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Competition and Professional Sports – Note by Bulgaria

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More documents related to this discussion can be found at
www.oecd.org/daf/competition/competition-and-professional-sports.htm.

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Bulgaria

1. Organization of sport activities in Bulgaria

1. The organization of sport activities in Bulgaria follows the most common pyramidal model, consisting of sport clubs of particular sport at the bottom of the structure, governed by a national federation, which in its part is governed (as a member) by the corresponding international federation. The general legislative framework as to the structure and the functioning of the sports is set in the Law on Physical Education and Sports (LPES), new one adopted in 2018. The government body that supervises and controls the application of the law is the Minister of the Physical Education and Sports.

2. The LPES lays down specific provisions on the powers of the Minister of Physical Education and Sports under the law, the rules for establishment, powers, functioning and financing of the sport clubs, united sport clubs, professional leagues, national federations, trainers, athletes, referees, athletes' agents, the organization of professional and non-professional sports and tourist activities.

3. **Sport clubs** should be established as non-profit organization or as capital company. When established as non-profit organization, only natural persons could participate in it. The word "sport" should be present in the name and sport activities should be included in its' areas of activities. The sport club should have concluded contracts with trainers and have available sport facilities (own ones or rented). A club may become a member of only one licensed sport or multisport federation, unless the law provides for otherwise. The sport clubs are allowed to perform the following activities:

- organize sport activities for citizens;
- provide sport services;
- organize and perform training activities;
- organize sport competitions after approval of the corresponding sport federation;
- participate in sport competition as per the rules set by the corresponding sport federation;
- propose to the corresponding sport federation to grant, stop or revoke the sport rights of athletes and the way to settle the outstanding issues with these athletes;
- apply for financing and subsidies with public resources under rules set by a law;
- own the advertising rights, the rights for radio and TV distribution of sport competitions, organized by them as set by rules, adopted by the corresponding sport federation;
- erect, acquire, use and manage sport facilities;
- other activities for promotion of sport.

4. Sport clubs are not subject to licensing by the Minister of the Physical Education and Sport on standalone basis, the sport federations have to be licensed. Sport clubs that are not members of sport federation are not allowed to organize sport competitions; participate in sport competition; apply for financing and subsidies with public resources under rules set by a law; own the advertising rights, the rights for radio and TV distribution of sport competitions, organized by them.

5. **Sport federations** (single sport or multisport) are non-profit organizations of sport clubs. Only one sport federation for single sport or for multisport could be licensed. In order to become licensed, the federation should have:

- as members at least 7 sport clubs with a place of establishment in at least 3 administrative regions in Bulgaria;
- concluded contracts with trainers (or its member sport clubs should have such) whose qualifications are in line with the Ordinance on training staff;
- 4-year development program;
- adopted sport calendar for competitions and state sport calendar, as well as rules for the later;
- sport facilities (or facilities of the participating clubs);
- rules for the statute of amateur and professional athletes for acquiring, terminating and taking away sport rights;
- adopted budget;
- rules for performing sport activities in line with the rules of the corresponding international federation, if this is the case.

6. If more than one application for licensing of sport federation for particular sport had been submitted, all applications are assessed together. The selection is made on the basis of criteria such as: the number of participating clubs; available trainers; sport facilities, membership in international federation or granted rights by international federation to organize sport events.

7. The powers of the licensed sport federations include:

- Administrative functions for regulating the corresponding sport/s;
- Adoption of methodological and administrative rules for the particular sport;
- Organization and holding of championships and competitions, deciding on the ranking in these events;
- Approval for organization of sport competition for the state sport calendar;
- Set the athletes and their training for the national teams in the corresponding sport;
- Manage sport facilities;
- Provide sport services;

8. The licensed sport federation may also perform the following:

- Grant, terminate and take away sport rights of athletes;
- Manage transfer registry;
- Manage registry of athletes agents;
- Perform sport justice through a system of committees and sport arbitration through arbitrary body;
- Teach referees and technical and administrative staff for the corresponding sport;
- Create accessory bodies – trainers' committee, disciplinary committee, etc.

- Have exclusive rights for advertising, radio and TV distribution of all sport competitions, organized by it, while giving on contractual basis a percentage of the incomes to the sport clubs that participate in the competition.
9. In addition to the above-listed powers, the LPES also requires the licensed federations to adopt a number of internal rules, including for: athletes sport rights and their statute, transfers of athletes, the activities of the sport agents, for sport justice and arbitration, management of state competitions by professional leagues, etc.
10. **Professional sport leagues** in Bulgaria should be subsidiary body of the licensed sport federation or non-profit organization/capital company. In case of non-profit organization/capital company form of establishment of a professional sport league, its members/partners/shareholders are the sport clubs that are members of the corresponding sport federation and participate in the particular competition. When the sport federation had established professional sport league, the federation may require that only professional athletes participate in the state competitions. For a particular sport only one professional league could be established.
11. The LPES also provides for the establishment of national Olympic Committee, university sport organizations, national tourist organization, etc.
12. The **joint sport club** is a non-profit association of sport clubs, established in order to use and manage sport facilities in public service. Only sport clubs that are members of sport federation are allowed to participate in a joint sport club. This association is established by at least 3 sport clubs that are members of federation and the only activity they can perform is to construct, acquire, use and manage sport facilities. Sport facilities, state or municipal property, that are given for use and management to a joint sport club under the terms of the LPES, are used by its members. The joint sport clubs are not allowed to be members of sport federation.

2. Organization of sports and competition law

13. With **Decision No 538/2016** the Bulgarian Commission on Protection of Competition (CPC), at request by the Minister of Youth and Sports, adopted advocacy opinion on draft of new Law on Physical Education and Sports. The CPC availed itself of this opportunity to inform the Minister and the general public (as the CPC opinion is public on its Internet site) of the instances where the sport rules could be assessed as to their compliance with competition rules.
14. The CPC pointed out that both the national Law on Protection of Competition (LPC) and the EU antitrust rules (Art. 101 and 102 TFEU) could be applied to the sport sectors, as set by the Court of Justice (CJ) (formerly the European Court of Justice – ECJ) in a number of cases (Walrave case, Bosman case, Meca Medina case, Piau case, MOTOE case, etc.)
15. Generally speaking, the sport regulations on the “rules of the game” are not in principle caught by the antitrust rules, as they are of purely sportive nature. The activities of the sport organizations that are economic by nature, however, fall within the scope of competition legislation. All organization, regardless of their form or way of financing, may be determined to be undertakings under the provisions of the LPC and EU competition law. The fact that a certain organization is registered as non-for-profit, does not prevent the competition authority to regard these activities as economic by nature. Thus, sport clubs may be undertakings and the sport federations-associations of undertakings if their

activities are economic in nature. The assessment if particular activity is economic is made on case-by-case basis.

16. The CPC also explained, that delegating governing powers to a particular sport organization does not mean that the same governing organization cannot perform certain economic activities itself, falling within the concept of “undertaking” within the meaning of competition law. When certain undertaking is vested with exclusive rights, this may put it in dominant position as to the other market participants.

17. After analyzing the provisions of the draft LPES, and based on the Court of Justice case law, the Bulgarian Commission on Protection of Competition noted that some of the activities that are allowed for the different sport organizations may potentially be determined as economic by nature, as the sport organizations may offer these goods and services on the relevant market in competition, real or potential, with other participants in competitive process. For example, provision of sport services, organization of training activities, sport competitions, commercial exploitation of products like sale of tickets, of TV rights, of sport souvenirs, etc., the construction and management of sport facilities may be performed by different legal persons, making these activities of the nature to generate profit and therefore, economic by nature. In this respect all persons, performing such activities, like sport clubs, united sport clubs, sport federations, professional leagues could be subject to competition rules as undertakings/associations of undertakings. Professional athletes, trainers, referees and sport agents, when providing services, may also fall within the definition of undertaking when their activities are of economic nature.

2.1. Financing of sport activities

18. The LPES provides for that non-economic activities of the sport organization are financed with public resources – either state resources or municipal ones. Public resources are given for physical activities, physical education, sport and tourist activities in encouraging sport for everyone and sport for excellence. Financing with public resources could be given for economic activities of sport organizations as well. State or municipal sport facilities could be given for use and management to sport organizations under lease contracts or under concession. The law requires that the public funding of sport organizations and sport activities is made in compliance with the state aid rules and other relevant legislation.

2.2. Potential competition problems in the draft LPES provisions

19. The CPC noted that some competition related problems might arise with some of the provisions of the draft LPES. The CPC recommendations covered the following:

2.2.1. Administrative procedures for licensing of sport federations.

20. The CPC noted that the draft provided for a greater number of member sport clubs required (15 against 7 in the then acting LPES) for licensing of sport federation. In addition, the licensing process was envisaged to be done on “first come, first served” basis. The CPC considered that greater number of clubs required to be members of a sport federation, applying for licensing, might have been acceptable in order for the more representative organization to be licensed. On the other hand, the licensing of federations by the order of the applications submitted may lead to less representative sport federation being licensed, forcing the sport clubs to join this federation, as otherwise they cannot perform the full scope of activities of sport club under the law. The CPC recommended the licensing to be

done in some type of competitive procedure, taking into account objective criteria, for example, the number of the participating clubs of the applicant sport federation.

2.2.2. Restrictions on the activities of the sport clubs.

21. The CPC pointed out in its opinion, that the provisions of the draft LPES envisaged only the sport clubs, entered into the registry of the Ministry of Youth and Sports, which are members of licensed federation, to be allowed to perform in full all the activities under the law, including the activities that are of economic nature or entail possibilities to perform economic activities – e.g. to organize and participate in sport competitions, to receive public financing for constructing, acquiring, managing and using sport facilities, for enrolling professional athletes, etc. Thus, relevant sport markets would be closed for a number of persons like the sport clubs that are not members of licensed federation, sport schools, organizing training and sport competitions for the trained persons, companies that organize sport competitions, both professional and amateur, in order to promote their goods and services, etc. The CPC proposed the provisions of the draft LPES to be reviewed as to give opportunity to all sport clubs, as well as to private economic operators, to organize sport competitions outside the state competitions, giving points for the championships, organized and administrated by the corresponding licensed sport federation.

Restrictions for some sport clubs to establish joint sport club.

22. The draft LPES provided for that only sport clubs that are members of licensed sport federation may establish joint sport club. Taking into account that the only activities allowed for the joint sport clubs include constructing, managing and using sport facilities, the CPC underlined in its opinion, that this restriction on the freedom of association for sport clubs that are not members of licensed federation, excludes them from these activities.

Registers of sport agents maintained by the sport federations.

23. The CPC proposed that the register of agents by sport could be vested on the Ministry of Youth and Sport. Maintaining of such registers by the sport federations may prevent some agents to perform their activity, based on refusal from the corresponding federation to enter them into the register.

Self-regulation by the sport federations.

24. The draft LPES envisaged that the sport federation should adopt a number of acts, regulating different aspects of its activities, including activities, that may be economic by nature. In its opinion the CPC pointed out that for the activities that are of economic nature the sport federations may be considered associations of undertakings and respectively the acts of self-regulation on these economic activities fall under the prohibition in Art. 15 LPC and Art. 101 TFEU. The CPC underlined that the Bulgarian Law on Protection of Competition provides for the opportunity for associations of undertakings to submit to the CPC their draft self-regulation acts for opinion.

Financing and financial aid to sport organizations.

25. The draft LPES provided for that the state and the local authorities (municipalities) may finance some of the activities of the sport organizations. The Minister of Youth and Sport considered, that the financing with public resources, envisaged in the draft law, concerned only amateur sport and that this financing is provided only for non-economic activities, therefore this financing did not fall under Art. 107 TFEU, as no public resources were to given to “undertakings” and it would not affect the trade between EU Member

states. The Minister also considered that the legal provision in the draft law for the sport organizations, that receive public financing and perform economic activities at the same time, requiring them to have analytical accounting, guaranteed that public resources were used only for non-economic activities.

26. In its opinion, regardless of the fact that it does not have any powers in state aid issues, the Bulgarian Commission on Protection of Competition underlined that Art. 108 TFEU sets the exclusive power of the European Commission to pronounce if certain measure is state aid and if such aid is compatible with the EU state aid rules. The CPC also pointed out that on national level the Minister of Finance is the responsible national state aid monitoring body.

Public procurement and sport.

27. The draft LPES envisaged, in its final Transitory provisions, that the procurement in the area of sport is added to the exception in the Public Procurement Act, allowing the contracting authorities in certain cases to use negotiation procedure without preliminary notice. The CPC objected to this provision, stating that the exceptions in the Public Procurement Act are of objective nature, apply to all procured goods and services, and do not relate to particular contracting authority. The CPC therefore expressed opinion that no exception should be made in the Public Procurement Act for procurement procedures of sport organizations.

2.3. Outcome from the CPC opinion on draft Law on Physical Education and Sport of 2016.

28. The new and now acting Law on Physical Education and Sport was adopted in 2018, two years after the Bulgarian Commission on Protection of Competition adopted competition advocacy opinion on a previous draft law. The adopted and acting LPES has numerous references to state aid rules, as advised by the CPC. The law does not envisage procurement in sports to enjoy the existing exceptions in Public Procurement Act. As regards the other CPC considerations and proposals, concerning the organizational issues and regulations for sport organizations, the only significant change to the draft law, assessed by the CPC in 2016, concerns the process of licensing sport federation in case of multiple application. The adopted LPES provides for the selection to be made according to the number of the participating clubs. Nonetheless, the Bulgarian Commission on Protection of Competition considers its advocacy opinion on sport regulation as part of its overall advocacy efforts, raising the awareness of the relevant state authorities on the applicability of competition rules to sport activities in certain cases.