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TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA
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EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Fifth Chamber)

30 April 2026 *

(Reference for a preliminary ruling – Competition – Professional football – No-poach-of-players agreement, concluded by a national sports association and a group of clubs following the suspension of the 2019/2020 sporting season due to the COVID-19 pandemic – Article 101(1) TFEU – Restriction of competition by object or by effect – Labour market – Recruitment of players by clubs – Unilateral termination of employment contract by players – Expiration of employment contract – Content of the agreement – Economic and legal context surrounding the agreement – Competition-related objective aims of the agreement – Whether justified – Conditions – Pursuit of legitimate objectives in the public interest – Necessity – Justification)

In Case C-133/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal da Concorrência, Regulação e Supervisão (Competition, Regulation and Supervision Court, Portugal), made by decision of 18 December 2023, received at the Court on 16 February 2024, in the proceedings

Liga Portuguesa de Futebol Profissional (LPFP),

CD Tondela – Futebol, SAD,

Clube Desportivo Feirense – Futebol, SAD,

Académico de Viseu Futebol Clube, Futebol, SAD,

Os Belenenses – Sociedade Desportiva de Futebol, SAD,

Boavista Futebol Clube, Futebol, SAD,

Sporting Clube de Braga – Futebol, SAD,

* Language of the case: Portuguese.

Sporting Clube da Covilhã – Futebol, SDUQ, Lda.,
Estoril Praia – Futebol, SAD,
Gil Vicente Futebol Clube – Futebol, SDUQ, Lda.,
Leixões Sport Clube – Futebol, SAD,
Clube Desportivo de Mafra – Futebol, SDUQ, Lda.,
União Desportiva Oliveirense – Futebol, SAD,
Futebol Clube de Paços de Ferreira, SDUQ, Lda.,
Futebol Clube de Penafiel, SAD,
Portimonense Futebol, SAD,
Rio Ave Futebol Clube – Futebol, SDUQ, Lda.,
Santa Clara Açores – Futebol, SAD,
Varzim Sport Club – Futebol, SDUQ, Lda.,
União Desportiva Vilafranquense – Futebol, SAD,
Futebol Clube de Famalicão – Futebol, SAD,
Associação Académica de Coimbra – Organismo Autónomo de Futebol,
SDUQ, Lda.,
Moreirense Futebol Clube – Futebol, SAD,
Marítimo da Madeira, Futebol, SAD,
Vitória Sport Clube – Futebol, SAD,
Futebol Clube do Porto, Futebol, SAD,
Sporting Clube de Portugal – Futebol, SAD,
Sport Lisboa e Benfica, Futebol, SAD

v

Autoridade da Concorrência,

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, J. Passer (Rapporteur), E. Regan, D. Gratsias and B. Smulders, Judges,

Advocate General: N. Emiliou,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 13 February 2025,

after considering the observations submitted on behalf of:

- the Liga Portuguesa de Futebol Profissional (LPFP), CD Tondela – Futebol, SAD, Clube Desportivo Feirense – Futebol, SAD, Académico de Viseu Futebol Clube, Futebol, SAD, Os Belenenses – Sociedade Desportiva de Futebol, SAD, Boavista Futebol Clube, Futebol, SAD, Sporting Clube de Braga, Futebol, SAD, Sporting Clube da Covilhã – Futebol, SDUQ, Lda., Estoril Praia – Futebol, SAD, Gil Vicente Futebol Clube – Futebol, SDUQ, Lda., Leixões Sport Clube – Futebol, SAD, Clube Desportivo de Mafra – Futebol, SDUQ, Lda., União Desportiva Oliveirense – Futebol, SAD, Futebol Clube de Paços de Ferreira, SDUQ, Lda., Futebol Clube de Penafiel, SAD, Portimonense Futebol, SAD, Rio Ave Futebol Clube – Futebol SDUQ, Lda., Santa Clara Açores – Futebol, SAD, Varzim Sport Club – Futebol, SDUQ, Lda., União Desportiva Vilafranquense – Futebol SAD, Futebol Clube de Famalicão – Futebol SAD, Associação Académica de Coimbra – Organismo Autónomo de Futebol, SDUQ, Lda., by A. Cantanhede Gonçalves, M.J. Faria and L.M. Soares Romão, advogados,
- Moreirense Futebol Clube – Futebol, SAD, by G. Ribeiro Dias, advogado,
- Marítimo da Madeira, Futebol, SAD, by J.A. Martins and J. Pinto de Almeida, advogados,
- Vitória Sport Clube – Futebol, SAD, by G. Gama Lobo and J. Pinto de Almeida, advogados,
- Futebol Clube do Porto, Futebol, SAD, by A. Domingues, advogado,
- Sporting Clube de Portugal – Futebol, SAD, by G. Banha Coelho, C. Homem Ferreira Morais, L.D. Silva Morais and L. Tomé Feteira, advogados,
- Sport Lisboa e Benfica, Futebol, SAD, by R. Bordalo Junqueiro, R. Pacheco Bettencourt and M. Stock da Cunha, advogados,
- the Autoridade da Concorrência, by D. Cardoso, A. Cruz Nogueira and A.C. Salgueiro, advogadas,
- the Portuguese Government, by C. Alves and P. Barros da Costa, acting as Agents,

- the Greek Government, by K. Boskovits, acting as Agent,
 - the Polish Government, by B. Majczynya and D. Lutostańska, acting as Agents,
 - the European Commission, by S. Baches Opi and P. Caro de Sousa and by F. van Schaik, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 15 May 2025,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 101 TFEU.
- 2 The request has been made in proceedings between the Liga Portuguesa de Futebol Profissional (LPFP) (Portuguese Professional Football League (LPFP)) and a group of professional football clubs established in Portugal, on the one hand, and the Autoridade da Concorrência (Competition Authority, Portugal), on the other, concerning the lawfulness of a decision by which the latter found, in essence, that the LPFP and those professional football clubs participating in the Portuguese football league's First and Second Divisions had infringed Article 101 TFEU and Portuguese competition law on account of a no-poach of players agreement concluded in the context brought on by the COVID-19 pandemic and by the indefinite suspension of the 2019/2020 sporting season.

Legal context

- 3 Article 101 TFEU provides:
 - ‘1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- 2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
- 3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
 - any agreement or category of agreements between undertakings,
 - any decision or category of decisions by associations of undertakings,
 - any concerted practice or category of concerted practices,which contributes 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, and which does not:
 - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.’

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

- 4 The LPFP is a private-law not-for-profit association whose mission, according to its statute, is to regulate and organise professional football activities in Portugal. In particular, under a delegation of powers conferred on it by the Federação Portuguesa de Futebol (Portuguese Football Federation), the LPFP regulates and organises professional football competitions. Those competitions include the Primeira Liga (First Division) and the Segunda Liga (Second Division).
- 5 During the 2019/2020 season, which initially included the period between 1 July 2019 and 30 June 2020, the First Division was to include 18 professional football clubs established in Portugal. The Second Division, meanwhile, was to include 13 other clubs, also established in Portugal.
- 6 On 11 March 2020, the World Health Organisation (WHO) declared the COVID-19 outbreak to be a pandemic.
- 7 On 12 March 2020, the Portuguese authorities announced the adoption of a series of measures intended to contain the risk of spread of the COVID-19 pandemic, which included the lockdown of the population and the closure of public establishments. On the same day, the LPFP ordered the indefinite suspension of

the 2019/2020 sporting season and of all associated competitions, including the First and Second Divisions. On that date, 10 fixtures remained still to play in each of those divisions.

- 8 On 18 March 2020, the Portuguese authorities declared a state of emergency owing to the rapid deterioration of the health situation. That declaration led to the partial suspension of a number of rights, including the right to circulate within the country, the right to go out and workers' rights. In parallel, several sets of extraordinary measures were adopted, in particular with a view to assisting employers and workers affected by the social, economic and financial consequences of that pandemic.
- 9 On 21 March 2020, the LPFP and the Sindicato de Jogadores Profissionais de Futebol (Union of Professional Football Players; 'the SJPF') began negotiations to identify jointly possible solutions to the sporting, social, economic and financial challenges posed by the pandemic for the Portuguese professional football sector. Those negotiations focused in particular on the terms for completing the 2019/2020 sporting season.
- 10 On 7 April 2020, the LPFP and the SJPF each issued a press release on the status of their negotiations. In its press release, the LPFP indicated, first, that it had received the SJPF's agreement on a package of legal measures intended to be incorporated into the collective labour agreement applicable to professional football players, including the extension of employment contracts and player loan or transfer contracts in effect on the date of that press release, until the end of the 2019/2020 sporting season, understood to be the date on which the last official match of that season would ultimately be played. The LPFP then specified that no agreement had been reached with the SJPF on the financial issues under discussion, which included the possibility for clubs and players or, otherwise, for management and workers, to agree on salary reduction measures. That lack of agreement was also referred to by the SJPF in its press release of the same day. Lastly, the LPFP recalled that, in the absence of such an agreement, clubs remained free, among other things, to resort to simplified temporary unemployment or to enter into individual negotiations with their players, before concluding with the following statement:

'The [LPFP] still hopes to see in writing measures aimed at supplementing the collective labour agreement agreed to previously with the [SJPF], jointly with the latter ...'

- 11 On the same day, the LPFP and the clubs participating in the First Division, represented for the most part by their respective presidents, took part in a videoconference, during which they concluded an agreement on the hiring of players who unilaterally terminated their employment contract due to the COVID-19 pandemic. Following that videoconference, the LPFP issued a press release, entitled 'Presidents of [First Division] clubs establish rule for unilateral terminations' and worded as follows:

‘The Presidents of [First Division] clubs, meeting today by videoconference with the President of the [LPFP], have analysed the current situation and, having deliberated on the matter, decided to announce that no club will hire a player who unilaterally terminates his employment contract, citing difficulties caused by the COVID-19 pandemic or by any exceptional decision arising therefrom, and in particular by the extension of the sporting season.’

- 12 On 8 April 2020, some of the clubs participating in the Second Division, represented for the most part by their respective presidents, took part in a videoconference, following which the LPFP issued a press release entitled ‘Presidents of [Second Division] clubs establish rule for unilateral terminations’. That press release included a first paragraph worded in terms identical to those referred to in the preceding paragraph, followed by two paragraphs worded as follows:

‘That measure was taken and announced yesterday by the Presidents of [First Division] clubs, and endorsed by the Presidents of [Second Division] clubs. United in order to navigate through this difficult period and speak as one, the Presidents of Second Division clubs, always in collaboration with the [LPFP], will be able to get through this very challenging period for the entire sector.

Management takes the view that, more than ever, the problems and challenges faced are common and that the response must necessarily also be joint.’

- 13 On 7 April 2020, the Fédération internationale de football association (FIFA) published Bulletin No 1714, entitled ‘COVID-19 – Football Regulatory Issues’, drawn up by a working group comprising, in addition to its own representatives, those of member national football associations, confederations, European Football Clubs, Football Players Worldwide (FIFPro) and the World Leagues Association. In that document, FIFA envisaged, among other things, that national football associations should be authorised to change the dates of their respective sporting seasons as well as those of the periods (‘windows’) for player registration. FIFA also proposed that clubs and players be encouraged to work together to reach agreements on salary deferrals or reductions or, alternatively, that agreements reached between clubs and players be put on hold during the period of suspension of the sporting season.
- 14 On 23 April 2020, the Portuguese Government published a decree-law establishing a set of exceptional and temporary measures in the field of sport, including the authorisation granted to Portuguese sports associations to amend their regulations during and for the duration of the 2019/2020 sporting season, in order to address the difficulties caused by the COVID-19 pandemic.
- 15 On 30 April 2020, those authorities adopted a resolution establishing a strategy for lifting the lockdown measures, which included the possibility of resuming the 2019/2020 sporting season in order to complete the First Division.

- 16 On 4 May 2020, the LPFP, the SJPF and the Associação Nacional de Treinadores de Futebol (National Association of Football Coaches, Portugal) signed a memorandum of understanding. The explanatory memorandum preceding that memorandum of understanding refers to the unusual and exceptional situation of a health emergency and social upheaval caused by the pandemic, before noting the possibility of resuming the First Division as provided for in the resolution referred to in the previous paragraph, and then referring to ‘the safeguarding of [that division] whilst specifically respecting the principles of competitive stability ... and sporting merit ...’. The memorandum of understanding itself provided *inter alia* that ‘the 2019/2020 sporting season shall end on the day following the last official match of this season’ and that ‘sports employment ... contracts concluded between clubs ... and players ... which are set to expire during the current sporting season ... shall be deemed to be automatically extended until the end of the season ...’.
- 17 On 26 May 2020, the Competition Authority imposed an interim measure to immediately suspend, for a period of 90 days, the measures referred to in the press releases issued by the LPFP on 7 and 8 April 2020, as referred to in paragraph 10 to 12 of the present judgment. On 2 June 2020, the LPFP and the clubs concerned stated that they agreed with that measure.
- 18 On 8 June 2020, the collective labour agreement concluded by the LPFP and the SJPF was amended by the parties thereto with a view to inserting a new Article 7a, entitled ‘Effect of changes to the competition calendar due to COVID-19 on the employment relationship in sport’, which reads as follows:
- ‘1. The parties to the collective labour agreement enter into the present agreement in accordance with the protocol established with the [LPFP] ..., which stipulates that the 2019/2020 sporting season ends on the day following the last official match of that season’s competitions.
2. Unless otherwise agreed by the parties, sports employment contracts ... entered into between clubs participating in the [First Division] and players, which expire during the current sporting season as defined by the regulation, shall be deemed to be automatically extended until the end of the current season, as defined in the preceding paragraph.
- ...
4. The contract extension referred to in point 1 entails the continuation of all the parties’ rights and obligations, including the sports employer’s obligation to pay the player’s monthly remuneration as set for the current sporting season, or a proportionate amount of that remuneration, if the sporting season ends before the remuneration is due in full, ...
- ...’

- 19 On 18 June 2020, the Portuguese Football Federation set the new date of the end of the 2019/2020 sporting season at 2 August 2020.
- 20 On 28 April 2022, the Competition Authority adopted a final decision by which it found that the measures referred to in the press releases issued by the LPFP on 7 and 8 April 2020, as referred to in paragraphs 10 to 12 of the present judgment, constituted an agreement having as its object the restriction of the competition in which the professional football clubs participating therein could, in the absence of such an agreement, have engaged on the market for recruiting players eligible to play in the First and Second Divisions.
- 21 The LPFP and a group of professional football clubs participating in the First and Second Divisions brought an appeal against that decision before the Tribunal da Concorrência, Regulação e Supervisão (Competition, Regulation and Supervision Court, Portugal), which is the referring court.
- 22 In the order for reference, after setting out the legal framework applicable to the recruitment and registration of players eligible to play in the First and Second Divisions and the impact of the COVID-19 pandemic on the sporting, economic and financial situation of Portuguese professional football clubs, and also the players' professional situation, that court states, in essence, that it has doubts as to how the Competition Authority interpreted and applied Article 101(1) TFEU in its decision of 28 April 2022.
- 23 In that regard, that court takes the view, first of all, that, in a general and abstract manner, conduct by which undertakings agree amongst themselves not to poach or hire their respective workers and, therefore, to limit or eliminate those workers' prospects for professional mobility and also their negotiating power vis-à-vis their respective employers, must be categorised under Article 101(1) TFEU as an agreement by which economic operators, acting as 'purchasers' on the recruitment 'market', distribute the 'resource' that is the workforce amongst themselves. It further considers that, by its content, such an agreement is comparable to those referred to in Article 101(1)(c) TFEU and that, therefore, given how harmful it is, it can be categorised as an agreement having as its 'object' the restriction of the competition in which the participating undertakings could engage in the absence of that agreement on the recruitment market, which can play a key role in certain sectors where workers' qualifications are essential, such as professional sport.
- 24 Next, the referring court explains that, in the present case, it nevertheless doubts that a correct interpretation of Article 101(1) TFEU allows for a finding that an agreement, such as the one at issue in the main proceedings, poses a sufficient degree of harm to competition to be classified as a restriction of competition by 'object'.
- 25 In particular, that court takes the view that the economic and legal context in which the agreement at issue in the main proceedings was concluded, in so far as it can be taken into consideration, is characterised by a set of factors specific to

the professional football sector, to which is added the situation caused by the COVID-19 pandemic and by the social, economic and financial impact of the pandemic on that sector, professional football clubs and players. In that regard, it observes, in essence, that the COVID-19 pandemic and the upheaval caused by it led the competent sporting association to order the suspension of the 2019/2020 sporting season and that the agreement at issue in the main proceedings forms part of a set of measures negotiated or decided following that suspension by the various stakeholders, such as sporting associations, management and labour, clubs and public authorities, so as to allow, in so far as possible, for the resumption of that sporting season and, more broadly, the re-establishment of the sector.

- 26 That court further considers that, in that context, the objective aims pursued by the agreement at issue in the main proceedings are ambivalent in nature. It is true that that agreement restricted the competition in which the participating clubs could have engaged in the absence of that agreement on the market for recruiting players. However, in seeking, by that plea, to preserve player stability during the indefinite suspension of the 2019/2020 sporting season, that agreement was also aimed at allowing, once appropriate, for the resumption of competitions between those clubs and, therefore, for the re-establishment of competition ‘on the pitch’, under conditions appropriate for preserving the integrity of the First and Second Divisions.
- 27 Lastly, the referring court seeks to ascertain whether, irrespective of the question whether or not the agreement at issue in the main proceedings poses a sufficient degree of harm to competition as to be classified as an agreement having as its ‘object’ the restriction of competition, such an agreement can be comparable to conduct which the Court has held, *inter alia* in the judgments of 19 February 2002, *Wouters and Others* (C-309/99, EU:C:2002:98), and of 18 July 2006, *Meca-Medina and Majcen v Commission* (C-519/04 P, EU:C:2006:492), subject to certain conditions, not to come within the scope of the prohibition laid down in Article 101(1) TFEU.
- 28 In those circumstances the Tribunal da Concorrência, Regulação e Supervisão (Competition, Regulation and Supervision Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does an agreement concluded online via the Zoom or Microsoft Teams platforms on 7 April 2020 by all of the First-Division-incorporated professional football clubs and to which most of the Second-Division-incorporated professional football clubs of a Member State subsequently signed up, by the same mechanism on the following day, in both cases in collusion with the association whose purpose in that Member State is to support and regulate professional football activities, and under which those clubs agreed as between themselves not to sign up any professional footballers in those divisions who had unilaterally terminated their employment contract on account of issues arising from the COVID-19

- pandemic or from any exceptional decision adopted as a result of that pandemic, in particular to extend the [sporting] season, constitute a rule of sporting interest for the purposes of the [judgment of 18 July 2006, *Meca-Medina and Majcen v Commission* (C-519/04 P, EU:C:2006:492)], in the circumstances described in this request for a preliminary ruling?
- (2) For the purposes of the case-law arising from the judgments of 19 February 2002, *Wouters and Others* (C-309/99, EU:C:2002:98, paragraph 97), and of 18 July 2006, *Meca-Medina and Majcen v Commission* (C-519/04 P, EU:C:2006:492, paragraph 42), may a rule, arising from an agreement concluded online via the Zoom or Microsoft Teams platforms on 7 April 2020 by all of the First-Division incorporated professional football clubs and to which most of the Second-Division incorporated professional football clubs of a Member State subsequently signed up, by the same mechanism on the following day, in both cases in collusion with the association whose purpose in that Member State is to support and regulate professional football activities, and under which those clubs agreed as between themselves not to sign up any professional footballers in those divisions who had unilaterally terminated their employment contract on account of issues arising from the COVID-19 pandemic or from any exceptional decision adopted as a result of that pandemic, in particular to extend the [sporting] season, and having the characteristics and objectives, and applying in the circumstances, described in this request for a preliminary ruling, be regarded as proportionate and appropriate and therefore, in accordance with Article 165 TFEU, compatible with Article 101(1) TFEU?
- (3) Does Article 101(1) TFEU preclude an interpretation to the effect that an agreement having the characteristics and objectives, and applying in the circumstances, described in this request for a preliminary ruling, concluded online via the Zoom or Microsoft Teams platforms on 7 April 2020 by all of the First-Division incorporated professional football clubs and to which most of the Second-Division incorporated professional football clubs of a Member State subsequently signed up, by the same mechanism on the following day, in both cases in collusion with the association whose purpose in that Member State is to support and regulate professional football activities, and under which those clubs agreed as between themselves not to sign up any professional footballers in those divisions who had unilaterally terminated their employment contract on account of issues arising from the COVID-19 pandemic or from any exceptional decision adopted as a result of that pandemic, in particular to extend the [sporting] season, may be classified as a restriction of competition by object on the ground that it presents a sufficient degree of harm to competition?

Consideration of the questions referred

Preliminary observations

- 29 As a preliminary point, it must be borne in mind that, 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 (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 83, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 75).
- 30 Only 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 (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 84 and the case-law cited, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 76).
- 31 With the exception of those specific rules, the rules adopted by sporting associations and, more broadly, the conduct of those associations may come within the scope of the FEU Treaty provisions on competition law where the conditions of application of those provisions are met (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 87 and the case-law cited, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 78). The same holds true for rules and conduct adopted, as in the main proceedings, by professional football clubs in collaboration with the competent national sporting association.
- 32 In the present case, measures such as those referred to in the press releases issued by the LPFP on 7 and 8 April 2020, as referred to in paragraphs 10 to 12 of the present judgment, are not among those rules to which the exception referred to in paragraph 30 herein might be applied, which exception the Court has stated repeatedly must be limited to its proper objective and may not be relied upon to exclude the whole of a sporting activity from the scope of the FEU Treaty provisions on EU economic law (see, by analogy, judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 89 and the case-law cited, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 79).
- 33 On the contrary, given that the composition of the teams constitutes one of the essential parameters of the competitions in which professional football clubs compete and those competitions give rise to an economic activity, measures such as those at issue in the main proceedings, which concern recruitment, potential transfers and players' possible professional mobility prospects, must be regarded as having a direct impact on the conditions for engaging in that economic activity

and on competition between the professional football clubs engaged in that activity (see, to that effect and by analogy, judgment of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 81).

34 Therefore, such measures are such as to come within the scope of Article 101 TFEU.

The third question

35 By its third question, which should be addressed first, the referring court asks, in essence, whether Article 101(1) TFEU must be interpreted as meaning that an agreement by which clubs participating in the professional football divisions of a Member State have undertaken, in collaboration with the national sporting association concerned, not to recruit their respective players who have unilaterally terminated their employment contracts citing difficulties caused by the COVID-19 pandemic or by any exceptional decision arising from it, and in particular by the extension of the sporting season, must be categorised as an agreement having as its object the restriction of competition.

36 In that regard, according to the Court's settled case-law, in order to find, in a given case, that an agreement, decision by an association of undertakings or a concerted practice is caught by the prohibition laid down in Article 101(1) TFEU, it is necessary to demonstrate, in accordance with the very wording of that provision, either that that conduct has as its object the prevention, restriction or distortion of competition, or that that conduct has such an effect (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 158 and the case-law cited, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 124).

37 To that end, it is appropriate to begin by examining the object of the conduct in question. If, at the end of that examination, that conduct proves to have an anticompetitive object, it is not necessary to examine its effect on competition. Thus, it is only if that conduct is found not to have an anticompetitive object that it will be necessary, in a second stage, to examine its effect (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 159 and the case-law cited, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 125).

38 The concept of anticompetitive 'object', whilst not an exception in relation to the concept of anticompetitive 'effect', must nevertheless be interpreted strictly (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 161 and the case-law cited, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 126).

39 Thus, that concept must be interpreted as referring solely to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects.

Indeed, certain types of coordination between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 162 and the case-law cited, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 127).

- 40 The types of conduct that must be considered to be so include, primarily, certain forms of collusive conduct which are particularly harmful to competition, such as horizontal cartels leading to price-fixing, limitations on production capacity or allocation of customers. Those types of conduct are liable to lead to price increases or falls in production and, therefore, more limited supply, resulting in poor allocation of resources to the detriment of user undertakings and consumers (see, to that effect, judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 163 and the case-law cited).
- 41 Without necessarily being equally harmful to competition, other types of conduct may also be considered, in certain cases, to have an anticompetitive object. That is the case, inter alia, of certain types of horizontal agreements other than cartels, such as those leading to competing undertakings being excluded from the market, or certain types of decisions by associations of undertakings (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 164 and the case-law cited, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 128). In order for such a finding to be made, however, it is necessary to demonstrate that such conduct carries a sufficient degree of harm to competition, meaning that they must have a manifest anticompetitive rationale, as referred to by the Advocate General in point 28 of his Opinion.
- 42 As is apparent from Article 101(1)(a) and (c) TFEU, which refers, in particular, to the fixing of ‘purchase or selling prices’ or the sharing of ‘markets or sources of supply’, such cartels, such horizontal agreements and such decisions by associations of undertakings may concern not only the goods or services marketed by the undertakings concerned, and therefore supply, but also the resources of any kind which the undertakings need to produce those goods or services, and therefore demand. The collusive behaviour of those undertakings may thus consist, for example, in sharing suppliers, using their collective market power to fix the price at which they will purchase their inputs, or limiting or controlling the essential parameter of competition consisting, in certain sectors or on certain markets, in the recruitment of highly skilled workers, such as players who have already been trained in the professional football sector (judgment of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 129 and the case-law cited).
- 43 In order to determine, in a given case, whether an agreement, decision by an association of undertakings or a concerted practice reveals, by its very nature, a sufficient degree of harm to competition that it may be considered as having as its object the prevention, restriction or distortion thereof, it is necessary to examine, first, the content of the agreement, decision or practice in question; secondly, the

economic and legal context of which it forms a part; and, thirdly, its objectives (see, to that effect, judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 165 and the case-law cited, and of 29 July 2024, *Banco BPN v BIC Português and Others*, C-298/22, EU:C:2024:638, paragraph 44).

- 44 In that regard, first of all, in order to examine the content of the agreement, decision by an association of undertakings or concerted practice at issue, it is necessary to examine its various aspects in order to determine whether the collusion in question has characteristics enabling it to be linked to a form of coordination between undertakings which must be regarded, by its very nature, as harmful to the proper functioning of normal competition, which is in particular the case if any coordination exhibiting such characteristics is, precisely because of those characteristics, capable of creating conditions of competition which do not correspond to the normal conditions of the market in question (see, to that effect, judgment of 29 July 2024, *Banco BPN v BIC Português and Others*, C-298/22, EU:C:2024:638, paragraph 45 and the case-law cited).
- 45 Next, as regards the economic and legal context of which the conduct in question forms a part, it is necessary to take into consideration the nature of the products or services concerned, as well as the real conditions of the structure and functioning of the sector(s) or market(s) in question. It is not, however, necessary to examine nor, a fortiori, to prove the effects of that conduct on competition, be they actual or potential, or negative or positive (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 166 and the case-law cited; of 27 June 2024, *Commission v Servier and Others*, C-176/19 P, EU:C:2024:549, paragraphs 288 and 453; and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 131).
- 46 In view of the referring court's statements on that point, it must be clarified that, although an examination of the economic and legal context surrounding given conduct is necessary in any case, as follows from the case-law cited in paragraph 43 of the present judgment, the extent to which that context is taken into account may nevertheless turn on the type of conduct at issue, as noted, in essence, by the Advocate General in points 42, 43 and 66 of his Opinion.
- 47 Thus, the Court has held that, where there is collusive conduct liable to constitute a type of coordination that is particularly harmful to competition, such as horizontal cartels leading to market-sharing or the exclusion of potentially competing undertakings from those markets, the analysis of the economic and legal context of which such conduct forms part may be limited to what is strictly necessary in order to establish the existence of a restriction of competition by object (see, to that effect, judgments of 20 January 2016, *Toshiba Corporation v Commission*, C-373/14 P, EU:C:2016:26, paragraphs 28 and 29, and of 26 October 2023, *EDP – Energias de Portugal and Others*, C-331/21, EU:C:2023:812, paragraphs 100 to 102).

- 48 However, in the case of other types of conduct which, without necessarily being equally harmful to competition, may nevertheless present a sufficient degree of harm such as to support a finding of their having an anticompetitive object, a more in-depth examination of all the elements referred to in paragraph 45 of the present judgment should be carried out, which entails that, where necessary, account must be taken of the relevant regulatory and institutional framework.
- 49 In both cases, the examination of the actual economic and legal context of which the conduct in question forms part should make it possible to ensure that the conditions required for a finding that that conduct presents a sufficient degree of harm such as to qualify as anticompetitive by ‘object’ are satisfied. It may be that it is only in certain circumstances relating, in particular, to the nature of the goods or services at issue, to the real conditions of the functioning of the market and to its structure, that such a categorisation may be made. Conversely, taking that context into account may lead to a finding that particular circumstances surrounding that conduct are such as to demonstrate that it is not sufficiently harmful to justify such a categorisation (see, to that effect, judgment of 29 July 2024, *Banco BPN v BIC Portugêses and Others*, C-298/22, EU:C:2024:638, paragraph 48).
- 50 Lastly, as regards the objectives pursued by the conduct in question, a determination must be made of the objective aims which that conduct seeks to achieve from a competition standpoint. Nevertheless, the fact that the undertakings involved acted without having a subjective intention to prevent, restrict or distort competition and the fact that they pursued certain legitimate objectives are not decisive for the purposes of the application of Article 101(1) TFEU (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 167 and the case-law cited, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 132).
- 51 Moreover, the taking into consideration of all of the aspects must, at any rate, show the precise reasons why the conduct in question reveals a sufficient degree of harm to competition such as to justify a finding that it has as its object the prevention, restriction or distortion of competition (see, to that effect, judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 168 and the case-law cited, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 133).
- 52 In the present case, as regards, in the first place, the content of the agreement at issue in the main proceedings, it follows from the very wording of the third question referred by the referring court, and the statements of that court, referred to in paragraphs 11 and 12 of the present judgment, that it is an agreement by which a group of clubs participating in the professional football divisions of a Member State have undertaken, in collaboration with the national sporting association concerned, not to recruit their respective players who have unilaterally terminated their employment contracts citing difficulties caused by the COVID-19

pandemic or by any exceptional decision arising from it, and in particular by the extension of the sporting season.

- 53 In concluding such an agreement, the professional football clubs participating therein coordinate, to the extent and in the manner determined jointly, in the present case for two high-level national competitions in a Member State, their conduct on the ‘upstream market’ consisting, from an economic standpoint, in the recruitment of players who have already been trained or are currently undergoing training. In so coordinating their conduct, all of those clubs undertake to refrain from, or prohibit themselves from, any possibility of deciding independently to recruit a player who has unilaterally terminated the employment contract by which he is bound to another club, for reasons related to the COVID-19 pandemic. Such an agreement, which is equivalent to a no-poach agreement, constitutes a manifest restriction of a competitive parameter which plays an essential role in high-level sport, namely the possibility of recruiting players already employed by a given club since, in the absence of such a restriction, those clubs would be able to compete with each other on that market (see, to that effect, judgment of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraphs 138, 145 and 146).
- 54 No-poach agreements can be treated as being equivalent to horizontal agreements for the sharing of ‘sources of supply’ referred to in Article 101(1)(c) TFEU, which, as follows from paragraph 42 of the present judgment, are harmful to competition because they tend to lead to the artificial partitioning of the ‘resources’ which are the players amongst the participating undertakings (see, to that effect, judgment of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 146), thereby giving rise to a potentially inefficient distribution of those resources on the market.
- 55 Moreover, those agreements restrict those workers’ opportunities to offer their services to other undertakings and, therefore, limit their negotiating power on the market, including in relation to the undertaking that employs them. Consequently, even though their content is different from that of agreements by which such undertakings have agreed directly to fix the salaries of their players, that is to say, the ‘purchase price’ of their respective human resources, which has the consequence of eliminating or restricting competition in that regard, the fact remains that such no-poach agreements are no less likely to have an indirect, potential impact on those prices.
- 56 That said, even if an agreement is connected with some type or another of conduct which may generally be considered to be such as to restrict competition by its very object, the examination of the content of that agreement does not suffice by itself to support a finding of that categorisation, as follows from the settled case-law referred to in paragraphs 43 and 49 of the present judgment.
- 57 As regards, in the second place, the economic and legal context of which the conduct in question forms part, it should, first, be borne in mind that the specific examination of the actual context of which the economic activities relating to the

pursuit of a sport form part may involve taking account, among other elements and provided that those specific characteristics are relevant, of the nature, organisation or functioning of the sport concerned, the manner in which it is practised, the manner of interaction between the various participating stakeholders and the role played by the structures and bodies responsible for it at all levels, with which the Union is to foster cooperation, in accordance with Article 165(3) TFEU (see, to that effect, judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 104 and 105 and the case-law cited).

- 58 In the present case, as stated in paragraph 52 of the present judgment, the agreement at issue in the main proceedings is a no-poach agreement concerning players having unilaterally terminated their employment contract for reasons relating to the COVID-19 pandemic, concluded by a group of clubs participating in the professional football divisions of a Member State, in collaboration with the national sporting association concerned. Hence, as noted in paragraph 53 of the present judgment, it concerns a competitive parameter which plays an essential role in the field of high-level professional football.
- 59 The competition that may be present between undertakings such as professional football clubs present certain specific characteristics. Although those undertakings are liable to compete with one another on different markets, such as ticket sales enabling fans to attend matches, the pursuit and acquisition of sponsorships or the exploitation of certain legal and economic rights relating to the competitions in which they participate and the players they employ, their reciprocal position on those markets nevertheless depends, to a certain extent, on their primary, principal activity, which is their participation in sporting competitions.
- 60 Those sporting competitions are characterised, *inter alia*, by the fact that, although participation therein is limited to teams which have achieved certain sporting results, with the conduct of those competitions being based on matches between and gradual elimination of those teams, thereby being based on sporting merit, the proper functioning, sustainability and success of those competitions depend on maintaining a balance and on preserving a certain equality of opportunity as between the participating professional football clubs, given the interdependence that binds them together (see, to that effect, judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 143 and 235 and the case-law cited).
- 61 To that extent, the sustainability of competition in which football clubs may engage presupposes that, at any given time, there is a sufficient number of clubs participating in the different competitions organised at national and international levels, even though those clubs are likely, over the course of the sporting seasons, gradually to be eliminated from a given sporting competition, whereas some of them will be promoted or, conversely, relegated from one league to another.

- 62 Secondly, the Court has emphasised on many occasions that, given those various specific characteristics, it is legitimate for national and international sporting associations which are responsible for a given sporting discipline to adopt, implement and ensure compliance with common rules relating, inter alia, to the organisation and conduct of international competitions in that discipline, and also participation by players therein (see, to that effect, judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 75 and 142 and the case-law cited).
- 63 Such common rules, intended to guarantee the homogeneity and coordination of competitions within an overall calendar as well as, more broadly, to promote, in a suitable and effective manner, the holding of sporting competitions based on equal opportunities and merit, may also aim, inter alia, to regulate the conditions in which professional football clubs can put together teams participating in such competitions and the conditions in which the players themselves may take part in them (see, to that effect, judgment of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 143 and the case-law cited).
- 64 In particular, since the annual or seasonal conduct of interclub professional football competitions is based, as observed in paragraph 60 of the present judgment, on matches between and gradual elimination of the participating teams and since it is therefore essentially based on sporting merit, which can be guaranteed only if all the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity, it may be legitimate for a sporting association to seek to ensure, to a certain extent, the stability of the composition of the player rosters that serve as a pool for the teams which are put together by those clubs during a given season – for example by proscribing the unilateral termination of employment contracts during the season – or during a given year (judgment of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 144 and the case-law cited).
- 65 That said, when a sporting association adopts such rules, they must comply with EU law. In particular, the adoption of those rules must not entail that compliance therewith by the member undertakings of that association gives rise to an infringement of Articles 101 and 102 TFEU. Moreover, the application of those rules must not limit the exercise of the rights and freedoms that EU law confers on individuals (see, to that effect, judgment of 21 December 2023, *Royal Antwerp Football Club*, C-680/21, EU:C:2023:1010, paragraph 103 and the case-law cited).
- 66 In the present case, the agreement at issue in the main proceedings, which was adopted jointly by the LPFP and a group of football clubs, partly ‘freezes’ the competitive relationship between those clubs as economic operators.
- 67 Thirdly, as is apparent from paragraphs 24 and 25 of the present judgment, the referring court seeks to ascertain whether some of the other elements characterising the economic and legal contest of which the agreement at issue in

the main proceedings forms part could lead it to find that, from a competition standpoint, that agreement does not have a sufficient degree of harm as to be held to have as its object the restriction of competition and, consequently, justify its refraining from examining the actual or potential effects thereof.

- 68 In particular, as is apparent from paragraphs 7 to 11, 14 to 16 and 18 of the present judgment, that court refers to the COVID-19 pandemic, the general consequences of that pandemic, relating inter alia to public lockdowns and the closure of public establishments, as well as the specific impact on professional football, including the suspension of the 2019/2020 sporting season and the numerous practical, sporting, social, economic and financial difficulties faced by the football clubs due to that pandemic.
- 69 It should be noted in that regard that, although it is ultimately for the referring court to categorise the agreement at issue in the main proceedings under Article 101(1) TFEU, when giving a preliminary ruling the Court may, where appropriate, nevertheless provide clarification designed to give the national court guidance in its interpretation in order to enable it to decide the case before it (see, to that effect, judgments of 13 July 2006, *Manfredi and Others*, C-295/04 to C-298/04, EU:C:2006:461, paragraph 48, and of 25 January 2024, *Em akaunt BG*, C-438/22, EU:C:2024:71, paragraph 27).
- 70 In the present case, first of all, the conduct at issue in the main proceedings must be distinguished from the rules laid down by the national or international sporting associations which are responsible for a given sporting discipline pursuant to their statutes and missions with which they are entrusted or which are recognised by the public authorities. The press releases issued by the LPFP on 7 and 8 April 2020, as referred to in paragraphs 10 to 12 of the present judgment, indicate that that conduct was originally adopted not by such a sporting association, but by professional football club undertakings.
- 71 Moreover, since Article 101(1) TFEU is intended to prohibit any form of coordination which deliberately substitutes practical cooperation between undertakings for the risks of competition and, more broadly, since the FEU Treaty provisions relating to competition are based on the premiss that each economic operator must determine independently the policy which it intends to adopt on the common market (see, to that effect, judgments of 14 July 1981, *Züchner*, 172/80, EU:C:1981:178, paragraph 13, and of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 34), such conduct cannot be equated with such rules.
- 72 That said, it is apparent from the information provided by the referring court that, even if it does not originate from the competent national sporting association, the conduct at issue in the main proceedings was adopted in the presence of the President of that association and may be considered and having been supported, and even endorsed, by it, which it is nevertheless for the referring court to verify.

- 73 Next, as stated in the order for reference, that conduct occurred in the very specific context brought on by the COVID-19 pandemic, which affected not only the sector concerned in many ways but also, and especially, had a fundamental impact on the competitive functioning of that sector. In particular, due to that pandemic and following the ensuing suspension of the 2019/2020 sporting season, the resumption of matches that still had to be played in the First and Second Divisions remained uncertain when the agreement at issue in the main proceedings was concluded, which uncertainty affected both the date of the end of that sporting season, in the event of resumption thereof, and the expiry of the employment contracts of some players. In the absence of suitable measures, players who unilaterally terminated their employment contracts due to that pandemic or whose employment contract ended on the date when that sporting season was initially due to end, namely 30 June 2020, could have subsequently been freely hired by another club, which would have inevitably and significantly altered the composition of the various teams involved, thereby undermining the integrity of competition. Moreover, as observed by the Advocate General in points 57 and 58 of his Opinion, such a situation could have been exacerbated if the economic and financial difficulties experienced by the clubs concerned by such departures of players had prevented them from signing new players due to a lack of funds.
- 74 It is true that the occurrence of an event such as the COVID-19 pandemic is not per se such as to justify making an exception to the imperative provision that is Article 101(1) TFEU (see, to that effect and by analogy, judgments of 26 September 2013, *ÖBB-Personenverkehr*, C-509/11, EU:C:2013:613, paragraphs 49 and 50, and of 8 June 2023, *UFC – Que choisir and CLCV*, C-407/21, EU:C:2023:449, paragraph 57).
- 75 In response to the referring court’s reference to Article 165 TFEU, suffice it to add that the situation is no different when the agreement, decision by an association of undertakings or concerted practice occurs in the field of sport. That provision cannot be regarded as being a special rule exempting sport from all or some of the other provisions of primary EU law liable to be applied to it or requiring special treatment for sport in the context of that application (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 101).
- 76 The fact remains, however, that circumstances such as those referred to in paragraph 73 of the present judgment must be taken into account by the referring court for the purpose of determining whether or not the context surrounding the conduct at issue in the main proceedings, considered together with its content and objective aims, has as its object the prevention, restriction or distortion of competition.
- 77 Lastly, taking into account the economic and legal context of which the conduct at issue in a given case forms part in a given case and, more specifically, the actual conditions characterising the functioning of the sector or sectors or markets in or

on which the conduct occurred must, in any event, show the specific reasons why that conduct does not, in the view of the specific characteristics of that context, present a sufficient degree of harm from a competition standpoint as to be held to have as its object the prevention, restriction or distortion of competition, as it must be held to do, as is apparent from paragraph 51 of the present judgment, in the event that the competent authority or court reaches the opposite conclusion.

- 78 Consequently, irrespective of the conclusion reached by the referring court at the end of its examination of the other contextual economic and legal elements referred to by it as to the presence or absence of a restriction of competition by ‘object’, such an assessment must be founded on a competition-based analysis setting out the specific reasons in support of that conclusion, in the light of all of the relevant elements of fact and law.
- 79 In the third and last place, as regards the competition-related objective aims pursued by the agreement at issue in the main proceedings, the aspects set out by the referring court in that regard call for the following observations.
- 80 That court states, in essence, that the agreement at issue in the main proceedings must, in view of its clear and precise content, be regarded as aimed at restricting the competition in which the professional football clubs which signed on to that agreement could have engaged on the player recruitment market had it not been for that agreement.
- 81 Those statements, which infer the aim in question from the very content of that agreement, confirm that it was inherently liable to undermine one of the various forms of competition, namely competition in player recruitment, which could have been pursued amongst the clubs competing in the First Division, which was at that time suspended indefinitely but nevertheless was likely to resume, in so far as the health situation brought about by the COVID-19 pandemic permitted.
- 82 The referring court further states, in essence, that, in circumstances such as those referred to in paragraph 73 of the present judgment, the agreement at issue in the main proceedings was nevertheless also intended to maintain stability in clubs’ player rosters, which serve as a pool for the composition of their respective teams throughout the indefinite suspension period of the 2019/2020 sporting season and, in so doing, once it became possible, enable the resumption of division play in conditions guaranteeing the integrity thereof. In that regard, that court observes, in particular, that it was initially foreseen that that sporting season was due to end on 30 June 2020, that numerous employment contracts by which players and their clubs were bound were due to expire on that same date and that, in the absence of the agreement at issue in the main proceedings, the clubs would have been free to recruit players of their competitors during the competition, including between the end date of that season as initially scheduled and the date of resumption of that same sporting season, as a result of which the clubs with greater financial resources at their disposal could have strengthened their own squads and weakened those of their competitors at the same time, thereby irrevocably

distorting the proper progress of the tournament and, ultimately, competition ‘on the pitch’.

- 83 Those statements, which have led the referring court to find that, to that extent, that agreement pursued an aim objectively favourable to competition, are relevant in view of the specific characteristics which are a hallmark of the normal competitive environment in professional football, as noted in paragraphs 60 to 64 of the present judgment, and also the actual context in which that agreement came into being.
- 84 As follows from the case-law cited in those paragraphs, interclub football competitions are based, *inter alia*, on the principle of sporting merit, which presupposes that the results achieved by all of the clubs involved in the different phases of a given competition may be validly compared.
- 85 As observed, in essence, by the Advocate General in points 57 to 59 of his Opinion, that form of competition in which clubs can engage necessarily presupposes the maintenance of the integrity of the competition and the stability of the composition of the player rosters that serve as a pool for the teams which are put together by those clubs during a given competition or season, which entails, in practice, avoiding late transfers of players that might substantially change the sporting strength of one or other team in the course of a competition, and proscribing the unilateral termination of employment contracts during the season (see, to that effect, judgments of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraphs 53 and 54, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraphs 100 and 144), except where founded on valid reasons, such as non-payment of salary by a club to its player or a disciplinary offence such as to justify such termination.
- 86 Hence the referring court may validly find that the agreement at issue in the main proceedings pursued, in parallel, an objectively anticompetitive aim, consisting in the restriction of competition on the player recruitment market and an objectively pro-competition aim, consisting in ensuring stability of player rosters playing in the First and Second Divisions by limiting participating clubs’ poaching of players whose employment contract was due to expire or was terminated unilaterally by the person concerned for reasons relating to the COVID-19 pandemic, including during the period between the date on which the 2019/2020 sporting season ought to have ended had there been no suspension and the date on which that season ultimately did end, in the event of resumption.
- 87 In view of the observations submitted on that point by the defendant in the main proceedings and the Commission, it should be added that such a situation is fundamentally different from that in which conduct pursuing an objectively anticompetitive aim whilst at the same time pursuing other objectives which are possibly legitimate but neutral from a competition standpoint (see, to that effect, judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 167 and the case-law cited).

- 88 Consequently, the referring court's statements and the Court's case file show that, although the examination of the content of the agreement at issue in the main proceedings demonstrates that it was such as to manifestly restrict the competition likely to exist between the participating football clubs on the player recruitment market, the examination of the actual economic and legal context of which it forms part shows that that agreement came about in a sector where competition features numerous specific characteristics in a very unique context. It is also apparent that that agreement does not pursue solely an objectively anticompetitive aim, consisting in restricting competition on the player recruitment market, but is also aimed at achieving an objectively pro-competition aim, consisting in ensuring the stability of player rosters playing in the First and Second Divisions. Hence, it is for the referring court alone to determine, in a precise and reasoned manner, whether or not, in view of all of the relevant elements of fact and law, that agreement presents a sufficient degree of harm as to be held to have as its object the restriction of competition.
- 89 In the light of all the foregoing considerations, the answer to the third question is that Article 101(1) TFEU must be interpreted as meaning that an agreement by which clubs participating in the professional football divisions of a Member State have undertaken, in collaboration with the national sporting association concerned, not to recruit their respective players who have unilaterally terminated their employment contracts citing difficulties caused by the COVID-19 pandemic or by any exceptional decision arising from it, and in particular by the extension of the sporting season, must be categorised as an agreement having as its object the restriction of competition, unless a specific examination of the content of that agreement, its objective aims from a competition standpoint and the specific economic and legal context of which it forms part makes clear the specific reasons why the competent authority or court considers that it must not be so categorised.

The first and second questions

- 90 By its first and second questions, which should be addressed together, the referring court asks, in essence, whether Article 101(1) TFEU must be interpreted as meaning that the prohibition laid down therein does not apply to an agreement by which clubs participating in the professional football divisions of a Member State have undertaken, in collaboration with the national sporting association concerned, not to recruit their respective players who have unilaterally terminated their employment contracts citing difficulties caused by the COVID-19 pandemic or by any exceptional decision arising from it, and in particular by the extension of the sporting season.
- 91 In that regard, according to the settled case-law of the Court, not every agreement between undertakings or decision of an association of undertakings which restricts the freedom of action of the undertakings party to that agreement or subject to compliance with that decision necessarily falls within the prohibition laid down in Article 101(1) TFEU. Indeed, the examination of the economic and legal context

of which certain of those agreements and certain of those decisions form a part may lead to a finding, first, that they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive in nature; secondly, that the specific means used to pursue those objectives are genuinely necessary for that purpose; and, thirdly, that, 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 (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 183 and the case-law cited, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 149).

- 92 However, that case-law does not apply in situations involving conduct which, far from merely having the inherent ‘effect’ of restricting competition, at least potentially, by limiting the freedom of action of certain undertakings, reveals a degree of harm that justifies a finding that it has as its very ‘object’ the prevention, restriction or distortion of competition (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 186, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 150). The degree of harm of that conduct in relation to competition, and therefore the direct or indirect harm to users and to intermediate or end consumers in the various sectors or markets concerned, is too great for it to be regarded as justified and proportionate (judgment of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 150).
- 93 As regards conduct having as its object the prevention, restriction or distortion of competition, it is thus only if Article 101(3) TFEU applies and all of the conditions provided for in that provision are observed that it may be granted the benefit of an exemption from the prohibition laid down in Article 101(1) TFEU (judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 187, and of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraph 151).
- 94 In the present case, it is therefore only if the referring court, at the end of its examination of the agreement at issue in the main proceedings, comes to the conclusion that it does not have as its object the restriction of competition and it is possible for it to find that that agreement nevertheless has such an effect that it will be for that court to ascertain whether that agreement can be held not to come within the scope of Article 101(1) TFEU under the case-law referred to in paragraph 91 of the present judgment, it being noted that it is for the party seeking to rely on that case-law to demonstrate, though convincing arguments and evidence, that all of the conditions required to do so are satisfied (see, by analogy, judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraphs 130, 191 and 205 and the case-law cited).
- 95 In view of the statement in the order for reference and the observations on that point submitted by the parties to the main proceedings and other interested parties

who have been involved in the present proceedings, it should nevertheless be noted, in the first place, that, even if the conduct at issue in the main proceedings takes the form of an agreement concluded by professional football clubs with the endorsement of the national sporting association concerned and, therefore, by undertakings which have acted in collaboration with an association of undertakings (see, to that effect, judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 90), it is liable to come within the case-law referred to in paragraph 91 of the present judgment. As is apparent from that wording, and contrary to the position taken by the defendant in the main proceedings and the Commission, that case-law is applicable to any conduct by which an association of undertakings and that association's member undertakings coordinate amongst themselves, irrespective of what form that coordination may take, and not only to those types of conduct which might take the form of rules that can be categorised as a decision by an association of undertakings.

- 96 As regards, in the second place, the existence of a legitimate objective in the public interest, the Court has held previously, on a number of occasions, that the objective consisting in ensuring the regularity of sporting competitions is a legitimate objective in the public interest which holds particular importance in the case of football and which may inter alia justify, in principle and without prejudice to their actual content, the adoption of rules on time limits for transfers of players during a competition, and also rules intended to ensure the maintenance of a certain degree of stability in clubs' player rosters, which serve as a pool for the composition of the teams that are likely to be fielded by those clubs in a given competition (see, to that effect, judgment of 4 October 2024, *FIFA*, C-650/22, EU:C:2024:824, paragraphs 100 to 102 and the case-law cited).
- 97 In those circumstances, the pursuit of such an objective is capable of justifying, in principle and without prejudice to their actual content, the rules implemented by an agreement such as the one at issue in the main proceedings.
- 98 As regards, in the third and last place, the requirement that that agreement must be necessary and proportionate, the Court notes that, as is apparent from the case-law referred to in paragraph 91 of the present judgment, the examination thereof involves, first of all, a determination of whether the specific pleas in law relied on in a given case to pursue a legitimate objective in the public interest are suitable for ensuring achievement of that objective; next, an assessment of whether the reliance on those pleas is necessary for achieving that objective, which means that there are no other measures which would be equally effective for that purpose while being less restrictive of competition; and, lastly, making sure that the restrictive effects caused by the measures adopted are not disproportionate to such an objective, in particular by eliminating all competition on the market concerned.
- 99 It is accordingly for the referring court, which expressed doubt in the order for reference as to whether the agreement at issue in the main proceedings was necessary and proportionate, to carry out an in-depth examination of those three

conditions, being suitability, necessity and proportionality, in the strict sense of the term, of that agreement, in the light of the arguments and evidence put forward by the parties, and also all of the relevant elements of fact and law.

- 100 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 101(1) TFEU must be interpreted as meaning that the prohibition laid down therein does not apply to an agreement by which clubs participating in the professional football divisions of a Member State have undertaken, in collaboration with the national sporting association concerned, not to recruit their respective players who have unilaterally terminated their employment contracts citing difficulties caused by the COVID-19 pandemic or by any exceptional decision arising from it, and in particular by the extension of the sporting season, where, first, that agreement cannot be categorised as an agreement having as its object the restriction of competition and, secondly, it has been established that that agreement is justified by the pursuit of a legitimate objective in the public interest, in view of which it appears to be appropriate, necessary and proportionate in the strict sense of the term.

Costs

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

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

1. Article 101(1) TFEU

must be interpreted as meaning that an agreement by which clubs participating in the professional football divisions of a Member State have undertaken, in collaboration with the national sporting association concerned, not to recruit their respective players who have unilaterally terminated their employment contracts citing difficulties caused by the COVID-19 pandemic or by any exceptional decision arising from it, and in particular by the extension of the sporting season, must be categorised as an agreement having as its object the restriction of competition, unless a specific examination of the content of that agreement, its objective aims from a competition standpoint and the specific economic and legal context of which it forms part makes clear the specific reasons why the competent authority or court considers that it must not be so categorised.

2. Article 101(1) TFEU

must be interpreted as meaning that the prohibition laid down therein does not apply to an agreement by which clubs participating in the professional football divisions of a Member State have undertaken, in collaboration with the national sporting association concerned, not to recruit their respective players who have unilaterally terminated their employment contracts citing difficulties caused by the COVID-19 pandemic or by any exceptional decision arising from it, and in particular by the extension of the sporting season, where, first, that agreement cannot be categorised as an agreement having as its object the restriction of competition and, secondly, it has been established that that agreement is justified by the pursuit of a legitimate objective in the public interest, in view of which it appears to be appropriate, necessary and proportionate in the strict sense of the term.

[Signatures]