Can No-Poach Agreements Be Justified? Insights from the AG Opinion on Portuguese Football

Published: 05 August 2025, by Emmanuel Goriola, Sam Parry

This article was written for and first published by LawInSport.com. The original is available here.

On 15 May 2025, Advocate General Nicholas Emiliou (**AG**) delivered three opinions regarding decisions by football governing bodies. Two cases related to aspects of the FIFA Football Agent Regulations (*Case C-209/23, RCC Sports*[1] and *Case C-428/23, Rogon*[2]). The third case involves a decision by the Portuguese competition authority, Autoridade da Concorrência (**AdC**), which found that a "no-poach" agreement among football clubs during the Covid pandemic restricted competition (*Case C-133/24, Tondela*[3]). This article focuses on ***Tondela***.

[1] Opinion of Advocate General Emiliou, Case C-209/23, RRC Sports GmbH v Fédération internationale de football association (FIFA), https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62023CC0209 (last accessed 31 July 2025).

[2] Opinion of Advocate General Emiliou, Case C-428/23, ROGON GmbH & Co. KG, MVI Management GmbH, DC v Deutscher Fußballbund e. V. (DFB), https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62023CC0428 (last accessed 31 July 2025).

[3] Opinion of Advocate General Emiliou, Case C-133/24, CD Tondela – Futebol, SAD v Autoridade da Concorrência, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62024CC0133 (last accessed 31 July 2025).

Tondela deals with an alleged no-poach agreement between Portuguese clubs which prevented the clubs from signing players who had unilaterally terminated their contracts and left their previous club due to salary cuts and delayed payments arising from the Covid-19 pandemic. In his opinion in ***Tondela***, the AG explained that although no-poach agreements between competitors generally have all the characteristics to be considered *prima facie* (at first sight) restrictive of competition "by object", and therefore an infringement of EU competition law, the specific context of this case cast doubt on the harmful nature of the agreement in question. In particular, he identified credible arguments that the alleged agreement was necessary to ensure completion of the football season without the integrity and fairness of the tournament being compromised in light of the challenges posed by the Covid-19 pandemic.[4]

In October 2024, *LawInSport* published an article offering some preliminary insights into this complaint (before the AG opinion was published).[5]

While an AG's opinion is not binding on the Court of Justice of the European Union (**CJEU**) it is influential and is often followed. This article examines the AG's legal opinion in ***Tondela***, the importance of the "genuine rationale" behind the agreement and why "context always matters" when determining whether an arrangement is a by-object restriction.

It also considers how the AG's opinion should be assessed in light of the European Commission's (**EC**) position that no-poach agreements should be considered as restrictions by object in light of the non-binding policy brief ''Antitrust in Labour Markets, Competition Policy Brief No 2/2024'; from the European Commission on no-poach agreements.[6]

Finally, it will compare the context of the Portuguese football agreement with the approach of the CJEU in *Case 650/22, Diarra*[7] which also considered restrictions on player mobility in the EU.

Anyone with an interest in the how competition/anti-trust law in sport is developing will find this article of interest.

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4 *Opinion of Advocate General Emiliou, Case C-133/24, 2025, (ECLI:EU:C:2025:364).*

5 Emmanuel Goriola & Sam Parry, '"No-poach" agreements - What can sports learn from Portuguese & Mexican football, US Major Leagues and UFC?', LawInSport, published on 11 October 2024, https://www.lawinsport.com/topics/item/no-poach-agreements-in-sport-what-can-clubs-learn-from-cases-in-portuguese-mexican-football-us-major-league-sports-and-the-ufc (last accessed 31 July 2025).

6 *Competition Directorate–General of the European Commission, 'Antitrust in Labour Markets, Competition Policy Brief No 2/2024', European Commission, May 2024*, https://competition-policy.ec.europa.eu/document/download/adb27d8b-3dd8-4202-958d-198cf0740ce3_en (last accessed 31 July 2025).

7 *Case C- 650/22- FIFA v BZ (2024) (ECLI:EU:C:2024:824).*

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Background to the case – A reminder of where we are now

In March 2020, the World Health Organisation announced a global pandemic. The nation of Portugal shut down and banned stadium attendances. The Portuguese professional football league was suddenly left on the brink of collapse due to limitations on revenues mid-season. Players stopped receiving their salaries and there were concerns of a player exodus. An

unprecedented crisis was occurring and the league needed to respond. This extraordinary confluence of events lays the groundwork for understanding the case that now unfolds.

In 2022, the Portuguese competition authority, the Autoridade da Concorrência (AdC), fined 31 football clubs for anticompetitive practices during the 2019/2020 season. These clubs, along with the Portuguese professional football league, had agreed not to recruit players who had terminated their contracts on the back of salary issues linked to the Covid-19 pandemic. This agreement effectively prevented players from being hired by other clubs in Portugal's top two divisions, thereby limiting their ability to leave their current clubs. The Portuguese clubs alleged that they entered into the agreement to ensure that the 2019/2020 season could be completed after the prolonged delays caused by the pandemic. However, the players, unhappy with this arrangement, prompted an investigation by the AdC.[8]

The Portuguese Competition Authority's Analysis

The AdC concluded that the agreement constituted a no-poach arrangement, something that competition regulators have generally argued is anticompetitive by object under Article 101 of the Treaty on the Functioning of the European Union (**TFEU**) (restriction or distortion of competition by object or effect). The arrangement was viewed as restricting competition by preventing clubs from hiring each other's players, thereby limiting labour mobility and bargaining power. This not only potentially harms the input market by restricting the movement and negotiation power of players but can also affect the output market by reducing the quality and competitiveness of the sporting spectacle offered to consumers.

Following the AdC's ruling, the sanctioned clubs appealed to the Portuguese Competition, Regulation and Supervision Court, and this court made a referral for a preliminary ruling to the CJEU. The questions for preliminary ruling included whether the agreement fell outside Article 101 TFEU as a rule of sporting interest, whether it pursued legitimate objectives, and whether it constituted a restriction by object.

The CJEU's decision is pending, with the AG's opinion published on 15 May 2025. The case highlights the tension between sporting regulations and competition law, especially in light of the EC's stance on no-poach agreements.

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8 '*AdC issues sanctioning decision for anticompetitive agreement in the labor market for the first time*', *Autoridade da Concorrência, 29 April 2022*, https://www.concorrencia.pt/en/articles/adc-issues-sanctioning-decision-anticompetitive-agreement-labor-market-first-time (last accessed 31 July 2025).

How to assess "Restrictions by Object"?

What is a by-object restriction?

Article 101(1) TFEU prohibits "*agreements between undertakings and decisions by associations of undertakings which have as their object or effect the prevention, restriction or distortion of competition within the common market*".

Recent cases such as *CAA v FA and FIFA*[9], *European Super League*[10] (in which Clifford Chance acted successfully for both of the claimants) and *International Skating Union*[11] have made it clear that there is no broad sporting exception that would exclude sporting activity from the application of competition law given the economic nature of sporting rules.[12] Nevertheless, sports regulations or agreements can fall outside the scope of Article 101 TFEU if they are not restrictive by object (i.e., inherently anticompetitive)[13] and serve a legitimate objective. For completeness, even sports regulations or agreements that are restrictive by object can, very rarely, be exempt under Article 101(3); however, meeting the requirements for such an exemption is an even higher hurdle to overcome.[14]

The AG's Analysis Framework

In Paragraph 28 of his opinion, the AG clarifies that "*[t]o constitute a restriction by object, the agreement must have a* ***manifest anticompetitive economic*** *rationale* (emphasis added). *In*

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9 In The Matter Of An Arbitration Under Rule K Of The Football Association Rules, CAA Base Limited & Ors. v The FA, https://www.thefa.com/-/media/thefacom-new/files/rules-and-regulations/2023-24/caa-v-fa-and-fifa-301123-rev-121223-publication-version.ashx?la=en (last accessed 31 July 2025).

10 *Case C-333/21 – European Superleague Company (2023) ECR (ECLI:EU:C:2023:1011)*,

11 *Case C-124/21 P – International Skating Union v Commission (2023) (ECLI:EU:C:2023:1012)*.

12 However, in the agent cases, the AG did make reference to the narrow "*sporting exception*" in relation to certain rules intrinsic to the sport itself that fall outside the scope of EU competition law. For more discussion on this please refer to: *Anand Patel, Regulating the Regulators: Competition Law Takes on FIFA's Agent Rules, LawInSport (13 June 2025)*, available at: https://www.lawinsport.com/topics/item/regulating-the-regulators-competition-law-takes-on-fifas-agent-rules.

13 A by-object restriction refers to a type of agreement or practice that is inherently anticompetitive, judged by its very nature, as the coordination reveals a sufficient degree of harm to competition for the view to be taken that it is not necessary to conduct a detailed analysis of its effects.

14 See *Case C-333/21 – European Superleague Company* (2023) ECR (ECLI:EU:C:2023:1011), paragraph 189: "*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...*"

other words, it must be clear that, from an economic point of view, the objective purpose of the agreement conflicts with the interests enshrined in Article 101 TFEU." As such, the AG went on to conclude that: "*even a potentially well-intentioned action is immaterial if the object and means of the cooperation agreed for that purpose are, by their very nature, anticompetitive*".[15]

What is crucially important is the economic and legal context of the agreement – the AG was critical of the suggestion from the EC and AdC that only a cursory analysis of the context is necessary given their view that it is accepted that no-poach agreements *generally* produced restrictive effects.[16]

Determining Restrictive Conduct

In order to determine whether conduct can be considered a restriction by object, a determination must be made of the immediate and direct aims which that conduct seeks to achieve. While there is often overlap between the immediate direct aims of conduct and the alleged legitimate objective pursued by such undertakings, it is crucial to distinguish between:

(a) the inherent objective of the agreement, and
(b) the legitimate objectives purportedly pursued by the undertakings in question to justify the *prima facie* anticompetitive agreement.[17]

Whilst the notion of a restriction by object is to be interpreted narrowly, agreements that reveal, by their very nature, a sufficient degree of harm to competition are to be considered as having the prevention, restriction or distortion of competition as their object. As mentioned above, the EC considers that no-poach agreements generally constitute restrictions by object and are in breach of Article 101.[18]

Application to the Facts

The AG acknowledged that the economic rationale of most no-poach agreements would be anti-competitive and constitute by-object restrictions because, "*[i]nstead of competing to recruit the best employees – by offering higher salaries and/or better working conditions and opportunities –*

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15 *Opinion of Advocate General Emiliou, Case C-133/24, 2025, (ECLI:EU:C:2025:364), paragraph 30.*

16 *Ibid, paragraph 65.*

17 See *Case C-124/21- International Skating Union, paragraph 107, Case 333/21 – European Superleague, paragraph 167, Case C-680/21 – Royal Antwerp Football Club, paragraph 94, and case-law cited and Opinion of Advocate General Wahl of 27 March 2014.*

18 *Competition Directorate–General of the European Commission, 'Antitrust in Labour Markets, Competition Policy Brief No 2/2024', European Commission, May 2024,* https://competition-policy.ec.europa.eu/document/download/adb27d8b-3dd8-4202-958d-198cf0740ce3_en (last accessed 31 July 2025).

the undertakings in question "lock in" their staff, with a "freezing effect" on the terms of their contracts. Most efficient undertakings, which have the incentive and the ability to recruit the personnel they consider to be the best fit for their needs, are prevented from doing so when that personnel is employed by one of the other parties to the agreement."[19]

However, notwithstanding this acknowledgment, the AG identified several elements that excluded the inherently anticompetitive nature of the agreement at issue. In this regard, the AG was critical of the EC's and the AdC's opinion that context is largely irrelevant in by object cases,[20] and critiqued the AdC for failing to explain in court how the agreement could have harmed the players.[21] The AG, whilst amenable to the consideration of labour issues within a competition law analysis in theory, posited that EU law should be deferential to national labour law unless said labour issues are meaningfully substantiated when the case is brought under Article 101.[22]

If followed by the CJEU, the AG's opinion would reflect a slightly softening of the EC's recent view set out in guidance that no-poach agreements are likely to be considered by-object restrictions.[23] The AG's stance is more reflective of the EC's previous decisional practice and the case law of the European courts generally relating to by-object restrictions and the importance of examining the context of the agreement to see if it reveals a sufficient degree of harm to competition.[24]

While these agreements can be argued to have the propensity to reduce labour market dynamism with resulting negative effects on employee compensation, firm productivity and innovation,[25] it must be the case that context is relevant in making the determination as to whether the agreement in question reveals a sufficient degree of harm to competition so as to be considered restrictive by object. As emphasised in the *European Super League* judgment: "*it is necessary to examine, first,*

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19 *Opinion of Advocate General Emiliou, Case C-133/24, 2025, (ECLI:EU:C:2025:364), paragraph 51.*

20 *Ibid, paragraphs 65-67.*

21 *Ibid, paragraph 69.*

22 *Ibid.*

23 A "*by-object*" restriction refers to a type of agreement or practice that is inherently anticompetitive, judged by its very nature, without needing detailed analysis of its effects.

24 See, for example, *Case C-333/21 – European Superleague Company (2023) ECR (ECLI:EU:C:2023:1011), paragraph 165*.

25 *Competition Directorate–General of the European Commission, 'Antitrust in Labour Markets, Competition Policy Brief No 2/2024', European Commission, May 2024*, https://competition-policy.ec.europa.eu/document/download/adb27d8b-3dd8-4202-958d-198cf0740ce3_en (last accessed 31 July 2025).

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".[26]

As such, in order to avoid a finding that an agreement is restrictive by object, it is incumbent upon parties to establish that the primary reasons behind the coordination (including the economic rationale),[27] in the context of the agreement, raise a reasonable doubt as to whether the agreement in question reveals a sufficient degree of harm to competition so as to be considered restrictive by object. However, that is not to say that subjective intention is a determinative factor when assessing whether an agreement is a by-object restriction – the subjective intention is merely another factor to be taken into account when relevant.[28]

Context that drove the AG to conclude that the agreement was not restrictive by object in Tondela

The Meca-Medina Test Application

As explained above, European competition law prohibits agreements that hinder competition in the EU. In labour markets, such agreements limiting employee mobility or choice are often unlawful.

However, as emphasised by the AG, the extent to which a particular agreement/practice might be considered a by-object restriction will be assessed on a case-by-case basis and will ultimately depend on the relevant factual and economic context. The AG assessed the agreement in ***Tondela*** with reference to the "Meca-Medina" test which he summarised as follows:

> "*In essence, the Meca-Medina case-law makes clear that agreements which restrict the freedom of action of the undertakings involved do not fall within the prohibition laid down in Article 101(1) TFEU if: (i) they are justified by the pursuit of one or more legitimate objectives in the public interest which are not anticompetitive in nature; (ii) the specific means used to pursue those objectives are genuinely necessary for that purpose; and (iii) 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*."[29]

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[26] See *Case C-333/21 – European Superleague Company (2023) ECR (ECLI:EU:C:2023:1011), paragraph 165.*

[27] *Opinion of Advocate General Emiliou, Case C-133/24, 2025, (ECLI:EU:C:2025:364), paragraph 37.*

[28] *Ibid, paragraphs 29 and 38. See also Case C-333/21 – European Superleague Company (2023) ECR (ECLI:EU:C:2023:1011), paragraph 167.*

[29] *Opinion of Advocate General Emiliou, Case C-133/24, 2025, (ECLI:EU:C:2025:364), paragraph 73.*

Genuine Necessity Standard

The AG then went on to clarify that the phrase "genuine necessity" in this context should be interpreted as "reasonable":

> *"The term 'genuine necessity' in the Meca-Medina test cannot be interpreted as* 'conditio sine qua non' *[absolutely essential] for the objective in question to be achieved...The keyword in this context is 'reasonableness': could the parties concerned reasonably take the view that the measure in question would make a meaningful contribution to the achievement of the stated objective, whilst any measure less restrictive of competition would not be equally effective?"*[30]

Factors Supporting the Agreement's Legitimacy

With regard to the agreement in question, before concluding that these questions should all be answered in the affirmative, the AG placed particular emphasis on the fact that:

- The agreement was concluded, with the support of the national football association, during the COVID-19 pandemic, with the objective of ensuring that the 2019/2020 season could, despite the interruption and delays, be completed without compromising the integrity and fairness of the tournament.[31]
- There were only ten matches left in the season and the agreement helped the clubs progress with the remaining games in a fair way, consistent with the games in the first part of the season, without the difference in wealth between the various clubs being exacerbated.[32] This limited temporal scope is evidenced from the fact that the agreement "ceased to have effect from the day following the last match of that season".[33]
- The agreement had limited geographical scope – the players were free to sign for other clubs (other than those that were in the first and second division in Portugal) and, as such, could have joined teams in other divisions or the lower divisions in Portugal.[34]
- The European Competition Network issued a statement a few weeks prior to the conclusion of the agreement in which it acknowledged the possible need for cooperation between businesses during the pandemic.[35]

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30 *Ibid, paragraph 84.*

31 *Ibid, paragraph 56.*

32 *Ibid*, *paragraph 57.*

33 *Ibid*, *paragraph 88.*

34 *Ibid*.

35 *Ibid, paragraph 90.*

- The agreement helped ensured some stability and the maintenance of a certain level of competitiveness with regard to market performance (with supporters, sponsors, broadcasters etc.).[36]

In fact, the AG was willing to go further by saying that: "*it could even be argued that the agreement in question had a pro-competitive nature.*"[37] In this context, the AG underscored that sports leagues operate differently from traditional markets, as clubs do not seek to eliminate their rivals or achieve monopoly status – such an outcome would be both unrealistic and contrary to the economic logic of sport. The stability of club numbers and the need to maintain a competitive balance are fundamental to the continued interest of supporters, sponsors and broadcasters. Against this backdrop, the AG considered that agreements that help preserve a suitable competitive structure, particularly in extraordinary circumstances such as a pandemic, may serve to protect and promote healthy competition within the league.[38]

Holistic Market Assessment

It is worth noting that the AG's assessment in ***Tondela*** deviates slightly from the other two judgments he delivered relating to football agents. In *RCC Sports* and *Rogon*, he focuses on the two labour sides of the market (i.e., both the market for the services provided by agents and the market for the transfer of players). In ***Tondela***, however, not only does the AG consider the labour side of the market (i.e., the players), he also goes on to consider the impact on other economic actors (i.e., less wealthy clubs) as well as final consumers including supporters, sponsors and broadcasters.[39] In fact, the AG in ***Tondela*** was particularly critical of the AdC for failing to explain what the harm to consumers was.[40] The AG conducts a more holistic assessment in ***Tondela*** as opposed to focusing purely on the anticompetitive harm caused on the labour side of the market. It will be interesting to see whether the CJEU adopts a similarly broad approach when reviewing the alleged harm caused by the agreement and when determining the immediate and direct aims which that conduct seeks to achieve.

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36 *Ibid, paragraph 63.*

37 *Ibid.*

38 *Ibid.*

39 See *G, Monti, "Justifications for Anticompetitive Agreements: AG Emiliou's Sports Trilogy"*, Kluwer Competition Law Blog, *June 2025*, https://competitionlawblog.kluwercompetitionlaw.com/2025/06/03/justifications-for-anticompetitive-agreements-ag-emilious-sports-trilogy-of-15-may-2025/ (last accessed 31 July 2025)

40 *Ibid, paragraph 69.*

In light of the context considered in ***Tondela***, in the ***Diarra*** case (below) we compare the reasons why those rules fell foul of competition law as by-object restrictions whilst others have withstood scrutiny.

Arrangements that have fallen foul of competition law – *Diarra*

In *LawInSport's* previous article on this case, we analysed a number of instances where the undertakings in a sporting competition have not, to the court's satisfaction, demonstrated that the primary reasons behind the coordination, in the context of an agreement, are not inherently anticompetitive. As such, those agreements have been deemed to violate competition law as a restriction by object.

Background to the *Diarra* Case

Shortly after the publication of the initial article on this topic, the CJEU rendered a significant judgment addressing labour market considerations within the football industry – *Case 650/22, Diarra*.[41] In the ***Diarra*** case, the CJEU found that certain FIFA regulations governing the international transfers of professional footballers are inconsistent with EU law.

In 2013, former Premier League star Lassana Diarra signed a four-year contract with Russian club FC Lokomotiv Moscow, but, following a reduction in his salary, he decided to leave the club before the expiry of his contract. In turn, Lokomotiv Moscow terminated his contract and initiated proceedings before FIFA's Dispute Resolution Chamber (**DRC**), asserting that Diarra had violated FIFA's 'Regulations on the Status and Transfer of Players' (**RSTP**) by ending his contract "without just cause". In response, Diarra lodged a counterclaim with the DRC, seeking unpaid wages and compensation for the remainder of his contract.

As a result of FIFA's regulations, Diarra subsequently found himself unable to transfer to Belgian club Royal Charleroi Sporting Club and challenged the rules established by FIFA before the Belgian courts. He claimed that these rules prevented him from being employed by the Belgian football club and it was argued that those rules hindered the free movement of players as well as competition between clubs.

The Problematic FIFA Regulations

The relevant provisions are found in FIFA's RSTP which are applied by FIFA and its member national football associations, including the Belgian association. These rules set out the framework

41 *Case C- 650/22- FIFA v BZ (2024) (ECLI:EU:C:2024:824).*

for resolving disputes where a player is alleged to have terminated his employment contract without "just cause" prior to its expiry. The key provisions can be summarised as follows:

- Where a club alleges that a player has ended his contract without just cause, both the player and any club seeking to employ him are jointly and severally liable for any compensation owed to the former club.[42]
- In certain circumstances, the new club may also face a sporting sanction, such as a ban on registering new players for a specified period.[43]
- While a dispute regarding the termination is ongoing, the national association of the former club must refuse to issue an International Transfer Certificate to the association of the new club, effectively preventing the player's transfer until the matter is resolved.[44]

The CJEU's Findings

Before concluding on the competition law elements of the case, the CJEU held that the RSTP impede the free movement of professional footballers by imposing severe financial penalties, registration restrictions and the withholding of International Transfer Certificates during contract disputes, all of which deter clubs from hiring players who have ended their contracts early and significantly limit player mobility.[45]

With regards to competition law, the CJEU found that the RSTP were designed to restrict, and even prevent, cross-border competition among EU clubs by prohibiting the unilateral recruitment of players under contract or whose contracts are alleged to have been terminated without just cause.[46] The CJEU emphasised that the ability to compete by recruiting players is fundamental to the professional football sector, and that rules which broadly restrict this form of competition, by effectively fixing the allocation of players between clubs and closing off the market, are akin to a no-poach agreement.[47] Furthermore, the CJEU noted that, subject to confirmation by the Cour d'Appel de Mons (Court of Appeal, Mons, Belgium), these rules do not appear to be either indispensable or necessary.[48]

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42 *Article 17(2) of the RSTP.*

43 *Article 17(4) of the RSTP.*

44 *Articles 9 and Annex 3, Article 8 of the RSTP*

45 *Case C- 650/22- FIFA v BZ (2024) (ECLI:EU:C:2024:824), paragraphs 86-93.*

46 *Ibid, paragraphs 139-141.*

47 *Ibid, paragraph 145.*

48 *Ibid, paragraph 157.*

Key Distinctions from *Tondela*

While both the ***Tondela*** and ***Diarra*** cases address important issues related to labour mobility in football, there are notable differences between them. In ***Diarra***, for example, the FIFA regulations in question lacked the geographical or temporal limitations present in ***Tondela***. Moreover, the RSTP were not justified by any pressing need for stability or continuity during periods of disruption, which had been central to the rationale in ***Tondela***.

The CJEU underlined the extensive impact of the RSTP on employee mobility and choice, stating:

> "*Furthermore, that generalised and drastic restriction of cross-border competition between clubs in the form of the unilateral recruitment of players who are already employed, and therefore of access by clubs to the essence of the 'resources' represented by players, extends, from a geographic viewpoint, to the entire territory of the European Union and, from a temporal viewpoint, is permanent, in that it covers the entire duration of each of the employment contracts which a player may conclude successively with one club, then, in the event of a negotiated transfer to another club, with the latter club, as is also apparent from Article 13 of the RSTP*." [49]

Scope and Proportionality Differences

As outlined above, unlike the broad and enduring restrictions on player movement and club competition described in ***Diarra***, which apply across the entire EU and for the full duration of successive player contracts under the FIFA regulations, the agreement in ***Tondela*** was both temporally and geographically limited. Concluded during the COVID-19 pandemic with the support of the national football association, it was designed solely to ensure the fair and orderly completion of the disrupted 2019/2020 season, ceasing immediately thereafter.[50] In contrast to ***Diarra***, the scope of the agreement in ***Tondela*** was limited as it only applied to clubs in Portugal's top two divisions, leaving players free to sign for clubs in other Portuguese divisions or abroad.[51] As such, according to the AG, the agreement in ***Tondela*** recognised the need for temporary cooperation between businesses during the pandemic, and it served to maintain competitive balance and market stability during an unprecedented period.[52]

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49 *Ibid, paragraph 140.*

50 *Opinion of Advocate General Emiliou, Case C-133/24, 2025, (ECLI:EU:C:2025:364), paragraphs 56.*

51 *Ibid, paragraph 88.*

52 *Ibid, paragraph 63.*

As emphasised by the AG throughout ***Tondela***, it remains essential to assess the context of the agreement to determine whether it demonstrates a sufficient degree of harm to competition.[53] In his evaluation of the facts in that case, the context indicated that there was reasonable doubt as to whether the agreement exhibited such harm, which would be necessary for it to be deemed restrictive by object and, if anything, the agreement actually encouraged healthy competition.[54]

However, in contrast to the CJEU's focus in ***Diarra*** on the anticompetitive harm caused on the labour side of the market, the AG conducts a more holistic assessment in ***Tondela*** also reflecting on the impact on the other economic actors such as less wealthy clubs as well as end consumers including supporters, sponsors and broadcasters.[55] It remains to be seen whether the CJEU confines itself to a more traditional labour-centric analysis as in ***Diarra*** or whether it adopts a similar broad approach to the AG in ***Tondela*** when assessing the alleged harm and the immediate objectives pursued by the agreement in question.

Concluding Remarks

While no-poach agreements in sports have come under increased scrutiny, the landscape of cases suggests a nuanced perspective. ***Tondela*** exemplifies how agreements such as no-poach agreements that may otherwise be *prima facie* viewed as restrictive by object, may actually be justifiable when framed around legitimate and proportionate objectives such as maintaining competitive balance and financial stability.

Since the AG delivered his opinions, the EC has announced that it would be fining Delivery Hero and Glovo for entering into a no-poach agreement.[56] Although this case falls outside the sporting context, the decision sets a precedent regarding the legal characterisation of no-poach agreements in the EU. Once the final decision is published, a more comprehensive analysis will be required to assess the potential impact of the ***Delivery Hero/Glovo*** case on no-poach agreements in other sectors, including sport.

The AG's opinion underscores the importance of context in evaluating these agreements, highlighting that not all no-poach arrangements are created equal. For example, as described in

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53 *Ibid, paragraphs 65-67 for example.*

54 *Ibid, paragraph 63.*

55 See *G, Monti, "Justifications for Anticompetitive Agreements: AG Emiliou's Sports Trilogy"*, Kluwer Competition Law Blog, *June 2025*, https://competitionlawblog.kluwercompetitionlaw.com/2025/06/03/justifications-for-anticompetitive-agreements-ag-emilious-sports-trilogy-of-15-may-2025/ (last accessed 31 July 2025)

56 European Commission, 'Commission fines Delivery Hero and Glovo €329 million for participation in online food delivery cartel', published on 2 June 2025, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1356 (last accessed 31 July 2025).

more detail in *LawInSport's* previous article on this case[57], UEFA's homegrown player regulations, although restrictive of player movement and potentially in breach of Article 101 TFEU, may be justified under EU competition law if they are proportionate and necessary for the promotion of legitimate aims such as the fostering of local talent and the preservation of competitive balance in European football.[58] Similarly, the NBA's salary cap and free agency rules, although restrictive of player movement and pay, have been upheld by the courts as lawful components of a collective bargaining agreement, recognising their role in promoting competitive balance and financial stability within the league.[59]

The UEFA and NBA examples are illustrations that if clubs and/or sporting bodies demonstrate a legitimate and proportionate objective, such as maintaining a competitive balance within the league, this raises reasonable doubt as to whether the agreement in question reveals a sufficient degree of harm to competition so as to be considered restrictive by object and can lead to an agreement withstanding scrutiny. Even in the absence of exceptional circumstances such as a pandemic, and a limit in temporal scope, it sufficed in these case that the agreements could be clearly demonstrated as promoting competitive balance within the relevant leagues.

This reinforces the notion that while competition law remains vigilant, it also recognises the unique dynamics of the sporting world, where maintaining a level playing field is key and can sometimes justify certain *prima facie* (on first look) restrictive practices.

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57 Emmanuel Goriola & Sam Parry, '"No-poach" agreements - What can sports learn from Portuguese & Mexican football, US Major Leagues and UFC?', LawInSport, published on 11 October 2024, https://www.lawinsport.com/topics/item/no-poach-agreements-in-sport-what-can-clubs-learn-from-cases-in-portuguese-mexican-football-us-major-league-sports-and-the-ufc (last accessed 31 July 2025).

58 *Case C-680/21 - Royal Antwerp Football Club (2023) (ECLI:EU:C:2023:1010)*.

59 *National Basketball Players Association, 'NBA Collective Bargaining Agreement' (2017)* https://nbpa.com/cba (last accessed 31 July 2025).