

UEFA FFP Regulations - Fairplay or Foulplay?

The case: We have already reported in SportsLawcircle that UEFA has sanctioned FC Malaga for overdue payables towards clubs and employees; it has been banned for one year from UEFA club competitions and must pay a penalty of CHF 300'000. According to the press, the club has announced it will appeal against this decision so that it may not yet be final. This notwithstanding, the case raises a number of questions; some of which shall be discussed in this forum.

The background: In May 2010, UEFA enacted the current *UEFA Club Licensing and Financial Fair Play Regulations*. These regulations consist of two main parts, the UEFA Club Licensing rules as well as the UEFA Club Monitoring provisions (also known as Financial Fair Play or *FFP Regulations*). The latter shall be of the subject of the present discussion. According to UEFA, the FFP Regulations aim to achieve fair play in UEFA club competitions and, in particular, (i) to improve the economic and financial capability of the clubs, (ii) to place the necessary importance on the protection of creditors by ensuring that clubs settle their liabilities with players, social/tax authorities and other clubs punctually, (iii) to introduce more discipline and rationality in club football finances, (iv) to encourage clubs to operate on the basis of their own revenues, (v) to encourage responsible spending for the long-term benefit of football, and (vi) to protect the long-term viability and sustainability of European club football. This objective is ambitious, indeed - particularly in light of the methods currently applied by many of the leading European clubs. Practically every week one can read about expenditures of European clubs that appear to be excessive compared to their own financial means.

Ensuring financial fair play according to the FFP Regulations is, thus, a complex issue which is also evidenced by the magnitude of the provisions that UEFA has enacted. The entire set of the UEFA Club Licensing and Financial Fair Play Regulations includes not less than 74 articles and eleven annexes extending, in total, over 85 pages which provide for certain topics very complex provisions.

By way of example, article 58 para. 1 provides that *relevant income* of a club that may be taken into account when determining whether or not the club meets the break-even requirements shall include revenue from *sponsorship* and *advertising*. It is obvious that a club facing financial problems could be willing to apply this provision in a "creative" way and declare donations or other financial contributions from related parties as income from advertising or sponsorship (e.g. by signing a sponsorship agreement allowing the related party to use certain trademarks and/or other designations of the club in exchange for specific payments that no one else would pay). In order to prevent such abusive application of the rules, Annex VI provides specific requirements for disclosure which shall apply in addition to the requirements of national accounting practice and the applicable international financial reporting standards, while Annex VII sets out a number of specific reporting principles. In addition, Annex X that deals with the calculation of the break-even result not only provides a detailed description of what shall be recognized as relevant income, but also provides a complex set of rules that specifically addresses the issue of income transactions with related parties above fair value (as well as expense transactions with related parties below fair value) with the aim of ensuring that related party transactions are at arm's length.

The issues: While the author recognizes the goals and objectives of UEFA to ensure fair play in European club football - at least as far as UEFA club competitions are concerned - one must note, at this early stage of the UEFA FFP Regulations being in force, two main issues: First, application of the FFP Regulations will be a complex and time-consuming matter that will require knowledgeable specialists to be involved on the side of both, the clubs and the monitoring entities, i.e. the national federations and the relevant UEFA bodies. This not only

increases cost and administrative workload on all sides, but also raises the question whether non-compliance with the FFP Regulations will be actually detected in each and every case which would be a basic requirement to ensure justice and equal treatment. Second, so far (only) FC Malaga has been sanctioned and suspended from UEFA club competitions. Although this club has had a very successful season and is, at the date of this article, still engaged in the 2012/2013 UEFA Champions League season, this club does not belong (yet) to the circle of the traditional, big and prestigious European clubs. Thus, the real test for the UEFA FFP Regulations and UEFA's capability to enforce them also against a "magic circle" club is still pending. The answer whether enforcement of the FFP regulations is possible in each relevant case may only be given in 2014 or later when the break-even rules and the rules on acceptable deviations from the break-even provisions will be fully effective. Before such date, a club may be sanctioned for non effecting overdue payments, but not for not controlling its income/expense ratio.