Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

21 December 2023 (*)

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(Request for a preliminary ruling – Competition – Internal market – Rules introduced by international sports associations – Professional football – Private law entities vested with regulatory, control and decision-making powers, and the power to impose sanctions – Rules on prior approval of competitions, on the participation of football clubs and players in those competitions, and also on the exploitation of commercial and media rights related to those competitions – Parallel pursuit of economic activities – Organisation and marketing of competitions – Exploitation of related commercial and media rights – Article 101(1) TFEU – Decision by an association of undertakings adversely affecting competition – Concepts of anticompetitive 'object' and 'effect' – Exemption under Article 101(3) TFEU – Conditions – Article 102 TFEU – Abuse of dominant position – Justification – Conditions – Article 56 TFEU – Restrictions on the freedom to provide services – Justification – Conditions – Burden of proof)

In Case C-333/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil de Madrid (Commercial Court, Madrid, Spain), made by decision of 11 May 2021, received at the Court on 27 May 2021, in the proceedings

European Superleague Company SL

v

Fédération internationale de football association (FIFA),

Union of European Football Associations (UEFA),

intervening parties:

A22 Sports Management SL,

Real Federación Española de Fútbol (RFEF),

Liga Nacional de Fútbol Profesional (LNFP),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe and O. Spineanu-Matei, Presidents of Chambers, J.-C. Bonichot, M. Safjan, L.S. Rossi, I. Jarukaitis, A. Kumin, N. Jääskinen, N. Wahl, J. Passer (Rapporteur) and M. Gavalec, Judges,

Advocate General: A. Rantos,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 and 12 July 2022,

after considering the observations submitted on behalf of:

– European Superleague Company SL, by J.-L. Dupont, avocat, B. Irissarry Robina and M. Odriozola Alén, abogados,

– the Fédération internationale de football association (FIFA), by J.M. Baño Fos, abogado, M. Hoskins, Barrister, and A. Pascual Morcillo, abogado,

– the Union of European Football Associations (UEFA), by H. Brokelmann, abogado, B. Keane, avocat, S. Love, Barrister, D. Slater and D. Waelbroeck, avocats,

– A22 Sports Management SL, by L.A. Alonso Díez, F. Giménez-Alvear Gutiérrez-Maturana, F. Irurzun Montoro, abogados, and M. Sánchez-Puelles González-Carvajal, procurador,

– the Real Federación Española de Fútbol (RFEF), by P. Callol García, abogado, B. González Rivero, procuradora, T. González Cueto and J. Manzarbeitia Pérez, abogados,

– the Liga Nacional de Fútbol Profesional (LNFP), by D. Crespo Lasso de la Vega, Y. Martínez Mata, M. Pajares Villarroya, J. Ramos Rubio and S. Rating, abogados,

– the Spanish Government, by L. Aguilera Ruiz and A. Gavela Llopis, acting as Agents,

– the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

– the Danish Government, by J. Farver Kronborg, V. Pasternak Jørgensen, M. Søndahl Wolff and Y. Thyregod Kollberg, acting as Agents,

– the German Government, by J. Möller, acting as Agent,

– the Estonian Government, by N. Grünberg, acting as Agent,

– Ireland, by M. Browne, Chief State Solicitor, A. Joyce and M. Tierney, acting as Agents, and by S. Brittain, Barrister at Law,

– the Greek Government, by K. Boskovits, acting as Agent,

– the French Government, by A.-L. Desjonquères, P. Dodeller, T. Stehelin and N. Vincent, acting as Agents,

– the Croatian Government, by G. Vidović Mesarek, acting as Agent,

– the Italian Government, by G. Palmieri, acting as Agent, and by D. Del Gaizo and S.L. Vitale, avvocati dello Stato,

– the Cypriot Government, by I. Neophytou, acting as Agent,

– the Latvian Government, by J. Davidoviča, K. Pommere and I. Romanovska, acting as Agents,

– the Luxembourg Government, by A. Germeaux and T. Uri, acting as Agents,

– the Hungarian Government, by M.Z. Fehér, E. Gyarmati and K. Szíjjártó, acting as Agents,

– the Maltese Government, by A. Buhagiar, acting as Agent,

– the Austrian Government, by F. Koppensteiner, acting as Agent,

– the Polish Government, by B. Majczyna and M. Wiącek, acting as Agents,

– the Portuguese Government, by P. Barros da Costa, R. Capaz Coelho and C. Chambel Alves, acting as Agents, and by J.L. da Cruz Vilaça, advogado,

– the Romanian Government, by E. Gane, L. Lițu and A. Rotăreanu, acting as Agents,

– the Slovenian Government, by A. Dežman Mušič and N. Pintar Gosenca, acting as Agents,

– the Slovak Government, by E.V. Drugda and B. Ricziová, acting as Agents,

– the Swedish Government, by O. Simonsson, M. Salborn Hodgson and H. Shev, acting as Agents,

– the Icelandic Government, by J.B. Bjarnadóttir, acting as Agent, and by G. Bergsteinsson, lawyer,

– the Norwegian Government, by F. Bersgø, L.-M. Moen Jünge, O.S. Rathore and P. Wennerås, acting as Agents,

– the European Commission, by S. Baches Opi, M. Mataija, G. Meessen, C. Urraca Caviedes and H. van Vliet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 December 2022,

gives the following

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.

[Signatures]

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* Language of the case: Spanish.