

21 May 2014

PRESS RELEASE

Re. : Complaint of Mr. Daniel STRIANI against the « FFP » UEFA regulation

Following reports from an unidentified source that the European Commission has decided to reject the complaint filed by Mr. Daniel STRIANI against the UEFA rule imposing "the requirement of financial stability" (known as Financial Fair Play), Mr. STRIANI can confirm he has received a letter from the Commission's DG Competition in which it reports that it envisages rejecting the complaint.

In essence, the response contains two reasons supporting this potential rejection.

First, the Commission has expressed doubts as to the legitimate interest of Mr. STRIANI since the impact to him is indirect (the UEFA rule is aimed primarily at clubs, and penalizes agents indirectly).

Mr. STRIANI strongly disagrees with this analysis from the European Commission and shall have until June 16 to make submissions in this regard, which will provide a detailed response.

Second, the European Commission intends to support its decision by means of another reason which has not been fully explained nor released to the press by the unidentified source.

For the purpose of completeness, the letter Mr. STRIANI has received from the European Commission states the second reason as follows:

« As you will appreciate, the Commission is unfortunately unable to pursue every alleged infringement of EU competition law that 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 complaints.

When deciding which cases to pursue, the Commission takes various factors into account and there is no fixed set of criteria.

For example, the Commission may take into account whether national courts are well-placed to examine the allegations made in a complaint. The Commission is entitled to decide not to pursue certain cases where national courts can protect the rights of a complainant in a satisfactory manner" (...).

“The Brussels Court appears to be well-placed to handle the matters raised in your complaint:

On 20 June 2013 you lodged an application (citation) before the Brussels Court requesting it to establish that UEFA has infringed the same Treaty provisions as those set out in your complaint, and to award you damages for these infringements. In your application, you develop arguments virtually identical to those set out in the complaint. The Brussels Court requested, and on 12 February 2014 received, UEFA's observations on your application (citation). You provided your observations (conclusions) on UEFA's observations on 18 April 2014. An oral hearing is scheduled for 26 and 27 February 2015.

For the reasons set out below, the Brussels Court appears to be well-placed to handle the matters raised in your complaint as your rights will be protected by that court in a satisfactory manner.

First, as shown by its request to UEFA to submit observations on your application, and UEFA's response to that request of 12 February 2014, 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 Article 101 and 102 TFEU.

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; (ii) benefits from an exemption under Article 101 (3) TFEU; and (iii) infringes Article 102 TFEU. The Brussels court can also apply the nullity sanction provided for in Article 101(2) TFEU and award damages for breach of Articles 101 and 102 TFEU.

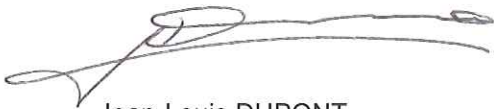
Third, the Brussels Court can make a reference for a preliminary ruling to the Court of Justice of the European Union pursuant to Article 267 TFEU concerning the compatibility of the FFP, and in particular the break-even requirement, with Articles 101 and 102 TFEU. You already made a request to this effect in your application of 20 June 2013, a request which you repeated in your observations of 18 April 2014.

Fourth, the Brussels Court can take effective action because of the sui generis system established by UEFA for the purpose of participation in pan-European 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.

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”.

Mr. STRIANI therefore notes that, according to the European Commission, the Court of Brussels is well placed to decide the question of the EU legality of the UEFA rule, in particular since - according to the Commission - the national court may itself address the preliminary questions raised by Mr. STRIANI at the European Union Court of Justice and also because the Brussels Tribunal may nullify the UEFA rule, which would lead to its ceasing to exist all across the European Union. The Brussels Court is expected to rule in spring 2015.

Finally, for further background reading of the incompatibility of the UEFA rule with European competition law, please look at the recent article by Professor Nicolas Petit, entitled 'Financial Fair Play' or Rent-Seeking 'Oligopoleague'?: A Preliminary Analysis of the UEFA's Break Even Requirement Under the EU Competition Rules'. This item is available at the following address: <http://ssrn.com/abstract=2438399>.



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