JUDGMENT OF THE COURT (Second

Chamber) October 4, 2024 (*)

"(Reference for a preliminary ruling - Internal market - Competition - Regulation instituted by an international sports association and implemented by it with the assistance of its members - Football) professional - Entities governed by private law with regulatory, supervisory and sanctioning powers Regulations governing the status and transfer of players - Rules governing employment contracts concluded between clubs and players - Early termination of an employment contract by the player - Compensation imposed on the player - Joint and several liability of the new club - Penalties - Prohibition on issuing the player's international transfer certificate and registering it as long as there is a dispute relating to the termination.
employment contract is pending - Prohibition on registering other players - Article 45 TFEU - Obstacle to freedom of movement for workers - Justification - Article 101 TFEU - Decision of an association of undertakings having as its object the prevention or restriction of competition - Labour market - Recruitment of players by clubs - Market for interclub soccer competitions - Participation clubs and players in sporting competitions - Restriction of competition by object - Exemption
"

In case C-650/22,

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

Fédération Internationale de Football Association (FIFA)

against

BZ,

in the presence of :

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

Sporting du Pays de Charleroi SA,

International Federation of Professional Footballers,

Fédération internationale des footballeurs professionnels - Division Europe,

Union nationale des footballeurs professionnels (UNFP),

THE COURT (second chamber),

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

Advocate General: Mr. M. Szpunar,

Clerk: Mr C. Di Bella, administrator,

in view of the written procedure and following the hearing of January 18, 2024,

considering the observations submitted :

– on behalf of Fédération Internationale de Football Association (FIFA), by A. Laes, lawyer, and D. Van Liedekerke, advocaat,

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

– for the Union royale belge des sociétés de soccer association ASBL (URBSFA), by Mes N. Cariat, E. Matthys and A. Stévenart, lawyers,

– for the International Federation of Professional Footballers, by C. De Preter and P. Paepe, lawyers,

– for the International Federation of Professional Footballers - Europe Division, by Mes J-. E. Barthélemy, C. De Preter and P. Paepe, lawyers,

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

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

– for the French government, by Messrs R. Bénard and V. Depenne, as agents,

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

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

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

having heard the Opinion of the Advocate General at the hearing of April 30, 2024,

hereby delivers the following opinion

Stop

1 The reference for a preliminary ruling concerns the interpretation of Articles 45 and 101 TFEU.

2 This request was made in the context of a dispute between the Fédération Internationale de Football Association (FIFA) and BZ concerning the latter's claim for compensation for the damage it believes it has suffered as a result of the wrongful conduct of FIFA and the Union Royale Belge des Sociétés de Football Association ASBL (URBSFA).

I. The legal framework

A. FIFA Statutes

3 FIFA is a private-law association based in Switzerland. According to Article 2 of its Articles of Association, as published in September 2020, its aims include "establishing rules and regulations for the sport of football".

provisions governing soccer and related matters, and to ensure that they are complied with", as well as "to control soccer in all its forms by adopting all necessary or advisable measures to prevent violations of the [s]tatutes, regulations, FIFA decisions and [l]ois of the [j]eu".

4 In accordance with articles 11 and 14 of the FIFA statutes, any "association responsible for the organization and control of soccer" in a given country may become a member of FIFA, provided it is already a member of one of the six continental confederations recognized by FIFA and referred to in article 22 of the statutes, These include the Union of European Football Associations (UEFA), and must first undertake to comply with FIFA's statutes, regulations, directives and decisions, as well as those of the continental confederation of which the association is already a member. In practice, over 200 national soccer associations are currently members of FIFA. As such, under articles 14 and 15 of FIFA's statutes, they are obliged, in particular, to ensure that their own members or affiliates comply with FIFA's statutes, regulations, directives and decisions, and that these are observed by all those involved in soccer, in particular professional leagues, clubs and players.

5 Among the members of FIFA and UEFA is URBSFA, based in Belgium, whose purpose is to organize and promote soccer in this member state. Under its own statutes, this association undertakes to comply with the statutes, regulations and decisions of FIFA and UEFA, and to ensure that they are respected by its members, "subject to the general principles of law, provisions of public policy and mandatory national, regional and Community legislation on the subject".

B. FIFA regulations on the status and transfer of players

6 On March 22, 2014, FIFA adopted the "Regulations on the Status and Transfer of Players" (hereinafter the "RSTJ"), which came into force on the following August [1], replacing an earlier by-law having the same purpose.

7 The introductory section of the RSTJ, entitled "Definitions", contains the following passage:

"For the purposes of interpreting these rules, the terms below are defined as follows:

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

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

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

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

[...]

6. Organized soccer: soccer organized under the aegis of FIFA, the confederations and associations, or authorized by them.

7. Protected period: period of three full seasons or three years - whichever comes first - following the start of a contract, if the contract in question was concluded before the professional player's 28th birthday, or a period of two full seasons or two years - whichever comes first - following the start of a contract, if the contract in question was concluded after the professional player's 28th birthday.

[...]

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

[...] "

8 Article [1] of the RSTJ, entitled "Scope of application", states in paragraph 1:

"These regulations establish universal and binding rules concerning the status of players and their qualification to participate in organized soccer, as well as their transfer between clubs belonging to different associations."

9 Article 2 of the RSTJ, entitled "Player status: amateur and professional players", reads as follows:

"1 Players taking part in organized soccer are either amateurs or professionals.

2. A professional player is any player who has a written contract with a club and who receives, for his soccer activity, a remuneration higher than the amount of the actual expenses he incurs. All other players are considered amateurs.

10 Article 5 of the RSTJ, entitled "Registration", provides in paragraph 1:

"A player must be registered with an association to play with a club either as a professional or as an amateur, in accordance with the provisions of Article 2. Only registered players are eligible to participate in organized soccer. A player's registration implies his agreement to comply with the Statutes and regulations of FIFA, the confederations and the associations."

11 Article 6 of the RSTJ, entitled "Registration periods", stipulates in paragraph 1, first sentence, that "a player may only be registered during one of the two annual registration periods set for this purpose by the association concerned".

12 The RSTJ also includes rules on employment contracts between a player and a club, as well as rules on player transfers.

1. Rules governing employment contracts

13 Under article 13 of the RSTJ, entitled "Compliance with contracts:

"A contract between a professional player and a club can only be terminated on its expiry date or by mutual agreement."

14 Under article 14 of the RSTJ, entitled "Breach of contract for just cause":

"In the presence of just cause, a contract may be terminated by either party without entailing any consequences (neither payment of compensation nor sporting sanctions)."

15 According to article 16 of the RSTJ, entitled "Prohibition of contract termination during the season:

"A contract cannot be unilaterally terminated during the season."

16 Article 17 of the RSTJ, entitled "Consequences of breach of contract without just cause", provides:

"The following provisions apply when a contract is terminated without just cause:

1. In all cases, the party breaking the contract is obliged to pay compensation. Subject to the provisions of article 20 and appendix 4 concerning training compensation, and if nothing is stipulated in the contract, compensation for breach of contract is calculated taking into account the law in force in the country concerned, the specific characteristics of the sport and any other objective criteria. These criteria include, in particular, the remuneration and other benefits due to the player under the current contract and/or the new contract, the remaining duration of the current contract up to a maximum of five years, the costs and expenses incurred or paid by the former club (amortized over the contractual period), and whether the breach occurs during a protected period.

2. The right to such compensation may not be transferred to a third party. If a professional player is required to pay compensation, the professional player and his new club will be jointly and severally liable for payment. The amount may be stipulated in the contract or agreed between the parties.

[...]

4 In addition to the obligation to pay compensation, sporting sanctions will be imposed on any club found to have breached a contract or induced a breach of contract during the protected period. A club that signs a contract with a professional player who has breached his previous contract without just cause is presumed, until proven otherwise, to have incited the professional player to breach the contract. The sanction takes the form of a ban on the club registering new players, nationally or internationally, for two complete and consecutive registration periods. The club will only be able to register new players, nationally or internationally, from the next registration period occurring after the sporting sanction in question has been served in full. In particular, it may not make use of the exception or provisional measures provided [by] these regulations to register players before that period."

17 Article 22 of the RSTJ, entitled "Competence of FIFA", states:

"Without prejudice to the right of any player or club to seek redress in a civil court for labour disputes, FIFA's jurisdiction extends:

a) disputes between clubs and players relating to the maintenance of contractual stability (articles 13-18) if there has been a request for an [international transfer certificate (ITC)] and if there is a claim by a party in relation to this ITC request, in particular concerning its issue, sporting sanctions or compensation for breach of contract ;

[...] "

18 Article 24 of the RSTJ, entitled "Chambre de Résolution des Litiges" (Dispute Resolution Chamber), states in paragraph 1:

"The Dispute Resolution Chamber (DRC) is empowered to decide any dispute referred to in [article 22, under a), b) and e),] with the exception of disputes concerning the issue of a CIT."

2 Transfer rules

19 Article 9 of the RSTJ, entitled "International Transfer Certificate", states in paragraph 1:

"A player registered with one association can only be registered with a new association once the new association has received an [ITC] issued by the former association. The ITC is to be issued unconditionally, free of charge and without time limit. Any provision to the contrary shall be null and void. The association issuing the ITC must submit a copy to FIFA. The administrative procedure for issuing the ITC is described in [article] 8 of appendix 3 [...] of these regulations."

20 Appendix 3 of the RSTJ, entitled "Transfer regulation system", includes an article 8 devoted to the "Administrative procedure for the transfer of professional players between associations", which states:

" 8.1 Principles

1. Any professional player registered with a club affiliated to one association may only be registered with a club affiliated to another association after an ITC has been issued by the former association and the new association has acknowledged receipt of the said ITC. [...]

[...]

8. 2Creating a CIT for a professional player [...]

3. On receipt of the ITC request, the former association must ask the former club and the professional player to specify whether the contract has expired, been terminated prematurely by mutual agreement, or whether the two parties are involved in a contractual dispute.

4. Within seven days of the date of the CIT request, the former association must [...] :

a) issue the ITC to the new association and enter the player's de-registration date; or

b) reject the ITC request and state [...] the reason for the refusal, which may be either that the contract between the former club and the professional player has not expired, or that there has been no mutual agreement regarding premature termination of the contract.

[...]

7. The former association shall not issue an ITC if the former club and the professional player are involved in a contractual dispute based on the circumstances stipulated in [article] 8.2, [paragraph] 4b of this appendix. In such cases, FIFA may, at the request of the new association, take provisional measures in the event of exceptional circumstances. [In addition, the professional player, the former club and/or the new club may bring an action before FIFA in accordance with [article] 22. FIFA will then rule on the establishment of the ITC and on any sporting sanctions within sixty days. In all cases, the decision regarding sporting sanctions must be taken before the ITC is issued. The issuance of the ITC will not prejudice the right to compensation for breach of contract."

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

21 BZ is a former professional soccer player living in Paris (France).

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

23 On August 22, 2014, Lokomotiv Moscow terminated this contract on grounds, in its view, related to BZ's behavior. On September 15, 2014, Lokomotiv Moscow applied to the LRC under Articles 22(a) and 24 of the RSTJ for an order that BZ pay compensation of €20 million, alleging "breach of contract without just cause" within the meaning of Article 17 of the RSTJ. Subsequently, BZ submitted a counterclaim to the LRC, seeking an order that Lokomotiv Moscow pay him back wages and an indemnity of

compensation equal to the amount of the remuneration that would have been due to him under the said contract had it run to term.

24 BZ states that he subsequently looked for a new professional soccer club to sign him up. In the course of this search, he was confronted with the difficulties arising from the risk that any club likely to take him on would be jointly and severally liable for payment of the compensation he might be required to pay to Lokomotiv Moscow, under article 17 of the RSTJ.

25 By letter dated February 19, 2015, Sporting du Pays de Charleroi SA, a professional soccer club based in Belgium, offered to hire BZ, while stipulating that this commitment was subject to two cumulative conditions precedent consisting, firstly, of BZ being registered and regularly qualified in the club's first team in order to take part in any competition organized by FIFA, UEFA and URBSFA for which he would be selected and, secondly, that the said club obtain written and unconditional confirmation that it could not be held jointly and severally liable for the payment of any compensation that BZ might owe to Lokomotiv Moscow.

26 By letter dated February 20, 2015, BZ approached FIFA and the URBSFA seeking assurances, firstly, that he could be registered and regularly qualified to play for the Sporting du Pays de Charleroi first team and, secondly, that Article 17 of the RSTJ would not be applied to this club. FIFA replied that only its competent decision-making body had the power to apply the RSTJ. For its part, the URBSFA replied that, in accordance with FIFA rules, its registration could not take place until a CIT had been issued by Lokomotiv Moscow.

27 In a decision dated May 18, 2015, the CRL, firstly, partially upheld Lokomotiv Moscow's claim and ordered BZ to pay it compensation of €10.5 million. Secondly, it rejected BZ's counterclaim. Thirdly, it declared that Article 17(2) of the RSTJ would not apply to BZ for the future.

28 Following an appeal by BZ, the Court of Arbitration for Sport (hereinafter "CAS"), a body based in Lausanne (Switzerland), confirmed this decision on May 27, 2016.

29 On July 24, 2015, BZ was hired by another professional soccer club based in France.

30 On December 9, 2015, BZ applied to the Hainaut Commercial Court (Charleroi division) (Belgium) for an order that FIFA and URBSFA pay it compensation of 6 million euros for the loss it considered it had suffered as a result of the misconduct of these two associations.

31 In a judgment handed down on January 19, 2017, the court declared itself competent to hear BZ's claim and found it to be well-founded in principle. It ordered FIFA and URBSFA jointly and severally to pay a provisional sum to BZ, while referring the remainder of the case back to the docket to enable the parties to settle the issue of determining the amount of the loss suffered by BZ in Belgium as a result of the misconduct of these two associations.

32 FIFA has appealed against this judgment to the Mons Court of Appeal (Belgium), which is the referring court. Essentially, it is asking this court to declare that it has no jurisdiction to hear BZ's claim, on the grounds that it falls within the exclusive jurisdiction of CAS or, at the very least, that this claim does not fall within the international jurisdiction of the Belgian courts. In the alternative, FIFA asks the referring court to declare the said claim inadmissible or, failing that, unfounded.

33 The URBSFA, which was involved in the proceedings, presented similar conclusions.

34 Sporting du Pays de Charleroi, which has lodged an application for voluntary intervention before the referring court, supports the conclusions of FIFA and URBSFA.

35 For its part, BZ, which has lodged a cross-appeal, essentially claims that the referring court should, firstly, rule that Article 17 of the RSTJ, Article 9(1) of that regulation and Article 8.2.7 of Annex 3 to that regulation infringe Articles 45 and 101 TFEU and, secondly, order FIFA and the URBSFA jointly and severally to pay compensation for the damage it has suffered as a result of the existence and implementation of those rules.

36 In its referral decision, the Mons Court of Appeal, after ruling that both FIFA' s appeal and Sporting du Pays de Charleroi's application for voluntary intervention were admissible, considered, firstly, that the Hainaut Commercial Court (Charleroi division) had rightly declared itself competent to rule on BZ's claim insofar as it concerned compensation for the loss suffered by the latter in Belgium.

37 In this respect, the referring court considers, firstly, that this claim cannot be regarded as falling within the exclusive jurisdiction of CAS by virtue of an arbitration agreement meeting the conditions of validity required under Belgian law, given the general, undifferentiated and imprecise nature of the stipulations of FIFA's statutes to which this association refers in order to establish the existence of such an agreement in this case.

38 Secondly, the referring court considers that the said claim did fall within the international jurisdiction of the court of first instance insofar as it concerns both the URBSFA and FIFA. As far as the URBSFA is concerned, this jurisdiction is established, since the head office of this association is established in Belgium and BZ invokes the existence of an injury suffered in Charleroi, where he was unable to work as a professional footballer despite the offer of employment made to him by Sporting du Pays de Charleroi. Similarly, as far as FIFA is concerned, such jurisdiction would be established, despite the fact that the headquarters of this association is based in Switzerland, since BZ is challenging the latter's liability in tort or quasi-tort, that the harmful event he invokes materialized in Charleroi (Belgium) and that there is a particularly close connecting link between the dispute opposing the parties on this subject and the said jurisdiction. This being the case, BZ's choice to bring the case before the Hainaut Commercial Court (Charleroi division) would mean that the jurisdiction of this court would be limited to the damage that the party concerned may have suffered in Belgium.

39 Lastly, the referring court finds that FIFA and URBSFA have no grounds for alleging "jurisdictional fraud" in that BZ artificially created a dispute in Belgium by using fraudulent maneuvers to obtain a fictitious offer of employment from Sporting du Pays de Charleroi. In this respect, it considers that it has been proven, firstly, that BZ took steps to obtain a commitment from several clubs established in different EU Member States, which, according to the press, had shown an interest in him; secondly, that Sporting du Pays de Charleroi took the unilateral initiative of proposing to hire him; and thirdly, that BZ immediately took the necessary steps to obtain a commitment from Sporting du Pays de Charleroi, that BZ immediately took the necessary steps to ensure compliance with the conditions precedent stipulated in the proposal and, fourthly, that it was not unreasonable for him to seek to follow up such a proposal, which was the only one available to him at the time to enable him to continue his professional career despite the dispute opposing him to Lokomotiv Moscow, as well as to limit the damage resulting from the interruption of his economic activity for several months.

40 Secondly, the Mons Court of Appeal ruled that BZ's claim was admissible, as it had sufficient legal interest to bring an action, as the holder of a subjective right who considered that he had suffered damage as a result of the wrongful conduct of FIFA and URBSFA.

41 Thirdly and lastly, the referring court states that the dispute in the main proceedings requires a decision on whether the damage that BZ considers it has suffered, by being prevented from exercising its activity as a professional soccer player during the 2014/2015 season, is caused by wrongful conduct.

FIFA and the URBSFA, consisting of having implemented rules that infringe articles 45 and 101 TFEU, namely article 17 of the RSTJ, article 9(1) of this regulation and article 8.2.7 of annex 3 of the said regulation.

42 In this respect, the court notes, firstly, that according to BZ, those rules must be considered, in the light of the judgment in Bosman (C-415/93, EU:C:1995:463), as hindering both the free movement of workers and competition. Indeed, the rule contained in article 17(2) of the RSTJ, according to which any new professional soccer club that hires a player following the termination of an employment contract without just cause is jointly and severally liable for the payment of any compensation that the player may be required to pay to his former club, would hinder the hiring of players, to the detriment of both them and the clubs intending to hire them, all the more so as the amount of this indemnity, which must subsequently be fixed in accordance with the criteria listed in article 17, point 1, of the RSTJ, is generally not known at the time when the interested parties intend to conclude an employment contract. Moreover, this hindrance would be reinforced by the rules set out in article 17, point 4, respectively, of this regulation, which provides that the new club is presumed to have induced the player to break the employment contract binding him to his former club and exposes the new club, in certain cases, to a sporting sanction. Similarly, the rules set out in article 9(1) of the RSTJ and article 8.2.7 of appendix 3 to that regulation would reinforce the said impediment by prohibiting the national soccer association to which the former club belongs from issuing an ITC for the benefit of the player if there is a dispute between the former club and the player arising from the premature termination of the employment contract without mutual agreement.

43 On the other hand, the referring court observes that, according to FIFA and URBSFA, the various rules at issue in the main proceedings should, in general, be understood in the light of the specific characteristics of sport recognized by the TFEU. More specifically, in the view of these associations, even if these rules were to hinder the free movement of workers or competition, they would be justified in the light of the legitimate objectives of maintaining contractual stability and the stability of soccer teams in the first place, and, more generally, preserving the integrity, regularity and proper conduct of sporting competitions.

44 For its part, the referring court considers, in essence, that it cannot be ruled out that, particularly when considered together, the various rules at issue in the main proceedings hinder the free movement of workers and competition. It also takes the view that, in the present case, there are serious, precise and concordant presumptions that the existence and implementation of these rules may have hindered the hiring of BZ by a new professional soccer club following the termination of his employment contract with Lokomotiv Moscow. Indeed, the said rules would have made such an engagement more difficult, as evidenced in particular by the suspensive conditions stipulated by Sporting du Pays de Charleroi in the engagement proposal it had sent to BZ.

45 In these circumstances, the Mons Court of Appeal decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

"Are Articles 45 and 101 TFEU to be interpreted as [meaning] that they prohibit :

– the principle of solidarity between the player and the club wishing to engage him in the payment of the compensation due to the club with which the contract has been breached without just cause, as stipulated in article 17[, point 2,] of the [RSTJ], in combination with the sporting sanctions provided for in article 17[, point 4,] of these regulations and [with] the financial sanctions provided for in article 17[, point 1, of the said regulations] ;

– the possibility for [the national soccer association] of the player's former club not to issue the [ITC], which is necessary for the player to be hired by a new club, if there is a dispute between the former club and the player (article 9[, paragraph 1,] of the same regulations and article 8.2.7 of appendix 3 [thereto])?"

III. Court proceedings

46 On December 15, 2022, i.e. subsequent to the adoption of the referral decision, three associations representing professional soccer players, the first at international level (the Fédération Internationale des Joueurs Professionnels, hereinafter "FIFPro"), the second at European level (the Fédération Internationale des Joueurs Professionnels - Division Europe, hereinafter "FIFPro Europe") and the third at French level (the Union Nationale des Footballeurs Professionnels (UNFP)), jointly filed an application for voluntary intervention in the main proceedings.

47 On December 19, 2022, the referring court informed the Court of the existence of this application for voluntary intervention.

48 Asked by the Court Registry whether the associations in question were to be regarded as new parties to the main proceedings by the mere fact of having applied to intervene voluntarily, or whether recognition of that status required a decision by the Court, the referring court replied in substance that those associations were to be regarded as parties to the main proceedings under the applicable national rules of procedure, namely Articles 15 and 16 of the Belgian Judicial Code, the referring court replied, in substance, that the associations were to be regarded as parties to the main proceedings under the applicable national procedural rules, namely Articles 15 and 16 of the Belgian Judicial Code, even though the admissibility of their application had not yet been decided.

49 In the light of this reply, the reference for a preliminary ruling was served on the said associations in accordance with Article 97(2) of the Court's Rules of Procedure, and they were given a period in which to submit written observations.

50 Following the submission of these written observations, FIFA asked the Court on May 30, 2023, and again on June 12, 2023, to set them aside or declare them inadmissible on the grounds that the three associations in question could not be considered new parties to the main proceedings. The Court Registry informed FIFA that it had decided to take note of its request and that it would be dealt with by the Court in due course, while drawing its attention, pending such treatment, to the fact that the referring court had explicitly and clearly indicated to the Court that these associations were to be considered as new parties to the main proceedings.

51 On November 29, 2023, the Registrar of the Court summoned, inter alia, all the parties to the main proceedings, as determined by the referring court, to the oral hearing scheduled for January 18, 2024. On that occasion, he informed them that, after deliberating on November 23, 2023, the Second Chamber of the Court had decided that there were no grounds for declaring inadmissible the written observations filed by FIFPro, FIFPro Europe and UNFP, or for dismissing these parties from the proceedings, specifying that the reasons for this decision would be set out in the judgment closing the proceedings.

52 In this respect, Article 96(1)(a) of the Rules of Procedure, read in conjunction with Article 23 of the Statute of the Court of Justice of the European Union, provides that, in preliminary ruling proceedings, the parties to the main proceedings are entitled to submit observations to the Court.

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

54 It is not for the Court to ascertain whether the referring court's decisions on this determination were taken in accordance with the applicable national procedural rules. On the contrary, the Court must adhere to those decisions as long as they have not been reported under the remedies provided for by national law (see, to that effect, judgment of 6 October 2015, Orizzonte Salute, C-61/14, EU:C:2015:655, paragraph 33).

55 Accordingly, the Court is, in principle, bound to regard as a party to the main proceedings any person who is determined as such by the referring court, whether that person had that status before the reference for a preliminary ruling was made or acquired it subsequently.

56 By way of exception to this principle, a person may be refused party status in the main proceedings, within the meaning of Article 96(1) of the Rules of Procedure, read in conjunction with Article 23 of the Statute of the Court of Justice of the European Union, where it is clear from the material in the case-file before the Court, that that person has made an application to intervene before the referring court subsequent to the reference for a preliminary ruling only for the purpose of participating in the preliminary ruling proceedings and does not intend to play an active role in the national proceedings (see, to that effect, judgment of 6 October 2015, Orizzonte Salute, C-61/14, EU:C:2015:655, paragraphs 35 and 36).

57 In the present case, as noted in paragraph 48 of this judgment, the referring court explicitly, clearly and unreservedly stated that FIFPro, FIFPro Europe and UNFP were to be considered new parties to the main proceedings, in accordance with the applicable national procedural rules. Furthermore, there is nothing in the case file to suggest that the court's decision in this respect was amended or withdrawn under the remedies available under national law.

58 Furthermore, it is not clear from the evidence in the file that the three associations in question have made their application to intervene before the referring court solely for the purpose of participating in the preliminary ruling procedure, and that they have no intention of playing an active role in the national proceedings.

59 Accordingly, these associations should have been recognized as parties to the main proceedings within the meaning of Article 96 of the Rules of Procedure, so that they were entitled to submit observations to the Court.

60 Consequently, there was no reason to declare their written observations inadmissible.

IV. Admissibility

61 FIFA, URBSFA and the Greek, French and Hungarian governments question the admissibility of the reference for a preliminary ruling, or at least of certain aspects of the question put to the Court.

62 They put forward three main arguments in this regard. Firstly, according to the Greek and French Governments and the URBSFA, the content of the reference for a preliminary ruling does not comply with the requirements set out in Article 94 of the Rules of Procedure, in that it does not set out in sufficient detail the legal and factual context in which the referring court is asking the Court to give a ruling and the reasons why that court considers it necessary to refer a question on the interpretation of Articles 45 or 101 TFEU in order to be able to decide the main proceedings. Secondly, FIFA and the URBSFA maintain that the reference for a preliminary ruling is hypothetical and abstract in nature, in that there is no actual dispute the handling of which might make it necessary for the Court to issue any interpretative ruling. Such a situation arises, on the one hand, from the fact that the RSTJ's rules on employment contracts and transfers have ultimately had no negative impact on BZ and, on the other hand, from the fact that the dispute in the main proceedings has been artificially constructed by BZ, who in fact never intended to join Sporting du Pays de Charleroi. Thirdly, according to the French and Hungarian Governments as well as FIFA and URBSFA, the dispute in the main proceedings lacks a cross-border dimension within the meaning of the TFEU and, according to FIFA and URBSFA, is even of an "external" nature, so that it cannot fall within the scope of Article 45 TFEU. In fact, the infringement of the freedom of movement of workers that BZ believes it has suffered consists of an obstacle to its professional mobility between a third country (Russia), where the company is based, and a third country (France), where the company is based.

Lokomotiv Moscow, and one member state (Belgium), where Sporting du Pays de Charleroi is based.

A. The content of the referral decision

63 The preliminary ruling procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, through which the Court of Justice provides the national courts with the elements of interpretation of Union law they need in order to give judgment in the disputes they are called upon to resolve. According to established case law, now reflected in Article 94(a) and (b) of the Rules of Procedure, the need to arrive at an interpretation of Union law that is useful to the national court requires the latter to define the factual and legal framework in which the questions it asks are placed or, at the very least, to explain the factual assumptions on which those questions are based. In addition, it is essential, as stated in Article 94(c) of the Rules of Procedure, that the reference for a preliminary ruling sets out the reasons which have led the referring court to question the interpretation or validity of certain provisions of Union law, and the link which it establishes between those provisions and the rules applicable to the main proceedings. These requirements are particularly relevant in areas characterized by complex factual and legal situations, such as competition law (judgment of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 59 and case law cited).

64 Furthermore, the information provided in the referral decision must not only enable the Court to provide useful answers, but also give the governments of the Member States and other interested parties the opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 60 and case law cited).

65 In the present case, the reference for a preliminary ruling meets the requirements set out in the two preceding paragraphs of this judgment. The reference decision sets out in detail the factual and legal context of the question referred to the Court. In addition, the decision succinctly but clearly sets out the reasons of fact and law which led the referring court to consider it necessary to refer the question, and the link which, in its view, links Articles 45 and 101 TFEU to the dispute in the main proceedings.

66 Moreover, the content of the written observations submitted to the Court shows that their authors had no difficulty in grasping the factual and legal context of the question put by the referring court, in understanding the meaning and scope of the factual statements underlying it, in grasping the reasons why the referring court considered it necessary to put it and, ultimately, in taking a full and useful position on it.

B. The reality of the dispute and the relevance of the question put to the Court

67 It is for the national court seized of the main proceedings alone, which must assume responsibility for the judicial decision to be taken, to assess, in the light of the specific features of those proceedings, both the need for a preliminary ruling in order to be able to give judgment and the relevance of the questions it puts to the Court. It follows that the questions put by the national courts enjoy a presumption of relevance, and that the Court may refuse to rule on them only if it is clear that the interpretation requested bears no relation to the reality or subject-matter of the main proceedings, if the problem is hypothetical, or if the Court does not have the factual and legal information necessary to give a useful answer to those questions (judgment of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 64 and case law cited).

68 In the present case, the statements of the referring court summarized in paragraphs 22 to 35, 39 and 41 to 44 of this judgment attest to the real nature of the dispute in the main proceedings. In addition, they show that

the fact that the referring court is asking the Court of Justice to interpret Articles 45 and 101 TFEU is not manifestly irrelevant to the reality and subject-matter of the dispute.

69 In fact, it is clear from the aforementioned statements, firstly, that this court is seized, both by way of an appeal and by way of a cross-appeal, of a dispute having as its object the real and concrete question of whether, as judged at first instance, BZ is entitled to claim compensation for the loss it claims to have suffered by being prevented from exercising its activity as a professional soccer player during the 2014/2015 season, as a result of wrongful conduct on the part of FIFA and the URBSFA in implementing article 17 of the RSTJ, article 9(1) of those regulations and article 8.2.7 of Annex 3 to that regulation. In this respect, the referring court points out that, in its view, there are serious, precise and concordant presumptions that the existence and implementation of these various rules may have prevented BZ from being taken on by a new professional soccer club following the termination of his employment contract with Lokomotiv Moscow. Secondly, both BZ's claim and the first-instance judgment declaring it well-founded in principle rely on an interpretation as well as an application of Articles 45 and 101 TFEU. Thirdly, the referring court states that, in view of the subject-matter of the dispute before it, it is, in turn, required, in order to give its decision, to rule, in particular, on whether the conduct of FIFA and the URBSFA is to be classified as wrongful on the ground that it infringes Articles 45 and 101 TFEU. Fourthly, the same court held, in the light of the facts before it, that, contrary to what FIFA and URBSFA allege, the dispute in the main proceedings cannot be regarded as artificial.

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

70 The provisions of the TFEU relating to freedom of movement for workers, freedom of establishment, freedom to provide services and freedom of movement for capital do not apply to situations where all the elements are confined within a single Member State, subject to certain specific situations in which the order for reference demonstrates the existence of factual elements making it possible to establish that the interpretation sought is necessary for the resolution of the dispute by reason of a link between the subject-matter or circumstances of the dispute and Articles 45, 49, 56 or 63 TFEU, as required by Article 94 of the Rules of Procedure (see, to this effect, judgment of 21 December 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, paragraphs 38 and 39 and the case law cited).

71 In the present case, the reference for a preliminary ruling cannot be regarded as inadmissible in so far as it concerns the interpretation of Article 45 TFEU, relating to the freedom of movement of workers, on the ground that that article has no connection with the dispute in the main proceedings, given its lack of cross-border dimension or, a fortiori, its "external" nature in the sense given to that term by the URBSFA.

72 In its referral decision, the Mons Court of Appeal states that BZ's residence and center of interests are in Paris. In addition, it points out that his claim is for compensation for the loss he believes he suffered during the 2014/2015 season, having been prevented from moving to other Member States, in particular Belgium, where Sporting du Pays de Charleroi had made him a conditional offer of employment. In so doing, in its reference for a preliminary ruling, the referring court clearly highlights the cross-border nature of the factual and legal situation which characterizes the dispute in the main proceedings, in which a person residing in France complains of having been hindered, following the termination of the employment contract which bound him to a professional soccer club established in a third State, from exercising his freedom of movement to other Member States, in particular Belgium, due to the existence and actual or potential implementation, in his case, of certain rules adopted by FIFA to regulate the status and international transfer of professional soccer players.

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

V. The question referred for a preliminary ruling

74 By its reference for a preliminary ruling, the national court is asking, in essence, whether Articles 45 and 101 TFEU must be interpreted as precluding rules which were adopted by a private-law association whose aims include, inter alia, the regulation, organisation and control of soccer at world level, and which provide for :

– firstly, that a professional player who is a party to an employment contract and whose contract has been terminated without just cause, and the new club which hires him following this termination, are jointly and severally liable for the payment of compensation, due to the former club for which the player worked and to be fixed on the basis of the various criteria listed in these rules;

– secondly, in the event that the professional player is hired during a protected period under the employment contract that has been terminated, the new club is subject to a sporting sanction consisting of a ban on registering new players for a specified period, unless it can demonstrate that it did not incite the player to terminate that contract, and

– thirdly, that the existence of a dispute linked to this breach of contract prevents the national soccer association of which the former club is a member from issuing the CIT required to register the player with the new club, with the consequence that the player cannot take part in soccer competitions on behalf of the new club.

A. Introductory remarks

75 First of all, insofar as the practice of sport constitutes an economic activity, it falls within the scope of the provisions of Union law applicable to such an activity (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 83 and the case law cited).

76 Only certain specific rules which, on the one hand, have been adopted exclusively for non-economic reasons, and which, on the other hand, deal with matters of interest only to sport as such, should be regarded as being extraneous to any economic activity. This is the case, in particular, of those relating to the exclusion of foreign players from the composition of teams taking part in competitions between teams representing their country or to the fixing of ranking criteria used to select athletes taking part in competitions on an individual basis (judgment of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 84 and case law cited).

77 With the exception of these specific rules, rules adopted by sports associations to govern the employment, provision of services or establishment of professional or semi-professional players and, more generally, rules which, while not formally governing such employment, provision of services or establishment, have a direct impact on such employment, provision of services or establishment may fall within the scope of Articles 45, 49 and 56 TFEU (judgment of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraphs 85 and 86 and the case law cited).

78 By the same token, the rules adopted by such associations and, more broadly, the conduct of such associations fall within the scope of the competition law provisions of the TFEU when the conditions for the application of those provisions are met (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 87 and case law cited).

79 However, the rules at issue in the main proceedings are not among those to which the exception referred to in paragraph 76 of this judgment could be applied, as the Court has repeatedly pointed out that it must remain limited to its proper purpose and that it cannot be relied upon to exclude an entire sporting activity from the scope of the provisions of the TFEU relating to the economic law of the Union (judgment in December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 89 and case law cited).

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

81 On the other hand, given that the composition of teams is one of the essential parameters of competitions in which professional soccer clubs compete, and that those competitions give rise to an economic activity, rules such as those at issue in the main proceedings, whether relating to employment contracts or player transfers, must also be regarded as having a direct impact on the conditions for the pursuit of that economic activity and on competition between the professional soccer clubs engaged in that activity (see, by analogy, judgment of 21 December 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, paragraph 61).

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

83 Secondly, given that the two articles of the TFEU each pursue their own objective, that they lay down their own conditions of application, that their application is not mutually exclusive and that their infringement, if established, does not entail the same consequences, the Court must interpret them successively, as requested by the referring court.

84 Thirdly and lastly, the undeniable specific features of sporting activity, which, although they particularly concern amateur sport, are also likely to be found in the exercise of sport as an economic activity, may possibly be taken into account, among other factors and insofar as they prove relevant, when applying Articles 45 and 101 TFEU, it being noted, however, that this can only be done within the framework and in compliance with the conditions of application laid down in each of those articles (judgment of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraphs 103 and 104 and the case law cited).

85 In particular, where it is claimed that a rule adopted by a sports association constitutes an obstacle to the free movement of workers or an anti-competitive agreement, the characterization of that rule as an obstacle or as an anti-competitive agreement must, in any event, be based on a concrete examination of the content of that rule in the actual context in which it is to be implemented (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 105 and case law cited).

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

1. On the existence of an obstacle to the free movement of workers

86 Article 45 TFEU, which has direct effect, precludes any measure, whether based on nationality or applicable irrespective of nationality, which is liable to place Union nationals at a disadvantage when they wish to pursue an economic activity in the territory of a Member State other than their Member State of origin, by preventing or dissuading them from leaving the latter .

(judgment of December 21, 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, paragraph 136 and case law cited).

87 In the present case, it follows from the terms of the question referred by the referring court and the statements underlying it that the conduct in relation to which that court is asking the Court to interpret Article 45 TFEU consists in the fact that FIFA adopted and then implemented, in relation to BZ, who resides in Paris, and the professional soccer clubs established in other Member States which were likely - or even willing - to hire him following the termination of his employment contract with Lokomotiv Moscow, or at the very least to have exposed that player and those clubs to the risk of various rules being applied to him, to hire him following the termination of his employment contract with Lokomotiv Moscow, or at the very least to have exposed him and these clubs to the risk of having various rules of the RSTJ applied to them, as set out respectively in article 17, points 1, 2 and 4, of this regulation, in article 9, paragraph 1, of this regulation and in article 8.2.7 of annex 3 of the same regulation.

88 Article 17, point 2, of the RSTJ provides that a professional player whose employment contract has been terminated without just cause and the new club which hires him following this termination are jointly and severally liable for the payment of compensation due to the former club for which the player worked. With regard to this compensation, article 17, point 1, of the RSTJ states that, if nothing is stipulated in the employment contract, it is calculated taking into account the law in force in the country concerned, the specific features of the sport and any other objective criteria, including, in particular, a criterion relating to the remuneration and other benefits due to the player under the employment contract which has been terminated and/or the new employment contract, a criterion relating to the remaining duration of the employment contract which has been terminated, up to a maximum of five years, as well as a criterion relating to the costs and expenses incurred or paid by the former club, amortized over the contractual period.

89 Secondly, under article 17, point 4 of the RSTJ, if the player concerned is hired during a protected period under the employment contract that has been terminated, corresponding to the first two or three seasons or years covered by that contract, depending on the player's age, the new club will incur a sporting sanction. In this respect, this provision specifies, firstly, that the sporting sanction in question is in addition to the obligation to pay the indemnity referred to in article 17, points 1 and 2, of the RSTJ. Secondly, this sporting sanction is intended to be applied to any new club found to have breached an employment contract or to have incited the breach of such a contract during the protected period. Thirdly, any new club that signs an employment contract with a player who has breached his previous employment contract without just cause is presumed, until proven otherwise, to have incited the player to do so. Fourthly, the said sporting sanction consists of a ban on the new club registering new players at national or international level, for two complete and consecutive registration periods.

90 Finally, it is clear in particular from article 9(1) of the RSTJ and article 8.2.7 of annex 3 to that regulation that the existence of a dispute relating to a breach of contract without just cause prevents the national soccer association of which the former club is a member from issuing the CIT necessary for the registration of the player concerned with the new club, with the consequence that the player concerned may not take part in soccer competitions on behalf of the new club.

91 As the Advocate General pointed out in paragraphs 43 and 44 of his Opinion, this set of rules is liable to disadvantage professional soccer players who have their residence or place of work in their Member State of origin and who wish to pursue their economic activity on behalf of a new club established in the territory of another Member State, by unilaterally terminating or having unilaterally terminated their employment contract with their former club, for a reason which the latter claims or risks claiming, rightly or wrongly, is not fair.

92 More specifically, the rules - admittedly suppletive - for determining the amount of compensation owed by any player to his former club in the event of termination of an employment contract without just cause, set out in article 17, point 1, of the RSTJ, the rule whereby any new club that hires such a player is jointly and severally liable for payment of this compensation, set out in article 17, point 2, of these regulations,

and the presumption, admittedly rebuttable, of inducement to terminate the contract, as well as the sanction of prohibition, are all based on the same principle.

The rules on the registration of new players applicable to new clubs under Article 17(4) of the said Regulation are such as to deprive to a very large extent, whether actually, as in the case of BZ, or at least potentially, any player in such a situation of the prospect of receiving firm and unconditional offers of commitment from clubs established in other Member States, the acceptance of which would lead him to leave his Member State of origin by exercising his freedom of movement. In fact, the existence of these rules and the combination of them means that these clubs are faced with major legal risks, unpredictable and potentially very high financial risks, as well as major sporting risks, which, taken together, are clearly likely to dissuade them from hiring such players.

93 For their part, the rules generally and automatically prohibiting, subject to exceptional circumstances, the issue of ITCs necessary for the registration of professional players with their new clubs for as long as there is a dispute between these players and their former clubs linked to a lack of mutual agreement on premature termination of the employment contract, as provided for in article 9(1) of the RSTJ and article 8.2.7 of Annex 3 of the said regulation, are such as to prevent the said players from carrying out their economic activity in any Member State other than their Member State of origin, and thus to deprive of the essential sporting and economic interest their possible engagement by a club established in one of these other Member States. Moreover, the latter rules apply specifically to the cross-border movement of players, to the exclusion of any movement within a single State, as is also clear from Article ^{1}(1) of the Regulation. Thus, in the present case, it is clear from the statements in the referral decision that Sporting du Pays de Charleroi specifically conditioned the recruitment offer sent to BZ on February 19, 2015 on the assurance that it would be able to register and play him in Belgium, BZ sought this assurance from FIFA and the URBSFA, but the latter declared that they were unable to give it to him in view of the existence of a dispute between him and Lokomotiv Moscow, a dispute which the CRL did not rule on until several months later.

94 Consequently, the rules at issue in the main proceedings are such as to hinder freedom of movement for workers.

2. On the existence of a possible justification

95 Non-statutory measures may be accepted, even if they are liable to hinder a freedom of movement enshrined in the TFEU, if it is established, firstly, that their adoption pursues a legitimate objective in the general interest compatible with the TFEU and, therefore, of a nature other than purely economic, and, secondly, that they comply with the principle of proportionality, which implies that they are suitable for guaranteeing the attainment of that objective and that they do not go beyond what is necessary to attain it. As regards, in particular, the requirement that such measures be suitable, it should be remembered that they can only be regarded as suitable for securing the attainment of the objective relied on if they genuinely respond to the concern to attain it in a coherent and systematic manner (judgments of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 251, and of December 21, 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, paragraph 141 and case law cited).

96 As in the case of State measures, it is for the author of such non-State measures to show that these two cumulative conditions are met (judgments of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 252, and of 21 December 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, paragraph 142 and case law cited).

97 In the present case, it will ultimately be for the referring court to determine whether the rules of the RSTJ at issue in the main proceedings meet those conditions, in the light of the arguments and evidence adduced by the parties. That being so, the Court is in a position to provide that court, in the light of the material in the file before it and subject to verification by the latter, with the following indications.

a) On the pursuit of a legitimate objective in the general interest

98 FIFA, joined by the URBSFA, argues that the RSTJ rules at issue in the main proceedings pursue several objectives: firstly, to maintain contractual stability and the stability of professional soccer club teams; secondly, to preserve, more generally, the integrity, regularity and smooth running of interclub soccer competitions; and thirdly, to protect the workers who are professional footballers. These different objectives would all be legitimate in terms of the general interest.

99 In this respect, firstly, it should be pointed out that the protection of workers is not one of FIFA's objectives, as defined in its articles of association, and secondly, that this private-law association has not been entrusted with any particular mission in this field by the public authorities. That being so, there is no need to rule on whether, in view of those circumstances, such an association is or is not entitled to rely on the pursuit of such an objective, since it is sufficient, in the present case, to find, in any event, that it does not appear in what way the adoption or implementation of the RSTJ rules at issue in the main proceedings, as identified in paragraph 74 of this judgment, would be likely to contribute to the protection of professional footballers.

100 Secondly, in view of FIFA's aims, as set out in Article 2 of its statutes and recalled in paragraph 3 of this judgment, it should be noted, firstly, that the objective of ensuring the regularity of sporting competitions constitutes a legitimate objective in the general interest which may be pursued by a sporting association, for example, by adopting rules laying down time-limits for transfers of players in order to avoid late transfers which could appreciably alter the sporting value of a particular team in the course of a competition and, in so doing, jeopardize the comparability of results between the various teams taking part in that competition and, consequently, the proper conduct of that competition as a whole (see, to that effect, judgment of 13 April 2000 in Lehtonen and Castors Braine, C-176/96, EU:C:2000:201, paragraphs 53 and 54).

101 Secondly, this objective takes on particular importance in the case of soccer, given the essential role played by sporting merit in the running of competitions organized at both European and national level. This essential role can only be guaranteed if all the numerous teams involved compete under uniform regulatory and technical conditions and if a balance is maintained between the clubs, ensuring a certain equality of opportunity (judgment of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 143 and case law cited).

102 Finally, given that the composition of teams is one of the essential parameters of competitions in which clubs compete (judgment of 21 December 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, paragraph 61), that objective is capable of justifying the adoption not only of the rules relating, inter alia, to deadlines for player transfers during competitions, referred to in paragraph 100 of this judgment, but also, in principle and without prejudice to their specific content, of rules intended to ensure the maintenance of a certain degree of stability in club squads, which serve as a pool for the composition of the teams likely to be fielded by those clubs in interclub soccer competitions. Maintaining a certain degree of stability in this workforce, and therefore a certain continuity in the contracts relating to it, must therefore be seen as constituting not a legitimate objective of general interest per se, but as one of the possible means of contributing to the pursuit of the legitimate objective of general interest consisting in ensuring the regularity of interclub soccer competitions.

b) Respect for the principle of proportionality

103 As follows from the preceding paragraph of this judgment and as the Advocate General pointed out in paragraph 65 of his Opinion, the rules of the RSTJ at issue in the main proceedings, as identified in paragraph 74 of this judgment and recalled in paragraphs 87 to 90 thereof, may all be regarded, prima facie and subject to the verifications which it is for the national court to carry out, as suitable for securing the attainment of the objective of ensuring the regularity of interclub soccer competitions,

by contributing, each in its own way, to maintaining a certain degree of stability in the workforce of all professional soccer clubs likely to take part in these competitions.

104 On the other hand, subject to the verifications that it is for the referring court to carry out, these various rules appear to go, in several respects, beyond, or even, for some of them, far beyond what is necessary to achieve this objective, all the more so as they are intended to apply, to a large extent, in combination and, for some of them, for a considerable period of time, to players whose careers are, moreover, relatively short, a situation which is likely to severely hamper the progress of their careers, if not lead some of them to end them prematurely.

105 Firstly, this is the case with Article 17(1) of the RSTJ in that it sets out the various criteria for calculating the compensation due by the player in the event of unilateral termination of the employment contract "without just cause", an expression which, incidentally, is not precisely defined in the regulations themselves.

106 In particular, the first criterion, which essentially consists of the possibility of taking into account the The first criterion, "the law in force in the country concerned", does not guarantee effective compliance with this law. On the contrary, the official commentary on the RSTJ published by FIFA states that this first criterion has, in fact, almost never been applied in practice, with the CRL essentially applying the regulations issued by this association itself and, on a purely suppletive basis, Swiss law. Such a failure to take real account of, and therefore effective compliance with, the law in force in the country concerned clearly goes beyond what may be necessary to maintain a certain degree of stability in club membership with a view to ensuring the regularity of interclub soccer competitions. As for the second criterion expressly provided for by this rule, relating to the "specific features of the sport", it refers to a general concept, without however providing a precise definition enabling us to understand in what respect and in what way this criterion may be called upon to influence the calculation of the compensation due by the player, so that, although the said criterion is presented as being an "objective criterion", it lends itself, in reality, to discretionary implementation, which is therefore unforeseeable and difficult to control. A criterion with such characteristics and consequences cannot be considered necessary to ensure the regularity of interclub soccer competitions.

107 For their part, the other criteria expressly provided for by the aforementioned rule, while at first sight more objective and controllable than the previous ones, nonetheless appear to go far beyond what is necessary for the same purpose. On the one hand, the remuneration and other benefits due to the player concerned under the employment contract subsequently entered into by him with a new club relate to an employment relationship subsequent to the employment relationship which was terminated, so that these elements must be regarded as extraneous to the latter employment relationship and its cost (see, by analogy, judgment of 16 March 2010, Olympique Lyonnais, C-325/08, EU:C:2010:143, paragraph 50). On the other hand, as regards all the costs and expenses incurred by the former club in connection with the transfer of the said player to the latter, amortized over the contractual period, it must be pointed out that, irrespective of the fact that this element relates, for the most part, to a previous contractual employment relationship, its inclusion seems particularly excessive, since it is likely to allow potentially considerable costs to be passed on to the player, costs which, a priori, were negotiated exclusively by other people and in their own interests, such as the clubs involved in the transfer or third parties who intervened in this context. Moreover, it has to be said that such compensation criteria appear to be intended more to safeguard the financial interests of the clubs in the economic context of p l a y e r transfers between them than to ensure the alleged smooth running of sporting competitions, as shown, moreover, by the way in which these criteria are interpreted and applied by the CRL and the CAS, as can be seen from certain decisions of these bodies in the file before the Court.

108 Secondly, this is, prima facie, also the case with Article 17(2) of the RSTJ in that it provides, as a matter of principle and therefore without taking account, in accordance with the principle of proportionality, of the circumstances specific to each individual case (see, to this effect, judgment of 4 October 2018, Link Logistik N&N, C-384/17, EU:C:2018:810, paragraph 45), in particular the actual conduct of the new club hiring the player, that the said club is jointly and severally liable for payment of the compensation due

by the said player to his former club in the event of unilateral breach of contract without just cause, such compensation being, moreover, fixed on the basis of criteria presenting the deficiencies highlighted in paragraphs 106 and 107 of this judgment. Furthermore, while it must be acknowledged that FIFA has argued that this provision is not applied systematically and, in particular, does not apply where the new contract of a player who has breached his previous contract without just cause is signed after the expiry date of that previous contract, the fact remains that, even assuming this situation to be established, Article 17(2) of the RSTJ does not provide for such non-application and therefore does not ensure the necessary legal certainty in this respect.

109 Thirdly, this is also the case with Article 17(4) of the RSTJ in that, in addition to being jointly and severally liable for payment of such compensation, the new club is presumed, subject to proof to the contrary, to have induced the player to terminate his contract without just cause and, in the event that the player is hired during the protected period of his contract with his former club, that the new club thereby incurs a sporting sanction consisting of a general ban on registering new players for two complete and consecutive registration periods.

110 Indeed, such a sporting sanction, which the bodies responsible for applying it do not have the power to adapt on a case-by-case basis according to given criteria or circumstances, appears, in view of its nature and consequences, to be manifestly lacking in any relationship of proportionality with the breach imputed to the new club concerned. What's more, the new club is being held liable on the basis of a presumption that does not appear to be justified. Admittedly, FIFA argued that the existence of this presumption was explained by the difficulties that a player's former club might face if it were obliged to prove that the player's new club had induced him to prematurely and without just cause break his contract with his former club. However, it has to be said that, while such an argument may, at first sight, justify the use of a presumption in principle, it does not justify the presumption at issue here, which applies automatically, In other words, it does not depend on any condition allowing the relevant circumstances of the case to be taken into account, even if only to a limited extent, such as, for example, requiring the former club to provide at least sufficient evidence to consider that the new club had encouraged the player to break away.

111 Furthermore, while it is open to an association such as FIFA to provide for the infliction of sanctions in the event of a breach of the rules it adopts, provided that those rules and the sanctions intended to ensure compliance with them are justified by the pursuit of a legitimate objective in the general interest, such sanctions can only be permitted on condition that their determination is governed by transparent, objective, non-discriminatory and proportionate criteria (see, to that effect, judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 257), the latter requirement implying, in particular, that account must be taken of the specific circumstances of the case in question when determining the amount and duration, as follows from the case law cited in paragraph 108 of this judgment. Secondly, such criteria must be capable of effective review.

112 Fourthly and lastly, this is also the case with article 8.2.7 of appendix 3 of the RSTJ in that it prohibits the former association, generally and automatically, subject to exceptional circumstances, from issuing an ITC if the former club and the player are opposed by a contractual dispute linked to a lack of mutual agreement on premature termination of the employment contract. In fact, such a provision, the implementation of which could lead to the player concerned being prevented from carrying out his professional activity, as well as to the new club being prevented from fielding this player on the sole grounds that there is a dispute between the said player and his former club relating to a breach of contract possibly lacking just cause, clearly disregards the principle of proportionality, in particular in that its application disregards the specific circumstances of each case, in particular the factual context in which the breach of contract occurred, the respective conduct of the player concerned and his former club, and the role or lack of role played by the new club, which is nevertheless ultimately responsible for the ban on registering this player and fielding him in competitions.

113 The prohibition in question cannot, therefore, be justified by an alleged desire to ensure the smooth running of sporting competitions. Furthermore, this conclusion is not called into question by FIFA's argument that, in the event of an application for registration submitted by the new national soccer association to which a player belongs, or in the event of an application submitted by a player, its services immediately and automatically proceed to provisional registration of that player. In fact, the provision in question contains no reference to such provisional registration, let alone any obligation to do so.

3. Conclusion

114 In the light of all the foregoing considerations, the answer to the question referred for a preliminary ruling, in so far as it concerns the interpretation of Article 45 TFEU, is that that article must be interpreted as precluding rules which were adopted by a private-law association whose aims are, inter alia, to regulate, organise and control soccer at world level, and which provide for :

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

– secondly, in the event that the professional player is hired during a protected period under the employment contract that has been terminated, the new club is subject to a sporting sanction consisting of a ban on registering new players for a specified period, unless it can demonstrate that it did not incite the player to terminate that contract, and

– thirdly, that the existence of a dispute linked to this breach of contract prevents the national soccer association of which the former club is a member from issuing the CIT required to register the player with the new club, with the consequence that the player cannot take part in soccer competitions on behalf of the new club,

unless it is established that these rules, as interpreted and applied on the territory of the Union, do not go beyond what is necessary to pursue the objective of ensuring the regularity of interclub soccer competitions by maintaining a certain degree of stability in the membership of professional soccer clubs.

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

1. Article 101(1) TFEU

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

116 As the Court has consistently held, the application of this provision in a given case requires a number of conditions to be met.

a) On the concepts of "companies" and "associations of companies

117 Article 101(1) TFEU is applicable not only to any entity engaged in an economic activity and, as such, qualifying as an "undertaking", irrespective of its legal form or the way in which it is financed, including entities incorporated in the form of an "undertaking".

of associations whose purpose, according to their articles of association, is the organization and control of a given sport, in so far as those entities carry on an economic activity in connection with that sport, but also to entities which, although not necessarily constituting undertakings themselves, may be classified as "associations of undertakings" (judgment of 21 December 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, paragraphs 76 to 78 and the case-law cited).

118 In the present case, given the subject-matter of the main proceedings and the statements made by the referring court, it must be held that Article 101(1) TFEU is applicable to FIFA as an association whose members are national soccer associations which may themselves be classified as "undertakings" in that they carry on an economic activity connected with the organization and marketing of interclub soccer competitions at national level and the exploitation of rights connected therewith, or which themselves have as members or affiliates entities which can be qualified as such, such as soccer clubs (judgments of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 115, and of December 21, 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, paragraph 79).

b) On the notion of "decision to associate companies

119 In order to apply Article 101(1) TFEU to an entity such as FIFA, it is necessary to establish the existence of an "agreement", a "concerted practice" or a "decision by an association of undertakings", which may themselves be of different kinds and take different forms. In particular, an association's decision to adopt or implement rules which have a direct impact on the conditions under which the economic activity of the undertakings which are directly or indirectly its members is carried on may constitute such a "decision by an association of undertakings" within the meaning of that provision (judgment of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 118 and the case law cited).

120 In the present case, as is clear from the wording of the order for reference and paragraph 81 of this judgment, it is with regard to decisions of this type that the referring court questions the Court on the interpretation of Article 101(1) TFEU, namely those consisting, for FIFA, in having adopted and implemented or being able to implement a set of rules relating to employment contracts and transfers of players.

121 Such decisions by associations of undertakings therefore fall within the scope of Article 101(1) TFEU.

c) The concept of "effect on trade between Member States

122 The application of Article 101(1) TFEU in the case of such decisions by associations of undertakings implies establishing, with a sufficient degree of probability, that they are "capable of affecting trade between Member States" to an appreciable extent, by exerting an influence, direct or indirect, actual or potential, on the pattern of trade, at the risk of hindering the establishment or functioning of the internal market, it being specified that such a condition may be deemed to be met in the case of conduct covering the entire territory of a Member State (judgment of December 21, 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, paragraph 43 and case law cited).

123 In the present case, this condition is clearly met given that, as stated in Article ^{1}(1) of the RSTJ, the rules laid down by this regulation have a geographical scope
"universal".

d) On the notion of conduct having the "object" or "effect" of harming competition

124 In order to be able to consider, in a given case, that an agreement, decision by an association of undertakings or concerted practice falls within the prohibition laid down in Article 101(1) TFEU, it is necessary,

in accordance with the very terms of this provision, to demonstrate either that such conduct has the object of preventing, restricting or distorting competition, or that it has such an effect (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 158 and case law cited).

125 To this end, we must first examine the purpose of the conduct in question. If, after such an examination, the conduct proves to have an anti-competitive object, it is not necessary to examine its effect on competition. It is therefore only if the said conduct cannot be considered to have such an anti-competitive object that it is necessary to proceed, in a second stage, to the examination of this effect (judgment of the December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 159 and case law cited).

126 As the Court has consistently held, the concept of anti-competitive "object", while not constituting an exception to the concept of anti-competitive "effect", must nevertheless be interpreted strictly (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 161 and the case law cited).

127 This concept must therefore be understood as referring exclusively to certain types of coordination between undertakings which reveal a sufficient degree of harmfulness to competition for it to be considered unnecessary to examine their effects. Indeed, certain forms of coordination between undertakings may be regarded, by their very nature, as harmful to the proper functioning of normal competition (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, point 162 and case law cited).

128 This applies in particular to certain types of horizontal agreements other than cartels, for example those leading to the exclusion of competing undertakings from the market, or to certain types of decisions by associations of undertakings (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 164 and the case law cited).

129 As is clear from Article 101(1)(a) and (c) TFEU, which refers in particular to the fixing of "purchase or selling prices" and the allocation of "markets or sources of supply", such cartels, horizontal agreements and decisions by associations of undertakings may relate not only to the products or services marketed by the undertakings concerned, and thus to supply, but also to the resources of all kinds which those undertakings need to produce those products or services, and thus to demand. The collusive conduct of those undertakings may thus consist, for example, in allocating suppliers among themselves, in using their collective market power to fix the price at which they will purchase their inputs or, as the Court has already held, in limiting or controlling the essential parameter of competition which may constitute, in certain sectors or on certain markets, the recruitment of high-level workers, such as players already trained in the case of the professional soccer sector (see, to that effect, judgment of 21 December 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, paragraphs 107, 109 and 110).

130 In order to determine, in a given case, whether an agreement, decision by an association of undertakings or concerted practice is, by its very nature, sufficiently harmful to competition to be considered as having the object of preventing, restricting or distorting competition, it is necessary to examine, firstly, the content of the agreement, decision or practice in question, secondly, the economic and legal context in which it takes place and, thirdly, the aims it is intended to achieve (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 165 and case law cited).

131 In this respect, first of all, with regard to the economic and legal context in which the conduct in question takes place, it is necessary to take into account the nature of the products or services concerned, as well as the actual conditions characterizing the structure and operation of the sector(s) or market(s) in question. On the other hand, it is in no way necessary to examine and, moreover, to take into account the actual conditions that characterize the structure and operation of the sector(s) or market(s) in question.

strong reason to demonstrate the effects of that conduct on competition, whether actual or potential and whether negative or positive (judgments of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 166 and case law cited, and of June 27, 2024, Commission/Servier and Others, C-176/19 P, EU:C:2024:549, paragraphs 288 and 453).

132 Secondly, as regards the aims pursued by the conduct in question, it is necessary to determine the objective aims that this conduct is intended to achieve with regard to competition. On the other hand, the fact that the undertakings involved acted without the subjective intention of preventing, restricting or distorting competition and the fact that they pursued certain legitimate objectives are not decisive for the purposes of applying Article 101(1) TFEU (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 167 and case law cited).

133 Lastly, consideration of all the factors referred to in the three preceding points of this judgment must, in any event, reveal the precise reasons why the conduct in question is sufficiently harmful to competition to justify the view that it has the object of preventing, restricting or distorting competition (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 168 and the case law cited).

134 In the present case, as regards, firstly, the content of the rules of the RSTJ at issue in the main proceedings, it follows from paragraphs 87 to 90 of this judgment that these various rules, which form an indissociable whole and must therefore be understood as such, provide, firstly, that any soccer player, and thus in particular any soccer player employed in the Union, who terminates his contract of employment with his former club, at any time during its term, is obliged, if FIFA subsequently decides that the termination was without just cause, to pay the former club compensation, the amount of which is calculated, in the absence of contractual stipulations on the subject, taking into account a number of criteria.

135 In this respect, it should be remembered that the first of these criteria, relating to the "law in force in the country concerned", has in practice remained virtually a dead letter to date, as pointed out in paragraph 106 of this judgment, and that the second of these criteria, relating to the "specific characteristics of the sport", is worded, as also pointed out in paragraph 106, in extremely general and imprecise terms lending itself to discretionary implementation, which is therefore unforeseeable and difficult to control. As for the other criteria, they appear, at first sight, to allow the setting of extremely high and dissuasive compensation amounts, as stated in paragraph 107 of this judgment. By contrast, Article 4 of the Law of February 24, 1978 on the employment contract of remunerated sportsmen and sportswomen (*Moniteur belge* of March 9, 1978, p.. 2606), referred to by BZ in its written observations, appears to provide, subject to verification by the referring court, that in a comparable situation but governed by Belgian domestic law, the amount of compensation corresponds solely to the remuneration remaining due until the end of the employment contract which has been terminated, and therefore does not involve elements extraneous to the employment relationship arising from that c o n t r a c t , analogous to those referred to in the same point.

136 Secondly, any player whose former club brings an action before the LRC seeking an order to pay the indemnity in question, on the alleged grounds that the employment contract between them was terminated without just cause, is automatically, by this very fact and subject to exceptional circumstances subject to FIFA's exclusive discretion, deprived of the possibility of obtaining the ITC which, in the event of a transfer to a new club established in a member state other than that in which his former club is established, is a condition of his registration with this new club and with FIFA, deprived of the possibility of obtaining the CIT which, in the event of a transfer to a new club established in a member state other than that in which his former club is established, is a condition of his registration with this new club and with the national soccer association to which the latter is affiliated. Consequently, in such a situation, the player is deprived of any possibility of participating in organized soccer, as is clear from Articles 5(1) and 9(1) of the RSTJ.

137 Lastly, any new club taking on such a player would be jointly and severally liable for the payment of any compensation the player has been or may be ordered to pay; secondly, it would be presumed, subject

to proof to the contrary, to have induced the player to terminate his employment contract with his former club; and thirdly, in the case of a new club, it would be presumed to have induced the player to terminate his employment contract with his former club.

where the breach of contract occurred during the protected period of the contract, condemned, as a result of the application of this presumption and without taking into account the specific circumstances of each case, to a general prohibition on registering any new player nationally or internationally for two complete and consecutive registration periods.

138 As the Advocate General As the Advocate General pointed out in paragraphs 52 to 55 of his Opinion, a combined reading of the RSTJ rules at issue in the main proceedings shows, firstly, that they are such as to restrict generally and drastically, from a material point of view, the competition which, in their absence, could set any professional soccer club established in a Member State against any other professional soccer club established in another Member State as regards the recruitment of players already recruited by a given club, given that, numerically speaking, these players make up the bulk of the population of players already trained or in training who could be the subject of such cross-border recruitment at any given time, even if there are also, at any given time, a number of players who are no longer under contract for one reason or another. As pointed out in paragraphs 81 and 129 of this judgment, the possibility of recruiting such players is an essential parameter of competition in the interclub professional soccer sector.

139 Indeed, unless the former club agrees to a negotiated transfer, the very act of hiring such a player exposes the new club to the risk of being held jointly and severally liable for the payment of a potentially very substantial indemnity. Moreover, the amount of this indemnity is highly unpredictable for the new club, given the nature of the criteria on which it is calculated. What's more, as long as there is a dispute between the player concerned and his former club over the early termination of the employment contract that bound them, and therefore as long as the CIT corresponding to this engagement has not been issued, the player can neither be registered with this new club nor take part, on its behalf, in any competition falling within the remit of FIFA, the national soccer associations that are members of it or the continental confederations, such as UEFA, that it recognizes. Finally, in addition to these various factors, there is the risk that the new club may be subject to a sporting sanction if the player is recruited during the protected period of his contract with his former club, and the new club fails to rebut the presumption of incitement to breach of contract resulting from the recruitment. As previously mentioned, this sporting sanction consists of automatically prohibiting the new club from registering any other new player for two complete and consecutive registration periods. In practice, the said sporting sanction prevents the club from fielding any other new player it may wish to recruit during a match, a situation which deprives such recruitment of any real practical interest.

140 On the other hand, this generalized and drastic restriction of cross-border competition between clubs through the unilateral recruitment of players already hired, and therefore of clubs' access to the essential "resources" that players represent, extends, from a geographical point of view, to the entire territory of the Union and presents, from a temporal point of view, it is permanent in that it covers the entire duration of each of the employment contracts that a player may conclude successively with a club, and then, in the event of a negotiated transfer to another club, with the latter, as is also clear from article 13 of the RSTJ.

141 In practice, this restriction means that each club can be certain, or almost certain, of keeping its own players until their contract or series of contracts has expired, or until it decides to terminate the contract with the player or transfer the player to another club, in return for payment of a transfer fee.

142 As regards, secondly, the economic and legal context in which the rules of the RSTJ at issue in the main proceedings are to be found, it should first of all be recalled that, given the specific nature of the "products" that sporting competitions constitute, from an economic point of view it is permissible, associations responsible for a sporting discipline to adopt, implement and enforce rules relating, in particular, to the organization of competitions in that discipline, to their proper conduct and to the participation of sportsmen and sportswomen in them (judgments of

December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, point 142, and December 21, 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, point 103 and case law cited).

143 With regard, more specifically, to soccer and the economic activities to which the practice of this sport gives rise, it is legitimate for an association such as FIFA to subject the organization and staging of international competitions to common rules designed to guarantee the homogeneity and coordination of such competitions within an overall annual or seasonal calendar and, more generally, to promote, in an appropriate and effective manner, the staging of sporting competitions based on equal opportunities and merit. In particular, it is legitimate for such an association to regulate, by means of such common rules, the conditions under which professional soccer clubs may compose teams taking part in such competitions, as well as those under which the players themselves may take part in them. Finally, it is legitimate to ensure effective compliance with these common rules by means of rules enabling sanctions to be imposed (see, to this effect, judgments of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, points 144 to 146, and of 21 December 2023, Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, point 104).

144 In this context, since the annual or seasonal conduct of interclub professional soccer competitions in the Union is based on the confrontation and progressive elimination of the participating teams and is therefore essentially based on sporting merit, which can only be guaranteed if all those teams compete under homogeneous regulatory and technical conditions, ensuring a certain equality of opportunity (see, to this effect, judgments of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 143, and Royal Antwerp Football Club, C-680/21, EU:C:2023:1010, paragraph 105), it may be legitimate for an association such as FIFA to seek to ensure, to a certain extent, the stability of the composition of the pool of players used by these clubs in the course of a given season, for example by prohibiting, as article 16 of the RSTJ does, the unilateral termination of employment contracts during the course of a season, or even a given year.

145 On the other hand, the specific characteristics of soccer and the real operating conditions of the market constituted, from an economic point of view, by the organization and marketing of interclub professional soccer competitions cannot lead to the acceptance of generalized, drastic and permanent restrictions, or even prevention, on the entire territory of the Union, any possibility for clubs to engage in cross-border competition by unilaterally recruiting players already employed by a club established in another Member State, or players whose employment contract with such a club is alleged to have been terminated without just cause. Under the guise of preventing aggressive recruitment practices, these rules in fact amount to no-poaching agreements between clubs which, in essence, result in the artificial partitioning of national and local markets, to the benefit of all clubs. In this respect, it is important to emphasize that classic contract law mechanisms, such as the club's right to receive compensation in the event of breach of contract by one of its players, possibly at the instigation of another club, in disregard of the stipulations of that contract, are sufficient to ensure, on the one hand, the long-term presence of the player at the first club mentioned, in accordance with the aforementioned stipulations, and, secondly, the normal interplay of the rules of the market between clubs, which allow the latter, at the end of the normal term of the contract or earlier if a financial agreement is reached between clubs, to proceed with the recruitment of the said player.

146 In the final analysis, such rules, even if they are presented as aimed at preventing the poaching of players by clubs with greater financial resources, are tantamount to a general, absolute and permanent ban on the unilateral recruitment of players already signed up, imposed by decision of an association of companies on all the companies that are professional soccer clubs, and weighing down on all the workers that are these players. They freeze the distribution of these resources between the clubs, subject to negotiated transfers. As such, they constitute a clear restriction on the competition to which these clubs are entitled.

The result is that the market is partitioned in favor of all these clubs.

147 As regards, thirdly and finally, the objective aim which the rules at issue in the main proceedings are intended to achieve with regard to competition, it follows from the foregoing considerations that, irrespective of the subjective intention or legitimate aims which may have animated or been pursued by the entity which adopted them, those rules must be regarded as intended to ensure that, with the exception of the case of players whose employment contract has been terminated for just cause or by mutual agreement with their former club, it becomes extremely difficult, given the legal, financial and sporting risks this would entail, for professional soccer clubs to compete for access to essential resources such as players already under contract, by unilaterally recruiting a player hired by another club or a player whose contract is alleged to have been unilaterally terminated without just cause, such recruitment only being possible by means of a transfer negotiated between the former club and the new club.

148 Thus, an examination of the content of the rules at issue in the main proceedings, the economic and legal context in which they are set and the objective aims they are intended to achieve shows that, by their very nature, these rules present a high degree of harmfulness with regard to the competition which professional soccer clubs could engage in by unilaterally recruiting players already hired by a club or players whose employment contracts have allegedly been terminated without just cause, thus seeking to gain access to the resources essential to their success which are these top-level players. Under these conditions, these rules must be considered as having the object of restricting, or even preventing, the said competition, and this throughout the territory of the Union. There is therefore no need to examine their effects.

e) Whether certain specific forms of conduct may be considered to fall outside the scope of Article 101(1) TFEU

149 The Court has consistently held that any agreement between undertakings or decision by an association of undertakings which limits the freedom of action of the undertakings party to that agreement or subject to compliance with that decision does not necessarily fall within the prohibition laid down in Article 101(1) TFEU. In fact, an examination of the economic and legal context in which some of these agreements and decisions are made may lead to the conclusion, firstly, that they are justified by the pursuit of one or more legitimate objectives in the general interest, which are not in themselves anti-competitive in nature, and secondly, that the concrete means used to achieve these objectives are in the public interest, that the specific means used to pursue those objectives are genuinely necessary for that purpose and, thirdly, that even if it turns out that those means have the inherent effect of restricting or distorting, at least potentially, competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition (judgments of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 183 and case law cited, and of January 25, 2024, Em akaunt BG, C-438/22, EU:C:2024:71, paragraph 30).

150 However, this case law cannot be applied to conduct which, far from merely having the inherent "effect" of restricting, or at least potentially restricting, competition by limiting the freedom of action of certain undertakings, is so harmful to that competition as to justify the view that its very "object" is to prevent, restrict or distort it (judgments of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 186, and of January 25, 2024, Em akaunt BG, C-438/22, EU:C:2024:71, paragraph 32). Indeed, the degree to which such conduct is harmful to competition, and hence the direct or indirect harm it is likely to cause to intermediate or final users and consumers in the various sectors or markets concerned, is too great to allow it to be considered justified and proportionate.

151 In the case of conduct intended to prevent, restrict or distort competition, it is therefore only in application of Article 101(3) TFEU and insofar as the entirety of the conduct in question does not fall within the scope of Article 101(3) TFEU.

conditions laid down in that provision are met that they may be granted the benefit of an exemption from the prohibition laid down in Article 101(1) TFEU (judgments of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 187, and of 25 January 2024, Em akaunt BG, C-438/22, EU:C:2024:71, paragraph 33).

152 In the present case, in view of the considerations set out in paragraphs 134 to 148 of this judgment, the case law referred to in paragraph 149 of this judgment must be considered not to apply to rules such as those at issue in the main proceedings.

2. Article 101(3) TFEU

153 It follows from the actual wording of Article 101(3) TFEU that any agreement, decision by an association of undertakings or concerted practice which proves to be contrary to Article 101(1) TFEU, whether by reason of its object or its anti-competitive effect, may benefit from an exemption if it fulfils all the conditions laid down for that purpose, it being observed that those conditions are stricter than those referred to in paragraph 149 of this judgment (judgment of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 189 and the case law cited).

154 In accordance with Article 101(3) TFEU, the benefit of this exemption in a given case is subject to four cumulative conditions. Firstly, it must be established with a sufficient degree of probability that the agreement, decision by an association of undertakings or concerted practice in question is likely to result in efficiency gains, by contributing either to improving the production or distribution of the products or services concerned, or to promoting technical or economic progress. Secondly, it must be established, to the same extent, that a fair share of the profits resulting from these gains in efficiency is reserved for users. Thirdly, the agreement, decision or practice in question must not impose on the participating undertakings restrictions which are not indispensable to achieving such efficiencies. Fourthly, the agreement, decision or practice must not afford the participating undertakings the possibility of eliminating all effective competition in respect of a substantial part of the products or services concerned (judgment of 21 December 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 190 and case law cited).

155 Failure to comply with one of these four cumulative conditions is sufficient to rule out the possibility of the conduct in question benefiting from the exemption provided for in Article 101(3) TFEU (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 208).

156 In this respect, the third condition, relating to the indispensable or necessary nature of the conduct in question, implies assessing and comparing the respective impact of this conduct and of alternative measures that could actually be envisaged, with a view to determining whether the efficiency gains expected from this conduct can be achieved by measures that are less restrictive of competition. On the other hand, it cannot lead to a choice being made, on a case-by-case basis, between such conduct and alternative measures if the latter do not appear to be less restrictive of competition (judgment of December 21, 2023, European Superleague Company, C-333/21, EU:C:2023:1011, paragraph 197).

157 In order to determine whether this third condition is met in the present case, the referring court will have to take into account, firstly, the fact, noted in paragraphs 105 to 112 of this judgment, that the rules of the RSTJ at issue in the main proceedings are characterized by a combination of elements, a significant number of which are discretionary and/or disproportionate. In addition, it must take account of the fact, referred to in paragraphs 138 to 140, 145 and 146 of this judgment, that those rules provide for a generalized, drastic and permanent restriction of the cross-border competition that professional soccer clubs could engage in by unilaterally recruiting top-level players. Indeed, each of these two circumstances, taken in isolation, precludes prima facie consideration of the said rules as indispensable or necessary in order to achieve efficiencies, even if these were established.

3. Conclusion

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

– firstly, that a professional player who is party to an employment contract and who is alleged to have terminated that contract without just cause, and the new club that hires him following that termination, are jointly and severally liable for the payment of compensation, owed to the former club for which the player worked and to be fixed on the basis of criteria that are sometimes imprecise or discretionary, sometimes lacking any objective link with the employment relationship concerned and sometimes disproportionate;

– secondly, in the event that the professional player is hired during a protected period under the employment contract that has been terminated, the new club is subject to a sporting sanction consisting of a ban on registering new players for a specified period, unless it can demonstrate that it did not incite the player to terminate that contract, and

– thirdly, that the existence of a dispute linked to this breach of contract prevents the national soccer association of which the former club is a member from issuing the CIT required to register the player with the new club, with the consequence that the player cannot take part in soccer competitions on behalf of the new club,

constitute a decision by an association of undertakings which is prohibited by paragraph 1 of this article and which can only benefit from an exemption under paragraph 3 of this article if it is demonstrated, by means of convincing arguments and evidence, that all the conditions required for this purpose are fulfilled.

Costs

159 As the proceedings have the character, as regards the parties to the main proceedings, of an incident raised before the referring court, it is for that court to decide on the costs. Costs incurred in submitting observations to the Court, other than those incurred by the parties, shall not be reimbursed.

For these reasons, the Court (Second Chamber) ruled:

1) Article 45 TFEU must be interpreted as precluding rules adopted by a private-law association whose aims include the regulation, organization and control of soccer at world level, and which provide for :

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

– secondly, that if the professional player is hired during a protected period under the employment contract that has been terminated, the new club is subject to a sporting sanction consisting of a ban o n registering from

new players for a specified period, unless he can demonstrate that he did not induce that player to break this contract, and

– **thirdly, that the existence of a dispute linked to this breach of contract prevents the national soccer association of which the former club is a member from issuing the international transfer certificate required to register the player with the new club, with the consequence that the player cannot take part in soccer competitions on behalf of the new club,**

unless it is established that these rules, as interpreted and applied on the territory of the European Union, do not go beyond what is necessary to pursue the objective of ensuring the regularity of interclub soccer competitions, by maintaining a certain degree of stability in the workforce of professional soccer clubs.

2) Article 101 TFEU must be interpreted as meaning that such rules constitute a decision to form an association of undertakings which is prohibited by paragraph 1 of that article and which can benefit from an exemption under paragraph 3 of that article only if it is shown, by means of convincing arguments and evidence, that all the conditions required for that purpose are fulfilled.

Signatures

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* Language of proceedings: French.