Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

21 December 2023 (*)

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In Case C-680/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking), Belgium), made by decision of 15 October 2021, received at the Court on 11 November 2021, in the proceedings

UL,

SA Royal Antwerp Football Club

v

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

intervening party:

Union des associations européennes de football (UEFA),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, K. Jürimäe, C. Lycourgos and O. Spineanu-Matei, Presidents of Chambers, M. Safjan, L.S. Rossi, I. Jarukaitis, A. Kumin, N. Jääskinen, N. Wahl, J. Passer (Rapporteur), M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: M. Szpunar,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 15 November 2022,

after considering the observations submitted on behalf of:

– UL, by J.-L. Dupont, S. Engelen, M. Hissel and F. Stockart, avocats,

– SA Royal Antwerp Football Club, by J.-L. Dupont, M. Hissel and F. Stockart, avocats,

– the Union royale belge des sociétés de football association ASBL (URBSFA), by N. Cariat, E. Matthys and A. Stévenart, avocats,

– the Union des associations européennes de football (UEFA), by B. Keane, D. Slater and D. Waelbroeck, avocats,

– the Belgian Government, by P. Cottin, J.-C. Halleux, C. Pochet and L. Van den Broeck, acting as Agents,

– the Greek Government, by K. Boskovits, acting as Agent,

– the Polish Government, by B. Majczyna, A. Kramarczyk-Szaładzińska and M. Wiącek, acting as Agents,

– the Portuguese Government, by P. Barros da Costa, R. Capaz Coelho and C. Chambel Alves, acting as Agents,

– the Romanian Government, by L.-E. Baţagoi, E. Gane, L. Liţu and A. Rotăreanu, acting as Agents,

– the Swedish Government, by H. Eklinder, J. Lundberg, C. Meyer-Seitz, A. Runeskjöld, M. Salborn Hodgson, R. Shahsavan Eriksson, H. Shev and O. Simonsson, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 9 March 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 45 and 101 TFEU.

2 The request has been made in proceedings between UL and SA Royal Antwerp Football Club (‘Royal Antwerp’), on the one hand, and the Union royale belge des sociétés de football association ASBL (Royal Belgian Football Association; ‘the URBSFA’), on the other, concerning an application to annul an arbitration award dismissing, in part as inadmissible and in part as unfounded, an action for nullity and compensation brought by UL and Royal Antwerp against the Union des associations européennes de football (Union of European Football Associations; ‘UEFA’) and the URBSFA.

I. Legal context

A. The UEFA Statutes

3 UEFA is an association governed by private law, established in Switzerland. According to Article 2 of the version of its statutes adopted in 2021 (‘the UEFA Statutes’), its objectives are, inter alia, to ‘deal with all questions relating to European football’, to ‘monitor and control the development of every type of football in Europe’ and to ‘organise and conduct international football competitions and tournaments at European level for every type of football’.

4 Under Article 5 of the UEFA Statutes, any association based in a European country which is recognised as an independent state by the majority of members of the United Nations (UN) and which is responsible for the organisation of football in that country may become a member of UEFA. Under Article 7^{bis} of those statutes, membership entails the obligation, for the associations concerned, to comply with, inter alia, the statutes, regulations and decisions of UEFA and to ensure observance of them, in their country, by the professional leagues subject to them and by clubs and players. In practice, more than 50 national football associations are currently members of UEFA.

5 Under Articles 11 and 12 of those statutes, UEFA’s organs comprise, inter alia, a ‘supreme organ’ called ‘the Congress’ and an ‘Executive Committee’.

B. The UEFA and the URBSFA regulations concerning ‘home-grown players’

1. *UEFA’s regulations*

6 On 2 February 2005, UEFA’s Executive Committee adopted rules stipulating that professional football clubs participating in international interclub football competitions organised by UEFA must include a maximum number of 25 players on the match sheet, which itself must include a minimum number of players categorised as ‘home-grown players’ and defined as players who, regardless of their nationality, have been trained by their club or by a club affiliated to the same national football association for at least three years between the ages of 15 and 21 (‘the rules on “home-grown players”’).

7 On 21 April 2005, the rules on ‘home-grown players’ were approved by UEFA’s Congress at the meeting of all the national football associations which are members of UEFA, held in Tallinn (Estonia) (‘the Tallinn Congress’).

8 Since the 2007/2008 season, those rules provide that professional football clubs taking part in an international interclub football competition organised by UEFA must include on the match sheet a minimum of 8 ‘home-grown players’ within a list comprising a maximum number of 25 players. Out of eight players, at least four must have been trained by the club which lists them.

2. ***The URBSFA’s regulations***

9 The URBSFA is an association with its headquarters in Belgium. Its purpose is to ensure the organisation and promotion of football in that Member State. In that respect, it is a member of both UEFA and the Fédération internationale de football association (International Association Football Federation; ‘FIFA’).

10 In 2011, the URBSFA introduced into its federal regulations rules on ‘home-grown players’.

11 In the version applicable during the arbitration proceedings which took place before the main proceedings, those rules were worded as follows:

‘Article P335.11 – Professional football divisions 1A and 1B: submission of the “Squad size limit” list

1. Lists to be submitted

11. All 1A and 1B professional football clubs must submit the following lists … and keep them updated:

– a maximum list of 25 players …, which must include at least 8 trained by Belgian clubs within the meaning of Article P1422.12; at least 3 players must meet the additional requirement laid down in Article P1422.13. If those minimum thresholds are not met, those players cannot be replaced by players who do not satisfy those conditions.

…

Article P1422 – Mandatory inclusion on the match sheet

1. The following rules shall apply to the first teams of professional football clubs:

11. When taking part in official first-team competitions …, professional football clubs shall be required to include on the match sheet at least six players who have been trained by a Belgian club, at least two of whom meet the additional requirement laid down in point 13 below. If the club cannot include the minimum number of players required under the preceding paragraph, it may not replace them by including players who do not satisfy the relevant conditions.

12. Players who have satisfied all requirements for official match inclusion for at least three full seasons for a club in Belgium shall be regarded as having been trained by a Belgian club before their 23rd birthday.

13. Players who have been affiliated club members for at least three full seasons at a club in Belgium before their 21st birthday shall satisfy the additional requirement.

…

15. 1A and 1B professional football clubs can include on the match sheet only players appearing on the club’s “Squad size limit” lists (Article P335).

16. In case of breach of the above rules, the competent federal body shall impose the sanctions stipulated for the inclusion of ineligible players …, with the exception of fines.’

12 Those rules were subsequently amended. In the version to which the national court refers in its request for a preliminary ruling, those rules are worded as follows:

‘Article B4.1[12]

In order to participate in official, first-team matches in competitive football, specific conditions shall apply to professional football and to amateur football.

Article P

All 1A and 1B professional football clubs must submit the following lists … and keep them updated:

1° a maximum list of 25 players …, which must include at least 8 trained by Belgian clubs (these are players who have satisfied all requirements for official match inclusion for at least three full seasons for a club in Belgium before their 23rd birthday); at least 3 players must meet the additional requirement of having satisfied that condition before their 21st birthday. If those minimum thresholds are not met, those players cannot be replaced by players who do not satisfy those conditions.

…

For a player to be eligible for inclusion on the “Squad size limit” list:

– he or she must be an affiliated member of the federation and an affiliated club member or temporarily eligible for official match inclusion for the club requesting his or her inclusion; and

– in the case of a paid sportsman or sportswoman who is not a national of a member country of the [European Economic Area (EEA)], a copy either of the single permit (which must still be valid) or of the official certificate issued by the local authority in his or her place of residence in Belgium confirming that the paid sportsman or sportswoman has reported to the authority must be furnished in order for him or her to be issued the single permit to which he or she is entitled …

– he or she must satisfy the requirements for official match inclusion. Amendments to that list may be approved only by the Federal Authority.

…

Article B6.109

The following requirements shall apply vis-à-vis the inclusion of players on the match sheet.

Article P

The following provisions shall apply to the first teams of professional football clubs:

In the context of their participation in official first-team competitions, professional football clubs are required to include on the match sheet at least six players who have been trained by a Belgian club, at least two of whom satisfy the additional requirement laid down hereinafter.

If the club cannot include the minimum number of players required under the preceding paragraph, it may not replace them by including players who do not satisfy the relevant conditions.

– Players who have satisfied all requirements for official match inclusion for at least three full seasons for a club in Belgium shall be regarded as having been trained by a Belgian club before their 23rd birthday.

– Players who have been affiliated club members for at least three full seasons at a club in Belgium before their 21st birthday shall satisfy the additional requirement.

…

1A and 1B professional football clubs can include on the match sheet only players appearing on the club's "Squad size limit" lists.

In the event of a breach of the above rules, the competent federal body shall impose the sanctions stipulated for the inclusion of ineligible players, with the exception of fines.'

II. Facts in the main proceedings and the questions referred for a preliminary ruling

13 UL is a professional football player who has the nationality of a third country, in addition to Belgian nationality. He has been professionally active in Belgium for many years. There he successively worked for Royal Antwerp, a professional football club established in Belgium, and then for another professional football club.

14 On 13 February 2020, UL brought an action before the Cour Belge d'Arbitrage pour le Sport (Belgian Court of Arbitration for Sport; 'the CBAS') seeking a declaration, inter alia, that the rules on 'home-grown players' adopted by UEFA and the URBSFA are automatically void on the ground that they infringe Articles 45 and 101 TFEU and compensation for the damage those rules caused to UL. Subsequently, Royal Antwerp voluntarily intervened in the proceedings, also seeking compensation for the damage caused by those rules.

15 By an arbitration award made on 10 July 2020, the CBAS decided that those claims were inadmissible in so far as they concerned the rules on 'home-grown players' adopted by UEFA and admissible but unfounded in so far as they concerned the rules adopted by the URBSFA.

16 As regards the rules adopted by UEFA, which was not a party to the arbitration proceedings, the CBAS considered, inter alia, that, in view of their own distinct character compared to those adopted by the various national football associations which are members of UEFA, including the URBSFA, they could not be considered to be the result of an agreement, decision or concerted practice between those different entities, for the purposes of Article 101(1) TFEU.

17 With regard to the rules adopted by the URBSFA, the CBAS considered in essence, first, that they did not interfere with the freedom of movement for workers guaranteed by Article 45 TFEU on the ground that they were applicable without distinction, that they did not give rise to any direct or indirect discrimination based on nationality and that they were, in any event, justified by legitimate objectives necessary for the pursuit of those objectives and proportionate to that end. Second, it decided that those rules did not have either as their object or their effect the restriction of competition and that they were, moreover, necessary for and proportionate to the pursuit of legitimate objectives, so that they did not infringe Article 101(1) TFEU either.

18 Accordingly, the CBAS rejected the claims of UL and Royal Antwerp.

19 By summons served on 1 September 2020, UL and Royal Antwerp brought proceedings against the URBSFA before the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking), Belgium) for annulment of the arbitration award handed down on the ground that it infringed public policy within the meaning of Article 1717 of the Belgian Judicial Code.

20 In support of the form of order sought, they argue in essence, first, that the rules on 'home-grown players' that were adopted by UEFA and the URBSFA implement an overall plan that has as its object and effect the restriction of competition within the meaning of Article 101(1) TFEU. Second, those rules interfere with the freedom of movement for workers guaranteed by Article 45 TFEU in that they limit both the possibility for a professional football club such as Royal Antwerp to recruit players who do not meet the requirement to have local or national roots laid down by those rules and to field them in a match, and the possibility for a player such as UL to be recruited and fielded by a club in respect of which he cannot claim such roots.

21 On 9 November 2021, UEFA applied for leave to intervene in support of the form of order sought by the URBSFA.

22 By judgment pronounced on 26 November 2021, that is to say, after the date on which the present request for a preliminary ruling arrived at the Court, UEFA's voluntary intervention was declared admissible. On 13 December 2021, the referring court informed the Court of the admission of that new party to the main proceedings, in accordance with Article 97(2) of the Rules of Procedure of the Court.

23 In its order for reference, the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking)) states, in the first place, that the arbitration award at issue in the main proceedings, both in so far as it finds that the applications made by UL and Royal Antwerp are in part inadmissible and in so far as it dismisses those applications as unfounded as to the remainder, is based on the interpretation and application of two provisions of EU law – namely Articles 45 and 101 TFEU – breach of which may be categorised as an 'infringement of public policy' within the meaning of Article 1717 of the Belgian Judicial Code, having regard to their nature and the relevant case-law of the Court (judgments of 1 June 1999, *Eco Swiss*, C-126/97, EU:C:1999:269, and of 26 October 2006, *Mostaza Claro*, C-168/05, EU:C:2006:675).

24 In the second place, the referring court considers it necessary for it to obtain clarification from the Court as to the interpretation of Articles 45 and 101 TFEU in order to be able to give judgment. In essence, that court asks, first, whether the rules on 'home-grown players' that were adopted by UEFA and the URBSFA may be categorised as 'agreements between undertakings', 'decisions by associations of undertakings' or 'concerted practices' within the meaning of Article 101 TFEU. Second, it questions whether those rules comply with the prohibition of agreements, decisions and concerted practices laid down in that article and with the freedom of movement for workers guaranteed in Article 45 TFEU, and whether those rules might be justified, suitable, necessary and proportionate. In that context, that court refers, in particular, to a press release published by the European Commission and to a study carried out on behalf of that institution, the 'main conclusion' of which is that the rules in question may have indirect discriminatory effects on the basis of nationality and restrictive effects on the free movement of workers, and from which it is not established that the rules are proportionate to the limited resulting benefits in terms of competitive balance between football clubs and the training of players, having regard to the alternative, less restrictive measures which appear possible.

25 In those circumstances, the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking)), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 101 TFEU to be interpreted as precluding the plan relating to "[home-grown players]" adopted on 2 February 2005 by UEFA's Executive Committee, approved by UEFA's 52 member associations at the Tallinn Congress on 21 April 2005 and implemented by means of regulations adopted both by UEFA and by its member federations?

(2) Are Articles 45 and 101 TFEU to be interpreted as precluding the application of the rules on the inclusion on the match sheet and the fielding of [home-grown players], as formalised by Articles P335.11 and P1422 of the URBSFA's federal regulation and reproduced in Articles B4.1[12] of Title 4 and B6.109 of Title 6 of the new URBSFA regulation?'

III. **Admissibility**

26 The URBSFA, UEFA, the Romanian Government and the Commission have cast doubt on the admissibility of the two questions posed by the referring court.

27 The arguments they put forward in that regard are, in essence, of four types. They include, first, arguments of a procedural nature alleging that the decision to make a request for a preliminary ruling was taken before UEFA was granted leave to intervene and therefore before it was heard in the main proceedings. Second, arguments of a purely formal nature are put forward, alleging that the content of that decision fails to comply with the requirements laid down in Article 94(a) of the Rules of Procedure inasmuch as it does not present in a sufficiently detailed manner the legal and factual context in which the referring court is making a reference to the Court, a situation which tends to prevent the parties concerned from effectively putting forward their viewpoints on the issues to be decided. Third, substantive arguments are put forward relating to the hypothetical nature of the request for a preliminary ruling, inasmuch as there is no actual dispute the resolution of which necessitates any

interpretative decision whatsoever from the Court. That is, in particular, because the rules on 'home-grown players' did not prevent UL from being recruited and fielded by Royal Antwerp, and then by another professional football club. Fourth, the dispute in the main proceedings should be regarded as being 'purely domestic' in the light of Article 45 TFEU and not likely to 'affect trade between Member States' within the meaning of Article 101 TFEU, given its *inter partes* nature, UL's nationality, the place of establishment of Royal Antwerp and the limited geographical scope of the rules that were adopted by the URBSFA.

A. The procedural conditions for issuing an order for reference

28 In the context of a preliminary ruling procedure, it is not for the Court of Justice, in view of the distribution of functions between itself and the national courts, to determine whether the order for reference was made in accordance with the rules of national law governing the organisation of the courts and their procedure. The Court is, moreover, bound by that order for reference in so far as it has not been rescinded on the basis of a means of redress provided for by national law (judgments of 14 January 1982, *Reina*, 65/81, EU:C:1982:6, paragraph 7, and of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 70).

29 Therefore, in the present case, it is not for the Court to take a view on the possible consequences attached, in the main proceedings and under the national rules of judicial procedure applicable to those proceedings, to the admission of a new party following the making of the order for reference.

30 Moreover, as regards the proceedings that preceded the present judgment, it should be noted that Article 97(2) of the Rules of Procedure states that, where a new party is granted leave to intervene in the main proceedings, when the proceedings before the Court are already pending, that party must accept the case as he or she finds it at the time when the Court was informed that that party was admitted. Furthermore, in the present case, it must be noted that, in view of the stage reached in those proceedings when the Court was informed of the fact that UEFA had been granted leave to intervene in the main proceedings, that party had not only been provided with all the procedural documents already served on the other interested parties, as provided for in that provision, but was also able to submit, and subsequently did in fact submit, observations during the written phase, and again at the oral hearing.

B. The content of the order for reference

31 The preliminary reference procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them. According to settled case-law, which is now reflected in Article 94(a) and (b) of the Rules of Procedure, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for the national court to define the factual and regulatory context of the questions it is asking or, at the very least, to explain the factual hypotheses on which those questions are based. Furthermore, it is essential, as stated in Article 94(c) of the Rules of Procedure, that the request for a preliminary ruling itself contain a statement of the reasons which prompted the referring court or tribunal to enquire about the interpretation or validity of certain provisions of EU law, and the connection between those provisions and the national legislation applicable to the dispute in the main proceedings. Those requirements are of particular importance in those fields which are characterised by complex factual and legal situations, such as competition (see, to that effect, judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 83, and of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraphs 23 and 24).

32 Moreover, the information provided in the order for reference must not only be such as to enable the Court to reply usefully but must also give the governments of the Member States and other interested parties an opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union (see, to that effect, judgments of 1 April 1982, *Holdijk and Others*, 141/81 to 143/81, EU:C:1982:122, paragraph 7, and of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraph 31).

33 In the present case, the request for a preliminary ruling complies with the requirements set out in the two preceding paragraphs of the present judgment. The order for reference sets out in detail the factual

and regulatory context surrounding the questions referred to the Court. It also sets out succinctly but clearly the factual and legal reasons that led the referring court to consider it necessary to refer those questions and the connection, in its view, between Articles 45 and 101 TFEU and the dispute in the main proceedings, in the light of the case-law of the Court.

34 Moreover, the gist of the written observations submitted to the Court highlights the fact that the parties submitting them had no difficulty in grasping the factual and legal context surrounding the questions put by the referring court, in understanding the meaning and scope of the underlying factual statements, in comprehending the reasons why the referring court considered it necessary to refer them and also, ultimately, in effectively setting out a complete and proper position on them.

C. The facts of the dispute and the relevance of the questions referred to the Court

35 It is solely for the national court before which the dispute in the main proceedings has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. It follows that questions referred by national courts enjoy a presumption of relevance and that the Court may refuse to rule on those questions only where it is quite obvious that the interpretation sought bears no relation to the actual facts of the dispute in the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to those questions (see, to that effect, judgments of 16 December 1981, *Foglia*, 244/80, EU:C:1981:302, paragraphs 15 and 18, and of 7 February 2023, *Confédération paysanne and Others (*In vitro *random mutagenesis),* C-688/21, EU:C:2023:75, paragraphs 32 and 33).

36 In the present case, the Court finds that the referring court's statements summarised in paragraphs 14 to 24 of the present judgment affirm the actual state of the dispute in the main proceedings. Moreover, those same statements show that it cannot be said that the referring court's reference to the Court on the interpretation of Articles 45 and 101 TFEU manifestly bears no relation to the actual facts of the dispute in the main proceedings or its purpose.

37 It is apparent from those statements, first, that that court has before it an application to set aside an arbitration award in which the CBAS dismissed, as in part inadmissible and in part unfounded, an action for nullity and compensation brought by UL and Royal Antwerp against the URBSFA and UEFA concerning 'home-grown players'. Second, that arbitration award is based on an interpretation and application of Articles 45 and 101 TFEU. Third, the referring court states that, given the purpose of the dispute before it, it is inter alia required, in order to deliver its judgment, to review the way in which the CBAS has interpreted and applied Articles 45 and 101 TFEU, in order to determine whether or not the arbitration award made by the CBAS contravenes Belgian public policy.

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

38 The FEU Treaty provisions on the freedom of establishment, the freedom to provide services and the free movement of capital do not apply to a situation which is confined in all respects within a single Member State (judgments of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 47, and of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 31). Consequently, requests for preliminary rulings concerning the interpretation of those provisions in such situations may be considered admissible, in certain specific cases, only if the order for reference highlights the specific factors which establish that the preliminary ruling on interpretation sought is necessary for the resolution of the dispute due to a link between the subject or circumstances of that dispute and Articles 49, 56 or 63 TFEU, in accordance with what is required by Article 94 of the Rules of Procedure (see, to that effect, judgments of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraphs 50 to 55, and of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 34).

39 However, in the present case, the request for a preliminary ruling cannot be considered inadmissible on the ground that Article 45 TFEU, relating to the freedom of movement for workers, is unconnected to the dispute in the main proceedings given its 'purely domestic' nature.

40 First, while it is true that the dispute in the main proceedings is *inter partes*, that UL has Belgian nationality, that Royal Antwerp is established in Belgium and that the rules adopted by the URBSFA have a geographical scope limited to the territory of that Member State, as some of the interested parties have rightly stated, the fact remains that that dispute concerns an arbitration award in which the CBAS interpreted and applied, inter alia, Article 45 TFEU, as is apparent from paragraph 17 of the present judgment. The question whether that article applies to that dispute therefore concerns its merits and thus cannot be relied on, without prejudging its outcome, in order to contest the admissibility of the request for a preliminary ruling.

41 Furthermore, UEFA's rules and those of the URBSFA, at issue in the main proceedings, are, according to the referring court, closely linked in that the URBSFA is required, in its capacity as a member of UEFA, to respect UEFA's statutes, regulations and decisions, and where its rules on 'home-grown players' are directly inspired by the rules that were previously adopted and approved by UEFA at the Tallinn Congress, as was mentioned in paragraph 7 of the present judgment. Moreover, those factual and legal connections between the rules of the URBSFA, those of UEFA and EU law are, in essence, what led the referring court to declare UEFA's voluntary intervention in the judgment referred to in paragraph 22 of the present judgment to be admissible.

42 Second, the dispute in the main proceedings, at the same time, concerns the interpretation and application by the CBAS of Article 101 TFEU.

43 However, it is settled case-law that if the application of paragraph 1 of that article makes it necessary, among other conditions, to establish, with a sufficient degree of probability, that an agreement, a decision by an association of undertakings or a concerted practice is capable of having an appreciable effect on trade between Member States by having an influence, direct or indirect, actual or potential, on the pattern of trade, at the risk of hindering the attainment or the functioning of the internal market, that condition may be considered fulfilled in the case of conduct that covers the entire territory of a Member State (see, to that effect, judgment of 16 July 2015, *ING Pensii*, C-172/14, EU:C:2015:484, paragraphs 48 and 49 and the case-law cited).

44 In the light of that case-law, and given the geographical scope of the rules at issue in the main proceedings and the close connection between them, the view cannot be taken that Article 101 TFEU has no connection with the dispute in the main proceedings on the ground that the rules to which that article relates may not 'affect trade between Member States'.

45 It follows that the request for a preliminary ruling is admissible in its entirety.

IV. Consideration of the questions referred

46 By its first question, the referring court asks, in essence, whether Article 101 TFEU must be interpreted as precluding rules that have been adopted by an association responsible for organising football competitions at European level and implemented both by that association and by its member national football associations, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained either by that club itself or in the territory of the national association to which that club is affiliated.

47 By its second question, that court asks, in essence, whether Articles 45 and 101 TFEU must be interpreted as precluding rules that have been adopted by an association responsible for organising football competitions at national level and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained in the territory of that association.

48 In view of both the gist of those questions and the nature of the dispute in which they were referred to the Court, it is appropriate to set out three sets of preliminary observations before examining those questions.

A. Preliminary observations

1. *The subject matter of the case in the main proceedings*

49 It is apparent from the actual wording of the two questions referred to the Court that they overlap to a large extent, in so far as they concern Article 101 TFEU. The referring court seeks clarification on the interpretation of that article in order to be able to review how it was applied in an arbitration award concerning the compatibility with that article of the rules on 'home-grown players', as adopted and implemented by UEFA and by the various national football associations which are members of UEFA, including the URBSFA.

50 However, those two questions differ in so far as they concern Article 45 TFEU, since only the second, which relates to the rules adopted and implemented by the URBSFA, refers to that article. In that regard, in the request for a preliminary ruling, the referring court states that it is not for it to refer a question to the Court relating to the compatibility with Article 45 TFEU of the rules adopted and implemented by UEFA. However, that court makes it clear, in essence, that it does not preclude taking that question into consideration in its assessment of the existence of an agreement, a decision by an association of undertakings or a concerted practice within the meaning of Article 101 TFEU.

51 In the light of all those different factors, it is appropriate to address the questions referred by the national court together, by interpreting Article 101 TFEU as a first step and Article 45 TFEU as a second.

2. *The applicability of EU law to sport and the activities of sporting associations*

52 The questions referred to the Court relate to the interpretation of Articles 45 and 101 TFEU in the context of a dispute involving rules which were adopted by two entities having, according to their respective statutes, the status of associations governed by private law responsible for the organisation and control of football at European and Belgian levels, respectively, and which make the composition of the teams able to participate in interclub football competitions subject to certain conditions, backed with sanctions.

53 It must be borne in mind in that regard that, in so far as it constitutes an economic activity, the practice of sport is subject to the provisions of EU law applicable to such activity (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraph 4, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 27).

54 Only certain specific rules which were adopted solely on non-economic grounds and which relate to questions of interest solely to sport per se must be regarded as being extraneous to any economic activity. That is the case, in particular, of those on the exclusion of foreign players from the composition of teams participating in competitions between teams representing their country or the determination of ranking criteria used to select the athletes participating individually in competitions (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraph 8; of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 76 and 127; and of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 43, 44, 63, 64 and 69).

55 Apart from those specific rules, the rules adopted by sporting associations in order to govern paid work or the performance of services by professional or semi-professional players and, more broadly, those rules which, whilst not formally governing that work or that performance of services, have an indirect impact thereon, may come within the scope of Articles 45 and 56 TFEU (see, to that effect, judgments of 12 December 1974, *Walrave and Koch*, 36/74, EU:C:1974:140, paragraphs 5, 17 to 19 and 25; of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 75, 82 to 84, 87, 103 and 116; of 12 April 2005, *Simutenkov*, C-265/03, EU:C:2005:213, paragraph 32; and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 28 and 30).

56 Similarly, the rules adopted by such associations and, more broadly, the conduct of associations which have adopted them fall within the provisions of the FEU Treaty on competition law when the conditions of application of those provisions are met (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 30 to 33), which means that those associations may be categorised as 'undertakings' within the meaning of Articles 101 and 102 TFEU or that the rules at issue may be categorised as 'decisions by associations of undertakings' within the meaning of Article 101 TFEU.

57 Thus, more generally, since such rules come within the scope of the aforementioned provisions of the FEU Treaty, where they set out edicts applicable to individuals, they must be drafted and implemented in compliance with the general principles of EU law, in particular the principles of non-discrimination and proportionality (see, to that effect, judgment of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraphs 60, 65 and 66 and the case-law cited).

58 The rules at issue in the main proceedings, however, irrespective of whether they originate from UEFA or the URBSFA, do not form part of those rules to which the exception referred to in paragraph 54 of the present judgment might be applied, which exception the Court has stated repeatedly must be limited to its proper objective and may not be relied upon to exclude the whole of a sporting activity from the scope of the FEU Treaty provisions on EU economic law (see, to that effect, judgments of 14 July 1976, *Donà*, 13/76, EU:C:1976:115, paragraphs 14 and 15, and of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraph 26).

59 On the contrary, although those rules do not formally govern the players' working conditions, they must be regarded as having a direct impact on that work in that they impose certain conditions, which are backed with sanctions, on the composition of the teams able to participate in interclub football competitions and, accordingly, the participation of the players themselves in those competitions (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 116 and 119).

60 More specifically, it is apparent from the statements of the referring court that those rules provide, in essence, that professional football clubs participating in those competitions must, subject to sanctions, include on the match sheet a minimum number of 'home-grown players'. In the rules adopted by UEFA, that term is in actual fact used to designate not only players who have been trained by the club which employs them, but also players who were trained by another club affiliated to the same national football association. In the rules adopted by the URBSFA, that term is used exclusively to designate players who have been trained by 'a Belgian club', therefore any club affiliated to that association. The fact that such rules thus limit the possibility that clubs have of including players on the match sheet, and therefore of fielding those players for the corresponding match, and not formally the possibility of employing those players, is irrelevant since participation in matches and competitions constitutes the essential purpose of the players' activity and that possibility of employment is also limited as a consequence (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 120, and of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraph 50).

61 Furthermore, given that the composition of the teams constitutes one of the essential parameters of the competitions in which professional football clubs compete and those competitions give rise to an economic activity, the rules at issue in the main proceedings must also be regarded as having a direct impact on the conditions for engaging in that economic activity and on competition between the professional football clubs engaged in that activity.

62 Hence, all of the UEFA and the URBSFA rules about which the referring court is submitting questions to the Court come within the scope of Articles 45 and 101 TFEU.

3. *Article 165 TFEU*

63 Most of the parties to the main proceedings and some of the governments that participated in the procedure before the Court have expressed differing views on the inferences liable to be attached to Article 165 TFEU in the answers to be given to the questions posed by the referring court.

64 In that regard, it should be noted, first, that Article 165 TFEU must be construed in the light of Article 6(e) TFEU, which provides that the Union has competence to carry out actions to support, coordinate or supplement the actions of the Member States in the areas of education, vocational training, youth and sport. Article 165 TFEU gives specific expression to that provision by specifying both the objectives assigned to Union action in the areas concerned and the means which may be used to contribute to the attainment of those objectives.

65 Thus, as regards the objectives assigned to Union action in the area of sport, the second subparagraph of Article 165(1) TFEU states that the Union is to contribute to the promotion of European sporting issues, while taking account of the specific characteristics of sport, its structures based on voluntary activity and its social and educational function and, in the last indent of paragraph 2, that Union action in that area is 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 sportspersons, especially the youngest sportspersons.

66 As regards the means which may be employed to contribute to the attainment of those objectives, Article 165(3) TFEU provides that the Union is to foster cooperation with third countries and the competent international organisations in the field of sport and, in paragraph 4, that the European Parliament and the Council of the European Union, acting in accordance with the ordinary legislative procedure, or the Council, acting alone on a proposal from the Commission, may adopt incentive measures or recommendations.

67 Second, as follows from both the wording of Article 165 TFEU and that of Article 6(e) TFEU, by those provisions, the drafters of the Treaties intended to confer a supporting competence on the Union, allowing it to pursue not a 'policy', as provided for by other provisions of the FEU Treaty, but an 'action' in a number of specific areas, including sport. Thus, those provisions constitute a legal basis authorising the Union to exercise that competence, under the conditions and within the limits fixed thereby, being inter alia, as provided for in the first indent of Article 165(4) TFEU, the exclusion of any harmonisation of the legislative and regulatory provisions adopted at national level. That supporting competence also allows the Union to adopt legal acts solely with the aim of supporting, coordinating or completing Member State action, in accordance with Article 6 TFEU.

68 By way of corollary, and as is also apparent from the context of which Article 165 TFEU forms a part, in particular from its insertion in Part Three of the FEU Treaty, devoted to 'Union policies and internal actions', and not in Part One of that treaty, which contains provisions of principle, including, under Title II, 'provisions having general application', relating, inter alia, to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against any discrimination, environmental protection and consumer protection, that article is not a cross-cutting provision having general application.

69 It follows that, although the competent Union institutions must take account of the different elements and objectives listed in Article 165 TFEU when they adopt, on the basis of that article and in accordance with the conditions fixed therein, incentive measures or recommendations in the area of sport, those different elements and objectives, as well as those incentive measures and recommendations need not be integrated or taken into account in a binding manner in the application of the rules on the interpretation of which the referring court is seeking guidance from the Court, irrespective of whether they concern the freedom of movement for workers (Article 45 TFEU) or competition law (Article 101 TFEU). More broadly, nor must Article 165 TFEU be regarded as being a special rule exempting sport from all or some of the other provisions of primary EU law liable to be applied to it or requiring special treatment for sport in the context of that application.

70 Third, the fact remains that, as observed by the Court on a number of occasions, sporting activity carries considerable social and educational importance, henceforth reflected in Article 165 TFEU, for the Union and for its citizens (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 106, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraphs 33 and 34).

71 Sporting activity also undeniably has specific characteristics which, whilst relating especially to amateur sport, may also be found in the pursuit of sport as an economic activity (see, to that effect, judgment of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraph 33).

72 Lastly, such specific characteristics may potentially be taken into account along with other elements and provided they are relevant in the application of Articles 45 and 101 TFEU, although they may be so only in the context of and in compliance with the conditions and criteria of application provided for in each of those articles.

73 In particular, when it is argued that a rule adopted by a sporting association constitutes an impediment to the free movement of workers or an anticompetitive agreement, the characterisation of that rule as an obstacle or anticompetitive agreement must, at any rate, be based on a specific assessment of the content of that rule in the actual context in which it is to be implemented (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 98 to 103; of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 61 to 64; and of 13 April 2000, *Lehtonen and Castors Braine*, C-176/96, EU:C:2000:201, paragraphs 48 to 50). Such an assessment may involve taking into account, for example, the nature, organisation or functioning of the sport concerned and, more specifically, how professionalised it is, the manner in which it is practised, the manner of interaction between the various participating stakeholders and the role played by the structures and bodies responsible for it at all levels, with which the Union is to foster cooperation, in accordance with Article 165(3) TFEU.

74 Moreover, once the existence of an obstacle to the free movement of workers is established, the association which adopted the rule in question may yet demonstrate that it is justified, necessary and proportionate in view of certain objectives which may be regarded as being legitimate (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 104), which themselves are contingent on the specific characteristics of the sport concerned in a given case.

75 It is by reference to all the foregoing considerations that the Court must examine the referring court's questions in so far as they concern Article 101 TFEU and then Article 45 TFEU.

B. **The questions referred in so far as they concern Article 101 TFEU**

76 Article 101 TFEU applies to any entity engaged in an economic activity that must, as such, be categorised as an undertaking, irrespective of its legal form and the way in which it is financed (see, to that effect, judgments of 23 April 1991, *Höfner and Elser*, C-41/90, EU:C:1991:161, paragraph 21; of 11 December 2007, *ETI and Others*, C-280/06, EU:C:2007:775, paragraph 38; and of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 20 and 21).

77 Consequently, that article applies, inter alia, to entities that are established in the form of associations which, according to their statutes, have as their purpose the organisation and control of a given sport, in so far as those entities exercise an economic activity in relation to that sport, by offering products or services, and where they must, in that capacity, be categorised as 'undertakings' (see, to that effect, judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 22, 23 and 26).

78 Article 101 TFEU also applies to entities which, although not necessarily constituting undertakings themselves, may be categorised as 'associations of undertakings'.

79 In the present case, given the subject matter of the main proceedings and the referring court's statements, the Court finds that Article 101 TFEU applies to UEFA and to the URBSFA since both those associations have as members or affiliates, whether directly or indirectly, entities that can be categorised as 'undertakings' in that they are engaged in an economic activity, as are football clubs.

1. ***The interpretation of Article 101(1) TFEU***

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

(a) ***Consideration of the existence of a 'decision by an association of undertakings'***

81 The application of Article 101(1) TFEU in the case of an entity such as UEFA or the URBSFA, as an association of undertakings, makes it necessary, first, to establish that there is a 'decision by an association of undertakings', such as a decision consisting, for the association concerned, of adopting or implementing regulations having a direct impact on the conditions for engaging in the economic activity of the undertakings who are directly or indirectly its members (see, to that effect, judgments of

19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 64, and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 42 to 45).

82 In the present case, that is the situation of the two decisions in respect of which the national court is referring questions to the Court, that is to say, those by which UEFA and the URBSFA adopted rules on 'home-grown players'.

(b) ***Consideration of the effect on trade between Member States***

83 Second, the application of Article 101(1) TFEU in the case of such decisions involves establishing, with a sufficient degree of probability, that they are 'capable of affecting trade between Member States', in an appreciable manner, by having an influence, direct or indirect, actual or potential, on the pattern of trade between Member States, at the risk of hindering the attainment or the functioning of the internal market.

84 In the present case, the geographical scope of the decisions at issue in the main proceedings, having regard to the settled case-law of the Court recalled in paragraph 43 of the present judgment and subject to verification by the referring court, permits the inference that that condition has been met.

(c) ***Consideration of the concept of conduct having as its 'object' or 'effect' the restriction of competition and of the categorisation of the existence of such conduct***

85 In order to find, in a given case, that an agreement, a decision by an association of undertakings or a concerted practice is caught by the prohibition laid down in Article 101(1) TFEU, it is necessary to demonstrate, in accordance with the very wording of that provision, either that that conduct has as its object the prevention, restriction or distortion of competition, or that that conduct has such an effect (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249, and of 29 June 2023, *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraph 31).

86 To that end, it is appropriate to begin by examining the object of the conduct in question. If, at the end of such an examination, that conduct proves to have an anticompetitive object, it is not necessary to examine its effect on competition. Thus, it is only if that conduct is found not to have an anticompetitive object that it will be necessary, in a second stage, to examine its effect (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249, and of 26 November 2015, *Maxima Latvija*, C-345/14, EU:C:2015:784, paragraphs 16 and 17).

87 The analysis to be made differs depending on whether the conduct at issue has as its 'object' or 'effect' the prevention, restriction or distortion of competition, with each of those concepts being subject to different legal and evidentiary rules (see, to that effect, judgment of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 63).

(1) *Categorisation of the existence of conduct having as its 'object' the prevention, restriction or distortion of competition*

88 According to the settled case-law of the Court, as summarised, in particular, in the judgments of 23 January 2018, *F. Hoffmann-La Roche and Others* (C-179/16, EU:C:2018:25, paragraph 78), and of 30 January 2020, *Generics (UK) and Others* (C-307/18, EU:C:2020:52, paragraph 67), the concept of anticompetitive 'object', whilst not, as follows from paragraphs 85 and 86 of the present judgment, an exception in relation to the concept of anticompetitive 'effect', must nevertheless be interpreted strictly

89 Thus, that concept must be interpreted as referring solely to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects. Indeed, certain types of coordination between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition (see, to that effect, judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 249; of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 78; and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 67).

90 The types of conduct that must be considered to be so include, primarily, certain forms of collusive conduct which are particularly harmful to competition, such as horizontal cartels leading to price-fixing, limitations on production capacity or allocation of customers. Those types of conduct are liable to lead to price increases or falls in production and, therefore, more limited supply, resulting in poor allocation of resources to the detriment of user undertakings and consumers (see, to that effect, judgments of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraphs 17 and 33; of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 51; and of 16 July 2015, *ING Pensii*, C-172/14, EU:C:2015:484, paragraph 32).

91 Without necessarily being equally harmful to competition, other types of conduct may also be considered, in certain cases, to have an anticompetitive object. That is the case, inter alia, of certain types of horizontal agreements other than cartels, such as those leading to competing undertakings being excluded from the market (see, to that effect, judgments of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraphs 76, 77, 83 to 87 and 101, and of 25 March 2021, *Lundbeck* v *Commission*, C-591/16 P, EU:C:2021:243, paragraphs 113 and 114), or even certain types of decisions by associations of undertakings aimed at coordinating the conduct of their members, in particular in terms of prices (see, to that effect, judgment of 27 January 1987, *Verband der Sachversicherer* v *Commission*, 45/85, EU:C:1987:34, paragraph 41).

92 In order to determine, in a given case, whether an agreement, a decision by an association of undertakings or a concerted practice reveals, by its very nature, a sufficient degree of harm to competition that it may be considered as having as its object the prevention, restriction or distortion thereof, it is necessary to examine, first, the content of the agreement, decision or practice in question; second, the economic and legal context of which it forms a part; and, third, its objectives (see, to that effect, judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 79).

93 In that regard, first of all, in the economic and legal context of which the conduct in question forms a part, it is necessary to take into consideration the nature of the products or services concerned, as well as the real conditions of the structure and functioning of the sector(s) or market(s) in question (judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 80). It is not, however, necessary to examine nor, a fortiori, to prove the effects of that conduct on competition, be they actual or potential, negative or positive, as follows from the case-law cited in paragraphs 85 and 86 of the present judgment.

94 Next, as regards the objectives pursued by the conduct in question, a determination must be made of the objective aims which that conduct seeks to achieve from a competition standpoint. Nevertheless, the fact that the undertakings involved acted without having a subjective intention to prevent, restrict or distort competition and the fact that they pursued certain legitimate objectives are not decisive for the purposes of the application of Article 101(1) TFEU (see, to that effect, judgments of 6 April 2006, *General Motors* v *Commission*, C-551/03 P, EU:C:2006:229, paragraphs 64 and 77 and the case-law cited, and of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21).

95 In particular, the Court has repeatedly held that agreements aimed at partitioning markets according to national borders, tending to restore the partitioning of national markets or making the interpenetration of national markets more difficult, may be such as to frustrate the objective of the EU and FEU Treaties to achieve the integration of those markets through the establishment of the internal market and that they must, for that reason, be categorised, in principle, as agreements that have as their ‘object’ the restriction of competition within the meaning of Article 101(1) TFEU (see, to that effect, judgments of 16 September 2008, *Sot. Lélos kai Sia and Others*, C-468/06 to C-478/06, EU:C:2008:504, paragraph 65 and the case-law cited, and of 4 October 2011, *Football Association Premier League and Others*, C-403/08 and C-429/08, EU:C:2011:631, paragraph 139).

96 That case-law, which has also been applied to conduct other than agreements, whether it emanates from undertakings or associations of undertakings (see, to that effect, judgments of 17 October 1972,

Vereeniging van Cementhandelaren v *Commission*, 8/72, EU:C:1972:84, paragraphs 23 to 25 and 29, and of 16 September 2008, *Sot. Lélos kai Sia and Others*, C-468/06 to C-478/06, EU:C:2008:504, paragraph 66), is based on the fact that, as follows from Article 3(1)(b) TFEU, the institution of the competition rules necessary for the functioning of the internal market forms an integral part of the objective of instituting that market with which Article 3(3) TEU, inter alia, tasks the European Union (see, to that effect, judgment of 12 May 2022, *Servizio Elettrico Nazionale and Others*, C-377/20, EU:C:2022:379, paragraphs 42 and 43 and the case-law cited). By partitioning markets according to national borders, by restoring their partitioning or by making the interpenetration of those markets more difficult, such conduct neutralises the benefits that consumers could derive from effective undistorted competition in the internal market (see, to that effect, judgment of 16 September 2008, *Sot. Lélos kai Sia and Others*, C-468/06 to C-478/06, EU:C:2008:504, paragraph 66).

97 The categorisation of an anticompetitive 'object', within the meaning of Article 101(1) TFEU, has thus been used for different forms of agreements that aim or tend to restrict competition according to national borders, whether that involves, inter alia, preventing or restricting parallel trade, ensuring absolute territorial protection to holders of exclusive rights or limiting, in other forms, cross-border competition in the internal market (see, to that effect, judgments of 6 October 2009, *GlaxoSmithKline Services and Others* v *Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 61, and of 4 October 2011, *Football Association Premier League and Others*, C-403/08 and C-429/08, EU:C:2011:631, paragraphs 139 to 142).

98 Finally, the characterisation of certain conduct as having as its 'object' the prevention, restriction or distortion of competition must, in any event, disclose the precise reasons why that conduct reveals a sufficient degree of harm to competition such as to justify a finding that it has such an object (see, to that effect, judgment of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 69).

(2) *Categorisation of the existence of conduct having as its 'effect' the prevention, restriction or distortion of competition*

99 The concept of conduct having an anticompetitive 'effect', for its part, comprises any conduct which cannot be regarded as having an anticompetitive 'object', provided that it is demonstrated that that conduct has as its actual or potential effect the prevention, restriction or distortion of competition, which must be appreciable (see, to that effect, judgments of 28 May 1998, *Deere* v *Commission*, C-7/95 P, EU:C:1998:256, paragraph 77, and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 117).

100 To that end, it is necessary to assess the way the competition would operate within the actual context in which it would take place in the absence of the agreement, decision by an association of undertakings or concerted practice in question (judgments of 30 June 1966, *LTM*, 56/65, EU:C:1966:38, page 250, and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 118), by defining the market(s) in which that conduct is liable to produce its effects, then by identifying those effects whether they are actual or potential. That assessment itself entails that all relevant facts must be taken into account.

(3) *Consideration of the categorisation of the rules requiring clubs to have a minimum quota of 'home-grown players' in their teams as a decision by an association of undertakings having as its 'object' or 'effect' the restriction of competition*

101 In the present case, as regards the content of the UEFA and the URBSFA rules, in respect of which the national court has referred questions to the Court, it should be recalled, first, that those rules require professional football clubs participating in interclub football competitions governed by those associations to include on the match sheet a minimum number of players meeting the requirements for being considered to be 'home-grown players', as defined by those rules, subject to the imposition of sanctions. In doing so, they limit, by their very nature, the possibility for those clubs to enter on that sheet players who do not meet those requirements.

102 Second, it appears from the statements of the referring court that that limitation of the possibility for clubs to put together their teams freely operates in two different ways. The UEFA and the URBSFA

rules require those clubs to include on the match sheet a minimum number of players who, while being categorised as 'home-grown players', were in actual fact trained, not necessarily by the club that employs them but by a club affiliated to the same national football association as that club, whichever it may be and regardless of any requirement as to geographic location within the territorial jurisdiction of that association. In that respect, the limitation brought about by those rules in actual fact operates at the level of the association concerned, therefore at national level. In parallel, the UEFA rules also require those clubs to include among the 'home-grown players' whom they must include on the match sheet a minimum number of players who have actually been trained by the club that employs them. Thus, the limitation that they bring about operates at the level of the club concerned.

103 As regards the economic and legal context of the rules in respect of which the national court is referring questions to the Court, it is apparent, first of all, from the case-law of the Court that, bearing in mind the specific nature of the 'products', which sporting competitions are from an economic point of view, it is generally open to associations that are responsible for sporting discipline, such as UEFA and the URBSFA, to adopt rules relating, inter alia, to the organisation of competitions in that discipline, their proper functioning and the participation of athletes in those competitions (see, to that effect, judgments of 11 April 2000, *Deliège*, C-51/96 and C-191/97, EU:C:2000:199, paragraphs 67 and 68, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 60), provided that, in so doing, those associations do not limit the exercise of the rights and freedoms that EU law confers on individuals (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 81 and 83, and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 52).

104 Next, the specific characteristics of professional football and the economic activities to which the exercise of that sport gives rise suggest that it is legitimate for associations such as UEFA and the URBSFA to regulate, more particularly, the conditions in which professional football clubs can put together teams participating in interclub competitions within their territorial jurisdiction.

105 The sport of football is not only of considerable social and cultural importance in the European Union (judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 106, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 40) but also generates great media interest; its specific characteristics include the fact that it gives rise to the organisation of numerous competitions at both European and national levels, which involve the participation of very many clubs and also that of large numbers of players. In common with other sports, it also limits participation in those competitions to teams which have achieved certain sporting results (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 132), with the conduct of those competitions being based on matches between and gradual elimination of those teams. Consequently, it is, essentially, based on sporting merit, which can be guaranteed only if all the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity.

106 Finally, the real conditions which characterise the functioning of the 'market' constituted, from an economic point of view, by professional football competitions explain that the rules which can be adopted by associations such as UEFA and the URBSFA, and more particularly those relating to the organisation and proper functioning of competitions that are governed by those associations, may continue to refer, on certain points and to a certain extent, to a national requirement or criterion. From a functional point of view, that sport is characterised by the coexistence of interclub competitions and competitions between teams representing national football associations, the composition of which may legitimately be subject to compliance with 'nationality clauses' due to the specific nature of those matches (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 127 and 128 and the case-law cited).

107 As regards the outcome which the rules at issue in the main proceedings objectively seek to attain, vis-à-vis competition, it is apparent from the statements of the referring court relating to the content of those rules that they limit or control one of the essential parameters of the competition in which professional football clubs may engage, namely the recruitment of talented players, whatever the club or place where they were trained, which could enable their team to win in the encounter with the opposing team. From that point of view, the Belgian government rightly added that that limitation is likely to have an impact on the competition in which the clubs may engage, not only in the 'upstream

or supply market', which, from an economic point of view, is constituted by the recruitment of players, but also in the 'downstream market', which, from the same point of view, is constituted by interclub football competitions.

108 It is, however, for the referring court to determine whether the rules at issue in the main proceedings reveal, by their very nature, a sufficient degree of harm to competition to be able to be regarded as having as their 'object' the restriction of competition.

109 To that end, it will be for that court to take into account, in accordance with the case-law recalled in paragraph 92 of the present judgment, the content of those rules and to determine whether they limit, to a sufficient extent to conclude that they present a degree of harm enabling them to be categorised as anticompetitive by 'object', the access of professional football clubs to the 'resources' essential to their success which, from an economic point of view, the players already trained are, by requiring them to recruit a minimum number of players trained nationally, to the detriment of the cross-border competition in which they could normally engage by recruiting players trained within other national football associations. The proportion of players concerned is, from that point of view, particularly relevant.

110 It will also be for the referring court to take into consideration, in accordance with the case-law recalled in paragraphs 70 to 73, 93 and 94 of the present judgment, the economic and legal context in which the rules at issue in the main proceedings were adopted, together with the specific characteristics of football, and to assess whether or not the adoption of those rules had the objective of restricting the clubs' access to those resources, of partitioning or re-partitioning markets according to national borders or of making the interpenetration of national markets more difficult by establishing a form of 'national preference'.

111 If, at the end of its examination, the referring court reaches the conclusion that the degree of harm of the rules at issue in the main proceedings is sufficient to justify a finding that they have as their object the restriction of competition and that, as a consequence, they are caught by the prohibition set out in Article 101(1) TFEU, there will be no need for that court to examine the actual or potential effects of those rules.

112 In the absence of such a finding, that court will have to examine those effects.

(d) ***Consideration of the possibility of finding certain specific conduct not to come within the scope of Article 101(1) TFEU***

113 According to the settled case-law of the Court, not every agreement between undertakings or decision of an association of undertakings which restricts the freedom of action of the undertakings party to that agreement or subject to compliance with that decision necessarily falls within the prohibition laid down in Article 101(1) TFEU. Indeed, the examination of the economic and legal context of which certain of those agreements and certain of those decisions form a part may lead to a finding, first, that they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive in nature; second, that the specific means used to pursue those objectives are genuinely necessary for that purpose; and, third, that, even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect does not go beyond what is necessary, in particular by eliminating all competition. That case-law applies in particular in cases involving agreements or decisions taking the form of rules adopted by an association such as a professional association or a sporting association, with a view to pursuing certain ethical or principled objectives and, more broadly, to regulate the exercise of a professional activity if the association concerned demonstrates that the aforementioned conditions are satisfied (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 97; of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 42 to 48; and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 93, 96 and 97).

114 More specifically, in the area of sport, the Court was led to observe, in view of the information available to it, that the anti-doping rules adopted by the International Olympic Committee (IOC) do not come within the scope of the prohibition laid down in Article 101(1) TFEU, even though they restrict

athletes' freedom of action and have the inherent effect of restricting potential competition between them by defining a threshold over which the presence of nandrolone constitutes doping, so as to safeguard the fairness, integrity and objectivity of the conduct of competitive sport, ensure equal opportunities for athletes, protect their health and uphold the ethical values at the heart of sport, including merit (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 43 to 55).

115 However, the case-law referred to in paragraph 113 of the present judgment does not apply in situations involving conduct which, far from merely having the inherent 'effect' of restricting competition, at least potentially, by limiting the freedom of action of certain undertakings, reveals a degree of harm in relation to that competition that justifies a finding that it has as its very 'object' the prevention, restriction or distortion of competition. Thus, it is only if, following an examination of the conduct at issue in a given case, that conduct proves not to have as its object the prevention, restriction or distortion of competition, that it must then be determined whether it may come within the scope of that case-law (see, to that effect, judgments of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 69; 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, paragraph 49; and of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International*, C-427/16 and C-428/16, EU:C:2017:890, paragraphs 51, 53, 56 and 57).

116 As regards conduct having as its object the prevention, restriction or distortion of competition, it is thus only if Article 101(3) TFEU applies and all of the conditions provided for in that provision are observed that it may be granted the benefit of an exemption from the prohibition laid down in Article 101(1) TFEU (see, to that effect, judgment of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21).

117 In the present case, it is therefore only if the referring court, at the end of its examination of the rules at issue in the main proceedings, reaches the conclusion that they do not have as their object the restriction of competition, but have such an effect, that it will fall to that court to ascertain whether they satisfy the conditions referred to in paragraph 113 of the present judgment, taking into account, in that context, the objectives put forward in particular by the sporting associations at issue in the main proceedings, which consist in ensuring the uniformity of the conditions in which the teams participating in interclub football competitions governed by those associations are formed and encouraging the training of young professional football players.

2. ***The interpretation of Article 101(3) TFEU***

118 It follows from the very wording of Article 101(3) TFEU that any agreement, decision by associations of undertakings or concerted practice which proves to be contrary to Article 101(1) TFEU, whether by reason of its anticompetitive object or effect, may be exempted if it satisfies all of the conditions laid down for that purpose (see, to that effect, judgments of 11 July 1985, *Remia and Others* v *Commission*, 42/84, EU:C:1985:327, paragraph 38, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraph 230), it being noted that those conditions are more stringent than those referred to in paragraph 113 of the present judgment.

119 Under Article 101(3) TFEU, that exemption in a given case is subject to four cumulative conditions. First, it must be demonstrated with a sufficient degree of probability (judgment 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, paragraph 95), that the agreement, decision by an association of undertakings or concerted practice in question makes it possible to achieve efficiency gains, by contributing either to improving the production or distribution of the products or services concerned, or to promoting technical or economic progress. Second, it must be demonstrated, to the same degree of probability, that an equitable part of the profit resulting from those efficiency gains is reserved for the users. Third, the agreement, decision or practice in question must not impose on the participating undertakings restrictions which are not indispensable for achieving such efficiency gains. Fourth, that agreement, decision or practice must not give the participating undertakings the opportunity to eliminate all effective competition for a substantial part of the products or services concerned.

120 It is for the party relying on such an exemption to demonstrate, by means of convincing arguments and evidence, that all of the conditions required for the exemption are satisfied (see, to that effect, 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, paragraph 82). If those arguments and that evidence are such as to oblige the other party to refute them convincingly, it is permissible, in the absence of such refutation, to conclude that the burden of proof borne by the party relying on Article 101(3) TFEU has been discharged (see, to that effect, judgments of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 79, 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, paragraph 83).

121 In particular, as regards the first condition referred to in paragraph 119 of the present judgment, the efficiency gains that the agreement, decision by an association of undertakings or concerted practice must make it possible to achieve correspond not to any advantage the participating undertakings may derive from that agreement, decision or practice in the context of their economic activity, but only to the appreciable objective advantages that that specific agreement, decision or practice makes it possible to attain in the different sector(s) or market(s) concerned. Moreover, in order for that first condition to be considered satisfied, not only must the actual existence and extent of those efficiency gains be established, it must also be demonstrated that they are such as to compensate for the disadvantages caused in competition terms by the agreement, decision or practice at issue (see, to that effect, judgments of 13 July 1966, C*onsten and Grundig* v *Commission*, 56/64 and 58/64, EU:C:1966:41, page 348, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraphs 232, 234 and 236; and, by analogy, of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, paragraph 43).

122 As regards the second condition referred to in paragraph 119 of the present judgment, it involves establishing that the efficiency gains made possible by the agreement, decision by an association of undertakings or concerted practice in question have a positive impact on all users, be they traders, intermediate consumers or end consumers, in the different sectors or markets concerned (see, to that effect, judgments of 23 November 2006, *Asnef-Equifax and Administración del Estado*, C-238/05, EU:C:2006:734, paragraph 70, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraphs 236 and 242).

123 It follows that, in a situation where the conduct infringing Article 101(1) TFEU is anticompetitive by object, that is to say, it presents a sufficient degree of harm to competition and is such as to affect different categories of users or consumers, it must be determined whether and, if so, to what extent, that conduct, notwithstanding its harmfulness, has a favourable impact on each of them.

124 As regards the third condition referred to in paragraph 119 of the present judgment, to the effect that the conduct at issue must be indispensable or necessary, it involves an assessment and comparison of the respective impact of that conduct and of the alternative measures which might genuinely be envisaged, with a view to determining whether the efficiency gains expected from that conduct may be attained by measures which are less restrictive of competition. It may not, however, lead to a choice based on their respective desirability being made as between such conduct and such alternative measures in the event that the latter do not seem to be less restrictive of competition.

125 As regards the fourth condition referred to in paragraph 119 of the present judgment, the ascertainment of its observance in a given case involves an examination of the quantitative and qualitative aspects that characterise the functioning of competition in the sectors or markets concerned, in order to determine whether the agreement, decision by an association of undertakings or concerted practice in question gives the participating undertakings the opportunity to eliminate all actual competition for a substantial part of the products or services concerned. In particular, in situations involving a decision by an association of undertakings or agreement to which undertakings have adhered as a group, the sizeable market share held by them may constitute, among other relevant facts and as part of an overall analysis thereof, an indicator of the possibility that, in view of its content and object or effect, that decision or

agreement enables the participating undertakings to eliminate all actual competition, which alone suffices as grounds to rule out the exemption provided for in Article 101(3) TFEU.

126 More generally, the examination of the different conditions referred to in paragraph 119 of the present judgment may require taking into account the particularities and specific characteristics of the sector(s) or market(s) concerned by the agreement, decision by an association of undertakings or concerted practice at issue, if those particularities and specific characteristics are decisive for the outcome of that examination (see, to that effect, judgments of 6 October 2009, *GlaxoSmithKline Services and Others* v *Commission and Others*, C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610, paragraph 103, and of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraph 236).

127 Furthermore, it should be recalled that non-compliance with one of the four conditions referred to in paragraph 119 of the present judgment is sufficient to exclude the benefit of the exemption provided for in Article 101(3) TFEU.

128 In the present case, it will be for the referring court to rule on whether the rules at issue in the main proceedings satisfy all of the conditions enabling them to benefit from an exemption under Article 101(3) TFEU, after having allowed the parties to discharge their burden of proof, as observed in paragraph 120 of the present judgment.

129 That being said, it should be observed, with regard to the first of those conditions, relating to the appreciable objective advantages that conduct having as its object or its effect the prevention, restriction or distortion of competition must make it possible to achieve on the sector(s) or market(s) concerned, that the rules at issue in the main proceedings may encourage professional football clubs to recruit and train young players, and therefore intensify competition through training. It is, however, for the referring court alone to decide, in the light of the specific arguments and evidence produced or to be produced by the parties, on whether those rules are of an economic, statistical or other nature, on the reality of that incentive, on the extent of the efficiency gains resulting from those rules in terms of training and on whether those efficiency gains are likely to compensate for the disadvantages resulting from those rules for competition.

130 As regards the second condition, according to which the conduct at issue must have a favourable effect for users, whether professionals, intermediate consumers or final consumers, in the different sectors or markets concerned, it should be emphasised that, in the present case, the ‘users’ include, first and foremost, professional football clubs and the players themselves. Added to that, more broadly, are the final ‘consumers’ who are, in the economic sense of the term, the spectators or television viewers. As regards the latter, it cannot be excluded a priori that the interest that some of them have in interclub competitions depends, among other factors, on the place of establishment of the clubs participating in those competitions and the presence in the teams fielded by those clubs of home-grown players. It will therefore be for the referring court to rule inter alia, in the light of the specific arguments and evidence produced or to be produced by the parties, on the question whether, on the market which they primarily affect, namely that of the recruitment of players by those clubs, the rules at issue in the main proceedings have a genuine favourable effect not only on the players but also on all the clubs and on the spectators and television viewers or if, as has been argued before the Court, they operate, in practice, to the benefit of certain categories of clubs but also, at the same time, to the detriment of others.

131 As regards the third condition, relating to the strict necessity of the rules at issue in the main proceedings, it will be for the referring court to ascertain, in the light of the specific arguments and evidence produced or to be produced by the parties, whether alternative measures such as those raised before the Court, namely the imposition of player training requirements for the purposes of granting licences to professional football clubs, the establishment of financing mechanisms or financial incentives aimed, in particular, at smaller clubs, or a system of direct compensation for the costs borne by training clubs, would be likely to constitute, in compliance with EU law (see, in that regard, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 108 and 109, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 41 to 45), measures that are less restrictive of competition.

132 As regards the fourth condition relating to whether the rules at issue in the main proceedings, while restricting the competition in which professional football clubs can engage through the recruitment of players trained already, still do not eliminate that competition, the determining factor is the level at which the minimum proportions of 'home-grown players' to be included on the match sheet have been set, compared with the total number of players on that sheet. The Commission has, more particularly, indicated that, compared with similar rules which it has had to consider, those minimum proportions do not appear to it to be disproportionate, even taking into account the fact that professional football clubs may in actual fact have to or wish to recruit a greater number of 'home-grown players' in order to address risks such as accidents or illnesses. However, it will ultimately be for the referring court alone to rule on that point.

133 That comparison must be carried out by comparing, to the extent possible, the situation resulting from the restrictions of competition at issue with what the situation on the market concerned would be if competition had not been prevented, restricted or distorted on that market due to those restrictions.

134 However, the fact that the rules at issue in the main proceedings apply to all interclub competitions governed by UEFA and the URBSFA, and to all professional football clubs and to all players participating in those competitions is not decisive. Indeed, that factor is inherent in the very existence of associations having, in a given territorial jurisdiction, regulatory power to which all member undertakings and all persons affiliated to those undertakings are subject.

135 Having regard to all the foregoing considerations, the answer to the questions posed by the referring court, in so far as they relate to Article 101 TFEU, is that:

– Article 101(1) TFEU must be interpreted as precluding rules that have been adopted by an association responsible for organising football competitions at European level and implemented both by that association and by its member national football associations, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained either by that club itself or within the territory of the national association to which that club is affiliated, and rules that have been adopted by an association responsible for organising football competitions at national level, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained in the territory of that association, if it is established, first, that those decisions by associations of undertakings are liable to affect trade between Member States and, second, that they have either as their object or their effect the restriction of competition between professional football clubs, unless, in the second of those scenarios, it is demonstrated, through convincing arguments and evidence, that they are both justified by the pursuit of one or more objectives that are legitimate and strictly necessary for that purpose;

– Article 101(3) TFEU must be interpreted as meaning that it allows such decisions by associations of undertakings, if they prove to be contrary to paragraph 1 of that article, to benefit from an exemption to the application of that paragraph only if it is demonstrated, through convincing arguments and evidence, that all of the conditions required for that purpose are satisfied.

C. Consideration of the questions referred in so far as they concern Article 45 TFEU

1. *The existence of indirect discrimination or an obstacle to freedom of movement for workers*

136 It is important to note, in the first place, that Article 45 TFEU, which has direct effect, precludes any measure, whether it is based on nationality or is applicable without regard to nationality, which might place EU nationals at a disadvantage when they wish to pursue an economic activity in the territory of a Member State other than their Member State of origin, by preventing or deterring them from leaving the latter (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 93 to 96, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 33 and 34).

137 In the present case, as the referring court states, it is apparent from their actual terms and their schema that rules such as those of the URBSFA are prima facie likely to place at a disadvantage professional

football players who wish to pursue an economic activity in the territory of a Member State, namely Belgium, other than their Member State of origin, and who do not satisfy the conditions required by those rules. While not being directly based on a criterion of nationality or residence, those rules are nonetheless based on a connection of an expressly 'national' character in two respects, as was noted in particular by the Commission. First, they define 'home-grown players' as those who were trained within a 'Belgian' club. Second, they require professional football clubs wishing to participate in interclub football competitions under the URBSFA to enter in the list of their players and to include on the match sheet a minimum number of players who satisfy the conditions to be eligible in that way.

138 Thus, those rules limit the possibility for players who cannot rely on such a 'national' connection of being entered in the list of players of such clubs and included on the match sheet, and therefore of being fielded by those clubs. As noted in paragraph 60 of the present judgment, the fact that the participation of players in teams is thus referred to, and not formally the possibility of employing those players, is immaterial since participation in matches and competitions constitutes the essential purpose of the activity of those players.

139 To that extent, the rules at issue in the main proceedings, as the Advocate General noted in points 43 and 44 of his Opinion, are likely to give rise to indirect discrimination at the expense of players coming from another Member State, in that they risk operating mainly to the detriment of those players.

140 It follows that those rules prima facie infringe the freedom of movement for workers, subject to the checks to be carried out by the referring court.

2. ***Whether there is justification***

141 Measures of non-State origin may be permitted even though they impede a freedom of movement enshrined in the FEU Treaty, if it is proven, first, that their adoption pursues a legitimate objective in the public interest that is compatible with that treaty and which is therefore other than of a purely economic nature and, second, that they observe the principle of proportionality, which entails that they are suitable for ensuring the achievement of that objective and do not go beyond what is necessary for that purpose (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 104; of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 38; and of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 48). As regards, more specifically, the condition relating to the suitability of such measures, it should be borne in mind that they can be held to be suitable for ensuring achievement of the aim relied on only if they genuinely reflect a concern to attain it in a consistent and systematic manner (see, to that effect, judgments of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, paragraph 61, and of 6 October 2020, *Commission* v *Hungary (Higher education)*, C-66/18, EU:C:2020:792, paragraph 178).

142 Similarly to situations involving a measure of State origin, it is for the party who introduced those measure of non-State origin to demonstrate that those two cumulative conditions are met (see, by analogy, judgments of 21 January 2016, *Commission* v *Cyprus*, C-515/14, EU:C:2016:30, paragraph 54, and of 18 June 2020, *Commission* v *Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476, paragraph 77).

143 In the present case, it will therefore be for the referring court to rule on whether the URBSFA rules at issue in the main proceedings satisfy those conditions, in the light of the arguments and evidence produced by the parties.

144 That said, it should be recalled, first, that, bearing in mind both the social and educational function of sport, recognised in Article 165 TFEU, and, more broadly, the considerable importance of sport in the European Union, repeatedly highlighted by the Court, the aim of encouraging the recruitment and training of young professional football players constitutes a legitimate objective in the public interest (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 106, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 39).

145 Second, as regards the suitability of rules such as those at issue in the main proceedings for attaining the objective in question, it should be noted, first of all, that that objective may, in certain cases and

under certain conditions, justify measures which, without being designed in such a way as to ensure, in a certain and quantifiable manner in advance, an increase or intensification of the recruitment and training of young players, may nonetheless create real and significant incentives in that direction (see, to that effect, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 108 and 109, and of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraphs 41 to 45).

146 Next, it must be observed that, to the extent that rules such as those of the URBSFA at issue in the main proceedings require professional football clubs wishing to participate in interclub football competitions governed by that association to enter in the list of their players and to include on the match sheet a minimum number of young players trained by a club governed by that association, whichever club that may be, their suitability for ensuring the attainment of the aim of encouraging the recruitment and training of young players at local level must be determined by the referring court, having regard to all the relevant factors.

147 In that regard, the referring court must take into account in particular the fact that, by placing on the same level all young players who have been trained by any club affiliated to the national football association in question, those rules might not constitute real and significant incentives for some of those clubs, in particular those with significant financial resources, to recruit young players with a view to training them themselves. On the contrary, such a recruitment and training policy, the costly, time-consuming and uncertain nature of which has already been highlighted by the Court for the club concerned (see, to that effect, judgment of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 42), is placed on the same level as the recruitment of young players already trained by any other club also affiliated to that association, regardless of the location of that other club within the territorial jurisdiction of that association. However, it is precisely local investment in the training of young players, in particular when it is carried out by small clubs, where appropriate in partnership with other clubs in the same region and possibly with a cross-border dimension, which contributes to fulfilling the social and educational function of sport (see, to that effect, judgment of 16 March 2010, *Olympique Lyonnais*, C-325/08, EU:C:2010:143, paragraph 44).

148 Third, it will be necessary to examine, as follows from paragraphs 131 and 132 of the present judgment, the necessary and proportionate nature of the rules at issue in the main proceedings, in particular the minimum number of ‘home-grown players’ which must be entered in the list of club players and included on the match sheet under those rules compared with the total number of players required to be included there.

149 All of the factors referred to in the preceding paragraphs of the present judgment and, where appropriate, other factors which the referring court may consider relevant in the light of the present judgment must be assessed thoroughly and comprehensively by that court, taking into consideration the arguments and evidence submitted or to be submitted by the parties to the main proceedings.

150 Having regard to all the foregoing considerations, the answer to the questions raised by the referring court, in so far as they concern Article 45 TFEU, is that that article must be interpreted as precluding rules which have been adopted by an association responsible for organising football competitions at national level, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained in the territorial jurisdiction of that association, unless it is established that those rules are suitable for ensuring, in a consistent and systematic manner, the attainment of the objective of encouraging, at local level, the recruitment and training of young professional football players, and that they will not go beyond what is necessary to achieve that objective.

V. **Costs**

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

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

1. **Article 101(1) TFEU**

must be interpreted as precluding rules that have been adopted by an association responsible for organising football competitions at European level and implemented both by that association and by its member national football associations, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained either by that club itself or within the territory of the national association to which that club is affiliated, and rules that have been adopted by an association responsible for organising football competitions at national level, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained in the territory of that association, if it is established, first, that those decisions by associations of undertakings are liable to affect trade between Member States and, second, that they have either as their object or their effect the restriction of competition between professional football clubs, unless, in the second of those scenarios, it is demonstrated, through convincing arguments and evidence, that they are both justified by the pursuit of one or more objectives that are legitimate and strictly necessary for that purpose.

2. **Article 101(3) TFEU**

must be interpreted as meaning that it allows such decisions by associations of undertakings, if they prove to be contrary to paragraph 1 of that article, to benefit from an exemption to the application of that paragraph only if it is demonstrated, through convincing arguments and evidence, that all of the conditions required for that purpose are satisfied.

3. **Article 45 TFEU**

must be interpreted as precluding rules which have been adopted by an association responsible for organising football competitions at national level, and which require each club participating in those competitions to enter in the list of its players and to include on the match sheet a minimum number of players trained in the territorial jurisdiction of that association, unless it is established that those rules are suitable for ensuring, in a consistent and systematic manner, the attainment of the objective of encouraging, at local level, the recruitment and training of young professional football players, and that they do not go beyond what is necessary to achieve that objective.

[Signatures]

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* Language of the case: French.