When Is a No-Poach Agreement a ‘By-Object’ Restriction? Lessons from *Tondela* (Part 1)

The[1] judgment of the Court of Justice of the European Union (**CJEU**) in *Tondela*[2] has already generated considerable commentary – not least because it appears, at first glance, to suggest that a “no-poach” agreement between competitors may be capable of being compatible with EU competition law. However, that reading risks overstating what the CJEU actually did.

In reality, the CJEU confirms that whilst no-poach arrangements are often likely to be restrictive of competition ‘by object’ (describing the agreement as a “*manifest restriction of a competitive parameter*”)[3], under the Treaty on the Functioning of the European Union (**TFEU**), it also makes clear that this characterisation does not dispense with the need for a structured assessment of the agreement’s content, context and objectives.

As such, rather than create an “emergency exception”, the CJEU has instead reaffirmed the strict interpretation of ‘by object’ competition restrictions. A "by-object’ restriction refers to a type of

[1] *AI Use Statement: The author used Legora for copy-editing. All cited authorities, quotations and factual claims have been independently verified by the author against the primary sources. The author takes full responsibility for the content.*

[2] *Judgment of the Court (Fifth Chamber) of 30 April 2026, Liga Portuguesa de Futebol Profissional (LPFP) and Others v Autoridade da Concorrência, Case C-133/24, ECLI:EU:C:2026 (provisional text).*

[3] *Ibid., para 53.*

agreement or practice that is inherently anti-competitive, judged by its very nature, without needing detailed analysis of its effects.

However, even conduct that closely resembles one of the recognised ‘by object’ restrictions under TFEU cannot be automatically categorised as such if, on a proper analysis of (a) the agreement's content, (b) the objective aims from a competition standpoint, and (c) the specific legal and economic context of which it forms part, there is doubt as to whether it reveals a “sufficient degree of harm” to competition as to warrant being classified as a ‘by object’ restriction.

For those less familiar with competition law, see this article here by the authors for some further background reading to understand the ‘by object’ restriction in more detail[4]

This analysis is published in two parts. This article is Part 1 which addresses whether a no-poach agreement of this kind is a restriction of competition ‘by object’ at all, working through the content, context and objectives of the arrangement including the role played by the COVID-19 crisis.

Part 2 (see here) turns to what follows if the agreement is caught: whether it can nonetheless be justified as a proportionate means of protecting the integrity of sporting competition, and what that means in practice for clubs and governing bodies.

This article looks at:

- Background to the case –how a COVID-19 no-poach deal in Portuguese football reached the CJEU
- Recap: From enforcement trends to the Advocate General Opinion
- Starting point: No-poach agreements remain inherently problematic under Article 101 TFEU
- How to assess Restrictions ‘by object’? Analytic framework: Content, context and objectives – applied rigorously
    - Assessing the agreement's content and context
    - Two categories of ‘by object’ conduct: cartels and beyond
    - Did the context of the COVID-19 crisis surrounding the no poach agreements change the analysis?
    - An agreement with both anticompetitive and pro-competitive aims

[4] Emmanuel Goriola & Sam Parry, ‘Can No-Poach Agreements Be Justified? Insights from the AG Opinion on Portuguese Football’, LawInSport, published on 5 August 2025, https://www.lawinsport.com/topics/item/can-no-poach-agreements-be-justified-insights-from-the-ag-opinion-on-portuguese-football (last accessed 15 July 2026)

The CJEU's judgment can be found here.

Background to the case –how a COVID-19 no-poach deal in Portuguese football reached the CJEU

In March 2020, COVID-19 brought the Portuguese professional football season to a sudden standstill: matches were suspended mid-season, stadiums were closed to the public, revenues collapsed and clubs could no longer meet their player payrolls. Against that backdrop, 31 clubs in Portugal's top two divisions, together with the Liga Portuguesa de Futebol Profissional (LPFP), agreed not to recruit players who unilaterally terminated their contract *"citing difficulties caused by the COVID-19 pandemic or by any exceptional decision arising therefrom, and in particular by the extension of the sporting season"*[5]. The stated rationale was to preserve squad stability and enable the 2019/2020 season to resume and be completed on an equal sporting footing: without such a restriction, wealthier clubs risked exploiting the crisis to strengthen their squads at the expense of financially stricken rivals, thereby distorting the remaining fixtures. Players who objected to being effectively frozen out of the transfer market complained to the Autoridade da Concorrência (**AdC**), the Portuguese competition authority, prompting a formal investigation.

In April 2022, the AdC fined the 31 participating clubs, concluding that the arrangement was restrictive of competition *by object* under Article 101 TFEU – that is, inherently anti-competitive by its very nature, with no need to prove actual effects. The AdC found that it harmed competition on two fronts: by restricting clubs' ability to recruit players and by potentially reducing the quality of the sporting product for spectators and broadcasters. The clubs appealed to the Portuguese Competition, Regulation and Supervision Court (Tribunal da Concorrência, Regulação e Supervisão), which referred the matter to the CJEU for a preliminary ruling on whether the agreement fell outside Article 101 TFEU as a rule of sporting interest, whether it could be justified by a legitimate objective, and, if not, whether it constituted a restriction by object. It is the CJEU's answers to those questions that this article examines.

Recap: From enforcement trends to the Advocate General Opinion

In October 2024, in this LawInSport article, the authors examined the increasing scrutiny of labour market restrictions, including no-poach agreements, by reviewing the landscape of cases across various sports and jurisdictions as well as the European Commission's emerging position laid out

[5] Paragraph 11-12 of the Decision.

in its non-binding policy brief that such arrangements are likely to be treated as restrictions ‘by object’.[6]

Following the Advocate General’s Opinion in May 2025, in this LawInSport article, the authors then explored how the specific factual context in *Tondela*, in particular the COVID-19 pandemic and the need to complete the season on a level (sporting) playing field, could cast doubt on whether the agreement was inherently anticompetitive.[7] In that opinion, the Advocate General not only focussed on the labour side of the market (i.e., the players) but also conducted a more holistic assessment by considering the impact on other economic actors (i.e., less wealthy clubs) as well as final consumers including supporters, sponsors and broadcasters. The result of this broad approach was that the Advocate General suggested that the arrangement might even exhibit pro-competitive features in preserving the integrity of the competition.

This article will consider how the CJEU has addressed some of these tensions. While the CJEU does follow the direction of travel suggested by the Advocate General, it does so in a more cautious and structured way, embedding the analysis firmly within orthodox Article 101 principles (prohibited anti-competitive agreements).

As will be explored in more detail below, the CJEU was careful to frame its analysis in orthodox terms from the outset. Reflecting the approach taken in *European Superleague*[8] and *Diarra*[9], it confirmed that, to establish a restriction by object, it is necessary to show that the conduct in question reveals, "*by its very nature, a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects*".[10]

6 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 25 June 2026).

7 Emmanuel Goriola & Sam Parry, ‘Can No-Poach Agreements Be Justified? Insights from the AG Opinion on Portuguese Football’, LawInSport, published on 05 August 2025, https://www.lawinsport.com/topics/item/can-no-poach-agreements-be-justified-insights-from-the-ag-opinion-on-portuguese-football (last accessed 25 June 2026).

8 Case C-333/21 – European Superleague Company (2023) ECR (ECLI:EU:C:2023:1011). Available at: https://infocuria.curia.europa.eu/tabs/redirect/juris/liste.jsf?num=C-333/21 (last accessed 9 July 2026).

9 Case C-650/22 – FIFA v BZ (2024) ECR (ECLI:EU:C:2024:824), para. 133. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62022CJ0650 (last accessed 9 July 2026).

10 *Tondela, para 39*.

The CJEU's position was clear and firm: the concept of anticompetitive object "*must be interpreted strictly*".[11] That framing alone foreshadowed a more searching inquiry – the agreement's facial similarity to a no-poach arrangement would not, by itself, suffice.

Starting point: No-poach agreements remain inherently problematic under Article 101 TFEU

The CJEU's strict interpretive lens outlined above does not soften its starting position: no-poach agreements, arrangements between competitors not to recruit each other's employees, including players in the context of competitive sport, remain inherently problematic under EU competition law.

As recognised both by regulators and by the CJEU:

- such agreements **restrict a core parameter of competition** – namely, the ability of undertakings to recruit talent;[12]
- they can **reduce labour mobility and bargaining power**;[13] and
- they risk producing a **"freezing effect"** on wages and working conditions.[14]

In the sporting context, the ability of clubs to compete for players is fundamental not only to the labour market but also to the competitive structure and quality of the sporting product itself (since games are more likely to be closely contested where squads can access comparable levels of playing talent).

The CJEU's analysis of the agreement's content is unambiguous on this point. At paragraph 53 of the judgment, the CJEU held that a no-poach arrangement: "*constitutes a manifest restriction of a competitive parameter which plays an essential role in high-level sport, namely the possibility of recruiting players already employed by a given club since, in the absence of such a restriction, those clubs would be able to compete with each other on that market*".

---

[11] *Ibid., para 38*.

[12] See, for example, ibid., para 42: "*limiting or controlling the essential parameter of competition consisting, in certain sectors or on certain markets, in the recruitment of highly skilled workers, such as players who have already been trained in the professional football sector*".

[13] See, for example, ibid., para 55: "*those agreements restrict those workers' opportunities to offer their services to other undertakings and, therefore, limit their negotiating power on the market, including in relation to the undertaking that employs them*".

[14] See, for example, ibid., paras 55 and 66.

The CJEU also drew an analogy with the categories of conduct explicitly identified in Article 101(1)(c) TFEU. It observed that no-poach agreements "*can be treated as being equivalent to horizontal agreements for the sharing of 'sources of supply' referred to in Article 101(1)(c) TFEU, which... are harmful to competition because they tend to lead to the artificial partitioning of the 'resources' which are the players amongst the participating undertakings*".[15]

Beyond the structural analogy, the CJEU went further and identified a potential indirect impact on remuneration. It noted that no-poach agreements "r*estrict those workers' opportunities to offer their services to other undertakings and, therefore, limit their negotiating power on the market, including in relation to the undertaking that employs them*". It concluded that, even though such agreements do not directly fix salaries, "*such no-poach agreements are no less likely to have an indirect, potential impact on those prices*".[16]

These findings confirm the Commission's instinct in its non-binding policy brief,[17] and the emerging consensus among competition authorities, that no-poach arrangements are often likely to be restrictive 'by object' as is well-established in the case law of the CJEU.[18]

How to assess Restrictions 'by object'? Analytic framework: Content, context and objectives – applied rigorously

The CJEU reiterates the now familiar three-part framework: the assessment of a potential 'by object' restriction requires consideration of:

- the content of the agreement,
- the economic and legal context, and
- the objectives pursued.[19]

Crucially, the CJEU resists the temptation to treat this framework as a formality. Instead, it reinforces two important points.

15 *Ibid., para 54.*

16 *Ibid., para 55.*

17 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 26 June 2026).

18 See for example, Case C-650/22 – FIFA v BZ (2024) (ECLI:EU:C:2024:824). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62022CJ0650 (last accessed 9 July 2026).

19 See, for example, *Tondela*, para 43 (citing *European Super League*, para 165 and *Banco BPN v BIC Português and Others*, C-298/22, EU:C:2024:638, para 44).

First, the analysis cannot be reduced to an abstract categorisation exercise. Even where an agreement resembles a recognised category of harmful conduct (such as no-poach), one must still ask whether it "*reveals a sufficient degree of harm*" in its specific context.

Secondly, and crucially, the role of context in the by-object assessment extends beyond mere confirmation of an initial finding: it can actively displace it. The CJEU makes clear that context can determine whether a *prima facie* [on the face of it] finding of an anticompetitive object survives scrutiny. An agreement whose content appears, at first glance, to restrict a competitive parameter in the manner of a by-object restriction may nonetheless escape that categorisation once the full economic and legal context is examined. That said, the CJEU is equally clear that reliance on context must be disciplined: it cannot bypass the requirement for a precise, reasoned analysis showing the specific reasons why the conduct does or does not reveal a sufficient degree of harm.

Assessing the agreement's content and context

With regard to examining **content**, the CJEU requires an assessment of "*whether the collusion in question has characteristics enabling it to be linked to a form of coordination between undertakings which must be regarded, by its very nature, as harmful to the proper functioning of normal competition*".[20] The CJEU adds that this is "*in particular the case*" where the coordination is "*capable of creating conditions of competition which do not correspond to the normal conditions of the market in question*".[21] In practice, this is effectively a question of whether the agreement looks, at first glance, like a *prima facie* by-object restriction, such as a no-poach agreement, which by its very nature restricts a core competitive parameter (the ability to recruit players) in a manner that plainly departs from normal market conditions.

As regards **context**, the CJEU reinforces that the examination of context "*may lead to a finding that particular circumstances surrounding that conduct are such as to demonstrate that it is not sufficiently harmful to justify such a categorisation*".[22]

Critically, however, the CJEU also states that "*the taking into consideration of all of the aspects must, at any rate, show the precise reasons why the conduct in question reveals a sufficient degree of harm to competition such as to justify a finding that it has as its object the prevention, restriction or distortion of competition*".[23] In other words, the finding must be grounded in a reasoned, fact-specific assessment of why the conduct reaches (or falls short of) the threshold of harm.

[20] See *Tondela*, para 44.

[21] Ibid.

[22] *Ibid., para 49.*

[23] *Ibid., para 51.*

Two categories of 'by object' conduct: cartels and beyond

However, that requirement of precision is not uniform in its intensity. The CJEU draws a distinction between two categories of conduct:

(a) those which are "*particularly harmful to competition, such as horizontal cartels*", where the contextual analysis "*may be limited to what is strictly necessary*"; and

(b) other types of conduct which "*without necessarily being equally harmful to competition, may nevertheless present a sufficient degree of harm*", where "*a more in-depth examination of all the elements... should be carried out, which entails that, where necessary, account must be taken of the relevant regulatory and institutional framework*".[24]

Critically, it is only in respect of this second category that the CJEU introduces the requirement, at paragraph 41, that the conduct must have a "*manifest anticompetitive rationale*". That phrase sets the benchmark that must be satisfied before conduct falling outside the most serious cartel-type conduct can be characterised as a restriction by object.

A no-poach agreement in the specific context of professional football falls into the second category, which explains why the CJEU conducts a considerably more granular analysis than it would, for example, for a straightforward horizontal cartel leading to market-sharing or the exclusion of potentially competing undertakings from the market.[25]

Did the context of the COVID-19 crisis surrounding the no poach agreements change the analysis?

Given that no-poach arrangements in professional football require more granular examination than more straightforward horizontal cartels, the CJEU stressed the importance of considering the context that the agreement was entered into. The COVID-19 pandemic provides the factual backdrop, but the CJEU is careful not to elevate it to a justification of potentially harmful conduct in its own right. Instead, the operative question is whether *that* context casts doubt on the existence of a sufficient degree of harm.

At paragraph 73, the CJEU provides its most detailed account of the relevant context. It acknowledges that the agreement "*occurred in the very specific context brought on by the COVID-19 pandemic, which affected not only the sector concerned in many ways but also, and especially, had a fundamental impact on the competitive functioning of that sector*". In particular, the

24 *Ibid., paras 46-48.*

25 A "straightforward horizontal cartel" refers to an agreement between actual or potential competitors (operating at the same level of the supply chain) to fix prices, divide markets or restrict output – conduct treated as a restriction of competition 'by object' under Article 101(1) TFEU, requiring no examination of its actual effects.

uncertainty surrounding the resumption of the season meant that "*the resumption of matches that still had to be played in the First and Second Divisions remained uncertain when the agreement at issue in the main proceedings was concluded, which uncertainty affected both the date of the end of that sporting season, in the event of resumption thereof, and the expiry of the employment contracts of some players*".

The CJEU then sets out the competitive risk that followed from this uncertainty: in the absence of suitable measures, "*players who unilaterally terminated their employment contracts due to that pandemic or whose employment contract ended on the date when that sporting season was initially due to end... could have subsequently been freely hired by another club, which would have inevitably and significantly altered the composition of the various teams involved, thereby undermining the integrity of competition*".[26]

However, the CJEU is careful to calibrate the legal weight of these observations. At paragraph 74, it states in clear terms that "*the occurrence of an event such as the COVID-19 pandemic is not per se such as to justify making an exception to the imperative provision that is Article 101(1) TFEU*".[27] As such, the pandemic is not a free pass. The pandemic simply generated the contextual circumstances which "*must be taken into account by the referring court for the purpose of determining whether or not the context surrounding the conduct at issue in the main proceedings, considered together with its content and objective aims, has as its object the prevention, restriction or distortion of competition*".[28]

The pandemic context is therefore neither irrelevant nor decisive. Its role is to supply facts that the national court must weigh as part of its assessment as to whether the conduct demonstrated a sufficient degree of harm so as to be classified as a restriction by object.

An agreement with both anticompetitive and pro-competitive aims

Within that same pandemic context, the CJEU also had to grapple with the conflicting dual rationale of the agreement – the same arrangement pursued, simultaneously, an anticompetitive aim and an aim that was objectively supportive of (sporting) competition. The CJEU recognised that the agreement had:

- on the one hand, a clearly anticompetitive aim (coordination on recruitment); and
- on the other, an objectively legitimate aim that enabled sporting competition (ensuring the stability of squads and the completion of the competition).

[26] *Tondela, para 73.*

[27] *Ibid, para 74.*

[28] *Ibid, para 76.*

This reflects an important reality of sport, often overlooked in purely economic analyses: a degree of cooperation is intrinsic to the existence of the competition itself. Clubs are competitors, but they are also interdependent participants in a joint sporting product.

The CJEU appears comfortable that this duality can feed into the 'by object' assessment. The existence of a rationale that is not merely neutral but actively supportive of sporting competition is capable of raising doubt as to whether the agreement is, by its nature, sufficiently harmful to dispense with an effects analysis. The CJEU holds that the referring court "*may validly find that the agreement at issue in the main proceedings pursued, in parallel, an objectively anticompetitive aim, consisting in the restriction of competition on the player recruitment market and an objectively pro-competition aim, consisting in ensuring stability of player rosters playing in the First and Second Divisions*."[29]

The CJEU clearly describes the pro-competitive aim of the conduct and how the agreement "*was nevertheless also intended to maintain stability in clubs' player rosters... and, in so doing, once it became possible, enable the resumption of division play in conditions guaranteeing the integrity thereof*".[30] In particular, it notes that without the agreement, "*the clubs with greater financial resources at their disposal could have strengthened their own squads and weakened those of their competitors at the same time, thereby irrevocably distorting the proper progress of the tournament and, ultimately, competition 'on the pitch'*".

Crucially, the CJEU distinguishes this from the more common situation where conduct pursuing an anticompetitive aim also pursues other objectives "*which are possibly legitimate but neutral from a competition standpoint".*[31] That distinction matters. In *European Superleague*, the Court held that competition-neutral objectives are simply irrelevant at the by-object stage: they neither displace nor moderate a finding of anticompetitive object. In *Tondela*, by contrast, the secondary aim was not neutral – it was directed at preserving the integrity and competitive balance of the sporting competition itself. That quality is what gave it traction in the by-object assessment: an aim that is "objectively favourable to competition"[32] on the pitch can raise genuine doubt as to whether the agreement demonstrates a sufficient degree of harm; a merely incidental or neutral objective cannot.

Bearing this in mind, the CJEU sets out its overall conclusion of this part of the analysis:

---

29 *Ibid, para 86.*

30 *Ibid, para 82.*

31 *Ibid, para 87 (citing European Superleague, para 167).*

32 *Ibid, para 83.*

"*although the examination of the content of the agreement at issue in the main proceedings demonstrates that it was such as to manifestly restrict the competition likely to exist between the participating football clubs on the player recruitment market, the examination of the actual economic and legal context of which it forms part shows that that agreement came about in a sector where competition features numerous specific characteristics in a very unique context... Hence, it is for the referring court alone to determine, in a precise and reasoned manner, whether or not, in view of all of the relevant elements of fact and law, that agreement presents a sufficient degree of harm as to be held to have as its object the restriction of competition*".[33]

As such, ultimately, the by-object question is left to the national court to determine. The CJEU then turns to what happens if the answer is no.

Whether the agreement crosses that threshold and is caught as a restriction 'by object' is only part of the issue. Part 2 (see here) considers the second question that the Court addressed: even if the agreement is caught, can it be justified as a proportionate means of safeguarding the integrity of the competition? It examines the legitimate-objective route derived from *Wouters*[34] and *Meca-Medina*[35], the suitability, necessity and proportionality test the Court applied, and the practical blueprint the judgment offers for defending such arrangements.

33 *Ibid, para 88.*

34 Case C-309/99, Wouters [2002] ECR I-1577. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61999CJ0309 (last accessed 15 July 2026)

35 Case C-519/04 P, Meca-Medina and Majcen v Commission [2006] ECR I-6991. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62004CJ0519 (last accessed 15 July 2026)