



# Sports Law & Taxation

FORMERLY KNOWN AS: GLOBAL SPORTS LAW & TAXATION REPORTS (GSLTR)

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2021/08 Pro-athletes: Guidelines for choosing a financial advisor

2021/09 Sportspersons, entertainers and taxing the digital economy



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# Colofon

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# EDITORIAL

It is with much pleasure that we welcome readers to the March 2021 edition (citation: SLT 2021/1) of our ground-breaking journal *Sports Law and Taxation (SLT)* and on-line database ([www.sportsandtaxation.com](http://www.sportsandtaxation.com)).

The COVID-19 pandemic is continuing to claim lives and livelihoods around the world. At the time of writing, according to the WHO figures, globally, there have been 112,456,453 confirmed cases and 2,497,514 deaths. Sport is not immune. However, for example, association football (soccer), at both the national and international levels, is managing to survive, subject to the imposition of and compliance with strict protocols and precautions. We invited Constantinos Masonos, General Director at Apollon Football and Athletic Club (website: <http://apollonclub.com.cy>), Limassol, Cyprus, to report and comment on the social and economic effects of the pandemic and how sport is faring in his country, despite everything. His report now follows.

## ***The social and economic effects of COVID-19 on sport in Cyprus***

*“March 2021 marks a year from the appearance of the first COVID-19 case on the island of Cyprus. A year through which the finances and everyday life for the majority of businesses and people residing on the island have been adversely affected, mainly due to the governmental measures introduced and enforced to fight the spread of the virus. Cyprus was moving on a very good financial path before the virus outbreak last spring. Now, economic sentiment and expectations are at an historic low; consumption and investment have declined substantially; and lower external demand for goods and tourism has led economic growth to slow down by 4.5% in the last quarter of 2020. Tourism, the main force behind the Cyprus economy, has been severely hit by the pandemic. Consecutive travel restrictions have sent international demand for tourism close to zero. Almost 4 million tourists arrived on the island in 2019; a number that fell by 84.1% in 2020, ending four successive record years of tourist arrivals that helped Cyprus emerge from the 2013 financial crisis. After the European Commission, the European Parliament and EU leaders agreed on a recovery plan to help repair the economic and social damage caused by the pandemic, the Cyprus government announced a stimulus package, including relief measures aiming, initially, to support employment and household incomes but also to help struggling businesses avoid bankruptcy. According to an IMF (International Monetary Fund) projection, last Summer, the Cypriot economy would shrink by 6.5% in 2020 and would make a comeback in 2021 with a growth of*

*5.6%. Local economists’ worst-case scenario projections were even more concerning, predicting that the economy could shrink even by 13%, depending on how long the economy would be in lockdown. Despite these projections, the most recent release of Eurostat data on GDP growth shows that the Cyprus economy has only shrunk by 5.1% in 2020. And whilst the Cyprus government is under constant fire for the financial management of the pandemic, it has also gained international recognition for the way it has contained the first wave of the pandemic, between March and May 2020. The immediate implementation of measures, such as school and university closures, prohibition of public gatherings, travel bans, active contact tracing with extensive and targeted testing, have proved to decrease significantly community transmission and contain the pandemic. Also, the new General Health System, implemented in 2019, allowed all of the island’s residents to be covered for the first time, reducing charges, mainly for low-income people, and allowed Cyprus to be better prepared for the challenges of the pandemic. The recent developments and the approval of a number of credible vaccines, able to immunize the general population against COVID-19, have raised hopes of returning to normality, with the first vaccinations in Cyprus rolling out near the end of last December. During the first wave of the pandemic, sport was one of the first sectors of the economy to be heavily affected by the strict governmental measures. The very first decree issued by the Government, required sports to take place in venues with closed doors and no fans. The gradually escalating measures, led to a general lockdown that lasted until May 2020, forcing the cancellation of all the professional sports leagues, including the biggest (at least by revenue) league on the island, the Cyprus Football First Division, after its initial postponement mid-March. After lengthy discussions between the Cyprus Football Association (CFA) and government representatives, the federation almost unanimously (18 votes out of 20), decided that the disparity between the federation’s safety guidelines concerning the pandemic and those of the government’s own epidemiological team to be an impossible obstacle to overcome, leaving the cancellation of the Cyprus League as the only possible outcome. All the top tier leagues on the island soon followed suit. Such an important decision, of course, was not light heartedly taken. Especially when it involved deciding who would participate in the European club competitions, for the forthcoming season. Participation in the UEFA Europa League or the Champions League qualifiers and later stages, can provide essential income for Cypriot football clubs to maintain their budgets at a competitive level.*

According to the local media, the presidents of the six teams who were, at the time, battling for a place in the European club qualifiers, had a meeting where they reached a gentleman's agreement that included the steps that the clubs would uniformly take, in order to face the consequences of the pandemic. The presidents agreed that the first four teams in the current standings, would participate in the UEFA qualifiers. They also agreed to follow a uniform line on cutting down players' annual wages by 10% and not to compete against each other for any of the players who would not agree with the cut. The CFA, representing all the clubs, would later send an official proposal to the Cypriot football players' union, stating that, due to the extreme financial situation caused by the pandemic and the clubs' financial losses, a wage cut of 23% on the annual wages for players, who earn more than € 2,000 per month, was required. The answer from the players union, which was supported by FIFPRO, claimed that the federation's proposal was grossly disproportionate and, therefore, not acceptable. As a result, the majority of players agreed to the cut and the rest, who didn't agree were eventually released or given a free transfer from their clubs. Later in June, the government measures were gradually lifted and Cyprus enjoyed a relatively virus-free Summer that allowed sports training to continue, with thousands of young athletes returning to pitches and courts. The reappearance of the virus in the Autumn, led to an unprecedented number of cases and deaths, forcing the government to start enforcing local lockdowns, closing two out of five counties and proceeding to ban all under-18 official and unofficial training and activities and, at the same time, closing down all sports facilities, except those used for training by tier 1 clubs. The decision of the government not to include non-profit entities, including sports clubs in their "second wave" stimulus packages, produced a devastating blow to the sports sector, that was still trying to pick up the pieces from the first wave of the pandemic. Private sports academies and other sports related businesses, such as fitness clubs, gyms and other sports facilities were again forced to go into lockdown, just as they were trying to pay off the debts that they had accumulated during the first wave of the pandemic. Coaches, trainers and other administrative staff, who were fully employed by private sports academies, were also excluded from the government financial assistance plans, forcing many of them to financial disparity or to look for a job in a different sector of the economy. On the other hand, the majority of competition officials and sports journalists were left in a better place, as the top tier leagues were not postponed and were just faced with a small decrease in their income. The introduction of rapid COVID-19 tests in November allowed the government to proceed to some easing of the measures concerning sports by allowing individual or one to one training initially and, in groups of up to 5 people, later. Young athletes, such as footballers, have not had a proper, 11vs11 training since last October. The right to individual training does not at any point substitute the physical and mental attributes athletes can gain only through playing their sport in a competitive environment. Unfortunately, their development has been

brought to a halt and there is no sign when they will be able to compete under normal conditions again. The positive effects of participating in sports at any level, even recreationally, on human psychology, and its ability to fight anxiety, desperation and hopelessness, suffered by people as a result of the pandemic, was sadly not taken fully into consideration by the experts, who had the responsibility to take the decisions, on which measures to be enforced. COVID-19 has sadly stolen the joy of life from people of all ages and replaced it with vigilance and fear. Vaccination programs around the world are currently focusing on people facing the highest risk, something that will, at least, pave the way for everyday life to return to "normal", including games and competitions to proceed along their traditional calendars. The sports sector is destined to and will bounce back as soon as the circumstances allow it."

### **Tokyo 2020 Olympic and Paralympic Games**

One important sporting casualty of COVID-19 has been the postponement of the Tokyo 2020 Olympic Games for one year. Despite media reports to the contrary, following a meeting at the end of January of the Executive Board of the International Olympic Committee ("IOC"), the President of the IOC, Dr. Thomas Bach, confirmed the holding of the postponed 2020 Olympic and Paralympic Games in Tokyo this summer. He informed the media as follows:

*"We are fully concentrated on and committed to the successful and safe delivery of the Olympic and Paralympic Games Tokyo 2020, starting on 23 July with the Olympic Games and 24 August with the Paralympic Games."*

And continued as follows:

*"In the last couple of days, we had consultation calls with the International Federations and the National Olympic Committees, also getting reports from the athletes' representatives. We could experience there today, again, that all of them are united and committed; all 206 National Olympic Committees, all of the International Federations and the athletes are standing behind these Olympic Games. We see the same commitment on the Japanese side with the Japanese government, the Organising Committee and the Japanese Olympic Committee. The organisation of the Olympic and Paralympic Games, as such, is already an extremely complex challenge. But this complexity is multiplied when it comes to organising postponed Olympic Games for the first time ever, and this under the conditions of a pandemic. So, there is no blue print for this, and we are learning every day. This fight against the virus [...] is a tough one. But we are fighting this fight for, and like, Olympic athletes. This means with full determination, with a will to win, with hard work every day, and with all the physical and mental strength we have. [T]here is speculation about cancellation [and] there are some proposals to move it to another city. We are not losing our time and energy on speculation. We are fully concentrating on the Opening Ceremony on 23 July this*

year. We are not speculating on whether the Games are taking place. We are working on how the Games will take place.”

*This statement by the IOC President comes at a time when a large majority of Japanese would wish to have the Games postponed in view of the COVID-19 pandemic and the influx of some 11,000 foreign athletes, who will be competing, but without any fans. Also, some commentators have remarked that the Games will be a logistical nightmare. It will be interesting to see, therefore, whether against all the odds, the IOC can pull off a safe and successful Olympic and Paralympic Games in Tokyo this summer!*

### **EU General Court Ruling in the ISU Case**

We now turn our attention to an important Ruling by the General Court of the European Union, which has recently been handed down in a competition law case involving the legal validity and enforceability of the Eligibility Rules of the International Skating Union. We reproduce the text of the official press release of the Court summarising the facts and decision in this case as follows.

**“General Court of the European Union  
Press Release No 159/20  
Luxembourg, 16 December 2020**

**Judgment in Case T-93/18  
International Skating Union v Commission**

***The General Court confirms that the rules of the International Skating Union (ISU) providing for severe penalties for athletes taking part in speed skating events not recognised by it are contrary to EU competition law***

On the other hand, the Commission was wrong to dispute the ISU’s arbitration rules

*The International Skating Union (ISU) is the sole international sports federation recognised by the International Olympic Committee (IOC) for the purpose of managing and administering figure skating and speed skating. The ISU also carries out a commercial activity entailing the organisation of various speed skating events in the context of the most important international competitions, such as the European and World Championships and the Winter Olympic Games. In 2014, the Korean company Icederby International Co. Ltd sought to organise a speed skating competition involving events in a new format in Dubai (United Arab Emirates). Since the ISU had not authorised that event, that organiser found it difficult to ensure the participation of professional speed skaters, which led it to abandon its plan. Skaters affiliated to national federations that are members of the ISU are subject, under the ISU’s statutes, to a pre-authorisation system, which includes “eligibility rules”. By virtue of those rules, in the version applicable to that period, the participation of a skater in an unauthorised competition exposed him or her to a penalty of a lifetime ban from any competition organised by the ISU.*

*Having received a complaint made by two Dutch professional speed skaters, the European Commission considered, in its decision of 8 December 2017<sup>1</sup> (“the contested decision”), that the ISU’s eligibility rules were incompatible with EU competition rules (Article 101 TFEU), in so far as their object was to restrict the possibilities for professional speed skaters to take part freely in international events organised by third parties and, therefore, they deprived those third parties of the services of athletes necessary in order to organise those competitions. The Commission, consequently, ordered the ISU, subject to a periodic penalty payment, to put an end to the infringement thus found, without, however, imposing a fine on it. The ISU brought an action against the contested decision before the General Court of the European Union. The General Court, called upon to rule for the first time on a Commission decision finding that rules adopted by a sports federation do not comply with EU competition law, confirms that the classification of a restriction of competition by object established by the Commission in respect of the rules at issue is well founded, but partially annuls the contested decision as regards the corrective measures imposed on the ISU.*

### **Assessment of the General Court**

*In the first place, the General Court finds that the Commission was right to conclude that the eligibility rules have as their object the restriction of competition within the meaning of Article 101 TFEU. In that regard, the General Court finds, first of all, that the situation in which the ISU finds itself is capable of giving rise to a conflict of interests. On the one hand, the ISU carries out a regulatory function, by virtue of which it has the power to adopt rules in the disciplines for which it is responsible, and, thus, to authorise competitions organised by third parties, while, on the other hand, in the context of its commercial activity, for its own part, it organises the most important speed skating competitions in which professional skaters must participate in order to earn their living. In that regard, the General Court considers that the obligations binding on a sports federation in the exercise of its regulatory function under Article 101 TFEU are those consistently set out in the case law relating to the application of Articles 102 and 106 TFEU<sup>2</sup>, with the result that, in those circumstances, the ISU is required to ensure, when examining applications for authorisation, that third-party organisers of speed skating competitions are not unduly deprived of access to the relevant market, to the extent that competition on that market is distorted. Having stated the above, the General Court then examines the Commission’s assessment concerning the content of the eligibility rules. It finds at the outset that those rules do not expressly set out the legitimate objectives pursued and have only set out authorisation criteria, which moreover are not exhaustive, since 2015. In those circumstances, the requirements applied as from that date cannot all be regarded as clearly defined, transparent, non-discriminatory and*

<sup>1</sup> Commission Decision C (2017) 8230 final, Case AT/40208.

<sup>2</sup> Judgments of the Court of Justice of 1 July 2008, MOTOE, C-49/07 (paragraphs 51 and 52), and of 28 February 2013, Ordem dos Técnicos Oficiais de Contas, C-1/12 (paragraphs 88 and 92); see also PR No 21/13).



reviewable authorisation criteria, which, as such, would be capable of ensuring the organisers of competitions effective access to the relevant market. Consequently, the General Court considers that the ISU retained, including after the adoption of authorisation criteria in 2015, broad discretion to refuse to authorise competitions proposed by third parties. Furthermore, as regards the system of penalties, the General Court stresses that the severity of the penalties provided for is particularly relevant when identifying potential obstacles to the proper functioning of competition on the relevant market. Such severity may dissuade athletes from taking part in competitions not authorised by the ISU, including where there is no legitimate reason for such a refusal to grant authorisation. In the present case, the General Court considers that the penalties provided for by the eligibility rules, even after the relaxation of the rules that took place in 2016, are disproportionate. Since that date, not only have the categories of infringements remained ill defined, but the duration of the penalties incurred, inter alia in the event of participation in unauthorised third-party competitions, have remained severe given the average length of a skater's career. Finally, the General Court examines the Commission's assessment concerning the objectives pursued by the eligibility rules. In that regard, the General Court recalls that the protection of the integrity of the sport constitutes a legitimate objective recognised in Article 165 TFEU. The General Court consequently acknowledges that it was legitimate for the ISU to establish rules seeking both to avoid the risks of manipulation of competitions liable to result from sports betting and to ensure that sporting competitions meet common standards. However, in the present case, the fact remains that the rules adopted by the ISU go beyond what is necessary to achieve such objectives and, accordingly, are not proportionate to those objectives. Consequently, the Commission was fully entitled to consider that the restrictions deriving from the pre-authorisation system cannot be justified by the objectives in question. In the light of all those considerations, the Commission was therefore right to conclude that the eligibility rules reveal a sufficient degree of harm, in particular with regard to their content, to be regarded as restricting competition by object. In the second place, the General Court rules on the legality of the corrective measures imposed by the contested decision in order to bring an end to the infringement found and partially upholds the applicant's claims for annulment in that regard, in so far as the Commission required, subject to a periodic penalty payment, substantial modification of the ISU's arbitration rules in the event that the pre-authorisation system was retained. In that regard, the General Court notes that the Commission considered that those arbitration rules, which confer on the Court of Arbitration for Sport in Lausanne (Switzerland) exclusive jurisdiction to hear appeals against ineligibility decisions and make such arbitration binding, reinforced the restrictions of competition caused by the eligibility rules. In so far as the Commission drew, in that regard, on the Guidelines on the method of setting fines,<sup>3</sup> and, more specifically, on the concept of an "aggravating circumstance"

contained therein, the General Court stresses that only unlawful conduct or circumstances which render the infringement more harmful can justify an increase in the penalty imposed for an infringement of EU competition law. In the present case, the General Court considers that there are no such unlawful circumstances. The Commission was not therefore entitled to consider that the ISU's arbitration rules constituted an aggravating circumstance.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act. Unofficial document for media use, not binding on the General Court.

## Articles

Now we turn our attention to the articles that you will find in this issue of SLT. As you will see from the Table of Contents of this issue, we include a wide range of sports law and sports tax articles, which will engage our readers attention and provide them with much "food for thought".

We would draw our readers' particular attention to the article "Fighting racism in English football" by Jonathan Copping. He summarises the current situation in his conclusion in the following insightful terms:

*"Eradicating racism from football still has a long way to go. Football cannot fight racism on its own, the wider society needs to play a very important role; however, football can influence the way to fight racism and improve society as a whole."*

*High-profile footballers and well thought out and smart campaigns by charities can significantly contribute to fighting racism, but all parties involved in football must be aligned and the governing bodies must be able to lead the way. It should not be left to individual footballers and charities to do so."*

As always, we would welcome and value your contributions in the form of articles and topical case notes and commentaries for our journal and also for posting on the SLT dedicated website at [www.sportsandtaxation.com](http://www.sportsandtaxation.com).

So, now read on and enjoy the March 2021 edition of SLT.

Dr. Rijkele Betten (Managing Editor)  
Prof. Dr. Ian S. Blackshaw (Consulting Editor)

March 2021

<sup>3</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p.2).