

UEFA and Financial Fair Play: AC Milan under the microscope and a discussion of the 2018 amendments to the Club Licensing and Financial Fair Play Regulations

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UEFA's Club Financial Control Body today issued its decision regarding AC Milan's infringements of the Club Licensing and Financial Fair Play Regulations (hereinafter referred to as "The Regulations"). The Club was excluded from participating in the next UEFA club competition for which it would otherwise qualify in the next two (2) seasons (i.e. **one** competition in 2018/19 or 2019/20, subject to qualification). This decision may be appealed to the Court of Arbitration for Sport (CAS), in accordance with Article 34(2) of the Procedural rules governing the UEFA Club Financial Control Body, as well as Articles 62 and 63 of the UEFA Statutes.

The AC Milan Case

The Italian Club has been closely watched by UEFA since they were acquired by Chinese investor, Li Yonghong, through his investment company, Rossoneri Sport, in April 2017. In the summer transfer window following this AC Milan spent more than €200m on a number of players. UEFA's concerns surrounded compliance with the "break-even" element of the Regulations, and the Club's ability to repay loans, which were taken out to finance the purchase of the Club. An American hedge fund, Elliot Management, is reported to have loaned the Club in excess of €300m, which must be repaid by October 2018, together with more than €40m of interest. The Club is attempting to recover from years of losses incurred when it was under the ownership of Fininvest, an Italian investment company ultimately owned by the family of former Prime Minister, Silvio Berlusconi. Following concerns raised by UEFA about the Club's financial situation, the Club had requested to enter into a voluntary settlement agreement but this was refused by the European governing body due to ongoing concerns raised about their finances. UEFA advised that they would continue to monitor the club and assess the situation in early 2018.

Following assessment, UEFA confirmed in May 2018 that: *"After careful examination of all the documentation and explanations provided by the club, the CFCB Investigatory Chamber considers that the circumstances of the case do not allow the conclusion of a settlement agreement. In particular, the investigatory chamber is of the opinion that, among other factors, there remains uncertainties in relation to the refinancing of the loan and the notes to be paid back in October 2018."* As such, the Investigatory Chamber referred the Italian Club to the Adjudicatory Chamber of the Club Financial Control Body (CFCB) for breach of the Regulations.

UEFA's Regulations relating to Financial Fair Play (FFP) were introduced in Season 2012/13 and apply to clubs who wish to participate in UEFA competitions. The Regulations aim to promote and improve the standard of all aspects of football in Europe and improve the economic and financial capability of clubs, increasing their transparency and credibility. Clubs are encouraged to operate on the basis of their own revenues and to spend responsibly for the long-term benefit of football. Of all the provisions contained within the Regulations, none have attracted such debate as the break-even requirement. This requirement states that clubs should have an overall break-even surplus in the monitoring period, with the monitoring period defined as the year of assessment

("T") and the preceding two years ("T-1" and "T-2"). A surplus is defined as the excess of relevant income over relevant expenses. If instead expenses are greater than income and a break-even deficit is generated, a deviation of €5mio will be tolerated. Furthermore, an excess of €30mio will be tolerated if the excess is covered by a shareholder contribution (not a shareholder loan).

The Galatasaray Case

In 2016, Galatasaray attempted to challenge the Regulations (in particular the break-even rule) at the Court of Arbitration for Sport (CAS) on the basis that the rules infringed EU law and the sanction imposed (exclusion from UEFA Club competitions for which they would otherwise qualify for the next two seasons) was disproportionate. However, CAS dismissed the claim in its entirety. In relation to the complaint regarding compatibility with EU law, the CAS Panel held that the club had not demonstrated that the provisions restricted competition. Further, the Panel confirmed that even if the club had demonstrated that the Regulations had an anti-competitive effect, their objectives and in particular the provisions relating to Financial Fair Play were legitimate. Any restrictions imposed by the Regulations were inherent to the achievement of the objectives. The Panel noted that the Regulations allowed for mitigating factors to be taken into account by the CFCB, when reviewing a case, and considered that this ensured that restrictions would be proportionate to the individual case circumstances. The Panel therefore dismissed the Club's claim that the Regulations infringed EU law.

The Panel did not consider that the Regulations were contrary to EU Law, the Club argued that the sanction imposed by the CFCB was disproportionate as the Club's "mitigating factors" failed to be taken into account when rendering the final decision. The Club asked the Panel to pay attention to external factors which affected the finances of the Club and its ability to meet the objectives set forth by the Settlement Agreement: namely, the Syrian refugee crisis, the terrorist attacks in Turkey, the Turkish major match-fixing scandal, the introduction of the so-called *Passolig* electronic ticketing system in Turkey, the exchange rate and interest rate fluctuations and the national economic downturn in Turkey. The Club advised that the disciplinary measure imposed was disproportionate and the financial consequences of exclusion from the Champions League alone would result in a significant financial loss. Such a loss would prevent the Club from future compliance with Financial Fair Play requirements. However, the Panel considered that the sanction imposed on the Club was not disproportionate on the basis that it was imposed as a sanction for a second offence. After its first breach, the Club had the benefit of a second chance through the conclusion of a settlement agreement.

The Club first avoided sanctions and benefited from the settlement agreement, the purpose of which is to provide an opportunity to allow compliance by clubs with UEFA's FFP Regulations, in view of their indication that they could and were willing to do so if provided with the extra time, under the conditions mutually agreed. However, despite this second chance the Panel noted that the Club failed to comply and thus had to bear the consequences thereof. The Panel considered that the Club was the "architect of its own failure" and that exclusions from UEFA competitions were consistent with the principle of equal treatment and fair competition, as it protected clubs who adhered to the Regulations. The CAS Panel therefore dismissed the proportionality argument of the club. The full case decision can be accessed [here](#).

It should be noted that in the case of AC Milan, the Club was not afforded the opportunity to enter into any settlement agreement as UEFA raised concerns following examination of all documentation and explanations in relation to the breaches of the Regulations. Instead, UEFA's CFCB has issued the same exclusion as was imposed upon Galatasaray after the Turkish club had failed to adhere to its settlement agreement. If AC Milan were to appeal the decision of UEFA to CAS, it will be interesting to note the CAS's stance given their comments with regard to settlement agreements and second chances as noted above.

Changes to the Regulations

UEFA's Regulations are periodically reviewed to identify weaknesses and improve upon the existing provisions and as such in 2018, new measures and requirements were introduced for competition cycle, 2019-2022 (they were amended previously in 2015, following their initial implementation in 2012). The 2018 regulations can be accessed [here](#). The new measures introduced aim to address improved transparency, harmonisation of accounting operations, the reduction of the assessment time gap and two new debt indicators in relation to sustainable debt and player transfers, the infringement of either being considered a breach of the break-even requirement.

Transparency

In terms of transparency under Article 47bis, the club must publish on its website or the website of the licensor, the total amount paid in the latest reporting period to or for the benefit of agents/intermediaries and the last audited annual financial information assessed by the licensor.

Harmonisation of accounting principles

This new principle is designed to address differences in the accounting treatments applied by some clubs with respect to certain transactions. The provisions are designed to protect from differing accounting standards as well as different interpretations and applications of those standards. The accounts must be prepared in accordance with the accounting standards of the relevant jurisdiction, or International Financial Reporting Standards (IFRS). In addition, UEFA have given clear prescriptive illustrations within the guidelines contained within the Regulations at Annex VII (B-F) to assist in the interpretation of specific transactions. This Annex includes commentary on consolidation requirements; the permanent transfer of a player's registration and the temporary transfer of a player's registration; specific expenses items and specific revenue items.

Reduction of the assessment time gap

As of competition cycle 2018-2022, there will be a shift towards *a priori* assessment whereby clubs will be assessed to take into account current transactions. The break-even requirements with the monitoring periods of T, T-1, T-2 will still be paramount, but these new Regulations require that any clubs considered to be in breach of sustainable debt and/or player transfer debt indicators must prove compliance with projected break-even reporting periods of T+1, T and T-1 ie. For season 2018/19: 2019, 2018 and 2017.

Player transfer balance

Under the new regulations, the Club must report player transfer balances (deficits) that are greater than €100m in any registration period that ends during that licence season. The player transfer balance in respect of a registration period is calculated as the net of: (1) the aggregate costs of acquiring each player's registration in respect of all new and existing player registrations, being all such costs paid and/or payable, and (2) the aggregate proceeds of transferring-out a player's registration, being all such proceeds received and/or receivable (net of any direct costs of disposal). If the aggregate of the costs incurred exceeds the aggregate of the proceeds generated in a registration period, then the club is considered to have a player transfer deficit.

Sustainable debt

The new regulations impose greater scrutiny on a Club's debt position with a shift towards the importance of creating value in the long-term. Under the new Regulations, a club will be in breach of the indicator if at the end of reporting period T-1, its relevant debt is greater than €30 million and it is greater than 7 times the average of the relevant earnings of T-1 and T-2. With regard to reporting period T (the current season), the club will be considered to be in breach of the sustainable debt indicator if at the end of reporting period T, the relevant debt is greater than €30 million and it is greater than 7 times the average of the relevant earnings of T, T1 and T-2.

Conclusion

The positive impact that the introduction of the Regulations in 2012 has had on European clubs (over 700 in total) cannot be denied. UEFA has reported an 80% reduction on aggregated net losses with a significant increase in net equity whilst the number of overdue payables owed by clubs has also reduced. The overall objective set by UEFA in its implementation of the Regulations was to improve the economic and financial capability of clubs whilst protecting the long-term viability and sustainability of European club football and in turn, improving all aspects of football across Europe. The Regulations have resulted in a significant improvement in club profitability with some of the highest operating profits on record, reported in recent years.¹

The impact of the new amendments, however, will surely be felt by clubs across Europe with their finances scrutinised more closely than ever, not just by the governing body but by the public, as a whole, thanks to provisions under Article 47bis. That said, at a time of growing concern regarding intermediary fees, the further scrutiny and publication of these fees will likely be welcomed by a large proportion of the football industry. Turning to individual player transfers, the introduction of the player transfer indicator is likely to have one of the biggest impacts on football clubs as their expenditure becomes open to scrutiny by UEFA for the first time immediately after the transfer window closes, whilst the implementation of key accounting requirements for specific football transactions is designed (but yet to prove effective) to prevent creative accounting practices that circumvent the rules.

AC Milan will now be feeling the effects of UEFA's FFP sanctions and we wait in anticipation of any likely CAS appeal as well as any clarification in the jurisprudence.

¹http://www.uefa.com/MultimediaFiles/Download/uefaorg/FinancialFairPlay/02/55/20/17/2552017_DOWNLOAD.pdf