Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

3 February 2021 *

(Reference for a preliminary ruling – Public procurement – Public procurement procedure – Directive 2014/24/EU – Article 2(1)(4) – Contracting authority – Bodies governed by public law – Concept – National sports federation – Meeting of needs in the general interest – Supervision of the federation's management by a body governed by public law)

In Joined Cases C-155/19 and C-156/19,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decisions of 17 January 2019, received at the Court on 22 February 2019, in the proceedings

Federazione Italiana Giuoco Calcio (FIGC),

Consorzio Ge.Se.Av. S. c. arl

v

De Vellis Servizi Globali Srl,

intervening parties:

Consorzio Ge.Se.Av. S. c. arl,

Comitato Olimpico Nazionale Italiano (CONI),

Federazione Italiana Giuoco Calcio (FIGC),

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, N. Piçarra, D. Šváby (Rapporteur), S. Rodin and K. Jürimäe, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 1 July 2020,

* Language of the case: Italian.

after considering the observations submitted on behalf of:

– the Federazione Italiana Giuoco Calcio (FIGC), by L. Medugno and L. Mazzarelli, avvocati,

– Consorzio Ge.Se.Av. S. c. arl, by V. Di Martino, avvocato,

– De Vellis Servizi Globali Srl, by D. Lipani, A. Catricalà, F. Sbrana and S. Grillo, avvocati,

– the Comitato Olimpico Nazionale Italiano (CONI), by S. Fidanzia and A. Gigliola, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by D. Del Gaizo, avvocato dello Stato,

– the European Commission, by G. Gattinara, P. Ondrůšek and L. Haasbeek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 October 2020,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 2(1)(4)(a) and (c) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

2 The requests have been made in two sets of proceedings between, on the one hand, the Federazione Italiana Giuoco Calcio (Italian Football Federation; 'the FIGC') and Consorzio Ge.Se.Av. S. c. arl ('Consorzio') and, on the other, De Vellis Servizi Globali Srl concerning the award of a contract to Consorzio.

Legal context

EU law

3 Article 2(1)(4) of Directive 2014/24 provides:

'For the purposes of this Directive, the following definitions apply:

…

(4) "bodies governed by public law" means bodies that have all of the following characteristics:
(a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
(b) they have legal personality; and

(c) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law'.

Italian law

The Public Procurement Code

4 Article 3(1)(d) of decreto legislativo n. 50 – Codice dei contratti pubblici (Legislative Decree No 50 establishing the Public Procurement Code) of 18 April 2016 (GURI, ordinary supplement No 91 of 19 April 2016; 'the Public Procurement Code') provides:

'For the purposes of this Code, the following definitions apply:

…

(d) "bodies governed by public law", means bodies, even if in the legal form of a company, the non-exhaustive list of which is contained in Annex IV:
   (1) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
   (2) having legal personality; and
   (3) financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.'

Decree-Law No 220

5 Article 1 of decreto-legge n. 220 – Disposizioni urgenti in materia di giustizia sportiva (Decree-Law No 220 laying down urgent provisions concerning sports law) of 19 August 2003 (GURI No 192 of 20 August 2003), converted into law, following amendment, by Article 1 of Legge n. 208 (Law No 208) of 17 October 2003 (GURI No 243 of 18 October 2003), provides:

'1. The Italian Republic recognises and promotes the autonomy of national sports law as an expression of international sports law falling within the purview of the International Olympic Committee.

2. The relationship between sports law and Italian law is governed by the principle of autonomy, except in cases involving individual rights linked to sports law which are of relevance to the legal system of the Italian Republic.'

Legislative Decree No 242

6 Article 1 of decreto legislativo n. 242 – Riordino del Comitato olimpico nazionale italiano - CONI, a norma dell'articolo 11 della legge 15 marzo 1997, n° 59 (Legislative Decree No 242 on the reorganisation of the Italian National Olympic Committee - CONI, pursuant to Article 11 of Law No 59 of 15 March 1997) of 23 July 1999 (GURI No 176 of 29 July 1999), in the version applicable to the disputes in the main proceedings ('Legislative Decree No 242'), is worded as follows:

'1. The [Comitato Olimpico Nazionale Italiano (Italian National Olympic Committee; "the CONI")] shall have legal personality under public law, with its seat in Rome and shall be responsible to the Ministero per i Beni e le Attività Culturali (Ministry of Heritage and Cultural Activities, Italy).'

7 Article 2(1) of that legislative decree states:

'The CONI … shall comply with the principles of international sports law, in line with the decisions and guidelines issued by the International Olympic Committee ("IOC"). The CONI shall be responsible for the organisation and enhancement of national sport and, in particular, the preparation of athletes and the provision of adequate resources for the Olympic Games and for all other national or international sports events geared towards preparation for the Olympic Games. It shall also be responsible, within the framework of sports law …, for adopting measures to prevent and eliminate the use of substances that alter the natural physical performance of athletes in sports activities, as well as for promoting the practice of sports on the broadest possible scale …, within the limits laid down in the decreto del Presidente della Repubblica n. 616 (Decree of the President of the Republic No 616) of 24 July 1977. …'

8 Article 4(1) and (2) of Legislative Decree No 242 provides:

'1. The National Council shall be composed of:

(a) the President of the CONI at its head;

(b) the presidents of the national sports federations;

(c) Italian members of the IOC;

(d) athletes and coaches representing national sports federations and associated sports disciplines, provided that they have never been suspended from sports activity by way of penalty for any use of substances altering natural physical performance during sports activities;

…

2. The representatives of [national sports] federations, as defined in the context of Olympic sports, must represent the majority of voters within the CONI National Council.'

9 Article 5 of Legislative Decree No 242 provides:

'1. In accordance with the decisions and guidelines of the IOC, the National Council shall work to promote the dissemination of the Olympic spirit and regulate and coordinate national sports

activities, harmonising to that end the actions undertaken by national sports federations and national sports disciplines.

…

2. The National Council shall have as its task to:

(a) adopt the statutes and other normative measures falling within its competence, as well as guidelines on the interpretation and implementation of the rules in force;

(b) define the fundamental principles with which the statutes of national sports federations, associated sports disciplines, sports promotion bodies and sports associations and societies must be aligned in order to be recognised for sporting purposes;

(c) take decisions to recognise for sporting purposes national sports federations, sports societies and associations, sports promotion bodies, charitable organisations and other sports disciplines associated with the CONI and the federations, in accordance with the requirements laid down in the statute …;

…

(e) establish criteria and conditions governing the exercise of controls over national sports federations, associated sports disciplines and recognised sports promotion bodies;

…

(e *ter*) adopt, on a proposal from the National Board, decisions to place national sports federations or associated sports disciplines under administrative supervision in cases of serious management irregularities or serious infringements of sports law by the governing bodies, in cases of the proven inability of those bodies to function, or where the proper launch and running of national sports competitions cannot be ensured;

…’

10 Article 6(1) of that legislative decree provides:

‘The National Board shall consist of:

(a) the President of the CONI at its head;

(b) Italian members of the IOC;

(c) 10 representatives of the national sports federations and associated sports disciplines;

…’

11 Article 7 of Legislative Decree No 242 is worded as follows:

'1. The National Board shall act as a directorate-general for the administration and management of the CONI, defining its objectives and programmes and verifying that the results are consistent with the guidelines given.

2. The National Board shall carry out the following tasks:

…

(e) it exercises, on the basis of the criteria and procedures established in accordance with Article 5(2)(e), the power of control over national sports federations, associated sports disciplines and recognised sports promotion bodies with regard to the proper organisation of competitions, Olympic preparation, high-level sports activity and the use of the financial aid referred to in point (d) of this paragraph;

(f) it proposes to the National Council the placing of national sports federations or associated sports disciplines under administrative supervision in cases of serious management irregularities or serious infringements of sports law by the governing bodies, in cases of the proven inability of those bodies to function, or where the regulatory requirements are not complied with in order to ensure the launch and proper conduct of national sporting competitions;

…'

12 Article 15(1) to (6) of that legislative decree states:

'1. The national sports federations and associated sports disciplines shall pursue sports activities in accordance with the decisions and guidelines of the IOC, international federations and the CONI, and with due regard for the public dimension of certain types of activity which are set out in the CONI Statute. Sports societies and associations shall participate in those activities, as shall individual members solely in the cases provided for in the statutes of national sports federations and associated sports disciplines concerning that particular activity.

2. National sports federations and associated sports disciplines shall take the form of associations having legal personality under private law. They shall be non-profit-making and, except as otherwise expressly provided for in this Decree, shall be governed by the provisions of the Civil Code and the relevant implementing provisions.

3. The budgets of national sports federations and associated sports disciplines shall be approved annually by the administrative body of each federation and shall be subject to the approval of the CONI National Board. In the event of a negative opinion by the auditors of a federation or associated federation or in the event that a budget is not approved by the CONI National Board, an assembly of societies and associations shall be convened in order to deliberate on approving the budget.

4. The assembly competent to elect the management bodies shall approve the administrative body's indicative budgetary programmes, which shall be submitted to the assembly for scrutiny at the end of each four-year period or at the end of the mandate for which they have been approved.

5. National sports federations and associated sports disciplines shall be recognised for sporting purposes by the National Council.

6. Recognition of new national sports federations and associated sports disciplines as having legal personality under private law shall be granted in accordance with the decreto del Presidente della Repubblica n. 361 (Decree of the President of the Republic No 361) of 10 February 2000, subject to recognition for sporting purposes by the National Council.'

13 Article 16(1) of Legislative Decree No 242 provides:

'National sports federations and associated sports disciplines shall be governed by the provisions of statutes and regulations on the basis of the principle of internal democracy, the principle of sport for all on equal terms, and in accordance with national and international sports law.'

The CONI Statute

14 Article 1 of the CONI Statute states:

'1. The [CONI] shall be the confederation of national sports federations … and associated sports disciplines …

2. The CONI … shall be the authority responsible for disciplining, regulating and managing sports activities, regarded as being an essential component of the physical and mental development of the individual and an integral part of national education and culture. …'

15 Article 6 of the CONI Statute provides:

'1. The National Council, in its capacity as supreme representative body for Italian sport, shall be responsible for disseminating the Olympic ideal, ensuring that the actions necessary to prepare for the Olympic Games are taken, regulating and coordinating national sports activities and harmonising the action of national sports federations and associated sports disciplines.

…

4. The National Council shall:

…

(b) establish the fundamental principles that must govern, as a condition of acquisition of recognition for sporting purposes, the statutes of national sports federations, associated sports disciplines, sports promotion bodies, associations of recognised standing in the field of sport and sports associations and societies, and adopt the Sports Disciplinary Code, which must be observed by all national sports federations and associated sports disciplines;

(c) adjudicate on the recognition for sporting purposes of national sports federations, associated sports disciplines, sports promotion bodies and associations of recognised standing in the field of sport, in accordance with the requirements laid down in the statutes, taking into account also to that end the representation and Olympic nature of the sport in question, any recognition by the IOC and the sporting tradition of the discipline;

…

(e) establish the criteria and procedures governing the carrying out by the CONI of checks of national sports federations, associated sports disciplines and, for sports matters, recognised sports promotion bodies;

(e1) lay down, with a view to ensuring that sports championships are properly organised, the criteria and procedures governing checks by federations of [member] sports corporations and the CONI's substitute oversight function in the event of proven failure on the part of national sports federations to carry out checks;

…

(f1) decide, on a proposal from the National Board, the placing of national sports federations or associated sports disciplines under administrative supervision in cases of serious management irregularities or serious infringements of sports law by the governing bodies, in cases of the proven inability of those bodies to function, or where the launch and proper conduct of national sporting competitions cannot be ensured;

…'

16 Article 7(5) of the CONI Statute provides:

'The National Board shall:

…

(e) on the basis of the criteria and procedures established by the National Council, oversee national sports federations in matters of a public nature and, in particular, in matters concerning the proper organisation of competitions, Olympic preparations, high-level sporting activities and the use of awards of financial assistance, and lay down the criteria for granting financial assistance to federations;

…

(f) make proposals to the National Council on the placement of national sports federations or associated sports disciplines under administrative supervision in cases of serious management irregularities or serious infringements of sports law by the governing bodies, in cases of the proven inability of those bodies to function, or where national sports federations have failed to adopt regulatory procedures, or on the placement of the competent internal bodies under administrative supervision in order to ensure the proper launch and conduct of national sports competitions;

…

(g2) approve the budgets and related activity programmes, as well as the annual balance sheets of national sports federations and associated sports disciplines;

…

(h1) appoint auditors to represent the CONI in national sports federations and associated sports disciplines and on the CONI's regional committees;

…

(l) approve, for sporting purposes, the statutes, regulations implementing the statutes, sports regulations and anti-doping rules of national sports federations and associated sports disciplines, determining whether they comply with the law, the CONI Statute, fundamental principles, and the guidelines and criteria laid down by the National Council, and referring them back, where appropriate, to the national sports federations and associated sports disciplines within 90 days to enable the necessary amendments to be made;

…'

17 Article 20(4) of the CONI Statute is worded as follows:

'National sports federations shall engage in sports activities and the corresponding promotional activities in accordance with the decisions and guidelines of the IOC and the CONI and taking into account the public dimension of certain aspects of those activities. In the context of sports law, national sports federations shall enjoy technical, organisational and managerial autonomy, subject to oversight by the CONI.'

18 Under Article 21 of the CONI Statute:

'1. The CONI shall recognise national sports federations which fulfil the following conditions:

(a) the carrying out of a sporting activity, on national territory and at international level, including participation in competitions and the implementation of training programmes for athletes and coaches;

(b) membership of an international federation recognised by the IOC, where such a federation exists, and the management of the activity in accordance with the Olympic Charter and the rules of the international federation to which they belong;

(c) a statutory and regulatory regime based on the principle of internal democracy and the participation of women and men in sporting activity under conditions of equality and equal opportunities, and in compliance with IOC and CONI resolutions and guidelines;

(d) electoral procedures and the composition of management bodies in accordance with Article 16(2) of [Legislative Decree No 242].

…

3. If a recognised national sports federation fails to comply with the requirements laid down in paragraph 1 above, the CONI National Council shall decide to revoke recognition granted at the time.'

19 Article 22 of the CONI Statute provides:

'1. The statutes of the national sports federations must respect the fundamental principles laid down by the National Council and aim, in particular, to strike a constant balance between the

rights and duties of the professional and amateur sectors, including between the various categories of the same sporting area.

2. The statutes of the national sports federations shall lay down the procedures governing the exercise of the right to vote and to stand for election of athletes and trainers, in accordance with the IOC's recommendations and with the fundamental principles of the CONI National Council.

…

4. The second-level assembly, made up of representatives elected at the territorial level, is authorised in national sports federations with more than 2 000 associations and affiliated societies entitled to vote.

5. The National Board has 90 days to approve, for sporting purposes, the statutes of the national sports federations. In order to do so, it must assess their compliance with the law, the CONI Statute and the fundamental principles laid down by the CONI National Council. In the event of non-compliance and within 90 days from the date of lodgement of the statute with the Secretariat-General, the National Board shall forward that document to the federations concerned, indicating to them the criteria to be complied with, so that the necessary amendments may be made. If that period of 90 days elapses without the document having been so forwarded, the federal statute shall be deemed to have been approved. If the national sports federations do not amend their statute in the sense indicated, the National Board may appoint an ad hoc administrator and, in the most serious cases, after formal notice has been given, withdraw recognition.

5 *bis*. The statutes shall define the powers of supervision and control which may be exercised by federations in the light of the associative organisation of their structure.

…'

20 Article 23 of the CONI Statute provides:

'1. In accordance with Legislative Decree No 242, as subsequently amended and supplemented, in addition to the activities the public nature of which is expressly provided for by law, the only national sports federation activities to have a public dimension shall be those which concern the following: the admission and membership of sports societies, associations, and individuals; revocation on any ground; the amendment of admission or membership decisions; scrutiny as to the proper running of professional sports competitions and championships; the use of public subsidies; the prevention and punishment of doping; high-level activities connected with preparations for the Olympics; the training of coaches; and the use and management of public sports facilities.

1 *bis*. In pursuing the activities of a public nature to which paragraph 1 refers, national sports federations shall comply with the guidelines and controls applied by the CONI and operate in accordance with the principles of impartiality and transparency. The public nature of an activity shall not change the ordinary rules of private law to which the individual acts and related individual legal situations are subject.

1 *ter*. The National Board shall establish the criteria and procedures for ensuring that decisions taken by federations comply with the CONI's programmes in so far as concerns the

competitiveness of national teams, the safeguarding of the national sports heritage and its specific identity and the need to ensure effective internal management.

2. The National Board, acting on the basis of the criteria and procedures laid down by the National Council, shall approve national sports federation budgets and establish the financial contributions payable to them, determining, where appropriate, the purpose for which those contributions are to be used, with particular attention being paid to the promotion of youth sport, preparation for the Olympic Games and high-level sporting activities.

3. The National Board shall oversee the proper functioning of national sports federations. In the event of proven serious management irregularities or serious infringements of sports law by the governing bodies, in cases of the proven inability of those bodies to function, or where the proper launch and conduct of sports competitions cannot be ensured, the National Board shall propose that the National Council appoint an administrator.'

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

21 De Vellis Servizi Globali was invited to participate in a negotiated procedure organised by the FIGC for the award of a contract for porterage services for accompanying the national football teams and for the purposes of the FIGC store in Rome (Italy) for a period of three years. Since the contract had been awarded at the end of that procedure to Consorzio, De Vellis Servizi Globali challenged, before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), the detailed rules governing the conduct of that procedure, arguing that the FIGC ought to have been regarded as a body governed by public law within the meaning of Article 3(1)(d) of the Public Procurement Code and should, therefore, have complied with the rules on publication laid down by that code.

22 The Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) granted the application of De Vellis Servizi Globali and annulled the award of the contract to Consorzio.

23 The FIGC and Consorzio both brought an appeal against the judgment of that court before the Consiglio di Stato (Council of State, Italy). They both contest the premiss that the FIGC should be classified as a 'body governed by public law' and, therefore, the jurisdiction of the administrative courts and the granting of the application by the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio).

24 The referring court states that, in order to determine whether the Italian administrative courts have jurisdiction to adjudicate on that dispute and whether the FIGC was required to apply the rules relating to the award of public contracts, it is necessary, first, to establish whether the FIGC may be classified as a 'body governed by public law', within the meaning of Article 3(1)(d) of the Public Procurement Code, which transposes Article 2(1)(4) of Directive 2014/24.

25 In particular, the referring court asks, in the first place, whether the FIGC fulfils the condition, laid down in Article 2(1)(4)(a) of Directive 2014/24, that 'bodies governed by public law' means bodies that are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character.

26 In that regard, the referring court observes, first, that, as a national sports federation, the FIGC is a private-law entity with legal personality, which the State is content to recognise in accordance with the procedural rules for recognising legal persons governed by private law, and the public nature of certain activities carried out by the FIGC does not alter the ordinary rules of private law to which it is subject. In addition, having regard to the FIGC's ability to finance itself and in the light of the judgment of 15 January 1998, *Mannesmann Anlagenbau Austria and Others* (C-44/96, EU:C:1998:4), activities other than tasks of a public nature which are entrusted to it on the basis of an exhaustive list could be regarded as falling within its general private-law capacity irrespective of its obligation to carry out those tasks.

27 Secondly, the referring court explains that it could also be considered that that formal qualification as a matter of law is not decisive, in so far as the national sports federations subject to the supervisory powers of the CONI are required by law to pursue the public-interest aims exhaustively set out in Article 23 of the CONI Statute, to comply with the CONI's guidelines and controls, to be recognised for sporting purposes by the CONI and to observe the principles of impartiality and transparency. In those circumstances, it could be considered that any ancillary activity such as porterage services is of such a functional character in relation to the tasks of a public nature that it forms an integral part of them.

28 In the second place, the referring court, while noting that the FIGC is not covered by the first and third parts of the alternative, provided for in Article 2(1)(4)(c) of Directive 2014/24, is uncertain whether that federation fulfils the condition referred to in the second part of that alternative, according to which, in order for an entity to be classified as a 'body governed by public law', it must be subject to management supervision by a public authority such as the CONI.

29 In that regard, the referring court points out that the CONI, which is itself subject to the supervision of the Ministro per i beni e le attività culturali (Minister for Heritage and Cultural Activities), has various powers with regard to national sports federations such as the FIGC, such as the powers of recognition for sporting purposes, powers of oversight and direction of activities of a public nature and powers of approving annual balance sheets and placing under administrative supervision.

30 The referring court, however, also points out that the FIGC could be regarded as not being under the dominant influence of the CONI because the national sports federations participate in the supreme bodies of the CONI and the powers of the CONI with regard to them do not constitute the usual supervision of bodies governed by public law, since approval of annual balance sheets is limited to verifying the use of public contributions.

31 In those circumstances the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer to the Court of Justice for a preliminary ruling the following questions, which are identical in Cases C-155/19 and C-156/19:

'(1) (a) On the basis of the characteristics of national sports law, can the [FIGC] be classified as a body governed by public law in so far as it was established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character?

(b) In particular, is the requirement relating to the purpose of the body satisfied in respect of the [FIGC], even in the absence of a formal act establishing a public authority and despite its membership base, on account of its incorporation into a sector (sports) organised in accordance with models of a public-law nature and the fact that it is required to comply with the principles and rules drawn up by the [CONI] and international sporting bodies, as a result of the recognition, for sporting purposes, of the national public entity?

(c) Furthermore, can this requirement arise in relation to a sports federation such as the [FIGC], which has the ability to fund itself, in respect of an activity of no significance in the context of public law, such as that at issue in this case, or must the requirement that the application of the rules on public and open tendering be ensured in any event, where such an entity awards any type of contract to third parties, be regarded as taking precedence?

(2) (a) On the basis of the legal relationship between the CONI and the FIGC …, does the former have a dominant influence over the latter in the light of the legal powers relating to recognition of the undertaking for sporting purposes, approval of annual budgets, supervision of the management and proper functioning of the bodies, and placing the entity itself under administrative supervision?

(b) On the other hand, are those powers insufficient to meet the requirement relating to the dominant public influence of a body governed by public law on account of the significant participation of the presidents and representatives of the sports federations in the key bodies of the [CONI]?'

32 By decision of the President of the Court of 2 April 2019, Cases C-155/19 and C-156/19 were joined for the purposes of the written and oral procedures and of the judgment.

Consideration of the questions referred

The first question

33 By its first question, the referring court seeks to ascertain, in essence, whether Article 2(1)(4)(a) of Directive 2014/24 must be interpreted as meaning that an entity entrusted with tasks of a public nature exhaustively defined by national law may be regarded as having been established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, within the meaning of that provision, even though it was established not in the form of a public authority but of an association governed by private law and some of its activities, for which it enjoys a self-financing capacity, are not public in nature.

34 In that regard, it should be borne in mind that, under Article 2(1)(4)(a) to (c) of Directive 2014/24, an entity is to be classified as a 'body governed by public law' where, first, it is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, secondly, it has legal personality and, thirdly, it is financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law, or is subject to management supervision by those authorities or bodies, or has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

35 The Court has already ruled that the three conditions in Article 2(1)(4)(a) to (c) of Directive 2014/24 are cumulative, it being understood that the three criteria mentioned in the third condition are alternative in nature (see, to that effect, judgments of 12 September 2013, *IVD*, C-526/11, EU:C:2013:543, paragraph 20, and of 5 October 2017, *LitSpecMet*, C-567/15, EU:C:2017:736, paragraph 30 and the case-law cited).

36 As regards the first of those three conditions, referred to in Article 2(1)(4)(a) of Directive 2014/24, it is apparent from the case-law of the Court that the EU legislature intended to make only entities established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and whose activity meets such needs subject to the binding rules on public contracts (see, to that effect, judgment of 5 October 2017, *LitSpecMet*, C-567/15, EU:C:2017:736, paragraph 35).

37 In that respect, whether since its establishment or afterwards, the entity concerned must actually meet needs in the general interest, and the assumption of responsibility for meeting those needs must be capable of being objectively determined (see, to that effect, judgment of 12 December 2002, *Universale-Bau and Others*, C-470/99, EU:C:2002:746, paragraph 63).

38 In the present case, it is apparent from the explanations provided by the referring court that, in Italy, the activity of general interest comprised by sport is pursued by each of the national sports federations within the framework of tasks of a public nature expressly assigned to those federations by Article 15(1) of Legislative Decree No 242 and exhaustively listed in Article 23(1) of the CONI Statute.

39 In that connection, it is apparent that several of the tasks listed in Article 23(1) of the CONI Statute, such as the supervision of the proper running of competitions and championships, the prevention and punishment of doping, and Olympic and high-level preparation, are not of an industrial or commercial nature, which it is, however, for the referring court to verify. In those circumstances, if it does in fact carry out such tasks, a national sports federation fulfils the condition laid down in Article 2(1)(4)(a) of Directive 2014/24.

40 That conclusion cannot be called into question, in the first place, by the fact that the FIGC has the legal form of an association governed by private law and that it was not, therefore, established by a formal act instituting a public administration.

41 First, the wording of Article 2(1)(4) of Directive 2014/24 does not contain either a reference to the rules for establishing the entity or to its legal form. Secondly, it must be borne in mind that the concept of a 'body governed by public law' must be interpreted in functional terms independent of the formal rules for its application, with the result that, in view of that requirement, no distinction should be drawn by reference to the legal form and rules which govern the entity concerned under national law or to the legal form of the provisions establishing that entity (see, to that effect, judgments of 10 November 1998, *BFI Holding*, C-360/96, EU:C:1998:525, paragraph 62; of 15 May 2003, *Commission* v *Spain*, C-214/00, EU:C:2003:276, paragraphs 55 and 56; and of 12 September 2013, *IVD*, C-526/11, EU:C:2013:543, paragraph 21 and the case-law cited).

42 In the second place, it is also irrelevant that the FIGC pursues, alongside the activities of general interest exhaustively listed in Article 23(1) of the CONI Statute, other activities which constitute a large part of its overall activities and are self-financed.

43 The Court has held that it is immaterial whether, in addition to its duty to meet needs in the general interest, an entity carries out other activities, and the fact that meeting needs in the general interest constitutes only a relatively small proportion of the activities actually pursued by that entity is also irrelevant, provided that it continues to attend to the needs which it is specifically required to meet (see, to that effect, judgment of 10 November 1998, *BFI Holding*, C-360/96, EU:C:1998:525, paragraph 55).

44 It must be pointed out that, in those circumstances, the fact that a national sports federation has a self-financing capacity in the light, in particular, of the non-public activities which it carries out cannot be of any relevance, as the Advocate General observed in point 56 of his Opinion, since such a self-financing capacity has no bearing on the assignment of public tasks.

45 Furthermore, nor does the judgment of 15 January 1998, *Mannesmann Anlagenbau Austria and Others* (C-44/96, EU:C:1998:4), enable a different conclusion to be reached.

46 First, the considerations set out in paragraphs 20 to 35 of that judgment specifically illustrate the line of case-law referred to in paragraph 43 above, which means, in essence, that, in order to determine whether an entity may be regarded as a body governed by public law, it is immaterial whether that entity carries out activities other than those intended to meet needs in the general interest, even if the activities intended to meet those needs in the general interest are not considerable.

47 Secondly, the considerations set out in paragraphs 38 to 41 of the judgment of 15 January 1998, *Mannesmann Anlagenbau Austria and Others* (C-44/96, EU:C:1998:4), are not relevant to resolving the case in the main proceedings, whose characteristics differ from those of the situation described in that judgment, which was that of a company established and held for the most part by a contracting authority with a view to carrying out commercial activities in relation to which that company benefited from a transfer of the funds derived from the activities pursued by that contracting authority in order to meet needs in the general interest, not having an industrial or commercial character.

48 In the light of the foregoing considerations, the answer to the first question is that Article 2(1)(4)(a) of Directive 2014/24 must be interpreted as meaning that an entity entrusted with tasks of a public nature exhaustively defined by national law may be regarded as having been established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, within the meaning of that provision, even though it was established not in the form of a public authority but of an association governed by private law and some of its activities, for which it enjoys a self-financing capacity, are not public in nature.

The second question

49 By its second question, the referring court seeks to ascertain whether the second part of the alternative referred to in Article 2(1)(4)(c) of Directive 2014/24 must be interpreted as meaning that a national sports federation must be regarded as being subject to management supervision by a public authority having regard, first, to the powers conferred on that authority with regard to such a federation and, secondly, to the fact that the key bodies of that authority are composed for the most part of representatives of all the national sports federations.

50 In that regard, it should be borne in mind that each of the alternative criteria in Article 2(1)(4)(c) of Directive 2014/24, as set out in paragraph 34 above, reflects the close dependency of a body on the State, regional or local authorities or other bodies governed by public law; more specifically, as regards the criterion of management supervision, such supervision is based on the finding that there is active control over the management of the body concerned such as to give rise to the dependency of that body on the public authorities equivalent to that which exists where one of the two other alternative criteria is fulfilled, which is likely to enable those authorities to influence that body's decisions with regard to public contracts (see, to that effect, judgment of 27 February 2003, *Adolf Truley*, C-373/00, EU:C:2003:110, paragraphs 68, 69 and 73 and the case-law cited).

51 Consequently, in principle, a review *ex post facto* does not satisfy that criterion, in that it does not enable the public authorities to influence the decisions of the body in question with regard to public contracts (see, to that effect, judgment of 12 September 2013, *IVD*, C-526/11, EU:C:2013:543, paragraph 29 and the case-law cited).

52 In the present case, it is apparent from the national rules – and, in particular, from Article 1 of Decree-Law No 220, in conjunction with Articles 2(1) and 5(1) of Legislative Decree No 242 and Articles 1(2) and 6(1) of the CONI Statute – that, as the authority responsible for the discipline, regulation and management of sports activities, the CONI's primary tasks, within the framework of the autonomy of sports law and in compliance with the principles of international sports law, are as follows: the organisation and enhancement of national sport, in particular the preparation of athletes and the provision of adequate resources for preparation for the Olympic Games; the adoption of anti-doping measures; and the promotion of the practice of sports on the broadest possible scale. To that end, the CONI National Council, as the supreme representative body of Italian sport, is responsible for disseminating the Olympic ideal, ensures that the actions necessary to prepare for the Olympic Games are taken, regulates and coordinates national sports activities, and harmonises, inter alia, the action of national sports federations.

53 It is therefore apparent that, by carrying out essentially a regulatory and coordination function, the CONI is an umbrella organisation which aims above all to issue to national sports federations common sporting, ethical and structural rules in order to regulate the practice of sport in a harmonised manner in accordance with international rules, in particular in the context of competitions and preparation for the Olympic Games. In that regard, it should moreover be noted that, under Article 7(2)(e) of Legislative Decree No 242, the CONI's power of control over those federations appears essentially limited to the proper organisation of competitions, Olympic preparation, high-level sporting activity and the use of financial aid, which it is for the referring court to verify.

54 By contrast, it is not apparent from the documents before the Court that the CONI is responsible for regulating the details of day-to-day sporting practice or interfering in the actual management of national sports federations and in the relations which they maintain – as the Advocate General observed, in essence, in point 29 of his Opinion – with the lower-level structures consisting in clubs, associations and other public or private bodies and with any individual wishing to practise sport.

55 That definition of the role and mission of the CONI appears to be supported by Article 20(4) of the CONI Statute, according to which national sports federations, while being required to engage in sports activities and associated promotional activities in accordance with the decisions and instructions of the IOC and the CONI, enjoy, subject to oversight by the CONI, technical,

organisational and managerial autonomy in the context of sports law. It is therefore apparent that, with the exception of the areas in which the CONI is authorised to intervene and exercise control, those federations enjoy broad autonomy as regards their own management and the management of the different aspects of the sporting discipline for which they are responsible, their relationship with the CONI being limited, prima facie, to complying with the guidelines and general rules issued by it. Article 15(4) of Legislative Decree No 242 states, moreover, that it is the assembly of the national sports federation concerned which approves and monitors the administrative body's indicative budgetary programmes, which again tends to show that those federations have full management autonomy.

56 In the case of such a configuration which, given the diverse range of solutions adopted in the different Member States, is specific to Italian sports law, it must be found that a public authority responsible in essence for laying down sporting rules, verifying that they are properly applied and intervening only as regards the organisation of competitions and Olympic preparation, without regulating the day-to-day organisation and practice of the different sporting disciplines, cannot be regarded, prima facie, as a hierarchical body capable of controlling and directing the management of national sports federations, and even less so when those federations enjoy management autonomy.

57 The management autonomy conferred on the national sports federations in Italy thus seems, a priori, to militate against active control on the part of the CONI to the extent that it would be in a position to influence the management of a national sports federation such as the FIGC, particularly in relation to the award of public contracts.

58 That said, such a presumption may be rebutted if it is established that, in practice, the various powers conferred on the CONI in relation to the FIGC have the effect of making the FIGC dependent on the CONI to such an extent that the CONI may influence its decisions with regard to public contracts. In that regard, the spirit of sports competition the organisation and actual management of which come within the remit of the national sports federations, as has been seen in paragraph 55 above, necessitates that the various powers of the CONI should not be understood in an overly technical sense, but interpreted more substantively than formally.

59 It is, therefore, for the referring court to examine whether the various powers vested in the CONI in relation to the FIGC reveal, on the whole, the existence of dependency coupled with such a possibility of influence. While that verification is solely a matter for the referring court, the Court of Justice, when giving a preliminary ruling on a reference, may, in appropriate cases, nonetheless give clarifications to guide the national court in its decision (see, to that effect, judgment of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, C-614/17, EU:C:2019:344, paragraph 37 and the case-law cited).

60 As regards, first, the CONI's power to recognise national sports federations for sporting purposes – as follows from Articles 5(2)(c) and 15(5) and (6) of Legislative Decree No 242 and from Article 6(4)(b) and (c) of the CONI Statute – it should be noted, first, that the CONI applies in that context general rules which, according to the written observations of the Italian Government, are common to any sports association which wishes to obtain legal personality or is dependent even for a minority of its finances on public contributions. Secondly, it is apparent from the documents before the Court that recognition by the CONI is only a preliminary stage which relates solely to the process of recognition for sporting purposes, with all national sports

federations being recognised uniformly in accordance with the detailed rules and conditions laid down by the Italian regulations in force, in this case Decree No 361 of the President of the Republic of 10 February 2000.

61 In addition, it follows from Article 6(4)(c) in conjunction with Article 21(1) of the CONI Statute that, subject to verification by the referring court, the criteria on the basis of which recognition is granted do not in any way concern aspects of the management of the federation concerned, but relate to general conditions which must be met by any national sports federation in respect of sport and organisation and to compliance with basic rules and principles, such as the principle of internal democracy or the principle of gender equality and equal opportunities. Similarly, the recognition of a national sports federation may be revoked by the CONI National Council, pursuant to Article 21(3) of the CONI Statute, only if the federation concerned no longer fulfils the conditions referred to in Article 21(1) of that statute.

62 Admittedly, as the Advocate General observed in point 71 of his Opinion, the recognition process appears – by reason of Article 5(2)(b) of Legislative Decree No 242 in conjunction with Article 6(4)(b) of the CONI Statute – to be linked to the examination of whether the statutes of the national sports federation concerned are consistent with the fundamental principles established by the CONI National Council. However, the expression 'fundamental principles', read in conjunction with the principles which the statutory and regulatory provisions of those federations must observe in accordance with Article 16(1) of Legislative Decree No 242 and Articles 21(1)(c) and 22(1) to (3) of the CONI Statute, appears to show that the CONI National Council may define only organisational rules, based on the principle of internal democracy which the statutes of those federations must observe, without being able to impose detailed and far-reaching management rules on those federations.

63 Since the CONI's intervention is limited to establishing fundamental principles in order to harmonise the general rules to which all national sports federations are subject and to ensure that those federations are operational, in the sports discipline for which they are responsible, at national and international level, by pursuing the objectives laid down by law and adopting provisions in the statutes and regulations which comply with that law and with the principle of internal democracy, it does not appear, prima facie, that prior recognition of the FIGC for sporting purposes of itself enables the CONI subsequently to exercise active control over the management of that federation to such an extent as to be able to influence the latter's decisions with regard to public contracts.

64 As regards, secondly, the CONI's power – provided for in Articles 5(2)(a) and 15(1) of Legislative Decree No 242 and in Articles 20(4) and 23(1 *bis*) and (1 *ter*) of the CONI Statute – to adopt, with regard to Italian sports federations, the guidelines, decisions, directives and instructions relating to the exercise of the sporting activity which those federations supervise, the referring court must ascertain whether, as the FIGC, the CONI and the Italian Government contended during the hearing, those norms all seek to impose on national sports federations overall, broad and abstract rules or general guidelines relating to the organisation of sport in its public dimension, with the result that, accordingly, the CONI does not intervene actively in the management of those federations to the extent of being able to influence their decisions with regard to public contracts; alternatively, the referring court must ascertain whether, on the contrary, the CONI is able to make those national federations subject to very detailed management rules and impose on them a specific course of management, in particular with regard to public contracts (see, to that effect, judgment of 1 February 2001, *Commission* v *France*, C-237/99, EU:C:2001:70, paragraphs 50 to 52 and 57).

65 As regards, thirdly, the CONI's power to approve for sporting purposes national sports federation statutes, it should be noted that, in exercising that power as set out in Articles 7(5)(l) and 22(5) of the CONI Statute, the CONI may only assess whether those federations' statutes comply with the law, its own Statute and the fundamental principles established by the CONI. In those circumstances, it is for the referring court to ascertain whether the CONI could have imposed on the FIGC, when approving the statutes, such amendments as would have restricted its management autonomy or, when assessing the statutes, revoked the FIGC's recognition, on the ground that the FIGC had not accepted amendments designed to restrict its management autonomy, or imposed on it predetermined management conduct.

66 As regards, fourthly, the CONI's power to approve the national sports federations' annual balance sheets and budgets, as set out in Article 15(3) of Legislative Decree No 242 and Articles 7(5)(g2) and 23(2) of the CONI Statute, it is for the referring court to ascertain whether, in that regard, the CONI confines itself to purely accounting checks of the balance sheets and of the balancing of the budget, which would not indicate that there is active control over the management of those federations (see, to that effect, judgments of 1 February 2001, *Commission* v *France*, C-237/99, EU:C:2001:70, paragraph 53, and of 12 September 2013, *IVD*, C-526/11, EU:C:2013:543, paragraph 29), or whether those checks also concern the conduct of those federations, in particular from the point of view of proper accounting, regularity, economy, efficiency and expediency, which would tend to show the existence of active control over management (see, to that effect, judgment of 27 February 2003, *Adolf Truley*, C-373/00, EU:C:2003:110, paragraph 73).

67 As regards specifically the approval of the balance sheets, the referring court must verify that the only 'penalty' linked to the failure of the CONI to approve the balance sheets consists in their non-publication. Such evidence would tend to show that the CONI has no power of coercion concerning the national sports federations in that regard.

68 As regards the approval of the budget, it will be for the referring court to ascertain whether, as evidenced by the explanations provided by the CONI during the hearing, the national sports federations ultimately decide on their budgets, without the CONI being able to oppose their adoption and therefore control the management of those federations on that point, which would again indicate that the CONI has no power of coercion.

69 As regards the CONI's power, referred to in Article 23(2) of its statute, to determine the financial contributions allocated to national sports federations and to define the purposes for which those contributions are to be used, it will be for the referring court to ascertain the effect of that power on the actual management of the FIGC and on the FIGC's ability to retain control over its decisions with regard to public contracts. In that context, the referring court will have to take account of the fact that, first, the public contributions seem to be apportioned, under that provision, according to very general categories within the public dimension of sport, namely the promotion of youth sport, preparation for the Olympic Games and preparation for high-level sporting activity, and, secondly, in any event in the specific case of the FIGC – as is apparent from the order for reference and the information provided during the hearing – a minority of that federation's funding is public, since the federation has a considerable self-financing capacity.

70 As regards, fifthly, the CONI's power to appoint, pursuant to Article 7(5)(h1) of the CONI Statute, auditors representing it in national sports federations, it will be for the referring court to ascertain whether the auditors are in a position to influence that federation's management policy,

particularly in the area of public contracts, given that, as evidenced by the written observations of the FIGC and the CONI, those auditors would have no veto power and would not have any representative or management powers.

71 As regards, sixthly, the CONI's power, provided for in Article 5(2)(e) of Legislative Decree No 242 and Articles 6(4)(e) and (e1), 7(5)(e) and 23(3) of its Statute, to oversee the exercise of activities of a public nature entrusted to national sports federations and, more generally, the proper functioning of those federations, it will be for the referring court to ascertain the scope of that oversight of the management autonomy of those federations and of their decision-making capacity with regard to public contracts. In particular, the referring court will have to determine whether, as stated in paragraph 53 above, oversight of the proper functioning of national sports federations is limited essentially to the proper organisation of competitions, Olympic preparation, high-level sporting activity and the use of financial aid, or whether more active oversight of the management of those federations is carried out by the CONI.

72 As regards specifically the CONI's power to place national sports federations under administrative supervision in cases of serious management irregularities, serious infringements of sports law, the inability of those federations to function, or problems with the proper conduct of sports competitions, it will be for the referring court, in order to exclude the existence of active control over the management of those federations, to determine whether, as the FIGC, the CONI and the Italian Government have argued both in their written observations and during the hearing, those cases of intervention by the CONI – as derived from Articles 5(2)(e *ter*) and 7(2)(f) of Legislative Decree No 242 and Articles 6(4)(f1), 7(5)(f) and 23(3) of the CONI Statute – fall within the mere verification of legality, and not the management policy of national sports federations, and whether, regardless of the exceptional nature of placing under administrative supervision, the exercise of that power does not imply permanent supervision of the management of those federations (see, to that effect, judgment of 1 February 2001, *Commission* v *France*, C-237/99, EU:C:2001:70, paragraphs 55 and 56).

73 It should be pointed out, as the Advocate General observed in essence in point 66 of his Opinion, that, in order to assess the existence of active control by the CONI over the management of the FIGC and of the possibility of the CONI influencing FIGC's decisions with regard to public contracts, the analysis of the CONI's various powers must be the subject of an overall assessment, bearing in mind that, as a general rule, the existence of such control will be likely to be revealed by a body of evidence (see, to that effect, judgment of 1 February 2001, *Commission* v *France*, C-237/99, EU:C:2001:70, paragraph 59).

74 As regards the circumstance, noted by the referring court, that if it were concluded that the CONI exercises supervision over the management of national sports federations such as the FIGC, within the meaning of the second part of the alternative referred to in Article 2(1)(4)(c) of Directive 2014/24, those federations would, on account of their majority participation in the CONI's main deliberative and collegiate bodies, pursuant to Articles 4 and 6 of Legislative Decree No 242, exert an influence over the CONI's activity which would offset that supervision, it should be emphasised that that circumstance would be relevant only if it could be established that each national sport federation, considered individually, is in a position to exert a significant influence over the management supervision exercised by the CONI over it with the result that that supervision would be offset and such a national sports federation would thus regain control over its management, notwithstanding the influence of the other national sports federations in a similar situation.

75 In the light of all the foregoing considerations, the answer to the second question is that the second part of the alternative referred to in Article 2(1)(4)(c) of Directive 2014/24 must be interpreted as meaning that where a national sports federation has management autonomy under national law, that federation may be regarded as being subject to management supervision by a public authority only if it emerges from an overall analysis of the powers which that authority has in relation to that federation that there is active management control which, in practice, calls into question that autonomy to such an extent as to allow the authority to influence the federation's decisions with regard to public contracts. The circumstance that the various national sports federations exert an influence over the activity of the public authority concerned on account of their majority participation in that authority's main deliberative and collegiate bodies is relevant only if it can be established that each federation, considered individually, is in a position to exert a significant influence over the public supervision exercised by that authority over it with the result that that supervision would be offset and such a national sports federation would thus regain control over its management, notwithstanding the influence of the other national sports federations in a similar situation.

Costs

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

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

1. **Article 2(1)(4)(a) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC must be interpreted as meaning that an entity entrusted with tasks of a public nature exhaustively defined by national law may be regarded as having been established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, within the meaning of that provision, even though it was established not in the form of a public authority but of an association governed by private law and some of its activities, for which it enjoys a self-financing capacity, are not public in nature.**

2. **The second part of the alternative referred to in Article 2(1)(4)(c) of Directive 2014/24 must be interpreted as meaning that where a national sports federation has management autonomy under national law, that federation may be regarded as being subject to management supervision by a public authority only if it emerges from an overall analysis of the powers which that authority has in relation to that federation that there is active management control which, in practice, calls into question that autonomy to such an extent as to allow the authority to influence the federation's decisions with regard to public contracts. The circumstance that the various national sports federations exert an influence over the activity of the public authority concerned on account of their majority participation in that authority's main deliberative and collegiate bodies is relevant only if it can be established that each federation, considered individually, is in a position to exert a significant influence over the public supervision exercised by that authority over it with the result that that supervision would be offset and such a national sports federation would thus regain control over its management, notwithstanding the influence of the other national sports federations in a similar situation.**

[Signatures]