

Case T-55/08

Union des associations européennes de football (UEFA)

v

European Commission

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

Judgment of the General Court (Seventh Chamber), 17 February 2011 . . . II - 279

Summary of the Judgment

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Whether directly concerned — Commission decision declaring national measures adopted pursuant to Article 3a of Directive 89/552 compatible with Community*

law — No discretion for Member States — Action brought by the original holder of the broadcasting rights to an event covered by that decision — Whether directly concerned
(Art. 263, fourth para., TFEU; Council Directive 89/552, Art. 3a; Commission Decision 2007/730)

2. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Possibility of being individually concerned by a general decision — Conditions — Commission decision declaring national measures adopted pursuant to Article 3a of Directive 89/552 compatible with Community law — Action brought by the original holder of the broadcasting rights to an event covered by that decision — Applicant identifiable at the time of adoption of that decision — Applicant individually concerned*
(Art. 263, fourth para., TFEU; Council Directive 89/552, Art. 3a; Commission Decision 2007/730)

3. *Freedom to provide services — Television broadcasting activities — Directive 89/552 — Possibility for Member States to impose restrictions on the exercise of fundamental freedoms established by European Union law — Justification — Guarantee of right to information*
(European Parliament and Council Directive 97/36, recitals 18 and 21; Council Directive 89/552, Art. 3a(1))

4. *Freedom to provide services — Television broadcasting activities — Directive 89/552 — Events of major importance*
(European Parliament and Council Directive 97/36, recital 18; Council Directive 89/552, Art. 3a)

5. *Freedom to provide services — Television broadcasting activities — Directive 89/552 — National procedures for determining events of major importance for society*
(Council Directive 89/552, Art. 3a(1))

6. *Freedom to provide services — Television broadcasting activities — Directive 89/552*
(European Parliament and Council Directive 97/36, recital 21; Council Directive 89/552, Art. 3a(1) and (2))

7. *Freedom to provide services — Television broadcasting activities — Directive 89/552 — Restrictions imposed by a Member State justified on grounds of overriding reasons of public interest and in keeping with the principle of proportionality — Indirect effects on competition*
(Council Directive 89/552)

8. *Freedom to provide services — Freedom of establishment — Restrictions — Justification on grounds of overriding reasons of public interest — Assessment in the light of general principles of law — Measures infringing fundamental rights not acceptable*
(Arts 46 EC and 55 EC)

1. The mechanism of mutual recognition, provided for by Article 3a(3) of Directive 89/552 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, triggered by a Commission decision declaring measures taken by a Member State in accordance with Article 3a(1) thereof compatible with Community law, creates an obligation for the Member States to safeguard the legal consequences of those measures. The Member States must, in particular, ensure that television broadcasters under their jurisdiction comply with the conditions which govern the television broadcasting in the Member State in question of the events of major importance for society included in the list annexed to that decision, as defined by the Member State in question in its measures which have been approved and published in the *Official Journal of the European Union*. The obligation to achieve that result has a direct adverse effect on the legal position of the television

broadcasters under the jurisdiction of Member States other than the Member State which adopted the measures and which wishes to purchase broadcasting rights for that Member State originally held by the organiser of an event. It follows that such a decision directly affects the legal position of organisers of such events in respect of the rights originally held by them and does not leave any discretion to the Member States as to the result to be obtained, which is imposed automatically and results from the Community rules alone, irrespective of the content of the specific mechanisms which the national authorities put in place to attain that result. Such a decision is therefore of direct concern to the organisers.

(see paras 32-35)

2. Persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed by such a decision.

decision, which is therefore of individual concern to it.

(see paras 36-38)

Irrespective of the legal nature and source of the broadcasting rights for the final stage of the European Football Championship (EURO), it is an event for the purposes of recital 21 in the preamble to Directive 97/36, amending Directive 89/552 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, in that it is organised in advance by an organiser legally empowered to sell those rights and that that situation also held true at the time of adoption of Commission Decision 2007/730 on the compatibility with Community law of measures taken by the United Kingdom pursuant to Article 3a(1) of Directive 89/552. The organiser of the EURO was perfectly identifiable at the time of adoption of that

3. Article 3a(1) of Directive 89/552 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities gave concrete expression to the possibility for the Member States to restrict the exercise, in the audiovisual field, of fundamental freedoms established by primary Community law, on the basis of overriding reasons in the public interest.

Freedom of expression, as protected by Article 10 of the European Convention on Human Rights, is one of the fundamental rights guaranteed by the Community legal order and is an overriding reason in the public interest which is capable of justifying such restrictions. Under Article 10(1) of the ECHR, freedom of expression also includes the freedom to receive information.

However, as is apparent from recital 18 in the preamble to Directive 97/36 amending Directive 89/552, the measures contemplated in Article 3a of Directive 89/552 are intended to protect the right to information and to ensure wide public access to television broadcasts of national or non-national events of major importance for society. Recital 21 in the preamble to Directive 97/36 states that an event is of major importance when it is outstanding, is 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 is organised in advance by an event organiser who is entitled to sell the rights pertaining to that event.

4. Article 3a of Directive 89/552 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, to which recital 18 in the preamble to Directive 97/36 amending Directive 89/552 refers, does not effect a harmonisation of specific events which Member States may consider to be of major importance for society. It follows that recital 18 in the preamble to Directive 97/36 cannot be construed as meaning that the inclusion of the final stage of the European Football Championship (EURO) in a national list of events of major importance for society is automatically compatible with Community law. A fortiori, that recital cannot be understood as indicating that the EURO may, in any event, be validly included in its entirety in such a list, irrespective of the interest in EURO matches in the Member State concerned.

It follows that, since they relate to events which are of major importance for society, the measures contemplated in Article 3a(1) of Directive 89/552 are justified by overriding reasons in the public interest. Those measures must also be appropriate for attaining the objective which they pursue and not go beyond what is necessary in order to attain it.

(see paras 44, 47-50)

Even though there is no harmonisation of specific events which a Member State may consider to be of major importance for its society, the reference to the EURO in recital 18 in the preamble to Directive 97/36 means 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 their importance for society. However, any finding by the Commission that the inclusion of the entire EURO in a list of events of major importance for the society of a Member State is compatible with Community law, on the ground that the EURO is, by its nature, legitimately regarded as a single event, may be called into question on the basis of specific factors showing that the 'non-prime' matches are not of such importance for the society of that Member State.

in the sense that they must be based on objective criteria which are known in advance by the parties concerned, so as to prevent the Member States' discretion for deciding on the specific events to include in their lists from being exercised in an arbitrary manner. Although it is true that, under Article 3a of Directive 89/552, in order for an event to be included in the list it must be of major importance for society, the fact remains that the prior establishment of specific criteria used to assess that importance is an essential factor in order for national decisions to be adopted in a transparent manner and within the parameters of the discretion which the national authorities have in that regard. The requirement of clarity and transparency of the procedure also implies that the relevant provisions indicate the body which is responsible for drawing up the list of events and the conditions in which interested parties may submit their observations.

(see paras 51-52, 120)

5. The procedures put in place by the Member States under Article 3a(1) of Directive 89/552 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities for adopting the list of events of major importance for society must be clear and transparent,

However, Article 3a(1) does not require Member States to provide for separate procedures for establishing each of the categories in which they have found it appropriate to classify events of major importance for their society. The fact that there is a single procedure for drawing

up the list in question as a whole does in itself not affect the clarity and transparency of the procedure.

event, of possibly even greater importance for that society, is not included.

(see paras 90-91, 100)

Where a selection is made from among a number of specific events of major importance for society within the meaning of Directive 97/36, the Member States may not be required, directly or indirectly, to include in their lists events other than the ones they choose to include, or to derogate from the rules of the Treaty any more than they wish to do.

6. In providing that it is for the Member States to define which events are of major importance for their society within the meaning specified in recital 21 in the preamble to Directive 97/36 amending Directive 89/552, Article 3a of Directive 89/552 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities leaves the Member States considerable discretion in that regard.

(see paras 119, 194-195)

7. The consequences resulting from the fact that, in the light of the importance of the exclusivity of broadcasting rights for the final stage of the European Football Championship (EURO) matches for those broadcasters coming within the second category established by the legislation of a Member State, the latter will not be interested in acquiring non-exclusive rights, result indirectly from the restrictions on freedom to provide services introduced by the measures of the Member State in question. Yet restrictions on freedom to provide services resulting from the inclusion of all EURO matches in the list of events of major importance for the society of that Member

When an event is of major importance for the society of a Member State, the Commission does not infringe the principle of equal treatment if, in the review it carries out pursuant to Article 3a(2) of Directive 89/552, it does not oppose its inclusion in the list drawn up by the Member State in question on the ground that another

State are justified by overriding reasons in the public interest and are neither inappropriate nor disproportionate. The effects on the number of potential competitors, which are presented as being an unavoidable consequence of those obstacles to the freedom to provide services, cannot, therefore, be considered to be contrary to the Treaty articles on competition. In those circumstances, the Commission does not have to conduct a more in-depth analysis of those consequences.

(see paras 163-164)

provide services or the freedom of establishment, such justification, provided for by Community law, must be interpreted in the light of the general principles of law and in particular of fundamental rights. Thus the national rules in question can fall under the exceptions provided for by those provisions only if they are compatible with the fundamental rights the observance of which is ensured by the Community judicature. Similarly, it cannot be accepted that a national measure which is not compatible with fundamental rights, such as the right to property, may fall under the exceptions recognised on the basis that the measure reflects an overriding reason in the public interest, such as television access for the general public to events of major importance for society.

8. Where a Member State relies on provisions such as Articles 46 EC and 55 EC in order to justify rules which are liable to obstruct the exercise of the freedom to

(see para. 179)