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Insight

Sports Law Newsletter January 2012

When practising at competition level, athletes submit themselves to the regulations of a sports federation and thereby agree to refer any disputes to the internal dispute resolution body set up by that federation, if any. Further, an appeal to the Court of Arbitration for Sport in Lausanne ("CAS") against a decision made by the dispute resolution body has become the rule for most international federations. Such appeal arbitration proceedings are governed by the CAS Code, under which athletes agree to seek interim relief exclusively before the CAS, to the exclusion of any state court.

It is usually claimed that the advantage of such sport justice is to offer an efficient dispute resolution mechanism: fast, inexpensive, and conducted by sports specialists with the independence and impartiality required. However, what should athletes do when they believe, rightly or wrongly, that such self-contained sport justice exercised by sportspeople is not adequate? May those athletes refer their disputes to state courts, by way of interim relief and/or on the merits, in parallel or in lieu of the dispute resolution body of the federation concerned and/or the CAS? Within what limits, if any, may the sports regulations prevent parties from having their disputes decided by civil courts? The FC Sion "saga" is certainly a good scenario for answering the above questions, including issues such as the role of competition law in sports. The Focus section of this newsletter is dedicated to this hot topic.

The Court of Justice of the European Union is also a decision body of which more and more developments are expected in sports law. The new issue recently addressed by that court concerns the broadcasting rights (see our Recent Issues section, also dedicated inter alia to interesting questions arising in anti-doping law with regard to the substance Clenbuterol).

Our Updates section will follow up on matters already discussed in our prior newsletters, such as the consequences of match-fixing in certain countries. Various issues of sports law will be addressed in our selection of CAS and Swiss Supreme Court case law. Finally, the News in Brief section will keep you informed of the latest developments in connection with sports.

Contents

A Complex Legal Battle with Multiple Lawsuits

In 2009, FC Sion was found to have induced goalkeeper Essam El-Hadary to breach his contract with his former club, and the club was banned from registering any new players for two registration periods by the FIFA Dispute Resolution Chamber. Since then, FC Sion officials have been conducting a legal battle against the authorities governing football at national (Swiss Football League, "SFL"), regional (UEFA), and international (FIFA) level, with multiple ramifications both within the ambit of sports justice and before local courts (see chronology at page 4). Confusion was added by controversies regarding the precise entities involved, i.e., the association FC Sion itself or Olympique des Alpes SA, the corporation through which the club operates its professional team activities (as this distinction is not relevant for present purposes, the expression "FC Sion" is hereinafter used as a generic name).

The tensions were reignited with FC Sion's application to register several new players for the 2011/2012 season in spite of the FIFA decision, a request which was initially denied by SFL and FIFA. While different lawsuits are still pending, involving either FC Sion or the players themselves, UEFA prevented FC Sion from acceding to the UEFA Europa League 2011/2012 by invalidating its results in those qualification matches in which the controversial players had played.

This Focus section addresses only the application for interim relief based on Swiss competition law filed by FC Sion before the Court of the Canton of Vaud ("Tribunal Cantonal") against UEFA, in order to be allowed to participate in the UEFA Europa League 2011/2012.

Interim relief before Swiss courts based on competition law

On 13 September 2011, the Tribunal Cantonal granted emergency interim relief *(mesures superprovisionnelles / superprovisorische Massnahmen)*, ordering UEFA to provisionally admit FC Sion to the Europa League matches and regard the players as qualified. On 27 September 2011, the Tribunal Cantonal confirmed this initial decision by way of interim measures *(mesures provisionnelles / vorsorgliche Massnahmen)*, adding a penalty of CHF 1000 for each day of noncompliance.

While considering that the CAS has exclusive jurisdiction on the merits in accordance with the UEFA regulations, the Tribunal Cantonal affirmed its jurisdiction based on Article 10 of the Swiss Private International Law Act ("SPILA"), as the court at the place where the provisional measures are to be enforced.

The Tribunal Cantonal further questioned the validity of the exclusion clause contained in the CAS Code for appeal arbitration proceedings (Article R37), whereby the parties waive the possibility to request provisional measures from state courts once arbitration proceedings have been introduced before the CAS. The Tribunal Cantonal stressed that, in this particular case, this clause might result in insurmountable practical hurdles, in particular if enforcement measures had to be ordered in case of noncompliance with an order on interim relief issued by the CAS Panel (arbitral tribunal). In addition, hesitations about the precise scope of the arbitration clause might prevent the arbitrators from ordering provisional measures in a timely manner should they have to engage in lengthy debates about their jurisdiction. However, the Tribunal Cantonal was able to leave the question of the validity of this exclusion clause undecided, as no appeal arbitration proceedings were pending before the CAS: UEFA had not made any "decision" at the time the application for interim relief was filed, and FC Sion had subsequently refrained from introducing appeal proceedings before the CAS, so that the matter had been brought before the CAS by UEFA through ordinary arbitration proceedings (which are not covered by the exclusion clause).

On the merits, the Tribunal Cantonal found that UEFA had committed an abuse of dominant position under Swiss competition law (Article 7 of the Swiss Cartel Act). The court considered that UEFA has a *de facto* monopoly for organising professional football competitions in the relevant European market, and therefore a dominant position. As to whether UEFA had been abusing its dominant position, the Tribunal Cantonal first emphasised that, in the context of sports, an impediment to competition law can be objectively justified by interests other than commercial ones, having regard to the idiosyncrasies of this activity, such as the rules guaranteeing the proper conduct of the competition, security, and equal chances of participants. In this case, however, the Tribunal Cantonal dismissed UEFA's argument that the players' qualification had not been conventionally ordered based on the sports regulations, but by a civil local court upon an "abusive" application by the players. The Tribunal Cantonal found that UEFA had no authority to substitute itself to SFL and FIFA to decide on player qualification matters. The fact that the qualification had occurred based on the order of a civil court is irrelevant, as otherwise any

association would be authorised to make its own interpretation of the law prevail over the interpretation of the competent judge. The Tribunal Cantonal added that the reaction of UEFA was strongly indicative of a desire to sanction FC Sion in retaliation for the players having sought – and obtained – the protection of civil courts.

The requirement of irreparable harm and urgency were also fulfilled in the Tribunal Cantonal's view. Failure to participate in the UEFA Europa League would lead to considerable damage in terms of loss of profits and image, the extent of which would be excessively difficult to assess. In addition, the CAS Panel would not be able to make a decision on the merits in time for FC Sion to participate in the group stage, so that any delay would make a subsequent reintegration illusory. As a result, the order for UEFA to admit FC Sion, including the players at stake, as participants in the group stage was maintained, but the Tribunal Cantonal left the organisational measures to UEFA's discretion. In a subsequent decision of 18 October 2011, the Tribunal Cantonal refused to take direct enforcement measures, such as ordering UEFA to let FC Sion participate in specific matches, which would have had the effect of excluding other teams.

An effective instrument to circumvent sports dispute resolution mechanisms?

Competition law seems to develop gradually into the most efficient way (or at least as the most-favoured tool) for athletes or clubs to obtain quick and effective relief against decisions of sports authorities preventing them from participating in competitions. In those urgent sports matters, provisional measures often pre-empt the final outcome of the case. This might lead to the somewhat paradoxical result that sports disputes will, *de facto*, be put back into the hands of civil courts, while the purpose of sports justice was precisely to provide for fast dispute resolution.

A comparable decision (with the important difference that the Tribunal Cantonal also had jurisdiction on the merits and there was no arbitration clause involved), which attracted less

attention from the media, was made by the Tribunal Cantonal on 24 June 2011. By way of interim relief, the Tribunal Cantonal ordered the organisers of the famous Athlétissima meet in Lausanne to accept Hind Dehiba, a French female track-and-field athlete, after she had finished serving her two-year ineligibility period for a doping violation. The Tribunal Cantonal found that the recommendations issued by Euromeetings (the association of all major track-and-field events in Europe) not to invite any athlete previously sanctioned for doping amounted to a true boycott of a whole category of competitors, which represented both an abuse of a dominant position and a violation of the athletes' personality rights.

Sports authorities with sufficient financial means may still successfully resist state courts' injunctions. In the FC Sion matter, UEFA did not apply the measures required to comply with the interim relief decision of the Tribunal Cantonal as long as the CAS Panel had not issued its award on the merits. By a decision of 15 December 2011 (the reasons of which are still to be notified), the Panel partially granted the relief sought by UEFA, declared that FC Sion is not entitled to be reintegrated into the UEFA Europa League 2011/2012, and lifted the provisional measures ordered by the Tribunal Cantonal. Parallel proceedings against the UEFA decision filed by FC Sion before the local courts of Nyon, at the registered office of UEFA, are still pending.

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Several proceedings

Proceedings relating to the SFL qualification

3.8.2011: the *Tribunal civil du district de Martigny* allowed the qualification of the new players on emergency interim relief.

27.9.2011: the *Tribunal civil du district de Martigny* confirmed the qualification of the new players on interim relief.

16.11.2011: the *Tribunal Cantonal (Valais)* overturned the first-instance decision of 27.9.2011. FC Sion was at risk of losing the points won in the games played with the new players.

8.12.2011: the *Swiss Football League (SFL)* decided not to withdraw the points won by FC Sion with its new players.

24.12.2011: football clubs of Lausanne, Thun and Lucerne announced their intention to appeal the SFL decision and bring the matter before the CAS to invalidate all results obtained with the new players.

30.12.2011: upon the warning by FIFA that FC Sion should be sanctioned (see below), the *Association suisse de football (ASF)* decided to withdraw 36 points from FC Sion in the SFL championship (Axpo Super League) on the grounds that the club had played 12 matches with its six new players.

Proceedings relating to the UEFA Europa League

2.9.2011: FC Sion was excluded from the Europa League competition by UEFA, despite its qualification obtained against Celtic Glasgow FC, for having played with players not validly registered.

5.9.2011: FC Sion appealed against this decision before both the civil courts and the UEFA Appeals Body.

13.9.2011: the *Tribunal Cantonal (Vaud)* granted emergency interim relief sought by FC Sion and validated its reintegration into the Europa League.

13.9.2011: the UEFA Appeals Body rejected FC Sion's appeal. FC Sion has challenged this decision before the *Tribunal d'Arrondissement de la Côte* (Nyon); the hearing is scheduled to take place in January 2012.

20.9.2011: the *Tribunal Cantonal (Vaud)* dismissed UEFA's application to revoke the emergency interim relief.

26.9.2011: UEFA filed a request for arbitration before the CAS.

27.9.2011: the *Tribunal Cantonal (Vaud)* confirmed its 13.9.2011 decision to grant interim relief to FC Sion, and it ordered UEFA to reintegrate the club into the Europa League.

11.10.2011: UEFA stated that it will await the decision of the CAS before reintegrating FC Sion into the Europa League.

15.12.2011: the CAS Panel notified the operative part of its award in which it refused to reintegrate FC Sion into the Europa League.

Other proceedings

31.10.2011: FC Sion and its players announced having referred the matter to the European Commission for various breaches of EU law.

17.12.2011: FIFA warned the ASF that it would be suspended (clubs and national team) if the FC Sion matter is not sorted out before 14.1.2012.

Various criminal complaints by FC Sion before Swiss authorities.

Recent Issues in Sports Law

The ECJ "Premier League" judgement

Factual background

Ms. Murphy, manager of a public house ("pub"), screens Premier League matches in her pub in Portsmouth, England. Until 2006 Ms. Murphy bought those matches on subscription from the satellite broadcast rights holder for the UK, which is BSkyB Ltd. Finding the subscriptions too expensive, Ms. Murphy procured an imported Greek satellite decoder box and card allowing her to access foreign broadcasts at a lower price to screen Premier League matches. In the UK certain restaurants and pubs have begun to use those devices to access Premier League matches.

The English Football Association Premier League ("FAPL") runs the Premier League, the leading professional football league competition for football clubs in England. The FAPL's activities include organising the filming of Premier League matches and exercising corresponding television broadcasting rights, that is to say rights to make the audiovisual content of sporting events available to the public by means of television broadcasting ("broadcasting rights").

The FAPL commercialises Premier League football matches by granting licences in respect of the broadcasting rights. Those rights are awarded to broadcasters under an open competitive tender procedure which begins with the invitation to tenderers to submit bids on a global, regional basis. Demand then determines the territorial basis on which the FAPL sells its international rights. Where a bidder wins a package of broadcasting rights for the live transmission of Premier League matches in an area, it is granted the exclusive right to broadcast them in that area.

In order to protect the territorial exclusivity, all broadcasters are required to ensure that all of their broadcasts capable of being received outside that territory – in particular those transmitted by satellite – are encrypted securely and cannot be received in unencrypted format. No device is knowingly authorised so as to allow anyone to view their transmissions outside the territory concerned. Therefore, broadcasters are prohibited from supplying decoding devices that allow their broadcasts to be decrypted for the purpose of being used outside the territory for which they hold the licence.

The FAPL took action against four pub licencees and the Greek suppliers of decoders in the English High Court. The FAPL alleged that those persons were infringing its rights protected by Section 298 of the Copyright, Designs, and Patents Act by trading in or, in the case of the defendants in one of the actions, being in possession for commercial purposes of foreign decoding devices designed or adapted to give access to the services of the FAPL and others without authorisation.

Agents from MPS, a body mandated by the FAPL to conduct a campaign of prosecutions against pub managers using foreign decoding devices, found

that Ms. Murphy was receiving, in her public house, broadcasts of Premier League matches transmitted by foreign broadcasters. Consequently, Ms. Murphy was sued before Portsmouth Magistrates' Court, which held her responsible for two offences under Section 297(1) of the Copyright, Designs, and Patents Act on the ground that she had dishonestly received a programme included in a broadcasting service provided from a place in the UK with intent to avoid payment of any charge applicable to the reception of the programme.

In both cases, the defendants used EU law in support of their case, arguing that: prohibiting foreign decoding devices – which give access to satellite broadcasting services from another member state – from being imported into and sold and used in the UK, is a restriction on the fundamental freedom to provide goods or services protected by the Treaty on the Functioning of the European Union ("TFEU"); and the exclusive licence agreements entered into by the FAPL and non-UK broadcasters constitute a restriction on competition prohibited by Article 101 TFEU, because they force the broadcaster not to supply decoding devices giving access to the FAPL protected subject matter outside the territory covered by the licence agreement concerned and therefore limit the markets in which those broadcasters could make sales.

The High Court referred to the Court of Justice of the European Union ("ECJ") a number of questions on the compatibility of the FAPL's licence terms with EU law.

The ECJ ruling

The ECJ's ruling was issued on 4 October 2011. The main reasons in the judgement are as follows.

Freedom to provide services

A national legislation prohibiting foreign decoding devices from being imported into and sold and used in another member state constitutes a restriction on the freedom to provide services that is prohibited by Article 56 TFEU unless it can be objectively justified. The ECJ recalled that a restriction on fundamental freedoms guaranteed by the Treaty cannot be justified unless (i) it serves overriding reasons in the public interest; (ii) it is suitable for securing the attainment of the public interest objective which it pursues; and (iii) it does not go beyond what is necessary in order to attain it. A restriction on the freedom to provide services may be justified, in particular, by overriding reasons in the public interest which consist in the protection of intellectual property rights.

In the present case, the ECJ held that the FAPL could not invoke copyright in Premier League games as a justification of the restriction on the freedom to provide services, because sporting events cannot be regarded as intellectual creations classifiable as works within the meaning of the EU Copyright Directive. It is, moreover, undisputed that EU law does not protect sporting events on any other basis in the field of intellectual property. Nonetheless, the ECJ held that sporting events, as such, have a unique and therefore original character which can transform them into a subject matter that is worthy of protection comparable to the protection of works. Accordingly, it is permissible for a member state to protect sporting events by enacting specific national legislation.

Such national legislation would not necessarily infringe upon the freedom of services enshrined in EU law. However, it is required that such a restriction does not go beyond what is necessary in order to attain its objective (which is to ensure that the rights holders are adequately remunerated). According to EU law, property rights holders are not entitled to more than an "appropriate remuneration".

In the case at hand, the premium paid by the broadcasters could not be regarded as forming part of the appropriate remuneration which the rights holders concerned must receive. As a result, the restrictions imposed by FAPL could not be justified on that basis. A premium which is paid by broadcasters to the rights holders in order to guarantee absolute territorial exclusivity goes beyond what is necessary to ensure appropriate remuneration for those rights holders, resulting in artificial price differences between national markets that are incompatible with the fundamental EC Treaty aim of creating an internal, common market.

Another argument submitted by the FAPL was that the restriction at issue in the main proceedings is necessary in order to ensure compliance with the "closed period" rule which prohibits the broadcasting in the UK of football matches on Saturday afternoons. The Court held that the restriction which consists in the prohibition on using foreign decoding devices cannot be justified by the objective of encouraging the public to attend football games in stadiums. It would have been sufficient to incorporate a contractual limitation in the licence agreements between the rights holders and the broadcasters, under which the latter would be required not to broadcast those Premier League matches during closed periods, rather than prohibit the use of foreign decoding devices altogether, which is a measure that has a more adverse effect on the fundamental freedom.

Competition rules

Pursuant to EU law, licence agreements according to which the rights holder has granted to a sole licencee the exclusive right to broadcast protected subject matter from a member state, and consequently to prohibit its broadcast by others, is not in itself anticompetitive. In order to assess whether the object of an agreement is anticompetitive, regard must be had *inter alia* to the content of its provisions, the objectives it seeks to attain, and the economic and legal context of which it forms a part.

Any contractual provision conferring absolute exclusivity which is aimed at partitioning national markets according to national borders or makes the interpenetration of national markets more difficult must be regarded as an agreement whose object is to restrict competition within the meaning of Article 101(1) TFEU.

In the case at hand, the ECJ held that the clauses of the exclusive licence agreements included in the contracts concluded by the FAPL with broadcasters have an anticompetitive object inasmuch as they prohibit the broadcasters from providing any cross-border service that relates to the football matches; this enables each broadcaster to be granted absolute territorial exclusivity in the area covered by its licence. As a consequence, the competition between broadcasters is completely eliminated. Therefore, according to the Court, the clauses at issue constitute a prohibited restriction on competition within the meaning of Article 101(1) TFEU.

Doping and environmental contamination: Clenbuterol continued – towards the end of the zero tolerance?

Clenbuterol, the banned anabolic agent included in WADA's Prohibited List, continues to be a major issue in the field of sports law. The issue reached its climax in November 2011, when WADA announced that there was high risk of ingesting food tainted with Clenbuterol in countries such as China and Mexico. WADA's announcement came at the end of a string of Clenbuterol cases involving high-profile athletes.

On the one hand, Chinese cyclist Fuyu Li, Chinese badminton athlete Zhou Mi, and Italian cyclist Alessandro Colo were all sanctioned by sports authorities based on the strict liability principle in Article 2.1.1 of the WADA Code and

the finding that they had failed to demonstrate their absence of fault or negligence. On the other hand, German table-tennis player Dimitrij Ovtcharov, Danish cyclist Philip Nielsen, five Mexican football players, and Spanish cyclist Alberto Contador were all cleared by their respective national sports authorities for inadvertent ingestion of the prohibited substance with no fault or negligence. Except for Alberto Contador, who still defends his case in appeal proceedings brought by WADA before the CAS, all decisions have become final and binding.

The apparent contradiction in these cases triggered strong reactions from the sports community. For some, this means the end of the "strict liability" and "zero tolerance" rules in Clenbuterol cases; for others, this reveals how inconsistent sports justice has been in applying doping rules in Clenbuterol cases. The question is whether these reactions are justified.

Comments

Concerning "zero tolerance," Clenbuterol remains a prohibited substance under the WADA 2012 Prohibited List, and there is no concentration threshold below which Clenbuterol is not prohibited. WADA recently commented that, based on expert opinion, there is no plan to introduce a threshold level for Clenbuterol.

As to "strict liability" and "inconsistency of sports justice," these are, in our view, two related topics. This can be shown by analysing the recent decisions having due regard to their specific facts and the anti-doping rules on the burden and standard of proof.

Under anti-doping rules implementing the WADA Code, athletes are in violation of anti-doping rules based on the mere presence of a prohibited substance in their system (Article 2.1.1 WADC). If the testing was carried out in connection with a specific competition, this triggers an automatic disqualification from such competition. By contrast, disciplinary sanctions are not automatic. Sanctions may be reduced or eliminated upon production of evidence of inadvertent ingestion with no fault or negligence or no significant fault or negligence (WADA Comment to Article 2.1.1 WADC, in connection with Articles 10.5.1 and 10.5.2 WADAC).

An anti-doping authority has the burden of proving the violation at a standard greater than a mere balance of probability but less than proof beyond a reasonable doubt (Article 3.1 WADC). In all cases referred to above, sports authorities have met the standard required by producing a positive doping test carried out under strict anti-doping rules.

Thereupon, the athletes must pinpoint the origin of the substance and demonstrate their absence of fault and negligence, this by a balance of probability (Article 3.1 WADC, in connection with Articles 10.5.1 and 10.5.2 WADAC). This may be particularly difficult as samples of the actual tainted meat are generally unavailable. However, in some of the above-mentioned cases the standard of proof has been considered fulfilled upon production of evidence that it is probable or likely that tainted meat was available for innocent ingestion by the athlete at the relevant place during the period concerned.

> Dimitrij Ovtcharov produced various records regarding the use of Clenbuterol in livestock breeding in China and a sample of his hair as the explanation that he had probably ingested the very low amount of Clenbuterol through tainted meat in China.
> Regarding Philip Nielsen and the five Mexican football players, WADA

withdrew its appeals before the CAS after receiving "compelling evidence" resulting from a joint investigation by FIFA and the Mexican government during the FIFA U-17 World Cup. The results of this investigation showed a serious public health problem and generalised meat contamination. For WADA it was then clear that, as recognised by the Mexican government, an ongoing problem with contaminated meat existed in the country. Now that the high risk for athletes has been identified and communicated, athletes will find it difficult to demonstrate diligence and no fault while ingesting tainted meat in Mexico.

- An unfortunate case in this context is that of Alessandro Colo, who was sanctioned with a reduced one-year suspension by the Italian anti-doping agency despite evidence of probable ingestion of tainted meat during his participation in the Vuelta a México.
- Regarding the Chinese athletes, Fuyu Li did not have an opportunity to prove his case since the Chinese Cycling Association had postponed the hearing. Zhou Mi publicly claimed that the positive test came from eating tainted meat in China, but there was never an appeal to reverse the Badminton World Federation's decision. In addition, the Chinese government has never recognised general contamination of meat in China.
- With respect to Alberto Contador, a CAS Panel will soon decide whether he was a victim of tainted meat, although the probability of ingesting tainted meat in Spain seems to be low.

These cases demonstrate the relative lack of legal and terminological precision in the way some anti-doping authorities, especially at national level, handle these environmental contamination matters. Under the system of the WADA Code, proof of an environmental contamination at most enables an athlete to eliminate the applicable period of ineligibility, but it does not invalidate the finding that an anti-doping rule violation has been committed, or the automatic disqualification. Many authorities, however, remained relatively vague on the nature of their decision, using expressions such as "the Commission decides to dismiss the case" inferring that no anti-doping violation took place (Disciplinary Commission of the Spanish Cycling Federation in Contador's case), thereby threatening to blur the distinction between violation and disciplinary sanctions, which is paramount to the WADA Code-based anti-doping programmes.

New studies

All in all, these cases certainly do raise significant issues both of a legal nature – regarding the burden and standard of proof for environmental contamination – and of a scientific and technical nature – regarding the sensitivity of the analysis methods and the capacity of laboratories to detect substances in extremely minor quantities.

In the near future, anti-doping authorities will be better equipped to assess an athlete's claim through scientific studies like the one currently carried out by FIFA, CLTS Nicosia, and the Swiss Laboratory for Doping Analyses. This study aims at identifying non-intentional doping through occasional ingestion of meat with Clenbuterol in various amounts during a certain period of time. To achieve its aim, the study tries to understand the process and the speed with which Clenbuterol is distributed, degraded, and eliminated by an athlete's body.

The NBA lockout

In 2011, the National Basketball Association ("NBA") experienced the fourth lockout of its history. After the 2004/2005 season, a lockout had been avoided by a collective bargaining agreement ("CBA") with a six-year duration (until June 2011) between the owners of the NBA teams and the players. This agreement included, in particular, the distribution of the league's revenue – the basketball-related income ("BRI," 57% for the players, 43% for the owners). The BRI comprises ticket sales, TV contracts, sponsorship, and merchandise sales. However, the NBA realised that the system was only feasible for large-market teams, while small-market teams (which are the majority) were losing money.

Negotiations on a new CBA began in early 2011, with the owners trying to obtain a greater share of the BRI and the players insisting on continuing as it stood. There were other issues such as the salary cap, but the BRI split was the main point of negotiation. Initially, the owners tried to increase their part to 63%. The players did not agree, and the two parties failed to reach an agreement by 30 June, which marked the end of the CBA. The lockout began on 1 July. This meant that teams could not trade, sign, or hire players, and players could not access NBA teams' facilities, trainers, or staff.

Negotiations continued during the following months, with both parties holding their ground. On 23 September, the NBA canceled training camps and the first week of preseason games. On 4 October, the rest of the preseason was canceled. With the parties still unable to reach an agreement, the decision was made on 10 October to cancel the first two weeks of the regular season, and followed on 28 October by the decision to cancel all games until 30 November, and then 15 December (six

weeks of the season). In addition, the players association dissolved the labour union and became a trade association in order to file antitrust lawsuits against the NBA with federal courts.

On 26 November, the players and the owners finally reached an agreement. They signed a provisional deal that put an end to the lockout and provided for a shortened season starting on 25 December. This provisional agreement provided the framework of what would become the new CBA. In this deal, the players agreed to reduce their share of the BRI to 51.15%. On 1 December, the players association was reconstituted as a union. The new CBA was ratified on 8 December.

The main consequences of the lockout are as follows:
Firstly, the players have lost approximately 20% of their 2011/2012 salaries because of the games canceled. Players could not allow themselves to stand their ground too long. The amount of money players were holding out for would not have been worth if half – or more – of the season had been canceled.

Secondly, the lockout had some consequences on sponsorship. Due to the amount of canceled games, sponsors were losing money. Their names, brands, and logos were no longer exposed to the thousands of fans attending NBA games and, moreover, to the millions of people who watch the players' performances on broadcast. To date, it is difficult to have a precise idea of what has been going on between the teams and their sponsors, as a consequence of a strict policy from the NBA that prohibits the teams from discussing the lockout, including its effects, failing which they would face the risk of being heavily fined.

The sponsors were given several options to minimise their losses. They could for example accept an increased advertising allotment during a condensed period – as a result of a shortened season. They could also defer their obligations and roll them over to next year. Brewing company MillerCoors, a major sponsor of the league, had announced in mid-November that it would suspend its sponsorship payments to the NBA until the lockout ends. This is certainly a factor that has accelerated the negotiations and perhaps pushed the owners to soften their positions.

An estimated USD 400 million in revenue seems to have been lost by both the players and the owners because of the lockout. It is also estimated that around 400 jobs have been lost because of the games canceled (around 200 within the league, around 200 among the 30 teams). In terms of image, a lockout can cause huge damage. The last NBA lockout, which occurred in 1998/1999 and also resulted in a shortened season, had devastating effects. In the subsequent years, the league had worked very hard to get its fan base back, and results were beginning to materialise. Other leagues such as the MLB (Major League Baseball) and the NHL (National Hockey League) have been hit by lockouts during this past decade, with great damage resulting from them.

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Updates on Sports Law

European betting / fraud scandal

In the aftermath of the last football season, Turkish football was hit by a massive fraud scandal. During the 2010/2011 season, 19 games of the Turkish Süper Lig were allegedly manipulated, including the game in which Fenerbahçe secured its title in the last round of the season. Last summer, more than 80 managers, players, and coaches from different clubs were arrested, and around 30 of them were charged with match-rigging. The trials against the charged persons are set to begin in February 2012. In addition to the arrests and charges, the scandal caused the delay of the beginning of this season's championship in Turkey and the forced withdrawal of Fenerbahçe from this year's UEFA Champions League tournament by the Turkish Football Federation. Interestingly, at the beginning of December 2011, the Turkish parliament approved a reduction of possible sanctions for match-rigging from a maximum of 12 to 3 years. This decision led to serious concerns that the legislative amendments had been designed to benefit particular people involved in the scandal.

UEFA Financial Fair Play Regulations

The UEFA Club Licensing and Financial Fair Play Regulations (the "Regulations") were approved in May 2010. These Regulations aimed to implement the "break-even requirement," according to which clubs may not spend more than they generate for the relevant period. This requirement will become effective for the financial statements at the end of 2012. These Regulations have been widely supported by all clubs and stakeholders and even by the European Commission. The transfers made during the last *mercatos* will impact on the "break-even" results of the financial years ending 2012 and 2013. To date, it seems that the amounts of the transfer fees have not really decreased during this last year. However, as these Regulations were adopted in view of a long-term approach, it is expected that, in the future, the upward trend in salaries and transfer fees will be reduced. According to Annex X of the Regulations, the expenses could be decreased if related in particular to youth development activities, construction of tangible fixed assets, and non-football operations not related to the club. Such authorised decreases could explain why big European clubs are investing in youth players in particular by renovating their formation centres. It is rumoured that some countries have already put practices in place allowing their clubs to deviate from these Regulations: the partial payment of the players' economic rights by the club and the payment of the balance by a third party or the lucrative assignment of part of the players' rights to investment funds. Some clubs which have been forced to sell some of their players in order to comply with these financial requirements and which consider such practice as anticompetitive seem to have met with UEFA in order to solve this issue.

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Recent CAS Awards

Since all major sports implemented the WADA Code, athletes in all disciplines have been subject to a relatively uniform anti-doping regime. This regime is usually characterised as a rather stringent one, both in terms of standards of diligence expected from the athletes and in terms of consequences involved in the event of a breach of their duties. CAS Panels called upon to decide on appeals against decisions in connection with anti-doping rule violations are generally supportive of the sports authorities' efforts to combat the doping plague. These same Panels, however, are also increasingly mindful to strike a proper balance between the interests of the fight against doping on the one hand and the athletes' rights on the other hand, which may lead them to impose limitations on the sports authorities' powers.

Four cases from the period under scrutiny in this sports law newsletter may serve as valuable illustrations of this process.

Jan Ullrich: limitations to delegation of disciplinary powers to third parties

CAS 2010/A/2070, *Antidoping Schweiz v. Jan Ullrich*, 30 November 2011

Regarding the athletes' submission to anti-doping rules and the related disciplinary process, as well CAS jurisdiction, the Panel in the matter *Antidoping Schweiz v. Jan Ullrich* dismissed the appeal by the Swiss national anti-doping organisation Antidoping Schweiz against the decision whereby the Swiss Olympic Chamber for Doping Cases had found that it lacked disciplinary authority over the athlete, who had terminated his membership with Swiss Cycling years before disciplinary proceedings were initiated. The CAS Panel considered that there was no arbitration clause between Jan Ullrich and Antidoping Schweiz, as this entity – a Swiss law foundation entrusted, in particular, with prosecuting alleged doping cases before the Swiss Olympic Chamber and the CAS – had been created at a time when the athlete was no longer a member of Swiss Cycling. According to the Panel, the athlete's withdrawal rules out any possibility of construing a subsequent implicit amendment of the arbitration clause, and principles of reliance ("Vertrauensschutz") prevent an association from freely transferring the power of enforcing membership obligations to third parties without the consent of the persons concerned. The CAS decision in the parallel appeal proceedings filed by the UCI is still expected.

Albert Subirats: duties of federations for notices served through third parties

CAS 2011/A/2499, *Albert Subirats v. FINA*, 24 August 2011

In *Albert Subirats v. FINA*, the CAS Sole Arbitrator warned the sports authorities that they must be prepared to meet the strict duties imposed on athletes by being equally strict with themselves. The professional swimmer Albert Subirats had correctly filed his quarterly whereabouts through his national federation, but the national federation then failed to communicate this information to FINA. Similarly, the national federation did not forward the notices of filing failures it had received from FINA to the athlete. The athlete became aware of the problem only when he was charged with an anti-doping rule violation for the third consecutive failure and sanctioned by the FINA Doping Panel. The CAS Sole Arbitrator first recalled that, under the WADA Code regime, it is the sole responsibility of the athlete who chooses to delegate his filing duties to a third party to make sure that such third party effectively forwards the information to FINA. However, a similar rule must apply to FINA if it chooses a third party as a recipient to communicate the filing failures, even if such third party is the one through which the athlete makes his or her filing: "*It shall not be a defense to an allegation of non-receipt of one or more failure notices that the anti-doping organisation delegated such responsibility to a third party and that third party failed to comply with the applicable requirements*" (paragraph 30). Accordingly, the CAS Sole Arbitrator considered that the athlete had committed no anti-doping rule violation, as he had not received any failure notice before the third whereabouts failure.

I v. FIA: reduced sanction based on the direct application of the proportionality principle

CAS 2010/A/2268, *I. v. FIA*, 15 September 2011

I. v. FIA involved a 12-year-old karting driver who had tested positive at an FIA international event. As regards the determination of the sanction, the CAS Panel departed from WADA Code–based anti-doping rules relying on proportionality considerations, for the first time since the WADA Code revision (implemented as of 1 January 2009) has introduced more flexibility. The CAS Panel confirmed that minors who participate in competitions are bound by anti-doping rules like the other participants and that the minor had submitted to the FIA regulations and testing in the concrete case. However, the Panel found that this was "*one of those rare and exceptional*

cases where the ineligibility sanction provided by the strict application of a sporting federation's rules could appear excessive and disproportionate in view of the specific circumstances of the case and of the twofold aim – retributive and educational – of the sanction," and it reduced the ineligibility period to 18 months (instead of the standard two-year suspension), despite the fact that the athlete had not given any explanations regarding the origin of the substance, which is a necessary prerequisite to benefit from the no (significant) fault and negligence exception. The Panel stressed the exceptional nature of the matter, in particular the fact that the competition at stake was restricted to youth athletes below the age of 15. It considered that this exception should not be seen as a precedent for instances where minors compete in events with adults. The athlete has challenged the award before the Swiss Supreme Court, and the appeal is currently pending.

Invalidity of the Osaka Rule: no additional sports sanctions after serving the ineligibility period

CAS 2011/O/2422, *USOC v. IOC*, 4 October 2011

In *USOC v. IOC*, a CAS Panel made an important decision to protect athletes sanctioned for doping against additional penalties going beyond the ineligibility period determined in accordance with the WADA Code. The Panel was called by USOC to examine the "Osaka Rule" enacted in June 2008 by the IOC Executive Board. That rule provides, in essence, that any athlete who has been sanctioned by any anti-doping organisation with a suspension of more than six months for any anti-doping rule violation committed after 1 July 2008 may not participate, in any capacity, in the edition of the Olympic Games following the date of expiry of such suspension. The Panel reached the conclusion that, in its effects and nature, the Osaka Rule is to be characterised as a disciplinary measure sanctioning a prior behaviour, rather than a pure eligibility requirement to compete in the Olympic Games. Such additional sanction is a substantive change of the mandatory provisions of the WADA Code, to which the IOC is a signatory. As the Olympic Charter, which the Panel described as the IOC's Statutes within the meaning of the Swiss law on associations, incorporates the WADA Code, the Osaka Rule was found to be contrary to the IOC Statutes and, therefore, "*invalid and unenforceable*." *Obiter*, the Panel added that, should the *ne bis in idem* principle be applicable to sanctions imposed under anti-doping sports regulations, the Osaka Rule would also be in breach of this principle, as the effective purpose is the same, the sanction is attributable to the same behaviour, and the sanctions result in the same consequence, i.e., ineligibility from competition. The IOC recently declared that it maintains its views as to the appropriateness of the Osaka Rule and, as suggested by the CAS Panel, it will seek to have this rule introduced in the next revision process of the WADA Code that was launched in December 2011. A similar matter will soon have to be decided by CAS, after the British Olympic Association ("BOA") lodged an appeal before CAS against the WADA decision declaring the BOA selection policy for the Olympic Team GB (providing for a lifetime ineligibility of athletes sanctioned for doping) noncompliant with the WADA Code.

Selection of other CAS awards

- CAS 2010/A/2315, *Netball New Zealand v. International Netball Federation*, 27 May 2011: eligibility dispute, time limit to appeal before the CAS not extended by attempts to obtain reconsideration unless specific process in regulations or representation that might be re-examined, appeal inadmissible.
- CAS 2010/A/2308, *Pellizotti v. CONI and UCI*, CAS 2011/A/2335, *UCI* v. *Pellizotti, FCI, and CONI*, 8 March 2011/14 June 2011: doping, athlete's biological passport, no sufficient evidence for Italian Tribunale Nazionale Antidoping, appeal by UCI upheld, two-year ineligibility sanction.
- CAS 2010/A/2401, *Bulgarian Boxing Federation v. European Boxing Confederation*, 7 June 2011: withdrawal of European Championships hosting rights and allocation to Turkey, *ultra vires* act, lack of practical feasibility to reinstate Bulgaria for financial and time constraints, decision declared illegal and set aside, but request to re-allocate Championships to Bulgaria denied.
- CAS 2011/A/2371, *Fédération Béninoise de Football v. FIFA*, 13 September 2011: dispute on governance of national federation, lack of formal decision by FIFA, appeal inadmissible.
- CAS 2011/A/2529, *FC Nouadhibou v. FFRIM*, 28 October 2011: disciplinary consequences for suspicion of match-fixing, lack of legal basis, consequences for the club, appeal upheld, decision to withdraw title of national champion set aside.

Swiss Supreme Court Decisions

This decision by the Swiss Supreme Court was rendered on 17 March 2011, regarding a CAS award dated 27 September 2010.

Summary of facts: National federations A., B., C., D., and E., as well as F. Inc., a lobbying company, had filed a request for arbitration before CAS against X., the international federation of which A., B., C., D., and E. are members. The subject of the dispute was the compliance with formal rules related to the nomination of S., the then president of X, for a new mandate as president. A., B., C., D., E., and F. Inc. were supporting Mr. R., who wanted to be elected as new president of X. instead of S. The CAS Panel rendered its award on 27 September 2010, dismissing the relief sought by the national federations and declaring the request for arbitration filed by F. Inc. as non-admissible due to the lack of jurisdiction. In the same award, the Panel ruled on the arbitration costs in splitting them between the parties, and it ordered A., B., C., D., E., and F. Inc. to pay an indemnity of CHF 35,000 to X. as a contribution to its legal costs.

X. lodged an appeal with the Swiss Supreme Court against this CAS award, alleging a breach of its right to be heard and seeking to have the decision on the legal costs quashed. The Panel had invited the parties to file comments on costs, and the parties had requested the Panel to set a specific time limit for this at the end of the hearings. X alleged that the CAS Panel had made its award without setting such a time limit and without giving an opportunity to the parties to file their written comments and evidence on costs.

Reasons: The Swiss Supreme Court first stated that the CAS award (in relation to the disputed issue of legal costs) was based on Article R64.5 of the CAS Code (edition in force as of 31 December 2009). This provision provides in particular that "*[…] as a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. […]*". Furthermore, the Swiss Supreme Court recalled that the scope of the right to be heard pursuant to Articles 182(3) and 190(2) lit. d of the Swiss Private International Law Act ("SPILA") does not differ from the similar right under constitutional law. The right to be heard also includes the right of the parties to produce evidence supporting their allegations. The arbitral tribunal can refuse to take evidence without breaching the right to be heard if the fact to be proven is already established, if such fact is not relevant, or if the Panel proceeds with an anticipated assessment of evidence. Such anticipated assessment of the evidence offered by the parties can be performed by the arbitral tribunal only to the extent that the result of the taking of the evidence offered does not have any influence on the outcome of the proceedings.

In the present case, the CAS Panel defended its award on legal costs before

the Swiss Supreme Court on the ground that it was not mandatory for the parties to file written comments on costs and, in any event, only a contribution towards such costs had to be paid to the prevailing party pursuant to Article R64.5 of the CAS Code and no particular procedure for the assessment of this contribution was foreseen by the CAS Code.

The Swiss Supreme Court did not follow these arguments, although they were also supported by the national federations. The Swiss Supreme Court noted that the CAS Panel had somehow breached the rule venire *contra factum proprium*. The CAS had first requested the parties to file written comments on the cost issue, but eventually did not set a precise deadline to the parties to file such observations (as requested by them), and it issued its award without giving the possibility to the parties to be heard in this respect.

The Swiss Supreme Court noted that the CAS Panel had most probably no obligation to request the parties to file written observations and evidence related to costs. As a general rule, in order to comply with the right to be heard, it is sufficient that the parties had the chance to provide the Panel with observations and evidence in this respect during the proceedings. However, the Panel had explicitly requested the parties to file written observations on this topic; to issue the award disregarding this request without warning the parties amounted to a breach of their right to be heard.

According to the Swiss Supreme Court, the fact that the applicable rule of the CAS Code provides only for a "contribution" to be paid to the prevailing party and no precise procedure is provided by such set of rules does not mean that CAS Panels shall not take into consideration the concrete situation of the parties and the actual costs borne by them in relation to the proceedings in order to calculate such contribution. *Obiter*, the Swiss Supreme Court also suggested that Article R64.5 of the CAS Code should be amended in order to provide guidance to the CAS Panels for the calculation of the contribution for legal costs, in order to limit to some extent their discretion in this respect.

As a consequence, the Swiss Supreme Court upheld the appeal lodged by X. and quashed the CAS award regarding the contribution for legal costs due to a breach of the right to be heard of X. pursuant to Article 190(2) lit. d SPILA.

Swiss Supreme Court rules on the possibility for the CAS to remedy procedural breaches

The Swiss Supreme Court recently made an interesting decision (decision of 3 October 2011, in the case N° 4A_530/2011), in which the court dismissed a motion to set aside an award rendered by the CAS.

Summary of facts: A is a middle-distance runner and a member of the athletics federation of her home country Z. In December 2008, the anti-doping commission of Z (the "Commission") suspended A for a two-year period because A had breached certain anti-doping regulations. Two years later, in 2010, A refused to submit to a doping test. As a result of this second offence, the Commission imposed a lifetime ban on A. A appealed this decision before the CAS and applied for legal aid (which was granted). On 26 July 2011, the CAS dismissed A's appeal and confirmed the Commission's decision. A lodged an appeal against the CAS award before the Swiss Supreme Court. A sought to have the CAS award set aside on the grounds that (i) the Commission did not meet the requirements of an "independent and impartial tribunal;" (ii) the proceedings conducted before the Commission were procedurally flawed; and (iii) the CAS did not have the authority to remedy these violations of A's procedural rights.

In its decision, the Swiss Supreme Court highlighted the rule pursuant to which the CAS has "full power to review the facts and the law [and] may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. […]" (Article R57 [1] of the CAS Code). In this context, the Swiss Supreme Court referred to one of its recent decisions in the *Valverde* saga (decision of 3 January 2011, in the case N° 4A_386/2010), where it held that the CAS was entitled to bar an athlete from taking part in sports events, notwithstanding the fact that the relevant national commission had refused to initiate disciplinary proceedings against the athlete. The CAS thus has a wide power to review the facts and the law in the context of appeal arbitration proceedings within the meaning of Articles R47 et seq. of the CAS Code. Against this background, the Swiss Supreme Court held that, in the case at hand, the CAS had the authority to validly cure the procedural flaws which purportedly affected the proceedings that had been conducted by the Commission. As a result, the Swiss Supreme Court dismissed A's appeal.

In our view, the main practical conclusions which can be drawn from this decision of the Swiss Supreme Court are the following:

> Firstly, this decision emphasizes the wide discretion of the CAS in appeal arbitration proceedings. In particular, the CAS may cure any procedural deficiencies which occurred at the level of the sports organisation whose decision is being challenged, and it may issue a new ruling (as opposed to quashing the decision challenged and referring the case back to the relevant sports organisation).

> Secondly, from a more practical perspective, this decision is a useful reminder that the International Council of Arbitration for Sport (ICAS, i.e., the independent body which supervises the CAS) has created a legal aid fund, which is available to facilitate access to CAS arbitration for individuals without sufficient financial means, although the specific legal aid guidelines expected from the CAS remain to be published. By contrast, in the context of the challenge of a CAS award before the Swiss Supreme Court, legal aid is granted to financially weak parties only if their case is not *prima facie* unfounded (Article 64 of the Swiss Supreme Court Act). In practice, the Swiss Supreme Court grants legal aid only in rare instances.

> As an aside, it is worth noting that the Swiss Supreme Court used a somewhat surprising legal terminology in its decision, when it stated that the CAS was entitled to review *de novo* the decision of the "first-instance authority" ("*autorité de première instance*" in paragraph 3.3.2 of the French original text). In our view, it is not legally accurate to portray the CAS as a second-instance authority, as this decision of the Swiss Supreme Court might suggest. The purpose of the chapter of the CAS Code dedicated to the appeal arbitration procedure is to pave the way for the challenge of a decision taken by a sports organisation. As regards Swiss-based sports organisations (which are generally structured in the form of an association within the meaning of Articles 60 *et seq*. of the Swiss Civil Code ["SCC"]), the CAS proceedings constitute the procedural tool to exercise the right to challenge a decision taken by a body of an association (as set forth in Article 75 SCC). In terms of remedies, the CAS is therefore acting as a first-instance authority, in the same way that a court of first instance would if the dispute was referred to it absent an arbitration agreement in favour of the CAS.

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Other Supreme Court decisions in sports-related matters

> Decision of 18 April 2011, *A. v. WADA, FIFA, and Cyprus Football Federation*, N° 4A_640/2010: appeal against CAS award, football trainer challenging doping sanction, appeal dismissed.

> Decision of 19 April 2011, *A. v. Trabzonspor Kulübü Dernegi and Turkish Football Federation*, N° 4A_404/2010: appeal against CAS award, athlete challenging CAS award denying jurisdiction, appeal dismissed.

> Decision of 28 April 2011, *X. SA v. A. and Caisse de Chômage V.*, N° 4A_53/2011: appeal against cantonal decision, damages to be paid to the player by his former club for immediate termination of contract for cause by the player due to the employer's breach.

> Decision of 20 July 2011, *X. v. Jamaican Football Federation and FIFA*, N° 4A_162/2011: appeal against CAS award, indemnity to be paid to the trainer by the federation for immediate termination of contract without cause, appeal dismissed.

> Decision of 22 August 2011, *X. v. Club Y.*, N° 4A_222/2011: request for revision of CAS award, training indemnity to be paid to the former club of the player by his new club, request for revision dismissed.

News in Brief

Amendments to the CAS Code

In December 2011, the ICAS announced some amendments to the CAS Code. On 1 January 2012, a new version has come into force with the following main modifications:

The consultation procedure is no longer available; its provisions (Articles R60ff.) have been deleted. This procedure allowed sports organisations to request an advisory opinion from the CAS. Such an opinion was only expressed as information and had no compulsory effect.

Appeals against decisions made by national federations in disciplinary matters are no longer free of charge. The arbitration costs must be borne by the parties as will be decided by the CAS Panels in each case. Appeals against decisions of a disciplinary nature made by international federations, however, remain free of charge (apart from the standard Court Office fee of CHF 1000 applicable to the filing of any appeal before the CAS).

The ICAS is no longer bound by requirements contained in Article S14 when establishing the list of CAS arbitrators. Previously, the ICAS was required to elect persons proposed by different bodies of the sports world according to certain ratios (such as one-fifth of the arbitrators selected from among the persons proposed by the International Olympic Committee, chosen from within its membership or from outside). As of 1 January 2012, the ICAS shall elect persons "*whose names and qualifications are brought to the attention of the ICAS, including by the IOC, the Ifs, and NOCs,*" but it will not have to adhere to any ratios.

In addition, some other developments will probably occur in the year 2012, such as the issuance of the CAS legal aid guidelines. This text will include criteria to access the legal aid fund, created in order to facilitate access to CAS arbitration for individuals without sufficient financial means.

European Parliament resolution on online gambling, 15 November 2011

On 15 November 2011, the European Parliament adopted a (non-binding) resolution on online gambling in the internal market. The resolution follows up on the European Commission's communication of 24 March 2011, entitled *Green Paper on Online Gambling in the Internal Market*. The resolution points out the subsidiarity principle and the importance of respecting the different traditions and cultures in the member states of the European Union and the member states' discretion in determining the organisation of gambling. In this respect, the resolution stresses that online gambling is a special kind of economic activity to which the European Union's internal market rules, such as the freedom of establishment, cannot fully apply. Nevertheless, the resolution calls for an expansion of the cooperation among national regulatory bodies, especially regarding joint action against online gambling operators which do not have the required national licences or regarding the fight against betting fraud, money laundering, and other organised crime.

The resolution also mentions the lack of an alternative dispute resolution system in the online gambling sector and calls on national regulatory agencies to establish alternative dispute resolution systems for this sector. Finally, the resolution emphasizes the need to ensure integrity. According to the resolution, the risk of fraud in sports competitions has massively increased since the emergence of the online sports-betting sector and compromises the integrity of sports.

The resolution certainly contains some valuable input, especially with regard to the necessity to coordinate the fight against the negative effects of online gambling. By the same token, the resolution adopts a very cautious tone,

respecting the member states' autonomy and their different approaches in dealing with online gambling. It remains unclear whether this resolution will be decisive for the European Union's future approach to online gambling.

Jeannie Longo cleared of whereabouts violation

On 22 November 2011, the French Cycling Federation ("FFC") cleared Olympic and world-champion cyclist Jeannie Longo of violating anti-doping rules.

The French Anti-Doping Agency ("AFLD") had accused Jeannie Longo of failing to file whereabouts information three times within an 18-month period (Article 2.4 WADAC), and accordingly requested a suspension of between three months and two years for the cyclist.

Jeannie Longo argued that she was no longer required to file whereabouts information when the third supposed failure occurred. In 2008 Jeannie Longo was in the pool of elite athletes obliged to supply whereabouts information as long as they were part of the said pool. However, on 14 April 2010, the AFLD Rules changed. Athletes are no longer part of the target pool for an undetermined time but only for one year, save for renewal upon notice to the athlete.

No notice in this respect was ever served on Jeannie Longo after that date. Therefore, the FFC took the view that the alleged third failure on 30 June 2011 could not be added to the previous two since Jeannie Longo was not in the pool beyond 15 April 2011, i.e., one year after the rule had come into force.

Jeannie Longo's legal counsel is contemplating possible criminal proceedings against the AFLD for a breach of professional secrecy.

Cash-for-votes scandal: FIFA's disciplinary sanctions

The Caribbean Football Union ("CFU") held a meeting in Trinidad and Tobago from 10 to 11 May 2011, during which Mohamed Bin Hamman ("MBH"), a then FIFA presidential challenger to Sepp Blatter, apparently offered USD 40,000 in cash to CFU's delegates in the framework of his FIFA presidential campaign. Proceedings regarding violations of the FIFA Code of Ethics were opened by FIFA against MBH and some of the CFU officials. On 23 July 2011, the FIFA Ethics Committee banned MBH for life from taking part in any kind of football-related activity at national and international level. This lifetime ban was confirmed by FIFA's Appeal Committee on 15 September 2011. An appeal against this decision was filed before CAS on 21 November 2011, and is still pending. By decisions rendered in October and November 2011, the Ethics Committee banned 10 CFU officials from taking part in any football-related activity (for periods of between seven days and two years) and reprimanded 4 others for their roles in the "cash-for-votes scandal." The banned CFU officials were also given fines ranging between CHF 300 and CHF 3000. Five CFU officials received a warning, while the proceedings against two officials were waived. For five officials, the cases were closed as they were no longer football officials. However, the Ethics Committee indicated that should they return to official football positions, their cases would be revisited.

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