

3. Is it consistent with European Union law if, during proceedings to amend a decision relating to a further application aimed at invalidating a utility model, the measures, procedures and legal remedies are applied in such a way that: the national court excludes any evidence submitted with the further application, including evidence relating to the state of the art, to which reference was already made in connection with the previous application for invalidation of a utility model?

**Appeal brought on 27 April 2011 by Fédération Internationale de Football Association (FIFA) against the judgment of the General Court (Seventh Chamber) delivered on 17 February 2011 in Case T-385/07: Fédération Internationale de Football Association (FIFA) v European Commission**

**(Case C-204/11 P)**

(2011/C 232/21)

*Language of the case: English*

#### Parties

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

*Other parties to the proceedings:* European Commission, Kingdom of Belgium, Federal Republic of Germany, United Kingdom of Great Britain and Northern Ireland

#### Form of order sought

The appellant claims that the Court should:

- uphold the judgment of the General Court delivered on 17 February 2011 in Case T-385/07 as regards admissibility;
- set aside the judgment of the General Court delivered on 17 February 2011 in Case T-385/07 as regards the substance, in so far as it approves the inclusion of the 'non-prime' matches of the FIFA World Cup™ in the Belgian list of events 'of major importance for society' within the meaning of the Directive;
- give final judgment pursuant to Article 61 of the Statute of the Court of Justice;
- order the Commission to pay FIFA's costs arising from the proceedings at first instance and from the present appeal.

#### Pleas in law and main arguments

1. **Error of law, violation of Article 36 of the Statute of the Court of Justice, infringement of Article 3a (2) of Directive 89/552/EEC<sup>(1)</sup> as amended by Directive 97/36/EC<sup>(2)</sup> and of EU law, misapplication of Article 296 TFEU** (exceeding the bounds of judicial review, contradictory reasoning, introducing reasons not given in the

contested decision as regards the categorisation of the FIFA World Cup™ and drawing wrong legal conclusions therefrom, reversing the burden of proof)

The appellant contends that the General Court infringed EU law in giving reasons not featured in the Commission decision<sup>(3)</sup> for its finding that the Commission correctly characterised the FIFA World Cup™ as 'by nature, a single event' for the purposes of Directive 89/552/EEC as amended by Directive 97/36/EC, in giving contradictory and inconsistent reasons, in holding that no specific grounds should be supplied by Member States for including the entire FIFA World Cup™ in their lists of major events, and in reversing the burden of proof.

2. **Error of law, infringement of Article 3a (1) of Directive 89/552/EEC as amended by Directive 97/36/EC, misapplication of Article 296 TFEU, violation of Article 36 of the Statute of the Court of Justice** (mischaracterisation of the FIFA World Cup™, overstepping the limits of judicial review, reliance on considerations not contained in the contested decision, erroneous assessment of facts relating to 'non-prime' matches and wrong legal conclusions drawn therefrom, finding the reasons given in the contested decision sufficient, failure to address arguments raised) The appellant argues that the General Court infringed EU law in holding that the Commission lawfully found and gave sufficient reasons for its finding that the entire FIFA World Cup™ is an event of major importance for Belgian society within the meaning of Directive 89/552/EEC as amended by Directive 97/36/EC. In particular, the General Court made an error of law and drew wrong legal conclusions from the facts in endorsing the Commission's unsupported findings that the entire FIFA World Cup™ has 'a special general resonance in Belgium', that it has been traditionally broadcast on free-to-air television and that it commanded large audiences.

3. **Error of law, infringement of the TFEU, violation of Article 3a (1) and (2) of Directive 89/552/EEC as amended by Directive 97/36/EC, misapplication of Article 296 TFEU, violation of Article 36 of the Statute of the Court of Justice** (disregarding the scope of judicial review, holding that the Commission correctly found and gave sufficient reasons for its finding that the notified Belgian measures are compatible with EU law and that the restrictions entailed by them are proportionate, misconstruction of the scope of the right to information and of the public interest in wide access to televised events of major importance for society)

### This plea is divided into two branches:

**First branch:** The appellant alleges that the General Court infringed EU law in holding that the Commission lawfully found that the notified Belgian measures were compatible with EU law, although the restrictions on the right of establishment were not addressed in the contested decision. The General Court further infringed EU law by holding that the restrictions on the right of establishment were proportionate and in holding that the Commission lawfully found, and that it gave sufficient reasons for its finding, that the restrictions on the freedom to provide services were proportionate.

**Second branch:** The appellant contends that the General Court infringed EU law in holding that the Commission lawfully found that the notified Belgian measures were compatible with EU law, although the restrictions on FIFA's property rights were not addressed in the contested decision. The General Court further infringed EU law by holding that the restrictions on FIFA's right to property were proportionate.

<sup>(1)</sup> 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 L 298, p. 23

<sup>(2)</sup> Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending 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 L 202, p. 60

<sup>(3)</sup> 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 L 180, p. 24.

**Appeal brought on 27 April 2011 by Fédération Internationale de Football Association (FIFA) against the judgment of the General Court (Seventh Chamber) delivered on 17 February 2011 in Case T-68/08: Fédération Internationale de Football Association (FIFA) v. European Commission**

**(Case C-205/11 P)**

(2011/C 232/22)

*Language of the case: English*

### Parties

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

**Other parties to the proceedings:** European Commission, Kingdom of Belgium, United Kingdom of Great Britain and Northern Ireland

### Form of order sought

The appellant claims that the Court should:

- uphold the judgment of the General Court delivered on 17 February 2011 in Case T-68/08 as regards admissibility;
- set aside the judgment of the General Court delivered on 17 February 2011 in Case T-68/08 as regards the substance, in so far as it approves the inclusion of the 'non-prime' matches of the FIFA World Cup™ in the UK list of events 'of major importance for society' within the meaning of the Directive;
- give final judgment pursuant to Article 61 of the Statute of the Court of Justice;
- order the Commission to pay FIFA's costs arising from the proceedings at first instance and from the present appeal.

### Pleas in law and main arguments

1. **Error of law, violation of Article 36 of the Statute of the Court of Justice, infringement of Article 3a (2) of Directive 89/552/EEC<sup>(1)</sup> as amended by Directive 97/36/EC<sup>(2)</sup> and of EU law, misapplication of Article 296 TFEU** (exceeding the bounds of judicial review, contradictory reasoning, introducing reasons not given in the contested decision as regards the categorisation of the FIFA World Cup™ and drawing wrong legal conclusions therefrom, reversing the burden of proof)

The appellant contends that the General Court infringed EU law in giving reasons not featured in the Commission decision<sup>(3)</sup> for its finding that the Commission correctly characterised the FIFA World Cup™ as 'by nature, a single event' for the purposes of

Directive 89/552/EEC as amended by Directive 97/36/EC, in giving contradictory and inconsistent reasons, in holding that no specific grounds should be supplied by Member States for including the entire FIFA World Cup™ in their lists of major events, and in reversing the burden of proof.

2. **Error of law, infringement of Article 3a (1) of Directive 89/552/EEC as amended by Directive 97/36/EC, violation of Article 36 of the Statute of the Court of Justice, misapplication of Article 296 TFEU** (the finding that the Commission correctly held that the list of the UK measures was drawn up 'in a clear and transparent manner')

The appellant submits that the General Court infringed EU law in holding that the Commission lawfully found that the UK events list was drawn up 'in a clear and transparent manner', as prescribed by Directive 89/552/EEC as amended by Directive 97/36/EC, regardless of the fact that the inclusion of the entire FIFA World Cup™ in that list was decided against unanimous contrary advice and that it was presented to the Commission, inter alia, on grounds that did not exist on the date on which the said list was drawn up.