

# State aid and sports

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# State aid and sports

## Content of this section

- 1) State aid rules - a brief recap
- 2) State and a sports: general considerations
- 3) Three case studies
  - a) French Tax Exemptions for sports organizations
  - b) Renovation of French stadiums for EURO 2016
  - c) Measures for Dutch and Spanish football clubs
- 4) Political dimension?
- 5) Some closing questions

*Suggestions for further reading are also included.*



# Legal framework - Substantive

## What is “State aid”? (Art. 107(1) TFEU)

- Advantage from State resources; and
- Selective character; and
  - Is there an advantage for a certain group of undertakings?
  - If yes, can that advantage be justified based on the nature and general scheme of the system?
- Granted to an “undertaking”; and
- Distortive impact on the internal market.

## State aid is sometimes compatible


- Compatible *de jure* - Art. 107(2) TFEU
- Approval by the EC - Art. 107(3) TFEU



*State aid rules ensure fair competition in the internal market.*

# State Aid in a Tax Context

## What does fiscal State aid look like?

- Selective tax exemptions, tax breaks or lower rates
  - Selective super-deductions, accelerated depreciation
  - Tax amnesties and waivers
  - Special tax regimes, tax rulings and overly beneficial APA
- The key issues in fiscal State aid cases tend to be the existence of an ‘advantage’ and selectivity. Often a lot of discussion in practice!
  - EC 1998 Notice on the application of the State aid rules to business taxation (updated in 2016).
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# Legal framework - procedural

## Enforcing the State aid rules (Art. 108 TFEU)

- Mandatory system of control
- Central role for the EC, e.g.
  - (i) Monitor existing situations
  - (ii) Approval of new aid
  - (iii) Investigations into unlawful aid
  - (iv) Oversee recovery of unlawful aid
- State Aid Register  
*[http://ec.europa.eu/competition/state\\_aid/register/](http://ec.europa.eu/competition/state_aid/register/)*
- Limited scope for legitimate expectations



# ‘Special status’ of sport in EU Law

- Promotion of sport is an EU objective.
  - Article 165(1) TFEU: “The Union shall **contribute to the promotion of European sporting issues (...)**”
- But: State aid rules do still apply!
  - Broad notion of ‘economic activities’; profit motive is not essential!
  - Aid to ISO, but also downstream (e.g. construction firms or future usage)
  - See: EC Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport (2007)
  - See: EC and UEFA joint statement on the impact of the FFP rules (Financial Fair Play) in the context of State aid (2 March 2012)

Three case studies - discussed in this presentation

- **UEFA 2016 French Tax Exemptions**

Not notified to the EC. Recent questions from the European Parliament regarding possible State aid. Could this be State aid?

- **Renovation of French stadiums for EURO 2016**

Work carried out to meet UEFA standards. Possible infrastructural aid, but approved by the EC under Article 107(3)c TFEU.

- **Measures for NL and Spanish football clubs**

State aid investigations by the EC regarding various types of (unlawful) aid measures for football clubs (incl. tax measures). In some cases: recovery.

## Example 1: UEFA 2016 Tax Exemptions (I)

### French tax exemptions for SO's

- Introduced in 2014; run up to UEFA's EURO 2016 Championship
- Exemptions for a number of different taxes e.g., CIT, WHT, wage tax, etc.
- Key criteria for qualifying sports organisations (cumulative)\*
  - 1) Awarded through a selection by an international committee
  - 2) Equivalent to a European championship
  - 3) Organized exceptionally on French territory
  - 4) Exceptional economic benefits

See: Article 1655 septies of the Code Général des Impôts

\* Clearly, the exemption is only relevant to the extent that organizations are subject to French tax in the first place.



# Example 1: UEFA 2016 Tax Exemptions (II)

- **Reasons for introducing the regime**
  - UEFA requirement for hosting EURO 2016.
  - Expectation of long term economic and social benefits.
- **Is this State aid?**
  - Key issue: Selectivity
  - Can special treatment be justified?
- **Similar (but hypothetical) discussion in NL**
  - Possible tax exemptions for FIFA

# Example 1: UEFA 2016 tax exemptions (III)

## Questions asked in EU Parliament

Answers EC: 15 September 2016

1. Does the Commission intend to open an investigation into this case?  
**A: EC “has not taken a position”**
2. Tax policy is a Member State matter. In the light of such dubious practices, however, can the EU not put a stop to these national arrangements?  
**A: MS have retained fiscal sovereignty, but must adhere to EU rules.**
3. Would it be possible to ban tax exemption clauses of this kind in contracts concluded with the Member States in the context of sporting events?  
**A: No.**

# Example 2: French stadiums EURO 2016

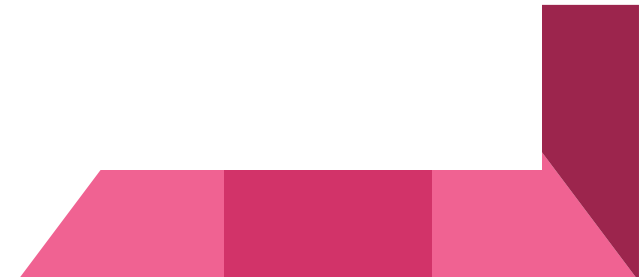
## Aid granted by France

- Construction and renovation of nine stadiums for EURO 2016
- Generally: stadiums are owned by municipal council; State funds used to get things up to the UEFA standards (e.g. safety, comfort)

## Infrastructural aid

- State contribution to infrastructure can be State aid (see: Leipzig/Halle case)
- Market Economy Operator Principle (MEOP)

## Various (potential) beneficiaries of aid



## Example 2: French stadiums for EURO 2016

### Approval by EC in 2013 under Article 107(3)c TFEU

“aid to facilitate the **development of certain economic activities or of certain economic areas**, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”

### Commissioner Almunia (Press Release 18 December 2013):

"France will build and renovate 9 modern multifunctional stadiums. This will not only allow for a smooth organisation of the UEFA EURO 2016 but will also promote sport and culture in France and benefit clubs and citizens for many years after the championship."

See also: EC authorisation of multifunctional stadiums in Belgium (IP/13/1120), Sweden (IP/13/394), and Germany (SA.35440, SA.35135, SA.36105).

## Example 3: Measures for football clubs

- **Investigations into aid to Spanish and Dutch football clubs:**
  - Opened in 2013; final decisions in 2016
  - A “new step” in enforcement of State aid rules vis-à-vis sports?
  - Press Releases 4 July 2016 (IP/16/2401 and IP/16/2402)
- **Various different measures, incl. tax**
  - E.g., State guarantees for bank loans, retroactive lowering of rent for stadiums and privileges regarding Spanish corporate tax (exemption from general obligation for professional football clubs to become “sport limited companies” - outcome: 30% tax rate becomes 25%).

# Political dimension? (I)

- State aid is not intended as a political tool but...
  - Compare: the debate surrounding Apple and Starbucks
- How could the EC influence the direction of State aid?
  - Selective enforcement; approval of aid; decision to recover aid; public communications (e.g. Vestager's Apple conference); etc.
- Structural solutions
  - Resolution of the Council on the European Union Work Plan for Sport (2014-2017) (2014/C 183/03)
- Political dynamic of State aid and sport?

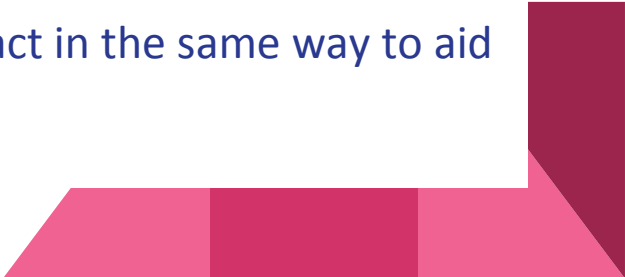
## Political dimension? (II)

“It is no secret that I am a supporter of Athletic Club Bilbao. I am astonished by your insinuation that this "can look like a conflict of interest". Let me also tell you that I am also a Spanish citizen, member of the PSOE, keen opera-goer, I enjoy cinema and I use the internet every day. These elements are however irrelevant when it comes to the Commission adopting decisions on State aid regarding Spanish cases, or granted by centre left governments, or benefitting cinema or culture in general, or to tackling antitrust issues with Microsoft and Google.”

Former EU Commissioner for Competition, **Joaquin Almunia**  
*Reacting to the “misleading” Press Release by the EU Ombudsman about the Spanish football club investigations.*



## Some closing questions to think about

- Are Member States sometimes too lenient when it comes to aid for sports organizations? Should they be stricter?
  - Is there a case for taxing ISO's different to other undertakings? Is the involvement of powerful organisations such as FIFA or UEFA a good enough reason?
  - How special are ISO's? Is EURO 2016 more special than the European Taekwondo Championship? Or the EU Table Tennis Champions League? What about London Fashion Week?
  - How active should the EC be in this field? Are there any lessons learned for the tax cases? Or vice versa? Would the general public react in the same way to aid for FIFA or UEFA as to aid to Apple or Starbucks?
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## Suggestions for reading

### **Specifically about sport:**

- B. Van Rompuy and O. van Maren, EU Control of State Aid to Professional Sport: Why Now?, in: A. Duval and B. Van Rompuy (eds.), The Legacy of Bosman, ASSER International Sports Law Series, T.M.C. Asser Press (2016).
- Blog by the Asser International Sports Law Institute (The Hague): <http://www.asser.nl/SportsLaw/Blog/>

### **General State aid:**

- H.C.H. Hofmann and C. Micheau (eds.), State Aid Law of the European Union, first edition, Oxford University Press, Oxford (2016).
- C. Quigley, European State Aid Law and Policy, third edition, Hart Publishing, Oxford (2015).