Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

11 September 2019 *

(Reference for a preliminary ruling – Regulation (EU) No 549/2013 – European system of national and regional accounts in the European Union – Paragraph 20.15 of Annex A – Control by a National Olympic Committee of national sports federations in the form of non-profit institutions (NPIs) – Second sentence of paragraph 20.15 of Annex A – Definition of 'public intervention in the form of general regulations applicable to all units working in the same activity' – Scope – First sentence of paragraph 20.15 of Annex A – Definition of 'ability to determine the general policy or programme' of an NPI – Scope – Paragraph 2.39(d), paragraph 20.15(d) and the last sentence of paragraph 20.309(i) of Annex A – Account taken of membership fees paid to the NPI)

In Joined Cases C-612/17 and C-613/17,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Corte dei conti (Court of Auditors, Italy), made by decisions of 13 September 2017, received at the Court on 24 October 2017, in the proceedings

Federazione Italiana Golf (FIG)

v

Istituto Nazionale di Statistica (ISTAT),

Ministero dell'Economia e delle Finanze (C-612/17),

and

Federazione Italiana Sport Equestri (FISE)

v

Istituto Nazionale di Statistica (ISTAT) (C-613/17),

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Second Chamber, and C. Vajda (Rapporteur), Judges,

Advocate General: G. Hogan,

* Language of the case: Italian.

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 6 February 2019,

after considering the observations submitted on behalf of:

– Federazione Italiana Golf (FIG), by P. Montone and M. Montone, avvocati,

– Federazione Italiana Sport Equestri (FISE), by G. Tobia, avvocato,

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

– the European Commission, by F. Moro and F. Simonetti, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 February 2019,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ 2013 L 174, p. 1).

2 The requests have been made in proceedings brought by the Federazione Italiana Golf (Italian Golf Federation; 'FIG') against the Istituto Nazionale di Statistica (National Statistics Office, Italy; 'ISTAT') and the Ministero dell'Economia e delle Finanze (Ministry of Economic Affairs and Finance, Italy), in Case C-612/17, and by the Federazione Italiana Sport Equestri (Italian Equestrian Sport Federation; 'FISE') against ISTAT, in Case C-613/17, concerning the inclusion, in respect of 2017, of FIG and FISE in the list of public authorities entered into the public profit and loss accounts ('the 2016 ISTAT list').

Legal framework

European Union law

3 Recital 1 of Regulation No 549/2013 is worded as follows:

'Policymaking in the Union and monitoring of the economies of the Member States and of the economic and monetary union (EMU) require comparable, up-to-date and reliable information on the structure of the economy and the development of the economic situation of each Member State or region.'

4 Recital 3 of that regulation states:

'Citizens of the Union need economic accounts as a basic tool for analysing the economic situation of a Member State or region. For the sake of comparability, such accounts should be drawn up on the basis of a single set of principles that are not open to differing interpretations. The information provided should be as precise, complete and timely as possible in order to ensure maximum transparency for all sectors.'

5 Chapter 1 of Annex A to that regulation, which lays down the general features and basic principles of the European system of accounts ('the ESA 2010'), contains paragraphs 1.01, 1.19, 1.34, 1.35, 1.36, 1.37 and 1.57, worded as follows:

'1.01 The [ESA 2010] is an internationally compatible accounting framework for a systematic and detailed description of a total economy (that is, a region, country or group of countries), its components and its relations with other total economies.

…

1.19 For the EU and its Member States, the figures from the ESA framework play a major role in formulating and monitoring their social and economic policies.

The following examples demonstrate uses of the ESA framework:

…

(b) defining criteria for the excessive deficit procedure: measures of government deficit and debt;

…

1.34 Sector accounts are created by allocating units to sectors and this enables transactions and balancing items of the accounts to be presented by sector. The presentation by sector reveals many key measures for economic and fiscal policy purposes. The main sectors are households, government, corporations (financial and non-financial), non-profit institutions serving households (NPISHs) and the rest of the world.

The distinction between market and non-market activity is an important one. An entity controlled by government, which is shown to be a market corporation, is classified in the corporation sector, outside the general government sector. Thus, the deficit and debt levels of the corporation will not be part of the general government deficit and debt.

1.35 It is important that clear and robust criteria for allocating entities to sectors are set out.

The public sector consists of all institutional units resident in the economy that are controlled by government. The private sector consists of all other resident units.

Table 1.1 sets out the criteria used to distinguish between [the] public and private sector, and in the public sector between the government sector and public corporations sector, and in the private sector between the NPISH sector and the private corporations sector.

Table 1.1

Criteria	Controlled by government (public sector)	Privately controlled (private sector)
Non-market output	General government	NPISH
Market output	Public corporations	Private corporations

1.36 Control is defined as the ability to determine the general policy or programme of an institutional unit. Further details in relation to the definition of control are given in paragraphs 2.35 to 2.39.

1.37 Differentiating between market and non-market, and so, for public sector entities, classifying them into the general government sector or the corporations sector, is decided by the following rule:

An activity shall be considered as a market activity when the corresponding goods and services are traded under the following conditions:
(1) sellers act to maximise their profits in the long term, and do so by selling goods and services freely on the market to whoever is prepared to pay the asking price;
(2) buyers act to maximise their utility given their limited resources, by buying according to which products best meet their needs at the offered price;
(3) effective markets exist where sellers and buyers have access to, and information on, the market. An effective market can operate even if these conditions are not met perfectly.

…

1.57 Institutional units are economic entities that are capable of owning goods and assets, of incurring liabilities and of engaging in economic activities and transactions with other units in their own right. For the purposes of the ESA 2010 system, the institutional units are grouped together into five mutually exclusive domestic institutional sectors:
(a) non-financial corporations;
(b) financial corporations;
(c) general government;
(d) households;
(e) [NPISHs].

The five sectors together make up the total domestic economy. Each sector is also divided into subsectors. The ESA 2010 system enables a complete set of flow accounts and balance sheets to be compiled for each sector, and subsector, as well as for the total economy. Non-resident units can interact with these five domestic sectors, and the interactions are shown between the five domestic sectors and a sixth institutional sector: the rest of the world sector.

…’

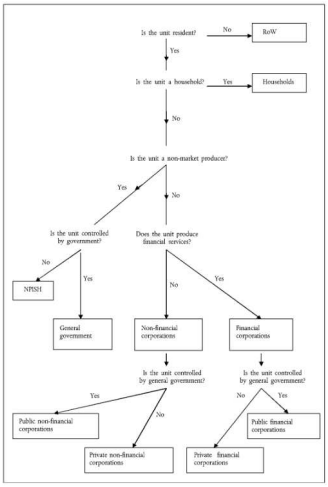
6 In Chapter 2 of that annex, entitled 'Units and groupings of units', paragraph 2.12, diagram 2.1 and paragraphs 2.34, 2.39 and 2.130 are worded as follows:

'2.12 *Definition*: an institutional unit is an economic entity characterised by decision-making autonomy in the exercise of its principal function. A resident unit is regarded as constituting an institutional unit in the economic territory where it has its centre of predominant economic interest if it has decision-making autonomy and either keeps a complete set of accounts, or is able to compile a complete set of accounts.

To have autonomy of decision in respect of its principal function, an entity must be:
(a) entitled to own goods and assets in its own right; it will be able to exchange the ownership of goods and assets in transactions with other institutional units;
(b) able to take economic decisions and engage in economic activities for which it is responsible and accountable at law;
(c) able to incur liabilities on its own behalf, to take on other obligations or further commitments and to enter into contracts; and
(d) able to draw up a complete set of accounts, comprised of accounting records covering all its transactions carried out during the accounting period, as well as a balance sheet of assets and liabilities.

…

Diagram 2.1 – Allocation of units to sectors



…

2.34 Diagram 2.1 shows how units are allocated to the main sectors. In order to determine the sector of a unit which is resident and not a household, according to the diagram, it is necessary to determine whether it is controlled by general government or not, and whether it is a market or a non-market producer.

…

2.39 For non-profit institutions recognised as independent legal entities, the five indicators of control to be considered are:
(a) the appointment of officers;

(b) the provisions of enabling instruments;
(c) contractual agreements;
(d) the degree of financing;
(e) the degree of government risk exposure.

As with corporations, a single indicator may be sufficient to establish control in some cases, but, in other cases, a number of separate indicators may collectively indicate control.

…

2.130 … Non-market NPISHs controlled by general government are classified in the general government sector (S.13).

…'

7 Paragraph 3.31 of Chapter 3 of Annex A to Regulation No 549/2013 states:

'…

A private [non-profit institution (NPI)] is classified to the NPISH sector if it is a non-market producer, except when it is under the control of government. When a private NPI is controlled by government, then it is classified in the general government sector.

…'

8 Chapter 4 of that annex, entitled 'Distributive transactions', contains paragraphs 4.125 and 4.126, which provide as follows:

'Current transfers to NPISHs (D.751)

4.125 *Definition*: current transfers to NPISHs include all voluntary contributions (other than legacies), membership subscriptions and financial assistance which NPISHs receive from households (including non-resident households) and, to a lesser extent, from other units.

4.126 Current transfers to NPISHs include the following:
(a) regular subscriptions paid by households to trade unions and political, sporting, cultural, religious and similar organisations classified in the sector NPISHs;

…'

9 Chapter 20 of Annex A to Regulation No 549/2013, which concerns government accounts, contains paragraphs 20.05, 20.13, 20.15, 20.17, 20.18, 20.29, 20.306, 20.309 and 20.310. Those paragraphs are worded as follows:

'20.05 The general government sector (S.13) consists of all government units and all non-market non-profit institutions (NPIs) that are controlled by government units. …

…

20.13 Non-profit institutions (NPIs) that are non-market producers and are controlled by government units are units of the general government sector.

…

20.15 Control of a NPI is defined as the ability to determine the general policy or programme of the NPI. Public intervention in the form of general regulations applicable to all units working in the same activity is irrelevant when deciding whether the government holds control over an individual unit. To determine whether a NPI is controlled by the government, the following five indicators of control should be considered:

(a) the appointment of officers;
(b) other provisions of the enabling instrument, such as the obligations in the statute of the NPI;
(c) contractual agreements;
(d) degree of financing;
(e) risk exposure.

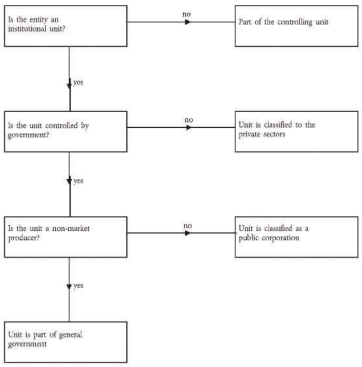
A single indicator can be sufficient to establish control. However, if a NPI that is mainly financed by government remains able to determine its policy or programme to a significant extent along the lines mentioned in the other indicators, then it would not be considered as being controlled by government. In most cases, a number of indicators will collectively indicate control. A decision based on these indicators will be judgmental in nature.

…

Other units of general government

20.17 It can be difficult to decide on the classification of producers of goods and services that operate under the influence of government units. The alternatives are to classify them as general government or, if they qualify as institutional units, as public corporations. For such cases, the following decision tree is used.

Diagram 20.1 — Decision tree



Public control

20.18 Control over an entity is the ability to determine the general policy or programme of that entity. …

…

The market/non-market test

20.29 …

The ability to undertake a market activity will be checked notably through the usual quantitative criterion (the 50% criterion), using the ratio of sales to production costs (as defined in paragraphs 20.30 and 20.31). To be a market producer, the public unit shall cover at least 50% of its costs by its sales over a sustained multi-year period.

…

20.306 All institutional units included in the public sector are resident units controlled by government, either directly or indirectly by public sector units in aggregate. The control over an entity is defined as the ability to determine the general policy of that entity. This is described in more detail below.

…

Public sector control

20.309 Control of a resident public sector unit is defined as the ability to determine the general policy of the unit. This can be through the direct rights of a single public sector unit or the collective rights of many. The following indicators of control are to be considered:

(a) rights to appoint, veto or remove a majority of officers, board of directors etc. The rights to appoint, remove, approve or veto a majority of the governing board of an entity are sufficient to determine control. Such rights may be directly held by one public sector unit, or indirectly by public sector units in aggregate. If the first set of appointments are controlled by the public sector but subsequent replacements are not subject to these controls, then the entity remains in the public sector until the time when the majority of the directors are not controlled appointments;

(b) rights to appoint, veto or remove key personnel. If the control of general policy is effectively determined by influential members of the board, such as the chief executive, chairperson and finance director, then the powers to appoint, veto or remove those personnel are given greater prominence;

(c) rights to appoint, veto or remove a majority of appointments for key committees of the entity. If key factors of the general policy, such as remuneration of senior staff, pay and business strategy, are delegated to subcommittees, then the rights to appoint, remove or veto of directors on these subcommittees is a determinant of control;

(d) ownership of the majority of the voting interest. This will normally determine control when decisions are made on a one-share, one-vote basis. The shares may be held directly or indirectly, with shares owned by all public sector units aggregated. If decisions are not made on a one-share, one-vote basis the situation should be analysed to see if the public sector has a majority vote;

(e) rights under special shares and options. These golden or special shares were once common in privatised corporations and also feature in some special purpose entities. In some cases they give public sector entities some residual rights to protect interests; such rights may be permanent or time-limited. The existence of such shares is not by itself an indicator of control, but needs to be carefully analysed, in particular the

circumstances where the powers may be invoked. If the powers influence the current general policy of the entity they will be important to the classification decisions. In other cases they will be reserve powers that may confer rights to control general policy in times of emergency etc., these are judged as irrelevant if they do not influence existing policy, although in the event that they are utilised they will usually trigger immediate reclassification. The existence of a share purchase option to public sector entities in certain circumstances is a similar situation, and a judgement is necessary on whether the powers to implement the option influence the general policy of the entity;

(f) rights to control via contractual agreements. If all the sales of an entity are to a single public sector entity, or a collection of public sector entities, there is scope for dominant influence that can be judged as control. The presence of other customers, or the potential to have other customers, is an indicator that the entity is not controlled by public sector units. If the entity is restricted from dealing with non-public sector customers due to public sector influence, then this is an indicator of public sector control;

(g) rights to control from agreements/permission to borrow. Lenders often impose controls as conditions of making loans. If the public sector imposes controls through lending, or to protect its risk exposure from a guarantee, which are tougher than a private sector entity would typically face from a bank, this is an indicator of control. If an entity requires permission from the public sector to borrow, then this is an indicator of control;

(h) control via excessive regulation. When regulation is so tight that it effectively dictates the general policy of the business, it is a form of control. Public authorities can in some cases have powerful regulatory involvement, particularly in areas such as monopolies and privatised utilities where there is a public service element. It is possible for regulatory involvement to exist in important areas, such as price setting, without an entity ceding control of general policy. Choosing to enter into or operate in a highly regulated environment is similarly an indicator the entity is not subject to control;

(i) others. Control may also be obtained from statutory powers or rights contained in an entity's constitution, for example to limit the activities, objectives and operating aspects, approve budgets or prevent the entity changing its constitution, dissolving itself, approving dividends, or terminating its relationship with the public sector. An entity that is fully, or close to fully, financed by the public sector is considered to be controlled if the controls on that funding stream are restrictive enough to dictate the general policy in that area.

20.310 Each classification case needs to be judged on its own merits and some of these indicators may not be relevant to the individual case. Some indicators, such as (a), (c) and (d) in paragraph 20.309, are sufficient by themselves to establish control. For others a number of separate indicators may collectively indicate control.

…'

Italian law

10 Article 1 of decreto legge n. 220 (Decree-Law No 220) 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:

'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. 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.'

11 Decreto legislativo n. 242 (Legislative Decree No 242) of 23 July 1999 (GURI No 176 of 29 July 1999; 'Legislative Decree No 242/1999') reorganises the Comitato Olimpico Nazionale Italiano (Italian National Olympic Committee; 'CONI'). Article 4(2) of that legislative decree is worded as follows:

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

12 Article 15(1) to (6) of Legislative Decree No 242/1999, concerning national sports federations and member sports federations, states:

'1. National sports federations and member sports federations shall carry on their sporting activities in accordance with the decisions and guidelines of the [International Olympic Committee], international federations and CONI, and also having regard to the public nature of certain classes of activity referred to in the Statute of CONI. Sports associations and corporations shall participate in those activities, as shall individual members solely in the cases provided for in the statutes of national sports federations and member sports federations concerning that particular activity.

2. National sports federations and member sports federations shall take the form of associations with legal personality governed by private law. They shall be non-profit making and be subject, unless express provision is made to the contrary in this decree, to the Civil Code and its implementing provisions.

3. The balance sheets of national sports federations and member sports federations shall be approved each year by the federal administrative body and be subject to the approval of CONI's National Board. If the auditors of the federation or member federation issue an adverse opinion or if CONI's National Board withholds its approval, the Assembly of corporations and associations must be convened to decide on the approval of the balance sheet.

4. The Assembly which elects the governing bodies shall approve the indicative budgetary plans of the administrative body, which will be scrutinised by the Assembly at the end of each four-year period and of the mandate for which they were approved.

5. The National Council shall recognise national sports federations and member sports federations for sporting purposes.

6. New national sports federations and member sports federations shall be recognised as having legal personality under private law in accordance with [decreto del Presidente della Repubblica

n. 361 (Decree No 361 of the President of the Italian Republic) of 10 February 2000], following prior recognition, for sporting purposes, by the National Council.'

13 Article 16 of Legislative Decree No 242/1999 provides:

'National sports federations and member sports federations 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.'

14 Article 6 of the Statute of CONI, concerning CONI's National Council, states, in paragraph 1:

'The National Council, which is the highest representative body of Italian sport, shall disseminate the Olympic ideal, carry out the necessary activities for Olympic preparations, regulate and coordinate national sporting activities, and ensure that national sports federations and member sports federations take harmonised action.'

15 Article 6(3) of the Statute of CONI provides:

'In accordance with Rule 29(3) of the Olympic Charter, a majority of votes must be made up of votes cast by representatives of national sports federations affiliated to the different international federations responsible for the sports listed in the Olympic Games programme.'

16 Article 6(4) of the Statute of CONI is worded as follows:

'The National Council shall:

…

(b) lay down the fundamental principles to be complied with, in order to secure recognition for sporting purposes, by the statutes of national sports federations, member sports federations, sports promotion entities, recognised public interest associations, and sports associations and corporations, and adopt the Sports Code which must be observed by all national sports federations and member sports federations;

(c) decide on the recognition, for sporting purposes, of national sports federations, member sports associations, sports promotion entities and recognised public interest associations, on the basis of the criteria set out in the Statute and also taking into account for that purpose the image and Olympic nature of the sport, possible recognition by the [International Olympic Committee] and the sporting tradition of the discipline involved;

…

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

(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 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, on the placement under supervision of national sports federations and member sports federations in the event of serious mismanagement or serious violations of sports law by the governing bodies, or where it has been shown that those bodies are unable to function correctly, or where the initiation and conduct of national sports competitions under appropriate conditions cannot be ensured;

…'

17 Article 7(1) of the Statute of CONI, concerning CONI's National Board, provides:

'The National Board is the body responsible for the management, implementation and oversight of the administrative activities of CONI; it oversees national sports federations and member sports federations – and through them, their internal functioning – and sports promotion entities.'

18 Article 7(5) of the Statute of CONI is worded as follows:

'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 under supervision of national sports federations or member sports federations in the event of serious mismanagement or serious violations of sports law by the governing bodies, or where it has been shown that those bodies are unable to function correctly, or where national sports federations have failed to adopt regulatory procedures or to place the competent internal bodies under supervision in order to ensure the initiation and conduct of national sports competitions under appropriate conditions;

…

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

…

(h1) appoint auditors to represent CONI in national sports federations and member sports federations and on 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 member sports federations, determining whether they comply with the law, the Statute of CONI, 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 member sports federations within 90 days to enable the necessary amendments to be made;

…'

19 Under Article 20(4) of the Statute of CONI:

'National sports federations shall carry on sporting activities and associated promotion activities in accordance with the decisions and instructions of the [International Olympic Committee] and CONI, and also having regard to the public dimension of specific aspects of those activities. Within the framework of sports law, national sports federations shall be recognised as having technical, organisational and management autonomy under CONI's control.'

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

20 In Italy, FIG and FISE are national sports federations in the form of non-profit associations with legal personality. They are legal persons governed by private law and are subject, in principle, to the provisions of the Italian Civil Code.

21 By decision published in the *Gazzetta ufficiale della Repubblica italiana* (Official Journal of the Italian Republic) on 30 September 2016, ISTAT included FIG and FISE in the 2016 ISTAT list.

22 Applying the provisions of the ESA 2010 for that purpose, ISTAT found, first of all, that those two federations were, by virtue of the 'market/non-market' test set out, in particular, in paragraph 20.29 of Annex A to Regulation No 549/2013, non-market institutional units. In order to determine whether those units had to be classified, under paragraphs 2.130 and 3.31 of Annex A to that regulation, in the NPISH sector or in the general government sector, ISTAT verified whether FIG and FISE were controlled by government.

23 ISTAT concluded that both federations were controlled by government because, although the federations had a degree of decision-making autonomy, they did not have the complete ability to exercise self-determination in view of the substantial control CONI exerted over their management. It found that a number of evidential factors pointed to that significant influence, including CONI's power to recognise federations for sporting purposes, to approve their statutes, budgets and balance sheets, to oversee federations in matters with a public dimension (competitions, Olympic preparations, etc.) and to place national sports federations under administrative supervision in certain cases of serious irregularities. In addition, ISTAT considered that membership fees paid to FIG and FISE had to be regarded as parafiscal public assistance and that those federations also received public funding from CONI, which was stable over time and strictly controlled by it.

24 On 29 November and 7 December 2016, respectively, FIG and FISE brought actions before the referring court, the Corte dei conti (Court of Auditors, Italy) seeking the annulment of ISTAT's decision to include them in the 2016 ISTAT list. In particular, they argue that ISTAT misapplied the provisions of the ESA 2010 and were wrong to find that they were subject to government control by CONI.

25 After noting that the activities of both FIG and FISE are not of a market nature and that those federations are non-profit institutions, within the meaning of the ESA 2010, the referring court states that the parties to the main proceedings disagree on the interpretation of the concept of 'government control' and, in particular, of three of the criteria to be taken into account, under paragraph 20.15 of Annex A to Regulation No 549/2013, in order to determine whether a sports federation, as an NPI, must be considered to be subject to government control and thus to fall within the general government sector.

26 As regards, first of all, the negative criterion set out in the second sentence of that paragraph, according to which 'public intervention in the form of general regulations applicable to all units working in the same activity' is irrelevant to whether government exerts control over an institutional unit, the referring court states that that expression could be interpreted broadly and cover, in the cases in the main proceedings, both CONI's power to issue guidelines concerning the pursuit of sporting activities and the power to recognise federations for sporting purposes. If those powers were to be classified as 'public intervention in the form of general regulations', they would not be relevant when deciding whether CONI exerts control over FIG and FISE.

27 Next, as regards the criterion that the control of an NPI by government is defined as '[government's] ability to determine the general policy or programme of the NPI', the referring court states that that expression could be construed in two different ways. First, as is clear from the spirit of paragraphs 1.36 and 20.15 of Annex A to Regulation No 549/2013, control could be interpreted as government's ability to determine the general policy or strategy of the institutional unit, that is to say, the ability to manage, constrain and influence the actual overall management of the unit, with the exception of merely formal and external supervision powers. Secondly, it could be interpreted broadly as including formal and external supervision powers, such as the power to approve balance sheets, appoint auditors or approve statutes.

28 Lastly, as regards the criterion relating to the 'degree of financing' referred to in paragraph 20.15(d) of Annex A to Regulation No 549/2013, the referring court states that both FIG and FISE receive approximately 30% of their funding from CONI, while the membership fees paid to those federations account for over 50% of their respective income. In those circumstances, the referring court is uncertain whether such fees can be taken into account in connection with the criterion relating to financing and whether they must be regarded as sources of public or private financing.

29 The referring court considers that it should be possible for the membership fees paid to the federations concerned to be taken into account when assessing the degree of financing, but that they should be treated as 'non-reciprocal private payments' which cannot be equated with income from public financing. The referring court states that if those fees were to be regarded as 'parafiscal public assistance', because they involve, as ISTAT claims, public transfers constituting a funding stream provided by CONI to each federation, that would be tantamount to introducing an indicator of control not provided for in the ESA 2010. According to that court, if its interpretation were to be upheld, it would be possible to take the view that FIG and FISE had developed, as a result of the private fees paid by their members, a considerable self-financing ability enabling them to determine their general policy or programme to a significant extent, thereby excluding all government control by CONI, notwithstanding the fact that they receive 30% of their funding from it.

30 In those circumstances, the Corte dei conti (Court of Auditors) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must the concept of "public intervention in the form of general regulations applicable to all units working in the same activity" referred to in paragraph 20.15 of [Annex A to] Regulation No 549/2013 … be understood broadly as covering also the powers of guidance of a sporting nature (so-called soft law) and the powers of recognition, laid down by law, for the purposes of acquiring legal personality and enablement powers in the sports sector, both powers relating generally to all Italian national sports federations?

(2) Must the general indicator of control referred to in paragraph 20.15 of [Annex A to] Regulation No 549/2013 … ("the ability to determine the general policy or programme of [a non-profit institution]") be interpreted in a substantive sense as the ability to manage, constrain and influence the management activity of the non-profit institution or can it be understood in a non-technical sense as also covering powers of external supervision other than those defined by the specific indicators of control referred to in subparagraphs (a), (b), (c), (d) and (e) of paragraph 20.15 [of Annex A to Regulation No 549/2013] (such as, for example, powers to approve budgets, appoint auditors, and approve statutes and certain types of regulations, sports guidelines or recognition for the purposes of sport)?

(3) On the basis of the combined provisions of paragraphs 20.15, 4.125 and 4.126 of [Annex A to] Regulation No 549/2013 …, can account be taken of membership fees for the purposes of establishing the existence or otherwise of government control, specifying whether a high level of such fees, together with other own revenues, can demonstrate, in the light of the particular features of the case at issue, that the non-profit institution has significant ability to exercise self-determination?'

Questions referred for a preliminary ruling

Preliminary observations

31 The cases in the main proceedings concern whether two Italian non-market institutional units in the form of NPIs, namely FIG and FISE, are to be regarded as controlled by government, namely CONI, for the purposes of their classification in either the general government sector or the NPISH sector, under the rules of the ESA 2010.

32 As is apparent from recitals 1 and 3 of Regulation No 549/2013 and paragraphs 1.01 and 1.19 of Annex A thereto, the ESA 2010 establishes a reference framework for drawing up the accounts of the Member States, for the purposes of both Union citizens and the European Union itself. The accounts should be drawn up on the basis of a single set of principles that are not open to differing interpretations, so that comparable results can be obtained.

33 For accounting purposes under the ESA 2010, all institutional units – defined, in essence, in paragraphs 1.57 and 2.12 of Annex A to Regulation No 549/2013 as an economic entity characterised by decision-making autonomy in the exercise of its principal function – must be allocated to one of the six main sectors identified in paragraph 1.34 of Annex A to that regulation, namely households, government, financial corporations, non-financial corporations, NPISHs or the rest of the world.

34 In order to determine the sector to which a resident institutional unit which is not a household, such as an NPI, should be allocated, it is necessary to establish whether it is a market or a non-market producer, so as to distinguish between entities which are to be classified as corporations and those which are not. In the case of a non-market unit, it must be ascertained whether or not that unit is controlled by government. If it is, the non-market unit will be classified in the general government sector, and if it is not, it will be classified in the NPISH sector. That classification method is apparent in particular from a combined reading of paragraphs 1.35, 2.34, 2.130, 3.31, 20.05, 20.13 and 20.17 of Annex A to Regulation No 549/2013.

35 The general concept of 'control' is defined in a similar way in paragraphs 1.36, 20.15, 20.18, 20.306 and 20.309 of Annex A to Regulation No 549/2013 as the power or ability to determine the general policy, strategy or programme of a unit or entity. Paragraph 20.309 of that annex, in the section of Chapter 20 thereof dealing with the public sector, which covers, inter alia, general government and the units or entities controlled by it, mentions nine general indicators of control for determining whether a resident unit may be regarded as being controlled by government for the purposes of its classification in the general government sector. However, under paragraph 20.310 of that annex, some of those indicators may not be relevant to the individual case.

36 It should be noted that the definition of the concept of 'control of a resident public sector unit' set out in paragraph 20.309 of Annex A to Regulation No 549/2013 is intended to apply to all institutional units, whatever their legal form.

37 Paragraph 20.15 of Annex A to Regulation No 549/2013 is specifically concerned with the question of government control of NPIs. The first sentence of paragraph 20.15 of Annex A to that regulation states that 'control of a NPI is defined as the ability to determine the general policy or programme of the NPI'. While stating that public intervention in the form of general regulations applicable to all units working in the same activity does not, in itself, lead to a finding of control, that provision sets out five indicators of control to be taken into account when determining whether an NPI is controlled by government. Those five indicators are also reproduced in paragraph 2.39 of Annex A to Regulation No 549/2013, subject to some drafting variations depending on the language version. The Court considers that, since paragraphs 2.39 and 20.15 of that annex deal with the same issue and pursue the same objective, namely to set out the indicators of control applicable to NPIs, they must, despite the variations in their wording, receive a common interpretation and be regarded as forming one and the same provision.

38 Furthermore, since paragraph 20.309 of Annex A to Regulation No 549/2013 defines the concept of control for the purposes of delimiting the public sector in general, and since the single provision of paragraphs 2.39 and 20.15 defines that concept with a view to distinguishing NPIs falling within the public sector from those which do not, those two definitions also pursue the same aim and may therefore be applied, in the case of NPIs, to the same entities. It must therefore be found that those two provisions are complementary and, as such, should be applied together and in a uniform manner when determining whether a unit falls within the public or private sector and, therefore, in the case of an NPI, whether it falls within the general government sector, in accordance with the combined provisions of paragraphs 3.31 and 20.13 of Annex A to Regulation No 549/2013, or whether it is an NPISH.

39 For the purposes of examining the questions referred for a preliminary ruling, it is thus necessary to examine the provision set out in paragraphs 2.39 and 20.15 of Annex A to Regulation No 549/2013, which apply specifically to NPIs, while supplementing that examination with reference to the generally applicable provision set out in paragraph 20.309 of that annex.

The first question

40 By its first question, the referring court essentially wishes to know which interpretation ought to be accorded to the concept of 'public intervention in the form of general regulations applicable to all units working in the same activity', referred to in paragraph 20.15 of Annex A to Regulation No 549/2013.

41 The referring court is unsure about the correct interpretation of that concept, particularly in the light of CONI's power to recognise national federations for sporting purposes and to adopt, in relation to them, guidelines concerning the pursuit of the sporting activities for which they are responsible.

42 According to the second sentence of paragraph 20.15 of Annex A to Regulation No 549/2013, 'public intervention in the form of general regulations applicable to all units working in the same activity is irrelevant when deciding whether the government holds control over an individual unit'.

43 It is clear from the wording of that provision that its aim is to exclude from the concept of 'control' any intervention by a public sector unit which is intended to enact or apply rules designed to make all units working in the activity concerned equally and uniformly subject to overarching, broad and abstract rules or general guidance.

44 It should be noted at the outset that, in the cases in the main proceedings, Article 16 of Legislative Decree No 242/1999, which provides that national sports federations are to 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, is one example of such public intervention in the form of general regulations, within the meaning of the second sentence of paragraph 20.15 of Annex A to Regulation No 549/2013, which is not relevant when deciding whether government holds control over an individual unit.

45 As regards the scope of the exclusion set out in that provision, it must be interpreted in the light of the specific indicators of control provided for therein and in other relevant provisions of Annex A to Regulation No 549/2013, in particular paragraph 20.309, referred to in paragraph 38 above.

46 The indicator of control relating to 'the provisions of enabling instruments' and 'other provisions of the enabling instrument, such as the obligations in the statute of the NPI', referred to, respectively, in paragraphs 2.39(b) and 20.15(b) of Annex A to Regulation No 549/2013, read in conjunction with the corresponding section of paragraph 20.309(i) of that annex, also applicable to NPIs, enables the possible existence of control to be established where a legal or regulatory provision directly or indirectly governing the NPI concerned or its founding instrument lays down regulatory powers or rights exercisable by government, confers legal powers on government or imposes obligations on the NPI towards government, in such a way that the general policy or programme of that NPI is thereby determined.

47 In particular, that indicator enables the possible existence of control to be established where a legal or regulatory provision directly or indirectly governing some or all NPIs working in the same activity confers on government the power to enact or apply rules which, irrespective of whether they are general or detailed, are capable of having a decisive influence on the general policy or programme of the NPIs concerned or require them to comply with such rules.

48 Furthermore, it should be pointed out that paragraph 20.309(h) of Annex A to Regulation No 549/2013 deals with the matter of 'control via excessive regulation'. Under that provision, 'when regulation is so tight that it effectively dictates the general policy of the business, it is a form of control', as 'public authorities can in some cases have powerful regulatory involvement'. It is also apparent from that provision that regulatory involvement which, irrespective of whether it is general or extensive in nature, is intrusive enough to determine, de facto, the general policy or programme of a unit or of all units working in the same activity may be indicative of control.

49 The foregoing considerations show that it is for the referring court to ascertain whether, in the exercise of its power to recognise national federations for sporting purposes, such as FIG and FISE, and to adopt in relation to them guidelines concerning the pursuit of the sporting activities for which they are responsible, CONI (i) enacts or applies rules designed to make all national sports federations equally and uniformly subject to overarching, broad and abstract rules or general guidance, and (ii) does not intervene excessively via regulation by effectively dictating the general policy or programme of some or all of those federations. If that were the case, those powers would not be relevant for determining the existence of control over FIG and FISE.

50 In its written observations and at the hearing before the Court, the European Commission argued that CONI's power to recognise national federations for sporting purposes has the effect of creating a de facto monopoly position in the sector relating to the branch of the sport at issue because, once they have been recognised for sporting purposes, those federations hold a monopoly in the sports sector concerned. The Commission concludes that CONI's power of recognition is not caught by the concept of 'public intervention in the form of general regulations' within the meaning of the second sentence of paragraph 20.15 of Annex A to Regulation No 549/2013. Moreover, the Commission maintains that since CONI's power to adopt guidelines concerning the pursuit of sporting activities in relation to national sports federations is exercised in a sector characterised by a monopoly, it takes the form of 'government control' as provided for in paragraph 20.309(h) of Annex A to that regulation, namely 'powerful regulatory involvement' in a sector characterised by a monopoly.

51 It should be recalled that, under paragraph 20.309(h) of Annex A to Regulation No 549/2013, 'public authorities can in some cases have powerful regulatory involvement, particularly in areas such as monopolies and privatised utilities where there is a public service element'. Therefore, one of the situations envisaged by that provision is where public authorities intervene in a regulatory capacity in a monopoly held by the entity in respect of which the question of government control arises.

52 In the present case, the Court observes that, in principle and subject to verification by the referring court, CONI's power of recognition is capable of constituting public intervention in the form of general regulations, in accordance with the definition set out in paragraph 43 above. First, CONI applies general regulations applicable to all entities seeking 'recognition for sporting purposes', namely Article 15(5) and (6) of Legislative Decree No 242/1999. Secondly, recognition by CONI is merely a preliminary step; all national sports federations are recognised in the same way in accordance with the procedures and conditions laid down by the Italian legislation in

force, in this case Decree No 361 of the President of the Italian Republic of 10 February 2000. The fact that, following their recognition, national sports federations hold a monopoly in the branch of sport for which they are responsible, in that the public face of the sporting activity, that is to say, when it is carried on in a formalised, official or representative context, is subject to their exclusive authority, is irrelevant in the light of the definition set out in paragraph 43 above. The establishment of such a monopoly as regards the public dimension of a sporting activity does not fall within the power of recognition as such or, therefore, within public intervention. Instead, it is an automatic consequence of the exercise of that power and that intervention, since conferring responsibility for the public dimension of a particular sport on a specific body necessarily results in it holding a monopoly, with clearly defined limits.

53 That being so, it is nevertheless for the referring court to satisfy itself that, in view of the de facto monopoly which national sports federations ostensibly hold in the branches of sport for which they are individually responsible, CONI does not have, further down the line, particularly as a result of its power to adopt guidelines concerning the pursuit of sporting activities in relation to national sports federations, 'powerful regulatory involvement' for the purposes of the indicators of control referred to in paragraphs 2.39(b), 20.15(b) and 20.309(h) of Annex A to Regulation No 549/2013, which would effectively enable it to dictate the general policy or programme of those federations.

54 In the light of the foregoing considerations, the following answer should be given to the first question: the concept of 'public intervention in the form of general regulations applicable to all units working in the same activity', referred to in the second sentence of paragraph 20.15 of Annex A to Regulation No 549/2013, must be interpreted as covering any intervention by a public sector unit which enacts or applies rules intended to make all units working in the activity concerned equally and uniformly subject to overarching, broad and abstract rules or general guidance, without such rules being capable, due to their particularly 'excessive' nature or character, within the meaning of paragraph 20.309(h) of Annex A to Regulation No 549/2013, of effectively dictating the general policy or programme of the units working in the activity concerned.

The second question

55 By its second question, the referring court is uncertain as to the interpretation to be accorded to the concept of 'ability to determine the general policy or programme' of an NPI, within the meaning of the first sentence of paragraph 20.15 of Annex A to Regulation No 549/2013.

56 Specifically, the referring court wishes to ascertain how that concept is to be interpreted in the light of the various powers held by a public sector unit, such as CONI, vis-à-vis national sports federations. It states that it is inclined to the view that the concept of 'ability to determine the general policy or programme' of an institutional unit such as an NPI should be construed as the ability of government to 'manage, constrain and influence the actual management of the institutional unit overall. Control therefore exists exclusively in the presence of an actual and specific ability on the part of the public entity to intervene … in the management of the entity under control'.

57 As recalled in paragraph 37 above, the first sentence of paragraph 20.15 of Annex A to Regulation No 549/2013 states that 'control of a NPI is defined as the ability to determine the general policy or programme of the NPI'. Paragraph 2.39 and the third sentence of paragraph 20.15 of Annex A to that regulation mention five indicators of control which must be taken into account to determine whether an NPI is controlled by government.

58 It is apparent from the wording of the fifth sentence of paragraph 20.15 of Annex A to Regulation No 549/2013, which refers to the ability to determine to a significant degree the general policy or programme of an NPI, that the concept of 'ability' must not be interpreted in a restrictive and formal sense, but rather, as the referring court points out, in the broad sense of 'capacity', 'possibility' or 'power'. That interpretation is moreover supported by various language versions of the paragraphs of Annex A to Regulation No 549/2013 concerned with the definition of the concept of 'control', which use alternatively and without distinction the words 'ability' (as in the Spanish ('*capacidad*'), German ('*Fähigkeit*'), English, French ('*capacité*') and Italian ('*capacità*') versions of paragraph 1.36), 'power' (as in the Dutch version ('*vermogen*') of paragraphs 20.306 and 20.310), 'entitlement' (as in the Romanian version ('*abilitatea*') of paragraphs 20.306 and 20.310) and 'possibility' (as in the German version ('*Möglichkeit*') of paragraph 20.310).

59 The interpretation set out in the preceding paragraph of this judgment also follows from the objective underpinning the first sentence of paragraph 20.15 of Annex A to that regulation, namely that the control of an NPI by government is established where the latter is in a position – that is to say, it has the ability, possibility or power – to exert a major influence over the general policy or programme of the NPI. It should also be noted that, from a contextual standpoint, paragraph 20.309(f) of Annex A to Regulation No 549/2013 clarifies the concept of 'ability to determine' by indicating that control may take the form of 'dominant influence'.

60 On the other hand, contrary to the view taken by the referring court, the concepts of 'general policy' and 'programme' cannot be reduced to merely the 'actual management of the institutional unit overall'.

61 That conclusion is apparent, in particular, from an analysis of the indicators of control referred to in paragraphs 2.39, 20.15 and 20.309 of Annex A to Regulation No 549/2013. Those indicators are intended to clarify and illustrate the concept of 'ability to determine the general policy or programme' of an NPI by focusing on aspects that are capable of significantly influencing the determination and direction of the NPI's overall strategy, such as the fact that government has the power to appoint officers to the NPI or to impose obligations on it, is bound to the NPI by contractual agreements, finances the NPI, or is exposed to the risks associated with its activities.

62 In the first place, the indicator of control relating to the 'appointment of officers', referred to in paragraphs 2.39(a) and 20.15(a) of Annex A to Regulation No 549/2013, corresponds to the section of paragraph 20.309(a) of that annex relating to the appointment of officers, which is also relevant for NPIs.

63 That indicator enables the possible existence of control over an NPI to be established where, as is apparent from paragraph 20.309(a) of Annex A to Regulation No 549/2013, a 'majority' of those responsible for directing and managing the entity concerned and, therefore, for determining and influencing its general policy and programme, such as members of the board or of the governing bodies, is appointed by government.

64 In the second place, the indicator of control relating to 'the provisions of enabling instruments' or 'other provisions of the enabling instrument, such as the obligations in the statute of the NPI', referred to, respectively, in paragraphs 2.39(b) and 20.15(b) of Annex A to Regulation No 549/2013, corresponds to the various examples mentioned in paragraph 20.309(a) to (c) and (g) to (i) of that annex, since those examples are relevant to NPIs and deal with matters other than the appointment of officers, which is covered by the indicator of control mentioned in the two preceding paragraphs.

65 As is apparent from paragraph 46 above, it follows, in particular, from a combined reading of paragraphs 2.39(b), 20.15(b) and 20.309(i) of Annex A to Regulation No 549/2013 that that indicator enables the possible existence of control to be established where the founding instrument of an NPI or a legal or regulatory provision directly or indirectly governing it lays down regulatory powers or rights exercisable by government, confers legal powers on government or imposes obligations on the NPI towards government, in such a way that the objectives, activities and operating aspects of the NPI and, therefore, its 'general policy or programme' are curtailed.

66 That is especially the case, under paragraph 20.309(a) to (c) and (g) to (i) of Annex A to Regulation No 549/2013, with respect to the rules entitling government to remove or veto a majority of officers, to appoint, remove or veto a majority of appointments for key committees of the NPI, and to appoint, remove or veto key personnel, which enable government to approve budgets, prevent the NPI from changing its constitution, dissolving itself or terminating its relationship with the public sector, require the NPI to ask for government permission to borrow or, as is apparent from paragraph 47 above, permit powerful regulatory involvement on the part of government.

67 In the third place, the indicator of control relating to 'contractual agreements', referred to in paragraphs 2.39(c) and 20.15(c) of Annex A to Regulation No 549/2013, corresponds to the indicator of control mentioned in paragraph 20.309(g) of Annex A to that regulation, which is also relevant to NPIs. Although, in essence, the indicator of control set out in paragraph 20.309(f) of Annex A to Regulation No 549/2013 could also be linked to the indicator mentioned in paragraphs 2.39(c) and 20.15(c) of Annex A to that regulation, it is clear that, by referring to a situation mainly characterised by sales and the existence of customers, the examples given there are not relevant to NPIs such as FIG and FISE.

68 The indicator relating to contractual agreements, as defined in the preceding paragraph of this judgment, enables the possible existence of control to be established where the provisions of a contractual agreement entered into by government and an NPI, such as a loan agreement, lay down, in favour of the former, rights allowing it to determine the general policy or programme of the latter, such as, as follows from paragraph 20.309(g) of Annex A to Regulation No 549/2013, control over the conditions for making loans which are more stringent than a private sector entity would typically face from a bank.

69 In the fourth place, the indicator of control relating to the 'degree of financing', referred to in paragraphs 2.39(d) and 20.15(d) of Annex A to Regulation No 549/2013, corresponds to the last sentence of paragraph 20.309(i) of that annex, which is also relevant to NPIs.

70 That indicator enables the possible existence of control to be established where an NPI is, as is apparent from a combined reading of the fifth sentence of paragraph 20.15 and the last sentence of paragraph 20.309(i) of Annex A to Regulation No 549/2013, fully, close to fully or mainly financed

by government, unless the controls on that funding stream are not restrictive enough to influence the general policy or programme of the NPI and the NPI is thus still able to determine its own policy or programme.

71 In the fifth place, the indicator of control relating to 'the degree of government risk exposure' or 'risk exposure', referred to, respectively, in paragraphs 2.39(e) and 20.15(e) of Annex A to Regulation No 549/2013, corresponds, in part, to paragraph 20.309(g) of that annex, which is also relevant to NPIs.

72 That indicator enables the possible existence of control to be established where government may be exposed to the risks associated with the NPI's activities or is entitled to take measures against an NPI in order to protect its exposure to such risks.

73 It follows from the above analysis that the relevant factors for determining whether an NPI is under government control are not concerned with the function of managing and administering the entity and monitoring day-to-day matters, but rather the function of defining or setting the entity's objectives, its activities and the operating aspects of those activities, as well as the strategic approaches and guidelines which the entity is to follow when pursuing those activities.

74 That interpretation is supported by the wording of paragraph 20.309(c) and (i) of Annex A to Regulation No 549/2013, which refers to a number of aspects related to the concept of 'general policy', including 'remuneration of senior staff, pay and business strategy' (subparagraph (c)) and 'the activities, objectives and operating aspects' of the entity concerned (subparagraph (i)).

75 Moreover, as the Commission pointed out in its written observations, reducing the concepts of 'general policy' and 'programme' to the mere concept of 'management' would strip all meaning from the management and decision-making autonomy which, by definition, is accorded to institutional units falling within the scope of the ESA 2010 by paragraph 2.12 of Annex A to Regulation No 549/2013. It follows that, although such units enjoy decision-making autonomy in the performance of their main duties, they may nevertheless be subject to government control within the meaning of the ESA 2010.

76 It should be noted in that regard that, in Italy, under Article 20(4) of the Statute of CONI, in connection with the principle of autonomy of sports law recognised by Article 1 of Decree-Law No 220 of 19 August 2003, national sports federations, such as FIG and FISE, enjoy 'technical, organisational and management autonomy under CONI's control'. Such autonomy is clearly reflected in the provisions of the statutes of those two federations, as is apparent from the requests for a preliminary ruling.

77 Consequently, the question of control of institutional units such as FIG and FISE by government, in the form of CONI in the present case, is not concerned with whether government exerts a decisive influence over the management or decision-making ability of the institutional unit, which, by definition, has full autonomy in that respect, but rather with whether government is in a position, notwithstanding such autonomy, to manage and constrain the unit in the very determination and implementation of its objectives, activities and strategic approaches.

78 It follows from the foregoing considerations that the concept of 'ability to determine the general policy or programme' of an NPI, within the meaning of the first sentence of paragraph 20.15 of Annex A to Regulation No 549/2013, must be interpreted as the ability of government to exert, by means of the indicators of control set out in paragraphs 2.39(a) to (e) and 20.15(a) to (e) of

Annex A to Regulation No 549/2013, as well as the corresponding indicators of control applicable to NPIs referred to in paragraph 20.309 of Annex A to that regulation, an actual and substantial influence over the very determination and implementation of the objectives of the NPI, its activities and the operating aspects of those activities, as well as the strategic approaches and guidelines which the NPI is to follow when pursuing those activities.

79 It is therefore for the referring court to verify whether the powers held by CONI vis-à-vis FIG and FISE are capable of constituting the 'ability to determine the general policy or programme' of those federations within the meaning of that definition.

80 Concerning, first, the power to appoint auditors to represent CONI in national sports federations, it must be noted, in the light of the considerations set out in paragraphs 62 and 63 above, that that power is not related to the indicator of control concerning the 'appointment of officers', since, by their very nature, auditors are not regarded as 'officers' and are thus not in a position to determine an entity's 'general policy or programme' within the meaning of the definition put forward in paragraph 78 above.

81 As regards, secondly, the powers stemming from Articles 6 and 7 of the Statute of CONI, most of them can be linked to the indicator of control relating to 'the provisions of enabling instruments' and to 'other provisions of the enabling instrument, such as the obligations in the statute of the NPI', as interpreted in paragraphs 64 to 66 above. That is true, in particular, of CONI's power 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 and anti-doping rules of national sports federations, and, where appropriate, propose the necessary amendments to those instruments; to appoint auditors to represent them in 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 championships are properly organised, the criteria and procedures governing the checks carried out by national sports federations of member sports corporations and CONI's substitute oversight function in the event of failure; to lay down the fundamental principles to be complied with by the statutes of national sports federations in order to secure recognition for sporting purposes; and to adopt the Sports Code which must be observed by all national sports federations. The same will also be true, as is apparent from paragraph 53 above, of CONI's power to adopt, in relation to national sports federations, guidelines concerning the pursuit of the sporting activities for which they are responsible, if, following the examination conducted by the referring court in the light of the Court's answer to the first question, that power is found to be linked to the indicator of control under consideration here.

82 For each of those powers, it is for the referring court to ascertain whether, despite the technical, organisational and management autonomy which is accorded to national sports federations such as FIG and FISE and reflected in their statutes, CONI is in a position to exert an actual and substantial influence over the general policy or programme of those federations, within the meaning of the definition set out in paragraph 78 above, or whether the effect of those powers is limited – in the words of the referring court – to mere 'external and formal supervision' which, like a purely marginal influence, does not have a decisive effect on that general policy or programme.

83 To that end, the referring court must, inter alia, determine whether the powers to approve budgets and balance sheets and to amend the statutes of the federations, which are expressly cited by way of example in paragraph 20.309(i) of Annex A to Regulation No 549/2013, confer on CONI a mere right of scrutiny or, on the contrary, the ability to exert a major influence over the very determination and implementation of the objectives of FIG and FISE, their activities and the operating aspects of those activities, as well as the strategic approaches and guidelines which those federations are to follow when pursuing their activities.

84 The referring court must also verify, if necessary, that CONI has a genuine and long-term ability to determine the general policy or programme of FIG and FISE, in that that ability should not be exercised only on a temporary basis in exceptional circumstances, as appears to be the case as regards CONI's power to place federations under supervision in the event of serious irregularities or violations of sports law by the governing bodies.

85 Thirdly, the referring court must, in addition, check whether the indicators of control referred to in paragraphs 67 and 68 and in paragraphs 71 and 72 above, relating, respectively, to contractual agreements and risk exposure, are relevant in the cases at issue in the main proceedings and, as the case may be, contribute to establishing the existence of government control. In particular, the referring court must ascertain whether, in the first place, agreements were concluded between CONI or any other public administrative body, on the one hand, and FIG or FISE, on the other, and, if necessary, establish whether, by their content and any rights granted to CONI or that body, those agreements confer on them rights to control capable of determining the general policy or programme of FIG or FISE, within the meaning of the definition set out in paragraph 78 above. In the second place, the referring court must determine whether CONI or any other public administrative body may be exposed to the risks associated with the activities of national sports federations, such as FIG and FISE, or whether they are able, in order to protect their potential exposure to such risks, to take measures in respect of those federations which confer rights on them enabling them to determine the general policy or programme of the federations, within the meaning of the definition set out in paragraph 78 above.

86 As regards, fourthly, the indicator of control referred to in paragraphs 69 and 70 above, that indicator will be examined in paragraph 91 et seq. of this judgment.

87 It should also be pointed out that the analysis of the various indicators of control mentioned in paragraphs 80 to 86 above must be the subject of an overall assessment, in accordance with the rules laid down for that purpose in the last sentence of paragraph 2.39, the fifth to eighth sentences of paragraph 20.15 and paragraph 20.310 of Annex A to Regulation No 549/2013. It is apparent from those rules that, 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. However, some indicators may be irrelevant depending on the situation under consideration and, as paragraph 70 above shows, the indicator relating to the degree of financing may not be decisive. It is thus for the referring court to conduct such an overall assessment having regard to those rules, bearing in mind that that assessment is, in accordance with the last sentence of paragraph 20.15 of Annex A to Regulation No 549/2013, 'judgmental in nature'.

88 In carrying out that 'judgmental' assessment, the referring court must also take account of the fact that the significant accumulation of evidence pointing to the existence of control within a single indicator may be sufficient for it to make a finding of control based on that indicator alone. In the instant case, it should be observed that many of the powers conferred on CONI fall within the indicator of control relating to 'the provisions of enabling instruments' and 'other provisions

of the enabling instrument, such as the obligations in the statute of the NPI'. Thus, if the referring court were to find, following the overall assessment which it must carry out, that those powers or a large proportion of them contribute to establishing the existence of control, it would still have to determine whether that indicator of control is sufficient, in itself, to establish control.

89 As for the fact, mentioned by the referring court, that Italian national sports federations influenced CONI's activities through their majority participation in its main decision-making collegiate bodies, such as the National Council and the National Board, that is relevant only if it can be established that each federation, individually, is able to exert a significant influence over the government control exercised by CONI in respect of it so as to neutralise that control, notwithstanding the influence of other sports federations in a similar situation, and is thus able to regain authority over its general policy and programme. It is for the referring court to establish whether that is the case, if need be.

90 In the light of the foregoing considerations, the following answer should be given to the second question: the concept of 'ability to determine the general policy or programme' of an NPI, within the meaning of the first sentence of paragraph 20.15 of Annex A to Regulation No 549/2013, must be interpreted as the ability of government to exert, on a lasting and continuous basis, an actual and substantial influence over the very determination and implementation of the objectives of the NPI, its activities and the operating aspects of those activities, as well as the strategic approaches and guidelines which the NPI is to follow when pursuing those activities. In cases such as those at issue in the main proceedings, it is for the national court to determine, in the light of the indicators of control referred to in paragraphs 2.39(a) to (e) and 20.15(a) to (e) of Annex A to Regulation No 549/2013, as well as the corresponding indicators of control applicable to NPIs referred to in paragraph 20.309 of Annex A to that regulation, whether a public administrative body, such as the National Olympic Committee at issue in the main proceedings, exerts government control over national sports federations in the form of NPIs, such as those at issue in the main proceedings, by carrying out, for that purpose, an overall assessment which is judgmental in nature, in accordance with the last sentence of paragraph 2.39, the fifth to eighth sentences of paragraph 20.15 and paragraph 20.310 of Annex A to Regulation No 549/2013.

The third question

91 By its third question, the referring court asks, in essence, whether membership fees paid to an NPI governed by private law, such as the national sports federations at issue in the main proceedings, may be taken into account for the purposes of determining the existence of government control and, if the answer is yes, whether those fees, which account for most of the NPI's income, must be regarded as public or private financing.

92 As a preliminary point, it should be noted that the referring court formulates its question with reference not only to paragraph 20.15 of Annex A to Regulation No 549/2013, but also to paragraphs 4.125 and 4.126 of that annex.

93 The provisions of paragraphs 4.125 and 4.126 of Annex A to Regulation No 549/2013 are not relevant to the answer to be given to the third question. Those provisions, which appear in Chapter 4 of Annex A, dealing with 'distributive transactions', that is to say, transactions to distribute the added value generated by production and to redistribute wealth and income, are intended solely to define and clarify the concept of 'current transfers to NPISHs', including, in particular, 'regular subscriptions paid by households to … sporting … organisations'. Besides the fact that that concept, in itself, has no bearing on the question of government control, it should

be noted that those provisions do not apply to all NPIs, but only to NPISHs, namely institutional units classified in the private sector which have been found not to be under government control. Thus, the provisions at issue are concerned with units in respect of which government control has already been ruled out and regulate matters which are entirely different from the matter of control.

94 It follows that the third question must be examined solely in the light of the indicator of control relating to the degree of financing, which is governed, as is apparent from paragraph 69 above, by paragraph 2.39(d), paragraph 20.15(d) and the last sentence of paragraph 20.309(i) of Annex A to Regulation No 549/2013.

95 As regards, in the first place, whether membership fees can be taken into account for the purposes of determining the existence of government control as regards the indicator of control relating to the degree of financing, it must be noted that the indicator referred to in the preceding paragraph of this judgment requires the percentage of an NPI's total revenue that comes from public funding to be calculated before that determination can be made. Membership fees forming part of the revenue of an NPI, such as FIG and FISE, must be taken into account, in one way or another, to be able to ascertain the extent to which the NPI is financed out of the public purse and, therefore, determine the existence or otherwise of government control.

96 In the second place, as for whether membership fees are of a public or private nature, it should be pointed out, as observed by the referring court, that these seem, at first sight, to be non-reciprocal private payments made by individuals from households, under the ESA 2010 classification, to institutional units organised in the form of NPIs.

97 However, in view of the objective underpinning Regulation No 549/2013, namely, as recalled in paragraph 32 above, the drawing up of the accounts of the Member States on the basis of a single set of principles that are not open to differing interpretations, so that comparable results can be obtained, the classification, for statistical purposes, of membership fees as sources of private or public financing should not take account solely of the private or public status of the person liable for the fee or the legal relationship between that person and the NPI under national law.

98 Account must also be taken of any factor capable of determining whether the fees are of a public or private nature, such as the context in which they are paid, their use in the light of the public interests which they may serve, whether they are mandatory or optional, whether they constitute consideration for the genuine enjoyment of services provided by the entity concerned, and the extent to which that entity has a free hand in setting the fee level. Accordingly, fees such as those which members are required to pay to the national sports associations at issue in the main proceedings could, notwithstanding the private status of the persons liable for those fees and their legal characterisation under national law, be considered to be of a public nature for the purposes of the ESA 2010, since they are mandatory fees which, without necessarily being consideration for the genuine enjoyment of services provided, are levied in the economic or social public interest, for the benefit, in particular, of legal persons governed by private law such as those national sports federations.

99 In the instant case, it is apparent from the documents before the Court that, first, Italian national sports federations such as FIG and FISE hold a monopoly in the branches of sport for which they are responsible, as stated in paragraph 52 above, in that the public face of the sporting activity, that is to say, when it is carried on in a formalised, official or representative context, is subject to their exclusive authority. Secondly, under Article 15(1) of Legislative Decree No 242/1999 and

Articles 7(5) and 20(4) of the Statute of CONI, those federations have a public dimension, consisting in the proper organisation of competitions, Olympic preparations and high-level sporting activities. Thirdly, in the light of the monopoly mentioned in this paragraph, the payment of fees is mandatory for every person wishing to take part in the public dimension of the sporting activity for which the corresponding sports federation is responsible, bearing in mind that every person wishing to participate in activities falling within the federation's remit is required to become a member. Fourthly, fees are not necessarily consideration for the genuine enjoyment of services provided by national sports federations, in so far as not all members take part in the public dimension of the sporting activity concerned.

100 Therefore, the fees which members are required to pay to the national sports federations at issue in the main proceedings could be regarded as being public in nature because, owing to their mandatory character, they help finance public interest objectives which are pursued, for each branch of sport, by a single national federation and are intended to promote sport in general and high-level sport in particular, without those fees being consideration for the genuine enjoyment of services thus provided.

101 At the hearing before the Court, FIG nonetheless argued that national sports federations are free to set the level of those fees, which is a matter for the referring court to verify. Although, if proven, that would indeed have to be taken into account when assessing whether the membership fees are of a private or public nature, it must be pointed out that such freedom does not necessarily call into question the public character of those fees.

102 While it is true that the freedom of national sports federations to set the level of fees could, as part of their wider organisational and budgetary autonomy, preclude those federations being considered to be closely dependent on CONI, that would not be the case if CONI was able, in the exercise of its power to control the budgets of those federations, to influence significantly the level of those fees or reduce its own financial participation in the event of disagreement on the fee level, as fixed by the federations themselves. It is for the national court to verify those matters and determine whether, if national sports federations indeed have a free hand in setting the level of membership fees, such freedom is sufficient to call in question the analysis set out in paragraph 100 above.

103 If, following such verification, the referring court were to conclude that the membership fees are of a private nature, it would have to find, having regard to paragraph 70 above, that it had not been demonstrated that FIG and FISE are under CONI's control in the light of the indicator of control relating to the degree of financing, owing to the fact that those federations, which receive only approximately 30% of their funding from CONI, are not mainly financed out of the public purse.

104 On the other hand, if the referring court were to classify the fees which members are required to pay to national sports federations as 'public contributions', they would have to be regarded as sources of public financing, in the same way as financial assistance paid by CONI. It is apparent from the documents before the Court, in particular the profit and loss accounts of FIG and FISE for the 2015 financial year, as mentioned by the referring court, that public financing, covering assistance paid by CONI of approximately 30% and membership fees of more than 60%, exceeds 90% of the total revenue of both FIG and FISE, which are matters for the referring court to verify, if necessary. Thus, in connection with the indicator of control relating to the degree of financing, it would be necessary, in that situation, to find that those two national sports federations are almost entirely financed by assistance and contributions of a public nature.

105 That being the case, as pointed out in paragraph 70 above, it follows from the fifth sentence of paragraph 20.15 and the last sentence of paragraph 20.309(i) of Annex A to Regulation No 549/2013 that the fact that an institutional unit such as an NPI is almost entirely financed by the public sector is not sufficient, in itself, for it be concluded that it is under government control, since the controls on those funding streams are not restrictive enough to influence the general policy or programme of the unit in question, which is thus still able to determine its own policy or programme.

106 The degree of independence that an NPI may have in using and allocating its publicly financed income and the degree of control and restriction to which that NPI may be subject in that regard have an impact on the assessment of whether government control exists.

107 Consequently, in the instant case, if the referring court were to classify the fees which members are required to pay as 'public contributions', it would have to verify whether CONI, in the control which it exerts over national sports federations in matters of a public nature under Article 7(5) of its Statute, merely controls the use of all or part of the financial assistance it grants to FIG and FISE, amounting to approximately 30%, or whether it also has the power to control in whole or in part the use which federations make of those contributions. In the course of that examination, the referring court would be able to make a finding of government control only if CONI's controls over the assistance it grants and over the membership fees are restrictive enough to influence the general policy or programme of FIG and FISE, to such an extent that those entities no longer have the ability to determine their own policy or programme.

108 In the light of the foregoing considerations, the following answer should be given to the third question: paragraph 2.39(d), paragraph 20.15(d) and the last sentence of paragraph 20.309(i) of Annex A to Regulation No 549/2013 must be interpreted as meaning that membership fees paid to an NPI governed by private law, such as the national sports federations at issue in the main proceedings, must be taken into account for the purposes of determining the existence of government control. Such fees may, notwithstanding the private status of the persons liable to pay them and their legal characterisation under national law, be considered, in connection with the indicator of control relating to the degree of financing referred to in paragraphs 2.39(d) and 20.15(d) of Annex A to that regulation, to be of a public nature where they are mandatory contributions which, without necessarily being consideration for the genuine enjoyment of services provided, are levied in the public interest for the benefit of national sports federations holding a monopoly in the branch of sport for which they are responsible, in that the public face of the sporting activity is under their exclusive authority, unless those federations retain organisational and budgetary control over those fees, which is for the referring court to verify. If the referring court finds that those fees must be regarded as public contributions, it will still have to determine whether, despite the fact that the national sports federations concerned are almost entirely financed by the public sector, the controls on those funding streams are restrictive enough to have an actual and substantial influence on the general policy or programme of those federations, or whether the federations are still able to determine their own policy or programme.

Costs

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

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

1. **The concept of 'public intervention in the form of general regulations applicable to all units working in the same activity', referred to in the second sentence of paragraph 20.15 of Annex A to Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union, must be interpreted as covering any intervention by a public sector unit which enacts or applies rules intended to make all units working in the activity concerned equally and uniformly subject to overarching, broad and abstract rules or general guidance, without such rules being capable, due to their particularly 'excessive' nature or character, within the meaning of paragraph 20.309(h) of Annex A to Regulation No 549/2013, of effectively dictating the general policy or programme of the units working in the activity concerned.**

2. **The concept of 'ability to determine the general policy or programme' of a non-profit institution (NPI), within the meaning of the first sentence of paragraph 20.15 of Annex A to Regulation No 549/2013, must be interpreted as the ability of government to exert, on a lasting and continuous basis, an actual and substantial influence over the very determination and implementation of the objectives of the NPI, its activities and the operating aspects of those activities, as well as the strategic approaches and guidelines which the NPI is to follow when pursuing those activities. In cases such as those at issue in the main proceedings, it is for the national court to determine, in the light of the indicators of control referred to in paragraphs 2.39(a) to (e) and 20.15(a) to (e) of Annex A to Regulation No 549/2013, as well as the corresponding indicators of control applicable to NPIs referred to in paragraph 20.309 of Annex A to that regulation, whether a public administrative body, such as the National Olympic Committee at issue in the main proceedings, exerts government control over national sports federations in the form of NPIs, such as those at issue in the main proceedings, by carrying out, for that purpose, an overall assessment which is judgmental in nature, in accordance with the last sentence of paragraph 2.39, the fifth to eighth sentences of paragraph 20.15 and paragraph 20.310 of Annex A to Regulation No 549/2013.**

3. **Paragraph 2.39(d), paragraph 20.15(d) and the last sentence of paragraph 20.309(i) of Annex A to Regulation No 549/2013 must be interpreted as meaning that membership fees paid to an NPI governed by private law, such as the national sports federations at issue in the main proceedings, must be taken into account for the purposes of determining the existence of government control. Such fees may, notwithstanding the private status of the persons liable to pay them and their legal characterisation under national law, be considered, in connection with the indicator of control relating to the degree of financing referred to in paragraphs 2.39(d) and 20.15(d) of Annex A to that regulation, to be of a public nature where they are mandatory contributions which, without necessarily being consideration for the genuine enjoyment of services provided, are levied in the public interest for the benefit of national sports federations holding a monopoly in the branch of sport for which they are responsible, in that the public face of the sporting activity is under their exclusive authority, unless those federations retain organisational and budgetary control over those fees, which is for the referring court to verify. If the referring court finds that those fees must be regarded as public contributions, it will still have to determine whether, despite the fact that the national sports federations concerned are almost entirely financed by the public sector, the**

controls on those funding streams are restrictive enough to have an actual and substantial influence on the general policy or programme of those federations, or whether the federations are still able to determine their own policy or programme.

[Signatures]