Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

4 October 2024*[i]

(Reference for a preliminary ruling – Internal market – Competition – Rules introduced by an international sports association and implemented by that association with the assistance of its members – Professional football – Private law entities vested with regulatory and control powers, and the power to impose sanctions – Regulations on the Status and Transfer of Players – Regulations relating to the employment contracts concluded between clubs and players – Early termination of an employment contract by the player – Player required to pay compensation – Joint and several liability of the new club – Sanctions – Prohibition on issuing and registering the player's International Transfer Certificate while a dispute relating to the early termination of the employment contract is pending – Prohibition of registration of other players – Article 45 TFEU – Restriction on the freedom of movement of workers – Justification – Article 101 TFEU – Decision by an association of undertakings having as its object the prevention or restriction of competition – Employment market – Recruitment of players by clubs – Market for interclub football competitions – Participation of clubs and players in sporting competitions – Restriction of competition by object – Exemption)

In Case C-650/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d'appel de Mons (Court of Appeal, Mons, Belgium), made by decision of 19 September 2022, received at the Court on 17 October 2022, in the proceedings

Fédération internationale de football association (FIFA)

v

BZ,

interveners:

Union royale belge des sociétés de football association ASBL (URBSFA),

Sporting du Pays de Charleroi SA,

Fédération internationale des footballeurs professionnels,

Fédération internationale des footballeurs professionnels – Division Europe,

Union nationale des footballeurs professionnels (UNFP),

* Language of the case: French.

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, N. Wahl, J. Passer (Rapporteur) and M.L. Arastey Sahún, Judges,

Advocate General: M. Szpunar,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 18 January 2024,

after considering the observations submitted on behalf of:

– the Fédération internationale de football association (FIFA), by A. Laes, avocat, and D. Van Liedekerke, advocaat,

– BZ, by J-E. Barthélemy, J.-L. Dupont, P. Henry, M. Hissel and F. Stockart, avocats,

– Union royale belge des sociétés de football association ASBL (URBSFA), by N. Cariat, E. Matthys and A. Stévenart, avocats,

– Fédération internationale des footballeurs professionnels, by C. De Preter and P. Paepe, avocats,

– Fédération internationale des footballeurs professionnels – Division Europe, by J-E. Barthélemy, C. De Preter and P. Paepe, avocats,

– Union nationale des footballeurs professionnels (UNFP), by C. De Preter, P. Paepe and R. Palao, avocats,

– the Greek Government, by K. Boskovits and C. Kokkosi, acting as Agents,

– the French Government, by R. Bénard and V. Depenne, acting as Agents,

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

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

– the European Commission, by S. Baches Opi, T. Baumé, B.-R. Killmann and G. Meessen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 45 and 101 TFEU.

2 The request has been made in proceedings between the Fédération internationale de football association (FIFA) and BZ concerning a claim by BZ for compensation for the harm which he claims to have suffered as a result of the wrongful conduct of FIFA and of the Union royale belge des sociétés de football association ASBL (URBSFA).

I. Legal context

A. The FIFA Statutes

3 FIFA is a private law association with its seat in Switzerland. According to Article 2 of its Statutes, in the September 2020 edition, its objectives are, inter alia, to 'draw up regulations and provisions governing the game of football and related matters and to ensure their enforcement' and to 'control every type of association football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the Game'.

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

5 The members of FIFA and UEFA include the URBSFA, which has its headquarters in Belgium and whose purpose is, inter alia, the organisation and promotion of football in that Member State. Under its own statutes, that association undertakes to comply with the statutes, regulations and decisions of FIFA and UEFA, and to cause them to be observed by its members, 'subject to the general principles of law, public policy provisions and relevant mandatory national, regional and community legislation'.

B. The FIFA Regulations on the Status and Transfer of Players

6 On 22 March 2014, FIFA adopted the 'Regulations on the Status and Transfer of Players' ('the RSTP'), which entered into force on 1 August 2014, replacing previous regulations having the same object.

7 The introductory part of the RSTP, entitled 'Definitions', contains the following passage:

'For the purpose of these regulations, the terms set out below are defined as follows:

1. Former association: the association to which the former club is affiliated.

2. Former club: the club that the player is leaving.

3. New association: the association to which the new club is affiliated.

4. New club: the club that the player is joining.

…

6. Organised football: association football organised under the auspices of FIFA, the confederations and the associations, or authorised by them.

7. Protected period: a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional.

…

9. Season: the period starting with the first official match of the relevant national league championship and ending with the last official match of the relevant national league championship.

…'

8 Article 1 of the RSTP, entitled 'Scope', states, in paragraph 1:

'These regulations lay down global and binding rules concerning the status of players, their eligibility to participate in organised football, and their transfer between clubs belonging to different associations.'

9 Article 2 of the RSTP, entitled 'Status of players: amateur and professional players', is worded as follows:

'1. Players participating in organised football are either amateurs or professionals.

2. A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs.'

10 Article 5 of the RSTP, entitled 'Registration', provides, in paragraph 1:

'A player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of Article 2. Only registered players are eligible to participate in organised football. By the act of registering, a player agrees to abide by the statutes and regulations of FIFA, the confederations and the associations.'

11 Article 6 of the RSTP, entitled 'Registration periods', provides, in the first sentence of paragraph 1, that 'players may only be registered during one of the two annual registration periods fixed by the relevant association'.

12 The RSTP also include, inter alia, rules relating to the employment contracts concluded between players and clubs and rules relating to the transfers of players.

1. The rules relating to employment contracts

13 Under Article 13 of the RSTP, entitled 'Respect of contract':

'A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.'

14 Article 14 of the RSTP, entitled 'Terminating a contract with just cause', is worded as follows:

'A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.'

15 Under Article 16 of the RSTP, entitled 'Restriction on terminating a contract during the season':

'A contract cannot be unilaterally terminated during the course of a season.'

16 Article 17 of the RSTP, entitled 'Consequences of terminating a contract without just cause', provides:

'The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of Article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

2. Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.

…

4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in Article 6, paragraph 1 of these regulations in order to register players at an earlier stage.'

17 Article 22 of the RSTP, entitled ‘Competence of FIFA’, states:

‘Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

(a) disputes between clubs and players in relation to the maintenance of contractual stability (Articles 13-18) where there has been an [International Transfer Certificate (ITC)] request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;

…’

18 Article 24 of the RSTP, entitled ‘Dispute Resolution Chamber’, provides, in paragraph 1:

‘The Dispute Resolution Chamber (DRC) shall adjudicate on any of the cases described under [Articles 22(a), (b), and (e)] with the exception of disputes concerning the issue of an ITC.’

2. The rules relating to transfers

19 Article 9 of the RSTP, entitled ‘International Transfer Certificate’, states, in paragraph 1:

‘Players registered at one association may only be registered at a new association once the latter has received an [ITC] from the former association. The ITC shall be issued free of charge without any conditions or time limit. Any provisions to the contrary shall be null and void. The association issuing the ITC shall lodge a copy with FIFA. The administrative procedures for issuing the ITC are contained in Annexe 3, Article 8 … of these regulations.’

20 Annexe 3 to the RSTP, entitled ‘Transfer matching system’, contains, inter alia, Article 8, covering the ‘Administrative procedure governing the transfer of professionals between associations’, which provides:

‘8.1 Principles

1. Any professional player who is registered with a club that is affiliated to one association may only be registered with a club affiliated to a different association after an ITC has been delivered by the former association and the new association has confirmed receipt of the ITC. …

…

8.2 Creating an ITC for a professional player

…

3. Upon receipt of the ITC request, the former association shall immediately request the former club and the professional player to confirm whether the professional player’s contract has expired, whether early termination was mutually agreed or whether there is a contractual dispute.

4. Within seven days of the date of the ITC request, the former association shall …:

(a) deliver the ITC in favour of the new association and enter the deregistration date of the player; or

(b) reject the ITC request and indicate … the reason for rejection, which may be either that the contract between the former club and the professional player has not expired or that there has been no mutual agreement regarding its early termination.

…

7. The former association shall not deliver an ITC if a contractual dispute on grounds of the circumstances stipulated in Annexe 3, Article 8.2, paragraph 4(b) has arisen between the former club and the professional player. In such a case, upon request of the new association, FIFA may take provisional measures in exceptional circumstances. … Furthermore, the professional player, the former club and/or the new club are entitled to lodge a claim with FIFA in accordance with Article 22. FIFA shall then decide on the issue of the ITC and on sporting sanctions within 60 days. In any case, the decision on sporting sanctions shall be taken before the delivery of the ITC. The delivery of the ITC shall be without prejudice to compensation for breach of contract.'

II. The dispute in the main proceedings and the question referred for a preliminary ruling

21 BZ is a former professional footballer and is resident in Paris (France).

22 On 20 August 2013, he signed a four-year contract with Futbolny Klub Lokomotiv, also known as Lokomotiv Moscow, a professional football club established in Russia.

23 On 22 August 2014, Lokomotiv Moscow terminated that contract for reasons which, it claimed, were connected with BZ's conduct. On 15 September 2014, it applied to the DRC, on the basis of Article 22(a) and Article 24 of the RSTP, for an order that BZ pay it compensation of EUR 20 million, alleging 'termination of contract without just cause' within the meaning of Article 17 of the RSTP. Subsequently, BZ submitted a counterclaim to the DRC, seeking an order that Lokomotiv Moscow pay him unpaid wages and compensation equal to the amount of the remuneration that would have been due to him under that contract if it had run to term.

24 BZ states that he subsequently searched for a new professional football club that might employ him. He states that, in the context of that search, he was faced with the difficulties caused by the risk, borne by any club that might employ him, of being held jointly and severally liable for payment of the compensation that he might be required to pay to Lokomotiv Moscow under Article 17 of the RSTP.

25 By letter of 19 February 2015, Sporting du Pays de Charleroi SA, a professional football club established in Belgium, offered to employ BZ, while stipulating that its offer was subject to two cumulative suspensive conditions: first, that he be duly registered and eligible to play for its first team in order to be able to participate in any competition organised by FIFA, UEFA and the URBSFA for which he would be selected and, second, that that club be provided with written and unconditional confirmation that it could not be held jointly and severally liable for payment of any compensation that BZ might be liable to pay to Lokomotiv Moscow.

26 By letter of 20 February 2015, BZ approached FIFA and the URBSFA, seeking assurance that he could be duly registered and eligible to play for Sporting du Pays de Charleroi's first team and, furthermore, that Article 17 of the RSTP would not be enforced against that club. FIFA replied that only its competent decision-making body had the power to apply the RSTP, while the URBSFA replied that, under the rules laid down by FIFA, he could not be registered as long as an ITC had not been issued by Lokomotiv Moscow.

27 By decision of 18 May 2015, the DRC, first, upheld Lokomotiv Moscow's claim in part and ordered BZ to pay it compensation of EUR 10.5 million. Second, it dismissed BZ's counterclaim. Third, it ruled that Article 17, paragraph 2 of the RSTP would not apply to BZ in future.

28 On appeal by BZ, the Tribunal arbitral du sport (Court of Arbitration for Sport; 'the CAS'), a body having its seat in Lausanne (Switzerland), upheld that decision on 27 May 2016.

29 On 24 July 2015, BZ was employed by another professional football club, established in France.

30 On 9 December 2015, BZ brought proceedings before the tribunal de commerce du Hainaut (division de Charleroi) (Commercial Court, Hainaut (Charleroi Division), Belgium), seeking an order that FIFA and the URBSFA pay him compensation of EUR 6 million for the harm which he claimed to have suffered as a result of the wrongful conduct of those two associations.

31 By decision of 19 January 2017, that court declared that it had jurisdiction to hear and determine BZ's claim and held that his claim was well founded in principle. It ordered FIFA and the URBSFA jointly and severally to pay a provisional sum to BZ and, for the remainder, adjourned the proceedings indefinitely to allow the parties to reach agreement on quantum as regards the harm suffered by BZ in Belgium as a result of the wrongful conduct of those two associations.

32 FIFA brought an appeal against that judgment before the cour d'appel de Mons (Court of Appeal, Mons, Belgium), the referring court. Essentially, it asks that court, primarily, to declare that it lacks jurisdiction to hear and determine BZ's claim on the ground that his claim comes within the exclusive jurisdiction of the CAS or, at the very least, that it does not come within the international jurisdiction of the Belgian courts. In the alternative, FIFA asks the referring court to declare the claim inadmissible or, failing that, unfounded.

33 The URBSFA, which was joined in the proceedings, seeks a similar form of order.

34 Sporting du Pays de Charleroi, which submitted a voluntary application to intervene before the referring court, supports the forms of order sought by FIFA and the URBSFA.

35 BZ, who lodged a cross-appeal, contends, essentially, that the referring court should, first, rule that Article 17 of the RSTP, Article 9, paragraph 1 of those regulations and Article 8.2.7 of Annexe 3 to those regulations infringe Articles 45 and 101 TFEU and, second, order FIFA and the URBSFA jointly and severally to make good the harm which he has suffered as a result of the existence and the implementation of those regulations.

36 In its order for reference, the cour d'appel de Mons (Court of Appeal, Mons), after declaring both FIFA's appeal and Sporting du Pays de Charleroi's voluntary application to intervene admissible, considers, in the first place, that the tribunal de commerce du Hainaut (division de Charleroi) (Commercial Court, Hainaut (Charleroi Division)) was correct to declare that it had jurisdiction to adjudicate on BZ's claim in so far as it concerns compensation for the harm suffered by BZ in Belgium.

37 In that regard, the referring court considers, first of all, that that claim cannot be regarded as coming within the sole jurisdiction of the CAS under an arbitration agreement meeting the requisite conditions of validity under Belgian law, having regard to the general, undifferentiated and imprecise nature of the stipulations of the FIFA Statutes to which that association refers with a view to establishing the existence of such an agreement in the present case.

38 Next, the referring court considers that the claim did come within the international jurisdiction of the court of first instance in so far as it concerns both the URBSFA and FIFA. As regards the URBSFA, that jurisdiction is recognised, since that association's seat is established in Belgium and BZ relies on the existence of harm that occurred in Charleroi, where he was unable to exercise his activity as a professional footballer in spite of the offer of employment made to him by Sporting du Pays de Charleroi. Likewise, as regards FIFA, such jurisdiction is recognised, notwithstanding the fact that FIFA's headquarters is established in Switzerland, since BZ relies on FIFA's tortious liability in delict or quasi-delict, the harmful act on which he relies occurred in Charleroi (Belgium) and there is a particularly close connection between the dispute between the parties on that point and the court of first instance. That said, BZ's decision to bring proceedings before the tribunal de commerce du Hainaut (division de Charleroi) (Commercial Court, Hainaut (Charleroi Division)) has the consequence that the jurisdiction of that court is limited to the harm that BZ may have suffered in Belgium.

39 Lastly, the referring court considers that FIFA and the URBSFA cannot validly allege the existence of 'jurisdiction fraud', related to the fact that BZ artificially created a dispute in Belgium by obtaining, by means of deceitful manoeuvres, a fictitious offer of employment from Sporting du Pays de Charleroi. In that regard, it considers that it is proved, first, that BZ took steps to secure employment with several clubs established in various Member States of the European Union which, according to the press, had shown an interest in employing him; second, that Sporting du Pays de Charleroi took the unilateral initiative to offer to employ him; third, that BZ immediately took the necessary steps to ensure that the suspensive conditions stipulated in that offer were met; and, fourth, that it was not unreasonable for him to seek to respond to such an offer, which was the only one which he had at that time that would allow him to pursue his professional career in spite of his dispute with Lokomotiv Moscow and also to limit the harm resulting from the interruption of his economic activity for several months.

40 In the second place, the cour d'appel de Mons (Court of Appeal, Mons) considers that BZ's claim is admissible, as he demonstrates to the requisite legal standard that he has an interest in bringing proceedings, in his capacity as the holder of a subjective right who considers that he has suffered harm as a consequence of the wrongful conduct of FIFA and the URBSFA.

41 In the third and last place, the referring court states that the dispute in the main proceedings requires a determination of whether the harm which BZ considers he has suffered, by being prevented from exercising his activity as a professional footballer during the 2014/2015 season, has its cause in wrongful conduct by FIFA and the URBSFA, consisting in having applied to him rules that infringe Articles 45 and 101 TFEU, namely Article 17 of the RSTP, Article 9, paragraph 1 of those regulations and Article 8.2.7 of Annexe 3 to those regulations.

42 On that point, the referring court observes, first, that in BZ's submission those rules must be regarded, in the light of the judgment of 15 December 1995, *Bosman* (C-415/93, EU:C:1995:463), as being restrictive of both the freedom of movement of workers and competition. The rule laid down in Article 17, paragraph 2 of the RSTP, to the effect that any new professional football club which employs a player following termination of an employment contract without just cause is to be held jointly and severally liable for payment of the compensation which that player may be required to pay to his or her former club constitutes a restriction on the employment of players, to the detriment of both the players and the clubs intending to employ them, particularly because the amount of that compensation, which must be determined subsequently in accordance with the criteria set out in Article 17, paragraph 1 of the RSTP, is generally not known at the time when the parties concerned wish to enter into an employment contract. In addition, that

restriction is reinforced by the rules set out, respectively, in Article 17, paragraph 4 of those regulations, which provides that the new club is to be presumed to have induced the player to commit a breach of the employment contract with his or her former club and exposes that new club, in certain cases, to a sporting sanction. Likewise, the rules in Article 9, paragraph 1 of the RSTP and Article 8.2.7 of Annexe 3 to those regulations reinforce that restriction by prohibiting the national football association to which the former club belongs from issuing an ITC for the player if there is a dispute between the former club and that player arising from an early termination of the employment contract where there is no mutual agreement.

43 Second, the referring court observes that, according to FIFA and the URBSFA, the various rules at issue in the main proceedings should generally be understood in the light of the specificity of sport, which is recognised by the FEU Treaty. More particularly, those associations submit that, even if those rules did give rise to a restriction on the freedom of movement of workers or competition, they are justified in the light of the legitimate objectives consisting in, primarily, maintaining contractual stability and the stability of football teams and, more broadly, preserving the integrity, regularity and proper conduct of sporting competitions.

44 The referring court considers, in essence, that the possibility cannot be ruled out that, in particular when they are taken together, the various rules at issue in the main proceedings constitute a restriction on the freedom of movement of workers and competition. It also observes that in the present case there are strong, specific and consistent presumptions that the existence and the implementation of those rules may have prevented BZ from being employed by a new professional football club following the termination of his employment contract with Lokomotiv Moscow. Those rules made such employment more difficult, as shown in particular by the suspensive conditions stipulated by Sporting du Pays de Charleroi in the offer of employment which it had made to BZ.

45 In those circumstances, the cour d'appel de Mons (Court of Appeal, Mons) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Are Articles 45 and 101 TFEU to be interpreted as precluding:

– the principle that the player and the club wishing to employ him [or her] are jointly and severally liable in respect of the compensation due to the club whose contract with the player has been terminated without just cause, as stipulated in [Article 17, paragraph 2] of the RSTP, in conjunction with the sporting sanctions provided for in [Article 17, paragraph 4] of those regulations and the financial sanctions provided for in [Article 17, paragraph 1];

– the ability of the [national football association] to which the player's former club belongs not to deliver the [ITC] required if the player is to be employed by a new club, where there is a dispute between that former club and the player ([Article 9, paragraph 1] of the RSTP and Article 8.2.7 of Annexe 3 to the RSTP)?'

III. Procedure before the Court

46 On 15 December 2022, that is to say, after the order for reference was adopted, three associations representing professional footballers, the first at international level (the Fédération internationale des footballers professionnels (International Federation of Professional Footballers; 'FIFPro')), the second at European level (the Fédération internationale des footballers professionnels – Division

Europe, ('FIFPro Europe')) and the third at French level (the Union nationale des footballeurs professionnels (UNFP)), submitted jointly a voluntary application to intervene in the dispute in the main proceedings.

47 On 19 December 2022, the referring court informed the Court of the existence of that voluntary application to intervene.

48 Questioned by the Court Registry as to whether the associations in question were to be considered to be new parties to the dispute in the main proceedings solely because they had submitted a voluntary application to intervene or whether recognition of that status required a decision on its part, the referring court answered, in essence, that those associations were to be considered to be parties to the dispute in the main proceedings under the applicable national rules of procedure, namely Articles 15 and 16 of the Belgian Judicial Code, even though there had not yet been a ruling on the admissibility of their application.

49 In the light of that answer, the request for a preliminary ruling was notified to those associations, in accordance with Article 97(2) of the Rules of Procedure of the Court of Justice, and a time limit was set for them to submit written observations.

50 After those written observations had been lodged, FIFA requested the Court, on 30 May 2023 and then again on 12 June 2023, to reject them or to declare them inadmissible, on the ground that the three associations in question could not be considered to be new parties to the dispute in the main proceedings. The Court Registry informed FIFA that it had decided to take note of FIFA's request and that the request would be dealt with by the Court in due course, drawing its attention, in the meantime, to the fact that the referring court had informed the Court, explicitly and clearly, that those associations had to be considered to be new parties to the dispute in the main proceedings.

51 On 29 November 2023, the Court Registry convened, among others, all the parties to the dispute in the main proceedings, as determined by the referring court, to the hearing, to take place on 18 January 2024. On that occasion, it informed them that, having deliberated on 23 November 2023, the Second Chamber of the Court had decided that it was not appropriate either to declare the written observations lodged by FIFPro, FIFPro Europe and the UNFP inadmissible or to exclude those parties from the proceedings, stating that the grounds of that decision would be set out in the judgment closing the proceedings.

52 In that regard, Article 96(1)(a) of the Rules of Procedure, read in conjunction with Article 23 of the Statute of the Court of Justice of the European Union, provides that, in preliminary ruling proceedings, inter alia, the parties to the dispute in the main proceedings are to be authorised to submit observations to the Court.

53 Under Article 97(1) of the Rules of Procedure, the parties to the dispute in the main proceedings are those who are determined as such by the referring court or tribunal in accordance with national rules of procedure.

54 It is not for the Court to determine whether the decisions of the referring court relating to that determination have been taken in accordance with the applicable national procedural rules. On the contrary, the Court must abide by such decisions in so far as they have not been overturned in any appeal procedures provided for by national law (see, to that effect, judgment of 6 October 2015, *Orizzonte Salute*, C-61/14, EU:C:2015:655, paragraph 33).

55 The Court is therefore required to regard as a party to the dispute in the main proceedings every person who is determined by the referring court to be such a party, either because that person had that status before the reference for a preliminary ruling was made or because he or she acquired that status afterwards.

56 In derogation from that principle, a person may be refused the status of party to the dispute in the main proceedings, within the meaning of Article 96(1) of the Rules of Procedure, read in conjunction with Article 23 of the Statute of the Court of Justice of the European Union, where the material in the file before the Court clearly shows that that person made an application to intervene before the referring court after the request for a preliminary ruling had been made for the sole purpose of participating in the preliminary ruling procedure and does not envisage playing an active role in the national proceedings (see, to that effect, judgment of 6 October 2015, *Orizzonte Salute*, C-61/14, EU:C:2015:655, paragraphs 35 and 36).

57 In the present case, as stated in paragraph 48 of the present judgment, the referring court stated expressly, clearly and without reservation that FIFPro, FIFPro Europe and the UNFP were to be considered to be new parties to the dispute in the main proceedings, in accordance with the applicable national rules of procedure. There is, moreover, nothing in the file to indicate that the decision of the referring court on that point has been amended or withdrawn in the context of the remedies provided for by national law.

58 Furthermore, the material in that file does not manifestly reveal that the three associations in question submitted their application to intervene before the referring court solely in order to participate in the preliminary ruling proceedings and that they did not envisage playing an active role in the national proceedings.

59 Accordingly, those associations had to be recognised as parties to the dispute in the main proceedings, within the meaning of Article 96 of the Rules of Procedure, and were therefore entitled to submit observations to the Court.

60 Consequently, their written observations did not have to be declared inadmissible.

IV. Admissibility

61 FIFA, the URBSFA and the Greek, French and Hungarian Governments question the admissibility of the request for a preliminary ruling or, at the very least, of certain aspects of the question referred to the Court.

62 The arguments which they put forward in that respect are, in essence, of three types. First, according to the Greek and French Governments and also the URBSFA, the content of the order for reference does not comply with the requirements set out in Article 94 of the Rules of Procedure, in that the order for reference does not state in sufficient detail the legal and factual context in which the referring court is making a reference to the Court and the reasons why it considers it necessary to refer a question for a preliminary ruling on the interpretation of Article 45 or 101 TFEU in order to be in a position to rule on the dispute in the main proceedings. Second, FIFA and the URBSFA maintain that the request for a preliminary ruling is hypothetical and abstract, in so far as there is no actual dispute the determination of which might make it necessary for the Court to give an interpretative decision. Such a situation arises from the fact that the RSTP rules governing contracts and transfers have, ultimately, not had any adverse

effect on BZ and, furthermore, from the fact that the dispute in the main proceedings was artificially constructed by BZ, who never had any intention of joining Sporting du Pays de Charleroi. Third, according to the French and Hungarian Governments and also FIFA and the URBSFA, the dispute in the main proceedings lack any cross-border dimension for the purposes of the FEU Treaty and are even, according to FIFA and the URBSFA, 'external' in nature, and cannot therefore come within the scope of Article 45 TFEU. In fact, the restriction on the freedom of movement of workers of which BZ claims to have been a victim consists in a restriction on his ability to move for professional purposes between a third State (Russia), where Lokomotiv Moscow is established, and a Member State (Belgium), where Sporting du Pays de Charleroi is established.

A. The content of the order for reference

63 The preliminary reference procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them. According to settled case-law, which is now reflected in Article 94(a) and (b) of the Rules of Procedure, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for the national court to define the factual and regulatory context of the questions it is asking or, at the very least, to explain the factual hypotheses on which those questions are based. Furthermore, it is essential, as stated in Article 94(c) of the Rules of Procedure, that the request for a preliminary ruling itself contain a statement of the reasons which prompted the referring court or tribunal to enquire about the interpretation or validity of certain provisions of EU law, and the connection between those provisions and the national legislation applicable to the dispute in the main proceedings. Those requirements are of particular importance in those fields which are characterised by complex factual and legal situations, such as competition (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 59 and the case-law cited).

64 Moreover, the information provided in the order for reference must not only be such as to enable the Court to reply usefully but must also give the governments of the Member States and other interested parties an opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 60 and the case-law cited).

65 In the present case, the request for a preliminary ruling meets the requirements set out in the preceding two paragraphs of the present judgment. The order for reference states in detail the factual and legal context of the question referred to the Court. Furthermore, that order states, succinctly but clearly, the reasons of fact and of law which prompted the referring court to consider it necessary to refer that question and what in its view was the connection between Articles 45 and 101 TFEU and the dispute in the main proceedings.

66 Moreover, the tenor of the written observations submitted to the Court shows that their authors had no difficulty in understanding the factual and legal context of the referring court's question, in understanding the meaning and the scope of the underlying factual statements, in grasping the reasons why the referring court considered it necessary to refer the question and also, ultimately, in adopting a comprehensive and useful position on the matter.

B. The facts of the dispute and the relevance of the question referred to the Court

67 It is solely for the national court before which the dispute in the main proceedings has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. It follows that questions referred by national courts enjoy a presumption of relevance and that the Court may refuse to rule on those questions only where it is quite obvious that the interpretation sought bears no relation to the actual facts of the dispute in the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to those questions (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 64 and the case-law cited).

68 In the present case, the referring court's statements summarised in paragraphs 22 to 35, 39 and 41 to 44 above affirm the actual state of the dispute in the main proceedings. Moreover, those same statements show that it cannot be said that the referring court's reference to the Court on the interpretation of Articles 45 and 101 TFEU manifestly bears no relation to the actual facts of the dispute in the main proceedings or its purpose.

69 It is apparent from those statements, first, that the referring court is seised, both by way of appeal and by way of cross-appeal, of a dispute the subject matter of which is the actual and specific question whether, as held at first instance, BZ is entitled to claim compensation for the harm which he claims to have suffered by being prevented from exercising his activity as a professional footballer during the 2014/2015 season by the wrongful conduct of FIFA and the URBSFA consisting in having applied to him Article 17 of the RSTP, Article 9, paragraph 1 of those regulations and Article 8.2.7 of Annexe 3 to those regulations. The referring court states, in that regard, that in its view there are strong, specific and consistent presumptions that the existence and application of those different rules may have prevented BZ from being employed by a new professional football club following the termination of his employment contract with Lokomotiv Moscow. Second, BZ's claim and the judgment at first instance declaring it well founded in principle both rely on an interpretation and an application of Articles 45 and 101 TFEU. Third, the referring court explains that, given the subject matter of the dispute before it, it is required, in order to deliver its judgment, to rule inter alia on whether FIFA's and the URBSFA's conduct must be categorised as wrongful on the ground that it infringes Articles 45 and 101 TFEU. Fourth, the referring court held, in view of the facts submitted to it, that, contrary to FIFA's and the URBSFA's assertions, the dispute in the main proceedings cannot be considered to be artificial.

C. The cross-border dimension of the dispute in the main proceedings

70 The FEU Treaty provisions on the freedom of movement of workers, the freedom of establishment, the freedom to provide services and the free movement of capital do not apply to a situation which is confined in all respects within a single Member State, subject to certain specific situations in which the order for reference reveals the existence of specific factors which establish that the preliminary ruling on interpretation sought is necessary for the resolution of the dispute due to a link between the subject or circumstances of that dispute and Article 45, 49, 56 or 63 TFEU, in accordance with what is required by Article 94 of the Rules of Procedure (see, to that effect, judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraphs 38 and 39 and the case-law cited).

71 In the present case, the request for a preliminary ruling cannot be regarded as inadmissible in so far as it concerns the interpretation of Article 45 TFEU, on the freedom of movement of workers, on the ground that that article is unrelated to the dispute in the main proceedings given the lack of a cross-border dimension or, a fortiori, because of its 'external' nature in the sense which the URBSFA ascribes to that word.

72 In fact, the cour d'appel de Mons (Court of Appeal, Mons) states, in its order for reference, that BZ's residence and the centre of his interests are in Paris. In addition, it observes that the object of his claim is to obtain compensation for the harm which he considers he suffered during the 2014/2015 season by being prevented from moving to other Member States to pursue his professional career, in particular to Belgium, where Sporting du Pays de Charleroi had made him a conditional offer of employment. In doing so, the referring court clearly demonstrates, in its request for a preliminary ruling, the cross-border nature of the factual and legal situation that characterises the dispute in the main proceedings, in which a person living in France complains of having been impeded, following the termination of his employment contract with a professional football club established in a third State, in his proven desire to exercise his freedom to move to other Member States, in particular Belgium, as a result of the existence and the actual or potential application to him of certain rules adopted by FIFA in order to provide a framework for the status and international transfer of professional footballers.

73 It follows from the foregoing considerations that none of the arguments set out in paragraph 62 of the present judgment can be accepted and that, consequently, the request for a preliminary ruling is admissible in its entirety.

V. Consideration of the question referred

74 By its question for a preliminary ruling, the referring court asks, in essence, whether Articles 45 and 101 TFEU must be interpreted as precluding rules which were adopted by a private law association whose objectives include, inter alia, the regulation, organisation and control of football at world level and which provide:

– first, that a professional player who is party to an employment contract and is deemed to have terminated that contract without just cause, and the new club which employs him or her following that termination, are to be jointly and severally liable for payment of compensation due to the former club for which the player worked, to be determined on the basis of the various criteria listed by those rules;

– second, that, where the employment of the professional player occurs during a protected period under the employment contract which has been terminated, the new club is to incur a sporting sanction consisting in a ban on registering new players during a specific period, unless it demonstrates that it did not induce the player to breach that contract; and

– third, that the existence of a dispute relating to that breach of contract is to prevent the national football association of which the former club is a member from issuing the ITC necessary for that player to be registered at the new club, with the consequence that the player cannot participate in football competitions for the new club.

A. Preliminary observations

75 As a preliminary point, it must be borne in mind, in the first place, that, in so far as it constitutes an economic activity, the practice of sport is subject to the provisions of EU law applicable to such an activity (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 83 and the case-law cited).

76 Only certain specific rules which were adopted solely on non-economic grounds and which relate to questions of interest solely to sport per se must be regarded as being extraneous to any economic activity. That is the case, in particular, of those on the exclusion of foreign players from the composition of teams participating in competitions between teams representing their country or the determination of ranking criteria used to select the athletes participating individually in competitions (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 84 and the case-law cited).

77 Apart from those specific rules, the rules adopted by sporting associations in order to govern paid work, the performance of services by or the establishment of professional or semi-professional players and, more broadly, those rules which, whilst not formally governing that work, that performance of services or that establishment, have a direct impact thereon, may come within the scope of Articles 45, 49 and 56 TFEU (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 85 and 86 and the case-law cited).

78 Likewise, the rules adopted by such associations and, more broadly, the conduct of those associations may come within the scope of the FEU Treaty provisions on competition law where the conditions of application of those provisions are met (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 87 and the case-law cited).

79 The rules at issue in the main proceedings, however, do not form part of those rules to which the exception referred to in paragraph 76 of the present judgment might be applied, which exception the Court has stated repeatedly must be limited to its proper objective and may not be relied upon to exclude the whole of a sporting activity from the scope of the FEU Treaty provisions on EU economic law (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 89 and the case-law cited).

80 The rules at issue in the main proceedings clearly have a direct impact on players' work. Thus, the rules referred to in paragraphs 13 to 17 of the present judgment are intended to govern the employment contracts of professional players, which define their working conditions and, indirectly, the economic activity to which that work may give rise. As for the rules referred to in paragraphs 10, 19 and 20 of the present judgment, they must be considered to have a direct impact on players' work in that they make their participation in competitions, which constitute the essential purpose of their economic activity, subject to certain conditions (see, to that effect, judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraphs 59 and 60 and the case-law cited).

81 Furthermore, since the composition of the teams constitutes one of the essential parameters of the competitions in which professional football clubs compete and those competitions give rise to an economic activity, rules such as those at issue in the main proceedings, whether they relate to the employment contracts or to the transfers of players, must also be regarded as having a direct

impact on the conditions for engaging in that economic activity and on competition between the professional football clubs engaged in that activity (see, by analogy, judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 61).

82 The rules at issue in the main proceedings therefore come within the scope of Articles 45 and 101 TFEU.

83 In the second place, since each of those two articles of the FEU Treaty has its own objective and its own specific conditions of application, since the application of the former does not preclude the application of the latter and vice versa, and since the consequences of an infringement, if established, are not the same in both cases, it is appropriate that the Court should interpret them in turn, as the referring court requests.

84 In the third and last place, the undeniable specific characteristics of sporting activity, which, whilst relating especially to amateur sport, may also be found in the pursuit of sport as an economic activity, may potentially be taken into account, along with other elements and provided that they are relevant in the application of Articles 45 and 101 TFEU, although they may be so only in the context of and in compliance with the conditions and criteria of application provided for in each of those articles (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 103 and 104 and the case-law cited).

85 In particular, when it is argued that a rule adopted by a sporting association constitutes an impediment to the freedom of movement of workers or an anticompetitive agreement, the characterisation of that rule as an obstacle or anticompetitive agreement must, at any rate, be based on a specific assessment of the content of that rule in the actual context in which it is to be implemented (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 105 and the case-law cited).

B. The question referred for a preliminary ruling in so far as it relates to Article 45 TFEU

1. Consideration of whether there is a restriction on the freedom of movement of workers

86 Article 45 TFEU, which has direct effect, precludes any measure, whether it is based on nationality or is applicable without regard to nationality, which might place EU nationals at a disadvantage when they wish to pursue an economic activity in the territory of a Member State other than their Member State of origin, by preventing or deterring them from leaving the latter (judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 136 and the case-law cited).

87 In the present case, it follows from the wording of the question submitted by the referring court and from the supporting statements that the conduct in connection with which that court asks the Court about the interpretation of Article 45 TFEU consists in the fact that FIFA adopted, and then applied to BZ, who is resident in Paris, and to the professional football clubs established in other Member States that were likely, indeed eager, to employ him following the termination of his employment contract with Lokomotiv Moscow, or, at the very least, exposed that player and those clubs to the risk that various rules of the RSTP, set out in Article 17, paragraphs 1, 2 and 4 of those regulations, in Article 9, paragraph 1 of those regulations and in Article 8.2.7 of Annexe 3 to those regulations, respectively, would be applied to them.

88 Article 17, paragraph 2 of the RSTP provides that a professional player whose employment contract has been terminated without just cause and the new club that employs him following that termination are to be jointly and severally liable for payment of compensation due to the former club for which the player worked. Article 17, paragraph 1 of the RSTP stipulates that, if no provision is made in the employment contract, that compensation is to be calculated with due consideration for the law in force in the country concerned, the specificity of sport and any other objective criteria, including, inter alia, a criterion relating to the remuneration and other benefits due to the player under the employment contract which has been terminated and/or the new employment contract, a criterion relating to the time remaining on the employment contract which has been terminated up to a maximum of five years and also a criterion relating to the fees and expenses paid or incurred by the former club, amortised over the term of the contract.

89 Next, under Article 17, paragraph 4 of the RSTP, where the player concerned is employed during a protected period under the employment contract which has been terminated, corresponding to the first two or three seasons or years covered by that contract, depending on the player's age, the new club is to incur a sporting sanction. In that regard, that provision stipulates, first, that the sporting sanction in question is to be added to the obligation to pay the compensation referred to in Article 17, paragraphs 1 and 2 of the RSTP. Second, that sporting sanction is to be applied to any new club found to be in breach of contract or found to be inducing a breach of such a contract during the protected period. Third, any new club signing an employment contract with a player who has terminated his or her former contract without just cause is to be presumed, in the absence of proof to the contrary, to have induced that player to commit that breach. Fourth, that sporting sanction is to consist of a ban on the new club registering any new players, either nationally or internationally, for two entire and consecutive registration periods.

90 Lastly, it follows, in particular, from Article 9, paragraph 1 of the RSTP and from Article 8.2.7 of Annexe 3 to those regulations that the existence of a dispute relating to a breach of contract without just cause precludes the national football association of which the former club is a member from issuing the ITC necessary for the player concerned to be registered with the new club, with the consequence that the player cannot participate in football competitions for that new club.

91 As observed, in essence, by the Advocate General in points 43 and 44 of his Opinion, that set of rules is likely to place at a disadvantage professional footballers whose residence or place of work is in their Member State of origin and who wish to exercise their economic activity for a new football club established on the territory of another Member State, by unilaterally breaching or after having unilaterally breached their employment contract with their former club, for what that club claims or might claim, wrongly or rightly, is not just cause.

92 More specifically, the – albeit supplementary – rules setting the amount of compensation payable by any player to his or her former club where the employment contract has been terminated without just cause, provided for in Article 17, paragraph 1 of the RSTP, the rule under which any new club which employs such a player is to be jointly and severally liable for payment of that compensation, set out in Article 17, paragraph 2 of those regulations, and the – albeit rebuttable – presumption of incitement to breach as well as the sanction prohibiting the registration of new players, which are applicable to the new clubs under Article 17, paragraph 4 of those regulations, are such as to deprive to a very great extent, whether actually, as in BZ's case, or at least potentially, any player in such a situation of the prospect of receiving firm and unconditional offers of employment from clubs established in other Member States, acceptance of which would cause him or her to leave his or her Member State of origin in the exercise of his

or her freedom of movement. The existence and combination of those rules have the consequence that those clubs bear significant legal risks, unpredictable and potentially very high financial risks and major sporting risks which, taken together, are clearly such as to dissuade them from signing such players.

93 The rules which prohibit, generally and automatically, subject to exceptional circumstances, the issuance of the ITCs necessary for professional players to be registered with their new clubs as long as there exists, between those players and their former clubs, a dispute involving the absence of mutual agreement regarding the early termination of the contract, as provided for in Article 9, paragraph 1 of the RSTP and Article 8.2.7 of Annexe 3 to those regulations, are such as to prevent those players from exercising their economic activity in any Member State other than their Member State of origin and therefore to negate the essence of the sporting and economic interest in their potential employment by a club established in one of those other Member States. In addition, those latter rules apply specifically in the event of a player's cross-border movement, to the exclusion of any movement within one and the same State, as is also clear from Article 1, paragraph 1 of those regulations. Thus, in the present case, it is apparent from the statements in the order for reference that Sporting du Pays de Charleroi specifically made the offer of employment addressed to BZ on 19 February 2015 conditional on the assurance that it would be able to register him and field him in Belgium, an assurance that BZ sought to obtain from FIFA and the URBSFA, but which they stated that they were unable to give him in view of the existence of a dispute between him and Lokomotiv Moscow, on which the DRC did not rule until several months later.

94 The rules at issue in the main proceedings are therefore such as to restrict the freedom of movement of workers.

2. Consideration of whether there is justification

95 Measures of non-State origin may be permitted even though they are liable to impede a freedom of movement enshrined in the FEU Treaty, if it is proved, first, that their adoption pursues a legitimate objective in the public interest which is compatible with that Treaty and which is therefore other than of a purely economic nature and, second, that they observe the principle of proportionality, which entails that they are suitable for ensuring the achievement of that objective and do not go beyond what is necessary for that purpose. As regards, more specifically, the condition relating to the suitability of such measures, it should be borne in mind that they can be held to be suitable for ensuring achievement of the aim relied on only if they genuinely reflect a concern to attain it in a consistent and systematic manner (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 251, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 141 and the case-law cited).

96 Similarly to situations involving a measure of State origin, it is for the party who introduced those measures of non-State origin to demonstrate that those two cumulative conditions are met (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 252, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 142 and the case-law cited).

97 In the present case it will therefore be for the referring court, in the final analysis, to determine whether the RSTP rules at issue in the main proceedings meet those conditions, in the light of the arguments and evidence put forward by the parties. That being the case, the Court is in a position to provide the referring court, in the light of the material on the file before it and subject to verification by that court, with the following guidance.

(a) Consideration of the pursuit of a legitimate objective in the public interest

98 FIFA, joined by the URBSFA, claims that the RSTP rules at issue in the main proceedings pursue a number of objectives consisting, first, in maintaining contractual stability and the stability of professional football club teams; second, in preserving, more broadly, the integrity, regularity and proper conduct of interclub football sporting competitions; and, third, in protecting workers such as professional footballers. It maintains that those various objectives are all legitimate in the light of the public interest.

99 In that regard, in the first place, as regards the protection of workers, it should be observed, first, that the protection of workers is not among the objectives of FIFA, as defined in its Statutes and, second, nor was that private law association entrusted by the public authorities with any particular mission in that area. That being so, there is no need to rule on whether, having regard to those circumstances, such an association is or is not entitled to rely on the pursuit of such an objective, since it is sufficient, in the present case, to state, in any event, that it is not apparent how the adoption or the implementation of the RSTP rules at issue in the main proceedings, as characterised in paragraph 74 of the present judgment, might contribute to the protection of professional footballers.

100 In the second place, having regard to the objectives which FIFA sets for itself, as specified in Article 2 of its Statutes and referred to in paragraph 3 of the present judgment, it should be observed, first of all, that the objective consisting in ensuring the regularity of sporting competitions is a legitimate objective in the public interest that may be pursued by a sporting association, for example by adopting rules setting deadlines for transfers of players in order to avoid late transfers that might substantially change the sporting strength of one or other team in the course of a competition and thereby call into question the comparability of results between the teams taking part in that competition and thus the proper conduct of that competition as a whole (see, to that effect, judgment of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraphs 53 and 54).

101 Next, that objective is of particular importance in the case of football, in view of the essential role afforded to sporting merit in the conduct of competitions organised at both European and national level. That essential role can be guaranteed only if all the numerous teams taking part face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 143 and the case-law cited).

102 Lastly, since the composition of the teams constitutes one of the essential parameters of the competitions in which clubs compete (judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 61), that objective is capable of justifying the adoption not only of rules on, inter alia, time limits for transfers of players during a competition, referred to in paragraph 100 of the present judgment, but also, in principle and without prejudice to their actual content, of rules intended to ensure the maintenance of a certain degree of stability in clubs' player rosters, which serve as a pool for the composition of the teams that are likely to be

fielded by those clubs in interclub football competitions. Maintaining a certain degree of stability in those player rosters, and therefore a certain continuity in the related contracts, must thus be regarded not as constituting in itself a legitimate objective in the public interest, but as one of the means capable of contributing to the pursuit of the legitimate objective in the public interest consisting in ensuring the regularity of interclub football competitions.

(b) Consideration of the observance of the principle of proportionality

103 As follows from the preceding paragraph of the present judgment and as observed by the Advocate General in point 65 of his Opinion, the rules of the RSTP at issue in the main proceedings, as characterised in paragraph 74 of the present judgment and referred to in paragraphs 87 to 90 above, may all be considered, prima facie and subject to the verifications to be carried out by the referring court, to be suitable for ensuring the achievement of the objective of ensuring the regularity of interclub football competitions, contributing, each in its own way, to maintaining a certain degree of stability in the player rosters of all the professional football clubs which are likely to participate in those competitions.

104 On the other hand, subject to the verifications to be carried out by the referring court, those different rules seem, in a number of aspects, to go beyond, indeed, in some cases, far beyond, what is necessary to achieve that objective, a fortiori because they are intended to apply, to a large extent, in combination and, for some of them, for a significant period of time, to players whose careers, moreover, are relatively short, a situation that may well seriously hamper the development of their careers, and indeed cause some players to end their careers prematurely.

105 In the first place, that is the case of Article 17, paragraph 1 of the RSTP, in that it sets the various criteria for the calculation of the compensation payable by the player where the unilateral breach of the employment contract takes place 'without just cause', an expression which, moreover, is not precisely defined in the regulations themselves.

106 In particular, the first criterion, which consists, in essence, in the possibility that 'the law of the country concerned' will be taken into account, does not guarantee actual observance of that law. On the contrary, the official Commentary on the RSTP published by FIFA states that in reality the first criterion has virtually never been applied in practice, as the DRC essentially applies the regulations laid down by FIFA itself and, purely subsidiarily, Swiss law. Such a failure to actually take into account and therefore to actually comply with the law in force in the country concerned clearly goes beyond what may be necessary in order to maintain a certain degree of stability in clubs' player rosters with a view to ensuring the regularity of interclub football competitions. As for the second criterion expressly provided for in that rule, relating to the 'specificity of sport', it refers to a general concept, but without also providing a precise definition that would make it possible to understand on which basis and according to which detailed rules that criterion might be called upon to influence the calculation of the compensation payable by the player, with the consequence that, although that criterion is presented as an 'objective criterion', it lends itself, in reality, to an application which is discretionary and therefore unpredictable and difficult to verify. The imposition of a criterion having such characteristics and giving rise to such consequences cannot be regarded as necessary in order to ensure the regularity of interclub football competitions.

107 The other criteria expressly provided for in that rule, while being prima facie more objective and more readily verifiable than the preceding criteria, nevertheless also appear to go very significantly beyond what is necessary for that purpose. First, the remuneration and other benefits due to the

player concerned under the employment contract subsequently concluded by him or her with another club concern an employment relationship subsequent to the one which has been terminated, and those elements must therefore be held to be unrelated to the latter employment relationship and its costs (see, by analogy, judgment of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 50). Furthermore, as regards all the costs and expenditure borne by the former club when the player was transferred to it, amortised over the term of the contract, it must be observed that, irrespective of the fact that that element relates essentially to a previous contractual employment relationship, its being taken into account seems to be particularly excessive, since it is likely to enable what are potentially considerable charges which were prima face negotiated exclusively by other persons in their own interest, like the clubs parties to the transfer or the third parties who were involved in that context, to be passed on to the player. It must be stated, moreover, that such criteria for compensation seem to be intended to preserve the financial interests of the clubs in the economic context specific to transfers of players between them more than to ensure what is alleged to be the proper conduct of sporting competitions, as attested, moreover, by the way in which those criteria are interpreted and applied by the DRC and the CAS, as is apparent from certain decisions of those bodies that appear in the file before the Court.

108 In the second place, that also holds true prima facie for Article 17, paragraph 2 of the RSTP in that it provides, as a matter of principle and therefore without taking account, in accordance with the principle of proportionality, of the particular circumstances of each case (see, to that effect, judgment of 4 October 2018, *Link Logistik N&N*, C-384/17, EU:C:2018:810, paragraph 45), in particular of the actual conduct of the new club which signs that player, that that club is to be jointly and severally liable for payment of the compensation payable by that player to his or her former club in the event of the unilateral breach of the contract without just case, such compensation, moreover, being determined by reference to criteria with the shortcomings highlighted in paragraphs 106 and 107 of the present judgment. Furthermore, while it must be acknowledged that FIFA maintained that that provision is not applied systematically and, in particular, is not to be applied when the new contract of a player who has terminated his or her earlier contract without just cause is signed after the date of expiry of the earlier contract, the fact nonetheless remains that, even if that situation were proven to be true, Article 17, paragraph 2 of the RSTP does not make provision for such non-application and therefore does not ensure the necessary legal certainty in that respect.

109 In the third place, that also holds true for Article 17, paragraph 4 of the RSTP in that it provides that, in addition to being jointly and severally liable for payment of such compensation, the new club is to be presumed, in the absence of proof to the contrary, to have induced that player to breach his or her contract without just cause and, where the player is signed during the protected period under the contract with his or her former club, the new club is for that reason to incur a sporting sanction consisting in a general ban on registering new players during two entire and consecutive registration periods.

110 Such a sporting sanction, which the bodies competent to apply it do not have the power to adapt on a case-by-case basis according to specific criteria or circumstances, appears, in the light of its nature and its consequences, manifestly to bear no relation of proportionality to the breach attributed to the new club concerned. That breach is, moreover, attributed to the new club on the basis of an assumption for which there does not appear to be any justification. Admittedly, FIFA maintained that the existence of that presumption was explained by the difficulties with which a player's former club might be faced if it were required to prove that the player's new club induced him or her to terminate his or her contract with the former club early without just cause.

However, it must be stated that, although such an argument is, prima facie, capable of justifying, in principle, recourse to a presumption, it nevertheless does not justify the presumption at issue in the present case, which is to be applied automatically, that is to say, without being dependent on any condition that would allow the relevant circumstances of the case to be taken into account, even to a limited extent, such as the condition requiring, for example, at the very least, that the former club be asked to provide sufficient evidence to support a finding that the new club induced the player to breach his or her contract.

111 Furthermore, while it is permissible for an association such as FIFA to provide for sanctions to be imposed in the event of a breach of the rules which it adopts, provided that those rules and the sanctions intended to ensure compliance therewith are justified by the pursuit of a legitimate objective in the public interest, such sanctions can be accepted only on condition that they are determined within a framework of criteria that are transparent, objective, non-discriminatory and proportionate (see, to that effect, judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 257), the last requirement entailing, inter alia, that the particular circumstances of the case are taken into account when the amount and the duration of the sanctions are fixed, as follows from the case-law cited in paragraph 108 of the present judgment. Such sanctions must, moreover, be capable of being the subject of effective review.

112 In the fourth and last place, that also holds true for Article 8.2.7 of Annexe 3 to the RSTP in that it prohibits the former association, generally and automatically, subject to exceptional circumstances, from issuing an ITC if the former club and the player are in a contractual dispute involving the absence of mutual agreement regarding the early termination of the employment contract. Such a provision, the application of which may result in the player concerned being prevented from exercising his or her professional activity and the new club being prevented from fielding that player for the sole reason that there exists between the player and his or her former club a dispute relating to a breach of contract that may be without just cause, manifestly infringes the principle of proportionality, particularly in so far as its application fails to have regard to the specific circumstances of each case, in particular the factual context in which the breach of contract occurred, the conduct of the player concerned and that of his or her former club and also the role, or lack of role, played by the new club, which ultimately bears the burden of the ban on registering the player and fielding him or her in competitions.

113 Hence, the prohibition at issue cannot be justified by what is alleged to be the wish to ensure the proper conduct of sporting competitions. That conclusion, moreover, is not called into question by FIFA's argument that, where an application to register a player is submitted by the new national football association to which the player belongs or where an application is submitted by a player, FIFA's services immediately and automatically register that player on a provisional basis. The provision in question makes no reference to such provisional registration and, a fortiori, does not make such registration compulsory.

3. Conclusion

114 In the light of all of the foregoing considerations, the answer to the question referred for a preliminary ruling, in so far as it relates to the interpretation of Article 45 TFEU, is that that article must be interpreted as precluding rules which have been adopted by a private law association whose objectives include, inter alia, the regulation, organisation and control of football at world level, and which provide:

– first, that a professional player who is party to an employment contract and is deemed to have terminated that contract without just cause, and the new club which employs him or her following that termination, are to be jointly and severally liable for payment of compensation due to the former club for which the player worked, to be determined on the basis of criteria which are sometimes imprecise or discretionary, sometimes lacking in any objective connection with the employment relationship concerned and sometimes disproportionate;

– second, that, where the employment of the professional player occurs during a protected period under the employment contract which has been terminated, the new club is to incur a sporting sanction consisting in a ban on registering new players during a specific period, unless it demonstrates that it did not induce the player to breach that contract; and

– third, that the existence of a dispute relating to that breach of contract is to prevent the national football association of which the former club is a member from issuing the ITC necessary for that player to be registered at the new club, with the consequence that the player cannot participate in football competitions for the new club;

unless it is established that those rules, as interpreted and applied on the territory of the European Union, do not go beyond what is necessary for the pursuit of the objective consisting in ensuring the regularity of interclub football competitions, while maintaining a certain degree of stability in the player rosters of the professional football clubs.

C. The question referred for a preliminary ruling in so far as it relates to the interpretation of Article 101 TFEU

1. Consideration of Article 101(1) TFEU

115 Article 101(1) TFEU prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.

116 The Court has consistently held that the application of that provision in a particular case requires that a set of conditions be satisfied.

(a) Consideration of the concepts of 'undertakings' and 'associations of undertakings'

117 Article 101(1) TFEU applies not only to any entity engaged in an economic activity that must, as such, be categorised as an 'undertaking', irrespective of its legal form and the way in which it is financed, including entitles that are established in the form of associations which, according to

their statutes, have as their purpose the organisation and control of a given sport, in so far as those entities exercise an economic activity in relation to that sport, but also to entities which, although not necessarily constituting undertakings themselves, may be categorised as 'associations of undertakings' (judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraphs 76 to 78 and the case-law cited).

118 In the present case, given the subject matter of the main proceedings and the referring court's statements, the Court finds that Article 101(1) TFEU applies to FIFA in its capacity as an association having as members national football associations which can themselves be categorised as 'undertakings' inasmuch as they carry on an economic activity related to the organisation and marketing of interclub football competitions at national level and the exploitation of the rights related thereto, or themselves have, as members or affiliates, entities which, like football clubs, may be categorised as such (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 115, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 79).

(b) Consideration of the concept of 'decision by an association of undertakings'

119 The application of Article 101(1) TFEU in a situation involving entities such as FIFA entails proving the existence of an 'agreement', 'concerted practice' or '[decision by an association] of undertakings', which themselves may be of different kinds and present in different forms. In particular, a decision of an association consisting in adopting or implementing rules having a direct impact on the conditions in which the economic activity is exercised by undertakings which are directly or indirectly members thereof may constitute such a '[decision by an association] of undertakings' within the meaning of that provision (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 118 and the case-law cited).

120 In the present case, as follows from the statements provided in the order for reference and from paragraph 81 of the present judgment, it is with regard to those kinds of decisions that the referring court questions the Court about the interpretation of Article 101(1) TFEU, namely those consisting, for FIFA, in having adopted and implemented or being capable of implementing a set of rules relating to the employment contracts and transfers of players.

121 Such decisions by associations of undertakings therefore come under Article 101(1) TFEU.

(c) Consideration of the concept of 'effect on trade between Member States'

122 The application of Article 101(1) TFEU in a situation involving such decisions of associations of undertakings entails establishing, with a sufficient degree of probability, that they are 'capable of having an appreciable effect on trade between Member States', by having an influence, direct or indirect, actual or potential, on the pattern of trade, at the risk of hindering the attainment or the functioning of the internal market; that condition may be considered fulfilled in the case of conduct that covers the entire territory of a Member State (judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 43 and the case-law cited).

123 In the present case, that condition is clearly fulfilled, having regard to the fact that, as stated in Article 1, paragraph 1 of the RSTP, the geographic scope of the rules established by those regulations is 'global'.

(d) Consideration of the concept of conduct having as its 'object' or 'effect' the restriction of competition

124 In order to find, in a given case, that an agreement, decision by an association of undertakings or a concerted practice is caught by the prohibition laid down in Article 101(1) TFEU, it is necessary to demonstrate, in accordance with the very wording of that provision, either that that conduct has as its object the prevention, restriction or distortion of competition, or that that conduct has such an effect (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 158 and the case-law cited).

125 To that end, it is appropriate to begin by examining the object of the conduct in question. If, at the end of that examination, that conduct proves to have an anticompetitive object, it is not necessary to examine its effect on competition. Thus, it is only if that conduct is found not to have an anticompetitive object that it will be necessary, in a second stage, to examine its effect (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 159 and the case-law cited).

126 According to the settled case-law of the Court, the concept of anticompetitive 'object', whilst not an exception in relation to the concept of anticompetitive 'effect', must nevertheless be interpreted strictly (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 161 and the case-law cited).

127 Thus, that concept must be interpreted as referring solely to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects. Indeed, certain types of coordination between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 162 and the case-law cited).

128 That is the case, inter alia, of certain types of horizontal agreements other than cartels, such as those leading to competing undertakings being excluded from the market, or certain types of decisions by associations of undertakings (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 164 and the case-law cited).

129 As is apparent from Article 101(1)(a) and (c) TFEU, which refers, in particular, to the fixing of 'purchase or selling prices' or the sharing of 'markets or sources of supply', such cartels, such horizontal agreements and such decisions by associations of undertakings may concern not only the goods or services marketed by the undertakings concerned, and therefore supply, but also the resources of any kind which the undertakings need to produce those goods or services, and therefore demand. The collusive behaviour of those undertakings may thus consist, for example, in sharing suppliers, using their collective market power to fix the price at which they will purchase their inputs or, as the Court has observed previously, limiting or controlling the essential parameter of competition consisting, in certain sectors or on certain markets, in the recruitment of highly skilled workers, such as players who have already been trained in the professional football sector (see, to that effect, judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraphs 107, 109 and 110).

130 In order to determine, in a given case, whether an agreement, a decision by an association of undertakings or a concerted practice reveals, by its very nature, a sufficient degree of harm to competition that it may be considered as having as its object the prevention, restriction or

distortion thereof, it is necessary to examine, first, the content of the agreement, decision or practice in question; second, the economic and legal context of which it forms a part; and, third, its objectives (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 165 and the case-law cited).

131 In that regard, first of all, in the economic and legal context of which the conduct in question forms a part, it is necessary to take into consideration the nature of the products or services concerned, as well as the real conditions of the structure and functioning of the sector(s) or market(s) in question. It is not, however, necessary to examine nor, a fortiori, to prove the effects of that conduct on competition, be they actual or potential, or negative or positive (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 166 and the case-law cited, and of 27 June 2024, *Commission* v *Servier and Others*, C-176/19 P, EU:C:2024:549, paragraphs 288 and 453).

132 Next, as regards the objectives pursued by the conduct in question, a determination must be made of the objective aims which that conduct seeks to achieve from a competition standpoint. Nevertheless, the fact that the undertakings involved acted without having a subjective intention to prevent, restrict or distort competition and the fact that they pursued certain legitimate objectives are not decisive for the purposes of the application of Article 101(1) TFEU (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 167 and the case-law cited).

133 Lastly, the taking into consideration of all of the aspects referred to in the three preceding paragraphs of the present judgment must, at any rate, show the precise reasons why the conduct in question reveals a sufficient degree of harm to competition such as to justify a finding that it has as its object the prevention, restriction or distortion of competition (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 168 and the case-law cited).

134 In the present case, as regards, in the first place, the content of the RSTP rules at issue in the main proceedings, it follows from paragraphs 87 to 90 of the present judgment that those various rules, which present as an indivisible whole and must therefore be construed as such, provide, first of all, that every footballer, and therefore, in particular, every footballer employed in the European Union, who terminates the employment contract with his or her former club, at any time whatsoever during the term of that contract, is to be required, if FIFA subsequently decides that that contract was terminated without just cause, to pay compensation to that former club, the amount of which is to be calculated, in the absence of contractual terms on the matter, by reference to a set of criteria.

135 It must be borne in mind, in that regard, that the first of those criteria, relating to the 'law of the country concerned', has thus far in practice been virtually ignored, as observed in paragraph 106 of the present judgment, and that the second of those criteria, relating to the 'specificity of sport', is couched, as also stated in paragraph 106, in extremely general and imprecise terms that lend themselves to being implemented in a manner that is discretionary and therefore unpredictable and difficult to verify. As for the other criteria, they appear, at first sight, to allow compensation to be fixed at an extremely high and deterrent amount, as stated in paragraph 107 of the present judgment. By contrast, Article 4 of the loi du 24 février 1978 relative au contrat de travail du sportif rémunéré (Law of 24 February 1978 on the employment contract of remunerated athletes) (*Moniteur belge*, 9 March 1978, p. 2606), referred to by BZ in his written observations, seems to provide, subject to verification by the referring court, that in a comparable situation,

but one coming under Belgian domestic law, the amount of compensation is to correspond solely to the remuneration remaining due to the end of the employment contract which has been terminated and is not therefore to involve aspects unrelated to the employment relationship arising from that contract, similar to those referred to in the same paragraph.

136 Next, any player against whom his or her former club initiates proceedings before the DRC seeking an order for payment of the compensation in question, alleging that the employment contract between them was terminated without just cause, is automatically, for that reason alone and subject to exceptional circumstances which are within FIFA's sole discretion, deprived of the possibility of getting the ITC issued which, in the event of a transfer to a new club established in a Member State other than that in which his or her former club is established, is a condition of being registered with that new club and with the national football association to which that club is affiliated. Consequently, in such a situation, that player is deprived of any possibility of participating in organised football, as follows from Article 5, paragraph 1 and Article 9, paragraph 1 of the RSTP.

137 Lastly, any new club employing such a player would, for that reason alone, first, be held jointly and severally liable for payment of the compensation which that player has been or might be ordered to pay; second, be presumed, in the absence of proof to the contrary, to have induced that player to breach the employment contract with his or her former club; and, third, where the breach of contract occurred during the protected period under that contract, be given, in application of that presumption, and without the particular circumstances of each case being taken into account, a general ban on registering any new player at national or international level for two entire and consecutive registration periods.

138 As observed, in essence, by the Advocate General in points 52 to 55 of his Opinion, it is clear on a combined reading of the rules of the RSTP at issue in the main proceedings, first, that they are such as to constitute a generalised and drastic restriction, from a substantive viewpoint, of the competition which, in their absence, could pit any professional football club established in a Member State against any other professional football club established in another Member State as regards the recruitment of players already employed by a given club, its being noted that such players constitute, in numerical terms, the essential part of the population of players who are already trained or undergoing training who might be the subject of such cross-border recruitment at a given time, even though there are also, at any time, a certain number of players who are no longer under contract for one reason or another. As observed in paragraphs 81 and 129 of the present judgment, the possibility of recruiting such players is an essential parameter of competition in the interclub professional football sector.

139 Indeed, unless the consent of the former club is obtained in the context of a negotiated transfer, the mere fact of employing such a player exposes the new club to the risk of being held jointly and severally liable for payment of a potentially very large amount of compensation. In addition, the amount of that compensation is highly unpredictable for the new club, given the nature of the criteria by reference to which it is calculated. Furthermore, as long as there is a dispute between the player concerned and his or her former club concerning the early termination of the employment contract by which they were bound, and therefore as long as the ITC relating to that employment has not been issued, the player concerned cannot either be registered with the new club or participate on its behalf in any competition coming within the competence of FIFA, the national football associations which are members of FIFA or the continental confederations, such as UEFA, which it recognises. Lastly, in addition to those various factors is the risk for the new club, where the player is recruited during the protected period under the contract between

the player and his or her former club, and where the new club does not succeed in rebutting the presumption that it induced the breach of contract, that the recruitment of the player will result in a sporting sanction being applied to it. As observed above, that sporting sanction consists in the new club being automatically banned from registering any new player during two entire and consecutive registration periods. That sporting sanction prevents it, in practice, from fielding in a match any other new player whom it might wish to recruit, a situation which effectively renders such recruitment pointless.

140 Furthermore, that generalised and drastic restriction of cross-border competition between clubs in the form of the unilateral recruitment of players who are already employed, and therefore of access by clubs to the essence of the 'resources' represented by players, extends, from a geographic viewpoint, to the entire territory of the European Union and, from a temporal viewpoint, is permanent, in that it covers the entire duration of each of the employment contracts which a player may conclude successively with one club, then, in the event of a negotiated transfer to another club, with the latter club, as is also apparent from Article 13 of the RSTP.

141 Having regard to all of those characteristics, that restriction thus ensures, in practice, that each club is certain, or virtually certain, that it will be able to keep its own players for as long as the contract or succession of contracts concluded with them has not reached its term or, before it does so, as long as it does not decide to part with them in the context of a termination accepted by the player or a negotiated transfer of the player to another club, in return for payment of a transfer fee by the latter club.

142 As regards, in the second place, the economic and legal context surrounding the RSTP rules at issue in the main proceedings, it should be borne in mind, first of all, that, given the specific nature of the 'products' which sporting competitions constitute from an economic point of view, associations which are responsible for a sporting discipline are generally able to adopt, implement and ensure compliance with rules relating, inter alia, to the organisation and proper conduct of competitions in that discipline and the participation of athletes therein (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 142, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 103 and the case-law cited).

143 As regards, more specifically, football and the economic activities to which the exercise of that sport gives rise, it is legitimate for an association such as FIFA to subject the organisation and conduct of international competitions to common rules intended to guarantee the homogeneity and coordination of those competitions within an overall annual or seasonal calendar as well as, more broadly, to promote, in a suitable and effective manner, the holding of sporting competitions based on equal opportunities and merit. In particular, it is legitimate for such an association to regulate, by means of such common rules, the conditions in which professional football clubs can put together teams participating in such competitions and the conditions in which the players themselves may take part in them. Lastly, it is legitimate to ensure effective compliance with those common rules by means of rules allowing sanctions to be imposed (see, to that effect, judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 144 to 146, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 104).

144 In that context, since the annual or seasonal conduct of interclub professional football competitions is based, in the European Union, on matches between and gradual elimination of the participating teams and since it is therefore essentially based on sporting merit, which can be

guaranteed only if all the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity (see, to that effect, judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 143, and of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 105), it may be legitimate for an association such as FIFA to seek to ensure, to a certain extent, the stability of the composition of the player rosters that serve as a pool for the teams which are put together by those clubs during a given season – for example by proscribing, as Article 16 of the RSTP does, the unilateral termination of employment contracts during the season – or during a given year.

145 However, the specificity of football and the actual conditions of the functioning of the market constituted, from an economic standpoint, by the organisation and marketing of interclub professional football competitions, cannot mean that it must be accepted that any possibility for clubs to engage in cross-border competition by unilaterally recruiting players already employed by a club established in another Member State or players whose employment contract with such a club has allegedly been terminated without just cause should be restricted in a generalised, drastic and permanent manner, or even prevented, throughout the territory of the European Union. Under the guise of preventing aggressive recruitment practices, those rules correspond, in fact, to no-poaching agreements between clubs which, in essence, lead to the artificial partitioning of national and local markets, to the advantage of the clubs as a whole. In that regard, it should be emphasised that the classic mechanisms of contract law, such as the right for the club to receive compensation in the event of a breach of contract by one of its players, at the instigation of another club where that is the case, in breach of the terms of that contract, are sufficient to ensure, on the one hand, the ongoing presence of that player in the first club mentioned, in accordance with those terms, and, on the other, the normal application between clubs of market rules, which allow them, on expiry of the normal term of the contract, or earlier if a financial agreement is concluded between clubs, to recruit the player in question.

146 Ultimately, such rules, even if they are presented as being intended to prevent player-poaching practices by clubs with greater financial means, can be treated as being equivalent to a general, absolute and permanent ban on the unilateral recruitment of players who are already employed, imposed by decision of an association of undertakings on all the undertakings, consisting of the professional football clubs, and borne by all the workers, consisting of the players. They thus perpetuate the sharing of those resources between those clubs, subject to transfers negotiated between them. On that basis, they constitute a manifest restriction of the competition in which those clubs would be able to engage in their absence, resulting in the partitioning of the market to the advantage of those same clubs as a whole.

147 As regards, in the third and last place, the objective aim which the rules at issue in the main proceedings seek to attain from a competition standpoint, it follows from the preceding considerations that, irrespective of the subjective intention or the legitimate objectives that may have inspired or have been pursued by the entity which adopted them, those rules must be considered to be intended to ensure that, apart from the case of players whose employment contracts were terminated for just cause or terminated by common agreement with their former club, it becomes extremely difficult, having regard to the legal, financial and sporting risks which that would entail, for professional football clubs to compete for access to the essential resources which players already under contract are, by unilaterally recruiting a player employed by another club or a player whose contract is alleged to have been terminated unilaterally without just cause, as such recruitment can take place only through a transfer negotiated between the former club and the new club.

148 Thus, the examination of the content of the rules at issue in the main proceedings, of the economic and legal context of which they form part and of the objective aims which they seek to attain reveals that those rules present, by their very nature, a high degree of harm to the competition in which professional football clubs could engage by unilaterally recruiting players who are already employed by a club or players whose employment contract is alleged to have been terminated without just cause, therefore by seeking to have access to the resources essential for their success that those highly trained players are. In those circumstances, those rules must be considered to have as their object the restriction, indeed the prevention, of that competition, throughout the territory of the European Union. There is accordingly no need to examine their effects.

(e) Consideration of the possibility of finding certain specific conduct not to come within the scope of Article 101(1) TFEU

149 According to the settled case-law of the Court, not every agreement between undertakings or decision by an association of undertakings which restricts the freedom of action of the undertakings party to that agreement or subject to compliance with that decision necessarily falls within the prohibition laid down in Article 101(1) TFEU. Indeed, the examination of the economic and legal context of which certain of those agreements and certain of those decisions form a part may lead to a finding, first, that they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive in nature; second, that the specific means used to pursue those objectives are genuinely necessary for that purpose; and, third, that, even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 183 and the case-law cited, and of 25 January 2024, *Em akaunt BG*, C-438/22, EU:C:2024:71, paragraph 30).

150 However, that case-law does not apply in situations involving conduct which, far from merely having the inherent 'effect' of restricting competition, at least potentially, by limiting the freedom of action of certain undertakings, reveals a degree of harm that justifies a finding that it has as its very 'object' the prevention, restriction or distortion of competition (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 186, and of 25 January 2024, *Em akaunt BG*, C-438/22, EU:C:2024:71, paragraph 32). The degree of harm of that conduct in relation to competition, and therefore the direct or indirect harm to users and to intermediate or end consumers in the various sectors or markets concerned, is too great for it to be regarded as justified and proportionate.

151 As regards conduct having as its object the prevention, restriction or distortion of competition, it is thus only if Article 101(3) TFEU applies and all of the conditions provided for in that provision are observed that it may be granted the benefit of an exemption from the prohibition laid down in Article 101(1) TFEU (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 187, and of 25 January 2024, *Em akaunt BG*, C-438/22, EU:C:2024:71, paragraph 33).

152 In the present case, having regard to the considerations set out in paragraphs 134 to 148 of the present judgment, the Court finds that the case-law referred to in paragraph 149 of the present judgment is not applicable in a situation involving rules such as those at issue in the main proceedings.

2. Consideration of Article 101(3) TFEU

153 It follows from the very wording of Article 101(3) TFEU that any agreement, decision by associations of undertakings or concerted practice which proves to be contrary to Article 101(1) TFEU, whether by reason of its anticompetitive object or effect, may be exempted if it satisfies all of the conditions laid down for that purpose, it being noted that those conditions are more stringent than those referred to in paragraph 149 of the present judgment (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 189 and the case-law cited).

154 Under Article 101(3) TFEU, that exemption in a given case is subject to four cumulative conditions. First, it must be demonstrated with a sufficient degree of probability that the agreement, decision by an association of undertakings or concerted practice in question makes it possible to achieve efficiency gains, by contributing either to improving the production or distribution of the products or services concerned, or to promoting technical or economic progress. Second, it must be demonstrated, to the same degree of probability, that an equitable part of the profit resulting from those efficiency gains is reserved for the users. Third, the agreement, decision or practice in question must not impose on the participating undertakings restrictions which are not indispensable for achieving such efficiency gains. Fourth, that agreement, decision or practice must not give the participating undertakings the opportunity to eliminate all effective competition for a substantial part of the products or services concerned (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 190 and the case-law cited).

155 Non-observance of one of those four cumulative conditions suffices to rule out the possibility that the conduct at issue may come within the exemption provided for in Article 101(3) TFEU (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 208).

156 In that respect, as regards the third condition, to the effect that the conduct at issue must be indispensable or necessary, it involves an assessment and comparison of the respective impact of that conduct and of the alternative measures which might genuinely be envisaged, with a view to determining whether the efficiency gains expected from that conduct may be attained by measures which are less restrictive of competition. It may not, however, lead to a choice based on their respective desirability being made as between such conduct and such alternative measures in the event that the latter do not seem to be less restrictive of competition (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 197).

157 In order to determine whether that third condition is observed in this instance, the referring court will have to take into consideration, first, the fact, referred to in paragraphs 105 to 112 of the present judgment, that the RSTP rules at issue in the main proceedings are characterised by a combination of factors, a significant number of which are discretionary and/or disproportionate. In addition, it will have to take account of the fact, referred to in paragraphs 138 to 140, 145 and 146 of the present judgment, that those rules provide for a generalised, drastic and permanent restriction of the cross-border competition in which professional football clubs could engage by unilaterally recruiting highly trained players. Each of those two circumstances, taken on its own, prima facie precludes those rules from being considered indispensable or necessary to enable efficiency gains to be made, if such gains were proven to exist.

3. Conclusion

158 In the light of the foregoing considerations, the answer to the question referred for a preliminary ruling, in so far as it concerns the interpretation of Article 101 TFEU, is that that article must be interpreted as meaning that rules which were adopted by a private law association whose objectives include, inter alia, the regulation, organisation and control of football at world level and which provide:

– first, that a professional player who is party to an employment contract and is deemed to have terminated that contract without just cause, and the new club which employs him or her following that termination, are to be jointly and severally liable for payment of compensation due to the former club for which the player worked, to be determined on the basis of criteria which are sometimes imprecise or discretionary, sometimes lacking in any objective connection with the employment relationship concerned and sometimes disproportionate;

– second, that, where the employment of the professional player occurs during a protected period under the employment contract which has been terminated, the new club is to incur a sporting sanction consisting in a ban on registering new players during a specific period, unless it demonstrates that it did not induce the player to breach that contract; and

– third, that the existence of a dispute relating to that breach of contract is to prevent the national football association of which the former club is a member from issuing the ITC necessary for that player to be registered at the new club, with the consequence that the player cannot participate in football competitions for the new club;

constitute a decision by an association of undertakings which is prohibited by paragraph 1 of that article and which cannot be exempted under paragraph 3 of that article unless it is demonstrated, through convincing arguments and evidence, that all of the conditions required for that purpose are satisfied.

Costs

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

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

1. Article 45 TFEU must be interpreted as precluding rules which have been adopted by a private law association whose objectives include, inter alia, the regulation, organisation and control of football at world level, and which provide:

– first, that a professional player who is party to an employment contract and is deemed to have terminated that contract without just cause, and the new club which employs him or her following that termination, are to be jointly and severally liable for payment of compensation due to the former club for which the player worked, to be determined on the basis of criteria which are sometimes imprecise or discretionary, sometimes lacking in any objective connection with the employment relationship concerned and sometimes disproportionate;

– **second, that, where the employment of the professional player occurs during a protected period under the employment contract which has been terminated, the new club is to incur a sporting sanction consisting in a ban on registering new players during a specific period, unless it demonstrates that it did not induce the player to breach that contract; and**

– **third, that the existence of a dispute relating to that breach of contract is to prevent the national football association of which the former club is a member from issuing the ITC necessary for that player to be registered at the new club, with the consequence that the player cannot participate in football competitions for the new club;**

unless it is established that those rules, as interpreted and applied on the territory of the European Union, do not go beyond what is necessary for the pursuit of the objective consisting in ensuring the regularity of interclub football competitions, while maintaining a certain degree of stability in the player rosters of the professional football clubs.

2. **Article 101 TFEU must be interpreted as meaning that such rules constitute a decision by an association of undertakings which is prohibited by paragraph 1 of that article and which cannot be exempted under paragraph 3 of that article unless it is demonstrated, through convincing arguments and evidence, that all of the conditions required for that purpose are satisfied.**

[Signatures]

[i] The wording of paragraph 77 of this document has been amended since it was first put online.