EU Sports Law and Policy Summer School
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State Aid and Cost Control Measures in Sport

Dr. Andrea Cattaneo - @Andrea_Cattaneo
Cost Control Measures

- *Post-Bosman:*
  + Players’ market is liberalised
  + Players’ wages inflated
  + Transfer fees inflated
  + Coupled with increased value of Broadcasting Rights
  + 2006 *(ongoing)* Eurocrisis

= Need for a system imposing financial responsibility of professional clubs
Salary Caps

- Salary Caps restrict the expenditure on players’ wages
- Salary Caps aim at guaranteeing Competitive Balance
- Hard Salary Caps, Soft Salary Caps, Luxury Taxes

- Salary Caps restrict the freedom of clubs and affect players
- As they are established by the Governing Body (an Association of Undertakings) may breach Article 101 TFEU – fixing trading conditions and restricting investments on the market
Are Salary Caps Legal?

• In U.S. Salary Caps are elements of CBA – exempted from prohibition under Competition Law (*Mackey v. NFL*)

• In EU - Case C-67/79, *Albany International v Stichting* [1999] :

  ‘when these agreements are reached between employers and employees and aim at improving the working conditions, the social policy objectives they pursue would be undermined if they would be subject to the application of competition law’

• **EU Social Dialogue** – Agreement on Minimum Requirements for Professional Football Players’ Contracts
Financial Fair Play

- In 2010 UEFA, with the agreement of ECA adopted FFP rule, as part of Club Licensing Regulations

- Break-even requirement for clubs participating in European competitions

- The objective of FFP is NOT to increase Competitive Balance

- The objective is to increase financial responsibility of Clubs, and making the football system stable and self-sufficient - Article 2(2) C of the UEFA Clubs Licensing and Fair Play Regulations.
FFP Rules

- Acceptable losses limited under €5 Million per year
- Control over transactions with related parties – Sponsors and Shareholders – under normal market conditions
- Clubs may list as relevant incomes revenues from non-football activities
- Clubs breaching FFP rules may be sanctioned by UEFA
Effects of FFP

- FFP prevents clubs from spending over their possibilities
- FFP restricts the freedom of clubs and players on the market
- Objective of Financial Stability is legitimate (*Bosman*, paras. 105/106)
- Objectives of FFP achieved – 81% reduction in aggregate losses
- However, FFP reduces Competitive Balance
- Proportionality of the Measure must be assessed
FFP Complaint

- Daniel Striani, Football Player Agent, filed a Complaint against FFP rules before the EU Commission and Belgian Court of First Instance.

- It is in the interest of sports teams, clubs and athletes to protect the economic viability of other teams, athletes and clubs as competitors. *(Joint Statement EU Commission-UEFA - 2012)*

- The objective of financial stability can be legitimately pursued through measures such as the FFP rules, which contribute to the sustainable development and healthy growth of sport in Europe. *(Arrangement for Cooperation EU Commission-UEFA – 2014)*

- Complaint manifestly inadmissible for lack of direct interest.
FFP and State Aid

• There is a significant risk that football clubs will increasingly apply for financial help to the national, regional, or local public authorities in order to be able to continue playing professional football. *(Joint Statement of the European Commission and UEFA on FFP and State Aid - 2012)*

• The objective of FFP rules are consistent with the enforcement of State Aid policy
State Aid

- EU ensures that the intervention of Member States on the economy does not distort the competition within the internal market

- Unregulated intervention of Member States would undermine the goals of the EU:
  - internal market, level playing field
  - role in liberalisation
  - competitive European industry
  - avoid subsidy race
  - element of cohesion
State Aid – Article 107 TFEU

• *Any aid* granted by a Member State or through State resources *in any form* whatsoever which distorts or threatens to distort competition by *favouring certain undertakings* or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

• *Derogations*: – Article 107(2): economic/social/cultural reasons – Article 107(3): measure necessary, proportionate and positive effects outweigh negative
Notion of State Aid

- A transfer of resources to the company or relief from charges which a company normally has to bear, whereby the financial advantage is for free or without adequate remuneration.

- State aid is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities.

- Market Economy Operator Principle - no advantage if state behaves like "normal" player on market
Notion of State Aid

• an intervention by the “State” or through “State resources” which can take a variety of forms
  – tax relief
  – bank guarantees
  – loans
  – subsidy
  – providing goods and services on preferential terms
  – waiver of debts
Notion of State Aid

- Favouring certain undertakings or the production of certain goods: reserved to certain undertakings or that anyway significantly favours an undertaking
- Benefit not received under normal market conditions
- Discretion of the Authority, not a general measure
State Aid and Sport

- Political & Social Value of Sport: Funding of Local Facilities and Professional Clubs

- Specific Nature of Sport

- Consequences of Illegal State Aid are severe – Recipient may have to pay it back – plus interests!!

- Nature of Sport Governing Bodies – Are they public entities?
Multifunctional Arenas

- **Commission Regulation 651/2014** - GBER II - Aid for sport and multifunctional recreational infrastructures
- Structures not exclusively used by Professional sport users
- Access open on a transparent and non-discriminatory basis
- Pricing conditions publicly available and Market Price

- **Hungary Supporting Tax Mechanism**

- **Multifunctional Arenas – Erfurt, Jena, Uppsala**

- **French Aid for UEFA EURO 2016**
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Aid to Professional Clubs

- **Dutch Municipalities** – NEC, Willem II, MVV, PSV, Den Bosch

- **Spanish Tax Scheme** – Real Madrid, Barcelona, Osasuna, Athletic Bilbao

- **Real Madrid Selling of Property Land**
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Sports Broadcasting and EU law

Any Questions?

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