Financial fair play: a tool to rationalise clubs' financial management?

Definition and objectives

The excessive and recurring debt of many of Europe's top football clubs led UEFA to create the Financial Fair Play system, which was implemented in two stages. From 2011 onwards, clubs had to meet their transfer and staff payment obligations. From 2013, they had to balance their books. Financial fair play is intended to be a more effective way of regulating the European football economy and to restore clubs' economic credibility - rather than the licencing system introduced by UEFA in 2004 - with an assessment based on five criteria: sporting, infrastructural, personnel, legal and financial.

The (ambitious) objectives of financial fair play are to introduce more rigour and rationality into club finances, curb inflationary trends in high salaries and transfer fees, encourage clubs to avoid debt and to prioritise investment in infrastructure, thus restoring fair competition between clubs distorted by excessive indebtedness, while protecting their medium and long-term viability.

For example, clubs participating in the Champions League and Europa League must comply with these new rules: their expenses may not exceed their income for the year by more than 5 million euros. However, accumulated losses from the previous three seasons can be up to €30 million as long as they are covered by shareholders. Stadium investments and training expenses are excluded from the calculation of the financial result. Failure to comply with these measures can result in a series of sanctions, ranging from a warning, a fine, deduction of points from the league table, withdrawal of a title, withholding of revenue, and a ban on entering new players in European competitions.

Financial Fair Play has contributed to more serious, transparent, and uniform management of the clubs, as well as to a consequent improvement in their accounts. The aggregate losses of the 718 European clubs belonging to UEFA's 54 national leagues have gradually decreased - 1.67 billion euros in 2011, - 792 million euros in 2013, - 269 million in 2016. Then cumulative profits appear +579 million in 2017 and +140 million in 2018. This turnaround is also due to the revenue growth in the five major leagues over the same period. The clubs have better calibrated their spending on wages and wage bills to the level of their income. This may reassure operators who in the past have been reluctant to invest in a loss-making economy.

Reviews

Investigations in 2018, by the European Investigative Collaborations consortium revealed, via "Football Leaks", the methods by which some clubs circumvented financial fair play. These techniques include the artificial overvaluation of partnership contracts with subsidiaries of companies belonging to the club's owner and the outsourcing of certain expenses for players' image rights to parallel companies dependent on the club's owner. This form of "financial doping" practiced by many clubs in Europe constitutes a manipulation that alters the integrity of competitions [Schubert and Hamil, 2018].

Moreover, financial fair play focuses on the clubs’ deficits and not on their debts. This means that some big clubs with a lot of debt but no deficit are not sanctioned. Other clubs, which spend more than they earn in recruiting talent without having any financial problems because they are owned by very rich states (PSG with Qatar and Manchester City with Abu Dhabi), are regularly subject to disciplinary proceedings by UEFA. The preservation of competitive balance is put forward as a justification for limiting the investments of certain clubs, which would otherwise have the means to grow.

Financial fair play has had no positive effect on the fairness of the competition. On the contrary, it has increased inequalities within European competitions. The gap in attractiveness between the championships has widened to the benefit of those where the 'historic' elite of clubs are represented (England, Germany, Spain, Italy, France). Furthermore, financial fair play has contributed to an even greater imbalance in competition, since its rules have frozen the positions in favour of clubs that have secured revenues or benefited from advantages (debt forgiveness, asset contributions) and that can invest without any contribution from their shareholders [Peeters and Szymanski, 2014].

Real Madrid's spending can reach €750 million, the club's total income per season, while Standard Liege's investments are capped at €60 million, its annual budget. A real barrier to entry thus prevents certain clubs from investing to progress, and this barrier has the same consequence: to produce the same European elite, with protection for the top clubs that have been able to build brands in the absence of any previous regulation.

The result is that the Champions League looks increasingly like a closed league with the presence, season after season, of the same teams from the quarterfinals onwards, constituting, in fact, an oligopoly - contrary to European competition law - of clubs that are rentiers of historical revenues: Real Madrid, FC Barcelona, Bayern

Munich, Manchester United, Liverpool and Juventus Turin. [Petit, 2014].

In the seven years prior to the full implementation of Financial Fair Play (2006/2007 to 2012/2013), 6 different clubs won the European title: Barcelona twice and Chelsea, Manchester United, AC Milan, Inter Milan, Bayern Munich once each. In the following seven seasons (2013/2014 to 2019/2020), only 4 clubs have had access to the final victory: Real Madrid four times, FC Barcelona, Liverpool, Bayern Munich once each.

In the Champions League, before or after financial fair play, the same clubs continue to dominate, the novelty being a greater concentration of titles in favour of a smaller number of teams. The limitation of investments leads to an 'ossification' of the European competition market. It hinders - or even prohibits - the least active clubs from investing to catch up [Rabu, 2016].

Uncertain legal security

The restrictions on investment by clubs and the lack of concrete results in reducing the inequalities between historically hegemonic clubs and new entrants, the latter being keen to compete with them while having limited entrepreneurial freedom, are indications of infringements of European law. By allowing clubs to be excluded from certain competitions based on the way they are financed, UEFA's regulations may not be in line with the principles of free competition. Indeed, a club's economic model, its investment strategy, its presence in an economic market or the arrival of potential investors may be called into question by such a sanction for non-compliance with financial fair play [Puy-Monbrun, 2019].

Legal action has been taken by various economic actors (clubs, leagues, sports agents), who have complained of multiple violations of the freedom of enterprise and the free movement of workers and services. According to its critics, financial fair play is a concerted limitation of investments by UEFA, i.e., collusion of interests, likely to harm fairness of professional competitions governed by competition law: Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits illegal agreements and Article 102 prohibits abuses of dominant positions.

The revision of Financial Fair Play in 2018 can be seen as another form of limiting the freedom to invest of clubs willing to recruit massively and quickly to create additional revenues and win titles (such as PSG or Manchester City). Indeed, a new indicator relating to the balance of transfers during a season has been integrated to ensure that a club does not exceed a deficit of more than 100 million euros between purchases and sales of players. If this rule had existed in 2017, PSG, which incurred €420 million in transfer spending that year

(Neymar and Kylian Mbappé), would have had to pay compensation to the tune of €320 million through the sale of numerous players.

If the objectives pursued by financial fair play were considered sufficiently legitimate to justify such infringements of those principles, the measure decided by UEFA would still have to satisfy the requirement of proportionality, that is to say, it would have to be the least restrictive means of achieving those objectives. It should be remembered that the Court of Justice of the European Union may consider a rule which infringes European law to be compatible with it on the twofold condition that the rule pursues a legitimate objective and that it is necessary and proportionate for the attainment of that objective.

Beyond the question of the legality of financial fair play, which is still pending, the major problem for UEFA is its inability to investigate the complex legal and financial arrangements of wealthy clubs and to prove their possible violations of the rules it has laid down. In this respect, the annulment in July 2020, by the Court of Arbitration for Sport (CAS) of Manchester City's exclusion from all European competitions for two seasons illustrates the powerlessness of European football's highest body.

The CAS decision was not based on the incompatibility of financial fair play with European competition law, but on the lack of evidence of the facts alleged against the English club. In this case, Manchester City was suspected of having disguised sources of financing through its owners (the Abu Dhabi royal family) by passing them off as sponsorship, with the assistance of companies dependent on the Emirati owner. The aim was to spend 1.6 billion euros on the transfer market over ten years to improve their competitiveness. There is no doubt that this CAS ruling will further weaken the regulatory power of financial fair play!

Perspectives

Some of the solutions for reducing inequalities between leagues and between clubs lie in financial fair play, but also, and above all, in the methods of access to European cups and the distribution of income from these competitions. Successive reforms of the Champions League have always given new competitive advantages to clubs that have already reached a certain level of economic and sporting development: by offering half of the qualifying places to teams from England, Spain, Germany and Italy, and sharing out the commercial rights in a way that is increasingly favourable to these big clubs.

It is true that the effectiveness of this virtuous circle between investments, sporting results and income is greatly compromised by financial fair play, which hinders the development of new entrants

by limiting their spending [Palo Mino, 2015]. This ultimately alters the quality of the marketed product by reducing the uncertainty of the outcome. UEFA could correct these negative effects by changing the criteria for participation in competitions and the way revenues are distributed in a more egalitarian way. The risk, of course, is that the big 'historic' clubs, who largely benefit from the status quo, will leave UEFA's fold and create a private, closed Super League in which they would be shareholders - based on the North American model.

Several other proposals can be made to reduce some of the drawbacks of financial fair play: an authorisation of overspending under the condition of a pre-guarantee (on equity) with a continuation of the limitation of debt financing; a salary cap setting a limit for the wage bill; a luxury tax sanctioning any overspending and redistributed to improve competitive balance; tax harmonisation within Europe to ensure better equity between clubs participating in the same competitions while being subject to very diverse levels of taxation. However, the feasibility and effectiveness of these measures, as well as their compliance with European competition rules, remain to be seen.

The effects of the health crisis linked to the pandemic that emerged in 2020 have further weakened financial fair play. According to a report published by UEFA on 21 May 2021, the decline in revenue of the 55 national leagues under the authority of European football's governing body will amount to 8.7 billion euros for the 2019-2020 and 2020-2021 seasons. As a result, UEFA has decided to relax its requirements by excluding the national leagues from the financial review of the losses incurred by Covid-19 (ticketing, hospitality, merchandising). New arrangements offering clubs more flexibility are being considered for the following seasons. It goes without saying that the European Club Association and UEFA are in a constant battle for influence over their content.

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