Case C-209/23

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:

31 March 2023

Referring court:

Landgericht Mainz (Germany)

Date of the decision to refer:

30 March 2023

Applicants:

FT

RRC Sports GmbH

Defendant:

Fédération Internationale de Football Association (FIFA)

Subject matter of the main proceedings

Claims for an injunction on account of infringement by the framework conditions adopted by FIFA within which players' agents may offer, provide and receive remuneration for players' agent services in relation to players and clubs, of the prohibition on cartels laid down Article 101 TFEU, the prohibition on abuse of a dominant position laid down in Article 102 TFEU, the freedom to provide services guaranteed by Article 56 TFEU, and (in part) the GDPR.

Subject matter and legal basis of the request

Subject matter: compatibility of FIFA's rules on players' agents with Article 101 TFEU, Article 102 TFEU, Article 56 TFEU and Article 6 of the GDPR.

Legal basis: Article 267 TFEU

Question referred for a preliminary ruling

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

(1) it is prohibited to agree on players' agents' remuneration, or pay them remuneration, in excess of a cap calculated as a percentage of the transfer fee or the annual remuneration of that player,

as provided for in Article 15(2) of the FIFA Football Agent Regulations ('the FFAR'),

(2) it is prohibited for third parties to pay remuneration due under a representation agreement in respect of the players' agent's contracting partner,

as provided for in Article 14(2) and (3) of the FFAR,

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

as provided for in Article 14(10) of the FFAR,

(4) for the grant of a licence as a players' agent, which is a condition for being allowed to provide players' agent services, it is required that the applicant submit to the internal regulations of the world sporting association (in this case: the FFAR, the FIFA Statutes, the FIFA Disciplinary Code, the FIFA Code of Ethics, the FIFA Regulations on the Status and Transfer of Players as well as the statutes, regulations, guidelines and decisions of authorities and bodies) and also to its jurisdiction as an association and that of confederations and member associations,

as provided for in Article 4(2), Article 16(2)(b) and Article 20 of the FFAR, in conjunction with Article 8(3), Article 57(1) and Article 58(1) and (2) of the FIFA Statutes, Article 5(a), Article 49 and Article 53(3) of the FIFA Disciplinary Code, and Article 4(2) and Article 82(1) of the Code of Ethics,

(5) requirements are laid down for the grant of a licence as a players' agent, under which the grant of a licence is permanently excluded in the case of convictions or settlements in criminal proceedings or a suspension of two years or

more, licence suspension or withdrawal, or other disqualification by an authority or a sports governing body, without the possibility of the licence being granted at a later date,

as provided for in Article 5(1)(a)(ii) and (iii) of the FFAR,

(6) players' agents are prohibited, in connection with the conclusion of a transfer agreement and/or a contract of employment, from providing players' agent services or any other services to, and being remunerated for them, by:

(a) the releasing club and the engaging club,

(b) the releasing club and the player,

(c) any parties involved (releasing club, engaging club and player),

as provided for respectively in Article 12(8) and (9) of the FFAR, and

(6a) players' agents are prohibited, in connection with the conclusion of a transfer agreement and/or a contract of employment together with a connected players' agent, from providing players' agent services or any other services to, and being remunerated for them, by:

(a) the releasing club and the engaging club,

(b) the releasing club and the player,

(c) any parties involved (releasing club, engaging club and player),

if the concept of connected players' agent includes cooperation in accordance with the definition of 'connected football agent' laid down in the FFAR (fourth subparagraph on p. 6 of the FFAR),

as provided for in Article 12(10) of the FFAR, in conjunction with the definition of 'connected football agent' in the fourth subparagraph on p. 6 of the FFAR,

(7) players' agents are prohibited from approaching or entering into a representation agreement with a club, player, or member association of the world sporting association or a legal person operating a single-entity league which is permitted to engage players' agents and which have entered into an exclusive agreement with another players' agent,

as provided for in Article 16(1)(b) and (c) of the FFAR,

(8) the names and details of all players' agents, the names of the clients whom they represent, the players' agent services which they provide to each individual client and/or the details of all transactions involving players' agents, including the amount of remuneration payable to players' agents, must be uploaded to a

platform of the world sporting association and this information is made available in part to other clubs, players or players' agents,

as provided for in Article 19 of the FFAR,

(9) it is prohibited to agree remuneration for players' agent services on any other basis than the player's remuneration or the transfer fee,

as provided for in Article 15(1) of the FFAR,

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

as provided for in Article 15(3) and (4) of the FFAR,

(11) the amount of the players' agent's remuneration to be calculated on a pro-rata basis is to be based solely on the salary actually received by the player,

as provided for in Article 14(7) and (12) of the FFAR,

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

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

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

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

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

(e) if they conduct their business affairs through an agency, within 14 days of the first transaction involving the agency: the number of players' agents who use the same agency to conduct their business affairs and the name of all its employees,

as provided for in Article 16(2)(j)(ii) to (v) and (k)(ii) of the FFAR,

(13) clubs are prohibited from agreeing on remuneration or elements of remuneration with players' agents for the future transfer of a player or from paying remuneration or elements of remuneration to players' agents, the calculation basis for which is (also) dependent on future transfer compensation received by the club from a subsequent transfer of the player,

as provided for in Article 18*ter*(1), first alternative, of the FIFA Regulations on the Status and Transfer of Players ('the FIFA RSTP') and Article 16(3)(e) of the FFAR.

Provisions of European Union law relied on

Article 101 TFEU, Article 102 TFEU, Article 56 TFEU and Article 6 of the GDPR

Provisions of national law relied on

Paragraphs 1, 19 and 33 of the Gesetz gegen Wettbewerbsbeschränkungen (Law against restrictions of competition) ('the GWB')

Paragraphs 823 and 1004 of the Bürgerliches Gesetzbuch (Civil Code) ('the BGB')

FIFA regulations relied on

FIFA Football Agents Regulations ('the FFAR')

Definitions, Articles 4, 5, 12, 14, 15, 16, 19 and 20

FIFA Regulations on the Status and Transfer of Players ('the FIFA RSTP')

Article 18*ter*

FIFA Regulations on Working with Intermediaries

Article 7

FIFA Statutes 2021

Articles 8, 14, 57 and 58

FIFA Code of Conduct 2019

Articles 5, 49 and 53

FIFA Code of Ethics 2020

Articles 4 and 82

Presentation of the facts and procedure in the main proceedings

The first applicant is a players' agent and, in addition, vice-president of the players' agents' association, the Football Forum. The second applicant is a limited liability company (GmbH) with its registered office in Frankenthal (Germany), which also acts as players' agent and is pre-registered with the Deutscher Fußball-Bund ('the DFB'), the national German football association to which the defendant belongs. The first applicant is managing director of the second applicant and – according to his submission at least – also registered as a players' agent in France and England.

The defendant is a non-profit association with legal personality incorporated under Swiss law with its registered office in Zurich (Switzerland). It is the supreme global governing body of football and has 211 affiliated national member associations around the world, including the DFB. Under Article 11(4) of the defendant's statutes ('the FIFA Statutes'), the defendant's member associations must undertake in their statutes to comply with the defendant's regulations and recognise its decisions (see also Article 14 of the FIFA Statutes).

The defendant has various bodies and committees. Its Council is the strategic and oversight body and issues general regulations in accordance with Article 34(11) of the FIFA Statutes.

The defendant's Council adopted the FIFA Football Agent Regulations ('the FFAR') at its meeting on 16 December 2022 and published them on 6 January 2023.

They are new regulations laying down the framework conditions within which players' agents may offer, provide and receive remuneration for players' agent services to players and clubs.

Articles 1 to 10 of the FFAR, and also Articles 22 to 27 thereof, entered into force on 9 January 2023 (see Article 28(1)(a) of the FFAR). The remaining provisions will enter into force on 1 October 2023, pursuant to Article 28(1)(b) of the FFAR.

Under the rules already in force prior to the adoption of the FFAR, clubs are prohibited from making the fee of the players' agent dependent on future transfer compensation (Article 18*ter*(1) of the FIFA RSTP and Article 7(4) of the FIFA Regulations on Working with Intermediaries).

In the present dispute before this court, the applicants make claims for injunctions on account of those rules and also some of the rules contained in the FFAR – in so far as they are referred to in the question referred for a preliminary ruling. In their view, the contested rules infringe the prohibition on cartels laid down in Article 101 TFEU, the prohibition on abuse of a dominant market position laid

down in Article 102 TFEU, the freedom to provide services guaranteed by Article 56 TFEU, and (in part) the GDPR. They therefore request that the defendant be prohibited from applying those rules.

The defendant, on the other hand, contends that its rules are lawful.

I.

The resolution of the present dispute turns on whether Articles 101, 102 and 56 TFEU and Article 6 of the GDPR preclude the rules at issue mentioned in the question referred for a preliminary ruling.

Under national German law, in the event of such an infringement, the applicants would have a claim to an injunction under Paragraph 33(1) and (2) of the GWB, in conjunction with Paragraphs 1 and 19 thereof, Articles 101 and 102 TFEU and the second sentence of Paragraph 1004(1) of the BGB, by analogy in connection with Paragraph 823(2) of the BGB, Articles 56, 101 and 102 TFEU and also Article 6 of the GDPR, and therefore the action would be well founded and would thus have to be granted. Otherwise, the action would be unfounded and would therefore have to be dismissed.

II.

1. Articles 101 and 102 TFEU.

(a) In the view of the Chamber, the rules at issue should fall within the scope of Articles 101 and 102 TFEU.

The defendant argues that the ostensibly economic activity of players' agents is directly connected to sporting competition and for that reason does not fall within the scope of Articles 101 and 102 TFEU. It concerns inter alia the composition of the teams, their continuity and their sporting strength, but also the loyalty of fans and viewers to clubs and their players. The activities of players' agents thus affect fair sporting competition and the performance and health of sportsmen. The defendant, as an international umbrella organisation, is responsible for the regulation of that activity and can also rely inter alia on Article 165 TFEU, which emphasises the special social character of the field of sport. In that context, it has a margin of discretion. In that respect, it should be noted that there is no other regulatory authority at global level and that it must find global and international solutions which have to fit into the respective national legal frameworks.

However, having regard to the case-law of the Court of Justice of the European Union ('the Court of Justice') in *Piau* (judgment of 26 January 2005 – T-193/02), the Chamber considers that it should rather be assumed that the occupation of players' agent constitutes an economic activity involving the provision of services, which does not fall within the scope of the specific nature of sport. Similarly, against the background of the abovementioned case-law, it must be assumed that the defendant is an association of undertakings within the meaning

of those provisions and that the rules at issue are to be regarded as a decision by an association of undertakings within the meaning of Article 101 TFEU. In the abovementioned judgment, the Court of Justice also concluded that the defendant held on the market for players' agents services a dominant position within the meaning of Article 102 TFEU. Since player transfers are often carried out on a cross-border basis and the occupation of a players' agent – like that of the applicants in this case – is not limited to transfers within the national professional league of a Member State, the rules at issue also affect trade between Member States.

(b)

The rules at issue may also constitute in principle a restriction of competition within the meaning of Article 101 TFEU since they limit the freedom of economic development of the actors involved (players' agents, players and clubs) with regard to a parameter of competition (in this case, inter alia, price and market access conditions).

However, according to the case-law of the Court of Justice in the *Meca-Medina and Majcen* (judgment of 18 July 2006 – C-519/04 P, EuZW 2006, 593), not every decision of an association of undertakings which restricts the freedom of action of the actors concerned is necessarily caught by the prohibition laid down in Article 101 TFEU. Rather, account must first of all be taken of the overall context in which the decision in question was taken or produces its effects and, more specifically, of its objectives. In this context, it must be considered whether the restrictions on the economic freedom of action of the actors involved associated with the rules at issue serve a legitimate objective, are necessary for the achievement of that objective, and are proportionate to that objective (the 'three-stage test').

Nonetheless, the Court of Justice has not clearly stated in this context whether the standard of that three-stage test is limited from the outset solely to rules of a purely sporting nature which directly affect sporting competition itself (such as, for example, the doping rules at issue in *Meca-Medina and Majcen*) or whether it is also applicable to other rules adopted by a sporting association. The defendant also argues that a distinction between rules of a purely sporting nature and other rules is not possible at all since rules with an economic connection – such as the rules at issue here on the activity and remuneration of players' agents – also have an effect on sporting competition because they at least indirectly affect the composition of the respective squads of the clubs.

If the three-stage test were to be limited from the outset to rules of a purely sporting nature, it would be not applicable in the present case. In that case, an infringement of Article 101 TFEU would have to be found. The Chamber takes the view, in particular – subject to a different assessment by the Court of Justice – that it is not evident that the strict requirements laid down in Article 101(3) TFEU are fulfilled in the present case.

Otherwise, it will be necessary to examine whether the rules at issue satisfy the requirements of the three-stage test.

In *Meca-Medina and Majcen*, the Court of Justice also did not take a position on whether the three-stage test should also be applied to the requirement relating to abuse of a dominant market position under Article 102 TFEU. The European Commission and the Bundeskartellamt consider that it should. As far as can be seen, the majority of German-language case-law and academic legal writings on the law on cartels support this view. However, a binding decision by the Court of Justice on this matter has yet to be taken.

(c)

In so far as the question of an infringement of the law on cartels by the rules at issue in the present case depends on an assessment of proportionality in accordance with the three-stage test, it is unclear whether the objectives cited by the defendant, which the rules at issue are intended to achieve, should be regarded as legitimate objectives in that sense.

In this context, the defendant refers in general to the following objectives:

- safeguarding the integrity of football, sporting competition and the transfer market, which is jeopardised by problems and undesirable developments in the transfer and players' agent market (in particular, players' agent fees which are not linked to the quality of the service provided, their blatant disproportion to training compensation and solidarity contributions, lack of transparency, undermining of contractual stability, abusive, excessive and unethical behaviour, and conflicts of interest),

- protecting contractual stability

- promoting solidarity between top-level and grassroots football

- preserving sporting balance

- establishing and improving minimum professional and ethical standards for the occupation of players' agent

- ensuring the quality of the services which players' agents provide to their clients

- limiting conflicts of interest to protect clients from unethical behaviour

- improving financial and administrative transparency

- protecting players who often lack experience or information on the football transfer system

- eliminating unfair, disproportionate and speculative practices, and

• preserving the orderly nature of sporting competitions, in particular by preventing teams from changing their competitive strength during a competition.

Only some of those objectives directly concern the functioning of sporting competition as such. Therefore, the question arises first of all whether such objectives can be taken into account at all in the three-stage test as legitimate objectives in relation to the rules of a sporting association or whether the implementation of those objectives must be reserved to the State legislature. In *Meca-Medina and Majcen*, the Court of Justice did not clearly state whether only objectives which directly concern the functioning of sporting competition can be considered as legitimate objectives in the three-stage test, or whether other objectives deemed legitimate can also be taken into account.

Furthermore, it is uncertain whether the rules at issue are necessary to achieve the specific objectives cited by the defendant, as required by the three-stage test. In this context, the question – which has not yet been answered by the Court of Justice – also arises as to the extent to which the defendant has a margin of discretion in that regard.

(1) Percentage limitation of players' agents' remuneration ('service fee' cap) (point 1 of the question referred)

The defendant claims in this respect that the current remuneration practice contributes significantly to numerous problems and undesirable developments on the transfer market, inter alia a threat to contractual stability, conflicts of interest, a general lack of transparency precisely in connection with players' agents' fees, unfair and excessive behaviour, and a threat to solidarity in football through speculation and sheer pursuit of profit.

The only aspect mentioned by the defendant in this context which could directly affect the functioning of sporting competition is contractual stability. This is because the stability of the composition of a team can have a direct impact on its sporting performance.

The defendant argues in this regard that higher remuneration for the players' agent creates a greater incentive to work towards a transfer (which may not even make sense from a sporting point of view). Limiting the remuneration reduces that incentive and therefore protects contractual stability. The applicants argue, conversely, that a limitation of the remuneration means that a players' agent has to arrange a larger number of transfers in order to earn a certain amount of remuneration and therefore the rules laid down by the defendant have precisely a counterproductive effect on contractual stability. The question therefore arises as to the extent to which the rules should be regarded as suitable at all for achieving the objective of contractual stability, and if so, whether they are necessary and proportionate in that regard.

As regards the other objectives, there is no direct connection to the functioning of sporting competition and therefore – as stated above – it is questionable whether

they can be taken into account at all as legitimate objectives in the three-stage test. If they can, it would be necessary further to examine whether the rules are necessary to achieve the respective objective and whether they are proportionate to that objective.

With regard to the objective of curbing conflicts of interest, the defendant argues that without the rules at issue there is a risk that a players' agent would try to achieve the highest possible remuneration for himself or herself rather than the highest possible salary for the player represented. The limitation of the remuneration to a certain percentage of the player's negotiated salary appears to be quite suitable to achieve the desired aim in the event the agent is mandated by the player. However, the rules also provide for a limitation of the remuneration to a certain percentage of the player's salary in the event the agent is mandated by the engaging club even though the club would precisely have an interest in keeping the player's salary as low as possible. Therefore, in the view of the Chamber, there are doubts as to whether the rules in their current form are in fact suitable for excluding conflicts of interest. In any event, the necessity and proportionality remain to be examined independently.

In the view of the Chamber, the extent to which a limitation of a players' agent's remuneration to a certain percentage of the player's salary or of the transfer fee leads to greater transparency is unclear. In this respect, the defendant argues that such a general limitation is known to the clients and therefore promotes transparency. However, even without a general limitation, the remuneration agreed with the players' agent would be known to the respective clients (who are, after all, the contractual partners of the players' agent with whom the remuneration agreement has been concluded) and therefore Chamber finds the defendant's arguments unclear.

Similarly, it is not apparent how the rules on remuneration at issue in this case are intended to prevent or curb the abusive and excessive behaviour of players' agents cited by the defendant (cases of corruption and tax evasion as well as cases in which the inexperience of players was exploited are cited as examples thereof).

In this context, the defendant also refers to a 'hidden information' problem (players' agents generally have superior knowledge of relevant information for a transfer, for example concerning general market conditions, the player's salary expectations and market value as well as the financial leeway of the engaging club, which they could use to the detriment of the players), a 'hold-up' problem (as transfers are only possible during set time windows, players' agents try to use the time pressure involved to agree higher remuneration for themselves), and a 'gate-keeper' problem (agents of particularly sought-after players exploit their strong position as, so to speak, unavoidable intermediaries on the market, to demand excessive remuneration). In the view of the Chamber, the intended limitation of the remuneration to a certain percentage of the player's salary or of the transfer fee at best indirectly addresses the abovementioned problems and therefore it is questionable whether it can be considered to be suitable for curbing

those problems. In any event, the necessity and proportionality thereof would appear to be in doubt.

The aspect of endangering solidarity in football through 'speculation and the sheer pursuit of profit' appears, in the view of the Chamber, too unspecific in those general terms to constitute a legitimate objective in the three-stage test. In this context, the defendant also states at another juncture that the remuneration of players' agents has been decoupled from training compensation and solidarity contributions. In this regard too, however, it is not clear to the Chamber how the intended limitation of the remuneration of the players' agent to a certain percentage of the player's salary is suitable for addressing this problem. Rather, a direct coupling of the remuneration to the training compensation and solidarity contributions (and not to the respective player's current salary) should be necessary.

(2) 'Client pays' rule (point 2 of the question referred)

In the view of the defendant, the 'client pays' rule is primarily intended to avoid conflicts of interest. The background to this is a practice, which clearly exists at present, whereby the player agent's fee is paid in full by the engaging club despite the fact that the players' agent has been mandated – also – by the player. Furthermore, the defendant also refers in this context to the 'hidden information' problem described above and states that clients are taking an increased interest in the remuneration of the players' agents working for them and also want to shape it if they in fact have to pay the remuneration themselves in the end.

Here, again, the question first arises as to whether those aspects can constitute a legitimate objective in the three-stage test at all since there is no direct connection to the functioning of sporting competition.

The extent to which specifically identifiable conflicts of interest have arisen in this context in the past cannot be determined on the basis of the parties' submissions. In particular, no surveys or other investigations carried out are mentioned in this regard. In the view of the Chamber, it seems in principle entirely possible that a situation where the player's agent is not remunerated by the player as his client, but by the engaging club, could lead to conflicts of interest for the player's agent (to the detriment of the player as client) since the interests of the player and the engaging club are naturally not the same. However, from the player's point of view, this possible conflict of interest is offset by the considerable advantage that the player does not have to pay the agent's fee, which he owes per se. In the player's perception, this advantage is more likely to outweigh the risk of a possible conflict of interest on the part of the players' agent. The applicants therefore also submit that the defendant is not at all concerned with avoiding conflicts of interest to the detriment of the players, but rather with relieving the financial burden on the clubs.

(3) '50% payment' rule (point 3 of the question referred)

The defendant argues that the idea behind this rule is essentially the same as that underlying the 'client pays' rule, namely that, in order to avoid conflicts of interest, the person who mandated the players' agent should be the person who pays the agent.

Therefore, reference can be made initially to the above comments at point (2).

However, here the further question arises as to why the 50% limit applies only to the part of the remuneration to be paid by the engaging club and not, rather, also to the part of the remuneration to be paid by the player.

(4) Rule on submission (point 4 of the question referred)

The defendant argues that submission to the FFAR and also the other rules set out in Article 4(2) of the FFAR is directly related to, and in line with, the objectives of the FFAR and the football transfer system, namely to ensure the integrity of football, sporting competition and the transfer system. It contributes inter alia to the establishment and improvement of minimum professional and ethical standards and thus ensures and enhances the quality of the provision of players' agent's services at global level. It is a requirement for the comprehensive implementation and enforcement of the FFAR, the monitoring thereof and the sanctioning of infringements of the FFAR.

It argues that the submission of players' agents to the jurisdiction of the defendant's association and the arbitration of the CAS is a necessary, at any rate appropriate and reasonable consequence of the (re)introduction of the licensing requirement for players' agents in terms of compliance with the FFAR and the prosecution and sanctioning of infringements of the FFAR. Furthermore, the defendant points out that under Article 20(1) of the FFAR, players' agents and their clients can agree individually on a different conflict resolution mechanism and thus also on the jurisdiction of the State courts.

It is obvious that the FFAR rules at issue in this case – in so far as they prove to be lawful – must also be enforced against the players' agents. Therefore, in the three-stage test the decisive factor should be whether submission to the defendant's rules and jurisdiction is to be regarded as necessary and proportionate in that regard.

This is supported by the fact that the rules are to apply worldwide and the rule on submission ensures a uniform legal framework worldwide and provides for a central decision-making authority. However, to satisfy the requirements of the three-stage test, there is a requirement that submission to all the above rules be necessary for the effective implementation of the FFAR and that the jurisdiction of the defendant as an association and of its confederations comply with the minimum procedural standards to be guaranteed from an EU law perspective.

(5) Requirements for licensing as a players' agent (point 5 of the question referred)

According to the defendant's submissions, the rule is intended to contribute to professionalisation and an increase in the quality of players' agents' activities. In view of the great influence of players' agents on the transfer market and the resultant considerable effects on their clients, in particular in economic and financial terms, it is necessary, in order to protect the clients (in particular young, inexperienced players), to exclude, to the extent provided for in the rules, candidates fulfilling the criteria laid down therein from acting as players' agents.

As stated above, with regard to the possible effects of a players' agent's activity on the stability and the composition of the team squads, there is a link with the functioning of sporting competition. The fact that the defendant makes the occupation of players' agent dependent on certain qualifications or the fulfilment of certain requirements should not therefore, in the view of the Chamber, be called into question in principle. The extent to which the individual requirements formulated by the defendant prove, in this context, to be actually necessary in each case is, however, uncertain.

(6) Prohibition on multiple remuneration (points 6 and 6a of the question referred)

Here, the defendant again cites the aspect of avoiding conflicts of interest. In this respect, reference can be made to the remarks at point (2).

Furthermore, it should also be examined here whether the concept of a connected players' agent is limited to the necessary extent.

(7) Rule on making approaches (point 7 of the question referred)

The essential reason stated by the defendant for this rule is the principle of contractual stability.

In this context, the question arises inter alia as to whether an 'additional' safeguard through the FFAR is necessary for this or whether the contractual sanctions available in the case of infringement of an exclusive representation agreement already entered into with another players' agent are considered to be sufficient.

(8) Rule on transparency (point 8 of the question referred)

According to the defendant, this rule is targeted at the currently insufficient transparency and accountability relating to the services of players' agents.

Information is only published in a graduated manner in accordance with legitimate processing purposes on three different channels, which are open to different groups of recipients, and precisely not made accessible to the public internationally, as the applicants believe. With regard to the fees of individual players' agents, only aggregated figures are provided. Data protection is taken seriously and the implementation of the FFAR is monitored by the defendant's

data protection department. Disclosure via the respective channels is regulated by 'finely balancing the interests of the relevant data subjects with the relevant interests of the defendant'. Only the Football Agent Directory is to be published on the FIFA website, whilst all other information is only to be made available on the platform or the FIFA Legal Hub, which is only be accessible to a narrow group of recipients.

Here, too, the question arises first of all as to the extent to which increased transparency can be used as a legitimate goal at all in the absence of a direct connection with the functioning of sporting competition.

Irrespective of this, increased transparency should not be an end in itself, but can only be taken into consideration as a justification for a restrictive measure if it is necessary to achieve or ensure another legitimate objective. It therefore depends on whether the respective processing purposes stated by the defendant in this context constitute a legitimate objective in the three-stage test and whether making individual pieces of information available to the relevant group of addressees is necessary and proportionate to achieve that objective.

In the view of the Chamber, it appears particularly problematic in this regard that the wording of the provision at issue in Article 19 of FFAR only provides for the disclosure of the information referred to therein by the defendant and that the wording of the provision does not support any graduation according to recipient groups or processing purposes or a weighing of the interests of the data subjects, as stated by the defendant. Accordingly, on an objective interpretation even unrestricted disclosure of the information referred to in the provision might be permissible in extreme cases.

(9) Calculation of the 'service fee' cap (point 9 of the question referred)

The defendant argues that this rule is merely an annex provision to the rule restricting the remuneration of players' agents ('service fee' cap; see point 1 of the question referred) and that the rule precisely does not prescribe a particular form of remuneration. However, this appears questionable both on the basis of the wording of the rule and on the basis of its position in the scheme of Article 15(1) of the FFAR. In the view of the Chamber, the rule in its current form is, on an objective interpretation, to be construed as having the meaning as set out by the applicants and formulated in point 9 of the question referred.

The defendant does not set any objectives that could justify a rule with such content. Therefore, the rule in its current form – subject to a different assessment by the Court of Justice – probably infringes Article 101(1) TFEU.

(10) Rule on presumption laid down in Article 15(3) and (4) of the FFAR (point 10 of the question referred)

According to the defendant's submissions, the rule serves to prevent circumvention of the 'service fee' cap. The aim is, inter alia, to prevent a players'

agent from declaring the remuneration (limited in amount by the 'service fee' cap) for a players' agent service as remuneration (not limited in amount) for another service and thus circumventing the 'service fee' cap. In this respect, it should be noted that players' agents could easily generate (unlimited) income with other services in so far as those services were also actually provided.

For this rule to be lawful, the 'service fee' cap must first be lawful. Even if that were the case, however, it appears questionable whether the rule on presumption laid down here (that is to say the associated reversal of the burden of presenting the facts and adducing the evidence) is necessary and proportionate for the effective enforcement thereof.

(11) Only salary actually received as the basis for calculating the players' agent's fee, Article 14(7) and (12) of the FFAR (point 11 of the question referred)

This rule is a mere annex provision to the 'service fee' cap referred to at point 1 of the question referred.

Subject to a different assessment by the Court of Justice, if the 'service fee' cap is lawful, there should be no objections to basing the calculation thereof solely on the salary actually received by the player.

(12) Disclosure obligations (point 12 of the question referred)

According to the defendant, this rule serves to monitor compliance with the rules applicable to players' agents, in particular the FFAR. Therefore, for the rule to be lawful, the FFAR must first be lawful (in particular the rules on remuneration at issue here). In addition, it may depend on whether the disclosure of the information referred to in Article 16(2)(j)(ii) to (v) and (k)(ii) of the FFAR is actually necessary for compliance with those rules. At present, this seems conceivable at most if broad discretion is conferred on the defendant, as the defendant does not provide any specific information as to which specific provision of the FFAR is to be ensured by the disclosure of the various information, and the rule also provides for the disclosure of 'information requested on the Platform' without providing greater detail. 'Platform' is defined in the FFAR as 'the digital platform operated by FIFA through which the licensing process, dispute resolution process, continuing professional development (CPD) and reporting shall occur'. What information is requested on the 'platform' is left entirely open under the rules. In so far as the defendant also mentions at this juncture disclosure in a graduated form and the limited group of recipients of the information, reference can be made to the explanations at point 8.

(13) Rules on taking account of future transfer compensation (point 13 of the question referred)

According to the defendant's submissions, this rule is intended to protect contractual stability and the clubs' independence with regard to their transfer policy.

Ultimately, similar questions arise in this context as they do with regard to the 'service fee' cap. In this respect, too, it may depend on whether the players' agent sharing in future transfer compensation provides an incentive to work towards unnecessary further transfers and whether, if so, a prohibition is necessary and proportionate to ensure the degree of contractual stability required for fair sporting competition.

2. Article 56 TFEU

Since the occupation of players' agent – as explained above – constitutes an economic activity and goes beyond the borders of a Member State, it also falls within the scope of the freedom to provide services laid down in Article 56 TFEU. This applies, inter alia, not only to the action of public authorities, but also to rules of any other nature aimed at regulating the provision of services in a collective manner, such as the statutes of sports associations (see also in this regard the cited case-law of the Court of Justice in *Meca-Medina and Majcen*). Since the rules at issue undoubtedly restrict or regulate the provision of services by players' agents, whether there is an infringement of the freedom to provide services under Article 56 TFEU also depends on whether the restrictions are possibly justified. This would be the case if they served to protect or enforce an overriding public interest and were appropriate, necessary and proportionate for that purpose. Thus, a comparable issue arises as in connection with the abovementioned three-step test according to the case-law of the Court of Justice in *Meca-Medina and Majcen*, although it does not appear certain whether an overriding general interest to justify a restriction of the freedom to provide services according to Article 56 TFEU is necessarily to be equated with a legitimate interest in the three-stage test.

3. Article 6 of the GDPR

The storage and processing of personal data provided for in Article 16(2)(j)(ii) to (v) and (k)(ii) and Article 19 of the FFAR can also only be justified under Article 6(1) of the GDPR if it can be concluded that the defendant has a legitimate interest. Here, too, it is therefore decisive whether the data storage or processing serves a legitimate objective, is necessary for the achievement of that objective and is proportionate to that objective, and the question also arises in this respect whether a legitimate interest within the meaning of Article 6(1) of the GDPR is necessarily to be equated with a legitimate interest in the three-stage test. However, only points 8 and 12 of the question referred are affected by possible infringements of the GDPR.

III.

The Chamber [refers] the questions set out in the operative part of the order to the Court of Justice for a preliminary ruling of its own motion pursuant to

subparagraph (a) of the first paragraph of Article 267 TFEU and the second paragraph thereof and stays proceedings pending the outcome of the request for a preliminary ruling.

This is appropriate as only the Court of Justice can give a binding judgment on the existence of an infringement of Articles 101, 102 and 56 TFEU and Article 6 of the GDPR.

Since the provisions of the FFAR at issue are intended to apply worldwide, a resolution of the dispute can also be achieved much better by a decision of a supranational court such as the Court of Justice than by a decision of a national court of first instance.

Contrary to the applicants' view, the questions referred also very much concern the interpretation of EU law and not its application in individual cases. In particular, it makes no difference whether the conformity with EU law of a specific provision of national law or of the statutes of a sporting association is at issue.

It is also not apparent that the Member State's courts have a margin of discretion in this context which cannot be reviewed by the Court of Justice. Rather, if the necessary factual basis is established – as is the case here – the Court of Justice can also itself fully review and assess the issue of proportionality or the extent to which the defendant is acting within a margin of discretion that it may enjoy.