



EUROPEAN COMMISSION

Brussels, 2.7.2021
C(2021) 5015 final

[REDACTED]
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SPAIN

Subject: Case AT. 40490 – Spanish Football Trainers
Commission Decision under Article 7 (2) of Regulation No 773/2004
(Please quote this reference in all correspondence)

Dear Sir,

- (1) I am writing to inform you that the European Commission (the "Commission") has decided, pursuant to Article 7(2) of Regulation (EC) No 773/2004,¹ to reject your complaint dated 17 February 2017 against the Union of European Football Associations ("UEFA"), the Real Federación Española de Fútbol ("the RFEF") and all the other national football federations that are members of UEFA ("the National Football Federations"). The reason for this decision is that the Spanish national courts are well placed to deal with the matters you have raised in your complaint and are already seized with similar disputes.
- (2) By letter dated 17 February 2017 and subsequent submissions,² you requested the Commission to launch an investigation into certain practices linked to the issuance

* Handling instructions for SENSITIVE information are given at <https://europa.eu/db43PX>

¹ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, Official Journal L 123, 27.04.2004, pages 18-24.

² Your emails to the Commission of 6 March 2017, 9 March 2017, 23 March 2017, 28 March 2017, 30 March 2017, 17 May 2017, 25 July 2017, 13 September 2017, 19 September 2017, 16 November 2017, 20 December 2017, 3 January 2018, 9 January 2018, 16 January 2018, 3 February 2018, 15 February 2018, 20 February 2018, 23 February 2018, 4 April 2018, 6 April 2018, 9 April 2018, 19 April 2018, 24 April 2018, 19 May 2018, 21 May 2018, 29 May 2018, 4 June 2018, 26 June 2018, 3 July 2018, 4 July 2018, 8 July 2018, 20 July 2018, 27 July 2018, 13 September 2018, 18 September 2018, 1 October 2018, 3 October 2018, 30 November 2018, 10 January 2019, 14 September 2019, 18 September 2019, 9 February 2019, 11 February 2019, 20 February 2019, 26 February 2019, 1 March 2019, 6 March 2019, 7 March 2019, 12 March 2019, 28 March 2019, 4 April 2019, 9 April 2019, 3 May 2019, 15 May 2019, 29 May 2019.
Commission européenne, DG COMP GREFFE ANTITRUST, B-1049 Bruxelles, Belgique
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of UEFA licenses for professional football coaches by UEFA, the RFEF and the National Football Federations, which you considered to breach Articles 101 and 102 of the Treaty on the Functioning of the European Union ('the Treaty').

- (3) In addition to violations of Articles 101 and 102 of the Treaty, your complaint alleges breaches of (i) Spanish law; (ii) Articles 20 and 21 of the Charter of Fundamental Rights of the European Union ("the Charter"), regarding equality and non-discrimination; (iii) Article 3 of the Treaty relating to the free movement of persons in the Union; and (iv) Directive 2005/36/EC on recognition of professional qualifications.³
- (4) These latter allegations fall outside the scope of the Commission's complaints procedure as delimited in Article 7 of Regulation (EC) No 1/2003⁴ and in Article 1 in conjunction with Article 5 of Regulation (EC) No 773/2004.
- (5) First, your submission concerning the breach of, on the one hand, Directive 2005/36/EC and, on the other, Article 3 of the TEU has been already dealt with in a separate procedure under the responsibility of the Commission's Directorate General for the Internal Market, Industry, Entrepreneurship and SMEs.⁵
- (6) Second, as regards the infringement of Articles 20 and 21 of the Charter, it must be reminded that, according to Article 51 of the Charter, its provisions are addressed to the institutions, bodies, offices and agencies of the Union and to the Member States only when they are implementing Union law. However, the conduct you complain, of can only be attributed to the targets of your complaint, namely UEFA, the RFEF and the National Football Federations in their capacity as private organisations. Therefore, the Commission has no power to examine the compliance of the conduct of UEFA, the RFEF and the National Football Federations with the Charter where they are acting as private undertakings, which is the case when they provide coach training services under the UEFA Coaching Convention and when they issue UEFA licences that are ancillary to these training services.
- (7) Finally, for the reasons set out in paragraph (5), the Commission is not competent to assess your claims concerning an alleged breach of Spanish law.
- (8) Therefore, the present decision will only deal with your allegations that UEFA, the RFEF and the other National Football Federations may have breached Articles 101 and 102 of the Treaty.
- (9) I regret to inform you that, for the reasons set out below, after careful examination of the factual and legal elements put forward in your complaint and subsequent

2019, 14 June 2019, 17 June 2019, 30 July 2019, 18 September 2019, 23 September 2019, 24 October 2019, 13 November 2019, 9 December 2019.

- 3 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005, p. 22.
- 4 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1.
- 5 CHAP (2015) 02360.

submissions, the Commission will not conduct a further investigation into your allegation that UEFA, the RFEF and the National Football Federations may have breached Articles 101 and 102 of the Treaty.

1. THE COMPLAINT AND PROCEDURE

1.1. The Parties

- (10) **UEFA** is one of the six continental confederations of FIFA, the governing body for football at worldwide level. UEFA governs European football and is the umbrella organisation for fifty five national associations, the National Football Federations.
- (11) **The National Football Federations** are the governing bodies of football at national level. They are members of UEFA. These federations sanction all competitive football matches within their remit at national level, have jurisdiction for their national league systems and are in charge of their respective national teams. The National Football Federations, *inter alia*, regulate and manage jointly with UEFA the training programs for football coaches and the award of the UEFA B, UEFA A and UEFA PRO licences to football coaches in accordance with the rules laid down in the UEFA Coaching Convention.⁶ These licences permit license holders to participate in official UEFA sanctioned competitions according to their licence level.
- (12) **The RFEF** is the Royal Spanish Football Federation and is a private entity with legal personality. It is one of the fifty-five National Football Federations that are UEFA's members and its activities cover the entire territory of Spain. It is made up of the regional football federations, sports clubs, sportsmen and women, coaches, judges and referees, professional leagues, and any other interested groups that promote, practice or contribute to the development of the sport of football. The RFEF performs private activities, such as the provision of training services for football coaches (directly or through the member regional federations).
- (13) In Spain there are two distinct training programs for football coaches that co-exist: (i) training programs leading to diplomas recognised under Spanish law and (ii) training programs that lead to UEFA licenses under the UEFA Coaching Convention. The Spanish State recognised training programs leading to the diploma of Football Sports Instructor (Level 1 and 2) as well as the diploma of Football Senior Sports Instructor (Level 3) ("Técnico Deportivo de Grado Medio en Fútbol/Técnico Deportivo de Grado Superior en Fútbol").⁷ The UEFA training programs lead to UEFA A, UEFA B and UEFA Pro licences respectively.

⁶ UEFA Coaching Convention, available at <https://www.uefa.com/insideuefa/football-development/technical/coach-education/index.html>. In particular, according to the UEFA Coaching Convention, the complaint (p. 5-6), and RFEF's reply of 17 March 2017 to the Commission's request for information, an UEFA PRO licence allows its holder to train any team, including national selections; an UEFA License A allows holders to be head coaches of men's professional second-tier clubs, youths up to age 18, and reserve teams (also known as 'B' teams) for top-tier clubs, and an UEFA License B allows holders to be head coaches of men's amateur clubs and youths up to age 16 and assistant coaches for professional clubs.

⁷ Law 10/1990 of 15 October on Sport; Royal Decree 320/2000 of 3 March 2000; Organic Law 2/2006 of 3 May 2006, and Royal Decree 1383/2007 of 24 October 2007. According to the complaint (p. 5-6) and RFEF's reply of 6 February 2019 to the Commission's request for information, holders of a Sports

- (14) Only the RFEF, its member regional federations and private training centers affiliated to the RFEF or those regional federations can offer the training programs leading to UEFA licences. Private training centers in Spain not affiliated to the RFEF or to its member federations, such as [REDACTED], can only offer the training programs leading to diplomas under Spanish law (hereinafter, collectively referred to as “non-affiliated centers”).
- (15) The RFEF also exercises, through delegation, public functions of an administrative nature, acting in this case as a collaborating agent of the public administration.⁸ This is the case when it issues the Spanish Federation licences to members of regional football federations – such as football players and coaches, who must have a license in order to participate in official competitions in Spain – in situations where a regional football federation cannot issue the license itself or has entrusted the RFEF to do so.⁹ In this respect, it is to be noted that, according to the Spanish Law 10/1990 on Sport¹⁰, when determining the conditions for the qualification of clubs participating in official competitions in Spain, the RFEF must not discriminate between clubs trained by coaches holding UEFA licenses on the one hand, and clubs trained by coaches holding other licenses, issued by officially recognised centres such as the centres operated by the complainant and recognised under Spanish law, on the other hand.
- (16) [REDACTED] is a private undertaking and is one of the above-mentioned non-affiliated training centers for football coaches in Spain. It provides only the state-recognised training programs for football coaches in Spain. Its programs do not lead to UEFA licences pursuant to the UEFA Coaching Convention. Hence, successful students can obtain only the diplomas under Spanish law of Football Sports Instructor (Level 1 and 2) and the Football Senior Sports Instructor (Level 3).

1.2. Your complaint

- (17) The Commission notes that your complaint essentially reproduces the complaint lodged by you on 6 February 2014 and subsequently withdrawn on 1 July 2015.¹¹

Instructor diploma are entitled to coach football teams in the youth and junior categories (for Level 1) and football clubs in the Spanish Federation and representative teams at the regional level (for Level 2). Holders of Senior Sports Instructor diplomas can coach any football clubs in the Spanish Federation and representative teams at national level (for Level 3). Representative teams are teams formed by the best young players in the region or country. There are several teams at regional/national level depending, among others, on the players' age.

8 Law 10/1990 of 15 October on Sport, Article 30.

9 Such Federation licences may be issued, depending on the occasion, either by the regional Football Federations or by the RFEF, and have effects both at state and regional level, according to the Law 10/1990 of 15 October on Sport, Articles 30 and 32.

10 Law 10/1990 of 15 October on Sport, Article 55 (4).

11 Your complaint of 6 February 2014 was registered on 8 May 2014 under case number AT.40200 – Spanish football training centres.

- (18) In particular, you allege that UEFA, the RFEF and the other National Football Federations have been breaching Articles 101 and 102 of the Treaty by issuing UEFA PRO, UEFA A and UEFA B licenses only to coaches who have trained in centres operated by UEFA members, thus denying such licenses to coaches trained in non-affiliated centres. You also claim that, as the RFEF refuses to recognise the diploma of Football Sports Instructor (Level 1 and 2) and the diploma of Football Senior Sports Instructor (Level 3) as equivalent to the UEFA A, UEFA B and UEFA Pro licences respectively, holders of licenses from non-affiliated centres are not able to exercise their profession outside Spain and are thereby excluded from the market for internationally licensed coaches.
- (19) In support of that allegation, you submitted, on various dates, examples of football coaches who had obtained the diploma of Football Sport Instructor and Football Senior Sports Instructor in non-affiliated centres in Spain and whose diplomas were not validated by the corresponding regional federation as UEFA licences, because those diplomas had not been issued by the RFEF or an RFEF affiliated centre.¹² As a result, these coaches were not able to exercise their profession in other Member States where the National Football Federations recognise the right to exercise the profession only to holders of a UEFA licence or an equivalent recognised by UEFA. In particular, you provided examples of coaches who were refused recognition¹³ in England¹⁴, Malta¹⁵, Germany¹⁶, Cyprus¹⁷, France¹⁸, and Italy.¹⁹ As regards Italy, you provided a further example of a coach who was first allowed to coach in Italy, but was later refused because he had obtained his diploma from a centre non-affiliated to the RFEF and hence, non-UEFA equivalent.²⁰

12 You submitted examples concerning the Regional Federation Canary Islands (submission of 23 March 2017), the Regional Federation of Valencia (submission of 16 November 2017), the Regional Federation of Madrid and the Regional Federation of the Balearic Islands (submission of 13 September 2018), and the Regional Federation of Catalonia (9 January 2018).

13 As regards Finland, you submitted on 20 July 2018 an email from the Finnish National Agency for Education, which explains the recognition of diplomas in Finland for regulated and non-regulated professions. This email does not evidence the refusal of a coach by the Finnish Football Federation.

14 Submissions of 14 September 2017 related to one coach, submissions of 19 May 2018, 21 May 2018, 1 October 2018, 2 October 2018 related to the same coach and submission of 20 February 2019 related to another coach.

15 Submission of 15 February 2018 and submission of 4 June 2018.

16 Submissions of 25 February 2017, 28 February 2017, 9 March 2017, 20 December 2017, 4 April 2018.

17 Submission of 30 April 2018.

18 Submission of 18 January 2017, in which a football coach submits that it is the first year that the French Football Federation requests a title equivalent to the UEFA licence in order to coach in France.

19 Submission of 17 May 2017.

20 Submission of 9 February 2019.

- (20) You also submitted two examples of coaches who had trained at the RFEF and obtained the UEFA Pro licence at the end of their studies.²¹
- (21) You further provided examples of coaches who had been refused recognition by federations outside Europe, such as China and the USA. These will not be considered for the purpose of this assessment, as they are not relevant for the assessment of your complaint under EU competition law.
- (22) In the course of the procedure, you submitted several more documents with background information relating to (i) the Accreditation of Competences Regulations of the RFEF and your appeal against them before the National Sports Council, (ii) the conditions for access to the profession of football coach in sports competitions in Spain, (iii) the legal nature of the RFEF's decisions in general, (iv) several press releases from centres affiliated to the RFEF announcing the beginning of their annual training programs²², and (v) a Europass diploma supplement template for the profession of football sports instructor.²³
- (23) On 4 April 2019, you sent to the Commission the judgment of the Court of First Instance No.5 of Majadahonda (Spain), handed down on 29 March 2019, concerning the same factual and legal issues that your complaint relates to.
- (24) That court found that the RFEF's refusal to issue the UEFA license (UEFA A, UEFA B or UEFA Pro) that would be equivalent to the applicant's qualifications could infringe Spanish Sports Law as well as Articles 20 and 21 of the Charter. Consequently, the Court ruled that the RFEF must inform a National Football Federation of the qualifications that the plaintiff holds and of the effects of those qualifications in Spain (i.e. in which types of clubs he can coach) in the event that those qualification were sufficient to work as a coach in that country. The Court further ordered that, if a UEFA license is a pre-requisite to be able to work as a coach in that country, the RFEF must issue the UEFA license equivalent to the qualification the coach holds.²⁴ This judgment is currently under appeal at the Audiencia Provincial of Madrid - Sección 21 (Civil) (see para (23) above).²⁵
- (25) On 4 March 2020, you also sent to the Commission the interim measures decision of the Court of First Instance No.3 of Majadahonda (Spain) handed down on 24 February 2020, ruling on another separate case brought before it by another football trainer against the RFEF. In that case, the Court partially accepted the interim

21 Submission of 4 September 2018.

22 Submissions of 6 March 2017, 6 April 2018, 26 February 2019, 28 March 2019, 29 March 2019, and 14 June 2019.

23 Submission of 9 December 2019.

24 *"Accordingly, the Court [...] can, as requested, rule that the RFEF must inform the Federation in the country in which the plaintiff wishes to coach of the qualification he holds and its effects in our country (i.e. in which types of club he can coach), in case that qualification is sufficient in order to be able to work as a coach in that country, and issuing, should that be the case, a UEFA license equivalent to the qualifications that he/she holds where this would be necessary to work in that country"*.

25 Emails from the RFEF of 16 July 2019 and 28 August 2019.

measures request and ordered the RFEF to issue to the plaintiff a certificate stating that his qualification is equivalent to that required by the UEFA PRO licence.

1.3. Procedure

1.3.1 UEFA

- (26) On 2 March 2017, the Commission issued a request for information to UEFA under Article 18 of Regulation (EC) No 1/2003. On 3 March 2017, and with your consent, the Commission sent to UEFA the non-confidential version of your complaint for comments. UEFA responded on 17 March 2017. On 1 June and 19 September 2017, the Commission sent follow-up questions to UEFA, to which it responded on 15 June and 22 September 2017. On 25 January 2019, the Commission sent an additional request for information to UEFA, which replied on 28 January 2019.
- (27) In its replies to the Commission's requests for information and follow-up questions, UEFA clarified that coaching activities within UEFA are regulated in the UEFA Coaching Convention ('the Convention').²⁶ This Convention is an agreement by the Convention Parties (i.e. the member associations, which we understand to mean the National Football Federations) to mutually recognise qualifications of professional football coaches, which exists in addition to any principles of mutual recognition applicable within the Union. However, given that UEFA is a private body and that professional football coaching is not a regulated profession, there is no legal obligation for UEFA or the Convention Parties to extend the scope of the rules on mutual recognition under the UEFA Coaching Convention to third parties who are not members. Indeed, UEFA and the National Football Federations have not extended the scope of the rules on mutual recognition to educational bodies and, as such, general educational qualifications offered by the latter are not considered to be of any relevance under the Convention. Nevertheless, while it is not possible for an educational body to become a party to the Convention, it is possible for such a body to enter into partnerships with National Football Federations or their members, the regional football federations.²⁷ UEFA claimed that it has no information of the complainant ever seeking such a partnership.
- (28) UEFA also provided a specific example of a partnership concerning Portugal, where partnerships with universities are possible for modules of football education at lower levels.²⁸ UEFA also explained the models used by the Belgian Football Federation and the French Football Federation for the recognition of football coaching diplomas issued by non-UEFA training centres.²⁹ In particular, both federations provide for two systems: (i) one system consisting of the application for recognition of the diploma for professional football coaching awarded in a Member State and (ii)

26 Currently 53 UEFA member associations are now parties to the UEFA Coaching Convention, although not all associations are members at the Pro licence /diploma level.

27 Further explained by UEFA's reply of 22 September 2017 to the Commission's follow up questions.

28 UEFA's reply of 22 September 2017.

29 UEFA's reply of 28 January 2019 to the Commission's request for information of 25 January 2019.

another procedure to enable the partial or entire certification of a diploma on the basis of the professional experience of the applicant.³⁰

1.3.2 RFEF

- (29) On 3 March 2017, the Commission sent a request for information under Article 18 of Regulation No. 1/2003 to the RFEF. With your consent, the non-confidential version of your complaint was attached. The RFEF responded in writing on 17 March 2017, and submitted its comments on your complaint on 30 March 2017. On 24 November 2017, the Commission sent a second request for information to the RFEF, to which it responded on 13 December 2017.
- (30) The RFEF explained that in Spain there are two types of coaching licenses/diplomas: (i) diplomas officially recognised by the State and (ii) licences recognised by UEFA. The Spanish Law 10/1990 on Sport, in its Article 55(4), obliges the RFEF and the regional football federations to treat the diplomas obtained under Spanish law and the UEFA licences equally when issuing the Spanish Federation licenses which are compulsory to participate in official competitions in Spain, even if, in the opinion of the RFEF, the contents of the respective programs and the quality of the training provided in the different centres is not equivalent. Hence there is no need to issue UEFA licenses to holders of diplomas officially recognised by the State for them to be able to provide services in Spain.³¹
- (31) The RFEF further explained that the UEFA license is, however, required to work outside Spain in countries whose National Football Federations are party to the UEFA Coaching Convention. The RFEF is not obliged under Spanish Law nor under the UEFA Coaching Convention to certify the equivalence between diplomas officially recognised by the Spanish State and those recognised by UEFA and to issue UEFA licenses to holders of diplomas/licenses officially recognised by the Spanish State.
- (32) On 18 October 2018, the RFEF informed the Commission of its decision to establish two systems to allow the recognition by UEFA and other National Football Federations of diplomas recognised by the Spanish State, subject to certain conditions. This would occur through (i) the certification by the RFEF of coach training centres that want their students to graduate with their skills recognised as UEFA-equivalent³², and (ii) an examination for individual holders of diplomas issued by non-certified centres.³³ According to the RFEF, the examination would consist of theory and practice exercises aimed to check whether the competences of the candidate are equivalent to those acquired by UEFA licence holders.³⁴ On 5 July

30 Systems VAF (Valorisation des Acquis de Formation) and the VAE (Valorisation des Acquis de l'Expérience).

31 UEFA's reply of 17 March 2017 to the Commission Request for Information, question 4.

32 The model proposed is based on the models used by the Belgian Football Federation and the French Football Federation.

33 Letter from the RFEF to the Commission of 18 October 2018.

34 Email of 6 February 2019.

2019 the RFEF informed the Commission of the results of the first round of examinations.³⁵ According to the RFEF, six holders of non UEFA licenses submitted applications in order to participate to the accreditation of coaching skills examinations. Four out of six applications fulfilled the requirements to participate in the examinations, and one out of these four succeeded in passing the exam.

- (33) On 21 November 2019 and 25 June 2020, the RFEF shared with the Commission three different interim measures decisions of national courts, namely (i) decision of the Court of First Instance No. 5 of Majadahonda (Madrid) of 4 November 2019 (interim measures proceedings 702/2019-0001); (ii) decision of the Court of First Instance No. 6 of Majadahonda (Madrid) of 11 November 2019 (interim measures proceedings 505/2019-0001), and (iii) the decision of the Court of First Instance No. 2 of Majadahonda (Spain) of 12 May 2020 (interim measures proceedings under LEC 727 242/2020).
- (34) The Commission notes that these three decisions concern the same factual and legal issues referred to in your complaint and dealt with in the judgment of the Court of First Instance No. 5 of Majadahonda (Spain) of 29 March 2019 that you had already shared with the Commission on 4 April 2019.
- (35) In particular, in their application for interim measures, the applicants, who are holders of diplomas issued by training centres non-affiliated to the RFEF, asked the Court to order the RFEF that a certificate of equivalence with the UEFA licence be granted to the applicants with the following results:
 - i. In its decision of 4 November 2019, the Court of First Instance No. 5 of Majadahonda (Madrid) rejected that request on the grounds that (i) its judgment of 29 March 2019 in the same matter is under appeal, and (ii) that, in the judgment under appeal, the Court had already stated that several issues of competence of the Court, as well as of substance would require further assessment.
 - ii. In its decision of 11 November 2019, the Court of First Instance No. 6 of Majadahonda (Madrid) rejected a similar request on the grounds that the RFEF has introduced a process to assess the competences of holders of non-UEFA licences in order to be in a position to certify the equivalence of those licenses with UEFA requirements. Furthermore, that Court, while accepting its jurisdiction to assess whether the process put in place by the RFEF may give rise to discriminatory practices, considered that such an assessment could not be conducted in that particular case because the applicant did not participate in the process.³⁶
 - iii. In its decision of 12 May 2020, the Court of First Instance No. 2 of Majadahonda (Spain) concluded that the RFEF is not *a priori* obliged to grant to an applicant trained in a training centre not affiliated to UEFA a certificate of equivalence with the UEFA licence, if that applicant has not succeeded in the relevant examination established by the RFEF for that purpose.

35 Email of 5 July 2019.

- (36) Then, on 27 October 2020, the RFEF shared with the Commission the judgment of the Court of First Instance No. 6 of Majadahonda (Spain), of 22 October 2020 (ordinary proceedings 505/2019), also concerning the same matter as your complaint. In that judgment, the Court concluded that the RFEF acts as a private undertaking when issuing UEFA licences under the UEFA Convention and that it has established a specific examination in order to assess the equivalence of non-UEFA diplomas with UEFA licenses. It therefore rejected the plaintiff's request that the RFEF issue a UEFA license equivalent to their qualification, because the fact that the applicant holds a diploma on the basis of the Spanish law does not prove that his/her diploma fulfills the conditions set by the UEFA Convention in terms of courses and training hours. The Court did not examine the specifics of the examination system established by UEFA since the applicant did not undergo the examination process.

1.3.3 Comparison of UEFA-accredited versus Spanish-accredited training programs

- (37) When asked to compare the curriculums of the UEFA-accredited programs with the Spanish-accredited training programs, the RFEF explained that the two training systems differ significantly in terms of both study hours required and course content. According to the RFEF, its syllabus requires many more hours of study for the UEFA courses than the Spanish-accredited courses (3 415 hours versus 1 320 hours).³⁷ As for content, the RFEF syllabus requires students to complete a practical training program, performing the duties of a football coach in both training sessions and official matches for at least five seasons (Reality-Based Training "RBT"). In contrast, Royal Decree 320/2000³⁸ does not require students to perform the duties of a coach during the training process, nor that such duties should be carried out during official competitions.³⁹
- (38) On 15 April 2019, the Commission asked the Spanish Ministry of Sport's opinion on the response provided by RFEF. The latter responded on 22 May 2019 explaining that, despite some structural differences, the two systems do not differ substantially in terms of hours of study required and course content. First, the content of the modules is very similar. Second, if all modules of the standard program are counted, the courses of the non-affiliated centres amount to 1 895 hours, while the RFEF course for the UEFA licences amounts to 1 665 hours.⁴⁰ Finally, the training part of the Spanish-accredited program fulfils the requirement of offering to the students a

37 RFEF's reply of 2 April 2019 to the Commission's Request for Information, question 8.

38 The Spanish Sports Law sets out the framework governing sports training courses and is supplemented by several Royal Decrees establishing the general and more specific provisions for specialised sports training courses. In the case of football, Royal Decree 320/2000 of 3 March 2000 establishes the qualifications of sports instructor and senior sports instructor specialised in football and indoor football, lays down the minimum content requirements for the courses concerned, and sets out the tests and entrance requirements for those courses.

39 RFEF's reply of 2 April to the Commission's Request for Information, question 8 and 11.

40 Report of the Spanish Ministry of Culture and Sport, 9 May 2019.

real-world environment practical training under tuition, similar with the so-called RBT requirement of the RFEF's syllabus.⁴¹

- (39) On 3 May 2019 the Commission asked for your comments on the RFEF's response. In your reply of the same day⁴², you contested the hours required as stated by the RFEF. You explained that Royal Decree 320/2000 sets the minimum permitted study load for training programs, giving the discretion to the regional governments to increase the hours of study or the content of the courses. According to you, the majority of training centers offering the training programs pursuant to Spanish law do not follow the study load as laid down in the Decree, but tend to follow the study program of their respective regional governments and as a result, their programs exceed in terms of teaching hours the syllabus of the RFEF.⁴³ You claim that the observations of the RFEF in respect of the practical training program are also incorrect, pointing to the provisions of Royal Decree 320/2000 that regulate the practical training program. You explained that students who have completed three academic years and have attended practical training modules, may then complete their practical training by participating as head coach in Spanish Federation competitions for at least one season (i.e. 6 months).⁴⁴
- (40) The Commission notes that the opinion provided by the Parties, as well as by the Spanish Ministry of Sport, in relation to the number of study hours and the content of the training programs based on Royal Decree 320/2000 differ significantly.
- (41) In that respect, you stress that, if the opinions of [REDACTED], the RFEF, and the Spanish Ministry of Sport diverge on that matter, the Commission should rely on the opinion of the Spanish administration.⁴⁵

1.3.4 National Football Federations

- (42) The Commission also sent requests for information to the National Football Federations of several Member States, in particular to those where you claim that alumni of your school were refused recognition: the National Football Federations of Germany ("DFB")⁴⁶, England ("FA")⁴⁷, France ("FFF")⁴⁸, Cyprus ("CFA")⁴⁹, and

41 Report of the Spanish Ministry of Culture and Sport, 9 May 2019, pages 8 and 9.

42 [REDACTED]'s opinion of 3 May 2019 on RFEF's reply to the Commission's Request for Information.

43 [REDACTED]'s opinion of 3 May 2019 on RFEF's reply to the Commission's Request for Information, pages 15-19.

44 [REDACTED]'s opinion of 3 May 2019 on RFEF's reply to the Commission's Request for Information, pages 20-25.

45 Observations on the Rejection Letter, of 24 February 2020, page 24 and of 4 March 2020, page 3.

46 DFB'S reply to the Commission's Request for Information of 7 June 2018.

47 The FA's reply to the Commission's Request for Information of 30 April 2018.

48 FFF's reply to the Commission's Request for Information of 30 April 2018.

49 CFA's reply to the Commission's Request for Information of 30 April 2018.

Italy (“FIGC”).⁵⁰ It appears from the responses to the Commission’s requests for information that, overall, these alumni were refused recognition (i) because they were not holders of UEFA licences and/or (ii) the relevant National Football Federation asked the RFEF whether the license was UEFA equivalent and the RFEF responded in the negative. According to these National Football Federations, the non-recognition of alumni of non-accredited coaching schools is not an issue in their respective Member States, as there are no such schools that are not affiliated with the National Football Federation or with UEFA, similar to [REDACTED].

1.4. Observations on the Article 7(1) Letter

- (43) By letter of 10 February 2020 (“the Article 7(1) Letter”), the Commission informed you of its intention to reject your complaint. In response, you made observations in your letter of 24 February 2020. In addition, you submitted further information and observations in your letter of 4 March 2020.
- (44) In your two sets of observations, similar to your complaint, you alleged that the conduct of UEFA and its member associations violates not only EU competition law, but also national and other EU law provisions.
- (45) First, as already explained in paragraph 6 of the Article 7(1) Letter, the Commission does not have the competence, in the context of the procedure set out in Regulation No 773/2004, to assess or enforce national law.
- (46) Second, you stress that the alleged behaviour infringes Articles 20 and 21 of the Charter regarding equality and non-discrimination.⁵¹ You challenge the Commission’s provisional assessment that, since the conduct you complain of can only be attributed to UEFA and the RFEF, which are private organisations, the Commission has no power to examine the compliance of their conduct with the Charter.⁵²
- (47) In particular, you claim that the Commission is empowered to rule on Articles 20 and 21 of the Charter because under the Spanish Sports Law of 1990, when the RFEF issues sports diplomas it does so as a delegated public authority and it should therefore be considered a body of a Member State.
- (48) However, the Commission considers that a distinction should be drawn between the competence of the RFEF to issue diplomas pursuant to the Spanish law and its competence to issue UEFA licences. The act of issuing diplomas on the basis of the Spanish law is an act attributed to the State and, as such could constitute a public act. However, when issuing UEFA licences, the RFEF is bound by the UEFA Coaching Convention, and acts as a private entity on behalf of UEFA. As a result, its decision or refusal to issue a UEFA licence cannot be attributed to the Spanish State.⁵³

50 FIGC’s reply to the Commission’s Request for Information of 11 March 2019.

51 Observations on the Rejection Letter of 24 February, page 5.

52 Observations on the Rejection Letter of 24 February, page 61.

53 See also judgment 90/2020 of the Central Administrative Court N. 3 Goya (Madrid), handed down on 6 November 2020, ruling that the RFEF acts as a private entity when issuing UEFA licenses.

- (49) In addition, the Charter applies only to Member States and bodies thereof when they are implementing Union law.⁵⁴ Even if the RFEF were to be considered to be a body of the Spanish State, your complaint and your subsequent observations do not explain how the RFEF would be implementing EU law in issuing diplomas on the basis of the Spanish law.
- (50) Therefore, the Commission considers that it does not have the power to examine the compliance of UEFA's and the RFEF's conduct with the Charter.
- (51) Moreover, you also claim that the alleged conduct infringes other provisions of Union law, namely: (i) Article 3 of the Treaty, relating to the free movement of persons in the EU;⁵⁵ (ii) Article 45 of the Treaty on the free movement of workers;⁵⁶ (iii) Article 21 of the Treaty and Directive 2004/38 on the free movement within the EU;⁵⁷ (iv) Directive 2005/36/EC on the recognition of professional qualifications; (v) Regulation (EU) 2019/1149 of 20 June 2019 on the establishment of a European Labour Authority;⁵⁸ (vi) Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty relating to the establishment of a single market.⁵⁹
- (52) To support these allegations you refer extensively to several communications issued by the Commission concerning the Single Market Act and the Digital Single Market Strategy.⁶⁰ You also make reference to the Conclusions of the European Council of 20 June 2019, where the protection of fundamental rights of EU citizens (including non-discrimination and access to justice) and the functioning of the internal market are set as top priorities for the EU.⁶¹
- (53) The Commission would like to stress that all the above allegations fall outside the scope of the Commission's complaints procedure as delimited in Article 1 Regulation (EC) 773/2004 in conjunction with Article 5 of the same Regulation. All complaints lodged before the Commission pursuant to this regulation should concern the application of Articles 101 and 102 of the Treaty.
- (54) Hence, the present Decision considers only the allegations of your observations that fall within the scope of EU competition law. In this regard:

54 EU Charter of Fundamental Rights, Article 51 – Field of Application. See also Case C-400/10, PPU - McB, ECLI:EU:C:2010:582, paragraphs, 51-52 and Case C-198/13, Hernández and others, ECLI:EU:C:2014:2055, paragraphs 33-37.

55 Observations on the Rejection Letter of 24 February, page 5.

56 Observations on the Rejection Letter of 24 February, pages 14-20.

57 Observations on the Rejection Letter of 24 February, pages 60-61.

58 Observations on the Rejection Letter of 24 February, pages 25-40.

59 Observations on the Rejection Letter of 24 February, page 42.

60 Observations on the Rejection Letter of 24 February, pages 42-48.

61 Observations on the Rejection Letter of 24 February, pages 55-60.

- i. You explain that UEFA and the RFEF not only exercise regulatory functions, but also conduct economic activities closely related to these functions. You repeat the allegations made in your complaint that, as a result, they do not act impartially and they abuse their dominance with the aim to exclude training centres not affiliated to UEFA from the market.⁶²
- ii. You argue that the Commission is required to conduct an investigation when an alleged infringement of Articles 101 and/or 102 of the Treaty is brought to its attention. In that regard, you claim that the Commission's intention not to investigate further your complaint constitutes a failure to act and infringes your right to effective judicial protection.⁶³
- iii. You also claim that your case should be treated as a priority due to the importance of the provision of professional services for the internal market.⁶⁴ To that end, you also refer to the number of studies conducted on the possible competition law restrictions created by licensing systems, and to the fact that several National Competition Authorities investigated in the past the conduct of professional associations, and in particular cases concerning unequal conditions for accessing a profession.⁶⁵
- iv. You also allege that, contrary to what the Commission provisionally concluded in paragraphs 58 -64 of the Article 7(1) Letter, it is not possible to seek redress in front of national courts for this matter.⁶⁶ You then request that the Commission seek the opinion of the Legal Service of the Spanish State on the competence of national courts to rule on the matter.⁶⁷

2. THE NEED FOR THE COMMISSION TO SET PRIORITIES

- (55) The Commission is unable to pursue every alleged infringement of EU competition law which is brought to its attention. The Commission has limited resources and must therefore set priorities, in accordance with the principles set out at points 41 to 45 of the Notice on the handling of complaints⁶⁸.
- (56) In particular, the Commission may refer to the Union interest in order to determine the degree of priority to be applied to the complaints brought before it. The assessment of the Union interest raised by a complaint depends on the circumstances of each individual case. When deciding which cases to pursue, the Commission takes

62 Observations on the Rejection Letter of 24 February, pages 3-4 and 8.

63 Observations on the Rejection Letter of 24 February, pages 8, 9, 52-54.

64 Observations on the Rejection Letter of 24 February, page 54.

65 Observations on the Rejection Letter of 24 February, pages 11-13.

66 Observations on the Rejection Letter of 24 February, page 53.

67 Observations on the Rejection Letter of 24 February, page 63.

68 OJ C 101, 27.04.2004, p. 65 (the 'Notice on Complaints'). See also the Commission's Report on Competition Policy 2005, p. 25-27.

various factors into account. There is no fixed set of criteria of assessment⁶⁹, and where appropriate, the Commission may give priority to a single criterion.

- (57) In this respect, the EU Courts stated that the Commission is entitled to reject a complaint where the alleged infringement or the centre of its gravity is confined to one Member State, and actions has been initiated in the national courts.⁷⁰ The EU Courts has also made clear that the Commission is entitled to reject a complaint, provided that the rights of the complainant can be adequately safeguarded by the national courts. Therefore, the Commission may decide not to pursue a case when the matters raised in the complaint may be, or have been brought before the national competition authority or the national courts which, being well placed to examine the allegations made by the complainant, can adequately protect the rights of the complainant.⁷¹ In particular, this is the case where the complainant may seek, or may have sought, effective redress before the competent national courts in view of the fact that the evidence is located in one Member State.⁷²
- (58) Also, the possibility of seeking redress before national courts may confer advantages to the complainant, for instance: (i) national courts may award damages and cost; (ii) they may uphold payment claims and contract performance claims; (ii) they may apply and draw consequences of nullity; (iv) they may order interim measures, and (v) they may apply EU competition law and the relevant national law.⁷³ Therefore, the Commission may decide not to pursue certain cases where national courts can protect the rights of a complainant in a satisfactory manner.⁷⁴
- (59) As regard the claim that the Commission is required to conduct an investigation when an alleged infringement of Articles 101 and/or 102 of the Treaty is brought to its attention and that its intention not to investigate further a complaint constitutes a failure to act and infringes the complainant's right to effective judicial protection,⁷⁵ the Commission observes that the fact that the Commission has already dedicated time and resources to an investigation does not preclude a rejection of the complaint for reasons of priority setting.⁷⁶ It follows from Regulation No 1/2003 and settled case law that the Commission is not required to conduct an investigation in all cases brought before it, or, *a fortiori*, to adopt a decision on the existence or non-existence

69 Case C-56/12 P, EFIM v Commission, EU:C:2013:575, para. 85.

70 Case T-114/92 BENIM v Commission, EU:T:1995:11, para 82; see also case T-427/08 CEAHR v Commission, EU:T:2010:517, para. 173.

71 The Notice on Complaints states that the Commission can reject a complaint on the ground that the complainant can bring an action to assert its right before national courts. See point 44, first indent.

72 See Case T-427/08, CEAHR v Commission, para. 173

73 Notice on Complaints, point 16. See also Case T-119/09, Protégé International Ltd v Commission, ECLI:EU:T:2012:421, p. 79.

74 Case T-24/90, Automec v Commission, ECLI:EU:T:1992:97, pp. 89-96, Case T-458/04, Au lys de France v Commission, ECLI:EU:T:2007:195, pp. 81-84.

75 Observations on the Rejection Letter of 24 February, pages 8, 9, 52-54.

76 Case T-110/95 IECC v. Commission, ECLI:EU:T:1998:214, at para. 49.

of an infringement of Articles 101 and 102 of the Treaty.⁷⁷ The Commission cannot therefore be compelled to carry out an investigation, because such an investigation could have no purpose other than to seek evidence of the existence or otherwise of an infringement, which it is not required to establish.⁷⁸

- (60) Consequently, a Commission decision not to investigate further a complaint cannot constitute a failure to act, given that Article 7 of Regulation No 1/2003 does not give a complainant the right to insist that the Commission take a final decision as to the existence or non-existence of the alleged infringement and does not oblige the Commission to continue the proceedings, whatever the circumstances, right up to the stage of a final decision.⁷⁹
- (61) In addition, a decision not to investigate further a complaint does not deprive complainants from their right to an effective remedy before the Union Courts. In particular, complainants that have lodged a complaint under Article 7 of Regulation No 1/2003 before the Commission can, pursuant to Article 263 of the Treaty, challenge a rejection decision in order to protect their legitimate interests.
- (62) Finally, pursuant to the case law, the Commission has a margin of discretion when assessing the Community interest of each case.⁸⁰ The Union interest of a complaint is decided on the facts of the particular case and is therefore independent of any other similar cases where a National Competition Authority or the Commission decided that a complaint in the same or similar economic sector did have sufficient interest, as this depends on many other factors besides the sector involved.⁸¹

3. ASSESSMENT OF YOUR COMPLAINT

- (63) In the Article 7(1) Letter, the Commission indicated that, after careful examination of the factual and legal elements you put forward, it intended to reject your complaint.
- (64) In light of the above, and as further elaborated in paragraphs 65 - 77 below, the Commission will not conduct a further in-depth investigation into your claims and rejects your complaint for lack of EU interest, in particular in view of the possibility to seek redress in front of competent national courts.

77 Case C-119/97 P UFEX, ECLI:EU:C:1999:116, para 87.

78 Case T-24/90, Automec v Commission, ECLI:EU:T:1992:97, paras 76-77.

79 Case T-480/15 Agria Polska sp. zo.o. and Others v European Commission, ECLI:EU:T:2017:339, para 94, upheld in C-373/17.

80 Case T-24/90, Automec v Commission, ECLI:EU:T:1992:97, para 86.

81 Case T-480/15 Agria Polska sp. zo.o. and Others v European Commission, ECLI:EU:T:2017:339, para 94, upheld in C-373/17. Judgment of 8 March 2007 in France Télécom, T 339/04, ECR, EU:T:2007:80, paragraph 83 ; Case T-201/11, Si mobil v Commission, , EU:T:2014:1096, paragraph 40 ; Cases T-144/07, T-147/07 to T-150/07 and T-154/07, ThyssenKrupp Liften Ascenseurs and Others v Commission, EU:T:2011:364, paragraph 78, T-431/16, VIMC- Vienna International Medical Clinic GmbH v Commission européenne, EU:T:2017:755, para 33. See also judgment of 30 September 2016, in Case T-70/15, Trajektina luka Split d.d v Commission, ECLI:EU:T:2016:592.

- (65) As indicated in paragraph 18, your complaint essentially revolves around the refusal by the RFEF to issue UEFA valid licences to coaches trained in non-affiliated centres in Spain that have followed a training program recognised under Spanish law.
- (66) As such, all the necessary information on the RFEF's refusal, for example, the procedure that the RFEF has to follow to assess the diplomas obtained under Spanish law, detailed information on the characteristics of both training programs and how their study load may vary depending on the syllabus proposed by the different regional governments, would appear to be located in Spain. This information seems therefore easily accessible to national courts.
- (67) In this respect, the Commission recalls that Articles 101 and 102 of the Treaty produce direct effects in relations between individuals and create rights for the individuals concerned, which national courts must safeguard.⁸² As a result and according to Article 6 of Regulation 1/2003, national courts are fully competent to apply the competition rules of the Treaty. When national courts apply EU competition law and/or the relevant corresponding national law, they may (i) award damages and cost;⁸³ (ii) may uphold payment claims and contract performance claims; (iii) apply and draw consequences of nullity; and (iv) order interim measures.⁸⁴
- (68) In particular, it is clear from the various judgments and decisions mentioned in paragraphs 23-25 and 33-36 that Spanish national courts have considered themselves and are capable and competent to assess the situation described in your complaint and to either rule on the legal questions arising from that situation or provide at least temporary relief, namely in the following cases:
- (i) Judgment of the Court of First Instance No 5 of Majadahonda (Madrid), handed down on 29 March 2019;
 - (ii) Interim measures decision of the Court of First Instance No. 5 of Majadahonda (Madrid), handed down on 4 November 2019;
 - (iii) Interim measures decision of the Court of First Instance No. 6 of Majadahonda (Madrid), handed down on 11 November 2019;
 - (iv) Interim measures decision of the Court of First Instance No. 3 of Majadahonda (Madrid), handed down on 24 February 2020;
 - (v) Interim measures decision of the Court of First Instance No. 2 of Majadahonda (Madrid), handed down on 12 May 2020;

82 Case C-453/99, *Courage*, ECLI:EU:C:2001:465, para. 23; Case C-435/18, *Land Oberösterreich*, ECLI:EU:C:2019:1069, para. 21. Individuals concerned are not only customers and suppliers of the affected market (para. 27), but any person suffering a harm that, absent the anticompetitive conduct, would not arise or have arisen (para. 34).

83 Case T- 70/15 *Trajektina luka Split v Commission*, EU:T:2016:592, para. 45.

84 Notice on Complaints, point 16.

(vi) Judgment of the Court of First Instance No 6 of Mahadajonda (Madrid), handed down on 26 October 2020.

- (69) The decisions and judgments listed above were given in separate but similar cases that involved two lawsuits on substance and four interim measures requests filed by football trainers about the same factual and legal issues as the ones described in your complaint.
- (70) In particular, the applicants in those proceedings had studied at training centres non-affiliated to the RFEF (or its members regional federations) and hold the diploma of Football Sports Instructor specialised in football (Levels 1 and 2), issued on the basis of the Spanish law. They wished to exercise the activity of football coach outside Spain, but on the basis that they had studied at training centres non-affiliated to the RFEF refused to issue a UEFA license and to confirm to the respective National Football Federations that the applicants had completed the necessary training in Spain.
- (71) In addition, the applicants in those proceedings sought remedies which were practically equivalent to the ones you seek to obtain from your complaint before the Commission. More specifically, the applicants requested, *inter alia*, that national courts (i) certify the equivalence of their qualification to the qualification obtained following a UEFA training program and (ii) order the RFEF to issue a UEFA license equivalent to their qualification so that they are able to work in a country other than Spain.
- (72) The Commission notes that in those two cases⁸⁵, national courts, at least provisionally, granted the applicants remedies that were practically equivalent to those you seek to obtain from the Commission.
- (73) In light of the above, the Commission concludes that Spanish courts are well placed to deal with the matters raised in your complaint.
- (74) In your observations you do not bring forward any new information that would alter this conclusion.
- (75) In particular, you claim that there is no possibility of obtaining redress through the national courts. You explain that, despite several attempts to bring the case in front of the national courts, only one court found itself competent to rule on the substance, but its decision is now under appeal by the RFEF.⁸⁶
- (76) First, the fact that national courts are well placed to deal with the matter is not dependent on whether or not you agree with previous rulings of the Spanish courts. Second, contrary to your claims, that matter has already been the subject of at least two separate court proceedings on substance, which are both on-going. First, the RFEF has appealed the abovementioned court judgment of the Court of First

85 Judgment of the Court of First Instance No 5 of Majadahonda (Madrid), handed down on 29 March 2019, and interim measures decision of the Court of First Instance No.3 of Majadahonda (Spain) handed down on 24 February 2020.

86 Observations on the Rejection Letter of 24 February 2020, page 52.

Instance No 5 of Majadahonda (Madrid) of 29 March 2019. Second, the court judgment of the Court of First Instance No 6 of Mahadahonda (Madrid) of 26 October 2020 can still be appealed by the plaintiff. All of the above further weigh against an EU interest in investigating this matter further.

- (77) In view of the above, the Commission is of the view that Spanish national courts are well placed to deal with your complaint and that it is possible for you to seek redress before national courts and to have access to national remedies.

4. CONCLUSION

- (78) In view of the above considerations, the Commission, in its discretion to set priorities, has come to the conclusion that there are insufficient grounds for conducting a further investigation into the alleged infringement(s) and consequently rejects your complaint pursuant to Article 7(2) of Regulation No. 773/2004.

5. PROCEDURE

5.1. Possibility to challenge this Decision

- (79) An action may be brought against this Decision before the General Court of the European Union, in accordance with Article 263 of the Treaty.

5.2. Confidentiality

- (80) The Commission reserves the right to send a copy of this Decision to UEFA and the RFEF.
- (81) Moreover, the Commission may decide to make this Decision, or a summary thereof, public on its website.⁸⁷ If you consider that certain parts of this Decision contain confidential information, I would be grateful if within two weeks from the date of receipt you would inform [REDACTED]. Please identify clearly the information in question and indicate why you consider it should be treated as confidential. Absent any response within the deadline, the Commission will assume that you do not consider that the Decision contains confidential information and that it can be published on the Commission's website or sent to UEFA and the RFEF.
- (82) The published version of the Decision may conceal your identity upon your request and only if this is necessary for the protection of your legitimate interests.

For the Commission

*Margrethe VESTAGER
Executive Vice-President*

⁸⁷ See paragraph 150 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ 2011/C 308/06.