

Communication made pursuant to Article 19(3) of Council Regulation No 17 concerning request for negative clearance or for exemption pursuant to Article 81(3) of the EC Treaty (Case No 37.632 — UEFA rule on 'integrity of the UEFA club competitions: independence of clubs'

(1999/C 363/02)

(Text with EEA relevance)

I. THE FACTS

1. THE NOTIFICATION

1. On 14 October 1999 the *Union des Associations Européennes de Football* (UEFA) applied for negative clearance or, failing this, for exemption pursuant to Article 81(3) of the EC Treaty in respect of the rule named 'Integrity of the UEFA club competitions: independence of the clubs'.
2. UEFA is an association which has its seat in Nyon, Switzerland. It is the governing body responsible for European football. Membership of UEFA is open to all European national football associations. UEFA currently consists of 51 members associations, eighteen of which are located inside the territory of the European Union. As a rule, there is a single association in each Member State of the EU and EEA, which organises the sport at national level. An exception is the United Kingdom, where for historical reasons England, Wales, Scotland and Northern Ireland each have their own association. As the confederation of FIFA (*Fédération Internationale de Football Association*) for Europe, UEFA regulates football throughout Europe. UEFA also organises and conducts international football competitions and international tournaments at European level. Until the 1998/1999 European football season, UEFA has organised three main club competitions: the Champions' league, the Cup Winners Cup and the UEFA Cup. Recently, UEFA has cancelled the Cup Winners' Cup. Therefore, from the 1999/2000 season on, only the Champions' league (giving access to a great number of clubs) and the UEFA Cup will be organised.

2. THE NOTIFIED RULE

3. The notified rule was adopted by the UEFA Executive Committee on 19 May 1998. On 24 November 1998, an Extraordinary Conference of the Presidents of UEFA Member Associations adopted unanimously a Resolution in which the associations confirmed their 'unqualified support for the UEFA rule, and the sporting principles which underlie it'.
4. The rule named 'Integrity of the UEFA club competitions: independence of the clubs' provides as follows:

'A. General Principle

It is of fundamental importance that the sporting integrity of UEFA club competitions be protected. To achieve this aim, UEFA reserves the right to intervene

and take appropriate action in any situation in which it transpires that the same individual or legal entity is in a position to influence the management, administration and/or sporting performance of more than one team participating in the same UEFA club competition.

B. Criteria

With regard to admission to the UEFA club competitions, the following criteria are applicable in addition to the respective competition regulations.

1. No club participating in a UEFA club competition may, either directly or indirectly:
 - (a) hold or deal in the securities or shares of any other club, or
 - (b) be a member of any other club, or
 - (c) be involved in any capacity whatsoever in the management, administration and/or sporting performance of any other club, or
 - (d) have any power whatsoever in the management, administration and/or sporting performance of any other club

participating in the same UEFA club competition.

2. No person may at the same time, either directly or indirectly, be involved in any capacity whatsoever in the management, administration and/or sporting performance of more than one club participating in the same UEFA club competition.
3. In the case of two or more clubs which are under common control, only one may participate in the same competition. In this connection, an individual or legal entity has control of a club where he/she/it:
 - (a) holds a majority of the shareholders' voting rights, or
 - (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body, or

(c) is a shareholder and alone controls a majority of the shareholders' voting rights pursuant to an agreement entered into with other shareholders of the club in question.

4. The Committee of the UEFA Club Competitions will take a final decision with regard to the admission of clubs to these competitions. It furthermore reserves the right to act *vis-à-vis* clubs which cease to meet the above criteria in the course of ongoing competition.'

5. The UEFA Club Competitions Committee defined the criteria for selecting the club which may participate in the competition, when two or more clubs under 'common control' are put forward to play in a UEFA competition. The selection criteria provides as follows:

'Admission Criteria

If two or more clubs are affected by the new regulations to safeguard the integrity of the UEFA club competitions, the Committee for the UEFA club competitions shall apply the following criteria in sequence, to determine which club is admitted to the competition in question:

A. Admission of a club

I. *UEFA Club Coefficient* (cumulative coefficient of the last five seasons):

The club with the highest club coefficient is admitted to the UEFA competition in question.

II. *UEFA National Association Coefficient* (cumulative coefficient of the last five seasons):

If two or more clubs have the same club coefficient (see I above), the current UEFA coefficient of the respective national associations is taken into consideration. The club whose association has the highest coefficient is admitted to the UEFA club competition in question.

III. *Drawing of lots*

If two or more clubs also have the same national association coefficient (see II above), a decision is taken by the drawing of lots.

B. Filling of vacant place

The national association of a club which is not admitted to a UEFA club competition under the above criteria

may fill the place thus rendered vacant with another of its clubs. As a rule, this vacant place should go to the club which finished the domestic league championship immediately below the club that is not admitted (for the UEFA Champions league and UEFA Cup). In the UEFA Cup Winners' Cup, the domestic cup runner-up or, if necessary, one of the semi-finalists, can be entered instead of the team not admitted. The Committee for the UEFA Club Competitions has the right to confirm the admission of the replacement club.'

6. In conclusion the rule establishes that: 1. no club should have a financial or management interest in another club which participates in the same UEFA competition; 2. no person should be involved in the management of more than one club participating in the same UEFA competition and 3. no person or company may control more than one club participating in the same UEFA competition.

3. THE UEFA ARGUMENTS FOR NEGATIVE CLEARANCE

7. According to UEFA the rule: 1. is designed to preserve the integrity of competition and the uncertainty of outcome in the international club competitions it organises, 2. seeks to achieve this objective by avoiding the 'conflict of interests' which would result if an individual or a company was able to influence the sporting performance of two (or more) teams participating in the same competition and which might lead to the manipulation of results. 3. is not concerned with economic or commercial activities but is concerned with football as a sport, 4. the rule falls outside the scope of the competition provisions of the EC Treaty because it pursues a sporting objective; the rule does not restrict competition but even if it was held to restrict competition on the market for ownership interests in football clubs capable of taking part in UEFA competitions, the rule would not still violate Article 81 of the EC Treaty as it is needed for the proper functioning of sporting competition.

8. In this last respect UEFA considers in line with the award pronounced on 20 August 1999 by the Court of Arbitration for Sport in case CAS 98/200 AEK Athens and Slavia Prague/UEFA, point 150) that the actual effect of the rule is to place some limitation on mergers between European high level football clubs, and thus it preserves or even enhances economic competition between club owners and economic and sporting competition between clubs. On the basis of the same CAS award (point 154) UEFA also point out, that contrary to other types of business, in the sports business consumer welfare requires that numerous clubs remain on the market and achieve the highest possible economic and sporting balance between them.

Furthermore, UEFA refers to Paragraph 107 of the Opinion of Advocate-General Alber in case C-176/96, Lehtonen (delivered on 22 June 1999). Here Mr Alber reminds, on the basis of the case law of the Court of Justice, that EC competition rules shall not be assessed in the abstract and that they are always depending of the economic conditions in the relevant markets. Rules restricting freedom of action which by their effect are necessary to the creation of competition on the relevant market, can therefore be compatible with Articles 81 and 82 of the EC Treaty, so long as they are necessary and appropriate to attain this objective.

9. In the submission of UEFA, the rule is a balanced and proportionate measure to ensure that competition is genuine and is seen to be genuine because it does not prevent investment in clubs (from other than clubs participating in UEFA competitions or owners of such clubs), but simply prohibits clubs under common control from playing in the same UEFA competition. Moreover, according to UEFA, the definition of 'control', based on EU law ⁽¹⁾, constitutes the minimum regulatory measure necessary to ensure that the public is fully confident in the integrity of the competitions it organises. UEFA mentions also that any investor may acquire a shareholding of up to 50 % in any two or more European football clubs participating in UEFA competitions without ever being affected by the rule in question, provided that the investor is not a club or a person involved in the management, administration and/or sporting performance of another club participating in UEFA competitions. Furthermore, UEFA stresses that several sporting bodies and some state legislators have issued stricter regulations to deal with the same issue.

II. THE COMMISSION'S INTENTION

10. The Commission considers that the notified rule can be qualified as a decision of an association of undertakings or an agreement between associations of undertakings inside UEFA, in the meaning of Article 81 of the EC Treaty. Taking into account what the Court of Justice has recognised in the Bosman Case as legitimate objectives ⁽²⁾ in the view of the considerable social importance of football in the Community, the Commission considers that the restrictions imposed by the rule may escape to the prohibition laid down in Article 81(1) of the Treaty. In order to establish whether this preliminary conclusion can be upheld or not, the Commission has to know if such restrictions are limited to what is necessary to preserve the integrity of the UEFA club competitions and to ensure the uncertainty as to results. In other words, the Commission must confirm whether there are or not less restrictive means to achieve the same objective.
11. In this view, the Commission invites third parties to send their observations within one month of the publication of this notice to the following address, quoting the reference 'COMP/37.632 — UEFA rule on the protection of integrity of competitions':

European Commission,
Directorate-General for Competition,
Directorate D,
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 295 30 80

⁽¹⁾ In particular, Council Directive 88/627/EC of 12 December 1988 (OJ L 342, 17.12.1998, p. 62).

⁽²⁾ Judgement of 15 December 1995, case C-415/93, [1995] ECR I-4921, point 106.