Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 1 October 2020 [1]

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

Federazione Italiana Giuoco Calcio (FIGC),
Consorzio Ge.Se.Av. S. c. arl
v
De Vellis Servizi Globali Srl,
interveners:
Consorzio Ge.Se.Av. S. c. arl,
Comitato Olimpico Nazionale Italiano (CONI),
Federazione Italiana Giuoco Calcio (FIGC)

(Request for a preliminary ruling from the Consiglio di Stato (Council of State, Italy))

(Reference for a preliminary ruling – Public procurement of supplies, works or services – Directive 2014/24/EU – Contracting authority – Body governed by public law – Concept – National football federation – Meeting of needs in the general interest – Supervision of the federation's management by a body governed by public law)

1. In the judgment of 11 September 2019, [2] the Court analysed whether a national Olympic committee (in that case, the Italian Olympic Committee) had exercised 'public control' over two sports federations in that country, [3] 'with a view to classifying them either within the public authorities sector or within the sector of NPISHs [(non-profit institutions serving households)]' under the European System of Accounts. [4]

2. The Consiglio di Stato (Council of State, Italy) has now submitted to the Court two substantively identical requests for a preliminary ruling relating to the same issue, from the point of view this time not of accounting but of public procurement. In the disputes in the main proceedings, it falls to be ascertained whether the Federazione Italiana Giuoco Calcio (Italian Football Federation; 'the FIGC') was established for the specific purpose of meeting needs in the general interest and, if so, whether the Comitato Olimpico Nazionale Italiano (Italian National Olympic Committee; 'CONI') controls its management.

1 Original language: Spanish.

2 Judgment in *FIG and FISE* (C-612/17 and C-613/17, EU:C:2019:705; 'the judgment in *FIG and FISE*'). Although relating to the European System of National and Regional Accounts of the European Union, the arguments set out in that judgment may be useful in the context of this reference for a preliminary ruling, inasmuch as the question of who supervises the management of bodies governed by public law is a relevant factor in the sphere of the procurement activities of such bodies too. It should nonetheless be noted that the criteria for determining whether such supervision exists vary significantly as between the sphere of procurement and that of accounting.

3 In that case, the Federazione Italiana Golf and the Federazione Italiana Sport Equestri.

4 The judgment in *FIG and FISE*, paragraph 31.

3. The answers to those questions may determine whether a contract concluded by the FIGC, which forms the subject of the disputes at issue, is subject to the procedures laid down in Directive 2014/24/EU[5] and in the national rules transposing that directive into domestic law. This will be the case only if the [Italian] national sports federations ('NSFs'), when procuring works, supplies and services above a certain threshold, are capable of being classified as contracting authorities because they are bodies governed by public law within the meaning of Directive 2014/24.

I. Legal framework

A. EU law. Directive 2014/24

4. Article 2 reads:

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

(1) "contracting authorities" means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;

…

(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 bodies or authorities; 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;

…'

B. Italian law

1. Legislative Decree No 50 of 18 April 2016 ('Public Procurement Code')

5. Article 3(1)(d) reproduces, in essence, the definition of 'body governed by public law' contained in Article 2(1)(4) of Directive 2014/24.

[5] Directive 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. Decree-Law No 220 of 19 August 2003 [6]

6. Article 1 provides:

'1. The Republic recognises and promotes the autonomy of the national system of sports governance as an expression of the international system of sports governance deriving from the International Olympic Committee.

2. The relationship between the system of sports governance and the Republic's legal system shall be governed by the principle of autonomy, except in cases involving subjective situations linked to the system of sports governance which are relevant to the Republic's legal system.'

3. Legislative Decree No 242 of 23 July 1999 on the reorganisation of CONI [7]

7. Article 1 states:

'[CONI] shall have legal personality under public law … and shall be responsible to the Ministry of Heritage and Cultural Activities.'

8. Article 2 provides:

'1. CONI … shall be responsible for the organisation and enhancement of national sport, 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. It shall also be responsible, within the framework of the system of sports governance, 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 Decree of the President of the Republic No 616 of 24 July 1977.

…'

9. According to Article 4(2) thereof:

'Representatives of the [NSFs], selected from the Olympic sports, shall make up the majority of the votes on [CONI].'

10. Article 5 provides:

'1. In accordance with the decisions and guidelines of the International Olympic Committee, the National Council shall work to promote the dissemination of the Olympic spirit and regulate and coordinate national sports activities, harmonising to this end the actions undertaken by NSFs and associated sports disciplines.

…

[6] Decreto legge 19 agosto 2003, n. 220 (GURI No 192 of 20 August 2003) (ratified, after amendment, by Article 1 of legge 17 ottobre 2003, n. 280 (Law No 280 of 17 October 2003; GURI No 243 of 18 October 2003)).

[7] Decreto legislativo 23 luglio 1999, n. 242, riordino del Comitato olimpico nazionale italiano – CONI (GURI No 176 of 29 July 1999; 'Legislative Decree No 242/1999').

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

(a) adopt the statute 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 [NSFs], 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 sports purposes [NSFs], sports societies and associations, sports promotion bodies, charitable organisations and other sports disciplines associated with CONI and [national sports] federations, in accordance with the requirements laid down in the Statute …;

…

(e) establish criteria and conditions governing the exercise of controls by [NSFs], associated sports disciplines and recognised sports promotion bodies;

…

(e *ter*) adopt, on a proposal from the National Board, decisions to place [NSFs] or associated sports disciplines under guardianship 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 lawfulness of the operation and running of sports competitions cannot be guaranteed;

…'

11. In accordance with Article 15:

'1. [NSFs] … shall pursue sports activities in accordance with the decisions and guidelines of the [International Olympic Committee], international federations and CONI, and with due regard for the public dimension of certain types of activity which are set out in the CONI statutes. Membership [of NSFs] shall be made up of sports societies and associations and, only in the cases provided for by [NSF] statutes … in connection with certain activities, individuals too.

2. [NSFs] … shall take the form of associations having legal personality under private law. They shall be non-profit-making and, to the extent that they are not provided for in this Decree, shall be governed by the provisions of the Civil Code and the relevant implementing provisions.

3. The budgets of [NSFs] … shall be approved annually by the administrative body of each federation and shall be subject to the approval of the National Board of CONI. In the event of a negative opinion by a federation's auditors … or in the event that a budget is not approved by the National Board of CONI, 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. [NSFs] … shall be recognised for sports purposes by the National Council.

6. Recognition of [NSFs] … as having legal personality under private law shall be granted in accordance with the decreto del Presidente della Repubblica 10 febbraio 2000, n. 361 (Decree of the President of the Republic No 361 of 10 February 2000), subject to recognition for sports purposes by the National Council.

…'

4. The CONI Statute[8]

12. Article 1 ('Definitions') states:

'1. [CONI] shall be the confederation of [NSFs] and associated sports disciplines.

2. 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 education and national culture. …'

13. Article 6 ('National Council') states:

'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 [NSFs] 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 sports purposes, the statutes of [NSFs], 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 [NSFs] …;

(c) adjudicate on the recognition of [NSFs] … for sports purposes in accordance with the requirements laid down in its statutes, taking into account also to that end the representation and Olympic nature of the sport in question, any recognition by the [International Olympic Committee] and the sports tradition of the discipline;

…

(e) define the criteria and procedures for applying CONI's controls to [NSFs] …;

[8] Adopted by agreement of the National Council of CONI, the last amended version of 2 October 2019 having been approved by Decree of 10 January 2020 of the President of the Council of Ministers.

(e1) with a view to ensuring that sports competitions are run properly, define the criteria and procedures for deploying the controls which federations must apply to [associated] sports societies and the subsidiary control exercised by CONI in the event that the controls applied by [NSFs] are found to be unsuitable;

…

(f1) adjudicate, on a proposal from the National Board, on the managerial performance of [NSFs] … in the event of serious management irregularities or serious infringements of the system of sports governance by the management bodies, or in the event that they are found to be unable to perform their functions or the proper organisation and running of national sports competitions cannot be guaranteed;

…'

14. Paragraph 5 of Article 7 ('National Board') reads:

'The National Board shall:

…

(g2) approve the budgets, together with the relevant activity programmes and annual accounts, of [NSFs] …;

…

(h1) appoint auditors to represent CONI within [NSFs] … and the regional committees of CONI;

…

(l) check, for sports purposes, the statutes, regulations implementing those statutes, regulations on sports discipline, and anti-doping regulations of [NSFs] …, assessing their compliance with the law, with the CONI statutes, and with the fundamental principles, guidelines and criteria established by the National Council, and, where appropriate, return them to [NSFs] … within a period of 90 days so that they can make the necessary amendments;

…'

15. Paragraph 4 of Article 20 ('System of governance of [NSFs]') provides:

'[NSFs] shall engage in sports activities and the corresponding promotional activities in accordance with the decisions and guidelines of the [International Olympic Committee] and CONI and taking into account the public dimension of certain aspects of those activities. In the context of the system of sports governance, [NSFs] shall enjoy technical, organisational and managerial autonomy, subject to supervision by CONI.'

16. In accordance with paragraph 3 of Article 21 ('Requirements governing the recognitions of [NSFs]'):

'If a recognised [NSF] fails to comply with the requirements laid down in paragraph 1 above, the National Council of CONI shall decide to revoke recognition granted at the time.'

17. Article 23 ('Guidelines and controls applicable to [NSFs]') provides:

'1. In accordance with Legislative Decree No 242 of 23 July 1999, as subsequently amended and supplemented, in addition to the activities the public nature of which is expressly provided for by law, the only [NSF] activities to have a public dimension shall be those relating to the admission and membership of sports societies and associations, as well as individuals, revocation on any ground and the amendment of admission or membership decisions, scrutiny as to the proper running of professional sports competitions and championships, the use of public subsidies and the prevention and sanctioning of doping, as well as 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, [NSFs] shall comply with the guidelines and controls applied by 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 their individual measures and the associated subjective legal situations are subject.

1 *ter*. The National Board shall establish the criteria and procedures for ensuring that decisions taken by federations comply with 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 [NSF] 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 Olympiads and high-level activities.

3. The National Board shall supervise the proper functioning of [NSFs]. In the event of serious management irregularities or serious infringements of the sports regulations by [NSF bodies] and in the event that the organisation and proper running of sports competitions cannot be guaranteed or [NSF bodies] are found not to be capable of performing their functions, it shall propose that the National Council appoint a receiver.'

II. Facts and questions referred

18. The FIGC launched a procedure for the award of three-year contracts for the porterage services needed to accompany the national football squads when travelling and to support the Federation's store in Rome. [9] It invited De Vellis Servizi Globali, s.r.l. ('De Vellis') and Consorzio Ge.Se.Av. S. c. arl ('Consorzio') to participate. The contract was ultimately awarded to Consorzio.

[9] The value of the contract was EUR 1 000 000, excluding VAT.

19. De Vellis brought an action before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy) challenging the way in which the tendering procedure had been conducted, inasmuch as the rules on disclosure laid down in the Code of Public Procedure had been infringed.

20. The court of first instance (judgment No 4101/2018) upheld the action and annulled the award of the contract to Consorzio. In particular, it classified the FIGC as a body governed by public law, dismissed the plea of lack of jurisdiction and annulled the measures adopted in the context of the tendering procedure on the grounds which De Vellis had put forward.

21. The FIGC and Consorzio have each lodged appeals against that judgment. They contest the finding that the FIGC is a body governed by public law and, consequently, the jurisdiction of the administrative courts to hear and determine the dispute.

22. The Consiglio di Stato (Council of State) submits that, before it is determined whether the FIGC was obliged to apply the rules relating to the award of public contracts, and which court has jurisdiction, it falls to be ascertained whether the FIGC can be classified as a body governed by public law in accordance with Article 3(1)(d) of the Public Procurement Code, which transposes Article 2(1)(4) of Directive 2014/24.

23. It is in those circumstances that the Consiglio di Stato (Council of State) has referred the following questions to the Court for preliminary ruling:

‘(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 a 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 [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 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 into receivership?

(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 [CONI]?'

III. Procedure before the Court of Justice

24. The orders for reference were received at the Court on 22 February 2019.

25. Written observations have been lodged by the FIGC, CONI, De Vellis, Consorzio, the Italian Government and the Commission.

26. At the hearing held on 1 July 2020, which was attended via video conference by the FIGC, CONI, the Italian Government and, in an observer capacity, the Commission, the Court invited the parties to comment on the bearing on this case of the judgment in *FIG and FISE*.

IV. Assessment

A. Preliminary observation

27. A comparison of situations across Europe shows that models for the relationship between NSFs and the public authorities vary substantially. To put it simply, some Member States have opted for 'liberal' approaches whereby NSFs are given maximum autonomy;[10] others have chosen more 'interventionist' formulas under which public supervision may in some cases be rigorous;[11] while certain others combine both models.

28. In public law, it is common for the legal system to entrust certain private entities, set up in order to achieve objectives common to their members, with the task of achieving public aims, including by delegating to them functions which would typically be administrative.[12]

29. In Italy, NSFs follow this format: on the same strict membership basis as that on which the clubs operate as first-tier sports associations, NSFs are set up as second-tier private associations,[13] to which the government authorities entrust certain functions of a public nature.

30. In that context, the referring court will of course be bound by the situation at issue and the specific features of the sports law in force in Italy. It will have to determine, in accordance with that law:

– whether the FIGC was established for the specific purpose of meeting needs in the general interest not having an industrial or commercial character;

[10] The public authorities generally deal only with matters concerning the grant of subsidies.

[11] In these cases, the NSFs tend to be private-law entities to which the legal system entrusts a greater or lesser number of public functions.

[12] In using private membership-based bodies to perform public functions, the State avoids the need to create public structures. The function in question is owned by the delegating State, which retains powers of control and supervision so as to ensure that the delegated function does not deviate from the aims established by the legal system.

[13] Article 1(2) of the Statute of the FIGC (https://www.figc.it/it/federazione/norme/statuto-della-figc/) defines it as an 'association of sports societies and sports associations the purpose of which is to practise the game of football in Italy, and other entities affiliated to it which pursue activities to achieve that aim'.

– whether the relationship between the public supervisory authority (CONI) and the FIGC allows the former to be recognised as exercising control over the latter and, if so, to what extent;

– whether the characteristics of the FIGC set it apart from other NSFs as regards the application of Directive 2014/24.

31. As the judgment in *FIG and FISE* made clear, the Court itself cannot dispel those points of uncertainty, the resolution of which falls to the referring court as being alone able to interpret its own national law.[14] The submissions that follow are therefore geared exclusively towards providing the referring court with some guidance on the interpretation of the provisions of Directive 2014/24.

B. First question

32. Directive 2014/24 takes a very broad view of the concept of contracting authority,[15] which extends beyond the State and local authorities to bodies governed by public law, if they meet all of the three requirements laid down in Article 2(1)(4) thereof.

33. In considering whether a particular body meets those requirements, the Court avoids formal methodologies and relies instead on a 'functional interpretation' whereby the scheme of law contained in that directive takes second place.[16]

34. The first of those requirements is that the body should have been *established for the specific purpose* of meeting needs in the general interest not having an industrial or commercial character. It is with the interpretation of that wording that the first question referred is concerned.[17]

35. Although an analysis of the formal aspects of the entity's *establishment* is not essential, the referring court will have to determine whether, for Italian NSFs, recognition by CONI[18] is a substantive condition or no more than a step in the process of acquiring legal personality. I shall look at this point later.

[14] As the Court asserts time and again in the successive paragraphs of the judgment in *FIG and FISE*.

[15] Judgment of 4 June 2020, *Asmel* (C-3/19, EU:C:2020:423, paragraph 54): 'Article 1(9) of [Directive 2004/18] defines the concept of "contracting authority" broadly and in functional terms, in order to secure the objectives of that directive, which seek to exclude both the risk of preferring national tenderers or bidders in any contract award made by the contracting authorities and the possibility that a body financed or controlled by the State, regional authorities or other bodies governed by public law may be guided by considerations other than economic ones (see, to that effect, judgment of 5 October 2017, *LitSpecMet*, C-567/15, EU:C:2017:736, paragraph 31 and the case-law cited)'.

[16] Judgments of 10 November 1998, *BFI Holding* (C-360/96, EU:C:1998:525, paragraph 62), and of 15 May 2003, *Commission* v *Spain* (C-214/00, EU:C:2003:276, paragraph 56): 'the effectiveness of [the Directive] would not be fully preserved if [its] application … to an entity which fulfils the three … conditions [governing recognition as a body governed by public law] could be excluded solely on the basis of the fact that, under the national law to which it is subject, its legal form and rules which govern it fall within the scope of private law'.

[17] There will be no need to examine the second requirement (legal personality), since it is common ground that the FIGC is a legal person. Italian NSFs are in the 'nature of associations having legal personality under private law' (paragraph 3.3 of the orders for reference).

[18] The existence of an NSF seems to depend not only on the will of the first-tier associations comprising it (the clubs), but also on official recognition by CONI, without which they will not acquire legal personality.

36. From a material point of view, which is the one that matters most, the Consiglio di Stato (Council of State) must pay attention first and foremost to the content of the public functions performed by the FIGC. From this it will be able to infer whether that body was established for the specific purpose of meeting needs in the general interest not having an industrial or commercial character, or meets them objectively in practice. [19]

37. Classification as such a body, as I have said, is not precluded by the fact that needs in the general interest are met by a technically private entity, particularly if that entity forms part of an organisational system the structure and configuration of which are laid down by law and administrative in nature. [20]

38. Now, the referring court itself infers from Legislative Decree No 242/1999 (Article 15(1)) that Italian NSFs are entrusted with the performance of functions of a 'public dimension'. [21]

39. It reaches that conclusion on the basis of an examination of Article 23 of the CONI Statute, in accordance with which NSF activities having a 'public dimension' are those relating to: (i) the admission and membership of sports societies and associations; (ii) the revocation and amendment of decisions on admission and membership; (iii) scrutiny as to the proper running of professional sports competitions and championships; (iv) the use of public subsidies; (v) the prevention and sanctioning of doping; (vi) high-level activities relating to Olympic preparations; (vii) the training of coaches; and (viii) the use and management of public sports facilities.

40. The FIGC, for its part, recognises that it has entrusted to it, 'under delegation from CONI …, certain pre-defined powers characterised by their public purpose', although, in its opinion, 'the public nature of the delegating [body] cannot be extended to the delegated [body] in such a way as to bind the latter beyond the predetermined limits of the delegation'. [22]

41. After noting that each NSF is responsible for a single sports discipline and for organising competitions relating to that discipline, the Consiglio di Stato (Council of State) submits that, according to the rules of sports law in Italy, 'public-interest aims are achieved by bodies which are technically private, albeit that they operate within the framework of an organisational system the structure and configuration of which are laid down by *law* (rather than being an expression of *private autonomy*) and administrative in nature'. [23]

42. This assessment is consistent with that carried out by the Court when analysing the relationship between NSFs and CONI. In the judgment in *FIG and FISE*, it referred to 'the public face of the sporting activity, that is to say, … in a formalised, official or representative context …'. It also took the view that the public dimension of the activities carried on by NSFs was apparent 'in the proper organisation of competitions, Olympic preparations and high-level sporting activities'. [24]

[19] 'A body which was not established to satisfy specific needs in the general interest not having an industrial or commercial character, but which has subsequently taken responsibility for such needs, which it has since satisfied, fulfils the requirement …, on condition that the assumption of responsibility for the satisfaction of those needs can be established objectively' (judgment of 12 December 2002, *Universale-Bau and Others* (C-470/99, EU:C:2002:746, operative part, paragraph 1).

[20] In the judgment of 13 January 2005, *Commission* v *Spain* (C-84/03, EU:C:2005:14), the Court held that the Kingdom of Spain had failed to comply with the public procurement directives precisely because it excluded bodies governed by private law (that is to say, commercial corporations whose activities were governed by private law) from classification as bodies governed by public law within the meaning of those directives.

[21] Paragraph 3.5 of the orders for reference.

[22] Paragraph 23 of its written observations.

[23] Paragraph 3.3 of the orders for reference. Emphasis in the original.

[24] The judgment in *FIG and FISE*, paragraph 99.

43. The Consiglio di Stato (Council of State) emphasises, in short, that, in Italy, sport has the status of an 'activity in the public interest which is for that reason organised, promoted, incentivised and financed by the State'. [25]

44. It is particularly significant that the referring court interprets the rules governing NSFs as meaning that the tasks having a public dimension which they perform seem to 'exhaust the scope of their operations and [are] the very reason for their establishment. Any other activity, including portage services for the national football squads, at issue in this dispute, operates as an instrument in service to the tasks having a "*public dimension*" which are laid down in the CONI statutes'. [26]

45. If that is its interpretation of national law, the referring court may draw the inference that NSFs, the *primary* purpose of which is to meet needs in the general interest within the context of sport, satisfy the first condition laid down in Article 2(1)(4) of Directive 2014/24.

46. Those needs in the general interest do not have an industrial or commercial character and are met by NSFs on the basis of a monopoly, [27] following the delegation to them of public functions by CONI. It makes no difference, for the purposes of this case, that NSFs also perform other, *instrumental* activities of an economic nature, as I shall go on to explain now.

47. The foregoing having been established, the doubts expressed by the Consiglio di Stato (Council of State) have to do not so much with whether the FIGC has been entrusted with functions in the general interest not having an industrial or commercial character (which, as I have said, that federation expressly recognises), as with the extent to which its procurement activities are linked to those public functions.

48. The referring court's uncertainty would be prompted by the fact that, according to Article 23(1 *bis*) of the CONI Statute, the public nature of the activities carried on by NSFs does nothing to alter the ordinary rules of private law to which the individual measures they take and the subjective legal situations associated with those measures are subject.

49. In my opinion, however, that provision is not decisive. The Court has held that 'it [is] immaterial whether, in addition to its duty to meet needs in the general interest, an entity [is] free to carry out other activities. 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'. [28]

[25] Paragraph 3.2 of the orders for reference, and the national case-law cited (Cons. Stato V, of 22 June 2017, No 3065).

[26] Paragraph 5.3.2 of the orders for reference. Emphasis and quotation marks in the original.

[27] In the judgment of 22 May 2003, *Korhonen and Others* (C-18/01, EU:C:2003:300, paragraph 51), the Court held that needs of an industrial or commercial character are usually met by bodies which operate under normal market conditions, aim to make a profit and bear the losses associated with the exercise of their activities, characteristics which are not exhibited by Italian NSFs.

[28] Judgments of 10 November 1998, *BFI Holding* (C-360/96, EU:C:1998:525, paragraph 55), and of 5 October 2017, *LitSpecMet* (C-567/15, EU:C:2017:736, paragraphs 40 and 41).

50. The Italian Government,[29] in common with the FIGC and CONI,[30] argues that the private activities carried on by NSFs, which are purely economic in nature, should be differentiated from those that serve a purpose in the general interest.

51. However, that differentiation does not strike me as being suitable for determining whether, in their contractual relations, NSFs meet needs in the general interest. The Court has held in this regard that '[the provision equivalent to Article 2(1)(4) of Directive 2014/24] [does not make] a distinction between public contracts awarded by a contracting authority for the purposes of fulfilling its task of meeting needs in the general interest and those which are unrelated to that task'.[31]

52. The argument put forward by the Italian Government, the FIGC and CONI has already been put to the Court, which rejected it in its judgment of 15 January 1998, *Mannesmann Anlagenbau Austria and Others*.[32] It opted instead for the so-called 'contagion theory' argument, whereby it is 'immaterial that such an entity is free to carry out other activities in addition to [functions in the general interest] …', with the result that 'the condition, laid down in [the provision equivalent to Article 2(1)(4)(a) of Directive 2014/24] …, does not mean that it should be entrusted only with meeting such needs'.[33]

53. That position would later be corroborated by the judgments in *BFI Holding*,[34] *Korhonen and Others*[35] and *Adolf Truley*,[36] and definitively endorsed in the judgment in *Ing. Aigner*.[37] In the latter judgment, the Court, in the face of doubts expressed by the referring court with respect to the application of the case-law established in the judgment of 15 January 1998, *Mannesmann Anlagenbau Austria and Others*,[38] in a situation where the public and private activities of a single entity were clearly distinguishable,[39] confirmed that, 'having regard to the reasons of legal

29 Paragraphs 15 and 16 of its written observations. It cites, in support of its argument, the judgment of 1 July 2008, *MOTOE* (C-49/07, EU:C:2008:376), which, however, is not concerned with NSFs, but with a private organisation organising motorcycling events in Greece the status of which as an *undertaking* had been called into question. It also relies on the judgment of 10 May 2001, *Agorà and Excelsior* (C-223/99, EU:C:2001:259), in which the Court recognised (paragraph 39) that the Ente Autonomo Fiera Internazionale di Milano met needs in the general interest but of an industrial or commercial character in organising fairs, exhibitions and other similar initiatives, and could not therefore be classified as being subject to the public procurement rules.

30 The FIGC states (paragraph 27 of its observations) that there is no justification for subjecting it to rules of public law in circumstances, such as those of this case, where it pursues interests of a commercial nature not consistent with those of CONI. The latter submits (paragraph 42 of its observations) that there is no reason to subject the FIGC, in the context of its contractual activities, to the rules of public law.

31 Judgment of 15 July 2010, *Commission* v *Germany* (C-271/08, EU:C:2010:426, paragraph 73 and the case-law cited).

32 Case C-44/96, EU:C:1998:4.

33 Judgment of 15 January 1998, *Mannesmann Anlagenbau Austria and Others* (C-44/96, EU:C:1998:4, paragraphs 25 and 26).

34 Judgment of 10 November 1998 (C-360/96, EU:C:1998:525, paragraphs 55 and 56).

35 Judgment of 22 May 2003 (C-18/01, EU:C:2003:300, paragraphs 57 and 58).

36 Judgment of 27 February 2003 (C-373/00, EU:C:2003:110, paragraph 56; 'the judgment in *Adolf Truly*').

37 Judgment of 10 April 2008 (C-393/06, EU:C:2008:213).

38 C-44/96, EU:C:1998:4.

39 Judgment of 10 April 2008, *Ing. Aigner* (C-393/06, EU:C:2008:213, paragraph 49): 'the referring court asks whether all contracts awarded by an entity which is a body governed by public law, within the meaning of [Directive 2004/17 or Directive 2004/18, are to be subject to the rules of one or other of those directives if, through effective precautions, a clear separation is possible between the activities carried out by that body to accomplish its task of meeting needs in the general interest and the activities which it carries out in competitive conditions'.

certainty, transparency and predictability which govern the implementation of procedures for all public procurement, the case-law of the Court [set out in the judgments cited above] must be followed'. [40]

54. In any event, the Consiglio di Stato (Council of State) has stated that the contract forming the subject of the dispute (porterage services for the Italian football squad) was instrumental to the performance of the FIGC's public functions, in particular those relating to the national teams in that sport.

55. Nor is it decisive, for our purposes here, whether or not NSFs carry on commercial activities or aim to make a profit. [41] The line of case-law which I have just set out supports that conclusion.

56. Finally, the fact that the FIGC is financially self-sufficient does not in any way prevent it from performing functions in the general interest under delegation from the public authorities. Its economic self-sufficiency sets the FIGC apart from other Italian NSFs whose subsistence depends to a large extent on public funds. As I have said, however, that fact is irrelevant for the purposes of determining whether it is entrusted with functions in the general interest. [42]

57. In short, unless it draws a different inference from its analysis of its domestic law, the referring court could interpret Article 2(1)(4) of Directive 2014/24 as meaning that the FIGC fulfils the first (point (a)) of the three conditions laid down in that provision.

C. Second question

58. The third requirement (point (c)) laid down in Article 2(1)(4) of Directive 2014/24 itself breaks down into three conditions. [43] It is sufficient for any one of those conditions to be present in order for the requirement as a whole to be regarded as being fulfilled.

[40] *Ibidem*, paragraph 54. In paragraph 53, citing the Opinion of Advocate General Ruiz-Jarabo, the Court stated that 'there must be serious doubts that, in reality, it is possible to establish such a separation between the different activities of one entity consisting of a single legal person which has a single system of assets and property and whose administrative and management decisions are taken in unitary fashion, even ignoring the many other practical obstacles with regard to reviewing before and after the event the total separation between the different spheres of activity of the entity concerned and the classification of the activity in question as belonging to a particular sphere'.

[41] According to Article 15(2) of Legislative Decree No 242/1999, NSFs 'shall not be profit-making'. The referring court appears implicitly to dismiss the commercial nature of the FIGC's activities, on which some of the parties rely (in reference to its ability to finance itself).

[42] If the FIGC were financed mainly by the State, regional or local authorities or other bodies governed by public law, it would automatically fulfil the third requirement laid down in Article 2(1)(4) of Directive 2014/24. On those aspects of public financing that are relevant to the interpretation of that provision, see the judgment of 3 October 2000, *University of Cambridge* (C-380/98, EU:C:2000:529). The judgment in *FIG and FISE* (paragraphs 95 to 107) recognises that, in certain circumstances, the fees paid to an Italian NSF by its members may be classified as public contributions and may, in some cases, indicate the existence of public control by CONI. At the hearing, the Commission suggested that the referring court (whose orders for reference do not address this matter) might take note of the judgment in *FIG and FISE* in assessing the extent to which the FIGC is publicly financed.

[43] These are that the body: (i) must be financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or (ii) must be subject to management supervision by those authorities or bodies; or (iii) must 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.

59. Of those conditions, the only one at issue here is that of whether the FIGC 'is subject to management supervision'[44] by the State or other bodies governed by public law. The referring court has doubts as to whether the rules of Italian law governing the relationship between the FIGC and CONI support the assertion that the latter exerts a 'decisive influence' over the management of the latter.

60. It is common ground that CONI is a body governed by public law. Legislative Decree No 242/1999 (Article 1) expressly confers on it the status of a body having 'legal personality under public law', which is responsible to the Ministry of Heritage and Cultural Activities. The judgment in *FIG and FISE* even classified it as a 'public authority'.[45]

61. So far as concerns the relationship between CONI and NSFs, the Court summarised this in the judgment in *FIG and FISE*,[46] listing a number of powers exercised by the former that might give an indication of the extent of its supervision of the latter.

62. That list included the powers of CONI:

'– to approve the budgets, related activity programmes and the annual balance sheets of national sports federations;

– to oversee national sports federations in matters of a public nature;

– to approve, "for sporting purposes", the statutes, regulations implementing the statutes, sports regulations governing sports disciplinary matters and anti-doping rules of national sports federations, and, where appropriate, propose the necessary amendments to those texts;

– to appoint auditors to represent it within national sports federations;

– to place national sports federations under supervision in the event of serious mismanagement or serious violations of sports law by the governing bodies;

– to establish the criteria and procedures governing the carrying out by CONI of checks of national sports federations;

– to lay down, with a view to ensuring that sports competitions are properly organised, the criteria and procedures governing the checks carried out by national sports federations on member sports corporations and CONI's substitute oversight function in the event of failure;

– to lay down the fundamental principles which, in order to obtain recognition for sporting purposes, must govern the statutes of national sports federations and to adopt the code of sporting discipline to be observed by all national sporting federations;

– … to adopt, in relation to national sports federations, guidelines concerning the pursuit of the sporting activities for which they are responsible.'

[44] I shall use without distinction the terms 'supervision' and 'control' employed by the different language versions in this provision. Thus, the English (*supervision*), the Spanish (*supervisión*) and the German (*Aufsicht*) opt for the former, while the French (*contrôle*) and the Portuguese (*controlo*) opt for the latter. The Italian version uses the term *vigilanza*.

[45] The judgment in *FIG and FISE*, paragraphs 77 and 85, as well as paragraph 2 of the operative part.

[46] Paragraph 81.

63. As I have already stated, the Consiglio di Stato (Council of State) asks whether, on the basis of that relationship between NSFs and CONI, the latter exerts a 'decisive influence' over the former. A potential obstacle to the existence of such an influence is the fact that the presidents and representatives of NSFs have a qualifying holding within the main bodies of CONI.

64. I shall look first at the supervision exercised by CONI over NSFs and, later, at the composition of CONI itself.

1. Supervision exercised by CONI over NSFs

65. The Court classifies 'management supervision' as supervision which gives rise to 'dependence on the public authorities equivalent to that which exists where one of the other alternative criteria is fulfilled, … enabling the public authorities to influence [the] decisions [of the body in question] in relation to public contracts'. [47]

66. The various indicators of control must be analysed by way of an 'overall assessment', since, 'while a single indicator may be sufficient, in some cases, to establish control, the existence of such control will, in most cases, be evidenced by a set of indicators'. [48]

67. In the field of public procurement, the Court has taken into consideration as factors indicative of the exercise of control over entities capable of being classified as bodies governed by public law the fact, inter alia, that the public authority:

– is able to dissolve the entity concerned, appoint a liquidator, order the suspension of its managerial organs and appoint a provisional administrator, in the event of serious omissions or irregularities; [49]

– has a power of inspection allowing it to carry out studies, audits or assessments in the field of activity of the entity concerned, as well as to draw up proposals as to the action to be taken following its inspection reports; [50]

– verifies that the entity which is responsible to it implements the measures it has adopted; [51]

– is authorised to examine the annual accounts of the entity concerned, as well as its conduct from the point of view of proper accounting, regularity, economy, efficiency and expediency, or is able to inspect its business premises and facilities and to report the results of those inspections to the competent bodies. [52]

[47] The judgment in *Adolf Truley*, paragraphs 69 and 70: '… the criterion of managerial supervision cannot be regarded as being satisfied in the case of mere review since, by definition, such supervision does not enable the public authorities to influence the decisions of the body in question in relation to public contracts'.

[48] The judgment in *FIG and FISE*, paragraph 87.

[49] Judgment of 1 February 2001, *Commission* v *France* (C-237/99, EU:C:2001:70, paragraph 54).

[50] *Ibidem*, paragraph 58.

[51] *Ibidem*, paragraph 58. See, to the same effect, the judgment of 17 December 1998, *Commission* v *Ireland* (C-353/96, EU:C:1998:611, paragraph 38), which states that the 'Minister's power to give instructions to Coillte Teoranta, in particular requiring it to comply with State policy on forestry or to provide specified services or facilities, and the powers conferred on that Minister and the Minister for Finance in financial matters give the State the possibility of controlling Coillte Teoranta's economic activity'. See, in identical wording, paragraph 33 of the judgment of the same date, *Connemara Machine Turf* (C-306/97, EU:C:1998:623).

[52] The judgment in *Adolf Truley*, paragraph 73. The same is not true if the authority simply verifies that the body's budget is balanced (judgment of 12 September 2013, *IVD* (C-526/11, EU:C:2013:543, paragraph 29)).

68. In the judgment in *FIG and FISE*, the Court, after taking note of all of the powers which CONI enjoys in relation to NSFs, called upon the national court to assess whether the former was able to 'exert an actual and substantial influence over the [latter's] general policy or programme', notwithstanding the 'technical, organisational and management autonomy' which NSFs enjoy. [53]

69. By the same token, the Consiglio di Stato (Council of State) will have to consider the various factors present in this case, not that this prevents the Court from providing it with some guidelines on the interpretation of Directive 2014/24.

70. I shall set these out under four headings.

(a) Powers relating to the establishment of NSFs

71. One of the functions of CONI is to recognise NSFs for sports purposes. [54] The referring court will have to determine whether such recognition is purely formal or, as appears to be the case, a matter of substance, inasmuch as it is linked to an examination of NSF statutes.

72. In order to approve the statutes of NSFs, [55] CONI has to assess their conformity with the law, with CONI's own Statute and with the fundamental principles which it has itself laid down. [56] It may refuse to grant such approval, in which case it returns the statutes presented to it to the NSF concerned, with an indication of the criteria that must be observed, so that the relevant amendments can be incorporated. [57] Compliance with those indications is compulsory. [58]

73. The referring court takes the view that 'recognition [of NSFs] for sports purposes may be regarded as comparable, from the point of view of the requirement relating to purpose, to the establishment of a body governed by public law', [59] a position which is of a piece with its assertions to the effect that the public functions entrusted to NSFs are 'the reason for their establishment'. [60]

74. If the public functions entrusted to NSFs are the reason why CONI plays such a decisive role in the recognition of the status of those federations, that role in itself reflects the influence which CONI, as a body governed by public law, exerts at the first stage in the existence of the NSFs.

53 The judgment in *FIG and FISE*, paragraph 82.

54 Article 5(2)(c) and Article 15(5) of Legislative Decree No 242/1999.

55 It is for the National Council of CONI to define the principles with which the statutes of NSFs must be aligned as a condition of recognition (Article 5(2)(b) of Legislative Decree No 242/1999).

56 Second subparagraph of Article 22(5) of the CONI Statute.

57 Third subparagraph of Article 22(5) of the CONI Statute.

58 If the NSF does not amend its statutes as indicated, CONI can appoint an ad hoc receiver and, in the most serious cases, after issuing a warning, revoke its recognition (fifth subparagraph of Article 22(5) of the CONI Statute).

59 Paragraph 5.3.3 of the orders for reference.

60 Point 44 of this Opinion.

(b) Powers relating to the activities of NSFs

75. NSFs are required to carry on the sports activity for which they are responsible in harmony with the decisions and guidelines of CONI.[61] Although they enjoy technical, organisational and management autonomy, they exercise that autonomy under CONI's *supervision*.[62] In performing their public activities, they must comply with the CONI guidelines and controls.[63]

76. Some of the parties to the dispute argue that those legislative provisions establish not control mechanisms but reciprocal cooperation. They go on to say that, because of their general and abstract nature, the aforementioned guidelines act as soft law and are not suitable for determining the management policies or strategies of NSFs.[64]

77. It is once again for the referring court to assess the extent of CONI's powers in relation to NSFs. In so doing, it will have to determine, inter alia, whether the former issues to the latter binding instructions, which are capable of being coercively imposed.

78. In the order for reference, the Consiglio di Stato (Council of State) takes the view that CONI exercises enhanced control over *all* of the activities carried on by NSFs, not just those of a public nature. It states that NSFs 'seem to lack the freedom to attain at will the aim pursued by a collective body', since 'their nature is in fact one that is institutional and externally determined, either by law or by measures adopted by the authorities …, not only as regards matters relating to their essential structure but also as regards their principal spheres of activity and the ways in which that activity is to be carried on, a fact which leads in consequence to the elimination or reduction of the space and freedom of organisation inherent in private autonomy'.[65]

79. If that is the case, intervention by the public authorities (in particular, CONI) in the business of NSFs does not seem to stop at adopting statutory or regulatory rules with which those federations must comply,[66] since CONI is able, by way of guidelines or other types of measure, to mark out the main lines that the activities carried on by NSFs must follow. In that connection, the Commission notes that CONI could, for example, influence the FIGC's decisions on the selection of which tenderers are to be awarded public contracts.[67]

80. Prominent among the powers conferred on CONI is its ability to place NSFs under its guardianship in the case where: (a) they commit serious management irregularities or serious infringements of sports law; (b) the managerial organs are found to be incapable of functioning; or (c) the proper operation or running of sports competitions cannot be guaranteed. In those circumstances, a receiver may be appointed.[68]

[61] Article 15(1) of Legislative Decree No 242/1999 and Article 20(4), first subparagraph, first indent, of the CONI Statute.

[62] Last subparagraph of Article 20(4) of the CONI Statute.

[63] First subparagraph of Article 23(1 *bis*) of the CONI Statute. According to what the Italian Government stated at the hearing, that provision should be interpreted in the light of Article 15 of Legislative Decree No 242/1999. It is for the national court to interpret, jointly or separately, Legislative Decree No 242/1999 and the CONI Statute in order to clarify the limits of the CONI 'decisions', 'guidelines' and 'controls' by which NSFs are bound.

[64] Observations of the FIGC and CONI (paragraphs 37 and 29 respectively).

[65] Paragraph 5.3.6 of the order for reference.

[66] According to the judgment in *FIG and FISE* (paragraph 48), regulatory intervention which is 'intrusive enough to determine, de facto, the general policy or programme of [an entity] … may be indicative of control'.

[67] Paragraph 76 of its written observations.

[68] Article 5(2)(e *ter*) of Legislative Decree No 242/1999 and the second subparagraph of Article 23(3) of the CONI Statute.

81. Those powers are consistent with the general mandate to the effect that CONI must ensure the proper functioning of NSFs and is even able to revoke their recognition as such. [69]

82. The case-law of the Court to which I have referred previously regards as a sign of control on the part of public authorities the fact that they can order an entity to be dissolved, appoint a liquidator or order the suspension of managerial staff in cases of serious irregularity. [70]

83. As the Commission notes, [71] the only way of telling the difference between a serious irregularity and one of lesser importance is the permanent and systematic control of an NSF's activities: CONI is free to decide whether, in the first case, it must intervene and place the NSF in question under its guardianship.

84. That same permanent supervisory link is in keeping with the task, also entrusted to CONI, of replacing an NSF in the case where the controls it applies to sports societies are shown to be unsuitable for ensuring the proper running of championships. [72]

85. A replacement measure of this kind goes to the core of a federation's activities, since the very purpose of the FIGC is to organise football competitions. As the Commission notes, [73] in order to be able to ascertain whether controls are unsuitable, CONI must hold a position allowing it to determine on an ongoing basis whether NSFs are complying with the requirements imposed on sports societies with respect to the proper running of championships. Those requirements must be consistent with the criteria and conditions of control laid down by CONI.

86. From the foregoing evidence, the referring court will be able to draw its own conclusions as to the extent of the supervision which CONI exercises over NSFs.

87. In that same context, it will have to assess whether CONI's general supervision of the activities carried on by NSFs extends to the way in which the latter draw up their public procurement policy, or at least to the precautions which have to be put in place so that the organisational autonomy of NSFs complies, in this field, with rules on disclosure, transparency, non-discrimination and respect for competition such as those laid down in Directive 2014/24. In that connection, CONI might exert an influence over the NSFs' procurement policy.

88. It is not inconceivable, moreover, that the irregularities forming the subject of supervision by CONI might arise under a procurement scheme operated by NSFs which is not governed by the rules on disclosure and transparency, in which case the risks of corruption would increase. [74] CONI's supervisory powers appear to include not only responding to such irregularities but also preventing them.

69 First subparagraph of Article 23(3) and Article 21(3) of the CONI Statute.

70 Judgment of 1 February 2001, *Commission* v *France* (C-237/99, EU:C:2001:70, paragraphs 54 and 55).

71 Paragraph 72 of its written observations.

72 Article 5(2)(e *bis*) of Legislative Decree No 242/1999.

73 Paragraph 68 of its written observations.

74 See the report on *Task Force 1* of the International Partnership against Corruption in Sport (IPACS), *Reducing the risk of corruption in procurement relating to sporting events and infrastructure*, at http://www.oecd.org/corruption/multi-stakeholder-sports-integrity-taskforces-established.htm.

(c) Powers relating to NSF budgets and accounts

89. CONI also has the power to approve NSF budgets.[75] Unlike in the case of approval of NSF statutes, in connection with which CONI's view is imposed in the manner already analysed, its disagreement with the budgets presented to it does not have the same effects.[76]

90. Once again, the Consiglio di Stato (Council of State) will have to gauge whether, even in cases where it rejects an NSF budget but is not able to replace it,[77] CONI exercises some control over NSFs, as the Commission maintains.[78] As the approval of budgets is based on the criteria and conditions laid down by CONI,[79] the latter may play an important role in their make-up.

91. In assessing the instruments available to CONI for controlling the economic activities carried on by NSFs, it should not be forgotten, finally, that CONI can appoint auditors to act within NSFs.[80]

92. The Court has held that 'auditors are not regarded as "officers" and are thus not in a position to determine an entity's "general policy or programme"'.[81] They may nonetheless be regarded as an additional means of exercising permanent supervision over the financial activities of NSFs.

93. According to the FIGC statutes, intervention by the auditors appointed by CONI is more significant than it might seem at first sight. Those auditors make up the majority (two thirds) of the FIGC's College of Auditors[82] and are entitled to attend all meetings of the Federation's organs.

94. Depending on the extent of their powers, a permanent presence of CONI's auditors within the decision-making bodies of the FIGC[83] might meet the conditions to which the judgment in *Adolf Truley* referred in connection with the financial supervision of entities by public authorities.[84]

(d) Powers relating to revocation of the recognition of NSFs

95. If an NSF fails to fulfil the obligations to which its recognition was made subject, CONI may revoke that recognition.[85] Together with receivership and guardianship, revocation is the strongest measure by which Italian law confers effective powers of supervision on CONI.

75 Article 15(3) of Legislative Decree No 242/1999, as well as Article 21(4) and Article 23(2) of the CONI Statute.

76 Some of the parties to the dispute play down the importance of CONI's role in the context of NSFs' accounts, describing that role as more symbolic, inasmuch as it is the assembly which makes the final adjudication.

77 In the event of non-approval by CONI, the power to replace the budget passes to the assembly comprised of representatives from sports societies (Article 20(1) of the FIGC statutes).

78 Paragraph 70 of its written observations.

79 First subparagraph of Article 23(2) of the CONI Statute.

80 Article 7(5)(h1) of CONI Statute.

81 The judgment in *FIG and FISE*, paragraph 80.

82 Article 31(1) of the FIGC statutes.

83 Article 31(4) of the FIGC statutes: the College of Auditors exercises accounting control over the FIGC and its organs. Members of the College must be invited to all meetings of the Federation's organs.

84 See point 68 and footnote 5 of this Opinion.

85 Article 21(3) of the CONI Statute.

96. The fact that revocation is adopted only in situations of particular seriousness does nothing to alter its status as a mechanism by which CONI exercises supervision over NSFs. It would appear to be a power that may be likened to those which the Court examined in the judgment in *Commission* v *France*,[86] whereby the public authority was authorised to order the dissolution of an entity and to appoint a liquidator and a provisional administrator.

97. According to the Court, 'the exercise of the powers conferred on [the authority] by those provisions[, even though it] is in fact the exception, … nonetheless implies *permanent supervision*, which provides the only means of detecting gross mismanagement or failure to act on the part of the managerial organs'.[87]

98. Finally, in the case of the FIGC, its dissolution, even if voluntary, does not entail a distribution of its assets, which are transferred to CONI.[88] This fact confirms, to my mind, that the public component of the FIGC's activities, which is subject to supervision by CONI, determines the entirety of the rules of law by which that federation is governed.[89]

2. Does CONI control the NSFs or do the NSFs control CONI?

99. Worthy of particular attention is the fact that those who argue that the NSFs are fully independent of CONI submit that it is in fact the NSFs which *control* CONI itself, given their participation in the latter's supreme organs.[90]

100. The Court addressed that same argument in the judgment in *FIG and FISE*, emphasising that '[that fact] is relevant only if it can be established that each federation, considered individually, is able to exert a significant influence over the public control exercised by CONI in respect of it so as to neutralise that control'.[91]

101. Albeit from a different point of view, the Consiglio di Stato (Council of State), too, rejects such a proposition. It takes view, with which I concur, that:

– first, the persons who make up the essential organs of CONI (even if they do, for the most part, come from the NSFs) 'are obliged to respect the official duties inherent in their position, without regard to where they have come from';

– secondly, 'CONI is itself subject … to supervision by the ministerial authority …, which may order the dissolution of the National Board and remove from office the President of CONI …', in the circumstances provided for in Article 13 of Legislative Decree No 242/1999.[92]

86 Judgment of 1 February 2001 (C-237/99, EU:C:2001:70).

87 *Ibidem*, paragraphs 54 and 56. No emphasis in the original.

88 Article 38(1) of the FIGC statutes.

89 Otherwise, dissolution would be governed by the rules of ordinary company law and any positive balance reported in its accounts on winding-up would be distributed among the members of the organisation. This is not the case, however, and the residual assets remain tied to the public aim pursued through transfer to the public supervisory authority.

90 Observations of the FIGC (paragraphs 43 to 45), of CONI (paragraphs 32 to 34) and of the Italian Government (paragraph 26), which emphasise that 'membership of the principal decision-making bodies of CONI is made up for the most part [of representatives from the NSFs]'.

91 The judgment in *FIG and FISE*, paragraph 89.

92 Fourth indent of paragraph 5.6 of the orders for reference.

102. The point of reference for determining who controls whom cannot be anything other than the legal configuration of the relationship between CONI and the NSFs. A situation in which, notwithstanding that the law confers on CONI the power of supervision over NSFs, that relationship were to become effectively inverted, because the members of CONI did not act 'without regard to where they have come from' and overlooked the fact that they are performing public functions, would constitute an anomaly [93] which would have to be corrected.

103. Consequently, in determining whether the FIGC is a body governed by public law within the meaning of Directive 2014/24, the referring court will have to take into account the legal conception of the relationship between CONI and the NSFs, regardless of any dysfunction which may in practice arise.

V. Conclusion

104. In the light of the foregoing, I suggest that the Court's answer to the Consiglio di Stato (Council of State, Italy) should be as follows:

'(1) In accordance with 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, a national sports federation may be classified as a body governed by public law if, in addition to having its own legal personality, it has been established for the specific purpose of meeting needs in the general interest not having an industrial or commercial character and its management is subject to the supervision of another body governed by public law such as a national Olympic committee on which the law of a Member State confers that status.

(2) The national court may infer that national sports federations meet needs in the general interest not having an industrial or commercial character in the case where the public functions which the legal system has entrusted to them by way of a monopoly and which constitute the reason for the existence of those non-profit making entities make up the essential core of their activities, with the result that their remaining activities are purely instrumental in relation to the former. It is immaterial for these purposes whether the national sports federation is financially self-sufficient or depends on public contributions.

(3) In order to determine whether a public authority such as the national Olympic committee forming the subject of the dispute in the main proceedings exercises supervision over national sports federations, the national court will have to carry out an overall assessment of the powers which that committee enjoys in relation to the management of those federations. Factors capable of being classified as indications the presence of which would, in principle, demonstrate that the national Olympic committee exercises powers of control are the fact that it:

– grants recognition for sports purposes to national sports federations, following approval of their statutes, and, in that event, may revoke such recognition;

– is authorised to issue guidelines and adopt decisions on the public activities of national sports federations;

[93] The legal and economic literature on the activities of public agencies has examined extensively the phenomenon known as 'regulatory capture' by the operators concerned.

– may require national sports federations to comply with the general provisions, guidelines and decisions of the national Olympic committee, and, in the event of serious management irregularities or serious infringements of the sports regulations, order that the aforementioned federations be placed into receivership;

– exercises permanent supervision over the functioning of national sports federations;

– approves the budgets, activity programmes and annual accounts of national sports federations, and may appoint auditors (who, in that event, hold a controlling majority within the College of Auditors) to represent it within the organs of those federations.

(4) The fact that the representatives from the national sports federations have a qualifying or majority holding within the organs of the national Olympic committee does not prevent those federations from being regarded as bodies governed by public law which are subject to the supervision of that committee.'