



EUROPEAN COMMISSION
Competition

CASE AT.40105
UEFA Financial Fair Play Rules

ANTITRUST PROCEDURE
Council Regulation (EC) 1/2003 and
Commission Regulation (EC) 773/2004

Article 7(2) Regulation (EC) 773/2004

Date: 24/10/2014

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EUROPEAN COMMISSION

Brussels, 24.10.2014
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SPRL MAD Management
Mr Daniele Striani
37 Avenue de la Basilique
1082 Bruxelles
Belgium

via

ROCA JUNYENT
Calle Ciutat de Granada, 38, 2, 1,
08005 Barcelona
Spain

Subject: Case AT.40105 – UEFA Financial Fair Play Rules
Commission Decision rejecting the complaint
(Please quote this reference in all correspondence)

Dear Mr Striani,

- (1) I am writing to inform you that the European Commission (the "Commission") has decided to reject your complaint against the Union des Associations Européennes de Football ("UEFA"), pursuant to Article 7(2) of Commission Regulation (EC) 773/2004 ("Regulation 773/2004").¹ The reason for this decision is that the Court of First Instance of Brussels ("the Brussels Court") is well-placed to deal with matters that you have raised in your complaint in the framework of your civil action against UEFA. The Commission accordingly rejects your complaint against UEFA for reasons of priority setting, without taking a position on either your legitimate interest in filing the complaint or the merits of your complaint.

¹ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, Official Journal L 123, 27.04.2004, pages 18-24.

1. THE COMPLAINT AND THE ACTION BEFORE THE BRUSSELS COURT

1.1. The complaint

- (2) By letter dated 5 May 2013, you requested that the Commission launch an investigation into the UEFA Club Licensing and Financial Fair Play Regulations (the "FFP"). The FFP contains a set of licensing criteria that have to be fulfilled by football clubs in order to compete in UEFA club competitions. In particular, you requested that the Commission launch an investigation into the "break-even" requirement contained in Articles 58 to 63 of the FFP. According to this requirement, over a period of three years, the relevant income of clubs has to at least match their relevant expenses (with an acceptable deviation of EUR 5 million). Moreover, clubs may exceed the acceptable deviation of EUR 5 million provided that such excess is entirely covered by contributions from equity participants and/or related parties, up to EUR 45 million for the monitoring period assessed in the 2013/14 and 2014/15 seasons².
- (3) You allege that the break-even requirement constitutes a violation of Article 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU") for the following reasons: (i) it distorts competition between clubs (since it imposes a limit on the level of debt and investment in players of clubs); (ii) it negatively affects the salaries and professional mobility of players (since clubs will spend less money on transfers and consequently fewer transfers will take place); and (iii) it distorts competition on the market for the services of players' agents (since there will be fewer transfers and transfer fees will be lower).
- (4) You further claim that the break-even requirement does not pursue a legitimate objective and that in your view, the restrictions on competition set out in paragraph (3) are neither inherent nor proportionate to the alleged legitimate objectives.
- (5) In addition, you claim that the break-even requirement infringes Articles 45 TFEU (free movement of workers), 56 TFEU (free movement of services) and 63 TFEU (free movement of capital).

1.2. The action before the Brussels Court

- (6) On 5 August 2013, you submitted a copy of your civil action dated 20 June 2013 (*citation*) lodged with the Brussels Court . In your action, you request the Brussels Court to establish that UEFA has infringed the same provisions of the TFEU as those set out in your complaint, and to award you damages for those infringements. In your action, you develop arguments virtually identical to those set out in your complaint.
- (7) On 11 April 2014, UEFA provided a copy of its observations dated 12 February 2014 (*conclusions*) on your action dated 20 June 2013.
- (8) On 20 April 2014, you provided a copy of your observations dated 18 April 2014 (*conclusions*) on UEFA's observations dated 12 February 2014.

² See Article 61(2) of the FFP. The maximum amount of contributions from equity participants will be EUR 30 million for the monitoring period assessed in the license seasons 2015/16, 2016/17 and 2017/18; and a lower amount in the following years, to be decided in due course by the UEFA Executive Committee.

- (9) On 15 September 2014, you provided a copy of UEFA's observations dated 22 July 2014 (*conclusions additionnelles et de synthèse*) on your observations dated 18 April 2014.
- (10) On 26 September 2014, you provided a copy of your observations dated 22 September 2014 (*conclusions additionnelles et de synthèse*) on UEFA's observations dated 22 July 2014.
- (11) An oral hearing before the Brussels Court is scheduled to take place on 26 and 27 February 2015.

1.3. Procedural steps since the lodging of the complaint

- (12) You made an additional written submission to the Commission by letter of 5 June 2013 in which you submitted various articles on the FFP.
- (13) On 8 May 2013, and with your consent, the Commission sent to UEFA a non-confidential version of the complaint.
- (14) On 21 June 2013, UEFA submitted its observations on the complaint, in which it made the following points.
- (15) First, UEFA explained the context in which the FFP and the break-even requirement were adopted, in particular, that the debt levels have risen significantly at many clubs in the last seven years and several football clubs have entered into bankruptcy protection.³ In addition, UEFA explained that the adoption of the FFP and the break-even requirement were preceded by extensive consultations with main stakeholders.
- (16) Second, UEFA alleged that you have failed to show that you have a legitimate interest in lodging your complaint.
- (17) Third, UEFA submitted that there is insufficient Union interest in investigating your complaint, as the break-even requirement does not constitute an infringement of either Article 101 or 102 TFEU. In particular, UEFA is of the view that the break-even requirement does not infringe Article 101 TFEU because: (i) it pursues legitimate objectives (ensuring the stability, integrity and smooth running of football competitions); (ii) its restrictive effects are inherent in the pursuit of these objectives; and (iii) it is proportionate to the achievement of these objectives since the break-even requirement is limited to what is necessary to ensure the proper conduct of European football.
- (18) On 20 December 2013, the Commission sent a request for information to UEFA pursuant to Article 18(2) of Council Regulation No 1/2003 ("Regulation 1/2003")⁴, to which UEFA responded in writing on 20 January 2014.

³ According to the UEFA Club Licensing Benchmarking Report (FY2010), auditors of one in eight football clubs have expressed doubts as to whether they can continue as a going concern. According to the report, more than half of the top European clubs reported losses, with 28% of clubs reporting significant losses equivalent to spending EUR 12 for every EUR 10 income.

⁴ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, Official Journal L 1, 4.1.2003, pages 1–25.

- (19) By letter of 30 April 2014, the Commission informed you, pursuant to Article 7(1) of Regulation 773/2004 of its intention to reject your complaint (“the Article 7(1) letter”). The Article 7(1) letter was based on three grounds. First, it appeared, based on the information you had submitted, that you lack a legitimate interest to lodge a complaint as required by Article 7(2) of Regulation 1/2003. Second, the Brussels Court appeared to be well-placed to handle the matters raised in your complaint. Third, the Commission had received only one complaint regarding the same conduct by UEFA.
- (20) The Article 7(1) letter did not express any preliminary view on the merits of your complaint.
- (21) On 16 June 2014, you made known your views in writing on the Article 7(1) letter.
- (22) First you contend that you have shown a legitimate interest as required by Article 7(2) of Regulation 773/2004. You claim that the FFP directly concerns players' agents and that you have demonstrated that it adversely affects players' agents.
- (23) Second, you agree with the Commission's provisional assessment that the Brussels Court appears to be well-placed to handle the matters raised in your complaint. In particular, you explain that the Brussels Court is well placed to address the issues raised by your complaint, notably because that court can make a reference for a preliminary ruling to the Court of Justice of the European Union pursuant to Article 267 TFEU regarding the FFP's compatibility with Articles 101 and 102 TFEU. You also state that the Brussels Court can adopt a judgment which could affect the operation of the FFP across the EU.
- (24) Third, you argue that the fact the Commission has so far received only one complaint regarding the same conduct by UEFA is not a valid reason for rejecting your complaint. You point out that certain football fans and certain football clubs are also unhappy about the FFP.
- (25) On 17 and 24 June 2014, you submitted two articles that, in your opinion, show the anti-competitive nature of the FFP. On 22 August 2014, you submitted a newspaper article in connection with the FFP.
- (26) In July and August 2014, your legal counsel submitted complaints on behalf of individual football fans and players' agents against the FFP and requested that the Commission also take into consideration the information submitted in those complaints in the present case. The Commission registered these complaints under case numbers AT.40217 and AT.40222.
- (27) On 24 September 2014, a further complaint was submitted to the Commission by your legal counsel on behalf of the Manchester City FC Supporters Club. The Commission has registered this complaint under case number AT.40217.

2. THE NEED FOR THE COMMISSION TO SET PRIORITIES

- (28) Notwithstanding the fact that doubts remain regarding your legitimate interest to lodge a complaint as required by Article 7(2) of Regulation 773/2004, the Commission has examined your complaint.

- (29) The Commission is unable to pursue every alleged infringement of EU competition law which is brought to its attention. The Commission has limited resources and must therefore set priorities, in accordance with the principles set out at points 41 to 45 of the Notice on the handling of complaints⁵ and the case law of the European Courts.⁶
- (30) When deciding which cases to pursue, the Commission takes into account various factors. There is no fixed set of criteria, but the Commission may decide not to pursue a case when the matters raised in the complaint are being considered in an action pending before a national court that can adequately protect the rights of the complainant.⁷ Where appropriate, the Commission may give priority to a single criterion for setting priorities.⁸

3. ASSESSMENT OF YOUR COMPLAINT

- (31) The Commission has decided to reject your complaint as the Brussels Court is well-placed to handle the matters raised in your complaint. This is because your rights will be protected by that court in a satisfactory manner.
- (32) First, as demonstrated by the proceedings before the Brussels Court (see section 1.2 above), the Brussels Court is in a position to gather the factual information necessary to determine whether the FFP, and in particular the break-even requirement, constitutes an infringement of Articles 101 and 102 TFEU.⁹
- (33) Second, the Brussels Court is able to examine whether the FFP, and in particular the break-even requirement: (i) restricts competition within the meaning of Article 101(1) TFEU;¹⁰ (ii) benefits from an exemption under Article 101(3) TFEU;¹¹ and (iii) infringes Article 102 TFEU.¹² The Brussels court can also apply the nullity sanction provided for in Article 101(2) TFEU¹³ and award damages for breach of Articles 101 and 102 TFEU.¹⁴
- (34) Third, the Brussels Court can make a reference for a preliminary ruling to the Court of Justice of the European Union pursuant to Article 267 TFEU concerning the compatibility of the FFP, and in particular the break-even requirement, with Articles 101 and 102 TFEU.¹⁵ You already made a request to this effect in your action dated 20 June 2013, a request which you repeated in your observations dated 18 April 2014 and 22 September 2014.¹⁶

⁵ OJ C 101, 27.04.2004, p. 65. See also the Commission's Report on Competition Policy 2005, p. 25-27.

⁶ Case C-119/97 *UFEX and Others v Commission*, ECLI:EU:C:1999:116, paragraphs 88 and 89; Case C-449/98P *International Express Carriers Conference (IECC) v Commission of the European Communities, La Poste, United Kingdom of Great Britain and Northern Ireland and The Post Office*, ECLI:EU:C:2001:275, paragraph 36; Case T-432/10 *Vivendi v Commission*, ECLI:EU:T:2013:538, paragraph 22.

⁷ Case T-24/90 *Automec v Commission*, ECLI:EU:T:1992:97, paras 89-96; Case T-458/04 *Au lys de France v Commission*, ECLI:EU:T:2007:195, paras. 81-84.

⁸ See Case C-450/98 P, *International Express Carriers Conference (IECC) c Commission*, ECLI:EU:C:2001:276, paras 57-59.

⁹ Case T-427/08 *CEAHR v Commission*, ECLI:EU:T:2010:517, para. 173.

¹⁰ Case T-24/90 *Automec v Commission*, ECLI:EU:T:1992:97, paras. 90 and 92.

¹¹ Article 6 and recital 4 of Regulation No 1/2003.

¹² Case T-119/09 *Protégé International v Commission*, ECLI:EU:T:2012:421, para 78.

¹³ Case T-24/90 *Automec v Commission*, ECLI:EU:T:1992:97, para. 93.

¹⁴ Case T-119/09 *Protégé International v Commission*, ECLI:EU:T:2012:421, para 79.

¹⁵ Case T-24/90 *Automec v Commission*, ECLI:EU:T:1992:97, para. 92.

¹⁶ See p. 45 of your application of 24 June 2013.

- (35) Fourth, the Brussels Court can take effective action because of the *sui generis* system established by UEFA for the purpose of participation in UEFA club competitions. The FFP uniformly applies across the EU to all clubs that participate, or want to participate, in UEFA club competitions. If the Brussels Court were to consider the break-even requirement to be contrary to Articles 101 and/or 102 TFEU, such a ruling – even if limited to the facts of the case before the Brussels Court – is likely to have an impact on the operation of that requirement across the EU.
- (36) Fifth, if the Brussels Court were to consider the break-even requirement to be contrary to Articles 101 and/or 102 TFEU, you would not need to bring further actions before national courts in other Member States. This is because if the Brussels Court applied the nullity sanction provided for in Article 101(2) TFEU, the break-even requirement would also cease to produce effects in other Member States.

4. CONCLUSION

- (37) The Commission, in its discretion to set priorities, therefore concludes that there are insufficient grounds for carrying out a further investigation into the alleged infringement(s) and consequently rejects your complaint pursuant to Article 7(2) of Regulation 773/2004.
- (38) Regarding your claim that the break-even requirement infringes Articles 45 TFEU (free movement of workers), 56 TFEU (free movement of services) and 63 TFEU (free movement of capital), the Commission does not intend to investigate these further for the same reasons as those set out in paragraphs 28-36 of this decision.

5. PROCEDURE

5.1. Possibility to challenge this Decision

- (39) An action may be brought against this Decision before the General Court of the European Union, in accordance with Article 263 TFEU.

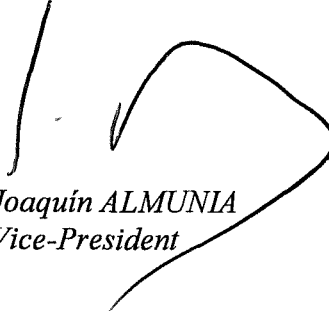
5.2. Confidentiality

- (40) The Commission reserves the right to send a copy of this Decision to UEFA. Moreover, the Commission may decide to make this Decision, or a summary thereof, public on its website.¹⁷ If you consider that certain parts of this Decision contain confidential information, I would be grateful if within two weeks from the date of receipt you would inform Ms Agnes SZARKA (e-mail: agnes.szarka@ec.europa.eu). Please identify clearly the information in question and indicate why you consider it should be treated as confidential. Absent any response within the deadline, the Commission will assume that you do not consider that the Decision contains confidential information and that it can be published on the Commission's website or sent to UEFA.

¹⁷ See paragraph 150 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ 2011/C 308/06.

- (41) The published version of the Decision may conceal your identity upon your request and only if this is necessary for the protection of your legitimate interests.

For the Commission



Joaquín ALMUNIA
Vice-President