television broadcasts of events of major importance and the right to information justified the specific restrictions brought about by the contested decision. It ruled on that issue in a general context, finding that, given that they concern events of major importance, the measures envisaged in Article 3a(1) of Directive 89/552 may be justified by that objective and by the right to information, provided that they are appropriate for giving effect to them and do not go beyond what is necessary in order to do so. In the light of the principles referred to in paragraphs 11 and 12 above, that finding cannot be criticised.
- 102 Moreover, it is apparent from what has been found in paragraphs 11, 21 and 22 above that, contrary to what FIFA submits, the General Court was not required to reconcile those objectives with the requirements relating to the freedom to provide services and the freedom of establishment.
- 103 In those circumstances, the second part of the third ground of appeal cannot be upheld.
- 104 In so far as concerns the third part of this ground of appeal, it is apparent from recital 17 of the contested decision that the Commission examined whether the measures notified by the Kingdom of Belgium were proportionate. Such an examination of proportionality necessarily involves an assessment of whether the public interest objectives could be attained by measures which are less restrictive of the freedoms of movement. In those circumstances, FIFA cannot submit that the Commission completely omitted to assess whether it was possible to rely on



such measures. In that regard, it is irrelevant that recital 17 merely refers to the freedom to provide services, since the examination of proportionality is not substantially different in relation to the restrictions on the freedom of establishment brought about by the notified measures and those measures will affect that freedom only exceptionally.

- 105 Moreover, in paragraph 118 of the judgment under appeal, the General Court examined the less restrictive measures proposed by FIFA and found that they were not compatible with the definition of free television set out in recital 22 in the preamble to Directive 97/36. Consequently, such measures do not ensure the attainment of the public interest objectives as effectively as the measures notified by the Belgian authorities. In those circumstances, the General Court was able to conclude that the Commission did not have to examine such measures before making a finding on the proportionality of the inclusion of the matches in the final stage of the World Cup, in their entirety, in the list of events of major importance for Belgian society.
- 106 Consequently, the third part of that ground of appeal must be rejected as unfounded.
- 107 As regards the fourth part of the third ground of appeal, it is evident from paragraphs 19 and 22 above that the Commission is required to carry out a limited review when it approves national measures designating events as being of major importance. Thus, FIFA is wrong to consider that the General Court should have held that the Commission was required to carry out a ‘thorough’ verification and a ‘detailed assessment’ of the compatibility of the notified measures with European Union law.
- 108 The fourth part of the third ground of appeal cannot therefore succeed.
- 109 As regards the fifth part of that ground of appeal, the Court finds that, in the light of the general considerations set out in paragraphs 107 to 111 of the judgment in *UEFA v Commission*, the grounds for the contested decision are sufficient, with the result that that part of the ground of appeal must be rejected as unfounded.
- 110 As regards the sixth part of the third ground of appeal, it is clear from the considerations set out in paragraphs 11, 21 and 22 above, first, that FIFA’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. Secondly, given that the matches in the final stage of the World Cup, in their entirety, were validly designated by the Belgian authorities as an event of major importance, the Commission was required to examine only the effects of that designation on FIFA’s property rights which exceeded those intrinsically linked to the inclusion of that event in the list of events designated by those authorities.

- 111 In the present case, FIFA did not produce before the General Court any evidence enabling it to find that the effects on FIFA's right to property of the designation of the matches in the final stage of the World Cup, in their entirety, as an event of major importance were excessive.
- 112 Accordingly, the sixth part of that ground of appeal must be rejected as unfounded.
- 113 Finally, as regards the seventh part of the third ground of appeal, suffice it to note that, in paragraphs 125 to 130 and 136 to 142 of the judgment under appeal, the General Court provided FIFA with sufficient grounds to enable it to understand why it did not uphold its arguments and the Court of Justice with sufficient information to exercise its power of review.
- 114 Consequently, that part of the third ground of appeal cannot be upheld.
- 115 In the light of the foregoing, the third ground of appeal must be rejected as being partly inadmissible and partly unfounded.
- 116 As none of the three grounds of appeal relied on by FIFA in support of its appeal can be upheld, the appeal must be dismissed in its entirety.

#### **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 FIFA, and as the latter has been unsuccessful, FIFA 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 Fédération internationale de football association (FIFA) to pay the costs.**

[Signatures]