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I. INTRODUCTION

Every day, thousands of people around the world participate in sports. The value of sports is somehow self-evident and its role in society apparent in many levels. The Roman satirical poet Juvenal explicitly incites to pray for a healthy mind in a healthy body (mens sana in corpore sano) presenting it first in the list of what is desirable in life (Satire X) (Rudd, 1991). In the same spirit, the pre Socratic philosopher Thales answers the question "what man is happy?" by stating: "he who has a healthy body, a resourceful mind and a docile nature" (Diogenes Laertius (-Hicks), 1972). In trying to provide a brief definition, sport means all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels (Council of Europe, 2001); hence, a combination of physical and mental activities that is governed by a set of rules or customs, with social, educational, entertaining and cultural dimensions (Panagiotopoulos and Anagnostopoulos, 2004). This being the case, sports create interactions in many levels within society, elevating the values of social participation and inspiration, values that are particularly fundamental within the general idea of democracy. In that respect, sport is protected as a fundamental right in the constitutional orders of all member states, either deriving from the freedom of arts and science or autonomously in the case of Greece, Spain and Portugal.

On the other hand, the establishment of the European Economic Community in 1957 constituted an innovative procedure based largely on principles of economic integration and development. The Treaty of Rome (EEC Treaty) can be understood as the institutional framework for economic and monetary union with the establishment of a common market to be the far-reaching aim (Belassa, 1961). Hence, a fundamental rights catalogue was totally absent from the EEC Treaty. Even in such a strict economic framework, the idea of certain rights derived from the four Community freedoms.

In particular, free movement of workers was included in article 48, para. 1 EEC Treaty. Paragraph 2 of article 48 prohibited any form of discrimination based on nationality between workers of the member states as regards employment, remuneration and other conditions of work. This provided the initiative for enforcing non-discrimination policies in labor affairs in Europe (see also C-379/87 Groener v. Minister for Education; C-267/91 and C-268/91 Keck and Mithouard; C-18/95 F.C. Terhoeve v. Inspecteur van de Balstingdienst Particulieren/Ondememingen Buitenland).

The principle of non-discrimination in labor affairs was further explained in paragraph 3. It contained the right to accept offers of employment actually made, to move freely within the territory of member states for this purpose (C-53/81 D. M. Levin v. Staatsecretaris van Justitie), to stay in a member state for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action and to remain in the territory of a member state after having been employed in that State (Grant, 2002). Furthermore, this principle covered every form of discrimination based on nationality, either directly

based on nationality of the worker, or indirectly, based on different criteria that reach the same outcome (C-152/73 Sotgiu; C-419/92 Scholz; Baldoni, 2003).

Apart from the recognition of non-discrimination as a fundamental right within the EEC Treaty, the free movement of workers contributed to the development of another fundamental right, that of freedom of work. The core of this particular right consists of the right to freely choose and change working environment. Under the establishment of the Community, this right of choice was highly improved in the sense that not only many more opportunities were provided to workers from a greater range of occupations, but also the possibility to compare working conditions in the member states and choose accordingly.

To summarize the above, the approach on free movement of workers seemed to seek a balance between the concept of worker as a production unit that contributes to the common market and the financial growth of Europe on one hand and the opportunity of the worker as a human being to choose to work in another member state for improving his living standards and at the same time not being discriminated on the ground of his nationality on the other (Craig and de Burca, 2024).

The EU has a quite limited role in sports policy, which largely remains within the competence of the member states. Article 6 TFEU explicitly identifies the competence of the Union to support, coordinate or supplement the actions of the member states in the area of sports. The application of EU policy is pretty much reflected in soft law instruments. On the other hand, many aspects of sports, especially on professional level, touch upon issues of economic nature that certainly affect the common market which is a fundamental aim of the Union from the very beginning, especially regarding competition law and policy.

The aim of this book is to provide a complete perception of sports in the EU legal order, through the presentation of the most important decisions of the Court of Justice of the European Union throughout the years, which cover aspects of fundamental rights and competition law in sports. The author shall have the opportunity to have a collection of significant cases in the area of sports, which may be used as a basis for further research.

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II. CASE LAW

C-36/74, Walrave and Koch v Association Union Cycliste Internationale and Others (12 December 1974)

Judgment

Facts

The order making the reference and the written observations submitted under Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I - Facts and procedure

It is the practice of the plaintiffs in the main action, both of whom are Dutch, to offer their services for remuneration to act as pacemakers on motorcycles in medium distance cycle races with so-called stayers, who cycle in the lee of the motorcycle. They provide these services under agreements with the stayers or the cycling associations or with organizations outside the sport (sponsors). These competitions include the world championships, the rules of which, made by the first defendant, include a provision that 'as from 1973 the pacemaker must be of the same nationality as the stayer'. The plaintiffs in the main action consider that this provision is incompatible with the Treaty of Rome in so far as it prevents a pacemaker of one Member State from offering his services to a stayer of another Member State and have brought an action against the three defendants for a declaration that the rule is void and an order that the defendants allow teams made up of the plaintiffs and stayers who are not of Dutch nationality to take part in the world championships provided that such stayers are nationals of another Member State.

The Arrondissementsrechtbank, Utrecht, has taken the view that questions of the interpretation of Community law arise and by judgment dated 15 May 1974 has referred the following questions to this Court for a preliminary ruling:

1. Assuming that the agreement between a pacemaker on the one hand and a stayer, a cycling association and/or a sponsor on the other hand, is to be regarded as a contract of employment, are Article 48 EEC Treaty and the provisions of EEC Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community to be interpreted in such a way that the provision in the rules for world championships of the Union Cycliste Internationale reading 'Dès l'année 1973 l'entraineur doit être de la nationalité du coureur' (from the year 1973 the pacemaker must be of the same nationality as the stayer) can be regarded as incompatible with them?

1. Does it matter in this connexion that the said provision in the rules is concerned with a sporting event in which countries or nationalities compete for the world title?

2. If sub-question (1) is answered in the affirmative, does it make any difference whether the pacemaker is to be regarded as a participant in the competition or as somebody who merely fulfils a supporting function on behalf of the participant (stayer)?

3. Does it also matter whether the world championships in question are held on the territory of a Member State of the EEC or outside such territory, bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions at the national level?

2. Assuming that the agreement between a pacemaker on the one hand and a stayer, a cycling association and/or a sponsor on the other hand, is to be regarded as a contract for the provision of individual services, is Article 59 EEC Treaty to be interpreted in such a way that the provision in the rules for world championships of the Union Cycliste Internationale reading 'Dès l'année 1973 l'entraineur doit être de la nationalité du coureur' can be regarded as incompatible with it?

1. Does it matter in this connexion that the said provision in the rules is concerned with a sporting event in which countries or nationalities compete for the world title?

2. If sub-question (1) is answered in the affirmative, does it make any difference whether the pacemaker is to be regarded as a participant in the competition or as somebody who merely fulfils a supporting function on behalf of the participant (stayer)?

3. Does it also matter whether the world championships in question are held on the territory of a Member State of the EEC or outside such territory, bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions at the national level?

4. Does Article 59 EEC Treaty by reason of its nature have direct effect within the legal orders of the Member States of the EEC? -

3. If either of the two questions above is answered in the negative:

Is Article 7 EEC Treaty to be interpreted in such a way that the provision in the rules for world championships of the Union Cycliste Internationale reading 'Dès l'année 1973 l'entraineur doit être de la nationalité du coureur' can be regarded as incompatible with it?

1. Does it matter in this connexion that the said provision in the rules is concerned with a sporting event in which countries or nationalities compete for the world title?

2. If sub-question (1) is answered in the affirmative, does it make any difference whether the pacemaker is to be regarded as a participant in the competition or as somebody who merely fulfils a supporting function on behalf of the participant (stayer)?

3. Does it also matter whether the world championships in question are held on the territory of a Member State of the EEC or outside such territory, bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions on the national level?

4. Does Article 7 of the EEC Treaty by reason of its nature have direct effect within the legal orders of the Member States of the EEC?

The order of reference was registered at the Court on 24 May 1974. The Court, after hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, decided to proceed without a preparatory inquiry.

The Commission, the Government of the United Kingdom, the first and second defendants and the plaintiffs have submitted written observations.

II - Observations submitted under Article 20 of the Statute of the Court of Justice

A - *Observations of the Commission*

First question **(Article 48 of the Treaty and Regulation No 1612/68)**

1. The Commission observes that the national court has contemplated a series of various alternatives as to the legal nature of the contract entered into by the pacemaker and the Commission states that it is for the national court to settle this question. If it comes to the conclusion that there is a contract of employment because the pacemaker works for another person to whom he subjects himself — which the Commission thinks is in fact the case — the pacemaker would be an employee to whom Article 48 of the Treaty would apply and the provision in question would be void or, in any event, could not affect such contracts since Article 7 (4) of Regulation No 1612/68 prohibits discrimination based on nationality in 'any clause of a collective or individual agreement or of any other collective regulation'.

In a general way, the provision in question of the first defendant's rule is, for the same reason, contrary to Article 48 (2), the directly applicable nature of which has been recognized by the Court (Case 167/73 *Commission v French Republic* [1974] ECR 359). Such discrimination would also infringe the provisions of Articles 1 and 2 of Regulation No 1612/68.

Conditions of work which distinguish between nationals and aliens do not however necessarily constitute in every case discrimination and in particular not when there are 'objective differences' between the respective circumstances of the workers in question (Case 152/73 *Sotgiu v Deutsche Bundespost* [1974] ECR 153).

On considering whether such 'objective differences' may exist in relation to employment in sport, the Commission makes the following observations:

(a) Article 48 applies to recreational activities, including sport, as to all economic activities, but only if the activities are pursued professionally. Article 48 therefore does not apply to amateur activities. The example of racing behind motorcycles shows however that it is not always possible to make a general classification in this respect of a sporting competition since the professional pacemaker offers his services both to amateurs and to professionals. It is therefore necessary to consider the activity of each participant separately.

(b) A clause excluding aliens is quite proper where a national sporting team is being constituted, but only in relation to the constitution of such a team. On the other hand,

so-called 'alien' clauses in the statutes of sporting associations prohibiting aliens or limiting their number are void.

(c) Not only 'team sports' but also 'individual sports' may involve belonging to a national team. The present case raises precisely the question of belonging to a sporting team.

2. The first sub-question asks whether in relation to the answer to the main question it matters whether it is a question 'of a sporting event in which countries or nationalities compete for the world title'.

The Commission considers that as soon as a clause excluding aliens is acceptable for constituting a national team, albeit professional, the nature of. the competition in which the national team is competing (world, European or local championship etc.) is of no importance in deciding the case.

3. The answer to the second sub-question, on the other hand, is crucial in deciding the case. It amounts to asking whether the pacemaker is a member of the national team in the same way as the cyclist, in which case objection to him could be validly made on the basis of the nationality clause.

This is a factual assessment which must be made by the national court in each individual case, according to the different sports, but in such a way as not to give the concept 'national team' a scope exceeding the objective for which it is acceptable. Thus persons attached to the team (seconds, sport directors and persons in charge of equipment) who do not take part in the actual competition could not, in any event, be regarded as part of a national team.

Even in cases — such as the present — where there is participation in the event itself, the national court must watch that the conditions required for inferring absence of discrimination do not bring this concept into question. The Commission proposes, in this respect, certain matters for consideration: the technical characteristics of the activity in question (qualities of the pacemaker as a sportsman), the frequency of participation in the activities of the team, the scope of the organizers in applying the rules of the events and the conditions of the award of prizes for winning.

4. The third subquestion asks whether a distinction must be made as to whether the world championships are held on the territory of a Member State of the EEC or outside such territory, 'bearing in mind that the world championships cast their shadow, as it were, in that they also determine the choice of a pacemaker in selection competitions and other competitions at the national level'.

A reply to the question is important only in the event of the clause excluding aliens being judged incompatible with Article 48. In this event, since the Treaty applies only in the territory where Member States have jurisdiction, the discriminatory nature of the clause could not be invoked for events organized in a third country.

The question, on the other hand, does not arise if the pacemaker is a member of the national team in the same way as the cyclist. If the exclusion clause is considered lawful, the cyclist will be induced to choose a compatriot for the rest of his activity, and it is possible that such a situation would come under Articles 85 and 86 of the Treaty,

but from the point of view of possible discrimination for the events of national teams — which alone must be considered — it must be recognized that such discrimination is inherent in the concept of a national team.

Second question **(Article 59 of the Treaty)**

1. The Commission notes that by reason of the 'residual' nature, according to the first paragraph of Article 60, of the concept 'services', the second question requires a reply only if the activity of the pacemaker is not covered by a contract of employment.

In this event a specific question arises. As distinct from Regulation No 1612/68 the provisions relating to freedom of establishment and freedom to provide services provide for abolition only of discrimination arising from provisions laid down by law, regulation or administrative action of the Member States or those 'administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States ...' (Article 54 (3) (c)). It is doubtful whether, in spite of its legislative appearance, the rules of the first defendant, which is a private society made up of two international federations of national cycling organizations, may be regarded as coming within the categories referred to by the provision in question.

2. If it is a question of provisions coming under Article 59, the replies proposed in relation to Article 48 to the first three sub-questions, in particular in relation to the question of the existence of discrimination, would apply likewise in the context of Article 59.

3. Although a reply to the fourth sub-question, on the direct effect of Article 59, is in the Commission's view unnecessary for a decision in the case by reason of the private nature of the first defendant's rules, its theoretical interest is nevertheless fundamental.

As regards freedom to provide services in the sphere of sport, the Council has not yet issued directives implementing the general programme of 18 December 1961, which, under Article 54 (2), should however have been done before the end of the transitional period. In a proposal for a directive of 23 December 1969 (OJ C 21 of 19. 2. 1970) the Commission proposed liberalizing a certain number of activities including sport, but this directive has not yet been adopted by the Council.

As regards the directly applicable nature of Article 59, the Commission, after having referred to the case-law of the Court on the direct effect of Articles 48 (Case 167/73 *Commission v French Republic* [1974] ECR 359), 53 (Case 6/64 *Costa v Enel* [1964] ECR 585 615) and 52 (Case 2/74 *Reyners* [1974] ECR 651), states that the provisions of Article 59 — as well as the third paragraph of Article 60 — satisfy the requirements laid down by the Court of Justice for directly applicable provisions: (a) the rule is clear and precise; (b) it is not subject to any reservation; and (c) the implementation of the obligation which it contains is not subject to measures being taken by Member States or Community Institutions.

First of all, the rule is clear and precise because the restrictions which Article 59 requires to be abolished are all legal provisions or administrative practices which:

(a) require the provider of services to have his address or residence in the country in which he wishes to supply the services in question;

(b) give rise to different treatment between nationals of the Community who are resident in the territory of the Member State where the service is supplied and others;

(c) apply different treatment based on nationality to the provision of services.

This same concept of 'restrictions' is moreover likewise employed in Article 62, the direct effect of which has never been doubted by anyone, whereas the Court has already decided that the problems which the national court could have in deciding whether a particular case amounted to a restriction do not present an obstacle to the direct application (Case 2/72 *Reyners v Belgium* [1974] ECR 631).

The obligation contained in Article 59 is not subject, at the end of the transitional period, to any reservation, nor to any measures being taken by Member States or Community institutions. Although Article *59* provides that liberalization shall take place 'within the framework of the provisions set out below', this clause is given expression in Article 63, providing for the drawing up of a general programme, to be implemented by directives. This general programme has been adopted, while Articles 59 and 63 leave the Council no discretion as to the date when these directives had to be issued. Once the limiting date has expired, the Treaty does not subject the abolition of restrictions either to the directives to be issued or already issued or to directives based on Article 57 of the Treaty relating to the coordination of the provisions laid down by law, regulation or administrative action concerning the taking up of professions or the mutual recognition of certificates.

Third question **(Article 7 of the Treaty)**

This question raises, as regards the compatibility of the clause in question with Article 7 of the Treaty, the same sub-questions as the first, to which it adds that of the direct applicability of Article 7.

1. As regards the direct applicability of Article 7, the Commission refers to its observations in Case 14/68 *Wilhelm v Bundeskartellamt,* Rec. 1969, p. 12, in which it proposed an affirmative reply to this question. The Court, moreover, has already pronounced in favour of the direct applicability of Article 7 in Case 13/63 *Italian Republic v Commission* [1963] ECR 165.

2. However, since this provision applies only 'without prejudice to any special provision' of the Treaty and therefore has a subsidiary character, its scope within the sphere of free movement of persons is considerably limited. It could apply only in isolated cases of discrimination not arising from national provisions laid down by law, regulation or administrative action in force but from a private person, as seems to be the case in the present instance. Further, it is of course necessary that the clause in question should be regarded as discriminatory.

B - ***Observations of the Government of the United Kingdom***

The observations of the Government of the United Kingdom relate solely to the reply to be given to sub-question (4) of the second question, relating to the direct effect of

Article 59. The United Kingdom refers to its observations in Case 33/74 *Van Binsbergen.* According to the Government of the United Kingdom it appears that Articles *59* and 60 have been directly applicable since the end of the transitional period despite the fact that the directives provided for in Articles 63 (2) and Article 57 (1) (to which Article 66 refers in relation to services) have not yet been able to be issued (the Government of the United Kingdom refers to the Judgment of the Court in Case 2/74 *Reyners v Belgium* [1974] ECR 631).

C - *Observations of the first and second defendants*

1. Prior to considering the questions raised by the national court, the first and second defendants give an outline of the history, composition and objectives of the Union Cycliste Internationale, the principal arrangements for the organization of world championships, the characteristics of medium-distance races and the *raison d'être* of the nationality clause.

It appears that:

— the first defendant is constituted at present by the Fédération Internationale Amateur de Cyclisme (FIAC) comprising 108 national federations and the Fédération Internationale de Cyclisme Professionnel (FICP), comprising 18 national federations.

— the organization of world championships, both amateur and professional, is the responsibility each year of a national federation and is supervised by the first defendant.

— the pacemaker is important in medium-distance races: he alone determines the speed to be maintained, taking into account the physical resources of the cyclist, who from the tactical point of view has only a very limited view of the course of the race by reason of his position behind the pacemaker.

— the introduction into the first defendant's rules of the nationality clause in question is based on the consideration that since the object of world championships is to have representatives of various Member countries compete, the participants must in fact have the nationality of the country which they are regarded as representing. As regards mediumdistance races this condition applies both to the pacemaker and to the cyclist.

2. Passing to the consideration of the questions raised by the Arrondissementsrechtbank Utrecht, the first and second defendants challenge in the first place the reference for a preliminary ruling:

— a reply to the questions in the form in which they are raised would involve this court in an examination of the particular case going beyond the scope of Article 177 of the Treaty.

— in asking questions on the interpretation of Articles 48 and 59, the national court has omitted to consider whether in the particular case there are contractual ties such as are referred to in the said Articles, and, prior to the reference for a preliminary ruling, it ought to have selected the applicable provision from among Articles 7, 48 or 59 of the Treaty.

— the sub-questions relating to the direct effect of Articles 7 and 59 do not raise the question which is essential in this case of whether Articles 7, 48 and 59 have a direct

effect not only with regard to national authorities but also in relationships between individuals.

3. According to the first and second defendants, the disputed clause of the first defendant's rules lies outside the scope of the EEC Treaty:

— its territorial application stretches far beyond the territory of the EEC;

— since it is part not of national law but of international rules of a private nature, it is alien to the provisions of Articles 7, 48 and 59 intended to harmonize or even unify the legal systems in the Community;

— even if the applicability of Community law and the discriminatory nature of the provision in question were admitted, it is in any case not established that the Community rules have priority over international rules;

— this Court cannot find as possibly void an international rule applicable in more than a hundred countries.

Since the first defendant's rules have been validly passed and the Community rules do not apply to them, the nationality clause is valid and as a result the contracts made having regard to this clause are all valid.

4. In order to define the concept of 'discrimination' the first and second defendants make two observations regarding the definition of this concept by the Court in Case 13/63 *Government of the Italian Republic v EEC Commission* [1963] ECR 165 178, according to which 'Discrimination in substance would consist in treating either similar situations differently or different situations identically'.

According to the first and second defendants, although the different treatment of identical situations is discriminatory this is not the case where the situations are only similar. Moreover, even where the situations are identical, there is discrimination only if the different treatment is obviously without basis.

Thus in the present case the unfavourable treatment of the Dutch pacemaker prevented from contracting with a Belgian cyclist is justified by the rule basic to world championships that a national team can be made up only of members of the same nationality. The different treatment is not therefore obviously without basis.

5. As regards the questions raised by the national court, the first and second defendants consider that it is necessary to reply to sub-questions (1) and the main questions together, while the other sub-questions must be considered separately. The clause in question relates only to world championships, which are organized only once a year. In relation to the whole medium-distance season it is thus rather the exception than the rule, which explains the importance of sub-questions (1).

First question and sub-question (1)

The first and second defendants doubt whether the relationship between the pacemaker and the cyclist may be regarded as coming within a contract of employment. The importance of the part of the pacemaker in the race excludes first of all the existence of a subordinate relationship. Moreover, it has not been shown that the plaintiffs act as

pacemakers in a professional capacity and that it is in a professional capacity that they take part in the world championships (for the rules of the first defendant do not classify pacemakers as professionals or amateurs). A purely recreational activity, without an economic objective, does not come under the application of Community law (reply by the Commission to the question raised by Mr Seefeld, OJ C 12 of 3. 2. 1971, pp. 10 to 11).

If the applicability of Article 48 has to be admitted, it is still necessary to examine the more specific applicability of Article 7 (4) of Regulation No 1612/68 of 15 October 1968 (OJ L 257, p. 2), according to which any clause of a collective or individual agreement or of any collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorizes discriminatory conditions in respect of workers who are nationals of the other Member States. Although this provision indicates that agreements made by individuals come under the application of Regulation No 1612/68, it would however be necessary, in order to apply Article 7 (4) of Regulation No 1612/68 to the contract concluded between a pacemaker and a cyclist, federation or sponsor, to admit that the disputed clause of the first defendant's rules is part of this contract, which would not be very easy.

According to the first and second defendants, both the excessive effect of automatic nullity of the said clause and the subtle distinctions involved in the concept of discrimination militate against the application of Article 48 and Regulation No 1612/68.

Sub-question (2)

The distinction based on the capacity as participant in the competition or assistant does not provide a sufficiently clear criterion to decide whether the nationality clause conforms with Community law or not. It is necessary rather to enquire whether the pacemaker is part of the national team in the same way as the cyclist. The affirmative reply to this question arises both from the important part that the pacemaker plays and from the fact that prizes are presented to the cyclist and pacemaker.

Sub-question (3)

As regards the territorial scope of Article 48, the first and second defendants observe that the application of Community provisions is subject to the following conditions:

(a) the contracting parties must be nationals of a Member State;

(b) the contract must have been entered into in the territory of a Member State;

(c) the services forming the subject of the contract must be performed within the territory of one of the Member States.

As regards the 'indirect' effect of the nationality clause on the participation in events other than world championships properly so called, the question amounts to examining to what extent restrictions on the constitution of a team for world championships may reflect on the other events within the Common Market, even if world championships are organized outside the territory of Member States.

In this respect the first and second defendants observe that both in Case 52/69 *Geigy v Commission* Recueil 1972, p. 826 and in Case 6/72 *Europemballage and Continental Can* v *Commission* [1973] ECR 241 the Court has given judgment only on acts taking place within the territory of the Common Market and has not pronounced upon the applicability of Community law to acts outside the Community but capable of producing effects within the Common Market.

In any event 'indirect' discrimination by reason of the clause in dispute could not be controlled according to Community rules unless pacemakers proved: (a) that there was discrimination in the formation of teams for events other than the world championships taking place within the Common Market and (b) that this 'indirect' discrimination inevitably arises from the nationality clause in question.

In the opinion of the first and second defendants, the selection heats for the world championships could not be subjected to such an examination, since the link with the world championships is too obvious; rules warranted for the organization of world championships must necessarily have precedence in selection heats wherever they take place. Outside the selection heats no such indirect discrimination could be shown. Outside world championships sportsmen are able to form a team with the partners of their choice whatever their nationality.

Second question and sub-question (1)

The first and second defendants stress in the first place the residual character of the provisions relating to freedom to provide services and freedom of establishment in relation to those governing freedom of movement for workers. The former apply only where the latter do not.

Further, there is a fundamental difference between Article 48 et seq. on the one hand and Article *59* et seq. on the other. Whereas the rules relating to freedom of movement for workers (Article 48 et seq.) involve obligations both for individuals and for Member States and Community Institutions, as appears in particular from Article 7 (4) of Regulation No 1612/68, this is not the case as regards freedom to provide services. Article 59 et seq. involve obligations only for Member States and Community Institutions. It cannot therefore be applied to the first defendant's rules.

Sub-questions (2) and (3)

Reference is made to the observations on sub-questions (2) and (3) of the first question.

Sub-question (4)

Although, in contrast to the position as regards Articles 48 and 52, the direct effect of Article *59* has not yet been the subject of a judgment by this Court, the first and second defendants are of the opinion that the wording of Article 59 leaves no doubt that this provisions fulfils the conditions which this Court has laid down for direct effect, in particular in Case 13/68 *Salgoil v Ministry of External Trade of the Italian Republic,* Recueil 1968, p. 661: the obligation is clear and at the end of the transitional period it is not subject to any reservation and does not leave the Member States any discretion.

Third question and sub-question (1)

The prohibition on discrimination contained in Article 7 of the Treaty applies only where Articles 48 and 59 do not. In contrast to Article 59, Article 7 applies however where, as in the present case, the discriminatory conduct is attributable to a private party. The first and second defendants repeat, however, that in their opinion there can be no question of 'discrimination' in the present case.

Sub-questions (2) and (3)

Reference is made to the observations on sub-questions (2) and (3) of the first question.

Sub-question (4)

As a general principle, of a subordinate nature in relation to Articles 48 and 59, Article 7, although expressing a sufficiently clear obligation, requires more detailed implementation such as is privided for in paragraph 2 thereof. It cannot therefore have direct effect.

D - Observations of the plaintiffs

First question **(Article 48)**

According to the plantiffs in the main action, the contract concluded between the pacemaker and the cyclist is a contract of employment. The so-called 'exclusion of aliens' clause clearly constitutes discrimination based on nationality. By reason of the importance, in this sphere of sport, of a world title, this clause seriously limits their professional activity.

As regards sub-question (2), the plaintiffs state that the pacemaker fulfils a supporting function on behalf of the participant.

The place where the world championships are held (sub-question (3) is irrelevant in view of their decisive influence on employment possibilities in the sphere of sport within the EEC.

Second question **(Article 59)**

The replies proposed for sub-questions (1) to (3) are identical with those set out above. Article 59 (sub-question (4)) must be recognized as having a direct effect.

Third question

The nationality clause in question is incompatible with Article 7 of the EEC Treaty which has direct effect (sub-question (4)). The fact that it relates to a competition in which countries or nationalities compete for a world title is irrelevant in the sphere of professional sport.

The answers proposed for sub-questions (2) and (3) are identical with those set out in relation to the first question.

III - Oral procedure

1. The oral observations of the plaintiffs, represented by J. L. Janssen van Raay, and the Commission, represented by J. Cl. Séché, assisted by H. Bronkhorst, were made at the hearing on 8 October 1974.

The plaintiffs replied to questions put to them by the Court relating to the 'sporting' nature of the team made up of the racing cyclist and pacemaker. The plaintiffs state that cycling competitions behind motorcycles are competitions solely between racing cyclists and not between teams made up of a cyclist and a motorcyclist. Various facts confirm this point of view: stayer competitions are organized between cycling and not motorcycling federations and the official publications of the results of world championships show that in events behind motor cycles only the racing cyclists are classified. In the plaintiffs' opinion a decisive factor is that in spite of the very clear distinction in sporting competitions between amateurs and professionals, professional pacemakers may take part in competitions for amateur cyclists.

As regards the first defendant's statement that its rules do not distinguish between professional and amateur pacemakers, the plaintiffs observe that it is contradictory to maintain on the one hand that in a pacemaker/cyclist association, pacemakers play as important a part as cyclists and on the other hand that no distrinction is made as to whether they are amateur or professional.

The Commission, developing the argument it made in its written observations, states that contrary to what the first defendant maintains, the finding that discrimination exists need not necessarily involve the nullity of the disputed rules of the first defendant. They would only be non-applicable. Under Article 7 (4) of Regulation No 1612/68 the clause in the contract which infringes Article 48 of the Treaty would be automatically null and void.

2. The Advocate-General delivered his opinion on 24 October 1974.

Law

1 By order dated 15 May 1974 filed at the Court Registry on 24 May 1974, the Arrondissementsrechtbank Utrecht referred under Article 177 of the EEC Treaty various questions relating to the interpretation of the first paragraph of Article 7, Article 48 and the first paragraph of Article 59 of the EEC Treaty and of Regulation No 1612/68 of the Council of 15 October 1968 (OJ L 257, p. 2) on freedom of movement for workers within the Community.

2 The basic question is whether these Articles and Regulation must be interpreted in such a way that the provision in the rules of the Union Cycliste Internationale relating to medium-distance world cycling championships behind motorcycles, according to which 'L'entraîneur doit être de la nationalité de coureur' (the pacemaker must be of the same nationality as the stayer) is incompatible with them.

3 These questions were raised in an action directed against the Union Cycliste Internationale and the Dutch and Spanish cycling federations by two Dutch nationals who normally take part as pacemakers in races of the said type and who regard the aforementioned provision of the rules of UCI as discriminatory.

4 Having regard to the objectives of the Community, the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty.

5 When such activity has the character of gainful employment or remunerated service it comes more particularly within the scope, according to the case, of Articles 48 to 51 or 59 to 66 of the Treaty.

6 These provisions, which give effect to the general rule of Article 7 of the Treaty, prohibit any discrimination based on nationality in the performance of the activity to which they refer.

7 In this respect the exact nature of the legal relationship under which such services are performed is of no importance since the rule of non-discrimination covers in identical terms all work or services.

8 This prohibition however does not affect the composition of sport teams, in particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity.

9 This restriction on the scope of the provisions in question must however remain limited to its proper objective.

10 Having regard to the above, it is for the national court to determine the nature of the activity submitted to its judgment and to decide in particular whether in the sport in question the pacemaker and stayer do or do not constitute a team.

11 The answers are given within the limits defined above of the scope of Community law.

12 The questions raised relate to the interpretation of Articles 48 and 59 and to a lesser extent of Article 7 of the Treaty.

13 Basically they relate to the applicability of the said provisions to legal relationships which do not come under public law, the determination of their territorial scope in the light of rules of sport emanating from a world-wide federation and the direct applicability of certain of those provisions.

14 The main question in respect of all the Articles referred to is whether the rules of an international sporting federation can be regarded as incompatible with the Treaty.

15 It has been alleged that the prohibitions in these Articles refer only to restrictions which have their origin in acts of an authority and not to those resulting from legal acts of persons or associations who do not come under public law.

16 Articles 7, 48, 59 have in common the prohibition, in their respective spheres of application, of any discrimination on grounds of nationality.

17 Prohibition of such discrimination does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services.

18 The abolition as between Member States of obstacles to freedom of movement for persons and to freedom to provide services, which are fundamental objectives of the Community contained in Article 3 (c) of the Treaty, would be compromised if the abolition of barriers of national origin could be neutralized by obstacles resulting from the exercise of their legal autonomy by associations or organizations which do not come under public law.

19 Since, moreover, working conditions in the various Member States are governed sometimes by means of provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons, to limit the prohibitions in question to acts of a public authority would risk creating inequality in their application.

20 Although the third paragraph of Article 60, and Articles 62 and 64, specifically relate, as regards the provision of services, to the abolition of measures by the State, this fact does not defeat the general nature of the terms of Article 59, which makes no distinction between the source of the restrictions to be abolished.

21 It is established, moreover, that Article 48, relating to the abolition of any discrimination based on nationality as regards gainful employment, extends likewise to agreements and rules which do not emanate from public authorities.

22 Article 7 (4) of Regulation No 1612/68 in consequence provides that the prohibition on discrimination shall apply to agreements and any other collective regulations concerning employment.

23 The activities referred to in Article 59 are not to be distinguished by their nature from those in Article 48, but only by the fact that they are performed outside the ties of a contract of employment.

24 This single distinction cannot justify a more restrictive interpretation of the scope of the freedom to be ensured.

25 It follows that the provisions of Articles 7, 48 and 59 of the Treaty may be taken into account by the national court in judging the validity or the effects of a provision inserted in the rules of a sporting organization.

26 The national court then raises the question of the extent to which the rule on non-discrimination may be applied to legal relationships established in the context of the activities of a sporting federation of world-wide proportions.

27 The Court is also invited to say whether the legal position may depend on whether the sporting competition is held within or outside the Community.

28 By reason of the fact that it is imperative, the rule on non-discrimination applies in judging all legal relationships in so far as these relationships, by reason either of the place where they are entered into or of the place where they take effect, can be located within the territory of the Community.

29 It is for the national judge to decide whether they can be so located, having regard to the facts of each particular case, and, as regards the legal effect of these relationships, to draw the consequences of any infringement of the rule on non-discrimination.

30 Finally, the national court has raised the question whether the first paragraph of Article 59, and possibly the first paragraph of Article 7, of the Treaty have direct effects within the legal orders of the Member States.

31 As has been shown above, the objective of Article 59 is to prohibit in the sphere of the provision of services, *inter alia,* any discrimination on the grounds of the nationality of the person providing the services.

32 In the sector relating to services, Article 59 constitutes the implementation of the non-discrimination rule formulated by Article 7 for the general application of the Treaty and by Article 48 for gainful employment.

33 Thus, as has already been ruled (Judgment of 3 December 1974 in Case 33/74, V*an Binsbergen)* Article 59 comprises, as at the end of the transitional period, an unconditional prohibition preventing, in the legal order of each Member State, as regards the provision of services — and in so far as it is a question of nationals of Member States — the imposition of obstacles or limitations based on the nationality of the person providing the services.

34 It is therefore right to reply to the question raised that as from the end of the transitional period the first paragraph of Article 59, in any event in so far as it refers to the abolition of any discrimination based on nationality, create individual rights which national courts must protect.

Costs

35 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

36 Since these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Arrondissementsrechtbank Utrecht, hereby rules:

1. Having regard to the objectives of the Community, the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty.

2. The prohibition on discrimination based on nationality contained in Articles 7, 48 and 59 of the Treaty does not affect the composition of sport teams, in. particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity.

3. Prohibition on such discrimination does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at collectively regulating gainful employment and services.

4. The rule on non-discrimination applies in judging all legal relationships in so far as these relationships, by reason either of the place where they are entered into or of the place where they take effect, can be located within the territory of the Community.

5. The first paragraph of Article 59, in any event in so far as it refers to the abolition of any discrimination based on nationality, creates individual rights which national courts must protect.

C-13/76, Dona v Mantero (14 July 1976)

Judgment

Facts

The order referring the case to the Court, the procedure and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I - Facts and procedure

1. Mr Mantero, former Chairman of the Rovigo Football Club and defendant in the main action, had entrusted Mr Donà, the plaintiff in the main action, with undertaking inquiries in football circles abroad in order to discover players willing to play in the Rovigo team. Mr Dona therefore arranged for the publication of an advertisement in a Belgian sporting newspaper with this object in view but Mr Mantero refused to consider the offers submitted as a result of the advertisement and to repay to Mr Dona the expenses incurred in the publication of the advertisement. In his action before the Giudice Conciliatore, Rovigo, Mr Dona requested that Mr Mantero be ordered to pay the expenses in question.

Mr Mantero replied that Mr Dona acted prematurely. In support of this statement he referred to the combined provisions of Articles 16 and 28 (g) of the 'Rules of the Italian Football Federation' according to which only players who are affiliated to that federation may take part in matches, membership being in principle only open to players of Italian nationality. Only when this 'blocking of the frontiers' has been abandoned will it be possible to consider the engagement of foreign players. Mr Dona replied that the provisions quoted were invalid on the ground that they were contrary to Articles 7, 48 and 59 of the Treaty.

2. By order of 7 February 1976, received at the Court Registry on 13 February 1976, the Giudice Conciliatore, Rovigo, decided to submit the following questions to the Court:

1. Do Articles 48 and 59 and perhaps Article 7 confer upon all nationals of any Member State of the Community the right to engage in their occupations anywhere in the Community either as employed persons or as independent persons providing services?

2. Do football players also enjoy the same right since their services are in the nature of a gainful occupation?

3. If so, does such a right prevail also with regard to rules issued by a national association which is competent to control the game of football on the territory of one Member State when such rules render the participation of players in matches dependent on their membership of the association itself, but reserve membership exclusively to players who are nationals of the State to which the association belongs?

4. If so, may such a right be directly invoked in the national courts and are the latter bound to protect it?

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the applicant in the main action and the Commission.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without holding any preliminary inquiry.

II - Summary of the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The first and second questions

The *plaintiff in the main action* sets out in detail the provisions governing football in Italy and points out in particular that:

— the Italian Football Federation, which is a constituent body of the Italian National Olympic Committee, is made up of sporting associations concerned with football and includes bodies and persons who carry out general or special competitive, technical, organizational or similar activities; it is the sole body qualified to draw up rules governing the game of football in the national territory;

— the organization of competitive activities is left to three sectors: the professional, the semi-professional and the amateur. The first two cover the clubs which employ professional players or which normally employ semi-professional players respectively;

— professional players, who cannot in principle take up any other form of paid employment, are, like semi-professional players, entitled to a number of financial benefits and insurance against certain risks;

— the participation of the players in competitions is dependent upon possession of the 'Federation card' which, in the professional and semi-professional sectors, is only given to players of Italian nationality.

Semi-professional or professional sport, which is alone relevant in this instance, constitutes a gainful activity, carried out for profit and thus economic in nature. It is therefore governed by Article 2 of the EEC Treaty. This applies independently of the fact that other persons engage in the same sport solely for the purposes of entertainment. The contrary interpretation which would reduce the field of application of the Treaty to industrial, agricultural and commercial activities, is negated by Article 60 which refers to the activities of the professions among those which are governed by the principle of freedom to provide services. Moreover, in so far as sport constitutes an economic activity, the Court has held that it is governed by the Treaty and in particular by Articles 48 to 51 or 59 to 66, which implement the prohibition set out in Article 7 against any discrimination on grounds of nationality (judgment of 12 December 1974, in Case 36/74, *Walrave* v *Union Cycliste Internationale* [1974] ECR 1417).

The exceptions set out in the Treaty to the principle of freedom of movement of persons and of provision of services must be restrictively interpreted. The only exceptions to this principle provided for by the Treaty concern the activities of public authorities and

are linked to the concepts of public policy, public security and public health; they are thus of no relevance in this instance.

Furthermore, it cannot be maintained that such forms of discrimination as that contained in the provisions in dispute are in any case inherent in the nature of the sport. Only in certain clearly defined cases does it appear justified to exclude foreign sportsmen, that is:

— In international competitions between athletes or teams representing each nation, in this case the players are defending the national flag;

— In national competitions which are open only to those who are born in a given district; in this case a foreigner is excluded on the same ground as a sports club is free to choose from among its professional players those who are to make up the team for a specific match, provided that the composition of that team is determined by reference to criteria based on technical sporting ability alone. Nevertheless, when the team is being selected, the question of giving preference to nationals may arise. In this respect it is appropriate to bear in mind the finding in the *Walrave* judgment according to which 'This restriction on the scope of the provisions in question must ... remain limited to its proper objective' (cf. ground of judgment No 9). As regards the composition of a national team, however, this judgment shows that in such a case the selection for a match between different countries may be limited to such players as are nationals. On the other hand, where it is necessary to select a team at a level other than national level, even if such team is required to take part in a match between teams from different countries, it is difficult to accept that reasons based on technical sporting ability alone may render it objectively necessary to select national players alone to defend the club colours. national who does not satisfy that condition.

Neither of these possibilities applies in this case. Moreover, although they generally bear the name of the town in which the club to which they belong is established, Italian teams playing against one another in the national football championship are made up of players who are chosen exclusively for their abilities and who are very often not citizens of the town in question. Thus, no reason of a sporting nature prevents the participation of nationals of other Member States in the football matches involved in that championship. Furthermore, no other Member State imposes a restriction as severe as that in question in this instance. In addition, even in Italy foreign nationals may take part in matches restricted to the amateur sector and there are no reasons of a sporting nature to justify different rules for those players whose activities are carried out for gain or reward. This distinction is in fact based on economic grounds, since the Italian football clubs are commercial organizations which themselves act for gain or reward.

The *Commission* considers that the reply to the first two questions is to be found in the Walrave judgment. This judgment shows that sport is covered by Community law where it constitutes an economic activity, whether engaged in by a worker (Article 48), by a self-employed person established in the territory of another Member State (Article 52) or by a person providing services (Article 59); conversely it falls outside these provisions only where the activities in question are carried out on an amateur basis, that is, without remuneration. It is therefore impossible to set up against the nationals of

other Member States provisions which restrict, or even exclude, the presence of professional players in a club.

That judgment nevertheless shows (cf. point 2 of the operative part) that any

The third question

The *plaintiff in the main action and the Commission* put forward arguments which are essentially identical. Taken as a whole they maintain that the affirmative reply to be given to this question arises directly out of the *Walrave* judgment, that is, from rules such as those in question 'aimed at regulating in a collective manner gainful employment and the provision of services' ([1974] ECR 1418, ground of judgment No 17). Moreover, the judgment found that 'the rule of non-discrimination covers in identical terms all work or services' (ground of judgment No 7), so that it is of no importance whether the professional or semi-professional football players are covered by Articles 48 to 51 or by Articles 59 to 66 of the Treaty. Even if it were to be accepted that such players carry on activities as self-employed persons within the meaning of Articles 52 *et seq.* they would be able to rely on the principle of non-discrimination in Article 7, as those articles implement that principle as regards the right of establishment.

As regards employed workers in particular, the *Walrave* judgment simply confirmed the solution which arises out of Article 7 (4) of Regulation No 1612/68 of the Council of 15 October 1968 (OJ, English Special Edition 1968 (II), p. 477), according to which: 'Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorizes discriminatory conditions in respect of workers who are nationals of the other Member States'.

The fourth question

The *plaintiff in the main action and the Commission* both maintain that the Court has already confirmed the direct applicability of the provisions in question, and in particular of:

— Article 48, in its judgment of 4 December 1974 *(van Duyn* v *Home Office,* Case 41/74 [1974] ECR 1337);

— Article 52, in its judgment of 21 June 1974 *(Reyners* v *Belgian State,* Case 2/74 [1974] ECR 656);

— Article 59, in its judgment of 3 December 1974 *(van Binsbergen* v *Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid,* Case 33/74 [1974] ECR 1313), and in the *Walrave* judgment.

Conclusions

Both the *plaintiff in the main action* and the *Commission* consider that an affirmative answer should be given to the four questions submitted by the Giudice Conciliatore, Rovigo.

The *Plaintiff in the main action* adds that the reply to the first two questions submitted by the national court should be formulated in such a way as to extend the field of

application of the principle of non-discrimination to amateur sport, although this aspect of the question is outside the subject-matter of the main action. With this in mind, he refers in particular to the fifth recital in the preamble to Regulation No 1612/68, according to which 'the right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires ... also that obstacles to the mobility of workers shall be eliminated, in particular as regards the worker's right to be joined by his family and the conditions for the integration of that family into the host country'. From this it follows that the Treaty covers not only economic, but also recreational, activities.

The *Commission* suggests that following details be added:

— It is lawful for participation in national teams for matches between different countries to be restricted to national players alone;

— On the other hand, such a restriction is not lawful as regards participation in teams which are not selected at national level, even on the occasion of matches between different countries.

During the oral procedure, which took place on 16 June 1976, the plaintiff in the main action, represented by Wilma Viscardini of the Padua Bar, and the Commission of the European Communities, represented by Jean-Claude Séché, Legal Adviser, and Eugenio de March, a member of the Legal Department, developed the arguments which they had put forward in the course of the written procedure.

The Advocate-General delivered his opinion at the hearing on 6 July 1976.

Law

1 By order of 7 February 1976, received at the Court Registry on 13 February 1976, the Giudice Conciliatore, Rovigo, referred to the Court under Article 177 of the EEC Treaty various questions concerning the interpretation of Articles 7, 48 and 59 of that Treaty.

2 The first two questions ask whether Articles 7, 48 and 59 of the Treaty confer upon all nationals of the Member States of the Community the right to provide a service anywhere in the Community and, in particular, whether football players also enjoy the same right where their services are in the nature of a gainful occupation.

3 Should the answer to these two questions be in the affirmative, the third question asks the Court essentially to rule whether the abovementioned right may also be relied on to prevent the application of contrary rules drawn up by a sporting federation which is competent to control football on the territory of a Member State.

4 In case the first three questions should be answered in the affirmative, the fourth question asks the Court whether the right in question may be directly invoked in the national courts and whether the latter are bound to protect it.

5 These questions have arisen in the context of an action between two Italian nationals over the compatibility of the abovementioned articles of the Treaty with certain provisions of the Rules of the Italian Football Federation, under which only players who are affiliated to that federation may take part in matches as professional or semi-

professional players, whilst affiliation in that capacity is in principle only open to players of Italian nationality.

6 (1) Article 7 of the Treaty provides that within the scope of application of the Treaty, any discrimination on grounds of nationality shall be prohibited.

As regards employed persons and persons providing services, this rule has been implemented by Articles 48 to 51 and 59 to 66 of the Treaty respectively and by measures of the Community institutions adopted on the basis of those provisions.

7 As regards workers in particular, Article 48 provides that freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

8 Under the terms of Article 1 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, (OJ English Special Edition 1968 (II), p. 476), any national of a Member State shall, irrespective of his place of residence, 'have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State'.

9 As regards freedom to provide services within the Community, Article 59 provides that the restrictions existing in this field shall be abolished in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

10 Under the third paragraph of Article 60 the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

11 The result of the foregoing is that any national provision which limits an activity covered by Articles 48 to 51 or 59 to 66 of the Treaty to the nationals of one Member State alone is incompatible with the Community rule.

12 (2) Having regard to the objectives of the Community, the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty.

This applies to the activities of professional or semi-professional football players, which are in the nature of gainful employment or remunerated service.

13 Where such players are nationals of a Member State they benefit in all the other Member States from the provisions of Community law concerning freedom of movement of persons and of provision of services.

14 However, those provisions do not prevent the adoption of rules or of a practice excluding foreign players from participation in certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only, such as, for example, matches between national teams from different countries.

15 This restriction on the scope of the provisions in question must however remain limited to its proper objective.

16 Having regard to the above, it is for the national court to determine the nature of the activity submitted to its judgment.

17 (3) As the Court has already ruled in its judgment of 12 December 1974 in *Walrave* v *Union Cycliste Internationale* (Case 36/74 [1974] ECR 1405), the prohibition on discrimination based on nationality does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at collectively regulating gainful employment and services.

18 It follows that the provisions of Articles 7, 48 and 59 of the Treaty, which are mandatory in nature, must be taken into account by the national court in judging the validity or the effects of a provision inserted in the rules of a sporting organization.

19 The answer to the questions referred to the Court must therefore be that rules or a national practice, even adopted by a sporting organization, which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question, are incompatible with Article 7 and, as the case may be, with Articles 48 to 51 or 59 to 66 of the Treaty unless such rules or practice exclude foreign players from participation in certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only.

20 (4) As the Court has already ruled in its judgments of 4 December 1974 in Case 41/74 *(van Duyn* v *Home Office* [1974] ECR 1337) and 3 December 1974 in Case 33/74 *(van Binsbergen* v *Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid* [1974] ECR 1299) respectively, Article 48 on the one hand and the first paragraph of Article 59 and the third paragraph of Article 60 of the Treaty on the other — the last two provisions at least in so far as they seek to abolish any discrimination against a person providing a service by reason of his nationality or of the fact that he resides in a Member State other than that in which the service is to be provided — have a direct effect in the legal orders of the Member States and confer on individuals rights which national courts must protect.

Costs

21 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Giudice Conciliatore, Rovigo, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Giudice Conciliatore, Rovigo, by order of 7 February 1976, hereby rules:

1. Rules or a national practice, even adopted by a sporting organization, which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question, are incompatible with Article 7 and, as the case may be, with Articles 48 to 51 or 59 to 66 of the Treaty, unless such rules or practice exclude foreign players from participation in certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only.

2 Article 48 on the one hand and the first paragraph of Article 59 and the third paragraph of Article 60 of the Treaty on the other — the last two provisions at least in so far as they seek to abolish any discrimination against a person providing a service by reason of his nationality or the fact that he resides in a Member State other than that in which the service is to be provided — have a direct effect in the legal orders of the Member States and confer on individuals rights which national courts must protect.

C-415/93, Union royale belge des sociétés de football association and Others v Bosman and Others (15 December 1995)

Judgment

1 By judgment of 1 October 1993, received at the Court on 6 October 1993, the Cour d'Appel (Appeal Court), Liège, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a set of questions on the interpretation of Articles 48, 85 and 86 of that Treaty.

2 Those questions were raised in various proceedings between (i) Union Royale Belge des Sociétés de Football Association ASBL ("URBSFA") and Mr Bosman, (ii) Royal Club Liégois SA ("RC Liège") and Mr Bosman, SA d'Économie Mixte Sportive de l'Union Sportive du Littoral de Dunkerque ("US Dunkerque"), URBSFA and Union des Associations Européennes de Football (UEFA) ("UEFA") and, (iii) UEFA and Mr Bosman.

The rules governing the organization of football

3 Association football, commonly known as "football", professional or amateur, is practised as an organized sport in clubs which belong to national associations or federations in each of the Member States. Only in the United Kingdom are there more than one (in fact, four) national associations, for England, Wales, Scotland and Northern Ireland respectively. URBSFA is the Belgian national association. Also dependent on the national associations are other secondary or subsidiary associations responsible for organizing football in certain sectors or regions. The associations hold national championships, organized in divisions depending on the sporting status of the participating clubs.

4 The national associations are members of the Fédération Internationale de Football Association ("FIFA"), an association governed by Swiss law, which organizes football at world level. FIFA is divided into confederations for each continent, whose regulations require its approval. The confederation for Europe is UEFA, also an association governed by Swiss law. Its members are the national associations of some 50 countries, including in particular those of the Member States which, under the UEFA Statutes, have undertaken to comply with those Statutes and with the regulations and decisions of UEFA.

5 Each football match organized under the auspices of a national association must be played between two clubs which are members of that association or of secondary or subsidiary associations affiliated to it. The team fielded by each club consists of players who are registered by the national association to play for that club. Every professional player must be registered as such with his national association and is entered as the present or former employee of a specific club.

Transfer rules

6 The 1983 URBSFA federal rules, applicable at the time of the events giving rise to the different actions in the main proceedings, distinguish between three types of

relationship: affiliation of a player to the federation, affiliation to a club, and registration of entitlement to play for a club, which is necessary for a player to be able to participate in official competitions. A transfer is defined as the transaction by which a player affiliated to an association obtains a change of club affiliation. If the transfer is temporary, the player continues to be affiliated to his club but is registered as entitled to play for another club.

7 Under the same rules, all professional players'contracts, which have a term of between one and five years, run to 30 June. Before the expiry of the contract, and by 26 April at the latest, the club must offer the player a new contract, failing which he is considered to be an amateur for transfer purposes and thereby falls under a different section of the rules. The player is free to accept or refuse that offer.

8 If he refuses, he is placed on a list of players available, between 1 and 31 May, for "compulsory" transfer, without the agreement of the club of affiliation but subject to payment to that club by the new club of a compensation fee for "training", calculated by multiplying the player's gross annual income by a factor varying from 14 to 2 depending on the player's age.

9 1 June marks the opening of the period for "free" transfers, with the agreement of both clubs and the player, in particular as to the amount of the transfer fee which the new club must pay to the old club, subject to penalties which may include striking off the new club for debt.

10 If no transfer takes place, the player's club of affiliation must offer him a new contract for one season on the same terms as that offered prior to 26 April. If the player refuses, the club has a period until 1 August in which it may suspend him, failing which he is reclassified as an amateur. A player who persistently refuses to sign the contracts offered by his club may obtain a transfer as an amateur, without his club's agreement, after not playing for two seasons.

11 The UEFA and FIFA regulations are not directly applicable to players but are included in the rules of the national associations, which alone have the power to enforce them and to regulate relations between clubs and players.

12 UEFA, URBSFA and RC Liège stated before the national court that the provisions applicable at the material time to transfers between clubs in different Member States or clubs belonging to different national associations within the same Member State were contained in a document entitled Principles of Cooperation between Member Associations of UEFA and their Clubs , approved by the UEFA Executive Committee on 24 May 1990 and in force from 1 July 1990.

13 That document provides that at the expiry of the contract the player is free to enter into a new contract with the club of his choice. That club must immediately notify the old club which in turn is to notify the national association, which must issue an international clearance certificate. However, the former club is entitled to receive from the new club compensation for training and development, to be fixed, failing agreement, by a board of experts set up within UEFA using a scale of multiplying factors, from 12 to 1 depending on the player's age, to be applied to the player's gross income, up to a maximum of SFR 5 000 000.

14 The document stipulates that the business relationships between the two clubs in respect of the compensation fee for training and development are to exert no influence on the activity of the player, who is to be free to play for his new club. However, if the new club does not immediately pay the fee to the old club, the UEFA Control and Disciplinary Committee is to deal with the matter and notify its decision to the national association concerned, which may also impose penalties on the debtor club.

15 The national court considers that in the case with which the main proceedings are concerned URBSFA and RC Liège applied not the UEFA but the FIFA regulations.

16 At the material time, the FIFA regulations provided in particular that a professional player could not leave the national association to which he was affiliated so long as he was bound by his contract and by the rules of his club and his national association, no matter how harsh their terms might be. An international transfer could not take place unless the former national association issued a transfer certificate acknowledging that all financial commitments, including any transfer fee, had been settled.

17 After the events which gave rise to the main proceedings, UEFA opened negotiations with the Commission of the European Communities. In April 1991, it undertook in particular to incorporate in every professional player's contract a clause permitting him, at the expiry of the contract, to enter into a new contract with the club of his choice and to play for that club immediately. Provisions to that effect were incorporated in the Principles of Cooperation between Member Associations of UEFA and their Clubs adopted in December 1991 and in force from 1 July 1992.

18 In April 1991, FIFA adopted new Regulations governing the Status and Transfer of Football Players. That document, as amended in December 1991 and December 1993, provides that a player may enter into a contract with a new club where the contract between him and his club has expired, has been rescinded or is to expire within six months.

19 Special rules are laid down for "non-amateur" players, defined as players who have received, in respect of participation in or an activity connected with football, remuneration in excess of the actual expenses incurred in the course of such participation, unless they have reacquired amateur status.

20 Where a non-amateur player, or a player who assumes non-amateur status within three years of his transfer, is transferred, his former club is entitled to a compensation fee for development or training, the amount of which is to be agreed upon between the two clubs. In the event of disagreement, the dispute is to be submitted to FIFA or the relevant confederation.

21 Those rules have been supplemented by UEFA regulations "governing the fixing of a transfer fee", adopted in June 1993 and in force since 1 August 1993, which replace the 1991 "Principles of Cooperation between Member Associations of UEFA and their Clubs". The new rules retain the principle that the business relationship between the two clubs are to exert no influence on the sporting activity of the player, who is to be free to play for the club with which he has signed the new contract. In the event of disagreement between the clubs concerned, it is for the appropriate UEFA board of experts to determine the amount of the compensation fee for training or development.

For non-amateur players, the calculation of the fee is based on the player's gross income in the last 12 months or on the fixed annual income guaranteed in the new contract, increased by 20% for players who have played at least twice in the senior national representative team for their country and multiplied by a factor of between 12 and 0 depending on age.

22 It appears from documents produced to the Court by UEFA that rules in force in other Member States also contain provisions requiring the new club, when a player is transferred between two clubs within the same national association, to pay the former club, on terms laid down in the rules in question, a compensation fee for transfer, training or development.

23 In Spain and France, payment of compensation may only be required if the player transferred is under 25 years of age or if his former club is the one with which he signed his first professional contract, as the case may be. In Greece, although no compensation is explicitly payable by the new club, the contract between the club and the player may make the player's departure dependent on the payment of an amount which, according to UEFA, is in fact most commonly paid by the new club.

24 The rules applicable in that regard may derive from the national legislation, from the regulations of the national football associations or from the terms of collective agreements.

Nationality clauses

25 From the 1960s onwards, many national football associations introduced rules ("nationality clauses") restricting the extent to which foreign players could be recruited or fielded in a match. For the purposes of those clauses, nationality is defined in relation to whether the player can be qualified to play in a country's national or representative team.

26 In 1978, UEFA gave an undertaking to Mr Davignon, a Member of the Commission of the European Communities, that it would remove the limitations on the number of contracts entered into by each club with players from other Member States and would set the number of such players who may participate in any one match at two, that limit not being applicable to players established for over five years in the Member State in question.

27 In 1991, following further discussions with Mr Bangemann, a Vice-President of the Commission, UEFA adopted the "3 + 2" rule permitting each national association to limit to three the number of foreign players whom a club may field in any first division match in their national championships, plus two players who have played in the country of the relevant national association for an uninterrupted period of five years, including three years as a junior. The same limitation also applies to UEFA matches in competitions for club teams.

Facts of the cases before the national court

28 Mr Bosman, a professional footballer of Belgian nationality, was employed from 1988 by RC Liège, a Belgian first division club, under a contract expiring on 30 June

1990, which assured him an average monthly salary of BFR 120 000, including bonuses.

29 On 21 April 1990, RC Liège offered Mr Bosman a new contract for one season, reducing his pay to BFR 30 000, the minimum permitted by the URBSFA federal rules. Mr Bosman refused to sign and was put on the transfer list. The compensation fee for training was set, in accordance with the said rules, at BFR 11 743 000.

30 Since no club showed an interest in a compulsory transfer, Mr Bosman made contact with US Dunkerque, a club in the French second division, which led to his being engaged for a monthly salary in the region of BFR 100 000 plus a signing-on bonus of some BFR 900 000.

31 On 27 July 1990, a contract was also concluded between RC Liège and US Dunkerque for the temporary transfer of Mr Bosman for one year, against payment by US Dunkerque to RC Liège of a compensation fee of BFR 1 200 000 payable on receipt by the Fédération Française de Football ("FFF") of the transfer certificate issued by URBSFA. The contract also gave US Dunkerque an irrevocable option for full transfer of the player for BFR 4 800 000.

32 Both contracts, between US Dunkerque and RC Liège and between US Dunkerque and Mr Bosman, were however subject to the suspensive condition that the transfer certificate must be sent by URBSFA to FFF in time for the first match of the season, which was to be held on 2 August 1990.

33 RC Liège, which had doubts as to US Dunkerque's solvency, did not ask URBSFA to send the said certificate to FFF. As a result, neither contract took effect. On 31 July 1990, RC Liège also suspended Mr Bosman, thereby preventing him from playing for the entire season.

34 On 8 August 1990, Mr Bosman brought an action against RC Liège before the Tribunal de Première Instance (Court of First Instance), Liège. Concurrently with that action, he applied for an interlocutory decision ordering RC Liège and URBSFA to pay him an advance of BFR 100 000 per month until he found a new employer, restraining the defendants from impeding his engagement, in particular by requiring payment of a sum of money, and referring a question to the Court of Justice for a preliminary ruling.

35 By order of 9 November 1990, the judge hearing the interlocutory application ordered RC Liège and URBSFA to pay Mr Bosman an advance of BFR 30 000 per month and to refrain from impeding Mr Bosman's engagement. He also referred to the Court for a preliminary ruling a question (in Case C-340/90) on the interpretation of Article 48 in relation to the rules governing transfers of professional players ("transfer rules").

36 In the meantime, Mr Bosman had been signed up by the French second-division club Saint-Quentin in October 1990, on condition that his interlocutory application succeeded. His contract was terminated, however, at the end of the first season. In February 1992, Mr Bosman signed a new contract with the French club Saint-Denis de la Réunion, which was also terminated. After looking for further offers in Belgium and

France, Mr Bosman was finally signed up by Olympic de Charleroi, a Belgian third-division club.

37 According to the national court, there is strong circumstantial evidence to support the view that, notwithstanding the "free" status conferred on him by the interlocutory order, Mr Bosman has been boycotted by all the European clubs which might have engaged him.

38 On 28 May 1991, the Cour d'Appel, Liège, revoked the interlocutory decision of the Tribunal de Première Instance in so far as it referred a question to the Court of Justice for a preliminary ruling. But it upheld the order against RC Liège to pay monthly advances to Mr Bosman and enjoined RC Liège and URBSFA to make Mr Bosman available to any club which wished to use his services, without it being possible to require payment of any compensation fee. By order of 19 June 1991, Case C-340/90 was removed from the register of the Court of Justice.

39 On 3 June 1991, URBSFA, which, contrary to the situation in the interlocutory proceedings, had not been cited as a party in the main action before the Tribunal de Première Instance, intervened voluntarily in that action. On 20 August 1991, Mr Bosman issued a writ with a view to joining UEFA to the proceedings which he had brought against RC Liège and URBSFA and bringing proceedings directly against it on the basis of its responsibility in drafting the rules as a result of which he had suffered damage. On 5 December 1991, US Dunkerque was joined as a third party by RC Liège, in order to be indemnified against any order which might be made against it. On 15 October and 27 December 1991 respectively, Union Nationale des Footballeurs Professionnels ("UNFP"), a French professional footballers'union, and Vereniging van Contractspelers ("VVCS"), an association governed by Netherlands law, intervened voluntarily in the proceedings.

40 In new pleadings lodged on 9 April 1992, Mr Bosman amended his initial claim against RC Liège, brought a new preventive action against URBSFA and elaborated his claim against UEFA. In those proceedings, he sought a declaration that the transfer rules and nationality clauses were not applicable to him and an order, on the basis of their wrongful conduct at the time of the failure of his transfer to US Dunkerque, against RC Liège, URBSFA and UEFA to pay him BFR 11 368 350 in respect of the damage suffered by him from 1 August 1990 until the end of his career and BFR 11 743 000 in respect of loss of earnings since the beginning of his career as a result of the application of the transfer rules. He also applied for a question to be referred to the Court of Justice for a preliminary ruling.

41 By judgment of 11 June 1992, the Tribunal de Première Instance held that it had jurisdiction to entertain the main actions. It also held admissible Mr Bosman's claims against RC Liège, URBSFA and UEFA seeking, in particular, a declaration that the transfer rules and nationality clauses were not applicable to him and orders penalizing the conduct of those three organizations. But it dismissed RC Liège's application to join US Dunkerque as a third party and indemnifier, since no evidence of fault in the latter's performance of its obligations had been adduced. Finally, finding that the examination of Mr Bosman's claims against UEFA and URBSFA involved considering the compatibility of the transfer rules with the Treaty, it made a reference to the Court of

Justice for a preliminary ruling on the interpretation of Articles 48, 85 and 86 of the Treaty (Case C-269/92).

42 URBSFA, RC Liège and UEFA appealed against that decision. Since those appeals had suspensive effect, the procedure before the Court of Justice was suspended. By order of 8 December 1993, Case C-269/92 was finally removed from the register following the new judgment of the Cour d'Appel, Liège, out of which the present proceedings arise.

43 No appeal was brought against UNFP or VVCS, who did not seek to intervene again on appeal.

44 In its judgment ordering the reference, the Cour d'Appel upheld the judgment under appeal in so far as it held that the Tribunal de Première Instance had jurisdiction, that the actions were admissible and that an assessment of Mr Bosman's claims against UEFA and the URBSFA involved a review of the lawfulness of the transfer rules. It also considered that a review of the lawfulness of the nationality clauses was necessary, since Mr Bosman's claim in their regard was based on Article 18 of the Belgian Judicial Code, which permits actions "with a view to preventing the infringement of a seriously threatened right", and Mr Bosman had adduced factual evidence suggesting that the damage which he fears ° that the application of those clauses may impede his career ° will in fact occur.

45 The national court considered in particular that Article 48 of the Treaty could, like Article 30, prohibit not only discrimination but also non-discriminatory barriers to freedom of movement for workers if they could not be justified by imperative requirements.

46 With regard to Article 85 of the Treaty, it considered that the FIFA, UEFA and URBSFA regulations might constitute decisions of associations of undertakings by which the clubs restrict competition between themselves for players. Transfer fees were dissuasive and tended to depress the level of professional sportsmen's pay. In addition, the nationality clauses prohibited foreign players'services from being obtained over a certain quota. Finally, trade between Member States was affected, in particular by the restriction of players'mobility.

47 Furthermore, the Cour d'Appel thought that URBSFA, or the football clubs collectively, might be in a dominant position, within the meaning of Article 86 of the Treaty and that the restrictions on competition mentioned in connection with Article 85 might constitute abuses prohibited by Article 86.

48 The Cour d'Appel dismissed UEFA's request that it ask the Court of Justice whether the reply to the question submitted on transfers would be different if the system permitted a player to play freely for his new club even where that club had not paid the transfer fee to the old club. It noted in particular that, because of the threat of severe penalties for clubs not paying the transfer fee, a player's ability to play for his new club remained dependent on the business relationships between the clubs.

49 In view of the foregoing, the Cour d'Appel decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

"Are Articles 48, 85 and 86 of the Treaty of Rome of 25 March 1957 to be interpreted as:

(i) prohibiting a football club from requiring and receiving payment of a sum of money upon the engagement of one of its players who has come to the end of his contract by a new employing club;

(ii) prohibiting the national and international sporting associations or federations from including in their respective regulations provisions restricting access of foreign players from the European Community to the competitions which they organize?"

50 On 3 June 1994, URBSFA applied to the Belgian Cour de Cassation (Court of Cassation) for review of the Cour d'Appel's judgment, requesting that the judgment be extended to apply jointly to RC Liège, UEFA and US Dunkerque. By letter of 6 October 1994, the Procureur Général (Principal Crown Counsel) to the Cour de Cassation informed the Court of Justice that the appeal did not have suspensive effect in this case.

51 By judgment of 30 March 1995, the Cour de Cassation dismissed the appeal and held that as a result the request for a declaration that the judgment be extended was otiose. The Cour de Cassation has forwarded a copy of that judgment to the Court of Justice.

The request for measures of inquiry

52 By letter lodged at the Court Registry on 16 November 1995, UEFA requested the Court to order a measure of inquiry under Article 60 of the Rules of Procedure, with a view to obtaining fuller information on the role played by transfer fees in the financing of small or medium-sized football clubs, the machinery governing the distribution of income within the existing football structures and the presence or absence of alternative machinery if the system of transfer fees were to disappear.

53 After hearing again the views of the Advocate General, the Court considers that that application must be dismissed. It was made at a time when, in accordance with Article 59(2) of the Rules of Procedure, the oral procedure was closed. The Court has held (see Case 77/70 Prelle v Commission [1971] ECR 561, paragraph 7) that such an application can be admitted only if it relates to facts which may have a decisive influence and which the party concerned could not put forward before the close of the oral procedure.

54 In this case, it is sufficient to hold that UEFA could have submitted its request before the close of the oral procedure. Moreover, the question whether the aim of maintaining a balance in financial and competitive terms, and in particular that of ensuring the financing of smaller clubs, can be achieved by other means such as a redistribution of a portion of football takings was raised, in particular by Mr Bosman in his written observations.

Jurisdiction of the Court to give a preliminary ruling on the questions submitted

55 The Court's jurisdiction to give a ruling on all or part of the questions submitted by the national court has been challenged, on various grounds, by URBSFA, by UEFA, by some of the governments which have submitted observations and, during the written procedure, by the Commission.

56 First, UEFA and URBSFA have claimed that the main actions are procedural devices designed to obtain a preliminary ruling from the Court on questions which meet no objective need for the purpose of settling the cases. The UEFA regulations were not applied when Mr Bosman's transfer to US Dunkerque fell through; if they had been applied, that transfer would not have been dependent on the payment of a transfer fee and could thus have taken place. The interpretation of Community law requested by the national court thus bears no relation to the actual facts of the cases in the main proceedings or their purpose and, in accordance with consistent case-law, the Court has no jurisdiction to rule on the questions submitted.

57 Secondly, URBSFA, UEFA, the Danish, French and Italian Governments and, in its written observations, the Commission have claimed that the questions relating to nationality clauses has no connection with the disputes, which concern only the application of the transfer rules. The impediments to his career which Mr Bosman claims arise out of those clauses are purely hypothetical and do not justify a preliminary ruling by the Court on the interpretation of the Treaty in that regard.

58 Thirdly, URBSFA and UEFA pointed out at the hearing that, according to the judgment of the Cour de Cassation of 30 March 1995, the Cour d'Appel did not accept as admissible Mr Bosman's claims for a declaration that the nationality clauses in the URBSFA regulations were not applicable to him. Consequently, the issues in the main proceedings do not relate to the application of nationality clauses and the Court should not rule on the questions submitted on that point. The French Government concurred in that conclusion, subject however to verification of the scope of the judgment of the Cour de Cassation.

59 As to those submissions, it is to be remembered that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 177 of the Treaty, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, inter alia, Case C-125/94 Aprile v Amministrazione delle Finanze dello Stato [1995] ECR I-0000, paragraphs 16 and 17).

60 Nevertheless, the Court has taken the view that, in order to determine whether it has jurisdiction, it should examine the conditions in which the case was referred to it by the national court. The spirit of cooperation which must prevail in the preliminary-ruling procedure requires the national court, for its part, to have regard to the function entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions (see, inter alia, Case C-83/91 Meilicke v ADV/ORGA [1992] ECR I-4871, paragraph 25).

61 That is why the Court has held that it has no jurisdiction to give a preliminary ruling on a question submitted by a national court where it is quite obvious that the interpretation of Community law sought by that court bears no relation to the actual

facts of the main action or its purpose (see, inter alia, Case C-143/94 Furlanis v ANAS [1995] ECR I-0000, paragraph 12) or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Meilicke, cited above, paragraph 32).

62 In the present case, the issues in the main proceedings, taken as a whole, are not hypothetical and the national court has provided this Court with a clear statement of the surrounding facts, the rules in question and the grounds on which it believes that a decision on the questions submitted is necessary to enable it to give judgment.

63 Furthermore, even if, as URBSFA and UEFA contend, the UEFA regulations were not applied when Mr Bosman's transfer to US Dunkerque fell through, they are still in issue in the preventive actions brought by Mr Bosman against URBSFA and UEFA (see paragraph 40 above) and the Court's interpretation as to the compatibility with Community law of the transfer system set up by the UEFA regulations may be useful to the national court.

64 With regard more particularly to the questions concerning nationality clauses, it appears that the relevant heads of claim have been held admissible in the main proceedings on the basis of a national procedural provision permitting an action to be brought, albeit for declaratory purposes only, to prevent the infringement of a right which is seriously threatened. As is clear from its judgment, the national court considered that application of the nationality clauses could indeed impede Mr Bosman's career by reducing his chances of being employed or fielded in a match by a club from another Member State. It concluded that Mr Bosman's claims for a declaration that those nationality clauses were not applicable to him met the conditions laid down by the said provision.

65 It is not for this Court, in the context of these proceedings, to call that assessment in question. Although the main actions seek a declaratory remedy and, having the aim of preventing infringement of a right under threat, must necessarily be based on hypotheses which are, by their nature, uncertain, such actions are none the less permitted under national law, as interpreted by the referring court. Consequently, the questions submitted by that court meet an objective need for the purpose of settling disputes properly brought before it.

66 Finally, the judgment of the Cour de Cassation of 30 March 1995 does not suggest that the nationality clauses are extraneous to the issues in the main proceedings. That court held only that URBSFA's appeal against the judgment of the Cour d'Appel rested on a misinterpretation of that judgment. In its appeal, URBSFA had claimed that that court had held inadmissible a claim by Mr Bosman for a declaration that the nationality clauses contained in its regulations were not applicable to him. However, it would appear from the judgment of the Cour de Cassation that, according to the Cour d'Appel, Mr Bosman's claim sought to prevent impediments to his career likely to arise from the application not of the nationality clauses in the URBSFA regulations, which concerned players with a nationality other than Belgian, but of the similar clauses in the regulations of UEFA and the other national associations which are members of it, which could concern him as a player with Belgian nationality. Consequently, it does not appear from

the judgment of the Cour de Cassation that those latter nationality clauses are extraneous to the main proceedings.

67 It follows from the foregoing that the Court has jurisdiction to rule on the questions submitted by the Cour d'Appel, Liège.

Interpretation of Article 48 of the Treaty with regard to the transfer rules

68 By its first question, the national court seeks in substance to ascertain whether Article 48 of the Treaty precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club has paid to the former a transfer, training or development fee.

Application of Article 48 to rules laid down by sporting associations

69 It is first necessary to consider certain arguments which have been put forward on the question of the application of Article 48 to rules laid down by sporting associations.

70 URBSFA argued that only the major European clubs may be regarded as undertakings, whereas clubs such as RC Liège carry on an economic activity only to a negligible extent. Furthermore, the question submitted by the national court on the transfer rules does not concern the employment relationships between players and clubs but the business relationships between clubs and the consequences of freedom to affiliate to a sporting federation. Article 48 of the Treaty is accordingly not applicable to a case such as that in issue in the main proceedings.

71 UEFA argued, inter alia, that the Community authorities have always respected the autonomy of sport, that it is extremely difficult to distinguish between the economic and the sporting aspects of football and that a decision of the Court concerning the situation of professional players might call in question the organization of football as a whole. For that reason, even if Article 48 of the Treaty were to apply to professional players, a degree of flexibility would be essential because of the particular nature of the sport.

72 The German Government stressed, first, that in most cases a sport such as football is not an economic activity. It further submitted that sport in general has points of similarity with culture and pointed out that, under Article 128(1) of the EC Treaty, the Community must respect the national and regional diversity of the cultures of the Member States. Finally, referring to the freedom of association and autonomy enjoyed by sporting federations under national law, it concluded that, by virtue of the principle of subsidiarity, taken as a general principle, intervention by public, and particularly Community, authorities in this area must be confined to what is strictly necessary.

73 In response to those arguments, it is to be remembered that, having regard to the objectives of the Community, sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty (see Case 36/74 Walrave v Union Cycliste Internationale [1974] ECR 1405, paragraph 4). This applies to the activities of professional or semi-professional footballers, where they are

in gainful employment or provide a remunerated service (see Case 13/76 Donà v Mantero [1976] ECR 1333, paragraph 12).

74 It is not necessary, for the purposes of the application of the Community provisions on freedom of movement for workers, for the employer to be an undertaking; all that is required is the existence of, or the intention to create, an employment relationship.

75 Application of Article 48 of the Treaty is not precluded by the fact that the transfer rules govern the business relationships between clubs rather than the employment relationships between clubs and players. The fact that the employing clubs must pay fees on recruiting a player from another club affects the players'opportunities for finding employment and the terms under which such employment is offered.

76 As regards the difficulty of severing the economic aspects from the sporting aspects of football, the Court has held (in Donà, cited above, paragraphs 14 and 15) that the provisions of Community law concerning freedom of movement of persons and of provision of services do not preclude rules or practices justified on non-economic grounds which relate to the particular nature and context of certain matches. It stressed, however, that such a restriction on the scope of the provisions in question must remain limited to its proper objective. It cannot, therefore, be relied upon to exclude the whole of a sporting activity from the scope of the Treaty.

77 With regard to the possible consequences of this judgment on the organization of football as a whole, it has consistently been held that, although the practical consequences of any judicial decision must be weighed carefully, this cannot go so far as to diminish the objective character of the law and compromise its application on the ground of the possible repercussions of a judicial decision. At the very most, such repercussions might be taken into consideration when determining whether exceptionally to limit the temporal effect of a judgment (see, inter alia, Case C-163/90 Administration des Douanes v Legros and Others [1992] ECR I-4625, paragraph 30).

78 The argument based on points of alleged similarity between sport and culture cannot be accepted, since the question submitted by the national court does not relate to the conditions under which Community powers of limited extent, such as those based on Article 128(1), may be exercised but on the scope of the freedom of movement of workers guaranteed by Article 48, which is a fundamental freedom in the Community system (see, inter alia, Case C-19/92 Kraus v Land Baden-Wuerttemberg [1993] ECR I-1663, paragraph 16).

79 As regards the arguments based on the principle of freedom of association, it must be recognized that this principle, enshrined in Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and resulting from the constitutional traditions common to the Member States, is one of the fundamental rights which, as the Court has consistently held and as is reaffirmed in the preamble to the Single European Act and in Article F(2) of the Treaty on European Union, are protected in the Community legal order.

80 However, the rules laid down by sporting associations to which the national court refers cannot be seen as necessary to ensure enjoyment of that freedom by those

associations, by the clubs or by their players, nor can they be seen as an inevitable result thereof.

81 Finally, the principle of subsidiarity, as interpreted by the German Government to the effect that intervention by public authorities, and particularly Community authorities, in the area in question must be confined to what is strictly necessary, cannot lead to a situation in which the freedom of private associations to adopt sporting rules restricts the exercise of rights conferred on individuals by the Treaty.

82 Once the objections concerning the application of Article 48 of the Treaty to sporting activities such as those of professional footballers are out of the way, it is to be remembered that, as the Court held in paragraph 17 of its judgment in Walrave, cited above, Article 48 not only applies to the action of public authorities but extends also to rules of any other nature aimed at regulating gainful employment in a collective manner.

83 The Court has held that the abolition as between Member States of obstacles to freedom of movement for persons and to freedom to provide services would be compromised if the abolition of State barriers could be neutralized by obstacles resulting from the exercise of their legal autonomy by associations or organizations not governed by public law (see Walrave, cited above, paragraph 18).

84 It has further observed that working conditions in the different Member States are governed sometimes by provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons. Accordingly, if the scope of Article 48 of the Treaty were confined to acts of a public authority there would be a risk of creating inequality in its application (see Walrave, cited above, paragraph 19). That risk is all the more obvious in a case such as that in the main proceedings in this case in that, as has been stressed in paragraph 24 above, the transfer rules have been laid down by different bodies or in different ways in each Member State.

85 UEFA objects that such an interpretation makes Article 48 of the Treaty more restrictive in relation to individuals than in relation to Member States, which are alone in being able to rely on limitations justified on grounds of public policy, public security or public health.

86 That argument is based on an false premiss. There is nothing to preclude individuals from relying on justifications on grounds of public policy, public security or public health. Neither the scope nor the content of those grounds of justification is in any way affected by the public or private nature of the rules in question.

87 Article 48 of the Treaty therefore applies to rules laid down by sporting associations such as URBSFA, FIFA or UEFA, which determine the terms on which professional sportsmen can engage in gainful employment.

Whether the situation envisaged by the national court is of a purely internal nature

88 UEFA considers that the disputes pending before the national court concern a purely internal Belgian situation which falls outside the ambit of Article 48 of the Treaty. They concern a Belgian player whose transfer fell through because of the conduct of a Belgian club and a Belgian association.

89 It is true that, according to consistent case-law (see, inter alia, Case 175/78 Regina v Saunders [1979] ECR 1129, paragraph 11; Case 180/83 Moser v Land Baden-Wuerttemberg [1984] ECR 2539, paragraph 15; Case C-332/90 Steen v Deutsche Bundespost [1992] ECR I-341, paragraph 9; and Case C-19/92 Kraus, cited above, paragraph 15), the provisions of the Treaty concerning the free movement of workers, and particularly Article 48, cannot be applied to situations which are wholly internal to a Member State, in other words where there is no factor connecting them to any of the situations envisaged by Community law.

90 However, it is clear from the findings of fact made by the national court that Mr Bosman had entered into a contract of employment with a club in another Member State with a view to exercising gainful employment in that State. By so doing, as he has rightly pointed out, he accepted an offer of employment actually made, within the meaning of Article 48(3)(a).

91 Since the situation in issue in the main proceedings cannot be classified as purely internal, the argument put forward by UEFA must be dismissed.

Existence of an obstacle to freedom of movement for workers

92 It is thus necessary to consider whether the transfer rules form an obstacle to freedom of movement for workers prohibited by Article 48 of the Treaty.

93 As the Court has repeatedly held, freedom of movement for workers is one of the fundamental principles of the Community and the Treaty provisions guaranteeing that freedom have had direct effect since the end of the transitional period.

94 The Court has also held that the provisions of the Treaty relating to freedom of movement for persons are intended to facilitate the pursuit by Community citizens of occupational activities of all kinds throughout the Community, and preclude measures which might place Community citizens at a disadvantage when they wish to pursue an economic activity in the territory of another Member State (see Case 143/87 Stanton v INASTI [1988] ECR 3877, paragraph 13, and Case C-370/90 The Queen v Immigration Appeal Tribunal and Surinder Singh [1992] ECR I-4265, paragraph 16).

95 In that context, nationals of Member States have in particular the right, which they derive directly from the Treaty, to leave their country of origin to enter the territory of another Member State and reside there in order there to pursue an economic activity (see, inter alia, Case C-363/89 Roux v Belgium [1991] ECR I-273, paragraph 9, and Singh, cited above, paragraph 17).

96 Provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement therefore constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned (see also Case C-10/90 Masgio v Bundesknappschaft [1991] ECR I-1119, paragraphs 18 and 19).

97 The Court has also stated, in Case 81/87 The Queen v H.M. Treasury and Commissioners of Inland Revenue ex parte Daily Mail and General Trust plc [1988] ECR 5483, paragraph 16, that even though the Treaty provisions relating to freedom of establishment are directed mainly to ensuring that foreign nationals and companies are

treated in the host Member State in the same way as nationals of that State, they also prohibit the Member State of origin from hindering the establishment in another Member State of one of its nationals or of a company incorporated under its legislation which comes within the definition contained in Article 58. The rights guaranteed by Article 52 et seq. of the Treaty would be rendered meaningless if the Member State of origin could prohibit undertakings from leaving in order to establish themselves in another Member State. The same considerations apply, in relation to Article 48 of the Treaty, with regard to rules which impede the freedom of movement of nationals of one Member State wishing to engage in gainful employment in another Member State.

98 It is true that the transfer rules in issue in the main proceedings apply also to transfers of players between clubs belonging to different national associations within the same Member State and that similar rules govern transfers between clubs belonging to the same national association.

99 However, as has been pointed out by Mr Bosman, by the Danish Government and by the Advocate General in points 209 and 210 of his Opinion, those rules are likely to restrict the freedom of movement of players who wish to pursue their activity in another Member State by preventing or deterring them from leaving the clubs to which they belong even after the expiry of their contracts of employment with those clubs.

100 Since they provide that a professional footballer may not pursue his activity with a new club established in another Member State unless it has paid his former club a transfer fee agreed upon between the two clubs or determined in accordance with the regulations of the sporting associations, the said rules constitute an obstacle to freedom of movement for workers.

101 As the national court has rightly pointed out, that finding is not affected by the fact that the transfer rules adopted by UEFA in 1990 stipulate that the business relationship between the two clubs is to exert no influence on the activity of the player, who is to be free to play for his new club. The new club must still pay the fee in issue, under pain of penalties which may include its being struck off for debt, which prevents it just as effectively from signing up a player from a club in another Member State without paying that fee.

102 Nor is that conclusion negated by the case-law of the Court cited by URBSFA and UEFA, to the effect that Article 30 of the Treaty does not apply to measures which restrict or prohibit certain selling arrangements so long as they apply to all relevant traders operating within the national territory and so long as they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States (see Joined Cases C-267/91 and C-268/91 Keck and Mithouard [1993] ECR I-6097, paragraph 16).

103 It is sufficient to note that, although the rules in issue in the main proceedings apply also to transfers between clubs belonging to different national associations within the same Member State and are similar to those governing transfers between clubs belonging to the same national association, they still directly affect players'access to the employment market in other Member States and are thus capable of impeding freedom of movement for workers. They cannot, thus, be deemed comparable to the rules on

selling arrangements for goods which in Keck and Mithouard were held to fall outside the ambit of Article 30 of the Treaty (see also, with regard to freedom to provide services, Case C-384/93 Alpine Investments v Minister van Financiën [1995] ECR I-1141, paragraphs 36 to 38).

104 Consequently, the transfer rules constitute an obstacle to freedom of movement for workers prohibited in principle by Article 48 of the Treaty. It could only be otherwise if those rules pursued a legitimate aim compatible with the Treaty and were justified by pressing reasons of public interest. But even if that were so, application of those rules would still have to be such as to ensure achievement of the aim in question and not go beyond what is necessary for that purpose (see, inter alia, the judgment in Kraus, cited above, paragraph 32, and Case C-55/94 Gebhard [1995] ECR I-0000, paragraph 37).

Existence of justifications

105 First, URBSFA, UEFA and the French and Italian Governments have submitted that the transfer rules are justified by the need to maintain a financial and competitive balance between clubs and to support the search for talent and the training of young players.

106 In view of the considerable social importance of sporting activities and in particular football in the Community, the aims of maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate.

107 As regards the first of those aims, Mr Bosman has rightly pointed out that the application of the transfer rules is not an adequate means of maintaining financial and competitive balance in the world of football. Those rules neither preclude the richest clubs from securing the services of the best players nor prevent the availability of financial resources from being a decisive factor in competitive sport, thus considerably altering the balance between clubs.

108 As regards the second aim, it must be accepted that the prospect of receiving transfer, development or training fees is indeed likely to encourage football clubs to seek new talent and train young players.

109 However, because it is impossible to predict the sporting future of young players with any certainty and because only a limited number of such players go on to play professionally, those fees are by nature contingent and uncertain and are in any event unrelated to the actual cost borne by clubs of training both future professional players and those who will never play professionally. The prospect of receiving such fees cannot, therefore, be either a decisive factor in encouraging recruitment and training of young players or an adequate means of financing such activities, particularly in the case of smaller clubs.

110 Furthermore, as the Advocate General has pointed out in point 226 et seq. of his Opinion, the same aims can be achieved at least as efficiently by other means which do not impede freedom of movement for workers.

111 It has also been argued that the transfer rules are necessary to safeguard the worldwide organization of football.

112 However, the present proceedings concern application of those rules within the Community and not the relations between the national associations of the Member States and those of non-member countries. In any event, application of different rules to transfers between clubs belonging to national associations within the Community and to transfers between such clubs and those affiliated to the national associations of non-member countries is unlikely to pose any particular difficulties. As is clear from paragraphs 22 and 23 above, the rules which have so far governed transfers within the national associations of certain Member States are different from those which apply at the international level.

113 Finally, the argument that the rules in question are necessary to compensate clubs for the expenses which they have had to incur in paying fees on recruiting their players cannot be accepted, since it seeks to justify the maintenance of obstacles to freedom of movement for workers simply on the ground that such obstacles were able to exist in the past.

114 The answer to the first question must therefore be that Article 48 of the Treaty precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club has paid to the former club a transfer, training or development fee.

Interpretation of Article 48 of the Treaty with regard to the nationality clauses

115 By its second question, the national court seeks in substance to ascertain whether Article 48 of the Treaty precludes the application of rules laid down by sporting associations, under which, in matches in competitions which they organize, football clubs may field only a limited number of professional players who are nationals of other Member States.

Existence of an obstacle to freedom of movement for workers

116 As the Court has held in paragraph 87 above, Article 48 of the Treaty applies to rules laid down by sporting associations which determine the conditions under which professional sports players may engage in gainful employment. It must therefore be considered whether the nationality clauses constitute an obstacle to freedom of movement for workers, prohibited by Article 48.

117 Article 48(2) expressly provides that freedom of movement for workers entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and conditions of work and employment.

118 That provision has been implemented, in particular, by Article 4 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968(II), p. 475), under which provisions laid down by law, regulation or administrative action of the Member States which restrict by number or percentage the employment of foreign nationals in any undertaking, branch of activity or region, or at a national level, are not to apply to nationals of the other Member States.

119 The same principle applies to clauses contained in the regulations of sporting associations which restrict the right of nationals of other Member States to take part, as professional players, in football matches (see the judgment in Donà, cited above, paragraph 19).

120 The fact that those clauses concern not the employment of such players, on which there is no restriction, but the extent to which their clubs may field them in official matches is irrelevant. In so far as participation in such matches is the essential purpose of a professional player's activity, a rule which restricts that participation obviously also restricts the chances of employment of the player concerned.

Existence of justifications

121 The existence of an obstacle having thus been established, it must be considered whether that obstacle may be justified in the light of Article 48 of the Treaty.

122 URBSFA, UEFA and the German, French and Italian Governments argued that the nationality clauses are justified on non-economic grounds, concerning only the sport as such.

123 First, they argued, those clauses serve to maintain the traditional link between each club and its country, a factor of great importance in enabling the public to identify with its favourite team and ensuring that clubs taking part in international competitions effectively represent their countries.

124 Secondly, those clauses are necessary to create a sufficient pool of national players to provide the national teams with top players to field in all team positions.

125 Thirdly, they help to maintain a competitive balance between clubs by preventing the richest clubs from appropriating the services of the best players.

126 Finally, UEFA points out that the "3 + 2" rule was drawn up in collaboration with the Commission and must be revised regularly to remain in line with the development of Community policy.

127 It must be recalled that in paragraphs 14 and 15 of its judgment in Donà, cited above, the Court held that the Treaty provisions concerning freedom of movement for persons do not prevent the adoption of rules or practices excluding foreign players from certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only, such as, for example, matches between national teams from different countries. It stressed, however, that that restriction on the scope of the provisions in question must remain limited to its proper objective.

128 Here, the nationality clauses do not concern specific matches between teams representing their countries but apply to all official matches between clubs and thus to the essence of the activity of professional players.

129 In those circumstances, the nationality clauses cannot be deemed to be in accordance with Article 48 of the Treaty, otherwise that article would be deprived of its practical effect and the fundamental right of free access to employment which the Treaty confers individually on each worker in the Community rendered nugatory (on

this last point, see Case 222/86 Unectef v Heylens and Others [1987] ECR 4097, paragraph 14).

130 None of the arguments put forward by the sporting associations and by the governments which have submitted observations detracts from that conclusion.

131 First, a football club's links with the Member State in which it is established cannot be regarded as any more inherent in its sporting activity than its links with its locality, town, region or, in the case of the United Kingdom, the territory covered by each of the four associations. Even though national championships are played between clubs from different regions, towns or localities, there is no rule restricting the right of clubs to field players from other regions, towns or localities in such matches.

132 In international competitions, moreover, participation is limited to clubs which have achieved certain results in competition in their respective countries, without any particular significance being attached to the nationalities of their players.

133 Secondly, whilst national teams must be made up of players having the nationality of the relevant country, those players need not necessarily be registered to play for clubs in that country. Indeed, under the rules of the sporting associations, foreign players must be allowed by their clubs to play for their country's national team in certain matches.

134 Furthermore, although freedom of movement for workers, by opening up the employment market in one Member State to nationals of the other Member States, has the effect of reducing workers'chances of finding employment within the Member State of which they are nationals, it also, by the same token, offers them new prospects of employment in other Member States. Such considerations obviously apply also to professional footballers.

135 Thirdly, although it has been argued that the nationality clauses prevent the richest clubs from engaging the best foreign players, those clauses are not sufficient to achieve the aim of maintaining a competitive balance, since there are no rules limiting the possibility for such clubs to recruit the best national players, thus undermining that balance to just the same extent.

136 Finally, as regards the argument based on the Commission's participation in the drafting of the "3 + 2" rule, it must be pointed out that, except where such powers are expressly conferred upon it, the Commission may not give guarantees concerning the compatibility of specific practices with the Treaty (see also Joined Cases 142/80 and 143/80 Amministrazione delle Finanze dello Stato v Essevi and Salengo [1981] ECR 1413, paragraph 16). In no circumstances does it have the power to authorize practices which are contrary to the Treaty.

137 It follows from the foregoing that Article 48 of the Treaty precludes the application of rules laid down by sporting associations under which, in matches in competitions which they organize, football clubs may field only a limited number of professional players who are nationals of other Member States.

Interpretation of Articles 85 and 86 of the Treaty

138 Since both types of rule to which the national court's question refer are contrary to Article 48, it is not necessary to rule on the interpretation of Articles 85 and 86 of the Treaty.

The temporal effects of this judgment

139 In their written and oral observations, UEFA and URBSFA have drawn the Court's attention to the serious consequences which might ensue from its judgment for the organization of football as a whole if it were to consider the transfer rules and nationality clauses to be incompatible with the Treaty.

140 Mr Bosman, whilst observing that such a solution is not indispensable, has suggested that the Court could limit the temporal effects of its judgment in so far as it concerns the transfer rules.

141 It has consistently been held that the interpretation which the Court, in the exercise of the jurisdiction conferred upon it by Article 177 of the Treaty, gives to a rule of Community law clarifies and where necessary defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its coming into force. It follows that the rule as thus interpreted can, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions for bringing before the courts having jurisdiction an action relating to the application of that rule are satisfied (see, inter alia, Case 24/86 Blaizot v University of Liège and Others [1988] ECR 379, paragraph 27).

142 It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict the opportunity for any person concerned to rely upon the provision as thus interpreted with a view to calling in question legal relationships established in good faith. Such a restriction may be allowed only by the Court, in the actual judgment ruling upon the interpretation sought (see, inter alia, the judgments in Blaizot, cited above, paragraph 28, and Legros, cited above, paragraph 30).

143 In the present case, the specific features of the rules laid down by the sporting associations for transfers of players between clubs of different Member States, together with the fact that the same or similar rules applied to transfers both between clubs belonging to the same national association and between clubs belonging to different national associations within the same Member State, may have caused uncertainty as to whether those rules were compatible with Community law.

144 In such circumstances, overriding considerations of legal certainty militate against calling in question legal situations whose effects have already been exhausted. An exception must, however, be made in favour of persons who may have taken timely steps to safeguard their rights. Finally, limitation of the effects of the said interpretation can be allowed only in respect of compensation fees for transfer, training or development which have already been paid on, or are still payable under an obligation which arose before, the date of this judgment.

145 It must therefore be held that the direct effect of Article 48 of the Treaty cannot be relied upon in support of claims relating to a fee in respect of transfer, training or development which has already been paid on, or is still payable under an obligation which arose before, the date of this judgment, except by those who have brought court proceedings or raised an equivalent claim under the applicable national law before that date.

146 With regard to nationality clauses, however, there are no grounds for a temporal limitation of the effects of this judgment. In the light of the Walrave and Donà judgments, it was not reasonable for those concerned to consider that the discrimination resulting from those clauses was compatible with Article 48 of the Treaty.

Costs

147 The costs incurred by the Danish, French, German and Italian Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Cour d'Appel, Liège, by judgment of 1 October 1993, hereby rules:

1. Article 48 of the EEC Treaty precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club has paid to the former club a transfer, training or development fee.

2. Article 48 of the EEC Treaty precludes the application of rules laid down by sporting associations under which, in matches in competitions which they organize, football clubs may field only a limited number of professional players who are nationals of other Member States.

3. The direct effect of Article 48 of the EEC Treaty cannot be relied upon in support of claims relating to a fee in respect of transfer, training or development which has already been paid on, or is still payable under an obligation which arose before, the date of this judgment, except by those who have brought court proceedings or raised an equivalent claim under the applicable national law before that date.

C-519/04 P, Meca-Medina and Majcen v Commission (18 July 2006)

Judgment

1 By their appeal, Mr Meca-Medina and Mr Majcen ('the appellants') ask the Court to set aside the judgment of the Court of First Instance of the European Communities of 30 September 2004 in Case T-313/02 *Meca-Medina and Majcen* v *Commission* [2004] ECR II-3291 ('the contested judgment') by which the latter dismissed their action for annulment of the decision of the Commission of the European Communities of 1 August 2002 rejecting the complaint – lodged by them against the International Olympic Committee ('the IOC') – seeking a declaration that certain rules adopted by the IOC and implemented by the Fédération internationale de natation (International Swimming Federation; 'FINA') and certain practices relating to doping control were incompatible with the Community rules on competition and freedom to provide services (Case COMP/38158 – Meca-Medina and Majcen/IOC) ('the decision at issue').

Background to the dispute

2 The Court of First Instance summarised the relevant anti-doping rules ('the anti-doping rules at issue') in paragraphs 1 to 6 of the contested judgment:

'1 The [IOC] is the supreme authority of the Olympic Movement, which brings together the various international sporting federations, among which is [FINA]).

2 FINA implements for swimming, by its Doping Control Rules ("the DCR", cited here in the version in force at the material time), the Olympic Movement's Anti-Doping Code. DCR 1.2(a) states that the offence of doping "occurs when a banned substance is found to be present within a competitor's body tissue or fluids". That definition corresponds to that in Article 2(2) of the abovementioned Anti-Doping Code, where doping is defined as the presence in an athlete's body of a prohibited substance or the finding that such a substance or a prohibited technique has been used.

3 Nandrolone and its metabolites, Norandrosterone (NA) and Norethiocholanolone (NE) (hereinafter together called "Nandrolone"), are prohibited anabolic substances. However, according to the practice of the 27 laboratories accredited by the IOC and FINA, and to take account of the possibility of endogenous, therefore innocent, production of Nandrolone, the presence of that substance in a male athlete's body is defined as doping only if it exceeds a limit of 2 nanogrammes (ng) per millilitre (ml) of urine.

4 For a first offence of doping with an anabolic substance, DCR 9.2(a) requires the suspension of the athlete for a minimum of four years, which may however be reduced, under the final sentence of DCR 9.2, DCR 9.3 and DCR 9.10, if the athlete proves that he did not knowingly take the prohibited substance or establishes how that substance could be present in his body without negligence on his part.

5 The penalties are imposed by FINA's Doping Panel, whose decisions are subject to appeal to the Court of Arbitration for Sport ("the CAS") under DCR 8.9. The CAS,

which is based in Lausanne, is financed and administered by an organisation independent of the IOC, the International Council of Arbitration for Sport ("the ICAS").

6 The CAS's rulings are subject to appeal to the Swiss Federal Court, which has jurisdiction to review international arbitration awards made in Switzerland.'

3 The factual background to the dispute was summarised by the Court of First Instance in paragraphs 7 to 20 of the contested judgment:

'7 The applicants are two professional athletes who compete in long-distance swimming, the aquatic equivalent of the marathon.

8 In an anti-doping test carried out on 31 January 1999 during the World Cup in that discipline at Salvador de Bahia (Brazil), where they had finished first and second respectively, the applicants tested positive for Nandrolone. The level found for Mr D. Meca-Medina was 9.7 ng/ml and that for Mr I. Majcen 3.9 ng/ml.

9 On 8 August 1999, FINA's Doping Panel suspended the applicants for a period of four years.

10 On the applicants' appeal, the CAS, by arbitration award of 29 February 2000, confirmed the suspension.

11 In January 2000, certain scientific experiments showed that Nandrolone's metabolites can be produced endogenously by the human body at a level which may exceed the accepted limit when certain foods, such as boar meat, have been consumed.

12 In view of that development, FINA and the applicants consented, by an arbitration agreement of 20 April 2000, to refer the case anew to the CAS for reconsideration.

13 By arbitration award of 23 May 2001, the CAS reduced the penalty to two years' suspension.

14 The applicants did not appeal against that award to the Swiss Federal Court.

15 By letter of 30 May 2001, the applicants filed a complaint with the Commission, under Article 3 of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962, p. 87), alleging a breach of Article 81 EC and/or Article 82 EC.

16 In their complaint, the applicants challenged the compatibility of certain regulations adopted by the IOC and implemented by FINA and certain practices relating to doping control with the Community rules on competition and freedom to provide services. First of all, the fixing of the limit at 2 ng/ml is a concerted practice between the IOC and the 27 laboratories accredited by it. That limit is scientifically unfounded and can lead to the exclusion of innocent or merely negligent athletes. In the applicants' case, the excesses could have been the result of the consumption of a dish containing boar meat. Also, the IOC's adoption of a mechanism of strict liability and the establishment of tribunals responsible for the settlement of sports disputes by arbitration (the CAS and the ICAS) which are insufficiently independent of the IOC strengthens the anti-competitive nature of that limit.

17 According to that complaint, the application of those rules (hereinafter "the anti-doping rules at issue") leads to the infringement of the athletes' economic freedoms, guaranteed inter alia by Article 49 EC and, from the point of view of competition law, to the infringement of the rights which the athletes can assert under Articles 81 EC and 82 EC.

18 By letter of 8 March 2002, the Commission informed the applicants, in accordance with Article 6 of Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles [81] and [82] of the EC Treaty (OJ 1998 L 354, p. 18), of the reasons for which it considered that the complaint should not be upheld.

19 By letter of 11 April 2002, the applicants sent the Commission their observations on the letter of 8 March 2002.

20 By decision of 1 August 2002 …, the Commission, after analysing the anti-doping rules at issue according to the assessment criteria of competition law and concluding that those rules did not fall foul of the prohibition under Articles 81 EC and 82 EC, rejected the applicants' complaint …'.

Procedure before the Court of First Instance and the contested judgment

4 On 11 October 2002, the present appellants brought an action before the Court of First Instance to have the decision at issue set aside. They raised three pleas in law in support of their action. First, the Commission made a manifest error of assessment in fact and in law, by deciding that the IOC is not an undertaking within the meaning of the Community case-law. Second, it misapplied the criteria established by the Court of Justice in Case C-309/99 *Wouters and Others* [2002] ECR I-1577, in deciding that the anti-doping rules at issue are not a restriction of competition within the meaning of Article 81 EC. Finally, the Commission made a manifest error of assessment in fact and in law at point 71 of the decision at issue, in rejecting the grounds under Article 49 EC relied upon by the appellants to challenge the anti-doping rules.

5 On 24 January 2003, the Republic of Finland sought leave to intervene in support of the Commission. By order of 25 February 2003, the President of the Fourth Chamber of the Court of First Instance granted leave.

6 By the contested judgment, the Court of First Instance dismissed the action brought by the present appellants.

7 In paragraphs 40 and 41 of the contested judgment, the Court of First Instance held, on the basis of case-law of the Court of Justice, that while the prohibitions laid down by Articles 39 EC and 49 EC apply to the rules adopted in the field of sport that concern the economic aspect which sporting activity can present, on the other hand those prohibitions do not affect purely sporting rules, that is to say rules relating to questions of purely sporting interest and, as such, having nothing to do with economic activity.

8 The Court of First Instance observed, in paragraph 42 of the contested judgment, that the fact that purely sporting rules may have nothing to do with economic activity, with the result that they do not fall within the scope of Articles 39 EC and 49 EC, means,

also, that they have nothing to do with the economic relationships of competition, with the result that they also do not fall within the scope of Articles 81 EC and 82 EC.

9 In paragraphs 44 and 47 of the contested judgment, the Court of First Instance held that the prohibition of doping is based on purely sporting considerations and therefore has nothing to do with any economic consideration. It concluded that the rules to combat doping consequently cannot come within the scope of the Treaty provisions on the economic freedoms and, in particular, of Articles 49 EC, 81 EC and 82 EC.

10 The Court of First Instance held, in paragraph 49 of the contested judgment, that the anti-doping rules at issue, which have no discriminatory aim, are intimately linked to sport as such. It found furthermore, in paragraph 57 of the contested judgment, that the fact that the IOC might possibly, when adopting the anti-doping rules at issue, have had in mind the concern, legitimate according to the present appellants themselves, of safeguarding the economic potential of the Olympic Games is not sufficient to alter the purely sporting nature of those rules.

11 The Court of First Instance further stated, in paragraph 66 of the contested judgment, that since the Commission concluded in the decision at issue that the anti-doping rules at issue fell outside the scope of Articles 81 EC and 82 EC because of their purely sporting nature, the reference in that decision to the method of analysis in *Wouters and Others* cannot, in any event, bring into question that conclusion. The Court held in addition, in paragraph 67 of the contested judgment, that the challenging of those rules fell within the jurisdiction of the sporting dispute settlement bodies.

12 The Court of First Instance also dismissed the third plea put forward by the present appellants, holding, in paragraph 68 of the contested judgment, that since the anti-doping rules at issue were purely sporting, they did not fall within the scope of Article 49 EC.

Forms of order sought on appeal

13 In their appeal, the appellants claim that the Court should:

– set aside the contested judgment;

– grant the form of order sought before the Court of First Instance;

– order the Commission to pay the costs of both sets of proceedings.

14 The Commission contends that the Court should:

– dismiss the appeal in its entirety;

– in the alternative, grant the form of order sought at first instance and dismiss the action for annulment of the decision at issue;

– order the appellants to pay the costs including those of the proceedings at first instance.

15 The Republic of Finland contends that the Court should:

– dismiss the appeal in its entirety.

The appeal

16 By their arguments, the appellants put forward four pleas in law in support of their appeal. By the first plea, which is in several parts, they submit that the contested judgment is vitiated by an error of law in that the Court of First Instance held that the anti-doping rules at issue did not fall within the scope of Articles 49 EC, 81 EC and 82 EC. By the second plea, they contend that the contested judgment should be annulled because it distorts the clear sense of the decision at issue. By the third plea, they argue that the contested judgment fails to comply with formal requirements because certain of its grounds are contradictory and the reasoning is inadequate. By the fourth plea, they submit that the contested judgment was delivered following flawed proceedings, since the Court of First Instance infringed the rights of the defence.

The first plea

17 The first plea, alleging an error of law, is in three parts. The appellants submit, first, that the Court of First Instance was mistaken as to the interpretation of the Court of Justice's case-law relating to the relationship between sporting rules and the scope of the Treaty provisions. They submit, second, that the Court of First Instance misconstrued the effect, in the light of that case-law, of rules prohibiting doping, generally, and the anti-doping rules at issue, in particular. They contend, third, that the Court of First Instance was wrong in holding that the anti-doping rules at issue could not be likened to market conduct falling within the scope of Articles 81 EC and 82 EC and therefore could not be subject to the method of analysis established by the Court of Justice in *Wouters and Others*.

The first part of the plea

– Arguments of the parties

18 In the appellants' submission, the Court of First Instance misinterpreted the case-law of the Court of Justice according to which sport is subject to Community law only in so far as it constitutes an economic activity. In particular, contrary to what was held by the Court of First Instance, purely sporting rules have never been excluded generally by the Court of Justice from the scope of the provisions of the Treaty. While the Court of Justice has held the formation of national teams to be a question of purely sporting interest and, as such, having nothing to do with economic activity, the Court of First Instance could not infer therefrom that any rule relating to a question of purely sporting interest has, as such, nothing to do with economic activity and thus is not covered by the prohibitions laid down in Articles 39 EC, 49 EC, 81 EC and 82 EC. The concept of a purely sporting rule must therefore be confined solely to rules relating to the composition and formation of national teams.

19 The appellants further contend that the Court of First Instance was wrong in finding that rules of purely sporting interest are necessarily inherent in the organisation and proper conduct of competitive sport, when, according to the case-law of the Court of Justice, they must also relate to the particular nature and context of sporting events. The appellants also submit that, because professional sporting activity is, in practical terms, indivisible in nature, the distinction drawn by the Court of First Instance between

the economic and the non-economic aspect of the same sporting activity is entirely artificial.

20 In the Commission's submission, the Court of First Instance applied correctly the case-law of the Court of Justice according to which purely sporting rules are, as such, not covered by the rules on freedom of movement. This does therefore involve an exception of general application for purely sporting rules, which is thus not limited to the composition and formation of national teams. Nor does the Commission see how a rule of purely sporting interest and relating to the specific nature of sporting events could fail to be inherent in the proper conduct of the events.

21 In the Finnish Government's submission, the Court of First Instance's approach is consistent with Community law.

– Findings of the Court

22 It is to be remembered that, having regard to the objectives of the Community, sport is subject to Community law in so far as it constitutes an economic activity within the meaning of Article 2 EC (see Case 36/74 *Walrave and Koch* [1974] ECR 1405, paragraph 4; Case 13/76 *Donà* [1976] ECR 1333, paragraph 12; Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 73; Joined Cases C-51/96 and C-191/97 *Deliège* [2000] ECR I-2549, paragraph 41; and Case C-176/96 *Lehtonen and Castors Braine* [2000] ECR I-2681, paragraph 32).

23 Thus, where a sporting activity takes the form of gainful employment or the provision of services for remuneration, which is true of the activities of semi-professional or professional sportsmen (see, to this effect, *Walrave and Koch*, paragraph 5, *Donà*, paragraph 12, and *Bosman*, paragraph 73), it falls, more specifically, within the scope of Article 39 EC et seq. or Article 49 EC et seq.

24 These Community provisions on freedom of movement for persons and freedom to provide services not only apply to the action of public authorities but extend also to rules of any other nature aimed at regulating gainful employment and the provision of services in a collective manner (*Deliège*, paragraph 47, and *Lehtonen and Castors Braine*, paragraph 35).

25 The Court has, however, held that the prohibitions enacted by those provisions of the Treaty do not affect rules concerning questions which are of purely sporting interest and, as such, have nothing to do with economic activity (see, to this effect, *Walrave and Koch*, paragraph 8).

26 With regard to the difficulty of severing the economic aspects from the sporting aspects of a sport, the Court has held (in *Donà*, paragraphs 14 and 15) that the provisions of Community law concerning freedom of movement for persons and freedom to provide services do not preclude rules or practices justified on non-economic grounds which relate to the particular nature and context of certain sporting events. It has stressed, however, that such a restriction on the scope of the provisions in question must remain limited to its proper objective. It cannot, therefore, be relied upon to exclude the whole of a sporting activity from the scope of the Treaty (*Bosman*, paragraph 76, and *Deliège*, paragraph 43).

27 In light of all of these considerations, it is apparent that the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down.

28 If the sporting activity in question falls within the scope of the Treaty, the conditions for engaging in it are then subject to all the obligations which result from the various provisions of the Treaty. It follows that the rules which govern that activity must satisfy the requirements of those provisions, which, in particular, seek to ensure freedom of movement for workers, freedom of establishment, freedom to provide services, or competition.

29 Thus, where engagement in the sporting activity must be assessed in the light of the Treaty provisions relating to freedom of movement for workers or freedom to provide services, it will be necessary to determine whether the rules which govern that activity satisfy the requirements of Articles 39 EC and 49 EC, that is to say do not constitute restrictions prohibited by those articles (*Deliège*, paragraph 60).

30 Likewise, where engagement in the activity must be assessed in the light of the Treaty provisions relating to competition, it will be necessary to determine, given the specific requirements of Articles 81 EC and 82 EC, whether the rules which govern that activity emanate from an undertaking, whether the latter restricts competition or abuses its dominant position, and whether that restriction or that abuse affects trade between Member States.

31 Therefore, even if those rules do not constitute restrictions on freedom of movement because they concern questions of purely sporting interest and, as such, have nothing to do with economic activity (*Walrave and Koch* and *Donà*), that fact means neither that the sporting activity in question necessarily falls outside the scope of Articles 81 EC and 82 EC nor that the rules do not satisfy the specific requirements of those articles.

32 However, in paragraph 42 of the contested judgment, the Court of First Instance held that the fact that purely sporting rules may have nothing to do with economic activity, with the result that they do not fall within the scope of Articles 39 EC and 49 EC, means, also, that they have nothing to do with the economic relationships of competition, with the result that they also do not fall within the scope of Articles 81 EC and 82 EC.

33 In holding that rules could thus be excluded straightaway from the scope of those articles solely on the ground that they were regarded as purely sporting with regard to the application of Articles 39 EC and 49 EC, without any need to determine first whether the rules fulfilled the specific requirements of Articles 81 EC and 82 EC, as set out in paragraph 30 of the present judgment, the Court of First Instance made an error of law.

34 Accordingly, the appellants are justified in asserting that, in paragraph 68 of the contested judgment, the Court of First Instance erred in dismissing their application on the ground that the anti-doping rules at issue were subject to neither Article 49 EC nor competition law. The contested judgment must therefore be set aside, and there is no

need to examine either the remaining parts of the first plea or the other pleas put forward by the appellants.

Substance

35 In accordance with Article 61 of the Statute of the Court of Justice, since the state of the proceedings so permits it is appropriate to give judgment on the substance of the appellants' claims for annulment of the decision at issue.

36 The appellants advanced three pleas in support of their action. They criticised the Commission for having found, first, that the IOC was not an undertaking within the meaning of the Community case-law, second, that the anti-doping rules at issue were not a restriction of competition within the meaning of Article 81 EC and, finally, that their complaint did not contain facts capable of leading to the conclusion that there could have been an infringement of Article 49 EC.

The first plea

37 The appellants contend that the Commission was wrong not to treat the IOC as an undertaking for the purposes of application of Article 81 EC.

38 It is, however, common ground that, in order to rule on the complaint submitted to it by the appellants in the light of Articles 81 EC and 82 EC, the Commission sought, as is explicitly made clear in point 37 of the decision at issue, to proceed on the basis that the IOC was to be treated as an undertaking and, within the Olympic Movement, as an association of international and national associations of undertakings.

39 Since this plea is founded on an incorrect reading of the decision at issue, it is of no consequence and must, for that reason, be dismissed.

The second plea

40 The appellants contend that in rejecting their complaint the Commission wrongly decided that the anti-doping rules at issue were not a restriction of competition within the meaning of Article 81 EC. They submit that the Commission misapplied the criteria established by the Court of Justice in *Woutersand Others* in justifying the restrictive effects of the anti-doping rules on their freedom of action. According to the appellants, first, those rules are, contrary to the Commission's findings, in no way solely inherent in the objectives of safeguarding the integrity of competitive sport and athletes' health, but seek to protect the IOC's own economic interests. Second, in laying down a maximum level of 2 ng/ml of urine which does not correspond to any scientifically safe criterion, those rules are excessive in nature and thus go beyond what is necessary in order to combat doping effectively.

41 It should be stated first of all that, while the appellants contend that the Commission made a manifest error of assessment in treating the overall context in which the IOC adopted the rules at issue like that in which the Netherlands Bar had adopted the regulation upon which the Court was called to rule in *Wouters and Others*, they do not provide any accompanying detail to enable the merits of this submission to be assessed.

42 Next, the compatibility of rules with the Community rules on competition cannot be assessed in the abstract (see, to this effect, Case C-250/92 *DLG* [1994] ECR I-5641, paragraph 31). 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 81(1) EC. For the purposes of application of that provision to a particular case, account must first of all be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects and, more specifically, of its objectives. It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives (*Wouters and Others*, paragraph 97) and are proportionate to them.

43 As regards the overall context in which the rules at issue were adopted, the Commission could rightly take the view that the general objective of the rules was, as none of the parties disputes, to combat doping in order for competitive sport to be conducted fairly and that it included the need to safeguard equal chances for athletes, athletes' health, the integrity and objectivity of competitive sport and ethical values in sport.

44 In addition, given that penalties are necessary to ensure enforcement of the doping ban, their effect on athletes' freedom of action must be considered to be, in principle, inherent itself in the anti-doping rules.

45 Therefore, even if the anti-doping rules at issue are to be regarded as a decision of an association of undertakings limiting the appellants' freedom of action, they do not, for all that, necessarily constitute a restriction of competition incompatible with the common market, within the meaning of Article 81 EC, since they are justified by a legitimate objective. Such a limitation is inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes.

46 While the appellants do not dispute the truth of this objective, they nevertheless contend that the anti-doping rules at issue are also intended to protect the IOC's own economic interests and that it is in order to safeguard this objective that excessive rules, such as those contested in the present case, are adopted. The latter cannot therefore, in their submission, be regarded as inherent in the proper conduct of competitive sport and fall outside the prohibitions in Article 81 EC.

47 It must be acknowledged that the penal nature of the anti-doping rules at issue and the magnitude of the penalties applicable if they are breached are capable of producing adverse effects on competition because they could, if penalties were ultimately to prove unjustified, result in an athlete's unwarranted exclusion from sporting events, and thus in impairment of the conditions under which the activity at issue is engaged in. It follows that, in order not to be covered by the prohibition laid down in Article 81(1) EC, the restrictions thus imposed by those rules must be limited to what is necessary to ensure the proper conduct of competitive sport (see, to this effect, *DLG*, paragraph 35).

48 Rules of that kind could indeed prove excessive by virtue of, first, the conditions laid down for establishing the dividing line between circumstances which amount to

doping in respect of which penalties may be imposed and those which do not, and second, the severity of those penalties.

49 Here, that dividing line is determined in the anti-doping rules at issue by the threshold of 2 ng/ml of urine above which the presence of Nandrolone in an athlete's body constitutes doping. The appellants contest that rule, asserting that the threshold adopted is set at an excessively low level which is not founded on any scientifically safe criterion.

50 However, the appellants fail to establish that the Commission made a manifest error of assessment in finding that rule to be justified.

51 It is common ground that Nandrolone is an anabolic substance the presence of which in athletes' bodies is liable to improve their performance and compromise the fairness of the sporting events in which they participate. The ban on that substance is accordingly in principle justified in light of the objective of anti-doping rules.

52 It is also common ground that that substance may be produced endogenously and that, in order to take account of this phenomenon, sporting bodies, including the IOC by means of the anti-doping rules at issue, have accepted that doping is considered to have occurred only where the substance is present in an amount exceeding a certain threshold. It is therefore only if, having regard to scientific knowledge as it stood when the anti-doping rules at issue were adopted or even when they were applied to punish the appellants, in 1999, the threshold is set at such a low level that it should be regarded as not taking sufficient account of this phenomenon that those rules should be regarded as not justified in light of the objective which they were intended to achieve.

53 It is apparent from the documents before the Court that at the material time the average endogenous production observed in all studies then published was 20 times lower than 2ng/ml of urine and that the maximum endogenous production value observed was nearly a third lower. While the appellants contend that, from 1993, the IOC could not have been unaware of the risk reported by an expert that merely consuming a limited quantity of boar meat could cause entirely innocent athletes to exceed the threshold in question, it is not in any event established that at the material time this risk had been confirmed by the majority of the scientific community. Moreover, the results of the studies and the experiments carried out on this point subsequent to the decision at issue have no bearing in any event on the legality of that decision.

54 In those circumstances, and as the appellants do not specify at what level the threshold in question should have been set at the material time, it does not appear that the restrictions which that threshold imposes on professional sportsmen go beyond what is necessary in order to ensure that sporting events take place and function properly.

55 Since the appellants have, moreover, not pleaded that the penalties which were applicable and were imposed in the present case are excessive, it has not been established that the anti-doping rules at issue are disproportionate.

56 Accordingly, the second plea must be dismissed.

The third plea

57 The appellants contend that the decision at issue is vitiated by an error of law in that it rejects, at point 71, their argument that the IOC rules infringe Article 49 EC.

58 However, the application made by the appellants to the Court of First Instance relates to the legality of a decision adopted by the Commission following a procedure which was conducted on the basis of a complaint lodged pursuant to Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962, p. 87). It follows that judicial review of that decision must necessarily be limited to the competition rules as resulting from Articles 81 EC and 82 EC, and consequently cannot extend to compliance with other provisions of the Treaty (see, to this effect, the order of 23 February 2006 in Case C-171/05 P *Piau*, not published in the ECR, paragraph 58).

59 Accordingly, whatever the ground on which the Commission rejected the argument relied upon by the appellants with regard to Article 49 EC, the plea which they now put forward is misplaced and must accordingly also be rejected.

60 In light of all the foregoing considerations, the action brought by the appellants challenging the decision at issue must therefore be dismissed.

Costs

61 The first paragraph of Article 122 of the Rules of Procedure provides that, where the appeal is unfounded or where the appeal is well founded and the Court of Justice itself gives final judgment in the case, it is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. The first subparagraph of Article 69(3) of the rules provides, however, that the Court may order that the costs be shared or that the parties bear their own costs where each party succeeds on some and fails on other heads, or where the circumstances are exceptional. The first subparagraph of Article 69(4) lays down that Member States which intervene in the proceedings are to bear their own costs.

62 Since the Commission has applied for costs to be awarded against the appellants and the latter have in essence been unsuccessful, they must be ordered to pay the costs relating both to the present proceedings and to the proceedings brought before the Court of First Instance. The Republic of Finland is to be ordered to bear its own costs.

On those grounds, the Court (Third Chamber) hereby:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 30 September 2004 in Case T-313/02 *Meca-Medina and Majcen* v *Commission*;

2. Dismisses the action under No T-313/02 brought before the Court of First Instance for annulment of the Commission's decision of 1 August 2002 rejecting the complaint lodged by Mr Meca-Medina and Mr Majcen;

3. Orders Mr Meca-Medina and Mr Majcen to pay the costs relating both to the present proceedings and to the proceedings brought before the Court of First Instance;

4. Orders the Republic of Finland to bear its own costs.

C-49/07, MOTOE (1 July 2008)

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Articles 82 EC and 86 EC.

2 The reference has been made in the course of proceedings between the Motosykletistiki Omospondia Ellados NPID (MOTOE) (Greek Motorcycling Federation; 'MOTOE') and the Elliniko Dimosio (Greek State) regarding financial compensation for the non-material harm which MOTOE claims to have suffered as a result of the implicit refusal by the Greek State to grant it authorisation to organise motorcycling competitions.

Legal context

3 Under Article 49 of the Greek Road Traffic Code, in the version resulting from Law No 2696/1999 (FEK A' 57):

'1. Competitions involving … motorcycles or mopeds on public or private roads or spaces are allowed to take place only after authorisation has been granted.

2. Authorisation under the previous paragraph shall be given:

…

(c) for all competitions involving … motorcycles or mopeds, by the Minister for Public Order or the authorities empowered by him, following the consent of the legal person which officially represents in Greece the … Fédération Internationale de Motocyclisme (International Motorcycling Federation) [("the FIM")]'.

The dispute in the main proceedings and the questions referred for a preliminary ruling

4 MOTOE is a non-profit-making association governed by private law whose object is the organisation of motorcycling competitions in Greece. Its members include various regional motorcycling clubs.

5 On 13 February 2000, that association submitted to the competent minister an application for authorisation to organise competitions within the framework of the MOTOE Panhellenic Cup in accordance with a programme appended to that application.

6 In accordance with Article 49(2) of the Greek Road Traffic Code, that programme was sent to Elliniki Leskhi Aftokinitou kai Periigiseon (Automobile and Touring Club of Greece; 'ELPA'), a legal person and a non-profit-making association which represents the FIM in Greece, for it to consent for the purposes of granting the authorisation applied for.

7 By letter of 16 March 2000 ELPA requested MOTOE, first, to communicate to it specific rules for each of the planned events two months before the date upon which it

would take place, so as to allow scrutiny of the list of participants, the route or track for the race, the safety measures adopted and, more generally, all the conditions for the safe running of the event. Second, it asked the clubs organising the events to lodge a copy of their statutes with Ethniki Epitropi Agonon Motosykletas (the National Motorcycle-Racing Committee; 'ETHEAM'), created by ELPA and entrusted with organising and supervising motorcycling events.

8 By application No 28/5.5.2000 sent to the competent ministry, MOTOE restated its request, in respect of six clubs, for authorisation to hold six races on dates from 9 July 2000 to 26 November 2000. It appended to that application the specific rules for the holding of those events as well as copies of those clubs' statutes. That application was also forwarded to ELPA with a view to its giving a declaration of consent for the holding of those events.

9 ELPA and ETHEAM sent MOTOE a document reminding it of certain rules relating to the organisation of motorcycling events in Greece. In particular, it is stated in that document that championships, cups and prizes organised in the framework of motorcycling events are announced by ETHEAM following authorisation from ELPA, which is the only legal representative of the FIM in Greece. If an entity or club which satisfies the necessary requirements for the organising and holding of events wishes a specific cup or prize to be announced, it must, according to that document, submit the announcement to ETHEAM. ETHEAM, after assessing the terms of that announcement, makes a decision in which it also defines the conditions for holding the event, in accordance with the international and national rules. For consent for organisation of an event to be granted, including within the framework of a cup or prize, each organiser who has taken on one of those events must satisfy the requirements laid down in the National Motorcycle Competition Code and ETHEAM's circulars. ELPA and ETHEAM also reminded MOTOE that if, in the course of the year, an organiser requests that additional events be announced, the dates of those events must not affect the dates already scheduled, and this must be in the interests of both the racers and the organisers. For that reason, the programme of events to be organised during 2001 had to be lodged with ELPA and ETHEAM no later than 15 September 2000.

10 In reply to MOTOE's request seeking information on the outcome of its applications for authorisation, the competent ministry indicated to MOTOE, in August 2000, that it had not received a document from ELPA with its consent under Article 49 of the Greek Road Traffic Code.

11 Pleading the unlawfulness of that implicit rejection, MOTOE brought an action before the Diikitiko Protodikio Athinon (Administrative Court of First Instance, Athens), seeking compensation of GRD 5 000 000 for the non-material damage that it claims to have suffered on account of its being unable to hold the events in question.

12 MOTOE claimed that Article 49 of the Greek Road Traffic Code is contrary, first, to the constitutional principle that administrative organs must be impartial and, second, to Articles 82 EC and 86(1) EC, on the ground that the national provision at issue enables ELPA, which itself organises motorcycling competitions, to impose a monopoly in that field and to abuse that position.

13 ELPA intervened before the Diikitiko Protodikio Athinon in support of the Greek State. ELPA annexed to its statement in intervention, amongst other documents, its statutes of association of 1924, and its yearbook for 2000 regarding motorcycling events which was published by ETHEAM. That yearbook includes ETHEAM's circulars for 2000, which relate, inter alia, to the supporting documents that competitors had to provide in order to be entitled to a licence, to the rules for events which had to be lodged, to the determination of fees and to other issues of a financial nature. The yearbook also contains the Ethnikos Athlitikos Kanonismos Motosikletas (National Sporting Rules for Motorcycling; 'the EAKM').

14 As regards EAKM, the following must be mentioned:

– Article 10.7 thereof states that every sports meeting which includes events in respect of ELPA and ETHEAM championships, cups or prizes may be combined with the commercial promotion of a sponsor referred to in the events' title or secondary title, but only after ELPA and ETHEAM have given their consent;

– Article 60.6 of the EAKM states that, during sports meetings, advertising on riders' clothes, helmets (on condition that the advertising does not affect helmets' technical characteristics) and motorcycles is permitted. In speed events and motocross within the framework of ELPA and ETHEAM championships, cups and prizes, the organisers may not require a racer, passenger or motorcycle to advertise any product, unless the competitor has given his consent. However, when a sponsorship agreement concluded by ETHEAM and ELPA is applicable, riders, passengers and motorcycles are obliged to observe the terms of that agreement;

– according to Article 110.1 of the EAKM, '[t]he organiser [of a motorcycling event], either directly or through the supervisory authority [namely ELPA and ETHEAM], must ensure that the sports meeting is covered by insurance which should include his own liability and that of manufacturers, riders, passengers … in the event of accidents and of loss or injury to third parties during the event and during practice.'

15 The Diikitiko Protodikio Athinon dismissed MOTOE's action on the ground, inter alia, first, that Article 49 of the Greek Road Traffic Code ensures that international rules for the safe running of motorcycling events are observed and, second, that MOTOE did not assert that that provision resulted in a dominant position within the common market, or that that provision might affect trade between Member States, or that ELPA abused such a position.

16 MOTOE lodged an appeal against that judgment with the Diikitiko Efetio Athinon, which states, first of all, that ELPA's activities are not limited to purely sporting matters, namely to the power conferred on ELPA in Article 49 of the Greek Road Traffic Code, given that it also engages in activities classified as 'economic' by the referring court, which consist in entering into sponsorship, advertising and insurance contracts. The Diikitiko Efetio Athinon, therefore, wonders whether ELPA can be classified as an undertaking for the purposes of Community competition law, in particular, for the purposes of Articles 82 EC and 86 EC, so that it would be subject to the prohibition on the abuse of a dominant position. The referring court interprets Article 49 of the Greek Road Traffic Code as meaning that ELPA is the only legal

person entitled to give consent to any application for authorisation to organise a motorcycling event. It draws attention to the fact that that association itself takes on, in parallel, the organising of events and the determination of prizes as well as the economic activities referred to above.

17 The Diikitiko Efetio Athinon next observes that the applicants, who have been refused authorisation to hold a motorcycling event since they have failed to obtain ELPA's consent, have no effective remedy under national law against such a decision. First, it is not provided that refusals by ELPA to give consent must contain a statement of reasons and, second, where a refusal of authorisation by the competent ministry is the subject of a legal action alleging failure to state reasons and that action is upheld, Greek law does not provide for authorisation to be granted to the applicant. Further, ELPA is not subject to control or to appraisal of any kind as regards the use that it makes of the power which is conferred on it by Article 49 of the Greek Road Traffic Code. Those circumstances present any person from another Member State of the European Union who wishes to organise motorcycling events in Greece with a *fait accompli*.

18 In these circumstances the Diikitiko Efetio Athinon decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Can Articles 82 EC and 86 EC be interpreted so as also to include within their scope the activity of a legal person which has the status of national representative of the [FIM] and engages in economic activity as described above by entering into sponsorship, advertising and insurance contracts, in the context of the organisation of motor sport events by it?

(2) Should the answer [to the first question] be in the affirmative, is Article 49 of [the Greek Road Traffic Code], which, in relation to issue by the competent national public authority (in the present case, the Ministry for Public Order) of permission to organise a motor-vehicle competition, gives the foregoing legal person the power to provide a concurring opinion as to the holding of the competition without that power being made subject to restrictions, obligations and review, compatible with those provisions of the Treaty?'

Examination of the questions referred for a preliminary ruling

19 By its questions, which should be considered together, the referring court essentially asks, first, whether a legal person, which is a non-profit-making association such as ELPA, falls within the scope of Articles 82 EC and 86 EC, given that its activities consist not only in taking part in administrative decisions authorising the organisation of motorcycling events, but also in organising such events itself and in entering, in that connection, into sponsorship, advertising and insurance contracts and, second, whether those Treaty provisions preclude a rule, such as that laid down in Article 49 of the Greek Road Traffic Code, in so far as it confers on such an association the power to give its consent to applications for authorisation to organise those events, without that power being made subject to restrictions, obligations or review.

20 In this respect, it must be borne in mind, first, that Community competition law refers to the activities of undertakings (Case 13/77 *GB-Inno-BM* [1977] ECR 2115, paragraph 31, and Case C-280/06 *ETI and Others* [2007] ECR I-0000, paragraph 38

and the case-law cited). More specifically, Article 82 EC applies to undertakings holding a dominant position.

21 Although the Treaty does not define the concept of an undertaking, the Court has consistently held that any entity engaged in an economic activity, irrespective of its legal form and the way in which it is financed, must be categorised as an undertaking (Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21, and Joined Cases C-264/01, C-306/01, C-354/01 and C-355/01 *AOK Bundesverband and Others* [2004] ECR I-2493, paragraph 46).

22 It should be borne in mind in this regard that any activity consisting in offering goods or services on a given market is an economic activity (see, in particular, Case C-35/96 *Commission* v *Italy* [1998] ECR I-3851, paragraph 36, and Joined Cases C-180/98 to C-184/98 *Pavlov and Others* [2000] ECR I-6451, paragraph 75). Provided that that condition is satisfied, the fact that an activity has a connection with sport does not hinder the application of the rules of the Treaty (Case 36/74 *Walrave and Koch* [1974] ECR 1405, paragraph 4, and Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 73) including those governing competition law (see, to that effect, Case C-519/04 P *Meca-Medina and Majcen* v *Commission* [2006] ECR I-6991, paragraphs 22 and 28).

23 As stated in the order for reference, and as also confirmed at the hearing before the Court, ELPA organises, in cooperation with ETHEAM, motorcycling events in Greece and, enters, in that connection, into sponsorship, advertising and insurance contracts designed to exploit those events commercially. Those activities constitute a source of income for ELPA.

24 According to the case-law of the Court of Justice, activities which fall within the exercise of public powers are not of an economic nature justifying the application of the Treaty rules of competition (see, to that effect, Case C-364/92 *SAT Fluggesellschaft* [1994] ECR I-43, paragraphs 30 and 31).

25 As regards the possible effect of the exercise of public powers on the classification of a legal person such as ELPA as an undertaking for the purposes of Community competition law, it must be noted, as the Advocate General did at point 49 of her Opinion, that the fact that, for the exercise of part of its activities, an entity is vested with public powers does not, in itself, prevent it from being classified as an undertaking for the purposes of Community competition law in respect of the remainder of its economic activities (Case C-82/01 P *Aéroports de Paris* v *Commission* [2002] ECR I-9297, paragraph 74). The classification as an activity falling within the exercise of public powers or as an economic activity must be carried out separately for each activity exercised by a given entity.

26 In the present case, it is necessary to distinguish the participation of a legal person such as ELPA in the decision-making process of the public authorities from the economic activities engaged in by that same legal person, such as the organisation and commercial exploitation of motorcycling events. It follows that the power of such a legal person to give its consent to applications for authorisation to organise those events

does not prevent its being considered an undertaking for the purposes of Community competition law so far as concerns its economic activities referred to above.

27 As regards the effect that the fact that ELPA does not seek to make a profit may have on that classification, it should be noted that, in Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, paragraphs 122 and 123), the Court stated that the fact that the offer of goods or services is made without profit motive does not prevent the entity which carries out those operations on the market from being considered an undertaking, since that offer exists in competition with that of other operators which do seek to make a profit.

28 That is the case of activities engaged in by a legal person such as ELPA. The fact that MOTOE, the applicant in the main proceedings, is itself a non-profit-making association has, from that point of view, no effect on the classification as an undertaking of a legal person such as ELPA. First, it is not inconceivable that, in Greece, there exist, in addition to the associations whose activities consist in organising and commercially exploiting motorcycling events without seeking to make a profit, associations which are engaged in that activity and do seek to make a profit and which are thus in competition with ELPA. Second, non-profit-making associations which offer goods or services on a given market may find themselves in competition with one another. The success or economic survival of such associations depends ultimately on their being able to impose, on the relevant market, their services to the detriment of those offered by the other operators.

29 Consequently, a legal person such as ELPA must be considered an undertaking for the purposes of Community competition law. However, in order for it to fall within the scope of Article 82 EC, it must also occupy a dominant position within the common market or in a substantial part of it.

30 In that regard, it must be observed that, in proceedings under Article 234 EC, which is based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court (Case C-450/06 *Varec* [2008] ECR I-0000, paragraph 23). However, in order to give the national court a useful answer, the Court may, in a spirit of cooperation with national courts, provide it with all the guidance that it deems necessary.

31 Before it is possible to assess whether a legal person such as ELPA has a dominant position within the meaning of Article 82 EC, it is necessary to define the relevant market, both from the point of view of the goods or services concerned and from the geographic point of view (Case 27/76 *United Brands and United Brands Continentaal* v *Commission* [1978] ECR 207, paragraph 10).

32 According to settled case-law, for the purposes of applying Article 82 EC, the relevant product or service market includes products or services which are substitutable or sufficiently interchangeable with the product or service in question, not only in terms of their objective characteristics, by virtue of which they are particularly suitable for satisfying the constant needs of consumers, but also in terms of the conditions of competition and the structure of supply and demand on the market in question (see, to that effect, Case 31/80 *L'Oréal* [1980] ECR 3775, paragraph 25; Case

322/81 *Nederlandsche Banden Industrie Michelin* v *Commission* [1983] ECR 3461, paragraph 37; and Case C-62/86 *AKZO* v *Commissio*n [1991] ECR I-3359, paragraph 51).

33 In that regard, it is clear from the order for reference that the activities in which ELPA is engaged consist, first, in the organisation of motorcycling events and, second, in their commercial exploitation by means of sponsorship, advertising and insurance contracts. Those two types of activities are not interchangeable but are rather functionally complementary.

34 The definition of the relevant geographical market calls, just like the definition of the product or service market, for an economic assessment. The geographical market can thus be defined as the territory in which all traders operate under the same conditions of competition in so far as concerns specifically the relevant products or services. From that point of view, it is not necessary for the objective conditions of competition between traders to be perfectly homogeneous. It is sufficient if they are similar or sufficiently homogeneous (see, to that effect, *United Brands and United Brands Continentaal* v *Commission*, cited above, paragraphs 44 and 53). Furthermore, the market may be confined to a single Member State (see, to that effect, *Nederlandsche Banden Industrie Michelin* v *Commission*, cited above, paragraph 28).

35 As stated in the order for reference, and as was also confirmed at the hearing before the Court, the activities in which ELPA engages are confined to the territory of Greece. However, the territory of a Member State may constitute a substantial part of the common market (see, to that effect, Case C-260/89 *ERT* [1991] ECR I-2925, paragraph 31). It is for the referring court, however, to determine whether the criterion relating to similar or sufficiently homogeneous conditions of competition is satisfied in the main proceedings.

36 It is with reference to the market thus defined that that court will have to assess whether ELPA has a dominant position.

37 It should be recalled in this respect that it is clear from the case-law that the concept of a 'dominant position' under Article 82 EC concerns a position of economic strength held by an undertaking, which enables it to prevent effective competition from being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers (*United Brands and United Brands Continentaal* v *Commission*, cited above, paragraph 65; Case 85/76 *Hoffmann-La Roche* v *Commission* [1979] ECR 461, paragraph 38; and *Nederlandsche Banden-Industrie-Michelin* v *Commission*, cited above, paragraph 30).

38 It should be added that an undertaking can be put in such a position when it is granted special or exclusive rights enabling it to determine whether and, as the case may be, in what conditions, other undertakings may have access to the relevant market and engage in their activities on that market.

39 It should further be observed that Article 82 EC cannot be infringed by a rule such as that laid down in Article 49 of the Greek Road Traffic Code unless trade between Member States is affected by it. As the Advocate General pointed out in points

63 and 64 of her Opinion, such an effect on trade between Member States can be assumed only if it is possible to foresee with a sufficient degree of probability, on the basis of a set of objective legal and factual elements, that the behaviour in question may have an influence, direct or indirect, actual or potential, on trade between Member States in such a way as might hinder the attainment of a single market between Member States (Case C-475/99 *Ambulanz Glöckner* [2001] ECR I-8089, paragraph 48). Purely hypothetical or speculative effects that the conduct of an undertaking in a dominant position may have do not satisfy that criterion. Similarly, the impact on intra-community trade must not be insignificant (Joined Cases C-215/96 and C-216/96 *Bagnasco and Others* [1999] ECR I-135, paragraph 60, and *Ambulanz Glöckner*, cited above, paragraph 48).

40 Accordingly, the effect on intra-Community trade is normally the result of a combination of several factors which, taken separately, are not necessarily decisive (Case C-250/92 *DLG* [1994] ECR I-5641, paragraph 54).

41 Furthermore, the assessment of whether the effect on trade between Member States is appreciable must take account of the conduct of the dominant undertaking in question, in so far as Article 82 EC precludes all conduct which is capable of affecting freedom of trade in a manner which might harm the attainment of the objectives of a single market between the Member States, in particular by sealing off domestic markets or by affecting the structure of competition within the single market (Case 22/78 *Hugin Kassaregister and Hugin Cash Registers* v *Commission* [1979] ECR 1869, paragraph 17).

42 The fact that the conduct of an undertaking in a dominant position relates only to the marketing of products in a single Member State is not sufficient to preclude the possibility that trade between Member States might be affected (see, to that effect, Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraph 45). Such conduct 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 (see, by analogy, Joined Cases C-295/04 to C-298/04 *Manfredi and Others* [2006] ECR I-6619, paragraphs 45 and 46).

43 So far as concerns, second, the scope of Article 86 EC, paragraph 1 thereof provides that, in the case of undertakings to which Member States grant special or exclusive rights, Member States are neither to enact nor maintain in force any measure contrary, in particular, to the rules contained in the Treaty with regard to competition. In this respect, it should be noted that a legal person such as ELPA, to which the power to give consent to applications for authorisation to organise motorcycling events has been granted, must be considered an undertaking which has been granted by the Member State concerned special rights within the meaning of Article 86(1) EC.

44 Article 86(2) EC allows Member States to confer, on undertakings to which they entrust the operation of services of general economic interest, exclusive rights which may hinder the application of the rules of the Treaty on competition in so far as restrictions on competition, or even the exclusion of all competition, by other economic operators are necessary to ensure the performance of the particular tasks assigned to the

undertakings holding the exclusive rights (Case C-320/91 *Corbeau* [1993] ECR I-2533, paragraph 14).

45 As regards the organisation and commercial exploitation of motorcycling events by a legal person such as ELPA, the Greek Government has not claimed that ELPA has been entrusted with the exercise of those activities through an act of public authority. It is not therefore necessary to examine further whether those activities may constitute a service of general economic interest (see, to that effect, Case 127/73 *BRT and Société belge des auteurs, compositeurs et éditeurs* [1974] ECR 313, paragraph 20, and Case 66/86 *Saeed Flugreisen and Silver Line Reisebüro* [1989] ECR 803, paragraph 55).

46 As regards the power to give consent to applications for authorisation to organise motorcycling events, that does indeed stem from an act of public authority, namely Article 49 of the Greek Road Traffic Code, but it cannot be classified as an economic activity, as the Advocate General observed at point 110 of her Opinion.

47 A legal person such as ELPA cannot therefore be considered an undertaking entrusted with a service of general economic interest within the meaning of Article 86(2) EC.

48 As regards, third, the question whether Articles 82 EC and 86(1) EC preclude a national rule, such as Article 49 of the Greek Road Traffic Code, which confers on a legal person like ELPA, which can itself take on the organisation of motorcycling events and their commercial exploitation, the power to give consent to applications for authorisation to organise those events, without that power being made subject to restrictions, obligations and review, it should be recalled that the mere creation or reinforcement of a dominant position through the grant of special or exclusive rights within the meaning of Article 86(1) EC is not in itself incompatible with Article 82 EC.

49 On the other hand, a Member State will be in breach of the prohibitions laid down by those two provisions if the undertaking in question, merely by exercising the special or exclusive rights conferred upon it, is led to abuse its dominant position or where such rights are liable to create a situation in which that undertaking is led to commit such abuses (*Höfner and Elser*, cited above, paragraph 29; *ERT*, cited above, paragraph 37; Case C-179/90 *Merci convenzionali porto di Genova* [1991] ECR I-5889, paragraphs 16 and 17; and Case C-323/93 *Centre d'insémination de la Crespelle* [1994] ECR I-5077, paragraph 18). In this respect, it is not necessary that any abuse should actually occur (see, to that effect, Case C-55/96 *Job Centre* [1997] ECR I-7119, paragraph 36).

50 In any event, Articles 82 EC and 86(1) EC are infringed where a measure imputable to a Member State, and in particular a measure by which a Member State confers special or exclusive rights within the meaning of Article 86(1) EC, gives rise to a risk of an abuse of a dominant position (see, to that effect, *ERT*, cited above, paragraph 37; *Merci convenzionali porto di Genova*, cited above, paragraph 17; and Case C-380/05 *Centro Europa 7* [2008] ECR I-0000, paragraph 60).

51 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. To entrust a legal person such as ELPA, which itself organises and commercially exploits motorcycling events, the task of giving the competent

administration its consent to applications for authorisation to organise such events, is tantamount *de facto* to conferring upon it the power to designate the persons authorised to organise those events and to set the conditions in which those events are organised, thereby placing that entity at an obvious advantage over its competitors (see, by analogy, Case C-202/88 *France* v *Commission* [1991] ECR I-1223, paragraph 51, and Case C-18/88 *GB Inno BM* [1991] ECR I-5941, paragraph 25). Such a right may therefore lead the undertaking which possesses it to deny other operators access to the relevant market. That situation of unequal conditions of competition is also highlighted by the fact, confirmed at the hearing before the Court, that, when ELPA organises or participates in the organisation of motorcycling events, it is not required to obtain any consent in order that the competent administration grant it the required authorisation.

52 Furthermore, such a rule, which gives a legal person such as ELPA the power to give consent to applications for authorisation to organise motorcycling events without that power being made subject by that rule to restrictions, obligations and review, could lead the legal person entrusted with giving that consent to distort competition by favouring events which it organises or those in whose organisation it participates.

53 In the light of the foregoing, the answer to the questions referred must be that a legal person whose activities consist not only in taking part in administrative decisions authorising the organisation of motorcycling events, but also in organising such events itself and in entering, in that connection, into sponsorship, advertising and insurance contracts, falls within the scope of Articles 82 EC and 86 EC. Those articles preclude a national rule which confers on a legal person, which organises motorcycling events and enters, in that connection, into sponsorship, advertising and insurance contracts, the power to give consent to applications for authorisation to organise such competitions, without that power being made subject to restrictions, obligations and review.

Costs

54 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

A legal person whose activities consist not only in taking part in administrative decisions authorising the organisation of motorcycling events, but also in organising such events itself and in entering, in that connection, into sponsorship, advertising and insurance contracts, falls within the scope of Articles 82 EC and 86 EC. Those articles preclude a national rule which confers on a legal person, which organises motorcycling competitions and enters, in that connection, into sponsorship, advertising and insurance contracts, the power to give consent to applications for authorisation to organise such competitions, without that power being made subject to restrictions, obligations and review.

C-333/21, European Superleague Company (21 December 2023)

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 101 and 102 TFEU, on the one hand, and Articles 45, 49, 56 and 63 TFEU, on the other.

2 The request has been made in proceedings between, on the one hand, European Superleague Company SL ('ESLC') and, on the other, the Fédération internationale de football association ('FIFA') and the Union of European Football Associations ('UEFA'), concerning an application seeking a declaration to the effect that FIFA and UEFA infringed Articles 101 and 102 TFEU, an order to cease the infringing conduct and the issuance of various injunctions in respect of those entities.

I. Legal context

A. The FIFA Statutes

3 FIFA is an association governed by private law having its headquarters in Switzerland. Article 2 of its Statutes, in the edition of September 2020 referred to in the order for reference ('the FIFA Statutes'), states that its objectives include, inter alia, 'to organise its own international competitions', 'to draw up regulations and provisions governing the game of football and related matters and to ensure their enforcement' and 'to control every type of association football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the laws of the game' at world level.

4 Articles 11 and 14 of the FIFA Statutes state that any 'association which is responsible for organising and supervising football' in a given country may become a member of FIFA, provided, inter alia, that it is already a member of one of the six continental confederations recognised by FIFA and referred to in Article 22 of those statutes, which includes UEFA, and that it undertakes beforehand to comply, inter alia, with the statutes, regulations, directives and decisions of FIFA and those of the relevant continental confederation of which that association is already a member. In practice, more than 200 national football associations are currently members of FIFA. In that capacity, under Articles 14 and 15 of the FIFA Statutes, they have the obligation, inter alia, to cause their own members or affiliates to comply with the statutes, regulations, directives and decisions of FIFA, and to ensure that they are observed by all stakeholders in football, in particular by the professional leagues, clubs and players.

5 Article 20 of those statutes, entitled 'Status of clubs, leagues and other groups of clubs', provides in paragraph 1:

'Clubs, leagues or any other groups affiliated to a member association shall be subordinate to and recognised by that member association. The member association's statutes shall define the scope of authority and the rights and duties of these groups. The statutes and regulations of these groups shall be approved by the member association.'

6 Article 22 of those statutes, entitled ‘Confederations’, provides, in paragraphs 1 and 3:

‘1. Member associations that belong to the same continent have formed the following confederations, which are recognised by FIFA:

…

(c) [Union of European Football Associations] – UEFA

…

Recognition of each confederation by FIFA entails full mutual respect of each other’s authority within their respective institutional areas of competence as set forth in these Statutes.

…

3. Each confederation shall have the following rights and obligations:

(a) to comply with and enforce compliance with the Statutes, regulations and decisions of FIFA;

(b) to work closely with FIFA in every domain so as to achieve the objectives stipulated in [Article] 2 and to organise international competitions;

(c) to organise its own interclub competitions, in compliance with the international match calendar;

(d) to organise all of its own international competitions in compliance with the international match calendar;

(e) to ensure that international leagues or any other such groups of clubs or leagues shall not be formed without its consent and the approval of FIFA;

…’

7 Article 24 of the FIFA Statutes provides that the bodies of FIFA include inter alia a ‘legislative body’, called ‘the Congress’, which constitutes the ‘supreme body’ thereof, a ‘strategic and oversight body’ called ‘the Council’, and an ‘executive, operational and administrative body’ called ‘the general secretariat’.

8 Article 67 of those statutes, entitled ‘Rights in competitions and events’, is worded as follows:

‘1. FIFA, its member associations and the confederations are the original owners of all of the rights emanating from competitions and other events coming under their respective jurisdiction, without any restrictions as to content, time, place and law. These rights include, among others, every kind of financial rights, audiovisual and radio recording, reproduction and broadcasting rights, multimedia rights, marketing and promotional rights and incorporeal rights such as emblems and rights arising under copyright law.

2. The Council shall decide how and to what extent these rights are utilised and draw up special regulations to this end. The Council shall decide alone whether these rights shall be utilised exclusively, or jointly with a third party, or entirely through a third party.'

9 Article 68 of those statutes, entitled 'Authorisation to distribute', provides, in paragraph 1:

'FIFA, its member associations and the confederations are exclusively responsible for authorising the distribution of image and sound and other data carriers of football matches and events coming under their respective jurisdiction, without any restrictions as to content, time, place and technical and legal aspects.'

10 Article 71 of the FIFA Statutes, entitled 'International matches and competitions', provides:

'1. The Council shall be responsible for issuing regulations for organising international matches and competitions between representative teams and between leagues, club and/or scratch teams. No such match or competition shall take place without the prior permission of FIFA, the confederations and/or the member associations in accordance with the Regulations Governing International Matches.

2. The Council may issue further provisions for such matches and competitions.

3. The Council shall determine any criteria for authorising line-ups that are not covered by the Regulations Governing International Matches.

4. Notwithstanding the authorisation competences as set forth in the Regulations Governing International Matches, FIFA may take the final decision on the authorisation of any international match or competition.'

11 Article 72 of those statutes, entitled 'Contacts', provides in paragraph 1:

'Players and teams affiliated to member associations or provisional members of the confederations may not play matches or make sporting contacts with players or teams that are not affiliated to member associations or provisional members of the confederations without the approval of FIFA.'

12 Article 73 of those statutes, entitled 'Authorisation', provides:

'Associations, leagues or clubs that are affiliated to a member association may only join another member association or take part in competitions on that member association's territory under exceptional circumstances. In each case, authorisation must be given by both member associations, the respective confederations and by FIFA.'

B. The FIFA Regulations Governing International Matches

13 Article 1 of the FIFA Regulations Governing International Matches, in the version thereof in force since 1 May 2014, provides that those regulations set forth the authorisations, notifications and other requirements for organising matches or competitions between teams belonging to different national football associations which are members of FIFA, for organising matches or competitions between teams belonging

to the same national association but playing in a third country, and for organising matches or competitions involving players or teams not affiliated to a national association.

14 Article 2 of those regulations provides that they apply to all international matches and international competitions, except for the matches played in competitions organised by FIFA or one of the continental confederations recognised by FIFA.

15 Article 6 of those regulations provides that all international matches must, as applicable, be authorised by FIFA, by the continental confederation concerned and/or by the national football associations which are members of FIFA to which the participating teams belong and on whose territory the matches are to be played.

16 Under Articles 7 and 10 of those same regulations, any 'tier 1 international match', defined as any match in which both of the teams participating are the 'A' representative teams of the national football associations which are members of FIFA, must be authorised by both FIFA and the continental confederation and national associations concerned. By contrast, under Articles 8 and 11 of the FIFA Regulations Governing International Matches, any 'tier 2 international match', defined as any match involving the 'A' representative team of a single national association, another representative team of such a national association, a team made up of players registered with more than one club belonging to the same national association, or the first team of a club that participates in the highest division of a national association, must be authorised only by the continental confederations and the national associations concerned.

C. The UEFA Statutes

17 UEFA is also an association governed by private law having its headquarters in Switzerland.

18 Article 2(1) of the UEFA Statutes states that the objectives of UEFA are to:

'(a) deal with all questions relating to European football;

(b) promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason;

(c) monitor and control the development of every type of football in Europe;

(d) organise and conduct international football competitions and tournaments at European level for every type of football …;

(e) prevent all methods or practices which might jeopardise the regularity of matches or competitions or give rise to the abuse of football;

(f) promote and protect ethical standards and good governance in European football;

(g) ensure that sporting values always prevail over commercial interests;

(h) redistribute revenue generated by football in accordance with the principle of solidarity and to support reinvestment in favour of all levels and areas of football, especially the grassroots of the game;

(i) promote unity among Member Associations in matters relating to European and world football;

(j) safeguard the overall interests of Member Associations;

(k) ensure that the needs of the different stakeholders in European football (leagues, clubs, players, supporters) are properly taken into account;

(l) act as a representative voice for the European football family as a whole;

(m) maintain good relations with and cooperate with FIFA and the other Confederations recognised by FIFA;

(n) ensure that its representatives within FIFA loyally represent the views of UEFA and act in the spirit of European solidarity;

(o) respect the interests of Member Associations, settle disputes between Member Associations and assist them in any matter upon request.'

19 Under Article 5 of those statutes, any association based in a European country which is recognised as an independent state by the majority of members of the United Nations (UN) and which is responsible for the organisation of football in that country may become a member of UEFA. Under Article 7bis of those statutes, membership entails the obligation, for the associations concerned, to comply with the statutes, regulations and decisions of UEFA and to ensure observance of them, in their country, by the professional leagues subject to them and by clubs and players. In practice, more than 50 national football associations are currently members of UEFA.

20 Under Articles 11 and 12 of those same statutes, the UEFA organs comprise, inter alia, a 'supreme organ' called 'the Congress' and an 'Executive Committee'.

21 Article 49 of the UEFA Statutes, entitled 'Competitions', provides:

'1. UEFA shall have the sole jurisdiction to organise or abolish international competitions in Europe in which Member Associations and/or their clubs participate. FIFA competitions shall not be affected by this provision.

…

3. International matches, competitions or tournaments which are not organised by UEFA but are played on UEFA's territory shall require the prior approval of FIFA and/or UEFA and/or the relevant Member Associations in accordance with the FIFA Regulations Governing International Matches and any additional implementing rules adopted by the UEFA Executive Committee.'

22 Article 51 of those same statutes, entitled 'Prohibited relations', provides:

‘1. No combinations or alliances between UEFA Member Associations or between leagues or clubs affiliated, directly or indirectly, to different UEFA Member Associations may be formed without the permission of UEFA.

2. A Member Association, or its affiliated leagues and clubs, may neither play nor organise matches outside its own territory without the permission of the relevant Member Associations.’

II. Facts in the main proceedings and the questions referred for a preliminary ruling

A. The Super League project

23 ESLC is a company governed by private law, established in Spain. It was established on the initiative of a group of professional football clubs, themselves established, as the case may be, in Spain (Club Atlético de Madrid, Fútbol Club Barcelona and Real Madrid Club de Fútbol), in Italy (Associazione Calcio Milan, Football Club Internazionale Milano and Juventus Football Club) and in the United Kingdom (Arsenal Football Club, Chelsea Football Club, Liverpool Football Club, Manchester City Football Club, Manchester United Football Club and Tottenham Hotspur Football Club). The order for reference states that its objective is to set up a new international professional football competition project known as the ‘Super League’. To that end, it established or planned to establish three other companies tasked with: (i) management of the Super League from a financial, sporting and disciplinary perspective once it is set up; (ii) exploitation of the media rights related to that competition; and (iii) exploitation of the other commercial assets related to that competition.

24 A22 Sports Management SL is also a company governed by private law, established in Spain. It describes itself as a company established to provide services related to the creation and the management of professional football competitions, more specifically the Super League project.

25 As regards the launching of that project, it is apparent from the order for reference, first of all, that the founding professional football clubs of ESLC intended to set up a new international football competition involving, on the one hand, 12 to 15 professional football clubs with the status of ‘permanent members’ and, on the other, an as-yet-undefined number of professional football clubs with the status of ‘qualified clubs’, selected according to a pre-determined process.

26 Next, that project was based on a shareholder and investment agreement providing for the conclusion of a set of contracts binding each of the professional football clubs participating or eligible to participate in the Super League and the three companies established or to be established by ESLC, having as their object, inter alia, to set out the detailed rules under which those clubs were to assign to ESLC their media or commercial rights to that competition and the remuneration for that assignment. Provision was further made for the conclusion of a set of contracts between those three companies, for the purpose of coordinating the supply of services necessary for the management of the Super League, exploitation of the rights assigned to ESLC and allocation of the funds to which ESLC has access to the participating clubs. The

provision of those funds was itself provided for in a letter containing an undertaking given by JP Morgan AG to grant ESLC financial support and an infrastructure subsidy in the form of a bridging loan of up to approximately EUR 4 billion, in order to enable the Super League to be set up and provisionally financed, pending the issuance of bonds on the capital markets.

27 Lastly, the shareholder and investment agreement in question made the establishment of the Super League and the provision of the funds necessary for that purpose subject to a suspensive condition consisting in obtaining either the recognition of that international competition by FIFA or UEFA and confirmation of its compliance with the rules adopted by them, or the obtaining of legal protection from the competent administrative or judicial authorities to enable the professional football clubs having the status of permanent members to participate in the Super League without that affecting their membership of or participation in the national football associations, professional leagues or international competitions in which they had been hitherto involved. To that effect, that agreement provided inter alia that FIFA and UEFA were to be informed of the Super League project.

B. The main proceedings and the questions referred

28 The main proceedings have arisen out of a commercial action, including a petition for protective measures without an *inter partes* hearing, brought by ESLC before the Juzgado de lo Mercantil de Madrid (Commercial Court, Madrid, Spain), against FIFA and UEFA.

29 According to the referring court, that action was brought following the launch of the Super League project by ESLC and FIFA's and UEFA's opposition to that project.

30 In that regard, the referring court states that, on 21 January 2021, FIFA and the six continental confederations recognised by it, including UEFA, issued a statement, setting out, first, their refusal to recognise the Super League and, second, affirming that any professional football club or any player taking part in that international competition would be expelled from competitions organised by FIFA and UEFA and, third, emphasising that all international football competitions were to be organised or authorised by the competent entities as referred to in the FIFA and the continental confederations' Statutes. That statement contained in particular the following passage:

'In light of recent media speculation about the creation of a closed European "Super League" by some European clubs, FIFA and the six confederations … once again would like to reiterate and strongly emphasise that such a competition would not be recognised by either FIFA or the respective confederation. Any club or player involved in such a competition would as a consequence not be allowed to participate in any competition organised by FIFA or their respective confederation.

As per the FIFA and confederations statutes, all competitions should be organised or recognised by the relevant body at their respective level, by FIFA at the global level and by the confederations at the continental level.'

31 On 18 April 2021, a further press release was issued by UEFA, the English, Spanish and Italian football associations and by certain professional leagues under their

remit, stating inter alia that 'the clubs concerned will be banned from playing in any other competition at domestic, European or world level, and their players could be denied the opportunity to represent their national teams'.

32 On 19 and 20 April 2021, the referring court successively held that ESLC's action was admissible and, without an *inter partes* hearing, ordered a series of protective measures, the purpose of which was, in essence, to prevent, for the duration of the legal proceedings, any conduct on the part of FIFA and UEFA and, through them, their member national football associations, liable to thwart or hamper the preparations for and the establishment of the Super League and the participation therein of professional football clubs and players, inter alia, through any disciplinary measures or sanctions and any threat to adopt such measures or sanctions aimed at clubs or players.

33 In support of its request for a preliminary ruling, that court observes, in essence, in the first place, that it follows from the case-law of the Court of Justice and the General Court that sporting activities are not excluded from the scope of the FEU Treaty provisions on freedom of movement (judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497) and on the competition rules (judgments of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, *and of* 26 January 2005, *Piau* v *Commission*, T-193/02, EU:T:2005:22).

34 In the second place, that court considers that, from a substantive and geographical standpoint, the two distinct but complementary economic activities that make up the relevant market in the present case are, on the one hand, the organisation and marketing of international interclub football competitions in the territory of the European Union and, on the other hand, the exploitation of the various rights related to those competitions, be they financial rights, audiovisual and radio recording, reproduction and broadcasting rights, other media rights, commercial rights or intellectual property rights.

35 In the third place, it takes the view that FIFA and UEFA have, for a long time, held an economic and commercial monopoly – and therefore a dominant position – on the market concerned, which allows them to conduct themselves independently of any potential competition, making them inevitable partners for any entity already operating or wishing to enter, in some capacity or other, into that market and conferring a particular responsibility on them to preserve competition.

36 In that regard, it observes, first of all, that the dominant position enjoyed by FIFA and UEFA affects not only undertakings that may wish to compete with them by organising other international football competitions but also, through their member national football associations, all of the other stakeholders in football, such as professional football clubs or players, a situation already noted by the General Court (judgment of 26 January 2005, *Piau* v *Commission*, T-193/02, EU:T:2005:22). Next, it observes that the dominant position of FIFA and UEFA on the market at issue in the main proceedings is based not only on an economic and commercial monopoly but also, ultimately and especially, on the regulatory, control and decision-making powers, and the power to impose sanctions, which enable FIFA and UEFA, in a mandatory and complete manner, to set the framework for the conditions in which all the other

stakeholders present on that market may pursue an economic activity there. Lastly, it states that the combination of all of those factors in practice gives rise to a barrier to entry that is almost impossible for potential competitors of FIFA and UEFA to overcome. In particular, they are confronted by the prior approval rules applicable to the organisation of international football competitions and the participation of professional football clubs and players therein, and by the rules governing the exclusive appropriation and exploitation of the various rights related to those competitions.

37 In the fourth place, the referring court is uncertain as to whether FIFA's and UEFA's conduct amounts to a two-fold abuse of a dominant position prohibited by Article 102 TFEU.

38 On that point, it states, on the one hand, that it follows from the case-law of the Court of Justice and the General Court (judgments of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 51 and 52, and of 16 December 2020, *International Skating Union* v *Commission*, T-93/18, EU:T:2020:610, paragraph 70), that the fact of entrusting, by regulatory or legislative means, a sporting organisation which pursues the economic activity of organising and marketing competitions while at the same time having the power to designate, *de jure* or de facto, the other undertakings authorised to set up those competitions, without that power being made subject to appropriate restrictions, obligations and review, confers on that sporting association an obvious advantage over its competitors by allowing it both to deny those competitors access to the market and to favour its own economic activity.

39 In view of that case-law, the referring court considers that it is possible to find in the present case that FIFA and UEFA are abusing their dominant position on the market at issue in the main proceedings. Indeed, the rules adopted by those two entities, in their capacity as associations and by virtue of the regulatory and control powers they have conferred on themselves as regards prior approval of international football competitions, enable them to prevent the entry of potentially competing undertakings on that market, especially since those powers are combined with decision-making powers and the power to impose sanctions, which allow them to force both their member national football associations and other stakeholders in football, in particular professional football clubs and players, to abide by their monopoly on that market. Nor do the FIFA or UEFA Statutes contain provisions guaranteeing that the implementation of those prior approval rules and, more broadly, the decision-making powers and the power to impose sanctions with which they are combined, is guided solely by objectives of general interest and not by commercial or financial interests linked to the economic activity pursued in parallel by those two entities. Lastly, those rules and powers are not placed within a framework of substantive criteria and detailed procedural rules which are suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, so as to limit the discretionary powers of FIFA and UEFA. The measures announced by those two entities in the present case, following the launch of the Super League project, illustrate that situation.

40 The referring court is also uncertain as to whether FIFA and UEFA are also infringing Articles 101 and 102 TFEU by appropriating, through their statutes, all of the legal and economic rights related to international football competitions which are

organised on European Union territory and by reserving for themselves the exclusive exploitation of those rights. The rules adopted by FIFA to that effect give it, UEFA and their member national football associations the status of 'original owners' of those rights, thereby depriving professional football clubs participating in such competitions of the proprietary rights thereto or obliging them to assign them to those two entities. Those rules are also combined with the rules on prior approval and, more broadly, the regulatory, control and decision-making powers, and the power to impose sanctions held by FIFA and UEFA, to close the market concerned to all potentially competing undertakings or, at the very least, to dissuade them from entering that market, by limiting their opportunity to exploit the various rights related to the competitions in question.

41 In the fifth place, that court observes that FIFA's and UEFA's conduct is also liable to infringe the prohibition on agreements laid down in Article 101 TFEU.

42 In that regard, it takes the view, first, that Articles 20, 22, 67, 68 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes and also the relevant articles of the FIFA Regulations Governing International Matches reflect the decision, taken by each of those two associations of undertakings and applicable, inter alia, on European Union territory, to coordinate, by making it subject to certain rules and certain common conditions, their conduct and that of the undertakings which are, directly or indirectly, members on the market for the organisation and marketing of interclub football competitions and also the exploitation of the various rights related thereto. Irrespective of the rules on prior approval, decision-making and sanctions laid down in those articles, they contain various provisions aimed at ensuring compliance therewith both by national football associations which are members of FIFA and UEFA and by professional football clubs which are members of those national associations or are affiliated therewith.

43 Second, the referring court considers that the examination of the content of the rules at issue, of the economic and legal context of which they form a part, of the objectives they pursue and, in the present case, the specific measures announced by FIFA and UEFA on 21 January and 18 April 2021, shows that those rules are capable of restricting competition on the market at issue in the main proceedings. Restating in that regard all of the factors referred to above in its analysis relating to Article 102 TFEU, it adds, more generally, that the competition issue before it ultimately arises from the fact that FIFA and UEFA are both undertakings which monopolise the market for the organisation and marketing of international interclub football competitions, inter alia on European Union territory, and also the exploitation of the various rights related to those competitions, and associations governed by private law entrusted, by virtue of their own statutes, with regulatory, control and decision-making powers, and the power to impose sanctions applicable to all other stakeholders in football, be they economic operators or sportspersons. Thus, in being both 'legislature and party', FIFA and UEFA are manifestly in a situation of conflict of interest that is liable to lead them to use their powers of prior approval and to impose sanctions in such a way as to prevent the setting up of international football competitions not within their system and, therefore, to impede all potential competition on that market.

44 In the sixth and last place, the referring court is uncertain as to whether the rules on prior approval and sanctions adopted by FIFA and UEFA, as well as the measures announced by them in the present case on 21 January and 18 April 2021, also infringe the right of free movement of workers enjoyed by the players who are or could be employed by the professional football clubs wishing to participate in international football competitions such as the Super League, the freedom to provide services and the freedom of establishment enjoyed by both those clubs and the undertakings offering other services related to the organisation and marketing of such competitions, and also the freedom of movement of the capital necessary to set them up.

45 In that regard, the referring court observes, in particular, that it is apparent from the settled case-law of the Court that rules of a public or private nature introducing a system of prior approval must not only be justified by an objective of general interest, but must also comply with the principle of proportionality, which entails inter alia that the exercise of the competent authority's discretion to grant such approval must be based on criteria which are transparent, objective and non-discriminatory (judgment of 22 January 2002, *Canal Satélite Digital*, C-390/99, EU:C:2002:34, paragraph 35 and the case-law cited).

46 In the present case, however, those various requirements are not fulfilled, as is apparent from the various factors referred to in the analysis carried out in relation to Articles 101 and 102 TFEU.

47 In those circumstances, the Juzgado de lo Mercantil de Madrid (Commercial Court, Madrid) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 102 TFEU be interpreted as meaning that that article prohibits the abuse of a dominant position consisting of the stipulation by FIFA and UEFA in their statutes (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any similar article contained in the statutes of the member associations and national leagues) that the prior approval of those entities, which have conferred on themselves the exclusive power to organise or give permission for international club competitions in Europe, is required in order for a third-part entity to set up a new pan-European club competition like the Super League, in particular where no regulated procedure, based on objective, transparent and non-discriminatory criteria, exists, and taking into account the possible conflict of interests affecting FIFA and UEFA?

(2) Must Article 101 TFEU be interpreted as meaning that that article prohibits FIFA and UEFA from requiring in their statutes (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any similar article contained in the statutes of the member associations and national leagues) the prior approval of those entities, which have conferred on themselves the exclusive power to organise or give permission for international competitions in Europe, in order for a third-party entity to create a new pan-European club competition like the Super League, in particular where no regulated procedure, based on objective, transparent and non-discriminatory criteria, exists, and taking into account the possible conflict of interests affecting FIFA and UEFA?

(3) Must Articles 101 and/or 102 [TFEU] be interpreted as meaning that those articles prohibit conduct by FIFA, UEFA, their member associations and/or national leagues which consists of the threat to adopt sanctions against clubs participating in the Super League and/or their players, owing to the deterrent effect that those sanctions may create? If sanctions are adopted involving exclusion from competitions or a ban on participating in national team matches, would those sanctions, if they were not based on objective, transparent and non-discriminatory criteria, constitute an infringement of Articles 101 and/or 102 [TFEU]?

(4) Must Articles 101 and/or 102 TFEU be interpreted as meaning that the provisions of Articles 67 and 68 of the FIFA Statutes are incompatible with those articles in so far as they identify UEFA and its national member associations as "original owners of all of the rights emanating from competitions … coming under their respective jurisdiction", thereby depriving participating clubs and any organiser of an alternative competition of the original ownership of those rights and arrogating to themselves sole responsibility for the marketing of those rights?

(5) If FIFA and UEFA, as entities which have conferred on themselves the exclusive power to organise and give permission for international club football competitions in Europe, were to prohibit or prevent the development of the Super League on the basis of the abovementioned provisions of their statutes, would Article 101 TFEU have to be interpreted as meaning that those restrictions on competition qualify for the exception laid down therein, regard being had to the fact that production is substantially limited, the appearance on the market of products other than those offered by FIFA/UEFA is impeded, and innovation is restricted, since other formats and types are precluded, thereby eliminating potential competition on the market and limiting consumer choice? Would that restriction be covered by an objective justification which would permit the view that there is no abuse of a dominant position for the purposes of Article 102 TFEU?

(6) Must Articles 45, 49, 56 and/or 63 TFEU be interpreted as meaning that, by requiring the prior approval of FIFA and UEFA for the establishment, by an economic operator of a Member State, of a pan-European club competition like the Super League, a provision of the kind contained in the [FIFA and UEFA Statutes] (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any other similar article contained in the statutes of member associations [and] national leagues) constitutes a restriction contrary to one or more of the fundamental freedoms recognised in those articles?'

III. Procedure before the Court

48 In its order for reference, the Juzgado de lo Mercantil de Madrid (Commercial Court, Madrid) requested that the Court determine the present case pursuant to the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice. In support of that request, it referred, first, to the important and sensitive nature, in economic and social terms, of the dispute in the main proceedings and of the questions referred to the Court, inasmuch as the dispute and those questions relate to the organisation of football competitions on European Union territory and the exploitation of various rights related to those competitions. Second, it stated that those

questions are referred in the context of legal proceedings at national level which have already given rise to protective measures being ordered and are of a certain urgency, given the harm alleged by the founding professional football clubs of ESLC and, more broadly, the practical and financial consequences for the football sector caused by the COVID-19 pandemic, inter alia on European Union territory.

49 By decision of 1 July 2021, the President of the Court rejected that request on the ground that the circumstances relied on in support thereof did not by themselves justify the present case being dealt with under the expedited procedure.

50 That procedure is a procedural instrument meant for an exceptional situation of urgency, the existence of which must be established in the light of exceptional circumstances specific to the case in connection with which an application for an expedited procedure is made (orders of the President of the Court of 20 December 2017, *M.A. and Others*, C-661/17, EU:C:2017:1024, paragraph 17, and of 25 February 2021, *Sea Watch*, C-14/21 and C-15/21, EU:C:2021:149, paragraph 22).

51 The important and sensitive nature, in economic and social terms, of a dispute and the questions referred to the Court in connection therewith in a given field of EU law, is not such as to establish the existence of an exceptional situation of urgency and, consequently, the need to have recourse to the expedited procedure (see, to that effect, orders of the President of the Court of 27 February 2019, *M.V. and Others*, C-760/18, EU:C:2019:170, paragraph 18, and of 25 February 2021, *Sea Watch*, C-14/21 and C-15/21, EU:C:2021:149, paragraph 24).

52 Moreover, the fact that a dispute is urgent and that the national court with jurisdiction is required to do everything possible to ensure that it is resolved swiftly is not in itself sufficient to justify that the Court should deal with the corresponding reference for a preliminary ruling pursuant to the expedited procedure, having regard to its purpose and the conditions for its implementation (see, to that effect, order of the President of the Court of 25 February 2021, *Sea Watch*, C-14/21 and C-15/21, EU:C:2021:149, paragraphs 26 to 29). It is primarily up to the national court before which the dispute has been brought, which is best placed to assess the specific issues for the parties and considers it necessary to refer questions to the Court, to adopt, pending the decision of the latter, all adequate interim measures to guarantee the full effectiveness of the decision that it itself is called upon to make (see, to that effect, order of the President of the Court of 25 February 2021, *Sea Watch*, C-14/21 and C-15/21, EU:C:2021:149, paragraph 33), as the referring court has done in the present case.

IV. Admissibility

53 The defendants in the main proceedings, one of the two interveners in the main proceedings who support them, Ireland and the French and Slovak Governments question the admissibility of the request for a preliminary ruling in its entirety.

54 The arguments they put forward in that regard are, in essence, of three types. They include, first, arguments of a procedural nature alleging that the decision to make a request for a preliminary ruling was taken following the adoption of protective measures without an *inter partes* hearing, and thus without the parties to the dispute in the main proceedings having been heard beforehand, as required by the applicable

provisions of domestic law and, moreover, without the referring court having ruled on the request put forward by the defendants in the main proceedings seeking to have that court decline jurisdiction in favour of the Swiss courts. Second, arguments of a purely formal nature are put forward, alleging that the content of that decision fails to comply with the requirements laid down in Article 94(a) of the Rules of Procedure inasmuch as it does not present in a sufficiently accurate and detailed manner the legal and factual context in which the referring court is making a reference to the Court. That situation is particularly problematic in a complex case relating essentially to the interpretation and application of the EU competition rules. It also tends to prevent the parties concerned from effectively putting forward their viewpoints on the issues to be decided. Third, substantive arguments are put forward relating to the hypothetical nature of the request for a preliminary ruling, inasmuch as there is no actual dispute the resolution of which necessitates any interpretative decision whatsoever from the Court. That is, in particular, because no proper application for approval of the Super League project has been submitted to FIFA and UEFA, and because that project was still vague and at an early stage both on the date when it was announced and on the date when the action giving rise to dispute in the main proceedings was instituted.

55 The French, Hungarian and Romanian Governments have questioned the admissibility of the third to sixth questions put by the referring court, on grounds which are, in essence, analogous to those put forward to call into question the admissibility of the request for a preliminary ruling in its entirety, namely that they are insufficiently substantiated or hypothetical. The principal factors put forward to that end relate to the lack of actual or sufficiently defined factual or legal connection, in the order for reference, between, on the one hand, the dispute in the main proceedings, and, on the other, the FIFA rules on the appropriation and exploitation of the various rights related to international football competitions (fourth question) and the provisions of the FEU Treaty on freedoms of movement (sixth question).

A. The procedural conditions for issuing an order for reference

56 In the context of a preliminary ruling procedure, it is not for the Court of Justice, in view of the distribution of functions between itself and the national courts, to determine whether the order for reference was made in accordance with the rules of national law governing the organisation of the courts and their procedure. The Court is, moreover, bound by that order for reference in so far as it has not been rescinded on the basis of a means of redress provided for by national law (judgments of 14 January 1982, *Reina*, 65/81, EU:C:1982:6, paragraph 7, and of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 70).

57 In the present case, it is not for the Court either to determine which procedural rules, under national law, govern the making of orders such as the order for reference where, as in the present case, protective measures were ordered beforehand without an *inter partes* hearing, or to ascertain whether that order was made in accordance with those rules.

58 Moreover, given the arguments relied on by certain of the defendants in the main proceedings, it should be noted that a national court is free to make a reference for a preliminary ruling to the Court of Justice both in proceedings of an urgent nature, such

as proceedings seeking the grant of protective measures, or other interim measures (see, to that effect, judgments of 24 May 1977, *Hoffmann-La Roche*, 107/76, EU:C:1977:89, paragraphs 1 and 4, and of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraph 20), and in proceedings which are not adversarial in nature (see, to that effect, judgments of 14 December 1971, *Politi*, 43/71, EU:C:1971:122, paragraphs 4 and 5, and of 2 September 2021, *Finanzamt für Steuerstrafsachen und Steuerfahndung Münster*, C-66/20, EU:C:2021:670, paragraph 37), provided that all of the conditions laid down in Article 267 TFEU are met and the reference complies with the applicable requirements as to its form and content (see, to that effect, judgment of 18 June 1998, *Corsica Ferries France*, C-266/96, EU:C:1998:306, paragraphs 23 and 24).

B. The content of the order for reference

59 The preliminary reference procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them. According to settled case-law, which is now reflected in Article 94(a) and (b) of the Rules of Procedure, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for the national court to define the factual and regulatory context of the questions it is asking or, at the very least, to explain the factual hypotheses on which those questions are based. Furthermore, it is essential, as stated in Article 94(c) of the Rules of Procedure, that the request for a preliminary ruling itself contain a statement of the reasons which prompted the referring court or tribunal to enquire about the interpretation or validity of certain provisions of EU law, and the connection between those provisions and the national legislation applicable to the dispute in the main proceedings. Those requirements are of particular importance in those fields which are characterised by complex factual and legal situations, such as competition (see, to that effect, judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 83, and of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraphs 23 and 24).

60 Moreover, the information provided in the order for reference must not only be such as to enable the Court to reply usefully but must also give the governments of the Member States and other interested parties an opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union (see, to that effect, judgments of 1 April 1982, *Holdijk and Others*, 141/81 to 143/81, EU:C:1982:122, paragraph 7, and of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraph 31).

61 In the present case, the request for a preliminary ruling complies with the requirements set out in the two preceding paragraphs of the present judgment. The order for reference sets out in detail the factual and regulatory context surrounding the questions referred to the Court. Next, it sets out in detail the factual and legal reasons that led the referring court to consider it necessary to refer those questions and the connection, in its view, between Articles 45, 49, 56, 63, 101 and 102 TFEU and the dispute in the main proceedings, in the light of the case-law of the Court of Justice and

the General Court. Lastly, the referring court states therein, in a clear and precise manner, the factors on which it based itself to draw certain factual and legal conclusions of its own.

62 In particular, the referring court's findings relating to, first, the market at issue in the main proceedings, defined as the market for the organisation and marketing of interclub football competitions on European Union territory, and also the exploitation of the various rights related to those competitions, and second, the dominant position held therein by FIFA and UEFA, afford an understanding of the actual relationship, in the context thus defined, between the dispute in the main proceedings and the fourth question put to the Court, by which the referring court enquires as to the interpretation of Article 102 TFEU for the purpose of a potential application of that article to the FIFA rules on the appropriation and exploitation of the rights at issue.

63 Moreover, the gist of the written observations submitted to the Court highlights the fact that the parties submitting them had no difficulty in grasping the factual and legal context surrounding the questions put by the referring court, in understanding the meaning and scope of the underlying factual statements, in comprehending the reasons why the referring court considered it necessary to refer them and also, ultimately, in effectively setting out a complete and proper position on them.

C. The facts of the dispute and the relevance of the questions referred to the Court

64 It is solely for the national court before which the dispute in the main proceedings has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. It follows that questions referred by national courts enjoy a presumption of relevance and that the Court may refuse to rule on those questions only where it is quite obvious that the interpretation sought bears no relation to the actual facts of the dispute in the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to those questions. (see, to that effect, judgments of 16 December 1981, *Foglia*, 244/80, EU:C:1981:302, paragraphs 15 and 18, and of 7 February 2023, *Confédération paysanne and Others (*In vitro *random mutagenesis)*, C-688/21, EU:C:2023:75, paragraphs 32 and 33).

65 In the present case, the Court finds, by way of corollary to the findings set out in paragraph 61 of the present judgment, that the referring court's statements summarised in paragraphs 28 to 32 above affirm the actual state of the dispute in the main proceedings. Moreover, those same statements, as well as those referred to in paragraphs 33 to 46 above, show that it cannot be said that the referring court's reference to the Court on the interpretation of Articles 45 and 101 TFEU manifestly bears no relation to the actual facts of the dispute in the main proceedings or its purpose.

66 In particular, although it is true that there is some disagreement between the parties to the main proceedings as to whether that court may simultaneously apply FEU Treaty provisions on EU competition rules and articles on freedoms of movement, given the terms in which the applicant in the main proceedings has drafted its heads of

claim, the fact remains that, as observed by the Spanish Government at the hearing, at the current stage that court appears to have taken the view that it has jurisdiction to do so, and the Court does not have jurisdiction to review the merits of that position.

67 It follows that the request for a preliminary ruling is admissible in its entirety.

V. Consideration of the questions referred

68 By its first five questions, the referring court asks the Court to interpret Articles 101 and 102 TFEU, under which anticompetitive agreements and abuse of a dominant position are prohibited, with a view to ruling on the compatibility of a set of rules adopted by FIFA and UEFA with those two articles.

69 By its sixth question, that court asks the Court about the interpretation of Articles 45, 49, 56 and 63 TFEU, relating to freedoms of movement guaranteed under EU law, for the purpose of ruling in parallel on the compatibility of those same rules with those four articles.

70 The dispute in which those questions are referred to the Court has arisen from an action brought by an undertaking complaining, in essence, that the rules adopted by FIFA and UEFA, in view of their nature, content and purpose, the specific context of which they form a part and the implementation which may be made thereof, prevent, restrict or distort competition on the market for the organisation and marketing of interclub football competitions on European Union territory, and also the exploitation of the various rights related to those competitions. More specifically, that undertaking submits that, following the launch of the new international football competition project it intends to set up, FIFA and UEFA infringed Articles 101 and 102 TFEU by stating that they intended to implement those rules and by setting out the specific consequences that that implementation could have for the competition concerned as well as the participating clubs and players.

71 In view of both the gist of the questions referred to the Court and the nature of the dispute in which they have arisen, it is appropriate to set out three sets of preliminary observations before examining those questions.

A. Preliminary observations

1. The subject matter of the case in the main proceedings

72 The questions submitted by the referring court concern solely a set of rules by which FIFA and UEFA intend to govern the prior approval of certain international football competitions and the participation therein of professional football clubs and players, and also the exploitation of the various rights related to those competitions.

73 In that regard, first of all, it is apparent from the wording of those questions that the rules in question are found in Articles 22, 67, 68 and 71 to 73 of the FIFA Statutes and in Articles 49 to 51 of the UEFA Statutes. However, as is apparent from the statements of the referring court, those rules are at issue in the dispute in the main proceedings only in so far as they are applicable to international competitions ‘between’ or ‘in which [clubs] participate’, as per the terminology used in Article 71(1) of the FIFA Statutes and Article 49(1) of the UEFA Statutes. Also categorised as ‘interclub

competitions' in Article 22(3)(c) of the FIFA Statutes, those competitions are part of the broader category of the 'tier 2' international football competitions referred to in Articles 8 and 11 of the FIFA Regulations Governing International Matches and come within the purview of the prior approval mechanism referred to in those articles.

74 Consequently, the rules adopted by FIFA and by UEFA in respect of, first, the prior approval of other international football competitions, such as those solely between representative teams of national football associations which are members of FIFA and UEFA, second, the participation of teams or players in those competitions and, third, the exploitation of the various rights related thereto, are not at issue in the dispute in the main proceedings and therefore in the present case.

75 Nor, a fortiori, does the present case involve either the rules which may have been adopted by FIFA and UEFA in respect of other activities, or the provisions of the FIFA and UEFA Statutes on the functioning, organisation, objectives or even the very existence of those two associations, it being observed, in that regard, that the Court has held previously that, whilst enjoying legal autonomy allowing them to adopt rules on, inter alia, the organisation of competitions in their discipline, their proper functioning and the participation of sportspersons therein (see, to that effect, judgments of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 67 and 68, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 60), such associations may not, in so doing, limit the exercise of the rights and freedoms conferred by EU law on individuals (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 81 and 83, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 52).

76 That being so, the finding set out in the preceding paragraph in no way precludes provisions such as those relating to the organisation or functioning of FIFA and UEFA from being taken into consideration by the referring court as part of the examination it will be called upon to carry out in order to rule on the dispute in the main proceedings, in so far as that is justified for applying the articles of the FEU Treaty in respect of which that court is referring questions to the Court, in the light of the interpretation set out in the present judgment.

77 Next, it must be observed that, although the dispute in the main proceedings has arisen from an action brought by a company that announced the launch of a new international football competition project called 'Super League', and even though the third question put by the referring court concerns specifically the actual conduct by which FIFA and UEFA reacted to that launch, the other five questions from that court concern the FIFA and UEFA rules on which that conduct was based (namely those on the prior approval of competitions of that nature and participation therein by professional football clubs or players) and other rules related, in that court's view, to the market concerned as defined by it (namely those on the appropriation and the exploitation of the various rights related to those competitions).

78 Those questions, viewed as a whole, are thus aimed at enabling the referring court to determine whether those various rules, inasmuch as they are liable to be implemented in respect of any new interclub football competition organised or envisaged on European Union territory, such as the one the launch of which gave rise to the dispute

in the main proceedings, in view of their nature, content, objectives and the specific context of which they form a part, amount to an infringement of Articles 45, 49, 56, 63, 101 and 102 TFEU.

79 In those circumstances, in its answers to all of the questions referred to it, the Court will take account of all the relevant features of the FIFA and UEFA rules which are at issue in the dispute in the main proceedings, such as those cited in the order for reference and referred to by all the parties to the main proceedings.

80 Lastly, however, it is clear that the referring court is not asking the Court about the interpretation of Articles 45, 49, 56, 63, 101 and 102 TFEU with a view to ruling, one way or another, on the compatibility of the Super League project itself with those various articles of the FEU Treaty.

81 Nor are the features of that project of any particular relevance in the context of the answers to be given to the first, second and fourth to sixth questions submitted by the referring court, given their object. Moreover, since those features are the subject of some robust debate by the parties to the main proceedings, the Court will limit itself, in that regard, to elucidating, where necessary, how they might be relevant, subject to verifications of fact which it will be for the referring court to carry out.

2. The applicability of EU law to sport and the activities of sporting associations

82 The questions referred to the Court relate to the interpretation of Articles 45, 49, 56, 63, 101 and 102 TFEU in the context of a dispute involving rules which were adopted by two entities having, according to their respective statutes, the status of associations governed by private law responsible for the organisation and control of football at world and European levels, and relating to the prior approval of international interclub football competitions and the exploitation of the various rights related to those competitions.

83 It must be borne in mind in that regard that, in so far as it constitutes an economic activity, the practice of sport is subject to the provisions of EU law applicable to such activity (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraph 4, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 27).

84 Only certain specific rules which were adopted solely on non-economic grounds and which relate to questions of interest solely to sport per se must be regarded as being extraneous to any economic activity. That is the case, in particular, of those on the exclusion of foreign players from the composition of teams participating in competitions between teams representing their country or the determination of ranking criteria used to select the athletes participating individually in competitions (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraph 8; of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 76 and 127; and of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 43, 44, 63, 64 and 69).

85 Apart from those specific rules, the rules adopted by sporting associations in order to govern paid work or the performance of services by professional or semi-

professional players and, more broadly, those rules which, whilst not formally governing that work or that performance of services, have an indirect impact thereon, may come within the scope of Articles 45 and 56 TFEU (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraphs 5, 17 to 19 and 25; of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 75, 82 to 84 and 87; of 12 April 2005, *Simutenkov*, C-265/03, EU:C:2005:213, paragraph 32; and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 28 and 30).

86 Similarly, the rules adopted by such associations may come within the scope of Article 49 TFEU (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraph 28), and even Article 63 TFEU.

87 Lastly, those rules and, more broadly, the conduct of associations which have adopted them come within the scope of the FEU Treaty provisions on competition law where the conditions of application of those provisions are met (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 30 to 33), which means that those associations may be categorised as 'undertakings' within the meaning of Articles 101 and 102 TFEU or that the rules at issue may be categorised as 'decisions by associations of undertakings' within the meaning of Article 101 TFEU.

88 Thus, more generally, since such rules come within the scope of the aforementioned provisions of the FEU Treaty, where they set out edicts applicable to individuals, they must be drafted and implemented in compliance with the general principles of EU law, in particular the principles of non-discrimination and proportionality (see, to that effect, judgment of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraphs 60, 65 and 66 and the case-law cited).

89 The rules at issue in the main proceedings, however, irrespective of whether they originate from FIFA or UEFA, do not form part of those rules to which the exception referred to in paragraph 84 of the present judgment might be applied, which exception the Court has stated repeatedly must be limited to its proper objective and may not be relied upon to exclude the whole of a sporting activity from the scope of the FEU Treaty provisions on EU economic law (see, to that effect, judgments of 14 July 1976, *Donà*, 13/76, EU:C:1976:115, paragraphs 14 and 15, and of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraph 26).

90 On the contrary, first, as the Court has already observed, the rules on a sporting association's exercise of powers governing prior approval for sporting competitions, the organisation and marketing of which constitute an economic activity for the undertakings involved or planning to be involved therein, come, in that capacity, within the scope of the FEU Treaty provisions on competition law (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 28). For the same reason, they also come within the scope of the FEU Treaty provisions on freedom of movement.

91 Second, the rules adopted by FIFA and UEFA to establish a framework for participation by professional football clubs and players in international interclub

football competitions also come within the scope of those provisions. Although they do not formally govern the players' conditions of work or of performance of services or the conditions of performance of services or, more broadly, of the exercise of their economic activity by professional football clubs, those rules must be regarded as having a direct impact, as the case may be, on that work, that performance of services or the exercise of that economic activity, since they necessarily affect whether the players and clubs may participate in the competitions in question.

92 Third, the rules adopted by FIFA to govern the exploitation of the various rights related to international football competitions have the very object of providing a framework for the conditions in which the undertakings which are the proprietors of those rights may exploit them or delegate the exploitation thereof to third-party undertakings; such activities are economic in nature. They also have an indirect impact on the conditions in which those third-party undertakings or other undertakings may hope to exploit, be assigned or have transferred those rights in any form whatsoever, in order to become involved in intermediation activities (such as resale of the rights in question to television broadcasters and other media service providers) or final activities (such as distribution or broadcast of certain matches on television or via the internet), which are also economic in nature.

93 Those different economic activities, consisting in the organisation of sporting competitions, the marketing of the sports event, the distribution thereof and the placement of advertising are, moreover, complementary and even closely related, as observed previously by the Court (see, to that effect, judgments of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 56 and 57, and of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 33).

94 Hence, all of the FIFA and UEFA rules about which the referring court is submitting questions to the Court come within the scope of Articles 45, 49, 56, 63, 101 and 102 TFEU.

3. Article 165 TFEU

95 All of the parties to the main proceedings and a large number of the governments that participated in the procedure before the Court have expressed differing views on the inferences liable to be attached to Article 165 TFEU in the answers to be given to the different questions put by the referring court.

96 In that regard, it should be noted, first, that Article 165 TFEU must be construed in the light of Article 6(e) TFEU, which provides that the Union has competence to carry out actions to support, coordinate or supplement the actions of the Member States in the areas of education, vocational training, youth and sport. Article 165 TFEU gives specific expression to that provision by specifying both the objectives assigned to Union action in the areas concerned and the means which may be used to contribute to the attainment of those objectives.

97 Thus, as regards the objectives assigned to Union action in the area of sport, the second subparagraph of Article 165(1) TFEU states that the Union is to contribute to the promotion of European sporting issues, while taking account of the specific characteristics of sport, its structures based on voluntary activity and its social and

educational function and, in the last indent of paragraph 2, that Union action in that area is to be aimed at developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportspersons, especially the youngest sportspersons.

98 As regards the means which may be employed to contribute to the attainment of those objectives, Article 165(3) TFEU provides that the Union is to foster cooperation with third countries and the competent international organisations in the field of sport and, in paragraph 4, that the European Parliament and the Council of the European Union, acting in accordance with the ordinary legislative procedure, or the Council, acting alone on a proposal from the Commission, may adopt incentive measures or recommendations.

99 Second, as follows from both the wording of Article 165 TFEU and that of Article 6(e) TFEU, by those provisions, the drafters of the Treaties intended to confer a supporting competence on the Union, allowing it to pursue not a 'policy', as provided for by other provisions of the FEU Treaty, but an 'action' in a number of specific areas, including sport. Thus, those provisions constitute a legal basis authorising the Union to exercise that supporting competence, on the conditions and within the limits fixed thereby, being inter alia, as provided for in the first indent of Article 165(4) TFEU, the exclusion of any harmonisation of the legislative and regulatory provisions adopted at national level. That supporting competence also allows the Union to adopt legal acts solely with the aim of supporting, coordinating or completing Member State action, in accordance with Article 6 TFEU.

100 By way of corollary, and as is also apparent from the context of which Article 165 TFEU forms a part, in particular from its insertion in Part Three of the FEU Treaty, devoted to 'Union policies and internal actions', and not in Part One of that treaty, which contains provisions of principle, including, under Title II, 'provisions having general application', relating, inter alia, to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against any discrimination, environmental protection and consumer protection, that article is not a cross-cutting provision having general application.

101 It follows that, although the competent Union institutions must take account of the different elements and objectives listed in Article 165 TFEU when they adopt, on the basis of that article and in accordance with the conditions fixed therein, incentive measures or recommendations in the area of sport, those different elements and objectives, as well as those incentive measures and recommendations need not be integrated or taken into account in a binding manner in the application of the rules on the interpretation of which the referring court is seeking guidance from the Court, irrespective of whether they concern the freedom of movement of persons, services and capital (Articles 45, 49, 56 and 63 TFEU) or the competition rules (Articles 101 and 102 TFEU). More broadly, nor must Article 165 TFEU be regarded as being a special rule exempting sport from all or some of the other provisions of primary EU law liable to be applied to it or requiring special treatment for sport in the context of that application.

102 Third, the fact remains that, as observed by the Court on a number of occasions, sporting activity carries considerable social and educational importance, henceforth reflected in Article 165 TFEU, for the Union and for its citizens (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 106, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraphs 33 and 34).

103 Sporting activity also undeniably has specific characteristics which, whilst relating especially to amateur sport, may also be found in the pursuit of sport as an economic activity (see, to that effect, judgment of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraph 33).

104 Lastly, such specific characteristics may potentially be taken into account along with other elements and provided they are relevant in the application of Articles 45 and 101 TFEU, although they may be so only in the context of and in compliance with the conditions and criteria of application provided for in each of those articles. The same assessment holds true in respect of Articles 49, 56, 63 and 102 TFEU.

105 In particular, when it is argued that a rule adopted by a sporting association constitutes an impediment to the free movement of workers or an anticompetitive agreement, the characterisation of that rule as an obstacle or anticompetitive agreement must, at any rate, be based on a specific assessment of the content of that rule in the actual context in which it is to be implemented (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 98 to 103; of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 61 to 64; and of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraphs 48 to 50). Such an assessment may involve taking into account, for example, the nature, organisation or functioning of the sport concerned and, more specifically, how professionalised it is, the manner in which it is practised, the manner of interaction between the various participating stakeholders and the role played by the structures and bodies responsible for it at all levels, with which the Union is to foster cooperation, in accordance with Article 165(3) TFEU.

106 Moreover, once the existence of an obstacle to the free movement of workers is established, the association which adopted the rule in question may yet demonstrate that it is justified, necessary and proportionate in view of certain objectives which may be regarded as legitimate (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 104), which themselves are contingent on the specific characteristics of the sport concerned.

107 It is in the light of all of the foregoing considerations that an examination must be made of the referring court's questions relating to the competition rules, followed by an examination of the rules on freedom of movement.

B. Consideration of the first to fifth questions: the competition rules

108 The first two questions relate, in essence, to the manner in which the rules such as those of FIFA and UEFA on the prior approval of international interclub football competitions, and on the participation of professional football clubs and sportspersons

in those competitions, must be construed in the light of Article 102 TFEU, on the one hand, and Article 101(1) TFEU, on the other.

109 The third question relates to the manner in which the announced implementation of those rules, in the form of the statement and press release referred to in paragraphs 30 and 31 of the present judgment, must be construed in the light of those same articles.

110 The fourth question, for its part, concerns how rules such as those adopted by FIFA concerning the rights of exploitation relating to those competitions are to be construed in the light of those articles.

111 The fifth question, put in the event that the rules referred to in the three preceding paragraphs of the present judgment must be regarded as constituting an abuse of a dominant position under Article 102 TFEU or an anticompetitive agreement prohibited by Article 101(1) TFEU, is aimed at enabling the referring court to ascertain whether those rules may nevertheless be allowed in the light of the Court's case-law on Article 102 TFEU or as permitted under Article 101(3) TFEU.

112 In view of the scope of those different questions, it should, as a preliminary point, be borne in mind, in the first place, that Articles 101 and 102 TFEU are applicable to any entity engaged in an economic activity that must, as such, be categorised as an undertaking, irrespective of its legal form and the way in which it is financed (see, to that effect, judgments of 23 April 1991, *Höfner and Elser*, C-41/90, EU:C:1991:161, paragraph 21; of 11 December 2007, *ETI and Others*, C-280/06, EU:C:2007:775, paragraph 38; and of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 20 and 21).

113 Consequently, those articles are applicable, inter alia, to entities which are established in the form of associations which, according to their statutes, have as their purpose the organisation and control of a given sport, in so far as those entities exercise an economic activity in relation to that sport, by offering products or services, and where they must, in that capacity, be categorised as 'undertakings' (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 22, 23 and 26).

114 Article 101 TFEU is also applicable to entities which, although not necessarily constituting undertakings themselves, may be categorised as 'associations of undertakings'.

115 In the present case, given the subject matter of the main proceedings and the referring court's statements, the Court finds that Articles 101 and 102 TFEU are applicable to FIFA and UEFA inasmuch as those two associations carry out a two-fold economic activity consisting, as is apparent from paragraphs 34, 90 and 92 of the present judgment, in the organisation and marketing of interclub football competitions on European Union territory and the exploitation of the various rights related to those competitions and that, in that capacity, they must be categorised as 'undertakings'. Moreover, Article 101 TFEU is applicable to them since those associations' members are national football associations which may themselves be categorised as 'undertakings' inasmuch as they carry on an economic activity related to the organisation and marketing of interclub football competitions at national level and the

exploitation of the rights related thereto, or themselves have, as members or affiliates, entities which, like football clubs, may be categorised as such.

116 In the second place, unlike Article 102 TFEU, which is aimed solely at unilateral conduct by undertakings holding, individually or, as the case may be, collectively, a dominant position, Article 101 TFEU is aimed at catching various forms of conduct having as their common point that they arise from collaboration by several undertakings, namely 'agreements between undertakings', 'concerted practices' and 'decisions by associations of undertakings', without regard being had to their position on the market (see, to that effect, judgment of 16 March 2000, *Compagnie maritime belge transports and Others* v *Commission*, C-395/96 P and C-396/96 P, EU:C:2000:132, paragraphs 34 to 36).

117 In the present case, one prerequisite, among other conditions, for the application of Article 102 TFEU to an entity such as FIFA or UEFA is that it be demonstrated that that entity holds a dominant position in a given market. In the present case, it is apparent from the statements of the referring court that it considers that each of those two entities holds a dominant position on the market for the organisation and marketing of interclub football competitions on European Union territory and also the exploitation of the various rights related to those competitions. It is thus on the basis of that factual and legal premiss, which is, moreover, indisputable, especially since FIFA and UEFA are the only associations which organise and market such competitions at world and European levels, unlike the situation prevailing in respect of other sporting disciplines, that answers should be given to the referring court's questions on the interpretation of Article 102 TFEU.

118 As to Article 101(1) TFEU, its application in a situation involving entities such as FIFA or UEFA entails proving the existence of an 'agreement', 'concerted practice' or '[decision by an association] of undertakings', which themselves may be of different kinds and present in different forms. In particular, a decision of an association consisting in adopting or implementing rules having a direct impact on the conditions in which the economic activity is exercised by undertakings which are directly or indirectly members thereof may constitute such a '[decision by an association] of undertakings' within the meaning of that provision (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 64, and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 42 to 45). In the present case, it is in the light of decisions of that nature that the referring court is referring questions to the Court on the interpretation of Article 101(1) TFEU, namely those consisting in FIFA's and UEFA's having adopted rules on the prior approval of international interclub football competitions, control of participation by professional football clubs and players in those competitions, and also the sanctions that may be imposed in the event of disregard of those rules on prior approval and participation.

119 In the third and last place, since the questions put by the referring court concern both Article 101 and Article 102 TFEU, it should be borne in mind that the same conduct may give rise to an infringement of both the former and the latter article, even though they pursue different objectives and have distinct scopes. Those articles may

thus apply simultaneously where their respective conditions of application are met (see, to that effect, judgments of 11 April 1989, *Saeed Flugreisen and Silver Line Reisebüro*, 66/86, EU:C:1989:140, paragraph 37; of 16 March 2000, *Compagnie maritime belge transports and Others* v *Commission*, C-395/96 P and C-396/96 P, EU:C:2000:132, paragraph 33; and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 146). They must, accordingly, be interpreted and applied consistently, although in compliance with the specific characteristics of each of them.

1. Consideration of the first question: the interpretation of Article 102 TFEU in situations involving rules on the prior approval of interclub football competitions and on the participation of clubs and of sportspersons in those competitions

120 By its first question, the referring court asks, in essence, whether Article 102 TFEU must be interpreted as meaning that the adoption and implementation of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, where there is no framework for that power providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective and non-discriminatory, constitutes abuse of a dominant position.

121 That being said, as is apparent from both the wording of the rules to which that question refers and the referring court's statements underlying that question, the rules at issue in the main proceedings relate not only to the prior approval of international interclub football competitions but also to whether professional football clubs and players are able to participate in such competitions. As is also apparent from those statements, non-compliance with those rules is also subject to sanctions applicable to non-complying natural or legal persons, which sanctions, as alluded to in the third question put by the referring court and as observed by all of the parties to the main proceedings, comprise exclusion of the professional football clubs from all competitions organised by FIFA and UEFA, a prohibition on players' taking part in interclub competitions and a prohibition on their taking part in matches between representative teams of national football associations.

122 In the light of those elements, the Court finds that, by its first question, the referring court asks, in essence, whether Article 102 TFEU must be interpreted as meaning that the adoption and implementation of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes abuse of a dominant position.

(a) Consideration of the concept of 'abuse of a dominant position'

123 Under Article 102 TFEU, abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it is to be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

124 As follows from the consistent case-law of the Court, the purpose of that provision is to prevent competition from being restricted to the detriment of the public interest, individual undertakings and consumers, by sanctioning the conduct of undertakings in a dominant position that has the effect of hindering competition on the merits and is thus likely to cause direct harm to consumers, or which causes them harm indirectly by hindering or distorting that competition (see, to that effect, judgments of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraphs 22 and 24; of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 20; and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraphs 41 and 44).

125 Such conduct covers any practice which, on a market where the degree of competition is already weakened precisely because of the presence of one or more undertakings in a dominant position, through recourse to means different from those governing normal competition between undertakings, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition (see, to that effect, judgments of 14 October 2010, *Deutsche Telekom* v *Commission*, C-280/08 P, EU:C:2010:603, paragraphs 174 and 177; of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 24; and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 68).

126 However, it is not the purpose of Article 102 TFEU to prevent an undertaking from acquiring, on its own merits, a dominant position on a market, or to ensure that competitors less efficient than an undertaking in such a position should remain on the market (see, to that effect, judgments of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 21; of 6 September 2017, *Intel* v *Commission*, C-413/14 P, EU:C:2017:632, paragraph 133; and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 73).

127 On the contrary, competition on the merits may, by definition, lead to the departure from the market or the marginalisation of competitors which are less efficient and so less attractive to consumers from the point of view of, among other things, price, choice, quality or innovation (see, to that effect, judgments of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 22; of 6 September 2017, *Intel* v *Commission*, C-413/14 P, EU:C:2017:632, paragraph 134; and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 45).

128 A fortiori, whilst a dominant undertaking has a special responsibility not to allow its behaviour to impair genuine, undistorted competition on the internal market, Article 102 TFEU does not sanction the existence per se of a dominant position, but only the abusive exploitation thereof (see, to that effect, judgments of 27 March

2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 23, and of 6 December 2012, *AstraZeneca* v *Commission*, C-457/10 P, EU:C:2012:770, paragraph 188).

(b) Consideration of the determination of whether there is abuse of a dominant position

129 In order to find, in a given case, that conduct must be categorised as 'abuse of a dominant position', it is necessary, as a rule, to demonstrate, through the use of methods other than those which are part of competition on the merits between undertakings, that that conduct has the actual or potential effect of restricting that competition by excluding equally efficient competing undertakings from the market(s) concerned (see, to that effect, judgment of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 25), or by hindering their growth on those markets, although the latter may be either the dominated markets or related or neighbouring markets, where that conduct is liable to produce its actual or potential effects (see, to that effect, judgments of 14 November 1996, *Tetra Pak* v *Commission*, C-333/94 P, EU:C:1996:436, paragraphs 25 to 27; of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraphs 84 to 86; and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 76).

130 That demonstration, which may entail the use of different analytical templates depending on the type of conduct at issue in a given case, must however be made in the light of all the relevant factual circumstances (see, to that effect, judgments of 19 April 2012, *Tomra Systems and Others* v *Commission*, C-549/10 P, EU:C:2012:221, paragraph 18, and of 19 January 2023, *Unilever Italia Mkt. Operations*, C-680/20, EU:C:2023:33, paragraph 40), irrespective of whether they concern the conduct itself, the market(s) in question or the functioning of competition on that or those market(s). That demonstration must, moreover, be aimed at establishing, on the basis of specific, tangible points of analysis and evidence, that that conduct, at the very least, is capable of producing exclusionary effects (see, to that effect, judgment of 19 January 2023, *Unilever Italia Mkt. Operations*, C-680/20, EU:C:2023:33, paragraphs 42, 51 and 52 and the case-law cited).

131 In addition, conduct may be categorised as 'abuse of a dominant position' not only where it has the actual or potential effect of restricting competition on the merits by excluding equally efficient competing undertakings from the market(s) concerned, but also where it has been proven to have the actual or potential effect – or even the object – of impeding potentially competing undertakings at an earlier stage, through the placing of obstacles to entry or the use of other blocking measures or other means different from those which govern competition on the merits, from even entering that or those market(s) and, in so doing, preventing the growth of competition therein to the detriment of consumers, by limiting production, product or alternative service development or innovation (see, to that effect, judgment of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraphs 154 to 157).

132 Thus, although a Member State is not prohibited per se from granting exclusive or special rights on a market to an undertaking through legislative or regulatory measures, such a situation must not place that undertaking in a position of being able to abuse the resulting dominant position, for example by exercising the rights in question

in a manner that prevents potentially competing undertakings from entering the market concerned or related or neighbouring markets (see, to that effect, judgments of 10 December 1991, *Merci convenzionali porto di Genova*, C-179/90, EU:C:1991:464, paragraph 14, and of 13 December 1991, *GB-Inno-BM*, C-18/88, EU:C:1991:474, paragraphs 17 to 19 and 24). That requirement is all the more warranted when such rights confer on that undertaking the power to determine whether and, as the case may be, on what conditions other undertakings are authorised to carry on their economic activity (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 38 and 51).

133 Indeed, the maintenance or development of undistorted competition in the internal market can be guaranteed only if equality of opportunity is ensured as between undertakings. To entrust an undertaking which exercises a given economic activity the power to determine, *de jure* or even de facto, which other undertakings are also authorised to engage in that activity and to determine the conditions in which that activity may be exercised, gives rise to a conflict of interests and puts that undertaking at an obvious advantage over its competitors, by enabling it to deny them entry to the market concerned or to favour its own activity (see, to that effect, judgments of 13 December 1991, *GB-Inno-BM*, C-18/88, EU:C:1991:474, paragraph 25; of 12 February 1998, *Raso and Others*, C-163/96, EU:C:1998:54, paragraphs 28 and 29; and of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 51 and 52) and also, in so doing, to prevent the growth of competition therein to the detriment of consumers, by limiting production, product or alternative service development or innovation.

134 Consequently, the grant of exclusive or special rights conferring such a power on the undertaking concerned, or the existence of a similar situation in the relevant markets, must be subject to restrictions, obligations and review that are capable of eliminating the risk of abuse of its dominant position by that undertaking, so as not to give rise to an infringement of Article 102 TFEU, read in conjunction with Article 106 TFEU (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 53).

135 More specifically, where the undertaking concerned has the power to determine the conditions in which potentially competing undertakings may access the market or to make determinations in that regard on a case-by-case basis, through a decision on prior authorisation or refusal of such access, that power must, in order not to infringe, by its very existence, Article 102 TFEU, read in conjunction with Article 106 TFEU, be placed within a framework of substantive criteria which are transparent, clear and precise (see, by analogy, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 84 to 86, 90, 91 and 99), so that it may not be used in an arbitrary manner. Those criteria must be suitable for ensuring that such a power is exercised in a non-discriminatory manner and enabling effective review (see, to that effect, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 99).

136 The power in question must also be placed within a framework of transparent, non-discriminatory detailed procedural rules relating, inter alia, to the time limits applicable to the submission of an application for prior approval and the adoption of a

decision thereon. In that regard, the time limits set must not be liable to work to the detriment of potentially competing undertakings by denying them effective access to the market (see, by analogy, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 86 and 92) and, ultimately, in so doing, limiting production, alternative product or service development or innovation.

137 Requirements identical to those recalled in the three preceding paragraphs of the present judgment are all the more necessary when an undertaking in a dominant position, through its own conduct and not by virtue of being granted exclusive or special rights by a Member State, places itself in a situation where it is able to deny potentially competing undertakings access to a given market (see, to that effect, judgment of 13 December 1991, *GB-Inno-BM*, C-18/88, EU:C:1991:474, paragraph 20). That may be the case when that undertaking has regulatory and review powers and the power to impose sanctions enabling it to authorise or control that access, and thus a means which is different to those normally available to undertakings and which govern competition on the merits as between them.

138 Consequently, such a power must, at the same time, be subject to restrictions, obligations and review suitable for eliminating the risk of abuse of a dominant position, so as not to give rise to an infringement of Article 102 TFEU.

(c) Consideration of the categorisation of rules on the prior approval of interclub football competitions and on the participation of clubs and of sportspersons in those competitions as abuse of a dominant position

139 In the present case, it is apparent from the referring court's statements that FIFA and UEFA both carry on economic activity consisting in the organisation and marketing of international football competitions and the exploitation of the various rights related to those competitions. Thus, in so far as they do so, those associations are both undertakings. They both also hold a dominant position, or even a monopoly, on the relevant market.

140 Next, it is apparent from the statements in the order for reference that the rules about which that court has made a reference to the Court are contained in the statutes adopted by FIFA and UEFA in their capacity as associations and by virtue of the regulatory and control powers that they have granted to themselves, and that those rules confer on those two entities not only the power to authorise the setting up and organisation, by a third-party undertaking, of a new interclub football competition on European Union territory, but also the power to control the participation of professional football clubs and players in such a competition, on pain of sanctions.

141 Lastly, according to the referring court's statements, those various powers are not placed within a framework of either substantive criteria or detailed procedural rules suitable for ensuring that they are transparent, objective and non-discriminatory.

142 In that regard, it follows from the case-law cited in paragraph 75 of the present judgment that associations which are responsible for a sporting discipline, such as FIFA and UEFA, are able to adopt, implement and ensure compliance with rules relating not only generally to the organisation and conduct of international competitions in that

discipline, in this case professional football, but also, more specifically, prior approval and participation by professional football clubs and players therein.

143 The sport of football is not only of considerable social and cultural importance in the European Union (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 106, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 40), but also generates great media interest; its specific characteristics include the fact that it gives rise to the organisation of numerous competitions at both European and national levels, which involve the participation of very many clubs and also that of large numbers of players. In common with other sports, it also limits participation in those competitions to teams which have achieved certain sporting results (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 132), with the conduct of those competitions being based on matches between and gradual elimination of those teams. Consequently, it is, essentially, based on sporting merit, which can be guaranteed only if all the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity.

144 Those various specific characteristics support a finding that it is legitimate to subject the organisation and conduct of international professional football competitions to common rules intended to guarantee the homogeneity and coordination of those competitions within an overall match calendar as well as, more broadly, to promote, in a suitable and effective manner, the holding of sporting competitions based on equal opportunities and merit. It is also legitimate to ensure compliance with those common rules through rules such as those put in place by FIFA and UEFA on prior approval of those competitions and the participation of clubs and players therein.

145 Since such rules on prior approval and participation are thus legitimate in the specific context of professional football and the economic activities to which the practice of that sport gives rise, neither their adoption nor their implementation may be categorised, in terms of their principle or generally, as an 'abuse of a dominant position' (see, by analogy, in respect of a restriction of freedom to provide services, judgment of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraph 64).

146 The same holds true for sanctions introduced as an adjunct to those rules, since such sanctions are legitimate, in terms of their principle, as a means of guaranteeing the effectiveness of those rules (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraph 44).

147 Be that as it may, none of the specific attributes that characterise professional football makes it possible to consider as legitimate the adoption nor, a fortiori, the implementation of rules on prior approval and participation which are, in a general way, not subject to restrictions, obligations and review that are capable of eliminating the risk of abuse of a dominant position and, more specifically, where there is no framework for substantive criteria and detailed procedural rules for ensuring that they are transparent, objective, precise and non-discriminatory, when they confer on the entity called on to implement them the power to deny any competing undertaking access to the market. Such rules must be held to infringe Article 102 TFEU, as follows from paragraphs 134 to 138 of the present judgment.

148 Similarly, in the absence of substantive criteria and detailed procedural rules ensuring that the sanctions introduced as an adjunct to those rules are transparent, objective, precise, non-discriminatory and proportionate, such sanctions must, by their very nature, be held to infringe Article 102 TFEU inasmuch as they are discretionary in nature. Indeed, such a situation makes it impossible to verify, in a transparent and objective manner, whether their implementation on a case-by-case basis is justified and proportionate in view of the specific characteristics of the international interclub competition project concerned.

149 In that regard, it is irrelevant that FIFA and UEFA do not enjoy a legal monopoly and that competing undertakings may, in theory, set up new competitions which would not be subject to the rules adopted and applied by those two associations. Indeed, as is apparent from the statements of the referring court, the dominant position held by FIFA and UEFA on the market for the organisation and marketing of international interclub football competitions is such that, in practice, at the current juncture it is impossible to set up viably a competition outside their ecosystem, given the control they exercise, directly or through their member national football associations, over clubs, players and other types of competitions, such as those organised at national level.

150 In the present case, however, it will be for the referring court to categorise the rules at issue in the main proceedings in the light of Article 102 TFEU, after carrying out the additional verifications it may deem necessary.

151 In that perspective, it should be noted that, in order for it to be held that the rules on prior approval of sporting competitions and participation in those competitions, such as those at issue in the main proceedings, are subject to transparent, objective and precise substantive criteria as well as to transparent and non-discriminatory detailed procedural rules that do not deny effective access to the market, it is necessary, in particular, that those criteria and those detailed rules should have been laid down in an accessible form prior to any implementation of those rules. Moreover, in order for those criteria and detailed rules to be regarded as being non-discriminatory, it is necessary, given, inter alia, the fact that entities such as FIFA and UEFA themselves carry on various economic activities on the market concerned by their rules on prior approval and participation, that those same criteria and detailed rules should not make the organisation and marketing of third-party competitions and the participation of clubs and players therein subject to requirements which are either different from those applicable to competitions organised and marketed by the decision-making entity, or are identical or similar to them but are impossible or excessively difficult to fulfil in practice for an undertaking that does not have the same status as an association or does not have the same powers at its disposal as that entity and accordingly is in a different situation to that entity. Lastly, in order for the sanctions introduced as an adjunct to rules on prior approval and participation, such as those at issue in the main proceedings, not to be discretionary, they must be governed by criteria that must not only be transparent, objective, precise and non-discriminatory, but must also guarantee that those sanctions are determined, in each specific case, in accordance with the principle of proportionality, in the light of, inter alia, the nature, duration and seriousness of the infringement found.

152 In the light of the foregoing considerations, the answer to the first question is that Article 102 TFEU must be interpreted as meaning that the adoption and implementation of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes abuse of a dominant position.

2. Consideration of the second question: the interpretation of Article 101(1) TFEU in situations involving rules on the prior approval of interclub football competitions and on the participation of clubs and of sportspersons in those competitions

153 By its second question, the referring court asks, in essence, whether Article 101(1) TFEU must be interpreted as meaning that the adoption and implementation, directly or through their member national football associations, of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, where there is no framework for that power providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective and non-discriminatory, constitutes a decision by an association of undertakings having as its object or effect the prevention of competition.

154 That being so, given the referring court's statements underlying that question, and for the same reasons as set out in paragraph 121 of the present judgment, the Court finds that, by that question, the referring court asks, in essence, whether Article 101(1) TFEU must be interpreted as meaning that the adoption and implementation, directly or through their member national football associations, of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes a decision by an association of undertakings having as its object the prevention of competition.

(a) Consideration of the concept of conduct having as its 'object' or 'effect' the restriction of competition and of the categorisation of the existence of such conduct

155 In the first place, under Article 101(1) TFEU, all agreements between undertakings, decisions by associations of undertakings and concerted practices which

may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market are incompatible with the internal market.

156 In the present case, as is apparent from the wording of the question, the referring court is asking the Court, in essence, whether Article 101(1) TFEU must be interpreted as meaning that decisions by associations of undertakings such as those embodied in the FIFA and UEFA rules referred to by it have as their 'object or effect' the 'prevention' of competition.

157 However, the referring court also clearly highlights the reasons that led it to find that those decisions by associations of undertakings may also affect trade between Member States.

158 In the second place, in order to find, in a given case, that an agreement, decision by an association of undertakings or a concerted practice is caught by the prohibition laid down in Article 101(1) TFEU, it is necessary to demonstrate, in accordance with the very wording of that provision, either that that conduct has as its object the prevention, restriction or distortion of competition, or that that conduct has such an effect (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249, and of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraph 31).

159 To that end, it is appropriate to begin by examining the object of the conduct in question. If, at the end of that examination, that conduct proves to have an anticompetitive object, it is not necessary to examine its effect on competition. Thus, it is only if that conduct is found not to have an anticompetitive object that it will be necessary, in a second stage, to examine its effect (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249, and of 26 November 2015, *Maxima Latvija*, C-345/14, EU:C:2015:784, paragraphs 16 and 17).

160 The analysis to be made differs depending on whether the conduct at issue has as its 'object' or 'effect' the prevention, restriction or distortion of competition, with each of those concepts being subject to different legal and evidentiary rules (see, to that effect, judgment of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 63).

(1) Categorisation of the existence of conduct having as its 'object' the prevention, restriction or distortion of competition

161 According to the settled case-law of the Court, as summarised, in particular, in the judgments of 23 January 2018, *F. Hoffmann-La Roche and Others* (C-179/16, EU:C:2018:25, paragraph 78), and of 30 January 2020, *Generics (UK) and Others* (C-307/18, EU:C:2020:52, paragraph 67), the concept of anticompetitive 'object', whilst not, as follows from paragraphs 158 and 159 of the present judgment, an exception in relation to the concept of anticompetitive 'effect', must nevertheless be interpreted strictly.

162 Thus, that concept must be interpreted as referring solely to certain types of coordination between undertakings which reveal a sufficient degree of harm to

competition for the view to be taken that it is not necessary to assess their effects. Indeed, certain types of coordination between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249; of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 78; and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 67).

163 The types of conduct that must be considered to be so include, primarily, certain forms of collusive conduct which are particularly harmful to competition, such as horizontal cartels leading to price fixing, limitations on production capacity or allocation of customers. Those types of conduct are liable to lead to price increases or falls in production and, therefore, more limited supply, resulting in poor allocation of resources to the detriment of user undertakings and consumers (see, to that effect, judgments of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraphs 17 and 33; of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 51; and of 16 July 2015, *ING Pensii*, C-172/14, EU:C:2015:484, paragraph 32).

164 Without necessarily being equally harmful to competition, other types of conduct may also be considered, in certain cases, to have an anticompetitive object. That is the case, inter alia, of certain types of horizontal agreements other than cartels, such as those leading to competing undertakings being excluded from the market (see, to that effect, judgments of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraphs 76, 77, 83 to 87 and 101, and of 25 March 2021, *Lundbeck* v *Commission*, C-591/16 P, EU:C:2021:243, paragraphs 113 and 114), or certain types of decisions by associations of undertakings (see, to that effect, judgment of 27 January 1987, *Verband der Sachversicherer* v *Commission*, 45/85, EU:C:1987:34, paragraph 41).

165 In order to determine, in a given case, whether an agreement, decision by an association of undertakings or a concerted practice reveals, by its very nature, a sufficient degree of harm to competition that it may be considered as having as its object the prevention, restriction or distortion thereof, it is necessary to examine, first, the content of the agreement, decision or practice in question; second, the economic and legal context of which it forms a part; and, third, its objectives (see, to that effect, judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 79).

166 In that regard, first of all, in the economic and legal context of which the conduct in question forms a part, it is necessary to take into consideration the nature of the products or services concerned, as well as the real conditions of the structure and functioning of the sectors or markets in question (judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 80). It is not, however, necessary to examine nor, a fortiori, to prove the effects of that conduct on competition, be they actual or potential, or negative or

positive, as follows from the case-law cited in paragraphs 158 and 159 of the present judgment.

167 Next, as regards the objectives pursued by the conduct in question, a determination must be made of the objective aims which that conduct seeks to achieve from a competition standpoint. Nevertheless, the fact that the undertakings involved acted without having a subjective intention to prevent, restrict or distort competition and the fact that they pursued certain legitimate objectives are not decisive for the purposes of the application of Article 101(1) TFEU (see, to that effect, judgments of 6 April 2006, *General Motors* v *Commission*, C-551/03 P, EU:C:2006:229, paragraphs 64 and 77 and the case-law cited, and of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21).

168 Lastly, the taking into consideration of all of the aspects referred to in the three preceding paragraphs of the present judgment must, at any rate, show the precise reasons why the conduct in question reveals a sufficient degree of harm to competition such as to justify a finding that it has as its object the prevention, restriction or distortion of competition (see, to that effect, judgment of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 69).

(2) Categorisation of the existence of conduct having as its 'effect' the prevention, restriction or distortion of competition

169 The concept of conduct having an anticompetitive 'effect', for its part, comprises any conduct which cannot be regarded as having an anticompetitive 'object', provided that it is demonstrated that that conduct has as its actual or potential effect the prevention, restriction or distortion of competition, which must be appreciable (see, to that effect, judgments of 28 May 1998, *Deere* v *Commission*, C-7/95 P, EU:C:1998:256, paragraph 77, and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 117).

170 To that end, it is necessary to assess the way the competition would operate within the actual context in which it would take place in the absence of the agreement, decision by an association of undertakings or concerted practice in question (judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 250, and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 118), by defining the market(s) in which that conduct is liable to produce its effects, then by identifying those effects, whether they are actual or potential. That assessment itself entails that all relevant facts must be taken into account.

(b) Consideration of the categorisation of the rules on the prior approval of interclub football competitions and on the participation of clubs and of sportspersons in those competitions as a decision of an association of undertakings having as its 'object' the restriction of competition

171 In the present case, it is apparent from the statements in the order for reference, first, that the FIFA and UEFA rules about which the referring court has put questions to the Court confer on those two entities not only the power to approve the setting up and organisation of any football competition on European Union territory, and thus any new interclub football competition envisaged by a third-party undertaking, but also the

power to control the participation of professional football clubs and players in such a competition, on pain of sanctions.

172 As regards, more specifically, the content of the FIFA rules, it is apparent from the statements in the order for reference that they provide, first, that no international league or other similar group of clubs or leagues may be formed without the consent of FIFA and the national football association(s) of which those clubs or leagues are members. Second, no match or competition may take place without the prior approval of FIFA, UEFA and those association(s). Third, no player and no team affiliated to a national football association that is a member of FIFA or UEFA may play a match or make sporting contacts with other, non-affiliated players or teams without the approval of FIFA. Fourth, associations, leagues or clubs which are affiliated to a national football association that is a member of FIFA may join another member association or take part in competitions on that member association's territory only under exceptional circumstances and with the approval of FIFA, UEFA and the two associations in question.

173 The UEFA rules, for their part, provide, according to the referring court, first, that UEFA is to have sole jurisdiction to organise or abolish, within its territorial remit, international competitions in which national football associations which are UEFA members or their affiliated clubs participate, except for competitions organised by FIFA. Second, international matches, competitions or tournaments which are not organised by UEFA but are played on its territory require the prior approval of FIFA, UEFA and/or the member associations concerned in accordance with the FIFA Regulations Governing International Matches. Third, no combinations or alliances between leagues or clubs affiliated, directly or indirectly, to different national football associations which are UEFA members may be formed without the approval of UEFA.

174 Moreover, according to the referring court, there is no framework for any of those powers held by FIFA and UEFA providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective and non-discriminatory, such as those referred to in paragraph 151 of the present judgment.

175 Next, it follows from paragraphs 142 to 149 of the present judgment that, although the specific nature of international football competitions and the real conditions of the structure and functioning of the market for the organisation and marketing of those competitions on European Union territory lend credence to the idea that it is legitimate, in terms of their principle, to have rules on prior approval such as those just recalled, those contextual elements nevertheless are not capable of legitimising the absence of substantive criteria and detailed procedural rules suitable for ensuring that those rules are transparent, objective, precise and non-discriminatory.

176 Lastly, although the stated reasons for the adoption of those rules on prior approval may include the pursuit of legitimate objectives, such as ensuring observance of the principles, values and rules of the game underpinning professional football, the fact remains that they make subject to the power of prior approval and the power to impose sanctions held by the entities that adopted them, in their capacity as associations of undertakings, the organisation and marketing of any international football competition other than those organised in parallel by those two entities, as part of their

pursuit of an economic activity. In so doing, those rules confer on those entities the power to authorise, control and set the conditions of access to the market concerned for any potentially competing undertaking, and to determine both the degree of competition that may exist on that market and the conditions in which that potential competition may be exercised. Those rules thus make it possible, by their nature, if not to exclude from that market any competing undertaking, even an equally efficient one, at least to restrict the creation and marketing of alternative or new competitions in terms of their format or content. In so doing, they also completely deprive professional football clubs and players of the opportunity to participate in those competitions, even though they could, for example, offer an innovative format whilst observing all the principles, values and rules of the game underpinning the sport. Ultimately, they completely deprive spectators and television viewers of the opportunity to attend those competitions or to watch the broadcast thereof.

177 Moreover, in so far as the rules on prior approval for international interclub football competitions contain rules on the participation of professional football clubs and players in those competitions, and the sanctions to which that participation is liable to give rise, it should be added that they appear, prima facie, liable to reinforce the anticompetitive object inherent in any prior approval mechanism that is not subject to restrictions, obligations and review suitable for ensuring that it is transparent, objective, precise and non-discriminatory. Indeed, they reinforce the barrier to entry resulting from such a mechanism, by preventing any undertaking organising a potentially competing competition from calling, in a meaningful way, on the resources available in the market, namely clubs and players, the latter being vulnerable – if they participate in a competition that has not had the prior approval of FIFA and UEFA – to sanctions for which, as observed in paragraphs 148 of the present judgment, there is no framework providing for substantive criteria or detailed procedural rules suitable for ensuring that they are transparent, objective, precise, non-discriminatory and proportionate.

178 For all of the foregoing reasons, the Court finds that, where there is no framework providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, precise, non-discriminatory and proportionate, such as those referred to in paragraph 151 of the present judgment, rules on prior approval, participation and sanctions such as those at issue in the main proceedings reveal, by their very nature, a sufficient degree of harm to competition and thus have as their object the prevention thereof. They accordingly come within the scope of the prohibition laid down in Article 101(1) TFEU, without its being necessary to examine their actual or potential effects.

179 In the light of the foregoing considerations, the answer to the second question is that Article 101(1) TFEU must be interpreted as meaning that the adoption and implementation, directly or through their member national football associations, of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers

providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes a decision by an association of undertakings having as its object the prevention of competition.

3. Consideration of the third question: the interpretation of Article 101(1) and Article 102 TFEU in situations involving conduct consisting of threatening the imposition of sanctions on clubs and on sportspersons participating in unauthorised competitions

180 By its third question, the referring court asks, in essence, whether Article 101(1) and Article 102 TFEU must be interpreted as meaning that a public announcement by entities such as FIFA and UEFA to the effect that sanctions will be imposed on any professional football club and any player that participates in an interclub football competition that has not received their prior approval, where there is no framework for those sanctions providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes an anticompetitive decision by an association of undertakings or abuse of a dominant position.

181 In the light of the answers given to the two preceding questions and, more specifically, the considerations set out in paragraphs 148 and 177 of the present judgment, to the effect that such a public announcement constitutes implementation of the rules infringing both Article 102 and Article 101(1) TFEU, and that it therefore also comes within the scope of the prohibitions laid down in those two provisions, there is no need to answer the present question separately.

4. Consideration of the fifth question: possible justification for rules on the prior approval of competitions and on the participation of clubs and of sportspersons in those competitions

182 By its fifth question, which it is appropriate to address before the fourth question since it relates to the same FIFA and UEFA rules as those at which the first three questions are directed, the referring court asks, in essence, whether Article 101(3) TFEU and the Court's case-law on Article 102 TFEU must be interpreted as meaning that rules by which associations which are responsible for football at world and European levels, and which pursue in parallel various economic activities related to the organisation of competitions, make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, may benefit from an exemption or be held to be justified.

(a) Consideration of the possibility of finding certain specific conduct not to come within the scope of Article 101(1) and Article 102 TFEU

183 According to the settled case-law of the Court, not every agreement between undertakings or decision of an association of undertakings which restricts the freedom of action of the undertakings party to that agreement or subject to compliance with that decision necessarily falls within the prohibition laid down in Article 101(1) TFEU.

Indeed, the examination of the economic and legal context of which certain of those agreements and certain of those decisions form a part may lead to a finding, first, that they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive in nature; second, that the specific means used to pursue those objectives are genuinely necessary for that purpose; and, third, that, even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition. That case-law applies in particular in cases involving agreements or decisions taking the form of rules adopted by an association such as a professional association or a sporting association, with a view to pursuing certain ethical or principled objectives and, more broadly, to regulate the exercise of a professional activity if the association concerned demonstrates that the aforementioned conditions are satisfied (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 97; of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 42 to 48; and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 93, 96 and 97).

184 More specifically, in the area of sport, the Court was led to observe, in view of the information available to it, that the anti-doping rules adopted by the International Olympic Committee (IOC) do not come within the scope of the prohibition laid down in Article 101(1) TFEU, even though they restrict athletes' freedom of action and have the inherent effect of restricting potential competition between them by defining a threshold over which the presence of nandrolone constitutes doping, so as to safeguard the fairness, integrity and objectivity of the conduct of competitive sport, ensure equal opportunities for athletes, protect their health and uphold the ethical values at the heart of sport, including merit (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 43 to 55).

185 However, the case-law referred to in paragraph 183 of the present judgment does not apply in situations involving conduct which, irrespective of whether or not it originates from such an association and irrespective of which legitimate objectives in the public interest might be relied on in support thereof, by its very nature infringes Article 102 TFEU, as is, moreover, already implicitly but necessarily apparent from the Court's case-law (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 53).

186 Given that the absence of a subjective intention to prevent, restrict or distort competition and the pursuit of potentially legitimate objectives are not decisive either for the purposes of application of Article 101(1) TFEU and that, moreover, Articles 101 and 102 TFEU must be interpreted consistently, the Court finds that the case-law referred to in paragraph 183 of the present judgment does not apply either in situations involving conduct which, far from merely having the inherent 'effect' of restricting competition, at least potentially, by limiting the freedom of action of certain undertakings, reveals a degree of harm in relation to that competition that justifies a finding that it has as its very 'object' the prevention, restriction or distortion of competition. Thus, it is only if, following an examination of the conduct at issue in a given case, that conduct proves not to have as its object the prevention, restriction or

distortion of competition, that it must then be determined whether it may come within the scope of that case-law (see, to that effect, judgments of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 69; of 4 September 2014, *API and Others*, C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147, paragraph 49; and of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International*, C-427/16 and C-428/16, EU:C:2017:890, paragraphs 51, 53, 56 and 57).

187 As regards conduct having as its object the prevention, restriction or distortion of competition, it is thus only if Article 101(3) TFEU applies and all of the conditions provided for in that provision are observed that it may be granted the benefit of an exemption from the prohibition laid down in Article 101(1) TFEU (see, to that effect, judgment of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21).

188 In the present case, in view of the statements in the order for reference and the answers provided by the Court in the light of those statements to the first three questions put by the referring court, the Court finds that the case-law referred to in paragraph 183 of the present judgment does not apply in situations involving rules such as those at issue in the main proceedings.

(b) The exemption under Article 101(3) TFEU

189 It follows from the very wording of Article 101(3) TFEU that any agreement, decision by associations of undertakings or concerted practice which proves to be contrary to Article 101(1) TFEU, whether by reason of its anticompetitive object or effect, may be exempted if it satisfies all of the conditions laid down for that purpose (see, to that effect, judgments of 11 July 1985, *Remia and Others* v *Commission*, 42/84, EU:C:1985:327, paragraph 38, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraph 230), it being noted that those conditions are more stringent than those referred to in paragraph 183 of the present judgment.

190 Under Article 101(3) TFEU, that exemption in a given case is subject to four cumulative conditions. First, it must be demonstrated with a sufficient degree of probability (judgment of 6 October 2009, *GlaxoSmithKline Services and Others* v *Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 95), that the agreement, decision by an association of undertakings or concerted practice in question makes it possible to achieve efficiency gains, by contributing either to improving the production or distribution of the products or services concerned, or to promoting technical or economic progress. Second, it must be demonstrated, to the same degree of probability, that an equitable part of the profit resulting from those efficiency gains is reserved for the users. Third, the agreement, decision or practice in question must not impose on the participating undertakings restrictions which are not indispensable for achieving such efficiency gains. Fourth, that agreement, decision or practice must not give the participating undertakings the opportunity to eliminate all effective competition for a substantial part of the products or services concerned.

191 It is for the party relying on such an exemption to demonstrate, by means of convincing arguments and evidence, that all of the conditions required for the exemption are satisfied (see, to that effect, judgments of 11 July 1985, *Remia and Others* v *Commission*, 42/84, EU:C:1985:327, paragraph 45, and of 6 October 2009, *GlaxoSmithKline Services and Others* v *Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 82). If those arguments and that evidence are such as to oblige the other party to refute them convincingly, it is permissible, in the absence of such refutation, to conclude that the burden of proof borne by the party relying on Article 101(3) TFEU has been discharged (see, to that effect, judgments of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 79, and of 6 October 2009, *GlaxoSmithKline Services and Others* v *Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 83).

192 In particular, as regards the first condition referred to in paragraph 190 of the present judgment, the efficiency gains that the agreement, decision by an association of undertakings or concerted practice must make it possible to achieve correspond not to any advantage the participating undertakings may derive from that agreement, decision or practice in the context of their economic activity, but only to the appreciable objective advantages that that specific agreement, decision or practice makes it possible to attain in the different sector(s) or market(s) concerned. Moreover, in order for that first condition to be considered satisfied, not only must the actual existence and extent of those efficiency gains be established, it must also be demonstrated that they are such as to compensate for the disadvantages caused by the agreement, decision or practice at issue in the field of competition (see, to that effect, judgments of 13 July 1966, *Consten and Grundig* v *Commission*, 56/64 and 58/64, EU:C:1966:41, page 348; and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraphs 232, 234 and 236; and also, by analogy, of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 43).

193 As regards the second condition referred to in paragraph 190 of the present judgment, it involves establishing that the efficiency gains made possible by the agreement, decision by an association of undertakings or concerted practice in question have a positive impact on all users, be they traders, intermediate consumers or end consumers, in the different sectors or markets concerned (see, to that effect, judgments of 23 November 2006, *Asnef-Equifax and Administración del Estado*, C-238/05, EU:C:2006:734, paragraph 70, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraphs 236 and 242).

194 It follows that, in a situation such as that at issue in the main proceedings, where the conduct infringing Article 101(1) TFEU is anticompetitive by object, that is to say, it presents a sufficient degree of harm to competition and is such as to affect different categories of users or consumers, it must be determined whether and, if so, to what extent, that conduct, notwithstanding its harmfulness, has a favourable impact on each of them.

195 Thus, in the case in the main proceedings, it will be for the referring court to examine whether the rules on prior approval, participation and sanctions at issue in the main proceedings are such as to have a favourable impact on the various categories of 'users', comprising, inter alia, national football associations, professional or amateur clubs, professional or amateur players, young players and, more broadly, consumers, be they spectators or television viewers.

196 It should be borne in mind in that regard, however, that, although such rules may appear to be legitimate, in terms of their principle, by contributing to guaranteeing observance of the principles, values and rules of the game underpinning professional football, in particular the open, meritocratic nature of the competitions concerned, and ensuring a certain form of 'solidarity redistribution' within football, the existence of such objectives, however laudable they may be, do not release the associations that have adopted those rules from their obligation to establish, before the national court, that the pursuit of those objectives translates into genuine, quantifiable efficiency gains, on the one hand, and that they compensate for the disadvantages caused in competition terms by the rules at issue in the main proceedings, on the other.

197 As regards the third condition referred to in paragraph 190 of the present judgment, to the effect that the conduct at issue must be indispensable or necessary, it involves an assessment and comparison of the respective impact of that conduct and of the alternative measures which might genuinely be envisaged, with a view to determining whether the efficiency gains expected from that conduct may be attained by measures which are less restrictive of competition. It may not, however, lead to a choice based on their respective desirability being made as between such conduct and such alternative measures in the event that the latter do not seem to be less restrictive of competition.

198 As regards the fourth condition referred to in paragraph 190 of the present judgment, the ascertainment of its observance in a given case involves an examination of the quantitative and qualitative aspects that characterise the functioning of competition in the sectors or markets concerned, in order to determine whether the agreement, decision by an association of undertakings or concerted practice in question gives the participating undertakings the opportunity to eliminate all actual competition for a substantial part of the products or services concerned. In particular, in situations involving a decision by an association of undertakings or agreement to which undertakings have adhered as a group, the sizeable market share held by them may constitute, among other relevant facts and as part of an overall analysis thereof, an indicator of the possibility that, in view of its content and object or effect, that decision or agreement enables the participating undertakings to eliminate all actual competition, which alone suffices as grounds to rule out the exemption provided for in Article 101(3) TFEU. Another potential aspect relates to determining whether or not such a decision or agreement, whilst closing off one form of actual competition or market access channel, allows others to continue in place (see, to that effect, judgment of 22 October 1986, *Metro* v *Commission*, 75/84, EU:C:1986:399, paragraphs 64, 65 and 88).

199 In order to determine whether that fourth condition is satisfied in the present case, the referring court must take into account, first of all, as observed, inter alia, in

paragraphs 174 to 179 of the present judgment, the fact that there is no framework for the rules on prior approval, participation and sanctions at issue in the main proceedings providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, precise and non-discriminatory. The Court finds, moreover, that such a situation is liable to enable entities having adopted those rules to prevent any and all competition on the market for the organisation and marketing of interclub football competitions on European Union territory.

200 More generally, the examination of the different conditions referred to in paragraph 190 of the present judgment may require taking into account the particularities and specific characteristics of the sectors or markets concerned by the agreement, decision by an association of undertakings or concerted practice at issue, if those particularities and specific characteristics are decisive for the outcome of that examination (see, to that effect, judgments of 6 October 2009, *GlaxoSmithKline Services and Others* v *Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 103, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraph 236).

(c) Objective justification under Article 102 TFEU

201 Consistently with what is provided for in Article 101(3) TFEU, it follows from the Court's case-law relating to Article 102 TFEU that an undertaking holding a dominant position may show that conduct liable to come within the scope of the prohibition laid down in that article may yet be justified (judgments of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 40, and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraph 46).

202 In particular, an undertaking may demonstrate, to that end, either that its conduct is objectively necessary, or that the exclusionary effect produced may be counterbalanced or even outweighed by advantages in terms of efficiency which also benefit the consumer (judgments of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 41, and of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraphs 46 and 86).

203 As regards the first part of that possibility, it follows from paragraph 147 of the present judgment that the establishment, by FIFA and UEFA, of discretionary rules on prior approval of international interclub football competitions, control of participation by clubs and players in those competitions and sanctions, precisely because of their discretionary nature, can in no way be regarded as being objectively justified by technical or commercial necessities, unlike what could be the case if there was a framework for those rules providing for substantive criteria and detailed procedural rules meeting the requirements of transparency, clarity, precision, neutrality and proportionality which are imperative in this field. Accordingly, objectively speaking, those rules, controls and sanctions have the aim of reserving the organisation of any such competition to those entities, entailing the risk of eliminating any and all competition from third-party undertakings, meaning that such conduct constitutes an

abuse of a dominant position prohibited by Article 102 TFEU, one not justified, moreover, by an objective necessity.

204 As regards the second part of that possibility, it is for the dominant undertaking to demonstrate, first, that its conduct can allow efficiency gains to be achieved by establishing the actual existence and extent of those gains; second, that such efficiency gains counteract the likely harmful effects of that conduct on competition and consumer welfare on the market(s) concerned; third, that that conduct is necessary for the achievement of those gains in efficiency; and, fourth, that it does not eliminate effective competition, by removing all or most existing sources of actual or potential competition (see, to that effect, judgment of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 42).

205 In the same way as for the exemption provided for in Article 101(3) TFEU, that justification requires that the undertaking relying thereon shows, using convincing arguments and evidence, that all of the conditions required for that exemption are satisfied.

206 In the present case, it will be for the referring court to rule on whether the rules at issue in the main proceedings satisfy all of the conditions enabling them to be regarded as justified under Article 102 TFEU, after having allowed the parties to discharge their burden of proof, as observed in paragraph 191 of the present judgment.

207 That being so, it should be noted, regarding the fourth of those conditions, which are applicable both in the context of Article 101(3) TFEU and that of Article 102 TFEU, that, given the nature of those rules – which make the organisation and marketing of any interclub football competition on European Union territory subject to prior approval by FIFA and UEFA, without that power being subject to appropriate substantive criteria and detailed procedural rules – and the dominant, even monopolistic, position which, as observed by the referring court, is held by those two entities on the market concerned, the Court finds that those rules afford those entities the opportunity to prevent any and all competition on that market, as observed in paragraph 199 of the present judgment.

208 It should also be borne in mind that non-observance of one of the four cumulative conditions referred to in paragraphs 190 and 204 of the present judgment suffices to rule out the possibility that rules such as those at issue in the main proceedings may come within the exemption provided for in Article 101(3) TFEU or be held to be justified under Article 102 TFEU.

209 In the light of all the foregoing, the answer to the fifth question is that Article 101(3) and Article 102 TFEU must be interpreted as meaning that rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, may benefit from an exemption to the application of Article 101(1) TFEU or be considered justified under Article 102 TFEU only if it is demonstrated, through

convincing arguments and evidence, that all of the conditions required for those purposes are satisfied.

5. Consideration of the fourth question: the interpretation of Articles 101 and 102 TFEU in situations involving rules on rights related to sporting competitions

210 By its fourth question, the referring court asks, in essence, whether Articles 101 and 102 TFEU must be interpreted as precluding rules laid down by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, which designate those associations as being the original owners of all of the rights emanating from competitions coming under their 'jurisdiction', including rights related to a competition organised by a third-party undertaking, and which also confer on those associations an exclusive power to market those rights.

211 It should be noted in that regard that, in their written observations and oral pleadings before the Court, FIFA and UEFA insisted that the Swiss private law rules referred to by the referring court – more specifically Article 67(1) and Article 68(1) of the FIFA Statutes – must be construed, inasmuch as they cover rights emanating from competitions, matches and other events coming under the 'jurisdiction' of FIFA and UEFA, as applying not to all of the competitions coming within the territorial jurisdiction and respective powers of those two entities but only to those competitions which, from among them, are organised by those entities, to the exclusion of those which might be organised by third-party entities or undertakings. According to their own interpretation of those rules, FIFA and UEFA may in no way claim to be the owners of the rights emanating from competitions organised by such third-party entities or undertakings.

212 In those circumstances, whilst observing, as did the applicant in the main proceedings at the oral hearing held before the Court, that the rules at issue in the main proceedings could be construed otherwise, given the different meanings that can be attributed to the term 'jurisdiction', and that those rules would benefit from being modified so as to eliminate any possible ambiguity in that regard, the Court will respond to the present question by taking the interpretation referred to in the preceding paragraph as a premiss and by taking account of the link of complementarity between the rules at issue and the rules on prior approval, participation and sanctions which form the subject matter of the preceding questions. As a result, this answer is without prejudice to that which might be provided to the separate question whether Articles 101 and 102 TFEU preclude rules by which an entity such as FIFA designates itself or designates an entity such as UEFA as being the original owners of all rights emanating from competitions which, whilst coming within their territorial jurisdiction and respective powers, are organised by third-party entities or undertakings.

(a) The holding of rights related to sporting competitions

213 Under Article 345 TFEU, the EU and FEU Treaties are in no way to prejudice the rules in Member States governing the system of property ownership.

214 It follows that, in terms of their very principle, Articles 101 and 102 TFEU cannot be held to preclude rules such as Articles 67 and 68 of the FIFA Statutes inasmuch as

those rules designate that entity and UEFA as the original owners of all rights emanating from professional interclub football competitions organised by them on European Union territory with the crucial backing of the professional football clubs and players participating in those competitions.

215 On the contrary, the interpretation of Articles 101 and 102 TFEU by the Court and the application of those articles by the referring court must be premissed on the fact that the rules governing the system of property ownership of rights to which such rules are applicable may vary from one Member State to another and that it is therefore primarily in the light of the applicable law governing property ownership and intellectual property that the question of the meaning to be attributed to the concept of 'original owner', referred to by those rules, must be examined, as observed, in essence, by many of the governments that have intervened before the Court. Thus, certain of them stated that, in so far as they are concerned and in order to be compatible with the provisions of their applicable domestic law governing property ownership and intellectual property, that concept must be examined as a 'voluntary assignment' or a 'forced assignment' of rights by professional football clubs to national football associations, at the time of their affiliation to them, accompanied by a subsequent assignment of those same rights to FIFA and UEFA, at the time of those associations' affiliation to the latter.

216 The present case does not however concern that question, the examination of which would also require account to be taken of Article 17 of the Charter of Fundamental Rights of the European Union, which is a rule of law intended to confer rights on individuals by enshrining the right of property ownership and intellectual property, although without conferring an absolute or unconditional nature on those rights (see, to that effect, judgment of 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, paragraph 56), as the Court has held previously in relation to the rights specifically at issue in the present case (judgments of 18 July 2013, *FIFA* v *Commission*, C-204/11 P, EU:C:2013:477, paragraph 110, and of 18 July 2013, *UEFA* v *Commission*, C-201/11 P, EU:C:2013:519, paragraph 102).

(b) The exploitation of rights related to sporting competitions

217 As regards the question whether Article 101(1) and Article 102 TFEU preclude the rules referred to by the referring court inasmuch as they relate not to the original ownership of rights emanating from professional interclub football competitions organised by FIFA and UEFA, but to the commercial exploitation of those rights, it follows, first, from paragraphs 115, 117, 118, 139 and 140 of the present judgment that such rules may be regarded as being both a '[decision by an association] of undertakings' within the meaning of Article 101(1) TFEU and, at the same time, conduct by an 'undertaking' in a 'dominant position', resulting from the exercise of a regulatory power, and hence from the exercise of a means which is different to those which govern competition on the merits as between undertakings.

218 Next, Article 101(1)(b) and Article 102(b) TFEU expressly prohibit decisions by associations of undertakings and abuse consisting in preventing and restricting competition by limiting or controlling, among other parameters of competition, production and markets, to the prejudice of consumers.

219 As observed, inter alia, by certain of the governments who submitted observations to the Court and the Commission, the very purpose of the rules at issue in the main proceedings is, as evidenced by an examination of their content, to substitute, imperatively and completely, an arrangement for the exclusive and collective exploitation of all of the rights emanating from the professional interclub football competitions organised by FIFA and UEFA, in whatever form they may be, for any other mode of exploitation that might, in the absence of those rules, be freely chosen by the professional football clubs participating in matches organised as part of those competitions, be that mode of exploitation individual, bilateral or even multilateral.

220 Indeed, rules such as those laid down in Articles 67 and 68 of the FIFA Statutes reserve, in very clear and precise terms, the exclusive power for FIFA to determine, through regulatory provisions, the conditions of exploitation and use of those rights, by it or a third party. They also reserve to FIFA and UEFA an exclusive power to authorise the broadcast of matches and events including those involving interclub football competitions, whether on audiovisual or other platforms, without any restrictions as to content, time, place and technical aspects.

221 Moreover, those rules make subject to such powers, in equally unambiguous terms, all of those rights, be they financial rights, audiovisual and radio recording, reproduction and broadcasting rights, multimedia rights, marketing and promotion rights or intellectual property rights.

222 In so doing, those rules enable FIFA and UEFA to control in its entirety the supply of rights related to interclub competitions organised by them and, consequently, to prevent any and all competition between professional football clubs as regards the rights related to matches in which they participate. It is apparent from the case file before the Court that that mode of competitive functioning of the market is not at all theoretical but, on the contrary, very real and specific and that it existed, by way of example, until 2015 in Spain, as regards the audiovisual rights related to the competitions organised by the relevant national football association.

223 Lastly, as regards the economic and legal context of which the rules at issue in the main proceedings form a part, it should be noted, first, that the various rights emanating from professional interclub football competitions constitute the principal source of revenue that can be derived from those competitions, inter alia by FIFA and UEFA, as the organisers of those competitions, as well as by the professional football clubs, without whose participation those competitions could not take place. Those rights are thus at the heart of the economic activity to which those competitions give rise, and their sale is, accordingly, intrinsically linked to the organisation of such competitions.

224 To that extent, the monopoly conferred by the rules at issue in the main proceedings on the entity that prescribed them, namely FIFA, and on UEFA, as regards the exploitation and marketing of those rights, dovetails with the absolute control that those entities have over the organisation and marketing of the competitions, by virtue of the rules which are the subject matter of the first three questions from the referring court, and corroborates the legal, economic and practical scope of those rules.

225 Second, irrespective of the economic activity to which they give rise, the rights at issue in the main proceedings constitute, in themselves, an essential element in the system of undistorted competition which the EU and FEU Treaties are intended to establish and maintain, as the Court has held previously in relation to trade mark rights held by professional football clubs (see, to that effect, judgment of 12 November 2002, *Arsenal Football Club*, C-206/01, EU:C:2002:651, paragraphs 47 and 48). Indeed, they are rights, which are legally protected and have their own economic value, to exploit commercially in various ways a pre-existing product or service, in this case a match or series of matches in which a given club faces one or more other clubs.

226 Hence, these rights are a parameter of competition which the rules at issue in the main proceedings remove from the control of the professional football clubs that participate in the interclub competitions organised by FIFA and UEFA.

227 Third, unlike the organisation of interclub football competitions, which is a 'horizontal' economic activity involving only those entities or undertakings which are currently or potentially organisers of them, the marketing of the various rights related to those competitions is 'vertical' inasmuch as it involves, on the supply side, those same entities or undertakings and, on the demand side, undertakings wishing to purchase those rights, either in order to sell them on to television broadcasters and other media service providers (trade) or to broadcast the matches themselves through various electronic communications networks or various media, such as linear television or on-demand streaming, radio, internet, mobile devices and other emerging media. Those various broadcasters are themselves liable to sell space or time to undertakings which are active in other economic sectors, for the purpose of advertising or sponsorship, in order to enable them to place their products or services during the broadcast of the competitions.

228 Hence, given their content, what they objectively aim to achieve in terms of competition and the economic and legal context of which they form a part, rules such as those at issue in the main proceedings are liable not only to prevent any and all competition between the professional football clubs affiliated to the national football associations which are FIFA and UEFA members in the marketing of the various rights related to the matches in which they participate, but also to affect the functioning of competition, to the detriment of third-party undertakings operating across a range of media markets situated downstream from that marketing, to the detriment of consumers and television viewers.

229 In particular, such rules are liable to enable both entities on which they confer a monopoly in this area, consisting in total control over supply, to charge excessive, and therefore abusive, prices (see, to that effect, judgments of 14 February1978, *United Brands and United Brands Continentaal* v *Commission*, 27/76, EU:C:1978:22, paragraph 250, and of 11 December 2008, *Kanal 5 and TV 4*, C-52/07, EU:C:2008:703, paragraphs 28 and 29), faced with which actual or potential buyers of rights prima facie have only limited negotiating power, given the fundamental and inescapable place held by professional interclub football competitions and matches as products with drawing power able to attract and to retain the loyalty of a large audience throughout the year, in the range of programmes and broadcasts that broadcasters may offer their customers

and, more generally, television viewers. Moreover, by obliging all actual or potential buyers of rights to purchase from two vendors, each offering a range of products exclusive of any alternative offering and enjoying a strong image and reputation, they are liable to incentivise those actual or potential buyers to standardise their conduct on the market and their offerings to their own customers, thereby leading to a narrowing of choice and less innovation, to the detriment of consumers and television viewers.

230 For all of the foregoing reasons, inasmuch as they substitute, imperatively and completely, an arrangement for the exclusive exploitation of all of the rights emanating from the professional interclub football competitions organised by FIFA and UEFA for any other mode of exploitation that might, in their absence, be freely chosen, rules such as those at issue in the main proceedings may be regarded as having as their 'object' the prevention or restriction of competition on the different markets concerned within the meaning of Article 101(1) TFEU, and as constituting 'abuse' of a dominant position within the meaning of Article 102 TFEU, unless it can be proven that they are justified. That holds all the more true when such rules are combined with rules on prior approval, participation and sanctions, such as those that were the subject matter of the preceding questions.

(c) Whether there is justification

231 As regards the question whether such rules are liable to fulfil all of the conditions referred to in paragraphs 190 and 204 of the present judgment, which must be fulfilled for there to be an exemption under Article 101(3) TFEU and to be considered justified under Article 102 TFEU, it should be noted that it will be for the referring court to rule on this question, after having allowed the parties to the main proceedings to discharge their respective burdens of proof.

232 That said, it should be noted, first, that before the Court, the defendants in the main proceedings, a number of governments and the Commission have argued that those rules enable efficiency gains to be made by helping to improve both production and distribution. By allowing actual or potential buyers to negotiate for the purchase of rights with two exclusive vendors prior to each of the international or European competitions organised by those vendors, the rules bring down their transaction costs significantly and reduce the uncertainty they would face if they had to negotiate on a case-by-case basis with the participating clubs, who would be liable to have divergent respective positions and interests in relation to the marketing of those rights. Moreover and especially, they also allow actual and potential buyers to have access, on defined terms and with consistent application at international or European level, to rights which are infinitely more attractive than what would be proposed to them jointly by clubs participating in one or another match, given that those rights benefit from FIFA's and UEFA's brand reputation and cover the entirety of a competition organised by them, or at least a complete set of matches scheduled at various stages of that competition (qualification matches, group stage and final stage).

233 It will, however, be for the national court to determine, in the light of the arguments and evidence to be adduced by the parties to the main proceedings, the extent of those efficiency gains and, in the event that their actual existence and extent have been established, to rule on whether any such efficiency gains would be such as to

compensate for the disadvantages in terms of competition resulting from the rules at issue in the main proceedings.

234 Second, the defendants in the main proceedings, a number of governments and the Commission have argued that a fair share of the profit that appears to result from the efficiency gains achieved through the rules at issue in the main proceedings is reserved for users. Thus, a large share of the profit derived from the centralised sale of the various rights related to the interclub football competitions organised by FIFA and UEFA is allocated to financing or projects intended to ensure some form of 'solidarity redistribution' within football, to the benefit not only of professional football clubs participating in those competitions, but also those not participating, amateur clubs, professional players, women's football, young players and other categories of stakeholders in football. Similarly, improvements in production and distribution resulting from the centralised sale and the 'solidarity redistribution' of the profit generated thereby ultimately benefit supporters, consumers, that is to say, television viewers, and, more broadly, all EU citizens involved in amateur football.

235 Those arguments appear prima facie to be convincing, given the essential characteristics of the interclub football competitions organised at world or European level. Indeed, the proper functioning, sustainability and success of those competitions depend on maintaining a balance and on preserving a certain equality of opportunity as between the participating professional football clubs, given the interdependence that binds them together, as follows from paragraph 143 of the present judgment. Moreover, there is a trickle-down effect from those competitions into smaller professional football clubs and amateur football clubs which, whilst not participating therein, invest at local level in the recruitment and training of young, talented players, some of whom will turn professional and aspire to join a participating club (see, to that effect, judgment of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 41 to 45). Lastly, the solidarity role of football, as long as it is genuine, serves to bolster its educational and social function within the European Union.

236 Even so, the profit generated by centralised sales of the rights related to interclub football competitions for each category of user – including not only professional and amateur clubs and other stakeholders in football, but also spectators and television viewers – must be proven to be real and concrete.

237 It will thus, ultimately, be for the referring court to determine, in the light of the evidence, particularly accounting and financial, to be adduced by the parties to the main proceedings, whether the arguments in question, irrespective of whether they relate to 'horizontal' solidarity as between clubs participating in those competitions or 'vertical' solidarity with the various other stakeholders in football, are in fact substantiated having regard to the rules at issue in the main proceedings.

238 Third, it will also be for the referring court to determine, in the light of the evidence to be adduced by the parties to the main proceedings, whether the rules at issue in the main proceedings are indispensable for achieving the efficiency gains referred to above and for ensuring the 'solidarity redistribution' of a fair share of the profit generated thereby to all users, be they professional or amateur football stakeholders, spectators or television viewers.

239 As regards, fourth, the question whether the rules at issue allow effective competition to remain for a substantial part of the products or services concerned, it should be noted that, whilst those rules eliminate all competition on the supply side, they do not, on the other hand, seem by themselves to eliminate competition on the demand side. Indeed, whilst they are liable to impose on actual or potential buyers a higher price to acquire rights, thereby reducing the number of buyers who are in a position to do so, or even incentivise them to group together, they also allow them to access a more attractive product in terms of content and image, for which there is fierce competition given the privileged position it occupies in the range of programmes and broadcasts that may be offered to customers and, more broadly, television viewers.

240 Be that as it may, the referring court can appraise the actual existence and importance of that competition only by taking into account the actual legal and economic conditions in which FIFA establishes a framework for the exploitation and proceeds to market the various competition-related rights (audiovisual, multimedia, marketing and other) on the basis of Articles 67 and 68 of its statutes. Where there is no competition between vendors and thus no 'inter-product' competition, that competition can be ensured, inter alia, through the use of an auction, selection or bidding procedure that is open, transparent and non-discriminatory and leads to impartial decision-making, thereby enabling actual or potential buyers to engage in effective, undistorted competition 'for the products'. It may also depend on the duration for which those rights are being offered, whether they are exclusive or non-exclusive, their geographical scope, the number (batches) and type (qualification, group stage, knockout round) of matches which may be broadcast, as well as all of the legal, technical and financial conditions under which those rights may be acquired. Beyond those legal parameters, competition may also depend on the number of actual or potential buyers, their respective market positions and the links that may exist both between them and with other stakeholders in football, such as professional football clubs, other undertakings or FIFA and UEFA themselves.

241 In the light of all of the foregoing, the answer to the fourth question is that Articles 101 and 102 TFEU must be interpreted as:

– not precluding rules laid down by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, inasmuch as they designate those associations as being the original owners of all of the rights emanating from competitions coming under their 'jurisdiction', where those rules apply only to competitions organised by those associations, to the exclusion of those which might be organised by third-party entities or undertakings;

– precluding such rules in so far as they confer on those same associations an exclusive power relating to the marketing of the rights at issue, unless it is demonstrated, through convincing arguments and evidence, that all the conditions required in order for those rules to benefit, under Article 101(3) TFEU, from an exemption to the application of Article 101(1) TFEU and be considered justified under Article 102 TFEU are satisfied.

C. Consideration the sixth question: freedoms of movement

242 By its sixth question, the referring court asks, in essence, whether Articles 45, 49, 56 and 63 TFEU must be interpreted as precluding rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, where there is no framework for those rules providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate.

1. Identification of the relevant freedom of movement

243 Where a national court makes a reference to the Court about the interpretation of various provisions of the FEU Treaty relating to freedoms of movement, with a view to ruling on a measure pertaining to several of those freedoms at the same time, and it appears, in view of its object, that that measure relates predominantly to one of those freedoms and secondarily to the others, the Court will in principle examine the measure in relation to only the predominant freedom concerned (see, to that effect, judgments of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, paragraph 47, and of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 50 and 51).

244 In the present case, the referring court asks the Court about the interpretation of provisions of the FEU Treaty pertaining to the freedom of movement of workers, freedom of establishment, freedom to provide services and freedom of movement of capital. However, the rules on which that court has been called on to rule in the dispute in the main proceedings have as their predominant object to make the organisation and marketing of any new interclub football competition on European Union territory subject to prior approval by FIFA and UEFA, and thus to make any undertaking wishing to carry on such an economic activity in any Member State whatsoever dependent on the grant of such approval. Although it is true that those rules on prior approval are accompanied by rules controlling the participation of professional football clubs and players in those competitions, for the purposes of the answer to be given to the present question, the latter may be considered as secondary to the former, inasmuch as they are ancillary thereto.

245 Thus, the FIFA and UEFA rules at issue in the main proceedings may be regarded as relating predominantly to the freedom to provide services, which includes all services which are not offered on a stable and continuous basis from an establishment in the Member State of destination (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 53).

246 In those circumstances, the Court will limit its examination to Article 56 TFEU.

2. The existence of an obstacle to freedom to provide services

247 Article 56 TFEU, which enshrines the freedom to provide services for the benefit of both providers and recipients of such services, precludes any national measures, even those which are applicable without distinction, which restrict the exercise of that

freedom by prohibiting, impeding or rendering less attractive the activity of those providers in those Member States other than the one where they are established (see, to that effect, judgments of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, paragraph 51, and of 3 March 2020, *Google Ireland*, C-482/18, EU:C:2020:141, paragraphs 25 and 26).

248 This is the case of the rules at issue in the main proceedings. Indeed, since, according to the statements of the referring court, there is no framework providing for substantive criteria and detailed rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, those rules enable FIFA and UEFA to exercise discretionary control over the possibility for any third-party undertaking to organise and market interclub football competitions on European Union territory, the possibility for any professional football club to participate in those competitions as well as, by way of corollary, the possibility for any other undertaking to provide services related to the organisation or marketing of those competitions, as observed, in essence, by the Advocate General in points 175 and 176 of his Opinion.

249 In so doing, those rules tend not only to impede or make less attractive the various economic activities concerned, but to prevent them outright, by limiting access for any newcomer (see, by analogy, judgments of 10 March 2009, *Hartlauer*, C-169/07, EU:C:2009:141, paragraph 34, and of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 62).

250 It follows that those rules constitute an obstacle to the freedom to provide services enshrined in Article 56 TFEU.

3. Whether there is justification

251 Measures of non-State origin may be permitted even though they impede a freedom of movement enshrined in the FEU Treaty, if it is proven, first, that their adoption is justified by a legitimate objective in the public interest which is other than of a purely economic nature and, second, that they observe the principle of proportionality, which entails that they are suitable for ensuring the achievement of that objective and do not go beyond what is necessary for that purpose (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 104, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 48). As regards, more specifically, the condition relating to the suitability of such measures, it should be borne in mind that they can be held to be suitable for ensuring achievement of the aim relied on only if they genuinely reflect a concern to attain it in a consistent and systematic manner (see, to that effect, judgments of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, paragraph 61, and of 6 October 2020, *Commission* v *Hungary (Higher education)*, C-66/18, EU:C:2020:792, paragraph 178).

252 Similarly to situations involving a measure of State origin, it is for the party who introduced the measure of non-State origin at issue to demonstrate that those two cumulative conditions are met (see, by analogy, judgments of 21 January 2016, *Commission* v *Cyprus*, C-515/14, EU:C:2016:30, paragraph 54, and of 18 June

2020, *Commission* v *Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476, paragraph 77).

253 In the present case, in view of the aspects discussed in paragraphs 142 to 144 and 196 of the present judgment, the Court finds that the adoption of rules on prior approval of interclub football competitions and on the participation of professional football clubs and players in those competitions may be justified, in terms of its very principle, by public interest objectives consisting in ensuring, prior to the organisation of such competitions, that they will be organised in observance of the principles, values and rules of the game underpinning professional football, in particular the values of openness, merit and solidarity, but also that those competitions will, in a substantively homogeneous and temporally coordinated manner, integrate into the 'organised system' of national, European and international competitions characterising that sport.

254 Nevertheless, those objectives are not capable of justifying the adoption of such rules where they do not include substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, precise and non-discriminatory, as follows from paragraphs 147, 175, 176 and 199 of the present judgment.

255 Indeed, in order for a prior approval scheme like the one introduced by those rules to be held to be justified, it must, in any event, be based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the discretion conferred thereby on the body empowered to grant or refuse that prior approval, so that that power is not used arbitrarily (see, to that effect, judgments of 22 January 2002, *Canal Satélite Digital*, C-390/99, EU:C:2002:34, paragraph 35, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 65).

256 In the present case, in the light of the statements of the referring court referred to in paragraph 248 of the present judgment, the rules at issue in the main proceedings do not appear to be capable of being justified by a legitimate objective in the public interest.

257 In the light of all the foregoing, the answer to the sixth question is that Article 56 TFEU must be interpreted as precluding rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, where there is no framework for those rules providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate.

Costs

258 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court.

Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. Article 102 TFEU

must be interpreted as meaning that the adoption and implementation of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes abuse of a dominant position.

2. Article 101(1) TFEU

must be interpreted as meaning that the adoption and implementation, directly or through their member national football associations, of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes a decision by an association of undertakings having as its object the prevention of competition.

3. Article 101(3) and Article 102 TFEU

must be interpreted as meaning that rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, may benefit from an exemption to the application of Article 101(1) TFEU or be considered justified under Article 102 TFEU only if it is demonstrated, through convincing arguments and evidence, that all of the conditions required for those purposes are satisfied.

4. Articles 101 and 102 TFEU must be interpreted as

– not precluding rules laid down by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, inasmuch as they

designate those associations as being the original owners of all of the rights emanating from competitions coming under their 'jurisdiction', where those rules apply only to competitions organised by those associations, to the exclusion of those which might be organised by third-party entities or undertakings;

– precluding such rules in so far as they confer on those same associations an exclusive power relating to the marketing of the rights at issue, unless it is demonstrated, through convincing arguments and evidence, that all the conditions required in order for those rules to benefit, under Article 101(3) TFEU, from an exemption to the application of Article 101(1) TFEU and be considered justified under Article 102 TFEU are satisfied.

5. Article 56 TFEU

must be interpreted as precluding rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, where there is no framework for those rules providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate.

C-124/21 P, International Skating Union v Commission (21 December 2023)

Judgment

1 By its appeal, the International Skating Union ('the ISU') seeks to have set aside in part the judgment of the General Court of the European Union of 16 December 2020, *International Skating Union* v *Commission* (T-93/18, 'the judgment under appeal', EU:T:2020:610), by which the General Court dismissed in part its action for annulment of Commission Decision C(2017) 8230 final of 8 December 2017 relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40208 – International Skating Union's Eligibility rules) ('the decision at issue').

2 By their cross-appeal, Mr Mark Jan Hendrik Tuitert, Mr Niels Kerstholt and the European Elite Athletes Association ('EU Athletes') also seek to have set aside in part the judgment under appeal.

I. Background to the dispute

3 The factual background to the dispute, as set out in paragraphs 1 to 37 of the judgment under appeal, may be summarised as follows.

A. The ISU

4 The ISU is an association governed by private law which has its headquarters in Switzerland. It describes itself as the only international sports federation recognised by the International Olympic Committee ('the IOC') in the field of figure skating and speed skating ('skating'). Its bodies include a 'legislative body' called 'the Congress, which is the 'highest-ranking body', and an 'executive body', known as 'the Council'.

5 The members of that association are figure-skating and speed-skating national associations, whose members or affiliates are in turn associations and clubs to which, in particular, professional athletes practising those sporting disciplines as an economic activity belong.

6 According to Article 1(1) and Article 3(1) of its Statutes, to which the decision at issue refers, the aim of the ISU is to regulate, administer, govern and promote skating throughout the world.

7 At the same time, it carries out an economic activity, consisting in particular of organising international skating events and exploiting the rights associated with those events. In the field of speed skating, those include, among others, the Speed Skating and Short Track Speed Skating World Cups and various international and European championships. The ISU is also responsible for organising skating events which take place in the context of the Olympic Winter Games.

B. The rules issued by the ISU

8 The ISU has set out and published a set of rules, codes and communications, including inter alia the following rules.

1. The prior authorisation rules

9 On 20 October 2015, the ISU published Communication No 1974, entitled ‘Open International Competitions’, which sets out the procedure to follow in order to obtain advance authorisation to organise an international skating competition and which is applicable both to national associations that are ISU members and any third-party entity or undertaking (‘the prior authorisation rules’).

10 That communication states, first of all, that the organisation of such competitions is subject to prior authorisation by the ISU and must be conducted in accordance with the regulations set out by that association. It states, inter alia, in that regard, that the time limit for submission of an application for prior authorisation is six months prior to the intended starting date of the competition if it is to be organised by a third-party entity or undertaking and three months before that date if the organiser is a national association that is an ISU member.

11 Next, that communication sets out a series of general, financial, technical, commercial, sporting and ethical requirements with which any organiser of a skating competition must comply. It follows from those requirements, in particular, that any application for prior authorisation must be accompanied by financial, technical, commercial and sporting information (including the venue of the planned event, value of the prizes to be awarded, business plan, budget, television coverage), that any organiser must submit a declaration confirming that it accepts the ISU’s Code of Ethics and that the ISU may request that further information be submitted to it on those various matters.

12 Lastly, Communication No 1974 authorises the ISU to accept or reject an application for prior authorisation submitted to it on the basis of the requirements set out in that communication and on the basis of the fundamental objectives pursued by that association, as defined, in particular, in Article 3(1) of its Statutes. That communication also provides that, in the event that such an application is rejected, an organiser may lodge an appeal against the ISU’s decision before the Court of Arbitration for Sport (‘the CAS’), established in Lausanne (Switzerland), in accordance with the rules adopted by the ISU with a view to establishing a dispute resolution mechanism (‘the arbitration rules’).

2. The eligibility rules

13 The ISU General Regulations include rules identified as ‘eligibility rules’, which determine the conditions in which athletes may take part in skating competitions. Those eligibility rules provide that such competitions must, first, have been authorised by the ISU or its members and, second, comply with the rules established by that association.

14 In the version adopted in 2014, those eligibility rules also contained inter alia Rule 102(1)(a)(i), according to which a person ‘has the privilege to take part in the activities and competitions under the jurisdiction of the ISU only if such person respects the principles and policies of the ISU as expressed in the ISU Statutes’, and Rule 102(1)(a)(ii), which stated that ‘the condition of eligibility is made for the adequate protection of the economic and other interests of the ISU, which uses its financial revenues for the administration and development of … sport disciplines and for the support and benefit of [its] Members and their Skaters’.

15 Those rules also contained Rule 102(2)(c), Rule 102(7) and Rule 103(2), from which it followed that, if an athlete participated in a competition not authorised by the ISU and/or by one of the national associations that make up its members, the person concerned would be exposed to a penalty of 'loss of eligibility' or 'ineligibility', entailing a lifetime ban from any competition organised by the ISU.

16 In 2016, the eligibility rules were partially revised.

17 Rule 102(1)(a)(ii), as revised, no longer refers to the 'adequate protection of the economic and other interests of the ISU'. Instead, it states that that 'the condition of eligibility is made for adequate protection of the ethical values, jurisdiction objectives and other legitimate respective interests' of that association, 'which uses its financial revenues for the administration and development of the ISU sport disciplines and for the support and benefit of [its] Members and their Skaters'.

18 According to Rule 102(7), following that partial revision, an athlete's participation in an event not authorised by the ISU and/or by one of the national associations that make up its members may give rise to a warning or the penalty of 'loss of eligibility' or 'ineligibility' entailing a ban from any competition organised by the ISU, whether for a specific period or for life.

19 Alongside those different rules, Article 25 of the ISU Statutes provides for the possibility for athletes who wish to challenge a decision imposing a penalty of 'loss of eligibility' or 'ineligibility' on them to lodge an appeal against that decision before the CAS in accordance with the arbitration rules.

C. The administrative procedure and the decision at issue

20 Mr Tuitert and Mr Kerstholt are two professional speed skaters residing in the Netherlands. They belong to the Koninklijke Nederlandsche Schaatsenrijders Bond (KNSB), the Royal Netherlands Skating Federation, which is a member of the ISU.

21 EU Athletes describes itself as the leading European association representing athletes and players from different sporting disciplines.

22 On 23 June 2014, Mr Tuitert and Mr Kerstholt submitted a complaint to the European Commission in which they claimed that the prior authorisation and eligibility rules laid down by the ISU infringed Articles 101 and 102 TFEU.

23 On 5 October 2015, the Commission decided to open a procedure in that regard.

24 On 29 September 2016, the Commission sent a statement of objections to the ISU, in which it considered, in essence, that that association was in breach of Article 101 TFEU. The ISU replied to that statement of objections on 16 January 2017.

25 On 8 December 2017, the Commission adopted the decision at issue. As indicated in recital 3 thereof, that decision principally covers the ISU's eligibility rules, as set out in paragraphs 13 to 18 of the present judgment, which allow that association to control the participation of athletes in skating events and to sanction them in the event of their participating in a competition not authorised by it. However, as is apparent from that recital, the decision at issue also covers the rules for prior authorisation of those competitions by the ISU, as set out in paragraphs 9 to 12 of the present judgment.

Finally, as set out in recitals 5 and 6 of that decision, it also covers the arbitration rules referred to in paragraph 19 of the present judgment.

26 In recitals 112 and 115 of the decision at issue, the Commission defined the relevant market as the worldwide market for the organisation and commercial exploitation of international speed skating events as well as the exploitation of the various rights associated with those events.

27 In recitals 116 to 134 of that decision, the Commission considered that the ISU had a strong position on the relevant market and had a substantial ability to influence any competition that might exist on that market. The factors that it took into consideration in order to justify that assessment include, in particular, first, the central role occupied by that association in that market, in its capacity as the sole international sports association recognised by the IOC in the field of skating and as an association with the purpose of regulating, administering, governing and promoting that sporting discipline throughout the world and, second, the fact that it organises and commercially exploits in parallel the main international competitions in that field. In its analysis in that regard, the Commission relied, inter alia, on the power held by the ISU to lay down rules imposed on all the national associations which are members and on all international skating competitions, including those organised by the ISU itself, by its members or by third-party entities or undertakings. It also notes, in essence, that those rules concern all matters relating to the organisation, conduct and commercial exploitation of those competitions (including prior authorisation, rules of the discipline, technical requirements, financial conditions, participation of athletes, sale of rights, imposing of sanctions, settlement of disputes) and that they are applicable to all parties entitled to take part in them or to be involved in their organisation or exploitation (including national associations, athletes, organisers, broadcasters, sponsors).

28 In recitals 146 to 152 of that decision, the Commission considered that the ISU should be classified both as an ‘association of undertakings’ within the meaning of Article 101(1) TFEU, in so far as its members are national skating associations that may themselves be classified as ‘undertakings’ within the meaning of that provision, in so far as they carry out economic activities consisting of organising and marketing competitions and exploiting the various rights associated with such competitions, and as an ‘undertaking’ within the meaning of that provision in so far as it too carries out such economic activities. The Commission also considered that the prior authorisation and eligibility rules should be classified as ‘decisions of associations of undertakings’ within the meaning of that provision.

29 In recitals 162 to 188 of the decision at issue, the Commission stated, in essence, that the prior authorisation and eligibility rules had as their object the restriction of competition on the relevant market, within the meaning of Article 101(1) TFEU, on the ground that an examination of the content of those rules, the economic and legal context of which they form a part, and the aims they pursue showed that those rules allowed the ISU, on the one hand, to prevent potential organisers of international speed skating events in competition with ISU events from entering that market and, on the other hand, to restrict the possibility for professional speed skaters to take part freely in such events

and thus to deprive potential organisers of such events of the services of the athletes whose participation is necessary for such events to be held.

30 In recitals 189 to 209 of that decision, the Commission stated that, taking into account the assessments summarised in the preceding paragraph, it was not necessary to examine the effects of the prior authorisation and eligibility rules on competition, before setting out the reasons why it considered that those rules also had the effect of restricting competition on the relevant market.

31 In recitals 210 to 266 of that decision, the Commission stated, in essence, that those rules could not be regarded as falling outside the scope of Article 101(1) TFEU on the ground that they are justified by legitimate objectives and inherent in the pursuit of those objectives.

32 In recitals 268 to 286 of that decision, the Commission considered, in essence, that although they themselves do not constitute a restriction of competition, the arbitration rules should be regarded as reinforcing the restriction of competition resulting from the prior authorisation and eligibility rules.

33 In recitals 287 to 348 of the decision at issue, the Commission found, inter alia, that the prior authorisation and eligibility rules did not satisfy the conditions required by Article 101(3) TFEU in order to benefit from an exemption, that those rules were capable of affecting trade between Member States and that it was necessary to require the ISU to bring the infringement established in that decision to an end, on pain of periodic penalty payments. In particular, in recitals 338 to 342 of that decision, the Commission stated that the measures that it required the ISU to take to bring an end to that infringement should in particular consist of, first, adopting prior authorisation criteria which are objective, transparent, non-discriminatory and proportionate, second, setting up suitable procedures for prior authorisation and sanctions, and third, amending the arbitration rules so as to ensure the effective review of decisions made at the end of those procedures.

34 The operative part of the decision at issue includes Article 1, according to which the ISU 'has infringed Article 101 [TFEU] … by adopting and enforcing the Eligibility rules, in particular Rules 102 and 103 of the … 2014 General Regulations and the … 2016 General Regulations, with regard to speed skating'. It also contains Article 2, under which the ISU is required to bring to an end to that infringement and to refrain from repeating it, and Article 4, which provides for the imposition of periodic penalty payments in the event of failure to comply with those requirements.

D. The action before the General Court and the judgment under appeal

35 By application lodged at the Registry of the General Court on 19 February 2018, the ISU brought an action for annulment of the decision at issue. In support of that action, the ISU relied on eight pleas in law alleging, in essence, in the first plea in law, infringement of the obligation to state reasons; in the second to fifth pleas in law, infringement of Article 101 TFEU in so far as that article was applied to its prior authorisation and eligibility rules; in the sixth plea in law, infringement of that article in so far as it was applied to the arbitration rules; and; in the seventh and eighth pleas

in law, the unlawfulness of both the requirements and periodic penalty payments which were imposed on the ISU.

36 By documents lodged at the Court Registry on 1 June 2018, Mr Tuitert, Mr Kerstholt and EU Athletes applied for leave to intervene in support of the form of order sought by the Commission.

37 By order of 12 September 2018, the President of the Seventh Chamber of the General Court allowed those applications to intervene.

38 On 20 December 2019, the General Court referred the case to a Chamber sitting in extended composition.

39 On 16 December 2020, the Court handed down the judgment under appeal, in which it held, in essence, that the decision at issue was not vitiated by illegality in so far as it related to the ISU's prior authorisation and eligibility rules, but that it was unlawful in so far as it related to the arbitration rules.

40 In that regard, in the first place, the Court held, in paragraphs 52 to 63 of the judgment under appeal, that the first plea in law, alleging that the decision at issue was vitiated by contradictory reasoning, was not well founded.

41 In the second place, the Court observed, in paragraphs 64 to 123 of the judgment under appeal, that the second and fourth pleas in law of the ISU did not permit the view that the Commission's findings that the prior authorisation and eligibility rules had as their object the restriction of competition within the meaning of Article 101(1) TFEU were incorrect.

42 In that regard, the Court held, in essence, first of all, in paragraphs 69 to 76 of the judgment under appeal that, even though the regulatory, control and decision-making powers and the power to impose sanctions of the ISU had not been delegated to it by a public authority, the rules laid down by that association, in its capacity as the sole international sports association in the field of skating must be understood in the light, in particular, of the case-law relating to the exercise at the same time, by the same entity, of an economic activity and of the powers likely to be used to prevent entities or undertakings currently or potentially in competition with it from entering the market (judgments of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127). In that context, the General Court also observed that the prior authorisation and eligibility rules concerned the organisation of the most important and lucrative international speed skating events, and in particular the prior authorisation of those events and the participation of athletes therein.

43 Next, that court found in paragraphs 77 to 121 of the judgment under appeal that, given the content of the prior authorisation and eligibility rules, the aims pursued by those rules and the economic and legal context of which they form a part, the Commission had been duly able to find that those rules had as their object the restriction of competition, within the meaning of Article 101(1) TFEU.

44 Finally, the General Court held, in paragraph 123 of the judgment under appeal, that, consequently, it was not necessary also to examine the remainder of the arguments

submitted by the ISU in the context of its third plea in law, in order to challenge the Commission's assessments relating to the actual or potential effects of those rules on competition.

45 In the third place, the General Court held in paragraphs 124 to 130 of the judgment under appeal that, contrary to what the ISU asserted in its fifth plea in law, the Commission had not misconstrued the territorial scope of Article 101 TFEU by taking into account, in the decision at issue, the ISU's refusal to authorise a planned speed skating event to be held in Dubai (United Arab Emirates), thus in a third country. In that regard, that court considered, in essence, that that institution had referred to that element to illustrate the application of the prior authorisation rules issued by the ISU, while demonstrating, moreover, that those rules were likely to produce immediate, substantial and foreseeable effects in the European Union.

46 In the fourth place, the General Court, after finding, in paragraphs 134 to 140 of the judgment under appeal, that the sixth plea in law raised by the ISU, which concerned the Commission's assessment of the arbitration rules in the decision at issue, was effective, upheld that plea in paragraphs 141 to 164 of that judgment.

47 In the fifth and last place, the Court held, consequently, in paragraphs 165 to 178 of the judgment under appeal that the seventh and eighth pleas in law of the ISU, relating to the legality of the requirements and periodic penalty payments set out in the decision at issue, should be partially upheld, in so far as those requirements and periodic penalty payments related to the arbitration rules. At the same time it rejected the remainder of the pleas in law.

48 In the light of all those findings, the General Court annulled in part Articles 2 and 4 of the decision at issue and dismissed the action as to the remainder.

II. Forms of order sought by the parties

49 By its appeal, the ISU claims that the Court of Justice should:

– set aside the judgment under appeal in so far as it dismissed in part the action at first instance;

– annul the decision at issue to the extent that it has not already been annulled by the judgment under appeal; and

– order the Commission and the interveners at first instance to pay the costs incurred both at first instance and on appeal.

50 The Commission contends that the Court should dismiss the appeal and order the ISU to pay the costs.

51 Mr Tuitert, Mr Kerstholt and EU Athletes contend that the Court should dismiss the appeal.

52 By their cross-appeal, Mr Tuitert, Mr Kerstholt and EU Athletes claim that the Court should:

– set aside the judgment under appeal in so far as it annulled in part the decision at issue;

– dismiss the action at first instance to the extent that it has not already been dismissed by the judgment under appeal; and

– order the ISU to pay the costs incurred at the appeal stage.

53 The Commission claims that the Court should allow the cross-appeal and order the ISU to pay the costs.

54 The ISU contends that the cross-appeal should be dismissed and Mr Tuitert, Mr Kerstholt and EU Athletes should be ordered to pay the costs.

III. The appeal

55 In support of its head of claim seeking that the judgment under appeal be set aside in part, the ISU relies on two grounds of appeal alleging infringement of Article 263 TFEU in conjunction with Article 101(1) TFEU.

56 It asks the Court, furthermore, to decide on the substance of the dispute and to rule thereon.

A. The first ground of appeal

1. Arguments of the parties

57 By its first ground of appeal, which is divided into three parts, the ISU complains that the General Court, in essence, failed to discharge its duty as the arbiter of the legality of decisions adopted by the Commission under the competition rules and infringed the concept of restriction of competition by 'object' referred to in Article 101(1) TFEU.

58 Before setting out that ground of appeal, the ISU presents three contextual factors in order, in its view, to facilitate its examination.

59 First, it notes that, for nearly a century (1892-1990), the eligibility rules covering the participation of athletes in skating competitions applied solely to amateurs, before it was decided, in line with developments within the IOC, to allow professional athletes also to participate in those competitions. It adds that following that change the prior authorisation rules applicable to those competitions were introduced, for the purpose of ensuring that those competitions, whether organised by the ISU or by a third-party entity or undertaking, would be conducted in accordance with those rules on a worldwide basis.

60 Second, the ISU maintains that the decision at issue is focused on speed skating, which is a niche sporting discipline representing a turnover for the ISU of 5 million Swiss francs (CHF) (approximately EUR 5.1 million at the current exchange rate) for 2016, of a total of approximately CHF 32 million (approximately EUR 32.7 million at the current exchange rate), of which the outstanding amount derives from the better-known sporting discipline of figure skating. It adds that that niche sporting discipline has merely limited appeal for the general public and this explains why no third-party

entity or undertaking has ever sought to organise an international competition in that field, until that referred to in the decision at issue. By contrast, it received 20 applications of that kind in the field of figure skating over the last 20 years, which were all approved. The ISU also submits that the refusal to authorise the sole application made to it on two occasions (namely in 2011 and then in 2014) in the field of speed skating was based on the central role that the organiser of the planned international competition intended to give to betting. That planned event, moreover, was eventually authorised in 2016 in the Netherlands in a format which did not include betting.

61 Third, the ISU maintains that, while the Commission classified the prior authorisation and eligibility rules as a restriction of competition by 'object' and 'effect' in the decision at issue, it nonetheless abandoned its initial opposition in principle expressed in its statement of objections with regard to those rules, by focusing on their arbitrary and disproportionate nature in the present case. This moreover explains why the ISU implemented the requirements set out in Article 2 of the decision at issue, by means of, inter alia, a communication seeking to amend those rules and not to abolish them.

62 While asserting that the ISU does not claim that there has been any distortion of the facts before the Court of Justice and therefore the facts to which the judgment under appeal refers must therefore be regarded as definitively established, the Commission disputes the accuracy of contextual elements presented by the ISU in the appeal. In particular, it submits, first, that the 20 international figure skating competitions that were approved by the ISU were not in fact organised by third-party entities or undertakings but by members of that association. Second, the planned speed skating event that the ISU approved in 2016 was also taken over, in the intervening period, by a national association that was a member of the ISU. Third, the ISU's refusal to approve that plan, as initially conceived by a third-party undertaking, took place when that association knew perfectly well that no betting was planned in that context.

63 Furthermore, the Commission asserts that the examination of the appeal should be made, in line with the decision at issue and the judgment under appeal, taking into account the effect of the rules laid down by the ISU not only on athletes, whom they prevent from freely offering their services to potential organisers of international events other than that association and its members, but also on those operators themselves, whom they prevent from freely organising international competitions both directly (the prior authorisation rules) and indirectly (the eligibility rules).

64 Mr Tuitert, Mr Kerstholt and EU Athletes support those arguments.

(a) The first part

65 By the first part of its first ground of appeal, the ISU complains that the General Court rejected as unfounded or ineffective or failed to examine certain arguments and items of evidence that it had submitted at first instance in the context of its second plea in law, alleging infringement of Article 101(1) TFEU, with a view to challenging the assessments relied on by the Commission in concluding that there was a restriction of competition by 'object'.

66 In that regard, it submits, first of all, that, in the decision at issue, the Commission, in practice, assessed the adoption and enforcement of the prior authorisation and eligibility rules, then classified those two elements as a restriction of competition by 'object', as the General Court moreover recognised in paragraphs 57 and 126 of the judgment under appeal.

67 Next, the ISU maintains that it invited the General Court, by its second plea in law, to reject that legal categorisation and to condemn the manifest errors of assessment that led the Commission to that conclusion. In particular, the ISU submits that it challenged, at first instance, the various findings of the Commission contained in recitals 174 to 179 of the decision at issue relating to the application of the prior authorisation and eligibility rules, as illustrated, as regards speed skating, by its allegedly intentional and anticompetitive refusal to authorise the sole planned international event by a competitor which was submitted to it in the preceding 20 years, in its initial version, and, as regards figure skating, by the parallel authorisation of 20 or so international events organised by third parties.

68 Lastly, it claims that the General Court failed to discharge its duty under Article 263 TFEU by rejecting its arguments and evidence in that regard, in paragraphs 116, 117, 121 and 127 of the judgment under appeal, on the ground that they were unfounded, ineffective or even irrelevant in so far as they concerned either matters of intention and implementation which did not need to be taken into account in order to establish the existence of a restriction of competition by 'object', or a sporting discipline other than that constituting the market concerned by that restriction. In addition, that court did not address other arguments or items of evidence adduced before it, in particular those relating to the matter of betting. In that regard, the ISU maintains that, despite not actually being part of the third-party planned international event that had been submitted to it, betting nevertheless lay at the heart of the concept that the organiser of that event intended to promote.

69 The Commission, supported by Mr Tuitert, Mr Kerstholt and EU Athletes, disputes all of those arguments.

(b) The second part

70 By the second part of its first ground of appeal, the ISU claims that the General Court substituted its factual and legal assessment for that of the Commission in finding the existence of an infringement differing from that found in Article 1 of the decision at issue, in disregard of its duty under Article 263 TFEU and relying on a misinterpretation of Article 101(1) TFEU.

71 In that regard, the ISU maintains, in the first place, that the General Court not only focused on conduct that was partially different from that called into question by the Commission (singling out the very existence of the prior authorisation and eligibility rules, and not their adoption and enforcement), but also classified that conduct differently. With regard to that second aspect, the General Court found exclusively that there was a restriction of competition by 'object', not only on the basis of the factors on which the Commission had relied in Section 8.3 of the decision at issue (entitled 'Restriction of competition by object') but also those referred to in Section 8.5 of that

decision (entitled ‘The Eligibility rules are within the scope of Article 101 [TFEU]’). The latter section concerns a separate matter, however.

72 In the second place, the ISU asserts that that rewriting of the decision at issue is itself based on a legally incorrect interpretation of Article 101(1) TFEU.

73 According to the ISU, that provision distinguishes restrictions of competition by ‘object’ and ‘effect’, the first of those two classifications being applicable only to conduct that may be considered, by its very nature, harmful to competition. In the present case, the General Court did not explain how the different elements to which it referred in paragraphs 87 to 89, 91 to 93 and 101 to 110 of the judgment under appeal justified such a classification. On the contrary, it merely examined the wording of the prior authorisation and eligibility rules and their aims in an abstract manner without context, then concluded, following that examination, that there was a possibility or risk that those rules could be used for anticompetitive purposes, given the discretionary power they confer on the ISU.

74 In addition, the ISU argues that the case-law relied on by the General Court in order to carry out that analysis (judgments of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127) is only relevant in the presence of restrictions of competition by ‘effect’ and cannot therefore be applied by analogy in order to rule on the potential existence of restrictions of competition by ‘object’, as the General Court did in paragraphs 72 and 88 of the judgment under appeal.

75 The Commission, supported by Mr Tuitert, Mr Kerstholt and EU Athletes, disputes all of those arguments.

(c) The third part

76 By the third part of its first ground of appeal, the ISU complains that the General Court erred in law in upholding the findings that led the Commission to classify the prior authorisation and eligibility rules as a restriction of competition by object.

77 In that regard, it claims, in the first place, that the General Court was wrong to acknowledge that the content of those rules may be relied on in support of such a classification.

78 Contrary to what the Commission found in recitals 162 and 163 of the decision at issue and as the General Court stated in paragraphs 91 and 95 of the judgment under appeal, the ISU asserts that the fact that those rules provide for the possibility, for the ISU, to apply a set of severe penalties to athletes taking part in unauthorised international speed skating events is, in itself, insufficient to establish a restriction of competition by object. It therefore remains necessary that the examination of their effects makes it possible to establish that they were applied to athletes who took part in events for which authorisation was refused on illegitimate grounds.

79 Next, according to the ISU, contrary to what is apparent from recital 163 of the decision at issue and to the General Court’s findings in paragraphs 85 to 89 of the judgment under appeal, the fact that the prior authorisation and eligibility rules do not refer to specifically identifiable objectives, that they do not contain clearly defined

criteria and that the ISU therefore has discretionary power or a least too much discretion to apply them cannot, in itself, make it possible to establish that there is a restriction of competition by object either. The specific effects of those rules must also be assessed in this case.

80 In addition, contrary to what the Commission set out, inter alia, in recitals 164 and 165 of the decision at issue, the fact that those rules referred, in the version adopted in 2014, to the protection of the ISU's economic interests cannot, per se, lead to the conclusion that there is a restriction of competition by object, which the General Court moreover recognised in paragraphs 98 and 109 of the judgment under appeal.

81 Lastly, contrary to what the Commission found in recital 166 of the decision at issue, as the General Court acknowledged in paragraph 97 of the judgment under appeal, the fact that those rules may be applied to athletes participating in a third-party international event not authorised by the ISU, irrespective of any scheduling conflict between that event and an event organised or authorised by the ISU, is irrelevant, in so far it is not the existence of a scheduling conflict but rather the promotion of betting that led that association to refuse, in the initial version, the planned third-party international competition to which the decision at issue refers.

82 In the second place, the ISU maintains that the General Court made three errors in law in analysing the aims pursued by the prior authorisation and eligibility rules.

83 First, according to the ISU, the General Court recognised, in paragraph 109 of the judgment under appeal, that the ISU was entitled to seek to protect its own economic interests, contrary to what the Commission stated in recital 169 of the decision at issue, but it failed to infer that that institution could not conclude that there was an anticompetitive object from that fact alone.

84 Next, the ISU claims that the General Court sought to compensate for that error and the consequential impossibility of basing arguments on the aims pursued by the prior authorisation and eligibility rules in order to justify the classification of an anticompetitive object by inferring, in paragraph 111 of the judgment under appeal, the existence of such an object from other elements, taking into account the allegedly vague, arbitrary and disproportionate nature of those rules. In so doing, that court substituted its own assessment for that of the Commission, which had relied on those elements, in the decision at issue, for purposes other (recitals 255 to 258) than the establishment of a restriction of competition by object (recitals 162 to 187).

85 Lastly, according to the ISU, it follows from the case-law that those elements are relevant solely in order to assess the effect of conduct liable to restrict competition (judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 69).

86 In the third place, the ISU claims that the General Court erred in law in reviewing the findings of the Commission relating to the economic and legal context surrounding the prior authorisation and eligibility rules. First, that court wrongly rejected, in paragraphs 115 to 117 of the judgment under appeal, its arguments relating to the authorisation of many third-party international events in the field of figure skating on the ground that that discipline did not form part of the relevant market in the present

case. It follows from the case-law that elements relating to a market other than the market concerned may be taken into consideration in the examination of that context (judgment of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraphs 78 and 79). Second, the General Court wrongly rejected, in paragraph 119 of the judgment under appeal, several established examples of the authorisation of third-party events on the ground that, according to that court, the Commission had correctly considered that there was a possibility or likelihood that the prior authorisation and eligibility rules would be applied in an arbitrary manner.

87 The Commission, supported by Mr Tuitert, Mr Kerstholt and EU Athletes, disputes all of those arguments.

2. Findings of the Court

88 By the three parts of its first ground of appeal, the ISU complains of different aspects of the way in which the General Court reviewed the legality of the decision at issue and of the result it reached following that review. In essence, it claims that, given, first, the meaning and scope of Article 101 TFEU and, second, the way in which that provision was applied by the Commission in the decision at issue, the judgment under appeal should be set aside on account of errors of law concerning (i) the General Court's having substituted its own assessment for that of the Commission in finding that there was an infringement other than that identified by that institution (second part), (ii) the General Court's incorrectly acknowledging that that infringement many be regarded as having the restriction of competition as its 'object' (second and third parts), and (iii) the General Court's having failed to discharge its duty in rejecting certain arguments and evidence adduced before it in order to challenge that classification (first and third parts).

89 Given the way in which that ground of appeal is structured, it is necessary to examine the various parts together, after recalling the meaning and scope of the provisions of Article 101 TFEU, in the light of which an assessment of whether they are well founded may be made.

90 In that regard, it is necessary, at the outset, to recall that no challenge has been made to the statements of the Commission and the General Court to the effect that the ISU must be classified, in the light of Article 101 TFEU, as 'an association of undertakings' carrying out, moreover, an economic activity consisting of organising and marketing international speed skating events, or the statements to the effect that the prior authorisation and eligibility rules constitute a 'decision by an association of undertakings' within the meaning of that article. Nor have the statements to the effect that that decision by an association of undertakings is liable to 'affect trade between Member States', within the meaning of Article 101(1) TFEU, been disputed. Finally, there has been no challenge, even in the alternative, to the findings that that decision does not satisfy the various conditions required to benefit from an exemption under Article 101(3) TFEU.

(a) The applicability of Article 101 TFEU to sport as an economic activity

91 In so far as it constitutes an economic activity, the practice of sport is subject to the provisions of EU law applicable to such activity (see, to that effect, judgments of

12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraph 4, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 27).

92 Only certain specific rules which were adopted solely on non-economic grounds and which relate to questions of interest solely to sport per se must be regarded as being extraneous to any economic activity. That is the case, in particular, of those on the exclusion of foreign players from the composition of teams participating in competitions between teams representing their country or the determination of ranking criteria used to select the athletes participating individually in competitions (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraph 8; of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 76 and 127; and of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 43, 44, 63, 64 and 69).

93 Apart from those specific rules, the rules issued by sporting associations and, more broadly, the conduct of the associations which adopted them come within the scope of the FEU Treaty provisions on competition law where the conditions of application of those provisions are met (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 30 to 33), which means that those associations may be categorised as 'undertakings' within the meaning of Articles 101 and 102 TFEU or that the rules at issue may be categorised as 'decisions by associations of undertakings' within the meaning of Article 101 TFEU.

94 That may be the case, in particular, regarding rules on a sporting association's exercise of powers governing prior approval for sporting competitions, the organisation and marketing of which constitute an economic activity for the undertakings involved or planning to be involved therein, including such an association (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 28). The same may also apply to rules that seek to cover the participation of athletes in such events, which constitutes an economic activity where they practise the sport concerned as a professional or semi-professional.

95 That being so, a sporting activity undeniably has specific characteristics which, whilst relating especially to amateur sport, may also be found in the pursuit of sport as an economic activity (see, to that effect, judgment of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraph 33).

96 The specific characteristics of an economic sector may potentially be taken into account, along with other elements and provided that they are relevant, in the application of Article 101 TFEU and more especially when examining the question whether a particular type of conduct should be considered as having as its 'object' or, failing that, 'effect', the prevention, restriction or distortion of competition, in the light of the economic and legal context of which it forms a part and the 'actual conditions' or 'actual context' that characterise the structure and functioning of the sectors or markets concerned (see, to that effect, judgment of 15 December 1994, *DLG*, C-250/92, EU:C:1994:413, paragraph 31). Such an assessment may involve taking into account, for example, the nature, organisation or functioning of the sport concerned and, more specifically, how professionalised it is, the manner in which it is practised, the manner

of interaction between the various participating stakeholders and the role played by the structures and bodies responsible for it at all levels, with which the Union is to foster cooperation, in accordance with Article 165(3) TFEU.

(b) Article 101(1) TFEU

97 Under Article 101(1) TFEU all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market are incompatible with the internal market.

(1) The categorisation of the existence of conduct having as its 'object' or 'effect' the prevention, restriction or distortion of competition, within the meaning of Article 101(1) TFEU

98 In order to find, in a given case, that an agreement, decision by an association of undertakings or a concerted practice is caught by the prohibition laid down in Article 101(1) TFEU, it is necessary to demonstrate, in accordance with the very wording of that provision, either that that conduct has as its object the prevention, restriction or distortion of competition, or that that conduct has such an effect (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249, and of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraph 31).

99 To that end, it is appropriate to begin by examining the object of the conduct in question. If, at the end of that examination, that conduct proves to have an anticompetitive object, it is not necessary to examine its effect on competition. Thus, it is only if that conduct is found not to have an anticompetitive object that it will be necessary, in a second stage, to examine its effect (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249, and of 26 November 2015, *Maxima Latvija*, C-345/14, EU:C:2015:784, paragraphs 16 and 17).

100 The analysis to be made differs depending on whether the conduct at issue has as its 'object' or 'effect' the prevention, restriction or distortion of competition, with each of those concepts being subject to different legal and evidentiary rules (see, to that effect, judgment of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 63).

(i) The categorisation of the existence of conduct having as its 'object' the prevention, restriction or distortion of competition

101 According to the settled case-law of the Court, as summarised, in particular, in the judgments of 23 January 2018, *F. Hoffmann-La Roche and Others* (C-179/16, EU:C:2018:25, paragraph 78), and of 30 January 2020, *Generics (UK) and Others* (C-307/18, EU:C:2020:52, paragraph 67), the concept of anticompetitive 'object', whilst not, as follows from paragraphs 98 and 99 of the present judgment, an exception in relation to the concept of anticompetitive 'effect', must nevertheless be interpreted strictly.

102 Thus, that concept must be interpreted as referring solely to certain types of coordination between undertakings which reveal a sufficient degree of harm to

competition for the view to be taken that it is not necessary to assess their effects. Indeed, certain types of coordination between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249; of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 78; and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 67).

103 The types of conduct that must be considered to be so include, primarily, certain forms of collusive conduct which are particularly harmful to competition, such as horizontal cartels leading to price fixing, limitations on production capacity or allocation of customers. Those types of conduct are liable to lead to price increases or falls in production and, therefore, more limited supply, resulting in poor allocation of resources to the detriment of user undertakings and consumers (see, to that effect, judgments of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraphs 17 and 33; of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 51; and of 16 July 2015, *ING Pensii*, C-172/14, EU:C:2015:484, paragraph 32).

104 Without necessarily being equally harmful to competition, other types of conduct may also be considered, in certain cases, to have an anticompetitive object. That is the case, inter alia, of certain types of horizontal agreements other than cartels, such as those leading to competing undertakings being excluded from the market (see, to that effect, judgments of 30 January 2020, *Generics (UK) and Others* C-307/18, EU:C:2020:52, paragraphs 76, 77, 83 to 87 and 101, and of 25 March 2021, *Lundbeck* v *Commission*, C-591/16 P, EU:C:2021:243, paragraphs 113 and 114), or certain types of decisions by associations of undertakings aimed at coordinating the conduct of their members, in particular in terms of prices (see, to that effect, judgment of 27 January 1987, *Verband der Sachversicherer* v *Commission*, 45/85, EU:C:1987:34, paragraph 41).

105 In order to determine, in a given case, whether an agreement, a decision by an association of undertakings or a concerted practice reveals, by its very nature, a sufficient degree of harm to competition that it may be considered as having as its object the prevention, restriction or distortion thereof, it is necessary to examine, first, the content of the agreement, decision or practice in question; second, the economic and legal context of which it forms a part; and, third, its objectives (see, to that effect, judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 79).

106 In that regard, first of all, in the economic and legal context of which the conduct in question forms a part, it is necessary to take into consideration the nature of the products or services concerned, as well as the real conditions of the structure and functioning of the sectors or markets in question (judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 80). It is not, however, necessary to examine nor, a fortiori, to prove the

effects of that conduct on competition, be they actual or potential, or negative or positive, as follows from the case-law cited in paragraphs 98 and 99 of the present judgment.

107 Next, as regards the objectives pursued by the conduct in question, a determination must be made of the objective aims which that conduct seeks to achieve from a competition standpoint. Nevertheless, the fact that the undertakings involved acted without having a subjective intention to prevent, restrict or distort competition and the fact that they pursued certain legitimate objectives are not decisive for the purposes of the application of Article 101(1) TFEU (see, to that effect, judgments of 6 April 2006, *General Motors* v *Commission*, C-551/03 P, EU:C:2006:229, paragraphs 64 and 77 and the case-law cited, and of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21).

108 Lastly, the taking into consideration of all of the aspects referred to in the three preceding paragraphs of the present judgment must, at any rate, show the precise reasons why the conduct in question reveals a sufficient degree of harm to competition, such as to justify a finding that it has as its object the prevention, restriction or distortion of competition (see, to that effect, judgment of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 69).

(ii) The categorisation of the existence of conduct having as its 'effect' the prevention, restriction or distortion of competition

109 The concept of conduct having an anticompetitive 'effect', for its part, comprises any conduct which cannot be regarded as having an anticompetitive 'object', provided that it is demonstrated that that conduct has as its actual or potential effect the prevention, restriction or distortion of competition, which must be appreciable (see, to that effect, judgments of 28 May 1998, *Deere* v *Commission*, C-7/95 P, EU:C:1998:256, paragraph 77, and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 117).

110 To that end, it is necessary to assess the way the competition would operate within the actual context in which it would take place in the absence of the agreement, decision by an association of undertakings or concerted practice in question (judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 250, and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 118), by defining the market(s) in which that conduct is liable to produce its effects, then by identifying those effects, whether they are actual or potential. That assessment itself entails that all relevant facts must be taken into account.

(2) The possibility of considering that certain specific conduct does not come under Article 101(1) TFEU

111 According to the settled case-law of the Court, not every agreement between undertakings or decision of an association of undertakings which restricts the freedom of action of the undertakings party to that agreement or subject to compliance with that decision necessarily falls within the prohibition laid down in Article 101(1) TFEU. Indeed, the examination of the economic and legal context of which certain of those agreements and certain of those decisions form a part may lead to a finding, first, that

they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive in nature; second, that the specific means used to pursue those objectives are genuinely necessary for that purpose; and, third, that, even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition. That case-law applies in particular in cases involving agreements or decisions taking the form of rules adopted by an association such as a professional association or a sporting association, with a view to pursuing certain ethical or principled objectives and, more broadly, to regulate the exercise of a professional activity if the association concerned demonstrates that the aforementioned conditions are satisfied (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 97; of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 42 to 48; and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 93, 96 and 97).

112 More specifically, in the area of sport, the Court of Justice was led to observe, in view of the information available to it, that the anti-doping rules adopted by the IOC do not come within the scope of the prohibition laid down in Article 101(1) TFEU, even though they restrict athletes' freedom of action and have the inherent effect of restricting potential competition between them by defining a threshold over which the presence of nandrolone constitutes doping, so as to safeguard the fairness, integrity and objectivity of the conduct of competitive sport, ensure equal opportunities for athletes, protect their health and uphold the ethical values at the heart of sport, including merit (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 43 to 55).

113 By contrast, the case-law referred to in paragraph 111 of the present judgment does not apply either in situations involving conduct which, far from merely having the inherent 'effect' of restricting competition, at least potentially, by limiting the freedom of action of certain undertakings, reveals a degree of harm in relation to that competition that justifies a finding that it has as its very 'object' the prevention, restriction or distortion of competition. Thus, it is only if, following an examination of the conduct at issue in a given case, that conduct proves not to have as its object the prevention, restriction or distortion of competition that it must then be determined whether it may come within the scope of that case-law (see, to that effect, judgments of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 69; of 4 September 2014, *API and Others*, C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147, paragraph 49; and of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International*, C-427/16 and C-428/16, EU:C:2017:890, paragraphs 51, 53, 56 and 57).

114 As regards conduct having as its object the prevention, restriction or distortion of competition, it is thus only if Article 101(3) TFEU applies and all of the conditions provided for in that provision are observed that it may be granted the benefit of an exemption from the prohibition laid down in Article 101(1) TFEU (see, to that effect, judgment of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21).

115 It is in the light of all those considerations that the various arguments put forward by the ISU must be assessed.

(c) The infringement found in the present case

116 As regards the ISU's arguments according to which the General Court substituted its own assessment for that of the Commission by considering that there was an infringement other than that described by that institution, it must be noted, in the first place, that, in paragraphs 57 and 126 of the judgment under appeal, the General Court held, in essence, that the Commission had found the existence of an infringement consisting, for the ISU, of having adopted and enforced, on the worldwide market for the organisation and commercial exploitation of international speed skating events and the exploitation of the various rights associated with those events, the prior authorisation and eligibility rules, in the versions adopted in 2014 and 2016, as the ISU moreover asserts in its appeal. The General Court also indicated, in the first of those two paragraphs, that the Commission had classified that conduct as an infringement of Article 101(1) TFEU on the grounds that it had the 'object' and 'effect' of restricting competition.

117 In the second place, the General Court, in paragraphs 77 to 120 of the judgment under appeal, went on to review the findings that had led the Commission to classify the fact of having adopted and enforced the prior authorisation and eligibility rules as conduct having the 'object' of restricting competition, by examining, first, those relating to the content of those rules, second, those concerning the aims pursued by those rules and, third, those relating to the context of which those rules form a part, in accordance with the settled case-law of the Court of Justice, to which the General Court, moreover, refers in paragraphs 66 and 67 of the judgment under appeal. Following its review, the General Court found, in paragraphs 121 to 123 of the judgment under appeal, that the Commission had not committed any of the errors of law or manifest errors of assessment complained of by the ISU, with the result that the classification of conduct having the 'object' of restricting competition did not appear unfounded and there was therefore no need to rule on the ISU's arguments concerning the alternative and subsidiary classification of conduct having the 'effect' of restricting competition.

118 In the third and last place, it follows from the case file before the Court of Justice that the identification of the conduct at issue in the present case and the classification attributed thereto, in the judgment under appeal, correspond to the content of the decision at issue in all respects. Article 1 of that decision, according to which the ISU infringed Article 101(1) TFEU by adopting and enforcing the prior authorisation and eligibility rules, must be read in the light of recitals 161 to 188 thereof, in which the Commission considered that, having regard to their content, the aims that they seek to achieve and the economic and legal context of which they form a part, those rules should be regarded as having as their 'object' the restriction of competition before adding separately and independently, in recitals 194 to 209 of that decision, that those rules also had the 'effect' of restricting competition.

119 In particular, as those various findings show, the Commission did not make a legal classification 'combining' the alternative concepts of anticompetitive 'object' and 'effect', as the ISU claims. On the contrary, it made, in parallel, two legal classifications

that were separate and independent of one another, of which either, if well founded, would serve to justify the operative part of the decision at issue.

120 In those circumstances, the General Court did not rule, contrary to what the ISU asserts, on an infringement differing from that identified by the Commission. On the contrary, it merely held that the first of the two legal classifications made by that institution was not vitiated by any of the errors alleged by the ISU.

121 Moreover, although it is true that the sections of the judgment under appeal that concern the review of the merits of that classification in the light of the content (paragraphs 81 to 98), the aims (paragraphs 99 to 114) and the economic and legal context (paragraphs 115 to 120) of the prior authorisation and eligibility rules make no mention at any time of the way in which they were enforced by the ISU, it must be held that that approach is the same as that used by the Commission in the decision at issue. Nor do the sections of the decision at issue in which the content (recitals 162 to 167 and 180 to 187), the aims (recitals 168 to 171) and the economic and legal context (recitals 172 and 173) of those rules are examined address such an issue, which is solely examined in different sections, such as those relating to the 'intention' of the ISU (recitals 174 to 179) or the 'effect' of those rules on competition (recitals 199 to 205).

122 Consequently, the ISU's arguments to the effect that the General Court found an infringement other than that identified by the Commission in the decision at issue, by substituting its own assessment for that of that institution, must be rejected as unfounded.

(d) The existence of conduct having as its 'object' the restriction of competition in the present case

123 The ISU's arguments that the General Court incorrectly interpreted Article 101(1) TFEU and wrongly held, on the basis of that interpretation, that the Commission had been correct in its classification of the prior authorisation and eligibility rules as conduct having as its 'object' the restriction of competition are principally of three kinds.

124 In essence, the ISU claims that the General Court, first, incorrectly interpreted the concept of anticompetitive 'object' in finding, as did the Commission, that, given the type of conduct that was at issue in the present case, the examination of its content, the aims that it sought to achieve and its legal and economic context should be carried out in the light of the judgments of 1 July 2008, *MOTOE* (C-49/07, EU:C:2008:376), and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas* (C-1/12, EU:C:2013:127). Second, the General Court wrongly held that that conduct should be classified as an infringement of Article 101(1) TFEU on the ground that it had as its 'object' the restriction of competition and that it followed from the Commission's assessments relating to the content, aims and economic and legal context of the prior authorisation and eligibility rules. At the same time, that court failed to rule on other essential elements such as the intention attributed by the Commission to the ISU and the effects of those rules on the relevant market and on the related market of figure skating. Third, while carrying out a joint examination of the second and fourth pleas in law which concerned the concept of anticompetitive 'object' within the meaning of

Article 101(1) TFEU and the case-law of the Court of Justice according to which certain conduct may be regarded as falling outside the scope of that provision (judgment of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98), the General Court committed additional errors of law consisting, in essence, of 'merging' those two separate questions and substituting, in so doing, its own assessment for that of the Commission.

(1) The applicability in the present case of the case-law arising from the judgments of 1 July 2008, MOTOE (C-49/07, EU:C:2008:376), and of 28 February 2013, Ordem dos Técnicos Oficiais de Contas (C-1/12, EU:C:2013:127)

125 It follows from the case-law of the Court of Justice that the maintenance or development of undistorted competition in the internal market can be guaranteed only if equality of opportunity is ensured as between undertakings. To entrust an undertaking which exercises a given economic activity the power to determine, *de jure* or even de facto, which other undertakings are also authorised to engage in that activity and to determine the conditions under which that activity may be exercised gives rise to a conflict of interests and puts that undertaking at an obvious advantage over its competitors, by enabling it to deny them entry to the relevant market or to favour its own activity (see, to that effect, judgments of 13 December 1991, *GB-Inno-BM*, C-18/88, EU:C:1991:474, paragraph 25; of 12 February 1998, *Raso and Others*, C-163/96, EU:C:1998:54, paragraphs 28 and 29; and of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 38, 49, 51 and 52) and, also, in so doing, to prevent the growth of competition therein to the detriment of consumers, by limiting production, product or alternative service development or innovation.

126 Consequently, such a power may be conferred on a given undertaking only on condition that it is subject to restrictions, obligations and review, irrespective of whether that power originates from the grant, by a Member State, of exclusive or special rights placing the undertaking on which it is conferred in a dominant position on the relevant market (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 50 and 53), from the autonomous behaviour of an undertaking in a dominant position, enabling that undertaking to prevent potentially competing undertakings from accessing that market or related or neighbouring markets (see, to that effect, judgment of 13 December 1991, *GB-Inno-BM*, C-18/88, EU:C:1991:474, paragraphs 17 to 20 and 24), or even from a decision by an association of undertakings, a fortiori where the association which issued that decision must be considered, at the same time, an 'undertaking' on account of the economic activity it carries out on that market (see, to that effect, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 39, 44, 45, 59, 91 and 92).

127 This is why the Court of Justice previously held that, unless it is subject to restrictions, obligations and review such as to prevent the risk of abuse of a dominant position, such a power, where it is conferred on an undertaking in a dominant position, infringes, by its very existence, Article 102 TFEU, read, as appropriate, in combination with Article 106 TFEU (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 50 and 53).

128 In the same way, since Articles 101 and 102 TFEU, while they pursue distinct objectives and have distinct scopes, can apply simultaneously to the same conduct where the respective conditions for their application are satisfied (see, to that effect, judgments of 11 April 1989, *Saeed Flugreisen and Silver Line Reisebüro*, 66/86, EU:C:1989:140, paragraph 32; of 16 March 2000, *Compagnie maritime belge transports and Others* v *Commission*, C-395/96 P and C-396/96 P, EU:C:2000:132, paragraph 33; and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 146), and since those articles must therefore be interpreted consistently, in the light, however, of their specific characteristics, it must be held that such a power may be regarded as having as its 'object' the prevention, restriction or distortion of competition, within the meaning of Article 101(1) TFEU.

129 Even if that is not the case, that power may, at least, be regarded as having the 'effect' of preventing, restricting or distorting competition, as the Court of Justice has already held (see, to that effect, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 69).

130 For those reasons, the General Court was correct to find, in essence, in paragraphs 68 to 76 of the judgment under appeal, as the Commission did in recitals 172 and 173 of the decision at issue, that, given the type of conduct at issue in the present case, that is to say, a decision by an association of undertakings conferring on that association responsible for a sporting discipline regulatory, control and sanctioning powers enabling it to authorise or prevent access on the part of potentially competing undertakings to a given market, on which that association itself is economically active, the examination of that conduct, and more particularly of its content, the aims it seeks to achieve and the economic and legal context of which it forms a part, must be carried out in the light of the case-law established in the judgments of 1 July 2008, *MOTOE* (C-49/07, EU:C:2008:376), and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas* (C-1/12, EU:C:2013:127).

(2) The classification of the conduct at issue in the present case

131 In order to rule on whether a decision by an association of undertakings conferring on that association regulatory, control and sanctioning powers enabling it to authorise or prevent access on the part of potentially competing undertakings to a given market, on which that association itself is economically active, must be regarded as having as its object or, failing that, effect the prevention, restriction or distortion of competition, it is relevant to determine, first of all, whether that power is circumscribed by substantive criteria which are transparent, clear and precise (see, to that effect, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 84 to 86, 90, 91 and 99), preventing it from being used arbitrarily. In addition, those criteria must have been clearly set out in an accessible form, prior to any implementation of the powers that they are intended to circumscribe.

132 Those criteria may include, inter alia, criteria that promote, in an appropriate and effective manner, the holding of sporting competitions based on equality of opportunity and merit.

133 Where that is the case, those criteria must, then, be such as to ensure that such a power is exercised without discrimination (see, to that effect, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 99) and that any sanctions that may be imposed are objective and proportionate (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 48 and 55). In order that those criteria may be regarded, in general, as non-discriminatory, they must not subject the organisation and marketing of third-party competitions and the participation of athletes in those competitions to requirements that either differ from those applicable to competitions organised and marketed by the decision-making entity, or are identical or similar but impossible or excessively difficult to fulfil in practice by an undertaking that does not have the same status as an association or does not have the same powers at its disposal as that entity and which is therefore in a different situation to it. As regards, more particularly, criteria governing the determination of sanctions that may be imposed, they must, furthermore, ensure that they are determined, in each specific case, in accordance with the principle of proportionality taking into account, in particular, the nature, duration and severity of the infringement found.

134 Finally, those criteria must be capable of being subject to effective review (see, to that effect, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 99).

135 Furthermore, the powers in question must be subject to transparent and non-discriminatory detailed procedural rules, such as those relating to the applicable time limits for submitting a prior authorisation request and the adoption of a decision on that request, which are not likely to be to the detriment of potentially competing undertakings by preventing them from effectively accessing the market (see, to that effect, judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 86 and 92) and, ultimately, from accordingly limiting production.

136 In the light of the case-law referred to in the five preceding paragraphs of the present judgment, it must be noted, in the present case, first, that, contrary to what the ISU submits, the General Court did not err in law, in its examination of the objective of the prior authorisation and eligibility rules, by referring to the question whether those rules were designed in a manner such as to make it possible to prevent the powers of prior authorisation and control and the power to impose sanctions that they confer on that association from being used in an arbitrary, discriminatory or disproportionate manner.

137 In particular, the General Court did not commit any error of law, during the specific examination of the content of those rules, in finding, in paragraphs 85 to 89 and 118 of the judgment under appeal, that they were not justified, in a verifiable manner, by any specific objective and that they did not govern the ISU's discretion to authorise or refuse to authorise the organisation and implementation of planned speed skating events that could be submitted to it by third-party entities or undertakings on the basis of transparent, objective, non-discriminatory and, consequently, reviewable

criteria, with the result that that association had to be regarded as having discretionary power.

138 It must be added that those findings, which sought, as is apparent from paragraphs 83 and 84 of the judgment under appeal, to address arguments specifically put forward by the ISU to challenge certain findings made by the Commission in the decision at issue, cannot be regarded, essentially, as new in relation to that decision. In recital 173 of that decision, the Commission made general reference to the need for discretion such as that enjoyed by the ISU to be subject to obligations, restrictions and review, before stating more particularly, in recitals 163 and 185 of that decision, that that was not the situation in the present case, since there was no link between that power and those specific and verifiable objectives.

139 Likewise, the General Court did not err in law in holding, in essence, in paragraphs 91 to 95 and 97 of the judgment under appeal that the sanctions that could be imposed by the ISU on athletes participating in speed skating events not subject to prior authorisation by it were not governed by criteria such as to ensure that they are objective and proportionate and were a relevant factor in determining whether the prior authorisation and eligibility rules had the 'object' of restricting competition on the relevant market. Nor can those findings, which also sought, as is apparent from paragraphs 83, 90 and 96 of the judgment under appeal, to address the arguments put forward by the ISU in support of its action for annulment, be regarded as concerning new matters in relation to those addressed in recitals 162, 163, 166 and 186 of the decision at issue.

140 Second, while referring, in the manner recalled above, to the case-law cited in paragraphs 125 to 128 of the present judgment, the General Court's findings in that regard were stated in the context of the overall legal reasoning aimed at determining, in accordance with the settled case-law referred to in paragraphs 105 to 108 of the present judgment and as is clear in particular from paragraphs 68, 76, 80 and 120 of the judgment under appeal, whether the Commission had correctly concluded that the prior authorisation and eligibility rules should be considered, taking into account their context, the aims they seek to achieve and the legal and economic context of which they form a part, as having the object of restricting competition on account of the sufficient degree of harm that they present to competition.

141 The ISU does not dispute the merits of that overall legal reasoning.

142 It merely submits, first of all, that certain factors taken into consideration in that reasoning, such as the discretionary nature of the power of prior authorisation conferred on it by the prior authorisation and eligibility rules, the disproportionate nature of the sanctions that those rules entitle it to impose on athletes participating in unauthorised speed skating events, or even the fact that those rules referred, at least until 2014, to an aim consisting in ensuring the protection of the ISU's economic interests, are not sufficient, on their own, to justify the finding of the General Court that those rules were correctly considered to have the object of restricting competition. However, such a line of argument is not such as to call that finding into question, since it is based on an overall assessment.

143 Next, the ISU maintains, in essence, that that finding is vitiated by an error of law in so far as it relies, ultimately, on the possibility or risk, inherent in the content and the general scheme itself of the prior authorisation and eligibility rules, that they may be used for anticompetitive purposes consisting in preventing entities or undertakings that may be in competition with that association from accessing the relevant market and in favouring competitions organised by the latter.

144 However, such as finding, as set out in paragraphs 95, 118 and 119 of the judgment under appeal, is consistent with the case-law of the Court of Justice. Although it follows from that case-law that a sports association such as the ISU may adopt, apply and ensure compliance with, by means of sanctions, rules relating to the organisation and conduct of international competitions in the sporting discipline concerned (see, to that effect, judgments of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 67 and 68; of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraph 44; and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 60), those considerations do not in any event make it possible to regard rules which, like the prior authorisation and eligibility rules, are not subject to suitable restrictions, obligations and review as legitimate.

145 On the contrary, such rules must be regarded, in the light of the case-law referred to in paragraphs 125 to 128 of the present judgment, as having as their object the restriction of competition. They confer on the entity that adopted them and that is empowered to implement them the power to authorise, control and set the conditions of access to the relevant market for any potentially competing undertaking, and to determine both the degree of competition that may exist on that market and the conditions in which that potential competition may be exercised.

146 Those rules are thus able to be used to allow or exclude from that market any competing undertaking, even an equally efficient undertaking, or at least restrict the creation and marketing of alternative or new competitions in terms of their format or content. In so doing, they also completely deprive athletes of the opportunity to participate in those competitions, even where they could be of interest to them, for example on account of an innovative format, while observing all the principles, values and rules underpinning the sporting discipline concerned. Ultimately, they are such as to completely deprive spectators and viewers of any opportunity to attend those competitions or to watch a broadcast thereof.

147 Lastly, the ISU disputes, in essence, the summary rejection, without examination, by the General Court of its various arguments and items of evidence relating to the intention that led it to adopt the prior authorisation and eligibility rules (paragraph 121 of the judgment under appeal) and to the application and effects of those rules on the relevant market and the related market of figure skating (paragraphs 115 to 117 of the judgment under appeal). However, that line of argument must be rejected in the light of the case-law referred to in paragraphs 98, 99, 106 and 107 of the present judgment.

148 Thus, the General Court did not commit any error of law or of legal characterisation of the facts in finding that the Commission had correctly classified the prior authorisation and eligibility rules as having as their object the restriction of

competition, within the meaning of Article 101(1) TFEU. The fact that, as the ISU moreover submits, that court carried out a joint examination, inter alia in paragraphs 101 to 104 and 108 of the judgment under appeal, of the separate question of whether those rules could nevertheless be regarded, in the light of the case-law cited in paragraph 111 of the present judgment, as not falling within the scope of that provision, whereas that case-law is irrelevant in situations involving conduct having as its object the restriction of competition, as is apparent from paragraphs 113 and 114 of this judgment has, in any event, no bearing on the merits of the reasoning referred to in paragraph 140 of this judgment.

149 Consequently, the first ground of appeal must be rejected.

B. The second ground of appeal

1. Arguments of the parties

150 By its second ground of appeal, the ISU complains that the General Court misconstrued and failed to examine the fourth plea in law and the items of evidence submitted in support of it, in disregard of its duty under Article 263 TFEU.

151 In that regard, it maintains, first, that that plea in law had a precise and limited purposeconsisting of claiming that its refusal to authorise the planned international event intended to be held in Dubai, which was submitted to it by a third-party organiser, did not fall within the scope of Article 101(1) TFEU, given that that refusal had a legitimate objective consisting of upholding the ban on betting set out in its Code of Ethics and could not be regarded as intending to exclude a potential competitor from the speed skating market, as the Commission found in the decision at issue.

152 Second, the ISU maintains that the General Court altered the scope of that plea in law by considering, in paragraph 99 of the judgment under appeal, that it entailed settling the general question whether the prior authorisation and eligibility rules were justified by an objective consisting in protecting the integrity of the sporting disciplines governed by the ISU.

153 Third, the ISU complains that the General Court, at the same time, acknowledged, in paragraph 102 of the judgment under appeal, that it was entitled to establish rules intended to prevent betting from distorting international skating events and refused, in paragraph 127 of that judgment, to rule on the lawfulness, in the light of Article 101(1) TFEU, of the application of those rules to the planned international event referred to in the decision at issue, on the ground that that application was not classified as an infringement by the Commission, but merely referred to in order to illustrate the way in which those rules could be applied in practice. It is apparent from the recitals and the operative part of that decision that the application of the prior authorisation and eligibility rules to the planned event in question was classified as an infringement of Article 101(1) TFEU, in the same way as their adoption, and that that legal classification was made by the Commission following an examination mainly, or exclusively, concerning the refusal of the ISU to authorise that planned event. In those circumstances, the General Court should have examined all the arguments and items of evidence submitted to it by the ISU in order to challenge that classification and to establish that its conduct was justified, which that court, however, failed to do.

154 The Commission, supported by Mr Tuitert, Mr Kerstholt and EU Athletes, disputes all of those arguments.

2. Findings of the Court

155 It must be noted, at the outset, that, even if the General Court was in error about the scope of the fourth plea in law raised by the ISU, in considering incorrectly that it was seised of the general question whether the prior authorisation and eligibility rules were justified by a legitimate objective and not the specific question whether the application of those rules to the international speed skating event referred to by that association was justified by such a legitimate objective, the present ground of appeal is, in any event, ineffective.

156 As is apparent from the reasoning set out above in the present judgment, the General Court was correct to confirm the merits of the Commission's assessment to the effect that the prior authorisation and eligibility rules, considered as such and therefore independently of their application to specific cases, had as their object the restriction of competition. In addition, the existence of a potential legitimate objective, even if established, is irrelevant in that context, as follows from paragraphs 107, 113 and 114 of the present judgment.

157 Since the two grounds of appeal have been rejected, the appeal must therefore be dismissed in its entirety.

IV. The cross-appeal

158 In support of their cross-appeal, Mr Tuitert, Mr Kerstholt and EU Athletes rely on two grounds of appeal alleging, in essence, errors of law in the interpretation and application in the present case of Article 101 TFEU.

A. The first ground of appeal

1. Arguments of the parties

159 By their first ground of appeal, which contains two parts, Mr Tuitert, Mr Kerstholt and EU Athletes, supported by the Commission, claim that the General Court erred in law in finding that the arbitration rules established by the ISU could not be regarded as reinforcing the infringement of Article 101(1) TFEU, referred to in Article 1 of the decision at issue.

160 By the first part of that ground of appeal, Mr Tuitert, Mr Kerstholt and EU Athletes argue that the General Court's finding that the arbitration rules could be justified by a legitimate interest relating to the specific nature of the sport is vitiated by errors of law.

161 In that regard, they submit, in the first place, that it follows from those rules that athletes who are affected by an ineligibility decision adopted by the ISU are required to bring their dispute with that association exclusively before the CAS. They also assert that those athletes are required to accept all rules adopted by the ISU, including those establishing such a dispute resolution mechanism, in order to be capable of being permitted to take part in international skating competitions organised by that association or by national skating associations that are members thereof.

162 In the second place, they maintain that the CAS is an arbitration body established outside the European Union, whose members are appointed by international sporting associations such as the ISU or, in practice, subject to the decisive influence of those associations and that appeals against the awards of that body may be brought exclusively before the Tribunal fédéral (Federal Supreme Court, Switzerland), whose review is limited to confirmation of the observance of public policy within the meaning defined by that court, which excludes EU competition rules.

163 They add that, while the national courts of the European Union theoretically retain a role to play in the enforcement of those awards, the judicial review that they may carry out in respect of those awards in such a context is, first, fragmented and therefore costly (in so far as an athlete must challenge the enforcement of the award concerning him or her in each of the Member States in which he or she intends to take part in a competition), second, belated and even ineffective (in so far as the ruling sought is generally delivered after the competition is held and where the athlete is prevented from applying for protective measures in the intervening period), third, limited or marginal (in so far as a ruling can only be regarded as contrary to EU public policy in the event of a flagrant, effective and concrete breach of the competition rules), and fourth and in any event, lacking actual force (in so far as the ISU has the power to enforce a ruling relating to a given athlete itself or to require its members to do so, by preventing him or her from taking part in the international events that it or they organise).

164 In the third and last place, Mr Tuitert, Mr Kerstholt and EU Athletes submit that the General Court erred in law in holding, in paragraph 156 of the judgment under appeal, that the mechanism established by the arbitration rules 'may be justified by legitimate interests linked to the specific nature of the sport'.

165 They assert that the General Court, in essence, relied in an overall and abstract manner on the specific nature of sport in general, whereas the rules at issue in the present case apply in the specific context of speed skating as an economic activity. The exclusive and mandatory recourse to arbitration cannot be justified in the same way in both cases. Furthermore, the reasoning of the General Court is all the more problematic since, unlike national courts or the EU Courts, an arbitral tribunal outside the EU court system, such as the CAS, has no obligation to ensure compliance with the EU competition rules, which the CAS interprets and applies, moreover, in a manifestly incorrect way.

166 The Commission, which supports all of those arguments, submits, more generally, that the General Court's reasoning disregards the specific arrangements under the arbitration mechanism established by the ISU. In particular, unlike a contractual arbitration mechanism freely agreed by the parties, the arbitration rules established by the ISU are in practice imposed on athletes unilaterally, exclusively and on pain of a ban on taking part in events organised by the ISU, a ban which equates, ultimately, to it being impossible for the parties concerned to carry out their profession.

167 By the second part of their ground of appeal, Mr Tuitert, Mr Kerstholt and EU Athletes claim that the General Court erred in law in holding, in essence, in paragraphs 157 to 164 of the judgment under appeal, that the arbitration rules were not

capable of undermining the effectiveness of the EU competition rules or of making it more difficult for athletes affected by ineligibility decisions adopted on anticompetitive grounds to exercise their right to effective judicial protection, with the result that those rules could not be regarded as reinforcing the infringement identified in Article 1 of the decision at issue.

168 In that regard, in the first place, they submit that the CAS is an arbitration body outside the EU legal order, before adding that its actual independence and impartiality in relation to international sporting associations such as the ISU are doubtful. They also maintain that CAS awards can only be subject to marginal judicial review without the EU competition rules being taken into account in any way, before a court which, moreover, is not entitled to refer questions to the Court of Justice for a preliminary ruling. In addition, they reiterate that the arbitration rules are, in practice, imposed unilaterally on athletes.

169 In the light of those factors, they argue that those rules should have been considered by the General Court to be capable of adversely affecting compliance with Articles 101 and 102 TFEU, and of making it more difficult for athletes to exercise their right to effective judicial protection, thus reinforcing the infringement identified in Article 1 of the decision at issue.

170 In the second place, Mr Tuitert, Mr Kerstholt and EU Athletes claim that the General Court downplayed the effect of those rules on athletes' right to effective judicial protection by referring to the opportunity they have to bring actions for damages before the national courts having jurisdiction in the event that they are affected by an ineligibility decision adopted on anticompetitive grounds. Although such actions may contribute to ensuring *ex post* judicial protection for individuals harmed by an infringement of the competition rules and to enforcing the effectiveness of those rules (judgments of 20 September 2001, *Courage and Crehan*, C-453/99, EU:C:2001:465, and of 14 March 2019, *Skanska Industrial Solutions and Others*, C-724/17, EU:C:2019:204), they cannot compensate for the absence of any legal means for them to obtain an effective *ex ante* remedy.

171 In addition, in the present case, Mr Tuitert, Mr Kerstholt and EU Athletes assert that it is apparent that that remedy consists, first and foremost, for a skater who is subject to an ineligibility decision adopted on anticompetitive grounds, in obtaining its annulment promptly along with the corresponding opportunity to resume his or her professional career and not merely to be awarded damages several years later in order to compensate for the unlawful ban on carrying out that activity and the loss of career and corresponding income. That is particularly the case since the CAS procedural rules prohibit applicants from seeking protective measures and several national courts have already dismissed actions for damages and the grounds that they should be regarded as falling within the exclusive jurisdiction conferred on that body under the arbitration rules.

172 In the third and last place, the cross-appellants claim that the General Court made a similar error of reasoning in holding that the opportunity for athletes concerned by an ineligibility decision adopted on anticompetitive grounds to lodge complaints before the Commission and the national competition authorities ('the NCAs') is satisfactory.

It follows from settled case-law that the Commission and the NCAs have broad discretion to deal with complaints submitted to them and that they cannot therefore be required to investigate by classifying the facts complained of in the light of the competition rules (judgments of 18 October 1979, *GEMA* v *Commission*, 125/78, EU:C:1979:237, and of 19 September 2013, *EFIM* v *Commission*, C-56/12 P, EU:C:2013:575).

173 The Commission supports all those arguments and submits that the General Court also clearly misunderstood the decision at issue, in paragraph 148 of the judgment under appeal, in finding that the reasoning in that decision consisted in classifying the arbitration rules as an 'aggravating circumstance' within the meaning accorded to that expression in the context of determining the fines that may be imposed in respect of an infringement of Articles 101 and 102 TFEU. Irrespective of the fact that no fine was imposed on the ISU in the present case, the Commission asserts that , in its examination of the merits, it merely stated that those rules reinforced the restriction of competition by object deriving from the prior authorisation and eligibility rules, by supporting the possibility that those rules give to that association to exclude all effective competition on the market on which international speed skating events are organised and marketed.

174 In response, the ISU which addresses the two parts of the ground of appeal together maintains, in the first place, that it is ineffective. As the General Court found in paragraphs 132 and 137 of the judgment under appeal, the Commission merely expressed its view on the arbitration rules in the decision at issue for the sake of completeness.

175 In the second place, the ISU maintains, in the alternative, that the ground of appeal should be dismissed as inadmissible in so far as it alters the subject matter of the dispute before the General Court. Neither that dispute nor the decision at issue concerned the very legitimacy of the conferral of exclusive jurisdiction on the CAS. At the very least, some of the arguments put forward in support of that ground of appeal should be rejected as inadmissible, either because they are new (such as those relating to the distinction to be made between the economic and non-economic aspects of the sport, the independence of the CAS or even the detailed rules governing the review of CAS awards by the Tribunal fédéral (Federal Supreme Court), or because they merely reproduced elements featuring in the decision at issue or in the first-instance pleadings without explaining how the General Court erred in law or distorted the facts in the judgment under appeal (such as those relating to the insufficient nature, in the light of the right to effective judicial protection, of the possibility that athletes have to bring actions for damages before the national courts or to lodge complaints before the Commission or the NCAs).

176 In the third and last place, the ISU asserts that that ground of appeal is, in any event, unfounded. Both the Commission, in the decision at issue, and the General Court, in the judgment under appeal, correctly acknowledged that the use of an exclusive and mandatory arbitration mechanism is a generally accepted method of resolving disputes and that it could, in the present case, be justified in the light of the need to ensure the uniform and effective application of the rules established by the ISU for all athletes practising skating.

2. Findings of the Court

(a) The admissibility and effectiveness of the ground of appeal

177 An appellant is entitled to lodge an appeal relying on grounds which arise from the judgment under appeal itself and seek to criticise, in law, its correctness (judgments of 29 November 2007, *Stadtwerke Schwäbisch Hall and Others* v *Commission*, C-176/06 P, EU:C:2007:730, paragraph 17, and of 25 January 2022, *Commission* v *European Food and Others*, C-638/19 P, EU:C:2022:50, paragraph 77).

178 In the present case, the cross-appellants seek, by their first ground of appeal, to call into question the legal merits of the grounds by which the General Court held, in paragraphs 154 and 156 to 164 of the judgment under appeal, that the Commission had erred in law in finding that the arbitration rules reinforced the restriction of competition by 'object' to which the prior authorisation and eligibility rules gave rise.

179 Furthermore, the grounds of the judgment under appeal referred to in that first ground of the cross-appeal are those that led the General Court to uphold the sixth plea in law and, in part, the seventh plea in law raised at first instance. Therefore, those grounds constitute, as is apparent from paragraphs 171 to 174 and 180 of that judgment, support for the operative part of that judgment in so far as it annulled in part Article 2 of the decision at issue, to the extent that that article refers to the arbitration rules. Consequently, and contrary to what the ISU claims, that ground of appeal is not ineffective.

180 That being so, since the Court of Justice's jurisdiction on an appeal is nonetheless limited to assessing the findings of law on the pleas argued before the General Court, it cannot rule, in this context, on grounds or arguments that were not put forward at first instance (see, to that effect, judgments of 30 March 2000, *VBA* v *VGB and Others*, C-266/97 P, EU:C:2000:171, paragraph 79, and of 25 January 2022, *Commission* v *European Food and Others*, C-638/19 P, EU:C:2022:50, paragraph 80).

181 In the present case, the ISU correctly contends that the arguments of the cross-appellants concerning the legal consequences that may arise from a potential lack of independence of the CAS do not form part of the arguments put forward before the General Court or, moreover, of those based on which the Commission adopted the decision at issue.

182 Those arguments must therefore be rejected as inadmissible.

183 By contrast, the other arguments, whose admissibility the ISU disputes, which relate to all the recitals of the decision at issue which the parties challenged at first instance and which the cross-appellants and the Commission complain that the General Court failed to take into account or incorrectly took into account when it ruled on the plea in law put forward by the ISU on the arbitration rules, are admissible.

(b) Substance

184 In the first place, it should be noted that, in recitals 268 to 286 of the decision at issue and more particularly in recitals 269 to 271, 277 and 281 to 283 of that decision, the Commission considered that the arbitration rules, while they did not in themselves constitute an infringement of Article 101(1) TFEU, should however be regarded, given their content, their conditions for implementation and their scope, in the legal and economic context to which they belong, as reinforcing the infringement identified previously by the Commission. More specifically, the Commission found in those recitals, in essence, that by making judicial review, in the light of EU competition law, of arbitral awards by which the CAS rules on the validity of decisions adopted by the ISU by virtue of discretionary powers conferred on it by the prior authorisation and eligibility rules more difficult, the arbitration rules reinforced the infringement of EU law connected with the existence of such powers. In particular, the Commission found that that judicial review was entrusted to a court established in a third country, thus outside the European Union and its legal order, and that, according to the case-law of that court, such awards could not be reviewed in the light of the EU competition rules. In so doing, the Commission, ultimately, complained not of the existence, organisation or operation of the CAS as an arbitration body, but rather of the legal immunity enjoyed by the ISU, in its view, in the light of EU competition law, in the exercise of its decision-making and sanctioning powers, to the detriment of persons who may be affected by the lack of a framework for those powers and the discretionary nature which derives therefrom.

185 In the second place, there are, in essence, four grounds that led the General Court to take the view that that reasoning on the part of the Commission was vitiated by errors of law. First, that court held that the Commission had neither called into question the very possibility of recourse to arbitration to settle certain disputes nor considered that the conclusion of an arbitration clause in itself restricted competition (paragraph 154 of the judgment under appeal). Second, it stated that nor had the Commission considered that the arbitration rules infringed the right to a fair hearing as such (paragraph 155 of that judgment). Third, it considered that by conferring binding and exclusive jurisdiction on the CAS to review decisions adopted by the ISU by virtue of its powers in respect of prior authorisation and sanctions, the arbitration rules could be justified by legitimate interests linked to the specific nature of the sport, consisting of enabling a single, specialised court to rule, in a quick, economic and uniform manner, on a multiplicity of disputes, often having an international dimension, to which the exercise of high-level professional sporting activity may give rise (paragraph 156 of that judgment). Fourth, the General Court stressed that athletes and entities or undertakings that plan to organise international speed skating events in competition with those organised by the ISU could not only bring actions for damages before the national courts but also lodge complaints with the Commission and the NCAs for breach of the rules of competition (paragraphs 157 to 161 of that judgment).

186 It must be observed that the first two of those grounds, which are not disputed before the Court of Justice, are not such as to justify the decision to annul in part the decision at issue taken by the General Court since they do not concern the assessments that led the Commission to call into question the arbitration rules and they are therefore not such as to call into question the merits of those assessments.

187 By contrast, the cross-appellants and the Commission are correct in maintaining that the third and fourth of those grounds are incorrect in law.

188 First, the general and undifferentiated assessment that the arbitration rules may be justified by legitimate interests linked to the specific nature of the sport, in so far as they confer on the CAS mandatory and exclusive jurisdiction to review decisions that the ISU may adopt by virtue of its powers in respect of prior authorisation and sanctions, disregards, as the cross-appellants and the Commission essentially argue, the requirements that must be satisfied for an arbitration mechanism such as that at issue in the present case to be capable of being regarded, on the one hand, as allowing effective compliance with the public policy provisions that EU law contains to be ensured and, on the other hand, as being compatible with the principles underlying the judicial architecture of the European Union.

189 In that regard, it must be noted that, as is common ground between the parties and as the General Court observed in paragraphs 156, 159 and 160 of the judgment under appeal, the arbitration rules imposed by the ISU concern, in particular, two types of disputes which may arise in the context of economic activities consisting of (i) seeking to organise and market international speed skating events and (ii) seeking to take part in such competitions as a professional athlete. Those rules therefore apply to disputes concerning the exercise of a sport as an economic activity and, on that basis, come under EU competition law. Therefore, they must comply with EU competition law for the reasons set out in paragraphs 91 to 96 of the present judgment, in so far as they are implemented in the territory in which the EU and FEU Treaties apply, irrespective of the place where the entities that adopted them are established (judgments of 25 November 1971, *Béguelin Import*, 22/71, EU:C:1971:113, paragraph 11; of 27 September 1988, *Ahlström Osakeyhtiö and Others* v *Commission*, 89/85, 104/85, 114/85, 116/85, 117/85 and 125/85 to 129/85, EU:C:1988:447, paragraph 16; and of 6 September 2017, *Intel* v *Commission*, C-413/14 P, EU:C:2017:632, paragraphs 43 to 45).

190 It is, consequently, only the implementation of such rules in the context of such disputes and in the territory of the European Union that is at issue in the present case and not the implementation of those rules in a territory other than the European Union, their implementation in other types of disputes, such as disputes concerning merely the sport as such and therefore not falling under EU law, or, a fortiori, the implementation of the arbitration rules in different areas.

191 Furthermore, as follows from paragraphs 181 and 184 of the present judgment, those rules are at issue, in the present case, not to the extent that they subject the review at first instance of decisions issued by the ISU to the CAS as an arbitration body, but only to the extent that they subject the review of the arbitral awards made by the CAS and the last-instance review of decisions of the ISU to the Tribunal fédéral (Federal Supreme Court), that is to say, a court of a third State.

192 In that regard, the Court of Justice has consistently held that Article 101 and 102 TFEU are provisions having direct effect which create rights for individuals which national courts must protect (judgments of 30 January 1974, *BRT and Société belge des auteurs, compositeurs et éditeurs*, 127/73, EU:C:1974:6, paragraph 16, and of

14 March 2019, *Skanska Industrial Solutions and Others*, C-724/17, EU:C:2019:204, paragraph 24) and which are a matter of EU public policy (see, to that effect, judgment of 1 June 1999, *Eco Swiss*, C-126/97, EU:C:1999:269, paragraphs 36 and 39).

193 That is why, while noting that an individual may enter into an agreement that subjects, in clear and precise wording, all or part of any disputes relating to it to an arbitration body in place of the national court that would have had jurisdiction to rule on those disputes under the applicable national law, and that the requirements relating to the effectiveness of the arbitration proceedings may justify the judicial review of arbitral awards being limited (see, to that effect, judgments of 1 June 1999, *Eco Swiss*, C-126/97, EU:C:1999:269, paragraph 35, and of 26 October 2006, *Mostaza Claro*, C-168/05, EU:C:2006:675, paragraph 34), the Court has nevertheless pointed out that such judicial review must, in any event, be able to cover the question whether those awards comply with the fundamental provisions that are a matter of EU public policy, which include Articles 101 and 102 TFEU (see, to that effect, judgment of 1 June 1999, *Eco Swiss*, C-126/97, EU:C:1999:269, paragraph 37). Such a requirement is particularly necessary when such an arbitration mechanism must be regarded as being, in practice, imposed by a person governed by private law, such as an international sports association, on another, such as an athlete.

194 In the absence of such judicial review, the use of an arbitration mechanism is such as to undermine the protection of rights that subjects of the law derive from the direct effect of EU law and the effective compliance with Articles 101 and 102 TFEU, which must be ensured – and would therefore be ensured in the absence of such a mechanism – by the national rules relating to remedies.

195 Compliance with that requirement for effective judicial review applies in particular to arbitration rules such as those imposed by the ISU.

196 The Court of Justice has held previously that, while having legal autonomy entitling them to adopt rules relating, inter alia to the organisation of competitions, their proper functioning and the participation of athletes in those competitions (see, to that effect, judgments of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 67 and 68, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 60), sports associations cannot, in doing so, limit the exercise of rights and freedoms conferred on individuals by EU law (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 81 and 83, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 52), which include the rights that underlie Articles 101 and 102 TFEU.

197 For that reason, rules such as the prior authorisation and eligibility rules must be subject to effective judicial review as is apparent from paragraphs 127 and 134 of the present judgment.

198 That requirement of effective judicial review means that, in the event that such rules contain provisions conferring mandatory and exclusive jurisdiction on an arbitration body, the court having jurisdiction to review the awards made by that body may confirm that those awards comply with Articles 101 and 102 TFEU. In addition, it entails that court's satisfying all the requirements under Article 267 TFEU, so that it is

entitled, or, as the case may be, required, to refer a question to the Court of Justice where it considers that a decision of the Court is necessary concerning a matter of EU law raised in a case pending before it (see, to that effect, judgments of 23 March 1982, *Nordsee*, 102/81, EU:C:1982:107, paragraphs 14 and 15, and of 1 June 1999, *Eco Swiss*, C-126/97, EU:C:1999:269, paragraph 40).

199 Thus, the General Court erred in law by merely finding, in an undifferentiated and abstract manner, that the arbitration rules 'may be justified by legitimate interests linked to the specific nature of the sport', in so far as they confer on 'a specialised court' the power to review disputes relating to the prior authorisation and eligibility rules, without seeking to ensure that those arbitration rules complied with all the requirements referred to in the preceding paragraphs of the present judgment and thus allowed for an effective review of compliance with the EU competition rules, even though the Commission correctly relied on those requirements in recitals 270 to 277, 282 and 283 of the decision at issue in concluding that those rules reinforced the infringement identified in Article 1 of that decision.

200 Second, that court also erred in law in holding, in paragraphs 157 to 161 of the judgment under appeal, that the effectiveness of EU law was ensured in full, given, on the one hand, the existence of remedies allowing recipients of a decision refusing to allow them to participate in a competition or of an ineligibility decision to seek damages for the harm caused to them by that decision before the relevant national courts and, on the other hand, the possibility of lodging a complaint with the Commission or an NCA.

201 As essential as it may be (see, in that regard, judgments of 20 September 2001, *Courage and Crehan*, C-453/99, EU:C:2001:465, paragraphs 26 and 27, and of 14 March 2019, *Skanska Industrial Solutions and Others*, C-724/17, EU:C:2019:204, paragraphs 25, 43 and 44), the fact that a person is entitled to seek damages for harm caused by conduct liable to prevent, restrict or distort competition cannot compensate for the lack of a remedy entitling that person to bring an action before the relevant national court seeking, as appropriate following the grant of protective measures, to have that conduct brought to an end, or where it constitutes a measure, the review and annulment of that measure, if necessary following a prior arbitration procedure carried out under an agreement that provides for such a procedure. The same applies to persons practising professional sport, whose career may be especially short, in particular where they practise that sport at a high level.

202 In addition, that fact cannot justify that right's being formally preserved but, in practice, deprived of an essential part of its scope, as would be the case if the judicial review that can be carried out in respect of the conduct or measure in question was excessively limited in law or in fact, in particular because it cannot concern the public policy provisions of EU law.

203 More especially, the possibility of lodging a complaint with the Commission or an NCA cannot be relied on in order to justify the lack of a remedy such as that referred to in paragraph 201 of the present judgment. It must, moreover, be pointed out, as regards the Commission, that, as that institution and the cross-appellants correctly assert, Article 7 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU]

(OJ 2003 L 1, p. 1) does not give a person who lodges an application under that article the right to insist that a final decision as to the existence or non-existence of the infringement he or she alleges be taken (see, to that effect, of 19 September 2013, *EFIM* v *Commission*, C-56/12 P, EU:C:2013:575, paragraphs 57 and the case-law cited).

204 The first ground of appeal is therefore well founded in its entirety. Consequently, the judgment under appeal must be set aside in so far as it annulled in part Article 2 of the decision at issue, to the extent that that article concerns the arbitration rules.

B. The second ground of appeal

1. Arguments of the parties

205 By their second ground of appeal, Mr Tuitert, Mr Kerstholt and EU Athletes, supported by the Commission, claim that the General Court erred in refusing to take into account, for the purposes of categorising a restriction of competition by object in the present case, the fact that the prior authorisation and eligibility rules aimed, inter alia, to ensure the protection of the ISU's economic interests.

206 In that regard, they argue, in the first place, that the General Court committed a manifest error or assessment as to the facts in paragraph 107 of the judgment under appeal in refusing to acknowledge that that aim was apparent from those rules both in the version adopted in 2014 and in that adopted in 2016.

207 In the second place, they maintain that the General Court made an incorrect legal classification of the facts, in paragraphs 107 and 109 of the judgment under appeal, in finding that such an aim was not, in itself, anticompetitive in nature. While it is in general permissible for an undertaking or association of undertakings engaged in an economic activity to promote its own economic interests, that court failed to draw the inferences from its own findings and assessments relating to the relevant legal and economic content, inter alia those made in paragraphs 70 and 114 of the judgment under appeal, from which it followed that the ISU combined a monopolistic economic activity on the market for the organisation and marketing of international speed skating events with regulatory, decision-making, control and sanctioning powers which placed it in a situation of conflict of interests requiring appropriate obligations, restrictions and review to be put in place. The General Court should have taken that situation into account and found that, in the light of that situation, the objective at issue in the present case was relevant for the purpose of finding a restriction of competition by object, as the Commission did.

208 The ISU disputes all those arguments.

2. Findings of the Court

209 It should be noted, at the outset, that, while finding, in paragraphs 107 and 109 of the judgment under appeal, that certain of the Commission's assessments were incorrect, the General Court nevertheless ultimately held, in paragraph 111 of that judgment, that those errors had no effect on the legally well-founded conclusion of that institution that the prior authorisation and eligibility rules had as their object the restriction of competition. For that reason, the General Court dismissed the action

brought by the ISU, in so far as it was directed against that aspect of the decision at issue.

210 Thus, the present ground of appeal concerns reasons set out in the ground of appeal which are not only for the sake of completeness, but which also form part of the reasoning that led the General Court to dismiss part of the ISU's claim, and thus to give satisfaction, to that extent, to the Commission and Mr Tuitert, Mr Kerstholt and EU Athletes. By that ground of appeal, the latter parties, consequently, seek to obtain a substitution of grounds that is not capable of procuring them any advantage. An application of that kind is inadmissible (judgments of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 42, and of 9 November 2017, *TV2/Danmark* v *Commission*, C-649/15 P, EU:C:2017:835, paragraph 61).

211 That ground of appeal must therefore be rejected as being inadmissible.

212 Therefore the cross-appeal must be upheld to the extent stated in paragraph 204 of the present judgment.

213 Consequently, the judgment under appeal must be set aside to the extent that it annulled in part the decision at issue.

V. The action in Case T-93/18

214 The first paragraph of Article 61 of the Statute of the Court of Justice of the European Union provides that, if the appeal is well founded and the Court quashes the decision of the General Court, it may in itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

215 In the present case, given that the Court of Justice has dismissed the appeal brought by the ISU against the judgment under appeal in so far as it rejected its claim seeking annulment of the part of the decision at issue concerning the prior authorisation and eligibility rules, the action in Case T-93/18 exists only in so far as it is directed against that part of that decision which concerns the arbitration rules.

216 Since the sixth and seventh pleas in law at first instance, alleging infringement of Article 101 TFEU in so far as that article was applied to the arbitration rules, were the subject of an exchange of arguments before the General Court and the examination of those pleas does not require any further measure of organisation of procedure or inquiry to be taken in the case, the state of the proceedings is such that the Court of Justice may give final judgment on those pleas and should do so (see, by analogy, judgments of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 130, and of 2 December 2021, *Commission and GMB Glasmanufaktur Brandenburg* v *Xinyi PV Products (Anhui) Holdings*, C-884/19 P and C-888/19 P, EU:C:2021:973, paragraph 104).

A. Arguments of the parties

217 By its sixth plea in law at first instance, the ISU maintains, in essence, that the Commission erred in finding that the arbitration rules reinforced the anticompetitive nature by object of the prior authorisation and eligibility rules.

218 The ISU asserts that the mandatory use of a contractual arbitration mechanism is a generally accepted method for the settlement of disputes. In addition, in the present case, the CAS plays a fundamental role in the uniform application of sporting rules. Furthermore, the conferral of powers on that body, which took place during the administrative procedure that led the Commission to adopt the decision at issue, constitutes progress in relation to the ISU internal appeals process that existed up to that point. Lastly, the parties concerned have the option of challenging the recognition and enforcement of the awards made by that body before the relevant national courts, which can refer questions to the Court of Justice for a preliminary ruling concerning the interpretation of the EU competition rules.

219 More generally, according to the ISU, the findings of the Commission in that regard are irrelevant, since that institution itself recognises that the arbitration rules do not, in themselves, constitute an infringement.

220 By its seventh plea at first instance, the ISU claims, in essence, that the Commission was not empowered to impose corrective measures on it concerning the arbitration rules, since there was no link between those rules and the prior authorisation and eligibility rules.

B. Findings of the Court

221 As is clear from paragraphs 199 and 204 of the present judgment, the Commission correctly relied, in recitals 270 to 277, 282 and 283 of the decision at issue, on the requirements referred to in paragraphs 188 to 198 of the present judgment to support its finding that, in view of their content, the conditions of their implementation and scope, in the legal and economic context of which they form a part, the arbitration rules reinforced the powers, which are not subject to any obligations, restrictions or appropriate judicial review and which therefore have an anticompetitive nature by object, held by that association under the prior authorisation and eligibility rules.

222 None of the arguments put forward by the ISU permit the view that such a finding is vitiated by any error, or more especially, by a manifest error.

223 In that respect, it is apparent from, on the one hand, the recitals of the decision at issue referred to in paragraph 216 of the present judgment that the arbitration rules subject, exclusively and mandatorily, disputes relating to the implementation of the prior authorisation and eligibility rules to the jurisdiction of the CAS, an arbitration body whose awards are subject to judicial review by the Tribunal fédéral (Federal Supreme Court). The Commission contends, inter alia, that the review that that court can carry out in respect of those awards excludes the question whether they comply with the public policy provisions of Articles 101 and 102 TFEU. In addition, it asserts that the Tribunal fédéral (Federal Supreme Court) is not a court of a Member State, but a court outside the EU legal system, which is not empowered to refer a question to the Court of Justice for a preliminary ruling on that subject. Lastly, it submits that, according to the case-law of the Tribunal fédéral (Federal Supreme Court), athletes do

not, in practice, have any choice other than to accept that disputes between them and the ISU are subject to the jurisdiction of the CAS, unless they no longer take part in any events organised by the ISU or the national skating associations that are its members, and therefore, ultimately, give up their profession.

224 On the other hand, the arbitration rules exclude the possibility, for applicants who have received an ineligibility decision or the entities or undertakings that have received a refusal to grant prior authorisation for a planned international speed skating competition, of seeking protective measures before the competent arbitration body and before the national courts which could be required to rule on the enforcement of awards made by that body. In addition, the Commission states that that enforcement can in general be handled by the ISU and by the national skating associations that are its members, without the need for the intervention of a national court for that purpose.

225 The ISU does not put forward any precise and substantiated argument that can permit the view that those various findings rely on an incorrect factual basis or are vitiated by one or more manifest errors of assessment. It must be held, on the contrary, that some of those findings, such as those relating to the lack of possibility of subjecting CAS awards to judicial review to ensure compliance with the provisions of public policy of EU law, if necessary using the procedure laid down in Article 267 TFEU, are correct, and others, such as those to the effect that the arbitration mechanism at issue in the present case is, in practice, imposed unilaterally by the ISU on athletes, reflect those of the European Court of Human Rights in that regard (ECtHR, 2 October 2018, *Mutu and Pechstein v. Switzerland*, CE:ECHR:2018:1002JUD004057510, §§ 109 to 115).

226 The sixth plea in law is therefore unfounded.

227 As regards the seventh plea in law, it must be noted that, where the Commission finds the existence of an infringement of Article 101 or Article 102 TFEU, it has the power to require, by means of a decision, the undertakings or associations of undertakings concerned to bring an end to that infringement (see, to that effect, judgment of 2 March 1983, *GVL* v *Commission*, 7/82, EU:C:1983:52, paragraph 23) and, to that end, impose on them a corrective measure that is proportionate to that infringement and necessary to bring it to an immediate end (judgment of 29 June 2010, *Commission* v *Alrosa*, C-441/07 P, EU:C:2010:377, paragraph 39).

228 In the present case, the Commission was correct in finding that the arbitration rules reinforced the infringement identified in Article 1 of the decision at issue, by making judicial review, in the light of EU competition law, of CAS arbitral awards delivered after the decisions adopted by the ISU by virtue of the discretion conferred on it by the prior authorisation and eligibility rules more difficult.

229 In addition, the ISU, which merely relies incorrectly on the absence of a link between those different rules, does not effectively dispute the Commission's findings relating to the need for the corrective measures imposed by that institution with regard to the arbitration rules.

230 In those circumstances, the seventh plea in law is also unfounded.

231 Accordingly, the action must be dismissed to the extent that it was not already dismissed in the judgment under appeal.

VI. Costs

232 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded or where the appeal is well founded and the Court of Justice itself gives final judgment in the case, the Court is to make a decision as to the costs.

233 Under Article 138(1) of those rules, which are applicable to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

234 Under Article 138(2) of those rules of procedure which also applies to appeal proceedings by virtue of Article 184(1) thereof, where there are several unsuccessful parties, the Court is to decide how the costs are to be shared.

235 In the present case, the ISU has been unsuccessful in Case C-124/21 P and in the part of Case T-93/18 referred to by the Court of Justice.

236 Furthermore, Mr Tuitert, Mr Kerstholt and EU Athletes, while unsuccessful in their second ground of appeal, have succeeded in their claim.

237 In those circumstances, the ISU must be ordered to pay the costs, both in Case C-124/21 P and in the part of Case T-93/18 referred to by the Court, in accordance with the forms of order sought by the Commission, Mr Tuitert, Mr Kerstholt and EU Athletes.

On those grounds, the Court (Grand Chamber) hereby:

1. Dismisses the appeal;

2. Upholds the cross-appeal;

3. Sets aside the judgment of the General Court of the European Union of 16 December 2020, *International Skating Union* v *Commission* (T-93/18, EU:T:2020:610), in so far as it annulled in part Article 2 of Decision C(2017) 8230 final of the European Commission of 8 December 2017 relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40208 – International Skating Union's Eligibility rules);

4. Dismisses the action in Case T-93/18 to the extent that it was not previously dismissed in the judgment referred to in point 3 of the present operative part;

5. Orders the International Skating Union to pay the costs in Case C-124/21 P and in the part of Case T-93/18 referred to in point 4 of the present operative part.

C-680/21, Royal Antwerp Football Club (21 December 2023)

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 45 and 101 TFEU.

2 The request has been made in proceedings between UL and SA Royal Antwerp Football Club ('Royal Antwerp'), on the one hand, and the Union royale belge des sociétés de football association ASBL (Royal Belgian Football Association; 'the URBSFA'), on the other, concerning an application to annul an arbitration award dismissing, in part as inadmissible and in part as unfounded, an action for nullity and compensation brought by UL and Royal Antwerp against the Union des associations européennes de football (Union of European Football Associations; 'UEFA') and the URBSFA.

I. Legal context

A. The UEFA Statutes

3 UEFA is an association governed by private law, established in Switzerland. According to Article 2 of the version of its statutes adopted in 2021 ('the UEFA Statutes'), its objectives are, inter alia, to 'deal with all questions relating to European football', to 'monitor and control the development of every type of football in Europe' and to 'organise and conduct international football competitions and tournaments at European level for every type of football'.

4 Under Article 5 of the UEFA Statutes, any association based in a European country which is recognised as an independent state by the majority of members of the United Nations (UN) and which is responsible for the organisation of football in that country may become a member of UEFA. Under Article 7bis of those statutes, membership entails the obligation, for the associations concerned, to comply with, inter alia, the statutes, regulations and decisions of UEFA and to ensure observance of them, in their country, by the professional leagues subject to them and by clubs and players. In practice, more than 50 national football associations are currently members of UEFA.

5 Under Articles 11 and 12 of those statutes, UEFA's organs comprise, inter alia, a 'supreme organ' called 'the Congress' and an 'Executive Committee'.

B. The UEFA and the URBSFA regulations concerning 'home-grown players'

1. UEFA's regulations

6 On 2 February 2005, UEFA's Executive Committee adopted rules stipulating that professional football clubs participating in international interclub football competitions organised by UEFA must include a maximum number of 25 players on the match sheet, which itself must include a minimum number of players categorised as 'home-grown players' and defined as players who, regardless of their nationality, have been trained by their club or by a club affiliated to the same national football association for at least three years between the ages of 15 and 21 ('the rules on "home-grown players"').

7 On 21 April 2005, the rules on ‘home-grown players’ were approved by UEFA’s Congress at the meeting of all the national football associations which are members of UEFA, held in Tallinn (Estonia) (‘the Tallinn Congress’).

8 Since the 2007/2008 season, those rules provide that professional football clubs taking part in an international interclub football competition organised by UEFA must include on the match sheet a minimum of 8 ‘home-grown players’ within a list comprising a maximum number of 25 players. Out of eight players, at least four must have been trained by the club which lists them.

2. The URBSFA’s regulations

9 The URBSFA is an association with its headquarters in Belgium. Its purpose is to ensure the organisation and promotion of football in that Member State. In that respect, it is a member of both UEFA and the Fédération internationale de football association (International Association Football Federation; ‘FIFA’).

10 In 2011, the URBSFA introduced into its federal regulations rules on ‘home-grown players’.

11 In the version applicable during the arbitration proceedings which took place before the main proceedings, those rules were worded as follows:

‘Article P335.11 – Professional football divisions 1A and 1B: submission of the “Squad size limit” list

1. Lists to be submitted

11. All 1A and 1B professional football clubs must submit the following lists … and keep them updated:

– a maximum list of 25 players …, which must include at least 8 trained by Belgian clubs within the meaning of Article P1422.12; at least 3 players must meet the additional requirement laid down in Article P1422.13. If those minimum thresholds are not met, those players cannot be replaced by players who do not satisfy those conditions.

…

Article P1422 – Mandatory inclusion on the match sheet

1. The following rules shall apply to the first teams of professional football clubs:

11. When taking part in official first-team competitions …, professional football clubs shall be required to include on the match sheet at least six players who have been trained by a Belgian club, at least two of whom meet the additional requirement laid down in point 13 below. If the club cannot include the minimum number of players required under the preceding paragraph, it may not replace them by including players who do not satisfy the relevant conditions.

12. Players who have satisfied all requirements for official match inclusion for at least three full seasons for a club in Belgium shall be regarded as having been trained by a Belgian club before their 23rd birthday.

13. Players who have been affiliated club members for at least three full seasons at a club in Belgium before their 21st birthday shall satisfy the additional requirement.

…

15. 1A and 1B professional football clubs can include on the match sheet only players appearing on the club's "Squad size limit" lists (Article P335).

16. In case of breach of the above rules, the competent federal body shall impose the sanctions stipulated for the inclusion of ineligible players …, with the exception of fines.'

12 Those rules were subsequently amended. In the version to which the national court refers in its request for a preliminary ruling, those rules are worded as follows:

'Article B4.1[12]

In order to participate in official, first-team matches in competitive football, specific conditions shall apply to professional football and to amateur football.

Article P

All 1A and 1B professional football clubs must submit the following lists … and keep them updated:

1° a maximum list of 25 players …, which must include at least 8 trained by Belgian clubs (these are players who have satisfied all requirements for official match inclusion for at least three full seasons for a club in Belgium before their 23rd birthday); at least 3 players must meet the additional requirement of having satisfied that condition before their 21st birthday. If those minimum thresholds are not met, those players cannot be replaced by players who do not satisfy those conditions.

…

For a player to be eligible for inclusion on the "Squad size limit" list:

– he or she must be an affiliated member of the federation and an affiliated club member or temporarily eligible for official match inclusion for the club requesting his or her inclusion; and

– in the case of a paid sportsman or sportswoman who is not a national of a member country of the [European Economic Area (EEA)], a copy either of the single permit (which must still be valid) or of the official certificate issued by the local authority in his or her place of residence in Belgium confirming that the paid sportsman or sportswoman has reported to the authority must be furnished in order for him or her to be issued the single permit to which he or she is entitled …

– he or she must satisfy the requirements for official match inclusion. Amendments to that list may be approved only by the Federal Authority.

…

Article B6.109

The following requirements shall apply vis-à-vis the inclusion of players on the match sheet.

Article P

The following provisions shall apply to the first teams of professional football clubs:

In the context of their participation in official first-team competitions, professional football clubs are required to include on the match sheet at least six players who have been trained by a Belgian club, at least two of whom satisfy the additional requirement laid down hereinafter.

If the club cannot include the minimum number of players required under the preceding paragraph, it may not replace them by including players who do not satisfy the relevant conditions.

– Players who have satisfied all requirements for official match inclusion for at least three full seasons for a club in Belgium shall be regarded as having been trained by a Belgian club before their 23rd birthday.

– Players who have been affiliated club members for at least three full seasons at a club in Belgium before their 21st birthday shall satisfy the additional requirement.

…

1A and 1B professional football clubs can include on the match sheet only players appearing on the club's "Squad size limit" lists.

In the event of a breach of the above rules, the competent federal body shall impose the sanctions stipulated for the inclusion of ineligible players, with the exception of fines.'

II. Facts in the main proceedings and the questions referred for a preliminary ruling

13 UL is a professional football player who has the nationality of a third country, in addition to Belgian nationality. He has been professionally active in Belgium for many years. There he successively worked for Royal Antwerp, a professional football club established in Belgium, and then for another professional football club.

14 On 13 February 2020, UL brought an action before the Cour Belge d'Arbitrage pour le Sport (Belgian Court of Arbitration for Sport; 'the CBAS') seeking a declaration, inter alia, that the rules on 'home-grown players' adopted by UEFA and the URBSFA are automatically void on the ground that they infringe Articles 45 and 101 TFEU and compensation for the damage those rules caused to UL. Subsequently, Royal Antwerp voluntarily intervened in the proceedings, also seeking compensation for the damage caused by those rules.

15 By an arbitration award made on 10 July 2020, the CBAS decided that those claims were inadmissible in so far as they concerned the rules on 'home-grown players' adopted by UEFA and admissible but unfounded in so far as they concerned the rules adopted by the URBSFA.

16 As regards the rules adopted by UEFA, which was not a party to the arbitration proceedings, the CBAS considered, inter alia, that, in view of their own distinct character compared to those adopted by the various national football associations which are members of UEFA, including the URBSFA, they could not be considered to be the result of an agreement, decision or concerted practice between those different entities, for the purposes of Article 101(1) TFEU.

17 With regard to the rules adopted by the URBSFA, the CBAS considered in essence, first, that they did not interfere with the freedom of movement for workers guaranteed by Article 45 TFEU on the ground that they were applicable without distinction, that they did not give rise to any direct or indirect discrimination based on nationality and that they were, in any event, justified by legitimate objectives necessary for the pursuit of those objectives and proportionate to that end. Second, it decided that those rules did not have either as their object or their effect the restriction of competition and that they were, moreover, necessary for and proportionate to the pursuit of legitimate objectives, so that they did not infringe Article 101(1) TFEU either.

18 Accordingly, the CBAS rejected the claims of UL and Royal Antwerp.

19 By summons served on 1 September 2020, UL and Royal Antwerp brought proceedings against the URBSFA before the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking), Belgium) for annulment of the arbitration award handed down on the ground that it infringed public policy within the meaning of Article 1717 of the Belgian Judicial Code.

20 In support of the form of order sought, they argue in essence, first, that the rules on 'home-grown players' that were adopted by UEFA and the URBSFA implement an overall plan that has as its object and effect the restriction of competition within the meaning of Article 101(1) TFEU. Second, those rules interfere with the freedom of movement for workers guaranteed by Article 45 TFEU in that they limit both the possibility for a professional football club such as Royal Antwerp to recruit players who do not meet the requirement to have local or national roots laid down by those rules and to field them in a match, and the possibility for a player such as UL to be recruited and fielded by a club in respect of which he cannot claim such roots.

21 On 9 November 2021, UEFA applied for leave to intervene in support of the form of order sought by the URBSFA.

22 By judgment pronounced on 26 November 2021, that is to say, after the date on which the present request for a preliminary ruling arrived at the Court, UEFA's voluntary intervention was declared admissible. On 13 December 2021, the referring court informed the Court of the admission of that new party to the main proceedings, in accordance with Article 97(2) of the Rules of Procedure of the Court.

23 In its order for reference, the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking)) states, in the first place, that the arbitration award at issue in the main proceedings, both in so far as it finds that the applications made by UL and Royal Antwerp are in part inadmissible and in so far as it dismisses those applications as unfounded as to the remainder, is based on the interpretation and application of two provisions of EU law – namely Articles 45 and

101 TFEU – breach of which may be categorised as an 'infringement of public policy' within the meaning of Article 1717 of the Belgian Judicial Code, having regard to their nature and the relevant case-law of the Court (judgments of 1 June 1999, *Eco Swiss*, C-126/97, EU:C:1999:269, and of 26 October 2006, *Mostaza Claro*, C-168/05, EU:C:2006:675).

24 In the second place, the referring court considers it necessary for it to obtain clarification from the Court as to the interpretation of Articles 45 and 101 TFEU in order to be able to give judgment. In essence, that court asks, first, whether the rules on 'home-grown players' that were adopted by UEFA and the URBSFA may be categorised as 'agreements between undertakings', 'decisions by associations of undertakings' or 'concerted practices' within the meaning of Article 101 TFEU. Second, it questions whether those rules comply with the prohibition of agreements, decisions and concerted practices laid down in that article and with the freedom of movement for workers guaranteed in Article 45 TFEU, and whether those rules might be justified, suitable, necessary and proportionate. In that context, that court refers, in particular, to a press release published by the European Commission and to a study carried out on behalf of that institution, the 'main conclusion' of which is that the rules in question may have indirect discriminatory effects on the basis of nationality and restrictive effects on the free movement of workers, and from which it is not established that the rules are proportionate to the limited resulting benefits in terms of competitive balance between football clubs and the training of players, having regard to the alternative, less restrictive measures which appear possible.

25 In those circumstances, the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking)), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 101 TFEU to be interpreted as precluding the plan relating to "[home-grown players]" adopted on 2 February 2005 by UEFA's Executive Committee, approved by UEFA's 52 member associations at the Tallinn Congress on 21 April 2005 and implemented by means of regulations adopted both by UEFA and by its member federations?

(2) Are Articles 45 and 101 TFEU to be interpreted as precluding the application of the rules on the inclusion on the match sheet and the fielding of [home-grown players], as formalised by Articles P335.11 and P1422 of the URBSFA's federal regulation and reproduced in Articles B4.1[12] of Title 4 and B6.109 of Title 6 of the new URBSFA regulation?'

III. Admissibility

26 The URBSFA, UEFA, the Romanian Government and the Commission have cast doubt on the admissibility of the two questions posed by the referring court.

27 The arguments they put forward in that regard are, in essence, of four types. They include, first, arguments of a procedural nature alleging that the decision to make a request for a preliminary ruling was taken before UEFA was granted leave to intervene and therefore before it was heard in the main proceedings. Second, arguments of a

purely formal nature are put forward, alleging that the content of that decision fails to comply with the requirements laid down in Article 94(a) of the Rules of Procedure inasmuch as it does not present in a sufficiently detailed manner the legal and factual context in which the referring court is making a reference to the Court, a situation which tends to prevent the parties concerned from effectively putting forward their viewpoints on the issues to be decided. Third, substantive arguments are put forward relating to the hypothetical nature of the request for a preliminary ruling, inasmuch as there is no actual dispute the resolution of which necessitates any interpretative decision whatsoever from the Court. That is, in particular, because the rules on 'home-grown players' did not prevent UL from being recruited and fielded by Royal Antwerp, and then by another professional football club. Fourth, the dispute in the main proceedings should be regarded as being 'purely domestic' in the light of Article 45 TFEU and not likely to 'affect trade between Member States' within the meaning of Article 101 TFEU, given its *inter partes* nature, UL's nationality, the place of establishment of Royal Antwerp and the limited geographical scope of the rules that were adopted by the URBSFA.

A. The procedural conditions for issuing an order for reference

28 In the context of a preliminary ruling procedure, it is not for the Court of Justice, in view of the distribution of functions between itself and the national courts, to determine whether the order for reference was made in accordance with the rules of national law governing the organisation of the courts and their procedure. The Court is, moreover, bound by that order for reference in so far as it has not been rescinded on the basis of a means of redress provided for by national law (judgments of 14 January 1982, *Reina*, 65/81, EU:C:1982:6, paragraph 7, and of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 70).

29 Therefore, in the present case, it is not for the Court to take a view on the possible consequences attached, in the main proceedings and under the national rules of judicial procedure applicable to those proceedings, to the admission of a new party following the making of the order for reference.

30 Moreover, as regards the proceedings that preceded the present judgment, it should be noted that Article 97(2) of the Rules of Procedure states that, where a new party is granted leave to intervene in the main proceedings, when the proceedings before the Court are already pending, that party must accept the case as he or she finds it at the time when the Court was informed that that party was admitted. Furthermore, in the present case, it must be noted that, in view of the stage reached in those proceedings when the Court was informed of the fact that UEFA had been granted leave to intervene in the main proceedings, that party had not only been provided with all the procedural documents already served on the other interested parties, as provided for in that provision, but was also able to submit, and subsequently did in fact submit, observations during the written phase, and again at the oral hearing.

B. The content of the order for reference

31 The preliminary reference procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by

means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them. According to settled case-law, which is now reflected in Article 94(a) and (b) of the Rules of Procedure, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for the national court to define the factual and regulatory context of the questions it is asking or, at the very least, to explain the factual hypotheses on which those questions are based. Furthermore, it is essential, as stated in Article 94(c) of the Rules of Procedure, that the request for a preliminary ruling itself contain a statement of the reasons which prompted the referring court or tribunal to enquire about the interpretation or validity of certain provisions of EU law, and the connection between those provisions and the national legislation applicable to the dispute in the main proceedings. Those requirements are of particular importance in those fields which are characterised by complex factual and legal situations, such as competition (see, to that effect, judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 83, and of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraphs 23 and 24).

32 Moreover, the information provided in the order for reference must not only be such as to enable the Court to reply usefully but must also give the governments of the Member States and other interested parties an opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union (see, to that effect, judgments of 1 April 1982, *Holdijk and Others*, 141/81 to 143/81, EU:C:1982:122, paragraph 7, and of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraph 31).

33 In the present case, the request for a preliminary ruling complies with the requirements set out in the two preceding paragraphs of the present judgment. The order for reference sets out in detail the factual and regulatory context surrounding the questions referred to the Court. It also sets out succinctly but clearly the factual and legal reasons that led the referring court to consider it necessary to refer those questions and the connection, in its view, between Articles 45 and 101 TFEU and the dispute in the main proceedings, in the light of the case-law of the Court.

34 Moreover, the gist of the written observations submitted to the Court highlights the fact that the parties submitting them had no difficulty in grasping the factual and legal context surrounding the questions put by the referring court, in understanding the meaning and scope of the underlying factual statements, in comprehending the reasons why the referring court considered it necessary to refer them and also, ultimately, in effectively setting out a complete and proper position on them.

C. The facts of the dispute and the relevance of the questions referred to the Court

35 It is solely for the national court before which the dispute in the main proceedings has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. It follows that questions referred by national courts enjoy a presumption of relevance and that the Court may refuse to rule on those questions only where it is quite obvious that the interpretation sought bears no

relation to the actual facts of the dispute in the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to those questions (see, to that effect, judgments of 16 December 1981, *Foglia*, 244/80, EU:C:1981:302, paragraphs 15 and 18, and of 7 February 2023, *Confédération paysanne and Others (*In vitro *random mutagenesis)*, C-688/21, EU:C:2023:75, paragraphs 32 and 33).

36 In the present case, the Court finds that the referring court's statements summarised in paragraphs 14 to 24 of the present judgment affirm the actual state of the dispute in the main proceedings. Moreover, those same statements show that it cannot be said that the referring court's reference to the Court on the interpretation of Articles 45 and 101 TFEU manifestly bears no relation to the actual facts of the dispute in the main proceedings or its purpose.

37 It is apparent from those statements, first, that that court has before it an application to set aside an arbitration award in which the CBAS dismissed, as in part inadmissible and in part unfounded, an action for nullity and compensation brought by UL and Royal Antwerp against the URBSFA and UEFA concerning 'home-grown players'. Second, that arbitration award is based on an interpretation and application of Articles 45 and 101 TFEU. Third, the referring court states that, given the purpose of the dispute before it, it is inter alia required, in order to deliver its judgment, to review the way in which the CBAS has interpreted and applied Articles 45 and 101 TFEU, in order to determine whether or not the arbitration award made by the CBAS contravenes Belgian public policy.

D. The cross-border dimension of the dispute in the main proceedings

38 The FEU Treaty provisions on the freedom of establishment, the freedom to provide services and the free movement of capital do not apply to a situation which is confined in all respects within a single Member State (judgments of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 47, and of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 31). Consequently, requests for preliminary rulings concerning the interpretation of those provisions in such situations may be considered admissible, in certain specific cases, only if the order for reference highlights the specific factors which establish that the preliminary ruling on interpretation sought is necessary for the resolution of the dispute due to a link between the subject or circumstances of that dispute and Articles 49, 56 or 63 TFEU, in accordance with what is required by Article 94 of the Rules of Procedure (see, to that effect, judgments of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraphs 50 to 55, and of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 34).

39 However, in the present case, the request for a preliminary ruling cannot be considered inadmissible on the ground that Article 45 TFEU, relating to the freedom of movement for workers, is unconnected to the dispute in the main proceedings given its 'purely domestic' nature.

40 First, while it is true that the dispute in the main proceedings is *inter partes*, that UL has Belgian nationality, that Royal Antwerp is established in Belgium and that the

rules adopted by the URBSFA have a geographical scope limited to the territory of that Member State, as some of the interested parties have rightly stated, the fact remains that that dispute concerns an arbitration award in which the CBAS interpreted and applied, inter alia, Article 45 TFEU, as is apparent from paragraph 17 of the present judgment. The question whether that article applies to that dispute therefore concerns its merits and thus cannot be relied on, without prejudging its outcome, in order to contest the admissibility of the request for a preliminary ruling.

41 Furthermore, UEFA's rules and those of the URBSFA, at issue in the main proceedings, are, according to the referring court, closely linked in that the URBSFA is required, in its capacity as a member of UEFA, to respect UEFA's statutes, regulations and decisions, and where its rules on 'home-grown players' are directly inspired by the rules that were previously adopted and approved by UEFA at the Tallinn Congress, as was mentioned in paragraph 7 of the present judgment. Moreover, those factual and legal connections between the rules of the URBSFA, those of UEFA and EU law are, in essence, what led the referring court to declare UEFA's voluntary intervention in the judgment referred to in paragraph 22 of the present judgment to be admissible.

42 Second, the dispute in the main proceedings, at the same time, concerns the interpretation and application by the CBAS of Article 101 TFEU.

43 However, it is settled case-law that if the application of paragraph 1 of that article makes it necessary, among other conditions, to establish, with a sufficient degree of probability, that an agreement, a decision by an association of undertakings or a concerted practice is capable of having an appreciable effect on trade between Member States by having an influence, direct or indirect, actual or potential, on the pattern of trade, at the risk of hindering the attainment or the functioning of the internal market, that condition may be considered fulfilled in the case of conduct that covers the entire territory of a Member State (see, to that effect, judgment of 16 July 2015, *ING Pensii*, C-172/14, EU:C:2015:484, paragraphs 48 and 49 and the case-law cited).

44 In the light of that case-law, and given the geographical scope of the rules at issue in the main proceedings and the close connection between them, the view cannot be taken that Article 101 TFEU has no connection with the dispute in the main proceedings on the ground that the rules to which that article relates may not 'affect trade between Member States'.

45 It follows that the request for a preliminary ruling is admissible in its entirety.

IV. Consideration of the questions referred

46 By its first question, the referring court asks, in essence, whether Article 101 TFEU must be interpreted as precluding rules that have been adopted by an association responsible for organising football competitions at European level and implemented both by that association and by its member national football associations, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained either by that club itself or in the territory of the national association to which that club is affiliated.

47 By its second question, that court asks, in essence, whether Articles 45 and 101 TFEU must be interpreted as precluding rules that have been adopted by an association responsible for organising football competitions at national level and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained in the territory of that association.

48 In view of both the gist of those questions and the nature of the dispute in which they were referred to the Court, it is appropriate to set out three sets of preliminary observations before examining those questions.

A. Preliminary observations

1. The subject matter of the case in the main proceedings

49 It is apparent from the actual wording of the two questions referred to the Court that they overlap to a large extent, in so far as they concern Article 101 TFEU. The referring court seeks clarification on the interpretation of that article in order to be able to review how it was applied in an arbitration award concerning the compatibility with that article of the rules on 'home-grown players', as adopted and implemented by UEFA and by the various national football associations which are members of UEFA, including the URBSFA.

50 However, those two questions differ in so far as they concern Article 45 TFEU, since only the second, which relates to the rules adopted and implemented by the URBSFA, refers to that article. In that regard, in the request for a preliminary ruling, the referring court states that it is not for it to refer a question to the Court relating to the compatibility with Article 45 TFEU of the rules adopted and implemented by UEFA. However, that court makes it clear, in essence, that it does not preclude taking that question into consideration in its assessment of the existence of an agreement, a decision by an association of undertakings or a concerted practice within the meaning of Article 101 TFEU.

51 In the light of all those different factors, it is appropriate to address the questions referred by the national court together, by interpreting Article 101 TFEU as a first step and Article 45 TFEU as a second.

2. The applicability of EU law to sport and the activities of sporting associations

52 The questions referred to the Court relate to the interpretation of Articles 45 and 101 TFEU in the context of a dispute involving rules which were adopted by two entities having, according to their respective statutes, the status of associations governed by private law responsible for the organisation and control of football at European and Belgian levels, respectively, and which make the composition of the teams able to participate in interclub football competitions subject to certain conditions, backed with sanctions.

53 It must be borne in mind in that regard that, in so far as it constitutes an economic activity, the practice of sport is subject to the provisions of EU law applicable to such activity (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74,

EU:C:1974:140, paragraph 4, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 27).

54 Only certain specific rules which were adopted solely on non-economic grounds and which relate to questions of interest solely to sport per se must be regarded as being extraneous to any economic activity. That is the case, in particular, of those on the exclusion of foreign players from the composition of teams participating in competitions between teams representing their country or the determination of ranking criteria used to select the athletes participating individually in competitions (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraph 8; of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 76 and 127; and of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 43, 44, 63, 64 and 69).

55 Apart from those specific rules, the rules adopted by sporting associations in order to govern paid work or the performance of services by professional or semi-professional players and, more broadly, those rules which, whilst not formally governing that work or that performance of services, have an indirect impact thereon, may come within the scope of Articles 45 and 56 TFEU (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraphs 5, 17 to 19 and 25; of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 75, 82 to 84, 87, 103 and 116; of 12 April 2005, *Simutenkov*, C-265/03, EU:C:2005:213, paragraph 32; and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 28 and 30).

56 Similarly, the rules adopted by such associations and, more broadly, the conduct of associations which have adopted them fall within the provisions of the FEU Treaty on competition law when the conditions of application of those provisions are met (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 30 to 33), which means that those associations may be categorised as ‘undertakings’ within the meaning of Articles 101 and 102 TFEU or that the rules at issue may be categorised as ‘decisions by associations of undertakings’ within the meaning of Article 101 TFEU.

57 Thus, more generally, since such rules come within the scope of the aforementioned provisions of the FEU Treaty, where they set out edicts applicable to individuals, they must be drafted and implemented in compliance with the general principles of EU law, in particular the principles of non-discrimination and proportionality (see, to that effect, judgment of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraphs 60, 65 and 66 and the case-law cited).

58 The rules at issue in the main proceedings, however, irrespective of whether they originate from UEFA or the URBSFA, do not form part of those rules to which the exception referred to in paragraph 54 of the present judgment might be applied, which exception the Court has stated repeatedly must be limited to its proper objective and may not be relied upon to exclude the whole of a sporting activity from the scope of the FEU Treaty provisions on EU economic law (see, to that effect, judgments of 14 July 1976, *Donà*, 13/76, EU:C:1976:115, paragraphs 14 and 15, and of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraph 26).

59 On the contrary, although those rules do not formally govern the players' working conditions, they must be regarded as having a direct impact on that work in that they impose certain conditions, which are backed with sanctions, on the composition of the teams able to participate in interclub football competitions and, accordingly, the participation of the players themselves in those competitions (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 116 and 119).

60 More specifically, it is apparent from the statements of the referring court that those rules provide, in essence, that professional football clubs participating in those competitions must, subject to sanctions, include on the match sheet a minimum number of 'home-grown players'. In the rules adopted by UEFA, that term is in actual fact used to designate not only players who have been trained by the club which employs them, but also players who were trained by another club affiliated to the same national football association. In the rules adopted by the URBSFA, that term is used exclusively to designate players who have been trained by 'a Belgian club', therefore any club affiliated to that association. The fact that such rules thus limit the possibility that clubs have of including players on the match sheet, and therefore of fielding those players for the corresponding match, and not formally the possibility of employing those players, is irrelevant since participation in matches and competitions constitutes the essential purpose of the players' activity and that possibility of employment is also limited as a consequence (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 120, and of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraph 50).

61 Furthermore, given that the composition of the teams constitutes one of the essential parameters of the competitions in which professional football clubs compete and those competitions give rise to an economic activity, the rules at issue in the main proceedings must also be regarded as having a direct impact on the conditions for engaging in that economic activity and on competition between the professional football clubs engaged in that activity.

62 Hence, all of the UEFA and the URBSFA rules about which the referring court is submitting questions to the Court come within the scope of Articles 45 and 101 TFEU.

3. Article 165 TFEU

63 Most of the parties to the main proceedings and some of the governments that participated in the procedure before the Court have expressed differing views on the inferences liable to be attached to Article 165 TFEU in the answers to be given to the questions posed by the referring court.

64 In that regard, it should be noted, first, that Article 165 TFEU must be construed in the light of Article 6(e) TFEU, which provides that the Union has competence to carry out actions to support, coordinate or supplement the actions of the Member States in the areas of education, vocational training, youth and sport. Article 165 TFEU gives specific expression to that provision by specifying both the objectives assigned to Union

action in the areas concerned and the means which may be used to contribute to the attainment of those objectives.

65 Thus, as regards the objectives assigned to Union action in the area of sport, the second subparagraph of Article 165(1) TFEU states that the Union is to contribute to the promotion of European sporting issues, while taking account of the specific characteristics of sport, its structures based on voluntary activity and its social and educational function and, in the last indent of paragraph 2, that Union action in that area is to be aimed at developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportspersons, especially the youngest sportspersons.

66 As regards the means which may be employed to contribute to the attainment of those objectives, Article 165(3) TFEU provides that the Union is to foster cooperation with third countries and the competent international organisations in the field of sport and, in paragraph 4, that the European Parliament and the Council of the European Union, acting in accordance with the ordinary legislative procedure, or the Council, acting alone on a proposal from the Commission, may adopt incentive measures or recommendations.

67 Second, as follows from both the wording of Article 165 TFEU and that of Article 6(e) TFEU, by those provisions, the drafters of the Treaties intended to confer a supporting competence on the Union, allowing it to pursue not a 'policy', as provided for by other provisions of the FEU Treaty, but an 'action' in a number of specific areas, including sport. Thus, those provisions constitute a legal basis authorising the Union to exercise that competence, under the conditions and within the limits fixed thereby, being inter alia, as provided for in the first indent of Article 165(4) TFEU, the exclusion of any harmonisation of the legislative and regulatory provisions adopted at national level. That supporting competence also allows the Union to adopt legal acts solely with the aim of supporting, coordinating or completing Member State action, in accordance with Article 6 TFEU.

68 By way of corollary, and as is also apparent from the context of which Article 165 TFEU forms a part, in particular from its insertion in Part Three of the FEU Treaty, devoted to 'Union policies and internal actions', and not in Part One of that treaty, which contains provisions of principle, including, under Title II, 'provisions having general application', relating, inter alia, to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against any discrimination, environmental protection and consumer protection, that article is not a cross-cutting provision having general application.

69 It follows that, although the competent Union institutions must take account of the different elements and objectives listed in Article 165 TFEU when they adopt, on the basis of that article and in accordance with the conditions fixed therein, incentive measures or recommendations in the area of sport, those different elements and objectives, as well as those incentive measures and recommendations need not be integrated or taken into account in a binding manner in the application of the rules on the interpretation of which the referring court is seeking guidance from the Court,

irrespective of whether they concern the freedom of movement for workers (Article 45 TFEU) or competition law (Article 101 TFEU). More broadly, nor must Article 165 TFEU be regarded as being a special rule exempting sport from all or some of the other provisions of primary EU law liable to be applied to it or requiring special treatment for sport in the context of that application.

70 Third, the fact remains that, as observed by the Court on a number of occasions, sporting activity carries considerable social and educational importance, henceforth reflected in Article 165 TFEU, for the Union and for its citizens (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 106, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraphs 33 and 34).

71 Sporting activity also undeniably has specific characteristics which, whilst relating especially to amateur sport, may also be found in the pursuit of sport as an economic activity (see, to that effect, judgment of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraph 33).

72 Lastly, such specific characteristics may potentially be taken into account along with other elements and provided they are relevant in the application of Articles 45 and 101 TFEU, although they may be so only in the context of and in compliance with the conditions and criteria of application provided for in each of those articles.

73 In particular, when it is argued that a rule adopted by a sporting association constitutes an impediment to the free movement of workers or an anticompetitive agreement, the characterisation of that rule as an obstacle or anticompetitive agreement must, at any rate, be based on a specific assessment of the content of that rule in the actual context in which it is to be implemented (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 98 to 103; of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 61 to 64; and of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraphs 48 to 50). Such an assessment may involve taking into account, for example, the nature, organisation or functioning of the sport concerned and, more specifically, how professionalised it is, the manner in which it is practised, the manner of interaction between the various participating stakeholders and the role played by the structures and bodies responsible for it at all levels, with which the Union is to foster cooperation, in accordance with Article 165(3) TFEU.

74 Moreover, once the existence of an obstacle to the free movement of workers is established, the association which adopted the rule in question may yet demonstrate that it is justified, necessary and proportionate in view of certain objectives which may be regarded as being legitimate (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 104), which themselves are contingent on the specific characteristics of the sport concerned in a given case.

75 It is by reference to all the foregoing considerations that the Court must examine the referring court's questions in so far as they concern Article 101 TFEU and then Article 45 TFEU.

B. The questions referred in so far as they concern Article 101 TFEU

76 Article 101 TFEU applies to any entity engaged in an economic activity that must, as such, be categorised as an undertaking, irrespective of its legal form and the way in which it is financed (see, to that effect, judgments of 23 April 1991, *Höfner and Elser*, C-41/90, EU:C:1991:161, paragraph 21; of 11 December 2007, *ETI and Others*, C-280/06, EU:C:2007:775, paragraph 38; and of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 20 and 21).

77 Consequently, that article applies, inter alia, to entities that are established in the form of associations which, according to their statutes, have as their purpose the organisation and control of a given sport, in so far as those entities exercise an economic activity in relation to that sport, by offering products or services, and where they must, in that capacity, be categorised as 'undertakings' (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 22, 23 and 26).

78 Article 101 TFEU also applies to entities which, although not necessarily constituting undertakings themselves, may be categorised as 'associations of undertakings'.

79 In the present case, given the subject matter of the main proceedings and the referring court's statements, the Court finds that Article 101 TFEU applies to UEFA and to the URBSFA since both those associations have as members or affiliates, whether directly or indirectly, entities that can be categorised as 'undertakings' in that they are engaged in an economic activity, as are football clubs.

1. The interpretation of Article 101(1) TFEU

80 Under Article 101(1) TFEU, all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market are incompatible with the internal market.

(a) Consideration of the existence of a 'decision by an association of undertakings'

81 The application of Article 101(1) TFEU in the case of an entity such as UEFA or the URBSFA, as an association of undertakings, makes it necessary, first, to establish that there is a 'decision by an association of undertakings', such as a decision consisting, for the association concerned, of adopting or implementing regulations having a direct impact on the conditions for engaging in the economic activity of the undertakings who are directly or indirectly its members (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 64, and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 42 to 45).

82 In the present case, that is the situation of the two decisions in respect of which the national court is referring questions to the Court, that is to say, those by which UEFA and the URBSFA adopted rules on 'home-grown players'.

(b) Consideration of the effect on trade between Member States

83 Second, the application of Article 101(1) TFEU in the case of such decisions involves establishing, with a sufficient degree of probability, that they are 'capable of affecting trade between Member States', in an appreciable manner, by having an influence, direct or indirect, actual or potential, on the pattern of trade between Member States, at the risk of hindering the attainment or the functioning of the internal market.

84 In the present case, the geographical scope of the decisions at issue in the main proceedings, having regard to the settled case-law of the Court recalled in paragraph 43 of the present judgment and subject to verification by the referring court, permits the inference that that condition has been met.

(c) Consideration of the concept of conduct having as its 'object' or 'effect' the restriction of competition and of the categorisation of the existence of such conduct

85 In order to find, in a given case, that an agreement, a decision by an association of undertakings or a concerted practice is caught by the prohibition laid down in Article 101(1) TFEU, it is necessary to demonstrate, in accordance with the very wording of that provision, either that that conduct has as its object the prevention, restriction or distortion of competition, or that that conduct has such an effect (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249, and of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraph 31).

86 To that end, it is appropriate to begin by examining the object of the conduct in question. If, at the end of such an examination, that conduct proves to have an anticompetitive object, it is not necessary to examine its effect on competition. Thus, it is only if that conduct is found not to have an anticompetitive object that it will be necessary, in a second stage, to examine its effect (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249, and of 26 November 2015, *Maxima Latvija*, C-345/14, EU:C:2015:784, paragraphs 16 and 17).

87 The analysis to be made differs depending on whether the conduct at issue has as its 'object' or 'effect' the prevention, restriction or distortion of competition, with each of those concepts being subject to different legal and evidentiary rules (see, to that effect, judgment of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 63).

(1) Categorisation of the existence of conduct having as its 'object' the prevention, restriction or distortion of competition

88 According to the settled case-law of the Court, as summarised, in particular, in the judgments of 23 January 2018, *F. Hoffmann-La Roche and Others* (C-179/16, EU:C:2018:25, paragraph 78), and of 30 January 2020, *Generics (UK) and Others* (C-307/18, EU:C:2020:52, paragraph 67), the concept of anticompetitive 'object', whilst not, as follows from paragraphs 85 and 86 of the present judgment, an exception in relation to the concept of anticompetitive 'effect', must nevertheless be interpreted strictly

89 Thus, that concept must be interpreted as referring solely to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects.

Indeed, certain types of coordination between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249; of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 78; and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 67).

90 The types of conduct that must be considered to be so include, primarily, certain forms of collusive conduct which are particularly harmful to competition, such as horizontal cartels leading to price-fixing, limitations on production capacity or allocation of customers. Those types of conduct are liable to lead to price increases or falls in production and, therefore, more limited supply, resulting in poor allocation of resources to the detriment of user undertakings and consumers (see, to that effect, judgments of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraphs 17 and 33; of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 51; and of 16 July 2015, *ING Pensii*, C-172/14, EU:C:2015:484, paragraph 32).

91 Without necessarily being equally harmful to competition, other types of conduct may also be considered, in certain cases, to have an anticompetitive object. That is the case, inter alia, of certain types of horizontal agreements other than cartels, such as those leading to competing undertakings being excluded from the market (see, to that effect, judgments of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraphs 76, 77, 83 to 87 and 101, and of 25 March 2021, *Lundbeck* v *Commission*, C-591/16 P, EU:C:2021:243, paragraphs 113 and 114), or even certain types of decisions by associations of undertakings aimed at coordinating the conduct of their members, in particular in terms of prices (see, to that effect, judgment of 27 January 1987, *Verband der Sachversicherer* v *Commission*, 45/85, EU:C:1987:34, paragraph 41).

92 In order to determine, in a given case, whether an agreement, a decision by an association of undertakings or a concerted practice reveals, by its very nature, a sufficient degree of harm to competition that it may be considered as having as its object the prevention, restriction or distortion thereof, it is necessary to examine, first, the content of the agreement, decision or practice in question; second, the economic and legal context of which it forms a part; and, third, its objectives (see, to that effect, judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 79).

93 In that regard, first of all, in the economic and legal context of which the conduct in question forms a part, it is necessary to take into consideration the nature of the products or services concerned, as well as the real conditions of the structure and functioning of the sector(s) or market(s) in question (judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 80). It is not, however, necessary to examine nor, a fortiori, to prove the

effects of that conduct on competition, be they actual or potential, negative or positive, as follows from the case-law cited in paragraphs 85 and 86 of the present judgment.

94 Next, as regards the objectives pursued by the conduct in question, a determination must be made of the objective aims which that conduct seeks to achieve from a competition standpoint. Nevertheless, the fact that the undertakings involved acted without having a subjective intention to prevent, restrict or distort competition and the fact that they pursued certain legitimate objectives are not decisive for the purposes of the application of Article 101(1) TFEU (see, to that effect, judgments of 6 April 2006, *General Motors* v *Commission*, C-551/03 P, EU:C:2006:229, paragraphs 64 and 77 and the case-law cited, and of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21).

95 In particular, the Court has repeatedly held that agreements aimed at partitioning markets according to national borders, tending to restore the partitioning of national markets or making the interpenetration of national markets more difficult, may be such as to frustrate the objective of the EU and FEU Treaties to achieve the integration of those markets through the establishment of the internal market and that they must, for that reason, be categorised, in principle, as agreements that have as their 'object' the restriction of competition within the meaning of Article 101(1) TFEU (see, to that effect, judgments of 16 September 2008, *Sot. Lélos kai Sia and Others*, C-468/06 to C-478/06, EU:C:2008:504, paragraph 65 and the case-law cited, and of 4 October 2011, *Football Association Premier League and Others*, C-403/08 and C-429/08, EU:C:2011:631, paragraph 139).

96 That case-law, which has also been applied to conduct other than agreements, whether it emanates from undertakings or associations of undertakings (see, to that effect, judgments of 17 October 1972, *Vereeniging van Cementhandelaren* v *Commission*, 8/72, EU:C:1972:84, paragraphs 23 to 25 and 29, and of 16 September 2008, *Sot. Lélos kai Sia and Others*, C-468/06 to C-478/06, EU:C:2008:504, paragraph 66), is based on the fact that, as follows from Article 3(1)(b) TFEU, the institution of the competition rules necessary for the functioning of the internal market forms an integral part of the objective of instituting that market with which Article 3(3) TEU, inter alia, tasks the European Union (see, to that effect, judgment of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraphs 42 and 43 and the case-law cited). By partitioning markets according to national borders, by restoring their partitioning or by making the interpenetration of those markets more difficult, such conduct neutralises the benefits that consumers could derive from effective undistorted competition in the internal market (see, to that effect, judgment of 16 September 2008, *Sot. Lélos kai Sia and Others*, C-468/06 to C-478/06, EU:C:2008:504, paragraph 66).

97 The categorisation of an anticompetitive 'object', within the meaning of Article 101(1) TFEU, has thus been used for different forms of agreements that aim or tend to restrict competition according to national borders, whether that involves, inter alia, preventing or restricting parallel trade, ensuring absolute territorial protection to holders of exclusive rights or limiting, in other forms, cross-border competition in the internal market (see, to that effect, judgments of 6 October 2009, *GlaxoSmithKline*

Services and Others v *Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 61, and of 4 October 2011, *Football Association Premier League and Others*, C-403/08 and C-429/08, EU:C:2011:631, paragraphs 139 to 142).

98 Finally, the characterisation of certain conduct as having as its 'object' the prevention, restriction or distortion of competition must, in any event, disclose the precise reasons why that conduct reveals a sufficient degree of harm to competition such as to justify a finding that it has such an object (see, to that effect, judgment of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 69).

(2) Categorisation of the existence of conduct having as its 'effect' the prevention, restriction or distortion of competition

99 The concept of conduct having an anticompetitive 'effect', for its part, comprises any conduct which cannot be regarded as having an anticompetitive 'object', provided that it is demonstrated that that conduct has as its actual or potential effect the prevention, restriction or distortion of competition, which must be appreciable (see, to that effect, judgments of 28 May 1998, *Deere* v *Commission*, C-7/95 P, EU:C:1998:256, paragraph 77, and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 117).

100 To that end, it is necessary to assess the way the competition would operate within the actual context in which it would take place in the absence of the agreement, decision by an association of undertakings or concerted practice in question (judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 250, and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 118), by defining the market(s) in which that conduct is liable to produce its effects, then by identifying those effects whether they are actual or potential. That assessment itself entails that all relevant facts must be taken into account.

(3) Consideration of the categorisation of the rules requiring clubs to have a minimum quota of 'home-grown players' in their teams as a decision by an association of undertakings having as its 'object' or 'effect' the restriction of competition

101 In the present case, as regards the content of the UEFA and the URBSFA rules, in respect of which the national court has referred questions to the Court, it should be recalled, first, that those rules require professional football clubs participating in interclub football competitions governed by those associations to include on the match sheet a minimum number of players meeting the requirements for being considered to be 'home-grown players', as defined by those rules, subject to the imposition of sanctions. In doing so, they limit, by their very nature, the possibility for those clubs to enter on that sheet players who do not meet those requirements.

102 Second, it appears from the statements of the referring court that that limitation of the possibility for clubs to put together their teams freely operates in two different ways. The UEFA and the URBSFA rules require those clubs to include on the match sheet a minimum number of players who, while being categorised as 'home-grown players', were in actual fact trained, not necessarily by the club that employs them but by a club affiliated to the same national football association as that club, whichever it

may be and regardless of any requirement as to geographic location within the territorial jurisdiction of that association. In that respect, the limitation brought about by those rules in actual fact operates at the level of the association concerned, therefore at national level. In parallel, the UEFA rules also require those clubs to include among the 'home-grown players' whom they must include on the match sheet a minimum number of players who have actually been trained by the club that employs them. Thus, the limitation that they bring about operates at the level of the club concerned.

103 As regards the economic and legal context of the rules in respect of which the national court is referring questions to the Court, it is apparent, first of all, from the case-law of the Court that, bearing in mind the specific nature of the 'products', which sporting competitions are from an economic point of view, it is generally open to associations that are responsible for sporting discipline, such as UEFA and the URBSFA, to adopt rules relating, inter alia, to the organisation of competitions in that discipline, their proper functioning and the participation of athletes in those competitions (see, to that effect, judgments of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 67 and 68, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 60), provided that, in so doing, those associations do not limit the exercise of the rights and freedoms that EU law confers on individuals (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 81 and 83, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 52).

104 Next, the specific characteristics of professional football and the economic activities to which the exercise of that sport gives rise suggest that it is legitimate for associations such as UEFA and the URBSFA to regulate, more particularly, the conditions in which professional football clubs can put together teams participating in interclub competitions within their territorial jurisdiction.

105 The sport of football is not only of considerable social and cultural importance in the European Union (judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 106, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 40) but also generates great media interest; its specific characteristics include the fact that it gives rise to the organisation of numerous competitions at both European and national levels, which involve the participation of very many clubs and also that of large numbers of players. In common with other sports, it also limits participation in those competitions to teams which have achieved certain sporting results (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 132), with the conduct of those competitions being based on matches between and gradual elimination of those teams. Consequently, it is, essentially, based on sporting merit, which can be guaranteed only if all the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity.

106 Finally, the real conditions which characterise the functioning of the 'market' constituted, from an economic point of view, by professional football competitions explain that the rules which can be adopted by associations such as UEFA and the URBSFA, and more particularly those relating to the organisation and proper

functioning of competitions that are governed by those associations, may continue to refer, on certain points and to a certain extent, to a national requirement or criterion. From a functional point of view, that sport is characterised by the coexistence of interclub competitions and competitions between teams representing national football associations, the composition of which may legitimately be subject to compliance with 'nationality clauses' due to the specific nature of those matches (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 127 and 128 and the case-law cited).

107 As regards the outcome which the rules at issue in the main proceedings objectively seek to attain, vis-à-vis competition, it is apparent from the statements of the referring court relating to the content of those rules that they limit or control one of the essential parameters of the competition in which professional football clubs may engage, namely the recruitment of talented players, whatever the club or place where they were trained, which could enable their team to win in the encounter with the opposing team. From that point of view, the Belgian government rightly added that that limitation is likely to have an impact on the competition in which the clubs may engage, not only in the 'upstream or supply market', which, from an economic point of view, is constituted by the recruitment of players, but also in the 'downstream market', which, from the same point of view, is constituted by interclub football competitions.

108 It is, however, for the referring court to determine whether the rules at issue in the main proceedings reveal, by their very nature, a sufficient degree of harm to competition to be able to be regarded as having as their 'object' the restriction of competition.

109 To that end, it will be for that court to take into account, in accordance with the case-law recalled in paragraph 92 of the present judgment, the content of those rules and to determine whether they limit, to a sufficient extent to conclude that they present a degree of harm enabling them to be categorised as anticompetitive by 'object', the access of professional football clubs to the 'resources' essential to their success which, from an economic point of view, the players already trained are, by requiring them to recruit a minimum number of players trained nationally, to the detriment of the cross-border competition in which they could normally engage by recruiting players trained within other national football associations. The proportion of players concerned is, from that point of view, particularly relevant.

110 It will also be for the referring court to take into consideration, in accordance with the case-law recalled in paragraphs 70 to 73, 93 and 94 of the present judgment, the economic and legal context in which the rules at issue in the main proceedings were adopted, together with the specific characteristics of football, and to assess whether or not the adoption of those rules had the objective of restricting the clubs' access to those resources, of partitioning or re-partitioning markets according to national borders or of making the interpenetration of national markets more difficult by establishing a form of 'national preference'.

111 If, at the end of its examination, the referring court reaches the conclusion that the degree of harm of the rules at issue in the main proceedings is sufficient to justify a finding that they have as their object the restriction of competition and that, as a

consequence, they are caught by the prohibition set out in Article 101(1) TFEU, there will be no need for that court to examine the actual or potential effects of those rules.

112 In the absence of such a finding, that court will have to examine those effects.

(d) Consideration of the possibility of finding certain specific conduct not to come within the scope of Article 101(1) TFEU

113 According to the settled case-law of the Court, not every agreement between undertakings or decision of an association of undertakings which restricts the freedom of action of the undertakings party to that agreement or subject to compliance with that decision necessarily falls within the prohibition laid down in Article 101(1) TFEU. Indeed, the examination of the economic and legal context of which certain of those agreements and certain of those decisions form a part may lead to a finding, first, that they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive in nature; second, that the specific means used to pursue those objectives are genuinely necessary for that purpose; and, third, that, even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition. That case-law applies in particular in cases involving agreements or decisions taking the form of rules adopted by an association such as a professional association or a sporting association, with a view to pursuing certain ethical or principled objectives and, more broadly, to regulate the exercise of a professional activity if the association concerned demonstrates that the aforementioned conditions are satisfied (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 97; of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 42 to 48; and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 93, 96 and 97).

114 More specifically, in the area of sport, the Court was led to observe, in view of the information available to it, that the anti-doping rules adopted by the International Olympic Committee (IOC) do not come within the scope of the prohibition laid down in Article 101(1) TFEU, even though they restrict athletes' freedom of action and have the inherent effect of restricting potential competition between them by defining a threshold over which the presence of nandrolone constitutes doping, so as to safeguard the fairness, integrity and objectivity of the conduct of competitive sport, ensure equal opportunities for athletes, protect their health and uphold the ethical values at the heart of sport, including merit (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 43 to 55).

115 However, the case-law referred to in paragraph 113 of the present judgment does not apply in situations involving conduct which, far from merely having the inherent 'effect' of restricting competition, at least potentially, by limiting the freedom of action of certain undertakings, reveals a degree of harm in relation to that competition that justifies a finding that it has as its very 'object' the prevention, restriction or distortion of competition. Thus, it is only if, following an examination of the conduct at issue in a given case, that conduct proves not to have as its object the prevention, restriction or distortion of competition, that it must then be determined whether it may come within

the scope of that case-law (see, to that effect, judgments of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 69; of 4 September 2014, *API and Others*, C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147, paragraph 49; and of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International*, C-427/16 and C-428/16, EU:C:2017:890, paragraphs 51, 53, 56 and 57).

116 As regards conduct having as its object the prevention, restriction or distortion of competition, it is thus only if Article 101(3) TFEU applies and all of the conditions provided for in that provision are observed that it may be granted the benefit of an exemption from the prohibition laid down in Article 101(1) TFEU (see, to that effect, judgment of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21).

117 In the present case, it is therefore only if the referring court, at the end of its examination of the rules at issue in the main proceedings, reaches the conclusion that they do not have as their object the restriction of competition, but have such an effect, that it will fall to that court to ascertain whether they satisfy the conditions referred to in paragraph 113 of the present judgment, taking into account, in that context, the objectives put forward in particular by the sporting associations at issue in the main proceedings, which consist in ensuring the uniformity of the conditions in which the teams participating in interclub football competitions governed by those associations are formed and encouraging the training of young professional football players.

2. The interpretation of Article 101(3) TFEU

118 It follows from the very wording of Article 101(3) TFEU that any agreement, decision by associations of undertakings or concerted practice which proves to be contrary to Article 101(1) TFEU, whether by reason of its anticompetitive object or effect, may be exempted if it satisfies all of the conditions laid down for that purpose (see, to that effect, judgments of 11 July 1985, *Remia and Others* v *Commission*, 42/84, EU:C:1985:327, paragraph 38, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraph 230), it being noted that those conditions are more stringent than those referred to in paragraph 113 of the present judgment.

119 Under Article 101(3) TFEU, that exemption in a given case is subject to four cumulative conditions. First, it must be demonstrated with a sufficient degree of probability (judgment of 6 October 2009, *GlaxoSmithKline Services and Others* v *Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 95), that the agreement, decision by an association of undertakings or concerted practice in question makes it possible to achieve efficiency gains, by contributing either to improving the production or distribution of the products or services concerned, or to promoting technical or economic progress. Second, it must be demonstrated, to the same degree of probability, that an equitable part of the profit resulting from those efficiency gains is reserved for the users. Third, the agreement, decision or practice in question must not impose on the participating undertakings restrictions which are not indispensable for achieving such efficiency gains. Fourth, that agreement, decision or practice must not give the

participating undertakings the opportunity to eliminate all effective competition for a substantial part of the products or services concerned.

120 It is for the party relying on such an exemption to demonstrate, by means of convincing arguments and evidence, that all of the conditions required for the exemption are satisfied (see, to that effect, judgments of 11 July 1985, *Remia and Others* v *Commission*, 42/84, EU:C:1985:327, paragraph 45, and of 6 October 2009, *GlaxoSmithKline Services and Others* v *Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 82). If those arguments and that evidence are such as to oblige the other party to refute them convincingly, it is permissible, in the absence of such refutation, to conclude that the burden of proof borne by the party relying on Article 101(3) TFEU has been discharged (see, to that effect, judgments of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 79, and of 6 October 2009, *GlaxoSmithKline Services and Others* v *Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 83).

121 In particular, as regards the first condition referred to in paragraph 119 of the present judgment, the efficiency gains that the agreement, decision by an association of undertakings or concerted practice must make it possible to achieve correspond not to any advantage the participating undertakings may derive from that agreement, decision or practice in the context of their economic activity, but only to the appreciable objective advantages that that specific agreement, decision or practice makes it possible to attain in the different sector(s) or market(s) concerned. Moreover, in order for that first condition to be considered satisfied, not only must the actual existence and extent of those efficiency gains be established, it must also be demonstrated that they are such as to compensate for the disadvantages caused in competition terms by the agreement, decision or practice at issue (see, to that effect, judgments of 13 July 1966, C*onsten and Grundig* v *Commission*, 56/64 and 58/64, EU:C:1966:41, page 348, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraphs 232, 234 and 236; and, by analogy, of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 43).

122 As regards the second condition referred to in paragraph 119 of the present judgment, it involves establishing that the efficiency gains made possible by the agreement, decision by an association of undertakings or concerted practice in question have a positive impact on all users, be they traders, intermediate consumers or end consumers, in the different sectors or markets concerned (see, to that effect, judgments of 23 November 2006, *Asnef-Equifax and Administración del Estado*, C-238/05, EU:C:2006:734, paragraph 70, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraphs 236 and 242).

123 It follows that, in a situation where the conduct infringing Article 101(1) TFEU is anticompetitive by object, that is to say, it presents a sufficient degree of harm to competition and is such as to affect different categories of users or consumers, it must be determined whether and, if so, to what extent, that conduct, notwithstanding its harmfulness, has a favourable impact on each of them.

124 As regards the third condition referred to in paragraph 119 of the present judgment, to the effect that the conduct at issue must be indispensable or necessary, it involves an assessment and comparison of the respective impact of that conduct and of the alternative measures which might genuinely be envisaged, with a view to determining whether the efficiency gains expected from that conduct may be attained by measures which are less restrictive of competition. It may not, however, lead to a choice based on their respective desirability being made as between such conduct and such alternative measures in the event that the latter do not seem to be less restrictive of competition.

125 As regards the fourth condition referred to in paragraph 119 of the present judgment, the ascertainment of its observance in a given case involves an examination of the quantitative and qualitative aspects that characterise the functioning of competition in the sectors or markets concerned, in order to determine whether the agreement, decision by an association of undertakings or concerted practice in question gives the participating undertakings the opportunity to eliminate all actual competition for a substantial part of the products or services concerned. In particular, in situations involving a decision by an association of undertakings or agreement to which undertakings have adhered as a group, the sizeable market share held by them may constitute, among other relevant facts and as part of an overall analysis thereof, an indicator of the possibility that, in view of its content and object or effect, that decision or agreement enables the participating undertakings to eliminate all actual competition, which alone suffices as grounds to rule out the exemption provided for in Article 101(3) TFEU.

126 More generally, the examination of the different conditions referred to in paragraph 119 of the present judgment may require taking into account the particularities and specific characteristics of the sector(s) or market(s) concerned by the agreement, decision by an association of undertakings or concerted practice at issue, if those particularities and specific characteristics are decisive for the outcome of that examination (see, to that effect, judgments of 6 October 2009, *GlaxoSmithKline Services and Others* v *Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 103, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraph 236).

127 Furthermore, it should be recalled that non-compliance with one of the four conditions referred to in paragraph 119 of the present judgment is sufficient to exclude the benefit of the exemption provided for in Article 101(3) TFEU.

128 In the present case, it will be for the referring court to rule on whether the rules at issue in the main proceedings satisfy all of the conditions enabling them to benefit from an exemption under Article 101(3) TFEU, after having allowed the parties to discharge their burden of proof, as observed in paragraph 120 of the present judgment.

129 That being said, it should be observed, with regard to the first of those conditions, relating to the appreciable objective advantages that conduct having as its object or its effect the prevention, restriction or distortion of competition must make it possible to achieve on the sector(s) or market(s) concerned, that the rules at issue in the main

proceedings may encourage professional football clubs to recruit and train young players, and therefore intensify competition through training. It is, however, for the referring court alone to decide, in the light of the specific arguments and evidence produced or to be produced by the parties, on whether those rules are of an economic, statistical or other nature, on the reality of that incentive, on the extent of the efficiency gains resulting from those rules in terms of training and on whether those efficiency gains are likely to compensate for the disadvantages resulting from those rules for competition.

130 As regards the second condition, according to which the conduct at issue must have a favourable effect for users, whether professionals, intermediate consumers or final consumers, in the different sectors or markets concerned, it should be emphasised that, in the present case, the 'users' include, first and foremost, professional football clubs and the players themselves. Added to that, more broadly, are the final 'consumers' who are, in the economic sense of the term, the spectators or television viewers. As regards the latter, it cannot be excluded a priori that the interest that some of them have in interclub competitions depends, among other factors, on the place of establishment of the clubs participating in those competitions and the presence in the teams fielded by those clubs of home-grown players. It will therefore be for the referring court to rule inter alia, in the light of the specific arguments and evidence produced or to be produced by the parties, on the question whether, on the market which they primarily affect, namely that of the recruitment of players by those clubs, the rules at issue in the main proceedings have a genuine favourable effect not only on the players but also on all the clubs and on the spectators and television viewers or if, as has been argued before the Court, they operate, in practice, to the benefit of certain categories of clubs but also, at the same time, to the detriment of others.

131 As regards the third condition, relating to the strict necessity of the rules at issue in the main proceedings, it will be for the referring court to ascertain, in the light of the specific arguments and evidence produced or to be produced by the parties, whether alternative measures such as those raised before the Court, namely the imposition of player training requirements for the purposes of granting licences to professional football clubs, the establishment of financing mechanisms or financial incentives aimed, in particular, at smaller clubs, or a system of direct compensation for the costs borne by training clubs, would be likely to constitute, in compliance with EU law (see, in that regard, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 108 and 109, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 41 to 45), measures that are less restrictive of competition.

132 As regards the fourth condition relating to whether the rules at issue in the main proceedings, while restricting the competition in which professional football clubs can engage through the recruitment of players trained already, still do not eliminate that competition, the determining factor is the level at which the minimum proportions of 'home-grown players' to be included on the match sheet have been set, compared with the total number of players on that sheet. The Commission has, more particularly, indicated that, compared with similar rules which it has had to consider, those minimum proportions do not appear to it to be disproportionate, even taking into account the fact that professional football clubs may in actual fact have to or wish to recruit a greater

number of 'home-grown players' in order to address risks such as accidents or illnesses. However, it will ultimately be for the referring court alone to rule on that point.

133 That comparison must be carried out by comparing, to the extent possible, the situation resulting from the restrictions of competition at issue with what the situation on the market concerned would be if competition had not been prevented, restricted or distorted on that market due to those restrictions.

134 However, the fact that the rules at issue in the main proceedings apply to all interclub competitions governed by UEFA and the URBSFA, and to all professional football clubs and to all players participating in those competitions is not decisive. Indeed, that factor is inherent in the very existence of associations having, in a given territorial jurisdiction, regulatory power to which all member undertakings and all persons affiliated to those undertakings are subject.

135 Having regard to all the foregoing considerations, the answer to the questions posed by the referring court, in so far as they relate to Article 101 TFEU, is that:

– Article 101(1) TFEU must be interpreted as precluding rules that have been adopted by an association responsible for organising football competitions at European level and implemented both by that association and by its member national football associations, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained either by that club itself or within the territory of the national association to which that club is affiliated, and rules that have been adopted by an association responsible for organising football competitions at national level, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained in the territory of that association, if it is established, first, that those decisions by associations of undertakings are liable to affect trade between Member States and, second, that they have either as their object or their effect the restriction of competition between professional football clubs, unless, in the second of those scenarios, it is demonstrated, through convincing arguments and evidence, that they are both justified by the pursuit of one or more objectives that are legitimate and strictly necessary for that purpose;

– Article 101(3) TFEU must be interpreted as meaning that it allows such decisions by associations of undertakings, if they prove to be contrary to paragraph 1 of that article, to benefit from an exemption to the application of that paragraph only if it is demonstrated, through convincing arguments and evidence, that all of the conditions required for that purpose are satisfied.

C. Consideration of the questions referred in so far as they concern Article 45 TFEU

1. The existence of indirect discrimination or an obstacle to freedom of movement for workers

136 It is important to note, in the first place, that Article 45 TFEU, which has direct effect, precludes any measure, whether it is based on nationality or is applicable without regard to nationality, which might place EU nationals at a disadvantage when they wish

to pursue an economic activity in the territory of a Member State other than their Member State of origin, by preventing or deterring them from leaving the latter (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 93 to 96, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 33 and 34).

137 In the present case, as the referring court states, it is apparent from their actual terms and their schema that rules such as those of the URBSFA are prima facie likely to place at a disadvantage professional football players who wish to pursue an economic activity in the territory of a Member State, namely Belgium, other than their Member State of origin, and who do not satisfy the conditions required by those rules. While not being directly based on a criterion of nationality or residence, those rules are nonetheless based on a connection of an expressly 'national' character in two respects, as was noted in particular by the Commission. First, they define 'home-grown players' as those who were trained within a 'Belgian' club. Second, they require professional football clubs wishing to participate in interclub football competitions under the URBSFA to enter in the list of their players and to include on the match sheet a minimum number of players who satisfy the conditions to be eligible in that way.

138 Thus, those rules limit the possibility for players who cannot rely on such a 'national' connection of being entered in the list of players of such clubs and included on the match sheet, and therefore of being fielded by those clubs. As noted in paragraph 60 of the present judgment, the fact that the participation of players in teams is thus referred to, and not formally the possibility of employing those players, is immaterial since participation in matches and competitions constitutes the essential purpose of the activity of those players.

139 To that extent, the rules at issue in the main proceedings, as the Advocate General noted in points 43 and 44 of his Opinion, are likely to give rise to indirect discrimination at the expense of players coming from another Member State, in that they risk operating mainly to the detriment of those players.

140 It follows that those rules prima facie infringe the freedom of movement for workers, subject to the checks to be carried out by the referring court.

2. Whether there is justification

141 Measures of non-State origin may be permitted even though they impede a freedom of movement enshrined in the FEU Treaty, if it is proven, first, that their adoption pursues a legitimate objective in the public interest that is compatible with that treaty and which is therefore other than of a purely economic nature and, second, that they observe the principle of proportionality, which entails that they are suitable for ensuring the achievement of that objective and do not go beyond what is necessary for that purpose (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 104; of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 38; and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 48). As regards, more specifically, the condition relating to the suitability of such measures, it should be borne in mind that they can be held to be suitable for ensuring achievement of the aim relied on only if they genuinely reflect a

concern to attain it in a consistent and systematic manner (see, to that effect, judgments of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, paragraph 61, and of 6 October 2020, *Commission* v *Hungary (Higher education)*, C-66/18, EU:C:2020:792, paragraph 178).

142 Similarly to situations involving a measure of State origin, it is for the party who introduced those measure of non-State origin to demonstrate that those two cumulative conditions are met (see, by analogy, judgments of 21 January 2016, *Commission* v *Cyprus*, C-515/14, EU:C:2016:30, paragraph 54, and of 18 June 2020, *Commission* v *Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476, paragraph 77).

143 In the present case, it will therefore be for the referring court to rule on whether the URBSFA rules at issue in the main proceedings satisfy those conditions, in the light of the arguments and evidence produced by the parties.

144 That said, it should be recalled, first, that, bearing in mind both the social and educational function of sport, recognised in Article 165 TFEU, and, more broadly, the considerable importance of sport in the European Union, repeatedly highlighted by the Court, the aim of encouraging the recruitment and training of young professional football players constitutes a legitimate objective in the public interest (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 106, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 39).

145 Second, as regards the suitability of rules such as those at issue in the main proceedings for attaining the objective in question, it should be noted, first of all, that that objective may, in certain cases and under certain conditions, justify measures which, without being designed in such a way as to ensure, in a certain and quantifiable manner in advance, an increase or intensification of the recruitment and training of young players, may nonetheless create real and significant incentives in that direction (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 108 and 109, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 41 to 45).

146 Next, it must be observed that, to the extent that rules such as those of the URBSFA at issue in the main proceedings require professional football clubs wishing to participate in interclub football competitions governed by that association to enter in the list of their players and to include on the match sheet a minimum number of young players trained by a club governed by that association, whichever club that may be, their suitability for ensuring the attainment of the aim of encouraging the recruitment and training of young players at local level must be determined by the referring court, having regard to all the relevant factors.

147 In that regard, the referring court must take into account in particular the fact that, by placing on the same level all young players who have been trained by any club affiliated to the national football association in question, those rules might not constitute real and significant incentives for some of those clubs, in particular those with

significant financial resources, to recruit young players with a view to training them themselves. On the contrary, such a recruitment and training policy, the costly, time-consuming and uncertain nature of which has already been highlighted by the Court for the club concerned (see, to that effect, judgment of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 42), is placed on the same level as the recruitment of young players already trained by any other club also affiliated to that association, regardless of the location of that other club within the territorial jurisdiction of that association. However, it is precisely local investment in the training of young players, in particular when it is carried out by small clubs, where appropriate in partnership with other clubs in the same region and possibly with a cross-border dimension, which contributes to fulfilling the social and educational function of sport (see, to that effect, judgment of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 44).

148 Third, it will be necessary to examine, as follows from paragraphs 131 and 132 of the present judgment, the necessary and proportionate nature of the rules at issue in the main proceedings, in particular the minimum number of 'home-grown players' which must be entered in the list of club players and included on the match sheet under those rules compared with the total number of players required to be included there.

149 All of the factors referred to in the preceding paragraphs of the present judgment and, where appropriate, other factors which the referring court may consider relevant in the light of the present judgment must be assessed thoroughly and comprehensively by that court, taking into consideration the arguments and evidence submitted or to be submitted by the parties to the main proceedings.

150 Having regard to all the foregoing considerations, the answer to the questions raised by the referring court, in so far as they concern Article 45 TFEU, is that that article must be interpreted as precluding rules which have been adopted by an association responsible for organising football competitions at national level, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained in the territorial jurisdiction of that association, unless it is established that those rules are suitable for ensuring, in a consistent and systematic manner, the attainment of the objective of encouraging, at local level, the recruitment and training of young professional football players, and that they will not go beyond what is necessary to achieve that objective.

V. Costs

151 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. Article 101(1) TFEU

must be interpreted as precluding rules that have been adopted by an association responsible for organising football competitions at European level and

implemented both by that association and by its member national football associations, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained either by that club itself or within the territory of the national association to which that club is affiliated, and rules that have been adopted by an association responsible for organising football competitions at national level, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained in the territory of that association, if it is established, first, that those decisions by associations of undertakings are liable to affect trade between Member States and, second, that they have either as their object or their effect the restriction of competition between professional football clubs, unless, in the second of those scenarios, it is demonstrated, through convincing arguments and evidence, that they are both justified by the pursuit of one or more objectives that are legitimate and strictly necessary for that purpose.

2. Article 101(3) TFEU

must be interpreted as meaning that it allows such decisions by associations of undertakings, if they prove to be contrary to paragraph 1 of that article, to benefit from an exemption to the application of that paragraph only if it is demonstrated, through convincing arguments and evidence, that all of the conditions required for that purpose are satisfied.

3. Article 45 TFEU

must be interpreted as precluding rules which have been adopted by an association responsible for organising football competitions at national level, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained in the territorial jurisdiction of that association, unless it is established that those rules are suitable for ensuring, in a consistent and systematic manner, the attainment of the objective of encouraging, at local level, the recruitment and training of young professional football players, and that they do not go beyond what is necessary to achieve that objective.

C-650/22, FIFA (4 October 2024)

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 45 and 101 TFEU.

2 The request has been made in proceedings between the Fédération internationale de football association (FIFA) and BZ concerning a claim by BZ for compensation for the harm which he claims to have suffered as a result of the wrongful conduct of FIFA and of the Union royale belge des sociétés de football association ASBL (URBSFA).

I. Legal context

A. The FIFA Statutes

3 FIFA is a private law association with its seat in Switzerland. According to Article 2 of its Statutes, in the September 2020 edition, its objectives are, inter alia, to 'draw up regulations and provisions governing the game of football and related matters and to ensure their enforcement' and to 'control every type of association football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the Game'.

4 Articles 11 and 14 of the FIFA Statutes state that any 'association which is responsible for organising and supervising football' in a given country may become a member of FIFA, provided, inter alia, that it is already a member of one of the six continental federations recognised by FIFA and referred to in Article 22 of those statutes, which include the Union of European Football Associations (UEFA), and undertakes beforehand to comply with the statutes, regulations, directives and decisions of FIFA and also those of the continental confederation of which that association is already a member. In practice, more than 200 national football associations are currently members of FIFA. In that capacity, under Articles 14 and 15 of the FIFA Statutes, they have the obligation, inter alia, to cause their own members or affiliates to comply with the statutes, regulations, directives and decisions of FIFA, and to ensure that they are observed by all stakeholders in football, in particular by the professional leagues, clubs and players.

5 The members of FIFA and UEFA include the URBSFA, which has its headquarters in Belgium and whose purpose is, inter alia, the organisation and promotion of football in that Member State. Under its own statutes, that association undertakes to comply with the statutes, regulations and decisions of FIFA and UEFA, and to cause them to be observed by its members, 'subject to the general principles of law, public policy provisions and relevant mandatory national, regional and community legislation'.

B. The FIFA Regulations on the Status and Transfer of Players

6 On 22 March 2014, FIFA adopted the 'Regulations on the Status and Transfer of Players' ('the RSTP'), which entered into force on 1 August 2014, replacing previous regulations having the same object.

7 The introductory part of the RSTP, entitled 'Definitions', contains the following passage:

'For the purpose of these regulations, the terms set out below are defined as follows:

1. Former association: the association to which the former club is affiliated.

2. Former club: the club that the player is leaving.

3. New association: the association to which the new club is affiliated.

4. New club: the club that the player is joining.

…

6. Organised football: association football organised under the auspices of FIFA, the confederations and the associations, or authorised by them.

7. Protected period: a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional.

…

9. Season: the period starting with the first official match of the relevant national league championship and ending with the last official match of the relevant national league championship.

…'

8 Article 1 of the RSTP, entitled 'Scope', states, in paragraph 1:

'These regulations lay down global and binding rules concerning the status of players, their eligibility to participate in organised football, and their transfer between clubs belonging to different associations.'

9 Article 2 of the RSTP, entitled 'Status of players: amateur and professional players', is worded as follows:

'1. Players participating in organised football are either amateurs or professionals.

2. A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs.'

10 Article 5 of the RSTP, entitled 'Registration', provides, in paragraph 1:

'A player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of Article 2. Only registered players are eligible to participate in organised football. By the act of registering, a player agrees to abide by the statutes and regulations of FIFA, the confederations and the associations.'

11 Article 6 of the RSTP, entitled 'Registration periods', provides, in the first sentence of paragraph 1, that 'players may only be registered during one of the two annual registration periods fixed by the relevant association'.

12 The RSTP also include, inter alia, rules relating to the employment contracts concluded between players and clubs and rules relating to the transfers of players.

1. The rules relating to employment contracts

13 Under Article 13 of the RSTP, entitled 'Respect of contract':

'A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.'

14 Article 14 of the RSTP, entitled 'Terminating a contract with just cause', is worded as follows:

'A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.'

15 Under Article 16 of the RSTP, entitled 'Restriction on terminating a contract during the season':

'A contract cannot be unilaterally terminated during the course of a season.'

16 Article 17 of the RSTP, entitled 'Consequences of terminating a contract without just cause', provides:

'The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of Article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

2. Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.

…

4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in Article 6, paragraph 1 of these regulations in order to register players at an earlier stage.'

17 Article 22 of the RSTP, entitled 'Competence of FIFA', states:

‘Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

(a) disputes between clubs and players in relation to the maintenance of contractual stability (Articles 13-18) where there has been an [International Transfer Certificate (ITC)] request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;

…’

18 Article 24 of the RSTP, entitled ‘Dispute Resolution Chamber’, provides, in paragraph 1:

‘The Dispute Resolution Chamber (DRC) shall adjudicate on any of the cases described under [Articles 22(a), (b), and (e)] with the exception of disputes concerning the issue of an ITC.’

2. The rules relating to transfers

19 Article 9 of the RSTP, entitled ‘International Transfer Certificate’, states, in paragraph 1:

‘Players registered at one association may only be registered at a new association once the latter has received an [ITC] from the former association. The ITC shall be issued free of charge without any conditions or time limit. Any provisions to the contrary shall be null and void. The association issuing the ITC shall lodge a copy with FIFA. The administrative procedures for issuing the ITC are contained in Annexe 3, Article 8 … of these regulations.’

20 Annexe 3 to the RSTP, entitled ‘Transfer matching system’, contains, inter alia, Article 8, covering the ‘Administrative procedure governing the transfer of professionals between associations’, which provides:

‘8.1 Principles

1. Any professional player who is registered with a club that is affiliated to one association may only be registered with a club affiliated to a different association after an ITC has been delivered by the former association and the new association has confirmed receipt of the ITC. …

…

8.2 Creating an ITC for a professional player

…

3. Upon receipt of the ITC request, the former association shall immediately request the former club and the professional player to confirm whether the professional player’s contract has expired, whether early termination was mutually agreed or whether there is a contractual dispute.

4. Within seven days of the date of the ITC request, the former association shall …:

(a) deliver the ITC in favour of the new association and enter the deregistration date of the player; or

(b) reject the ITC request and indicate … the reason for rejection, which may be either that the contract between the former club and the professional player has not expired or that there has been no mutual agreement regarding its early termination.

…

7. The former association shall not deliver an ITC if a contractual dispute on grounds of the circumstances stipulated in Annexe 3, Article 8.2, paragraph 4(b) has arisen between the former club and the professional player. In such a case, upon request of the new association, FIFA may take provisional measures in exceptional circumstances. … Furthermore, the professional player, the former club and/or the new club are entitled to lodge a claim with FIFA in accordance with Article 22. FIFA shall then decide on the issue of the ITC and on sporting sanctions within 60 days. In any case, the decision on sporting sanctions shall be taken before the delivery of the ITC. The delivery of the ITC shall be without prejudice to compensation for breach of contract.'

II. The dispute in the main proceedings and the question referred for a preliminary ruling

21 BZ is a former professional footballer and is resident in Paris (France).

22 On 20 August 2013, he signed a four-year contract with Futbolny Klub Lokomotiv, also known as Lokomotiv Moscow, a professional football club established in Russia.

23 On 22 August 2014, Lokomotiv Moscow terminated that contract for reasons which, it claimed, were connected with BZ's conduct. On 15 September 2014, it applied to the DRC, on the basis of Article 22(a) and Article 24 of the RSTP, for an order that BZ pay it compensation of EUR 20 million, alleging 'termination of contract without just cause' within the meaning of Article 17 of the RSTP. Subsequently, BZ submitted a counterclaim to the DRC, seeking an order that Lokomotiv Moscow pay him unpaid wages and compensation equal to the amount of the remuneration that would have been due to him under that contract if it had run to term.

24 BZ states that he subsequently searched for a new professional football club that might employ him. He states that, in the context of that search, he was faced with the difficulties caused by the risk, borne by any club that might employ him, of being held jointly and severally liable for payment of the compensation that he might be required to pay to Lokomotiv Moscow under Article 17 of the RSTP.

25 By letter of 19 February 2015, Sporting du Pays de Charleroi SA, a professional football club established in Belgium, offered to employ BZ, while stipulating that its offer was subject to two cumulative suspensive conditions: first, that he be duly registered and eligible to play for its first team in order to be able to participate in any competition organised by FIFA, UEFA and the URBSFA for which he would be selected and, second, that that club be provided with written and unconditional confirmation that it could not be held jointly and severally liable for payment of any compensation that BZ might be liable to pay to Lokomotiv Moscow.

26 By letter of 20 February 2015, BZ approached FIFA and the URBSFA, seeking assurance that he could be duly registered and eligible to play for Sporting du Pays de Charleroi's first team and, furthermore, that Article 17 of the RSTP would not be enforced against that club. FIFA replied that only its competent decision-making body had the power to apply the RSTP, while the URBSFA replied that, under the rules laid down by FIFA, he could not be registered as long as an ITC had not been issued by Lokomotiv Moscow.

27 By decision of 18 May 2015, the DRC, first, upheld Lokomotiv Moscow's claim in part and ordered BZ to pay it compensation of EUR 10.5 million. Second, it dismissed BZ's counterclaim. Third, it ruled that Article 17, paragraph 2 of the RSTP would not apply to BZ in future.

28 On appeal by BZ, the Tribunal arbitral du sport (Court of Arbitration for Sport; 'the CAS'), a body having its seat in Lausanne (Switzerland), upheld that decision on 27 May 2016.

29 On 24 July 2015, BZ was employed by another professional football club, established in France.

30 On 9 December 2015, BZ brought proceedings before the tribunal de commerce du Hainaut (division de Charleroi) (Commercial Court, Hainaut (Charleroi Division), Belgium), seeking an order that FIFA and the URBSFA pay him compensation of EUR 6 million for the harm which he claimed to have suffered as a result of the wrongful conduct of those two associations.

31 By decision of 19 January 2017, that court declared that it had jurisdiction to hear and determine BZ's claim and held that his claim was well founded in principle. It ordered FIFA and the URBSFA jointly and severally to pay a provisional sum to BZ and, for the remainder, adjourned the proceedings indefinitely to allow the parties to reach agreement on quantum as regards the harm suffered by BZ in Belgium as a result of the wrongful conduct of those two associations.

32 FIFA brought an appeal against that judgment before the cour d'appel de Mons (Court of Appeal, Mons, Belgium), the referring court. Essentially, it asks that court, primarily, to declare that it lacks jurisdiction to hear and determine BZ's claim on the ground that his claim comes within the exclusive jurisdiction of the CAS or, at the very least, that it does not come within the international jurisdiction of the Belgian courts. In the alternative, FIFA asks the referring court to declare the claim inadmissible or, failing that, unfounded.

33 The URBSFA, which was joined in the proceedings, seeks a similar form of order.

34 Sporting du Pays de Charleroi, which submitted a voluntary application to intervene before the referring court, supports the forms of order sought by FIFA and the URBSFA.

35 BZ, who lodged a cross-appeal, contends, essentially, that the referring court should, first, rule that Article 17 of the RSTP, Article 9, paragraph 1 of those regulations and Article 8.2.7 of Annexe 3 to those regulations infringe Articles 45 and

101 TFEU and, second, order FIFA and the URBSFA jointly and severally to make good the harm which he has suffered as a result of the existence and the implementation of those regulations.

36 In its order for reference, the cour d'appel de Mons (Court of Appeal, Mons), after declaring both FIFA's appeal and Sporting du Pays de Charleroi's voluntary application to intervene admissible, considers, in the first place, that the tribunal de commerce du Hainaut (division de Charleroi) (Commercial Court, Hainaut (Charleroi Division)) was correct to declare that it had jurisdiction to adjudicate on BZ's claim in so far as it concerns compensation for the harm suffered by BZ in Belgium.

37 In that regard, the referring court considers, first of all, that that claim cannot be regarded as coming within the sole jurisdiction of the CAS under an arbitration agreement meeting the requisite conditions of validity under Belgian law, having regard to the general, undifferentiated and imprecise nature of the stipulations of the FIFA Statutes to which that association refers with a view to establishing the existence of such an agreement in the present case.

38 Next, the referring court considers that the claim did come within the international jurisdiction of the court of first instance in so far as it concerns both the URBSFA and FIFA. As regards the URBSFA, that jurisdiction is recognised, since that association's seat is established in Belgium and BZ relies on the existence of harm that occurred in Charleroi, where he was unable to exercise his activity as a professional footballer in spite of the offer of employment made to him by Sporting du Pays de Charleroi. Likewise, as regards FIFA, such jurisdiction is recognised, notwithstanding the fact that FIFA's headquarters is established in Switzerland, since BZ relies on FIFA's tortious liability in delict or quasi-delict, the harmful act on which he relies occurred in Charleroi (Belgium) and there is a particularly close connection between the dispute between the parties on that point and the court of first instance. That said, BZ's decision to bring proceedings before the tribunal de commerce du Hainaut (division de Charleroi) (Commercial Court, Hainaut (Charleroi Division)) has the consequence that the jurisdiction of that court is limited to the harm that BZ may have suffered in Belgium.

39 Lastly, the referring court considers that FIFA and the URBSFA cannot validly allege the existence of 'jurisdiction fraud', related to the fact that BZ artificially created a dispute in Belgium by obtaining, by means of deceitful manoeuvres, a fictitious offer of employment from Sporting du Pays de Charleroi. In that regard, it considers that it is proved, first, that BZ took steps to secure employment with several clubs established in various Member States of the European Union which, according to the press, had shown an interest in employing him; second, that Sporting du Pays de Charleroi took the unilateral initiative to offer to employ him; third, that BZ immediately took the necessary steps to ensure that the suspensive conditions stipulated in that offer were met; and, fourth, that it was not unreasonable for him to seek to respond to such an offer, which was the only one which he had at that time that would allow him to pursue his professional career in spite of his dispute with Lokomotiv Moscow and also to limit the harm resulting from the interruption of his economic activity for several months.

40 In the second place, the cour d'appel de Mons (Court of Appeal, Mons) considers that BZ's claim is admissible, as he demonstrates to the requisite legal standard that he has an interest in bringing proceedings, in his capacity as the holder of a subjective right who considers that he has suffered harm as a consequence of the wrongful conduct of FIFA and the URBSFA.

41 In the third and last place, the referring court states that the dispute in the main proceedings requires a determination of whether the harm which BZ considers he has suffered, by being prevented from exercising his activity as a professional footballer during the 2014/2015 season, has its cause in wrongful conduct by FIFA and the URBSFA, consisting in having applied to him rules that infringe Articles 45 and 101 TFEU, namely Article 17 of the RSTP, Article 9, paragraph 1 of those regulations and Article 8.2.7 of Annexe 3 to those regulations.

42 On that point, the referring court observes, first, that in BZ's submission those rules must be regarded, in the light of the judgment of 15 December 1995, *Bosman* (C-415/93, EU:C:1995:463), as being restrictive of both the freedom of movement of workers and competition. The rule laid down in Article 17, paragraph 2 of the RSTP, to the effect that any new professional football club which employs a player following termination of an employment contract without just cause is to be held jointly and severally liable for payment of the compensation which that player may be required to pay to his or her former club constitutes a restriction on the employment of players, to the detriment of both the players and the clubs intending to employ them, particularly because the amount of that compensation, which must be determined subsequently in accordance with the criteria set out in Article 17, paragraph 1 of the RSTP, is generally not known at the time when the parties concerned wish to enter into an employment contract. In addition, that restriction is reinforced by the rules set out, respectively, in Article 17, paragraph 4 of those regulations, which provides that the new club is to be presumed to have induced the player to commit a breach of the employment contract with his or her former club and exposes that new club, in certain cases, to a sporting sanction. Likewise, the rules in Article 9, paragraph 1 of the RSTP and Article 8.2.7 of Annexe 3 to those regulations reinforce that restriction by prohibiting the national football association to which the former club belongs from issuing an ITC for the player if there is a dispute between the former club and that player arising from an early termination of the employment contract where there is no mutual agreement.

43 Second, the referring court observes that, according to FIFA and the URBSFA, the various rules at issue in the main proceedings should generally be understood in the light of the specificity of sport, which is recognised by the FEU Treaty. More particularly, those associations submit that, even if those rules did give rise to a restriction on the freedom of movement of workers or competition, they are justified in the light of the legitimate objectives consisting in, primarily, maintaining contractual stability and the stability of football teams and, more broadly, preserving the integrity, regularity and proper conduct of sporting competitions.

44 The referring court considers, in essence, that the possibility cannot be ruled out that, in particular when they are taken together, the various rules at issue in the main

proceedings constitute a restriction on the freedom of movement of workers and competition. It also observes that in the present case there are strong, specific and consistent presumptions that the existence and the implementation of those rules may have prevented BZ from being employed by a new professional football club following the termination of his employment contract with Lokomotiv Moscow. Those rules made such employment more difficult, as shown in particular by the suspensive conditions stipulated by Sporting du Pays de Charleroi in the offer of employment which it had made to BZ.

45 In those circumstances, the cour d'appel de Mons (Court of Appeal, Mons) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Are Articles 45 and 101 TFEU to be interpreted as precluding:

– the principle that the player and the club wishing to employ him [or her] are jointly and severally liable in respect of the compensation due to the club whose contract with the player has been terminated without just cause, as stipulated in [Article 17, paragraph 2] of the RSTP, in conjunction with the sporting sanctions provided for in [Article 17, paragraph 4] of those regulations and the financial sanctions provided for in [Article 17, paragraph 1];

– the ability of the [national football association] to which the player's former club belongs not to deliver the [ITC] required if the player is to be employed by a new club, where there is a dispute between that former club and the player ([Article 9, paragraph 1] of the RSTP and Article 8.2.7 of Annexe 3 to the RSTP)?'

III. Procedure before the Court

46 On 15 December 2022, that is to say, after the order for reference was adopted, three associations representing professional footballers, the first at international level (the Fédération internationale des footballers professionnels (International Federation of Professional Footballers; 'FIFPro')), the second at European level (the Fédération internationale des footballers professionnels – Division Europe, ('FIFPro Europe')) and the third at French level (the Union nationale des footballeurs professionnels (UNFP)), submitted jointly a voluntary application to intervene in the dispute in the main proceedings.

47 On 19 December 2022, the referring court informed the Court of the existence of that voluntary application to intervene.

48 Questioned by the Court Registry as to whether the associations in question were to be considered to be new parties to the dispute in the main proceedings solely because they had submitted a voluntary application to intervene or whether recognition of that status required a decision on its part, the referring court answered, in essence, that those associations were to be considered to be parties to the dispute in the main proceedings under the applicable national rules of procedure, namely Articles 15 and 16 of the Belgian Judicial Code, even though there had not yet been a ruling on the admissibility of their application.

49 In the light of that answer, the request for a preliminary ruling was notified to those associations, in accordance with Article 97(2) of the Rules of Procedure of the Court of Justice, and a time limit was set for them to submit written observations.

50 After those written observations had been lodged, FIFA requested the Court, on 30 May 2023 and then again on 12 June 2023, to reject them or to declare them inadmissible, on the ground that the three associations in question could not be considered to be new parties to the dispute in the main proceedings. The Court Registry informed FIFA that it had decided to take note of FIFA's request and that the request would be dealt with by the Court in due course, drawing its attention, in the meantime, to the fact that the referring court had informed the Court, explicitly and clearly, that those associations had to be considered to be new parties to the dispute in the main proceedings.

51 On 29 November 2023, the Court Registry convened, among others, all the parties to the dispute in the main proceedings, as determined by the referring court, to the hearing, to take place on 18 January 2024. On that occasion, it informed them that, having deliberated on 23 November 2023, the Second Chamber of the Court had decided that it was not appropriate either to declare the written observations lodged by FIFPro, FIFPro Europe and the UNFP inadmissible or to exclude those parties from the proceedings, stating that the grounds of that decision would be set out in the judgment closing the proceedings.

52 In that regard, Article 96(1)(a) of the Rules of Procedure, read in conjunction with Article 23 of the Statute of the Court of Justice of the European Union, provides that, in preliminary ruling proceedings, inter alia, the parties to the dispute in the main proceedings are to be authorised to submit observations to the Court.

53 Under Article 97(1) of the Rules of Procedure, the parties to the dispute in the main proceedings are those who are determined as such by the referring court or tribunal in accordance with national rules of procedure.

54 It is not for the Court to determine whether the decisions of the referring court relating to that determination have been taken in accordance with the applicable national procedural rules. On the contrary, the Court must abide by such decisions in so far as they have not been overturned in any appeal procedures provided for by national law (see, to that effect, judgment of 6 October 2015, *Orizzonte Salute*, C-61/14, EU:C:2015:655, paragraph 33).

55 The Court is therefore required to regard as a party to the dispute in the main proceedings every person who is determined by the referring court to be such a party, either because that person had that status before the reference for a preliminary ruling was made or because he or she acquired that status afterwards.

56 In derogation from that principle, a person may be refused the status of party to the dispute in the main proceedings, within the meaning of Article 96(1) of the Rules of Procedure, read in conjunction with Article 23 of the Statute of the Court of Justice of the European Union, where the material in the file before the Court clearly shows that that person made an application to intervene before the referring court after the request for a preliminary ruling had been made for the sole purpose of participating in

the preliminary ruling procedure and does not envisage playing an active role in the national proceedings (see, to that effect, judgment of 6 October 2015, *Orizzonte Salute*, C-61/14, EU:C:2015:655, paragraphs 35 and 36).

57 In the present case, as stated in paragraph 48 of the present judgment, the referring court stated expressly, clearly and without reservation that FIFPro, FIFPro Europe and the UNFP were to be considered to be new parties to the dispute in the main proceedings, in accordance with the applicable national rules of procedure. There is, moreover, nothing in the file to indicate that the decision of the referring court on that point has been amended or withdrawn in the context of the remedies provided for by national law.

58 Furthermore, the material in that file does not manifestly reveal that the three associations in question submitted their application to intervene before the referring court solely in order to participate in the preliminary ruling proceedings and that they did not envisage playing an active role in the national proceedings.

59 Accordingly, those associations had to be recognised as parties to the dispute in the main proceedings, within the meaning of Article 96 of the Rules of Procedure, and were therefore entitled to submit observations to the Court.

60 Consequently, their written observations did not have to be declared inadmissible.

IV. Admissibility

61 FIFA, the URBSFA and the Greek, French and Hungarian Governments question the admissibility of the request for a preliminary ruling or, at the very least, of certain aspects of the question referred to the Court.

62 The arguments which they put forward in that respect are, in essence, of three types. First, according to the Greek and French Governments and also the URBSFA, the content of the order for reference does not comply with the requirements set out in Article 94 of the Rules of Procedure, in that the order for reference does not state in sufficient detail the legal and factual context in which the referring court is making a reference to the Court and the reasons why it considers it necessary to refer a question for a preliminary ruling on the interpretation of Article 45 or 101 TFEU in order to be in a position to rule on the dispute in the main proceedings. Second, FIFA and the URBSFA maintain that the request for a preliminary ruling is hypothetical and abstract, in so far as there is no actual dispute the determination of which might make it necessary for the Court to give an interpretative decision. Such a situation arises from the fact that the RSTP rules governing contracts and transfers have, ultimately, not had any adverse effect on BZ and, furthermore, from the fact that the dispute in the main proceedings was artificially constructed by BZ, who never had any intention of joining Sporting du Pays de Charleroi. Third, according to the French and Hungarian Governments and also FIFA and the URBSFA, the dispute in the main proceedings lack any cross-border dimension for the purposes of the FEU Treaty and are even, according to FIFA and the URBSFA, 'external' in nature, and cannot therefore come within the scope of Article 45 TFEU. In fact, the restriction on the freedom of movement of workers of which BZ claims to have been a victim consists in a restriction on his ability to move for

professional purposes between a third State (Russia), where Lokomotiv Moscow is established, and a Member State (Belgium), where Sporting du Pays de Charleroi is established.

A. The content of the order for reference

63 The preliminary reference procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them. According to settled case-law, which is now reflected in Article 94(a) and (b) of the Rules of Procedure, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for the national court to define the factual and regulatory context of the questions it is asking or, at the very least, to explain the factual hypotheses on which those questions are based. Furthermore, it is essential, as stated in Article 94(c) of the Rules of Procedure, that the request for a preliminary ruling itself contain a statement of the reasons which prompted the referring court or tribunal to enquire about the interpretation or validity of certain provisions of EU law, and the connection between those provisions and the national legislation applicable to the dispute in the main proceedings. Those requirements are of particular importance in those fields which are characterised by complex factual and legal situations, such as competition (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 59 and the case-law cited).

64 Moreover, the information provided in the order for reference must not only be such as to enable the Court to reply usefully but must also give the governments of the Member States and other interested parties an opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 60 and the case-law cited).

65 In the present case, the request for a preliminary ruling meets the requirements set out in the preceding two paragraphs of the present judgment. The order for reference states in detail the factual and legal context of the question referred to the Court. Furthermore, that order states, succinctly but clearly, the reasons of fact and of law which prompted the referring court to consider it necessary to refer that question and what in its view was the connection between Articles 45 and 101 TFEU and the dispute in the main proceedings.

66 Moreover, the tenor of the written observations submitted to the Court shows that their authors had no difficulty in understanding the factual and legal context of the referring court's question, in understanding the meaning and the scope of the underlying factual statements, in grasping the reasons why the referring court considered it necessary to refer the question and also, ultimately, in adopting a comprehensive and useful position on the matter.

B. The facts of the dispute and the relevance of the question referred to the Court

67 It is solely for the national court before which the dispute in the main proceedings has been brought, and which must assume responsibility for the subsequent judicial

decision, to determine in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. It follows that questions referred by national courts enjoy a presumption of relevance and that the Court may refuse to rule on those questions only where it is quite obvious that the interpretation sought bears no relation to the actual facts of the dispute in the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to those questions (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 64 and the case-law cited).

68 In the present case, the referring court's statements summarised in paragraphs 22 to 35, 39 and 41 to 44 above affirm the actual state of the dispute in the main proceedings. Moreover, those same statements show that it cannot be said that the referring court's reference to the Court on the interpretation of Articles 45 and 101 TFEU manifestly bears no relation to the actual facts of the dispute in the main proceedings or its purpose.

69 It is apparent from those statements, first, that the referring court is seised, both by way of appeal and by way of cross-appeal, of a dispute the subject matter of which is the actual and specific question whether, as held at first instance, BZ is entitled to claim compensation for the harm which he claims to have suffered by being prevented from exercising his activity as a professional footballer during the 2014/2015 season by the wrongful conduct of FIFA and the URBSFA consisting in having applied to him Article 17 of the RSTP, Article 9, paragraph 1 of those regulations and Article 8.2.7 of Annexe 3 to those regulations. The referring court states, in that regard, that in its view there are strong, specific and consistent presumptions that the existence and application of those different rules may have prevented BZ from being employed by a new professional football club following the termination of his employment contract with Lokomotiv Moscow. Second, BZ's claim and the judgment at first instance declaring it well founded in principle both rely on an interpretation and an application of Articles 45 and 101 TFEU. Third, the referring court explains that, given the subject matter of the dispute before it, it is required, in order to deliver its judgment, to rule inter alia on whether FIFA's and the URBSFA's conduct must be categorised as wrongful on the ground that it infringes Articles 45 and 101 TFEU. Fourth, the referring court held, in view of the facts submitted to it, that, contrary to FIFA's and the URBSFA's assertions, the dispute in the main proceedings cannot be considered to be artificial.

C. The cross-border dimension of the dispute in the main proceedings

70 The FEU Treaty provisions on the freedom of movement of workers, the freedom of establishment, the freedom to provide services and the free movement of capital do not apply to a situation which is confined in all respects within a single Member State, subject to certain specific situations in which the order for reference reveals the existence of specific factors which establish that the preliminary ruling on interpretation sought is necessary for the resolution of the dispute due to a link between the subject or circumstances of that dispute and Article 45, 49, 56 or 63 TFEU, in accordance with what is required by Article 94 of the Rules of Procedure (see, to that effect, judgment

of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraphs 38 and 39 and the case-law cited).

71 In the present case, the request for a preliminary ruling cannot be regarded as inadmissible in so far as it concerns the interpretation of Article 45 TFEU, on the freedom of movement of workers, on the ground that that article is unrelated to the dispute in the main proceedings given the lack of a cross-border dimension or, a fortiori, because of its 'external' nature in the sense which the URBSFA ascribes to that word.

72 In fact, the cour d'appel de Mons (Court of Appeal, Mons) states, in its order for reference, that BZ's residence and the centre of his interests are in Paris. In addition, it observes that the object of his claim is to obtain compensation for the harm which he considers he suffered during the 2014/2015 season by being prevented from moving to other Member States to pursue his professional career, in particular to Belgium, where Sporting du Pays de Charleroi had made him a conditional offer of employment. In doing so, the referring court clearly demonstrates, in its request for a preliminary ruling, the cross-border nature of the factual and legal situation that characterises the dispute in the main proceedings, in which a person living in France complains of having been impeded, following the termination of his employment contract with a professional football club established in a third State, in his proven desire to exercise his freedom to move to other Member States, in particular Belgium, as a result of the existence and the actual or potential application to him of certain rules adopted by FIFA in order to provide a framework for the status and international transfer of professional footballers.

73 It follows from the foregoing considerations that none of the arguments set out in paragraph 62 of the present judgment can be accepted and that, consequently, the request for a preliminary ruling is admissible in its entirety.

V. Consideration of the question referred

74 By its question for a preliminary ruling, the referring court asks, in essence, whether Articles 45 and 101 TFEU must be interpreted as precluding rules which were adopted by a private law association whose objectives include, inter alia, the regulation, organisation and control of football at world level and which provide:

– first, that a professional player who is party to an employment contract and is deemed to have terminated that contract without just cause, and the new club which employs him or her following that termination, are to be jointly and severally liable for payment of compensation due to the former club for which the player worked, to be determined on the basis of the various criteria listed by those rules;

– second, that, where the employment of the professional player occurs during a protected period under the employment contract which has been terminated, the new club is to incur a sporting sanction consisting in a ban on registering new players during a specific period, unless it demonstrates that it did not induce the player to breach that contract; and

– third, that the existence of a dispute relating to that breach of contract is to prevent the national football association of which the former club is a member from issuing the

ITC necessary for that player to be registered at the new club, with the consequence that the player cannot participate in football competitions for the new club.

A. Preliminary observations

75 As a preliminary point, it must be borne in mind, in the first place, that, in so far as it constitutes an economic activity, the practice of sport is subject to the provisions of EU law applicable to such an activity (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 83 and the case-law cited).

76 Only certain specific rules which were adopted solely on non-economic grounds and which relate to questions of interest solely to sport per se must be regarded as being extraneous to any economic activity. That is the case, in particular, of those on the exclusion of foreign players from the composition of teams participating in competitions between teams representing their country or the determination of ranking criteria used to select the athletes participating individually in competitions (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 84 and the case-law cited).

77 Apart from those specific rules, the rules adopted by sporting associations in order to govern paid work, the performance of services by or the establishment of professional or semi-professional players and, more broadly, those rules which, whilst not formally governing that work, that performance of services or that establishment, have an indirect impact thereon, may come within the scope of Articles 45, 49 and 56 TFEU (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 85 and 86 and the case-law cited).

78 Likewise, the rules adopted by such associations and, more broadly, the conduct of those associations may come within the scope of the FEU Treaty provisions on competition law where the conditions of application of those provisions are met (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 87 and the case-law cited).

79 The rules at issue in the main proceedings, however, do not form part of those rules to which the exception referred to in paragraph 76 of the present judgment might be applied, which exception the Court has stated repeatedly must be limited to its proper objective and may not be relied upon to exclude the whole of a sporting activity from the scope of the FEU Treaty provisions on EU economic law (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 89 and the case-law cited).

80 The rules at issue in the main proceedings clearly have a direct impact on players' work. Thus, the rules referred to in paragraphs 13 to 17 of the present judgment are intended to govern the employment contracts of professional players, which define their working conditions and, indirectly, the economic activity to which that work may give rise. As for the rules referred to in paragraphs 10, 19 and 20 of the present judgment, they must be considered to have a direct impact on players' work in that they make their participation in competitions, which constitute the essential purpose of their economic activity, subject to certain conditions (see, to that effect, judgment of 21 December

2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraphs 59 and 60 and the case-law cited).

81 Furthermore, since the composition of the teams constitutes one of the essential parameters of the competitions in which professional football clubs compete and those competitions give rise to an economic activity, rules such as those at issue in the main proceedings, whether they relate to the employment contracts or to the transfers of players, must also be regarded as having a direct impact on the conditions for engaging in that economic activity and on competition between the professional football clubs engaged in that activity (see, by analogy, judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 61).

82 The rules at issue in the main proceedings therefore come within the scope of Articles 45 and 101 TFEU.

83 In the second place, since each of those two articles of the FEU Treaty has its own objective and its own specific conditions of application, since the application of the former does not preclude the application of the latter and vice versa, and since the consequences of an infringement, if established, are not the same in both cases, it is appropriate that the Court should interpret them in turn, as the referring court requests.

84 In the third and last place, the undeniable specific characteristics of sporting activity, which, whilst relating especially to amateur sport, may also be found in the pursuit of sport as an economic activity, may potentially be taken into account, along with other elements and provided that they are relevant in the application of Articles 45 and 101 TFEU, although they may be so only in the context of and in compliance with the conditions and criteria of application provided for in each of those articles (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 103 and 104 and the case-law cited).

85 In particular, when it is argued that a rule adopted by a sporting association constitutes an impediment to the freedom of movement of workers or an anticompetitive agreement, the characterisation of that rule as an obstacle or anticompetitive agreement must, at any rate, be based on a specific assessment of the content of that rule in the actual context in which it is to be implemented (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 105 and the case-law cited).

B. The question referred for a preliminary ruling in so far as it relates to Article 45 TFEU

1. Consideration of whether there is a restriction on the freedom of movement of workers

86 Article 45 TFEU, which has direct effect, precludes any measure, whether it is based on nationality or is applicable without regard to nationality, which might place EU nationals at a disadvantage when they wish to pursue an economic activity in the territory of a Member State other than their Member State of origin, by preventing or deterring them from leaving the latter (judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 136 and the case-law cited).

87 In the present case, it follows from the wording of the question submitted by the referring court and from the supporting statements that the conduct in connection with which that court asks the Court about the interpretation of Article 45 TFEU consists in the fact that FIFA adopted, and then applied to BZ, who is resident in Paris, and to the professional football clubs established in other Member States that were likely, indeed eager, to employ him following the termination of his employment contract with Lokomotiv Moscow, or, at the very least, exposed that player and those clubs to the risk that various rules of the RSTP, set out in Article 17, paragraphs 1, 2 and 4 of those regulations, in Article 9, paragraph 1 of those regulations and in Article 8.2.7 of Annexe 3 to those regulations, respectively, would be applied to them.

88 Article 17, paragraph 2 of the RSTP provides that a professional player whose employment contract has been terminated without just cause and the new club that employs him following that termination are to be jointly and severally liable for payment of compensation due to the former club for which the player worked. Article 17, paragraph 1 of the RSTP stipulates that, if no provision is made in the employment contract, that compensation is to be calculated with due consideration for the law in force in the country concerned, the specificity of sport and any other objective criteria, including, inter alia, a criterion relating to the remuneration and other benefits due to the player under the employment contract which has been terminated and/or the new employment contract, a criterion relating to the time remaining on the employment contract which has been terminated up to a maximum of five years and also a criterion relating to the fees and expenses paid or incurred by the former club, amortised over the term of the contract.

89 Next, under Article 17, paragraph 4 of the RSTP, where the player concerned is employed during a protected period under the employment contract which has been terminated, corresponding to the first two or three seasons or years covered by that contract, depending on the player's age, the new club is to incur a sporting sanction. In that regard, that provision stipulates, first, that the sporting sanction in question is to be added to the obligation to pay the compensation referred to in Article 17, paragraphs 1 and 2 of the RSTP. Second, that sporting sanction is to be applied to any new club found to be in breach of contract or found to be inducing a breach of such a contract during the protected period. Third, any new club signing an employment contract with a player who has terminated his or her former contract without just cause is to be presumed, in the absence of proof to the contrary, to have induced that player to commit that breach. Fourth, that sporting sanction is to consist of a ban on the new club registering any new players, either nationally or internationally, for two entire and consecutive registration periods.

90 Lastly, it follows, in particular, from Article 9, paragraph 1 of the RSTP and from Article 8.2.7 of Annexe 3 to those regulations that the existence of a dispute relating to a breach of contract without just cause precludes the national football association of which the former club is a member from issuing the ITC necessary for the player concerned to be registered with the new club, with the consequence that the player cannot participate in football competitions for that new club.

91 As observed, in essence, by the Advocate General in points 43 and 44 of his Opinion, that set of rules is likely to place at a disadvantage professional footballers whose residence or place of work is in their Member State of origin and who wish to exercise their economic activity for a new football club established on the territory of another Member State, by unilaterally breaching or after having unilaterally breached their employment contract with their former club, for what that club claims or might claim, wrongly or rightly, is not just cause.

92 More specifically, the – albeit supplementary – rules setting the amount of compensation payable by any player to his or her former club where the employment contract has been terminated without just cause, provided for in Article 17, paragraph 1 of the RSTP, the rule under which any new club which employs such a player is to be jointly and severally liable for payment of that compensation, set out in Article 17, paragraph 2 of those regulations, and the – albeit rebuttable – presumption of incitement to breach as well as the sanction prohibiting the registration of new players, which are applicable to the new clubs under Article 17, paragraph 4 of those regulations, are such as to deprive to a very great extent, whether actually, as in BZ's case, or at least potentially, any player in such a situation of the prospect of receiving firm and unconditional offers of employment from clubs established in other Member States, acceptance of which would cause him or her to leave his or her Member State of origin in the exercise of his or her freedom of movement. The existence and combination of those rules have the consequence that those clubs bear significant legal risks, unpredictable and potentially very high financial risks and major sporting risks which, taken together, are clearly such as to dissuade them from signing such players.

93 The rules which prohibit, generally and automatically, subject to exceptional circumstances, the issuance of the ITCs necessary for professional players to be registered with their new clubs as long as there exists, between those players and their former clubs, a dispute involving the absence of mutual agreement regarding the early termination of the contract, as provided for in Article 9, paragraph 1 of the RSTP and Article 8.2.7 of Annexe 3 to those regulations, are such as to prevent those players from exercising their economic activity in any Member State other than their Member State of origin and therefore to negate the essence of the sporting and economic interest in their potential employment by a club established in one of those other Member States. In addition, those latter rules apply specifically in the event of a player's cross-border movement, to the exclusion of any movement within one and the same State, as is also clear from Article 1, paragraph 1 of those regulations. Thus, in the present case, it is apparent from the statements in the order for reference that Sporting du Pays de Charleroi specifically made the offer of employment addressed to BZ on 19 February 2015 conditional on the assurance that it would be able to register him and field him in Belgium, an assurance that BZ sought to obtain from FIFA and the URBSFA, but which they stated that they were unable to give him in view of the existence of a dispute between him and Lokomotiv Moscow, on which the DRC did not rule until several months later.

94 The rules at issue in the main proceedings are therefore such as to restrict the freedom of movement of workers.

2. Consideration of whether there is justification

95 Measures of non-State origin may be permitted even though they are liable to impede a freedom of movement enshrined in the FEU Treaty, if it is proved, first, that their adoption pursues a legitimate objective in the public interest which is compatible with that Treaty and which is therefore other than of a purely economic nature and, second, that they observe the principle of proportionality, which entails that they are suitable for ensuring the achievement of that objective and do not go beyond what is necessary for that purpose. As regards, more specifically, the condition relating to the suitability of such measures, it should be borne in mind that they can be held to be suitable for ensuring achievement of the aim relied on only if they genuinely reflect a concern to attain it in a consistent and systematic manner (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 251, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 141 and the case-law cited).

96 Similarly to situations involving a measure of State origin, it is for the party who introduced those measures of non-State origin to demonstrate that those two cumulative conditions are met (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 252, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 142 and the case-law cited).

97 In the present case it will therefore be for the referring court, in the final analysis, to determine whether the RSTP rules at issue in the main proceedings meet those conditions, in the light of the arguments and evidence put forward by the parties. That being the case, the Court is in a position to provide the referring court, in the light of the material on the file before it and subject to verification by that court, with the following guidance.

(a) Consideration of the pursuit of a legitimate objective in the public interest

98 FIFA, joined by the URBSFA, claims that the RSTP rules at issue in the main proceedings pursue a number of objectives consisting, first, in maintaining contractual stability and the stability of professional football club teams; second, in preserving, more broadly, the integrity, regularity and proper conduct of interclub football sporting competitions; and, third, in protecting workers such as professional footballers. It maintains that those various objectives are all legitimate in the light of the public interest.

99 In that regard, in the first place, as regards the protection of workers, it should be observed, first, that the protection of workers is not among the objectives of FIFA, as defined in its Statutes and, second, nor was that private law association entrusted by the public authorities with any particular mission in that area. That being so, there is no need to rule on whether, having regard to those circumstances, such an association is or is not entitled to rely on the pursuit of such an objective, since it is sufficient, in the present case, to state, in any event, that it is not apparent how the adoption or the implementation of the RSTP rules at issue in the main proceedings, as characterised in paragraph 74 of the present judgment, might contribute to the protection of professional footballers.

100 In the second place, having regard to the objectives which FIFA sets for itself, as specified in Article 2 of its Statutes and referred to in paragraph 3 of the present judgment, it should be observed, first of all, that the objective consisting in ensuring the regularity of sporting competitions is a legitimate objective in the public interest that may be pursued by a sporting association, for example by adopting rules setting deadlines for transfers of players in order to avoid late transfers that might substantially change the sporting strength of one or other team in the course of a competition and thereby call into question the comparability of results between the teams taking part in that competition and thus the proper conduct of that competition as a whole (see, to that effect, judgment of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraphs 53 and 54).

101 Next, that objective is of particular importance in the case of football, in view of the essential role afforded to sporting merit in the conduct of competitions organised at both European and national level. That essential role can be guaranteed only if all the numerous teams taking part face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 143 and the case-law cited).

102 Lastly, since the composition of the teams constitutes one of the essential parameters of the competitions in which clubs compete (judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 61), that objective is capable of justifying the adoption not only of rules on, inter alia, time limits for transfers of players during a competition, referred to in paragraph 100 of the present judgment, but also, in principle and without prejudice to their actual content, of rules intended to ensure the maintenance of a certain degree of stability in clubs' player rosters, which serve as a pool for the composition of the teams that are likely to be fielded by those clubs in interclub football competitions. Maintaining a certain degree of stability in those player rosters, and therefore a certain continuity in the related contracts, must thus be regarded not as constituting in itself a legitimate objective in the public interest, but as one of the means capable of contributing to the pursuit of the legitimate objective in the public interest consisting in ensuring the regularity of interclub football competitions.

(b) Consideration of the observance of the principle of proportionality

103 As follows from the preceding paragraph of the present judgment and as observed by the Advocate General in point 65 of his Opinion, the rules of the RSTP at issue in the main proceedings, as characterised in paragraph 74 of the present judgment and referred to in paragraphs 87 to 90 above, may all be considered, prima facie and subject to the verifications to be carried out by the referring court, to be suitable for ensuring the achievement of the objective of ensuring the regularity of interclub football competitions, contributing, each in its own way, to maintaining a certain degree of stability in the player rosters of all the professional football clubs which are likely to participate in those competitions.

104 On the other hand, subject to the verifications to be carried out by the referring court, those different rules seem, in a number of aspects, to go beyond, indeed, in some

cases, far beyond, what is necessary to achieve that objective, a fortiori because they are intended to apply, to a large extent, in combination and, for some of them, for a significant period of time, to players whose careers, moreover, are relatively short, a situation that may well seriously hamper the development of their careers, and indeed cause some players to end their careers prematurely.

105 In the first place, that is the case of Article 17, paragraph 1 of the RSTP, in that it sets the various criteria for the calculation of the compensation payable by the player where the unilateral breach of the employment contract takes place 'without just cause', an expression which, moreover, is not precisely defined in the regulations themselves.

106 In particular, the first criterion, which consists, in essence, in the possibility that 'the law of the country concerned' will be taken into account, does not guarantee actual observance of that law. On the contrary, the official Commentary on the RSTP published by FIFA states that in reality the first criterion has virtually never been applied in practice, as the DRC essentially applies the regulations laid down by FIFA itself and, purely subsidiarily, Swiss law. Such a failure to actually take into account and therefore to actually comply with the law in force in the country concerned clearly goes beyond what may be necessary in order to maintain a certain degree of stability in clubs' player rosters with a view to ensuring the regularity of interclub football competitions. As for the second criterion expressly provided for in that rule, relating to the 'specificity of sport', it refers to a general concept, but without also providing a precise definition that would make it possible to understand on which basis and according to which detailed rules that criterion might be called upon to influence the calculation of the compensation payable by the player, with the consequence that, although that criterion is presented as an 'objective criterion', it lends itself, in reality, to an application which is discretionary and therefore unpredictable and difficult to verify. The imposition of a criterion having such characteristics and giving rise to such consequences cannot be regarded as necessary in order to ensure the regularity of interclub football competitions.

107 The other criteria expressly provided for in that rule, while being prima facie more objective and more readily verifiable than the preceding criteria, nevertheless also appear to go very significantly beyond what is necessary for that purpose. First, the remuneration and other benefits due to the player concerned under the employment contract subsequently concluded by him or her with another club concern an employment relationship subsequent to the one which has been terminated, and those elements must therefore be held to be unrelated to the latter employment relationship and its costs (see, by analogy, judgment of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 50). Furthermore, as regards all the costs and expenditure borne by the former club when the player was transferred to it, amortised over the term of the contract, it must be observed that, irrespective of the fact that that element relates essentially to a previous contractual employment relationship, its being taken into account seems to be particularly excessive, since it is likely to enable what are potentially considerable charges which were prima face negotiated exclusively by other persons in their own interest, like the clubs parties to the transfer or the third parties who were involved in that context, to be passed on to the player. It must be stated, moreover, that such criteria for compensation seem to be intended to preserve

the financial interests of the clubs in the economic context specific to transfers of players between them more than to ensure what is alleged to be the proper conduct of sporting competitions, as attested, moreover, by the way in which those criteria are interpreted and applied by the DRC and the CAS, as is apparent from certain decisions of those bodies that appear in the file before the Court.

108 In the second place, that also holds true prima facie for Article 17, paragraph 2 of the RSTP in that it provides, as a matter of principle and therefore without taking account, in accordance with the principle of proportionality, of the particular circumstances of each case (see, to that effect, judgment of 4 October 2018, *Link Logistik N&N*, C-384/17, EU:C:2018:810, paragraph 45), in particular of the actual conduct of the new club which signs that player, that that club is to be jointly and severally liable for payment of the compensation payable by that player to his or her former club in the event of the unilateral breach of the contract without just case, such compensation, moreover, being determined by reference to criteria with the shortcomings highlighted in paragraphs 106 and 107 of the present judgment. Furthermore, while it must be acknowledged that FIFA maintained that that provision is not applied systematically and, in particular, is not to be applied when the new contract of a player who has terminated his or her earlier contract without just cause is signed after the date of expiry of the earlier contract, the fact nonetheless remains that, even if that situation were proven to be true, Article 17, paragraph 2 of the RSTP does not make provision for such non-application and therefore does not ensure the necessary legal certainty in that respect.

109 In the third place, that also holds true for Article 17, paragraph 4 of the RSTP in that it provides that, in addition to being jointly and severally liable for payment of such compensation, the new club is to be presumed, in the absence of proof to the contrary, to have induced that player to breach his or her contract without just cause and, where the player is signed during the protected period under the contract with his or her former club, the new club is for that reason to incur a sporting sanction consisting in a general ban on registering new players during two entire and consecutive registration periods.

110 Such a sporting sanction, which the bodies competent to apply it do not have the power to adapt on a case-by-case basis according to specific criteria or circumstances, appears, in the light of its nature and its consequences, manifestly to bear no relation of proportionality to the breach attributed to the new club concerned. That breach is, moreover, attributed to the new club on the basis of an assumption for which there does not appear to be any justification. Admittedly, FIFA maintained that the existence of that presumption was explained by the difficulties with which a player's former club might be faced if it were required to prove that the player's new club induced him or her to terminate his or her contract with the former club early without just cause. However, it must be stated that, although such an argument is, prima facie, capable of justifying, in principle, recourse to a presumption, it nevertheless does not justify the presumption at issue in the present case, which is to be applied automatically, that is to say, without being dependent on any condition that would allow the relevant circumstances of the case to be taken into account, even to a limited extent, such as the condition requiring, for example, at the very least, that the former club be asked to

provide sufficient evidence to support a finding that the new club induced the player to breach his or her contract.

111 Furthermore, while it is permissible for an association such as FIFA to provide for sanctions to be imposed in the event of a breach of the rules which it adopts, provided that those rules and the sanctions intended to ensure compliance therewith are justified by the pursuit of a legitimate objective in the public interest, such sanctions can be accepted only on condition that they are determined within a framework of criteria that are transparent, objective, non-discriminatory and proportionate (see, to that effect, judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 257), the last requirement entailing, inter alia, that the particular circumstances of the case are taken into account when the amount and the duration of the sanctions are fixed, as follows from the case-law cited in paragraph 108 of the present judgment. Such sanctions must, moreover, be capable of being the subject of effective review.

112 In the fourth and last place, that also holds true for Article 8.2.7 of Annexe 3 to the RSTP in that it prohibits the former association, generally and automatically, subject to exceptional circumstances, from issuing an ITC if the former club and the player are in a contractual dispute involving the absence of mutual agreement regarding the early termination of the employment contract. Such a provision, the application of which may result in the player concerned being prevented from exercising his or her professional activity and the new club being prevented from fielding that player for the sole reason that there exists between the player and his or her former club a dispute relating to a breach of contract that may be without just cause, manifestly infringes the principle of proportionality, particularly in so far as its application fails to have regard to the specific circumstances of each case, in particular the factual context in which the breach of contract occurred, the conduct of the player concerned and that of his or her former club and also the role, or lack of role, played by the new club, which ultimately bears the burden of the ban on registering the player and fielding him or her in competitions.

113 Hence, the prohibition at issue cannot be justified by what is alleged to be the wish to ensure the proper conduct of sporting competitions. That conclusion, moreover, is not called into question by FIFA's argument that, where an application to register a player is submitted by the new national football association to which the player belongs or where an application is submitted by a player, FIFA's services immediately and automatically register that player on a provisional basis. The provision in question makes no reference to such provisional registration and, a fortiori, does not make such registration compulsory.

3. Conclusion

114 In the light of all of the foregoing considerations, the answer to the question referred for a preliminary ruling, in so far as it relates to the interpretation of Article 45 TFEU, is that that article must be interpreted as precluding rules which have been adopted by a private law association whose objectives include, inter alia, the regulation, organisation and control of football at world level, and which provide:

– first, that a professional player who is party to an employment contract and is deemed to have terminated that contract without just cause, and the new club which employs him or her following that termination, are to be jointly and severally liable for payment of compensation due to the former club for which the player worked, to be determined on the basis of criteria which are sometimes imprecise or discretionary, sometimes lacking in any objective connection with the employment relationship concerned and sometimes disproportionate;

– second, that, where the employment of the professional player occurs during a protected period under the employment contract which has been terminated, the new club is to incur a sporting sanction consisting in a ban on registering new players during a specific period, unless it demonstrates that it did not induce the player to breach that contract; and

– third, that the existence of a dispute relating to that breach of contract is to prevent the national football association of which the former club is a member from issuing the ITC necessary for that player to be registered at the new club, with the consequence that the player cannot participate in football competitions for the new club;

unless it is established that those rules, as interpreted and applied on the territory of the European Union, do not go beyond what is necessary for the pursuit of the objective consisting in ensuring the regularity of interclub football competitions, while maintaining a certain degree of stability in the player rosters of the professional football clubs.

C. The question referred for a preliminary ruling in so far as it relates to the interpretation of Article 101 TFEU

1. Consideration of Article 101(1) TFEU

115 Article 101(1) TFEU prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.

116 The Court has consistently held that the application of that provision in a particular case requires that a set of conditions be satisfied.

(a) Consideration of the concepts of 'undertakings' and 'associations of undertakings'

117 Article 101(1) TFEU applies not only to any entity engaged in an economic activity that must, as such, be categorised as an 'undertaking', irrespective of its legal form and the way in which it is financed, including entitles that are established in the form of associations which, according to their statutes, have as their purpose the organisation and control of a given sport, in so far as those entities exercise an economic activity in relation to that sport, but also to entities which, although not necessarily constituting undertakings themselves, may be categorised as 'associations of undertakings' (judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraphs 76 to 78 and the case-law cited).

118 In the present case, given the subject matter of the main proceedings and the referring court's statements, the Court finds that Article 101(1) TFEU applies to FIFA in its capacity as an association having as members national football associations which can themselves be categorised as 'undertakings' inasmuch as they carry on an economic activity related to the organisation and marketing of interclub football competitions at national level and the exploitation of the rights related thereto, or themselves have, as members or affiliates, entities which, like football clubs, may be categorised as such (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 115, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 79).

(b) Consideration of the concept of 'decision by an association of undertakings'

119 The application of Article 101(1) TFEU in a situation involving entities such as FIFA entails proving the existence of an 'agreement', 'concerted practice' or '[decision by an association] of undertakings', which themselves may be of different kinds and present in different forms. In particular, a decision of an association consisting in adopting or implementing rules having a direct impact on the conditions in which the economic activity is exercised by undertakings which are directly or indirectly members thereof may constitute such a '[decision by an association] of undertakings' within the meaning of that provision (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 118 and the case-law cited).

120 In the present case, as follows from the statements provided in the order for reference and from paragraph 81 of the present judgment, it is with regard to those kinds of decisions that the referring court questions the Court about the interpretation of Article 101(1) TFEU, namely those consisting, for FIFA, in having adopted and implemented or being capable of implementing a set of rules relating to the employment contracts and transfers of players.

121 Such decisions by associations of undertakings therefore come under Article 101(1) TFEU.

(c) Consideration of the concept of 'effect on trade between Member States'

122 The application of Article 101(1) TFEU in a situation involving such decisions of associations of undertakings entails establishing, with a sufficient degree of probability, that they are 'capable of having an appreciable effect on trade between Member States', by having an influence, direct or indirect, actual or potential, on the pattern of trade, at the risk of hindering the attainment or the functioning of the internal market; that condition may be considered fulfilled in the case of conduct that covers the entire territory of a Member State (judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 43 and the case-law cited).

123 In the present case, that condition is clearly fulfilled, having regard to the fact that, as stated in Article 1, paragraph 1 of the RSTP, the geographic scope of the rules established by those regulations is 'global'.

(d) Consideration of the concept of conduct having as its 'object' or 'effect' the restriction of competition

124 In order to find, in a given case, that an agreement, decision by an association of undertakings or a concerted practice is caught by the prohibition laid down in Article 101(1) TFEU, it is necessary to demonstrate, in accordance with the very wording of that provision, either that that conduct has as its object the prevention, restriction or distortion of competition, or that that conduct has such an effect (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 158 and the case-law cited).

125 To that end, it is appropriate to begin by examining the object of the conduct in question. If, at the end of that examination, that conduct proves to have an anticompetitive object, it is not necessary to examine its effect on competition. Thus, it is only if that conduct is found not to have an anticompetitive object that it will be necessary, in a second stage, to examine its effect (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 159 and the case-law cited).

126 According to the settled case-law of the Court, the concept of anticompetitive 'object', whilst not an exception in relation to the concept of anticompetitive 'effect', must nevertheless be interpreted strictly (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 161 and the case-law cited).

127 Thus, that concept must be interpreted as referring solely to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects. Indeed, certain types of coordination between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 162 and the case-law cited).

128 That is the case, inter alia, of certain types of horizontal agreements other than cartels, such as those leading to competing undertakings being excluded from the market, or certain types of decisions by associations of undertakings (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 164 and the case-law cited).

129 As is apparent from Article 101(1)(a) and (c) TFEU, which refers, in particular, to the fixing of 'purchase or selling prices' or the sharing of 'markets or sources of supply', such cartels, such horizontal agreements and such decisions by associations of undertakings may concern not only the goods or services marketed by the undertakings concerned, and therefore supply, but also the resources of any kind which the undertakings need to produce those goods or services, and therefore demand. The collusive behaviour of those undertakings may thus consist, for example, in sharing suppliers, using their collective market power to fix the price at which they will purchase their inputs or, as the Court has observed previously, limiting or controlling the essential parameter of competition consisting, in certain sectors or on certain markets, in the recruitment of highly skilled workers, such as players who have already been trained in the professional football sector (see, to that effect, judgment of

21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraphs 107, 109 and 110).

130 In order to determine, in a given case, whether an agreement, a decision by an association of undertakings or a concerted practice reveals, by its very nature, a sufficient degree of harm to competition that it may be considered as having as its object the prevention, restriction or distortion thereof, it is necessary to examine, first, the content of the agreement, decision or practice in question; second, the economic and legal context of which it forms a part; and, third, its objectives (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 165 and the case-law cited).

131 In that regard, first of all, in the economic and legal context of which the conduct in question forms a part, it is necessary to take into consideration the nature of the products or services concerned, as well as the real conditions of the structure and functioning of the sector(s) or market(s) in question. It is not, however, necessary to examine nor, a fortiori, to prove the effects of that conduct on competition, be they actual or potential, or negative or positive (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 166 and the case-law cited, and of 27 June 2024, *Commission* v *Servier and Others*, C-176/19 P, EU:C:2024:549, paragraphs 288 and 453).

132 Next, as regards the objectives pursued by the conduct in question, a determination must be made of the objective aims which that conduct seeks to achieve from a competition standpoint. Nevertheless, the fact that the undertakings involved acted without having a subjective intention to prevent, restrict or distort competition and the fact that they pursued certain legitimate objectives are not decisive for the purposes of the application of Article 101(1) TFEU (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 167 and the case-law cited).

133 Lastly, the taking into consideration of all of the aspects referred to in the three preceding paragraphs of the present judgment must, at any rate, show the precise reasons why the conduct in question reveals a sufficient degree of harm to competition such as to justify a finding that it has as its object the prevention, restriction or distortion of competition (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 168 and the case-law cited).

134 In the present case, as regards, in the first place, the content of the RSTP rules at issue in the main proceedings, it follows from paragraphs 87 to 90 of the present judgment that those various rules, which present as an indivisible whole and must therefore be construed as such, provide, first of all, that every footballer, and therefore, in particular, every footballer employed in the European Union, who terminates the employment contract with his or her former club, at any time whatsoever during the term of that contract, is to be required, if FIFA subsequently decides that that contract was terminated without just cause, to pay compensation to that former club, the amount of which is to be calculated, in the absence of contractual terms on the matter, by reference to a set of criteria.

135 It must be borne in mind, in that regard, that the first of those criteria, relating to the 'law of the country concerned', has thus far in practice been virtually ignored, as observed in paragraph 106 of the present judgment, and that the second of those criteria, relating to the 'specificity of sport', is couched, as also stated in paragraph 106, in extremely general and imprecise terms that lend themselves to being implemented in a manner that is discretionary and therefore unpredictable and difficult to verify. As for the other criteria, they appear, at first sight, to allow compensation to be fixed at an extremely high and deterrent amount, as stated in paragraph 107 of the present judgment. By contrast, Article 4 of the loi du 24 février 1978 relative au contrat de travail du sportif rémunéré (Law of 24 February 1978 on the employment contract of remunerated athletes) (*Moniteur belge*, 9 March 1978, p. 2606), referred to by BZ in his written observations, seems to provide, subject to verification by the referring court, that in a comparable situation, but one coming under Belgian domestic law, the amount of compensation is to correspond solely to the remuneration remaining due to the end of the employment contract which has been terminated and is not therefore to involve aspects unrelated to the employment relationship arising from that contract, similar to those referred to in the same paragraph.

136 Next, any player against whom his or her former club initiates proceedings before the DRC seeking an order for payment of the compensation in question, alleging that the employment contract between them was terminated without just cause, is automatically, for that reason alone and subject to exceptional circumstances which are within FIFA's sole discretion, deprived of the possibility of getting the ITC issued which, in the event of a transfer to a new club established in a Member State other than that in which his or her former club is established, is a condition of being registered with that new club and with the national football association to which that club is affiliated. Consequently, in such a situation, that player is deprived of any possibility of participating in organised football, as follows from Article 5, paragraph 1 and Article 9, paragraph 1 of the RSTP.

137 Lastly, any new club employing such a player would, for that reason alone, first, be held jointly and severally liable for payment of the compensation which that player has been or might be ordered to pay; second, be presumed, in the absence of proof to the contrary, to have induced that player to breach the employment contract with his or her former club; and, third, where the breach of contract occurred during the protected period under that contract, be given, in application of that presumption, and without the particular circumstances of each case being taken into account, a general ban on registering any new player at national or international level for two entire and consecutive registration periods.

138 As observed, in essence, by the Advocate General in points 52 to 55 of his Opinion, it is clear on a combined reading of the rules of the RSTP at issue in the main proceedings, first, that they are such as to constitute a generalised and drastic restriction, from a substantive viewpoint, of the competition which, in their absence, could pit any professional football club established in a Member State against any other professional football club established in another Member State as regards the recruitment of players already employed by a given club, its being noted that such players constitute, in numerical terms, the essential part of the population of players who are already trained

or undergoing training who might be the subject of such cross-border recruitment at a given time, even though there are also, at any time, a certain number of players who are no longer under contract for one reason or another. As observed in paragraphs 81 and 129 of the present judgment, the possibility of recruiting such players is an essential parameter of competition in the interclub professional football sector.

139 Indeed, unless the consent of the former club is obtained in the context of a negotiated transfer, the mere fact of employing such a player exposes the new club to the risk of being held jointly and severally liable for payment of a potentially very large amount of compensation. In addition, the amount of that compensation is highly unpredictable for the new club, given the nature of the criteria by reference to which it is calculated. Furthermore, as long as there is a dispute between the player concerned and his or her former club concerning the early termination of the employment contract by which they were bound, and therefore as long as the ITC relating to that employment has not been issued, the player concerned cannot either be registered with the new club or participate on its behalf in any competition coming within the competence of FIFA, the national football associations which are members of FIFA or the continental confederations, such as UEFA, which it recognises. Lastly, in addition to those various factors is the risk for the new club, where the player is recruited during the protected period under the contract between the player and his or her former club, and where the new club does not succeed in rebutting the presumption that it induced the breach of contract, that the recruitment of the player will result in a sporting sanction being applied to it. As observed above, that sporting sanction consists in the new club being automatically banned from registering any new player during two entire and consecutive registration periods. That sporting sanction prevents it, in practice, from fielding in a match any other new player whom it might wish to recruit, a situation which effectively renders such recruitment pointless.

140 Furthermore, that generalised and drastic restriction of cross-border competition between clubs in the form of the unilateral recruitment of players who are already employed, and therefore of access by clubs to the essence of the 'resources' represented by players, extends, from a geographic viewpoint, to the entire territory of the European Union and, from a temporal viewpoint, is permanent, in that it covers the entire duration of each of the employment contracts which a player may conclude successively with one club, then, in the event of a negotiated transfer to another club, with the latter club, as is also apparent from Article 13 of the RSTP.

141 Having regard to all of those characteristics, that restriction thus ensures, in practice, that each club is certain, or virtually certain, that it will be able to keep its own players for as long as the contract or succession of contracts concluded with them has not reached its term or, before it does so, as long as it does not decide to part with them in the context of a termination accepted by the player or a negotiated transfer of the player to another club, in return for payment of a transfer fee by the latter club.

142 As regards, in the second place, the economic and legal context surrounding the RSTP rules at issue in the main proceedings, it should be borne in mind, first of all, that, given the specific nature of the 'products' which sporting competitions constitute from an economic point of view, associations which are responsible for a sporting

discipline are generally able to adopt, implement and ensure compliance with rules relating, inter alia, to the organisation and proper conduct of competitions in that discipline and the participation of athletes therein (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 142, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 103 and the case-law cited).

143 As regards, more specifically, football and the economic activities to which the exercise of that sport gives rise, it is legitimate for an association such as FIFA to subject the organisation and conduct of international competitions to common rules intended to guarantee the homogeneity and coordination of those competitions within an overall annual or seasonal calendar as well as, more broadly, to promote, in a suitable and effective manner, the holding of sporting competitions based on equal opportunities and merit. In particular, it is legitimate for such an association to regulate, by means of such common rules, the conditions in which professional football clubs can put together teams participating in such competitions and the conditions in which the players themselves may take part in them. Lastly, it is legitimate to ensure effective compliance with those common rules by means of rules allowing sanctions to be imposed (see, to that effect, judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 144 to 146, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 104).

144 In that context, since the annual or seasonal conduct of interclub professional football competitions is based, in the European Union, on matches between and gradual elimination of the participating teams and since it is therefore essentially based on sporting merit, which can be guaranteed only if all the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity (see, to that effect, judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 143, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 105), it may be legitimate for an association such as FIFA to seek to ensure, to a certain extent, the stability of the composition of the player rosters that serve as a pool for the teams which are put together by those clubs during a given season – for example by proscribing, as Article 16 of the RSTP does, the unilateral termination of employment contracts during the season – or during a given year.

145 However, the specificity of football and the actual conditions of the functioning of the market constituted, from an economic standpoint, by the organisation and marketing of interclub professional football competitions, cannot mean that it must be accepted that any possibility for clubs to engage in cross-border competition by unilaterally recruiting players already employed by a club established in another Member State or players whose employment contract with such a club has allegedly been terminated without just cause should be restricted in a generalised, drastic and permanent manner, or even prevented, throughout the territory of the European Union. Under the guise of preventing aggressive recruitment practices, those rules correspond, in fact, to no-poaching agreements between clubs which, in essence, lead to the artificial partitioning of national and local markets, to the advantage of the clubs as a whole. In that regard, it should be emphasised that the classic mechanisms of contract law, such

as the right for the club to receive compensation in the event of a breach of contract by one of its players, at the instigation of another club where that is the case, in breach of the terms of that contract, are sufficient to ensure, on the one hand, the ongoing presence of that player in the first club mentioned, in accordance with those terms, and, on the other, the normal application between clubs of market rules, which allow them, on expiry of the normal term of the contract, or earlier if a financial agreement is concluded between clubs, to recruit the player in question.

146 Ultimately, such rules, even if they are presented as being intended to prevent player-poaching practices by clubs with greater financial means, can be treated as being equivalent to a general, absolute and permanent ban on the unilateral recruitment of players who are already employed, imposed by decision of an association of undertakings on all the undertakings, consisting of the professional football clubs, and borne by all the workers, consisting of the players. They thus perpetuate the sharing of those resources between those clubs, subject to transfers negotiated between them. On that basis, they constitute a manifest restriction of the competition in which those clubs would be able to engage in their absence, resulting in the partitioning of the market to the advantage of those same clubs as a whole.

147 As regards, in the third and last place, the objective aim which the rules at issue in the main proceedings seek to attain from a competition standpoint, it follows from the preceding considerations that, irrespective of the subjective intention or the legitimate objectives that may have inspired or have been pursued by the entity which adopted them, those rules must be considered to be intended to ensure that, apart from the case of players whose employment contracts were terminated for just cause or terminated by common agreement with their former club, it becomes extremely difficult, having regard to the legal, financial and sporting risks which that would entail, for professional football clubs to compete for access to the essential resources which players already under contract are, by unilaterally recruiting a player employed by another club or a player whose contract is alleged to have been terminated unilaterally without just cause, as such recruitment can take place only through a transfer negotiated between the former club and the new club.

148 Thus, the examination of the content of the rules at issue in the main proceedings, of the economic and legal context of which they form part and of the objective aims which they seek to attain reveals that those rules present, by their very nature, a high degree of harm to the competition in which professional football clubs could engage by unilaterally recruiting players who are already employed by a club or players whose employment contract is alleged to have been terminated without just cause, therefore by seeking to have access to the resources essential for their success that those highly trained players are. In those circumstances, those rules must be considered to have as their object the restriction, indeed the prevention, of that competition, throughout the territory of the European Union. There is accordingly no need to examine their effects.

(e) Consideration of the possibility of finding certain specific conduct not to come within the scope of Article 101(1) TFEU

149 According to the settled case-law of the Court, not every agreement between undertakings or decision by an association of undertakings which restricts the freedom

of action of the undertakings party to that agreement or subject to compliance with that decision necessarily falls within the prohibition laid down in Article 101(1) TFEU. Indeed, the examination of the economic and legal context of which certain of those agreements and certain of those decisions form a part may lead to a finding, first, that they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive in nature; second, that the specific means used to pursue those objectives are genuinely necessary for that purpose; and, third, that, even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 183 and the case-law cited, and of 25 January 2024, *Em akaunt BG*, C-438/22, EU:C:2024:71, paragraph 30).

150 However, that case-law does not apply in situations involving conduct which, far from merely having the inherent 'effect' of restricting competition, at least potentially, by limiting the freedom of action of certain undertakings, reveals a degree of harm that justifies a finding that it has as its very 'object' the prevention, restriction or distortion of competition (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 186, and of 25 January 2024, *Em akaunt BG*, C-438/22, EU:C:2024:71, paragraph 32). The degree of harm of that conduct in relation to competition, and therefore the direct or indirect harm to users and to intermediate or end consumers in the various sectors or markets concerned, is too great for it to be regarded as justified and proportionate.

151 As regards conduct having as its object the prevention, restriction or distortion of competition, it is thus only if Article 101(3) TFEU applies and all of the conditions provided for in that provision are observed that it may be granted the benefit of an exemption from the prohibition laid down in Article 101(1) TFEU (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 187, and of 25 January 2024, *Em akaunt BG*, C-438/22, EU:C:2024:71, paragraph 33).

152 In the present case, having regard to the considerations set out in paragraphs 134 to 148 of the present judgment, the Court finds that the case-law referred to in paragraph 149 of the present judgment is not applicable in a situation involving rules such as those at issue in the main proceedings.

2. Consideration of Article 101(3) TFEU

153 It follows from the very wording of Article 101(3) TFEU that any agreement, decision by associations of undertakings or concerted practice which proves to be contrary to Article 101(1) TFEU, whether by reason of its anticompetitive object or effect, may be exempted if it satisfies all of the conditions laid down for that purpose, it being noted that those conditions are more stringent than those referred to in paragraph 149 of the present judgment (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 189 and the case-law cited).

154 Under Article 101(3) TFEU, that exemption in a given case is subject to four cumulative conditions. First, it must be demonstrated with a sufficient degree of probability that the agreement, decision by an association of undertakings or concerted practice in question makes it possible to achieve efficiency gains, by contributing either to improving the production or distribution of the products or services concerned, or to promoting technical or economic progress. Second, it must be demonstrated, to the same degree of probability, that an equitable part of the profit resulting from those efficiency gains is reserved for the users. Third, the agreement, decision or practice in question must not impose on the participating undertakings restrictions which are not indispensable for achieving such efficiency gains. Fourth, that agreement, decision or practice must not give the participating undertakings the opportunity to eliminate all effective competition for a substantial part of the products or services concerned (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 190 and the case-law cited).

155 Non-observance of one of those four cumulative conditions suffices to rule out the possibility that the conduct at issue may come within the exemption provided for in Article 101(3) TFEU (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 208).

156 In that respect, as regards the third condition, to the effect that the conduct at issue must be indispensable or necessary, it involves an assessment and comparison of the respective impact of that conduct and of the alternative measures which might genuinely be envisaged, with a view to determining whether the efficiency gains expected from that conduct may be attained by measures which are less restrictive of competition. It may not, however, lead to a choice based on their respective desirability being made as between such conduct and such alternative measures in the event that the latter do not seem to be less restrictive of competition (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 197).

157 In order to determine whether that third condition is observed in this instance, the referring court will have to take into consideration, first, the fact, referred to in paragraphs 105 to 112 of the present judgment, that the RSTP rules at issue in the main proceedings are characterised by a combination of factors, a significant number of which are discretionary and/or disproportionate. In addition, it will have to take account of the fact, referred to in paragraphs 138 to 140, 145 and 146 of the present judgment, that those rules provide for a generalised, drastic and permanent restriction of the cross-border competition in which professional football clubs could engage by unilaterally recruiting highly trained players. Each of those two circumstances, taken on its own, prima facie precludes those rules from being considered indispensable or necessary to enable efficiency gains to be made, if such gains were proven to exist.

3. Conclusion

158 In the light of the foregoing considerations, the answer to the question referred for a preliminary ruling, in so far as it concerns the interpretation of Article 101 TFEU, is that that article must be interpreted as meaning that rules which were adopted by a private law association whose objectives include, inter alia, the regulation, organisation and control of football at world level and which provide:

– first, that a professional player who is party to an employment contract and is deemed to have terminated that contract without just cause, and the new club which employs him or her following that termination, are to be jointly and severally liable for payment of compensation due to the former club for which the player worked, to be determined on the basis of criteria which are sometimes imprecise or discretionary, sometimes lacking in any objective connection with the employment relationship concerned and sometimes disproportionate;

– second, that, where the employment of the professional player occurs during a protected period under the employment contract which has been terminated, the new club is to incur a sporting sanction consisting in a ban on registering new players during a specific period, unless it demonstrates that it did not induce the player to breach that contract; and

– third, that the existence of a dispute relating to that breach of contract is to prevent the national football association of which the former club is a member from issuing the ITC necessary for that player to be registered at the new club, with the consequence that the player cannot participate in football competitions for the new club;

constitute a decision by an association of undertakings which is prohibited by paragraph 1 of that article and which cannot be exempted under paragraph 3 of that article unless it is demonstrated, through convincing arguments and evidence, that all of the conditions required for that purpose are satisfied.

Costs

159 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. Article 45 TFEU must be interpreted as precluding rules which have been adopted by a private law association whose objectives include, inter alia, the regulation, organisation and control of football at world level, and which provide:

– first, that a professional player who is party to an employment contract and is deemed to have terminated that contract without just cause, and the new club which employs him or her following that termination, are to be jointly and severally liable for payment of compensation due to the former club for which the player worked, to be determined on the basis of criteria which are sometimes imprecise or discretionary, sometimes lacking in any objective connection with the employment relationship concerned and sometimes disproportionate;

– second, that, where the employment of the professional player occurs during a protected period under the employment contract which has been terminated, the new club is to incur a sporting sanction consisting in a ban on registering new players during a specific period, unless it demonstrates that it did not induce the player to breach that contract; and

– third, that the existence of a dispute relating to that breach of contract is to prevent the national football association of which the former club is a member from issuing the ITC necessary for that player to be registered at the new club, with the consequence that the player cannot participate in football competitions for the new club;

unless it is established that those rules, as interpreted and applied on the territory of the European Union, do not go beyond what is necessary for the pursuit of the objective consisting in ensuring the regularity of interclub football competitions, while maintaining a certain degree of stability in the player rosters of the professional football clubs.

2. Article 101 TFEU must be interpreted as meaning that such rules constitute a decision by an association of undertakings which is prohibited by paragraph 1 of that article and which cannot be exempted under paragraph 3 of that article unless it is demonstrated, through convincing arguments and evidence, that all of the conditions required for that purpose are satisfied.