Reports of Cases

OPINION OF ADVOCATE GENERAL
EMILIOU
delivered on 15 May 2025[1]

Case C-209/23

FT,
RRC Sports GmbH
v
Fédération internationale de football association (FIFA)

(Request for a preliminary ruling from the Landgericht Mainz (Regional Court, Mainz, Germany))

(Reference for a preliminary ruling – Competition – Internal market – Rules introduced by international sports associations – Professional football – World sporting association – Regulations on football agents – Article 101(1) TFEU – Concept of anticompetitive 'object' – *Meca-Medina* case-law – Article 101(3) TFEU – Article 102 TFEU – Abuse of a dominant position – Exploitative abuses – Exclusionary abuses – Article 56 TFEU – Restrictions on the freedom to provide services – Protection of personal data – Article 6(1)(f) Regulation (EU) 2016/679)

I. Introduction

1. In a number of recent cases – namely, *ISU*,[2] *Superleague*,[3] *Royal Antwerp*[4] and *FIFA*[5] – the Court had to review the compatibility with the EU competition and internal market provisions of certain regulations adopted by international or national sports associations.

2. The present case is a natural follow-up to those cases. Indeed the dispute in the main proceedings concerns an international sports association's regulations ('the regulations at issue') governing the activities of players' agents ('the agents'). By its questions, the referring court essentially asks the Court to provide further guidance on various interpretative issues arising from the EU provisions on competition, internal market and data protection.

1 Original language: English.

2 Judgment of 21 December 2023, *International Skating Union* v *Commission* (C-124/21 P, EU:C:2023:1012) ('the judgment in *ISU*').

3 Judgment of 21 December 2023, *European Superleague Company* (C-333/21, EU:C:2023:1011) ('the judgment in *Superleague*').

4 Judgment of 21 December 2023, *Royal Antwerp Football Club* (C-680/21, EU:C:2023:1010) ('the judgment in *Royal Antwerp*').

5 Judgment of 4 October 2024, *FIFA* (C-650/22, EU:C:2024:824) ('the judgment in *FIFA*').

3. Largely similar issues are also raised by two other references for a preliminary ruling – those in Cases C-428/23, *ROGON and Others*, [6] and in C-133/24, *CD Tondela and Others* [7] – in which I will deliver my Opinion today. The present Opinion should, thus, be read together with those other Opinions. For the sake of judicial economy, and in order to assist the readers, I shall attempt to avoid unnecessary repetitions in the three Opinions and, to that end, will make a number of cross-references between them.

II. Legal framework

4. Article 6 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ('the GDPR'), [8] entitled 'Lawfulness of processing', provides:

'1. Processing shall be lawful only if and to the extent that at least one of the following applies:

…

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data …

…'

III. Facts, procedure and the question referred

5. The applicants in the main proceedings are FT, an agent for players and the Vice-President of the players' agents' association 'Football Forum', and RRC Sports, a company based in Germany, which also acts as a players' agent and of which FT is the managing director. The defendant, Fédération internationale de football association (FIFA), is a non-profit association governed by Swiss law, which has its registered office in Zurich (Switzerland). It is also the global governing body for football, overseeing 211 national member associations, including the Deutscher Fußball-Bund (the German football association).

6. In accordance with Article 11(4) and Article 14 of the FIFA Statutes, the member associations must comply with FIFA's regulations and recognise its decisions.

7. On 16 December 2022, FIFA's Council adopted the FIFA Football Agent Regulations ('the FFAR'), which were subsequently published on 6 January 2023. Those regulations provide the framework governing, inter alia, the remuneration, activities and conduct of players' agents. Articles 1 to 10 and 22 to 27 of the FFAR took effect on 9 January 2023. The remaining provisions were scheduled to enter into force on 1 October 2023. Among those rules, the FFAR impose limits on players' agents' fees and introduces other rules on conflicts of interest and on contractual terms.

6 C-428/23 ('the Opinion in *ROGON*').

7 C-133/24 ('the Opinion in *CD Tondela*').

8 OJ 2016 L 119, p. 1.

8. The applicants in the main proceedings brought an action for an injunction before the Landgericht Mainz (Regional Court, Mainz, Germany) seeking to bar the application of certain rules of the FFAR[9] ('the rules at issue') on the ground that they infringe Article 56 TFEU, Articles 101 and 102 TFEU and Article 6 of the GDPR. For its part, FIFA maintains that the rules contained in the FFAR are both lawful and necessary for the integrity of football, fostering solidarity between professional and grassroots levels and ensuring transparency and ethical standards.

9. Harbouring doubts as to the proper interpretation of the relevant provisions of EU law, the Landgericht Mainz (Regional Court, Mainz) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 101 [TFEU] (prohibition on cartels), Article 102 TFEU (prohibition on abuse of a dominant position) and Article 56 TFEU (freedom to provide services) and also Article 6 of the [GDPR] be interpreted as precluding rules adopted by a world sporting association (in this case: FIFA), to which 211 national sports federations of the relevant sport (in this case: football) belong, and whose rules are therefore binding in any event on the majority of the actors active in the respective national professional leagues of the relevant sport (in this case: clubs (which also means football clubs organised as capital companies), players (who are club members) and players' agents), and which have the following content:

(1) it is prohibited to agree on players' agents' remuneration, or pay them remuneration, in excess of a cap calculated as a percentage of the transfer fee or the annual remuneration of that player, as provided for in Article 15(2) of the [FFAR];

(2) it is prohibited for third parties to pay remuneration due under a representation agreement in respect of the players' agent's contracting partner, as provided for in Article 14(2) and (3) of the FFAR;

(3) clubs are prohibited from paying more than 50% of the total remuneration due from the player and the club for the services of the players' agent in cases where a players' agent acts on behalf of the engaging club and the player, as provided for in Article 14(10) of the FFAR;

(4) for the grant of a licence as a players' agent, which is a condition for being allowed to provide players' agent services, it is required that the applicant submit to the internal regulations of the world sporting association (in this case: the FFAR, the FIFA Statutes, the FIFA Disciplinary Code, the FIFA Code of Ethics, the [FIFA RSTP] as well as the statutes, regulations, guidelines and decisions of authorities and bodies) and also to its jurisdiction as an association and that of confederations and member associations, as provided for in Article 4(2), Article 16(2)(b) and Article 20 of the FFAR, in conjunction with Article 8(3), Article 57(1) and Article 58(1) and (2) of the FIFA Statutes, Article 5(a), Article 49 and Article 53(3) of the FIFA Disciplinary Code, and Article 4(2) and Article 82(1) of the Code of Ethics;

[9] Where relevant, as applied in combination with other rules issued by FIFA such as Article 18ter of the FIFA Regulations on the Status and Transfer of Players ('the FIFA RSTP'), Article 7 of the FIFA Regulations on Working with Intermediaries, Articles 8, 14, 57 and 58 of the FIFA Statutes 2021, Articles 5, 49 and 53 of the FIFA Code of Conduct 2019 and Articles 4 and 82 of the FIFA Code of Ethics 2020.

(5) requirements are laid down for the grant of a licence as a players' agent, under which the grant of a licence is permanently excluded in the case of convictions or settlements in criminal proceedings or a suspension of two years or more, licence suspension or withdrawal, or other disqualification by an authority or a sports governing body, without the possibility of the licence being granted at a later date, as provided for in Article 5(1)(a)(ii) and (iii) of the FFAR;

(6) players' agents are prohibited, in connection with the conclusion of a transfer agreement and/or a contract of employment, from providing players' agent services or any other services to, and being remunerated for them, by: (a) the releasing club and the engaging club, (b) the releasing club and the player, (c) any parties involved (releasing club, engaging club and player), as provided for respectively in Article 12(8) and (9) of the FFAR; and

(6a) players' agents are prohibited, in connection with the conclusion of a transfer agreement and/or a contract of employment together with a connected players' agent, from providing players' agent services or any other services to, and being remunerated for them, by: (a) the releasing club and the engaging club, (b) the releasing club and the player, (c) any parties involved (releasing club, engaging club and player), if the concept of connected players' agent includes cooperation in accordance with the definition of "connected football agent" laid down in the FFAR (fourth subparagraph on p. 6 of the FFAR), as provided for in Article 12(10) of the FFAR, in conjunction with the definition of "connected football agent" in the fourth subparagraph on p. 6 of the FFAR;

(7) players' agents are prohibited from approaching or entering into a representation agreement with a club, player … or member association of the world sporting association or a legal person operating a single-entity league which is permitted to engage players' agents and which have entered into an exclusive agreement with another players' agent, as provided for in Article 16(1)(b) and (c) of the FFAR;

(8) the names and details of all players' agents, the names of the clients whom they represent, the players' agent services which they provide to each individual client and/or the details of all transactions involving players' agents, including the amount of remuneration payable to players' agents, must be uploaded to a platform of the world sporting association and this information is made available in part to other clubs, players or players' agents, as provided for in Article 19 of the FFAR;

(9) it is prohibited to agree remuneration for players' agent services on any other basis than the player's remuneration or the transfer fee, as provided for in Article 15(1) of the FFAR;

(10) it is presumed that other services provided by a players' agent or a connected players' agent in the 24 months prior to or following the provision of a players' agent service to a client involved in the transaction for which player agency services were performed form part of the player agent's services and, in so far that the presumption cannot be rebutted, remuneration for the other services is deemed to form part of the remuneration paid for the players' agent service, as provided for in Article 15(3) and (4) of the FFAR;

(11) the amount of the players' agent's remuneration to be calculated on a [pro rata] basis is to be based solely on the salary actually received by the player, as provided for in Article 14(7) and (12) of the FFAR;

(12) players' agents are required to disclose the following information to the world sporting association:

(a) within 14 days of conclusion: any agreement with a client other than a representation agreement, including but not limited to other services, and the information requested on the platform,

(b) within 14 days of payment of remuneration: the information requested on the platform,

(c) within 14 days of payment of any remuneration related to any agreement with a client other than a representation agreement: the information requested on the platform,

(d) within 14 days of occurrence: any contractual or other arrangement between players' agents to cooperate in the provision of any services or to share the revenue or profits of any part of their players' agent services,

(e) if they conduct their business affairs through an agency, within 14 days of the first transaction involving the agency: the number of players' agents who use the same agency to conduct their business affairs and the name of all its employees, as provided for in Article 16(2)(j)(ii) to (v) and (k)(ii) of the FFAR;

(13) clubs are prohibited from agreeing on remuneration or elements of remuneration with players' agents for the future transfer of a player or from paying remuneration or elements of remuneration to players' agents, the calculation basis for which is (also) dependent on future transfer compensation received by the club from a subsequent transfer of the player, as provided for in Article 18ter(1), first alternative, of the [FIFA RSTP] and Article 16(3)(e) of the FFAR.'

10. Written observations have been submitted by FT, FIFA and the Greek, French and Hungarian Governments, as well as the European Commission.

11. By letter of 5 March 2024, the Court invited interested parties, on the basis of Article 62(1) of the Rules of Procedure of the Court of Justice, to submit their observations on the impact of the judgments in *ISU*, in *Superleague* and in *Royal Antwerp* on the answer to be given to the question referred in the present case. FT, FIFA, the Greek, French and Hungarian Governments and the Commission complied with that request.

12. FT, FIFA, the Hungarian Government and the Commission also presented oral argument at the hearing on 12 February 2025.

IV. Analysis

13. By its question, the referring court asks the Court to assess the compatibility with EU law of regulations, such as the FFAR, that have been adopted by a world sports association and concern the activity of athletes' agents. The question referred enquires about the proper interpretation of four provisions of EU law and, as such, raises a multitude of legal issues which ought to be examined separately.

14. Before I start my assessment of those issues (C, D, E and F), I would like first to make some preliminary remarks of a systemic (A) and methodological (B) nature.

A. Preliminary remarks (I) – systemic

15. At the outset, I find it useful to make three preliminary remarks in order to set the scene for the readers of the present Opinion (and that may also be relevant to the readers of the other two Opinions referred to in point 3 above).

16. First, I should like to recall that, according to settled case-law, in so far as it constitutes an economic activity, the practice of sport is subject to the provisions of EU law applicable to such activity.[10] Accordingly, the rules adopted by sporting associations governing paid work or the performance of services by professional or semi-professional players and, more broadly, those rules which, whilst not formally governing that work or the performance of those services, have an indirect impact thereon, may come within the scope of the EU provisions on *free movement*. In addition, those rules and, more broadly, the conduct of associations which have adopted them come within the scope of the EU *competition* provisions where the relevant conditions are met, in so far as those associations may be categorised as 'associations of undertakings' and the rules at issue as 'decisions by associations of undertakings' for the purposes of Articles 101 and/or 102 TFEU.[11]

17. However, the Court has consistently stated that certain specific rules which were adopted solely on non-economic grounds and which relate to questions of interest solely to sport per se must be regarded as being extraneous to any economic activity. That is the case, in particular, of those on the exclusion of foreign players from the composition of teams participating in competitions between teams representing their country or the determination of ranking criteria used to select the athletes participating individually in competitions.[12]

18. This 'sporting exception' – dating back to the seminal *Walrave* case,[13] and often criticised in legal scholarship,[14] should, in my view, be interpreted narrowly.[15] The Court has consistently stated that the fact that a rule has a purely sporting nature or applies solely to sport does not mean that that rule and, a fortiori, the activity to which it relates are automatically excluded from the scope of the Treaty.[16]

19. In fact, the 'sporting exception' is by no means a real exception to the application of the EU provisions in question, but merely an application of two well-established principles.

10 See the judgment in *Superleague*, paragraph 83 and the case-law cited.

11 Ibid., paragraphs 85 to 87 and the case-law cited.

12 Ibid., paragraph 84.

13 Judgment of 12 December 1974, *Walrave and Koch* (36/74, EU:C:1974:140, paragraph 8) ('the judgment in *Walrave*'). Subsequently confirmed, inter alia, in the judgments of 15 December 1995, *Bosman* (C-415/93, EU:C:1995:463, paragraph 76) ('the judgment in *Bosman*'), and of 11 April 2000, *Deliège* (C-51/96 and C-191/97, EU:C:2000:199, paragraph 43) ('the judgment in *Dèliege*').

14 See, with further references, Parrish, R. and Miettinen, S., *The Sporting Exception in European Union Law*, T.M.C. Asser Press, 2008, and Weatherill, S., 'The impact of the rulings of 21 December 2023 on the structure of EU sports law', *The International Sports Law Journal*, Vol. 23, 2023, p. 414.

15 See, for example, the judgment in *Walrave*, paragraph 9; and judgments of 14 July 1976, *Donà* (13/76, EU:C:1976:115, paragraph 15); of 8 May 2003, *Deutscher Handballbund* (C-438/00, EU:C:2003:255, paragraphs 54 to 56); and of 18 July 2006, *Meca-Medina and Majcen* v *Commission* (C-519/04 P, EU:C:2006:492, paragraph 26) ('the judgment in *Meca-Medina*'). See also, in scholarship, Ibáñez Colomo, P., 'Competition law and sports governance: Disentangling a complex relationship', *World Competition*, Vol. 45, Issue 3, 2022, pp. 331 to 334.

16 See, inter alia, judgment of 13 June 2019, *TopFit and Biffi* (C-22/18, EU:C:2019:497, paragraphs 49 and 53) ('the judgment in *TopFit*'), and the judgment in *FIFA*, paragraph 79.

20. The first such principle is that the EU provisions on free movement and competition are, in general, concerned with *economic activities* and intra-EU trade.[17] For example, it is settled case-law that activities which are connected with the exercise of prerogatives of a public authority do not have an economic character,[18] or which are provided on the basis of solidarity, and do not consist in offering goods or services in the market against remuneration, may fall outside the scope of the EU provisions on competition.[19] That is so despite the fact that some incidental restriction of competition may flow from them.[20] Likewise, the Court has made clear that measures which influence only non-economic aspects of EU citizens' lives are, as a rule, not affected by the internal market provisions.[21]

21. The second principle is that, even where some indirect effect on the exercise of an economic activity or intra-EU trade cannot be a priori excluded, it remains irrelevant as long as it can be considered *de minimis*. The Court has consistently stated that measures whose effects on intra-EU trade are too *uncertain*, indirect, vague, remote, speculative or hypothetical in nature cannot be regarded as constituting 'restrictions' for the purposes of the EU provisions on free movement.[22] The concept of 'restriction' is certainly broad, but it cannot be stretched to cover every tiny nuisance to the manner in which undertakings operate.[23] Similarly, it is well established that forms of conduct by undertakings that do not have an *appreciable* effect on the market,[24] for instance because any influence on the parameters on which competition occurs is marginal and indirect,[25] fall outside the prohibitions set out in the EU antitrust rules.

22. In my view, the 'sporting exception' encompasses, by and large, the basic 'rules of the game' and some organisational aspects of a non-economic nature: for example, how matches take place (number of players, length of the match, the forms of conduct allowed or disallowed on the pitch, clothing requirements of athletes, and so forth) and how tournaments are structured (number of teams participating, number of matches per tournament, schedule of the matches, and so forth).[26]

23. It is undeniable that the application of those rules could, hypothetically, have some kind of impact on commerce and/or competition between undertakings within the internal market.[27]

17 See, to that effect, judgment of 19 February 2002, *Wouters and Others* (C-309/99, EU:C:2002:98, paragraph 57 and the case-law cited) ('the judgment in *Wouters*'). See also, more generally, Opinion of Advocate General Poiares Maduro in *FENIN* v *Commission* (C-205/03 P, EU:C:2005:666, point 15 and the case-law cited).

18 See, for example, judgments of 1 July 2008, *MOTOE* (C-49/07, EU:C:2008:376, paragraph 24) ('the judgment in *MOTOE*'), and of 18 January 2024, *Lietuvos notarų rūmai and Others* (C-128/21, EU:C:2024:49, paragraph 61 and the case-law cited).

19 See, inter alia, judgment of 11 June 2020, *Commission and Slovak Republic* v *Dôvera zdravotná poisťovňa* (C-262/18 P and C-271/18 P, EU:C:2020:450, paragraphs 26 to 52 and the case-law cited).

20 See, in particular, judgment of 21 September 1999, *Albany* (C-67/96, EU:C:1999:430, paragraphs 59 and 60). See also, Opinions of Advocate General Jacobs in *Albany* (C 67/96, EU:C:1999:28, point 182), and of Advocate General Wahl in *FNV Kunsten Informatie en Media* (C-413/13, EU:C:2014:2215, points 31 to 35).

21 See, for example, judgments of 5 October 1988, *Steymann* (196/87, EU:C:1988:475, paragraph 9), and of 31 May 1989, *Bettray* (344/87, EU:C:1989:226, paragraphs 17 to 20).

22 See, among many, judgments of 7 March 1990, *Krantz* (C-69/88, EU:C:1990:97, paragraph 11); of 16 December 1992, *B & Q* (C-169/91, EU:C:1992:519, paragraph 15); of 14 July 1994, *Peralta* (C-379/92, EU:C:1994:296, paragraph 24); and of 26 May 2005, *Burmanjer and Others* (C-20/03, EU:C:2005:307, paragraph 31).

23 See my Opinion in *Fastweb and Others (Time frame for billing)* (C-468/20, EU:C:2022:996, point 50).

24 See recently, to that effect, judgment of 5 December 2024, *Tallinna Kaubamaja Grupp and KIA Auto* (C-606/23, EU:C:2024:1004, paragraphs 28 and 32 to 34), and the judgment in *ISU*, paragraph 109. See also, judgment of 13 December 2012, *Expedia* (C-226/11, EU:C:2012:795, paragraphs 16 and 17).

25 See, for example, judgment of 12 September 2000, *Pavlov and Others* (C-180/98 to C-184/98, EU:C:2000:428, paragraphs 90 to 97).

26 On this issue, see Report from the Commission to the European Council with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework of 10 December 1999 (The Helsinki Report on Sport) (COM(1999) 644 final), point 4.2.1.1.

27 Exactly like being eligible and/or selected to play in a national team can have some impact on players' careers and, by extension, also on the public image of their football clubs.

24. Just to give some, obviously extreme, examples: the fact that football teams are only allowed to play matches with 11 players per side (and not, for example, 12 or 15) cannot be said to have no influence whatsoever on the free movement of workers. More players on the pitch would – one can presume – increase the intra-EU mobility of football players. [28] Similarly, one could go as far as arguing that the prohibition on players wearing anything that is dangerous (such as items of jewellery), or on spectators at football matches entering the premises while intoxicated by alcohol and carrying and lighting pyrotechnics, could deter some people from purchasing those goods and thus negatively influence imports from other Member States. [29]

25. By the same token, the decision to limit the number of teams that participate in a football league to a given and predetermined number (for example, 18 teams in the Bundesliga), and that only a few new teams can join the first division, at the end of the season, on the basis of a system of promotion from and relegation to lower divisions, de facto raises extremely high barriers to entry into the markets in which those teams are active. In turn, rules about the maximum number of players that a team can sign (currently 25 in the Bundesliga) could potentially penalise certain teams (for example, those with greater financial resources or more developed youth academies) and, thus, limit their ability to compete against other teams. One could also argue that such a measure may constitute a restriction on the free movement of capital.

26. However, those are not the kind of restraints that the EU free movement and competition provisions are concerned with. [30] Those provisions are not meant to protect the unhindered pursuit of trade by economic operators or a general deregulation of the markets. [31] They are, rather, intended to ensure that the internal market functions in accordance with the principle of an open market economy, in which the free and undistorted flow of products, services and factors of production ensures an efficient allocation of resources, [32] thereby contributing to the well-being of the people living in the European Union. [33]

27. Where there is no detectable impact on matters governed by EU law – *in casu*, intra-EU trade and/or competition – there can be no justification for EU law to interfere with the regulations issued by professional or sports associations [34] (often referred to as *lex sportiva*), [35] which should

28 See, for example, the argument referred to in the judgment of 23 November 1989, *B & Q* (C-145/88, EU:C:1989:593, paragraph 7).

29 See, *mutatis mutandis*, Opinion of Advocate General Kokott in *Mickelsson and Roos* (C-142/05, EU:C:2006:782, point 45).

30 See, similarly, the judgment in *Deliège*, paragraphs 64 to 66, in which the Court referred to rules of sports association which 'inevitably have the effect of *limiting* the number of participants in a tournament' but that effect 'is *inherent* in the conduct of an international high-level sports event, which necessarily involves certain selection rules or criteria being adopted'. Emphasis added.

31 See, for example, Opinions of Advocate General Tesauro in *Hünermund and Others* (C-292/92, EU:C:1993:863, points 1 and 28), and of Advocate General Tizzano in *CaixaBank France* (C-442/02, EU:C:2004:187, point 63).

32 See Articles 120 and 199 TFEU, and Protocol (No 27) on the internal market and competition. See also, Opinions of Advocate General Gulmann in *Schindler* (C-275/92, EU:C:1993:944, point 123), and of Advocate General Szpunar in Joined Cases *X and Visser* (C-360/15 and C-31/16, EU:C:2017:397, point 1).

33 See, in particular, Article 3(1) and (3) TEU. See also, Opinion of Advocate General Wahl in *AC-Treuhand* v *Commission* (C-194/14 P, EU:C:2015:350, point 45).

34 See, to that effect, the judgments in *Deliège*, paragraphs 67 and 68, and in *TopFit*, paragraph 60.

35 On the concept of '*lex sportiva*', see, for example, Anderson, J., *Modern Sports Law: A Textbook*, Hart Publishing, 2010, pp. 20 to 23, and Parrish, R., '*Lex Sportiva* and EU sports law', *European Law Review*, Vol. 37, Issue 6, 2012, p. 716.

enjoy some degree of internal autonomy [36] and protection of their activities under Article 12(1) of the Charter of Fundamental Rights of the European Union ('the Charter') enshrining the freedom of assembly and of association. [37]

28. Having said that, a mere claim that a rule is purely sporting in nature – that is, it was adopted for sports-related reasons and regulates non-economic aspects of the activity – is, as explained above, insufficient to shield it from scrutiny. The possible application of the relevant EU free movement and competition provisions to those rules should, accordingly, be assessed on a case-by-case basis.

29. Second, I understand that, to some observers, it may appear odd that both EU free movement provisions and competition provisions apply, possibly cumulatively, to the very same measures. Indeed, at least in principle, the former apply to restrictions on trade resulting from State intervention, whereas competition rules target market distortions arising from the conduct of private undertakings. [38]

30. However, that unusual situation is the result of the fact that, in certain areas, the (EU and/or national) authorities may decide to abstain from regulating some aspects of a given economic activity, and leave it to the market operators concerned – acting through self-governing bodies, trade federations or representative associations – to establish the necessary rules and, where appropriate, enforce them and settle potential disputes. [39] That is necessarily so in sport: there must be some self-governing body which, inter alia, lays down the common rules of the sports, decides when tournaments will be held and organises them. It is unthinkable that a State or a polity like the European Union could decide the *minutiae* of the various sports, such as the details of the offside rule in football, the height of basketball hoops or whether scoring in volleyball should follow the side-out scoring system or the rally point system.

31. In those circumstances, market operators can, therefore, wear a 'double hat': that of undertaking (competing with the other undertakings active on the market) and that of regulator (shaping the rules under which competition takes place). If that is so, the compatibility with EU law of the measures adopted by those market operators can, where appropriate, be examined from the double perspective of internal market law and competition law. [40]

32. Third, in its judgment in *Superleague* the Court has made clear that Article 165 TFEU – which concerns the European Union's action in the field of sport – does not constitute a provision which may be relied on in order to justify measures which infringe the EU provisions on free movement or competition. However, it also added that the specific characteristics of sports, which

36 See, for example, Article 4 of the Council of Europe's Revised European Sports Charter (2022): 'Sports movement organisations fully enjoy the freedom of association enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms [('the ECHR')']. They enjoy autonomous decision-making processes and should choose their leaders democratically in accordance with good governance principles.'

37 As the Court has stated, Article 12(1) of the Charter, which corresponds to Article 11(1) of the ECHR, 'constitutes one of the essential bases of a democratic and pluralist society, inasmuch as it allows citizens to act collectively in fields of mutual interest and in doing so to contribute to the proper functioning of public life'. That right does not only include the freedom to create or dissolve an association but also covers the possibility for that association to act in the meantime, which means, inter alia, that it must be able to pursue its activities and operate without unjustified interference by the State. See, with references to the relevant case-law of the European Court of Human Rights, judgment of 18 June 2020, *Commission* v *Hungary (Transparency of associations)* (C-78/18, EU:C:2020:476, paragraphs 110 to 113).

38 See, for example, judgment of 5 April 1984, *van de Haar and Kaveka De Meern* (177/82 and 178/82, EU:C:1984:144, paragraphs 11 and 12).

39 Cf., for example, judgment of 19 February 2002, *Arduino* (C-35/99, EU:C:2002:97, paragraph 43).

40 On this topic, see, also, some complementary considerations in the Opinion of Advocate General Szpunar in *FIFA* (C-650/22, EU:C:2024:375, points 31 to 34).

Article 165 TFEU recognises, 'may potentially be taken into account along with other elements and provided they are relevant in the application of [the EU provisions on free movement and competition]'. [41]

33. This means that Article 165 TFEU, in and of itself, cannot constitute the basis for invoking an exception to those provisions of EU law. Nevertheless, the interests enshrined in that provision may, of course, be taken into account when the conditions set out in other provisions of EU law providing for exemptions or derogations are satisfied: for example, those concerning the justifications for the restrictions on free movement, the legitimate objectives in the public interest for the purposes of the *Meca-Medina* case-law or the situations in which an exemption under Article 101(3) TFEU may be granted. After all, if those are the values that the European Union's action in this field should promote, it would be absurd to consider them irrelevant, for the purposes of EU law, when sports associations themselves do so.

34. Having clarified the above, I can now explain the methodology I shall use to carry out my legal analysis of the issues raised by the question referred in the present case. I have three remarks in that regard.

B. Preliminary remarks (II) – methodological

35. First, in the present case the referring court asks the Court to provide guidance on the interpretation of four distinct provisions of EU law, with respect to a relatively detailed set of regulations adopted by a world sports association, of which 14 specific rules have been singled out.

36. Given the rather complex legal and economic context which constitutes the background to those regulations, I would be very hesitant to provide a clear-cut and final assessment on the compatibility of those measures with EU law. It seems to me that a number of elements of law and fact need to be further clarified by the parties, before the referring court, to have a full understanding of the legal mechanisms established by the FFAR and their impact on the economic activities of the market operators concerned (*in primis*, football agents and football clubs).

37. In that connection, I wish to recall that, in the context of the procedure referred to in Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, the role of the latter is, in principle, limited to interpreting the provisions of EU law referred to it. Therefore, it is generally not for the Court of Justice, but for the referring court, to apply those provisions to the dispute pending before it.

38. That said, when giving a preliminary ruling, the Court may of course provide, on the basis of the information available to it, clarification designed to give the national court guidance in its interpretation in order to enable it to decide the case before it. The fact that the Court is willing, in some cases, to exercise its role under Article 267 TFEU in an expansive manner, in order to assist the referring courts as best it can, or simply because it sees the need to deliver a landmark ruling, and thus agrees to provide an answer which is tailored to the facts of the case, cannot be

[41] See the judgment in *Superleague*, paragraphs 95 to 106 and the case-law cited.

taken as an indication that the Court will, let alone must, usually do so.[42] Put differently, the Court may, but need not, provide answers on the outcome of specific cases. As explained, my view is that the present case does not lend itself to being an 'outcome case'.[43]

39. Second, it seems to me that, in order to facilitate the legal assessment, rules such as those referred to in the question referred may be grouped into the following five categories, on the basis of their subject matter and objective:

– those concerning the *agents' remuneration*, such as the 'service fee cap' rule, the 'client pays' rule, the '50% payment' rule, the 'calculation of the cap' rule, the 'presumption' rule, the 'salary actually received' rule and the 'future transfer' rule (points 1, 2, 3, 9, 10, 11 and 13 of the question);

– those concerning a *licence* as an agent, such as the 'compliance' rule and the 'requirements' rule (points 4 and 5 of the question);

– those concerning *multiple representation* (points 6 and 6a of the question);

– that concerning *making an approach* (point 7 of the question); and

– those concerning the *submission and disclosure of information*, such as the 'transparency' rule and the 'disclosure' rule (points 8 and 12 of the question).

40. Third, for reasons of judicial economy, I shall not dwell on issues which, on the basis of well-established case-law, are in my view rather straightforward. In particular, I am of the view that regulations such as those at issue (i) cannot, in the light of their subject matter, objectives and effects on the agents', clubs' and players' economic activity, be considered to fall within the abovementioned 'sports exception';[44] (ii) constitute 'decisions by associations of undertakings' within the meaning of Article 101(1) TFEU;[45] and (iii) may have an effect on intra-EU trade for the purposes of the EU provisions on free movement and competition.[46]

41. Moreover, there are certain issues of a rather complex nature that some of the parties have raised in their observations, even if they were not raised in the request for a preliminary ruling and/or do not appear to be of central importance to resolving the dispute pending before the referring court. With respect to those issues, I shall offer some considerations which I believe could be useful to the referring court, without, however, entering into an in-depth discussion which would go beyond the scope of the present case.

42. It is in the light of the above considerations that I shall now assess the compatibility of regulations such as those at issue with the EU provisions referred to in the question referred for a preliminary ruling.

42 See my Opinion in *KUBERA* (C-144/23, EU:C:2024:522, points 104 and 105 and the case-law cited).

43 For this expression in legal scholarship, see for example, Tridimas, T., 'Constitutional review of member state action: The virtues and vices of an incomplete jurisdiction', *International Journal of Constitutional Law*, Vol. 9, Issue 3-4, 2011, pp. 737 to 756.

44 See, to that effect, judgment of 26 January 2005, *Piau* v *Commission* (T-193/02, EU:T:2005:22, paragraph 73) ('the judgment in *Piau*').

45 See, inter alia, the judgments in *Piau*, paragraphs 69 to 75, and in *FIFA*, paragraphs 117 to 120. See also, above, point 16 of the present Opinion.

46 See, to that effect, the judgment in *FIFA*, paragraphs 122 and 123 and the case-law cited.

C. Article 101 TFEU

43. The first provision which the referring court discusses in its order for reference is Article 101 TFEU. The referring court observes that some of the FFAR rules appear, prima facie, capable of restricting competition between agents or between football clubs and, as such, they seem to fall within the scope of that provision of the Treaty.

44. I agree. It is rather clear, to me, that a number of those rules (for example, those on remuneration or on the licence requirements) are, in principle, capable of producing some restrictive effects in the relevant markets, preventing agents and/or football clubs from competing freely in certain respects.

45. Accordingly, to determine whether those rules are precluded by Article 101 TFEU, the referring court will have to deal, in a nutshell, with the following issues.

1. The structure of the analysis

46. First, the referring court should ascertain whether those rules give rise to a restriction of competition '*by object*'. If the referring court were to come to the conclusion that that is the case, it would not need to examine the actual or potential effects of those rules on the market. Indeed, those rules would be prohibited, unless they are exempted under Article 101(3) TFEU.

47. In points 23 to 45 of my Opinion in *CD Tondela*, I have discussed in detail the *concept* of restriction 'by object' and the manner in which such a restriction ought to be established (namely, the *elements* which are relevant to the analysis and the *approach* to be adopted in that regard). In the interest of judicial economy, I shall refer readers to those passages.

48. Second, if the rules in question do not have an anticompetitive object, the referring court would have to examine whether they nonetheless have anticompetitive effects and, if so, whether those effects may be justified on the basis of the '*Meca-Medina* case-law'.

49. To recall, that is the case-law of the Court that, originating from the judgment in *Wouters*, was then applied to sports-related activities, first in *Meca-Medina* and then more recently referred to in *ISU*, in *Superleague* and in *Royal Antwerp*, as well as in some subsequent judgments.[47] In essence, the *Meca-Medina* case-law makes clear that agreements which restrict the freedom of action of the undertakings involved do not fall within the prohibition laid down in Article 101(1) TFEU if: (i) they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive; (ii) the specific means used to pursue those objectives are genuinely necessary for that purpose; and (iii) even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition.

50. In points 21 to 53 of my Opinion in *ROGON*, I have discussed in detail the origin, logic and scope of that case-law. In the interest of judicial economy, I shall, also on this matter, refer readers to those passages.

[47] See judgments of 18 January 2024, *Lietuvos notarų rūmai and Others* (C-128/21, EU:C:2024:49, paragraphs 97 to 105), and of 25 January 2024, *Em akaunt BG* (C-438/22, EU:C:2024:71, paragraphs 21 to 35 and 42 to 54).

51. Third, if the rules at issue constitute a restriction 'by object' or, alternatively, if they cannot be justified on the basis of the *Meca-Medina* case-law, the referring court should determine whether those rules may benefit from an *exemption* under Article 101(3) TFEU. According to that provision, the prohibition set out in Article 101(1) TFEU may be declared inapplicable in the case of forms of conduct which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, provided certain conditions are satisfied.

52. As stated in points 35 to 37 above, those assessments will be for the referring court to make. However, with a view to assisting that court, I will discuss each of those steps of the analysis with respect to the rules at issue.

2. The rules on agents' remuneration

53. The five rules on agents' remuneration referred to in the order for reference establish, in essence, a system whereby: (i) for services connected to the transfer of players, agents cannot be remunerated in excess of a cap which is calculated as a percentage of the transfer fee or of the yearly salary actually paid to the player; (ii) agents should only be remunerated by the players or clubs which engage them; (iii) clubs cannot pay more than 50% of the total remuneration due from the player and the club where an agent acts on behalf of the engaging club and the player; (iv) it is presumed (*iuris tantum*) that other services provided by the same agent or a connected agent, in the 24 months prior to or following the provision of the main services, form part of those main services and, consequently, remuneration for the other services is part of the remuneration paid for the agent's main services.

54. I must say, from the outset, that, among the rules referred to in the order for reference, those concerning agents' remuneration may be the rules which require the most careful and most in-depth analysis from the referring court. I shall now explain why.

55. In the first place, I will examine whether the rules at issue should be considered to be restrictive 'by object' within the meaning of Article 101 TFEU.

56. It is well known that agreements between competitors [48] which concern prices are generally considered some of the most harmful from a competition perspective. However, apart from the obvious fact that – as cases such as *DLG*, *Budapest Bank* and *Super Bock* illustrate well [49] – even when an agreement falls into that (rather broad) category, a specific assessment thereof in the light of its content, legal and economic context and objectives is necessary for it to be classified as anticompetitive, in the present case there is more to consider. Indeed, although the rules in question could have a twofold impact – on competition between agents and on competition between football clubs – in neither case are the nature and magnitude of that impact obvious. There are several reasons for supporting that view.

57. To begin with, I hardly need to point out that agreements on prices between competitors cannot be considered a sufficiently homogenous category for the purposes of Article 101(1) TFEU. [50] Such a categorisation would be far too broad and would include a variety of agreements

[48] With the term 'agreements', I shall refer to all forms of conduct which are covered by Article 101 TFEU: 'agreements between undertakings, decisions by associations of undertakings and concerted practices'.

[49] Judgments of 15 December 1994, *DLG* (C-250/92, EU:C:1994:413); of 2 April 2020, *Budapest Bank and Others* (C-228/18, EU:C:2020:265); and of 29 June 2023, *Super Bock Bebidas* (C-211/22, EU:C:2023:529).

[50] See, in that regard, points 41 and 42 of my Opinion in *CD Tondela*.

whose effects on competition are by no means similar. In that regard, it is important to emphasise that the rules at issue do not establish, recommend or at any rate concern *fixed* prices or *minimum* prices.[51] Indeed, they introduce a mechanism which affects the calculation of the *maximum* rate of fees that can be charged by agents for certain types of service.

58. That is an important element. In particular, the harm to consumers is not so obvious, since competition among agents by reducing prices (certainly one of the most effective forms thereof) is still very much possible.[52] In addition, a system which makes it possible to calculate the maximum fees due for a given service could, in some cases, remedy a situation where there is a significant asymmetry of expertise and information between the parties to a complex service agreement.[53] In fact, I see that administrative and judicial practice[54] as well as legal and economic scholarship[55] is mixed on the inherently harmful nature of agreements affecting maximum prices.

59. It is true that there may be cases where that type of agreement may lead the service provider to limit its output and/or investment in research, innovation or quality improvement. In addition, it cannot be ruled out that agreements on maximum prices may de facto lead to (express or tacit) collusion on minimum or fixed prices. However, one cannot presume that those situations are likely to occur in most, let alone all, cases. In the present case, I see nothing in the case file which, at this stage, may support such a finding in respect of agents.

60. In addition, I would also be hesitant to subscribe to the Commission's view that those rules are equivalent to a 'buyer's cartel' on the part of football clubs. To be clear, I obviously do not dispute that certain agreements between competitors that, having significant market power, decide to cooperate in order to exploit their (usually, smaller or financially weaker) suppliers may have an

51 With regard to those agreements, see, inter alia, judgments of 18 January 2024, *Lietuvos notarų rūmai and Others* (C-128/21, EU:C:2024:49, paragraph 91 and the case-law cited), and of 25 January 2024, *Em akaunt BG* (C-438/22, EU:C:2024:71, paragraphs 50 to 53).

52 From a purely consumer-oriented welfare perspective, rules on maximum prices in upstream markets may even be beneficial since competition to offer products or services below the maximum could drive down the overall costs of the product or service offered downstream. *In casu*, by incurring lower agent fees, football clubs could hypothetically allocate more resources to other areas and make savings which could then be partly passed on to consumers (for example, by reducing ticket prices for matches). In that regard, I note that, in its Communication – Report on competition in professional services (COM/2004/83 final), the Commission wrote: (i) '*fixed* prices or *minimum* prices are the regulatory instruments that are likely to have the most detrimental effects on competition, eradicating or seriously reducing the benefits that competitive markets deliver for consumers' (point 31); and (ii) 'it is possible that *maximum* prices might protect consumers from excessive charges in markets with high entry barriers and a lack of effective competition. However, this does not appear to be true for the majority of the EU professions' (point 35). Emphasis added.

53 See, to that effect, judgment of 4 July 2019, *Commission* v *Germany* (C-377/17, EU:C:2019:562, paragraphs 77, 80 and 94); and Opinion of Advocate General Mazák in *Commission* v *Italy* (C-565/08, EU:C:2010:403, point 34).

54 I find case-law from the United States courts particularly interesting in this regard. For example, in *State Oil Co. v. Khan* (522 U.S. 3, 1997), the Supreme Court of the United States, overturning previous precedents, decided, in essence, that maximum price-fixing should not be treated as per se illegal, and should thus be evaluated under the 'rule of reason', which involves analysing the actual competitive effects of the practice in its special market context. In addition, in *NCAA v. Alston and Others* (375, F. Supp.3d 1058, District Court, 2019), the United States Court of Appeals for the Ninth Circuit examined the compensation limits introduced by the National Collegiate Athletic Association for student-athletes, which had to be enforced by its member schools. The rules thus fixed the price on the buyer-side labour market, depressing compensation for at least some student-athletes below what a competitive market would have yielded. Nevertheless, that court examined the restrictions under the rule of reason, on the ground, inter alia, that in the relevant market some degree of cooperation was necessary. The judgment of the district court was affirmed by the Supreme Court of the United States in its Opinion of 21 June 2021 (141 S. Ct. 2141 (2021)). Regarding that Opinion, see also my Opinion in *ROGON*, footnote 61.

55 See, with further references, Easterbrook, F.H., 'Maximum price fixing', *The University of Chicago Law Review*, Vol. 48(4), 1981, pp. 886 to 910, and Whish, R. and Bailey, D., 'Horizontal guidelines on purchasing agreements: Delineation between by object and by effect restrictions – Final Report', published by the European Commission in 2022.

anticompetitive object. That follows from the very wording of Articles 101 and 102 TFEU.[56] Well-established case-law from both the EU Courts[57] and foreign courts appears to support that view.[58]

61. However, once again, that is not necessarily the situation in most cases. In fact, in some circumstances the 'antitrust community' (if I may use this expression) has considered buyers' agreements to be 'beneficial to society [such as when] joint purchasing arrangements between smaller purchasers [allow] them to benefit from cost savings that they pass on to consumers through lower prices'.[59] More generally, a recent OECD note on this topic recorded '[a certain] scepticism [by the enforcers] that [purchasing power] harms consumers or economic efficiency', that 'it is sometimes argued that purchasing power be pro-competitive, particularly in the context of merger control', and that 'the appropriate level of enforcement against purchasing power is currently under discussion'.[60]

62. More importantly, the typical 'buyer's cartel' – at least that which the Commission considers to be a restriction by object – is an agreement that aims at 'squeezing' suppliers which negotiate individually with the various buyers, being generally unaware that negotiations are not carried out independently and in good faith, but have been rigged through collusion on the part of the buyers.[61] In the present case, the rules at issue are public and transparent, and do not appear intended to undermine the individual negotiations which take place in the market. As such, the rules at issue seem to be, to some extent, closer to a typical 'joint purchasing arrangement', in which it is made 'clear to suppliers that the negotiations are conducted on behalf of its members and that the members will be bound by the agreed terms and conditions for their individual purchases'.[62] Indeed, as I understand it, a number of agents and associations of agents were heard by FIFA in the process that led to the adoption of the FFAR. Depending on the specific circumstances of the case, joint purchasing arrangements may or may not be problematic under competition law.[63]

63. Moreover – and this is, for me, of the utmost importance – the rules at issue do not set any specific binding maximum level of fees. In fact, there is no given ceiling which the agents' fees cannot exceed. The rules at issue only require that the fees be linked to the transfer cost or to the salary of the player assisted by the agent, through a percentage cap thereon. Yet, in so far as no maximum in respect of those two parameters exists, and football clubs can and do compete to

56 Article 101(1)(a) and (c) TFEU, refers, as examples of prohibited types of agreements, to those that 'directly or indirectly fix *purchase* or selling prices or any other trading conditions' and those that 'share markets or *sources of supply*'. In turn, abuses under Article 102 TFEU include, in particular, 'directly or indirectly imposing unfair *purchase* or selling prices or other unfair trading conditions'. Emphasis added.

57 See, for example, judgments of 4 June 2009, *T-Mobile Netherlands and Others* (C-8/08, EU:C:2009:343, paragraph 37), and of 7 November 2019, *Campine and Campine Recycling* v *Commission* (T-240/17, EU:T:2019:778, paragraph 297).

58 See, to mention but one example, Supreme Court of the United States, *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U.S. 219 (1948).

59 See OECD, 'Purchasing power and buyers' cartels – OECD competition policy roundtable background note', Paris, 2022, pp. 6 and 7.

60 Ibid. See also, OECD, 'Purchasing power and buyers cartels – Summaries of contributions', Paris, 20 June 2022, and Khemani, R.S., United Nations Conference on Trade and Development, 'Application of competition law: Exemptions and exceptions', 2002, p. 29.

61 In this context, I note, in passing, that United States courts have generally ruled that sports leagues should not be regarded as 'cartels'. Views in United States scholarship are, however, mixed on the most convenient manner in which sports associations' actions should be considered under antitrust law. Cf. references to case-law and academia, Roberts, G.R., 'The antitrust status of sports leagues revisited', *Tulane Law Review*, Vol. 64, Issue 1, 1989, p. 117; Ross, S.F. and Szymanski, S., 'Antitrust and inefficient joint ventures: Why sports leagues should look more like McDonald's and less like the United Nations', *Marquette Sports Law Review*, Vol. 16, Issue 2, 2006, p. 213; and Dabscheck, B., 'The sporting cartel in history', *Sport in History*, Vol. 28, Issue 2, 2008, p. 329.

62 Communication from the Commission – Guidelines on the applicability of Article 101 [TFEU] to horizontal co-operation agreements (OJ 2023 C 259, p. 1), paragraphs 278 to 304.

63 See judgment of 15 December 1994, *DLG* (C-250/92, EU:C:1994:413, paragraphs 28 to 45).

sign up new players by offering higher transfer fees to the releasing clubs and salaries to the players in question, the agents' fees can also, as a consequence, increase with no upper limit acting as a constraint. That is why, in these proceedings, certain parties referred to the cap set out in the FFAR as a *dynamic* maximum price.

64. Accordingly, my view is that the rules in question cannot easily be considered to be restrictive by object, by associating them with some category of agreement which, based on experience, is generally regarded as being inherently harmful to competition. Such a finding would, if appropriate, require a more in-depth analysis of the specificities of the rules, the legal and economic context in which they operate and – last but not least – the very objectives pursued with those rules.[64] Should relevant (public or internal) documents from FIFA or its members be available, those could perhaps also shed more light on both the economic rationale of the rules at issue and the subjective intent pursued with them.[65] In particular, an objective to avoid fees which FIFA or its members consider unfair or unreasonable[66] would, taken alone, appear prima facie problematic. By contrast, a genuine aim to avoid conflicts of interest or abuse by agents would tend to exclude an anticompetitive object.

65. As regards the actual or potential *effects* of those rules, my preliminary view is that some effects on inter-club and/or inter-agent competition cannot be excluded. The referring court would, thus, have to carry out a *counterfactual* analysis: in essence, assessing whether, in the absence of the rules at issue, competition between agents and/or between football clubs would be more intense. In other words, are those rules limiting, to an appreciable extent, the ability and incentive of those market operators to compete against their rivals?

66. With respect to inter-agent competition, that court may want to check, in particular, whether it is likely that, because of the rules at issue, a significant number of agents may be induced to limit their services (for example, avoiding representing players who are not sufficiently profitable due to a lower transfer fee or remuneration) or decrease investment in the activities of research and innovation that may be relevant to their profession. In this context, I think it is important to bear in mind that the rules at issue apply only in regard to one type of service provided by agents. Indeed, remuneration for the services relating to other activities of consulting and representation to be provided by the agents can be freely negotiated between the two parties since it falls outside the scope of the FFAR. The presumption rule set out in Article 15(3) and (4) thereof does not seem to me to constitute any real obstacle in that respect since, in the light of the explanations provided by FIFA, it appears to be easily rebuttable.

67. As regards competition between football clubs, the referring court may wish to consider whether the fact that, because of the rules at issue, clubs are unable to, for example, (i) offer the player's agent higher fees, or (ii) if the agent works on behalf of both the club and the player, offer to pay a share of the fees above 50%, is capable of having an appreciable effect on competition.[67]

68. If that court were to take the view that those rules can have an actual or potential anticompetitive effect on inter-club and/or inter-agent competition, it would then need to check whether they may be justified on the basis of the *Meca-Medina* case-law. Indeed, for the reasons I

64 See my Opinion in *CD Tondela*, points 43 to 45.

65 Ibid., points 29 and 38.

66 See, in that regard, Article 1(2)(b) of the FFAR.

67 I should add, in passing, that if, and to the extent that, such rules aim at ensuring that agents act in the best interest of their clients, avoiding conflicts of interest, those rules might be justified under the *Meca-Medina* case-law or exempted under Article 101(3) TFEU. See more below.

have explained in my Opinion in *ROGON*, I am of the view that a national or international sports association (such as FIFA) should be considered, in principle, entitled to adopt regulations which may affect the activities of agents, provided they pursue an objective in the public interest.[68] That said, the referring court should of course examine whether the conditions laid down in that case-law are, in the case at hand, satisfied for each rule or set of rules.

69. Under the first step of the test, the referring court should verify, in particular, what the specific objectives pursued by the rules at issue actually are, and whether those objectives deserve protection under EU law. In that regard, I must observe that, in the present proceedings, FIFA invokes a myriad of interests as being allegedly protected by the FFAR. However, what matters is the actual contribution made by each rule or set of rules to the protection of one or more specific interests among those invoked.

70. In addition, whereas some of the interests invoked clearly fall within the concept of 'legitimate objectives in the public interest', for others the picture is, in my view, not so clear. A mere economic interest of the market operators (the association itself, the football clubs, the athletes or the agents) cannot, alone, justify any restrictions of competition under the *Meca-Medina* case-law. There must be some *public* non-economic interest which either coincides with the private economic interest of the market operators or is protected in combination with the latter. For example, preserving the health of athletes, or preventing abusive, fraudulent or unethical practices (including conflict of interest) vis-à-vis athletes (in particular, young athletes), is no doubt an objective in the public interest.

71. Furthermore, to the extent that the interests allegedly protected enable the sport 'ecosystem' to function in accordance with the principles enshrined in Article 165 TFEU, a public-interest objective can also be recognised. For example, preserving contractual stability may, under certain circumstances, be one such objective.[69] However, I would most probably need a detailed explanation as to why objectives which are formulated somewhat vaguely (such as 'ensuring the quality of the services which players' agents provide to their clients'), or which may well be problematic in certain respects (such as 'improving financial and administrative transparency'[70]), should be recognised as being in the *public* interest.

72. Under the second step of the test, the referring court should verify, in particular, whether the rules at issue were genuinely necessary to protect the public interest invoked. This means checking, mainly, three aspects which are strictly related, namely whether the rules at issue (i) were adopted in response to an *objective need* to pursue certain objectives; (ii) *genuinely* reflect a concern to secure the attainment of those objectives in a coherent way; and (iii) are *suitable* to achieve those objectives, meaning that they appear capable of making a significant contribution towards their achievement.

73. To give an example, should the rules at issue be *reasonably* necessary[71] to ensure that agents provide their services in the best interest of their clients (and are thus not unduly influenced by offers which are financially interesting for them but not necessarily in the interest of their clients), or to ensure a level playing field to some degree between teams in signing new players

68 See points 56 to 74 of that Opinion.

69 See the judgment in *FIFA*, paragraphs 100 to 102 and the case-law cited.

70 See, in that regard, point 171 below.

71 See, in that regard, my Opinion in *ROGON*, points 35 to 37.

(thereby avoiding an excessive 'buyer' power of the richest teams), the rules at issue would, in my view, be acceptable. That is naturally not so if those rules are, first and foremost, aimed at limiting the costs that clubs have to bear in relation to agents' services.

74. In applying the third and final part of the *Meca-Medina* test, the referring court may need to focus, in particular, on two aspects, namely whether (i) other measures exist that, whilst being equally capable of achieving the objective pursued, are also less restrictive of competition; and (ii) the rules at issue have excessive repercussions on the agents' economic freedoms.

75. Should the referring court take the view that the rules at issue either pursue an anticompetitive objective, or have restrictive effects and do not meet the *Meca-Medina* test, then the question arises as to whether an exemption under Article 101(3) TFEU may be granted in respect of some or all of those rules. Pursuant to Article 101(3) TFEU four *cumulative* conditions must be satisfied.[72]

76. First, it must be demonstrated, with a sufficient degree of probability, that the agreement in question makes it possible to achieve *efficiency gains*, by contributing either to the improvement of the production or distribution of the products or services concerned, or to the promotion of technical or economic progress. Second, it must be demonstrated, to the same degree of probability, that an equitable part of the profit resulting from those efficiency gains is reserved for users. Third, the agreement in question must not impose on the participating undertakings restrictions which are not indispensable for achieving such efficiency gains. Fourth, that agreement must not give the participating undertakings the opportunity to eliminate all effective competition for a substantial part of the products or services concerned.

77. Since the referring court does not raise any specific issue under Article 101(3) TFEU, I shall deal with it concisely, making two remarks.

78. My first remark concerns the various conditions which an agreement must satisfy under the *Meca-Medina* case-law and under Article 101(3) TFEU. A fully fledged discussion of this fascinating, albeit complex, topic would require a lengthy discussion which appears unnecessary in the present case. Thus, I will share only the following thoughts.

79. On the one hand, the material scope of the *Meca-Medina* case-law is narrower than that of Article 101(3) TFEU: whereas an agreement may be justified under the former only in so far as it pursues a *legitimate objective in the public interest* and is agreed within a professional or sports association whose self-regulatory activities are recognised by the public authorities, those requirements do not appear in Article 101(3) TFEU. That provision is, therefore, also applicable to agreements between undertakings which pursue objectives of an economic and private nature only.[73]

80. That explains why, on the other hand, there are more stringent conditions to be satisfied under Article 101(3) TFEU, and the related evidentiary requirements are, in certain respects, higher.[74] Since there is no public interest associated with the agreement in question, the weakening of competition in a market cannot be justified unless the undertakings concerned prove to the requisite standard, in particular, the existence of efficiency gains, and that part of the benefits thus produced is passed on to users.

72 See, inter alia, the judgment in *FIFA*, paragraphs 154 and 155 and the case-law cited.

73 On this issue, in general, see Monti, G., 'Article 81 EC and public policy', *Common Market Law Review*, Vol. 39, Issue 5, 2002, p. 1057.

74 See, to that effect, the judgment in *FIFA*, paragraph 153 and the case-law cited.

81. In the present case, the above means that FIFA could invoke Article 101(3) TFEU in respect of the rules of the FFAR that – as explained in point 70 above – fall outside the scope of the *Meca-Medina* exception because the objectives pursued are merely in the interest of the market operators concerned.

82. My second remark concerns certain requirements laid down in Article 101(3) TFEU in respect of which I cannot fully subscribe to the Commission's views.

83. First, that provision states that an exemption may be granted when an agreement 'contributes to improving the production or distribution of goods or to promoting technical or economic progress'. In the present case, this means that the referring court should ascertain whether the rules in question (i) produce efficiency gains in the market by, for example, enabling football clubs to realise synergies or make cost savings, a fair share of which is then passed on to users; or (ii) ensure the proper conduct of the tournaments and matches, to the direct benefit of consumers who can enjoy sporting events of higher quality.[75]

84. The Commission, however, expressed some doubts as to whether certain efficiency gains that the rules at issue may produce could be taken into account under Article 101(3) TFEU, in so far as they would be hardly 'quantifiable', as required by paragraph 196 of the judgment in *Superleague*. In that regard, the Commission also refers to its 2004 Guidelines, which mark a certain shift in that institution's interpretation of the types of benefit that could justify an exemption under Article 101(3) TFEU. Whereas before the 'modernisation' of competition procedural rules the Commission had consistently accepted that non-economic benefits could be covered by that provision,[76] in 2004 it decided that that would no longer be possible and – as far as I understand it – only direct economic benefits would be acceptable.

85. In that regard, my view is that (i) the Commission is misreading paragraph 196 of the judgment in *Superleague*, and (ii) the approach adopted in its 2004 Guidelines may be too strict.

86. First, it seems to me that the Commission reads the term 'quantifiable' in isolation from its context. That passage of the judgment does not imply that the undertakings invoking the efficiency gains should be able to put a precise figure on them (in the form, for example, of a monetary value). That may often be difficult, if not impossible. Indeed, estimating the future economic value of a given improvement in the production or distribution of goods or services may, at times, be hardly predictable and therefore speculative. A fortiori, when the efficiency gains arise from measures furthering technical or economic progress, it may be outright impossible to translate that progress into a precise monetary value.

87. As I read it, in that passage of the judgment in *Superleague*, the Court meant that vague, unsubstantiated or simply speculative claims of efficiency gains cannot be accepted. The parties should identify the type of gains with a sufficient degree of precision, explain how they are going to improve the market, and establish, by means of adequate reasoning and/or evidence, that they are real and of a significant magnitude.[77] In fact, there is consistent case-law on this point,[78] and the Commission itself states in its Guidelines that it is for the undertakings concerned to

75 See, in that regard, Communication from the Commission – Notice – Guidelines on the application of Article 81(3) [EC] (OJ 2004 C 101, p. 97) ('the 2004 Guidelines'), paragraphs 102 to 104.

76 See, extensively, Brook, O., 'Struggling with Article 101(3) TFEU: Diverging approaches of the Commission, EU Courts, and five competition authorities', *Common Market Law Review*, Vol. 56, Issue 1, 2019, pp. 121 to 156.

77 See, for example the judgment in *Superleague*, paragraphs 237 and 238.

78 See the judgment in *Royal Antwerp*, paragraph 120 and the case-law cited.

demonstrate that efficacy gains relied on are 'objective, concrete and verifiable'.[79] Otherwise, I do not see how the competent authorities could carry out the balancing exercise required by Article 101(3) TFEU. Although that balancing exercise is not one of pure arithmetic or financial accounting, it nonetheless requires the weighting of various benefits which have – broadly speaking – some aspect of an economic nature.

88. I am also unconvinced by the Commission's position on the types of benefits that can be accepted under Article 101(3) TFEU. That approach seems to me to contradict not only its previous practice, but – more importantly – the letter of the Treaty and long-standing case-law of the Court on this matter.

89. Indeed, Article 101(3) TFEU distinguishes between '[improvements to] the production or distribution of goods' *and* '[the promotion of] technical or economic progress'. The term 'economic progress' in Article 101(3) TFEU cannot be read as a synonym of 'economic growth' or of 'wealth'. Article 3(3) TEU refers to the European Union's aim to 'establish an internal market [which] shall work for the *sustainable development* of Europe based on balanced *economic growth* and price stability, a highly competitive *social market economy*, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote *scientific and technological advance*'.[80] Using a basic metaphor, I would say that 'progress' – from an internal market and competition perspective – means that not only is the size of the cake increasing, but the quality of the cake is also improving, the cake is being shared more equitably, or it is ensured that an equally tasty cake can also be baked in the foreseeable future.

90. In addition, the Commission's approach appears inconsistent with that adopted by the drafters of the Treaties with regard to free movement[81] and the interpretation given to those provisions by the Court.[82] Whereas restrictions on free movement, which are in principle prohibited, can be justified on non-economic grounds, it would make no sense if restrictions of competition could never be justified on the same grounds. In that regard, it should not be overlooked that, as stated in Protocol (No 27) on the internal market and competition, the internal market defined in Article 3 TEU includes a system of ensuring that competition is not distorted. Thus, although each of those two sets of rules has its own objective and its own specific conditions of application,[83] they are two components of the same legal project[84] and it would, thus, be logical to have a comparable framework of analysis, so that, in specific cases, paradoxical results could be avoided.[85]

91. I wholeheartedly agree with those who argue that an analysis of competition law should not be manipulated in order to achieve political objectives (for example, industrial policy goals) or polluted with non-economic considerations (for example, fairness of the undertakings' conduct). That would be a case of ignoring the rationale of that body of laws and would make the legal analysis unpredictable, unworkable and non-transparent, if not altogether biased. However,

79 See, for example, paragraphs 341 and 559 of the Guidelines referred to in footnote 62 above, and paragraph 56 of the 2004 Guidelines.

80 Emphasis added.

81 See, in particular, Article 36, Article 45(3), Article 52(1) and Article 65(1) TFEU.

82 I hardly need to refer, in that regard, to the well-established case-law on the 'mandatory requirements' or 'overriding reasons' in the public interest which can justify restrictions on free movement rules, originating in the seminal judgment in *Cassis de Dijon*: judgment of 20 February 1979, *Rewe-Zentral* (120/78, EU:C:1979:42, paragraph 8).

83 See the judgment in *FIFA*, paragraph 83.

84 See, to that effect, for example, judgment of 12 May 2022, *Servizio Elettrico Nazionale and Others* (C-377/20, EU:C:2022:379, paragraphs 42 and 43 and the case-law cited) ('the judgment in *SEN*').

85 See the example provided in the Opinion of Advocate General Szpunar in *FIFA* (C-650/22, EU:C:2024:375, point 35).

recognising that the objective to ensure free and undistorted competition coexists and must be reconciled with other objectives that have equal value in the EU legal order is a far cry from that. When the *strict* conditions set out in Article 101(3) TFEU are satisfied – one of which requires, as explained, some positive economic repercussions on the relevant market (or on the connected markets) – the authorities should be able to carry out the balancing exercise, regardless of the nature of the benefit in question.

92. The Commission's narrow approach also appears inconsistent with established case-law. In the well-known *Metro* case, the Court stated, rather clearly, that 'the powers conferred upon the Commission under [Article 101(3) TFEU] show that the requirements for the maintenance of workable competition may be reconciled with the safeguarding of *objectives of a different nature* and that to this end certain restrictions on competition are permissible …'.[86] I fail to see where more recent case-law of the Court would have overturned that clear statement of principle.[87]

93. Once again, a detailed discussion of the matter appears unnecessary for the purposes of the present Opinion. The above considerations are intended to explain why I take the view that benefits of a *non-economic nature*, provided that they have tangible positive repercussions on the relevant markets, or on the markets which are strictly connected to them,[88] can also be relevant under Article 101(3) TFEU.

94. Accordingly, I take the view that, for example, the objectives of avoiding fraud, conflict of interest or abusive exploitation of young athletes undoubtedly contribute to improving the overall functioning of the football ecosystem, with positive repercussions on the product or service markets concerned. It is quite clear that integrity and accountability have recently become a major concern for the sports industry,[89] and that numerous scandals have seriously damaged the image of sports associations.[90] It would be naïve to think that those events have no impact on consumers', supporters' and broadcasters' interest in financing sport and their willingness to do so.[91]

95. Lastly, as regards the term 'consumers', used in Article 101(3) TFEU, in the present case that term should, naturally, correspond first and foremost to supporters: those who ultimately finance the system by, in particular, purchasing match tickets, official merchandise or other services provided by football clubs and broadcasting services. However, that term cannot be construed too narrowly as referring only to end consumers.[92] In fact, in its case-law on Article 101(3) TFEU,

86 See, in particular, judgment of 25 October 1977, *Metro SB-Großmärkte* v *Commission* (26/76, EU:C:1977:167, paragraph 21) (emphasis added). In scholarship, see, inter alia, Lugard, P. and Hancher, L. 'Honey, I shrunk the article! A critical assessment of the Commission's Notice on Article 81(3) of the EC Treaty', *European Competition Law Review*, Vol. 25, Issue 7, 2004, p. 410, and Bourgeois, J.H.J. and Bocken, J., 'Guidelines on the application of Article 81(3) of the EC Treaty of how to restrict a restriction', *Legal Issues of Economic Integration*, Vol. 32, Issue 2, 2005, pp. 111 to 121.

87 Admittedly, there has not been much case-law on Article 101(3) TFEU in recent years. The key cases on point seem to me to be the judgments of 6 October 2009, *GlaxoSmithKline Services and Others* v *Commission and Others* (C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610) ('the judgment in *GlaxoSmithKline*'), and of 11 September 2014, *MasterCard and Others* v *Commission* (C-382/12 P, EU:C:2014:2201) ('the judgment in *MasterCard*').

88 In the football ecosystem, where the provision of different services is interlinked, when assessing the benefits produced, it is necessary to take into account the overall system of which the rules in question form part, including, where appropriate, all the objective advantages flowing from them, not only in the markets in respect of which the restriction has been established (*in casu*, those in which agents and/or clubs compete), but also in the other markets which the former interact with. See, to that effect, the judgment in *MasterCard*, paragraphs 236 and 237.

89 See, for example, the Commission's Communication 'Developing the European dimension in sport', of 18 January 2011, COM(2011) 12 final, Section 4.1.

90 See, for example, United Nations Office on Drugs and Crime, 'Global report on corruption in sport', 2022 (available online), p. 3.

91 See also, my Opinion in *ROGON*, point 49.

92 See, in particular, judgment of 23 November 2006, *Asnef-Equifax and Administración del Estado* (C-238/05, EU:C:2006:734, paragraphs 64 to 71).

the Court has often referred to '*users*', for example when emphasising the need for the parties relying on that provision to show that the measures in question result in appreciable objective advantages for the different categories of users involved, thereby compensating for the disadvantages caused in competition terms on the relevant markets. For example, in the judgment in *Superleague* the Court referred to users as 'comprising, inter alia, national football associations, professional or amateur clubs, professional or amateur players, young players and, more broadly, consumers, be they spectators or television viewers'. [93] To that end, the benefits for the different types of users can be considered in combination when balancing them against the restrictive effects produced. [94]

3. The rules on a licence as an agent

96. Turning now to the assessment of the rules on a licence as an agent under Article 101 TFEU, my observations are as follows.

97. First of all, it is an uncontested fact that, in today's society, many different professions require service providers to obtain a licence or certification from (usually) the profession's self-governing body (which may be public or private). To do so, the candidate has to show that he or she fulfils certain criteria and/or has to undergo some ad hoc training and/or pass a specific exam or test. It is also quite normal that, in that context, the service provider undertakes to observe the rules issued by the association and becomes subject to certain penalties in case of non-compliance with those rules. [95] That is so, provided that those penalties are objective, proportionate and non-discriminatory, and that their imposition can be subject to effective judicial review. [96]

98. A recent OECD policy paper points out that the range of professions for which a licence is required has recently expanded and in some jurisdictions may account for up to 30% of overall employment. Often, the licence requirements are established by means of legislation or other public regulatory acts. However, self-regulatory activity by the private associations themselves also plays an important role in this field. The reasons for such systems are, mainly, related to information asymmetries (that is, customers are mostly unable to assess the quality of the service requested from the provider), externalities (that is, the provision of the service in question can create negative externalities for third parties which need to be avoided or minimised), or the protection of public goods (that is, the services produce or affect some public interest which requires a certain level of quality and quantity of supply to be ensured). [97]

99. In so far as the licence requirements result from regulations issued by professional or sports associations of a private nature (and are thus not imputable to the State), it is relatively clear to me that those requirements could, in some cases, produce restrictive *effects* on competition because they limit market entry. That is so unless the regulations require minimal effort and costs to obtain the licence, and are applied in an open, transparent and non-discriminatory manner. Indeed, in such cases it could be argued that the effect on competition is not appreciable.

93 Paragraph 195 of the judgment. See also, the judgments in *GlaxoSmithKline* paragraph 92; in *Royal Antwerp*, paragraphs 121 and 122; and in *FIFA*, paragraph 154.

94 See, to that effect, the judgment in *MasterCard*, paragraph 241.

95 See, by analogy, the judgment in *Superleague*, paragraphs 144 to 146. See also, the judgment in *Piau*, paragraph 92.

96 See, to that effect, the judgments in *ISU*, paragraphs 133 to 139; in *Superleague*, paragraphs 146 to 152; and in *FIFA*, paragraph 111.

97 See, generally, European Commission, Report on competition in professional services, referred to in footnote 52 above, especially pp. 9 and 10; 'Communication on professional services – Scope for more reform – Follow-up to the Report on competition in professional services' (COM(2005) 405 final), especially paragraphs 10 to 13 and 33; and OECD, 'Competition and regulation in professions and occupations – OECD roundtables on competition policy papers', 2024, especially pp. 6, 13, 14, 29, 31 and 47.

100. That said, could similar regulations be considered also to have an anticompetitive *object*? That issue is, in my view, more complex, mainly for two reasons: (i) as explained above, the *rationale* for such regulations is often to correct certain market failures, with a view to protecting consumers, public safety or certain common goods; and (ii) their capacity to have an appreciable *impact* on market access (and the degree to which that may occur) varies significantly, depending mostly on what the requirements for a licence are and how the process for obtaining the licence functions. [98]

101. In its 2004 Report on competition in professional services, the Commission wrote, inter alia: (i) 'qualitative entry restrictions, combined with reserved rights, ensure that only practitioners with appropriate qualifications and competence can carry out certain tasks [and] they may thus make an important contribution for ensuring the quality of professional services'; (ii) 'excessive licensing regulation is likely to reduce the supply of service providers, with negative consequences for competition and quality of service'; (iii) 'licensing regulations might, in some cases, be excessively restrictive and that consumers might benefit from a relaxation of the existing rules'; and (iv) 'there might be scope to lower entry requirements in cases where they appear to be disproportionate to the complexity of the profession's tasks'. [99]

102. I am of the view that those considerations – which appear quite reasonable – broadly correspond to the findings made by the EU Courts when they had to review private regulations which, through licence requirements or other equivalent measures, could limit access to a service market. [100] Case-law indicates that the anticompetitive nature of such systems depends mainly on their specific objective and design. Is there a genuine and objective (and not per se anticompetitive) reason as to why a licensing system is necessary to exercise a given profession? Does the system function in a manner which is open, transparent and non-discriminatory? Does it manifestly go beyond what is needed to protect the interests at stake? Those are the issues which the EU Courts have mostly focused on in those cases. Clearly, more caution in the assessment is needed when the association itself offers products or services in the market in which it acts as gatekeeper. In that case, the regulations of the associations may have the effect of reserving for themselves a significant part of the market, or may discriminate against the actual or potential competitors, thereby protecting their de facto monopoly. [101]

103. Therefore, I do not think that each and every set of private rules imposing the grant of a licence to exercise a given profession can be considered, prima facie, to have an anticompetitive object. It all depends on the content, context and objectives of the system established. Put differently, I do not see a clear and well-defined category of regulations on licensing whose harmful nature is well known or generally accepted. Or, at any rate, I am unable to subsume the rules at issue under a specific and homogenous category of conduct in respect of which experience tells us that it is inherently anticompetitive. This is why my preliminary view is that the rules at issue do not have an anticompetitive object.

98 See the documents referred to in the previous footnotes. See also – in other jurisdictions – Canadian Competition Bureau, 'Self-regulated professions, balancing competition and regulation', Report, 11 December 2007, and Australian Competition and Consumer Commission, 'Regulation, competition and the professions', 13 July 2001. Both are available online.

99 Referred to in footnotes 52 and 97 above, paragraphs 49 to 53.

100 See, for example, the judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas* (C-1/12, EU:C:2013:127, paragraphs 68, 69 and 82) ('the judgment in *OTOC*').

101 See, to that effect, the judgments in *MOTOE*, paragraphs 51 and 52; in *OTOC*, paragraphs 62 and 88 to 92; in *ISU*, paragraphs 144 to 146; and in *Superleague*, paragraph 176. See also, order of 23 February 2006, *Piau* v *Commission* (C-171/05 P, EU:C:2006:149, paragraph 38).

104. It would be different, however, were the referring court to establish that those rules were manifestly unnecessary, since no public interest that genuinely required such a level of protection was implicated,[102] and that their adoption was (solely or mainly) explained by the desire of the market operators involved (football clubs and/or agents themselves) to limit the number of professionals active on the market for agents' services.

105. In the light of the above, should the referring court come to the conclusion that the rules at issue do not have an anticompetitive object but that they may produce some restrictive effects on a relevant market, that court would then have to check whether those rules can be justified under the *Meca-Medina* case-law. Regardless of that, the rules at issue could also be subject to an evaluation under Article 101(3) TFEU.

106. With respect to these two steps of the analysis, I do not have much to add to what I set out above. I would only recall that, among the rules of FIFA's Players' Agents Regulations (in force at that time) which the General Court had to review in *Piau*, agents were required to obtain a licence issued by the competent national association. In that respect, the General Court essentially found that (i) such a rule gave rise to a restriction of competition 'by effect' pursuant to (what is now) Article 101(1) TFEU; and (ii) the Commission had not made any manifest error of assessment in considering that it satisfied the conditions for benefiting from an exemption under Article 101(3) TFEU. In particular, the General Court took the view that competition in the relevant market was not eliminated by the licensing system. That system put in place a mechanism which, according to the General Court, 'result[ed] in a qualitative selection, appropriate for the attainment of the objective of raising professional standards for the occupation of players' agent, rather than a quantitative restriction on access to that occupation'.[103] On the basis of the information in the case file, I would not reject the possibility that similar considerations may, *mutatis mutandis*, also be valid in the present case.

4. The rules on multiple representation

107. The rules on multiple representation – which preclude agents from providing triple representation (player, engaging club and releasing club) and certain dual representation (player and releasing club, or releasing club and engaging club) in transactions – appear, as far as I can see, to be aimed at avoiding a conflict of interest which could harm the parties involved, and in particular the athletes, who could be less informed and vigilant than the football clubs. This suggests that the rules at issue are, prima facie, not restrictive of competition by object and – should they be restrictive by effect, which is indeed possible[104] – they could probably be justified under the *Meca-Medina* case-law, or exempted pursuant to Article 101(3) TFEU, should the respective conditions be satisfied.

[102] On this point, it may be interesting to note that certain reports commissioned by the Commission in previous years seem to suggest that a licensing system may be necessary to ensure good governance in the football agents industry. See, for example, 'Study on sports agents in the European Union', November 2009, pp. 7, 84 to 91 and 107 to 132, and Parrish, R., et al., *Promoting and Supporting Good Governance in the European Football Agents Industry – Final Report*, 2019, pp. 56 to 70 ('the Parrish Report'). In addition, the European Parliament has, in its resolution of 17 June 2010 on players' agents in sports (2011/C 236 E/14), also expressed the view that a licensing system for football agents was necessary.

[103] See paragraphs 100 to 104 of the judgment in *Piau*. On appeal, see order of 23 February 2006, *Piau* v *Commission* (C-171/05 P, EU:C:2006:149, paragraph 38).

[104] For example, without the rules at issue, agents would be able to propose that the parties apply lower fees *pro quota*, should they be chosen to represent more than one party to the transaction.

108. I believe that, in both cases, the key issue for the referring court will be to check whether alternative measures which are less restrictive of competition (such as obligations of transparency and information upon agents, and of obtaining written consent from the parties in question), whilst being equally effective, exist. The issue appears to be the subject of some debate.[105] If the arguments of the two sides were found to be, broadly speaking, of the same weight, I would be inclined to leave some margin of manoeuvre to the sports associations, for the reasons indicated in points 35 to 37 of my Opinion in *ROGON* (regarding the *Meca-Medina* case-law) and points 83 to 94 above (concerning Article 101(3) TFEU).

5. The rule on making an approach

109. With regard to the rule on making an approach, it seems to me that – as both the applicants in the main proceedings and the Commission argue – it is *inherently* anticompetitive. Indeed, it is intended to prevent agents from offering their services to certain categories of potential new clients: those that are already engaged with another agent on an exclusive basis, unless they are in the last two months of their current contract.

110. I do not think that there can be a great deal of doubt that both the object and the effect of such a rule are anticompetitive. I also did not hear, from the parties, any convincing explanation as to why such a rule could be justified under the *Meca-Medina* case-law or exempted under Article 101(3) TFEU.

111. Be that as it may, I fail to see any legitimate objective in the public interest pursued by the rule at issue. To justify this rule, FIFA invokes the need to strengthen contractual stability. However, that appears to me to be an interest of an economic and purely private nature. Whereas a certain stability of the contracts between players and clubs is essential to ensure regularity in the tournaments,[106] I doubt that the same logic can also be applied in respect of the contracts between agents and players or clubs. By the same token, it is unclear to me what gains in efficiency the rule at issue would generate in the market that could compensate for the anticompetitive effects produced.

6. The rules on information submission and disclosure

112. In and of themselves, the rules on information submission and disclosure do not appear to be particularly problematic from a competition angle, unless the referring court were to ascertain – as explained in points 171 and 187 below – that, because of the nature of the commercial information that is shared between agents who are actual or potential competitors, that could lead to some form of collusion between them.[107]

113. Concluding on Article 101 TFEU, it follows from the foregoing that whether the rules at issue are compatible with that provision will depend mainly on whether any appreciable anticompetitive effects of those rules can be justified under the *Meca-Medina* case-law, or exempted under Article 101(3) TFEU.

105 See, in that regard, the Parrish Report, pp. 78 to 84.

106 See, in that regard, and with references to the case-law, my Opinion in *CD Tondela*, points 58 and 79.

107 For the well-established principles on this issue, see, inter alia, judgment of 12 January 2023, *HSBC Holdings and Others* v *Commission* (C-883/19 P, EU:C:2023:11, paragraphs 113 and 114 and the case-law cited).

D. Article 102 TFEU

114. The second issue raised by the question referred concerns the compatibility of regulations such as the FFAR with Article 102 TFEU.

115. In the judgment in *Superleague*, the Court recalled settled case-law according to which Article 102 TFEU is 'applicable to any entity engaged in an economic activity that must, as such, be categorised as an undertaking, irrespective of its legal form and the way in which it is financed'. That provision is, thus, also applicable 'to entities which are established in the form of associations which, according to their statutes, have as their purpose the organisation and control of a given sport, in so far as those entities exercise an economic activity in relation to that sport, by offering products or services, and where they must, in that capacity, be categorised as "undertakings"'. [108] The Court then went on to find that FIFA '[held] a dominant position on the market for the organisation and marketing of interclub football competitions on European Union territory and also the exploitation of the various rights related to those competitions' ('the dominated markets'). [109]

116. It also follows from the judgment in *Superleague*, and from well-established case-law, that Article 102 TFEU does not only prohibit undertakings from exercising their market power in an abusive manner in the dominated markets or in other markets in which they may be active, but also in other related or neighbouring markets in which they do not operate, [110] such as those existing upstream or downstream of the dominated ones. [111]

117. Against that background, it seems, to me, rather clear that, through the adoption of regulations such as the FFAR, FIFA appears able to leverage its market power in the dominated markets in order to influence how competition takes place in two markets which are connected to those: the market for agents' services (in which agents compete), and the market for the transfer of players (in which football clubs compete) ('the connected markets').

118. In particular, the FFAR determine who enters the market for agents' services (through the rules on licensing) and how agents can and cannot compete with each other (for example, when they can make an approach in order to recruit new clients). In addition, regulating the agents' activity necessarily affects the downstream market for the transfer of players, since agents are a key player in that market, being able to exert a significant influence on whether and how players move from one club to another.

119. Having said that, do the rules at issue give rise to the alleged abuses? In my view, it is in principle for the referring court to give a final answer that question. Nevertheless, with a view to assisting that court in its assessment, I shall now offer some considerations on the matter.

120. At the outset, I must state that I find it somewhat difficult to carry out a relatively detailed assessment of whether the various rules at issue could give rise to an abuse of a dominant position, since the theory of harm behind the alleged abuses remains, at times, to some extent unclear. Essentially, the issues raised under Article 102 TFEU in the request for a preliminary

[108] Paragraphs 112 and 113 of the judgment in *Superleague*.

[109] Ibid., paragraph 117.

[110] See, for example, the judgment in *Superleague*, paragraph 129, and, more recently, judgment of 25 February 2025, *Alphabet and Others* (C-233/23, EU:C:2025:110, paragraph 54 and the case-law cited) ('the judgment in *Alphabet*').

[111] See, for example, judgment of 19 April 2018, *MEO – Serviços de Comunicações e Multimédia* (C-525/16, EU:C:2018:270, paragraph 24 and the case-law cited).

ruling, and those discussed by the parties in their written and oral observations, correspond to those raised and discussed under Article 101 TFEU. This also makes me wonder what the added value of an assessment of the rules at issue under Article 102 TFEU could be.

121. In any event, it seems to me that the applicants in the main proceedings are of the view that the rules at issue have both some *exploitative* effects and some *exclusionary* effects. If I understand their arguments correctly, the alleged anticompetitive effects of the rules at issue, from the viewpoint of Article 102 TFEU, would be as follows.

122. The exploitative effects would stem from the fact that some of the rules at issue (such as those on remuneration, and on submission and disclosure of information) impose on them unfair trading conditions. In particular, if matters were left to the normal conditions of competition – they argue – agents would be free to charge their clients higher fees or calculate those fees on the basis of different parameters. The rules at issue are, in their view, excessively penalising for agents, since they do not adequately take into account the quality and importance of the services they provide.

123. The exclusionary effects would, instead, be the consequence of the fact that some of the rules at issue restrict the manner in which agents can access the market for their services and then compete therein (such as those on licensing, on multiple representation and on making an approach), and other rules limit the manner in which clubs compete on the transfer market (such as the rules on agents' remuneration).

124. Exploitative and exclusionary abuses are somewhat different with regard to their nature and the manner in which they harm consumers.

1. Exploitative abuses

125. With regard to *exploitative* abuses, I would first emphasise that they require a particularly cautious analysis. [112] Indeed, in markets which are free and open, such abuses appear very unlikely to happen, since they would normally self-correct. It may be different, however, where there are high barriers to entry, or the dominant undertaking operates in a situation of *de jure* or de facto monopoly. [113]

126. Building on the existing case-law of the Court, I would say that the basic test with regard to exploitative abuses is whether the dominant firm imposes, on their customers or suppliers, trading terms which have no reasonable relationship with the nature of the transaction and/or value of the product or service traded. [114] Such an assessment involves two main steps of analysis.

[112] See, for example, Opinion of Advocate General Wahl in *Autortiesību un komunicēšanās konsultāciju aģentūra – Latvijas Autoru apvienība* (C-177/16, EU:C:2017:286, points 36 to 54) ('the Opinion in *AKKA-LAA*').

[113] Ibid., points 3 and 4. See also, Opinion of Advocate General Pitruzzella in *SABAM* (C-372/19, EU:C:2020:598, points 23 to 25).

[114] See, to that effect, judgments of 14 February 1978, *United Brands and United Brands Continentaal* v *Commission* (27/76, EU:C:1978:22); of 14 September 2017, *Autortiesību un komunicēšanās konsultāciju aģentūra/Latvijas Autoru apvienība* (C-177/16, EU:C:2017:689, paragraph 35) ('the judgment in *AKKA-LAA*'); and of 25 November 2020, *SABAM* (C-372/19, EU:C:2020:959, paragraph 28) ('the judgment in *SABAM*').

127. As a first step, one should check whether there is a difference between the trading terms imposed by the dominant undertaking and those that would have been applied had there been effective competition in the market. That difference must be of some significance and negatively affect the customers or suppliers concerned. [115]

128. If there is, the second step of the analysis is then to determine whether the trading terms applied by the dominant undertakings are 'unfair', either in themselves or when compared to competing products or services traded. It is in this second step of the analysis that the need to verify whether any reasonable *economic* relationship exists between the trading terms at issue and the underlying economic transaction acquires all its meaning. Was it necessary (or reasonable) to include that term for the dominant undertaking in order to pursue some legitimate commercial interest? Was the term equitable, in the sense that its impact on the position of the customer or supplier concerned is proportionate to the aim pursued by the dominant undertaking? Those are typically some of the issues that may be examined in that context. [116] In extreme simplicity, when no legitimate and rational explanation can be identified for the inclusion of trading terms that appear exorbitant or excessively onerous for the dominant undertaking's customers or suppliers, those terms may be qualified as 'unfair', and consequently abusive, under Article 102 TFEU. [117]

129. As regards the present case, I wish to make two observations.

130. One the one hand, it can hardly be disputed that the situation at issue in the main proceedings shows two features which, as set out above, are generally considered to make exploitative abuses possible. [118] To begin with, there are particularly high barriers to entry in the markets in which sports associations (such as FIFA) operate. [119] In addition, their de facto monopoly *status* in those markets is only to a limited extent the result of greater efficiency, investment or innovation. Indeed, it mainly derives from the pyramidal structure of the sports industry in the European Union. That monopoly status is further reinforced by the role of de facto regulator of the whole ecosystem (that has the dominated markets at its centre [120]) played by the associations, which is made possible by the express or tacit acceptance of the EU and national authorities. [121]

131. On the other hand, however, given the rather exceptional nature of exploitative abuses, the bar for declaring that a contractual term imposed by a dominant undertaking is unfair, within the meaning of Article 102 TFEU, should be placed relatively high. A term is not unfair simply because the customers or suppliers of the dominant undertakings would not have accepted it, had the latter not been able to impose it thanks to its monopolistic position. Nor is any limitation of contractual freedom is anticompetitive. Something more is required, as explained above. On

115 See, to that effect, paragraphs 56 to 58 of the judgment in *AKKA-LAA*.

116 See, for example, judgments of 30 January 1974, *BRT and Société belge des auteurs, compositeurs et éditeurs* (127/73, EU:C:1974:6, paragraphs 10 to 15); of 6 October 1994, *Tetra Pak* v *Commission* (T-83/91, EU:T:1994:246, paragraph 140); and of 22 November 2001, *AAMS* v *Commission* (T-139/98, EU:T:2001:272, paragraph 79).

117 See, to that effect, the judgment in *AKKA-LAA*, paragraph 36; the judgment in *SABAM*, paragraph 31; and the Opinion of Advocate General Wahl in *AKKA-LAA*, point 131.

118 In scholarship, see, with further references, Lianos, I., Korah, V. and Siciliani, P., *Competition Law – Analysis, Cases, & Materials*, Oxford University Press, 2019, p. 1228, and O'Donoghue, R. and Padilla, J., *The Law and Economics of Article 102 TFEU*, 3rd edition, Hart Publishing, 2020, pp. 294 to 315.

119 See paragraph 36 of the judgment in *Superleague*.

120 See, in that regard, paragraph 149 of the judgment in *Superleague*.

121 See also, point 80 of my Opinion in *CD Tondela*.

the basis of the (limited) information included in the case file, I am not sure that any of the rules at issue is manifestly exorbitant or excessively onerous for the agents, account being taken of their underlying rationale. This is, at any rate, an issue for the referring court to decide.

2. Exclusionary abuses

132. The judgment in *Superleague*,[122] in combination with other judgments given in the same period (such as, in particular, in *SEN*, in *Unilever*, in *Google Shopping* and in *Alphabet*[123]), has also brought about more clarity on the concept of 'exclusionary abuse' for the purposes of Article 102 TFEU. In particular, the Court has placed an emphasis on two elements of the analysis, relating to the conduct of the dominant undertaking: whether that conduct is in line with 'competition on the merits' (or 'means different from those governing normal competition between undertakings'), and whether it is capable of producing exclusionary effects.

133. A detailed discussion on the exact nature of those elements and their relationship would be beyond the scope of the present Opinion. For the purposes of the present case, it suffices to point out that the power of sports associations to adopt rules that affect competition in some relevant markets can hardly be regarded as being an expression of 'competition on the merits'. Indeed, as explained above, that power results mainly from the status of de facto monopolist of sports associations on the dominated markets, and their role of de facto regulator of the whole ecosystem that has the dominated markets at its centre.

134. Obviously, that does not imply that the regulations issued by sports associations should be considered suspicious, let alone presumed to be abusive. It only means that their compatibility with Article 102 TFEU should be assessed on a case-by-case basis, like other forms of (unilateral) conduct from dominant undertakings. As in the case of forms of multilateral conduct covered by Article 101(1) TFEU, also with regard to forms of unilateral conduct, their anticompetitive nature could be established by examining the *object* of the conduct or its *effects*.[124]

135. It is true that, unlike in *Superleague*, when regulating the connected markets, the sports association does not act in a situation of potential conflict of interest. Quite clearly, the FFAR rules do not give any advantage to FIFA over undertakings which are actual or potential competitors.

136. However, the fact that FIFA is not (and does not intend to be) active in either of the connected markets,[125] and that it is an entity not seeking to make a profit,[126] is of no relevance in the present case. Nor is it accurate to say that FIFA has no economic interest. Indeed, FIFA might have an *indirect* interest in regulating competition in those markets, since it is an association

122 See, in particular, paragraphs 124 to 126 and 131 of the judgment.

123 The judgment in *SEN*, paragraphs 44 to 48 and 65 to 77; judgments of 19 January 2023, *Unilever Italia Mkt. Operations* (C-680/20, EU:C:2023:33, paragraph 39); and of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)* (C-48/22 P, EU:C:2024:726, paragraphs 165 to 167) ('the judgment in *Google Shopping*'); and the judgment in *Alphabet*, paragraphs 37, 38 and 54 to 58).

124 See, to that effect, the judgments in *Superleague*, paragraph 131, and in *Google Shopping*, paragraph 167. See also, my Opinion in Joined Cases *Illumina and Grail* v *Commission* (C-611/22 P and C-625/22 P, EU:C:2024:264, point 230).

125 This follows from the case-law referred to in point 116 above. See also, by analogy, judgment of 22 October 2015, *AC-Treuhand* v *Commission* (C-194/14 P, EU:C:2015:717, paragraphs 27 and 34 to 36).

126 This is another element of no relevance. See, to that effect, the judgments in *MOTOE*, paragraph 27, and in *OTOC*, paragraph 56 and the case-law cited.

having as members national football associations which themselves have, as members or affiliates, entities like football clubs. [127] Football clubs are, as I have explained, the undertakings competing in one of the connected markets and the buyers in the other connected market.

137. To my mind, where an undertaking can, *de jure* or de facto, exercise a regulatory role, determining the conditions in which undertakings may access a given market and shaping the conditions in which those undertakings can then compete, that power must be strictly framed and carefully exercised, regardless of whether or not that undertaking is itself active in that market. [128]

138. Having clarified the above, given that – as set out in point 120 above – the issues raised under Article 102 TFEU in the request for a preliminary ruling, and those discussed by the parties in their written and oral observations, essentially correspond to those raised and discussed under Article 101 TFEU, the considerations developed in the present Opinion with regard to the latter provision may, *mutatis mutandis*, be relevant for an assessment under the former provision.

139. As the Court recalled in *Superleague*, the same conduct may give rise to an infringement of both Article 101 and Article 102 TFEU, even though those provisions pursue complementary objectives and have distinct scopes of application. Articles 101 and Article 102 TFEU may thus apply simultaneously, where their respective conditions of application are met. That said, the Court also emphasised that those provisions must be interpreted and applied consistently, although in compliance with the specific characteristics of each of them. [129]

140. In that connection, I would add an important element: in paragraphs 182 to 209 and 231 to 240 of the judgment in *Superleague*, the Court has made clear that the various justifications for and exemptions from the prohibitions set out in Article 101(1) TFEU and Article 102 TFEU should, to the extent possible, be interpreted harmoniously. After all, the opposite would make no sense from a legal and economic viewpoint. Therefore, were the referring court to find that some rules at issue do not come within the scope of Article 101(1) TFEU (because, for example, the *Meca-Medina* case-law applies) or could be exempted under Article 101(3) TFEU, it would have to take that into account, and draw the appropriate inferences from it, when assessing whether the same conduct could be considered justified under Article 102 TFEU.

141. Indeed, according to settled case-law, it is open to an undertaking in a dominant position to provide justification for behaviour that is liable to be covered by the prohibition laid down in Article 102 TFEU. In particular, an undertaking may demonstrate, to that end, either that its conduct is objectively necessary or that the exclusionary effect produced may be counterbalanced or even outweighed by advantages in terms of efficiency which also benefit the consumer. [130]

142. Hence, as regards the compatibility of the rules at issue with Article 102 TFEU, one of the key issues in the assessment that the referring court will have to make is whether those rules genuinely pursue a legitimate objective and are necessary and proportionate to that objective, or whether the anticompetitive effects produced are counterbalanced or outweighed by advantages in terms of efficiency in the markets affected which also benefit the consumer.

127 See the judgment in *FIFA*, paragraph 118 and the case-law cited.

128 See, to that effect, the judgment in *Superleague*, paragraphs 135 to 137 and the case-law cited.

129 Paragraph 119 of the judgment.

130 See, recently, the judgment in *Alphabet*, paragraphs 70 and 71 and the case-law cited.

E. Article 56 TFEU

143. The third issue raised by the question referred concerns the compatibility of regulations such as the FFAR with Article 56 TFEU.

144. That provision enshrines the freedom to provide services for the benefit of both providers and recipients of such services. In that respect, it precludes any national measures, even those which are applicable without distinction, which restrict the exercise of that freedom by prohibiting, impeding or rendering less attractive the activity of those providers in the Member States other than the one where they are established. [131]

145. The Court has held that this prohibition also applies where a group or organisation exercises a certain power over individuals and is in a position to impose on them conditions that adversely affect the exercise of the fundamental freedoms guaranteed under the Treaty. [132] In that regard, the prohibition applies not only to national measures, but also to private rules or practices, including those adopted by sports federations. [133]

146. Nevertheless, private rules may be permitted even though they restrict the freedom to provide services, if it is proven that their adoption is justified by a legitimate objective in the public interest which is other than of a purely economic nature and that they respect the principle of proportionality, which entails that they are suitable for ensuring the achievement of that objective and do not go beyond what is necessary for that purpose. It is for the party who introduced the measure to demonstrate that those conditions are met. [134]

147. In principle, it is for the referring court to decide whether the rules at issue in the main proceedings restrict intra-EU trade and if so, whether they could be justified, in the light of the arguments and evidence produced by the parties. [135] That said, I would nonetheless observe the following.

148. First, it is true that, to some extent, the rules at issue have the effect of harmonising, at EU level, the requirements for exercising the activity of an agent. In a way, this body of rules favours the free movement of services, since agents established in one Member State can, almost automatically, provide their services as agents in any other Member State. [136] Indeed, although some Member States do have legislation which diverges from the FFAR (and which thus obliges the relevant national football associations to adopt rules which partly complement or supersede the FFAR), [137] I understand that the key rules of the FFAR are applicable throughout the European Union.

149. Yet, it cannot be denied that some of the rules at issue, when adopted, made it more difficult for the agents established in some Member States (where the activity of agent was not regulated or only minimally so) to operate abroad. Indeed, those agents must now obtain a licence and comply with a number of rules (which regulate, inter alia, who they can represent and how they can recruit new clients), on pain of sanctions.

131 See, inter alia, the judgment in *Superleague*, paragraph 247 and the case-law cited.

132 See, for example, the judgment in *TopFit*, paragraph 39 and the case-law cited.

133 Ibid., paragraph 49.

134 See the judgment in *Superleague*, paragraphs 251 and 252 and the case-law cited.

135 See, to that effect, the judgment in *Royal Antwerp*, paragraph 143.

136 See, in particular, Article 2 of the FFAR.

137 See Article 3(3) of the FFAR.

150. Accordingly, rules of a sports association such as those at issue on licensing, on multiple representation and on making an approach seem to me likely to amount to a restriction of the freedom to provide services within the meaning of Article 56 TFEU.

151. By contrast, I am not sure that a similar conclusion can be reached concerning the rules on agents' remuneration and submission and disclosure of information. As regards that category, the Court's findings with regard to the Italian legislation on maximum tariffs for lawyers seem to me, *mutatis mutandis*, to be applicable to the dispute at issue in the main proceedings. [138] With regard to the rules on information, my preliminary view would be that any negative impact that those rules could have on the agents' ability and incentive to exercise their activities cross-border would be too uncertain and indirect to trigger Article 56 TFEU. [139]

152. As far as justification is concerned, I have explained already why certain objectives invoked by FIFA can, in principle, be regarded as being legitimate and in the public interest. The situation is, nevertheless, less clear-cut with regard to other objectives relied on. My considerations on that matter are also valid in the present context.

153. However, the referring court should verify whether the rules at issue are suitable to achieve the stated objectives. In particular, it should assess whether those rules *genuinely* reflect a concern about attaining those objectives in a *consistent and systematic* manner. [140]

154. This is, in my view, a particularly important step in the analysis. Indeed, the referring court should determine whether the rules at issue are truly intended to pursue the objectives invoked by FIFA and, therefore, that there is no hidden motive behind their adoption. As I stated in point 50 of my Opinion in *ROGON*, I indeed suspect that for almost any measure adopted by a sports federation, some kind of interest of a general nature allegedly being pursued may be knocked together *ex post*, when the need to justify the measure arises. In addition, it goes without saying that a measure can hardly be regarded as genuinely pursuing some public interest unless it makes a meaningful contribution to the furthering of that interest.

155. Lastly, the referring court is to check whether the rules at issue go beyond what is necessary to pursue the objectives in question. This step involves, first and foremost, verifying that the same level of protection of the interest at stake cannot be achieved with measures which would be less restrictive of the agents' economic freedoms. Finally, the referring court should also ensure that the rules at issue are proportionate *stricto sensu*, in the sense that they strike a fair balance between the interests FIFA wishes to protect and those of the agents who are adversely affected by them. That would not be the case, for example, where a rule does indeed pursue a legitimate and valid interest but, regardless of whether alternative measures exist, the burden imposed on the agents for that purpose would, at any rate, be unreasonable and excessive.

156. Accordingly, under Article 56 TFEU, the referring court will have to check whether the rules that give rise to a restriction on the freedom to provide services are justified by a legitimate objective in the public interest which is other than of a purely economic nature and whether they comply with the principle of proportionality, meaning that that they are suitable for ensuring the achievement of that objective and do not go beyond what is necessary for that purpose.

138 Judgment of 29 March 2011, *Commission* v *Italy* (C-565/08, EU:C:2011:188, paragraphs 47 to 54).

139 See, by analogy, judgment of 22 December 2022, *Airbnb Ireland and Airbnb Payments UK* (C-83/21, EU:C:2022:1018, paragraphs 45, 50 and 51).

140 See, to that effect, the judgment in *FIFA*, paragraph 95 and the case-law cited.

F. Article 6 of the GDPR

157. The fourth and final issue raised by the question referred concerns the compatibility of regulations such as the FFAR with Article 6 of the GDPR. In its order for reference, the referring court points to the data processing provided for in Article 16(2)(j)(ii) to (v) and (k)(ii) of the FFAR and Article 19 of the FFAR.

158. In essence, Article 16(2)(j)(ii) to (v) and (k)(ii) of the FFAR require agents to upload details regarding client agreements, remuneration and collaboration to a platform operated by FIFA within 14 days. Article 19 of the FFAR further mandates that agents disclose personal data to FIFA, including information about clients, services and transactions, which are then made accessible to certain stakeholders for the purposes of monitoring compliance with the substantive provisions of the FFAR.

159. Article 6(1) of the GDPR sets out an exhaustive and restrictive list of the cases in which the processing of personal data can be regarded as lawful. While the referring court has not specified which case under that provision it deems relevant to the main proceedings, it follows from the information in the order for reference and the nature of the FFAR rules at issue that Article 6(1)(f) is relevant in this context.

160. Article 6(1)(f) of the GDPR provides that the processing of personal data is lawful if it is 'necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data …'.

161. According to settled case-law, that provision lays down three cumulative conditions so that the processing of personal data covered by that provision is lawful. First, the controller or a third party must pursue a *legitimate interest*. Second, the processing of personal data must be *necessary* to achieve that interest. Third, the *interests or fundamental freedoms and rights* of the person whose personal data are at stake must not take precedence over the legitimate interest of the controller or of a third party. [141]

162. While it is ultimately for the referring court to assess whether, in relation to the processing of personal data at issue in the main proceedings, the three conditions referred to above are satisfied, it is open to the Court, when giving a preliminary ruling on a reference, to provide clarifications to guide the referring court in that assessment. [142] Accordingly, in the following sections, I shall attempt to provide some guidance on how the referring court should verify whether the three cumulative conditions referred to in the previous point may be applied to regulations such as the FFAR.

163. Before proceeding, however, a word of caution is in order: pursuant to Article 1(1) of the GDPR, that regulation affords protection to the processing of data concerning natural persons only. Therefore, as made clear by recital 14 thereof, the GDPR does not apply to 'the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person'. Consequently, if the referring court were to find the rules at issue to be incompatible with Article 6 of the GDPR, that finding would apply only to (personal) data concerning agents who are

141 Judgment of 9 January 2025, *Mousse* (C-394/23, EU:C:2025:2, paragraph 45 and the case-law cited) ('the judgment in *Mousse*').

142 Ibid., paragraph 51 and the case-law cited.

natural persons, and football players or – where relevant – other individuals (such as the staff of the football clubs involved, or of the agencies through which agents may carry out their business activities).

1. The FFAR and legitimate interests

164. As regards the first condition, relating to the pursuit of a *legitimate interest*, it should be recalled that, according to Article 13(1)(d) of the GDPR, it is the responsibility of the controller, at the time when personal data relating to a data subject are collected from that person, to inform him or her of the legitimate interests pursued where that processing is based on Article 6(1)(f) of that regulation. Accordingly, it will be for the referring court to ascertain, at the outset, whether FIFA has complied with that obligation by directly informing agents of the legitimate interest pursued at the time of data collection.

165. If that obligation has not been met, the collection cannot be justified on the basis of Article 6(1)(f) of the GDPR.

166. That being said, it should be noted that, in the absence of a definition of the concept of 'legitimate interest' in the GDPR, a wide range of interests could, in principle, be regarded as legitimate. As is apparent from recital 47 of the GDPR, that concept is not limited to interests enshrined in and determined by law, and interests of economic nature can also be legitimate. A legitimate interest may exist, for instance, where there is a relevant and appropriate relationship between the data subject and the controller, such as when the data subject is a client or in the service of the controller, or even in the context of direct marketing. [143]

167. In the present case, the relationship between FIFA and agents does not resemble the classic client-service relationship referred to in recital 47 of the GDPR. Nevertheless, the activities of agents are – as explained, also, in points 57, 58 and 65 of my Opinion in *ROGON* – closely tied to FIFA's regulatory framework. Indeed, agents are accredited professionals registered with FIFA and authorised to represent and advise stakeholders within the football industry ecosystem, subject to the rules laid down by that governing body. Thus, there appears to be a relevant and appropriate relationship of proximity between the two.

168. Moreover, and with particular relevance to the matter at hand, Article 1(2) of the FFAR specifies that its rules are designed to ensure that the conduct of agents is consistent with the core objectives of the football transfer system and with other objectives, which include – FIFA states – maintaining the quality of the services provided by agents to clients at fair and reasonable fees, limiting conflicts of interest, enhancing financial and administrative transparency, and preventing abusive practices. In its written submissions, FIFA further explains that Article 16(2)(j)(ii) to (v) and (k)(ii) of the FFAR and Article 19 of the FFAR primarily guarantee transparency, ensure supervision and enforce compliance with the substantive provisions of the FFAR.

169. I have three remarks to make in that regard.

143 Ibid., paragraphs 46 and 47 and the case-law cited. See also, recital 47 of the GDPR.

170. First, as I see it, limiting conflicts of interest and preventing abusive practices are quite clearly interests that are legitimate within the meaning of Article 6 of the GDPR. Similarly, enabling FIFA to monitor and enforce compliance with the substantive rules of the FFAR is also, in principle, an acceptable objective, provided – I hardly need to add – that the substantive rules in question do not infringe any provision of EU law.

171. Second, I must say that 'transparency' can certainly be considered a value worthy of protection in itself when it concerns the activity of public authorities, since there is an obvious link between democracy and transparency (or openness) within the public administration.[144] However, as far as economic activities of private persons are concerned, the situation is not so clear-cut. Indeed transparency must be reconciled with privacy. In addition, transparency with regard to a person's economic and financial information may have some unfortunate consequences – a point to which I shall come back later – such as favouring collusion between competitors or permitting acts of unfair competition. In that regard, therefore, I think that the referring court should, with respect to each type of information to be submitted on (allegedly) transparency grounds, pose the question: *for what purpose* should transparency be ensured?

172. Third, I am also somewhat perplexed when it comes to the objective of 'maintaining the quality of the services provided by agents to clients at *fair and reasonable* fees'.[145] 'Fair' and 'reasonable' are two adjectives which inevitably require a subjective evaluation. Whether some fees are 'fair and reasonable' or not depends, of course, on the perspective adopted when considering those fees. I am sure that football teams and agents may often disagree in that regard. Moreover, I wonder whether an association of undertakings (*in casu*, FIFA) can validly claim that it pursues a legitimate interest when asking certain commercial partners (*in casu*, agents) to disclose economic and financial information of a confidential nature, in order to be able 'to extract a better deal' (*in casu*, lower fees) from them, than if the matter had been subject to the normal conditions of competition. It may be different, however, if – as explained above – a certain mechanism for the setting of fees were to be considered necessary to ensure a minimum degree of competitiveness and fairness in the tournaments, or to protect the other market operators involved (such as athletes, and in particular young athletes) from conflicts of interest or abusive or fraudulent practices.

2. The FFAR and necessity

173. As regards the second condition relating to *necessity*, the referring court should determine whether the legitimate data processing interest pursued can reasonably be achieved just as effectively by other means less restrictive of the fundamental rights and freedoms of data subjects, in particular the rights to respect for private life and to the protection of personal data guaranteed by Articles 7 and 8 of the Charter.[146]

144 See, in particular, Article 15(1) TFEU which states that, 'in order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work *as openly as possible*' (emphasis added). See also, Article 15(2) and (3) TFEU and Article 11(1) to (3) TEU.

145 Emphasis added.

146 Judgment of 4 October 2024, *Koninklijke Nederlandse Lawn Tennisbond* (C-621/22, EU:C:2024:858, paragraph 42 and the case-law cited).

174. It should also be recalled that the condition relating to the need for processing must be examined in conjunction with the 'data minimisation' principle enshrined in Article 5(1)(c) of the GDPR, in accordance with which personal data must be 'adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed'. [147]

175. In that light, to determine whether some data processing is 'necessary' within the meaning of Article 6(1)(f) of the GDPR requires, in particular, verification that the measures providing for such processing: (i) *genuinely* protect the public interest invoked (in the sense that there is no hidden motive behind them); (ii) were adopted in response to an *objective need* to pursue the objective in question; (iii) are *suitable* to achieve those objectives (meaning that they appear capable of making a significant contribution towards their achievement); and (iv) could be replaced by *alternative measures* which interfere less with the privacy of the natural persons involved.

176. In the present case, FIFA contends that those provisions require the submission of essential information only, and ensure its availability to parties for whom access to such data is vital for the exercise of their economic activities.

177. However, I note that the provisions of the FFAR at issue require agents to submit to FIFA a rather *substantial* volume of data (in terms of both type and quantity [148]). This includes not only personal information relating to an agent's profile, client list and services provided, but also details of contractual agreements, financial transactions and remuneration. Those provisions also mandate that part of this information be made accessible to, potentially, a rather large set of natural and legal persons: other clubs, players and players' agents.

178. If that is so, one of the key issues that the referring court will have to address is, in my view, whether the *scope* of the data to be provided to FIFA, and that of the data to be disclosed to third parties, could plausibly be limited and/or whether alternatives which are equally effective and less intrusive would be available.

179. To that end, I think that FIFA should explain to the referring court why, in *relation to each type of information*, its production by the agents and, where applicable, its disclosure to stakeholders, could not be dispensed with, since it would make it impossible or excessively difficult for FIFA to protect the legitimate interests at stake.

3. The FFAR and overriding interests of the data subjects

180. Concerning, lastly, the third condition, it must be determined whether the interests or fundamental rights and freedoms of the data subject override the legitimate interests of the controller or of a third party. In that respect, the Court has held that that condition entails a *balancing* of the opposing rights and interests in question, which depends, in principle, on the specific circumstances of the particular case.

147 Ibid., paragraph 43 and the case-law cited.

148 Incidentally, I note that, according to the FIFA Football Agents Report 2024, as of 5 December 2024, a total of 7 558 individuals were licensed football agents. This implies a significant scale of potential data processing, consistent with the concept of 'large-scale' under recital 91 of the GDPR, which refers to the processing of a 'considerable amount' of personal data with the potential to affect a large number of data subjects. That categorisation has certain consequences pursuant to the provisions of the GDPR.

181. While it is for the referring court to carry out that balancing exercise – which requires a relatively in-depth knowledge of the competing interests – [149] to assist the referring court in its assessment, I will make the following observations.

182. This condition fundamentally constitutes checking the following: assuming that data processing genuinely pursues an interest that is legitimate, and that is necessary for that purpose, is the processing nonetheless going too far because it places an *intolerable burden* on the data subjects? In other words, is the sacrifice of the data subjects' interests simply excessive, in the light of the reasons for which, and the manner in which, the data processing is carried out?

183. In that connection, the Court has held that, when balancing the opposing rights at issue, particular consideration must be given to the *reasonable expectations* of the data subject, the scale of the processing and its impact on the individual in question. [150] Indeed, it follows from recital 47 of the GDPR that the interests and fundamental rights of the data subject may in particular override the interest of the data controller, where personal data are processed in circumstances in which data subjects do not reasonably expect such processing.

184. In the specific circumstances of the present case, where agents operate within a regulatory framework such as the FFAR, it would seem reasonable to expect that the regulatory body which laid down that framework would process their data. In particular, effective monitoring and enforcement of compliance by FIFA would not be feasible without access to relevant information regarding agents and their services.

185. However, also in this context questions may arise as to whether agents could reasonably expect that all or certain aspects of these data would be disclosed to parties other than the governing body regulating football. Indeed, it is not clear how the disclosure of agents' data to clubs, players and other agents squares with the legitimate interest for which FIFA processes the data – namely, to exercise its regulatory authority in pursuit of the FFAR's objectives.

186. Agents operate within a highly competitive market, where information regarding their client base and contractual arrangements is valuable commercial data. If such details become accessible to competitors (rival agents) or potential clients (players and clubs), this could, on the one hand, affect the competitive structure of the market and, on the other hand, also cause serious financial harm to the agents.

187. As set out in point 171 above, disclosure of agents' economic and financial data to competitors may favour collusion in the market. It could also lead to unfair competitive practices, allowing rival agents to interfere in future negotiations. Moreover, it could erode trust in agent-client relationships, as the risk of sensitive contractual and financial details being exposed may discourage transparent negotiations and ultimately erode confidence in the regulatory framework. In so far as FIFA exercises regulatory action in respect of agents, they should have some confidence in that body being able to take into account their legitimate interests relating to privacy and confidentiality. The legal framework cannot be exclusively focused on the interests of clubs and players, as legitimate as those interests may be.

149 The judgment in *Mousse*, paragraph 50 and the case-law cited.

150 See, in particular, judgment of 4 July 2023, *Meta Platforms and Others* (General terms of use of a social network) (C-252/21, EU:C:2023:537, paragraph 116).

188. Accordingly, a far-reaching obligation to submit data, and the possibility that those data may be accessed by third parties, may not only interfere with the agents' rights to respect for private life and to protection of personal data (Articles 7 and 8 of the Charter), but possibly also with the agents' freedom to conduct a business (Article 16 of the Charter).

189. In the light of the foregoing considerations, it cannot be ruled out that the processing of the personal data at issue in the main proceedings may, at least in part, not be justified as necessary for the purposes of legitimate interests within the meaning of Article 6(1)(f) of the GDPR, in so far as, in particular, certain information of an economic and financial nature is made available to parties other than FIFA and its organs and bodies.

190. In the light of that, the fourth part of the question referred should be answered to the effect that regulations issued by sports associations which concern the submission of personal data of natural persons and their disclosure to third parties comply with Article 6(1) of the GDPR where, in particular, those regulations (i) genuinely pursue an interest worthy of protection; (ii) are limited to what is strictly necessary to that end; and (iii) do not place an intolerable burden on the data subjects as regards their right to privacy and their financial interests.

V. Conclusion

191. In conclusion, I propose that the Court answer the question referred for a preliminary ruling by the Landgericht Mainz (Regional Court, Mainz, Germany) to the effect that the rules set out in regulations issued by sports associations which concern the activity of football agents are not precluded:

– by Article 101 TFEU, if any appreciable anticompetitive effect that those rules may produce can be justified under the *Meca-Medina* case-law or exempted under Article 101(3) TFEU;

– by Article 102 TFEU, if those rules genuinely pursue a legitimate objective and are necessary and proportionate to that objective, or the anticompetitive effects produced are counterbalanced or outweighed by advantages in terms of efficiency in the markets affected which also benefit the consumer;

– by Article 56 TFEU if those rules, where they entail a restriction on the freedom to provide services, are justified by a legitimate objective in the public interest which is other than of a purely economic nature and comply with the principle of proportionality, meaning that they are suitable for ensuring the achievement of that objective and do not go beyond what is necessary for that purpose; and

– by Article 6 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), if those which concern the submission of personal data of natural persons and their disclosure to third parties genuinely pursue interests worthy of protection, only concern data that is strictly necessary to that end and do not place an intolerable burden on the data subjects as regards their right to privacy and their financial interests.