

The Foreign Subsidies Regulation: A new step towards Financial Fair Play in football?

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It has long been recognised that financial support in favour of football clubs can distort fair competition. A widespread concern is that investors behind the big European clubs like Manchester City, Paris Saint Germain, or Chelsea FC reign over professional football with their money at will. In light of this, the Union of European Football Associations (UEFA) established the Financial Fair Play (FFP) rules. With the Foreign Subsidies Regulation, which entered into force in January 2023, there may be another instrument to address financial advantages to football clubs perceived as unfair if the investment is attributable to a government outside the EU.

The UEFA's Financial Fair Play rules

The UEFA's Financial Fair Play rules, which entered into force in 2015, oblige clubs to adapt their expenses to their actual income over a longer period of time. If a club does not achieve this goal and its expenses exceed its income by a certain amount, UEFA may impose sanctions. Considering this, RB Leipzig, for example, is currently threatened with sanctions from UEFA for excessive transfer spending if corresponding income cannot be generated.

However, the significance of the FFP is limited, as the regulations do not cover all relevant cases: One prominent example is Chelsea FC: After the club was taken over by American investors in 2022, a windfall followed. In order to improve its position, the club spent over EUR 600 million on contracts with new players in the 2022/23 season, an amount which will likely not be offset by revenues in the foreseeable future. To avoid sanctions, Chelsea FC concluded very long contracts with the new players, spreading its expenses over a long period of time.

Football clubs looking for new paths: The Lommel SK case

A new approach to combat anti-competitive behaviour in professional football was recently taken by the Belgian second-division club Royal Excelsior Virton, who launched a complaint against its league rival Lommel SK. In spring 2020, Lommel SK has been taken over by the City Football Group, a holding company in which the majority of shares are indirectly held by a member of the Abu Dhabi Royal Family and Minister of Presidential Affairs of the United Arab Emirates. The club has recently received a financial contribution of EUR 16.8 million from its parent company, which enabled the club to obtain its

professional licence for the coming season. Contrary to what might have been expected, Royal Excelsior Virton did not file a complaint based on the FFP. Rather, the club has brought the case to the European Commission under the Foreign Subsidies Regulation.

The impact of the Foreign Subsidies Regulation

The FSR, which entered into force in January 2023, allows the Commission to take action against foreign subsidies from third countries that distort the EU internal market (for further information, please see our previous briefings [Blomstein | Foreign Subsidies Regulation – ready, set, go](#) and [Blomstein | Foreign Subsidies Regulation: Have your say](#). The FSR requires notification of certain concentrations and bids in public procurement procedures to enable the European Commission investigate and counteract undue foreign subsidies. Furthermore, the FSR introduces a general investigation to investigate any market situation. The complaint by Royal Excelsior Virton targets the latter option, the so-called *ex-officio tool*.

It is in the discretion of the European Commission whether to initiate a review once the *ex-officio tool* comes into force on 12 July 2023. If decided to take up the case, it would first assess whether a foreign subsidy exists. A foreign subsidy is a financial contribution from a non-EU government which gives a company active in the EU a certain benefit which is limited to one or more undertakings or industries. In the case of Lommel SK, it is particularly relevant whether the financial contribution granted by the City Football Group is attributable to the United Arab Emirates government or whether it comes from private funds. The Commission would also have to examine in further detail whether it confers a benefit to Lommel SK, which is this case if such investment would not have been made by a private investor under normal market conditions. This would require close consideration, as significant investments in professional football clubs are not uncommon among private investors, as the examples of Roman Abramovich and Lars Windhorst show. Should the Commission come to the conclusion that the financial contribution by the City Football Group qualifies as a foreign subsidy, it would then examine whether it distorts competition. This is the case if the benefit is liable to improve the competitive position of Lommel SK and actually or potentially negatively affects competition in the EU internal market. In its assessment, the European Commission has a broad discretion, in particular as there is no case law on the application of the FSR so far.

If the Commission concludes that Lommel SK has been granted a foreign subsidy which distorts the internal market, it can impose so-called redressive measures, which may include the obligation to refrain from certain investments (e.g. transfers in the case of Lommel SK) or to repay the foreign subsidy.

Outlook

The Commission's powers under the FSR to initiate investigations under the *ex-officio* tool will come into effect on 12 July 2023. It remains to be seen how the Commission will deal with the complaint by Royal Excelsior Virton. At least under the existing EU State aid rules, state support to professional football clubs has been subject to several investigations by the European Commission. For example, Real Madrid C.F., FC Barcelona and other Spanish clubs have been ordered to repay undue tax subsidies in the past. This shows that the Commission is in principle willing to take up such cases and order repayment. Due to the far-reaching economic consequences of the FSR, football clubs and investors should be aware of the new rules and consider their potential impact on investment decisions.

BLOMSTEIN is monitoring further developments with regard to the FSR closely and will keep you informed. [Florian Wolf](#), [Pascal Friton](#), [Max Klasse](#) and [Ramona Ader](#) are happy to answer any questions that may arise.