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UEFA Financial Fair Play: the savior of football or the road to the next Bosman-ruling?

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Summary

The governing body of European football, UEFA, recently adopted the Financial Fair play rules as part of the previously existing Club Licensing system. The core provision of the Financial Fair Play rules are the break-even requirement, which forces the European football clubs to live within their means.

The purpose of the thesis is to analyze whether the Financial Fair Play rules are compatible with EU law, especially the competition provisions, regulated in Articles 101 TFEU and 102 TFEU and the free movement of workers, regulated in Article 45 TFEU. In order to make this analyze, sport-related case law has been emphasized and thoroughly examined, since the principles of EU sports law can only be derived from said case law. These principles have then been applied to the Financial Fair play rules.

The thesis concludes that the Financial Fair Play rules would probably pass the Wouters test and thereby they would not constitute a restrictive agreement within the meaning of Article 101(1) TFEU. Also, on the same merits, the rules would probably meet the objective justification grounds regarding free movement of workers and therefore be compatible with Article 45 TFEU. If the Financial Fair Play rules would not pass the Wouters test, they would have a good chance of gaining exemption under Article 101(3) TFEU but they would still be deemed incompatible with Article 45 TFEU. Furthermore, the Financial Fair Play rules are not likely to constitute abuse of a dominant position, and therefore they are not prohibited by Article 102 TFEU. However, the thesis also concludes that one should be vary of drawing definite conclusions in these matters, since the compatibility with EU law of rules issued by sport governing bodies must be examined on a case by case basis, with a proportionality test being one of the key features.

Even though the Financial Fair Play rules likely are considered to be compatible with EU law, it is problematic that they supposedly will not promote competitive balance. Hopefully, that issue will be addressed in the future, for example by complementing the rules with other measures.

Sammanfattning

Det styrande organet i europeisk fotboll, UEFA, har nyligen introducerat Financial Fair Play-regler som en del av det sedan tidigare existerande Club Licensing-systemet. Kärnan i Financial Fair Play reglerna är ett break-even-krav som tvingar de europeiska fotbollsklubbarna att leva efter sina resurser.

Uppsatsens syfte är att analysera om Financial Fair Play-reglerna är förenliga med EU-rätten. Av särskilt intresse är EU-rättens konkurrensrättsliga regler, som återfinns i Artikel 101 FEUF och Artikel 102 FEUF, samt regeln gällande fri rörlighet för arbetstagare, som återfinns i Artikel 45 FEUF. För att genomföra analysen på ett relevant sätt har sportrelaterad praxis legat i fokus och studerats ingående, eftersom principerna om EU-rättens relation till sport endast kan utläsas från nämnda praxis. Dessa principer har sedan tillämpats på Financial Fair Play-reglerna.

I uppsatsen dras slutsatsen att Financial Fair Play-reglerna förmodligen skulle klara Wouters-testet och därmed inte utgöra en konkurrensbegränsning under Artikel 101(1) FEUF. På samma sätt skulle reglerna förmodligen vara objektivt försvarbara gällande den fria rörligheten för arbetstagare och därför vara förenliga med Artikel 45 FEUF. Om Financial Fair Play-reglerna inte skulle klara Wouters-testet så skulle de ha en god chans att möta kriterierna för det undantag som återfinns i Artikel 101(3) FEUF. Dock skulle de i så fall ändå inte vara förenliga med Artikel 45 FEUF. Vidare så bör Financial Fair Play-reglerna inte utgöra missbruk av en dominerande ställning under Artikel 102 FEUF. Det ska dock påpekas att man bör vara försiktig med att dra definitiva slutsatser i sådana här fall, eftersom förenligheten med EU-rätten gällande regler utfärdade av styrande sportorgan måste undersökas ifrån fall till fall, då ett proportionalitetstest är ett utav nyckelverktygen.

Trots att Financial Fair Play-reglerna troligtvis är förenliga med EU-rätten är det problematiskt att reglerna förmodligen inte kommer att förbättra konkurrensen mellan klubbarna. Förhoppningsvis kommer detta att åtgärdas i framtiden, till exempel genom att reglerna kompletteras med fler åtgärder.

Preface

From the bottom of my heart, I would like to thank my fiancé Dasha for the unprecedented support and encouragement she has been giving me.

Also, my parents, my sisters and my dear friends deserve acknowledgement for all their help and cheerful encouragement.

Finally, I would like to thank my supervisor, Professor Hans Henrik Lidgard for good advice on how to structure and formulate the problem of the thesis.

Abbreviations

EU	European Union
TFEU	Treaty on the Functioning of the European Union
UEFA	The Union of the European Football Associations
FIFA	International Federation of Association Football
URBSFA	Royal Belgian Football Association
CFCB	Club Financial Control Body
IOC	International Olympic Committee
FINA	Fédération Internationale de Natation Amateur

1 Introduction

Even though professional football in Europe has developed into a huge industry during the last decades and despite steady rising of incomes for the European clubs, there have been extensive discussions about financial crisis in the European football and even concerns about a financial bubble about to burst.¹ According to the UEFA club licensing benchmark report for the financial year 2011, 55% of the clubs participating in the European top divisions were loss-making and 38% reported negative equity.² The same figures for 2010 were 56% and 36% respectively.³ UEFA, an association of national associations and the governing body of European football, has concluded that the inflationary spending on salaries and transfer fees of the European football clubs is the root to this problem.⁴ With this in mind, it is not surprising that the possibility of introducing different cost control mechanisms has been a highly topical issue for the stakeholders in European football the last decade.

UEFA holds jurisdiction over football played in Europe and organizes some of the most profitable and prestigious European tournaments, including UEFA Champions League and Europa League. Since 2004, European football clubs that want to participate in the UEFA club competitions must qualify for an UEFA license. In order to do that, the clubs needed to fulfill some minimum standards (covering the areas of sporting, infrastructure, personnel, legal and financial matters) set out in the UEFA Club Licensing system. In 2010, UEFA introduced the UEFA Financial Fair Play regulations (Financial Fair Play rules), which are an extension of the UEFA Club Licensing, essentially adding requirements concerning solvency and financing. The core of the Financial Fair Play rules is the break-even requirement. In order for a club to comply with this requirement, relevant expenses cannot exceed relevant incomes in excess of the acceptable deviation.

As stated above, the UEFA license only applies to the UEFA club competitions and not to the domestic leagues. However, the most competitive clubs of Europe will have to comply with the Financial Fair Play rules in order to receive an UEFA license. For example, in February 2013, the clubs in the English Premier League announced that they had reached an agreement in principle to a system of enhanced financial regulations. These regulations has some strong resemblance to the Financial Fair Play rules but also include restrictions on the amount of increased

¹ Conn, D., Uefa's Fair Play Rules Will Help Clubs Rein in Spending, 25.01.2012.

² Peery, S., Leach, S. UEFA The European Club Licensing Benchmarking Report Financial Year 2011.

³ Peery, S., Leach, S. The European Club Footballing Landscape. Club Licensing Benchmarking Report Financial Year 2010.

⁴ UEFA. Financial Fair Play.

Premier League Central Funds that can be used to increase player wage costs in the next couple of years.⁵

1.1 Purpose

The purpose of this thesis is to analyze whether the Financial Fair Play rules are compatible with EU law. In doing so, the break-even requirement included in the Financial Fair Play rules will be most developed upon, since it could be considered to represent the core of the Financial Fair Play rules and it is also the most complex requirement from a legal viewpoint. The thesis aims to describe and analyze the applicable regulations and relevant case law concerning competition law and internal market freedoms in order to be able to make that assessment. As part of the purpose of the thesis, other forms of cost control mechanisms will be briefly examined to see if there are alternative measures that are more suitable than the Financial Fair Play Rules.

My intention is that this thesis should be written in a way that will help the actors in the football arena to understand the legal problems existing in the complex relationship between different cost control mechanisms and EU law.

1.2 Method

The method chosen for this thesis is the traditional legal method, also known as the dogmatic method. In order to interpret and systemize applicable law and find the answer to the given problem, material such as legislation, case law, official documents and doctrine will be assigned value and be analyzed.

Before the introduction of Article 165 in the Treaty of the Functioning of the European Union (TFEU), there was no legal instrument that applied exclusively or specifically to sports. However, sport-related activities have been analyzed in a number of judgments by the Court of Justice of the EU (the Court). Therefore, the relevant case law that has developed when it comes to the relationship between sports and EU law plays a vital part in the assessment of the compatibility of the Financial Fair Play rules with EU law.

In order to investigate applicable law in the area of cost control mechanisms in professional football, the thesis will touch upon issues regarding the objective of rules issued by governing sport bodies, economic aspect of such rules and references to different jurisdictions where such rules are used. However, this does not mean that other perspectives such as law and politics and law and economics or certain comparisons will not be used since these

⁵ The New Financial Rules Agreed by Clubs Explained, 07.02.2013.

issues are of importance when deciding how a court of law can be expected to rule.

1.3 Delimitations

Even though the UEFA Club Licensing and Financial Fair Play regulations consist of a wide range of licensing conditions, the focus of this thesis will be on the break-even requirement. Some interesting requirements, such as clubs having to settle their liabilities on a timely basis (a requirement that Malaga recently breached and therefore where banned from future competition) will not be developed.

Furthermore, this being a thesis in the subject of law, the analysis of what type of cost control mechanism the Financial Fair Play rules formally constitute is of little importance and will therefore not be examined. This cost control mechanism will be treated as separate from the other types of cost control mechanisms.

Also, for the educational purposes of this thesis, I will use terms and Article numbers as they are today. For example, the term Court of Justice of the EU will be used instead of European Court of Justice.

1.4 Disposition

An introduction to the thesis can be found in the first chapter. In the second chapter, the different cost control measures that exist in sports will be briefly touched upon as well as the basics of the Financial Fair Play rules being developed in more detail. The third chapter contains the identification of applicable law, the provisions that would be relevant in a potential challenge of the Financial Fair Play rules and the relevant case law. In the fourth chapter, the analysis whether the Financial Fair Play Rules are compatible with EU law will be conducted. The final fifth chapter contains the concluding remarks.

2 Cost control mechanisms in sport

Salary caps are arguably the most famous type of cost control mechanisms in sport and it sets a limit on the amount of money a club can spend on player salaries.⁶ However, since top division clubs across Europe on average spend 65% of their overall share of revenue on wages and social costs, 38% of the clubs spend more than 70% and 13% of the clubs spend more than 100%, any form of cost control mechanism relating to football must target wages as it is the primary cost for football clubs.⁷

Cost control mechanisms in sport usually have the objective to promote competitive balance and to maintain financial sustainability. From an economic perspective though, it may also be viewed upon as a way for the owners to extract rents on the expense of the players and thereby transfer player rents back to ownership through a collusive agreement.⁸ Also, it can be argued that sport leagues should be viewed as rent seeking contests (since they exhibit a “fix supply of winning”) where success depends on the relative share of total resources devoted to competition.⁹

Regulations in professional team sports have been commonly used to battle the dangers of competitive imbalance and the escalation of player wages. This is especially true when it comes to American professional team sports. The reserve clause in the US that was abolished 1976 in favour of free agency, due to player unions and antitrust threats, is one example.¹⁰ Professional football in Europe has seen prominent examples, such as the transfer rules restricting free movement of players before they were abolished due to the Bosman ruling.¹¹ The first time salary caps were introduced in sport was when the National Basketball Association (NBA) implemented it for the 1984-1985 season. Since then, cost control mechanisms in sports have become commonplace and are today in effect in professional team sports all around the world. Noticeable examples are all the major leagues in the US, such as the Nation Football League (NFL), the Major League Baseball (MLB) and the Major League Soccer (MLS),

⁶ Commission Staff Working Document, SEC(2007) 935, accompanying Commission White Paper on Sport, COM (2007) 391 final (July 11, 2007), p. 77. Dietl, H., Helmut M., Lang, M., Rathke, A., 2009. “The Effect of Salary Caps in Professional Team Sports on Social Welfare”, p. 2.

⁷ Peery, S., Leach, S. UEFA The European Club Licensing Benchmarking Report Financial Year 2011, p. 97. Peeters, T., Szymansky, S., 2012. “Vertical restraint in soccer: Financial Fair Play and English Premier League”, p. 27.

⁸ Dietl, H., Helmut M., Lang, M., Rathke, A., supra note 6. Peeters, Szymansky, supra note 7, p. 3

⁹ Peeters, Szymansky, supra note 7, p. 8.

¹⁰ Dietl, H., Franck, E., Lang M., Rathke, A., 2010. “Salary Cap Regulation in Professional Team Sports”, p. 2.

¹¹ Case C-415/93 *URBSFA v. Bosman* ECR 1995 I-4921.

Australian leagues, such as the Australian Football League, the National Rugby League and A-League Soccer and European leagues such as the Kontinental Hockey League (KHL) and different Rugby leagues.¹²

The idea of introducing cost control mechanisms in European football has been up for discussion for a long time. The investigation leading to the UEFA Club Licensing system considered the possibility of introducing a salary cap but found it infeasible and in 2003, 14 of the leading clubs in European football, organized as the so-called G14, agreed to limit spending on team salaries to 70% of revenues. Whether this agreement was never put in place or if the clubs simply failed to live up to the agreement, due to a lack of enforcement mechanisms, seems to be up for debate.¹³

2.1 Salary caps

As mentioned earlier, a salary cap is as a limit on the amount of money a club can spend on player salaries. The cap is commonly calculated as a percentage of average annual league revenues and limits the possibility for clubs to invest in player talent. The cap is often a fixed sum, since leagues usually calculate the cap on the basis of the revenues for the preceding season. Salary caps have existed in American leagues for several decades and are now, in contrary to earlier regulations, an established part of the system of labor relations.¹⁴

There are mainly two types of salary caps. A hard cap imposes a fixed amount on the spending of all clubs and they may never exceed that limit. A soft cap, on the other hand, also imposes a fixed amount of spending of all clubs but they may exceed that limit under certain conditions, as for example to keep a player that has been with the team for a long time.¹⁵

2.2 Luxury taxes

A luxury tax, sometimes also referred to as a competitive balance tax, is a surcharge on the aggregate payroll of a sports team that exceeds a predetermined limit. The purpose is to slow the growth of salaries and to promote competitive balance by preventing large-market teams from signing all of the top players within a league. The money derived from this tax is distributed among the financially weaker teams.¹⁶

¹² Dietl, H., Helmut M., Lang, M., Rathke, A., supra note 6, at p. 2.

¹³ Peeters, Szymansky, supra note 7, p. 6. Lindholm, J., 2011. "The Problem With Salary Caps Under European Union Law: The Case Against Financial Fair Play", p. 194.

¹⁴ Dietl, H., Helmut M., Lang, M., Rathke, A., supra note 6.

¹⁵ Parrish, R., Garcia, B., Miettinen, S., Siekmann, R., 2010. "The Lisbon Treaty and EU Sports Policy" p. 33. Lindholm, supra note 13, p. 194.

¹⁶ Dietl, H., Lang, M., Werner, S., 2010. "The Effect of Luxury Taxes on Competitive Balance, Club Profits, and Social Welfare in Sports Leagues", p. 2.

2.3 Financial Fair Play rules

2.3.1 Objectives

The objectives of the UEFA Club Licensing system are set out in Article 2 of the UEFA Club licensing and Financial Fair Play Regulations, which are basically a combination of the objectives of the former UEFA Club Licensing system and the Financial Fair Play rules.¹⁷ The Financial Fair Play rules “aim to achieve financial fair play in UEFA club competitions and in particular:

- a) to improve the economic and financial capability of the clubs, increasing their transparency and credibility;
- b) to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with players, social/tax authorities and other clubs punctually;
- c) to introduce more discipline and rationality in club football finances;
- d) to encourage clubs to operate on the basis of their own revenues;
- e) to encourage responsible spending for the long-term benefit of football;
- f) to protect the long-term viability and sustainability of European club football.”¹⁸

However, these objectives can only be properly understood when read in combination with the more general objectives of the licensing rules, being for example “to further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club”, “to adapt clubs’ sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities” and “to protect the integrity and smooth running of the UEFA club competitions”.¹⁹

It is interesting to note that competitive balance is not among the objectives of the Financial Fair Play rules, as opposed to most other cost control measures. Instead the Financial Fair Play rules could be argued to pursue other objectives, with questions of fairness, financial soundness as a mean to ensure the long-term viability of football, promoting long-term investments and protecting the wider interests of football being of paramount importance.²⁰ However, from a more cynical point of view, the purpose of the break-even regulation could also be seen as a way for football clubs and UEFA to increase profitability and extract rents at the expense of the players.²¹

¹⁷ UEFA Club Licensing and Financial Fair Play Regulations, Article 2.

¹⁸ Id, Article 2(2).

¹⁹ Id, Article 2(1).

²⁰ Parrish, Garcia, Miettinen, Siekmann, supra note 15, p. 33. Geey, D., 2011. “The UEFA Financial Fair Play Rules: a difficult balancing act”, para. 2. Lindholm, supra note 13, p. 197. Joint statement by Vice-President Joaquín Almunia and President Michel Platini, p. 2.

²¹ Peeters, Szymansky, supra note 7, p. 3.

2.3.2 Basic rules

The scope of the break-even requirement is defined in Article 57 and the break-even requirements are regulated in Articles 58 to 63 and further developed in the Annexes X and XI. Within the scope of this thesis, there is no place for a detailed discussion about the rules or to describe the regulations in detail, but in order to obtain a license for a UEFA club competition, clubs must fulfill the break-even requirement. In short, the clubs must show, by submitting their financial statements and underlying accounting records, that their break-even results (determined by calculating the difference between relevant incomes and relevant expenses) for a specific monitoring period are positive, or within an acceptable deviation. The acceptable deviation is €5M for each monitoring period but during a phasing period, an excess of up to €45M for each monitoring period will be allowed, under certain conditions, if such excess is entirely covered by contributions from equity participants and/or related parties. That is the case if, for example, an owner exchanges cash for shares.²²

Some categories of expenditures are encouraged by the Financial Fair Play rules, since the expenses are excluded from the calculation of the break-even result. Expenditure on youth development activities and expenditure on community development activities are examples of such categories. Likewise, some categories of income do not count in full when calculating the break-even result. Income transactions with related parties above fair value is one example of such a category. If such a transaction takes place, only the estimated fair value counts. Fair value is defined as “the amount for which an asset could be exchanged, or a liability settled, between knowledgeable willing parties in an arm’s length transaction”.²³ The purpose of the provisions regarding related party transactions is to hinder owners of clubs from artificially inflating their clubs revenues in order to fulfill the break-even requirement. Without these provisions, the club owners could, for example, sign lucrative sponsorship deals, that would be disproportionately favorable for the clubs, in order to circumvent the Financial Fair Play rules.²⁴

Naturally, in order to have a well-functioning licensing system, there has to be enforcement mechanisms in place. Responsible for overseeing the application of the UEFA Club Licensing System and Financial Fair Play Regulations is the Club Financial Control Body (CFCB). The CFCB is competent to impose disciplinary measures in the case of non-fulfillment of the requirements, and to decide on cases relating to clubs’ eligibility for UEFA club competitions. The CFCB is divided into two chambers. The investigatory chamber is responsible for the investigation stage of the proceedings and the adjudicatory chamber is responsible for the judgment stage of the proceedings. The disciplinary measures at hand are extensive and range from a warning to disqualification from competitions in progress

²² UEFA Club licensing et. al., supra note 17, Articles 3 and 57-63.

²³ Id, Annex X.

²⁴ Geey, et. al. supra note 24, para. 49.

and/or exclusion from future competitions and ultimately withdrawal of a title or award.²⁵

2.3.3 Comments

The effect of the Financial Fair Play rules has been examined in a few studies. Football clubs are generally considered to be win maximizers engaged in a form of rent-seeking contest.²⁶ Hence, as one study shows, the Financial Fair Play rules are expected to impact almost entirely on costs, which in football clubs primarily take the form of wages. In case the Financial Fair Play rules had been applied fully in the English Premier League in the 2009/10 season, it is estimated that the wage to turnover ratios would have fallen by as much as 15%.²⁷ It is also often argued that the Financial Fair Play rules will significantly reduce competitive balance in European football.²⁸

It is clear that one of the main objectives of this type of cost control mechanism is to ensure financial stability. Thereby, the aim is not to promote competitive balance, but rather to cut costs. UEFA wants the European football clubs to be self-sustainable, to balance their books and to compete within their means. This correlates with the belief of UEFA that club owners injecting money leads to bidding wars between clubs for players, which has caused a transfer fee and wage inflation leading to financial unsustainability.²⁹

In order to understand the difficulty of introducing cost control mechanisms in European football, one must have a basic understanding of the way the European system of sport governing bodies work. As opposed to the major leagues in North America, where player unions and owners represent the two sides of the relevant labor market, the organization of European sport is characterized by a monopolistic pyramid structure with large stakeholder diversity. The sport governing bodies need to balance the interests of all stakeholders. Also, in the European football pyramid for example, there is a significant market heterogeneity considering that it includes all European football competitions with all their different preconditions.³⁰ Traditionally, European football has used an open system in which sporting success determines access to competitions, for example through promotion and relegation but the Financial Fair Play rules are different in the sense that it uses financial criteria.³¹ Nevertheless, according to the Commission and

²⁵ Procedural rules governing the UEFA Club Financial Control Body”.

²⁶ Peeters, Szymansky, supra note 7. Sass, M. 2012. “Long-term Competitive Balance under UEFA Financial Fair Play Regulations”.

²⁷ Peeters, Szymansky, supra note 7, p. 27-28.

²⁸ Id., p. 7. Sass, supra note 26, p. 10. Storm, R., Nielsen, K., 2012. “Soft Budget Constraints in Professional Football”, p. 196.

²⁹ Geey, supra note 24, para. 2.

³⁰ Dietl, Franck, Lang, Rathke, supra note 10, p. 4-5; Commission White Paper on Sport, supra note 6, p. 36.

³¹ Parrish, Garcia, Miettinen, Siekmann, supra note 15, p. 33.

UEFA, the principles of the Financial Fair Play rules have been developed in cooperation with, and are fully supported by, all football stakeholders.³²

³² Joint statement, supra note 20, p. 1.

3 Sport and EU law

3.1 The application of EU law to sport

First of all, it is important to note that the EU has no general regulatory competence and that the only competences and powers attributed to it stems from its treaties. Prior to the Lisbon Treaty, that entered into force in December 2009, the treaties did not mention sport at all and the EU had therefore no explicit power in the field of sport.³³ Instead, European sports law is primarily based on the “judge-made law” of the Court of Justice of the EU, with its jurisprudence including the landmark cases such as *Walrave*³⁴, *Bosman*³⁵ and *Meca-Medina*³⁶. Over time, a body of case law has been established that is based on the underlying principle of respect for the autonomy of the sports associations and their rules and decisions, as long as they are sustainable in the light of the particular characteristics of the sport. In other words, sporting rules and decisions can be granted exceptions to EU law if they are justifiable and proportional.³⁷ The specific characteristics of sports are often referred to as the “specificity of sport” and have been recognized and taken into account both by the European Courts and the Commission. However, the specificity of sport cannot justify a general exemption from the application of EU law.³⁸ There could even be argued that sport has always been treated as special by EU law and that it has been given a conditional autonomy in the sense that it has to respect the core norms of the Treaty but never has been treated as a normal industry by the Court or the Commission.³⁹

Starting with its first great case in sport, the *Walrave* case, the Court of Justice of the EU has consistently subjected sport to EU law in so far it constitutes an economic activity.⁴⁰ Hence, it has long been established that in so far sport constitutes an economic activity, it falls within the scope of the Treaty and sporting practices must comply with the rules contained therein, most notably competition law and internal market freedoms.⁴¹ The

³³ Weatherill, S. 2011. “EU Sports Law: the Effect of the Lisbon Treaty”, p. 1.

³⁴ Case 36/74 *Walrave and Koch v. Union Cycliste Internationale* ECR 1974, 1405.

³⁵ *Bosman*, supra note 11.

³⁶ Case C-519/04 P *David Meca-Medina and Igor Majcen v. Commission* ECR 2006 I-6991.

³⁷ Siekmann, R., Soek, J. 2012. “Lex Sportiva: What is Sports Law”, p. 383-384.

³⁸ Commission White Paper on Sport, supra note 6, p. 13.

³⁹ Weatherill, supra note 33, p. 3.

⁴⁰ *Walrave and Koch*, supra note 34, para. 4. Case 13/76 *Donà v. Mantero* ECR 1976 1333, para. 12. *Bosman*, supra note 11, para. 73. Joined Cases C-51/96 and C-191/97 *Christelle Delière v. Ligue francophone de judo etc.* ECR 2000 I-2549, para. 41. Case C-176/96 *Lehtonen et al v. FRSB* ECR 2000 I-2681, para. 32. *David Meca-Medina and Igor Majcen*, supra note 36, para. 22. Case C-325/08 *Olympique Lyonnaise SASP v. Olivier Bernard and Newcastle UFC* ECR 2010 I-2177, para. 27.

⁴¹ Weatherill, supra note 33, p. 1-2. Siekmann, Soek, et.al. supra note 37, p. 372. Commission White Paper, supra note 6, p. 13.

court has confirmed on several occasions that this is highly relevant when it comes to regulations issued by the governing bodies of football.⁴² The court has also consistently held that “where a sporting activity takes the form of gainful employment or the provision of services for remuneration, which is true of the activities of semi-professional or professional sportsmen, it falls, more specifically, within the scope of Article 45 TFEU”.⁴³ In *Bosman*, the Court commented on the “the difficulty of severing the economic aspects from the sporting aspects of football”.⁴⁴ That is a fair point, since most sporting practices connected to professional sport in general, and perhaps football in particular, has an economic impact.⁴⁵

Another principle from the *Walrave* case was that it exists sporting rules that are “of purely sporting interest and as such has nothing to do with economic activity”.⁴⁶ Over the years, this principle has often been promoted by sport governing bodies but the non-existence of a widespread exemption for “purely sporting rules” should, if not sooner, be clear after *Meca-Medina*.⁴⁷ The court stated that “the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down” and that “if the sporting activity in question falls within the scope of the Treaty, the conditions for engaging in it are then subject to all the obligations which result from the various provisions of the Treaty. It follows that the rules which govern that activity must satisfy the requirements of those provisions, which, in particular, seek to ensure freedom of movement for workers, freedom of establishment, freedom to provide services, or competition”.⁴⁸ Therefore, a practice that is of a sporting nature, or even purely sporting in intent, will be tested against the demands of EU trade law if it exerts economic effects.⁴⁹

Furthermore, it is clear from the case law that rules adopted by sporting associations and federations, both on national and on international level, are subject to EU law even though they are not rules adopted by public authorities.⁵⁰ For example, the Court stated in *Bernard* that “it is settled case law that Article 45 TFEU extends not only to the actions of public authorities but also to rules of any other nature aimed at regulating gainful employment in a collective manner”⁵¹ and in *Meca-Medina*, the Court held that rules established by sport federations “must be limited to what is necessary to ensure the proper conduct of competitive sport”.⁵² The latter formulation has two implications. First of all, it is a confirmation of the

⁴² See e.g. *Donà*, supra note 40. *Bosman*, supra note 35. *Bernard*, supra note 40.

⁴³ See e.g. *Bernard*, supra note 40, para. 28.

⁴⁴ *Bosman*, supra note 11, para. 76.

⁴⁵ *Weatherill*, supra note 33, p. 2.

⁴⁶ *Walrave*, supra note 34, para. 8.

⁴⁷ Whatelet, M. 2007. “Sport Governance and EU Legal Order: Present and Future”, p. 4.

⁴⁸ *Meca-Medina*, supra note 21, paras. 27-28.

⁴⁹ *Weatherill*, supra note 33, p. 4-5.

⁵⁰ Commission Staff Working Document, supra note 6, p. 101.

⁵¹ *Bernard*, supra note 40, para. 30.

⁵² *Meca-Medina*, supra note 36, para. 47.

aforementioned conditional autonomy of sport federations under EU law, but it also highlights the need for a case-by-case examination of the compatibility of sporting practices with the Treaty. In other words, there does not exist a blanket exemption or general guidelines when it comes to applying EU law to sporting rules.⁵³

The Financial Fair Play Rules are part of the licensing system for clubs, which is one of the legal issues regarding the organization of sport. Licensing refers to different criteria established by sports federations or leagues that clubs must adhere to in order to be allowed to participate in competitions. In theory, licensing requirements may amount to a barrier to entry to the market and risk being captured within the scope of Articles 101 and 102 TFEU. There is also a risk that licensing requirements would restrict the right to free movement of players, contained in Article 45 TFEU, if an acquiring club could not recruit new labour due to these requirements.⁵⁴ However, the Commission has stated that it “acknowledges the usefulness of robust licensing systems for professional clubs at European and national levels as a tool for promoting good governance in sport” but also that “such systems must be compatible with competition and internal market provisions and may not go beyond what is necessary for the pursuit of a legitimate objective relating to the proper organization and conduct of sport.”⁵⁵ The Commission has also stated that “In the light of *Meca-Medina*, it appears that a considerable number of organizational sporting rules, namely all those that determine the conditions for professional athletes, teams or clubs to engage in sporting activity as an economic activity, are subject to scrutiny under the antitrust provisions of the Treaty”.⁵⁶ As follows of this reasoning, the Financial Fair Play Rules could potentially be challenged under Article 101 TFEU, Article 102 TFEU and Article 45 TFEU on the grounds that they distort or restrict competition, constitute abuse of a dominant position or restrict the free movement of workers.⁵⁷

In December 2009, when the Lisbon Treaty entered into force, sport was for the first time recognized as an area in which the EU had the authority to intervene.⁵⁸ Article 165 TFEU states that “the Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function”. Even though that is a milestone in the relationship between EU law and sports, the Article is cautiously formulated and is intended for EU to play a subsidiary role compared to the Member states and the governing bodies in sport. It seems to be a common opinion that the introduction of sport into the Lisbon Treaty is unlikely to alter the existing approach to sport taken by the Court and the Commission.⁵⁹

⁵³ Weatherill, *supra* note 33, p. 5.

⁵⁴ Parrish, Garcia, Miettinen, Siekmann, *supra* note 15, p. 33ff.

⁵⁵ Commission White Paper on Sport, *supra* note 6, p. 17.

⁵⁶ Commission Staff working document, *supra* note 6, p. 36.

⁵⁷ Lindholm, *supra* note 13, p. 197-198.

⁵⁸ Siekmann, Soek, *supra* note 37, p. 372.

⁵⁹ Weatherill, *supra* note 33, p. 12. Siekmann, Soek, *supra* note 37, p. 372. Parrish, Garcia, Miettinen, Siekmann, *supra* note 15, p. 61.

3.2 Relevant provisions

As already mentioned, the Financial Fair Play Rules can potentially be challenged under Article 101 TFEU, Article 102 TFEU and Article 45 TFEU.

Article 101(1) TFEU prohibits “all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market”.

Also, according to Article 101(2) TFEU “any agreements or decisions prohibited pursuant to this Article shall be automatically void”.

However, Article 101 (3) TFEU states that “The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 102 TFEU states that “any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.”

According to Article 45 (1) TFEU “Freedom of movement for workers shall be secured within the Union.”

Also, Article 45 (2) TFEU states that “Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.”

3.3 Relevant case law

3.3.1 Sport and competition in case law

One of the reasons that the landmark *Meca-Medina* ruling is so important, is because the Court of Justice of the EU for the first time reasoned on the application of Article 101 TFEU and Article 102 TFEU to organizational sporting rules, while before, the Court had decided cases on the basis of other provisions, such as the free movement of workers.⁶⁰

The case concerned a complaint by two professional long distance swimmers against a doping sanction imposed on them after a failed test. The swimmers challenged the compatibility with Articles 101 TFEU and 102 TFEU of the anti-doping rules adopted by the International Olympic Committee (IOC) and implemented by the swimming governing body Fédération Internationale de Natation Amateur (FINA). The challenge was founded on the accusation that the setting of the prescribed doping limit was a concerted practice between the IOC and the 27 laboratories accredited by it, that the limit was scientifically unfounded and could lead to the exclusion of innocent or merely negligent athletes.⁶¹

The Court stated that engagement in a sporting activity “must be assessed in the light of the Treaty provisions relating to competition, it will be necessary to determine, given the specific requirements of Articles 81 EC and 82 EC (now Articles 101 TFEU and 102 TFEU), whether the rules which govern that activity emanate from an undertaking, whether the latter restricts competition or abuses its dominant position, and whether that restriction or that abuse affects trade between Member States.”⁶²

Furthermore, the Court stated that “Not every agreement between undertakings or every decision of an association of undertakings which restricts the freedom of action of the parties or of one of them necessarily falls within the prohibition laid down in Article 81(1) EC (now Article 101(1) TFEU). For the purposes of application of that provision to a particular case, account must first of all be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects and, more specifically, of its objectives. It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives... and are proportionate to them”.⁶³ This line of reasoning was established in the *Wouters* case.⁶⁴

⁶⁰ Commission Staff working document, supra note 6, p. 35.

⁶¹ Parrish, Garcia, Miettinen, Siekmann, supra note 15, p. 31. Commission Staff working document, supra note 6, p. 64.

⁶² *Meca-Medina*, supra note 36, para. 30.

⁶³ Id., para. 42.

⁶⁴ Case C-309/99 *Wouters v. Algemene Raad van de Nederlandse Order van Advocaten* ECR 2002 I-577, para. 97.

In applying this “Wouters test” to the sporting rules at hand in *Meca-Medina*, the Court concluded that they did not infringe EU competition law, since they had a legitimate objective “to combat doping in order for competitive sport to be conducted fairly” and was “inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes”.⁶⁵ The Court also recognized that the sanctions attached to the anti-doping rules “are capable of producing adverse effects on competition” and that “in order not to be covered by the prohibition laid down in Article 81(1) EC (now Article 101(1) TFEU), the restrictions thus imposed by those rules must be limited to what is necessary to ensure the proper conduct of competitive sport”.⁶⁶ The Court found the rules to be proportionate both in regard to the set threshold for the banned substance and the severity of the sanctions.⁶⁷

In its White Paper on Sport, the Commission explained its methodological approach, based on the ruling in *Meca-Medina*, when it comes to assessing whether a rule relating to the organization of sport and adopted by a sport association infringes Article 101 TFEU and/or Article 102 TFEU.⁶⁸ In evaluating the approach taken by the Commission, it is worth noticing that the White Paper on Sport has met widespread approval in the doctrine.⁶⁹

3.3.2 Sport and free movement of workers in case law

The list of sports cases where the Court of Justice of the EU has applied the provisions of free movement to sporting activities is far more extensive than the one where the Court has applied competition rules. For the purpose of this thesis, only the parts of the rulings that are relevant for the assessment of whether the Financial Fair Play rules are in compliance with EU law will be examined.

The landmark *Bosman* ruling concerned a complaint by a Belgian football player against the international transfer rules and nationality quotas in club competitions, imposed by FIFA and UEFA, due to a failed transfer from a Belgian to a French club. The Court held that Article 45 TFEU “applies to rules laid down by sporting associations such as URBSFA, FIFA or UEFA, which determine the terms on which professional sportsmen can engage in gainful employment.”⁷⁰ Also, the Court stated that “the situation in issue... cannot be classified as purely internal”, since *Bosman* had “entered into a contract of employment with a club in another Member State with a view to exercising gainful employment in that State” and therefore he had

⁶⁵ *Meca-Medina*, supra note 36, paras. 42 and 45.

⁶⁶ *Id.*, para. 47.

⁶⁷ *Id.*, paras. 54 and 55.

⁶⁸ Commission White Paper on Sport, supra note 6, p. 38.

⁶⁹ See e.g. Weatherill, S. ”The White Paper on Sport as an Exercise in ‘Better Regulation’”, p. 8. Parrish, Garcia, Miettinen, Siekmann, supra note 15, p. 12.

⁷⁰ *Bosman*, supra note 11, paras. 90-91.

“accepted an offer of employment actually made, within the meaning of Article 48(3)(a) (now Article 45(3)(a) TFEU).⁷¹

Furthermore, the Court held that “provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement therefore constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned” and that the transfer rules in issue “constitute an obstacle to freedom of movement for workers prohibited in principle by Article 48 (now Article 45 TFEU) of the Treaty” and that “it could only be otherwise if those rules pursued a legitimate aim compatible with the Treaty and were justified by pressing reasons of public interest. But even if that were so, application of those rules would still have to be such as to ensure achievement of the aim in question and not go beyond what is necessary for that purpose.”⁷² These justification grounds follow the line of reasoning in, for example, the ruling in Gebhard, which concerned another fundamental freedom, namely free movement of services.⁷³

In examining the existence of justifications regarding the transfer rules, the Court held that “In view of the considerable social importance of sporting activities and in particular football in the Community, the aims of maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate”.⁷⁴ However, the application of the transfer rules in issue could not be considered adequate means to achieve those aims.⁷⁵ Also, the Court held that “the same aims can be achieved at least as efficiently by other means which do not impede freedom of movement for workers”.⁷⁶ These means included the possibility to “determine by a collective wage agreement specified limits for the salaries to be paid to the players by the clubs” and “redistribution of income”.⁷⁷

Furthermore, in reviewing the existence of justifications regarding the nationality quotas, the Court found that the direct discrimination on grounds of nationality was not in compliance with Article 45 TFEU.⁷⁸ Also, regarding the argument that the nationality quotas were drawn up in collaboration with the Commission, the Court held that “except where such powers are expressly conferred upon it, the Commission may not give guarantees concerning the compatibility of specific practices with the Treaty... In no circumstances does it have the power to authorize practices

⁷¹ Id., para. 87.

⁷² Id., para. 96 and 104.

⁷³ Case C-55/94 *Gebhard v. Consiglio dell’Ordine degli Avvocati e Procuratori di Milano* ECR 1995 I-4165, para. 37.

⁷⁴ *Bosman*, supra note 11, para. 106.

⁷⁵ Id., paras. 106-109.

⁷⁶ Id., para. 110.

⁷⁷ *Bosman*, supra note 11, opinion of Advocate General Lenz, paras. 226-227.

⁷⁸ *Bosman*, supra note 11, para. 129.

which are contrary to the Treaty”.⁷⁹ Thus, the Court ruled that both the transfer rules and the nationality quotas in issue were precluded by Article 45 TFEU.

Other cases regarding the relationship between sport and free movement does not, for the purposes of this thesis, require as in depth review as *Bosman*.

In *Lehtonen*, the Court considered whether transfer rules that were adopted by a basketball federation and which imposed certain restrictions regarding players previously registered in a federation of another country, complied with Article 45 TFEU.⁸⁰ The Court held that “late transfers might be liable to change substantially the sporting strength of one or other team in the course of the championship, thus calling into question ... the proper functioning of the championship as a whole”.⁸¹ The Court concluded that Article 45 TFEU “precludes the application of rules laid down in a Member State by sporting associations which prohibit a basketball club from fielding players from other Member States in matches in the national championship, where they have been transferred after a specified date, if that date is earlier than the date which applies to transfers of players from certain non-member countries, unless objective reasons concerning only sport as such or relating to differences between the position of players from a federation in the European zone and that of players from a federation not in that zone justify such different treatment.”⁸²

In *Deliège*, the Court ruled on the compatibility of a judo association’s rules with the freedom to provide services, found in Article 56 TFEU. The selection rules restricted the number of athletes that could participate in international tournaments, which did not involve national teams competing against each other, and required them to be authorized by their national federations.⁸³

The Court held that “in contrast to the rules applicable to the *Bosman* case, the selection rules at issue...do not determine the conditions governing access to the labour market by professional sportsmen and do not contain nationality clauses” and that “although selection rules...inevitably have the effect of limiting the number of participants in a tournament, such a limitation is inherent in the conduct of an international high-level sports event, which necessarily involves certain selection rules or criteria being adopted. Such rules may not therefore in themselves be regarded as constituting a restriction on the freedom to provide services”.⁸⁴ Thus, selection rules such as the one in issue, “does not in itself, as long as it

⁷⁹ *Id.*, para. 136.

⁸⁰ Commission Staff working document, *supra* note 6, p. 107.

⁸¹ *Lehtonen*, *supra* note 40, para. 54.

⁸² *Id.*, para. 60.

⁸³ *Deliège*, *supra* note 40, para. 22. Commission Staff working document, *supra* note 6, p. 107.

⁸⁴ *Deliège*, *supra* note 40, paras. 61 and 64.

derives from a need inherent in the organisation of such a competition, constitute a restriction on the freedom to provide services”⁸⁵.

In *Bernard*, the first sport-related case after the Lisbon Treaty entered into force, the Court considered whether rules, according to which a “joueur espoir” (a young player employed as a trainee by a professional club under a fixed-term contract) may be ordered to pay damages if, at the end of his training period, he signs a professional contract with a club in another Member State, was precluded by Article 45 TFEU.⁸⁶ The rules regulating the employment of professional football players had the status of a collective agreement and action for damages could be brought against the “joueur espoir”, according to an article of the French Employment code.⁸⁷

After confirming that sport is subject to EU law in so far it constitutes an economic activity and that professional sportsmen are workers within the meaning of Article 45 TFEU, the Court held that rules regulated by collective agreements, as other rules aimed at regulating gainful employment in a collective manner, falls within the scope of Article 45.⁸⁸ Also, the Court reaffirmed the principle established in *Bosman*, that non-discriminatory measures can constitute an obstacle to freedom of movement.⁸⁹ Furthermore, the Court held that “rules, such as those at issue in the main proceedings... are likely to discourage that player from exercising his right of free movement”, that “even though... such rules do not formally prevent the player from signing a professional contract with a club in another Member State, it none the less makes the exercise of that right less attractive” and that, consequently, “those rules are a restriction on freedom of movement for workers guaranteed within the European Union by Article 45 TFEU”.⁹⁰

When examining the justification for restriction of the free movement of workers, the Court applied the same principles as in *Bosman*, which is that the measures constituting a restriction have to pursue a legitimate aim, be suitable to ensure that said objective is attained and proportional.⁹¹ However, the Court added that when considering the suitability and proportionality “account must be taken... of the specific characteristics of sport in general, and football in particular, and of their social and educational function. The relevance of those factors is also corroborated by their being mentioned in the second subparagraph of Article 165(1) TFEU.”⁹²

The Court accepted the objective of encouraging the recruitment and training of young players as legitimate and that the measures were suitable,

⁸⁵ *Id.*, para. 69.

⁸⁶ *Bernard*, supra note 40, para. 17.

⁸⁷ *Id.*, para. 3 and 6.

⁸⁸ *Id.*, paras. 27-32.

⁸⁹ *Id.*, para. 35.

⁹⁰ *Id.*, paras. 35-37.

⁹¹ *Id.*, para. 38.

⁹² *Id.*, para. 40.

since “the prospect of receiving training fees is likely to encourage football clubs to seek new talent and train young players” However, the Court concluded that the measures did not constitute a justified restriction of the free movement of workers, because the liability of players to pay damages, calculated in a way which is unrelated to the actual costs of the training, went beyond what was necessary to obtain the legitimate objective.⁹³

3.3.3 Comments

After examining existing case law, it can hardly be contested that the Court of Justice of the EU continuously has taken account of the special characteristics of sport and enabled sporting activities to receive a sensitive treatment.⁹⁴

The Court has considered justifications for rules that would ordinarily be seen as restrictions of competition or free movement. Justificatory grounds can be found in the Treaty but the Court has also accepted reference to other objective justifications when applying EU law to sporting activities. The justificatory grounds in the Treaty can be found in Article 101 (3) TFEU regarding competition law and in Article 45 (3) and (4) TFEU regarding free movement of workers. The grounds for objective justification cannot be found in the Treaty and are instead established in case law.

In competition law, objective justification can explain why a practice is not a restriction within the meaning of Article 101 TFEU. Following *Meca-Medina*, it is clear that a sporting rule can be objectively justified if it pursues a legitimate objective and its restrictive effects are inherent in the pursuit of that objective and are proportionate to it. In order to be proportional, the sporting rule must be the least restrictive measure. In the free movement provisions on the other hand, objective justification does not mean that the practice does not constitute a restriction within the meaning of these provisions, but that the restriction is justified and thereby compatible with these provisions. After the extensive case law regarding this issue, it is clear that a sporting rule can be objectively justified if it pursues a legitimate objective and is proportional. Naturally, sporting rules must conform to the general principles of EU law, such as proportionality, when they are within the scope of the Treaty. When assessing whether a sporting rule is proportionate in free movement cases, the Court must consider whether the rule is suitable to achieve the legitimate objective and does not go beyond what is necessary to achieve that objective. Also, in order to be proportional, the rule which justifiably restrict free movement must be the least restrictive measure.⁹⁵

⁹³ Id., paras. 46-48 and 50.

⁹⁴ Parrish, Garcia, Miettinen, Siekmann, *supra* note 15, p. 23.

⁹⁵ Id., p. 24-25. Commission White Paper on Sport, *supra* note 6, p. 68. Craig P., de Burca, G., 2008. *EU Law, Text, Cases, and Materials*, p. 545.

This legal model allows for a cohabitation of sporting rules and EU law. Once it has been established that a sporting activity exerts economic effects, it falls within the scope of the Treaty. It is then up to the sport governing body to show why sport is different from other industries and why the rule at issue must be tolerated. Thus, the grounds of justification may very well rely on arguments that are specific to sport.⁹⁶

It follows from the reasoning described above that the sport governing bodies have been granted some space to maneuver when adopting rules. The Court does not call for abandonment of established patterns of sport governance but rather requires adaptation of specific rules not compatible with EU law. The concept of a transfer system was, for example, not ruled incompatible with EU law in *Bosman* and *Bernard*, but those specific transfer systems were. Likewise, in *Meca-Medina*, the specific anti-doping rules at issue were not ruled incompatible with EU law, but rules that are found excessive in regard of the threshold for the banned substance or the severity of the penalties would infringe the competition rules.⁹⁷

Furthermore, it seems clear that Article 165 TFEU is not likely to change the way the Court will rule in relation to sporting activities. In *Bernard*, the Court did open up for giving further weight to sports-related arguments but it mainly used Article 165 TFEU to corroborate its own case law by confirming the legal reasoning in *Bosman*.⁹⁸

Finally, it is also clear that the methodical approach used by the Court when assessing the objective justifications of sport rules in regard to competition law and free movement is similar in many ways. In the “White paper plus”, the Commission use the wording of the *Wouters* test applied in *Meca-Medina* when describing how to assess the compatibility of sport rules to EU law, including free movement of workers.⁹⁹ Also, there has been argued in the doctrine that the findings in *Meca-Medina*, concerning competition, can be transposed to the free movement context, that there is a functional comparability between the inquiries conducted under these provisions or even that the objective justification tests are functionally identical.¹⁰⁰

⁹⁶ Weatherill, *supra* note 33, p. 5. García B., Weatherill, S., 2012. “Engaging With the EU in Order to Minimize its Impact: Sport and the Negotiation of the Treaty of Lisbon”, p. 240.

⁹⁷ Weatherill, S. 2009. ”Article 82 EC and Sporting ’Conflict of Interest’: the Judgement in *Motoe*”, p.5.

⁹⁸ Parrish, Garcia, Miettinen, Siekmann, *supra* note 15, p. 24-25. Commission White Paper on Sport, *supra* note 6, p. 11. Weatherill, *supra* note 33, p. 13.

⁹⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Developing the European Dimension in Sport”, Brussels 18.1.2011, p. 11.

¹⁰⁰ Siekmann, R., 2012. “Introduction to International and European Sports Law”, p. 51. Weatherill, S., 2007. “European Sports Law Collected Papers”, p. 342. Lindholm, *supra* note 13, p. 204.

4 The Financial Fair Play rules and EU law

4.1 The Financial Fair Play rules and Article 101(1) TFEU

It is clear that sport is subject to EU law in so far it constitutes an economic activity, that professional sport constitutes an economic activity and that the rules which govern that activity must satisfy the requirements of all the obligations which result from the various provisions of the Treaty, for example the competition rules. It is also clear that this reasoning applies to rules adopted by sport governing bodies.¹⁰¹

In order to assess whether the Financial Fair Play rules infringes Article 101 TFEU, the aforementioned methodological approach, in line with the reasoning in *Meca-Medina*, that the Commission follows will be applied. However, for educational reasons, the Wouters test determining if the Financial Fair Play rules are justified and thereby fall outside the scope of Article 101 TFEU will have its own subchapter. This is because the applicability of Article 101 TFEU is likely to rest on this test.¹⁰²

First, it needs to be determined whether the sporting association that adopted the rule is an undertaking or an association of undertakings.¹⁰³ It is settled case law that the term undertaking has been given a broad interpretation, including “every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed”. For these purposes, any activity consisting of “offering goods or services on the market” constitutes an economic activity.¹⁰⁴ UEFA, as an international football association consisting of national football associations, is an undertaking when carrying out activities of economic nature itself but may also be referred to as an association of undertakings or an association of associations of undertakings when not carrying out economic activity itself.¹⁰⁵ The Financial Fair Play rules concern football clubs, for which the practice of football is an economic activity and the national football associations are groupings of these football clubs. As UEFA is grouping together the national football association, it will in this case constitute an

¹⁰¹ See e.g. *Meca-Medina*, supra note 36, paras. 22-28.

¹⁰² Parrish, Garcia, Miettinen, Siekmann, et. al. supra note 15, p. 33.

¹⁰³ Commission White Paper on Sport, supra note 6, p. 38. *Meca-Medina*, supra note 36, para. 30.

¹⁰⁴ Commission Staff working document, supra note 6, p. 66, citing Case 41/90 *Klaus Höfner and Fritz Elser v Macroton GmbH* ECR 1991 I-1979, para. 21 and Case 118/85 *Commission v Italy* ECR 1987 2599, para. 7.

¹⁰⁵ Commission Staff working document, supra note 6, p. 66.

association of undertakings within the meaning of Article 101 TFEU.¹⁰⁶ This is also in line with the purpose of including the concept of associations of undertakings in Article 101 TFEU, namely to prevent undertakings from circumventing the competition rules by forming a common body that coordinates their conduct on the market.¹⁰⁷

Next, it needs to be determined if the rule in question restricts competition within the meaning of Article 101 TFEU, that is whether the Financial Fair Play rules have as their object or effect the prevention, restriction or distortion of competition.¹⁰⁸ It can hardly be contested that the Financial Fair Play rules restrict the freedom of action of the European football clubs, since the break-even requirement forces them to live within their means and therefore cannot spend the amount of money that they choose. This may limit club expenditure on player wages and result in increasing profitability of clubs.¹⁰⁹ However, if they fulfill the criteria of the Wouters test, they do not necessarily constitute a restriction of competition incompatible with the common market, within the meaning of Article 101 TFEU.¹¹⁰ This will be closer examined in chapter 4.3.

Thirdly, it needs to be determined if the rule in question affect trade between Member States.¹¹¹ If it does not, the matter remains in the jurisdiction of the relevant Member State. Since the Court has adopted a broad test, the matter commonly ends up within the jurisdiction of the EU. The Court held in *Société Technique Minière* that if it is “possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or of fact that the agreement in question may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States”, the requirement is fulfilled.¹¹² It can hardly be contested that, in restricting the freedom of action of the European football clubs, the Financial Fair Play rules affect trade between Member States. In light of the reasoning in *Bosman*, the Financial Fair Play rules most likely affect trade between Member States actually and directly.¹¹³

It is also worth noticing that the de minimis limitation, according to which an agreement that does not have an appreciable impact on competition or on inter-state trade will not be caught by Article 101 TFEU, is not applicable to the Financial Fair Play rules. This is because in order to be subject to this

¹⁰⁶ See *Meca-Medina*, supra note 36, para. 38. Case T-193/02 *Piau v. Commission* ECR 2005 II-209 (upheld by the ECJ in Case C-171/05P, ECR 2006 I-37), para. 69 and 72. Commission decision of 23 July 2003, Case 37398 Joint selling of the commercial rights of the UEFA Champions League, OJ 2003 L 291/25, para. 106.

¹⁰⁷ Lindholm, supra note 13, p. 199, referencing to *Wouters*, supra note 64, opinion of Advocate General Léger, para. 62.

¹⁰⁸ White Paper on Sport, supra note 6, p. 38. *Meca-Medina*, supra note 36, para. 30.

¹⁰⁹ Geey, supra note 24, para. 33. Peeters, Szymansky, supra note 7, p. 3.

¹¹⁰ See *Meca-Medina*, supra note 36, para. 45.

¹¹¹ Commission White Paper on Sport, supra note 6, p. 38. *Meca-Medina*, supra note 36, para. 30.

¹¹² Craig, de Burca, supra note 95, p. 975, citing Case 56/65 *Société Technique Minière v. Maschinenbau Ulm GmbH* ECR 235, p. 249.

¹¹³ *Bosman*, supra note 11, para. 103.

limitation, the market share held by the parties cannot exceed 10%, while UEFA is the only organizer of professional football in Europe.¹¹⁴

Hence, it is clear that if the Financial Fair Play rules cannot be justified by the criterias of the Wouters test, they will be seen as a restrictive agreement within the meaning of Article 101(1) TFEU. However, they may then be exempted on economic grounds if they fulfill the conditions of Article 101(3) TFEU.¹¹⁵

4.2 The Financial Fair Play rules and Article 45 TFEU

It is established case law that sport is subject to EU law in so far it constitutes an economic activity, that professional football players are workers within the meaning of Article 45 TFEU and that rules aimed at regulating gainful employment in a collective manner falls within the scope of Article 45 TFEU. It is also clear that this reasoning applies to rules adopted by sport governing bodies.¹¹⁶

The Financial Fair Play rules do not discriminate directly or indirectly on grounds of nationality. However, they do constitute an obstacle to the free movement of workers, since they may hinder a club from signing a contract with a player they would have signed a contract with if the rules were not in place.¹¹⁷ In other words, the Financial Fair Play rules would restrict a player's right of free movement if the acquiring club could not recruit new labour due to the these rules.¹¹⁸ In this regard, it needs to be borne in mind that discrimination in so called "wholly internal" situations is not prohibited by Article 45 TFEU, which means that national workers cannot claim rights in their own Member State.¹¹⁹ The Financial Fair Play rules can therefore only be challenged under Article 45 TFEU by a football player who wants to sign a contract with a club situated in another Member State.

Free movement of workers may be restricted on the justificatory grounds found in Article 45(3) TFEU, concerning public policy, public security or public health, and Article 45(4) TFEU, concerning employment in the public service. However, both of these provisions are not applicable in regard to organizational sport rules such as the Financial Fair Play rules.

It is established case law that sporting rules constituting an obstacle to free movement of workers can be objectively justified.¹²⁰ As discussed in

¹¹⁴ Craig, de Burca, supra note 95, p. 976. *Lindholm*, supra note 13, p. 199.

¹¹⁵ Craig, de Burca., supra note 95, p. 24. Commission White Paper on Sport, supra note 6, p. 38.

¹¹⁶ See e.g. *Bernard*, supra note 40, para. 27-30.

¹¹⁷ See *Bosman*, supra note 11, para. 96.

¹¹⁸ Parrish, Garcia, Miettinen, Siekmann, supra note 15, p. 35.

¹¹⁹ Craig, de Burca, et.al. supra note 95, p. 762.

¹²⁰ See *Bernard*, supra note 40, para. 38. *Bosman*, supra note 11, para. 104.

chapter 3.3, the test of objective justification is functionally similar to the Wouters test and therefore they will be applied together for the purposes of this thesis. However, in this regard it has to be borne in mind that infringements of the free movement of workers cannot be justified by considerations of a purely economic nature.¹²¹ This is in line with established case law in regard to the other freedoms under TFEU.¹²²

4.3 Objective justification/the Wouters test

In order to determine whether the Financial Fair Play rules restrict competition within the meaning of Article 101 TFEU, the principles established in Wouters will be applied. The same principles will also apply when determining if the Financial Fair Play rules fulfill the objective justification grounds in relation to Article 45 TFEU, regarding free movement of workers. Determining factors are: the overall context in which the rule was adopted or produces its effects, and its objectives; whether the restrictions caused by the rule are inherent in the pursuit of the objectives; and whether the rule is proportionate in light of the objective pursued.

4.3.1 Legitimate objective

It is obvious from previous chapters that the Court has taken into account some special characteristics of sport when assessing whether sporting rules have legitimate objectives and that it usually relates to the organization and proper conduct of competitive sport.¹²³ However, when also taking into account opinions on the specific nature of sport in decisions by the Commission, its White Paper on Sport, Member State contributions in form of declarations, European Parliaments Reports and statements from sports stakeholder, the meaning of these specific characteristics get more clear. Some examples are “the mutual interdependence of the sports market, the need to ensure solidarity between participants, the need to ensure the regularity and proper functioning of competitions, the need to encourage the training and education of young players, the need to promote stadium attendance and participation at all levels and the need to ensure fairness and the integrity of competition”.¹²⁴

In the so called White paper plus, the Commission stated that “in team sports, club licensing systems offer a valuable tool to ensure the integrity of competitions. They are also an effective way of promoting good governance

¹²¹ Case C-137/04 *Rockler v Försäkringskassan* ECR 2006 I-1441, para. 24.

¹²² Craig, de Burca, et.al. supra note 95. See e.g. Case C-109/04 *Kranemann v Land Nordrhein-Westfalen* ECR 2005 I-2421.

¹²³ Commission White Paper on Sport, supra note 6, p. 38, citing *Meca-Medina*, supra note , paras. 45-46.

¹²⁴ Parrish, Garcia, Miettinen, Siekmann, supra note 15, p. 18-19.

and financial stability. The Commission welcomes the adoption of measures aimed at enhancing financial fair play in European football while recalling that such measures have to respect internal market and competition rules.”¹²⁵

An even stronger statement was recently issued by the Commission and UEFA in the Joint statement on UEFA’s Financial Fair Play rules and the EU State aid Policy, stating for example that the principles underlying the Financial Fair Play rules “could serve...as an effective model for other sports facing similar financial challenges”, that “the “break even” rule reflects a sound economic principle that will encourage greater rationality and discipline in club finances and, in so doing, help to protect the wider interests of football” and that the objectives of the Financial Fair Play rules “are also consistent with the aims and objectives of European Union policy in the field of State Aid.”¹²⁶

Naturally, these statements do not in themselves mean that the Commission considers the Financial Fair Play rules compatible with EU law. However, it does seem that the Commission considers the objectives of the Financial Fair Play rules to be legitimate in the context of organizing a pan-European football competition, at least in regard to the competition provisions in TFEU. Considering that the Court of Justice of the EU has previously given weight to the specific characteristics of sport, it will most likely also consider the objectives of the Financial Fair Play rules as legitimate.

A complication when determining if the objectives of the Financial Fair Play rules pursue a legitimate objective in relation to Article 45 TFEU is that a restriction of the free movement of workers cannot be justified by considerations of a purely economic nature. There is no doubt that some, or even most, of the objectives of the Financial Fair Play rules, are of an economic nature, but as we have seen above, there are a wide range of objectives pursued and depending on which objectives the Court emphasize, they might nevertheless be considered as legitimate.

4.3.2 Inherent

The restrictions caused by a sporting rule must be inherent in the pursuit of its objective. As described above, the Court found the penalties at issue in Meca-Medina to be inherent for the organization and proper conduct of competitive sport and the healthy rivalry of athletes. Also, the Commission has found the prohibition on the ownership of two or several sport clubs/teams competing against each other to be inherent for ensuring the uncertainty of results and maintaining the integrity of the competition. Other examples of inherent rules are the so called “rules of the game”, such as rules determining the number of players on the field.¹²⁷

¹²⁵ Developing the European Dimension in Sport, supra note 99100, p. 12.

¹²⁶ Joint statement, supra note 20, p. 2.

¹²⁷ Commission Staff working document, supra note 6, p. 68.

Regarding the Financial Fair Play rules, it is clear that they limit clubs freedom of action by restricting them from spending. The question is whether such a restriction should be considered inherent in the pursuit of legitimate objectives such as ensuring the integrity of competitions, promoting good governance, safeguarding financial stability of clubs and leagues and encouraging longer term infrastructure investment¹²⁸ when it might be argued that the problem is the overspending by badly run clubs?

This question cannot be answered with great certainty. For example, the restriction caused by the Financial Fair Play rules can hardly be compared to the restrictions caused by the “rules of the game” but a comparison with the anti-doping rules in Meca-Medina may not be unreasonable. Therefore, the conclusion must be that it is possible, but by no means certain, that the Financial Fair Play rules will be considered inherent in the pursuit of its objective. However, since the major downside of the Financial Fair Play rules is that they will significantly reduce competitive balance in football, it might be hard to argue that these rules do not actually manage to fulfill their objectives, since competitive balance is not one of them.

4.3.3 Proportional

Finally, it needs to be determined whether the rule is proportionate in the light of the objective pursued. Once again, Meca-Medina is a relevant example in this regard, as the Court concluded that the threshold of the banned substance was not disproportionate and that the rules did not go beyond what was necessary to ensure the proper conduct of competitive sport.¹²⁹

The most noticeable stage of the proportionality inquiry is to determine whether the rules at issue are necessary in order to achieve the legitimate objectives, or if there are less restrictive alternatives available. In this regard it has been argued that neither empirical evidence nor theoretical research supports the need for regulation in form of the Financial Fair Play rules in order for the European football clubs to stop engaging in the destructive behavior of overspending, since the empirical evidence is inconclusive and the theoretical research is unclear in some key parts, such as what drives fan interest.¹³⁰ However, these observations were made before the UEFA licensing regulations demanded the clubs to comply with the Financial Fair Play rules and either way, such findings cannot be seen as conclusive evidence that the Financial Fair Play rules are not necessary. Likewise, the improvement in certain economic categories of the economy of the football clubs since the Financial Fair Play rules were implemented cannot, at least yet, be seen as conclusive evidence that the Financial Fair Play rules are necessary.

¹²⁸ Geey, supra note 24 June 2011, para. 39.

¹²⁹ Commission Staff working document, supra note 6, p. 69.

¹³⁰ Lindholm, supra note 13, p. 205-208.

As for determining whether the Financial Fair Play rules are the least restrictive measure available, there are several other cost control measures or other measures that need to be considered. These include for example absolute salary caps, luxury taxes, reducing club compensation and revenue sharing.¹³¹

The introduction of luxury taxes on transfer fees in European Football has actually been promoted in a recent independent study on transfers in sport that was published by the Commission. However, the study also supports the Financial Fair Play rules.¹³² In regard to introducing a luxury tax as a less restrictive measure than the Financial Fair Play rules in the context of pan-European football competitions it does seem highly questionable whether the legitimate objectives the Financial Fair Play rules pursue would be achieved. Luxury taxes aim to increase competitive balance and research show that they succeed in that aim at the price of increased total salary payments.¹³³ Also, luxury taxes do not stop clubs from excessive spending, it just makes it more expensive.

As for absolute salary caps, they are more restrictive than luxury taxes but they also seem more likely to achieve the legitimate objectives of the Financial Fair Play rules, even though their main objective is competitive balance. Research has shown that under certain circumstances, mainly where fans have a high preference for competitive balance, they may have a positive impact on competitive balance, club profits and social welfare. However, there is also stated in the same research that “the labor relations approach employed by the hermetic American major leagues is not feasible within the European association-governed pyramid” considering the market heterogeneity and stakeholder diversity of European Football, and that “the only workable solution in the European context seems to be a percentage-of-revenue payroll cap”.¹³⁴ In the context of cost control measures relating to a pan-European club competition, this seems like a valid point.

Another suggested alternative is to reduce the compensation for clubs participating in club competitions with the purpose of decreasing the incentive for clubs to overinvest in order to qualify for said competition. While this could be a reasonable action in itself, it is not remotely close to achieving the legitimate objectives of the Financial Fair Play rules.

As for revenue sharing, research show that it enhances competitive balance since the small-market club will increase its investment level relatively more than the large-market club.¹³⁵ As with the action of reducing club

¹³¹ See e.g. Lindholm, *supra* note 13, p. 209-211.

¹³² The Economic and Legal Aspects of Transfers of Players, January, 2013.

¹³³ See e.g. Dietl, Lang, Werner, *supra* note 16, p. 2-3.

¹³⁴ Dietl, H., Fort, R., Lang, M., 2011. “International Sports League Comparisons”, p. 16-17.

¹³⁵ *Id.*, p. 13.

compensation, this measure does not by itself achieve the legitimate objectives of the Financial Fair Play rules.

Also, it is so far too early to comment on the proportionality of the sanctions accompanying the Financial Fair Play rules. However, it is clear that the CFCB has an extensive range of possible sanctions to choose from and that the members of adjudicatory chamber should be competent to choose proportionate sanctions for potential breaches of the Financial Fair play rules, since it has two former judges of the Court of Justice of the EU amongst its members.

The conclusions of the examinations carried out in this subchapter should not be held as absolute truths as it reflects the writers own opinion on the issues at hand and it is possible that the Court would adopt a different view. This is in line with the case-by-case approach promoted by the Court in *Meca-Medina* and a pre-condition for the writer being able to examine the proportionality of the Financial Fair Play rules.

Also, it is worth noticing that even though the Court is unlikely to base its judgment on Article 165 TFEU, the Court did suggest in *Bernard* that the specific features of sport, some of which are listed in Article 165 TFEU, might affect its interpretation of the suitability and necessity of the rules.¹³⁶

4.4 Justification under Article 101(3) TFEU

If a sport rule is found to be restrictive under Article 101(1) TFEU, it may still be justified and gain exemption under Article 101(3) TFEU. Such a justification is most likely to apply where a rule cannot be considered inherent in the organization or proper conduct of sport, and hence cannot be justified by the *Wouters* test, but the beneficial effects of a rule outweigh its restrictive effects. Following the Commission's decision in the UEFA Champions League case¹³⁷, it is likely that the grounds for exempting a sport rule must be located within the exemption criteria contained in Article 101(3) TFEU. Thus, the reference to the 'specific nature of sport' contained within Article 165 TFEU should not be taken into account.¹³⁸ The four conditions set out in Article 101(3) TFEU are cumulative, which means that the all need to be fulfilled in order for an exemption to be granted.¹³⁹

First, the restrictive agreement must produce some efficiency gains, such as cost savings.¹⁴⁰ This condition seems to be fulfilled by the Financial Fair Play rules, since they should be cost cutting.

¹³⁶ Parrish, Garcia, Miettinen, Siekmann, *supra* note 15, p. 24-25 and 35.

¹³⁷ Decision 2003/778 OJ 2003 L291/25.

¹³⁸ Commission Staff working document, *supra* note 6, p. 69. Parrish, Garcia, Miettinen, Siekmann, *supra* note 15, p. 29 and 33.

¹³⁹ Craig, de Burca, *supra* note 95, p. 977.

¹⁴⁰ *Id.*, p. 977.

Next, consumers must receive a fair share of the resulting benefit, meaning that consumers must at least be compensated for any actual or likely negative impact caused to them by the restriction of competition.¹⁴¹ In determining if the Financial Fair Play rules fulfill this condition, it could first of all be questioned if these rules will cause any negative impact for the consumers? In regard to the economic effects, the answer is most likely no. However, it seems clear that the Financial Fair Play rules will reduce the competitive balance in European Football.¹⁴² Yet, it is also possible that consumers will not suffer in longer term as it reduces the risk of clubs living beyond their means and enter administration. This would also mean that consumers will not have to bail clubs out economically.

Thirdly, both the restrictive agreement and the individual restrictions that flow from the agreement needs to be reasonably necessary in order to achieve the efficiencies and the restriction must be indispensable to the agreement's objectives.¹⁴³ In other words, it is a test of proportionality.¹⁴⁴ It has been argued in the doctrine whether UEFA has a strong case or not in this regard.¹⁴⁵ Also, in this thesis, the issue has been addressed in chapter 4.3.3.

Finally, the agreement should not lead to the elimination of competition in respect of a substantial part of the products in question.¹⁴⁶ The Financial Fair Play rules should fulfill this condition as they do not result in elimination of competition.

4.5 The Financial Fair Play rules and Article 102 TFEU

For the purposes of applying Article 102 TFEU, it is necessary to define the relevant market, to decide whether the undertaking is dominant within that market, to determine whether it has abused its dominant position and to decide if there are any defenses available. Also, in assessing if an undertaking has abused its dominant position, it must be determined whether it has conducted any of the practices mentioned in Article 102 TFEU but also if it has conducted exploitation practices harmful to consumers and anti-competitive practices harmful to competitors.¹⁴⁷

¹⁴¹ Id., p. 977-978.

¹⁴² Peeters, Szymansky, supra note 7, p. 7. M Sass, supra note 26, p. 10. Storm, Nielsen, supra note 28, p. 196.

¹⁴³ Craig, de Burca, supra note 95, p. 976 and 978.

¹⁴⁴ Geey, supra note 24, para. 43. Parrish, Garcia, Miettinen, Siekmann, supra note 15, p. 24.

¹⁴⁵ See e.g. Geey, supra note 24, para. 43. Lindholm, supra note 13, p. 208-211.

¹⁴⁶ Craig, de Burca, supra note 95, p. 979.

¹⁴⁷ Id., p. 1005 and 1019.

As explained above, UEFA groups members and therefore constitute an undertaking within the meaning of Article 102 TFEU.¹⁴⁸ Also, UEFA is the only organizer of professional football in Europe and are therefore dominant on that market.¹⁴⁹ However, by adopting the Financial Fair Play rules, UEFA has not conducted any of the practices mentioned above, since they do not harm neither consumers, nor competitors. Therefore, the Financial Fair Play rules are not prohibited by Article 102 TFEU.

¹⁴⁸ Commission Staff working document, *supra* note 6, p. 67.

¹⁴⁹ Lindholm, *supra* note 13, p. 201.

5 Concluding remarks

Analyzing whether the Financial Fair Play rules are compatible with EU law is hard, since the lawfulness of rules issued by sport governing bodies need to be examined on a case by case basis and the special characteristics of sport needs to be taken into account. For example, it is in the nature of proportionality tests that the outcome of it includes some degree of uncertainty. One should therefore be vary of drawing definite conclusions in these matters.

However, my assessment is that the Financial Fair Play rules are compatible with EU law. I believe that they would pass the Wouters test and thereby they would not constitute a restriction within the meaning of Article 101(1) TFEU. If that is not the case, I still believe that they would have a good chance of gaining exemption under Article 101(3) TFEU. Furthermore, the Financial Fair Play rules are not prohibited by Article 102 TFEU. Since I believe that the Financial Fair Play rules would pass the Wouters test, I also believe that they would meet the objective justification grounds regarding free movement of workers and therefore be compatible with Article 45 TFEU on the same merits. If that is not the case, the possibility of justification would be exhausted and the Financial Fair Play rules would be deemed incompatible with Article 45 TFEU.

Although the compatibility of the Financial Fair Play rules with EU law is a fascinating topic, it should also be borne in mind that a precondition for them being tried in Court is that they are actually being challenged. Considering that the process of drafting the rules has been conciliatory, that major stakeholders have been involved in the process all the way and that the rules seem to enjoy a wide support from stakeholders, one might think that the rules would not be challenged in the near future. However, just because you support the rules in theory it does not mean that you will not take action if you feel aggrieved by them. By the reasons stated above, I think it would be a bigger threat to the Financial Fair Play rules if a player decides to challenge them than if a clubs decides to do the same.

The title of this thesis refers to the serious economic situation that the European football clubs are in right now but also to the ruling that arguably shocked the governing bodies of football the most, namely the Bosman case. Considering the effort and prestige that UEFA has put into the Financial Fair Play rules, it would be a major setback for them to if they have to abolish the rules. In this sense, it feels assuring that UEFA apparently has had continuous talk with the Commission, resulting in, for example, their joint statement.

To summarize this thesis, I do believe that the Financial Fair Play rules are compatible with EU law but that it is problematic that they supposedly will not promote competitive balance. In that respect, I consider it a natural

follow up question how the rules can be complemented with other measures in order to achieve competitive balance, while still safeguarding the open European model with, for example, promotion and relegation?

Supplement A

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Supplement B

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