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## FINANCIAL FAIR PLAY AND THE STRIANI COMPLAINT: WHERE ARE WE NOW?

By [Andrew Smith \(/item/andrew-smith-2\)](#) published on 17 February 2015



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Since the publication of the two-part article '[Fair or Foul? Competition Law and the Financial Regulation of Football \(/articles/competition-law/item/fair-or-foul-competition-law-and-the-financial-regulation-of-football\)](#)',<sup>1</sup> there have been a number of significant developments in the field of financial fair play (FFP).

As anticipated, [UEFA's new regulatory regime \(http://www.uefa.com/MultimediaFiles/Download/Tech/uefaorg/General/01/80/54/10/1805410\\_DOWNLOAD.pdf\)](http://www.uefa.com/MultimediaFiles/Download/Tech/uefaorg/General/01/80/54/10/1805410_DOWNLOAD.pdf)<sup>2</sup> was not happily received in all quarters; it has been (and remains) the subject of various legal challenges and complaints (some of which are outlined below). The European Commission ("EC") has so far declined to initiate a detailed investigation into the new FFP regime, and it appears that any legal challenge is likely to bypass the EC and head straight to the courtroom.

Indeed, 26 February 2015 is a historic day for sport and the law not only because it is the day of the inaugural LawInSport conference, but also because it is due to be day one of a two-day hearing in the Belgian Court of First Instance, at which the lawfulness of the UEFA FFP Regulations will be considered.

This update also considers the measures taken by UEFA to enforce the new FFP Regulations and the sanctions imposed on offending clubs.

## THE STRIANI COMPLAINT

Daniel Striani is an Italian national who is registered to work as a players' agent in Belgium. Acting on Mr Striani's behalf, on 6 May 2013 Belgian lawyer Jean-Louis Dupont (of *Bosman* fame) submitted a formal complaint to the EC, alleging that the 'break-even' obligations in the FFP Regulations are non-compliant with EU law.

The following restrictions on competition were cited in the [Striani Complaint \(http://www.soccernomics-agency.com/?p=454\)](http://www.soccernomics-agency.com/?p=454):<sup>3</sup>

- Restriction of investments;
- Fossilization of the existing market structure (i.e. the current top clubs are likely to maintain their leadership, and even to increase it);
- Reduction of the number of transfers, of the transfer amounts and of the number of players under contracts per club;
- Deflatory effect on the level of players' salaries; and
- Consequently, a deflatory effect on the revenues of players' agents (depending on the level of transfer amounts and/or of players' salaries).

The 'break-even' rule was also said to infringe other EU fundamental freedoms, namely:

- Free movement of capital (as far as club owners are concerned);
- Free movement of workers (players); and
- Free movement of services (player agents).

The Striani Complaint contended that such restrictions on competition and violation of EU fundamental freedoms could not be justified by reference to the objectives put forward by UEFA in support of the new FFP regime (namely: long term financial stability of club football and integrity of the UEFA interclub competitions).

The Striani Complaint did not object to the FFP Regulations in their entirety. Indeed, the 6 May 2013 press release emphasised that:

*"...this complaint does not at all question the legality of the UEFA rule (also included in the FFP regulation) that states that any club participating in the UEFA competition must prove – before the start of the competition – that it has no overdue payables towards clubs, players and social/tax authorities. In our view, this rule is justified in principle for the attainment of the integrity of the football competition and proportionate to this objective)."*

## THE EC'S RESPONSE TO THE STRIANI COMPLAINT

In May 2014, according to a press release drafted by Mr Striani's lawyers, the EC's Directorate General for Competition informed Mr Striani (<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCYQFjAA&url=http%3A%2F%2Fwww.as.com%2Fmisc%2Fpdf%2Fnota-prensa-in-gles.pdf&ei=vmibVLLVMOXD7gaq1IGICw&usq=AFQjCNGvIWMM5dX2AiviMVZqX2Vhg5RUw&sig2=wTsS5BnD6qj4q4YSjLI0tg&bvm=bv.85761416.d.ZGU>) that it was envisaging rejecting his complaint.<sup>4</sup> First of all, the EC expressed doubts as to whether Mr Striani had a legitimate interest in challenging the FFP Regulations, on the basis that they are primarily aimed at clubs (and any impact upon players' agents is an indirect consequence of their application). Secondly, the EC took the view that the Belgian Court of First Instance was well placed to handle the matters raised in the Striani Complaint (and that the same points were essentially being argued in both the Belgian legal proceedings and the complaint to the EC).

According to other media reports (<http://www.theguardian.com/football/2014/may/20/uefa-defeats-financial-fair-play-challenge>),<sup>5</sup> the EC also observed (in its initial response to the Striani Complaint) that:

- The assertion that FFP would decrease transfer activity had not been substantiated by the complainant;
- The EC had received no other complaints at all in almost four years since the rules were introduced;
- The EC had been widely consulted about the FFP Regulations rules before they were passed; and
- The clubs' organisations and leagues represented at UEFA had unanimously supported the FFP Regulations being introduced.

On or around 29 October 2014, the EC announced that it would not be taking any further action (<http://fairplayfc.org/29-november-2014-press-release/>) in relation to the Striani Complaint, reportedly on the basis that "*the Court of Brussels is well placed to ensure compliance with European competition law including by making a reference for a preliminary ruling to the European Court of Justice.*"<sup>6</sup>

It will be noted that the EC's decision not to pursue an investigation into and/or uphold the Striani Complaint did not amount to a formal determination by the EC that the FFP Regulations are compatible with EU competition law (or other fundamental principles of EU law).

In addition to the Striani complaint, a group of football fans from France, Belgium and England have filed their own complaint with the EC, arguing that the FFP Regulations are incompatible with EU law. The "*legitimate interest*" advanced by these groups is their status as "*consumers*" of products offered by football clubs. In essence, they base their complaint on the following arguments:

- The entrenchment of privileged status for the elite clubs in Europe, leading to an "*oligopoleague*";
- Increasing the financial burden on supporters, owing to the restrictions on owner investment; and
- A lack of consumer protection.

## THE INTERVENTION OF THE EU OMBUDSMAN

Notwithstanding the EC's 'deferment' (as opposed to rejection on the merits) of the Striani Complaint, Mr Striani was dissatisfied with the outcome. In fact, he was so dissatisfied that he lodged a complaint with the EU Ombudsman, alleging "*maladministration*" on the part of the EC – in particular, that the Commissioner responsible for determining his complaint "*was in a situation of conflict of interest.*" Mr. Striani cited the following alleged conflicts of interest:

- Mr Almunia had signed a joint statement with the UEFA President ([http://ec.europa.eu/competition/sectors/sports/joint\\_statement\\_en.pdf](http://ec.europa.eu/competition/sectors/sports/joint_statement_en.pdf)), Michel Platini (dated 21 March 2012), effectively endorsing a regime of FFP<sup>7</sup>; and
- Mr Almunia had a longstanding affiliation with Athletic Bilbao.

Mr Striani sought the following remedy from the EU Ombudsman (<http://www.ombudsman.europa.eu/en/cases/caseopened.faces/en/58780/html.bookmark>): "*The Commission should acknowledge the existence of this conflict of interest and apologise to the complainant.*"<sup>8</sup>

## THE EC & UEFA 'PARTNERSHIP AGREEMENT'

On 14 October 2014, the EC and UEFA signed a formal 'Arrangement for Cooperation' ([http://europa.eu/rapid/press-release\\_IP-14-1134\\_en.htm](http://europa.eu/rapid/press-release_IP-14-1134_en.htm)), to run for an initial period until 31 December 2017.<sup>10</sup> The document, running to eight pages, sets out the commitment of the two organisations to work together on matters of shared interest, including:

- The integrity of sport;
- Respect for human rights and dignity;
- Non-discrimination; and
- Solidarity.

As regards FFP, the introductory section of the Partnership Agreement includes a statement that the two organisations will "*endeavour to foster cooperation and dialogue for the purpose of building a strong legacy with sporting, social, cultural, educational and economic benefits*" (para. 1.2, emphasis added); and specifically identifies "*financial instability*" as one of the "*risks*" facing sport, and which demands "*a common effort on the part of all its stakeholders*" (para. 2.3). However, the Partnership Agreement goes further than vague statements of principle in relation to the promotion of financial stability; FFP is specifically cited as a positive initiative and development in the field of sport:

*"Financial stability, transparency and better governance within sport can be pursued through responsible self-regulation. In this respect, and subject to compliance with competition law, measures to encourage greater rationality and discipline in club finances with a focus on the long-term as opposed to the short-term, such as the Financial Fair Play initiative, contribute to the sustainable development and healthy growth of sport in Europe."* (para. 2.7, emphasis added)

## LEGAL PROCEEDINGS IN THE BELGIAN COURT OF FIRST IN-

## STANCE (AND ELSEWHERE)

As previously reported by LawInSport (/sports-law-news/item/ffp-legal-challenge-steps-up-in-belgian-courts-with-new-bid-to-prevent-further-implementation-of-uefa-s-financial-balance-requirement),<sup>11</sup> proceedings were instituted (on or around 20 June 2013) in the Belgian Court of First Instance, challenging the lawfulness of the FFP Regulations – in particular, their compatibility with fundamental principles of EU law. The plaintiffs / claimants now include players' agents and supporters groups (including those of Manchester City). UEFA reportedly filed its observations / submissions to the Belgian Court on 12 February 2014.

There are a number of potential outcomes to this litigation; the Belgian Court may:

- Dismiss the complaint and declare that the FFP Regulations (in particular, the 'break-even' requirement) are compatible with EU law;
- Uphold the complaint, declare that the FFP Regulations are incompatible with EU law, apply the nullity sanction (provided for in Article 101 (2) TFEU) and award damages;
- Refer the matter to the CJEU (without applying any interim or provisional measures); or
- Refer the matter to the CJEU, in conjunction with the application of interim or provisional measures: for example, prohibiting UEFA from moving into the 'second phase' of its implementation of the 'break-even' requirement – i.e. the scheduled reduction to the 'acceptable deviation' from €45 million to €30 million (as discussed in the 2013 article), or indeed any further reduction (pending resolution of the dispute by the CJEU).

As noted above, a two day hearing is scheduled to take place in the Belgian Court of First Instance on 26 – 27 February 2015, and the outcome is eagerly awaited. It could have profound ramifications.

In other civil litigation, a group of Paris Saint-Germain supporters is also challenging the FFP Regulations (<http://www.espnfc.com/paris-saint-germain/story/2260651/psg-fans-suing-over-uefas-financial-fair-play-rule>) in a French court. The fans are reportedly suing the French football federation and the league "to denounce the multiple infringements of European Union law caused by the UEFA break-even requirement."<sup>12</sup> It is not clear whether any hearing has yet been listed for these proceedings.

Having regard to the significance of the FFP Regulations on the governance and regulation of football across the European Union, it seems probable that the CJEU will, at some point, be called upon by one or more national courts of the Member States to adjudicate upon the legality of the FFP Regulations. However, a final determination on this issue is likely to be years rather than months away.

## UEFA'S ENFORCEMENT OF THE FFP REGULATIONS

UEFA has not taken a back seat when it comes to enforcing the new FFP regime. On 16 May 2014, it announced that terms proposed by the 'Club Financial Control Body Investigatory Chamber' had been accepted (<http://www.uefa.org/protecting-the-game/club-licensing-and-financial-fair-play/news/newsid=2106909.html>) by nine clubs which were the subject of investigation in relation to suspected non-compliance with the 'break-even' requirement.<sup>13</sup>

The settlements included some or all of the following provisions:

- *“Break-even targets: defined as (i) annual and aggregate break-even results as per individual summary settlements, and/or (ii) restrictions on the level of revenue from sponsorship/inter-company transactions that can be included in a club's future break-even calculation;*
- *Sporting measures: defined as limitations on (i) the number of players included on the 'A' list related to UEFA competitions, and/or (ii) the registration of newly-transferred players on the 'A' and 'B' squad lists related to UEFA competitions; and/or (iii) employee benefit expenses (total wages and benefits) incurred in the relevant reporting period(s); and*
- *Financial contributions: defined as money withheld from revenues earned from participation in UEFA competitions (for which the distribution of such money according to an agreed formula shall be communicated at a later date). Such contributions shall not impact future break-even calculations.”*

UEFA has also published (online) details of the individual settlements (<http://www.uefa.org/disciplinary/club-financial-controlling-body/cases/index.html>) reached with the affected clubs.<sup>14</sup> This is an approach which promotes transparency and accountability, and allows interested parties to understand how UEFA sanctions are being applied in practice.

## CONCLUSION

The issue of FFP remains a fertile battleground for lawyers. After a considerable amount of media attention and debate – both within the legal / academic community and the footballing community – we have now reached the stage where a Court of competent jurisdiction is soon due to issue a judgment on the lawfulness of the FFP Regulations. Whilst the judgment of the Belgian Court of First Instance is eagerly awaited and will no doubt be closely analysed by lawyers and football ‘stakeholders’ alike, it seems unlikely that it will be the final word on the issue. Rather, the answer to the question ‘FFP: Fair or Foul?’ seems destined to be resolved, via a long and winding road, in Luxembourg.

[References \(<http://www.lawinsport.com/articles/item/financial-fair-play-and-the-striani-complaint-where-are-we-now#references>\)](http://www.lawinsport.com/articles/item/financial-fair-play-and-the-striani-complaint-where-are-we-now#references)

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