Provisional text

OPINION OF ADVOCATE GENERAL
RANTOS
delivered on 15 December 2022 (1)

Case C-333/21

European Superleague Company SL
v
Unión de Federaciones Europeas de Fútbol (UEFA),
Fédération internationale de football association (FIFA),
interveners:
A22 Sports Management SL,
Liga Nacional de Fútbol Profesional,
Real Federación Española de Fútbol

(Request for a preliminary ruling from the Juzgado de lo Mercantil n.º 17 de Madrid (Commercial Court, Madrid, Spain))

(Reference for a preliminary ruling – Competition – Articles 101 and 102 TFEU – Abuse of a dominant position – Articles 45, 49, 56 and 63 TFEU – European Super League (ESL) – First European competition outside UEFA – Refusal of UEFA and FIFA to recognise the ESL – Prior approval allowing a third entity to organise a new competition – Threat of sanctions against clubs and players participating in the new competition – Rights derived from competitions and their marketing)

I. Introduction

1. 'The importance of the present case is obvious. The answer to the question of the compatibility with Community law of the transfer system and the rules on foreign players will have decisive influence on the future of professional football in the Community.' Those were the opening words of Advocate General Lenz in the preliminary observations to his Opinion in the case which gave rise to the judgment in *Bosman*, which sent shockwaves through the football world. (2)

2. Almost three decades later, a request for a preliminary ruling, this time from Spain, raises questions connected with the very existence of the organisational structure of the modern game. The present case was triggered by the plan to create the European Super League ('the ESL'), a new European football competition, which has been the subject of intense media coverage attracting impassioned reactions and comments from 'mere' supporters and at the highest national and European political levels alike. (3) In the present case, the future of European football will turn on the answers given by the Court to problems related primarily to competition law and, secondarily, to fundamental freedoms.

3. The request has been made by the Juzgado de lo Mercantil n.º 17 de Madrid (Commercial Court, Madrid, Spain) in proceedings between, on the one hand, the Fédération internationale de football association (International Association Football Federation; 'FIFA') and the Union of European Football Associations ('UEFA') and, on the other, European Superleague Company SL ('ESLC'), a company seeking to organise and market a new European football competition that would be an alternative or competitor to those organised and marketed to date by those two federations. Those proceedings concern public statements made by FIFA and UEFA making clear their refusal to authorise that new competition and warning that any player or club participating in it would be expelled from the competitions organised by FIFA and UEFA.

II. Legal context

A. Rules and regulations adopted by FIFA

4. As set out in Article 22 of the FIFA Statutes:

'1. Member associations that belong to the same continent have formed the following confederations, which are recognised by FIFA:

…

(c) Union des associations européennes de football – UEFA

…

2. FIFA may, in exceptional circumstances, authorise a confederation to grant membership to an association that belongs geographically to another continent and is not affiliated to the confederation on that continent. The opinion of the confederation concerned geographically shall be obtained.

3. Each confederation shall have the following rights and obligations:

(a) to comply with and enforce compliance with the Statutes, regulations and decisions of FIFA;

(b) to work closely with FIFA in every domain so as to achieve the objectives stipulated in [Article] 2 and to organise international competitions;

(c) to organise its own interclub competitions, in compliance with the international match calendar;

(d) to organise all of its own international competitions in compliance with the international match calendar;

(e) to ensure that international leagues or any other such groups of clubs or leagues shall not be formed without its consent and the approval of FIFA;

(f) at the request of FIFA, to grant associations applying for membership the status of a provisional member. This status shall grant associations the right to take part in the confederation's competitions and conferences.

…

(j) exceptionally to allow, with FIFA's consent, an association from another confederation (or clubs belonging to that association) to participate in a competition that it is organising;

(k) with the mutual cooperation of FIFA, to take any action considered necessary to develop the game of football on the continent concerned, such as arranging development programmes, courses, conferences, etc.;

…'

5. Article 67(1) of the FIFA Statutes states:

'FIFA, its member associations and the confederations are the original owners of all of the rights emanating from competitions and other events coming under their respective jurisdiction, without any restrictions as to content, time, place and law. …'

6. Article 68(1) of the FIFA Statutes provides:

'FIFA, its member associations and the confederations are exclusively responsible for authorising the distribution of image and sound and other data carriers of football matches and events coming under their respective jurisdiction, without any restrictions as to content, time, place and technical and legal aspects.'

7. Article 71 of the FIFA Statutes states:

'1. The Council shall be responsible for issuing regulations for organising international matches and competitions between representative teams and between leagues, club and/or scratch teams. No such match or competition shall take place without the prior permission of FIFA, the confederations and/or the member associations in accordance with the Regulations Governing International Matches.

2. The Council may issue further provisions for such matches and competitions.

3. The Council shall determine any criteria for authorising line-ups that are not covered by the Regulations Governing International Matches.

4. Notwithstanding the authorisation competences as set forth in the Regulations Governing International Matches, FIFA may take the final decision on the authorisation of any international match or competition.'

8. Article 72 of the FIFA Statutes reads as follows:

'1. Players and teams affiliated to member associations or provisional members of the confederations may not play matches or make sporting contacts with players or teams that are not affiliated to member associations or provisional members of the confederations without the approval of FIFA.

2. Member associations and their clubs may not play on the territory of another member association without the latter's approval.'

9. Article 73 of the FIFA Statutes prohibits associations, leagues or clubs that are affiliated to a member association from joining another member association or taking part in competitions on that member association's territory, save under exceptional circumstances with the express approval of FIFA and of the respective confederation(s).

B. Rules and regulations adopted by UEFA

10. Like the FIFA Statutes, Articles 49 to 51 of the UEFA Statutes grant UEFA a monopoly as regards the organisation of international competitions in Europe and the ability to prohibit such competitions from being organised without its prior approval. More specifically, those articles read as follows:

'Article 49 – Competitions

1. UEFA shall have the sole jurisdiction to organise or abolish international competitions in Europe in which Member Associations and/or their clubs participate. FIFA competitions shall not be affected by this provision.

…

3. International matches, competitions or tournaments which are not organised by UEFA but are played on UEFA's territory shall require the prior approval of FIFA and/or UEFA and/or the relevant Member Associations in accordance with the FIFA Regulations Governing International Matches and any additional implementing rules adopted by the UEFA Executive Committee.

Article 50 – Competition Regulations

1. The Executive Committee shall draw up regulations governing the conditions of participation in and the staging of UEFA competitions. These regulations shall set out a clear and transparent bidding procedure for all UEFA competitions, including competition finals.

…

2. It shall be a condition of entry into competition that each Member Association and/or club affiliated to a Member Association agrees to comply with the Statutes, and regulations and decisions of competent Organs made under them.

3. The admission to a UEFA competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures.

Article 51 – Prohibited Relations

1. No combinations or alliances between UEFA Member Associations or between leagues or clubs affiliated, directly or indirectly, to different UEFA Member Associations may be formed without the permission of UEFA.

2. A Member Association, or its affiliated leagues and clubs, may neither play nor organise matches outside its own territory without the permission of the relevant Member Associations.'

III. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

11. FIFA, a Swiss body governed by private law, is football's world governing body; its objectives are, primarily, to promote football and to organise its own international competitions. Composed of national federations, it also recognises the existence of regional football confederations, including UEFA, which are not however members of FIFA. Professional football clubs are, for their part, indirect members of FIFA, in so far as they may be the subject of disciplinary measures ordered by FIFA. Federations, confederations and clubs must comply with the rules and regulations adopted by FIFA.

12. UEFA is also a Swiss body governed by private law and is football's governing body at European level. Its main role is to monitor and control the development of football in all its forms within Europe. National leagues and European clubs are indirect members of UEFA, which organises international competitions of those clubs and of national teams.

13. In accordance with their respective statutes, FIFA and UEFA hold a monopoly as regards the authorisation and the organisation of international professional football competitions in Europe.

14. ESLC is a company governed by Spanish law which plans to organise the first annual European football competition to exist independently of UEFA, called the ESL. The company's shareholders are prestigious European football clubs. Its business model is based on a 'semi-open' system of participation involving, on the one hand, 12 to 15 professional football clubs with the status of permanent members and, on the other, an as-yet-undefined number of professional football clubs selected according to a pre-determined process with the status of 'qualified clubs'.

15. The conditions precedent to which that project is subject include the recognition of the ESL by FIFA and/or UEFA as a new competition compatible with their statutes or, alternatively, the obtaining of legal protection from the courts and/or administrative bodies to enable the founding clubs to participate in the ESL whilst continuing to participate in their respective national leagues, competitions and tournaments.

16. Following the announcement of the creation of the ESL, FIFA and UEFA issued a joint statement on 21 January 2021, setting out their refusal to recognise that new body and warning that any player or club taking part in that new competition would be expelled from competitions organised by FIFA and its confederations. By a further press release of 18 April 2021, that statement was reaffirmed by UEFA and other national federations, reiterating the possibility of disciplinary measures being adopted against participants in the ESL. Those disciplinary measures would entail, inter alia, the exclusion of the clubs and players participating in the ESL from certain major European and world competitions.

17. In proceedings brought before it by ESLC, which considers that the conduct of FIFA and UEFA must be regarded as 'anticompetitive' and incompatible with Articles 101 and 102 TFEU, the Juzgado de lo Mercantil n.º 17 de Madrid (Commercial Court, Madrid), the referring court, on 19 and 20 April 2021, successively held that ESLC's action was admissible and, without an *inter partes* hearing, ordered a series of protective measures. The purpose of those measures was, in essence, to prevent any conduct on the part of FIFA or UEFA intended to thwart or hamper the preparations for and the establishment of the ESL and the participation of clubs and players, inter alia, through disciplinary measures or sanctions involving exclusion from the competitions organised by UEFA and FIFA.

18. In support of its request for a preliminary ruling, the referring court, having defined the economic activities and the substantive and geographic markets concerned – namely the organisation and the marketing of international football competitions in Europe and the exploitation of the various associated sports rights – took the view that FIFA and UEFA hold, on each of those markets, a monopoly or, at the very least, a dominant position. In that context, the referring court has doubts as to whether certain provisions of the FIFA and UEFA Statutes and the threats of sanctions or the warnings issued by those federations comply with EU law in the light, first, of the prohibition of any abuse of a dominant position laid down in Article 102 TFEU, secondly, of the prohibition of anticompetitive agreements, decisions and concerted practices provided for in Article 101 TFEU and, thirdly, of the various fundamental freedoms guaranteed by the FEU Treaty, since they could be used to undermine any potential rival private initiative in the field of football competitions.

19. In those circumstances, the Juzgado de lo Mercantil n.º 17 de Madrid (Commercial Court, Madrid) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 102 TFEU be interpreted as meaning that that article prohibits the abuse of a dominant position consisting of the stipulation by FIFA and UEFA in their statutes (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any similar article contained in the statutes of the member associations and national leagues) that the prior approval of those entities, which have conferred on themselves the exclusive power to organise or give permission for international club competitions in Europe, is required in order for a third-part entity to set up a new pan-European club competition like the [ESL], in particular where no regulated procedure, based on objective, transparent and non-discriminatory criteria, exists, and taking into account the possible conflict of interests affecting FIFA and UEFA?

(2) Must Article 101 TFEU be interpreted as meaning that that article prohibits FIFA and UEFA from requiring in their statutes (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any similar article contained in the statutes of the member associations and national leagues) the prior approval of those entities, which have conferred on themselves the exclusive power to organise or give permission for international competitions in Europe, in order for a third-party entity to create a new pan-European club competition like the [ESL], in particular where no regulated procedure, based on objective, transparent and non-discriminatory criteria, exists, and taking into account the possible conflict of interests affecting FIFA and UEFA?

(3) Must Articles 101 and/or 102 [TFEU] be interpreted as meaning that those articles prohibit conduct by FIFA, UEFA, their member associations and/or national leagues which consists of the threat to adopt sanctions against clubs participating in the [ESL] and/or their players, owing to the deterrent effect that those sanctions may create? If sanctions are adopted involving exclusion from competitions or a ban on participating in national team matches, would those sanctions, if they were not based on objective, transparent and non-discriminatory criteria, constitute an infringement of Articles 101 and/or 102 [TFEU]?

(4) Must Articles 101 and/or 102 TFEU be interpreted as meaning that the provisions of Articles 67 and 68 of the FIFA Statutes are incompatible with those articles in so far as they identify UEFA and its national member associations as “original owners of all of the rights emanating from competitions … coming under their respective jurisdiction”, thereby depriving participating clubs and any organiser of an alternative competition of the original ownership of those rights and arrogating to themselves sole responsibility for the marketing of those rights?

(5) If FIFA and UEFA, as entities which have conferred on themselves the exclusive power to organise and give permission for international club football competitions in Europe, were to prohibit or prevent the development of the [ESL] on the basis of the abovementioned provisions of their statutes, would Article 101 TFEU have to be interpreted as meaning that those restrictions on competition qualify for the exception laid down therein, regard being had to the fact that production is substantially limited, the appearance on the market of products other than those offered by FIFA/UEFA is impeded, and innovation is restricted, since other formats and types are precluded, thereby eliminating potential competition on the market and limiting consumer choice? Would that restriction be covered by an objective justification which would permit the view that there is no abuse of a dominant position for the purposes of Article 102 TFEU?

(6) Must Articles 45, 49, 56 and/or 63 TFEU be interpreted as meaning that, by requiring the prior approval of FIFA and UEFA for the establishment, by an economic operator of a Member State, of a pan-European club competition like the [ESL], a provision of the kind contained in the statutes of FIFA and UEFA (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any other similar article contained in the statutes of member associations [and] national leagues) constitutes a restriction contrary to one or more of the fundamental freedoms recognised in those articles?’

20. Written observations were submitted to the Court, in their capacity as parties to the main proceedings, by ESLC, A22 Sports Management SL (‘A22’), (4) FIFA, UEFA and the Liga Nacional de Fútbol Profesional (LNFP). (5) Written observations were also filed on some or all of the questions referred for a preliminary ruling by the Spanish, Czech and Danish Governments, by Ireland, by the French, Croatian, Italian, Latvian, Luxembourg, Hungarian, Polish, Portuguese, Romanian, Slovak, Swedish and Icelandic Governments and by the European Commission. Oral argument was presented, at the hearing held on 11 and 12 July 2022, by ESLC, A22, FIFA, UEFA, the LNFP and the Real Federación Española de Fútbol (RFEF), (6) by the Spanish, Czech, Danish, German and Estonian Governments, by Ireland, by the Greek, French, Croatian, Italian, Cypriot, Latvian, Hungarian, Maltese, Austrian, Polish, Portuguese, Romanian, Slovenian, Swedish and Norwegian Governments and by the Commission.

IV. Analysis

A. Admissibility of the questions referred for a preliminary ruling

21. The admissibility of the request for a preliminary ruling has been called into question in three respects by UEFA and the LFNP and, in whole or in part, by certain interested parties, namely Ireland and the French, Hungarian, Romanian and Slovak Governments.

22. In the first place, with regard to the argument alleging that the dispute in the main proceedings is hypothetical in nature, (7) it appears to me to be appropriate to note that the dispute has its origin in FIFA’s and UEFA’s publicly demonstrated opposition to the project announced by ESLC. The fact that that project may have been in the development stage when it was announced and that, since then, it has come to a halt in no way changes that opposition, which was based on some of the rules of those two federations, the compatibility of which with competition rules the referring court questions. In addition, there is nothing to show that ESLC has ceased to exist or that it has withdrawn the action which triggered the dispute in the main proceedings. Accordingly, the dispute appears still to exist and persist, as does the relevance of the associated questions of economic law.

23. In the second place, as regards the content of the request for a preliminary ruling, which – it is alleged – does not comply with the requirements relating to the regulatory and factual framework within which the referring court asks about the interpretation of EU law, (8) although that request does not address all the questions of law raised by the relationships between sporting activities, their regulation and EU economic law, it must be observed that the questions submitted by the referring court are presented in a detailed and well-argued manner and are supported by specific references to the points of fact and of law which appeared relevant to it. The fact that the request contains statements and assessments the accuracy of which is a matter of debate is not, in itself, capable of rendering the request entirely or partially inadmissible.

24. In the third and final place, the request for a preliminary ruling is said to be vitiated by procedural irregularities connected in particular with the protective nature of the proceedings and the absence of an *inter partes* hearing. (9) However, the fact that the matter may have been referred to the Court in the preliminary context of proceedings of a protective or preventive nature does not render that request inadmissible, since the referring court has set out the reasons why the request was necessary to enable it to give its judgment and complied with the other requirements, both formal and

substantive, in its order for reference.

B. Preliminary observations

25. By its questions submitted for a preliminary ruling, the referring court asks the Court to give a ruling, in essence, on the compatibility with the rules of competition and, secondarily, with the fundamental economic freedoms guaranteed by the FEU Treaty of a series of rules which have been adopted by FIFA and UEFA, in their capacity as federations governing all aspects of football at the world and European levels, and concern the organisation and the marketing of football competitions in Europe.

26. Before considering the questions referred for a preliminary ruling, I consider it worthwhile to make some observations on the relationship between sport and EU law.

1. Article 165 TFEU and the 'European Sports Model'

27. Whilst sport was not initially covered by the founding treaties of the European Union, the confirmation of its special nature and its insertion into Article 165 TFEU by the Treaty of Lisbon marked the culmination of an evolution encouraged and promoted by the EU institutions.

28. Article 165 TFEU took note of the considerable social importance of sporting activities in the European Union, (10) providing not only that 'the Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function' (paragraph 1), but also that the objectives of EU action are to be aimed at 'developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen' (paragraph 2).

29. Furthermore, the wording of Article 165 TFEU crystallised the conclusions of a series of initiatives which had been taken by the EU institutions, from the 1990s onwards, following the judgments delivered by the Court – and in particular the judgment in *Bosman* – (11) in the context of establishing a European sports policy. Thus, the groundwork for the recognition of the specific nature of sport was laid by a joint declaration on sport annexed to the Treaty of Amsterdam, (12) followed by the Commission report (13) which recognised the specific nature of sport in particular in the context of the application of competition law. (14) On the basis of that report, the Nice European Council issued a declaration marking a further step in the recognition of the specific nature of sport by requiring the Community, in its action under the various Treaty provisions, to take account of the social, educational and cultural functions inherent in sport, in order to preserve its social role. (15) That initiative was followed, in the course of 2007, by the Commission's White Paper on Sport, (16) the final stage before the insertion of Article 165 TFEU into the Treaty of Lisbon in 2009.

30. Article 165 TFEU gives expression, moreover, to the 'constitutional' recognition of the 'European Sports Model', which is characterised by a series of elements applicable to a number of sporting disciplines on the European continent, including football. That model is based, first, on *a pyramid structure* with, at its base, amateur sport and, at its summit, professional sport. Secondly, its primary objectives include the promotion of *open competitions*, which are accessible to all by virtue of a transparent system in which promotion and relegation maintain a competitive balance and give priority to sporting merit, which is also a key feature of the model. That model is, lastly, based on *a financial solidarity regime*, which allows the revenue generated through events and activities at the elite level to be redistributed and reinvested at the lower levels of the sport.

31. Sports federations play a key role in the 'European Sports Model', in particular from an organisational perspective, with a view to ensuring compliance with, and the uniform application of, the rules governing the sporting disciplines in question. That role has, moreover, been recognised by the Court, which has held that it falls to the sports federations to lay down appropriate rules for the organisation of a sporting discipline and that the delegation of such a task to sports federations is, in principle, justified by the fact that those federations have the necessary knowledge and experience to perform that task. (17) Historically organised in accordance with the 'one-place' principle (*Ein-Platz-Prinzip*), under which the federations exercise, within their geographical jurisdiction, a monopoly over the governance and the organisation of the sport, that model is now being called into question.

32. It should also be observed that the 'European Sports Model' is not static. European sports structures and their mode of governance often evolve under the influence of other models established outside Europe. Given the diversity of European sports structures, it would thus be difficult to define in detail a single and unified model for the organisation of sport in Europe. There are other models of governance for individual and team sports which differ in certain respects, in view of their technical characteristics and their organisation, from the model upon which European football is currently based. (18) However, the emergence of various sports models in Europe cannot call into question the principles set out in Article 165 TFEU or require the adoption of reciprocal arrangements intended to 'standardise' the various models that coexist, let alone to remove 'structures based on voluntary activity'.

2. The challenge to the 'European Sports Model'

33. As stated in point 30 of this Opinion, the 'European Sports Model' is characterised in particular by the openness of its competitions, participation in which is based on 'sporting merit' through a promotion and relegation system. It thus differs from the North American model, which is primarily based on 'closed' competitions or leagues, in which the participation of clubs, which are franchised businesses, is guaranteed, pre-determined and based on an entrance fee. (19) It could be observed that it is precisely in response to the other models which exist that the EU legislature decided to incorporate the concept of the 'European Sports Model' into the Treaty in order to draw a clear distinction between it and those other models and to guarantee its protection through the adoption of Article 165 TFEU.

34. If that were not the case, that article would have no purpose. It is clear that it was not introduced simply to protect amateur sport. After all, an institutional guarantee is not required, particularly at the level of the FEU Treaty, in order to allow any person to practice a sport on an individual basis or to set up amateur sports associations. The article was inserted specifically because sport is, at the same time, an area of significant economic activity. The rationale behind the introduction of Article 165 TFEU is therefore to emphasise the special social character of that economic activity, which may justify a difference in treatment in certain respects. It should be noted, more specifically, that the terminology purposefully used in the wording of that article (including, in particular, the expressions 'structures based on voluntary activity', 'social function', 'European dimension in sport', 'fairness and openness in sporting competitions' and 'cooperation between bodies responsible for sport') illustrates the special nature of that model, which the EU legislature seeks to protect.

35. Article 165 TFEU cannot, quite clearly, be interpreted in isolation, disregarding the requirements laid down in Articles 101 and 102 TFEU,

which are also applicable in the field of sport (in particular where the activities in question have an economic dimension). The same is also true as regards the application of provisions of competition law in that field. Nevertheless, the application of the provisions of the FEU Treaty to the sporting field cannot be limited solely to Articles 101 and 102 TFEU, since Article 165 TFEU can also be used as a standard in the interpretation and the application of the abovementioned provisions of competition law. Accordingly, within its field, Article 165 TFEU is a specific provision as compared with the general provisions of Articles 101 and 102 TFEU, which apply to any economic activity. No provision of the FEU Treaty must, *ab initio*, be applied exclusively or predominantly vis-à-vis the other provisions; the relationships between provisions are, in fact, governed by the principle of speciality. Furthermore, Article 165 TFEU is, by its very nature, a 'horizontal' provision, inasmuch as it must be taken into consideration when implementing other EU policies. Moreover, in accordance with Article 7 TFEU, the various policies of the European Union must be implemented consistently, taking into account all of the objectives which the European Union seeks to protect.

36. In that regard, I note that the influence of the 'alternative models' referred to in point 33 of this Opinion and the liberalisation of the sports economy have led to the rise of movements challenging the monopoly exercised by some European sports federations, in particular in relation to the organisation and the commercial exploitation of the most lucrative competitions. From an economic perspective, the main objective of those 'separatist' movements, which are often initiated by the clubs affiliated to those sports federations, has been to maximise the financial revenue from the commercial exploitation of those competitions – which were hitherto placed under the aegis of those federations – through changes to their structure and their organisational model. In European football, there is nothing new about the desire to create a closed (or 'semi-open') league or competition, as is clear from the attempts to establish rival competitions to those organised by UEFA made in the 1990s and 2000s, without any concrete outcomes. (20)

37. From a legal standpoint, the challenges to the governance model of sports federations have often been built upon competition law. Thus, the focus of the objections raised before national competition authorities, the Commission and national courts and tribunals has mainly been the dual role of regulator and economic stakeholder held by the sports federations, the monopolistic structure of certain markets for the organisation of sporting competitions and the marketing of the associated rights, and those federations' refusal to permit the organisation of independent competitions and, therefore, to allow new competitors to enter the markets in question.

38. Similarly, in the present case, ESLC's challenge to the model for the organisation of football competitions and their marketing by UEFA and FIFA has been based, primarily, on competition law.

3. Account taken of the specific nature of sport and of the 'European Sports Model' in the competition analysis

39. It follows from long-established and settled case-law of the Court that, notwithstanding the fact that its specific nature has been underlined, sport is subject to EU law, and in particular to the provisions of the Treaty related to the economic law of the European Union, to the extent that it constitutes an economic activity. (21)

40. With regard, specifically, to EU competition law, the compatibility of the rules issued by sports federations and the conduct of such federations on the market cannot be assessed in the abstract, without consideration being given to all the elements that form part of the relevant legal and factual context.

41. The particular features of sporting activities set them apart from other economic sectors. Sport is characterised by a high degree of interdependence, since clubs are dependent on one another in order to be able to organise themselves and to develop in the context of sporting competitions. It follows that a degree of equality and a certain competitive balance are necessary, characteristics which distinguish sport from other sectors, where competition between economic operators ultimately leads to inefficient companies being driven out of the market.

42. Therefore, whilst the specific characteristics of sport cannot be relied on to exclude sporting activities from the scope of the EU and FEU Treaties, the references to that specific nature and to the social and educational function of sport, which appear in Article 165 TFEU, may be relevant for the purposes, inter alia, of analysing, in the field of sport, any objective justification for restrictions on competition or on the fundamental freedoms. (22)

4. The obligations incumbent on a sports federation with a power of approval and to prevent conflicts of interests

43. In view of the role traditionally conferred on them, sports federations are exposed to a potential conflict of interests given that, on the one hand, they hold a regulatory power and, on the other hand and at the same time, they perform an economic activity.

44. The issue of a potential conflict of interests arising from the fact that UEFA and FIFA not only carry on an economic activity consisting in the organisation and the marketing of competitions but also hold a regulatory power is expressly mentioned in the first and second questions referred for a preliminary ruling. Before analysing the contested provisions in the light of Articles 101 and 102 TFEU, certain clarifications should therefore be made regarding the obligations incumbent on sports federations such as UEFA and FIFA in the exercise of their powers and the measures that must be adopted to prevent conflicts of interests.

45. In that regard the Court, in two judgments, one concerning the regulation of a sporting discipline and the other the regulation of a liberal profession, laid the basis for an analytical framework 'devoted' to the question of the cumulation, under one roof, of a regulatory power on the one hand and an economic activity on the other.

46. More specifically, first, in the judgment in *MOTOE*, (23) the Court held that, where a rule confers on a legal person, which itself organises and commercially exploits events, the power to designate the persons authorised to organise those events, and to set the conditions in which those events are organised, it places that entity at an obvious advantage over its competitors. Such a right may therefore lead the undertaking which possesses it to deny other operators access to the relevant market. That regulatory power should therefore be exercised subject to restrictions, obligations or review, so as to prevent the legal person concerned from being able to distort competition by favouring events which it organises or those in whose organisation it participates. Secondly, that case-law was applied by analogy in another judgment of the Court, arising from a case concerning the interpretation of Article 101 TFEU with regard to the rules adopted by an association of undertakings which was both an operator and the regulator of the relevant market, in that instance the market for the compulsory training for chartered accountants. (24)

47. In the present case, it is not in dispute that UEFA performs a dual role: on the one hand, regulatory, by adopting rules relating to professional football, and, on the other, economic, by organising sporting competitions. Since it also has the power to authorise competitions organised by third

parties, that situation may give rise to a conflict of interests, which means that that federation is subject to certain obligations when performing its regulatory duties so as not to distort competition.

48. It should, however, be observed, at the outset, that it is clear from the case-law of the Court cited in point 46 of this Opinion that the mere fact that the same entity performs the duties both of regulator and of organiser of sporting competitions does not entail, in itself, an infringement of EU competition law. (25) Furthermore, it follows from that case-law that the main obligation on a sports federation in UEFA's position is to ensure that third parties are not unduly denied access to the market to the point that competition on that market is thereby distorted.

49. It follows that sports federations may, subject to certain conditions, refuse third parties access to the market, without this constituting an infringement of Articles 101 and 102 TFEU, provided that that refusal is justified by legitimate objectives and that the steps taken by those federations are proportionate to those objectives.

C. The questions referred

50. The present case concerns a series of rules adopted by FIFA and UEFA, in their capacity as federations, with the purpose of 'regulating' the various aspects of world and European football. The rules fall into three categories:

– a system of prior approval, by FIFA and UEFA, of any international football competition, and therefore, inter alia, those which third-party entities (unaffiliated to those federations) propose to organise and market;

– clauses by which those federations require their direct and indirect members (namely, respectively, the national football associations, football leagues and professional football clubs), and, ultimately, players, to take part only in international competitions organised by them or which they have authorised a third-party entity to organise, on pain of exclusion;

– provisions under which FIFA (or, in certain cases, FIFA and the regional confederations, including UEFA) is (or are) the 'original' owner(s) of all sports rights related to the international football competitions coming under its (their) jurisdiction and exclusively competent to exploit those rights and to authorise the distribution (in all its forms) of those competitions.

51. By its first two questions submitted for a preliminary ruling, the referring court essentially asks about the compatibility of the requirement for the prior approval of FIFA and UEFA with, respectively, Articles 101 and 102 TFEU.

52. The third question referred for a preliminary ruling concerns the discretion enjoyed by those federations to impose sanctions on their members and the manner in which that risk was publicly invoked by FIFA and UEFA, following the announcement of the ESL's creation.

53. On account of a more developed line of case-law relating to the decisions of sports associations under Article 101 TFEU, I will begin by examining, in the first place, the second and third questions referred for a preliminary ruling (as far as concerns analysis of the sanctions from the perspective of Article 101 TFEU), before turning, in the second place, to the first question referred for a preliminary ruling and then, in the third place, to the fifth question referred for a preliminary ruling, which concerns the existence of possible justifications if a restriction of competition under Articles 101 and 102 TFEU were established.

54. Furthermore, I consider that the question of the legality for the purpose of competition law of the conduct to which the third question referred for a preliminary ruling relates is inherently linked to that of the rules that are the subject of the first two questions referred. Thus, since the purpose of the sanctions is to ensure that the system of prior approval and the rules of participation are effective, they should be analysed together.

55. This Opinion will go on to address the question of the compatibility with Articles 101 and 102 TFEU of the rules laid down by UEFA and FIFA regarding the exploitation of the commercial rights arising from football competitions (fourth question referred for a preliminary ruling) and the compatibility of the pre-approval rules with the provisions of the FEU Treaty on the fundamental freedoms (sixth question referred for a preliminary ruling).

1. The second question referred for a preliminary ruling

56. By its second question and the first part of its third question, the referring court asks, in essence, whether Article 101 TFEU must be interpreted as precluding the provisions of the FIFA and UEFA Statutes concerning the system of prior approval and the sanctions envisaged by those federations.

57. As a preliminary point, it must be recalled that, in order to be caught by the prohibition laid down in Article 101(1) TFEU, an agreement, a decision by an association of undertakings or a concerted practice must be capable of affecting trade between Member States and have as its 'object or effect' the prevention, restriction or distortion of competition within the internal market. (26)

58. With regard, in the first place, to the existence of a decision made by an association of undertakings, it follows from well-established case-law that the concept of an undertaking includes, in the context of competition law, any entity engaged in an economic activity, irrespective of its legal form and the way in which it is financed. (27) In that regard, Article 101(1) TFEU covers not only direct methods of coordinating conduct between undertakings, but also institutionalised forms of cooperation, that is to say, situations in which the economic operators operate through a collective structure or a common body. (28)

59. Here, it is established that FIFA's and UEFA's members are national associations, which are groupings of clubs for which the practice of football is an economic activity and which are therefore undertakings within the meaning of Article 101 TFEU. (29) Since the national associations are associations of undertakings and also, on account of the economic activities in which they are engaged, undertakings, FIFA and UEFA, associations which are groupings of the national associations, are also associations of undertakings (indeed even 'associations of associations of undertakings') within the meaning of Article 101 TFEU. Furthermore, the statutes adopted by such entities give expression to the intention of FIFA and of UEFA to coordinate the conduct of their members as regards, inter alia, their participation in international football competitions. (30) The provisions of the statutes of an international sports federation, such as the provisions at issue in the main proceedings, can therefore be regarded as 'decisions by associations of undertakings' within the meaning of Article 101(1) TFEU.

60. In the second place, in order for EU competition rules to apply to a decision by an association of undertakings, that decision must be capable of

affecting trade between Member States. (31) In my view, such an effect could be identified without any great difficulty in the present case.

61. It must be noted, in the third place, that, in order to be caught by the prohibition laid down in Article 101(1) TFEU, an agreement must have as its 'object or effect' the restriction of competition. In that regard, it follows from settled case-law that the alternative nature of that requirement, as shown by the conjunction 'or', leads, first of all, to the need to consider the precise object of the agreement. (32)

62. The concept of 'restriction by object' must be interpreted strictly and can be applied only to some concerted practices between undertakings which reveal, in themselves and having regard to the content of their provisions, their objectives, and the economic and legal context of which they form part, a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects, since some forms of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition. (33) When determining that context, it is necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question. (34)

(a) Does the prior approval requirement constitute a restriction of competition by object?

63. I would point out, in the first place, that it is apparent from the content of the rules at issue in the main proceedings that the organisation of any football competition in Europe must be subject to the prior approval of UEFA, which, moreover, has exclusive competence for the organisation of such competitions. That system of prior approval goes hand in hand with an obligation – on the part of the clubs and players affiliated to UEFA and FIFA – to participate in the competitions organised by those federations and with a prohibition on taking part in competitions not authorised by them, on pain of sanctions involving exclusion.

64. It should be stated, in view of the foregoing description, that the system established by UEFA is based on a series of provisions that can be equated with non-competition and exclusivity clauses, accompanied by sanctions intended to ensure that those clauses are effective.

65. However, it must be observed that, first, such provisions are not among the types of agreements or the forms of conduct that can be regarded, by their very nature and in the light of the experience gained, as being harmful to the proper functioning of normal competition without examining their effects. (35)

66. Secondly, the very existence of a pre-approval mechanism that allows third-party organisers to request access to the market concerned – regardless of the discretion enjoyed by UEFA to refuse such authorisation – should be enough to raise questions as to the sufficiently harmful nature of those rules which is required by case-law as a criterion for a finding of a restriction by object. The question whether the mechanism in place is in fact sufficient to guarantee effective competition on the market concerned or whether it restricts competition can be determined only on the basis of an analysis of the anticompetitive effects.

67. With regard, in the second place, to the objectives pursued by the UEFA rules, it is settled case-law that the fact that UEFA and FIFA may pursue legitimate objectives related to the specific nature of sport cannot, on its own, be a factor which allows the rules laid down to escape classification as a 'restriction by object' if it is established that another objective pursued by them may be regarded as having an object restrictive of competition. (36)

68. However, even if the objectives pursued by UEFA are not expressly identifiable or they are not clear from the content of the UEFA rules, as ESLC and the Commission argue, that fact cannot, on its own, justify a finding of an anticompetitive object.

69. In the third place, it is settled case-law that the analysis of the anticompetitive object of a measure must not be restricted to the examination in isolation of the content and the objective of the rules examined, rather it is also necessary to take into account the legal and economic context of which those rules form part. (37)

70. The following factors appear to me to be particularly relevant in the context of that analysis.

71. First of all, the legal and economic context of which those rules form part is characterised by the cumulation of a regulatory power with the exercise of an economic activity, which places UEFA in a special position that imposes on it certain obligations in order to avoid a conflict of interests. (38)

72. There is no doubt, in that regard, that UEFA has a discretion stemming in particular from its special position on the market concerned as football's governing body in Europe. While it is therefore incumbent on UEFA to structure the prior approval procedure so as to avoid favouring its own competitions by unjustifiably refusing events submitted for approval and proposed by third parties, the fact remains that only a specific analysis of the exercise of the discretion held by UEFA could establish whether its use of that discretion has been discriminatory and inappropriate in order to demonstrate anticompetitive effects.

73. Even if the prior approval scheme established by UEFA is not governed by a procedure subject to approval criteria that are clearly defined, transparent, non-discriminatory and reviewable, within the meaning of the case-law of the Court deriving from the judgments in *MOTOE* and in *OTOC*, as the referring court seems to suggest, it is clear from that case-law that the lack of such criteria cannot automatically entail classification as a 'restriction of competition by object' but rather constitutes an indication of restrictive effects which must, however, be confirmed on the basis of an in-depth analysis. (39)

74. Furthermore, a restriction of competition could, in principle, be established (with the necessary degree of certainty) only in so far as prior approval were in fact to prove to be objectively necessary for the creation of an alternative competition, like the ESL. However, it would appear, in the present case, that, from a (purely) legal perspective, such approval is not essential, and therefore any independent competition, outside the UEFA and FIFA ecosystem, can be created freely and without UEFA's intervention.

75. Unlike the situation at issue in the case which gave rise to the judgment in *MOTOE*, neither FIFA nor UEFA is a public entity or has any special or exclusive right which would mean that an undertaking planning to organise an international or European football competition would absolutely have to obtain the approval of one or other of those bodies. In addition, that undertaking would not be required by any provision of public law to comply with the rules laid down by those entities, by contrast to the situation at issue in the case which gave rise to the judgment in *OTOC*.

76. Thus, there would be nothing, in principle, to prevent the clubs forming the ESL from following the example of other sporting disciplines and

from creating their own competition outside the framework defined by UEFA. However, in the present instance, UEFA's prior approval scheme appears to constitute a barrier to the creation of the ESL, primarily because the clubs behind that project also wish to remain affiliated to UEFA and benefit from the advantages arising from such affiliation. It should be noted, in this regard, that measures which seek to tackle that phenomenon of 'dual membership', such as non-competition or exclusivity clauses, do not have the object of restricting competition according to the case-law of the Court. (40)

77. Finally, the answer to the question whether, from a practical point of view, such an initiative could in fact be realised in view of other possible obstacles, such as, for example, the system of sanctions to which UEFA-affiliated clubs and players would expose themselves (and the consequences that such a decision might have on the financial and sporting plans of the parties involved), cannot be provided on the basis of an examination of the rules in question in the abstract, but only as part of a detailed examination of the actual effects of applying those rules. Furthermore, those sanctions would have a restrictive effect only in so far as the clubs concerned wish to remain affiliated to UEFA. (41)

78. In the light of the foregoing considerations, it is my view that, even if the rules at issue in the main proceedings are liable to have the effect of restricting the access of UEFA's competitors to the market for the organisation of football competitions in Europe, such a fact, if established, does not manifestly mean that those rules have the object of restricting competition within the meaning of Article 101(1) TFEU.

(b) Does the prior approval requirement constitute a restriction of competition by effect?

79. It follows from settled case-law that, where a restriction by object is not clearly established, as appears to me to be the case here, a complete analysis of its effects must be carried out for the purposes of Article 101(1) TFEU. (42) The goal of such an analysis is to determine what impact on competition the UEFA rules are liable to have on the market for the organisation of football competitions in Europe.

80. In the present case, assessing the impact of the UEFA rules on competition involves, first of all, taking into account all the factors that determine access to the relevant market, for the purposes of assessing whether, on the basis of the procedure established by that federation, there are 'real and concrete possibilities' for a competitor to set up an independent competition. (43)

81. To that end, consideration must be given in particular to the central role played by UEFA as football's governing body on the European continent and to the discretion held by it in that capacity. Similarly, the economic power of the ESL and of the clubs of which it is composed must also be analysed, inter alia to assess whether that competition could be set up independently of UEFA.

82. In that context, it is necessary, in my view, to consider not only the actual impact of the barriers to entry which are capable of arising from the prior approval system established by UEFA but also (and in particular) the potential impact of the sanctions provided for by that federation on the readiness of the necessary clubs and players to form this new competition.

(c) Examination of the disciplinary regime laid down by UEFA in the assessment of an anticompetitive object or effect

83. The severity of the applicable sanctions in the event of breach of the rules laid down by a sports federation and the likelihood of those sanctions being imposed are particularly relevant factors when analysing the content and the objective of a measure adopted by a sports federation, since those sanctions are liable to deter clubs or players from taking part in competitions not authorised by that federation. In the present instance, the disciplinary measures which appear to have been envisaged by UEFA, including threats of sanctions made against participants in the ESL, are liable to close off the market for the organisation of football competitions in Europe to a potential competitor, since that competitor would risk being denied both the participation of the clubs necessary to organise a sporting competition and the access to a 'resource': the players.

84. However, the impact of the sanctions imposed by a sports federation cannot be analysed in the abstract without consideration of the overall context of which the disciplinary measures envisaged by that federation form part. In that regard, a specific assessment must be made of the deterrent effect that the sanctions may have on the clubs (and the players) concerned, and in particular of the possibility that, given their respective positions on the market, the latter decide to disregard the risk of sanctions being imposed on them by creating an independent league (and participating in it). The disciplinary power enjoyed by a sports federation can be exercised only within 'the limits of its jurisdiction', which – in turn – depends on its recognition by the clubs and players affiliated to it that, initially, gave their voluntary agreement to be subject to its rules and, therefore, to its control. However, if those clubs and players decide to 'break away' from that federation by creating and participating in a new independent competition, the risk of sanctions being imposed may no longer have any deterrent effect in their regard.

(d) Application of the ancillary restraints doctrine to the rules at issue

85. To fall outside the scope of Article 101(1) TFEU, the restrictions caused by the UEFA rules at issue must be inherent in the pursuit of legitimate objectives and proportionate to those objectives. It is therefore necessary to examine whether, as FIFA and UEFA and a number of governments essentially claim, notwithstanding the potential effects restrictive of competition, the characteristics of the prior approval scheme and of the system of sanctions enable the legitimate objectives pursued by UEFA to be achieved without going beyond what is necessary for their achievement. (44)

86. Since the application of the ancillary restraints doctrine in the context of sport lies at the heart of the present case, I consider it appropriate to provide certain clarifications about the analytical framework to be adopted.

(1) Preliminary observations on the analytical framework for ancillary restraints

87. The ancillary restraints doctrine was initially developed in the context of 'purely' commercial agreements. (45) An 'ancillary restraint' is thus any restriction directly related to and necessary for the implementation of the main transaction, which is not itself anticompetitive in nature. (46)

88. The case-law on 'commercial ancillary restraints' was subsequently extended to restrictions considered necessary on public interest grounds, thus giving rise to 'regulatory ancillary restraints'. (47) Thus, the Court has acknowledged that, in certain cases, 'non-commercial' objectives may be weighed against a restriction of competition, and that those objectives may be found to take precedence over that restriction, with the result that there is no infringement of Article 101(1) TFEU.

89. Enshrined for the first time in the judgment in *Wouters and Others* which concerned rules of professional conduct for lawyers, (48) that case-law was essentially then applied – other than in the judgment in *Meca-Medina and Majcen* v *Commission* (49) on the activity of a sports federation – in

cases concerning practices or acts emanating from professional bodies and associations. (50) While the case-law on regulatory ancillary restraints remains limited – and even more restricted in the field of sport, the case that gave rise to the judgment in *Meca-Medina and Majcen* v *Commission* being the only precedent for the application of that doctrine in that field – the Court appears to have adopted a restrictive approach when applying it in the cases cited above. Thus, it is not enough to rely on 'vague' or general objectives in the abstract; it is also necessary, if the existence of the objectives is established, that the restraint be objectively necessary for the implementation of the main transaction and proportionate to it; (51) the related analysis must be specific and detailed. (52)

90. That approach seems justified to me since the very concept and the underlying idea of the ancillary restraints doctrine require that a restrictive interpretation be adopted. I would point out that this involves excluding from the scope of Article 101(1) TFEU certain aspects of an agreement, which (actually or potentially) undermine competition, only where they are directly related to and necessary for the implementation of the main transaction, which is not itself anticompetitive. Adopting a broader interpretation would pose a risk of the rules of competition law being circumvented; this would be an unacceptable solution, in particular once it is not in dispute that the activities concerned – notwithstanding the fact that they are activities of sports federations – are economic activities subject to competition law.

91. That said, the analytical framework for regulatory ancillary restraints (including those related to sport) differs from that for purely commercial restraints, since the necessity of the former restraints must be assessed in relation to objectives that are by definition more 'abstract' than those at issue in the context of commercial agreements. I would observe, furthermore, that the particular nature of regulatory ancillary restraints, and in particular of 'sports' restraints, is based on the fact that account is taken of a wide range of (non-commercial) objectives which may vary between rather technical objectives (such as anti-doping rules or certain specific aspects related to the sporting disciplines in question) and other more general objectives such as those recognised under Article 165 TFEU (for example, the principles of integrity and of sporting merit). It must be borne in mind that, *in fine*, that analysis allows the specific characteristics of sport to be 'incorporated' into the competition analysis as part of a tricky exercise in which a balance is struck between the 'commercial' and the 'sporting' aspects of professional football.

92. Having made those clarifications, it is now necessary to examine, first of all, whether the objectives pursued by the contested UEFA (and FIFA) rules are legitimate, before considering, secondly, whether the measures adopted by that federation are inherent in and proportionate to those objectives.

(2) The legitimacy of the objectives pursued by the UEFA rules

93. With regard to the specific prior approval and participation rules at issue in the present case, it cannot be disputed that most of the objectives invoked by UEFA and FIFA stem from the 'European Sports Model' and are therefore expressly covered by primary EU law and, in particular, Article 165 TFEU, with the result that their legitimacy cannot be contested. The same is true, more specifically, of the rules that seek to ensure the openness of competitions, to protect the health and safety of players and to guarantee solidarity and the redistribution of revenue. Those objectives, which are related to the specific nature of sport, include some, moreover, which have also been recognised in the case-law of the Court, such as the objective related to maintaining the integrity of competitions and the balance between clubs in order to preserve a certain degree of equality and uncertainty. (53)

94. However, as has been stated in point 85 of this Opinion, it follows from the case-law of the Court that the pursuit of legitimate objectives cannot, on its own, suffice to exclude the UEFA and FIFA rules from the scope of Article 101(1) TFEU, rather it is necessary to establish, as part of a specific analysis, that the measures adopted to achieve the objectives pursued are necessary and proportionate.

(3) Is the restriction of competition inherent in and proportionate to the objectives pursued?

(i) The inherence of the prior approval scheme

95. It should be recalled, first of all, that the Court has acknowledged that it falls to the sports federations to lay down the rules appropriate to the organisation of a sporting discipline. (54) It follows that, from an organisational perspective, it appears legitimate for a body to be designated as responsible for ensuring compliance with those rules and for that body to have the 'tools' necessary to perform that task.

96. This is particularly the case in the context of a sporting discipline such as football, which is characterised by the involvement of a significant number of stakeholders at various levels of the pyramid in the organisation and the conduct of matches and competitions. The prior approval system therefore appears to constitute an essential governance mechanism for European football in order to ensure, first, the uniform application of the rules of that sport and, secondly and more specifically, compliance with common standards between the various competitions. Such a system also makes it possible to ensure the coordination and the compatibility of football match and competition calendars in Europe.

97. Without an *ex ante* control mechanism, it would be virtually impossible for UEFA or FIFA to ensure that the objectives pursued are achieved. It should be noted, in this regard, that the fact that other sporting disciplines operate on the basis of different 'sports models' under which, for example, the organisation of independent competitions is not subject to the prior approval of the regulatory body of the sport in question does not call into question the inherence of the prior approval scheme established by UEFA (which can, moreover, also be found in other sporting disciplines). As stated in point 32 of this Opinion, the 'European Sports Model' does not exclude the possibility of other sporting disciplines being organised differently.

98. In addition to the purely 'sporting' aspects, such a system could prove, on the other hand, necessary to safeguard the current structure of European football and the objective of solidarity. That objective is closely linked to the redistribution and the reinvestment of the revenue from football competitions organised under the aegis of FIFA and UEFA.

99. It should, however, be made clear in that regard that, in view of the differing views expressed at the hearing as to the intended purpose and the scale of the funding in question, it is for the referring court to ascertain whether the profit redistribution mechanism provided for by UEFA does indeed allow the objectives pursued to be achieved. The same goes for ESLC's proposal (or commitment) to 'cover' the amounts currently paid by UEFA by means of 'solidarity payments' in order to establish whether such a mechanism would in fact enable the mechanism currently established by UEFA to be replaced (without compromising the current structure of European football).

(ii) The inherence of the sanctions

100. The foregoing observations also apply to the disciplinary regime laid down by UEFA and FIFA. After all, any rule adopted by a sports federation

would be meaningless without disciplinary measures intended to ensure its effectiveness and to secure compliance, by their direct members and by independent organisers, with the rules established to regulate football.

(iii) The application of the UEFA pre-approval and sanctions rules in the present case

101. It is not in dispute in the present case that the majority of the clubs participating in the ESL (that is to say, 15 of the 20 participants) would see their participation guaranteed. Furthermore, the ESL's founding clubs intended to continue to take part in the open national competitions organised by the national federations and leagues under the aegis of FIFA and UEFA.

102. However, such a competition would inevitably have a negative impact on the national championships by reducing the appeal of those competitions (and in particular those of the Member States whose clubs are part of the ESL). As things currently stand, the final standing obtained at the end of each season in the national championships plays a decisive role in determining the participants in the top European competition, which (depending on the level of the national league) makes reaching the top spots in those championships particularly attractive. That element could vanish, or at least be significantly weakened, if the results of the national leagues were largely irrelevant to participation at the top level of the pyramid, as appears to be indicated by ESLC's ambitions. The founding clubs would thus be protected, in their national championships, from competition from rival clubs for a place in a high-level European competition. However, such a competition does not appear consistent with the principle governing European football, under which participation in competitions is based on 'sporting merit' and the results achieved on the pitch.

103. Furthermore, a competition with the characteristics of the ESL could have a negative impact on the principle of equal opportunities, which is one component of the fairness of competitions. Thanks to their guaranteed participation in the ESL, certain clubs could book significant additional revenue, whilst continuing at the same time to participate in national competitions in which they would face other clubs which would be unable to generate revenue on a comparable scale, let alone on a permanent and constant basis. The guaranteed revenue from permanent participation at the highest level may be regarded as a significant competitive advantage in financing the acquisition and the remuneration of new players, which is a decisive parameter of competition. The fact that there are currently significant disparities between the clubs taking part in UEFA's competitions would not be capable of justifying an increase in those disparities.

104. In addition, in line with the almost unanimous view of the governments which participated in the procedure in the present case, such a competition would essentially prevent the participation of teams from most European countries, since it would be limited to participants from a restricted number of countries, and this also might well run counter to the 'European' dimension of the sports model enshrined in Article 165 TFEU.

105. Subject to the checks that are for the referring court to carry out in this regard, the ESL model would also risk calling into question the principle of solidarity, since the creation of that competition format could have the effect of undermining the appeal and the profitability of UEFA's competitions (in particular the Champions League) and of thus reducing the revenue from them, a percentage of which is earmarked for grassroots football.

106. In addition to the purely sporting objectives, and even accepting that the reasons for both the rules established by UEFA and FIFA and the threats of sanctions made by them lay in purely economic considerations, such provisions of statutes could, at the very least, prove necessary. It is thus my view that, in the context of the present case, the application of the rules established by UEFA and its conduct vis-à-vis ESLC should be construed as seeking to avoid a 'dual membership' (or even a free riding) scenario which would risk weakening UEFA's (and therefore FIFA's) position on the market.

107. It must be pointed out, in this regard, that ESLC's intention is not to create a 'proper' closed and independent league (a breakaway league) but to set up a rival competition to UEFA's in the most lucrative segment of the market for the organisation of European football competitions, whilst continuing to be part of the UEFA ecosystem by participating in some of those competitions (and in particular in the national championships). In other words, it would appear that ESLC's founding clubs want, on the one hand, to benefit from the rights and advantages linked to membership of UEFA, without however being bound by UEFA's rules and obligations.

108. From the perspective of competition law, an undertaking (or an association of undertakings such as UEFA) cannot be criticised for attempting to protect its own economic interests, in particular in relation to such an 'opportunistic' project that would risk weakening it significantly. (55) It should be recalled, in that regard, that the Court has already found to be appropriate provisions of the statutes of a cooperative association limiting the ability of its members (including through sanctions involving exclusion) to participate in other forms of cooperation which are in competition. (56)

109. Finally, it should be noted that, unlike Case C-124/21 P (*International Skating Union* v *Commission*) which is currently pending before the Court, the present case does not concern UEFA's refusal of the organisation of a competition or its imposition of disciplinary measures in respect of clubs wishing to participate in a third-party competition or event which would not risk influencing the sporting calendar or destabilising the existing structure of the governance and organisational model of the sporting discipline concerned. (57)

110. In the light of the foregoing observations, I take the view that the non-recognition by FIFA and UEFA of an essentially closed competition such as the ESL could be regarded as inherent in the pursuit of certain legitimate objectives (within the meaning of the case-law deriving from 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)), in that the purpose of that non-recognition is to maintain the principles of participation based on sporting results, equal opportunities and solidarity upon which the pyramid structure of European football is founded.

(4) The proportionality of the prior approval scheme and of the sanctions provided for by the UEFA rules

111. In the very wording of its first three questions submitted for a preliminary ruling, the referring court is of the view that neither the prior approval procedure nor the procedure for the imposition of sanctions is governed by 'objective, transparent and non-discriminatory' criteria. It should be noted, in that regard, that while, in the judgments in *MOTOE* and in *OTOC*, the Court did stress the importance of regulating a sports federation's ability to use its power of authorisation and its power to impose sanctions by means of the criteria identified by the referring court so as to prevent any risk of misuse, it simply set out general criteria without defining their specific content.

112. It is therefore my view that the implementation of the criteria established in the case-law of the Court should satisfy the following objectives.

113. As is clearly stated in the Court's case-law deriving from the judgments in *MOTOE* and in *OTOC*, such criteria must, in the first place, be intended

to establish the framework for the discretion enjoyed by a sports federation by restricting the leeway enjoyed by it and, in particular, that federation's ability to have recourse to arbitrary decisions, refusing the organisation of third-party sporting competitions without justification or on illegitimate grounds. (58)

114. In the second place, it must be possible on the basis of those criteria to establish clearly, objectively and in as much detail as possible the conditions for access to the market in order to enable any organiser of third-party competitions not only to have sufficient visibility as to the procedure to be followed and the conditions to be satisfied in order to enter the market in question, but also to expect that, if those conditions are met, the federation in question should not be able, in principle, to refuse it access to the market.

115. As for, in the third place, the clubs and players concerned, they must also be in a position to know in advance the conditions under which they will be able to participate in third-party events and the sanctions incurred should they participate in such events. Beyond their deterrent effect, those sanctions must, moreover, be sufficiently clear, foreseeable and proportionate in order to limit any risk of arbitrary application by the federation in question.

116. Finally, in the fourth place, both the organisers of rival competitions and the clubs and players concerned must have remedies at their disposal that enable them to challenge any refusal decisions or sanctions imposed by the sports federations in question. Furthermore, those remedies must not be restricted to the federation's internal bodies, but must also provide for the possibility of contesting such decisions before an independent body.

117. It is therefore for the referring court to examine, in the light of the principles established in the preceding points of this Opinion, the proportionality of the UEFA (and FIFA) prior approval and sanctions rules. However, that examination cannot be carried out in the abstract and must take account of the factual, legal and economic context in which those rules will be applied, including, therefore, the specific characteristics of the ESL.

(i) The proportionality of the prior approval scheme

118. It should be pointed out at the outset that the principles described in points 114 to 116 of this Opinion can apply only in relation to independent competitions which themselves comply with the objectives recognised as legitimate that are pursued by a sports federation. It follows that, even if the criteria established by UEFA were not to satisfy the criteria of transparency and non-discrimination, this would not mean that a third-party competition running counter to legitimate sporting objectives should be authorised and that UEFA's refusal to authorise such a competition could not be justified.

(ii) The proportionality of the system of sanctions

119. In the judgments in which the Court has found sanctions targeted, first, at sportsmen and sportswomen who have not complied with the federation's rules and, secondly, at members of a professional association to be inherent in the light of the objectives pursued, the Court has taken care to stress the importance of ensuring that the disciplinary measures in question are proportionate. (59)

120. As regards the threats of sanctions made by UEFA, it is important to distinguish between sanctions that may be applied to the clubs and those to which the players of the clubs involved in setting up the ESL appear to be exposed.

121. Thus, imposing sanctions on players who were not parties to the decision to set up the ESL seems disproportionate to me, in particular as regards their participation in national teams. Accordingly, a decision that consists in punishing players who do not appear to have engaged in any misconduct vis-à-vis the UEFA rules and whose involvement in the creation of the ESL does not seem to have been established would indicate a wrongful and excessive application of those rules. Furthermore, depriving the national teams concerned of some of their players would amount to sanctioning them indirectly too, a situation which likewise appears disproportionate.

122. By contrast, the sanctions targeted at football clubs affiliated to UEFA, in the event of participation in an international competition such as the ESL, may appear proportionate given, in particular, the role played by those clubs in the organisation and the creation of a competition which, for the reasons set out in points 102 to 105 of this Opinion, do not appear to comply with the fundamental principles structuring how European football is organised and operates.

123. In the light of the foregoing considerations, I propose that the Court's answer to the second question referred for a preliminary ruling should be that Article 101 TFEU must be interpreted as not precluding Articles 22 and 71 to 73 of the FIFA Statutes and Articles 49 and 51 of the UEFA Statutes which provide that the setting up of a new pan-European interclub football competition is to be subject to a prior approval scheme since, taking into account the characteristics of the planned competition, the restrictive effects arising from that scheme appear inherent in, and proportionate for achieving, the legitimate objectives pursued by UEFA and FIFA which are related to the specific nature of sport.

2. The first question referred for a preliminary ruling

124. By its first question and the second part of its third question, the referring court asks, in essence, whether Article 102 TFEU is to be interpreted as precluding the provisions of the FIFA and UEFA Statutes concerning the prior approval scheme and the system of sanctions.

125. As a preliminary point, it should be recalled that Article 102 TFEU prohibits the abuse of a dominant position within the internal market or in a substantial part of it.

126. The abuse of a dominant position is an objective concept relating to the conduct of a dominant undertaking which, on a market where the degree of competition is already weakened precisely because of the presence of the undertaking concerned, through recourse to methods different from those governing normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition. (60)

127. According to settled case-law, the existence of a dominant position imposes a special responsibility on the entity which holds that position not to allow its behaviour to prevent the development of genuine, undistorted competition on the internal market. (61) The question whether its conduct constitutes an abuse, in a particular case, must be examined objectively and specifically, taking into account all the facts, the characteristics of the market concerned and the conduct at issue, and by weighing the actual or potential exclusionary effects of the conduct against the gains in efficiency capable of neutralising those effects, to the benefit of consumers. (62)

128. However, the existence of a dominant position does not deprive an undertaking placed in that position either of the right to safeguard its own commercial interests, where they are under attack, (63) or of the power, to a reasonable extent, to take the steps that it considers appropriate with a view to protecting them, provided that that conduct does not constitute an abuse of a dominant position. (64)

(a) The existence of a dominant position held by UEFA and FIFA

129. In the light of the explanations provided by the referring court, it should be assumed that the relevant market is the market for the organisation and the commercial exploitation of international competitions between football clubs at European level, and that UEFA holds a dominant position (if not a monopoly) on that market, since it is the sole organiser of all major interclub football competitions at European level.

(b) The abuse of a dominant position by UEFA and FIFA

130. It should be recalled that the performance, by a sports federation, of the regulatory function consisting in the designation of the persons authorised to organise competitions and in the setting of the conditions in which those competitions are organised must be subject to restrictions, obligations or review so as to prevent the legal person concerned from being able to distort competition by favouring events which it organises or those in whose organisation it participates. (65) In that context, the 'special responsibility' borne by FIFA and UEFA, for the purpose of Article 102 TFEU, lies specifically in their obligation to ensure, when examining requests for authorisation of a new competition, that third parties are not *unduly* denied access to the market.

131. Accordingly, the analysis developed regarding the application of the case-law on 'ancillary restraints' in the context of the answer given to the second question referred for a preliminary ruling can be transposed when examining the measures at issue in the present case in the light of Article 102 TFEU.(66)

132. For the sake of completeness, I do however consider it appropriate to examine briefly two issues specific to the application of Article 102 TFEU to the rules established by UEFA and FIFA that were raised by certain parties in their written observations and discussed at the hearing.

(1) The issue of 'preventing conflicts of interests' in the light of Article 102 TFEU

133. ESLC submits that the fact that UEFA grants itself the power to authorise alternative competitions even though there is a conflict of interests constitutes, in itself, an abuse of a dominant position. Thus, in ESLC's view, the only way of resolving this situation is to split up the regulation of the sport, the organisation of competitions and its commercial exploitation.

134. I would point out, in the first place, that the mere fact that a sports federation performs the tasks both of regulator and of organiser of sporting competitions does not entail in itself an infringement of EU competition law. (67) Although a structural separation as advocated by ESLC consisting in entrusting the exercise of the regulatory powers to an independent body with no connection to any undertaking active on the market concerned could eliminate any conflict of interests, it is not the only and necessary solution. It is thus clear from the case-law of the Court recalled in points 45 and 46 of this Opinion that, in order to prevent potential conflicts of interests, a federation can also establish an approval procedure for third-party competitions by identifying pre-defined approval criteria in an objective and non-discriminatory manner.

135. In the second place, requiring a structural separation would effectively prohibit sports federations in the same position as UEFA and FIFA from engaging in any economic activity, a situation which is difficult to reconcile with the fact that, notwithstanding their particular characteristics, they are also undertakings for which, like any other undertaking, the pursuit of economic objectives is inherent in their activity and is not anticompetitive per se.

136. In the third place, a ('forced') separation of the 'regulatory' and the 'commercial' activities carried out by a sports federation would risk falling foul of the 'European Sports Model', in particular in the case of sporting disciplines for which the pyramid structure plays a key role, like football. In the context of such sporting activities, the regulatory and economic functions are linked and interdependent, since the revenue from the commercial exploitation of the competitions organised under the aegis of those federations is redistributed with a view to developing the sport concerned.

(2) Application of the 'essential facilities' doctrine

137. One specific issue raised in the context of analysis of the first question referred for a preliminary ruling is that of the potential relevance, for the purpose of analysing the prior approval and participation rules established by FIFA and UEFA in the light of Article 102 TFEU, of the case-law of the Court on 'essential facilities' deriving from the judgment in *Bronner*. (68)

138. According to the essential facilities doctrine, a dominant undertaking which owns or controls an essential infrastructure may be forced to cooperate with its competitors by giving them access to that infrastructure without any discrimination. Thus, in the judgment in *Bronner*, the Court took the view that, for the refusal by an undertaking in a dominant position to grant access to infrastructure or services to be capable of constituting abuse within the meaning of Article 102 TFEU, that refusal had to be likely to eliminate all competition on the market on the part of the person requesting the service and incapable of being objectively justified, and the service in itself had to be indispensable to carrying on that person's business, inasmuch as there was no actual or potential substitute in existence for that service. (69)

139. For the following reasons, I am of the view that the UEFA and FIFA 'ecosystem' cannot be regarded as an 'essential facility' and that the application of this doctrine in the present case should therefore be rejected.

140. As regards, first, the prior approval requirement, it is clear that such approval is not necessary in order for a third party, ESLC for example, to organise a new football competition. As has been stated in point 75 of this Opinion, there is no legal obstacle capable of preventing the clubs participating in the ESLC initiative from setting up and organising freely their own competition, outside the UEFA and FIFA ecosystem. The approval of those federations is thus required only in so far as the clubs participating in the ESL wish to remain affiliated to UEFA and to continue to participate in the football competitions organised by it.

141. Secondly, the creation of a league such as the ESL does not require reproduction of the existing UEFA infrastructure together with the associated obligations. Nothing requires the organisers of a new independent competition to base their project on an organisational model similar to that of UEFA and of FIFA. Accordingly, as mentioned in points 106 and 107 of this Opinion, the real issue in the present case concerns the possibility that those clubs will have of creating their own league and seeking, at the same time, to continue to participate in the football ecosystem of FIFA and UEFA, as well as

in competitions organised by them. In such a situation, the case-law on essential facilities cannot be relevant.

142. Thirdly, the application of the case-law on essential facilities is justified only if a refusal of access is liable to eliminate, or to make excessively difficult, any competition on the related market, or to prevent the launch of a new product for which there is demand, a situation which, for the reasons set out above, does not obtain here.

143. Fourthly, subject to the observations set out in points 133 to 142 of this Opinion, it is my view that UEFA's refusal may be objectively justified both in sporting terms, having regard to the legitimate objectives pursued by that federation, and economically in order to combat free riding or a 'dual membership' scenario liable to weaken the position of UEFA and FIFA on the market. (70)

144. In the light of the foregoing considerations, I propose that the Court's answer to the first question referred for a preliminary ruling should be that Article 102 TFEU must be interpreted as not precluding Articles 22 and 71 to 73 of the FIFA Statutes and Articles 49 and 51 of the UEFA Statutes which provide that the setting up of a new pan-European interclub football competition is to be subject to a prior approval scheme since, taking into account the characteristics of the planned competition, the restrictive effects arising from that scheme appear inherent in, and proportionate for achieving, the legitimate objectives pursued by UEFA and FIFA which are related to the specific nature of sport.

3. The third question referred for a preliminary ruling

145. Since the question of the legality for the purpose of competition law of the conduct to which the third question referred for a preliminary ruling relates is inherently linked to that of the rules forming the subject of the first two questions referred, those questions have been subject to a joint analysis, as explained in point 54 of this Opinion. More specifically, the analysis of the questions relating to the UEFA and FIFA sanctions is contained in points 83 and 84, 101 to 108, 111 to 117 and 119 to 122 of this Opinion.

146. In the light of the foregoing considerations, I propose that the Court's answer to the third question referred for a preliminary ruling should be that Articles 101 and 102 TFEU must be interpreted as not prohibiting FIFA, UEFA, their member federations or their national leagues from issuing threats of sanctions against clubs affiliated to those federations when those clubs participate in a project to set up a new pan-European interclub football competition which would risk undermining the objectives legitimately pursued by those federations of which they are members. However, the sanctions involving exclusion targeted at players who have no involvement in the project in question are disproportionate, in particular as regards their exclusion from national teams.

4. The fifth question referred for a preliminary ruling

147. By its fifth question submitted for a preliminary ruling, the referring court asks about the applicability of the 'classic' exemptions and justifications in competition law, such as, respectively, those laid down in the FEU Treaty in the case of Article 101(3) TFEU and those established by case-law in relation to Article 102 TFEU. (71)

148. It should be noted, first of all, that this question has to be answered only if the Court finds, in the light of the answers given to the first and second questions referred for a preliminary ruling, that Articles 101 and 102 TFEU have been infringed. However, in the light of the answers which I propose are given to those questions, this is not the case.

149. Furthermore, it follows from settled case-law that it is for the party accused of having infringed the competition rules to prove that its conduct satisfies the conditions subject to which the view may be taken that that conduct is covered by Article 101(3) TFEU (72) or that it is objectively justified in the light of Article 102 TFEU. (73) However, it must be stated that, in the present case, the order for reference was made without FIFA or UEFA having been heard beforehand, and that they were therefore unable to present arguments and evidence relating to the satisfaction of those conditions in the specific circumstances of this case. (74)

150. In the light of the answers given to the first three questions referred for a preliminary ruling and having regard to the foregoing clarifications, it is my view that the fifth question referred for a preliminary ruling should not be answered.

5. The fourth question referred for a preliminary ruling

151. By the fourth question referred for a preliminary ruling, the Court is asked to rule on whether the rules established by FIFA concerning the exploitation of sports rights are compatible with Articles 101 and 102 TFEU. Those rules provide, more specifically, that all the rights connected with the exploitation of international football competitions belong 'originally' to FIFA and to the regional confederations such as UEFA, which are 'exclusively responsible for authorising the distribution of image and sound and other data carriers of football matches and events coming under their respective jurisdiction, without any restrictions as to content, time, place and technical and legal aspects'.

(a) Preliminary observations

152. Before analysing the fourth question referred for a preliminary ruling, I consider it important to make certain clarifications regarding the context of which those rules form part, in particular in the light of certain findings made by the referring court with regard to the interpretation of those provisions, whilst recalling that the Court does not have jurisdiction to interpret provisions of the FIFA and UEFA Statutes, which, manifestly, are not part of the corpus of EU law.

153. Articles 67 and 68 of the FIFA Statutes state that FIFA claims exclusive original ownership of the rights arising from the competitions coming under UEFA's 'jurisdiction'. It should be observed that the fact that that term is not defined in the FIFA Statutes leads to some confusion, as is shown by the differing views of ESLC, on the one hand, and FIFA and UEFA, on the other. Thus, ESLC supports a literal (and relatively broad) interpretation of the term 'jurisdiction', claiming that it refers to the complete (and exclusive) appropriation of the football rights in respect of all the competitions which, geographically, take place on the continent of Europe. By contrast, FIFA and UEFA argue, in essence, that the reference to the term 'jurisdiction' has a legal and not a geographic meaning, in that it covers only competitions authorised by FIFA and UEFA in Europe.

154. The Commission takes the view that those provisions must be read in conjunction with Article 49(1) of the UEFA Statutes, which states that UEFA has sole jurisdiction to organise international competitions in Europe in which associations and/or clubs affiliated to them participate. Taken together, those expressions could be understood, as moreover the referring court appears to maintain, as meaning that FIFA claims, without limitation, exclusive

ownership by UEFA as regards the competitions in which clubs of its member associations participate, which appears to indicate that it also covers the rights related to competitions such as the ESL.

155. In that regard, it should be noted, in the first place, that Articles 67 and 68 of the FIFA Statutes exist within a particular context specific to certain very popular sports, including football, where there is a mechanism for the centralised exploitation of the rights related to the top competitions.

156. Contrary to ESLC's claim, the structure of that model does not appear to be based on an obligation requiring transfer of the rights held by the football clubs or football competition organisers to UEFA against their will. On the contrary, it would rather appear, from a legal point of view, that the clubs participating in UEFA's competitions have voluntarily entrusted the exploitation of their sports rights to UEFA, whilst continuing to be the actual ultimate holders of those rights and, on that basis, to receive a share of the revenue arising from their sale. Thus, 'original ownership', which is complete and exclusive, as provided for in the articles in question, could only be understood, conceptually, as being the expression of joint ownership by UEFA (as organiser of European football competitions) and the professional football clubs (as participants in those competitions). (75)

157. In the second place, while Articles 67 and 68 of the FIFA Statutes do contain ambiguous wording capable of being interpreted as also covering football competitions organised by third parties in Europe, it is my view that those provisions cannot be understood as requiring, by means of mandatory transfer, an expropriation of those rights to the benefit of UEFA where those rights arise from a third-party competition without any connection to that federation. To my mind, those provisions can concern only the commercial rights arising from the competitions organised under the aegis of UEFA, and therefore any independent competition set up outside the UEFA ecosystem could not be subject to those rules. Moreover, a private body could under no circumstances regulate, on the basis of its own rules, the conduct of other private bodies that are independent of it. The organisers of such a competition would be free, in principle, to exploit the rights arising from that competition as they wish without any intervention from UEFA.

(b) Analysis

158. It is undeniable that FIFA, in its capacity as an association of undertakings or an undertaking organising and marketing international football competitions, engages in an economic activity involving, on the hand, intellectual and, on the other, commercial, technical and financial investments. Such an activity must be able, by its very nature, to enjoy legal protection, on the one hand, and to receive remuneration, an essential – but not exclusive – source of which may stem from the exploitation of sports rights (distribution, broadcasting and other rights) related to the competitions, on the other hand.

159. Furthermore, it follows from the Commission's decision-making practice regarding this type of agreement involving the marketing of rights related to sporting competitions, and in particular from its decision on 'Joint selling of the commercial rights of the UEFA Champions League', that agreements providing for the exclusive assignment of those rights to a single entity may restrict competition (76) (notwithstanding the fact that they may be exempted pursuant to Article 101(3) TFEU). (77)

160. Although the question submitted by the referring court differs appreciably from that examined by the Commission in the decision cited above – in that the alleged restriction of competition, in the present case, is not just limited to the issue of the joint selling and the exclusive exploitation of the commercial rights over a specific UEFA competition, but also concerns the question of an alleged 'appropriation' of the rights related to other competitions that might take place in Europe as well as the fact that those rules have the object or effect of supplementing the monopoly held by UEFA on the market for the organisation and marketing of football competitions – those two issues are related because they concern the powers and the rights conferred by the FIFA Statutes on UEFA to be the holder and exclusive selling body of the commercial rights of football competitions in Europe.

161. It should be noted, in that regard, that, in the present case, the exploitation of football rights in which FIFA and UEFA are engaged is a 'secondary' or 'ancillary' economic activity as compared with the 'core' economic activity of organising and marketing international football competitions, which I have analysed in the context of the first two questions referred for a preliminary ruling. Analysis of the UEFA rules in conjunction with one another appears to show that all the competitions in which clubs affiliated to that federation participate must be subject to the rules laid down by it, including those rules concerning the exploitation of such rights. It follows that such a scenario is liable to give rise to a restriction of competition, since those rules may be perceived as (additional) barriers to market entry hampering the creation and the development of new sporting competitions and may, thereby, have (at least potential) exclusionary effects on the market for the organisation and the marketing of competitions (by contributing to its closure to the detriment of competitors) as well as on the market for the exploitation of sports rights (by requiring clubs to exploit all such rights on a joint and exclusive basis).

162. If a restriction of competition can be shown, it should be examined whether that restriction is inherent in the pursuit of a legitimate objective and proportionate thereto, or whether the restrictive conduct satisfies the conditions to benefit from an individual exemption under Article 101(3) TFEU or the restriction is objectively justified for the purpose of Article 102 TFEU.

163. With regard to the possible justification of such restrictions on the basis of the ancillary restraints doctrine, this question should be considered, in essence, having regard to the analytical framework set out in points 93 to 118 of this Opinion.

164. As regards, more specifically, the legitimate objectives pursued by those rules, in addition to the objectives which are related to the 'European Sports Model' and have been described in points 30 and 95 to 98 of this Opinion, the objective of financial solidarity appears particularly relevant in the present instance, since a large share of the redistributed profits seems to come directly from the exploitation of the commercial rights for those competitions. I note, in this regard, that Articles 67 and 68 of the FIFA Statutes would pursue a legitimate objective recognised, inter alia, by the Commission in the decision on 'Joint selling of the commercial rights of the UEFA Champions League', consisting in maximising the revenue from the exploitation of the sports rights related to the competitions organised by UEFA, which is assigned in full to the development of football in general and to showing solidarity towards the clubs at the lower levels of the 'pyramid'. (78)

165. In addition, subject to the checks that are for the referring court to carry out, those articles appear to be proportionate to the pursuit of such an objective in that they grant ownership of the rights in question to FIFA and UEFA, because that arrangement would mean avoiding the difficulties that would arise from the regular renegotiation of the division of the corresponding revenue between clubs.

166. It should be recalled, in that regard, that football is characterised by an economic interdependence between the clubs, and therefore the financial success of a competition is primarily dependent on a degree of equality between the clubs. The redistribution of the revenue from the commercial exploitation of the rights arising from sporting competitions meets that objective of 'balance'. Thus, if each club were free unilaterally to negotiate all

its commercial rights, including those arising from its participation in interclub competitions (for example, television rights), the balance between those clubs would be jeopardised.

167. Moreover, it should be observed that, as the Court has pointed out, the exploitation of the rights at issue in the main proceedings is connected to a sport which has 'considerable social importance'. (79) In this vein, the EU legislature adopted legislation inter alia allowing each Member State to require the open broadcast of sporting events 'of major importance for society'. (80)

168. For the same reasons as those stated when answering the fifth question referred for a preliminary ruling, I do not consider it appropriate to rule on the existence of any justifications as regards Articles 101 and 102 TFEU. For the sake of completeness, it should, however, be pointed out that, in its decision on 'Joint selling of the commercial rights of the UEFA Champions League', the Commission took the view that an agreement for the joint exploitation by UEFA of commercial rights was covered by an individual exemption pursuant to Article 101(3) TFEU. In that connection, the Commission considered that those rules provided the consumer with the benefit of media products related to that pan-European football club competition that are sold via a single point of sale and which could not otherwise be produced and distributed equally efficiently. (81)

169. In the light of the foregoing considerations, I propose that the Court's answer to the fourth question referred for a preliminary ruling should be that Articles 101 and 102 TFEU must be interpreted as not precluding Articles 67 and 68 of the FIFA Statutes since the restrictions concerning the exclusive marketing of the rights relating to the competitions organised by FIFA and UEFA appear inherent in the pursuit of the legitimate objectives related to the specific nature of sport and proportionate to them. Furthermore, it is for the referring court to examine to what extent the articles in question may benefit from the exemption provided for in Article 101(3) TFEU or whether there is an objective justification for that conduct for the purpose of Article 102 TFEU.

6. The sixth question referred for a preliminary ruling

170. By its sixth question submitted for a preliminary ruling, the referring court asks, in essence, whether the FIFA and UEFA rules on the prior approval of international football competitions and on the participation of professional football clubs and of players in those competitions are compatible with the articles of the FEU Treaty relating to the four fundamental economic freedoms.

171. In that regard, it is settled case-law that the prohibitions on adversely affecting the fundamental economic freedoms enshrined in the FEU Treaty apply not only to public rules and, more generally, to measures attributable to the Member States, but also to private rules or measures, including rules or practices adopted by sports federations. (82) It thus follows from that case-law of the Court that, while sports federations are free to establish their own rules, the autonomy which they enjoy cannot allow them to restrict the exercise of rights conferred by the FEU Treaty.

172. Nevertheless, it follows from equally settled case-law of the Court that certain rules or practices adopted by bodies (such as the International Olympic Committee) or by (national or international) sports federations are to be regarded from the outset as excluded from the scope of the provisions of the FEU Treaty on the fundamental economic freedoms, in so far as they concern matters 'of sporting interest only' which are, as such, unconnected with economic activity. (83) The Court has, however, made clear that that 'sporting exception' must remain limited to its specific object (84) and, for that reason, has found it to be applicable thus far only when faced with a very limited number of rules which go to the 'heart' of the sporting activities. (85) That exception cannot, therefore, be relied on to exclude an entire sporting activity from the scope of the FEU Treaty. Since the classification of a measure as a 'sporting exception' removes it from the scope of the provisions of the FEU Treaty and, therefore, from any control, a restrictive interpretation of that concept must be adopted.

173. It follows from that case-law that, on account of its characteristics, the prior approval scheme provided for by UEFA cannot benefit from the 'sporting exception'. Thus, even though the 'sports' aspects of that scheme are undeniable, the fact remains that it also (undoubtedly) has an economic dimension, since, by conferring on UEFA the ability to control and therefore to refuse access to the market for the organisation of sporting competitions, it can have an impact on the fundamental freedoms.

174. Since the UEFA rules at issue fall within the scope of the provisions of the FEU Treaty on the fundamental economic freedoms, it is necessary to identify which freedoms are concerned and also whether they are restricted.

175. It must be stated, in that connection, that, in the light of the discretion enjoyed by UEFA, which enables it to control access to the market on the basis of criteria which it itself has established, the prior approval and participation rules introduced by that federation may be regarded as being liable to restrict, first, Articles 49 and 56 TFEU on the freedom of establishment and the freedom to provide services of undertakings wishing to enter the market for the organisation of sporting competitions. Those rules are therefore liable to have a negative impact on the possibility for organisers of alternative international football competitions such as ESLC to avail themselves of the services of professional football clubs who employ those players, who have retained their services or who are considering so doing, knowing that they will not be able to do so unless FIFA or UEFA approves the international competitions which they are planning to organise and market.

176. Secondly, the rules at issue have, on account of the sanctions involving exclusion provided for by the UEFA rules, an impact on the possibility of the clubs themselves organising their own competition (assuming that it is not organised by a third-party entity) and of supplying their services to a third-party competition.

177. Thirdly, the prior approval and participation rules introduced by FIFA and UEFA may also be liable to reduce the appeal of the possibility of free movement (within the meaning of Article 45 TFEU), in the case of players, in order to provide their services to (or to be employed by) professional football clubs established in Member States other than that of which they are nationals, such as those which are ESLC members, with a view to enabling those clubs to participate in a rival international competition to those organised and marketed by FIFA and UEFA, such as the ESL. Furthermore, if those players do so, they may open themselves to a sanction involving exclusion and, more broadly, to the risk of suffering harm to their professional career and to their economic activity.

178. Fourthly, even though it is only of secondary importance to the freedom of establishment and to the freedom to provide services, the free movement of capital enshrined in Article 63 TFEU also appears to be concerned, since it is clear from the order for reference and from ESLC's observations that ESLC's creation and development were conditional on significant funding being granted by financial institutions established in various Member States.

179. It is for the referring court to examine the question of the possible justification of the prior approval and participation rules at issue here and, if necessary, whether they are appropriate, coherent and proportionate. In that regard, I consider that that analysis overlaps to a large extent with that carried out in the examination of ancillary restraints. (86)

180. In that connection, I would point out, first, that such justifications may, of course, be relied on by the sports federations against which the fundamental economic freedoms guaranteed by the FEU Treaty are invoked. (87)

181. With regard, secondly, to the objectives of general interest which may justify restrictions placed on the fundamental economic freedoms by rules adopted by sports federations, I refer to the analysis carried out in points 93 and 94 of this Opinion. Furthermore, it should be pointed out that a certain number of such objectives have already been recognised by the Court. Objectives that are common to all sports federations, such as those of ensuring the regularity of competitions (88) as well as their proper functioning by means of appropriate rules or criteria, (89) appear particularly relevant in this case. The objectives of maintaining the balance between the clubs, of guaranteeing equal opportunities and of preserving the uncertainty of the results, which are specific to a team sport such as football, are also relevant in my view. (90)

182. As for, thirdly, the 'test' of proportionality, it should be noted from the outset that the Court does not accept the legality per se of prior approval systems and is committed to assessing on a case-by-case basis their purpose and proportionality, as indeed the referring court observed. (91) It follows from that case-law that, while it falls to the sports federations to lay down appropriate rules in order to ensure the proper functioning of competitions, those rules may not go beyond what is necessary for achieving the aim pursued. (92) This has also been confirmed in the judgment recently delivered by the Court in *TopFit*, in which it was held that, in order for a prior authorisation scheme to be justified in the light of the provisions on the freedoms of movement, it must, in any event, be based on objective and non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of a sports federation's discretion so that it is not used arbitrarily. (93)

183. It should be pointed out that those cases concerned rules providing for the non-admission or the complete exclusion of athletes for reasons connected with their nationality. The Court therefore considered that such rules issued by sports federations giving rise to discrimination on the basis of nationality were, by their very nature, disproportionate. (94)

184. For the same reasons as those set out in points 111 to 117 of this Opinion, it appears to me that the prior approval scheme is limited to what is necessary to guarantee the legitimate objectives pursued by UEFA.

185. Furthermore, it is my view that the review of proportionality cannot ignore the clear differences existing in the 'power dynamic' between a sports federation and a single player (whether amateur or professional) and football clubs which include some of the most powerful in the world, given the public support, media exposure and financing from which they benefit.

186. In the light of the foregoing considerations, I propose that the Court's answer to the sixth question referred for a preliminary ruling should be that Articles 45, 49, 56 and 63 TFEU are to be interpreted as not precluding Articles 22 and 71 to 73 of the FIFA Statutes and Articles 49 and 51 of the UEFA Statutes which provide that the setting up of a new pan-European interclub football competition is to be subject to a prior approval scheme, since that requirement is appropriate and necessary for that purpose, taking into account the particular characteristics of the planned competition.

V. Conclusion

187. In the light of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Juzgado de lo Mercantil n.º 17 de Madrid (Commercial Court, Madrid, Spain) as follows:

(1) Articles 101 and 102 TFEU must be interpreted as not precluding Articles 22 and 71 to 73 of the Statutes of the Fédération internationale de football association (FIFA) and Articles 49 and 51 of the Statutes of the Union of European Football Associations (UEFA) which provide that the setting up of a new pan-European interclub football competition is to be subject to a prior approval scheme since, taking into account the characteristics of the planned competition, the restrictive effects arising from that scheme appear inherent in, and proportionate for achieving, the legitimate objectives pursued by UEFA and FIFA which are related to the specific nature of sport.

(2) Articles 101 and 102 TFEU must be interpreted as not prohibiting FIFA, UEFA, their member federations or their national leagues from issuing threats of sanctions against clubs affiliated to those federations when those clubs participate in a project to set up a new pan-European interclub football competition which would risk undermining the objectives legitimately pursued by those federations of which they are members. However, the sanctions involving exclusion targeted at players who have no involvement in the project in question are disproportionate, in particular as regards their exclusion from national teams.

(3) Articles 101 and 102 TFEU must be interpreted as not precluding Articles 67 and 68 of the FIFA Statutes since the restrictions concerning the exclusive marketing of the rights relating to the competitions organised by FIFA and UEFA appear inherent in the pursuit of the legitimate objectives related to the specific nature of sport and proportionate to them. Furthermore, it is for the referring court to examine to what extent the articles in question may benefit from the exemption provided for in Article 101(3) TFEU or whether there is an objective justification for that conduct for the purpose of Article 102 TFEU.

(4) Articles 45, 49, 56 and 63 TFEU are to be interpreted as not precluding Articles 22 and 71 to 73 of the FIFA Statutes and Articles 49 and 51 of the UEFA Statutes which provide that the setting up of a new pan-European interclub football competition is to be subject to a prior approval scheme, since that requirement is appropriate and necessary for that purpose, taking into account the particular characteristics of the planned competition.

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1 Original language: French.

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2 C-415/93, EU:C:1995:293, point 56.

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3 See European Parliament resolution of 23 November 2021 on EU sports policy: assessment and possible ways forward (2021/2058(INI)).

4 A22 describes itself as a company providing services related to the creation and the management of international football competitions, which wishes to enter the market for the organisation and the marketing of such competitions in connection with the development and the establishment of the ESL.

5 The LNFP describes itself as an association recognised by law to which all professional football clubs playing in the first and second divisions of the National League Championship in Spain are legally required to belong.

6 The RFEF is the Spanish national football federation.

7 Ireland and the French, Hungarian and Romanian Governments have argued that the dispute is hypothetical in nature.

8 The French, Hungarian, Romanian and Slovak Governments have expressed doubts as to the very content of the request for a preliminary ruling.

9 The Slovak Government has submitted that the request for a preliminary ruling is vitiated by certain procedural irregularities.

10 See judgment of 15 December 1995, *Bosman* (C-415/93, EU:C:1995:463, paragraph 106).

11 Judgment of 15 December 1995 (C-415/93, EU:C:1995:463).

12 Declaration No 29 on sport, 2 October 1997 (OJ 1997 C 340, p. 136).

13 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).

14 That report stated, inter alia in point 4.2.1., that the application of the Treaty's competition rules to the sporting sector must take account of the specific characteristics of sport, especially the interdependence between sporting activity and the economic activity that it generates, the principle of equal opportunities and the uncertainty of the results.

15 Nice European Council, 7-9 December 2000, Conclusions of the Presidency, Annex IV: Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies, paragraph 1.

16 White Paper on Sport, 11 July 2007 (COM(2007) 391 final).

17 Judgment of 11 April 2000, *Deliège* (C-51/96 and C-191/97, EU:C:2000:199, paragraphs 67 and 68).

18 It should be stated, in this regard, that the creation of closed (or 'semi-open') leagues within certain sporting disciplines in Europe appears to be justified by the fact that their popularity varies significantly between the various Member States, with the result that, both from a sports perspective (in particular with a view to striking a competitive balance between the various clubs) and from a commercial point of view (since the commercial interest in such events is more limited), a competition format that limits the participation of clubs appears to be the most appropriate.

19 This is the case with the national leagues of the main American sports: the National Basketball Association (NBA) for basketball, the National Football League (NFL) for American football, Major League Baseball (MLB) for baseball and the National Hockey League (NHL) for ice hockey.

20 See, for example, the Media Partners and Golden League projects.

21 See, inter alia, judgments of 12 December 1974, *Walrave and Koch* (C-36/74, EU:C:1974:140, paragraph 8), and 25 April 2013, *Asociația Accept* (C-81/12, EU:C:2013:275, paragraph 45 and the case-law cited).

22 See, to that effect and by analogy, judgment of 16 March 2010, *Olympique Lyonnais* (C-325/08, EU:C:2010:143, paragraph 40).

23 Judgment of 1 July 2008 (C-49/07, EU:C:2008:376, paragraphs 51 and 52; 'the judgment in *MOTOE*').

24 See judgment of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas* (C-1/12, EU:C:2013:127, paragraphs 88 and 89; 'the judgment in *OTOC*').

25 Judgment in *MOTOE* (paragraphs 51 and 52).

26 See judgment of 14 January 2021, *Kilpailu- ja kuluttajavirasto* (C-450/19, EU:C:2021:10, paragraph 20).

27 Judgment in *MOTOE* (paragraph 21).

28 See Opinion of Advocate General Léger in *Wouters and Others* (C-309/99, EU:C:2001:390, point 62).

29 See, to that effect, judgment of 26 January 2005, *Piau* v *Commission* (T-193/02, EU:T:2005:22, paragraph 69).

30 See, to that effect, judgment of 19 February 2002, *Wouters and Others* (C-309/99, EU:C:2002:98, paragraph 64).

31 Judgment of 13 July 2006, *Manfredi and Others* (C-295/04 to C-298/04, EU:C:2006:461, paragraph 40).

32 See judgment of 2 April 2020, *Budapest Bank and Others* (C-228/18, EU:C:2020:265, paragraph 33 and the case-law cited).

33 See judgment of 30 January 2020, *Generics (UK) and Others* (C-307/18, EU:C:2020:52, paragraph 67 and the case-law cited).

34 See judgment of 30 January 2020, *Generics (UK) and Others* (C-307/18, EU:C:2020:52, paragraph 68 and the case-law cited).

35 See the case-law cited in point 76 of this Opinion.

36 See judgment of 2 April 2020, *Budapest Bank and Others* (C-228/18, EU:C:2020:265, paragraph 52 and the case-law cited).

37 See judgment of 18 November 2021, *Visma Enterprise* (C-306/20, EU:C:2021:935, paragraph 72 and the case-law cited).

38 See points 46 and 47 of this Opinion.

39 Judgment in *OTOC* (paragraphs 70 to 100).

40 See, inter alia, judgments of 11 July 1985, *Remia and Others* v *Commission* (42/84, EU:C:1985:327, paragraph 19); of 28 January 1986, *Pronuptia de Paris* (161/84, EU:C:1986:41, paragraphs 16 and 17); of 15 December 1994, *DLG* (C-250/92, EU:C:1994:413, paragraphs 40 and 41); and of 26 November 2015, *Maxima Latvija* (C-345/14, EU:C:2015:784, paragraphs 21 and 24).

41 See point 84 of this Opinion.

42 See judgment of 18 November 2021, *Visma Enterprise* (C-306/20, EU:C:2021:935, paragraph 71 and the case-law cited).

43 See judgment of 26 November 2015, *Maxima Latvija* (C-345/14, EU:C:2015:784, paragraph 27).

44 See 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).

45 See, to that effect, judgments of 25 October 1977, *Metro SB-Großmärkte* v *Commission* (26/76, EU:C:1977:167), and of 28 January 1986, *Pronuptia de Paris* (161/84, EU:C:1986:41).

46 Initially the result of the application of Article 101 TFEU to agreements between undertakings, this concept can be found in the law on concentrations. See, to that effect, Article 6 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p.1).

47 Whish, R. and Bailey, D., *Competition Law*, Oxford University Press, Oxford, 2021 (10th ed.), pp. 139 to 142, and Faull, N. and Nikpay, A., *The EU Law of Competition*, Oxford University Press, Oxford, 2014 (Third Edition), pp. 253 to 255.

48 Judgment of 19 February 2002 (C-309/99, EU:C:2002:98, paragraphs 86 to 94 and 97 to 110).

49 Judgment of 18 July 2006 (C-519/04 P, EU:C:2006:492).

50 See judgments of 18 July 2013, *Consiglio Nazionale dei Geologi* (C-136/12, EU:C:2013:489); of 4 September 2014, *API and Others* (C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147); and of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International* (C-427/16 and C-428/16, EU:C:2017:890).

51 This criterion was restated in paragraph 29 of the Communication from the Commission concerning guidelines on the application of Article 81(3) EC (now Article 101(3) TFEU) (2004/C 101/08), which sets out that 'a restriction is directly related to the main transaction if it is subordinate to the implementation of that transaction and is inseparably linked to it'.

52 See, in particular, judgment of 4 September 2014, *API and Others* (C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147, paragraphs 37, 41 and 49 to 57).

53 See judgment of 15 December 1995, *Bosman* (C-415/93, EU:C:1995:463, paragraph 106).

54 See judgment of 11 April 2000, *Deliège* (C-51/96 and C-191/97, EU:C:2000:199, paragraphs 67 and 68).

55 Ibáñez Colomo, P., 'Competition Law and Sports Governance: Disentangling a Complex Relationship', *World Competition*, 2022, No 3, Vol. 45, pp. 337 and 338.

56 See judgment of 15 December 1994, *DLG* (C-250/92, EU:C:1994:413, paragraphs 40 and 41).

57 See point 131 of my Opinion in Case C-124/21 P (*International Skating Union* v *Commission*), delivered on the same day as this Opinion.

58 See the judgments in *MOTOE* (paragraph 51) and in *OTOC* (paragraph 88).

59 See judgments of 15 December 1994, *DLG* (C-250/92, EU:C:1994:413, paragraph 41), and of 18 July 2006, *Meca-Medina and Majcen* v *Commission* (C-519/04 P, EU:C:2006:492, paragraph 47).

60 Judgment of 25 March 2021, *Deutsche Telekom* v *Commission* (C-152/19 P, EU:C:2021:238, paragraph 41 and the case-law cited).

61 See judgment of 6 September 2017, *Intel* v *Commission* (C-413/14 P, EU:C:2017:632, paragraph 135).

62 See judgment of 6 September 2017, *Intel* v *Commission* (C-413/14 P, EU:C:2017:632, paragraphs 138 and 140).

63 See judgment of 14 February 1978, *United Brands and United Brands Continentaal* v *Commission* (27/76, EU:C:1978:22, paragraph 189).

64 See Opinion of Advocate General Rantos in *Servizio Elettrico Nazionale and Others* (C-377/20, EU:C:2021:998, points 58 and 59).

65 See point 46 of this Opinion.

66 See points 85 to 121 of this Opinion.

67 See points 46 and 48 of this Opinion.

68 Judgment of 26 November 1998 (C-7/97, EU:C:1998:569).

69 Judgment of 26 November 1998, *Bronner* (C-7/97, EU:C:1998:569, paragraph 41).

70 See points 106 to 108 of this Opinion.

71 See, inter alia, judgment of 27 March 2012, *Post Danmark* (C-209/10, EU:C:2012:172, paragraphs 40 to 42).

72 Under Article 101(3) TFEU, the provisions of Article 101(1) TFEU may be declared inapplicable where the agreement between undertakings 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', provided that 'restrictions which are not indispensable to the attainment of these objectives' are not imposed on the undertakings

concerned.

73 See recital 5 and Article 2 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1) and judgments of 11 July 1985, *Remia and Others* v *Commission* (42/84, EU:C:1985:327, paragraph 45), and 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, paragraphs 82 and 83).

74 See point 17 of this Opinion.

75 See, to that effect, also recitals 110, 122 and 123 of Commission Decision 2003/778/EC of 23 July 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP/C.2-37.398 – Joint selling of the commercial rights of the UEFA Champions League) (OJ 2003 L 291, p. 25).

76 See recitals 113 to 132 of the decision on 'Joint selling of the commercial rights of the UEFA Champions League'.

77 See recitals 136 to 197 of the decision on 'Joint selling of the commercial rights of the UEFA Champions League'.

78 See recital 131 of the decision on 'Joint selling of the commercial rights of the UEFA Champions League'.

79 See judgment of 15 December 1995, *Bosman* (C-415/93, EU:C:1995:463, paragraph 106).

80 See recitals 18 and 19 of Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1997 L 202, p. 60).

81 See recitals 136 to 196 of the decision on 'Joint selling of the commercial rights of the UEFA Champions League'.

82 See judgment of 13 June 2019, *TopFit and Biffi* (C-22/18, EU:C:2019:497, paragraph 39 and the case-law cited).

83 See judgment of 11 April 2000, *Deliège* (C-51/96 and C-191/97, EU:C:2000:199, paragraphs 43, 44, 64 and 69 and the case-law cited).

84 See judgment of 8 May 2003, *Deutscher Handballbund* (C-438/00, EU:C:2003:255, paragraphs 54 to 56 and the case-law cited).

85 It follows from the case-law cited that that exception applies, primarily, to rules or practices justified on 'non-economic' grounds, relating to the specific nature and framework of certain matches or to the composition of the sports teams.

86 See points 95 to 99 and 101 to 110 of this Opinion.

87 See judgment of 15 December 1995, *Bosman* (C-415/93, EU:C:1995:463, paragraph 86).

88 See, to that effect, judgment of 13 April 2000, *Lehtonen and Castors Braine* (C-176/96, EU:C:2000:201, paragraph 53).

89 See, to that effect, judgment of 13 June 2019, *TopFit and Biffi* (C-22/18, EU:C:2019:497, paragraph 60 and the case-law cited).

90 See, to that effect, judgment of 15 December 1995, *Bosman* (C-415/93, EU:C:1995:463, paragraph 106).

91 See judgment of 22 January 2002, *Canal Satélite Digital* (C-390/99, EU:C:2002:34).

92 See judgment of 13 June 2019, *TopFit and Biffi* (C-22/18, EU:C:2019:497, paragraph 60 and the case-law cited).

93 Judgment of 13 June 2019, *TopFit and Biffi* (C-22/18, EU:C:2019:497, paragraph 65).

94 Judgment of 13 June 2019, *TopFit and Biffi* (C-22/18, EU:C:2019:497, paragraph 66).