



Reports of Cases

OPINION OF ADVOCATE GENERAL
JÄÄSKINEN
delivered on 12 December 2012¹

Cases C-201/11 P, C-204/11 P and C-205/11 P

**Union of European Football Associations (UEFA),
Fédération Internationale de Football Association (FIFA)**

v

European Commission

(Appeals — Television broadcasting — Television without frontiers — Article 3a of Directive 89/552/EEC — Directive 97/36/EC — Measures taken by the Member State concerning events of major importance for society which cannot be covered by exclusive television broadcasting rights — Commission decision declaring the measures compatible with European Union law — Commission's power of review — UEFA European Football Championship — FIFA World Cup — Right to property)

1. The present appeals are concerned with disputes relating primarily to the scope of the examination which the European Commission must carry out in respect of the list of events of major importance for the society of a Member State ('the national list') which each Member State may draw up under Article 3a(1) of Council Directive 89/552/EEC.²

2. The purpose of including an event on the national list is to ensure that a wide audience may follow the event via live or deferred coverage on free television. Within a period of three months from notification by a Member State, the Commission is to verify that the national list is compatible with European Union law and communicate it to the other Member States in order to ensure mutual recognition on their part.

3. In Case C-201/11 P, the Union of European Football Associations (UEFA) requests the Court of Justice to set aside the judgment of the General Court of 17 February 2011 in Case T-55/08 *UEFA v Commission*,³ by which the General Court confirmed the validity of Decision 2007/730/EC⁴ in which the Commission approved the inclusion of the entire UEFA European Football Championship ('the EURO') on the national list of the United Kingdom of Great Britain and Northern Ireland.

¹ — Original language: French.

² — Council Directive 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 amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (OJ 1997 L 202, p. 60) ('Directive 89/552 as amended').

³ — [2011] ECR II-271.

⁴ — Commission Decision of 16 October 2007 on the compatibility with Community law of measures taken by the United Kingdom pursuant to Article 3a(1) of Directive 89/552 (OJ 2011 L 295, p. 12).

4. In Case C-204/11 P, the Fédération Internationale de Football Association (FIFA) requests the Court of Justice to set aside the judgment of the General Court of 17 February 2011 in Case T-385/07 *FIFA v Commission*,⁵ by which the General Court confirmed the validity of Decision 2007/479/EC⁶ in which the Commission approved the inclusion of all the matches played in the FIFA World Cup ('the World Cup') on the national list of the Kingdom of Belgium.

5. In Case C-205/11 P, FIFA requests the Court of Justice to set aside the judgment of the General Court of 17 February 2011 in Case T-68/08 *FIFA v Commission*,⁷ by which the General Court confirmed the validity of Decision 2007/730 in which the Commission approved the inclusion of the entire World Cup on the national list of the United Kingdom.

6. Although the appellants claim that the General Court committed a number of errors of law, the grounds of appeal raised before the Court concern, primarily, two legal issues which deserve a more detailed examination. First, the issue of the interpretation of Article 3a of Directive 89/552 as amended must be discussed. Secondly, the present appeals require an analysis of the nature of the legal position of an organiser of sporting events with regard to fundamental rights of the European Union.

7. Lastly, it must be stressed that the national lists, as provided for in Article 3a of Directive 89/552 as amended, are measures concerning major cultural and sporting events whose scope greatly exceed that of football. Depending on the Member States' choices, they include, inter alia, in Belgium, the final of the Queen Elisabeth Music Competition and the Belgian Cycling Championship and, in the United Kingdom, the Cricket World Cup and the Wimbledon Tennis Championship. In relation to the procedure for verifying the national lists, taken as a whole, the statements of reasons for the Commission's decisions must be examined in a holistic manner, in order to avoid an artificial separation of the measures in question.⁸

I – Legal context

8. According to recital 18 in the preamble to Directive 97/36:⁹

'... 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 the European football championship; ... 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'.

5 — [2011] ECR II-205.

6 — Commission Decision of 25 June 2007 on the compatibility with Community law of measures taken by Belgium pursuant to Article 3a(1) of Directive 89/552 (OJ 2007 L 180, p. 24).

7 — [2011] ECR II-349.

8 — I note, in that respect, that the national list for the Kingdom of Belgium includes more than 20 events and that the United Kingdom's list includes 19. While acknowledging the optional nature of those lists, I note that, assuming each of the national lists contains about 20 events, the Commission would have to deploy significant administrative resources to be able to carry out a detailed examination of the content of, and the reasons stated for, the national lists of all the Member States.

9 — Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1997 L 202, p. 60; 'Directive 97/36').

9. Pursuant to Article 3a(1) and (2) of Directive 89/552 as amended:

‘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.’

II – The proceedings before the General Court, the judgments under appeal and the procedure before the Court of Justice

10. By its judgment in *UEFA v Commission*, the General Court rejected all of the pleas in law raised by UEFA against Decision 2007/730. By the judgments in Case T-385/07 *FIFA v Commission* and Case T-68/08 *FIFA v Commission*, the General Court rejected all of the pleas in law raised by FIFA against Decision 2007/479 and Decision 2007/730, respectively.

11. By its appeal in Case C-201/11 P, lodged at the Registry of the Court on 27 April 2011, UEFA requests the Court to set aside the judgment in *UEFA v Commission*, to partially annul Decision 2007/730 and to order the Commission to pay the costs. By its appeals in Cases C-204/11 P and C-205/11 P, lodged at the Registry of the Court on 28 April 2012, FIFA requests the Court to uphold, as regards admissibility, the judgments in Case T-385/07 *FIFA v Commission* and Case T-68/08 *FIFA v Commission*; to set aside those judgments in so far as they respectively approve the inclusion of the ‘non-prime’ matches of the World Cup on the national list of the Kingdom of Belgium and their inclusion on the United Kingdom national list; to give final judgment pursuant to Article 61 of the Statute of the Court of Justice of the European Union; and to order the Commission to pay FIFA’s costs arising from the proceedings at first instance and from the present appeals.

12. UEFA, FIFA, the Commission, the United Kingdom Government and the Belgian Government submitted written observations and attended the hearing which was held on 13 September 2012.

III – Observations concerning all three appeals

13. The principal legal question raised in the cases before the Court concerns the notion of the power of review granted to the Commission under Article 3a of Directive 89/552 as amended, a notion arising from a model comprising discretionary powers situated at various levels of a decision-making process in European Union law. Another horizontal question relating to all three appeals concerns the alleged infringement of the right to property. I propose first to clarify those issues, so that I can subsequently examine the remaining grounds of appeal put forward in the three cases.

A – The nature of the Commission's check under Article 3a of Directive 89/552 as amended and the interpretation of the scope of that provision

14. As a preliminary point, it is to be recalled that a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods used to achieve that result. As regards the objective of Directive 89/552 as amended, it must be recalled that its main purpose is to ensure freedom to provide television broadcasting services.¹⁰ In that context, Directive 89/552 as amended does not completely harmonise the rules relating to the areas to which it applies, but lays down minimum rules for broadcasts which emanate from the European Union and which are intended to be received within it.¹¹

15. Also, it is to be noted that Directive 89/552 as amended is based on the principle of control by the Member State of origin of the television broadcasts.¹² In that context, the provisions of Article 3a of Directive 89/552 as amended constitute a specific mechanism granting Member States the power to draw up national lists and entailing, in the case of cross-frontier broadcasts, supervision of compliance by television broadcasters within their jurisdiction with the requirement of access by the public in another Member State to television coverage of events which are designated as being of major importance for the society in that other Member State.

16. In accordance with recital 18 in the preamble to Directive 97/36, in order to protect the right to information and to ensure wide access by the public to television coverage of events of major importance, the Member States have the power to regulate the exercise of exclusive broadcasting rights to such events.

17. In the present instance, it clearly follows from Article 3a(1) of Directive 89/552 as amended that the Member State alone is competent to draw up a national list in order to ensure that the events are broadcast on free television, a list which must be notified to the Commission. That provision therefore governs the respective roles of the Commission and the Member States in the procedure for adopting the national lists, namely the issue of the allocation of competence between them.

18. Thus, pursuant to Directive 89/552 as amended, the Member States have a certain freedom of action in choosing the measures which they consider best suited to achieving – in the context of their distinctive national, cultural, and social characteristics – the result prescribed by that directive. In particular, Article 3a of Directive 89/552 as amended accords national authorities a discretion in drawing up the national list, provided that this competence is exercised in accordance with the aforementioned objective of Directive 89/552 as amended, under conditions observing the procedural requirements defined therein. The directive also sets out, in recital 21,¹³ certain criteria which must be taken into account in classifying an event as being of major importance in order to include it on the national list. However, those criteria are rather of an axiological nature, reflecting the specific traditions and needs of the population of the Member State at issue.

10 — As the Court found in Case C-412/93 *Leclerc-Siplec* [1995] ECR I-179, paragraph 28, and in Joined Cases C-34/95, C-35/95 and C-36/95 *De Agostini and TV-Shop* [1997] ECR I-3843, paragraph 3, the main purpose of Directive 89/552, which was adopted on the basis of Article 57(2) of the EEC Treaty (now, after amendment, Article 47(2) EC) and Article 66 of the EEC Treaty (now Article 55 EC), is to ensure freedom to provide television broadcasting services.

11 — See Case C-222/07 *UTECA* [2009] ECR I-1407, paragraph 19 and the case-law cited, and Joined Cases C-244/10 and C-245/10 *Mesopotamia Broadcast* [2011] ECR I-8777, paragraph 34.

12 — *Mesopotamia Broadcast*, paragraph 35.

13 — ‘... 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’.

19. It follows, in my view, that the check which the Commission is authorised to carry out in respect of the exercise of the Member State's discretion in establishing national lists is limited to ascertaining whether there is a manifest error of assessment. Consequently, the Commission is required, above all, to check the procedure for drawing up national lists in the light of the criteria of transparency and clarity. Moreover, the Commission is required to ensure that the national lists do not provide for a greater derogation from fundamental freedoms than that accepted by the European Union legislature when it adopted Article 3a of Directive 89/552 as amended. Likewise, the Commission must check the national lists from the perspective of general principles, such as non-discrimination on grounds of nationality. However, it is clear, in my view, that the Commission's review must be objective in nature and limited in scope.

20. In that respect, I note that a similar model, arising from a decision-making process at several levels, also applies in other fields of European Union law, such as in the field of State aid, and, in particular, as regards services of general economic interest under Article 108 TFEU. The scope of the control which the Commission is entitled to exercise in respect of national decisions establishing a service of general economic interest is limited to checking for manifest error.¹⁴ Reference can also be made, by analogy, to environmental law and the distribution of competence between the Member States and the Commission as regards the scheme for greenhouse gas emission allowance trading.¹⁵

21. In the present instance, the European Union legislature's intention to confer on the Commission only a power to review the conformity of the national lists, and not a power to substitute or to harmonise which would include the power to determine the national list itself on the basis of the national proposals, is also clear from the preparatory documents for Directive 97/36.

22. Thus, at the Conciliation Committee stage, unencoded access to events of major importance was considered to be a matter of priority by the European Parliament.¹⁶ The compromise solution reached was based on the principle that citizens' interests should be protected, the Member States being able to draw up lists that, after notification to the Commission, are mutually recognised by the other Member States, which undertake to ensure that those events are broadcast in unencoded form and free of charge, and, 'if necessary or appropriate for objective reasons of public interest', in the form of deferred coverage.¹⁷ The examination carried out by the Commission constitutes a stage preceding the mutual recognition procedure laid down in Article 3a(3) of Directive 89/552 as amended.

23. I note, furthermore, that, on modernisation of the existing rules by Directive 2007/65/EC¹⁸ to take account of technological and commercial developments in the European audiovisual sector, the mechanism of the drawing up of national lists by the Member States was retained without amendment.¹⁹

24. Moreover, it must be pointed out that Article 3a(2) of Directive 89/552 as amended introduces the possibility of determining, where necessary, whether a type of event comes within the scope of the directive by means of the 'comitology' procedure established in Article 23a of the directive. The contact committee established under that provision enables the organisation of consultations and regular exchanges with all the players in the television broadcasting market.

14 — Case T-289/03 *BUPA and Others v Commission* [2008] ECR II-81, paragraph 220.

15 — Case C-505/09 P *Commission v Estonia* [2012] ECR, paragraph 49 et seq.

16 — Document 1995/0074(COD)-10/06/1997. Text adopted by the Parliament, third reading.

17 — Report of 3 June 1997 on the joint text, approved by the Conciliation Committee, for a European Parliament and Council Directive 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 (C4-0203/97 - 95/0074(COD)).

18 — Directive of the European Parliament and of the Council of 11 December 2007 amending Directive 89/552 (OJ 2007 L 332, p. 27).

19 — See Article 3j in Directive 2007/65.

25. It follows that, in its decision-making process, the Commission can in no way limit itself to an automatic verification of the national lists. On the contrary, it is required, within the limits of its discretion, to observe, *inter alia*, the principle of good administration, which entails the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case.²⁰ However, such an examination does not preclude the repetition of identically worded statements in its decisions, inasmuch as the criteria in the light of which the Commission checks for manifest errors of assessment on the part of the Member States remain unchanged.

26. Furthermore, the scope of judicial review of decisions of the Commission such as those at issue in the present cases should be recalled.

27. Given that the power which the Commission may exercise in verifying the national lists is limited, the review which the General Court has to carry out in respect of the Commission's assessment in that regard must also observe the same limit. Therefore, that review must necessarily remain restricted and be confined to ascertaining whether the Commission properly found or rejected the existence of a manifest error by the Member State. In addition, the General Court's review must relate to ascertaining that the Commission complied with the rules of procedure and the rules relating to the duty to give reasons, and also that the facts relied on were accurate and that there has been no error of law, manifest error of assessment or misuse of powers.²¹

28. Finally, as regards the issues raised in the appeals before the Court relating to any restrictions on fundamental freedoms within the context of the internal market, I consider that it is useful to note some general considerations with regard to the content of Directive 89/552 as amended.

29. First, although the objective of Directive 89/552 as amended is to create a legal framework for television broadcasting in the internal market, it is apparent that, by adopting the provisions of Article 3a of that directive, the legislature of the European Union sought to reconcile the objective of promoting the freedom to provide services in the field of television broadcasting and that of protecting the right to information within the context of the cultural diversity of the Member States.

30. It is therefore evident from the general scheme of Directive 89/552 as amended that it is in order to ensure free access by a large audience to events of major importance for society that the Member States have been allowed to restrict, under the legislation, the exercise of exclusive broadcasting rights for such events. The inclusion of certain events on the national list, in accordance with Article 3a of Directive 89/552 as amended, can have the effect of restricting the freedom of television broadcasters to provide services.

31. Accordingly, it is clear that a restriction on the freedom to provide services was understood as an inherent consequence of the power conferred on the Member States to draw up national lists. Consequently, it must be found that the European Union legislature considered that restriction to be indispensable for the purposes of ensuring access by a large audience to events of major importance for society within the meaning of Directive 89/552 as amended. As such, it must be considered justified and, therefore, proportionate, subject to compliance by the Member States with the conditions laid down for drawing up national lists, a matter which the Commission is required to verify.

20 — See, *inter alia*, Case C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 14.

21 — See, by analogy, *BUIPA and Others v Commission*.

32. Since the legislature itself carried out the assessment of the proportionality of the restriction as an appropriate means of ensuring the right to information, the Commission's task is limited to verifying that, in adopting the national lists, the Member States do not exceed the limits of their competence under Article 3a of Directive 89/552 as amended, that is to say, to verifying the national procedure for the drawing up of those lists and whether the events included on them may be considered to be of major importance for society.

B – *The right to property*

33. The second notable aspect of the present appeals concerns the issue of the right to property as regards the organisation of sporting competitions. Issues concerning the relationship between the sport sector and the media have become crucial as broadcasting rights have become the primary source of revenue for professional sport in Europe. In the present instance, both UEFA and FIFA raised the issue of the infringement of the right to property in that respect in their written pleadings and at the hearing. In the light of the distinctive position of an organiser of sports events, it is necessary to consider the nature of the right whose existence and infringement they allege, in order to analyse subsequently the legal consequences arising therefrom.

34. In the present instance, it is undisputed that, as the governing bodies of European and international football, UEFA and FIFA are emblematic organisations in that sport. Both are holders of various intellectual property rights, which provide them with a source of revenue that they use to finance major sports events and promote the development of the sport on a long term basis.²²

35. However, before the General Court, UEFA and FIFA invoked a loss of earnings in relation to television broadcasting rights of which they are the exclusive owners, on the ground that the number of parties interested in such a transaction would be substantially reduced.²³ Before the Court, they claim that such a restriction on their right to property is unjustified, so that the judgment of the General Court is vitiated by an error of law.

36. First of all, if the alleged infringement were to be analysed from the perspective of the national law of the two Member States concerned, I observe that no protection arising from the right to property could be attributed, as such, to the abovementioned bodies. As confirmed by the representatives of the United Kingdom and Belgian Governments, although the notion of the right to property covers both the *jus in re* and intellectual property rights, UEFA and FIFA would be unable to rely thereon against third parties.²⁴ Interpreted from that perspective, their contentions before the General Court cannot succeed and, consequently, their grounds of appeal directed against the General Court's reasoning in that respect are ineffective. Under national law, the situation would have been different if an exclusive right relating to the exploitation of sporting events had been granted to the organisers of sporting events, as is the case in certain Member States and third countries.²⁵

37. Next, since, in their pleadings, both UEFA and FIFA have relied on the protection arising from fundamental rights, it must be recalled that, under Article 17 of the Charter of Fundamental Rights of the European Union ('the Charter'), '[e]veryone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. ... Intellectual property shall be protected'. The explanations

22 — That intellectual property is principally composed of registered trade marks (EURO 2012, FIFA WORLD CUP, BRAZIL 2014), designs, and copyright over works such as, inter alia, the official poster or the official emblem of competitions.

23 — See *UEFA v Commission*, paragraph 174, and Case T-385/07 *FIFA v Commission*, paragraphs 132 and 136.

24 — At the hearing, the representative of the United Kingdom confirmed that an event organiser holds an access contract, stipulating who may have access to an event and how that event may be viewed, filmed, etc. However, under United Kingdom law, the organiser of an event does not have a property right guaranteeing him exclusivity, protected against third parties, as regards the exploitation of an event for a commercial purpose. See Gardiner, S., *Sports Law*, p. 400 et seq.

25 — As an example, Article L.333-1 of the French sport code may be mentioned, according to which sporting federations, as well as organisers of sporting events, are owners of the right to exploit the events or sporting competitions that they organise. However its scope and its content are not clearly defined. See Wise, A., and Meyer, B., *International Sports Law and Business*, Kluwer 1997, pp. 1811 to 1830.

relating to that article indicate that it corresponds to Article 1 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ('Protocol No 1'). Thus, under Article 52(3) of the Charter, the right to property protected by Article 17 of the Charter has the same meaning and scope as under the European Convention for the Protection of Human Rights and Fundamental Freedoms.²⁶

38. I note that the object of Article 1 of Protocol No 1 is to protect a person against any interference by the State with the peaceful enjoyment of his or her possessions.²⁷ In accordance with the case-law of the European Court of Human Rights, the person who complains of an interference with his property rights must show that such a right exists.²⁸ Also, the concept of property under the European Convention for the Protection of Human Rights and Fundamental Freedoms does not have any single legal meaning. Consequently, that concept must be defined on the basis of the case-law of the European Court of Human Rights, which has opted for a wide interpretation. Thus, the concept of property 'can be "existing possessions" or assets, including, in certain well-defined situations, claims'.²⁹ According to the traditional approach, the right to property within the meaning of Article 1 of Protocol No 1 therefore covers the *jus in re*, the *jus ad personam* and intellectual property rights.

39. However, it must be recalled that, as the Court ruled in *Football Association Premier League and Others*, sporting events, including football matches, cannot be regarded as intellectual creations and those events cannot be protected under copyright. It is, moreover, undisputed that European Union law does not protect them on any other basis in the field of intellectual property.³⁰

40. Accordingly, the appellants' situation under the Charter corresponds to the position which UEFA and FIFA set up in fact and in law, on the one hand, through contractual arrangements concluded, inter alia, with athletes, spectators, sports clubs and broadcasters and, on the other hand, by means of control of access to stadiums, resulting from contracts concluded with their owners, and control of the related equipment.

41. In that regard, since the interpretation of the concept of 'possessions' within the meaning of Article 1 of Protocol No 1 is independent of the formal classifications of domestic law and the concept is wider in nature,³¹ the legal position of UEFA and of FIFA could, in my view, be equated with a right to property for the purpose of Protocol No 1.³² The existence of such a legal position would seem to be presumed by Article 3a of Directive 89/552 as amended and by recital 21 in the preamble to Directive 97/36.³³ Accordingly, a limitation by the State of the exercise of their rights constitutes interference with the enjoyment of their possessions by a public authority.³⁴

42. Consequently, even though – while recognising without hesitation the existence of the right whose infringement UEFA and FIFA invoked before it – the General Court did not correctly establish the nature of that right, it was nevertheless correct to reject their claims on the basis of the case-law concerning the restrictions which may be imposed on the use of the right to property and on the freedom to pursue an economic activity under European Union law.³⁵

26 — See the Opinion of Advocate General Bot in Case C-283/11 *Sky Österreich* (point 28), pending before the Court, a case which, however, concerns the distinct issue of the limitation of intellectual property rights.

27 — See European Court of Human Rights, *Broniowski v. Poland* [GC], no. 31443/96, § 143 and 144, ECHR 2004-V.

28 — See European Court of Human Rights, *Pištárová v. the Czech Republic*, no. 73578/01, § 38, 26 October 2004.

29 — See European Court of Human Rights, *Draon v. France* [GC], no. 1513/03, § 65, 6 October 2005.

30 — Joined Cases C-403/08 and C-429/08 [2011] ECR I-9083, paragraphs 98 and 99.

31 — See European Court of Human Rights, *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II.

32 — It is a case comparable to what is commonly called the right to 'goodwill', which has been recognised as a 'possession' within the meaning of Protocol No 1. See European Court of Human Rights, *van Marle and Others v. the Netherlands*, no. 8543/79, 26 June 1986, § 39 to 41, Series A no. 101.

33 — See *Football Association Premier League and Others*, paragraph 103.

34 — See, by analogy, European Court of Human Rights, *Beyeler v. Italy* [GC], no. 33202/96, § 98 et seq., ECHR 2000-I.

35 — See *UEFA v Commission*, paragraphs 179 and 180; Case T-385/07 *FIFA v Commission*, paragraphs 139 and 140; and Case T-68/08 *FIFA v Commission*, paragraphs 142 to 144.

43. Having regard to the balancing of interests arising from Directive 89/552 as amended, it seems to me that the European Union legislature is justified in imposing limitations or restrictions on the right to property invoked by UEFA and by FIFA, either on the basis of the fundamental rights of others, such as the right to information, or on the basis of the public interest. Moreover, I note that the right acknowledged in the present instance is far from an essential concept of the right to property covered by protection from legislative interventions. According to the case-law of the Court, even where intellectual property rights are recognised, the right holders concerned are not guaranteed the opportunity to demand the highest possible remuneration.³⁶ Furthermore, inasmuch as the right whose existence is claimed by UEFA and FIFA is defined neither in national law nor in European Union law, its field of application depends, for its very existence, on the provisions setting out its limits, such as Article 3a of Directive 89/552 as amended.

44. Consequently, the assessment of the European Union legislature carried out in the context of Directive 89/552 as amended, according to which the exclusivity of the right of the organiser of a sporting event may be limited, does not constitute, in my view, an obstacle to the peaceful enjoyment of possessions or an unlawful control of their use, within the meaning of Protocol No 1.³⁷

45. It is therefore in the light of those considerations that the grounds raised in the present appeals must be considered.

IV – The appeal in Case C-201/11 P

A – The first ground of appeal in Case C-201/11 P

46. By the first part of its first ground of appeal, UEFA claims that the General Court erred in law in its application of the requirements laid down in Article 3a(1) and (2) of Directive 89/552 as amended. UEFA points, in particular, to paragraph 94 of the judgment in *UEFA v Commission* and asserts that the General Court was incorrect in holding that the requirement of clarity and transparency does not have either as its object or as its effect to oblige the national authority to set out the reasons why it did not follow the opinions or observations put forward to it during the consultation procedure.

47. At the outset, it must be observed that paragraph 94 of the judgment in *UEFA v Commission* is part of a line of reasoning developed by the General Court in the preceding paragraphs, in which it sought to characterise the procedures organised at a national level to draw up the national list. Thus, it correctly pointed out, in paragraphs 90 and 91 of that judgment, that such procedures must be based on objective criteria which are known in advance by the parties concerned, so as to prevent the Member States' discretion from being exercised in an arbitrary manner.³⁸ Also, it pointed out that the requirement of clarity and transparency implies that the responsible body and the conditions in which interested parties may submit their observations can be identified.

48. In the light of the interpretation of Article 3a of Directive 89/552 as amended relating to the scope of the Commission's power, which I have set out in points 14 to 25 of the present Opinion, the General Court's reasoning must be validated.

36 — See *Football Association Premier League and Others*, paragraph 108.

37 — In such a case, given that the right, as such, remains in the hands of the sports organisations who may still grant licences or abstain from doing so, the issue of 'deprivation' of the property does not arise.

38 — Case C-250/06 *United Pan-Europe Communications Belgium and Others* [2007] ECR I-11135, paragraph 46.

49. Furthermore, it must be stated that, without presenting a precise and detailed line of argument as regards the error allegedly vitiating the General Court's reasoning, and merely citing a lone paragraph of the judgment in *Commission v UEFA*, UEFA in essence repeats the criticisms which it previously raised at first instance against Decision 2007/730 before the General Court, claiming that the United Kingdom's Secretary of State for Culture, Media and Sport rejected the convergent opinions of several advisory groups in the procedure which it carried out. Moreover, UEFA indicates that, in its view, the General Court should have ruled on the United Kingdom's national list.

50. An appeal must indicate precisely the contested elements of the decision of the General Court which the appellant seeks to have set aside, and also the legal arguments specifically advanced in support of the appeal. That requirement is not satisfied by a ground of appeal which, without even including an argument specifically identifying the error allegedly vitiating the decision under appeal, merely reproduces arguments previously submitted before the General Court. Such a ground of appeal amounts in reality to no more than a request for re-examination of a plea raised before the General Court, which the Court of Justice does not have jurisdiction to undertake.³⁹ Accordingly, the first part of the first ground of appeal must be declared to be inadmissible.

51. By the second part of the first ground of appeal, which comprises two separate complaints, UEFA claims that the General Court was wrong to validate the characterisation of the EURO as an event of major importance for society.

52. First, UEFA states that the General Court held that the mere fact that the EURO is mentioned in recital 18 in the preamble to Directive 97/36 means that the Commission did not need to require Member States to provide any specific reasons to support the inclusion of the entire tournament in the national list. Secondly, UEFA submits that the General Court substituted its own analysis for that of the Commission on two points concerning the characterisation of the EURO, in its entirety, as an event of major importance, namely (i) the characterisation of the EURO as a single event and (ii) the use of factors that the Commission had not taken into consideration.

53. First of all, as regards the complaint relating to the interpretation of recital 18 in the preamble to Directive 97/36, it must be observed that UEFA's arguments are based on a misreading of the judgment in *UEFA v Commission*.

54. I note that the General Court refers on several occasions to recital 18 in the preamble to Directive 97/36, recalling its interpretation of that recital in paragraphs 44 to 53 of the judgment. As the General Court rightly held, the reference to the EURO as an example of an event of major importance for society does not automatically result in its inclusion on the national list being compatible with European Union law. *A fortiori*, a reference to the EURO in recital 18 does not mean that the entirety of the EURO may *in any event* be included on the national list irrespective of the interest aroused by that competition in the Member State concerned. On the other hand, according to the General Court, recital 18 implies that where the Member State includes EURO matches on the national list, it does not need to include in its notification to the Commission specific grounds concerning the EURO's nature 'as an event of major importance for society'.

55. The General Court therefore correctly distinguished between, on the one hand, the necessity for inclusion of the EURO to comply, *on a case by case basis*, with the requirements of Directive 97/36, as set out in particular in recital 21 in its preamble, and, on the other, the legal characterisation of the EURO *as an event* of major importance for society by the legislature itself. Accordingly, in paragraph 120 of the judgment in *UEFA v Commission*, criticised by UEFA in the present ground of appeal, the General Court correctly inferred that the inclusion of EURO matches on the national list

39 — Case C-401/09 P *Evropaïki Dynamiki v ECB* [2011] ECR I-4911, paragraphs 55 and 61.

cannot be considered by the Commission to be incompatible with European Union law where the Member State does not provide specific reasons justifying their character *as an event* of major importance for society. It follows that the first complaint in the second part of the first ground of appeal must be rejected as unfounded.

56. Secondly, as regards the alleged substitution of reasons, UEFA criticises the validation of the unitary nature of the EURO by the General Court in paragraph 103 of the judgment in *UEFA v Commission*, in that the General Court relied for that purpose on entirely new factual evidence – set out in paragraphs 126 to 135 of the judgment – which was not considered in Decision 2007/730.

57. In its response to the first plea in law raised at first instance, the General Court found, in paragraph 103 of the judgment in *UEFA v Commission*, that the EURO is a competition which may reasonably be regarded as a single event rather than as a series of individual events divided up into matches arousing different levels of interest. Then, in paragraphs 126 to 135 of the judgment, responding to the third plea raised at first instance, and in order to reject the argument that the Commission erred in law by failing to call into question the unitary nature of the EURO, the General Court relied on the results of studies commissioned by UEFA.

58. In that regard, I note that it follows from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice that the General Court has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, second, to assess those facts. When the General Court has found or assessed the facts, the Court of Justice has jurisdiction under Article 256 TFEU to review the legal characterisation of those facts by the General Court and the legal conclusions it has drawn from them.⁴⁰

59. The Court has also held that the appraisal of the facts by the General Court does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice.⁴¹

60. In the present case, it must be stated that by its line of argument concerning, first, the EURO's non-unitary nature and, second, the analyses of the interest aroused by certain types of matches in the United Kingdom, UEFA requests the Court to verify factual assessments carried out by the General Court.

61. I note in that respect, as the General Court correctly found in paragraph 103 of its judgment, that Directive 89/552 as amended does not take a position on whether the EURO is unitary in nature. The examination of the nature of a sporting event based on various types of fixtures is a factual issue. Since UEFA has failed to show clear distortion of the sense of the factual evidence examined by the General Court, the second part of the first ground of appeal must be considered to be clearly inadmissible.

62. In those circumstances, the first ground of appeal raised by UEFA in support of its appeal cannot be upheld and, consequently, must be rejected in its entirety.

B – *The second ground of appeal in Case C-201/11 P*

63. By its second ground of appeal, divided into two parts, UEFA claims that the General Court erred in law in the application of provisions concerning competition.

40 — See Joined Cases C-628/10 P and C-14/11 P *Alliance One International and Standard Commercial Tobacco v Commission* [2012] ECR, paragraph 84 and the case-law cited.

41 — *Alliance One International and Standard Commercial Tobacco v Commission*, paragraph 85 and the case-law cited.

64. By the first part, UEFA claims that the General Court misconstrued Article 106(1) TFEU. First, it submits that the General Court erred in that it was silent on the preliminary question of whether that provision is engaged in the present case. Secondly, the General Court was wrong to conclude that the United Kingdom measures did not amount to the grant of special rights to broadcasters operating free television channels. According to UEFA, the General Court placed excessive weight on the fact that, in theory, the United Kingdom legislation prohibits exclusive broadcasting rights for any television broadcaster, whether they operate free channels or pay channels. Finally, UEFA claims that the General Court's analysis amounted to a misinterpretation of the concept of 'special rights' within the meaning of Article 106(1) TFEU, which consists of two elements, namely (i) that the right must be granted by an act of a Member State and (ii) that the right must give rise to more favourable treatment of the undertaking benefiting from the right than of its competitors.

65. In that regard, first of all, it must be stated that the issue concerning Article 106 TFEU was analysed by the General Court in the context of the examination of the fourth plea raised at first instance, in response to the complaint concerning the special rights allegedly granted to the BBC and to ITV. After correctly recalling, in paragraphs 166 to 168 of the judgment in *UEFA v Commission*, the applicable case-law in the area of special and exclusive rights,⁴² the General Court sought to demonstrate that the United Kingdom legislation at issue did not display the features that could render Article 106 TFEU applicable. The General Court found, in particular, in paragraph 170 of the judgment, that '[t]he United Kingdom legislation ... prohibits exclusivity for any broadcaster, not only at the broadcast stage, but also at the stage of concluding broadcasting contracts, with the result that no broadcaster coming under United Kingdom jurisdiction may validly conclude a contract for the exclusive broadcast of an event included in its list'. Subsequently, in paragraph 171 of the judgment, the General Court concluded that 'the result that ... only certain broadcasters ... such as the BBC and ITV, will ultimately broadcast the EURO in the United Kingdom, since their competitors are interested only in exclusive broadcasting ... is not tantamount to a grant of special or exclusive rights'.

66. Consequently, as regards the complaint relating to the lack of analysis of the applicability of Article 106 TFEU, it is necessary to reject UEFA's contentions as ineffective.

67. Secondly, it must be recalled that the Court's jurisdiction in appeals from the General Court is limited to points of law. In a list setting out the grounds that may be relied upon in that context, the first paragraph of Article 58 of the Statute of the Court of Justice states that an appeal may be based on infringement of European Union law by the General Court.⁴³

68. In the present case, the rule which UEFA claims has been infringed is certainly part of European Union law. However, the alleged breach is based on a presumed error concerning the interpretation by the General Court of a rule of national law.

69. So far as concerns the examination, in the context of an appeal, of the findings made by the General Court with regard to national legislation, the Court has previously held that it has jurisdiction to examine (i) whether the General Court may have distorted the clear sense of the wording of the national provisions at issue, (ii) whether the General Court made findings that were clearly inconsistent with their content and (iii) whether the General Court, in examining all the particulars, attributed to one of them, for the purpose of establishing the content of the national law at issue, a significance which is not appropriate in the light of the other particulars, where that is manifestly apparent from the documentation in the case file.⁴⁴ Since none of those allegations can be accepted in the present case, it is necessary to reject that complaint as unfounded.

42 — See the case-law cited in paragraphs 166 to 168 of that judgment.

43 — Case C-263/09 P *Edwin v OHIM* [2011] ECR I-5853.

44 — See, to that effect, *Edwin v OHIM*.

70. Thirdly, as regards misinterpretation of the concept of ‘special rights’ within the meaning of Article 106 TFEU, it suffices to note that the arguments relating to the supposed grant of privileges to the BBC and ITV were not raised before the General Court and are intended to change the subject-matter of the proceedings brought before it. Since UEFA’s submission therefore constitutes a new plea, it must be rejected as inadmissible on appeal.⁴⁵

71. Moreover, in order to have the lawfulness of the national legislation reviewed in the light of European Union law, UEFA should have brought an action before the national courts, which would thus have been able to refer a question to the Court of Justice for a preliminary ruling.

72. By the second part of the second ground of appeal, UEFA claims that the General Court infringed other provisions of the FEU Treaty. Its line of reasoning is based on the premiss that Article 106(1) TFEU is applicable in the present case. Accordingly, it submits that the General Court made a second error of law in failing to assess whether the United Kingdom measures have the effect of putting the BBC and ITV in a position that they could not have obtained themselves without infringing competition law or otherwise facilitated infringements of competition law on their part.

73. In the light of the response to the first part of the present ground of appeal, in which I propose that the Court find that the General Court did not infringe Article 106 TFEU, it is not necessary to examine the second part of the present ground of appeal.

74. In those circumstances, I propose that the Court reject the second ground of appeal in its entirety as partially ineffective, partially inadmissible and partially unfounded.

C – The third ground of appeal in Case C-201/11 P

75. By its third ground of appeal, UEFA claims that the General Court erred in law in the application of the Treaty provisions relating to freedom to provide services and to the principle of proportionality. UEFA submits, first, that the General Court mischaracterised its plea, which was by no means limited to the argument that some EURO matches were not, individually, events of major importance.

76. The second defect in the General Court’s analysis, according to UEFA, is that it wrongly assumed that, just because the EURO may – contrary to the view of UEFA – be considered a unitary event and it is, as a whole, of major importance to society, the objective of ensuring wide public access to a television broadcast of that event could not be adequately obtained by a lesser restriction, such as a list that included only a selection of EURO matches.

77. In any event, even if the EURO could be regarded as a single event of major importance for the society of the United Kingdom, the Commission would have been required to carry out a detailed assessment of the compatibility of the notified measures with the Treaty provisions on the free movement of services and competition.

78. First of all, for the reasons set out in points 14 to 25 of the present Opinion, concerning the interpretation of Article 3a of Directive 89/552 as amended, I propose that the Court hold that the General Court was correct in finding that the Commission duly fulfilled its duty of verification as regards Decision 2007/730. Moreover, it is by its definitive assessment of the factual and legal circumstances – without being exposed to the unfounded complaints in the grounds of appeal raised against its judgment – that the General Court correctly applied the case-law relating to the justification of restrictions on the freedom to provide services and to the principle of proportionality.

⁴⁵ — See judgment of 19 July 2012 in Case C-264/11 P *Kainer and Others v Commission*, paragraph 65 and the case-law cited.

79. Moreover, as regards UEFA's first complaint, it must be stated that, while alleging distortion of its plea, it summarises its contentions at first instance and submits observations as to the solution which the General Court should, in its view, have adopted as regards the discriminatory and disproportionate character of the measures adopted by the United Kingdom. Admittedly, UEFA criticises paragraph 150 of the judgment in *UEFA v Commission*, which sets out UEFA's arguments in a very general manner. However, since it has not specifically shown by what line of reasoning the General Court committed the distortion, that mere assertion is too general and imprecise to be assessed by the Court.⁴⁶ Consequently, since they are not sufficiently detailed, those arguments must be rejected as inadmissible.

80. As regards the second complaint in UEFA's third ground of appeal, I note that UEFA's line of argument is based on an erroneous interpretation of the judgment in *UEFA v Commission*. In paragraph 152 of that judgment, which constitutes the conclusion leading to the rejection of the fifth plea put forward at first instance, the General Court confirmed that the EURO could legitimately be regarded as a single event of major importance for United Kingdom society. However, on reading the judgment, there is no basis for finding the assumption alleged by UEFA, according to which the General Court erroneously ruled on the manner of achieving the objective of Directive 89/552 as amended, which consists in ensuring wide access by the public to television coverage of such events. Moreover, as regards the scope of the examination which the Commission must carry out under Article 3a of Directive 89/552 as amended, for the reasons set out in points 14 to 25 of the present Opinion the criticisms of UEFA in that respect must be considered unfounded.

81. In the third complaint in the present ground of appeal, UEFA claims that the Commission was required to carry out a detailed assessment of the compatibility of the notified measures with the Treaty provisions on the free movement of services and competition. In the light of the abovementioned interpretation of Article 3a of Directive 89/552 as amended which I propose that the Court adopt, UEFA's contentions must be rejected as unfounded.

82. Therefore, the third ground of appeal must be rejected in its entirety as in part inadmissible and in part unfounded.

D – The fourth ground of appeal in Case C-201/11 P

83. By its fourth ground of appeal, UEFA submits that the General Court erred in law by reasoning that, simply because the EURO might be considered as a single event of major importance, the infringement of UEFA's property rights in relation to every single EURO match must therefore be proportionate. According to UEFA, that reasoning is erroneous. In fact, to act proportionately, the United Kingdom would have had to limit its national list to the most important EURO matches. Furthermore, in UEFA's view, the General Court made a more fundamental error in failing to assess the extent of the restriction of UEFA's property rights, and was therefore unable to conduct an adequate analysis of whether the disadvantages caused by the measure were disproportionate to the aims pursued. The extent of those restrictions was significant because the practical effect of the United Kingdom measures is that the only way for UEFA to obtain any value at all from its United Kingdom broadcasting rights is to conduct an auction with only a single participant, the joint BBC/ITV bidding vehicle, which reduces considerably the price they have to pay for those rights.

84. In the light of the arguments in points 28 to 32 of the present Opinion regarding the effect of the principle of proportionality, and in points 33 to 44 regarding the right to property, I propose that the Court reject UEFA's fourth ground of appeal as unfounded.

⁴⁶ — See, to that effect, Case C-51/92 P *Hercules Chemicals v Commission* [1999] ECR I-4235, paragraph 113.

E – *The fifth ground of appeal in Case C-201/11 P*

85. UEFA's fifth ground of appeal alleges failure to state reasons. UEFA claims that the reasoning of Decision 2007/730, held to be sufficient by the General Court, was extremely limited in comparison with the reasoning required of the Commission for decisions of a similar character. Accordingly, the General Court erred in law in failing to hold the Commission to the required standard of reasoning in respect of each of the four substantive issues raised in the appeal. In that regard, UEFA specifies the alleged errors in the validity of the reasons set out by the Commission.

86. According to UEFA, that decision must be annulled, first, because it did not provide sufficient reasons with respect to the characterisation of the EURO as an event of major importance for society. Secondly, as regards the reasons stated in Decision 2007/730 concerning competition, the General Court should not have held, in paragraph 71 of its judgment, that it was sufficient for Decision 2007/730 to state – without providing reasons – that the United Kingdom measures would 'allow actual and potential competition for the acquisition of the rights to broadcast these events'.

87. Furthermore, as regards the reasons stated relating to the freedom to provide services, UEFA, pointing to paragraph 70 of the judgment in *UEFA v Commission*, claims that the General Court left the task of assessing the proportionality to UEFA, while dispensing the Commission from that task. In addition, the General Court should not have relied on what it perceived to be the privileged position of UEFA as the rights holder in determining whether the Commission's reasons were sufficient.

88. At the outset, it must be noted that the criticisms made by UEFA in the present ground of appeal concern, for the most part, possible defects in the statement of reasons for Decision 2007/730, which are mixed with certain criticisms of the judgment in *UEFA v Commission*. Thus, the arguments put forward by UEFA in that part of the fifth ground of appeal concerning the defects of Decision 2007/730 constitute a request for re-examination of a plea raised before the General Court, which the Court of Justice does not have jurisdiction to undertake. Those pleas must therefore be considered clearly inadmissible.⁴⁷

89. Moreover, the arguments put forward by UEFA against the judgment in *UEFA v Commission* are clearly not such as to call into question the General Court's analysis, which is in accordance with the Court's case-law relating to the duty to provide reasons.

90. According to that case-law, the statement of reasons required by the second paragraph of Article 296 TFEU must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Court to exercise its power of review.⁴⁸

91. In the light of the arguments set out in points 14 to 27 of the present Opinion regarding the limited nature of the review that the Commission carries out in respect of the decisions of Member States drawing up national lists, the General Court cannot take the place of the Commission in that respect. Consequently, the review exercised by the General Court must also remain limited.

47 — Case C-131/03 P *Reynolds Tobacco and Others v Commission* [2006] ECR I-7795, paragraph 50 and the case-law cited.

48 — C-90/09 P *General Química and Others v Commission* [2011] ECR I-1, paragraph 59 and the case-law cited.

92. Accordingly, as regards the grounds of the judgment in *UEFA v Commission* concerning competition, in paragraphs 71 to 73 of that judgment the General Court clearly set out the reasons why the statement of reasons for Decision 2007/730 – which, moreover, and contrary to what is claimed by UEFA, includes a reference to compatibility with competition law – was sufficient and allowed UEFA to understand the Commission’s reasoning and the General Court to exercise its power of review.⁴⁹

93. As regards the grounds of the judgment in *UEFA v Commission* concerning the freedom to provide services, it must be stated that, in paragraph 70 of that judgment, the General Court in fact held that, in the light of the statement of reasons for Decision 2007/730, UEFA was ‘in a position to assess whether there are factors which may ... potentially show that it is disproportionate ... to include all EURO matches in the list’. In that regard, it is sufficient to point out that this passage must be read in the light of paragraph 62 of the judgment, in which the General Court correctly cited the Court of Justice’s case-law concerning the scope of the duty to provide reasons, case-law which is intended to enable the persons concerned to ascertain the reasons for the act adopted. Thus, the contention that the General Court imposed an obligation to assess the proportionality on UEFA is erroneous and must be rejected.

94. Finally, as regards inadequacy of the reasoning in respect of infringement of the right to property, I note that the General Court not only accepted – too readily in my view – that UEFA’s right is affected by Decision 2007/730, but also analysed the compatibility of such a restriction with the principles of European Union law in responding to the sixth plea raised at first instance. In the light of the response which I propose be given to UEFA’s fourth ground of appeal, the examination of this complaint is unnecessary.

95. In the light of all the foregoing considerations, the fifth ground of appeal cannot be upheld.

V – The appeals in Cases C-204/11 P and C-205/11 P

96. In support of its appeal in Case C-204/11 P, FIFA puts forward three grounds of appeal. In support of its appeal in Case C-205/11 P, FIFA puts forward four grounds of appeal. I note that the arguments set out by FIFA in those two appeals merge and that the criticisms made are, for the most part, very similar. Therefore, despite the difficulties presented by a joint analysis of the complaints made against two separate judgments of the General Court, I intend to examine simultaneously the contentions advanced in Case C-204/11 P and C-205/11 P.

A – The first ground of appeal in Case C-204/11 P and the first ground of appeal in Case C-205/11 P

97. As regards, first, the judgment in Case T-385/07 *FIFA v Commission*, concerning Decision 2007/479 relating to the measures adopted by the Kingdom of Belgium, and, secondly, the judgment in Case T-68/08 *FIFA v Commission*, concerning Decision 2007/730 relating to the measures adopted by the United Kingdom, FIFA claims that the reasoning in those judgments is contradictory, inconsistent and inadequate as regards whether the World Cup should be considered a single event of major importance for society. First of all, in various statements the General Court provided inconsistent reasoning as regards the true character, in the General Court’s view, of the World Cup. In addition, 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.

⁴⁹ — I also note that the reference made by UEFA to paragraph 71 of that judgment is incorrect, since the General Court only cites recital 20 in the preamble to Decision No 2007/730 there, without substantiating the compatibility of the measures at issue with competition law.

98. Furthermore, according to FIFA, in ruling that the notifying Member State did not have to give specific reasons for including, in its events list, the entire World Cup, the General Court precludes the Commission from carrying out a thorough verification and a detailed assessment of the compatibility of the notified measures with European Union law, as required by the judgment of the General Court in *Infront WM v Commission*.⁵⁰

99. Moreover, FIFA submits that the General Court's reasoning in the judgments in Case T-385/07 *FIFA v Commission* and T-68/08 *FIFA v Commission* amounts to an unlawful reversal of the burden of proof. Finally, by giving reasons not contained in Decision 2007/479 and Decision 2007/730, the General Court exceeded the ambit of judicial review.

100. To begin with, it must be pointed out that, by those grounds of appeal, FIFA confuses, on the one hand, the issue of the scope of the review carried out by the Commission in respect of the national lists under Article 3a of Directive 89/552 as amended and the scope of the related judicial review, and, on the other hand, the issue of the characterisation of the World Cup as a single event of major importance for the society of a Member State.

101. As regards the first issue, for the reasons concerning the scope of the Commission's power under Article 3a of Directive 89/552 as amended which are set out in points 14 to 25 of the present Opinion, FIFA's criticisms must be considered unfounded.

102. As regards the second issue, it must be stated that by its argument concerning the non-unitary nature of the World Cup and the interest aroused by the matches of that competition, FIFA requests the Court to verify factual assessments made by the General Court. The appraisal of the facts by the General Court does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice.⁵¹ Those arguments must therefore be regarded as inadmissible.

103. In any event, the complaint concerning the alleged contradictory reasoning, illustrated by various extracts taken from the judgments in Case T-385/07 *FIFA v Commission* and T-68/08 *FIFA v Commission* and isolated from their context, must be found to be ineffective, since those judgments set out to the requisite legal standard the reasons which led the General Court to find that the Commission correctly fulfilled its duty of review under Article 3a of Directive 89/552 as amended.

104. In the light of the foregoing, it is necessary to reject the first ground of appeal in Case C-204/11 P and the first ground of appeal in Case C-205/11 P as partly unfounded and partly inadmissible.

B – The second ground of appeal in Case C-204/11 P and the third ground of appeal in Case C-205/11 P

105. By the second ground of appeal in Case C-204/11 P and the third ground of appeal in Case C-205/11 P, FIFA claims that the General Court wrongly held that the Commission had submitted sufficient evidence and provided adequate reasons to justify its findings that the World Cup, in its entirety, had been correctly considered to be an event of major importance for society. In that regard, first, the General Court did not examine FIFA's argument relating to the type and date of the data which, in making Decision 2007/479 and Decision 2007/730, the Commission should have taken into account. Secondly, the General Court relied on reasons which do not appear in those decisions. Thirdly, the General Court erred in law in refusing to accord any importance to the practice of other Member States which have not included 'non-prime' World Cup matches in their national lists.

⁵⁰ — Case T-33/01 [2005] ECR II-5897.

⁵¹ — *Alliance One International and Standard Commercial Tobacco v Commission*, paragraph 85 and the case-law cited.

106. Fourthly, FIFA submits that the General Court erred in its interpretation of the criteria on the basis of which the World Cup was found to be of major importance for society.

107. First of all, according to FIFA, the General Court erred in approving the Commission's finding that the entire World Cup fulfilled the criterion relating to its 'special general resonance' in Belgium and in the United Kingdom and in considering that the Commission had given sufficient and adequate reasons for that finding. Moreover, in relation to the second criterion referred to in recital 16 in the preamble to Decision 2007/479 and recital 18 in the preamble to Decision 2007/730, the General Court provided reasons not given by the Commission, in order to support its position that the entire World Cup has always been broadcast on free television channels. Finally, FIFA submits that the General Court erred in endorsing the Commission's finding that the requirement of the criterion relating to large television audiences commanded by the 'non-prime' matches of the World Cup was fulfilled, and in holding that the Commission gave sufficient and adequate reasons for its finding.

108. Firstly, as regards the complaint concerning an alleged failure to state adequate reasons, it must be pointed out that the absence of any reference to the nature of the information used for the adoption of Decision 2007/479 was raised by FIFA in the context of its sixth plea at first instance in Case T-385/07 *FIFA v Commission*, alleging a failure to state reasons in that decision. Admittedly, in the judgment in Case T-385/07 *FIFA v Commission*, the General Court did not respond specifically regarding the issue of the information that the General Court should have taken into account. However, it was not required to do so, since it explained its reasons to the required legal standard and relied on the reasoning set out in paragraphs 68 to 74 of that judgment in order to provide a comprehensive response to the plea raised before it. The first complaint is therefore unfounded.

109. As regards the judgment in Case T-68/08 *FIFA v Commission*, it was in the context of the first plea raised at first instance that FIFA claimed that, in adopting Decision 2007/730, the Commission ought to have taken into account all of the circumstances, such as, in particular, the viewing figures for the 1998, 2002, and 2006 World Cups and the content of the correspondence exchanged between the Commission and the United Kingdom authorities between August 2006 and February 2007. In that regard, I note that after examining, in the light of the correct interpretation of Article 3a of Directive 89/552 as amended, the question of the statement of reasons for Decision 2007/730 in paragraphs 67 to 72 of the judgment in Case T-68/08 *FIFA v Commission*, the General Court responded to those contentions in paragraphs 74 and 75 of that judgment. In this respect, it correctly drew legal consequences from the finding that the statement of reasons for Decision 2007/730 was sufficient, ruling that the Commission could therefore not be criticised for failing to set out more information in it, including information which did not exist at the time when the national list was drawn up. This complaint must therefore be considered unfounded.

110. As regards the second complaint, it must be observed that, after rightly carrying out an interpretation of recital 18 in the preamble to Directive 97/36, in paragraph 71 of the judgment in Case T-385/07 *FIFA v Commission*, the General Court, in the light of the case-law on the duty to state reasons, set out to the requisite legal standard the arguments according to which FIFA should be able to identify the reasons forming the basis of the Commission's decision to validate the inclusion of all of the matches of the World Cup on the Kingdom of Belgium's national list. In doing so, the General Court properly discharged its duty of judicial review and its duty to provide reasons. Identically, in the light of the interpretation of recital 18 in the preamble to Directive 97/36, the General Court discharged its duty of review and its duty to provide reasons in paragraphs 69 to 72 of the judgment in Case T-68/08 *FIFA v Commission*. This complaint is therefore unfounded.

111. As regards the third complaint, it must be stated, first, that, since at first instance, in Case T-385/07 *FIFA v Commission*, FIFA did not raise – in a detailed manner and within the context of a specific complaint – the issue of the comparability of the practices of Member States in order to analyse the lawfulness of the decisions adopted under Article 3a of Directive 89/552 as amended, it

cannot validly invoke an error on the part of the General Court in that respect. Second, I note that, in paragraph 133 of the judgment in Case T-68/08 *FIFA v Commission*, the General Court fully responded to FIFA's arguments relating to the Commission's failure to take into account the fact that other Member States included mainly 'prime' World Cup matches in their national lists. In any event, in the light of the significant freedom of action granted to Member States in drawing up national lists, the arguments concerning the comparability of the practices of other Member States must be rejected. This complaint is therefore unfounded.

112. As regards the fourth complaint, which concerns the General Court's interpretation of the criterion of a 'special general resonance', the issue of television broadcasting and the analysis of the criterion relating to the large television audiences commanded by the 'non-prime' matches, it must be stated that, by its ground of appeal, FIFA criticises the part of the grounds of the judgments under appeal that the General Court, in my view, gave for the sake of completeness. The General Court, in dismissing the plea alleging breach of Article 3a(1) of Directive 89/552 as amended, relied principally on the reasoning set out in paragraphs 94 to 100 and 117 to 119 of the judgment in Case T-385/07 *FIFA v Commission* and on the reasoning set out in paragraphs 112 to 118 of the judgment in Case T-68/08 *FIFA v Commission*. Consequently, FIFA's complaints must be rejected as ineffective or, in any case, as inadmissible, since they relate to factual evidence examined by the General Court, clear distortion of whose sense has not been shown by FIFA.

113. In the light of all of the foregoing, it is necessary to reject the second ground of appeal in Case C-204/11 P and the third ground of appeal in Case C-205/11 P as partially unfounded, partially inadmissible and partially ineffective.

C – The first and second parts of the third ground of appeal in Case C-204/11 P and the first and third parts of the fourth ground of appeal in Case C-205/11 P

114. By the first part of the third ground of appeal in Case C-204/11 P, and by the first part of the fourth ground of appeal in Case C-205/11 P, FIFA claims, first of all, that the General Court erred in the examination of the proportionality of the restrictions, which arose from the national measures in question, on the freedom to provide services and on the right of establishment. It states that it is the Commission and not the General Court which was required to examine such restrictions.

115. Secondly, FIFA submits that the General Court erred in holding 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 Decisions 2007/479 and 2007/730. Wide public access is not limitless access. Moreover, 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', as required by its judgment in *Infront WM v Commission*.

116. Finally, FIFA submits that the General Court erred in ruling that the Commission had given sufficient reasons for its conclusion concerning the proportionality of the restrictions on the freedom to provide services.

117. By the second part of the third ground of appeal in Case C-204/11 P and by the second part of the fourth ground of appeal in Case C-205/11 P, FIFA claims that the General Court should have found that, by failing to take into consideration the restrictions on the right to property implied by Decisions 2007/479 and Decision 2007/730, the Commission infringed Article 3a(2) of Directive 89/552 as amended and the Treaty. In addition, the General Court erred in holding that the restrictions on FIFA's property rights were proportionate to the attainment of the objective pursued.

118. By the third part of the fourth ground of appeal in Case C-205/11 P, FIFA claims that the General Court made errors of law in its analysis of the competition rules. First, the General Court erred in finding that the Commission was not required to carry out a more detailed analysis than that which it carried out. Secondly, FIFA criticises the General Court for finding that the measures notified by the United Kingdom did not grant special rights, within the meaning of Article 106(1) TFEU, to the BBC and ITV. According to FIFA, that finding is based on purely formalistic and theoretical considerations.

119. First, I note that the majority of the contentions advanced in the context of the present complaints can be rejected as unfounded in the light of considerations concerning the interpretation of Article 3a of Directive 89/552 as amended which are explained in points 14 to 25 of the present Opinion.

120. In the judgments in Case T-385/07 *FIFA v Commission* and Case T-68/08 *FIFA v Commission*, the General Court correctly applied Article 3a of Directive 89/552 as amended, finding that the Member States have significant freedom of action in drawing up the national lists, so that the power of review entrusted to the Commission under Article 3a of Directive 89/552 as amended is of a limited nature. The General Court drew appropriate legal conclusions from that finding, in particular in paragraphs 52, 73 to 74 and 114 to 115 of the judgment in Case T-358/07 *FIFA v Commission* and in paragraphs 48, 71 to 76 and 112 of the judgment in Case T-68/08 *FIFA v Commission*.

121. Moreover, given the arguments set out in points 26 to 27 of the present Opinion concerning the limited review which the General Court carries out in respect of Commission decisions under Article 3a of Directive 89/552 as amended, the General Court cannot take the place of the Commission in that respect. Consequently, the degree of its review must also remain limited.

122. Secondly, as regards the examination by the Commission of the proportionality of the national lists, I accept that the reasons stated in Decisions 2007/730 and 2007/479 may, at first glance, seem superficial in that respect. However, in the light of points 28 to 32 of the present Opinion, since the weighing of the interests which may be taken into account for the purpose of applying the principle of proportionality in respect of derogations from the fundamental freedoms has already been carried out by the European Union legislature, the role of the Commission must be understood as subsidiary and necessarily limited, having regard to the limited scope of the review under Article 3a of Directive 89/552 as amended.

123. More generally, I consider that statements of reasons for decisions under Article 3a of Directive 89/552 as amended must be interpreted in their entirety so as not to lead to a dismantling of such acts with regard to each of the events that a Member State concerned considers to be of major importance for society. Thus, the Commission is entitled to adjust its assessment, by varying the intensity of the statement of reasons on the basis of the events concerned. For example, in the case of the events mentioned in recital 18 in the preamble to Directive 97/36, the statement of reasons may be brief, without risking an automatic approach and while respecting the principle of good administration. As regards other specific events, the Commission may seek to provide more detail, while observing the limits laid down in Directive 89/552 as amended. Finally, the statement of reasons for the Commission's decision must be sufficient, in its entirety, to allow the General Court to conduct its judicial review, which must also remain limited.

124. In the light of the foregoing, the General Court was correct to confirm the validity, first, of Decision 2007/479 in paragraphs 117 to 119 of the judgment in Case T-385/07 *FIFA v Commission*, and second, of Decision 2007/730 in paragraphs 160 to 164 of the judgment in Case T-68/08 *FIFA v Commission*.

125. Thirdly, as regards breach of the right to property, in the light of the considerations set out in points 33 to 44 of the present Opinion concerning the right to property, I propose that this complaint be rejected as unfounded.

126. As regards the third part of the fourth ground of appeal in Case C-205/11 P, it suffices to point out that, in the light of the Commission's freedom of action under Article 3a of Directive 89/552 as amended, the General Court rightly found, in paragraph 173 of the judgment in Case T-68/08 *FIFA v Commission*, that the Commission was not required to carry out a more detailed analysis than that which it carried out. Furthermore, it was by a definitive assessment of the factual circumstances, in the light of Directive 89/552 as amended, that the General Court could find that the issue of the grant of special rights did not arise in the present case.

127. In the light of all the foregoing, I propose that the first and second parts of the third ground of appeal in Case C-204/11 P, and the first and second parts of the fourth ground of appeal in Case C-205/11 P, be rejected as unfounded.

D – The second ground of appeal in Case C-205/11 P

128. By this ground of appeal, FIFA claims that the General Court erred in law in validating the Commission's finding that the inclusion of the 'non-prime' World Cup matches on the United Kingdom's national list had been carried out in accordance with a clear and transparent procedure. In particular, FIFA asserts that, contrary to what was held by the General Court, the fact that certain authorities or advisory bodies, in the course of their duties, suggested to the United Kingdom's Secretary of State for Culture, Media and Sport that only 'prime' matches be included in the list does give rise to an obligation for the Commission to explain why the Secretary of State did not err in adopting a different position. FIFA adds that the General Court erred in finding that the Commission was entitled to take account of circumstances subsequent to the date on which the national list was drawn up.

129. In that regard, I note that the line of argument relating to infringement of the conditions of clarity and transparency during the procedure for drawing up the United Kingdom's national list was raised by FIFA in the context of the second plea at first instance. In response to the contentions relating to an alleged error of assessment on the part of the Commission, the General Court – after correctly interpreting Article 3a of Directive 89/552 as amended in paragraphs 84 to 89 of the judgment in Case T-68/08 *FIFA v Commission* – rightly rejected FIFA's contentions in paragraph 96 of that judgment. I note that Article 3a of Directive 89/552 as amended does not lay down any mandatory consultation to be complied with by the national authorities or, possibly, the Commission. Accordingly, the national authorities are not bound by the opinions expressed during the drawing up of the national list, nor are they required to respond individually to the comments submitted to them. This complaint is therefore unfounded.

VI – Conclusion

130. In conclusion, I suggest that the Court rule as follows:

- (1) The appeal in Case C-201/11 P is dismissed. In accordance with Article 138 of the Rules of Procedure of the Court of Justice of the European Union, UEFA is ordered to bear its own costs and pay the costs incurred by the European Commission in the present appeal.
- (2) The appeal in Case C-204/11 P is dismissed. In accordance with Article 138 of the Rules of Procedure of the Court of Justice, FIFA is ordered to bear its own costs and pay the costs incurred by the European Commission in the present appeal.

- (3) The appeal in Case C-205/11 P is dismissed. In accordance with Article 138 of the Rules of Procedure of the Court of Justice, FIFA is ordered to bear its own costs and pay the costs incurred by the European Commission in the present appeal.
- (4) The United Kingdom of Great Britain and Northern Ireland and the Kingdom of Belgium are ordered to bear their own costs, in accordance with Article 140 of the Rules of Procedure of the Court of Justice.