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# PROBLEM OF STATE AID IN SPANISH FOOTBALL – CASE ANALYSIS

**Maximilian Farnung**[1]

## ABSTRACT

In the recent past, the European Court of Justice (ECJ) issued two judgments concerning state aid granted by the Kingdom of Spain to Spanish football clubs. The outcome is that, after the conclusion of the proceedings, the aid granted to FC Barcelona has to be reclaimed, while Valencia CF can keep the state aid granted to it respectively it has not to be reclaimed. This raises the question of whether equal constellations exist and were judged differently, i.e., whether there is unequal treatment in this regard. Furthermore, whether there is no uniform line at EU level in this respect and in such constellations, and thus whether there is legal uncertainty. This article aims to answer these questions. In order to answer these questions, this article will look at the two judgments of the ECJ and their backgrounds and explanations. In addition, the basic principles of European law and the functioning of the institutions of the European Union necessary for understanding this constellation will be provided. The result is that the ECJ's judgments have different, but understandable, outcomes. As conclusion, it remains to be said, that it cannot be assumed that the approach taken at EU level in this regard is inconsistent.

**Key words**: European Court of Justice (ECJ), European Commission, General Court of the European Union, FC Barcelona, Valencia CF, state aid, football.

JEL: K33, Z2

## 1. Introduction

In the recent past, the European Court of Justice (ECJ) issued two judgments concerning state aid granted by the Kingdom of Spain to Spanish football clubs. The outcome is that, after the conclusion of the proceedings, the aid granted to FC Barcelona has to be reclaimed, while Valencia CF can keep the state aid granted to it respectively it has not to be reclaimed. This raises the question of

[1] SWPS University of Social Sciences and Humanities, Warsaw, Poland.
E-mail: maxi.farnung@yahoo.de.

whether equal constellations exist and were judged differently, i.e., whether there is unequal treatment in this regard. Furthermore, whether there is no uniform line at EU level in this respect and in such constellations, and thus whether there is legal uncertainty. In order to answer these questions, this article will look at and analyze the two judgments of the ECJ and their backgrounds and explanations. In addition, the basic principles of European law and the functioning of the institutions of the European Union necessary for understanding this constellation will be provided.

## 2. Legal Basis and Institutions in the European Union

The Treaty on European Union, or TEU for short, distinguishes between the issuing of legal acts (regulations, directives and decisions) in the ordinary legislative procedure (Art. 294 TFEU) and in the special legislative procedure (Art. 289(2) TFEU) (cf. Weber, 2022, Europäische Gesetzgebung [European Legislation], para. 1). European legislation creates EU law, namely secondary law, and it is not possible to amend primary law, i.e., in particular the TEU and TFEU, through European legislation in the strict sense (cf. Weber, 2022, Europäische Gesetzgebung [European Legislation], para. 1).

By virtue of the sovereign rights transferred to the Union, the Union institutions can adopt regulations which – without any mediation by the Member States – can directly create rights and obligations for individuals ("pervasive effect" of secondary Union law) (cf. Herdegen, 2023, § 5 para. 19). Examples are regulations or decisions that directly oblige individual citizens or companies to behave in a certain way or confer rights on them, such as the approval of a merger or the imposition of a fine (cf. Herdegen, 2023, § 5 para. 19). It is this possible "pervasive effect" that is the essential difference between the Union's regulatory powers and the decisions of other international organizations or other fora of "intergovernmental" cooperation (cf. Herdegen, 2023, § 5 para. 19).

According to Art. 13(1) TEU the Union's institutions shall be the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors. The allocation of competences to the individual Union institutions implements a complicated system of separation of powers and interdependence of powers (cf. Herdegen, 2023, § 7 para. 6).

With regard to the decisions of the ECJ to be discussed in this article, the General Court and the Commission are the main players whose actions in these proceedings are crucial for understanding the different outcomes.

The Commission is the political body of the Union in which the members and the formation of the will are entirely detached from the Member States and, together with the Court of Justice, forms the purest manifestation of a "supranational" body in the Union system, in which the Commission primarily

performs the tasks of an "executive" of the Union (cf. Herdegen, 2023, § 7 para. 58). Its most important tasks are participation in the legislative process of the Council and Parliament, including initiative and further participation, the exercise of its own legislative powers, the adoption of implementing provisions on the basis of an authorization by the Council, the external representation of the Union (except in the area of the Common Foreign and Security Policy), decisions on administrative enforcement as well as control tasks including infringement proceedings, appeals for annulment and appeals for failure to act as well as the approval of national derogations from Union law rules (cf Herdegen, 2023, § 7 para. 67). For the judgments discussed in the context of this article, it is of particular importance that in the hands of the Commission lies especially the direct administrative enforcement of competition law (cf. Herdegen, 2023, § 7 para. 71).

The Court of Justice of the European Union acts as a common judicial body in the institutional system of the Union (cf. Herdegen, 2023, § 7 para. 97). According to Art. 19(1) TEU, the Court of Justice of the European Union shall include the Court of Justice, the General Court and specialized courts and it shall ensure that in the interpretation and application of the Treaties the law is observed. Pursuant to Art. 19(3) TEU, the Court of Justice of the European Union shall, in accordance with the Treaties (a) rule on actions brought by a Member State, an institution or a natural or legal person; (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions; (c) rule in other cases provided for in the Treaties. The activities of the Court of Justice of the European Union are of particular importance for the interpretation of treaties or other Union law, the further development of Union law, the review of the legal acts of the Union institutions for their compatibility with higher-ranking law and the review of the conduct of the Member States against the yardstick of Union law (cf. Herdegen, 2023, § 7 para. 97).

In the organization of the courts, the General Court is responsible for the first instance and it is to be distinguished from the superior "Court of Justice" (cf. Herdegen, 2023, § 7 para. 99). The jurisdiction of the General Court at first instance relates to the actions referred to in the first subparagraph of Art. 256(1) TFEU, which include, for example, actions brought by natural and legal persons, but also actions brought by the Member States and institutions of the Union (actions for annulment, actions for failure to act and actions for damages, as well as disputes in civil service matters and actions based on arbitration clauses) (cf. Herdegen, 2023, § 7 para. 103). According to the second subparagraph of Art. 256(1) TFEU, decisions given by the General Court under this paragraph may be subject to a right of appeal to the ECJ on points of law only, under the conditions and within the limits laid down by the Statute. A new examination of the facts is thus excluded in principle (cf. Wegener, 2022, Art. 256, para. 12). More generally, the ECJ reviews the legal qualifications and decisions of the General Court based

on findings of fact and appraisal, whereby the appraisal of evidence is not a question of law unless the evidence is distorted (cf. Wegener, 2022, Art. 256, para. 12 with further references). On the other hand, the missing or insufficient subsumption of the facts under the constituent elements of a provision of Union law as well as the missing or contradictory reasoning of the contested judgment can be complained about (cf. Wegener, 2022, Art. 256, para. 12 with further references).

The statutory basis for these cases can be found, in particular, in Art. 107, 108 TFEU. Because, according to Art. 107(1) TFEU, save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market. In Art. 107(2) TFEU exceptions to this can be found, which shall be compatible with the internal market. In contrast to this, Art.107(3) TFEU defines exceptions, which may be considered to be compatible with the internal market.

As per Art. 108(1) sentence 1 TFEU, the Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. Art. 108(2) sentence 1 TFEU states that if, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Art. 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission. Furthermore, pursuant to Art. 108(3) sentence 1 TFEU, the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. Art. 108(3) sentence 2 TFEU states that if it considers that any such plan is not compatible with the internal market having regard to Art. 107, it shall without delay initiate the procedure provided for in para. 2. According to Art. 108(3) sentence 3 TFEU, the Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

Among other steps in the review process, the Commission must first examine the existence of state aid when reviewing a measure (cf. Commission, 2016/2391, paras. 45-46; Commission, 2017/365, paras. 49-50 and for the further steps in the review process see Commission 2016/2391, paras. 45-96 and there with further references; Commission, 2017/365, paras. 49-131 and there with further references). According to the Commission Decision (EU) 2017/365, in order to conclude whether State aid is present, the Commission would have to assess whether the cumulative criteria of Art. 107(1) TFEU (i.e. transfer of State resources, selective advantage, potential distortion of competition and affectation of intra-EU trade) are met for each of the measures under assessment (cf. Commission, 2017/365, para. 51; in this sense also Commission, 2016/2391, para. 46 with further references).

However, that this is not always so easy can be seen in the facts of the cases underlying the ECJ judgments to be discussed here. These judgements also explain the background, what happened in the forefront and in particular why the respective case is now before the ECJ, as well as the underlying facts of the case. This will now be dealt with in the following.

## 3. Judgments of the ECJ and underlying Facts of the Cases

First, the ECJ had with its judgement of 4.3.2021 – Case C-362/19 P – Commission versus Fútbol Club Barcelona ("Judgement I") to decide, according to the Judgement's para. 1, on an appeal of the European Commission, where it requests the ECJ to set aside the judgment of the General Court of the European Union of 26 February 2019, Fútbol Club Barcelona v Commission (T-865/16, EU:T:2019:113; 'the judgment under appeal'), by which the General Court annulled Commission Decision (EU) 2016/2391 of 4 July 2016 on the State aid SA.29769 (2013/C) (ex 2013/NN) implemented by Spain for certain football clubs (OJ 2016 L 357, p. 1; 'the decision at issue') (see ECJ, 2021, C-362/19 P, para. 1).

After introductory references to the underlying EU law in paras. 2-4, the ECJ comes to the background to the dispute and the decision at issue with its para. 5, where it refers, cites and summarizes para. 1 to 6 of the judgement under appeal as follows (see ECJ, 2021, C-362/19 P, para. 5):

1. Article 19(1) of Ley 10/1990 del Deporte (Law 10/1990 on sport) of 15 October 1990 (BOE No 249 of 17 October 1990, p. 30397) ("Law 10/1990") obliged all Spanish professional sports clubs to convert into public limited sports companies ("SLCs"). The purpose of the law was to encourage more responsible management of clubs through a change in legal form.
2. However, the seventh additional provision of Law 10/1990 provided an exception for professional sports clubs that had achieved a positive financial balance during the financial years preceding adoption of the law. ... Fútbol Club Barcelona, and three other professional footballs clubs fell within the exception under Law 10/1990. Those four entities therefore had the option, which they chose to take, of continuing to operate in the form of sports clubs.
3. Unlike SLCs, sports clubs are non-profit legal persons which enjoy, in that capacity, a special rate of income tax. Until 2016, that rate remained below the rate applicable to SLCs.
4. By letter of 18 December 2013, the...Commission notified the Kingdom of Spain of its decision to initiate the procedure laid

> down in Article 108(2) TFEU with regard to the potentially preferential tax treatment of four professional football clubs, including the applicant, when compared with SLCs.
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> 6. By [the decision at issue], the Commission found that, by Law 10/1990, the Kingdom of Spain had unlawfully implemented aid in the form of a preferential corporate tax rate for the applicant, Club Atlético Osasuna, Athletic Club Bilbao and Real Madrid Club de Fútbol, in breach of Article 108(3) TFEU (Article 1 of the [decision at issue]). The Commission also found that the scheme was incompatible with the internal market and therefore ordered the Kingdom of Spain to discontinue it (Article 4(4)) and to recover from the beneficiaries the difference between the corporate tax actually paid and the corporate tax they would have been required to pay had they been SLCs, as of the tax year 2000 (Article 4(1)), subject, in particular, to the possibility that the aid in question constituted de minimis aid (Article 2). Lastly, the [decision at issue] instructs its addressee to comply with the requirements set out in the operative part immediately and effectively with regard to recovery of the aid granted (Article 5(1)) and within 4 months following the date of notification with regard to implementation of the decision overall (Article 5(2)) (ECJ, 2021, C-362/19 P, para. 5).

In para. 6 to 11 of its Judgement I, the ECJ summarizes the procedure before the General Court and the judgement under appeal, where "[…] Fútbol Club Barcelona ('FCB') brought an action for annulment of the decision at issue" (ECJ, 2021, C-362/19 P, para. 6). The ECJ states the most decisive in this regard in para. 10–11 of its Judgment I, namely that the General Court annulled the decision at issue by holding, as is apparent, inter alia, from para. 59 and 67 of the General Court's judgment, that the Commission had failed to discharge, to the requisite legal standard, the burden of proving that the national measure at issue provided an advantage to its beneficiaries, given the existence of a less favorable deduction rate for reinvestment of extraordinary profits for those entities than that applicable to SLCs (see ECJ, 2021, C-362/19 P, paras. 10–11).

Against this decision of the General Court, the Commission appealed, which is why the ECJ had to decide on this with the underlying Judgement I. As per para. 14 of the Judgement I, the Commission raises, in support of its appeal, a single ground, divided into two parts, alleging infringement by the General Court, in the judgment under appeal, of Art. 107(1) TFEU, so far as concerns, first, the concept of an 'advantage' capable of constituting 'State aid', within the meaning of that provision, and, second, the Commission's duty of diligence in the context of the

examination of the existence of aid and its burden of proving that there is an advantage (see ECJ, 2021, C-362/19 P, para. 14).

In paras. 14-138, the ECJ explains and evaluates the arguments of the parties and the findings of the court in detail in relation to the appeal and the action before the General Court, and in paras. 139–142, the ECJ explains how the costs of the proceedings are allocated (see ECJ, 2021, C-362/19 P, paras. 14-142 for details). Within the context of these explanations and evaluations, the ECJ concludes in particular that the General Court made several errors of law in its decision and that the judgement under appeal must be set aside for several reasons and annuls the decision at issue consequently (see especially ECJ, 2021, C-362/19 P, para. 106 and for the detailed explanations and evaluations of the several reasons and errors of law paras. 14–106).

But, "[…] if the decision of the General Court is set aside, the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits" (ECJ, 2021, C-362/19 P, para. 107). This is what the ECJ assumed (cf. ECJ, 2021, C-362/19 P, para. 108). In this regard, the ECJ states after its evaluation that "[s]ince none of the pleas put forward in the action [by FCB in order to annul the respective Commission Decision; author's note] has been upheld, the action must therefore be dismissed" (ECJ, 2021, C-362/19 P, para. 138).

Ultimately, this judgement means that, in addition to FC Barcelona, the other clubs mentioned above also received illegal state aid due to the tax privileges described earlier (cf. beck-aktuell, 2021) and that the unpaid taxes of up to EUR 5 million per club must be paid back (cf. DER SPIEGEL, 2021).

Later, the ECJ had with its judgement of 10.11.2022 – Case 211/20 P – Commission versus Valencia Club de Fútbol ("Judgement II") to decide, according to the Judgement's para. 1, on an appeal of the European Commission, where it requests the ECJ to set aside the judgment of the General Court of the European Union of 12 March 2020, Valencia Club de Fútbol v Commission (T-732/16, EU:T:2020:98), by which the General Court annulled Commission Decision (EU) 2017/365 of 4 July 2016 on the State aid SA.36387 (2013/C) (ex 2013/NN) (ex 2013/CP) implemented by Spain for Valencia Club de Fútbol Sociedad Anónima Deportiva, Hércules Club de Fútbol Sociedad Anónima Deportiva and Elche Club de Fútbol Sociedad Anónima Deportiva (OJ 2017 L 55, p. 12) ('the decision at issue'), in so far as it concerns Valencia Club de Fútbol SAD ('Valencia CF') (see ECJ, 2022, C-211/20 P, para. 1).

After introductory references to the legal context in para. 2–7, the ECJ comes to the background to the dispute and the decision at issue with its paras. 8–17 (see ECJ, 2022, C-211/20 P, paras. 8–17 and especially there for details). According to para. 8 of Judgement II, Valencia CF is a professional football club whose head office is located in Valencia, Spain and the Fundación Valencia (Valencia Foundation; 'the FV') is a non-profit foundation whose primary aim is

to preserve, disseminate and promote the sporting, cultural and social aspects of Valencia CF and its relationship with its fans see ECJ, 2022, C-211/20 P, para. 8). Pursuant to para. 9 of Judgement II, on 5 November 2009, the Instituto Valenciano de Finanzas (Valencian Institute for Finance; 'the IVF'), the financial establishment of the Generalitat Valenciana (Regional Government of Valencia, Spain), provided the FV with a guarantee for a bank loan of EUR 75 million from the bank Bancaja, through which it acquired 70.6% of the shares in Valencia CF ('measure 1') (see ECJ, 2022, C-211/20 P, para. 9). As per para. 10 of Judgement II, the guarantee covered 100% of the principal of the loan, plus interest and the costs of the guaranteed transaction and in return, an annual guarantee premium of 0.5% had to be paid by the FV to the IVF (see ECJ, 2022, C-211/20 P, para. 10). According to para. 10 of the Judgement II, the latter received, as a counter-guarantee, a second-rank pledge on the shares in Valencia CF acquired by the FV and the duration of the underlying loan was six years (see ECJ, 2022, C-211/20 P, para. 10). Pursuant to para. 10 of Judgement II, to begin with, the interest rate of the underlying loan was 6% for the first year, and subsequently the Euro Interbank Offered Rate (Euribor) 1-year + 3.5% margin with a 6% minimum rate, in addition, there was a 1% commitment fee and the schedule provided for repayment of the interest starting in August 2010 and repayment of the principal in two tranches of EUR 37.5 million on 26 August 2014 and 26 August 2015, respectively (see ECJ, 2022, C-211/20 P, para. 10). As per para. 10 of Judgment II, it was envisaged that repayment of the guaranteed loan (principal and interest) would be financed by the sale of the shares in Valencia CF acquired by the FV (see ECJ, 2022, C-211/20 P, para. 10). According to para. 11 of Judgement II, on 10 November 2010, the IVF increased its guarantee in favor of the FV by EUR 6 million so as to obtain an increase by the same amount in the sum already loaned by Bancaja in order to cover payment of the overdue principal, interest and costs arising from the non-payment of interest on the guaranteed loan on 26 August 2010 ('measure 4') (see ECJ, 2022, C-211/20 P, para. 11).

Pursuant to para. 12 of Judgement II, having been informed of the existence of alleged State aid granted by the Regional Government of Valencia in the form of guarantees on bank loans in favor of Elche Club de Fútbol SAD, Hércules Club de Fútbol SAD and Valencia CF, the Commission, on 8 April 2013, invited the Kingdom of Spain to comment on that information and the latter replied to the Commission on 27 May and 3 June 2013 (see ECJ, 2022, C-211/20 P, para. 12). As per para. 13 of Judgement II, by letter of 18 December 2013, the Commission informed that Member State of its decision to initiate the formal investigation procedure provided for in Art. 108(2) TFEU, in which it invited the interested parties to submit their observations and stated, inter alia, its concerns (see and cf. ECJ, 2022, C-211/20 P, para. 13 and see there for more details). According to para. 15 of Judgement II, by the decision at issue, the Commission found, inter alia, that measures 1 and 4 constituted unlawful aid incompatible with the internal

market, in the amount of EUR 19 193 000 and EUR 1 188 000 respectively, and ordered the Kingdom of Spain to recover that aid immediately and effectively (see ECJ, 2022, C-211/20 P, para. 15).

In para. 18 to 20 of its Judgement II, the ECJ summarizes the procedure before the General Court and the judgement under appeal, where "[…] Valencia CF brought an action for annulment of the decision at issue" (ECJ, 2022, C-211/20 P, para. 18). According to para. 19 of Judgement II, in support of that action, Valencia CF raised eight pleas in law, the first and third of which alleged, respectively, manifest errors of assessment in the characterization of an advantage and in the calculation of the amount of the aid (see ECJ, 2022, C-211/20 P, para. 19). Pursuant to para. 20 of Judgement II, by the judgment under appeal, the General Court upheld the first and third pleas in law and consequently annulled the decision at issue in respect of measures 1 and 4 (see ECJ, 2022, C-211/20 P, para. 20).

Against this decision of the General Court, the Commission appealed so far as concerns measure 1, which is why the ECJ had to decide on this with the underlying Judgement II (see ECJ, 2022, C-211/20 P, para. 21). As per para. 23 of the Judgement II, the Commission raises, in support of its appeal, a single ground alleging a misinterpretation, in para. 124 to 138 of the judgment under appeal, of the concept of 'economic advantage', for the purposes of Art. 107(1) TFEU, resulting, first of all, from erroneous interpretations of the decision at issue and of the Guarantee Notice, next, from a failure to observe the limits of its burden of proof and its duty of care, and, lastly, from a distortion of the facts (see ECJ, 2022, C-211/20 P, para. 23).

In para. 23–102, the ECJ explains and evaluates the arguments of the parties and the findings of the court in detail in relation to the appeal and in para. 103–106, the ECJ explains how the costs of the proceedings are allocated (see ECJ, 2022, C-211/20 P, paras. 23-142 for details). Within the context of these explanations and evaluations, the ECJ concludes, inter alia and especially, in regards of the arguments of the Commission that "[…] it cannot be held that […] the judgment under appeal reveals a distortion which is obvious from the documents in the file […]" (ECJ, 2022, C-211/20 P, para. 58 and for details in this regard paras. 55–58) and "[…] as regards the alleged misinterpretation, in paragraphs 124 to 126 and 138 of the judgment under appeal, of recitals 85 and 93 of the decision at issue, suffice it to state that that is based on a misreading of the judgment under appeal" (ECJ, 2022, C-211/20 P, para. 59 and for details in this regard paras. 59-60). For the latter and other reasons, the ECJ could also not find an erroneous interpretation of the Guarantee Notice by the General Court (cf. ECJ, 2022, C-211/20 P, paras. 61–72). Furthermore, "[c]ontrary to what the Commission claims, the General Court did not […] impose on it an excessive duty of care and an excessive burden of proof, but merely found that the Commission had not satisfied the requirements which it had imposed on itself by adopting that

notice" (ECJ, 2022, C-211/20 P, para. 101 and for details in this regard paras. 73–101). Nevertheless, the ECJ has made a decisive statement at this point which, although it does not influence the result here, is likely to be of fundamental importance for the future and for the general classification.

> "It [the General Court; author's note] did not require the Commission to provide evidence that transactions of a similar nature could not be found on the market, but merely pointed out that the Commission had not substantiated its finding or availed itself of its power, in accordance with the case-law referred to in paragraph 84 above, to make a specific request to the Spanish authorities or the interested parties during the administrative procedure to obtain the production of relevant evidence for the purposes of the assessment to be carried out[,] [i]n particular, the General Court did not rule out the possibility that it could have been sufficient for the Commission, in order to fulfil its duty of care and satisfy its burden of proof, to make such a specific request in the context of the exchanges referred to in paragraph 14 above [in the Judgement II; author's note]" (ECJ, 2022, C-211/20 P, para. 101).

In regards of the Judgement II, the ECJ came to the following result: "In the light of all the foregoing considerations, the single ground of appeal and, accordingly, the appeal itself must be dismissed as unfounded" (ECJ, 2022, C-211/20 P, para. 102). This, in turn, has the consequence that Valencia CF has not obtained any incompatible state aid within the meaning of Art. 107(1) TFEU with the measures assessed here and that it can therefore keep them or that the Kingdom of Spain does not have to reclaim them.

## 4. Evaluation and Classification of the Findings – Conclusions

All in all, it remains to be said that despite the different outcomes and consequences of the proceedings for FC Barcelona and Valencia CF, no unequal treatment can be identified here. For one thing, the two aid cases and the underlying measures were fundamentally different situations with fundamentally different constellations. Thus, the relevant EU institutions cannot make any general statements in this regard; rather, each individual measure must be examined on a case-by-case basis to determine whether it constitutes incompatible state aid within the meaning of Art. 107(1) TFEU. On the other hand, the competences of the individual EU institutions, as described above, are clearly defined and partially limited. Hence, the ECJ is basically and especially left with the, as described above, decisions on points of low only on appeals against the decisions of the General Court within the meaning of the second subparagraph of Art. 256(1) TFEU and under the conditions and within the limits laid down by the

statute. Once again, a new examination of the facts is thus excluded in principle (cf. Wegener, 2022, Art. 256, para. 12).

The ECJ has done exactly this in the presented judgments, which has led to different, but understandable, outcomes.

It remains to be said, that it cannot be assumed that the approach taken at EU level in this regard is inconsistent, which is shown in particular by the ECJ's last addition in Judgment II, which was particularly emphasized. According to the opinion expressed here, the ECJ wants to show with this additional statement, which would not have been necessary for the result of the judgment, that it considers such "support measures" to be quite questionable and worthy of review, and it thus provides an indication for the future, in the sense of quality assurance, of what it considers to be necessary in the review procedure, in line with the General Court.

With this judgement, the ECJ reaffirmed already established principles of state aid law that also apply to sport, whereby no revolutionary surprises are recognizable for the general state aid community, while for leaders of sport – and especially for those responsible in politics and administration – the situation is not relaxed, despite the pleasing result for the Valencia CF (cf. Kornbeck, 2023, p. 36). State aid to associations and clubs is subject to the same standards and scrutiny as other types of aid, and just because no incompatible state aid could be proven in the present case of Judgement II, there is no reason to be careless about it in the future (cf. Kornbeck, 2023, p. 36).

These findings are ultimately also in line with the ECJ's Judgment I, which fits into this direction and in which the ECJ was able to decide the case finally – in the sense of the critical assessment of such support measures – due to the readiness of the case for decision.

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