The exclusion of sports clubs from the junior hockey league: the case of the Czech Republic from the perspective of EU competition law

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Abstract

In February 2019, the Executive Committee of the Czech Ice Hockey Association (CIHA) decided to create a new junior hockey competition, the Junior League of Academies, beginning in September 2019. As a result, a few clubs were administratively excluded from the highest junior competition. Three of the five excluded clubs decided to initiate arbitration proceedings. After the failure of arbitration, the clubs filed a lawsuit in the Czech civil court seeking the annulment of the decision of the CIHA to expel them from the competition. This article analyses the actions of CIHA from the perspective of EU competition law. It assesses whether the CIHA's exclusion of clubs from the new league may violate Articles 101 or 102 TFEU. For this purpose, the article uses the methodological approach adopted by the Court in *Meca-Medina*. Although in general, in accordance with EU law and EU law policy, the organization of competitions and the setting of sporting rules fall within the competence of sports associations, these competences are not unlimited. Sports rules have to be set up in advance based on the transparent process of sports governing body in accordance with good governance principles. If the procedure of adopting sporting rules is not in accordance with the principles of good governance, it cannot be considered inherent and proportionate and as such it may be found contrary to the Article 101 or 102 TFEU.

Keywords Selection rules · Administrative exclusion · Sports competition · EU competition law · Sports association · Sporting rules

1 Introduction

On 10 April 2019, the Executive Committee of the Czech Ice Hockey Association (CIHA) decided to create a new junior hockey competition, the Junior League of Academies, to begin in the 2019/2020 season. The newly created Junior League of Academies is the newest junior hockey competition in the Czech Republic, replacing the top junior competition called the DHL Extraleague Junior. As a consequence of CIHA's decision, five clubs were excluded from the highest junior hockey competition.

The decision was criticized by the clubs HC ZUBR Přerov, VALAŠSKÝ HOKEJOVÝ KLUB, and HC AZ Havířov 2010, which had previously competed in the DHL Extraleague Junior. The clubs argued that even if they won the right to participate in the DHL Extraleague Junior in

accordance with the established conditions set before the beginning of the 2018/2019 season, they would not be allowed to participate in the Junior League of Academies in the 2019/2020 season due the absence of CIHA Academy status, a condition introduced by the CIHA for the new league.

Those above excluded clubs decided to initiate the arbitration proceedings. After being unsuccessful in arbitration, the clubs filed a lawsuit in the Czech civil court seeking the annulment of the decision of the CIHA to bar them from the competition.¹ In addition to initiating civil proceedings, the three excluded clubs also filed a complaint with the Czech National Competition Authority, arguing that the decision of the CIHA, which established the Junior League of Academies, constituted a prohibited decision by an association of competitors distorting competition between hockey clubs.²

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¹ https://www.idnes.cz/hokej/hokejova-1-liga/vsetin-havirov-prerov-juniorska-liga-hokej-soud-arbitraz.A190807_493854_hok_1liga_elv.

² https://www.idnes.cz/hokej/hokejova-1-liga/havirov-prerov-vsetin-extraliga-junioru.A190521_150350_hok_1liga_par.

Since 2004, the Czech authorities including courts are bound to apply the EU competition law to anticompetitive agreements (Article 101 TFEU) as well as the prohibition of the abuse of a dominant position (Article 102 TFEU),³ this article aims to explore the actions of the CIHA from the perspective of EU competition law. In doing so, it examines the compatibility of the decision to create the Junior League of Academies—which led to the exclusion of a few hockey clubs from the highest junior competition—with Articles 101 (1) TFEU and 102 TFEU. For this purpose, the methodological approach adopted in the *Meca-Medina* case will be used to analyse the actions of the CIHA.⁴

The litigation involving the CIHA and the excluded clubs was ultimately settled out of court. However, the questions related to the organization and management of sports competitions by governing bodies under EU law still persist. Therefore, this paper offers a reflection on how this litigation might have been resolved, had it not been concluded out of court, not least to shed light on how the looming threat of litigation has the potential to influence the decisions of governing bodies in sport.

2 Factual background

2.1 The genesis of the CIHA's decision

In January 2019, CIHA organized a conference on the state of Czech ice hockey with more than 100 invited representatives (including owners, general and sports managers) of the clubs of the three highest ice hockey senior leagues in the Czech Republic, i.e. Tipsport Extraleague, Chance League and 2nd League. One of the main topics was the discussion about the level of youth hockey competitions, especially with regard to the long-term failures of Czech youth representations at international sports events. In this context, the need to modify the system of youth competitions, including the narrowing of the highest junior hockey league, was discussed. However, neither concrete proposals nor a timeframe when changes should be implemented were agreed.⁵

On 14 February 2019, the CIHA decided to reduce the DHL Extraleague Junior from the 24 to 17 clubs from the beginning of 2019/2020 season. That highest junior league was to be closed. The CIHA ruled that participation in the

DHL Extraleague Junior would be reserved for clubs with CIHA Academy status. A possible exception to this condition could be obtained by the club EC Redbull Salzburg if it met the conditions set by the CIHA.⁶

The decision was highly criticized by HC ZUBR Přerov, VALAŠSKÝ HOKEJOVÝ KLUB, and HC AZ Havířov 2010 which had already been participating in the DHL Extraleague Junior. The clubs argued that even if they won the right to participate in the DHL Extraleague Junior in accordance with the established conditions set before the beginning of the 2018/2019 season, they would not be allowed to participate in this competition in the 2019/2020 season due to the absence of CIHA Academy status, the condition newly required for the participation in the highest junior competition set up by CIHA. Therefore, the clubs initiated the meeting with the representatives of CIHA in order to find an amicable solution.⁷

However, probably quite surprisingly for those three clubs involved, the CIHA Executive Committee determined on 21 March 2019 that the DHL Extraleague Junior will have eighteen members since the 2019/2020 season consisting of 17 clubs with the CIHA Academy status and the club HC Olomouc which received the exception from this condition due to its participation in the highest senior league. It was also decided that the DHL Extraleague Junior will be closed in the 2019/2020 season in order to allow the best young players play in the senior teams as the preparation for the 2020 World Junior Ice Hockey Championships,⁸ which was hosted in the Czech Republic.

In addition, the CIHA Executive Committee decided in its decision from March 2019 to replace the two-stage model of junior hockey competitions (consisting of the DHL Extraleague Junior and the Regional Junior League) by a three-stage model (consisting of the new highest junior league for the clubs with the CIHA Academy status, the DHL Extraleague Junior, and the Regional Junior League) since the season 2019/2020. The new highest junior league should have consisted of 17 clubs with CIHA Academy status and the club HC Olomouc. The DHL Extraleague Junior (newly the second highest junior league) should have included 14 clubs, consisting of the clubs which had not held the CIHA Academy status and had already participated in the DHL Extraleague Junior, and the best clubs of the Regional Junior League according to the sports results from the previous season. In the Regional Junior League (newly the third highest

³ 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.

⁴ Commission Staff Working Document, The EU and Sport: Background and Context, Accompanying Document to the White Paper on Sport, COM (2007) 391 final, Annex I, para 2.1.2.

⁵ <https://www.hokej.cz/mladez-clanek/vysledky-hokejoveho-fora-upravy-tabulek-ci-zuzeni-mladeznickych-soutezi/5036435>.

⁶ <https://www.hokej.cz/mladez-clanek/velky-tresk-v-extralize-vrati-se-primy-postup-a-sestup-zmeny-take-v-mladezi/5037202>.

⁷ <https://www.hokej.cz/mladez-clanek/konec-v-extralize-junioru-havirov-prerov-a-vsetin-jednaly-s-vedenim-svazu/5037841>.

⁸ <https://www.hokej.cz/mladez-clanek/konecny-verdikt-extraligu-junioru-bude-hrat-17-akademii-a-olomouc/5038180>.

junior league) should have played the remaining junior clubs. Moreover, it was established that all junior competitions would begin in the 2020/2021 season while the right to participate in the highest junior competition will not be conditioned by CIHA Academy status or any other condition.

Finally, on 10 April 2019, the CIHA decided that the highest junior league would be called the Junior League of Academies. The right to participate in the Junior League of Academies has been secured only for clubs with the status of CIHA Academy. The exception being HC Olomouc due to its participation in the highest senior league. Another exception was obtained by EC Redbull Salzburg. This exception derived from the contract between EC Redbull Salzburg and CIHA, which granted to this Austrian club the right to participate in the highest junior hockey competition in the Czech Republic.⁹ The organization of the DHL Extraleague Junior and the Regional Junior League remained unchanged. Moreover, it was also confirmed that the winner of the DHL Extraleague Junior in the season 2019/2020 will obtain the right to participate in the highest junior competition regardless of the CIHA Academy status or any other condition.¹⁰

As a consequence of the reorganization of junior hockey competitions, HC ZUBR Přerov, VALAŠSKÝ HOKEJOVÝ KLUB, HC AZ Havířov 2010, IHC Králové Písek and HC Slovan Ústí nad Labem were excluded from the new top junior competition because they did not hold the CIHA Academy status required by CIHA for a participation in the established Junior League of Academies.

2.2 The arbitration proceedings

Three of five clubs excluded, namely HC ZUBR Přerov, VALAŠSKÝ HOKEJOVÝ KLUB and HC AZ Havířov 2010, initiated arbitration proceedings through the review mechanisms of the CIHA.¹¹ The clubs claimed that CIHA's decision to create the Junior League of Academies was non-conceptual, non-transparent and unpredictable, and therefore it should be declared void. They also raised a number of other arguments. For instance, the excluded clubs objected that the fulfilment of that condition, Academy status, is objectively impossible due to time-constraints, as obtaining the CIHA Academy status is a time-consuming process

lasting many months. Accordingly, the clubs claimed that such a condition is discriminatory as the CIHA had refused to grant that status of CIHA Academy to the contested clubs, however, it had provided two exemptions from this condition for two specific competitors (HC Olomouc and EC Redbull Salzburg). The clubs further pointed out that the condition of the status of the CIHA Academy has not yet been a condition for participation in any of the competitions organized by CIHA and that the status of the CIHA Academy is not materially related to participation in the highest junior competition. Not least, they also claimed that the decision of CIHA amounted to a breach of competition law as it was a prohibited decision by an association of competitors distorting competition between hockey clubs.

The arbitration panel dismissed all the claims raised by the clubs. It concluded that the decision of the CIHA was made in compliance with the statutes and other rules of the CIHA, as the establishment, organization and management of competitions, including conditions of participation are within its competence. The arbitration panel argued that the CIHA proceeded quite transparently within the possibilities and its powers. The panel conceded that in the future the CIHA should set clear criteria for participation in CIHA competitions well in advance. In this context, the arbitral tribunal also recommended to the CIHA it should comply with the rules thus established and not grant unjustified exceptions.

2.3 The litigation

After the clubs' failed arbitration, the clubs filed a lawsuit in the Czech civil court seeking the annulment of the decision of the CIHA to bar them from the highest junior competition. In this context, they also applied for an interim order to ensure that the Junior League of Academies did not start playing until the decision was taken. The civil court made the requested order on 4 September 2019¹²—two days before the regular season 2019/2020 of Junior League of Academies should have begun.

This preliminary ruling was appealed by the CIHA. The CIHA argued the establishment, organization and management of competitions falls within the competences of CIHA Executive Committee and that this issue due to its purely sporting nature is excluded from the judicial review. Consequently, the CIHA claimed that the preliminary measure prohibiting the start of play unlawfully interfered with its autonomy to regulate and organize the sports competitions in the field of ice hockey in the Czech Republic. Moreover, the CIHA objected that the interests of the three clubs

⁹ The contract on the other side included the possibility of Czech national teams organizing its training camps in the Red Bull Academy, which bears the costs.

¹⁰ <https://hokej.cz/mladez-clanek/juniorska-extraliga-bude-mit-19-tymu-svaz-dodrzi-smlouvu-se-salcburkem/5038705>.

¹¹ The arbitration panel consisted of three arbitrators. Each of the parties involved, that is the clubs and CIHA, appointed one arbitrator from the list of members of the CIHA Arbitration Commission. The Chairman of CIHA Arbitration Commission became by virtue of his position the presiding arbitrator of such established panel.

¹² Decision of the Municipal Court in Prague, No. 80 Cm 134/2019-67, 4 September 2019.

could not outweigh the interests of the eighteen clubs. In addition, the CIHA submitted that the concerned clubs were not excluded from the participation in hockey competition organized by CIHA as those clubs remained participants of the DHL Extraleague Junior into which they had qualified during the season 2018/2019.¹³

However, the High Court in Prague upheld the preliminary order. The court favoured the arguments of the complaining clubs which argued that the preliminary ruling was necessary to secure the possibility of the excluded clubs to participate in the highest junior hockey competition and that this measure did not go beyond what was necessary to secure that possibility. The clubs claimed if the season started as scheduled, then they would in effect be barred for the entirety of that season. In this sense, the High Court in Prague concluded that the fact of suspending the running of regular season which preserves the situation at the time of the contested decision of CIHA could not be considered disproportionate interference with the rights of CIHA or other participants of Junior League of Academies.¹⁴

In reaction to that preliminary ruling ordering not to start playing the regular hockey competition of Junior League of Academies, the CIHA decided to replace the regular season by organizing the tournament called DHL Cup in which all teams that were supposed to play the Junior League of Academies were participating.¹⁵ The CIHA justified this on the grounds that it was in the interest of the youth national teams of the Czech Republic, which are mostly composed of participants of Junior League of Academies, and in the interest of encouraging the training of youth athletes.¹⁶ The excluded clubs objected that CIHA was circumventing the preliminary ruling as the DHL Cup copied the Junior League of Academies with its parameters (the same clubs, the same schedule of the dates and locations of games), which in fact could be considered a competition identical to the Junior League of Academies.¹⁷

As the DHL Cup followed the parameters of the Junior League of the Academies, the excluded clubs HC ZUBR Přerov, VALAŠSKÝ HOKEJOVÝ KLUB and HC AZ Havířov 2010 applied once again for a preliminary order, this time requesting that the DHL Cup be interrupted pending a decision on a decision of the court. The clubs objected that the CIHA was circumventing the preliminary ruling. According to the clubs, there existed a serious risk that, if the DHL Cup were not suspended by the order for interim measures, the regular junior competition would become a mere repetition of the DHL Cup already played. In that case, it could be supposed that if the DHL Cup went ahead then there would be no need to play the regular season since the hockey clubs and spectators concerned would probably no longer be interested in such a competition.¹⁸

The court of the first instance—the Municipal Court in Prague—considered the matter only briefly and took the view that the DHL Cup constituted a competition different from the subject of the dispute concerning the invalidity of the CIHA's decision to create the Junior League of Academies. Based on such formal differentiation between the DHL Cup and the Junior League of Academies the Municipal Court in Prague concluded that CIHA did not breach the interim measure prohibiting the start of the regular hockey competition of Junior League of Academies because the Junior League of Academies was postponed and, therefore, dismissed the application for a preliminary order on that ground.¹⁹ This court decision was subsequently upheld by the High Court in Prague which agreed with the reasoning of the court of first instance. The High Court in Prague in that sense only repeated that the merits of the case concerned the CIHA's decision to create the Junior League of Academies dated April 10, 2019, not the decision to create the DHL Cup. In this context, the court stated that ...*“nobody could be aware of the DHL Cup at that time”*... In regard the decision of CIHA to organize the DHL Cup was taken after the issued interim measure of 4 September 2019 the High Court in Prague concluded it was obvious that the decision of CIHA to establish the DHL Cup did not relate to the merits of the case. Therefore, it was ruled that the legal preconditions for the order of the proposed interim measure were not given.²⁰

¹³ Decision of the High Court in Prague, No. 6 Cmo 340/2019-275, 3 January 2020, paras. 3–5.

¹⁴ Ibid, para. 9–23.

¹⁵ https://www.irozhlas.cz/sport/hokej/ledni-hokej-juniori-o-pohar-dhl-hokejova-akademie-mestsky-soud-v-praze-zdenek_1909052254_and.

¹⁶ <https://www.hokej.cz/svaz-poda-odvolani-dhl-juniorska-liga-akademie-odlozena/5041804>.

¹⁷ https://www.irozhlas.cz/sport/hokej/hokej-juniorska-extraliga-svaz-soud-zakaz-nova-soutez_1909061555_kro In this context, it should be noted that the court executor have imposed a few fines on CIHA for circumventing the interim measure ordering not to play the junior highest league. These fines gradually reached up to 5 million. Further information is available at <https://www.sport.cz/hokej/ostatni/clanek/1210975-hokejovy-svaz-milionove-pokuty-neplati-nesouhlasis-nimi-kaucha-junioru-nekonci.html>.

¹⁸ Decision of the Municipal Court in Prague, No. 80 Cm 134/2019-102, 1 October 2019.

¹⁹ Decision of the Municipal Court in Prague, No. 80 Cm 134/2019-102, 1 October 2019.

²⁰ Decision of the High Court in Prague, No. 6 Cmo 339/2019-268, 3 January 2020, para 26.

2.4 The competition complaint

In addition to initiating civil proceedings, the three excluded clubs also filed a complaint with the Czech National Competition Authority, arguing that the decision of the CIHA, constituted a prohibited decision by an association of competitors distorting competition between hockey clubs in the meaning of provision § 3 sec. 1 of Act No. 143/2001 Coll., on the Protection of Competition as it explicitly includes illicit elements such as market partitioning, discriminatory practices and group boycotts.

The clubs specified that they have been participating in a competition in which they compete with other competitors in the market represented by a complex of products and services related to the operation of ice hockey (including competitive sports activities) in the Czech Republic. In this context, the clubs pointed out that participation and performances in organized ice hockey competitions directly affect the economic results of individual competitors and clubs, not only at the professional top level, but also at the amateur level, where they affect the economic stability of each competitors to cover its operational costs. These include income from the sale of marketing rights, advertising, ticket sales, or income from the players' development and related transfers of players.

The clubs claimed that the CIHA's decision to create the Junior League of Academies led to a significant distortion of competition between competitors in the relevant market. They argued that even though they won the right to participate in the highest junior competition in accordance with the established conditions set before the beginning of the 2018/2019 season, they would not be allowed to participate in the highest junior competition in the 2019/2020 season due the absence of CIHA Academy status, the condition newly required for the participation in the highest junior competition set up by CIHA. As a consequence of distorted competition, the exclusion of clubs from the highest junior league will lead to a diminution of excluded clubs for players, reduction of the market value of players, reduction of income from the sale of advertising and marketing rights, reduction of subsidies, and to disadvantage of excluded clubs in senior competitions resulting from the mentioned reasons.

The clubs also objected that the fulfilment of that condition, Academy status, is objectively impossible under the given time circumstances, as obtaining the CIHA Academy status is a time-consuming process lasting many months. Therefore, the clubs argued that such a condition is discriminatory as the CIHA had refused to grant that status of CIHA Academy to the contested clubs, however, had provided two exemptions from this condition for two specific competitors (HC Olomouc and EC Redbull Salzburg). The clubs further pointed out that the condition of the status of the CIHA Academy has not yet been a condition for participation in any of the competitions organized by CIHA and that the status of the CIHA Academy is not materially related to

participation in the highest junior competition. Not least, they questioned the impartiality of the members of the CIHA as the representatives of the clubs with the status of the CIHA Academy held the absolute majority of votes in the CIHA Executive Committee. This position gave rise to a risk that the clubs with CIHA Academy status could use their power to set the conditions in which the ice hockey competitions are organized independently of the clubs without the CIHA Academy status.²¹

2.5 The settlement of the litigation

In June 2020 the three excluded clubs reached a settlement with the CIHA thereby abandoning litigation. The reason for the settlement can be attributed to the severe negative impacts of the COVID-19 pandemic to economic stability of not only the parties involved in that litigation but the whole ice hockey industry. In that context, the clubs and the CIHA have agreed that it is necessary to terminate all legal disputes and focus on managing the situation and further developing ice hockey and the grassroots game in the country.²²

3 Legal analysis

This section will assess whether the CIHA's decision to establish the Junior League of Academies, which led to the exclusion of hockey clubs without CIHA Academy status in the highest junior league, would have survived EU competition law had the litigation not been settled out of court in June 2020. CIHA claimed that it was excluded from the judicial review as the issue of organization and management of competition belongs within its exclusive competences and has purely sporting nature.²³

As derives from established case law, sport is the subject to Community law in so far as it constitutes an economic activity.²⁴ However, the mere fact that a rule is purely

²¹ In the end, the competition complaint was unsuccessful. The information was mentioned only in media, see, e.g. https://www.irozhlas.cz/sport/hokej/ledni-hokej-juniori-o-pohar-dhl-hokejova-akademie-mests-ky-soud-v-praze-zdenek_1909052254_and. Unfortunately, the reasoning of the Czech National Competition Authority has not been published.

²² <https://www.ceskyhokej.cz/clanky/kluby-havirov-prerov-a-vsetin-se-dohodly-s-ceskym-hokejem-na-smirnem-reseni>. In return, CIHA has promised that a similar situation will never happen again. However, the details of the agreement were not disclosed anywhere.

²³ Decision of the High Court in Prague, No. 6 Cmo 340/2019-275, 3 January 2020, paras. 3–5.

²⁴ See, e.g. Case 36/74 *Walrave and Koch v Union Cycliste Internationale* [1974] ECR 1405, Case C-415/93 *Union Royale Belge des Sociétés de Football Association and Others v Bosman* [1995] ECR I-4921, paragraph 73, Case C-519/04 *Meca-Medina and Igor Majcen v Commission* [2006] ECR I-6991, Case 49/07 *MOTOE v Ellinko Dimosio*, [2008] ECR I-4863, Case C-176/96 *Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v. Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)* [2000] ECR I-2681, and Case T-193/02 *Laurent Piau v. Commission* [2006] ECR II-209.

sporting in nature does not have the effect of removing from the scope of the Treaty either a person engaging in the activity governed by that rule or the body which has laid it down.²⁵ As a result, a rule being purely sporting in nature is not of itself enough for such a rule to fall outside the scope of the Treaty and enjoy immunity from the expectation of EC trade law. Therefore, regardless the sporting nature of the rule or even its intent it still must be tested against the demands of EC trade law where it exerts economic effects.²⁶ This brings us to the analysis of CIHA's role and functions because only an undertaking is subject to the Treaty rules on competition.²⁷

3.1 Classification of CIHA: undertaking or association of undertakings?

For the EU Court of Justice (further referred as CJEU or Court), the concept of an undertaking encompasses every entity involved in economic activity, regardless of the legal status of the entity and the way it is financed.²⁸ In general, economic activity is any activity consisting of offering goods or services on the market.²⁹ It has been recognized that sports associations can constitute an undertaking or association of undertakings within the meaning of Article 101 and 102 TFEU to the extent they carry out economic activity.³⁰ So a pure regulator of the relevant sports industry may escape subjection to the Treaty in so far as it does not carry on an economic activity.³¹ Thus, to assess whether CIHA constitutes an undertaking or an association of undertakings depends on its position in the relevant market.³²

CIHA is a national sports association in the field of ice hockey and the International Ice Hockey Federation (IIHF) recognizes CIHA as the controlling body of ice hockey in the Czech Republic.³³ CIHA clearly stands in the role of

competition organizer and regulator of all hockey competitions played in the Czech Republic. It, inter alia, decides the rules of entry, sets the rules of the competition, provides match officials, organizes disciplinary procedures, manages the draw, and schedules the dates and locations of games. However, CIHA also engages in economic activity. As an example, from the CIHA website, it appears that the national association has entered into a sponsorship contract with DHL Express since 2014 in order to support the training and development of youth hockey players.³⁴ There is no doubt that this activity is able to generate income for CIHA. Given that CIHA is engaged in the organization and commercial exploitation of ice hockey competitions, it would be reasonable to assume that for the purposes of EU law, CIHA is an undertaking carrying out economic activity.³⁵

In addition, CIHA would also constitute an association of undertaking in this case. CIHA associates individual hockey clubs in the Czech Republic participating in competitions organized by CIHA. For this to be the case, individual clubs would have to be undertakings.³⁶ In this context, the fact that clubs are engaged in economic activity, and, therefore, can be regarded as undertakings, was found, for example, in the *Piau* decision. There, in the review of the FIFA rule regulating access to the profession of players' agents, the Court concluded that football clubs are undertakings within the meaning of Article 101 TFEU and the national association must therefore be considered as an association of undertakings within the meaning of that provision regardless the amateur or professional nature of the clubs.³⁷

There is no reason to come to the opposite conclusion in this case as the clubs supply sporting entertainment by playing matches against other clubs, usually within an organized

²⁵ Case C-519/04 *Meca-Medina and Igor Majcen v Commission* [2006] ECR I-6991, para. 27.

²⁶ Weatherill 2014a, p. 447.

²⁷ Weatherill 2014b, p. 473.

²⁸ Case 41/90 *Hofner v Macroton* ECR 1991, I-1979, para. 21.

²⁹ Case 118/85 *Commission v Italy* ECR 1987 2599, para. 7.

³⁰ Case T-193/02 *Laurent Piau v. Commission* [2006] ECR II-209, para. 69. Opinion of Advocate General Lenz in C-415/93 *Bosman*, points 255–257, and the Commission Decision of 23 July 2003 in Case COMP/C.2-37.398 *Joint Selling of the Commercial Rights of the UEFA Champions League*.

³¹ Case C-309/99 *Wouters* [2002] ECR I-1577, paras. 111–115.

³² Van Rompuy 2015, p. 184.

³³ According to article 9.2 IIHF Statutes „The IIHF shall only admit one ice hockey association for membership per Sovereign State.“. The list of member national associations of IIHF including CIHA is available at: <https://www.iihf.com/en/associations>.

³⁴ <https://www.ceskyhokej.cz/clanky/cslh-a-dhl-prodlouzily-spolu-praci-pri-podpore-mladeznickeho-hokeje>. The arrangement ceased in 2020. CIHA signed a new sponsorship contract with Kaufland in 2019. This contract is to continue to the season 2022/2023. For more information see <https://www.hokej.cz/cesky-hokej-ma-noveho-partnera-ambasadorem-spoluprace-je-jagr/5043410?t=1xbrawnkh98rwtp7eknpb9kqs8hcvxdtrvks7lw6mvxwmwv37xv2m>.

³⁵ In this regard, the Court made a similar conclusion in *MOTOE* when found that ELPA (The Automobile and Touring Club of Greece) constitutes an undertaking as it enters into sponsorship, advertising and insurance contracts designed to exploit its activities commercially, see Case 49/07 *MOTOE v Ellinko Dimosio*, [2008] ECR I-4863, para. 23.

³⁶ Case C-309/99 *Wouters v Algemene Raad van de Nederlandse Orde van Advocaten* [2002] ECR I-1577, para. 45.

³⁷ Case T-193/02 *Laurent Piau v. Commission* [2006] ECR II-209, para. 69–72.

championships.³⁸ It is obvious that club sports activities can result in a commodity. Therefore, it can be concluded that the clubs constitute the undertakings and CIHA may be considered an association of undertakings.

3.2 Does the decision of the CIHA restrict competition within the meaning of Article 101 (1) TFEU or constitute an abuse of a dominant position under Article 102 TFEU?

Rules adopted by sports bodies, such as national associations, may constitute agreements or decisions by undertakings or associations of undertakings within the meaning of Article 101 TFEU.³⁹ These rules are prohibited if they have as their *object* or *effect* the restriction or distortion of competition within the common market and affect trade between Member States.⁴⁰

In general, the rules drawn up unilaterally by sporting associations will usually consist of decisions by an association of undertakings.⁴¹ However, before the conclusion that the contested decision of CIHA constitutes a decision by an association of undertaking, it has to be examined whether the potential restrictions imposed by that decision of CIHA should be treated as horizontal or vertical in nature. This appears important in order to determine if only Article 101 TFEU or also Article 102 TFEU applies in this matter,⁴² as Articles 101 and 102 TFEU are not mutually exclusive, but may be applied simultaneously.⁴³

3.2.1 Horizontal or vertical relationship at play?

The contested decision of CIHA was taken by the CIHA Executive Committee which is the statutory body of CIHA. It consists of CIHA President and ten members consisting of six representatives of professional hockey clubs (i.e. the clubs in the first and second highest senior leagues) and 4 representatives of performance clubs (i.e. the clubs participating in the remaining hockey competitions organized by

CIHA). The CIHA Conference, which is the highest body of CIHA, elects the members of the CIHA Executive Committee to a four-year term. The clubs of the three highest ice hockey senior leagues in the Czech Republic (Tipsport Extraleague, the Chance League and the 2nd League) are represented at the CIHA Conference equally as each senior league has 14 delegates entitled to vote at the CIHA conference.⁴⁴

It would appear from the above mentioned that the contested decision of CIHA can constitute a horizontal agreement among the hockey clubs participating in CIHA's competitions since CIHA through its bodies (the CIHA Executive Committee in this case) acts as an agent of the participants. In that regard, CIHA Executive Committee directly consists of clubs as its voting members it is the hockey clubs themselves that through the chain of pyramid structure define and set the rules of the game. As a consequence, the regulatory activities of CIHA would fall under the rules for horizontal cartels. Therefore, the contested decision of CIHA could be considered an agreement among undertakings (the clubs) and Article 101 TFEU would be in play.⁴⁵

However, as mentioned at the very beginning, the excluded clubs, HC ZUBR Přerov, VALAŠSKÝ HOKEJOVÝ KLUB and HC AZ Havířov 2010, objected during the dispute with CIHA that the members of the CIHA Executive Committee had been biased during the decision-making process preceding the contested decision as the representatives of the clubs with the status of CIHA Academy held the absolute majority of votes in the CIHA Executive Committee at that time.⁴⁶ This argument, therefore, implicitly raises the question whether the contested decision of CIHA can be considered a vertical restraint from the perspective of competition law. If so, the Article 102 TFEU may apply.

A vertical restraint can be defined as

³⁸ Commission Decision of 27 June 2002, COMP IV/37.806-ENIC/UEFA, para. 25.

³⁹ Case T-193/02 *Laurent Piau v. Commission* [2006] ECR II-209, para 75.

⁴⁰ See European Commission Guidelines of 27 April 2004, on the effect of trade concept contained in Articles 81 and 82 of the Treaty [2004] OJ C 101/7.

⁴¹ See Commission White Paper on Sport, COM (2007) 391 final, Annex I, footnote nr. 177, and Commission Decision of 27 June 2002, COMP IV/37.806-ENIC/UEFA, para. 26.

⁴² Budzinski and Szymanski 2015, pp. 409–429.

⁴³ See Case 85/76 *Hoffmann-La Roche*, ECLI:EU:C:1979:36, para. 116, and Case 66/86 *Ahmed Saeed Flugreisen and Silver Line Reisebüro GmbH v. Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V.*, ECLI:EU:C:1989:140, para. 37.

⁴⁴ The CIHA Statutes, edition 2016, Articles 7–13. The excluded clubs HC ZUBR Přerov, VALAŠSKÝ HOKEJOVÝ KLUB and HC AZ Havířov 2010 have been playing in the second highest senior league, called the Chance League. Thus, they have obviously belonged among the group of clubs with the voting rights at the CIHA conference. They have had an opportunity to influence the composition of the CIHA Executive Committee which has taken the contested decision as well. Together with the clubs of the Tipsport extraleague their interests have been represented through six members of the CIHA Executive Committee who act as the agents of the professional clubs.

⁴⁵ Budzinski and Szymanski 2015, pp. 416–417.

⁴⁶ The 6 of 11 members of the CIHA Executive Committee were representatives of clubs with CIHA Academy status. According to the CIHA statutes, an absolute majority of all members is sufficient for the adoption of a decision of the CIHA Executive Committee. The contested decision was adopted in the presence of eight members of the CIHA Executive Committee when five of the six votes came from the clubs with CIHA Academy status.

an agreement of concerted practice entered into between two or more undertakings each of which operates, for the purposes of the agreement or the concerted practice, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services.⁴⁷

To answer the raised question, therefore, requires to define the different levels of production first.

As mentioned earlier, CIHA stands in the role of competition organizer and regulator of all hockey competitions played in the Czech Republic. In this sense, it is also engaged in the commercial exploitation of ice hockey competitions. On the other side, the role of the clubs in the competition is largely just to turn up and play. In this context, there is a distinction to be made between “competition organizing services” provided by CIHA and “ice hockey match-playing services” which are delivered by the participating clubs.⁴⁸

However, unlike other economic activities, the success of sports clubs is reflected not only in economic profit but also in excellent sports results. Sporting results are generally closely related to economic results.⁴⁹ In order to achieve sporting results, clubs need additional rivals to compete with in the competition. The economic benefits of such club competition can then be significantly increased if it takes place within an organized championship. Individual games between the clubs represent the input for the production of the final meta-product, the championship itself.⁵⁰ In that regard, CIHA may be understood as the upstream firm that controls access to an attractive product seeking to contract with downstream service suppliers.⁵¹

Once we have defined the different levels of production it is necessary to identify if there is some degree of market power at the level of the supplier or the buyer or at both levels.⁵² An identification of market power constitutes an obvious precondition of a finding an abuse of dominance case within the meaning of Article 102 TFEU. CIHA by its nature holds a monopoly position of national governing body on the market for competition organizing services in the field of ice hockey and sledge hockey in the Czech Republic. In that sense, CIHA clearly enjoys considerable market power vis-à-vis the clubs that compete in its competitions.

Regarding the case at hand and the possible vertical dimension of the restraint of the CIHA’s decision, it would need to be established why it is in CIHA’s self-interest to consolidate the market structure of the downstream market for match-playing services by excluding the clubs without the CIHA Academy statutes from the highest junior league.⁵³ As it would require a proper and deep economic analysis which goes beyond the scope of this paper, we are forced to leave the discussion of this aspect aside.

However, the argument of the excluded clubs regarding the question of impartiality of the relevant CIHA Executive committee members implicitly opens the door to the different consideration. That the clubs with the CIHA Academy status may be held collectively dominant within the meaning of Article 102 TFEU in the context of the decision-making process preceding the contested decision of the CIHA. As established in the relevant case law a collective dominance may exist in a vertical setting,⁵⁴ regardless the existence of an agreement or of other links in law.⁵⁵ Moreover, the concept of collective dominance in the sporting context has been already discussed by the Court in *Piau*.⁵⁶

The excluded clubs objected that the contested decision of the CIHA was made thanks to the votes of clubs with the CIHA Academy status. In this context, the excluded clubs pointed out that the six of 11 members of the CIHA Executive Committee were representatives of clubs with the CIHA Academy status. According to the CIHA statutes, an absolute majority of all members is sufficient for the adoption of a decision of the CIHA Executive Committee.⁵⁷ The contested decision of CIHA was adopted in the presence of eight members of the CIHA Executive Committee when 5 of the 6 votes came from the clubs with the CIHA Academy status.

At the first sight, it seems that the contested decision of CIHA adopted by the CIHA Executive Committee may be influenced by the motivation of clubs with the CIHA Academy status to create an exclusive junior competition for their junior teams in order to increase the quality of their players at the expense of non-CIHA Academy status’ clubs. In this context, there can be identified an obvious risk of a conflict of interest between the clubs with the CIHA Academy status and the clubs without that status. Moreover, the contested decision may imply an anticompetitive foreclosure effect

⁴⁷ The Guidelines on Vertical Restraints OJ C 130, 19.5.2010.

⁴⁸ Budzinski and Szymanski 2015, pp. 422–423.

⁴⁹ Pijetlovic 2015, p. 241.

⁵⁰ Dietl et al. 2011, pp. 2–3.

⁵¹ Budzinski and Szymanski have come to a similar conclusion when assessing the horizontal and vertical effects of restrictions by sports associations on the example of the Financial Fair Play Rules. See Budzinski and Szymanski 2015, p. 423.

⁵² The Guidelines on Vertical Restraints OJ C 130, 19.5.2010.

⁵³ See Budzinski and Szymanski 2015, p. 425–429.

⁵⁴ See Case T-228/97 Irish Sugar plc v Commission of the European Communities, ECLI:EU:T:1999:246, paras. 61–63.

⁵⁵ See Joined cases C-395/96 P and C-396/96 P Compagnie maritime belge transports SA, Compagnie maritime belge SA and Dafa-Lines A/S v Commission of the European, ECLI:EU:C:2000:132, para. 45.

⁵⁶ Case T-193/02 Laurent Piau v. Commission [2006] ECR II-209, paras. 113–115.

⁵⁷ The CIHA Statutes, edition 2016, Articles 13 (3).

of the relevant market with the “ice hockey match-playing services”.⁵⁸

Whereas the clubs with the CIHA Academy status held the absolute majority of all votes in the CIHA Executive Committee and could benefit from the established requirement of the CIHA Academy status as the condition for the participation in the newly created ice hockey junior league at the expense of the clubs without that status than it seems inevitable the conclusion that the Article 102 is triggered as well. That conclusion is even reinforced by the fact that the excluded clubs affected by the contested decision of CIHA may lack enough capacity to control CIHA’s decisions, even if they have some voting powers in terms of the constitution of the CIHA Executive Committee.⁵⁹

3.2.2 The nature of the restriction of competition under Article 101 TFEU

Thereafter, it must be analysed as to whether the contested decision of CIHA has an objective to restrict or distort, or an effect upon the restriction or distortion of, competition within the common market.

The contested decision of CIHA has established the new highest junior hockey league called the Junior League of Academies. The CIHA restricted the right to participate in that competition to clubs with the status of the CIHA Academy. That led consequently to the exclusion of hockey clubs without the CIHA Academy status from the highest junior league.

CIHA justified this decision by an effort to increase the competitiveness of Czech youth hockey at the international level. Further, CIHA stated that the need for a change in the system of junior competitions had been discussed in the past. It had been proposed to create a special competition for clubs which have been working with youth players systematically and continuously at the high level of quality. According to CIHA, that criteria have been fulfilled especially by the clubs with the CIHA Academy status.⁶⁰ Consequently, CIHA decided to create a competition that would be exclusively attended by these clubs.

In general, the abovementioned objective of increasing the competitiveness of Czech youth hockey supported by CIHA aims at encouraging the training of young athletes, which can be considered as a legitimate objective of sporting rules.⁶¹ This objective may be subordinated to the objective of the “organization and proper conduct of competitive sport”, which has been already accepted as legitimate objective in case law.⁶²

In *Deliège*, the Court acknowledged that sporting organizations have the authority to lay down appropriate sporting rules and to make their selections in accordance with them. In this context, the Court conceded that the delegation of such a task to national federations, which normally have the necessary knowledge and experience, is the arrangement adopted in most sporting disciplines, which is based in principle on the existence of a federation in each country.⁶³

However, even though there is recognized power of sports federations to issue the regulatory rules governing the respective part of the sports sector, it does not mean that such a rules cannot amount into the restrictions of competition which are precluded by the Treaty.⁶⁴

In the case at hand, the excluded clubs argued that as a consequence of the contested decision of CIHA their exclusion from the highest junior league has led to diminution of the excluded clubs for players, reduction of the market value of players, reduction of income from the sale of advertising and marketing rights, reduction of subsidies, and to disadvantage of excluded clubs in senior competitions resulting from the mentioned reasons.

It may be conceivable that the contested decision of CIHA could constitute such restrictions as objected by the excluded clubs. For example, in regard the restrictions of the possibilities of the excluded clubs to compete with the clubs with the CIHA Academy status by engaging players. The players will prefer the clubs with the CIHA Academy status which are participating in the highest junior league because the participation in the highest league raises the chances of players to become professionals. The excluded clubs that had participated in the highest junior league before the contested decision was taken are therefore put into disadvantage compared to the clubs with the CIHA Academy status.

⁵⁸ In the context of conflict of interest and its affect to the market foreclosure see Case 49/07 *MOTOE v Ellinko Dimosio*, [2008] ECR I-4863, para. 42 and 51.

⁵⁹ See Budzinski and Szymanski 2015, p. 421–422. For deeper analysis of the principal-agent problem, see, e.g. Geeraert 2016a, pp. 213–232, or Geeraert 2016b.

⁶⁰ The CIHA Academy is a project established by CIHA in 2011. The project aims to encourage a development of youth players able to compete with the best players on a global scale. To qualify for CIHA Academy, clubs must meet specific conditions that allow for comprehensive and all-round development of players, including proper education in schools. The CIHA Academy project is open and any club that meets the set conditions can apply for CIHA Academy status.

⁶¹ Commission Staff Working Document, The EU and Sport: Background and Context, Accompanying Document to the White Paper on Sport, COM (2007) 391 final, Annex I, para 2.1.5.

⁶² Case C-519/04 *Meca-Medina and Igor Majcen v Commission* [2006] ECR I-6991, para 45 and 46.

⁶³ Joint Cases C-51/96 and C-191/97 *Deliège* [2000] ECR I-2549, paras. 67–68.

⁶⁴ See, e.g. COMP 35.163, Notice published at OJ 2001 C169/5. See also Commission press release, 30 October 2001, IP/01/1523, “Commission closes its investigation into Formula One and other four-wheel motor sports”.

That is a restriction of competition between those clubs. In fact, this can be seen as a way of sharing “source of supply” within the meaning of Article 101(1)(c) TFEU. The contested decision of CIHA could be considered as the rule replacing the normal system of supply and demand by a market partitioning which leads to the existing competition situation being preserved and the excluded clubs being deprived of the possibility of making use of the chances, with respect to the engagement of players, which would be available to them under normal competitive conditions.⁶⁵ Regardless of the other objected consequences of the contested decision of CIHA, it is possible to conclude that the contested decision has the restrictive effect on the competition among the clubs. Moreover, as indicated in the subsequent section of this paper, the contested decision of the CIHA could have been considered a result of the abuse of the collective dominance of CIHA clubs. Thus, it appears a question if the restriction of competition has not been only the effect of the contested decision of CIHA, but also the intention of the clubs with the CIHA Academy status.⁶⁶

3.2.3 Abuse of a collective dominant market position under Article 102 TFEU

As discussed above, the clubs with the CIHA Academy status held the absolute majority of all votes in the CIHA Executive Committee during the decision-making process preceding the contested decision of the CIHA. Obviously, they could benefit from the established requirement of the CIHA Academy status as the condition for the participation in the newly created ice hockey junior league at the expense of the clubs without that status. In this context, the adoption of the contested decision of CIHA could be regarded as if the clubs with the CIHA Academy status were linked through their conduct and presented themselves on that market as a collective entity vis-à-vis their competitors, their trading partners and consumers.⁶⁷

Therefore, the clubs with the CIHA Academy status may be held collectively dominant on the market for the “ice hockey match-playing services” since they, through the

contested decision of CIHA, have laid down the conditions under which the services in question are provided. And the clubs without the status of CIHA Academy could not jeopardize that.⁶⁸ In this regard, the Court in *MOTOE* similarly concluded that an undertaking which is able to determine in what conditions other undertakings may have access to the relevant market and engage in their activities on that market can be considered as occupying a dominant position.⁶⁹

However, it must be restated that the existence of a dominant market power is not prohibited under Article 102 TFEU. Rather, this Article targets the abuse of a dominant (or collective dominant) position.⁷⁰ In *Hoffmann-La Roche*, the Court defined the concept of abuse as an objective concept stemming from the behaviour of a dominant undertaking which influences the structure of the market so as to hinder the maintenance or growth of competition.⁷¹ In this sense, it has to be understood that “a system of undistorted competition, such as that provided for by the Treaty, can be guaranteed only if equality of opportunity is secured as between the various economic operators”.⁷²

In the case at hand, it is submitted that the clubs with the CIHA Academy status had an obvious advantage over its competitors (the clubs without the CIHA Academy status) as they held the absolute majority of all votes in the CIHA Executive Committee. Consequently, the clubs with the CIHA Academy status could use their power in the CIHA Executive Committee and set the conditions in which the ice hockey competitions are organized independently of the clubs without the CIHA Academy status. That situation enabled the clubs with the CIHA Academy status to use their power to deny other operators access to the relevant market. They could distort competition by favouring events in whose organization they participate. Therefore, the exercise of that regulatory power should be made subject to restrictions, obligations and review.⁷³

At the first sight, it seems that the contested decision of CIHA adopted by the CIHA Executive Committee may be influenced by the motivation of clubs with the CIHA Academy status to create an exclusive junior competition for their junior teams in order to increase the quality of their players at the expense of non-CIHA Academy status clubs. As the economic interests of the clubs with the CIHA Academy

⁶⁵ Vermeersch 2007, p. 250 and the reference made there to Opinion of Advocate General Lenz in C-415/93 *Bosman*, point 262.

⁶⁶ Ibid. However, in this regard, it has to be noted that the intention is not necessary factor in determining whether a decision by an association of undertakings is restrictive by object. See, e.g. Case T-93/18 *International Skating Union v. Commission*, ECLI:EU:T:2020:610, para 121.

⁶⁷ Case T-193/02 *Laurent Piau v. Commission* [2006] ECR II-209, para 113. Similarly, Advocate General Lenz considered in his Opinion in *Bosman* that football clubs in a professional league could be “united by such economic links” as to be regarded as collectively dominant. See Opinion of Advocate General Lenz in C-415/93 *Bosman*, point 285.

⁶⁸ Ibid. paras. 111 and 114.

⁶⁹ Case 49/07 *MOTOE v Ellinko Dimosio* [2008] ECR I-4863, para. 38.

⁷⁰ Ezrachi 2018, p. 214.

⁷¹ Case 85/76 *Hoffmann-La Roche v. Commission* [1979] ECR 461, para. 91.

⁷² Case 49/07 *MOTOE v Ellinko Dimosio* [2008] ECR I-4863, para. 51.

⁷³ Case T-93/18 *International Skating Union v. Commission*, ECLI:EU:T:2020:610, para 70.

status were directly engaged by the contested decision of CIHA, there can be identified an obvious risk of a conflict of interest between the clubs with the CIHA Academy status and the clubs without that status.⁷⁴ Moreover, the contested decision may imply an anticompetitive foreclosure effect of the relevant market with the “ice hockey match-playing services”.⁷⁵ Such a leverage of regulatory power to achieve commercial advantage implies the abuse within the meaning of Article 102 TFEU.⁷⁶

This conclusion is even more strengthened when we consider the procedures and the conditions which the clubs applying for the CIHA Academy status have to fulfil in order to obtain the CIHA Academy status. For instance, the excluded clubs objected that the fulfilment of that condition, Academy status, is objectively impossible under the time circumstances, as obtaining the CIHA Academy status is a time-consuming process lasting many months. Accordingly, the clubs claimed that such a condition is discriminatory as the CIHA had refused to grant that status of CIHA Academy to the contested clubs, however, it had provided two exemptions from this condition for two specific competitors (HC Olomouc and EC Redbull Salzburg). The clubs further pointed out that the condition of the status of the CIHA Academy has not yet been a condition for participation in any of the competitions organized by CIHA and that the status of the CIHA Academy is not materially related to participation in the highest junior competition.

In accordance with established case law of the Court, the procedures and criteria of the system requiring prior approval, such as the requirement of the CIHA Academy status, for the participation on the Junior League of Academies, can be justified only if the restriction on trade is proportionate to the objective pursued and provided that the applicable criteria are objective, non-discriminatory, and known in advance.⁷⁷ Moreover, there should be a right to a hearing, an obligation to provide reasoning for the decision taken, and the possibility of review by an independent body.⁷⁸ The purpose is to determine as precisely as possible

the basis of the decision-making process in order to prevent arbitrary or self-motivated choices.⁷⁹

In the case at hand, the contested decision of CIHA which has established the condition of CIHA Academy status for the participation on the Junior League of Academies was adopted on 10 April 2019. The deadline for the application into the ice hockey competitions for the 2019/2020 season was set up until 31 May 2019. That was only 7 weeks after the contested decision had been issued. Considering the fact that the procedure obtaining the CIHA Academy status has no specific timeframe in which the decision about the application must be taken there exists a risk of arbitrary treatment of such an application.⁸⁰ Moreover, the affected procedural rules were drafted in very vague terms and no express limits or review mechanisms were imposed on refusals.⁸¹

In light of the above, it is possible to conclude, without further analysis, that the procedure relating to the CIHA Academy status licencing does not satisfy the necessary procedural requirements established in the cited case law. In connection with an obvious risk of a conflict of interest between the clubs with the CIHA Academy status and the clubs without that status, it is very likely that an abuse condemned by Article 102 TFEU would be found by the Court.

3.3 The existence of justification

However, as derives from *Meca-Medina*, not every agreement between undertakings or every decision of an association of undertakings which restricts the freedom of action of the parties or of one of them necessarily falls within the prohibition laid down in Article 101 (1) TFEU. In applying these provisions to a particular case, the overall context of the decision of the association of undertakings, its effects and, more specifically, of its objectives must be considered. It has then to be considered whether the effects restrictive of competition are inherent in the pursuit of those objectives and are proportionate to them.⁸² Considering that the objective justification defence under Article 102 may include non-economic objectives and amount to an equivalent of public policy justification under Article 101 (1) TFEU the approach adopted in *Meca-Medina* is applied in the abuse of dominant position case as well.⁸³

⁷⁴ For deeper analysis of conflict of interests in the practice of sports regulators see Opinion of Advocate General Kokott in case 49/07 *MOTOE v Ellinko Dimosio*, para. 98.

⁷⁵ Case 49/07 *MOTOE v Ellinko Dimosio*, [2008] ECR I-4863, para. 42.

⁷⁶ Weatherill 2017, p. 253–254.

⁷⁷ See, e.g. Case C-390/99 *Canal Satelite Digital SL v. Administración General del Estado*, and *Distribuidora de Televisión Digital SA (DTS)*, 2002, ECR I-607, para 35; Case C-432/03 *Commission v. Portugal* [2005] ECR I-9665, para. 50; Case C-219/07 *Nationale Raad van Dierenkwekers en Liefhebbers* [2008] ECR I-4475, paras. 33–37.

⁷⁸ Weatherill 2017, p. 256.

⁷⁹ *Ibid.*, p. 257.

⁸⁰ Case T-93/18 *International Skating Union v. Commission*, ECLI:EU:T:2020:610, para 110.

⁸¹ The Technical regulation to obtain the status of CIHA Academy, p. 5. Available at: <https://www.ceskyhokej.cz/data/document/file/akademie-cslh-technicky-predpis-18-19.pdf>

⁸² Case C-519/04 *Meca-Medina and Igor Majcen v Commission* [2006] ECR I-6991, para. 42.

⁸³ Cf. Pijetlovic 2015, pp. 161–162; Commission Staff Working Document, The EU and Sport: Background and Context, Accompa-

3.3.1 Inherency

The restrictive effect of a decision will not infringe Article 101 (1) TFEU, provided that it is established that the restrictive effect does not go beyond what is inherent in pursuing its objectives.⁸⁴ The term “inherent” as a synonym for “indispensable”, “necessary” or “essential” includes assessing whether a measure taken is necessary to achieve a legitimate objective, in other words, without taking such a measure, the legitimate objective cannot be achieved.⁸⁵ However, necessity does not imply absolute necessity, since a measure which may be reasonable may be considered necessary.⁸⁶ In *Deliège*, the Court ruled that limiting the number of participants is inherent in the conduct of an international high-level sports event, which necessarily involves certain selection rules or criteria being adopted.⁸⁷

However, the determination of selective criteria must be based on a large number of considerations unconnected with the personal situation of any athlete such as nature, organization and financing of the sport.⁸⁸ In this context, the preference of one selection system over another is left to sporting bodies and organizers, when the delegation of such issues to the competence of sports associations is adopted in most sporting disciplines, which is based on the principle of the existence of federation in each country.⁸⁹

This demonstrates the respect of EU institutions, including the Court, for the specific nature of sport.⁹⁰ The Court did not insist on imposing any particular organizational structure on the sport because the selection of the appropriate institutional set-up is in the realm of regulatory autonomy of the sporting body.⁹¹ The fact that setting the appropriate organizational structure is mainly the responsibility of sports governing bodies is acknowledged in the EU level.⁹²

However, it is stressed that the autonomy of sport organizations needs to be recognized and protected within a framework that ensures the implementation of good governance principles such as democracy, transparency and accountability.⁹³ This derives from the fact that EU has had a longstanding interest and put a lot effort in developing and spreading these principles in sport through a variety of measures adopted by the EU institutions.⁹⁴ The European Commission has even described good governance as a condition for the autonomy and self-regulation of sports associations.⁹⁵ As a consequence, “sports bodies that do not have in place good governance procedures and practices can expect their autonomy and self-regulatory practices to be curtailed”.⁹⁶ In view of this, the review of the inherency criteria should therefore take into account whether the measure adopted by the sports association has been taken in accordance with good governance principles.⁹⁷

The decision of the CIHA Executive Committee to establish the Junior League of Academies is an organizational rule that governs the structure of youth ice hockey competitions organized by CIHA. As discussed above, the question of creating an organizational structure, in particular a new competition organized within a sports association, is left entirely to the sports association. In this context, setting out who can participate in a sports competition and thus limiting the number of participants is an inherent rule without which the proper functioning of sport competition cannot be ensured.

However, as regards the assessment of the decision of the CIHA Executive Committee in terms of its compliance with the principles of good governance, the answer is not so clear. According to the principles of good governance when amendments to statutes, rules, regulations or key policies are contemplated and appropriate and proportionate, a consultation process should be put in place with relevant members and stakeholders within a suitable timeframe.⁹⁸ An appropriate timeframe allows all relevant members and stakeholders

Footnote 83 (continued)

nying Document to the White Paper on Sport, COM (2007) 391 final, Annex I, para 2.1.5.

⁸⁴ Case C-309/99 J.C.J. Wouters, J. W. Savelbergh, Price Waterhouse Belastingadviseurs BV. V. Algemene Eaad van de Nederlandse Orde van Advocaten [2002] ECR I-1577, para 97.

⁸⁵ Pijetlovic 2017, p. 97.

⁸⁶ Case C-309/99 J.C.J. Wouters, J. W. Savelbergh, Price Waterhouse Belastingadviseurs BV. V. Algemene Eaad van de Nederlandse Orde van Advocaten [2002] ECR I-1577, para 107.

⁸⁷ Joint Cases C-51/96 and C-191/97 *Deliège* [2000] ECR I-2549, para 64.

⁸⁸ *Ibid.* para 65.

⁸⁹ *Ibid.* para 67 and 68.

⁹⁰ For more information about the specific nature of sport, see, e.g. Vermeersch 2018, pp. 307–325, Siekmann 2012, pp. 67–95.

⁹¹ Pijetlovic 2015, p. 279.

⁹² See, e.g. White Paper on Sport, para. 4.

⁹³ Commission Staff Working Document, The EU and Sport: Background and Context, Accompanying Document to the White Paper on Sport, COM (2007) 391 final, Annex I, para 4.1.

⁹⁴ See García and de Wolff 2018, pp. 301–305. For instance, the Council of the European Union determined “good governance” as one of the key priorities in EU sports policy in the 2011–2014 EU Work Plan in the field of sport. More recently, “good governance” was also highlighted as a specific priority in Erasmus+, the 2014–2020 EU programme for education, training youth sport.

⁹⁵ European Commission, Developing the European Dimension in Sport [2011] COM (2011) 12 final, para 4.1.

⁹⁶ Expert Group “Good Governance” Deliverable 2 Principles of good governance in sport. EU Work Plan for Sport 2011–2014, p. 3.

⁹⁷ Pijetlovic 2015, p. 279.

⁹⁸ Expert Group “Good Governance” Deliverable 2 Principles of good governance in sport. EU Work Plan for Sport 2011–2014, p. 13.

to prepare for planned changes to the rules and to take appropriate action in this context. The Arbitral Tribunal for Sport also draws attention to the requirement of transparency and information in connection with the adoption of rules establishing the right of participation of association members in sports competitions.⁹⁹ Changes in the organization of junior competitions represent a significant hit for clubs in terms of their investment and long-term strategies. This places even greater demands on the need for information and the possible involvement of clubs in the discussion of the final model.

However, the decision of the CIHA Executive Committee was preceded by only one conference in January 2019, to which the clubs agreed only on the need to reduce the number of clubs in the junior competitions. How and when this might happen was not agreed. In addition, CIHA President said in his opinion that the number of participants in the junior top hockey competition should be reduced gradually over two years. Finally, at the end of the 2018/2019 season, the CIHA Executive Committee decided that the changes would take place from the 2019/2020 season. Since the CIHA Executive Committee has changed and modified the conditions for club participation in the top junior competition several times, and given the CIHA President's statements after the January 2019 conference, this suggests that such a significant decision regarding the reorganization of junior competitions has not been properly discussed. Not to mention the lack of sufficient discussion with the clubs affected by the decision. For the above reasons, it is submitted that the principles of transparency and democracy were not fulfilled in connection with the decision to create a new junior competition. From this point of view, the decision hardly could be seen as inherent.¹⁰⁰

Furthermore, due to the serious risk of conflict of interests between the clubs with the CIHA Academy status and the clubs without that status during the decision-making process preceding the contested decision of the CIHA, the noncompliance with the principal of internal accountability and control can be identified. As mentioned above, the contested decision of CIHA was adopted in the presence of eight members of the CIHA Executive Committee when five of the six votes came from the clubs with the CIHA Academy status. In general, members of any decision-making body

should be independent in their decisions.¹⁰¹ Accordingly, a person with a business or personal interest in the issue under discussion should be ineligible to vote in that matter. Moreover, there should be established clear conflict of interests' procedures that apply to the members of the CIHA Executive Committee.¹⁰² As these standards of good governance principles were not secured in the case at hand, the Court would not probably consider the contested decision of CIHA as inherent to objectives of Article 101 TFEU.

3.3.2 Proportionality

As indicated in the *Deliège* case, when reviewing the selection rules which were considered inherent in the conduct of an international high-level sports event, the adoption of one system for selecting participants rather than another must be based on a large number of considerations unconnected with the personal situation of any athlete.¹⁰³ Thus, by implication, the Court indicated that inherent rules should satisfy the requirement of proportionality. If it were shown that the selection rules were discriminatory, the proportionality criterion would not be met and the inherent test failed.¹⁰⁴ In accordance with the established case law, the sporting rule must also be proportionate to its objective in order not to infringe Articles 101 (1) and 102 TFEU.¹⁰⁵ It follows that sporting rules must be applied in a transparent, objective and non-discriminatory manner.¹⁰⁶ In other words, a measure may not go beyond what is necessary.¹⁰⁷

Therefore, the question at this stage of the analysis is whether there is any other, less restrictive, measures that are capable of achieving the same objectives.¹⁰⁸ In the context of the assessment of the proportionality of the CIHA Executive Committee decision to establish the Junior League of Academies, it should also be taken into account whether the decision is based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the

⁹⁹ Arbitration CAS 2000/A/278 Chiba/Japan Amateur Swimming Federation (JASF), award of 24 October 2000, para 10.

¹⁰⁰ Weatherill argues in a similar way when he stipulates that the absence of transparent and participatory governance "is a powerful reason for arguing that practices imposed on football clubs which fall within the sphere of application of EC law are likely to be incompatible with it, for it is not necessary for the federations to maintain such a formal exclusion of input from directly affected commercial and sporting interests". See Weatherill 2014a, p. 462.

¹⁰¹ Basic Universal Principles of Good Governance of the Olympic and Sports Movement, p. 4.

¹⁰² Geeraert 2018, pp. 19–20.

¹⁰³ Joint Cases C-51/96 and C-191/97 *Deliège* [2000] ECR I-2549, para 65.

¹⁰⁴ Pijetlovic 2017, p. 91.

¹⁰⁵ Case C-519/04 *Meca-Medina and Igor Majcen v Commission* [2006] ECR I-6991, para 42, and Case C-325/08 *Olympique Lyonnais SASP v Olivier Bernard*, para 45.

¹⁰⁶ Commission Staff Working Document, Annex I, para 2.1.5.

¹⁰⁷ Case C-176/96 *Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v. Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)* [2000] ECR I-2681, para 56.

¹⁰⁸ Pijetlovic 2015, p. 281.

exercise of the CIHA Executive Committee, so that it is not used arbitrarily.¹⁰⁹

The decision to create the Junior League of Academies since the 2019/2020 season was made at the end of the 2018/2019 season. That decision was preceded by two other decisions of the CIHA Executive Committee. According to these decisions, the right to participate in the Junior League of Academies since the 2019/2020 season was initially reserved for clubs with the status of the CIHA Academy. Subsequently, the exception from that condition has been granted to the club HC Olomouc due to its participation in the highest senior league. Another exception obtained by EC Redbull Salzburg.

These changes have had a negative impact on five clubs, which, as a result of these decisions, were administratively excluded from the highest junior league for the 2019/2020 season. The excluded clubs, HC ZUBR Přerov, VALAŠSKÝ HOKEJOVÝ KLUB and HC AZ Havířov 2010, argued that even though they won the right to participate in the highest junior competition in accordance with the established conditions set before the beginning of the 2018/2019 season, they would not be allowed to participate in the highest junior competition in the 2019/2020 season due the absence of CIHA Academy status, the condition newly required for the participation in the highest junior competition set up by CIHA.

CIHA justified this decision on the basis that it was made to increase the competitiveness of Czech youth hockey at the international level. In this connection, CIHA further referred that the need for a change in the system of junior competitions had been discussed in the past. It had been proposed to create a special competition for clubs which have been working with youth players systematically and continuously at the high level of quality. According to CIHA, that criteria have been fulfilled especially by the clubs with the CIHA Academy status.

Those three excluded clubs objected that the fulfilment of that condition is objectively impossible under the given time circumstances, as obtaining the CIHA Academy status is a formalized time-consuming process lasting many months. Therefore, the clubs claimed that such a condition is discriminatory as the CIHA had refused to grant that status of CIHA Academy to the contested clubs, however, they had provided two exemptions from this condition for two specific competitors (HC Olomouc and EC Redbull Salzburg). The clubs further pointed out that the condition of the status of the CIHA Academy has not yet been a condition for participation in any of the competitions organized by CIHA

and that the status of the CIHA Academy is not materially related to participation in the highest junior competition.

Whereas, according to the contested decision of CIHA, it was also established that the winner of the DHL Extraleague Junior in the season 2019/2020 would obtain the right to participate in the Junior League of Academies regardless the CIHA Academy status or any other condition, it seems the raised argument of the clubs very relevant. In this context, the chosen condition of the CIHA Academy status necessary for participation in the Junior League of Academies lose its credibility. It would be difficult for CIHA to defend it. Even if an effort to increase the competitiveness of Czech youth hockey at the international level can be considered as a legitimate objective and the establishment of the exclusive competition for the clubs with the CIHA Academy status could be a suitable means to achieve that legitimate aim, the fact that promotion and relegation into the Junior League of Academies are finally left open without any condition, makes the original requirement of CIHA Academy status completely unnecessary.¹¹⁰

Moreover, the CIHA Executive Committee implicitly suggested that the decision to set up the Junior League of Academies was a purposeful decision aimed at justifying the exclusion of the clubs from the top junior competition. Excluded clubs did not have the chance to meet the conditions of participation in this newly created competition in such a short time at the time of the decision to create the Junior League of Academies. Neither of the clubs played the highest competition in the senior category at the time, so their only chance would be to obtain the CIHA Academy status. However, the award of CIHA Academy status is not automatic and may take several years while the trend and long-term readiness of the club to ensure the functioning of the CIHA Academy are monitored. For this reason, the decision of the CIHA Executive Committee to establish the Junior League of Academies can be considered an arbitrary decision, as the criteria for participating in the newly created top junior competition were not known well in advance, and moreover, the CIHA Executive Committee's procedure indicates a purposeful approach in an effort to make the exclusion of the clubs without the CIHA Academy status from the highest junior competition as legitimate as possible.

In addition, excluded clubs argued that if CIHA wanted to reduce the number of clubs in junior competitions, it should have been done on the basis of sporting results. They argued that the reduction in the number of clubs in

¹⁰⁹ Case C-390/99 *Canal Satellite Digital SL v. Administración General del Estado, and Distribuidora de Televisión Digital SA (DTS)*, 2002, ECR I-607, para 43.

¹¹⁰ This is even more obvious when we consider the fact that one of the excluded clubs, HC AZ Havířov 2010, has won the second highest junior league in the season 2019/2020 and so has obtained the right to participate in the highest junior competition in the season 2020/2021 regardless the CIHA Academy status or any other condition.

the competition should have been a gradual increase in the number of descending clubs to a predetermined and agreed number. In this alternative way, it would also be possible to achieve a legitimate objective. The alternative way of doing so leaves the possibility for clubs to win their right to participate in the highest junior competition in a sporting way. From this point of view, the alternative solution seems to be less restrictive, since the participation of clubs in the highest junior competition would depend purely on the sports results of the clubs and not on their administrative status. In view of the objective of increasing competition in junior competitions and promoting the education of talent and elite athletes, this seems to be a much more appropriate solution to changes in junior hockey competitions.

Given that the criteria for participating in the Junior League of Academies were not set in a timely manner and the legitimate ground of the chosen condition lacks a sufficient justification, the decision of the CIHA Executive Committee can only be considered disproportionate. This conclusion is even supported by the fact that the procedure of the CIHA Executive Committee was not transparent and there is an alternative and less restrictive measure capable of achieving the legitimate objective set.

3.4 Is trade between Member States affected?

Article 101 TFEU prohibits anticompetitive agreements between undertakings and decisions of associations of undertakings which may affect trade between Member States. Similarly, Article 102 TFEU applies only to abuse which may appreciably affect intra-Union trade. This criterion divides the areas falling under either EU or national competition law.¹¹¹ It is not decisive whether the agreement, decision or practice actually had a cross-border effect within the internal market. It is sufficient that they are capable of having such an effect.¹¹² The rules of national sports associations which regulate the conduct of their members on the market generally produce market effects between Member States.¹¹³

In the case at hand, the decision of the CIHA Executive Committee to establish the Junior League of Academies affected all clubs playing the highest junior competition or clubs playing the second highest junior competition with an ambition to advance. At the first sight, it seems that only national trade along the borders of the Czech Republic

where CIHA performs its competences is affected. However, even where the undertaking's conduct appears to relate only to a single Member State, it is perfectly possible that it may have the effect of reinforcing the partitioning of markets on a national basis, thereby holding up the economic interpenetration which the Treaty is designed to bring about.¹¹⁴

Moreover, the Commission found in its decision practice related to the staid aid that professional football club usually deploys economic activities in several markets, such as the transfer market for professional players, publicity, sponsorship, merchandising or media coverage. In this context, aid to a professional football club strengthens its position on each of those markets, most of which cover several Member States. The fact that the club does not participate in football competitions which have an international dimension cannot jeopardize that assessment. Therefore, regardless of the league in which the club plays, the staid aid providing a selective advantage to a professional sports club might have the potential of distorting competition and to affect trade between Member States within the meaning of Article 107 (1) of the Treaty.¹¹⁵

Since CIHA signed a contract with the Austrian club EC Redbull Salzburg, which under that contract participates in the highest junior hockey competition in the Czech Republic, the contested decision of CIHA has not only potential but even real effect on the market between Member States. In the light of the foregoing, we can therefore conclude that the contested decision of CIHA has the potential of distorting competition and to effect trade between Member States.

3.5 The fulfilment of conditions of Article 101 (3) TFEU

Pursuant to Article 101 (3) of the TFEU, an agreement or decision found restrictive under Article 101 (1) of the TFEU may be declared valid and enforceable if it contributes to improving the production or distribution of goods or promoting technical or economic progress, consumers and does not afford such competition the possibility of eliminating competition in respect of a substantial part of the products in question.

Within the framework laid down by Article 101 (3) TFEU there are balanced anticompetitive and pro-competitive effects exclusively.¹¹⁶ Thus, under this provision, there is no scope for anti-competition arguments that cannot be turned

¹¹¹ Joined Cases 56 and 58/64 *Consten and Grundig v. Commission*, EU:C:1966:41, p. 341.

¹¹² Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty ('Guidelines on the effect on trade concept'), OJ C 101 of 27.4.2004, page 81, para. 24–32.

¹¹³ Van Rompuy 2015, p. 193.

¹¹⁴ Case 49/07 *MOTOE v Ellinko Dimosio*, [2008] ECR I-4863, para. 42.

¹¹⁵ SA.41614 Den Bosch, par. 7, 62–63. See also SA.40.168 Willem II, especially par. 15, 39–40.

¹¹⁶ The Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty ('Guidelines on the effect on trade concept'), OJ C 101 of 27. 4. 2004, para 11.

into economic efficiencies.¹¹⁷ The four conditions are cumulative so they must all be met for the exception rule to be applicable. It is not necessary to examine any remaining conditions once it is found that one of the conditions of Article 101 (3) of the TFEU is not satisfied. Therefore, in individual cases it may be appropriate to consider the four conditions in any order.¹¹⁸

Regarding the third condition of Article 101 (3) TFEU, the restrictive agreement or the decision must be reasonably necessary in order to achieve the efficiencies. Moreover, the individual restrictions on competition that flow from the agreement or decision must also be reasonably necessary for the attainment of the efficiencies.¹¹⁹ As stated above, the decision of the CIHA Executive Committee to establish the Junior League of Academies is not reasonably necessary in order to achieve any possible efficiency. As this criterion is not met, there is no need to examine others and it can be concluded that the decision of the CIHA Executive Committee cannot be exempted under Article 101 (3) TFEU. Consequently, in regard the Article 102 TFEU, the objective justification defence would not be successful.

4 Conclusion

The paper has dealt with the analysis of the decision of the CIHA Executive Committee to create the new junior competition. As a consequence of such a decision, five clubs were administratively excluded from the highest junior hockey competition. As the three of five excluded clubs challenged this decision not only through the Czech courts, but also through a competition law complaint at the Czech National Competition Authority, this contribution aimed to assess the whole case from the perspective of EU competition law.

To assess whether the decision of the CIHA Executive Committee concerning the organization of junior competitions in the Czech Republic violates Articles 101 and/or 102 TFEU, the arguments are based on the methodological approach of the Commission consisting in four-step test. Thus, it was first assessed whether CIHA could be considered as an undertaking or an association of undertakings. It was then examined whether the sporting rule restricts competition within the meaning of Article 101(1) TFEU or constitutes an abuse of dominance under Article 102 TFEU. In this context, the principles set out in *Meca-Medina* were applied, assessing the overall context in which a sporting rule was adopted and producing its effect in relation to its

objectives. It was then considered whether the consequential restrictive effects to competition are inherent in pursuit of those objectives and proportionate to them. Finally, it was assessed whether the market between Member States was affected and whether the rule fulfilled the conditions for exemption under Article 101(3) TFEU.

Based on the evaluation of individual steps of the test, it was found that the contested decision of CIHA Executive Committee to create a new junior competition, which resulted in the exclusion of clubs without the CIHA Academy status from the highest junior competition, fulfils the conditions for applying EU competition law. CIHA, as a national sports association governing ice hockey in the Czech Republic can be considered an undertaking since it is engaged in the organization and commercial exploitation of ice hockey competitions in the Czech Republic. Apart that, it also constitutes an association of undertakings which is grouping the hockey clubs participating in competitions organized by CIHA.

The restrictions imposed by the contested decision of CIHA may be treated as horizontal as vertical in nature. Under the horizontal approach, the contested decision of CIHA could be considered an agreement among undertakings (the clubs). In accordance with the vertical approach, the potential collectively dominant behaviour of the clubs with the CIHA Academy status was taken into account. It was reached that due to a risk of conflict of interests and a lack of capacity to control the CIHA's decisions from the principal it is very likely that an abuse condemned by Article 102 TFEU would be found by the Court.

Given that the criteria for participating in the Junior League of the Academies were not set sufficiently in advance, the legitimate ground of chosen condition lacks a sufficient justification, the procedure of the CIHA Executive Committee was not sufficiently transparent and there is an alternative less restrictive measure capable of achieving the legitimate objective set, it was finally concluded that that decision of the CIHA Executive Committee infringes Article 101 (1) TFEU.

Although in general, in accordance with the EU law, the organization of competitions and the setting of sporting rules fall within the competence of sports associations, these competences are not unlimited, as is confirmed by the CJEU in its decision-making practice. This also applies in case of the competence of sports association to set rules for participation in the competition. As suggested by the CJEU in the *Deliège* case, the need to establish sports rules for competition is inherent in the conduct of professional high-level sports events. At the same time, the Court implicitly mentioned that even in such a case the system of selection rules should be proportional. As the case presented in this article shows, we can only agree.

¹¹⁷ Pijetlovic 2015, p. 155.

¹¹⁸ The Commission Guidelines on the application of Article 81(3), para 38 and 42.

¹¹⁹ Ibid, para 73.

The fact that it is a rule that is inherent in the conduct of professional high-level sports events does not automatically mean that it is a proportional rule. In addition, when assessing the sporting rules laying down the conditions for participation in terms of their inherence, the procedure prior to the adoption of specific rules should also be taken into account. Indeed, if the procedure for adopting sporting rules is not in accordance with the principles of good governance, it can hardly be considered that such a rule is inherent.

Therefore, had the court been allowed the chance to decide the case at hand, it is likely that it would have concluded that the contested decision of CIHA which led to the exclusion of five hockey clubs from the highest junior competition was contrary to the Article 101 as 102 TFEU. However, this does not mean that the contested decision of CIHA would not have been able to success if the selection criteria for the participation in the established competition were known in advance, sufficiently transparent and the procedure for adopting those selection criteria complied with the good governance principles.

Nevertheless, even though the litigation was not pursued to the end due to the reached settlement, it provides an illustrative case study demonstrating the potential role of EU law in exerting control over the autonomy of sports federation both to set its organizational rules and to devise the procedures from which they emerge. Furthermore, the subsequent changes in the organization of junior hockey competitions in the Czech Republic confirm that the threat of litigation may provoke the changes in the sports governance patterns. Applied in this case, when CIHA decided in December 2019 to further narrow the highest junior league since the 2020/2021 season, the reduction in the number of clubs in the highest junior league has been based on a gradual increase in the number of descending clubs to a pre-determined and agreed number.

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