

Case C-333/21**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

27 May 2021

Referring court:

Juzgado de lo Mercantil n.º 17 de Madrid (Commercial Court No 17, Madrid, Spain)

Date of the decision to refer:

11 May 2021

Applicant:

European Super League Company, S. L.

Defendants:

Union of European Football Associations (UEFA)

Fédération Internationale de Football Association (FIFA)

Subject matter of the main proceedings

Legal action in which the applicant seeks a declaration that, by preventing the organisation of the European Super League, the applicants engaged in concerted practices and abused their dominant position in the market for the organisation of international club football competitions in Europe and the market for the marketing of the rights associated with such competitions. The applicant further seeks the adoption of interim measures aimed at enabling the organisation and development of the European Super League.

Subject matter and legal basis of the request for a preliminary ruling

Reference for a preliminary ruling under Article 267 TFEU seeking the interpretation of Articles 101 TFEU, 102 TFEU, 45 TFEU, 56 TFEU, 49 TFEU and 63 TFEU.

Questions referred for a preliminary ruling

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

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

3 Must Articles 101 and/or 102 be interpreted as meaning that those articles prohibit conduct by FIFA, UEFA, their member associations and/or national leagues which consists of the threat to adopt sanctions against clubs participating in the Super League and/or their players, owing to the deterrent effect that those sanctions may create? If sanctions are adopted involving exclusion from competitions or a ban on [OR 30] participating in national team matches, would those sanctions, if they were not based on objective, transparent and non-discriminatory criteria, constitute an infringement of Articles 101 and/ or 102 of the TFEU?

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

5 If FIFA and UEFA, as entities which have conferred on themselves the exclusive power to organise and give permission for international club football competitions in Europe, were to prohibit or prevent the development of the Super League on the basis of the abovementioned provisions of their statutes, would

Article 101 TFEU have to be interpreted as meaning that those restrictions on competition qualify for the exception laid down therein, regard being had to the fact that production is substantially limited, the appearance on the market of products other than those offered by FIFA/UEFA is impeded, and innovation is restricted, since other formats and types are precluded, thereby eliminating potential competition on the market and limiting consumer choice? Would that restriction be covered by an objective justification which would permit the view that there is no abuse of a dominant position for the purposes of Article 102 TFEU?

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

Provisions of EU law relied on

Articles of the TFEU governing the prohibition of concerted practices (101 TFEU) and the abuse of a dominant position (102 TFEU), and principles laid down by case-law, to be specific, by the following judgments:

- Judgment of 6 December 2012, *AstraZeneca v Commission* (C-457/10 P, EU:C:2012:770, paragraph 175): a ‘dominant position’ under Article 82 EC (now Article 102 TFEU) concerns a position of economic strength held by an undertaking which enables it to prevent effective competition from being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers.
- Judgment of 30 September 2003, *Michelin v Commission* (T-203/01, EU:T:2003:250, paragraph 54): an abuse is an objective concept referring to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is already weakened and which, through recourse to methods different from those governing normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.
- Judgment of 26 January 2005, *Piau v Commission* (T-193/02, EU:T:2005:22, paragraph 109): Article 102 TFEU deals with the conduct of one or more economic operators abusing a position of economic strength and thus hindering

the maintenance of effective competition on the relevant market by allowing that operator to behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers.

- Judgment of 13 February 1979, *Hoffmann-La Roche v Commission* (85/76, EU:C:1979:36, paragraph 91): the concept of abuse is an objective concept relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.

Provisions of the TFEU governing freedom of movement for workers (Article 45 TFEU), freedom to provide services (Article 56 TFEU), freedom of establishment (Article 49 TFEU) and the free movement of capital and payments (Article 63 TFEU), in addition to the judgment of the Court of Justice of 13 June 2019, *TopFit and Biffi* (C-22/18, EU:C:2019:497), which states at paragraph 49 that, in the field of sport, the Court has consistently held that the provisions of EU law concerning the free movement of persons and services do not preclude rules or practices justified on grounds that relate to the particular nature and context of certain sports matches, such as matches between national teams from different countries. However, such a restriction on the scope of the provisions in question must remain limited to its proper objective and cannot be relied upon to exclude the whole of a sporting activity from the scope of the Treaty.

Provisions of national law relied on

No provisions of Spanish law are cited.

Summary of the facts and procedure in the main proceedings

Structure, objectives and powers of FIFA and UEFA

- 1 FIFA is a body governed by private law whose Statutes lay down, inter alia, the following objectives: ‘to organise its own international competitions’ and ‘to control every type of association football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the Game’. National associations and regional football confederations, including UEFA in the European region, are affiliated to FIFA. Professional clubs are indirect members of FIFA. Article 20 of the FIFA Statutes expressly provides that ‘clubs, leagues or any other groups affiliated to a member association shall be subordinate to and recognised by that member association.’ Article 73 of the FIFA Statutes prohibits federations, leagues and clubs affiliated to member associations from joining another member association or taking part in competitions on that

association's territory unless there are exceptional circumstances and express approval is given by FIFA and the competent regional confederation(s).

- 2 UEFA is a body governed by private law which has the following objectives: a) to deal with all questions relating to European football, b) to monitor and control the development of every type of football in Europe and c) to organise and conduct international football competitions and tournaments at European level for every type of football. Associations, national leagues and clubs are also indirect members of UEFA and are bound by its statutes and regulations.
- 3 FIFA and the regional confederations hold a monopoly with regard to the **approval and organisation of international competitions** in professional football. Article 22 of the FIFA Statutes grants UEFA and the other regional confederations the right to organise their own international competitions while imposing on them the obligation to ensure that international leagues or any other such groups of clubs are not formed without its consent and the approval of FIFA. Article 70 of the FIFA Statutes allocates to the FIFA Council sole responsibility for compiling an international match calendar that is to be binding upon the confederations, national member associations and leagues. Article 71 of the FIFA Statutes confers on FIFA and on the confederations and national member associations the exclusive power to grant prior permission for the organisation of international competitions and expressly prohibits any matches and competitions from taking place without the prior permission of FIFA, the national member associations or the confederations. Those provisions are repeated in Articles 49 to 51 of the UEFA Statutes, which confer on UEFA a monopoly as regards the organisation of international competitions in Europe and the right to prohibit international competitions in Europe for which prior permission has not been given by UEFA. Article 6 of the FIFA Regulations Governing International Matches provides that only FIFA and its confederations and member associations have the power to authorise international matches. Article 72 of the FIFA Statutes prohibits players and teams affiliated to member associations from playing matches or making sporting contacts with players or teams that are not affiliated to member associations of FIFA, while sole authority to approve exceptions to that prohibition rests with FIFA.
- 4 In accordance with Article 67 of the FIFA Statutes, FIFA, the regional confederations and the member associations are **sole proprietors of all rights** (including financial, commercial, marketing and incorporeal rights) emanating from international competitions, without any restrictions on FIFA, its national member associations and the confederations. Article 68 allocates to FIFA, its national member associations and the confederations exclusive responsibility for authorising the distribution of image and sound and other data carriers of football matches.
- 5 Both organisations hold the **power to impose sanctions and disciplinary measures** in relation to clubs and players taking part in football competitions.

Structure, objectives and operation of the European Super League

- 6 The European Super League Company, S. L. (‘ESLC’) is a limited liability company whose shareholders are the following founding clubs: Real Madrid Club de Fútbol, Associazione Calcio Milán, Fútbol Club Barcelona, Club Atlético de Madrid, Manchester United Football Club, Football Club Internazionale de Milano S.P.A., Juventus Football Club, The Liverpool Football Club and Athletic Grounds Limited, Tottenham Hotspur Football Club, Arsenal Football Club, Manchester City Football Club and Chelsea FC Plc.
- 7 ESLC is the sole proprietor of the Super League and will be the parent company of:
- SL Sports Co S. L., a company tasked with the oversight and management of the day-to-day operation of the Super League from a sporting, disciplinary and financial sustainability perspective.
 - SL MediaCo, a company responsible for overseeing and managing the routine operation of the Super League solely as regards the worldwide marketing and sale of the audiovisual rights for the Super League.
 - SL CommercialCo, a company responsible for the oversight and routine management of the worldwide marketing and sale of the commercial assets of the Super League other than the audiovisual rights.
- 8 The objective of the Super League is to become the first European competition outside UEFA, to be held yearly and with the participation of players and clubs at the highest sporting level, including the permanent member clubs of the Super League and other clubs that qualify to play in the competition. That competition would not prevent the participating clubs from taking part in their respective national competitions and domestic leagues.
- 9 The shareholders and investment agreement between the founding clubs of the Super League creates the following business model:
- The clubs will conclude participation contracts with the Super League companies and those contracts will govern how the assignment of rights from the clubs participating in the Super League to SL MediaCo will take place and what fee the clubs participating in the Super League will receive.
 - SL SportsCo and SL MediaCo and SL CommercialCo will conclude a contract for the supply of services pursuant to which SL SportsCo will be tasked with the management of sporting, disciplinary and financial sustainability matters.
 - The Infrastructure Grant Agreement will govern the terms and conditions under which the founding clubs will receive the sums to which SL MediaCo has access. The funds for the Infrastructure Grant Agreement are guaranteed by the undertaking given by JP Morgan AG on 17 April 2021 to grant a bridging loan

of EUR 3 983 000 000. Bonds will subsequently be issued on the capital markets so that investors can participate in the financing of the Super League.

- SL MediaCo will deal with the marketing and distribution of the audiovisual rights for the Super League through media agreements and distribution agreements.
 - Subsequently, participation agreements will be concluded between the founding clubs and the Super League companies and an ESLC shareholders' meeting will be held at which the conversion of ESLC into a public limited company will be approved.
- 10 That shareholders and investment agreement includes the following conditions precedent for the performance of the Super League project (conditions on which the provision of funding to carry out the project is dependent):
- recognition of the Super League by FIFA and/or UEFA as a new competition compatible with their statutes or, alternatively,
 - the obtaining of legal protection from the courts and/or administrative bodies which will enable the founding clubs to participate in the Super League in such a way that they can continue to participate in their respective leagues, competitions and national tournaments.

Initiatives taken by both parties prior to the dispute

- 11 The founding clubs informed FIFA and UEFA that they had set up a new professional football competition.
- 12 On 21 January 2021, FIFA and UEFA issued a statement in which:
- They expressed their refusal to recognise the creation of the Super League.
 - They warned that any player or club taking part in that competition would be expelled from competitions organised by FIFA and the regional federations.
 - They stated that all competitions must be organised or recognised by the appropriate body.
- 13 That statement was reaffirmed by a new statement on 18 April 2021 which was issued by UEFA, the English Football Association and the Premier League, the Royal Spanish Football Federation, La Liga, the Italian Football Federation and Lega Serie A. That statement gave a new warning concerning the adoption of disciplinary measures in relation to any clubs and footballers involved in the creation of the Super League and explicitly announced that the clubs would be excluded from any other competition at domestic, European or world level and that their players could be denied the opportunity to represent their national teams.

The adoption of those measures would lead to the failure of the Super League project and the cancellation of the funding undertakings given by JP Morgan.

- 14 The Association of European Professional Football Leagues published a statement of unanimous support for the statement by FIFA and UEFA with a view to coordinating all the measures necessary to prevent the new competition from starting to operate and to adopt the disciplinary measures announced by FIFA and UEFA in respect of clubs and footballers taking part in the new competition.

Position adopted in the proceedings before the referring court and grant of interim measures

- 15 ESLC lodged an application instituting ordinary proceedings and an *ex parte* application for interim measures against UEFA and FIFA.

- 16 More specifically, ESLC applied for the following declarations:
- that, by conferring on themselves the discretionary power to prohibit alternative competitions and by requiring clubs and potentially the Super League to assign the exploitation rights for the competitions in which they participate, UEFA and FIFA have abused their dominant position thereby infringing Article 102 TFEU;
 - that Articles 22, 67, 68, 79, 71, 72 and 73 of the FIFA Statutes, Article 6 of the FIFA Regulations Governing International Matches and Articles 49 and 51 of the UEFA Statutes are incompatible with Articles 101 TFEU and/or 102 TFEU;
 - that UEFA and FIFA are hindering freedom of competition on the market by imposing unjustified and disproportionate restrictions on the Super League in breach of Article 101 TFEU;
 - that the content of the statement issued by FIFA and UEFA on 21 January 2021 infringes Articles 101 TFEU and 102 TFEU.

- 17 In addition, ESCL claimed that FIFA and UEFA should be ordered to cease the anti-competitive conduct described above and should be prohibited from repeating such conduct in the future. In particular, ESCL sought:

- An order that FIFA and UEFA refrain from taking any steps or actions and from issuing any statement or press release which would prevent or make more difficult the preparations for the Super League, the launch and development of the Super League and the participation of clubs and players in it.
- An order that, should the need arise, FIFA and UEFA take any steps or actions and issue any statement or press release which would not, directly or indirectly, prevent or make more difficult the preparations for the Super League, the launch and development of the Super League and the participation of clubs and players in it.

- An injunction prohibiting FIFA and UEFA, directly or through their associate members (including national associations), confederations, licensee clubs and national or domestic leagues, from announcing or threatening, preparing, initiating and/or adopting any disciplinary measures or sanctions (or, directly or indirectly, promoting or encouraging the announcement, threat, preparation, initiation and/or adoption of such disciplinary measures or sanctions by third parties) against clubs, directors and staff of the clubs, and/or players who participate in preparations for the Super League and, as the case may be, eventually compete in it and, in particular, ordering that they refrain, directly or indirectly (through their associate members, confederations, licensee clubs and national or domestic leagues) from excluding such clubs and/or players from any international or national competitions in which they have been participating on a regular basis or for which they fulfil the ordinary conditions for doing so.
 - An order that FIFA and UEFA, through their own regulatory instruments, guidelines, decisions and directives – within the meaning of Article 52 of the UEFA Statutes – and, where appropriate, the enforcement of these if they are not respected or observed, instruct their associate members (including national associations), confederations, licensee clubs and national or domestic leagues to comply with the orders and injunction set out above and, in particular, warn them that no breach of the Statutes or rules of (i) FIFA, (ii) UEFA, (iii) their associate members (including national associations), (iv) confederations, or (v) national and domestic leagues, derived from preparations for, the launch of or participation in the Super League, may be relied on by the associate members of FIFA or UEFA, the confederations, licensee clubs or national or domestic leagues as grounds for sanctions, exclusions, claims or any other similar measure against clubs, directors or staff of those clubs, and/or players in international or domestic competitions.
- 18 Lastly, ESLC applied for an order that FIFA and UEFA eliminate immediately all the effects of the anti-competitive conduct described above which may have occurred before or during the course of these proceedings.
- 19 The referring court gave leave for the action to proceed on 19 April 2021 and, by order of 20 April 2021, *ex parte* interim measures were adopted which will remain in force throughout the main proceedings and which reflect the forms of order sought by ESLC set out in paragraphs 17 and 18.

Essential arguments of the parties to the main proceedings

- 20 The order for reference does not expressly set out the parties' arguments, although the position of ESLC is clear from the forms of order set out in paragraphs 16 to 18 above.

Summary of the reasoning in the request for a preliminary ruling

The existence of a monopoly contrary to the rules on the protection of competition

- 21 The referring court has identified evidence that FIFA and UEFA have a monopoly with regard to the organisation and authorisation of international competitions.
- 22 First, the referring court points out that FIFA and UEFA have a 100% market share as regards the organisation of international football competitions and therefore they hold a monopoly. The judgment of the Court of First Instance of 6 October 1994 (Case T-83/91 *Tetrapak*) found in paragraph 109 that the holding of market shares of 90% ‘meant that the applicant’s position on the market made it an inevitable partner ... and guaranteed it the freedom of conduct characteristic of a dominant position. The Commission was therefore correct in taking the view that such market shares were in themselves and in the absence of exceptional circumstances evidence of the existence of a dominant position’.
- 23 The referring court also states that FIFA and UEFA have been organising and exploiting, as a monopoly, the market for the organisation of football competitions for decades, adopting all the rules applicable to such competitions and arrogating to themselves the power to impose sanctions and disciplinary measures in respect of clubs and players participating in those football competitions. The referring court mentions in that connection the judgment of the General Court of 26 January 2005, *Piau v Commission* (T-193/02, EU:T:2005:22, paragraph 114) of which held: ‘Because the regulations are binding for national associations that are members of FIFA and the clubs forming them, these bodies appear to be linked in the long term as to their conduct by rules that they accept and that other actors (players and players’ agents) cannot break on pain of sanctions that may lead to their exclusion from the market, in particular in the case of players’ agents. Within the meaning of the case-law cited in paragraphs 110 and 111 above, such a situation therefore characterises a collective dominant position for clubs on the market for the provision of players’ agents’ services, since, through the rules to which they adhere, the clubs lay down the conditions under which the services in question are provided.’
- 24 According to the referring court, the statutes of FIFA and of UEFA, and the imposition of sanctions and bans in accordance with those statutes, constitute an insurmountable barrier to the entry of new competitors on the European market for international club football competitions and the marketing of the rights associated with those competitions, activities that are not interchangeable but are rather functionally complementary, as stated in paragraph 33 of the judgment of the Court of Justice of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376. The referring court points out in particular that:
- The power of FIFA and UEFA to give permission for the holding of international matches and competitions is not subject to any type of limit or to

an objective and transparent procedure but rather to the discretion of two private bodies which, owing to their monopoly over the organisation of competitions and exclusive management of the economic benefits derived from such sporting competitions, have a clear interest in refusing to grant that permission. Furthermore, that permission is not subject to reasons of public interest or to a time limit within which FIFA and UEFA must give a decision in that regard. That power does not satisfy the requirements of legal certainty, is liable to restrict freedom of competition and may be contrary to the judgment of 22 January 2002, *Canal Satélite Digital*, C-390/99, EU:C:2002:34, paragraph 35 of which states that a system of prior administrative authorisation cannot legitimise discretionary conduct on the part of the national authorities which is liable to negate the effectiveness of provisions of Community law, particularly those relating to the fundamental freedoms at issue in the main proceedings ... Therefore, if a prior administrative authorisation scheme is to be justified even though it derogates from such fundamental freedoms, it must, in any event, be based on objective, non-discriminatory criteria which are known in advance to the undertakings concerned, in such a way as to circumscribe the exercise of the national authorities' discretion, so that it is not used arbitrarily. In that context, the referring court also cites the judgment of the General Court of 16 December 2020, *International Skating Union v Commission*, T-93/18, EU:T:2020:610, paragraph 70 of which observes that when a rule entrusts a legal person, which itself, organises and commercially operates competitions, with the task of designating the persons authorised to organise those competitions and to determine the conditions under which they are organised, it grants that entity an obvious advantage over its competitors. Such a right may therefore lead the undertaking making use of it to prevent access by other operators to the market concerned. The exercise of that regulatory function should therefore be made subject to restrictions, obligations and review, so that the legal person entrusted with giving that consent may not distort competition by favouring events which it organises or those in whose organisation it participates. The referring court further cites the judgment of the Court of Justice of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, which held in paragraph 51 that a system of undistorted competition, such as that provided for by the Treaty, can be guaranteed only if equality of opportunity is secured as between the various economic operators. To entrust a legal person such as ELPA, which itself organises and commercially exploits motorcycling events, the task of giving the competent administration its consent to applications for authorisation to organise such events, is tantamount *de facto* to conferring upon it the power to designate the persons authorised to organise those events and to set the conditions in which those events are organised, thereby placing that entity at an obvious advantage over its competitors ... Such a right may therefore lead the undertaking which possesses it to deny other operators access to the relevant market. That situation of unequal conditions of competition is also highlighted by the fact, confirmed at the hearing before the Court, that, when ELPA organises or participates in the organisation of motorcycling

events, it is not required to obtain any consent in order that the competent administration grant it the required authorisation.

- The sanctions that FIFA and UEFA have threatened to impose will prevent clubs and players participating in the Super League from taking part in upcoming international competitions (The European Football Championship of July 2021, the Olympic Games of July 2021 and the 2022 Football World Cup). Such sanctions are not proportionate, have an obvious deterrent effect on the organisation of football competitions by potential competitors and amount de facto to the imposition of unjustified and disproportionate restrictions which have the effect of limiting competition in the internal market.
- 25 In addition to setting out the above evidence of a monopoly over the organisation of international competitions, the referring court states that significant economic consequences flow from that monopoly, since Article 67 of the FIFA Statutes provides that FIFA, its member associations and the confederations are the original owners of all of the rights emanating from competitions, including financial rights, audiovisual and radio recording, reproduction and broadcasting rights, multimedia rights, marketing and promotional rights and incorporeal rights such as emblems and rights arising under copyright law. Moreover, Article 68 of the FIFA Statutes confers on FIFA, the associations and the confederations exclusive responsibility for authorising the distribution of those exploitation rights. The grant of those economic rights is absolute and without any limit as to time.
- 26 That grant of economic rights, which means that the clubs are required to assign the commercial rights emanating from the sporting competitions in which they participate, together with the disciplinary and organisational powers described above, places FIFA and UEFA in a position of dominance, in respect of which evidence of abuse can be inferred since there is a partial and unjustified limitation of the opportunity for potential competitors, such as football clubs, to organise alternative football tournaments independently of FIFA and UEFA, and also to exploit the derived economic rights.
- 27 The referring court observes that that situation is due to the existence of an agreement between two private bodies, which enables the coordination of conduct designed to place conditions on the organisation of international football competitions and the commercialisation of the economic rights derived therefrom, which is contrary to the prohibition laid down in Article 101 TFEU. The referring court further observes that such an agreement has an obvious effect on competition in the relevant market, as referred to in Article 101 TFEU, and is liable to affect trade between the Member States. In that connection, the referring court draws attention to the judgments of the Court of Justice of 30 June 1966, *LTM* (56/65, EU:C:1966:38), which states at page 170 that, for the condition relating to the effect on trade to be fulfilled, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or of fact that the agreement in question may have an influence, direct or indirect,

actual or potential, on the pattern of trade between Member States; and of 16 July 2015, *ING Pensii*, C-172/14, EU:C:2015:484, which states in paragraph 31 that, with regard to the concept of restriction ‘by object’, it should be noted that certain types of coordination between undertakings reveal, by their very nature, a sufficient degree of harm to the proper functioning of normal competition so that there is no need to examine their effects. In that connection, the referring court draws attention to paragraph 33 of that judgment which states that, in order to determine whether an agreement between undertakings or a decision by an association of undertakings has those characteristics, regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms part. When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the actual conditions of the functioning and structure of the market or markets in question. Also in that connection, the referring court cites the judgment of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21 of which states that, to determine whether an agreement comes within the prohibition laid down in Article 81(1) EC (now Article 101 TFEU), close regard must be paid to the wording of its provisions and to the objectives which it is intended to attain. In that regard, even supposing it to be established that the parties to an agreement acted without any subjective intention of restricting competition, but with the object of remedying the effects of a crisis in their sector, such considerations are irrelevant for the purposes of applying that provision. Indeed, an agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives.

Infringement of fundamental freedoms

- 28 The disciplinary measures announced by FIFA and UEFA could lead to an infringement of EU freedoms, in particular:
- The freedom to provide services governed by Article 56 TFEU, in that those measures impede the provision of services by ESLC.
 - Freedom of movement for workers, as recognised by Article 45 TFEU, in that players are prevented from supplying their services through participation in the European Super League. In that respect, the referring court draws attention to the judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, which held in paragraph 96 that provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement therefore constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned.
 - Freedom of establishment, as provided for in Article 49 TFEU, by precluding the creation of the three companies to be tasked with the management and oversight of ESLC.

- The free movement of capital and payments governed by Article 63 TFEU, by impeding intra-Community movements of payments and capital linked to the European Super League project.

WORKING DOCUMENT