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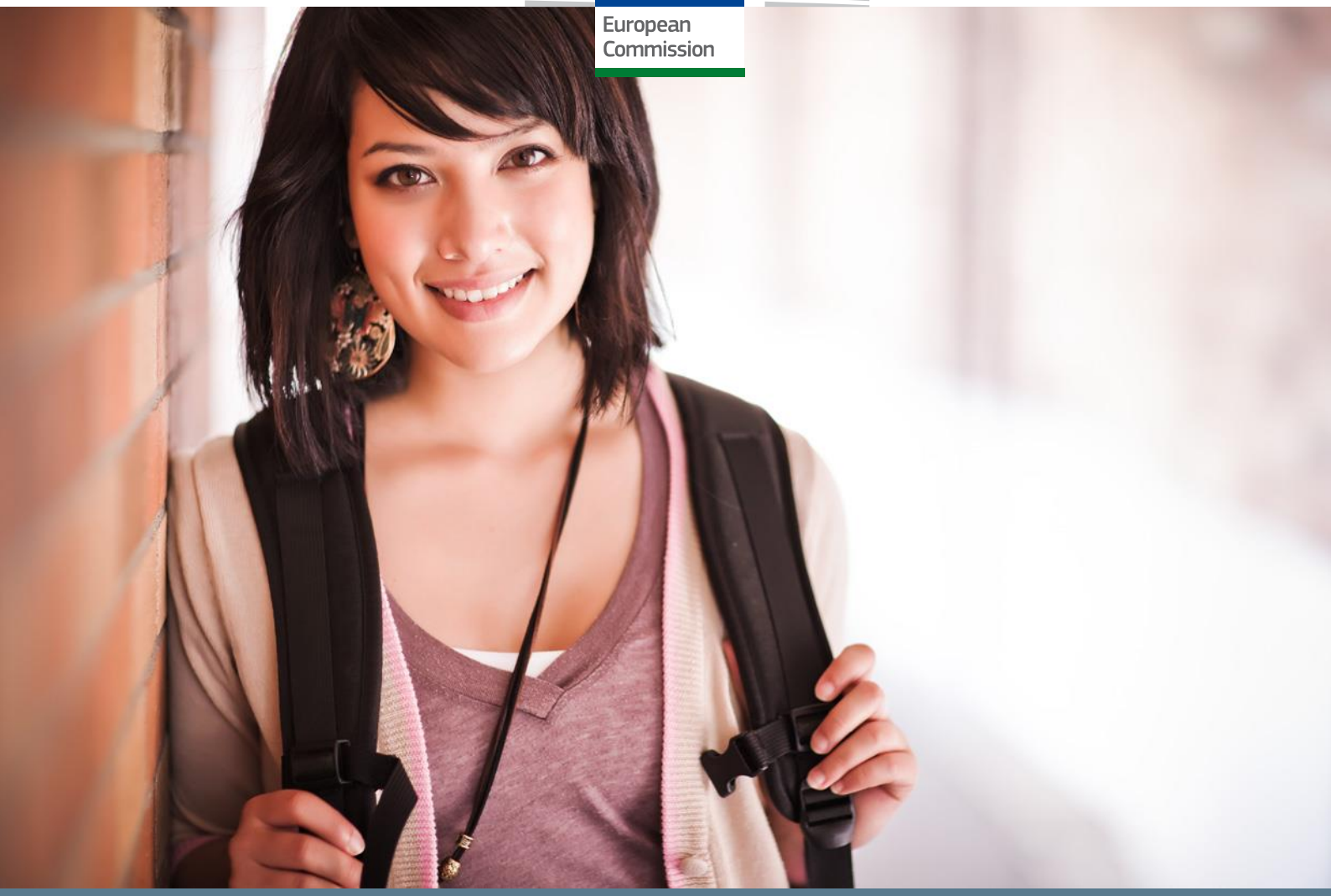

# Mapping and Analysis of the Specificity of Sport

*A Final Report to the DG Education & Culture of the European Commission*

*June 2016*

*Sport*

**EUROPEAN COMMISSION**

Directorate-General for Education and Culture

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# Mapping and Analysis of the Specificity of Sport

*Final Report to the DG Education & Culture of the European Commission*

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KEA EUROPEAN AFFAIRS

Sport and Citizenship
Sport serving society

June 2016

Directorate-General for Education and Culture
SPORT

EN

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# 1.0 Background

## 1.1 Introduction

Ecorys, KEA and Sport and Citizenship were commissioned by the European Commission in March 2016 to undertake a study on the mapping and analysis of the specificity of sport, in response to growing interest from Member States and also discussions at the Council of the European Union under the Luxembourg Presidency in November 2015. This is the study's final report.

## 1.2 Purpose of the Study

This report provides an analysis of recent EU rulings and decisions relating to the 'specificity of sport' since 2007. The 'specificity of sport' refers to the inherent characteristics of sport which set it apart from other economic and social activities. The 'specificity of sport' has become a legal concept established and developed through the rulings of the European Court of Justice and through decisional practice of the European Commission, notably as regards competition rules.[1] As set out in the White Paper on Sport[2], the recognition of the specificity of sport requires an assessment of the compatibility of sporting rules with EU law on a case-by-case basis.

In 2009 the 'specificity of sport' was recognised in the amended Treaty of the European Union. Article 165[3] of the Treaty states:

"*The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function*."

The main focus of the study is to provide an analysis of the specificity of sport through a systematic review of all new case law and decisions relevant to sporting rules since the publication of the White Paper on Sport in 2007. The research has also sought to identify how recent decisions and rulings have given weight to the Article 165 considerations.

Due to the very large number of national rulings relevant to the specificity of sport, the scope of this review has primarily covered recent rulings and decisions linked to:

- European Court of Justice (ECJ) judgements;
- European Court of First Instance judgements;
- Commission decisions in different fields; and
- Rulings of national competition authorities to the extent that they have a direct relationship with ECJ judgements and could have consequences at the European level.

[1] Halleux V., (2015), *IEU Sport Policy: An Overview, In-depth Analysis*, European Parliamentary Research Service

[2] Commission Of The European Communities, (2007), *White Paper on Sport*, Published 11 July 2007

[3] European Union, Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 13 December 2007, 2007/C 306/01, available at: http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-3-union-policies-and-internal-actions/title-xii-education-vocational-training-youth-and-sport/453-article-165.html [accessed 20 March 2016]

## 1.3 Methodology

The desk research on legal developments on the specificity of sport was undertaken in two stages. The first stage consisted of an initial scoping exercise to identify relevant case law and decisions for the subsequent review and synthesis tasks. While it was not possible to guarantee an exhaustive list of decisions and rulings in the time available for the study, the approach to the scoping review aimed to ensure a thorough and comprehensive coverage of the available literature and case material.

In order to inform the scoping review, the research team conducted consultations with relevant experts and stakeholders. The consultations helped to narrow the focus of the search as well as signpost the research team to the most relevant sources of interest. Consultees included:

- Experts on sports issues at the following DGs:
  - Education and Culture;
  - Competition policy;
  - Employment;
  - Justice & Home Affairs;
  - Grow; and
  - Connect;
- International Sports Law Centre; and
- Union of European Football Associations (UEFA).

The desk research for the scoping review covered key texts covering developments in European sports law since 2007, including the following:

- International Sports Law Journal.
- Relevant literature extracted from the websites of key organisations such as the European Commission and ASSER International Sports Law Centre.
- The European Court of Justice database of rulings using relevant search parameters.
- Other suggestions of key sources based on consultations with key experts (see above).

Building on the scoping exercise, the research team reviewed the key rulings and decisions in detail. The review involved sorting and collating information on rulings and decisions into an analytical grid to enable the information to be analysed in a logical and consistent manner.

## 1.4 Structure of the report

The remainder of the report is structured as follows:

- Chapter two considers developments in EU law relating to the economic dimension of sport.
- Chapter three considers the implications of recent legal developments concerning the organisation of sport.

More detail on the relevant rulings and decisions highlighted in this report is provided in annex one.

A bibliography of relevant sources is included in annex two.

# 2.0 The Economic Dimension of Sport

## 2.1 Introduction

This chapter considers developments in EU rulings and decisions since 2007 concerning the economic dimension of sport, namely State Aid for sport, taxation of sport, sponsorship, protection of sport intellectual property rights and anti-trust.

Prior to 2007 it had been established by case-law and the decisional practice of the Commission that economic activities in the context of sport fall within the scope of EU law, including EC competition rules and internal market freedoms. Decisions since 2007 demonstrate how decisional practice continues to seek to achieve a balance between applying EU rules on the functioning of the single market and recognising the specificity of sport.

The table below provides a summary of the key developments in EU law in relation to the economic dimension of sport since 2007. A detailed analysis of the new regulations and cases and any outstanding legal issues are considered in the sections below.

**Table 0.1 Summary of case law developments concerning economic dimension of sport**

| Reference | Title | Main legal implications | Relevant section |
|---|---|---|---|
| Commission Regulation (EU) No 733/2013 | Amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State Aid | - Clarified that various measures implemented by Member States in the sport sector may not constitute State Aid as they comply with the criteria of compatibility with the internal market set out in Article 107 of the Treaty<br>- Compatibility criteria generally relates to measures which are small scale, with limited effects on trade between Member States and where it is unlikely to create competitive advantages or distortions of competition. | 2.2 |
| Commission Regulation (EU) 651/2014 | Regulation declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty | - State Aid measures in sport are acceptable where they have a purely local character or where they are taken in the field of amateur sport.<br>- Develops clarity on the categories of spending on sports infrastructure which are compatible with EU State Aid laws. | 2.2 |
| Commission reasoned opinion, 8 October 2009 | Request to change rule on preferential tax rate for tickets to sports events | - VAT exemption for sports services should not apply to all activities carried out by associations of public interest, whose objective is to exercise or promote sport | 2.3 |
| Commission reasoned opinion, 24 June 2010 | Request to change rule on preferential tax rate for tickets to sports events | - VAT should be levied on tickets for admission to matches and other sporting events. | 2.3 |
| European Court of Justice Case | Greek Motorcycling Federation (Motosykletistiki | - Sports federations that regulate sports events should ensure a fair and transparent process in awarding the | 2.4 |

| Reference | Title | Main legal implications | Relevant section |
|---|---|---|---|
| C 49/07, | Omospondia Ellados NPID (MOTOE)) v Elliniko Dimosio, | staging of new events. | |
| European Court of Justice Cases C-201/11 P, C-204/11 P C-205/11 P | UEFA v European Commission | - Confirms that only Member States can determine which events are of major importance with sufficient justification<br>- All matches in the final stages of an international tournament cannot be grouped together; they must be divided into different levels of interest. | 2.5 |
| European Court of Justice Case C-283/11 | Sky Österreich GmbH v. Österreichischer Rundfunk, ECLI:EU:C:2013:28 | - In broadcasting short news items the amount of compensation provided by the public broadcaster to organisations with exclusive rights to showing those events should be limited to the additional costs directly incurred in providing access to the signal. | 2.5 |
| European Court of Justice Joined Cases C-403/08 and 429/08 | Football Association Premier League Ltd and others v QC Leisure and others and Karen Murphy v Media Protection Services Ltd | - Clarifies that EU law on copyright does not protect sports events.<br>- Various media products resulting from the audiovisual recording and broadcasting of sports events give rise to a variety of intellectual property rights and should qualify for protection.<br>- It is acceptable for Member States to introduce legislation to protect sporting events, where appropriate by virtue of protection of intellectual property, by putting in place specific national legislation. | 2.6 |

## 2.2 State Aid Control

The Treaty's provisions on State Aid are to ensure that government interventions do not distort competition and trade between Member States. The Treaty contains a general prohibition of State Aid while also recognising that, in certain circumstances, State Aid is necessary for a well-functioning and equitable economy. The Treaty therefore leaves room for a number of measures with which State Aid can be considered compatible.

Prior to the 2007 White Paper there had been very few decisions where the Commission had applied State Aid exemptions to sport. However, since 2007 the Commission has adopted numerous decisions on State Aid measures for stadiums or other sports infrastructures. On the basis of these decisions, the Commission has been able to codify the operational exemption criteria for aid to sports infrastructures.

### Scale

The **Commission Regulation Amending Regulation (EC) No 994/98** on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State Aid adopted in 2013[4] clarified that various measures implemented by Member States in the sport sector may not constitute State Aid as they comply with the criteria of compatibility with the internal market set out in Article 107 of the Treaty. The compatibility criteria generally relates to measures which are small scale, with limited effects on trade between Member States and where it is unlikely to create competitive advantages or distortions of competition. The Regulation's provisions allow the Commission to declare specific categories of State Aid (including aid for sport) compatible with the Treaty if they fulfil certain conditions, thus exempting them from the requirement of prior notification and Commission approval. The Regulation declares that clear compatibility conditions can be defined on the basis of the experience acquired so as to ensure that aid to sports does not give rise to any significant distortion.

The **Commission Regulation declaring certain categories of aid compatible with the internal market adopted in 2014**[5] (General Block Exemption Regulation – GBER) provides further clarification in stating that under certain circumstances, State Aid measures are acceptable where they have a purely local character or where they are taken in the field of amateur sport. In the case of the Netherlands Contribution to the renovation of ice arena Thialf in Heerenveen (2013), for example, the Commission considered that the State Aid would have limited effects on competition because the catchment area of the ice arena is not expected to become larger as a result of the renovation, as "ice skaters typically travel to a nearby skating facility". It was also noted in the decision that the predominant type of usage was amateur usage.[6] In the decision concerning State Aid for a stadium in the German town Erfurt, a factor in the Commission's decision that the infrastructure investment was compatible with the Treaty was that the objective of the renovation project was not to attract international commercial events but to cater to local or regional needs.[7] The State Aid regulations of 2013 and 2014 should lead to increased certainty on the requirements for prior notification of State Aid and a reduction in the administrative burden for sports organisations and public authorities involved in sports infrastructure projects.

### Rules on sports infrastructure

A significant development since 2007 has been the clarification of rules regarding the exemption of State Aid to the government funding of sports infrastructure. Between 2011 and 2013 the Commission made ten decisions dealing with State Aid to sports infrastructure. Most cases involved football stadiums, but there were also decisions on aid for the construction and/or renovation of a swimming pool, an ice arena, a rugby stadium, a Gaelic games stadium, and multifunctional sport arenas.[8] These decisions generally adopted a consistent and favourable approach towards aid measures for sports infrastructure.[9]

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[4] Amending Regulation No 994/98 on the application of articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State Aid

[5] European Commission Regulation 651/2014 Declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014

[6] Commission Decision of 13 December 2013,SA.37373 (2013/N), the Netherlands Contribution to the renovation of ice arena Thialf in Heerenveen

[7] Commssion Decision of 20 March 2013 State Aid SA.35135 (2012/N) – Germany Multifunktionsarena der Stadt Erfurt

[8] Ben Van Rompuy and Oskar van Maren, (2016), *EU control of State Aid to professional sport: why now?*, Asser Institute Centre for International and European Law, Research Paper Series, February 2016

[9] idem

The Commission's acceptance that a sports infrastructure project, supporting different categories of activities, could be considered as embodying a typical State responsibility towards the general public is now being used to find that the aid measure is aimed at a well-defined objective of common interest.[10] This was demonstrated also in the Germany Erfurt arena case, where the Commission asserts that "the construction of venues for sport and other public events and supporting different types of activities which benefit the general public can be considered a State responsibility towards the general public."[11]

Recent decisions concerning State Aid consistently make reference to Article 165 of the Treaty in addition to the Amsterdam Declaration on Sport[12] in order to strengthen the argument that the aid measure is in line with the common interest.[13] The specificity of sport argument has therefore been used to demonstrate how public support for sports infrastructure can support the common interest.

Building on the principles established through the Commission's decisions on State Aid for sports infrastructure, the 2014 General Block Exemption regulation (GBER) clarifies the types of sports infrastructure investments that should be considered exempt from the EU's general laws on State Aid. The conditions for exemption are as follows:

- Sport infrastructure shall not be used exclusively by a single professional sport user. Use of the sport infrastructure by other professional or non-professional sport users shall annually account for at least 20% of time capacity.
- If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated.
- Multifunctional recreational infrastructure shall consist of recreational facilities with a multi-functional character offering, in particular, cultural and recreational services with the exception of leisure parks and hotel facilities.
- Access to the sport or multifunctional recreational infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis.
- Undertakings which have financed at least 30% of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available.
- If sport infrastructure is used by professional sport clubs, Member States shall ensure that the pricing conditions for its use are made publicly available.
- Any concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

[10] idem
[11] SA.35135 Arena Erfurt
[12] Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Declarations adopted by the Conference - Declaration on sport Official Journal C 340 , 10/11/1997 P. 0136
[13] Ben Van Rompuy and Oskar van Maren, (2016), *EU control of State Aid to professional sport: why now?*, Asser Institute Centre for International and European Law, Research Paper Series, February 2016

The aid may take the form of:

- Investment aid, including aid for the construction or upgrade of sport and multifunctional recreational infrastructure; operating aid for sport infrastructure.
- For investment aid for sport and multifunctional recreational infrastructure, the eligible costs shall be the investment costs in tangible and intangible assets.
- For operating aid for sport infrastructure, the eligible costs shall be the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent and administration, but exclude depreciation charges and the costs of financing if these have been covered by investment aid.
- For investment aid for sport and multifunctional recreational infrastructure, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism.
- For operating aid for sport infrastructure, the aid amount shall not exceed the operating losses over the relevant period. This shall be ensured ex ante, on the basis of reasonable projections, or through a claw-back mechanism.
- For aid not exceeding EUR 1 million, the maximum amount of aid may be set at 80% of eligible costs.

The Kristall Bäder AG case,[14] which concerned a major modernisation, extension and upgrading of a local swimming pool, provides an early example of how the GBER has been applied to sports infrastructure projects. The case concerned a project to upgrade a leisure complex, adding to the existing swimming pool some modern spa, fitness and wellness facilities in order to increase its attractiveness. The proposed renovation (transformation and complete refurbishment of existing facilities) and the construction of the new complex would almost double its dimension to create ([8,000-10,000]*m2 of usable space instead of 4,755 m2). The Commission determined that the new complex complied with the provisions of the GBER, in particular it was considered that: the new complex qualifies as a multifunctional recreational infrastructure as it serves as a swimming pool for local population and visitors, but provides the same users also other type of services (spa and wellness) with its other related facilities; the complex would not be "used exclusively by a single professional sport user"; and the "aid amount covers the funding gap, results from one contract, and does not exceed the difference between eligible costs and operating profit."[15]

**State Aid to professional clubs**

After being alerted to a number of public support measures for football clubs, in 2013 the Commission opened a series of in-depth investigations into various public support measures in favour of certain Spanish and Dutch professional football clubs (including tax privileges, the transfer and sale of land and property, State guarantees, bank loans, and debt waivers).[16] The Commission was alerted to the measures by concerned citizens.

[14] State Aid No SA.33045 (2013/NN) (ex 2011/CP) – Germany – Alleged unlawful aid in favour of Kristall Bäder AG

[15] http://ec.europa.eu/competition/state_aid/cases/247490/247490_1580456_110_2.pdf

[16] Commission decision of 6 March 2013, SA.33584, The Netherlands - Alleged municipal aid to certain professional Dutch football clubs in 2008-2011 [2013] OJ C 116/19; Commission decision of 18 December 2013, SA.29769 Spain – State Aid to certain Spanish professional football clubs [2014] OJ C69/115; Commission decision of 18 December 2013, SA.36387 Spain – Alleged aid

In its letter on the decision to investigate Spanish clubs, the Commission expressed doubt that there is "an objective of common interest which could justify selective operating support to very strong actors in a highly competitive economic sector" and therefore could not justify preferential tax rates for the four football clubs in question on the basis of evidence provided by Spain at that time.[17] The outcomes of the Commission's investigations into the support measures for football clubs are still pending.

## 2.3 Taxation of Sport

In the area of indirect taxation, the current Community VAT rules are laid down in Council Directive 2006/112/EC74[18] (hereafter referred to as "VAT Directive"). The VAT Directive provides for exemptions from VAT for certain categories of transactions. Under Article 132 of the VAT Directive, certain activities which are in the public interest are VAT exempt. That provision does not, however, provide exemption from VAT for every activity performed in the public interest, but only for those which are listed and described therein. The research has revealed two Commission decisions on VAT which help to clarify how the rules on exemptions should be applied to sports activities. In particular the requests show that a general exemption on VAT for tickets for sports events is not compatible with EU taxation rules.

In a request to Austria in 2009, which took the form of a reasoned opinion (second step of the infringement procedure provided for in article 226 of the Treaty), the Commission considered that the **Austrian VAT exemption for services closely linked to sport or physical education supplied by non-profit-making organisations to persons taking part in sport or physical education was too wide**, since it applied, without any restriction, to all activities carried out by associations of public interest, whose objective is to exercise or promote sport.[19]

In a reasoned opinion in 2014 the Commission asked **France to levy VAT on tickets for admission to matches and other sporting events which are not subject to entertainment tax** as France had granted a total exemption to admission fees for sporting events. Following the intervention of the Commission, the French government has introduced a reduced VAT rate of 5.5% on tickets for sporting events.[20]

## 2.4 Anti-trust

Article 102 of the Treaty concerning anti-trust rules prohibits the abuse of a dominant position on a given market, for example by charging unfair prices, by limiting production, or by refusing to innovate to the prejudice of consumers. The Medina decision[21] in 2006 was a landmark judgement in the application of EU competition law to the sport sector since it was the first time that the Court of Justice considered the application of the EU's anti-trust laws to organisational sporting rules.

in favour of three Valencia football clubs [2014] OJ C69/99; Commission decision of 18 December 2013 SA.33754, Spain – Real Madrid CF [2014] OJ C69/108.

[17] Commission decision of 18 December 2013, SA.29769 Spain – State Aid to certain Spanish professional football clubs [2014] OJ C69/115

[18] Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax - OJ L 347, 11.12.2006, p.1.

[19] Commission reasoned opinion, 8 October 2009 http://europa.eu/rapid/press-release_IP-08-1032_en.htm?locale=en (accessed 10 April 16)

[20] Commission reasoned opinion, 24 June 2014 http://europa.eu/rapid/press-release_MEMO-14-470_en.htm (accessed 10 April 16)

[21] Case C-519/04P, Meca Medina v. Commission, ECR 2006, I-6991

### Role of sports federations in approving sports events

The European Court of Justice ruling in **Greek Motorcycling Federation (Motosykletistiki Omospondia Ellados NPID (MOTOE)) v Elliniko Dimosio** (hereafter MOTOE)[22] confirmed that a sporting body that mixes regulatory functions with economic activities should be subject to the application of EC anti-trust law. The issue in question in the MOTOE case was about how this should affect the decision-making process by sport governing bodies on whether or not to approve the staging of new events.

The Court of Justice ruling in MOTOE confirmed that organisations such as sports federations that regulate the undertaking of sporting events and have a direct commercial interest in the events (for example entering into sponsorship, advertising and insurance contracts) can have exclusive rights in deciding which events take place. The ruling however clarified that the procedures and criteria for selection used by sports governing bodies need to be transparent when responding to other organisations that are applying to organise events. The fact that the Greek Automobile and Touring Association was operating a virtual monopoly in organising motorcycle events was not viewed as a breach of the Treaty. The Court of Justice ruled that while the position and activities were not automatically abusive, the fact that there was no recourse for those who were refused consent, MOTOE in this case, could be considered an abuse of the federation's dominant position.

The MOTOE decision provides further demonstration of the Court's consistent view that sport, in so far as it constitutes an economic activity, falls within the scope of application of EU competition law. Reflecting the landmark Medina ruling, MOTOE has enhanced legal certainty by clearly pronouncing that there exists no such thing as a category of "purely sporting rules" that would be excluded straightaway from the scope of EC competition law. The decision confirmed the readiness of the Court of Justice to subject the detailed aspects of sports organisation to the scrutiny of EU (competition law)[23].

The MOTOE decision confirms however that the specific features of sport should be considered in assessing the compatibility of organisational sporting rules with EU competition law. MOTOE clarifies that EU law expects that the organisation of sports events should be subject to stringent regulations by governing bodies. A system involving prior consent is not of itself objectionable: acting as a 'gatekeeper' is an obvious task of a sports federation.[24] The objection in MOTOE and confirmed by the Court is not in terms of how the sport was regulated but rather the system of approval that was used by the sporting body.

### Rules of sports federations regarding freedoms to enter different competitions

In October 2015 the Commission opened a formal antitrust investigation into **International Skating Union (ISU)** rules that permanently ban skaters from competitions such as the Winter Olympics and the ISU World and European Championships if they take part in events not approved by the ISU.[25] The issues to be addressed in the ISU case have strong resonances with arguments considered in the MOTOE case. The ISU rules threaten athletes who take part in non ISU approved events with a lifetime ban and exclusion from competitions such as the Winter Olympics and World Championships. The Commission will consider whether such rules prevent

[22] Case C 49/07, Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio, ECLI:EU:C:2008:376

[23] Stephen Weatherill, (2014), *Article 82 EC and sporting 'conflict of interest': The judgment in MOTOE, Sport And The Law* Journal Volume 16 Issue 2

[24] Stephen Weatherill (2014), *Article 82 EC and sporting 'conflict of interest': The judgment in MOTOE, Sport And The Law* Journal Volume 16 Issue 2

[25] http://europa.eu/rapid/press-release_IP-15-5771_en.htm (accessed 10 April 16)

alternative event organisers from entering the market, in which case such practices could constitute anti-competitive agreements and/or an abuse of a dominant market position in breach of EU antitrust rules.[26] A number of national cases (detailed in Annex One) show how the rules of national sports associations have been changed to allow the possibility for athletes to participate in non-official competitions without risking any fine or suspension.

In February 2016, Euroleague Properties, a subsidiary company of Euroleague filed a complaint against the International Basketball Federation (FIBA) and FIBA Europe to the Commission, stating that FIBA had put clubs under pressure to join its Basketball Champions League. In response FIBA submitted a complaint to the European Commission against Euroleague based on a similar basis that the alleged engaged in anti-competitive behaviour in order to gain a competitive advantage.

Euroleague filed the first complaint to the Commission against FIBA stating that they had infringed on anti-trust laws by making illegal threats and applying unfair pressure on clubs, players and referees, in order to coerce them into participating in FIBA competitions. The complaint states that FIBA are infringing on EU law as there is a conflict of interest as FIBA has rules and sanctions against those not involved in non-FIBA run competitions. FIBA responded by filing a complaint to the European Commission against subsidiary Euroleague Commercial Assets (ECA) for breaching similar anti-competitive laws, including imposing pressure on clubs, players and referees to take party in a Euroleague competition or face expulsion from their other events, as well as unfair discrimination against certain clubs. In summary, FIBA accuses ECA of denying them the ability to contribute to the growth of the European club business, whilst unfairly creating a monopolistic position which it is abusing. The investigations into both complaints will examine whether the rules of both associations infringe on the freedom of clubs, players and referees to participate in competitions.

**Role of sports federations in promoting fair sporting competition**

An ongoing investigation being carried out by a national competition authority highlights potential conflicts between anti-trust rules and national league regulations on the financial conditions that need to be met by clubs on being promoted to a national league. In October 2015, the Spanish National Commission of Markets and Competition opened an investigation into the financial conditions set by the Spanish Basketball Clubs Association (ACB) for clubs being promoted to the ACB's national league. In particular the Spanish Commission is considering whether the conditions are discriminatory and against fair sporting competition. This investigation has been initiated following the complaint by the Tizona Basketball Club. The particular conditions being contested by the club include the requirement to pay 3.2 million euros within three months of joining the ACB, plus 1.8 million euros in a fund for promotion and relegation purposes, as well as a 270,000 euros contribution to a wage guarantee fund.

## 2.5 Media

Two decisions of the European Court of Justice since 2007 recognise the specificity of sport in the media context and in particular the importance of maximising the coverage of sports events for (television) viewers. The decisions provide clarification on how European law is applied in ensuring that the public gain access to information and coverage of sporting events of major importance.

[26] http://europa.eu/rapid/press-release_IP-15-5771_en.htm (accessed 10 April 16)

### Listed events

The Council Directive 89/552/EEC regarding the television broadcasting activities authorises Member States to prohibit the exclusive broadcasting of events which they deem to be of major importance for society, and where such broadcasts would deprive a substantial proportion of the population to view these events on free television.

The European Court of Justice decision in **UEFA v European Commission** (2013)[27] clarified that it is the **Member States that should determine which events are of major importance** with sufficient justification, and that the Commission's role is merely to determine whether Member States have complied with the relevant directive. Belgium and the UK had each drawn up a list of events they regarded as being of major importance. For Belgium these constituted all matches in the final stage of the World Cup and, for the UK, all matches in the final stages of the World Cup and European Football Championships. The Commission decided that both lists were compatible with European Union law. FIFA and UEFA challenged these decisions, however the General Court dismissed their actions, and this led them to lodge appeals before the Court of Justice. The Court of Justice deemed that if an event has been designated to be of major importance by a Member State, the Commission is only able to carry out a limited review of the designation.

A point of detail in the UEFA v European Commission case is the Court's clarification that Member States are required to specify why all matches in the final stages of a major tournament are of major importance. The implication is that all matches in the final stages of an international tournament cannot be grouped together and therefore Member States should be required to specify why all matches, divided into different levels of interest (for example first round matches as well as later rounds) are regarded to be of major importance. In the UEFA v European Commission case it is clear that the UK notified the Commission of the designation of the matches in the final stages of the European Football Championships as major importance. In providing this information to the Commission the UK enabled the Commission to review and seek further information where it was deemed necessary or appropriate. The Court concludes that there was nothing to indicate that the Commission did not exercise its limited power of review.

### Short news reports

The Audiovisual Media Services Directive[28] authorises any broadcaster established in the EU to produce short news reports on events of high interest to the public, where those events are subject to exclusive broadcasting rights. The European Court of Justice's decision in **Sky Österreich GmbH v. Österreichischer Rundfunk**[29] confirmed that the amount of compensation provided by the public broadcaster should be limited to the additional costs directly incurred in providing access to the signal.

In this decision the Court recognises that exclusive broadcasting rights, as acquired by Sky, have asset value and do not constitute mere commercial interests or opportunities. However, the Court considers that when Sky acquired those rights by means of a contract (in August 2009), EU law already provided for the right to make short news reports, while limiting the amount of compensation to the additional costs directly incurred in providing access to the signal. Therefore, the Court considers that Sky could not rely on an established legal position enabling it to exercise its exclusive broadcasting

[27] Cases C-201/11 P, C-204/11 P and C-205/11 P, UEFA v European Commission, 62011-CJ-0201
[28] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010 L 95, p. 1, and corrigendum OJ 2010 L 263, p. 15).
[29] Case C-283/11, Sky Österreich GmbH v. Österreichischer Rundfunk, ECLI:EU:C:2013:28

rights autonomously. The consequence of this decision is that companies holding exclusive rights to broadcast events cannot rely on cannot rely on rules concerning the protection of property, to demand remuneration greater than the additional costs incurred in providing access to the satellite signal.

## 2.6 Protection of sport-related intellectual property rights

The review has identified one significant ruling in the area of protection of sport-related intellectual property rights. In the case of **FA Premier League v QC Leisure**[30], the European Court of Justice has clarified that various media products resulting from the audio-visual recording and broadcasting of sports events give rise to a variety of intellectual property rights and should qualify for protection; however the actual events do not qualify for copyright protection under EU law.

In the UK, restaurants, bars and pubs started using foreign decoding devices to access FA Premier League (FAPL) matches via satellite from a Greek broadcaster who held the rights to broadcast matches in Greece only. This was done as the payment for subscription to the satellite service was cheaper than BSkyB who had acquired the licence to show matches in the UK territory. FAPL believed that these activities were harmful to their interests as they undermined the exclusivity of the rights granted by the territorial licence. The FAPL believed that the broadcaster selling the cheapest decoder cards has the potential to become the broadcaster for Europe, leading to a loss of revenue for FAPL and the broadcasters as their service is undermined. The Court of Justice ruled that FAPL screenings including those from overseas broadcasters, where FAPL logos, graphics or anthems were broadcast in the UK pubs, had impeded on copyright infringement.

While the Court rules out copyright protection for sports events as such through EU law, the ruling provided scope for national discretion on intellectual copyright rules concerning sport events. According to the Court, "Nonetheless, sporting events, as such, have a unique and, to that extent, original character which can transform them into subject-matter that is worthy of protection comparable to the protection of works, and that protection can be granted, where appropriate, by the various domestic legal orders".[31] With reference to Article 165 of the Treaty and the EU rules on the specificity of sport, the Court considers that it is permissible for a Member State "to protect sporting events, where appropriate by virtue of protection of intellectual property, by putting in place specific national legislation, or by recognising, in compliance with European Union law, protection conferred upon those events by agreements concluded between the persons having the right to make the audio-visual content of the events available to the public and the persons who wish to broadcast that content to the public of their choice."[32] This provides scope for the introduction of national schemes to protect sports events. An example of such protection would be the special rights granted to sports organisers under the French Sports Act or the recently created Italian neighbouring right.[33]

[30] Joined Cases C- 403/08 and 429/08 Football Association Premier League Ltd and others v QC Leisure and others and Karen Murphy v Media Protection Services Ltd (2011) ECR-I-9083.
[31] idem.
[32] idem.
[33] Asser Institute Centre for International and European Law, (2014), Study on sports organisers' rights in the European Union.

# 3.0 The Organisation of Sport

## 3.1 Introduction

This chapter considers developments in EU law since 2007 concerning the organisation of sport. It focuses on how the specificity of sport relates to the organisational structures and rules established by sports federations to ensure balanced and open competition. Decisions since 2007 have shown that a key focus of decisional practice is seeking to achieve a balance between the weight attached to EU rules on freedom of movement and non-discrimination and the special characteristics of sports competitions.

As shown in table 3.1, there have been very few legal developments concerning the organisation of sport since 2007; however the review has highlighted a number of ongoing investigations which may lead to modifications to EU law. The table below provides a summary of the key decisions made. Analysis of these and the pending issues are provided in the sections below.

**Table 0.1 Summary of key developments concerning the organisation of sport**

| Reference | Title | Main legal implications | Relevant section |
|---|---|---|---|
| European Court of Justice Case C 325/08 | Olympique Lyonnais SASP v Olivier Bernard and Newcastle United FC, | - A training compensation scheme can be justified on the grounds that it encourages the recruitment and training of young players provided that the scheme is proportionate. | 3.2 |
| Commission reasoned opinion, 16 April 2014 | Commission asks Spain to end indirect discrimination towards players from other Member States | - Provides indication that the Commission views a quota of home-grown players of approximately 30% as compatible with Treaty rules on free movement. | 3.2 |

## 3.2 Free movement and nationality

The Treaties establish the right of every citizen of the Union to move and reside freely in the territory of the Member States and prohibit discrimination on grounds of nationality. Since 2007 there have been limited rulings and decisions concerning the application of rules on free movement to sport. A landmark European Court of Justice ruling concerned the compatibility of a training compensation scheme for young players with EU rules on free movement. There have also been a number of policy statements and informal agreements between the Commission and the Member States leading to the modification of rules on the promotion of home grown players. While these are discussed briefly below, there have yet to be any developments in case law that clarify the legal basis for quotas on home grown players.

### Compensation for training young players

In the case **Olympique Lyonnais v Olivier Bernard and Newcastle United FC**[34] (hereafter Bernard), a football player refused the offer of a professional contract for one year made by the club which had trained him (the French club Olympique Lyonnais) and instead agreed a similar contract with the English club Newcastle United FC. The Court had to consider the compatibility with EU law of a scheme aimed at guaranteeing compensation to a club providing training for young players, when the trained players sign their first professional contract in a club established in another Member State. In

[34] Case-325/08, Olympique Lyonnais SASP v Olivier Bernard and Newcastle United FC, ECLI:EU:C:2010:143

particular the Court of Justice was asked to clarify if a compensation scheme can be considered as a restriction on free movement of players as set out in the Treaty (Article 45) and detailed in the Bosman case. The Court of Justice decision sought to clarify if this potential restriction on free movement of players could be justified on the basis of the need to encourage the recruitment and training of young professional players.[35]

The Court of Justice decision stated that the compensation scheme for training of players does indeed constitute a restriction to the free movement of workers as set out in Article 45 TFEU, as the possibility of signing a contract outside of the country where the player was trained would become less attractive. However the Court considered that such a scheme can be justified on the grounds that it encourages the recruitment and training of young players but provided that the scheme is proportionate ("suitable to ensure the attainment of that objective and does not go beyond what is necessary to attain it"[36]). In making this decision the Court made a clear reference to the Article 165 of the Treaty by highlighting 'the specific characteristics of sport in general, and football in particular, and of their social and educational function', though in a supplementary fashion.

The ruling clarified that the training compensation scheme must ensure that the damages to be paid are related to the actual costs of the training (test of proportionality), and not to damages suffered by the training club. In the Bernard Case, the Olympique Lyonnais had requested compensation fees amounting to the salary proposed to the player over the duration of the contract initially proposed (1 year) which was considered to fail the test of proportionality.

The Court concluded that a scheme providing for the payment of compensation for training where a young player, at the end of their training, signs a professional contract with a club other than the one which trained him can be justified by the objective of encouraging the recruitment and training of young players.

Despite deciding that obliging players to stay would infringe their right to free movement, the judges were keen to stress that given the "considerable social importance" of football in the EU, "the objective of encouraging the recruitment and training of young players must be accepted as legitimate". The decision therefore implicitly weighed up the Treaty's laws on free movement with the need to take account of the specificity of sport, as enshrined in Article 165 of the Treaty. In the court's view, the prospect of receiving training fees is likely to provide an incentive to football clubs to invest in the development of young players.

The ruling, which applies to players aged 16-22, will **ensure that clubs are adequately compensated for their investment in training youngsters**. No similar cases have subsequently been brought up at the European level which suggests that the ruling has helped to clarify EU law in this area. The amount of compensation is to be determined "by taking account of the costs borne by the clubs in training both future professional players and those who will never play professionally."[37]

At international level, UEFA commented on the case and concluded that the case validates Annex 4 of FIFA rules, which provides for financial compensation to clubs that contribute to training football players when a player signs his first contract and then all

[35] idem
[36] idem
[37] idem

subsequent contracts until the age of 23.[38]

**Quotas on home-grown players**

While the Bernard ruling clarifies that EU law supports compensation for youth developments it is questionable whether the ruling supports quotas on home-grown players. From 2008/09, UEFA required clubs in the UEFA Champions League and UEFA Europa League to include a minimum of eight home-grown players in a squad limited to 25. In line with compensation schemes, the rule aims to encourage the local training of young players, and increase the openness and fairness of European competitions. It also aims to counter the trend for hoarding players, and to try to re-establish a 'local' identity at clubs.[39] According to Action 9 of the Pierre de Coubertin Action Plan, which was part of the White Paper on Sport:

> "Rules requiring that teams include a certain quota of 'home-grown players' could be accepted as being compatible with the Treaty provisions on free movement of persons if they do not lead to any direct discrimination based on nationality and if possible indirect discrimination effects resulting from them can be justified as being proportionate to a legitimate objective pursued, such as enhancing and protecting the training and development of talented young players".

This approach received the support of the European Parliament in the Resolution on the White Paper on Sport.[40] It remains, however, that no formal decisions have been taken on home-grown players so far by the Community courts or by the Commission.

In order to be able to assess the implications of the UEFA rule in terms of the principle of free movement of workers, the Commission elected to closely monitor its implementation and a further analysis of its impacts was subsequently undertaken in 2012. The 2012 study could not however be conclusive on the impacts of the rule on competitive balance and youth development and recommended that a further study be conducted in three years by UEFA. The study also highlighted the question of whether less restrictive alternatives (for example UEFA's Financial Fair Play regulations) can deliver more substantial improvements to competitive balance and the quality of youth development.

A reasoned opinion decision by the Commission indicates that the UEFA rule on home-grown is being used as the reference point for decisions on home-grown players in other sports. A **Commission reasoned opinion decision in 2014 requested Spain to change its rules on the composition of basketball teams** because it considered that the quotas for locally trained players could lead to indirect indiscrimination towards players from other Member States. The Commission considered that quotas established by the Spanish Basketball Federation (FEB) and the Spanish Association of Basketball Clubs (ACB) for some national competitions, which resulted in reserving for locally trained players between 40% and 88% of the jobs available in the basketball teams, were not compatible with the Treaty's rules on free movement. In its decision, the Commission referred to the UEFA Home Grown Player rule (32% of the posts in each team) as an example of a quota which seemed proportionate in pursuing the legitimate sporting objectives of promoting training of young players and encouraging fair competition between clubs.[41] As a consequence the Spanish Basketball Federation

[38] KEA and the Centre for the Law and Economics of Sport, (2013), *The Economic and Legal Aspects of Transfers of Players* , Report to the European Commission
[39] http://www.uefa.com/news/newsid=943393.html
[40] European Parliament, (2007), *Resolution on the White Paper on Sport*, 2007/2261(INI).
[41] Commission reasoned opinion, 16 April 2014, http://europa.eu/rapid/press-release_MEMO-14-293_en.htm

relaxed the rules on home-grown players in the 2014-15 season bringing them in line with the Commission's recommendation, at approximately 30%.[42]

A national case in France provides examples of additional criteria that may be acceptable as part of a regulation on home-grown players. The French volleyball league had introduced a minimum of four home-grown players in a squad of 12 for the 2010-2011 season. For the following seasons, this requirement would be increased to five home-grown players per squad. The home-grown players had to meet at least one of the following conditions: obtaining their first volleyball licence in France; spending at least three years in the academy of a French professional club; having a volleyball licence in France for at least five years; obtaining the French Nationality (naturalisation) before 30 June 2010. The Conseil d'Etat deemed that the quota of "players coming from French training" (home-grown players) may be compatible with the principle of free movements of workers as set out in Article 45 of the Treaty. However the Conseil d'Etat rejected the last condition set out in the league regulation as it constitutes a discrimination based on nationality, which, the Conseil d'Etat considered, is not justified by any consideration of common good or general interest in this case.

## 3.3 Financial fair play

UEFA's Financial Fair Play (FFP) Regulations were introduced in 2012 with the aim of ensuring the long-term viability and sustainability of European club football.[43] In March 2012 the Commission and UEFA issued a joint statement which highlighted the consistency between the rules and objectives of financial fair play and the policy aims of the EU commission in the field of State Aid. However to date there is no formal decision that has assessed the compatibility of FFP with EU law. In the case of Daniele Striani and Others, RFC Sérésien ASBL v UEFA,[44] Striani, a football agent, raised the questions of whether the 'break-even requirement' infringes on the Treaty's freedom of movement (and anti-trust) rules. In May 2015 the Court of First Instance ruled itself incompetent to deal with Striani's case as it had no jurisdiction, given that the complainant Striani was not directly affected by the regulations. The Court of First Instance's decision did not therefore amount to a formal rejection of Striani's complaint regarding free movement and ant-trust rules, rather the Court considered that there are insufficient grounds to take the action further.[45]

## 3.4 Transfers

The 2007 White Paper highlighted how the transfer system of players, as set out in FIFA's Regulations on the Status and Transfer of Players (RSTP) agreed to by the European Commission in 2001, provide an example of how the specificity of sport principle is applied in protecting the integrity of sporting competition.[46] Since 2007 there have been no developments in European case law regarding the transfer of players; however a recent development on this issue is the complaint lodged by FiFPro to the Commission in September 2015 challenging the global transfer market system governed by FIFA's regulations. FIFPro states that the transfer system in its current form can no

[42] Federation of Spanish Basketball, (2014), Competition Rules.
[43] UEFA, (2012) UEFA Club Licencing and Financial Fair Play Regulations
[44] Request for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium) lodged on 19 June 2015 — Daniele Striani and Others, RFC Sérésien ASBL v Union Européenne des Sociétés de Football Association (UEFA), Union Royale Belge des Sociétés de Football — Association (URBSFA)
[45] Stefano Bastianon, (2015) *The Striani Challenge to UEFA Financial Fair-Play. A New Era after Bosman or Just a Washout?* The Competition Law review, Volume 11 Issue 1 pp 7-39 July 2015.
[46] Commission of The European Communities, (2007), *Commission Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport*, Published 11 July 2007

longer be justified or protected by the 'specificity of sport'.[47] FIFPro claims that the transfer system fails to attain the objectives of serving the interests of fair competition and in many regards works to the opposite of what was intended. Specifically, FIFPro argues that the transfer system fails to attain the objectives of the RSTP, as agreed to by the European Commission in 2001, which are specifically, contractual stability, financial solidarity (redistribution of revenue), competitive balance, integrity and stability of competitions, as well as the training of young players. The Commission's decision on whether to investigate the complaint is still pending.

A global ban by FIFA on Third Party Ownership, which allows businesses or funds to own the economic rights to players, came into effect on 1 May 2015. The Spanish and Portuguese football leagues have subsequently lodged a complaint to the Commission on the grounds that the ban infringes the Treaty's competition and anti-trust laws. The results of the Commission's investigation into the ban are still pending.

## 3.5 Agents

A recent development concerning legal rules on agents concerns a complaint to the Commission regarding FIFA's new regulations that puts a limit on payments to players' agents. On 1 April 2015, the new FIFA Regulations on Working with Intermediaries (also known as agents) came into force. Under Article 7 of the regulations there is recommended 3% commission cap on the remuneration for intermediaries from a player's basic gross income, for the duration of his contract, or the eventual transfer compensation if acting on behalf of a club. The Association of Football Agents, the representative body for approximately 500 football agents in England lodged a complaint to the European Commission that Article 7 was unlawful under European competition law, as the rule distorts competitive practices. It is not clear at this time how the specificity of sport principle will be applied in justifying the limit on agents' payments; it is understood however that the justification for the new Regulations partly relates to the need to protect the finances of football clubs.

[47] https://www.fifpro.org/en/news/fifpro-takes-legal-action-against-fifa-transfer-system (accessed 19 April 2016)

# Annex One: Details of decisions since 2007

## European Court of Justice Rulings

| Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio | |
|---|---|
| Case / regulation number | European Court of Justice Case C-49/07 |
| Date | 1 July 2008 |
| Name | Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio |
| Official reference | ECLI:EU:C:2008:376 |
| Internet link | http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62007CJ0049 |
| Context / background information | MOTE is a non-profit making association governed by private law, they organise motorcycle competitions in Greece. MOTOE's members include regional motorcycling clubs. On 13 February 2000, MOTE submitted an application to organise competitions to Elliniki Leskhi Aftokintou Kai Periigiseon (Automobile and Touring Club of Greece; EPLA), also a non-profit organisation. Subsequently MOTE submitted specific rules to the planned events as well as the statuses of the clubs organising the events to the ministry and ELPA.<br>ELPA and ETHEAM sent MOTOE a document relating to certain rules of organising motorcycling events in Greece, specifically stating that cups and prizes are to be announced by ETHEAM following authorisation from ELPA. |
| Details of decision made | MOTE requested information seeking the outcome of the application; the Ministry advised MOTE that it had not received a document from ELPA with its consent. Pleading unlawfulness of the rejection, MOTE sought compensation for non-material damage suffered due to not holding the events. MOTE claimed that firstly, organisations must be impartial and secondly that ELPA who also organise motorcycling events was trying to establish a monopoly.<br>ELPA intervened before Diikitko Protodikio Athinon in support of the Greek States decision. ELPA included further supporting documents to justify the decision, these included; its statuses of association of 1924, its yearbook for 2000 regarding motorcycle events which was published by ETHEAM. Included in the yearbook were the supporting documents that competitors had to provide in order to be entitled to a license as well as other supporting documents and the National Sporting Rules for Motorcycling (EAKM).<br>The Diikitiko Protodikio Athinon dismissed MOTE's action on the ground, that article 49 of the Greek Road Traffic Code, ensuring the rules for the safe running of the motorcycling events are maintained, and advised that ELPA did not abuse their position in order to gain a monopoly.<br>MOTE then lodged an appeal against the judgment, stating that EPLA's activities are not limited to sporting matters, it also engages in economic activities, entering into sponsorship, advertising and insurance contracts. This meant that these undertaking were subject to the European Commission's Treaty rules on competition. This Treaty is violated when a Member State undertakes exercises that lead to a dominant position. As ELPA organises and gains commercial advantages from organising motorcycling events, and decides on whether to give applications to organise competing events whilst needing no consent from any other body, it has an obvious advantage over its competition. It could potentially distort competition by favouring their events. This identification of a dominant position is different from determining whether this position has been abused, the abuse of this position is prohibited by Article 82, however, the existence or acquisition of a dominant position is not. |

| Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio | |
|---|---|
| | The fact that ELPA was operating a virtual monopoly in organising motorcycle events was not a breach of Articles 82 and 86 of the European Commission Treaty. The position and activities were not automatically abusive, but the fact that there was no recourse for those who were refused consent, MOTE in this case, gave rise to abuse of their position. |
| Implications for sport in practice | This should make organisations that regulate the undertaking of motorcycle events and other sporting events more transparent when responding to other organisations that are applying to organise events. It will not stop monopolies occurring, but will not allow the organisations to abuse their power or rights. |

| C-325/08 Olympique Lyonnais v Olivier Bernard and Newcastle United FC – 'Bernard case' | |
|---|---|
| Case / regulation number | European Court of Justice Case C-325/08 |
| Date | 16 March 2010 |
| Name | Judgment of the Court (Grand Chamber) of 16 March 2010.<br>Olympique Lyonnais SASP v Olivier Bernard and Newcastle United FC. |
| Official reference | ECLI:EU:C:2010:143 |
| Internet link | http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62008CJ0325 |
| Context / background information | In the case Olympique Lyonnais v Olivier Bernard and Newcastle United FC (Bernard case), a player (Olivier Bernard) refused the offer of a professional contract for one year made by the club which had trained him French club: Olympique Lyonnais) and instead concluded a contract of the same type with the English club Newcastle United FC.<br>In the Bernard case, the Court had to consider the compatibility with EU law of a sporting organization's scheme aimed at guaranteeing compensation to a club providing training for young players, when the trained players sign their first professional contract in a club established in another Member State. In particular the CJEU was asked to clarify if a compensation scheme can be considered as a restriction on free movement of players as set out in the Treaty on the Functioning of the European Union (Art.45) and detailed in the Bosman case.<br>The questions referred to the CJEU also sought to clarify if this potential restriction on free movement of players could be justified on the basis of "the need to encourage the recruitment and training of young professional players". |
| Details of decision made | The Court Decision stated that the compensation scheme for training of players does indeed constitute a restriction to the free movement of workers as set out in Article 45 TFEU, as the possibility of signing a contract outside of the country where the player was trained would become less attractive.<br>However the Court also stated that a training compensation scheme can be justified on the grounds that it encourages the recruitment and training of young players through a club receiving training fees, provided that the scheme is proportionate (suitable to ensure the attainment of that objective and does not go beyond what is necessary to attain it).<br>The compensation scheme must therefore ensure that the damages to be paid are related to the actual costs of the training (test of proportionality), and not to damages suffered by the training club. For example in the Bernard Case, the Olympique Lyonnais had requested compensation fees amounting to the salary proposed to the player over the duration of the contract initially proposed (1 year). |

| C-325/08 Olympique Lyonnais v Olivier Bernard and Newcastle United FC – 'Bernard case' | |
|---|---|
| | The Court concluded that schemes guaranteeing a financial compensation to professional clubs and training structures when a player signs a professional<br>The Court also made a clear reference to the article 165 TFEU, by highlighting 'the specific characteristics of sport in general, and football in particular, and of their social and educational function', though in a supplementary fashion. |
| Implications for sport in practice | The Bernard case led to several developments across sport practice, including notably:<br>- At international level UEFA commented on the case and concluded that the case validates Annex 4 of FIFA rules, which provides for financial compensation to clubs that contribute to training football players when a player signs his first contract and then all subsequent contracts until the age of 23. In addition, the FIFA rule provides that for players above the age of 23, a levy of 5% is raised on the value of the transfer to be redistributed to training clubs.[48]<br>No similar cases were subsequently brought up at CJEU level.[49]<br>- At national federations' level, it contributed to clarify the scope and key principles applicable to training schemes and compensation. |

| UEFA v European Commission, appeals regarding television broadcasting | |
|---|---|
| Case / regulation number | European Court of Justice Cases C-201/11 P, C-204/11 P and C-205/11 P |
| Date | 18 July 2013 |
| Name | Union des associations européennes de football (UEFA) v European Commission.<br>Appeals - Television broadcasting - Directive 89/552/EEC - Article 3a - Measures taken by the United Kingdom concerning events of major importance for the society of that Member State - European Football Championship - Decision declaring the measures compatible with European Union law - Statement of reasons - Articles 49 EC and 86 EC - Right to property. |
| Official reference | 62011CJ0201 |
| Internet link | http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011CJ0201 |
| Context / background information | The Council Directive 89/552/EEC regarding the television broadcasting activities authorises Member States to prohibit the exclusive broadcasting of events which they deem to be of major importance for society, and where such broadcasts would deprive a substantial proportion of the population to view these events on free television.<br>Belgium and the UK each drew up a list of events they regarded as being of major importance, for Belgium these constituted all matches in the final stage of the World Cup and, for the UK they included, all matches in the final stages of the World Cup and EURO (European Football Championship). The Commission decided that both lists were compatible with European Union law. FIFA and UEFA challenged these decisions, however the General Court dismissed their actions, and this led them to lodge appeals before the Court of Justice. |

[48] KEA (2013) Study on the economic and legal aspects of the transfer of players. A report prepared for the European Commission, DG EAC. Brussels, 2013.

[49] See for example the list of Case Law on sports by the DG Employment & Social Affairs: http://ec.europa.eu/social/main.jsp?catId=953&langId=en&intPageId=1225

| UEFA v European Commission, appeals regarding television broadcasting | |
|---|---|
| Details of decision made | The European Court of Justice informs that it is the Member States that determine which events are of major importance, and that the Commission's role is to determine whether the Member States have complied with European Law. Therefore if an event has been designated of major importance by a Member State, the Commission is only able to carry out a limited review of the designation.<br>The Court then notes that the Commission cannot include all matches in the final stages of the EURO are of equal importance, despite the Member State advising that they were. The Member State needed to specify why matches, divided into different levels of interest, were of major importance. In the present case despite this error it was ruled that it did not invalidate the judgment. It is clear that the United Kingdom clearly notified the Commission of the designation of the final stages of the EURO as major importance. In providing this information to the Commission the United Kingdom enabled the Commission to review and seek further information where it was deemed necessary or appropriate. There is nothing to indicate that the Commission did not exercise their limited power of review.<br>The General Court found that all matches in the final stages of the two tournaments attracted sufficient attention from the public to form part of an event of major importance. From previous records it is apparent that the tournaments have always been popular among the general public and have traditionally been broadcast on free television channels in the applicable Member States.<br>Given the Commission's limited power of review of the designation being a major event by a Member State and the in-depth knowledge of broadcasters of the grounds underlying such a designation, the Commission only has to indicate the grounds for its decision on the list of events of major importance drawn up by a Member State.<br>Where the effects of the designation on the freedom to provide services, the freedom of competition and the right to property do not go beyond those which are linked to the classification of major events. It is not necessary to prove that it is compatible with European Union law, as it is in the present case, where the effects on the freedoms and rights of the designation of the final stages of the World Cup and the EURO, as events of major importance were excessive.<br>The Court dismisses the appeals brought by FIFA and UEFA in their entirety. |
| Implications for sport in practice | The law has not been amended as a result of this case, therefore there are no new implications for sport. Member States still appoint events of major importance, this highlights the special place sport has in social activities. |

| Sky Österreich GmbH v. Österreichischer Rundfunk | |
|---|---|
| Case / regulation number | European Court of Justice Case C-283/11, |
| Date | 22 January 2013 |
| Name | **Sky Österreich GmbH v. Österreichischer Rundfunk** |
| Official reference | ECLI:EU:C:2013:28 |
| Internet link | http://curia.europa.eu/juris/liste.jsf?num=C-283+/11 |

| Sky Österreich GmbH v. Österreichischer Rundfunk | |
|---|---|
| Context / background information | The Audiovisual Media Services Directive[50] authorises any broadcaster established in the EU to produce short news reports on events of high interest to the public, where those events are subject to exclusive broadcasting rights.<br>In August 2009, Sky acquired exclusive rights to broadcast Europa League matches in the 2009/2010 to 2011/2012 seasons in Austrian territory. Sky stated that it spent several million euros each year on the licence and production costs.<br>On 11 September 2009, Sky and ORF entered into an agreement granting ORF the right to produce short news reports and providing for the payment of EUR 700 per minute for such reports.<br>At the request of ORF, made in November 2010, KommAustria decided that Sky was required, as the holder of exclusive broadcasting rights, to grant ORF the right to produce short news reports, but was not entitled to demand remuneration greater than the additional costs directly incurred in providing access to the satellite signal, which were non-existent in this case. Both parties appealed against that decision before the Bundeskommunikationssenat (the Austrian Federal Communications Senate),<br>The Bundeskommunikationssenat had also asked the Court of Justice whether the Audiovisual Media Services Directive, in so far as it limits the compensation in question to additional costs directly incurred in providing access to the signal, is compatible with the Charter of Fundamental Rights of the European Union which guarantees the right to property and the freedom to conduct a business. |
| Details of decision made | In this decision the Court recognises that exclusive broadcasting rights, as acquired by Sky, have asset value and do not constitute mere commercial interests or opportunities. However, the Court considers that when Sky acquired those rights by means of a contract (in August 2009), EU law already provided for the right to make short news reports, while limiting the amount of compensation to the additional costs directly incurred in providing access to the signal. Therefore, the Court considers that Sky could not rely on an established legal position enabling it to exercise its exclusive broadcasting rights autonomously. The consequence of this decision is that companies holding exclusive rights to broadcast events cannot rely on cannot rely on rules concerning the protection of property, to demand remuneration greater than the additional costs incurred in providing access to the satellite signal. |
| Implications for sport in practice | By confirming that the amount of compensation provided by the public broadcaster should be limited to the additional costs directly incurred in providing access to the signal, the decision improves legal certainty in this area and should ensures that news items on the sporting events of high interest will continue to be shown to the general public. |

| FA Premier League V QC Leisure regarding media protection services | |
|---|---|
| Case / regulation number | European Court of Justice Joined Cases C-403/08 and C-429/08 |
| Date | 04 October 2011 |
| Name | Football Association Premier League v QC Leisure and others<br>And Karen Murphy v Media Protection Services |

[50] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010 L 95, p. 1, and corrigendum OJ 2010 L 263, p. 15).

| FA Premier League V QC Leisure regarding media protection services | |
|---|---|
| Official reference | EWHC 1411 (2008) |
| Internet link | http://curia.europa.eu/juris/document/document.jsf?text=&docid=110361&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=256729 |
| Context / background information | The Football Association Premier League (FAPL) is the governing body of the English Football Premier League. The FAPL is responsible for the broadcasting of Premier League matches. The Premier League owns various copyrights for the football matches which are then sold to broadcasters through an open competitive tender. The rights are exclusively awarded on a territorial basis, where the bidder wins the broadcasting rights for the specified area, this allows the broadcaster to differentiate their services from competitors. To protect the territorial exclusivity of all broadcasters, their agreement with FAPL aims to prevent the public from receiving the broadcast outside of their designated area. To do this, all broadcasts are encrypted and broadcasters must not knowingly transmit to territories outside of their remit. The broadcaster must undertake procedures to ensure that no device is knowingly authorised to permit anyone to view the match outside their particular licenced territory.<br>In Greece NetMed Hellas held the broadcasting rights to the Premier League matches, these were broadcast via satellite on the NOVA platform, owned and operated by Multichoice Hellas. To access the channels through the NOVA platform, the subscriber must provide a name, Greek address and Greek phone number.<br>At the time of the hearing BSkyB held the UK broadcasting rights for the 2011/2012 season. To screen the Premier League in the UK the person must take out a commercial subscription.<br>In the UK, restaurants, bars and pubs started using foreign decoding devices to access Premier League matches. This was done as the payment for subscription to the NOVA platform was cheaper than BskyB. FAPL believed that these activities were harmful to their interests as they undermine the exclusivity of the rights granted by the territorial exclusivity licence. The broadcaster selling the cheapest decoder cards has the potential to become the broadcaster for Europe, leading to a loss of revenue for FAPL and the broadcasters as their service is undermined. Consequently FAPL brought Case C-403/08 to Court, against the various organisations. |
| Details of decision made | The Court of European Justice of the European Union (CJEU) ruled that the EU free movement of services prohibited rules preventing viewers in one Member State from importing satellite decoders into another Member State. The FAPL are still able to grant rights on a territorial basis, however the FAPL's broadcasting licence against the supply of decoding devices made territorial exclusivity absolute, which infringed on Article 101 of TFEU.<br>The CJEU found the screening of transmissions from the Greek broadcaster NOVA involved the public, which under Article 3 of the EU Copyright Directive could amount to copyright infringement. As a result the pubs were deemed to breach copyright laws and were required to pay for the screening of Premier League matches.<br>Under UK law the showing of a public broadcast does not infringe on copyright laws as the viewers of the football games in pubs had not paid to enter the premises. However any FAPL screenings including those from overseas broadcasters, where FAPL logos, graphics or anthems were broadcast in the UK pubs, had impeded on copyright infringement. The copyright infringements would not be applicable when it is not screened to the public, this allows the private user to continue to operate in this manner. |
| Implications for sport in practice | The specificity of sport did not affect the ruling in this case – it was copyright infringements which made the screening of the matches illegal. The implication is that various media products resulting from the audio-visual recording and |

| FA Premier League V QC Leisure regarding media protection services | |
|---|---|
| | broadcasting of sports events that give rise to a variety of intellectual property right are protected by copyright law.<br>However with reference to Article 165 of the Treaty and the EU rules on the specificity of sport, the Court considers however that it is permissible for a Member State "to protect sporting events, where appropriate by virtue of protection of intellectual property, by putting in place specific national legislation, or by recognising, in compliance with European Union law, protection conferred upon those events by agreements concluded between the persons having the right to make the audio-visual content of the events available to the public and the persons who wish to broadcast that content to the public of their choice." This provides scope for the introduction of national schemes to protect sports events. |

## European Court of First Instance Decisions

| Striani V UEFA - Rejected | |
|---|---|
| Case / regulation number | Court of First Instance Case C-299/15 |
| Date | 16 July 2015 |
| Name | Request for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium) lodged on 19 June 2015 — Daniele Striani and Others, RFC Sérésien ASBL v Union Européenne des Sociétés de Football Association (UEFA), Union Royale Belge des Sociétés de Football — Association (URBSFA) |
| Official reference | OJ C 270, 17.8.2015 |
| Internet link | http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62015CN0299 |
| Context / background information | Striani, a Belgium football players' agent, lodged a complaint with the European Commission on 6 May 2013, against UEFA's Financial Fair Play regulations (FFP), however in May 2014 the Commission released a statement that it intends to dismiss the complaint. Striani then lodged a second legal challenge against UEFA in the Court of First Instances in Brussels.<br>Straini proposed three questions to the European Court of Justice;<br>1. Does the 'break-even requirement' infringe on Article 101 (or 102) of TFEU, by restricting competition, or by abusing a dominant position.<br>2. Does the 'break even requirement' infringe on the freedom of movement of capital, services, persons as well as Articles 63, 56 and 45 of TFEU (and Articles 15 and 16 of the Charter of Fundamental Rights of the European Union).<br>3. Are Articles 65 and 66 of the UEFA Financial Fair Play Regulations discriminatory/disproportionate, giving preference on overdue payables to certain categories of debtors and creditors.<br>The Striani challenge claims that FFP break-even rule limits a clubs ability to spend money on players' wages and transfers, this in turn has a negative effect on the revenue of players' agents under Article 101 and 102 of TFEU. Under Article 101 violations are comprised of three elements; proof of collusion, the collusion must effect trade between Member States and finally if the agreement has the objective or effect of restricting competition within the common market.<br>If players are regarded as workers, then it can be argued that FFP becomes a factor because of the financial restraints as the clubs are required to break even. It restricts their right of free movement within the EU as there is a deterrent effect, this is a violation of Article 45 of the TFEU. However, as it is a players' agent who is claiming that FFP restricts negatively impact their business, it is a remote link. The direct impact on agents is vague and hard to measure, and the agent's freedom to provide service has not been restricted.<br>Article 101 of the Antitrust law could be deemed to be breached through UEFA's abuse of a dominant position of its undertakings. UEFA's FFP certainly effects trade between Member States and distorts competition in individual countries internal market, this is done through their monopolistic position of power. It will affect the buying and selling price of players as the clubs try to adhere to the break even requirements.<br>The principle of non-discrimination is not adhered to under FFP. Between clubs in Europe there are huge financial differences, therefore forcing all clubs regardless of size to adhere to break-even requirement is not fair, some clubs can rely on millions of income whilst others have only thousands. This is discriminatory to the smaller clubs and allows the rich clubs to spend more, allowing the rich to spend their way to success and further riches. Additionally FFP dictates which income or expenses are to be monitored under the break-even requirement, this can lead to |

| Striani V UEFA - Rejected | |
|---|---|
| | discrimination against clubs which have to comply with additional regulations. This will therefore affect the long term sustainability of certain clubs as FFP financially discriminates against them. |
| Details of decision made | The Brussels Court ruled itself on 29 May 2015 incompetent to deal with Striani's case as it had no jurisdiction. As FFP were bought into effect in Switzerland, the jurisdiction lies with the Swiss Courts. Despite this, the derogation of the law grants territorial jurisdiction to both the place of the event, Switzerland and where the damage occurred, Belgium.<br>The Brussels Court disagreed with UEFA that the damages to Striani are hypothetical, it stated that the damage is an indirect consequence of the clubs participating in Europe. It is the clubs that are directly affected by FFP, players and players agents are only indirectly effected. As the damages must be direct harm, the Court concluded that FFP does not directly affect Striani directly, which rules out the breach of EU competition law. |
| Implications for sport in practice | The Brussels Court granted Striani a provisional measure requested, blocking UEFA implementing the next phase of FFP. UEFA appealed against the Brussels Court judgement, resulting in the provisional measure being suspended, this allowed UEFA to implement the next stage of FFP as planned.<br>Within the updated FFP regulations on 01 July 2015, UEFA relaxed certain restraints, however the main issue of the break-even requirement remains in place.<br>Despite this individual case coming to a close, it is likely that it will lead to further questions and appeals which will again bring in to question the specificity of sport. If Striani were to re-submit his complaint it is likely that the Commission would have to conduct the investigation due to increased interest. |

## European Commission Regulations

| Amendment to Council Regulation on State Aid | |
|---|---|
| Case / regulation number | Commission Regulation (EU) No 733/2013 |
| Date | 22 July 2013 |
| Name | Amending Regulation No 994/98 on the application of articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid |
| Official reference | OJ L 204, 31.7.2013 |
| Internet link | http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0733 |
| Context / background information | The Commission set out a State Aid reform programme, to modernise State Aid. This has affected the title of regulation No 994/98, which has been replaced with 733/2013 and sport is now included under Article 1(a). |
| Details of decision made | The EU's Council of Ministers has formally adopted articles 92 (now 107) and 93 (now 108), two regulations on State Aid exemptions and procedures. The regulations grant the European Commission more powers, including the blocking of aid to more categories where they have expertise, including sport. The Commission has passed this measure after acquiring solid case experiences. The regulation was passed on 22 July 2013, making it binding in its entirety and directly applicable in all Member States. |
| Implications for sport in practice | Article 107(1) of the TFEU will reduce the administration and paperwork in State Aid in the field of sport, despite this, sport is not exempt from the general scope of EU State Aid.<br>In the sport sector, in particular the field of amateur sport, various measures implemented by Member States may not constitute State Aid as they do not comply with the criteria (Article 107(1) of the TFEU). This for example could be because the beneficiary does not carry out economic activity or because there is no trade between Member States. The regulation expands the number of aid categories that do not need to notify the Commission prior to its allocation, sport was included in this category. With the regulation, the Commission can declare specific categories of State Aid compatible with the treaty if they fulfil certain conditions, thus exempting them from the requirement of prior notification and Commission approval. This modernises, simplifies and clarifies the laws around State Aid, enabling the Commission to regulate it easily and transparently. It will allow Member States across Europe the opportunity to implement State Aid in sport quicker.<br>State Aid in sport is often small scale, with limited effects on trade between Member States and thus is unlikely to create competitive advantages or distortions of competition. The amounts granted are also typically limited. Compatibility conditions can be defined from experience acquired to ensure that significant distortion does not arise. |

| Regulation Declaring Certain Categories Of Aid Compatible with the Single Market | |
|---|---|
| Case / regulation number | Commission Regulation (EU) 651/2014 |
| Date | 17 June 2014 |
| Name | Declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty |

| Regulation Declaring Certain Categories Of Aid Compatible with the Single Market | |
|---|---|
| Official reference | OJ L 187, 26.6.2014 |
| Internet link | http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.187.01.0001.01.ENG |
| Context / background information | Regulation 651/2014 is one of the features of State Aid modernisation, including the new General Block Exemption Regulation (GBER). A main objective of the modernisation is to encourage Member States to use GBER for small budgets and well known policy. This will allow the Commission to dedicate more resources on focusing and analysing; unusual, higher risk or larger measures of aid. |
| Details of decision made | The scope of GBER has been widened to 143 regulations, from the previous 30, now including aid for sport and multifunctional recreational infrastructure. For several types of aid the maximum grant amount has increased, many notification thresholds have also increased.<br>The regulation aims to increase the transparency of State Aid regulations. It states that aid must have an incentive effect, changing the behavioural operations of the organisation. Member States must publish a summary of all aid provided and must submit summary information within 20 working days of adapting a measure of State Aid to the Commission, as well as annual reports.<br>The new GBER guidelines overlap less than previous regulations, this will ensure that Member States know which aid is applicable and which regulations to comply with. The GBER clarifies funding that is centrally managed and not considered State Aid. It does not give the Member State the option of using GBER or the State Aid guidelines, it is now one or the other. The Commission has the power to withdraw the benefits of GBER if a Member State fails to comply with conditions, the Commission can then withdraw the benefits from the aid recipient or granting authority. |
| Implications for sport in practice | The new GBER provides clarity on the types of sports projects which are compatible with the single market. In sport and multifunctional infrastructure, when the project exceeds €15 million, or operating aid for sport infrastructure surpasses €2 million, notification is necessary.<br>It is probable that there will be less applications of aid under GBER due to the more relaxed laws. Aid is more likely to be granted as less paperwork is required and there is a raised notification threshold under the new GBER. It may however lead to more cases being investigated due to non-compliance. |

## European Commission Reasoned opinions

| Taxation: VAT on sporting events in Austria | |
|---|---|
| Date | 08 October 2009 |
| Name | VAT – Commission pursues infringement proceedings against Austria on the application of certain exemptions |
| Official reference | IP/09/1453 |
| Internet link | http://europa.eu/rapid/press-release_IP-09-1453_en.htm?locale=en |
| Context / background information | The Commission considers that the Austrian VAT exemption for services linked to sport, physical education or non-profit making organisations for persons participating in physical education is too wide. |
| Details of decision made | Austria has taken actions to reduce the scope of organisations that are exempt from paying taxes. At the end of 2015 there were four reservations regarding VAT resources for Austria, two reservations from Austria and two from the Commission which are yet to be resolved. |
| Implications for sport in practice | It is likely that more organisations in Austria will be required to pay VAT, however until the regulation is passed the extent is unknown. |

| Taxation: VAT on sporting events in France | |
|---|---|
| Date | 01 January 2015 |
| Name | Taxation: the Commission asks France to apply the same procedural rules to French and European investors. |
| Official reference | MEMO/14/470 |
| Internet link | http://europa.eu/rapid/press-release_MEMO-14-470_en.htm |
| Context / background information | Before 2015 France used to grant sporting events and matches a total exemption from taxes on admission fees. On 10 July 2014 the Commission requested France to charge VAT on tickets for admission to matches and sporting events. |
| Details of decision made | From the 1 January 2015 tickets relating to the admission to sporting events and matches will be subject to a reduced rate of VAT at 5.5% |
| Implications for sport in practice | This will either lead to a reduced profit from ticket admissions or an increased price in admission prices to maintain the same level of profit. |

| Spanish Basketball quotas for locally trained players | |
|---|---|
| Date | 16 April 2014 |
| Name | Basketball: Commission asks Spain to end indirect discrimination towards players from other Member States |
| Official reference | MEMO/14/293 |
| Internet link | http://europa.eu/rapid/press-release_MEMO-14-293_en.htm |
| Context / background information | In 2014 the Commission requested Spain to change its rules on the composition of basketball teams, stating that the quotas for locally trained players could lead to indirect indiscrimination towards players from other Member States. The Commission found that the quotas of the Spanish Basketball Federation (FEB) and the Spanish Association of Basketball Clubs (ACB) for some competitions, which |

| Spanish Basketball quotas for locally trained players | |
|---|---|
| | resulted in locally trained players representing between 40% and 88% of the jobs available in basketball teams, did not complying with the Treaty's rules on free movement. |
| Details of decision made | The Commission referred to UEFA's Home Grown Player rule (32% of the posts in each team) as an model for best practice in pursuing proportionate, legitimate sporting objectives of promoting training of young players and encouraging fair competition between clubs. As a consequence the Spanish Basketball Federation relaxed the rules on home-grown players for the 2014-2015 season, bringing the in-line with the Commission's recommendations, at approximately 30% |
| Implications for sport in practice | Provides clarity on the proportion of home-grown players which is acceptable under EU free movement rules. |

## Selective national cases

| Association Racing Club de Cannes Volley | |
|---|---|
| Case / regulation number | Conseil d'État N° 343273 34327 |
| Date | 08 March 2012 |
| Name | Conseil d'État (France), 2ème et 7ème sous-sections réunies, 08/03/2012, 34327 |
| Official reference | ECLI:FR:CESSR:2012:343273.20120308 |
| Internet link | https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000025469061&fastReqId=728538560&fastPos=2 |
| Context / background information | This case deals with the question of home-grown players as introduced in the national volley league regulation on 2 April 2010 in France. The volleyball league had introduced a minimum of 4 home-grown players in a squad of 12 for the 2010-2011 season. For the next seasons, this requirement would be increased to 5 home-grown players per squad.<br>The home-grown players had to meet at least one of the following conditions:<br>- Obtaining their first volleyball licence in France<br>- Spending at least three years in the academy of a French professional club<br>- Having a volleyball licence in France for at least 5 years<br>- Obtaining the French Nationality (naturalisation) before 30 June 2010. |
| Details of decision made | The Conseil d'Etat deemed that the quota of "players coming from French training" (home-grown players) may be compatible with the principle of free movements of workers as set out in Article 45 TFUE.<br>However the Conseil d'Etat rejected the last condition set out in the national volley league regulation as it constitutes a discrimination based on nationality, which is not justified by any consideration of common good or general interest in this case. |
| Implications for sport in practice | Similar to the Bernard Case (referred to in the decision).<br>This case brings additional details on what criteria may be used as part of a regulation on homegrown players (in France only). |

| Swedish Body-Building Association (SKKF) | |
|---|---|
| Case / regulation number | Swedish Competition Authority Case number 590/2013 |
| Date | 28 May 2014 (investigation closed) |
| Name | CASE 590/2013 : Swedish Competition Authority investigation on the Swedish Body-Building Association (SKKF) |
| Official reference | N/A |
| Internet link | http://ec.europa.eu/competition/ecn/brief/03_2014/sv_body.pdf |
| Context / background information | The Swedish Competition Authority (SCA) investigated on the Swedish Body-Building Association (SKKF) for the application of the loyalty clause. According to SKKF's rules, members who compete in contests that are not approved or authorised by SKKF itself can be fined or suspended; athletes who have taken part in an unapproved event or competition must also undergo tests for doping at |

| Swedish Body-Building Association (SKKF) | |
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| | their own expense. BMR Sports Nutrition AB, a manufacturer of nutritional and bodybuilding supplements, filed a complaint alleging that this clause violates Art. 101 TFEU as it prevents organisers of body-building competitions to compete with SKKF own competitions. |
| Details of decision made | The investigation was closed on 28 May 2014 after the SKKF notified the SCA notified the modification and the possibility for athletes to participate to non-official competitions without risking any fine or suspension. Athletes still have to take doping tests at their own expenses before official competitions. |
| Implications for sport in practice | Clarification of anti-trust rules in relation to the organisation of sport competitions. |

| Swedish Automobile Sports Federation loyalty rules | |
|---|---|
| Case / regulation number | Swedish Competition Authority Case number 709/2009 |
| Date | 13 May 2011 |
| Name | CASE 709/2009 and Court CASE A 5/11: Swedish Competition Authority (SCA) on the Swedish Automobile Sports Federation loyalty rules |
| Official reference | BESLUT 2011-05-13 Dnr 709/2009 |
| Internet link | http://www.konkurrensverket.se/en/news/more-should-be-able-to-organise-motor-racing-events/ |
| Context / background information | The rules of the Swedish Automobile Sports Federation banned racers officially inscribed in the Federation from participating in races that are not organised or sanctioned by the Swedish Automobile Sports Federation. |
| Details of decision made | In May 2011, the Swedish Competition Authority (SCA) ordered the Swedish Automobile Sports Federation to change its loyalty rules because it was considered as an unjustified restriction on competition, thus constituting an infringement of Art. 101 TFEU and its equivalent in the Swedish Competition Act.<br>The SCA made reference in its decision to the specificity of sport, explaining that even though restriction to competition rules could be justified for sporting competitions to be organised in a fair, well-ordered and safe way, the rules were not proportionate and justified in this case.<br>The Federation appealed the decision in 2012, but on 20 December 2012, the Market Court Decision confirmed the decision of the SCA. |
| Implications for sport in practice | Clarification of anti-trust rules in relation to the organisation of sport competitions. |

| Italian Equestrian Sports Federation | |
|---|---|
| Case / regulation number | Italian Competition Authority Case A378; Decision number 18285, |
| Date | 28 July 2008 |
| Name | A378 - Italian Equestrian Sports Federation (FISE) |
| Official reference | Decision n°18285, Bollettino n°19/2008, Italy |

| Italian Equestrian Sports Federation | |
|---|---|
| Internet link | http://www.agcm.it/component/joomdoc/bollettini/19-081.pdf/download.html |
| Context / background information | In 2007, A complaint was filed for abuse of dominant position by ENGEA (National Association of Equestrian Eco-Tourists Guide) and FIEW (Italian Western Equestrian Federation) against the Italian Federation of Equestrian Sports (FISE). The two organisations held that FISE rules prevented the participation of FISE members to competition and events organised by other federations; |
| Details of decision made | The Italian Competition Authority deemed that these impositions have severe effects on the equestrian sport sector, preventing the development of activities of both new and existing associations. The foreclosure of the equestrian market constituted an infringement of Art.101 TFEU and the abuse of dominant position infringed Art.102 TFEU. |
| Implications for sport in practice | Clarification of anti-trust and competition rules in relation to the organisation of sport competitions. |

| Gargano Racing | |
|---|---|
| Case / regulation number | Italian Competition Authority Case A396 ; Decision number 19946 |
| Date | 11 June 2009 |
| Name | A396 – Gargono Racing |
| Official reference | Decision n° 19946, Bollettino n°23, Italy |
| Internet link | http://www.agcm.it/concorrenza/concorrenza-delibere/open/41256297003874BD/5764581408C13D8EC12575E60039872C.html |
| Context / background information | In November 2007 the Market Court opened an investigation on potential infringements of art.101 and 102 TFEU. This dealt with market foreclosure and abuse of dominant position by ACI, the official Club of Italian Automobile, whose statutes prevented the organisation of racing competitions unsanctioned by ACI. The investigation was initiated following complaints to the Competition authority from Gargano Corse, Salerno Corse and FIAS, three associations of amateur racing. |
| Details of decision made | In June 2009, the Court closed the investigation, as ACI had modified its statutes in order to lift the limitation on access to the car racing market and in order not to make advantages of its official role on the organization of racing competitions. |
| Implications for sport in practice | Clarification of anti-trust and competition rules in relation to the organisation of sport competitions. |

| Show Jumping Ireland | |
|---|---|
| Case / regulation number | Competition and Consumer Protection Commission Case (reference number not available) |
| Date | 01 May 2012 |
| Name | CASE SJI, Ireland |
| Official reference | N/A |

| Show Jumping Ireland | |
|---|---|
| Internet link | http://www.ccpc.ie/show-jumping-ireland-amend-allegedly-restrictive-rule |
| Context / background information | The Irish Competition Authority opened an investigation in 2011 on the Show Jumping Ireland (SJI) association. Its regulation (article 299N of the Rulebook of SJI) stated that SJI members could not compete in unaffiliated show jumping events where the prize fund exceeded €60/£50 and would be liable to a penalty fee. |
| Details of decision made | The Irish Competition Authority investigation concluded that this rule prevented affiliated members to take part in non-SJI competitions, which restricted the organization of such unaffiliated events in Ireland. The Irish Competition Authority considered the rule to infringe both Irish and European law (Art. 101 TFEU).<br>The SJI cooperated with the Irish Competition Authority and agreed to amend its article 299N of the Rulebook in May 2012. The new version does not prevent participation to unaffiliated events, as long as those events sign up to Health and Safety Standards set by SJI, and foresees adequate assurance. |
| Implications for sport in practice | Clarification of anti-trust and competition rules in relation to the organisation of sport competitions. |

| Conditions for release of handball players for international matches | |
|---|---|
| Case / regulation number | Higher Court of Dusseldorf Case VI-U (Kart) 13/14 |
| Date | 15 July 2015 |
| Name | IHF-Abstellbedingungen |
| Official reference | Higher Court of Dusseldorf, 15 July 2015, Case VI-U (Kart) 13/14 – IHF-Abstellbedingungen |
| Internet link | https://openjur.de/u/855589.html |
| Context / background information | More than 30 clubs from the first and second German Bundesliga – supported by the Forum Club Handball (FCH), the representation of the European top clubs – lodged a complaint against the International Handball Federation (IHF) regulations. The complaint dealt with the chapter stating that foreign handball players shall be released to their National Federations for international matches without the Federations having to pay release fees or provide insurance coverage. The IHF regulation was implemented in Germany by the German Handball Federation (DHB). |
| Details of decision made | At first instance the regional court of Dortmund had granted the claim as it deemed it represented an unjustified breach of competition rules, according to German and EU cartel law.<br>The Higher Regional Court of Dusseldorf dismissed the claim from German handball clubs against the release obligations according to the Player Eligibility Code of IHF and DHB at second instance, as the IHF regulations had changed during the process. |
| Implications for sport in practice | Clarification of anti-trust and competition rules in relation to the organisation of sport competitions. |

| International Skating Union – antidoping rules | |
|---|---|
| Case / regulation number | Higher Regional Court of Munich case number U 1110/14 |
| Date | 15 January 2015 |
| Name | Case U (Kart) 1110/14 - Pechstein |
| Official reference | OLG München · Teil-Urteil vom 15. Januar 2015 · Az. U 1110/14 Kart |
| Internet link | https://openjur.de/u/756385.html |
| Context / background information | In 2009, Ms. Pechstein was banned for two years from participating in any competition organised by the International Skating Union (ISU) due to doping. She appealed this decision to the Court of Arbitration of Sport, which rejected it (CAS2009/A/1912). This decision was confirmed by the Swiss Federal Tribunal (Case 4A_612/2009, 10 February 2010 and Case 4A_144/2010, 28 September 2010).<br>In parallel, Ms. Pechstein also filed a claim at the Regional Court in Munich for damages in the amount of EUR 4.4 million against the ISU, although her licence included an agreement that any dispute with the ISU can only be submitted to the CAS. |
| Details of decision made | On 26 February 2014, her claim was rejected in the Court of first Instance as it had already been judged by the CAS (*res judicata* principle). Ms. Pechstein appealed the ruling, and on 15 January 2015, the Munich Higher Regional Court granted her claim, as the forced arbitration clause of the ISU is contrary to German and EU anti-trust laws.<br>Indeed, the Munich court considers the ISU as a monopolistic structure since participating in ISU's competitions is the only source of revenues for professional athletes, and imposing an arbitration clause conflicts with anti-trust laws. The Higher Regional Court specified that such forced arbitration clause may be lawful (and is in fact common practice in the world of sport). However, in this case the composition of the Arbitration Division of the CAS is composed by 20 members, and 14 of them are connected to sport organisations which are ISU's members.<br>The Higher Regional Court therefore deemed that due to the combination of the monopolistic position of the ISU and the lack of independence of the CAS panels, the imposition of a forced arbitration clause constitutes a breach of German antitrust law. |
| Implications for sport in practice | Clarification of anti-trust rules in relation to the contractual arrangement between sport federations and athletes.<br>Whilst outside the scope of this study, the Pechstein case may have strong implications on the functioning of the CAS arbitration body. |

| Fees relating to the organization of sports events | |
|---|---|
| Case / regulation number | Higher Regional Court of Dusseldorf Case VI-U (Kart) 9/13 |
| Date | 02 April 2013 |
| Name | VI - U (Kart) 9/13 – Triathlon |
| Official reference | OLG Düsseldorf · Beschluss vom 2. April 2013 · Az. VI - U (Kart) 9/13 |
| Internet link | https://openjur.de/u/633726.html |
| Context / | In Germany, regional and national sport associations are entitled to perceive a fee |

| Fees relating to the organization of sports events | |
|---|---|
| background information | from private sports events organisers. In 2012, a regional triathlon organisation did not authorise a private sports event to be held as no fee had been paid.<br>Since the triathlon organisation also organises sports events, the private organisation complained the regional triathlon had abused a dominant market position. |
| Details of decision made | The Higher Regional Court of Dusseldorf decided that in this case, the triathlon association was charging fees in exchange for benefits to private organisers of triathlon competition, and that the fee charged was not disproportionate to the actual benefits. It therefore concluded that the triathlon association did not infringe EU and German anti-trust law. |
| Implications for sport in practice | Clarification of anti-trust rules in relation to the organisation of sport competitions. |

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