

The UEFA Financial Fair Play Rules: A Difficult Balancing Act

Daniel Geey, Solicitor in the Sports Group at Field Fisher Waterhouse LLP

The aim of this article is to set out the rationale for the new UEFA Financial Fair Play Rules (FFPRs), examine what the provisions state and offer a conclusion about their significance. The article will illustrate that there are a number of criteria and exceptions which clubs can use to their advantage. There will also be an explanation regarding the amortisation of transfer fees and how such accounting practices will affect clubs wishing to break-even in order to qualify for UEFA club competitions.

Keywords: Football, law, regulations, UEFA, finance, debt, break-even, revenue, costs

Background

UEFA and its president Michele Platini have long been concerned that clubs who continually make losses are not playing by the rules of fair competition. The Premier League, and in particular, its chief executive Richard Scudamore have been wary of lessening the global attractiveness of its competition by curbing the ability of owners to subsidise their clubs. Mr Scudamore in fact recently gave the FFPRs his approval. He interestingly likened the rules to a ‘soft’ wage cap due to the fact that transfers and wages were a clubs biggest expense.

See http://news.bbc.co.uk/sport1/hi/football/eng_prem/9364531.stm

UEFA has implemented, as part of its already functioning club licensing system, the FFPRs to ensure a club in the longer term, more or less, has to break even. UEFA’s overall aim for the FFPRs is for its affiliated football clubs to balance their books, not spend more than they earn and promote investment in their stadia and training facility infrastructure and youth development. This idea of self-sustainability relates to UEFA’s underlying belief that transfer fee and wage inflation continues unabated because each set of new club owners inject more money into the European football club market. This ‘keeping up with the Jones’s effect’ spirals further because a new owner then has to outbid other high spending clubs.

Although the players are earning ever more lucrative salaries, the clubs (through their representative ECA body) have been seeking ways in conjunction with UEFA to actually

limit their own spending. This may seem rather ironic in the case of Chelsea for example, given their £120m loss in 2004 but it actually makes perfect sense; Mr Abramovich, after spending over £700m, sees the fallacy of football clubs constantly outdoing one another. The very clubs that are being restricted by these rules are the ones that have actively participated in, and consented to, the proposals. Clubs are asking UEFA to save them from themselves. UEFA, along with the various interest groups have, put forward proposals in order to create a deflationary effect across UEFA affiliated national football associations.

The Basics

It should be borne in mind that the new FFPR only relate to Champions League and Europa League, and not to domestic league, participation. Each club that believes it can qualify for that season's European competitions must prior to the beginning of that season apply for a UEFA Club Licence. From the 2013-14 season, the licence stipulations will include adherence to the FFPRs. Until the 2013-14 season there are no sanctions for breaching the FFPRs.

The FFPRs will therefore start to bite from the 2013-14 season. The rules need to be borne in mind from however from the 2011-12 season onwards because the 2011-12 and 2012-13 accounts will be used to determine a club's license application in the 2013-14 season.

The rules also encourage investment in youth development and infrastructure. Such infrastructure includes stadium and training ground development and expenditure in a club's academy. Any club has the incentive to spend in these areas, should they wish to participate in European competition, because the FFPRs do not count such investment as expenditure as part of its break-even calculation. The greater the commercial revenue growth funded by long term infrastructure investment the larger the revenue to balance against expenditure.

UEFA has also been at great pains to stress that they are not anti-debt. With clubs like Manchester United's huge reported debt, Mr Platini placated various clubs with the distinction that so long as the debt is being serviced (i.e. profit is covering interest payments) UEFA does not have a problem. Issues become more delicate when interest payments to service the debt do not cover the profit made. Prior to the latest Liverpool FC takeover, its latest accounts showed that the club's trading profit of £27.4m fell somewhat short of the £40.1m required to service the interest payments due.

Acceptable Deviation = Break Even (ish)

Usually break-even means expenditure must equal revenue. Not in this case; at least at the outset of these rules. This is because included in the break-even calculations are the acceptable deviation provisions. Clubs will not have to actually break even until 2018/19 season at the earliest.

The revenue that is taken into account for break even purposes includes gate receipts, broadcasting rights, commercial sponsorship details and profit on player transfers. Expenditure includes player transfers, wages and associated costs and other operating expenses. There are also anti-evasion mechanisms like arms length trading and related party transaction requirements which are discussed in more detail below.

The acceptable deviation provisions allow a club with some losses over a certain number of seasons to 'break even' and therefore pass the FFPR. Without trying to get too technical, below is a table that I have amended slightly from an excellent blog (<http://swissramble.blogspot.com/2010/05/uefa-say-fair-play-to-arsenal.html>) on the FFPRs.

Acceptable Deviation Levels						
Monitoring Period	Number of Years	Years Included			Acceptable Deviation (€m)	
		T-2	T-1	T	Equity Investment	Non Equity Investment
2013-14	2	N/A	2011-12	2012-13	45	5
2014-15	3	2011-12	2012-13	2013-14	45	5
2015-16	3	2012-13	2013-14	2014-15	30	5
2016-17	3	2013-14	2014-15	2015-16	30	5
2017-18	3	2014-15	2015-16	2016-17	30	5
2018-19	3	2015-16	2016-17	2017-18	<30	5

In taking the first row as an example, the rules come into force in the 2013-14 season (the first monitoring period). The reason why this is important is because, in the first monitoring period, two years worth of accounts are used to assess whether a particular club can successfully apply for its UEFA Club License. Therefore a club's accounts for years 2011-12 and 2012-13 are used to determine the license application. This is crucial because the present 2010-11 season accounts are not taken into account (with the

exception of the amortised annual transfer fee write-downs noted in each club's annual accounts- see the amortisation section below for more detail on this point).

The table shows that the acceptable deviations (i.e. losses) vary quite considerably. From the first 2013/14 monitoring period, an owner can invest up to €45m over two seasons in exchange for more shares in the club. It means an owner can after the 2013-14 season on average only exchange €15m worth of cash for shares each year to spend on transfers and wages etc. That figure is reduced to €10m per season (€30m over three seasons) for the 2015-16 season. If an owner does not put any money into a club by way of cash for shares, each club's acceptable loss (by reference to the last column in the table) is a mere €5m over three years.

Indeed, the FFPRs may signal the end of the mega transfer because a club may simply not be able to afford a £50m transfer and then breakeven. This is of course unless a club makes large commercial profits which very few clubs across Europe achieve (see <http://news.bbc.co.uk/1/hi/business/8535297.stm>). Otherwise, from the 2011-12 season onwards a club would have to make windfall revenues from their commercial activities (or sell another top player) to afford a marquee signing like Torres to balance the books. It may however be possible to take a loan to fund a large transfer so long as the interest repayments do not send a club into the red. This has not stopped the recent Chelsea January 2011 transfer window purchases which will be assessed in more detail below.

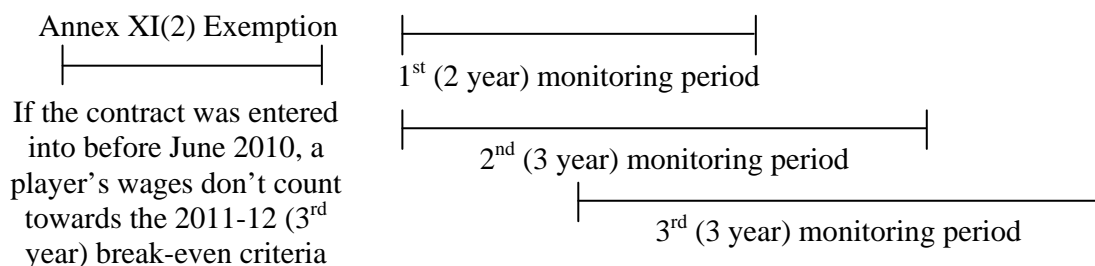
Amortisation

Some commentators have argued that clubs can circumvent the rules by going on a transfer shopping spree until the first accounting period (2011-12) kicks in, so that they are compliant in time for the first monitoring period (2013-14). The logic being that as the shopping spree would be booked in a club's 2010-11 accounts the transfer splurge would have no effect on clubs wanting to adhere to the FFPRs. This would appear not to be the case. This is because of how a club values its players in its accounts. Very simply put "*when a player is purchased, his cost is capitalised on the balance sheet and is written-down (amortised) over the length of his contract.*" See <http://swissramble.blogspot.com/2010/10/how-manchester-city-could-break-even.html>.

This basic conclusion is that even a transfer that occurs in the 2009-10 season can have an impact on a club trying to breakeven in the first monitoring period (in 2013-14). As you will see from below, the amortisation of the transfer fee lasts for the length of the contract and may then be included in calculating a club's FFPR break-even position. Below is a working example of how a club can amortise a player's value over the length of their contract.

A player signs in January 2010 for a transfer fee of £10 million on a 5 year deal worth £5 million per year in wages. Thus the transfer fee in the club's accounts will show the amortised amount of £2 million each year for 5 years. See the below table.

	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year	6 th Year
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Transfer Fee (£)	2m	2m	2m	2m	2m	-
Wages (£)	5m	5m	5m	5m	5m	- zero if contract not renewed



The 2010 transfer has an effect (if, for example, the transfer is booked in the 2009-2010 accounts) in five seasons worth of accounts (with the third, fourth and fifth years being included within FFPRs monitoring period). Thus even though the transfer occurred prior to the FFPR accounting period, the transfer will have consequences for future years' accounts because of the way the transfer was amortised.

Therefore, it appears as Andrea Traverso, the Head of Club Licensing and Financial Fair Play at UEFA, explained:

“transfers now will impact on the break-even results of the financial years ending 2012 and 2013 – the first financial years to be assessed under the break-even rule.”

See http://swissramble.blogspot.com/2011/02/chelseas-financial-fair-play-challenge.html?utm_source=BP_recent

The other interesting amortisation issue is the accounting procedure if a player gets transferred. On this topic I defer again to the Swiss Ramble who uses the ex-Manchester City player Robinho as an example.

“[H]e was bought for £32.5 million in September 2008 on a four-year contract, so annual amortisation was £8.1 million. He was sold after two years, so cumulative amortisation was £16.2 million, leaving a value of £16.3m in the books. Sale price to Milan is reported as £18 million, so City will report a profit on sale of £1.7 million in the 2010/11 accounts. Therefore, City will show an annual profit improvement of £18.1 million after this deal: £8.3 million lower wages + £8.1 million lower amortisation + £1.7 million profit on sale.” See <http://swissramble.blogspot.com/2010/10/how-manchester-city-could-break-even.html>

This demonstrates how clubs write-off the transfer value of a player over the life-time of their contract and also interestingly illuminates that because Robinho was worth £16.3m two years into his four year deal, Manchester City made an accounting profit on his transfer of £1.7m. Fans would see the sale of a player for £18m bought two years previously for £32.5m as bad business. The club in their accounts will class it as a £18.1m profit improvement.

One Early Loophole

Neatly tucked away in the last provision of the final annex of the rules is an avenue for clubs applying for a UEFA license to remove some of its wage expenditure from the break-even calculation. Annex XI(2) states that for applications for the first two monitoring periods (the 2013/14 and 2014/15 seasons) if *“the break-even deficit... exceeds the acceptable deviation”* provisions, a club will not be sanctioned so long as it:

- *“reports a positive trend in the annual break-even results”* ; and
- *“the aggregate break-even deficit is only due to the annual break-even deficit of the reporting period ending in 2012... to contracts with players undertaken prior to 1 June 2010”*

Therefore even if a club fails to meet the standard deviation target in the first two monitoring periods when applying for a UEFA license, the club can remove all wage costs from their 2011-12 accounts for players whose contracts were already in place prior to 1 June 2010. Additionally, it appears contract renegotiations after 1 June 2010 for an existing contracted player would be classed as a new contract for the purposes of this provision (see Annex XI(2)(ii).

With the FFPRs first monitoring period being the 2013-14 season, this loophole will only be available to clubs whose players entered into a contract before 1 June 2010 with that club and

whose contract had not subsequently been renegotiated or extended prior to 1 June 2010. Thus only clubs with players on relatively long term contracts entered into before 1 June 2010 will be able to benefit from the rule. See the below table for a few examples. Each of the examples bar 'Player E' is eligible for Annex XI qualification because the contract covers the 2011-12 season.

Player	Date Signed	Length of Contract (in years)	Expiry of Contract	Eligible for Annex XI qualification?
A	June 2009	5	June 2014	Yes
B	June 2009	4	June 2013	Yes
C	June 2009	3	June 2012	Yes
D	May 2010	5	May 2015	Yes
E	July 2010	5	July 2015	No as the contract was signed after the 1 June 2010 deadline

This leads to a number of avenues open to clubs to use this provision to their advantage. This rule would appear to include the wages of a player that has left the club but had a valid contract with the club during the 2011-12 season. Presumably, the club applying for the UEFA license would be able to include the cost of such wages in the Annex XI calculation. Similarly, what if a contract extension is negotiated in July 2012 from an original contract entered into in January 2010 (i.e. prior to the 1 June 2010 cut-off). Can the cost of the original (January 2010) contract, because it was negotiated prior to 1 June 2010 and covers the 2011-12 season, be included in the Annex XI calculation? The answer would appear to be yes.

This author's understanding of Annex XI is that it will provide to clubs the temporary benefit of postponing sanctions for the first two years of the FFPRs. This is because the 2011-12 season accounts are included in:

- the first monitoring period (the two year period 11-12 and 12-13); and

- the second monitoring period (the three year period 11-12, 12-12 and 13-14).

This will give clubs some breathing space to deduct such wage costs from their bottom line in order to fulfil the Annex XI criteria.

Andrea Traverso, of UEFA recently stated:

“should a club be in breach [of the FFPRs break-even requirements] and they are able to prove that the breach is exclusively due to salaries for players under contract before 1 June 2010, and they can also show an improvement trend in their accounts, they will not be sanctioned.”

(See <http://www.sportingintelligence.com/2011/02/01/revealed-why-chelsea-dont-fear-uefa-ffp-rules-wages-dont-count-for-first-two-years-010205/>)

Such a provision demonstrates that UEFA is giving clubs every chance to adhere to the rules, though some may argue that such a regulation merely fudges the break-even test further. Either way it will be possible for a club applying for a UEFA license in the first and second monitoring periods to fall significantly outside of the standard deviation provisions but still obtain a UEFA license.

An Outline Competition Law Assessment: Are the FFPRs Anti-Competitive?

A number of people have asked this author whether the FFPRs could be challenged as illegal under a number of avenues; one being competition law. As a competition lawyer, this author thought it appropriate to briefly outline some of the risks and justifications from a competition law perspective. Clubs if they are refused their UEFA license meaning they cannot participate in the Champions League for example may decide to challenge the legality of the FFPRs. Set out below is an outline analysis of whether the FFPRs could be challenged under competition law grounds, by who and whether UEFA could provide enough resolute justifications.

The FFPRs are for ease of reference assessed here in relation to Article 101 of the TFEU (though in the domestic courts, national competition rules would usually apply). A challenge to the rules would be likely to occur in the form of a complaint to the European Commission, a national competition authority or a civil action in the domestic courts. Presumably, an aggrieved club could make complainant representations to the European Commission or national competition regulator once the UEFA appeals procedures had been exhausted. The European Commission could then initiate an investigation. Note that Article 66 of the Disciplinary Regulations states that any appeal is final, which would suggest that no other civil court proceedings could be commenced.

It should also be noted that club X who finishes one place below Champions League qualification club Y may become an interested party and complain to UEFA if it believes that UEFA should have refused club Y a license because it was in breach of the FFPRs. Ian Ayre, the Liverpool Managing Director, commented recently that:

"These rules should be rules and should be hard and fast. What will kill the initiative, or certainly stifle it, is people easing themselves into it rather than the rules applying and everyone operating within them. The rules should be clearly defined, you cannot have a half-rule process."

See <http://www.independent.co.uk/sport/football/european/uefa-to-close-loopholes-if-clubs-dodge-financial-rules-2257699.html#>

Reading between the lines, some clubs who feel confident of passing the FFPRs could seek recourse to the courts if the UEFA appeals process does not deliver the desired outcome and the rules are not consistently applied.

Without delving into the detailed law governing the correct forum for any such dispute, it is necessary to point out that UEFA regulations stipulate that recourse to the courts is prohibited. It gives jurisdiction to the Court of Arbitration for Sport (CAS) to arbitrate on conflicts to the "exclusion of any ordinary court" (Article 60 of the UEFA Statutes http://www.uefa.com/MultimediaFiles/Download/Regulations/uefaorg/General/01/47/69/97/1476997_DOWNLOAD.pdf). Therefore UEFA has the power to initiate disciplinary proceedings against a UEFA affiliated club if it begins national court proceedings. Suffice to say that if a club still decides (after probably incurring the wrath of UEFA) to use competition law to challenge the FFPRs it is worthwhile to remind readers that Article 101(1) outlaws:

"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" and specifically "(b) limit or control production, markets, technical development, or investment;"

In order to play out the scenario, should a club challenge the legality of the FFPRs and pass all the potential domestic and/or EU requisite standing requirements it would then have to prove that the FFPRs restriction fell within Article 101(1) by probably arguing that the rules have the object or effect of restricting the ability of a club owner to spend whatever they chose i.e. the autonomy of what a club owner can do is restricted. The club challenging the rules would have to argue that Article 101(1) (or its domestic equivalent) is engaged. UEFA would argue that the FFPRs either:

- do not fall within the Article 101(1) restriction in the first place (see for example *Wouters v Algemene Raad van de Nederlandse Orde van Advocaten (C309/99)*); or that
- the agreement can be exempted under Article 101(3) (see for example provision 7 in *2003/778/EC: Commission Decision of 23 July 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP / C.2-37.398 - Joint selling of the commercial rights of the UEFA Champions League)*).

Article 101(3) states that:

"The provisions of paragraph 1 may, however, be declared inapplicable [if the restriction] 1. contributes to improving the production or distribution of goods or to promoting technical or economic progress, while 2. allowing consumers a fair share of the resulting benefit, and which does not: 3. impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; or 4. afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question."

Therefore, if the challenging club gets over the first hurdle of engaging Article 101(1), which is by no means a *fait-de-compli*, UEFA would argue that Article 101(3) applies and that even if the FFPRs were deemed anti-competitive that the four 101(3) tests would be satisfied and the FFPRs could therefore be exempted.

From a practical perspective, such an investigation would take time and in the case of a club whose license had been rejected in advance of next seasons Champions League participation, it would be extremely unlikely that a European Commission investigation or court case could be concluded in time for participation in that years competition. A club could perhaps decide to seek declaratory relief in court proceedings as the basis for re-instatement into the UEFA competition.

UEFA would stress that the process of drafting the rules has been conciliatory, the European Club Association (the ECA) has been engaged in every step of the way and that any clubs who had substantive concerns should have voiced their displeasure at the more formative stages. This author's understanding of the consultation process with UEFA and the ECA is that a number concessions were made (i.e. the Annex XI provisions, the staggered standard deviation approach and the removal of all infrastructure and youth development costs from the break-even calculation). This author is yet to hear of any club claiming that the FFPRs are illegal. Indeed UEFA would no doubt argue that if clubs have not yet criticised the rules and/or questioned their legality, why only challenge the rules when the club has breached them and are facing sanction?

The general argument would be that a club cannot use competition law as a weapon when that same club has tacitly accepted the rules of the game and, more so been active in the very formulation of the rules. In addition UEFA would also contend that the FFPRs do not limit investment at all. On the contrary they incentivise investment in long term projects like youth development or stadium construction over shorter term investment on transfer fees and wages.

An aggrieved club however may argue that there is an indirect investment restriction because in order to break even (or reach the acceptable deviation point) clubs can only spend what they earn. They are thus indirectly constrained by their own cost base. To counter this, UEFA would use such arguments that a benefactor could buy a club and invest heavily on infrastructure, youth development and other FFPRs exempt costs. Whilst this does restrict the autonomy of what an owner can do, UEFA would point to the restrictions having the pro-competitive benefits of:

- ensuring the integrity of competitions;
- promoting good governance;
- safeguarding financial stability of clubs and leagues; and
- encouraging longer term infrastructure investment.

Additionally, it is worthwhile pointing out that the rules only apply to clubs in UEFA competitions. In a previous article, in relation to third party player ownership, this author stated that in relation to multiple club ownership:

“CAS decided in the ENIC case that the rule prohibiting one company owning more than one club competing in the same UEFA club competition was proportionate. This was because, among other reasons, it still allowed an entity to purchase more than one European club. The prohibition was that two commonly owned clubs could not compete in the same competition. CAS explained that the UEFA rule was proportionate because there was not an absolute prohibition on a company’s ability to buy two European football clubs. It just meant both could not play in the same European competition.”

See <http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume7/number2/geey/#a10>

It would appear the same kind of logic may apply to the current situation in that clubs can effectively spend what they want whilst playing in domestic competitions (subject to national association rules). UEFA is only regulating entry into its competitions and there are a variety of other national competitions that a club can participate in which are not subject to UEFA’s FFPRs.

Therefore UEFA would state that its rules are not all encompassing. Indeed, any club that qualifies can choose whether it wants to apply for a license for participation in European competitions. Needless to say, the challenging club would argue that if you want to be a top club Champions League revenue is vital and therefore re-occurring qualification into the Champions League is imperative to maintain revenues and compete at the top of the national league.

It is on this proportionality ground (number 3 of Article 101(3)) that this author believes UEFA may have strong reasons for arguing it has not gone beyond what is necessary for securing the objective of financial fair play. UEFA would however have to set out appropriate reasons for why the regulations would pass the other three tests that make up Article 101(3) gateway. In reality many of the arguments may overlap.

The European Commission recently gave its tentative approval to the FFPR by stating:

"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."

See http://ec.europa.eu/sport/news/doc/communication/communication_en.pdf Conclusion

Rather unhelpfully however such a comment was so heavily caveated that the statement is of little practical use. Being in favour of the FFPRs subject to EU law offers little guidance on the European Commission's thinking as to the practical legalities of the regulations.

It was recently confirmed to this author by Andrea Traverso of UEFA that UEFA has had a series of consultations with the European Commission to ensure that the rules complied with EU law. Presumably the European Commission would have wanted UEFA to explain the various reasons (i.e. defences) to demonstrate why:

- the FFPRs would not fall under Article 101(1) but if they did; that
- there were enough substantive justifications to ensure that they are covered by the Article 101(3) exemption.

It is not surprising that UEFA has had detailed discussions with the European Commission to ensure that there are robust legal arguments underpinning the FFPRs. So whilst this section can only speculate as to the challenges that face the FFPRs in the future, it is clear that UEFA has done much behind the scenes to engage with clubs and the regulators alike.

Related Party Transactions

In Annex X (E) of the FFPRs reference is made to “*related party transactions and fair value of related party transactions.*” The specific provisions of this rule are to ensure that owners of clubs are not able to artificially inflate a club’s revenues in order to bolster the chances of passing the FFPRs by providing the club with a massive sponsorship deal from one of the owners other company’s. In many instances it could be particularly difficult to measure concepts of fair value for an asset or a discharged liability but UEFA is keen to ensure that few loopholes are available. Annex X(E.7) states:

“A related party transaction may, or may not, have taken place at fair value... An arrangement or a transaction is deemed to be ‘not transacted on an arm’s length basis’ if it has been entered into on terms more favourable to either party to the arrangement than would have been obtained if there had been no related party relationship.”

Therefore UEFA will need to assess the counter-factual position should question marks be raised over a particular transaction. The devil is obviously in the detail but issues over how revenue can be correctly valued may become a particularly thorny issue. In order to investigate a shirt sponsorship deal to assess fair value it would be necessary for UEFA to use comparatives to identify whether a particular deal is extraordinary in any particular way. In using a rather blunt example, should an entity with a relationship to Premier League club X who has Champions League aspirations enter into £50m per season in shirt sponsorship deal with Club X UEFA would almost certainly study the top shirt deals in the Premier League and see that the largest deal is around £20m per season. FFPRs alarm bells would start ringing rather loudly. UEFA would then have to assess the true value of the contract for the purposes of the FFPRs calculations.

Chelsea January 2011 Transfer Window Spending

It did not go unnoticed that on the same day that Chelsea announced £71m losses it spent an almost identical amount in transfer fees on David Luiz and Fernando Torres (see <http://www.bbc.co.uk/news/business-12330303>). Many commentators believed that such expenditure would put Chelsea in real trouble of passing the FFPRs standard deviation provisions. However chief executive Ron Gourlay of Chelsea, recently stated:

“[t]he club is in a strong position to meet the challenges of Uefa financial fair-play initiatives which will be relevant to the financial statements to be released in early 2013”.

See <http://www.telegraph.co.uk/sport/football/competitions/premier-league/8297380/Chelsea-and-Manchester-City-confident-they-will-meet-Uefa-financial-fair-play-rules.html>

Indeed, when taking into account Chelsea spending on youth development and infrastructure which can be deducted as a cost from the FFPRs, wage reductions from high earners like

Carvalho, Ballack, Deco and Joe Cole who left the club, profits on transfers and deductions on Annex XI wages for contracts entered into pre-June 2010, it starts to become apparent that it may well be possible for Chelsea to make a 'standard' accounting loss in the next few years but still receive a UEFA license to participate in the Champions League. For a more in-depth assessment of where Chelsea may commercialise their revenues further to break-even see http://swissramble.blogspot.com/2011/02/chelseas-financial-fair-play-challenge.html?utm_source=BP_recent

Sanctions

The Club Financial Control Panel will conduct club audits to ensure that the system is applied correctly. If the Panel believes that the FFPR have not been fulfilled, it can refer the case to the UEFA Organs for Administration of Justice with the ultimate sanction being a ban from UEFA competitions. The UEFA Disciplinary Regulations do provide for a whole host of possible sanctions including a reprimand, a fine, disqualification from competitions in progress and/or exclusion from future competitions or withdrawal of a licence.

UEFA's general secretary, Gianni Infantino, has recently stated *"There may be intermediate measures. We would have to ask why, maybe there would be a warning, but we would bar clubs in breach of the rules from playing in the Champions League or the Europa League. Otherwise, we lose all credibility."*

It should be borne in mind that Real Mallorca were refused entry into the 2010/11 season's Europa League because they failed to meet the UEFA Club Licensing entry criteria. Such an instance does illustrate the powers UEFA has to refuse a club license application. When the FFPRs are added to the license criteria in time for the 2013-14 season, the rules will be stricter than those that applied to Real Mallorca. A future high profile UEFA refusal of a club license application should not however be ruled out.

Consequences for Clubs and Conclusion

It could be argued that the FFPRs are an effective barrier to entry for mid level teams. It therefore entrenches the top clubs who are able to receive Champions League money and commercialise their rights more effectively leading to more revenue to off-set their cost base against. The flip side to this is that if clubs do not wish to play in UEFA competitions, they can spend whatever they want (so long as there are no domestic FFPRs that are put in place). Indeed, a club strategy may be to invest heavily in transfer fees and wages knowing that they will not pass the FFPRs on the basis that finishing top of the Premier League is more lucrative than participation in the Champions League. Most clubs would try and do both. Players may

also be less likely to be attracted to clubs who are not able to participate in European competition.

Additionally, the FFPRs may actually have a distortive effect on domestic leagues. Whilst the clubs wishing to participate in UEFA club competitions will have to ensure they adhere to the FFPRs, the remaining teams will not be under such an obligation. Therefore a club owner of a mid table team may have a competitive advantage over a team in the Champions League for domestic competitions because there is a looser financial straightjacket being imposed on his club.

It appears that the FFPRs will not stop a benefactor wishing to spend and inject capital into a club. It does however stop an owner spending if they want to play in UEFA competitions. It means that:

- equity injections must be restricted to the standard deviation limits;
- spending is encouraged on youth development and stadium infrastructure (i.e. long term ventures); whilst
- clubs are dis-incentivised from shelling out large sums on short term transfers and wages.

It ultimately means that the avenues for instant success will be narrowed which may well have the effect of encouraging more organic football club investment and growth.

Daniel Geey is a solicitor at Field Fisher Waterhouse LLP in London and advises football clubs and entities wishing to invest in the football industry, specifically in relation to ownership criteria, director responsibilities, conflicts of interest, multiple club ownership and third-party player ownership.

Please feel free to contact Daniel at Daniel.geey@ffw.com. His direct dial is +44 207 861 4335.

Daniel is also the editor of On the Ball which is a collection of football related legal articles. <http://www.ffw.com/pdf/On-the-ball-Issue-2.pdf>