Sports Law: 23 June 2015

1. The International Ski Federation (FIS) has its seat in Switzerland and is the world governing body of the sport of ski. The FIS stages and markets events (world cups) and regulates the different skiing disciplines. The professional Austrian skier Marcus Girondolli is among the top 20 skier in Austria. However, since competition in Austria is very tough, he feels that it will be very hard for him to be nominated by the Austrian Skiing Federation (ÖSV) for the FIS world cups. This is all the more true, since every member federation of the FIS is allocated only a limited number of quota places. Girondolli, therefore, changes his nationality. He obtains the citizenship of Luxembourg and wants to participate for Luxembourg in the FIS world cups. The Luxembourg Skiing Federation (LSF) is very proud of its new member and eager to nominate him. However, the FIS rules provide as follows:

> *All athletes that fulfill the sportive criteria are eligible for the world cup provided that they are nominated by a national skiing federation (NF), have a license and the citizenship of said NF. In case an athlete was licensed with one NF before and changes his/her citizenship at a later stage, he or she may acquire the license of the new NF. However, he or she will have to serve a waiting period of five years before the new NF is permitted to nominate the athlete for the world cup. In the meantime the athlete is not eligible to participate in the world cup for his or her old NF.*

Girondolli is of the view that the aforementioned rule violates the fundamental freedoms enshrined in the TFEU and contacts you for an expert opinion on this question.

2. What are in particular the problems encountered in proceedings before the Court of Arbitration for Sport related to cases of match-fixing?

Scoring System Sports Law Exam 23 June 2015
Prof. Dr. Ulrich Haas

No. of the Exam:			
No. of Matriculation			
Date of Correction:			
	Notes	Points	Points received
<u>Question 1</u>			
a) Territorial scope: - Does the TFEU apply to an entity outside EU? - Walrave-decision: Relationship entered in EU or has effect in EU - i.c.: Effect in EU		3	
b) Addressee of the fundamental freedoms: - FIS as addressee of fundamental freedoms (it is an association who do not come under public law)? - Walrave-decision: Decisive is whether the private rules establish obstacles that are comparable to those resulting from statutory provisions. - I.c. met (rules regulate a whole economic sector)		4	
c) Material scope of application: - Do the fundamental freedoms apply to the field of sport? - Walrave-decision: Yes, if it constitutes an economic activity (not like the exceptions in the sector "culture"; see Bosman-decision); only in exceptional circumstances the sporting rule does not affect an economy activity (e.g. composition national teams). - I.c. material scope fulfilled.		6	
d) Breach of fundamental freedoms: - Art. 56 TFEU: Not only prohibits restrictions, but also any discrimination based upon nationality. - I.c.: both		4	
e) Room for sport-specific justification? - Bosman-decision: Sport federations enjoy the right of freedom of association; since member state can justify violations of the fundamental freedoms (on grounds of public policy, security and health) also association are not precluded from relying on justifications (open to a balance of interests) - Conditions: legitimate aim, rules must achieve the aim, proportionality		12	

- Argumentation f) Conclusion		1	
Total Question 1 (60%)		**30**	
Question 2			
<u>a) In General</u> - Lack of evidence: Hard to prove whether a mistake was intentionally and very international cases. CAS tries to solved that problem with: <u>b) Standard of Proof:</u> - Civil matters: balance of probabilities - Criminal matters: beyond reasonable doubt - Problem in match-fixing cases: Sanction almost as severe as in criminal cases (like a lifelong employment ban) - BUT: Impossible to proof a fix beyond reasonable doubt - Pobeda-Case: CAS considered the problem of lack of evidence and established the standard of proof of comfortable satisfaction (as in doping cases) <u>c) Protected Witnesses</u> - Problem: Mafia is involved - Nobody wants to give testimony - BUT: Witness statements are very important in the fight against match-fixing - Witnesses must stay anonymously - Conflict with Art. 6 para. 3 lit.d ECHR? - Swiss Federal Tribunal- and ECHR-decision: Balance of interests - Pobeda-Case: Anonymous witnesses are possible under the following five conditions: solid reason and concrete threats, panel knows identity, panel must check identity, technical measures to allow a cross examination and prober balance of interests.		3 7 10	
Total Question 2 (40%)		**20**	
Total Exam (100%)		**50**	