

## Comparative approach to the National Financial Controls of Clubs

### SPAIN

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After the events that occurred this past summer, specifically the demotion of *Real Murcia* and the non-registration of *Pedro LEÓN* as player of *Getafe FC*<sup>46</sup>, standards of economic and financial control introduced by the Spanish Professional Football League (LFP) have come to the fore. For many people (especially the fans of the affected clubs), it can be understood as an illegitimate intrusion of the LFP in the internal management of clubs, but we must not forget that the LFP is nothing more than the assembly of the clubs that participate in the first and second division and therefore they are the ones who have decided to implement those control measures to prevent situations such as *Real Zaragoza*, *RC Deportivo La Coruña*, *Rayo Vallecano*, *Valladolid*, etc. where the overhang ended with the well-known declaration of bankruptcy.

#### Background

Following the adoption of UEFA's rules of economic control in May 2010, all major European leagues have taken a step forward in terms of Financial Fair Play, this fact is recognized by the LFP itself in the Preamble of the "Regulation for economic control of the Clubs and Sports Companies affiliated with the National Football League" (hereafter the Regulations) in its 2013 edition.

The current will of the of football family is that (exceptions aside) football clubs do not live beyond their means in their eagerness to compete and in case they do not reach their sportive (and thus financial) goals, to avoid to have the whole structure run down like a house of cards.

An example of the application of these "new" regulations with UEFA was the *Málaga FC* case, where after a long procedure that finished with a Court of arbitration for sports (CAS) award, the club was sanctioned by a EUR 5,000,000 debt with the Spanish tax authorities and was excluded from participating in the next UEFA clubs competition for which it would otherwise have qualified, in the next four seasons (*i.e.* 2013/14, 2014/15, 2015/16, 2016/17). In addition, *Málaga* would have been excluded from a subsequent UEFA competition for which it would otherwise qualify (in the next four seasons) if it did not prove, by 31 March 2013, that it had no overdue payables towards other football clubs or towards employees and/or social/tax authorities. In the end, the latter sanction was not imposed, but like *Málaga*, many other cases in Europe have ended with similar sanctions. For example, *Hajduk Split*, *Rapid Bucharest*, *Dinamo Bucharest*, *Partizan Belgrade*, etc. have been sanctioned for violating articles 49 and 50 of the UEFA Licensing Regulations and Financial Fair Play, which establish the prohibition for clubs to have debts towards employees, tax authorities and/or clubs before the previous 31 December. More recently, big clubs like *Manchester City* or *Paris Saint-Germain* have been forced to conclude agreements with the UEFA Financial Control Body to prevent similar sanctions for

exceeding their financing limits on advertising.

Following the 1990 Spanish Sports Act that grants the Professional Leagues with the competence for tutelary, control and monitoring of their members' finances -after some modifications that started in 2011- in May 2013 the LFP approved the current Regulations for Financial Control of Clubs in the Spanish National League of Professional Football. It provided that it will enter in force at the end of the 2013/14season.

#### Aim of the Regulations

The aim of the regulations is to establish the appropriate mechanisms to supervise and control the financial situation of the Spanish football clubs in order to protect both the clubs and their creditors, including tax authorities, employees and other clubs maintaining the Financial Fair Play policies established by UEFA. Of course, the regulations also stipulate the sanctions that shall be imposed on clubs who decide to breach the rules on Financial Fair Play.

In order to accomplish this goal, the LFP decided that to execute the competences granted by the regulations, there shall be a specific intern unit called "*Comité de Control Económico*" -in English: Economic Control Committee (hereinafter the Committee), and an external second instance under the competence of the second instance for UEFA's License Committee of the Spanish Football Federation (hereinafter the Second Instance) that will decide on the appeals issued against the

<sup>46</sup> See Football Legal # 2, p.XX



decisions rendered by the Committee.

### **The economic control Committee**

The Committee is composed of 5 main members and 5 substitutes. None of them can be or have been part of any club member of the LFP, or have or have had any kind of relationship with them. At least 3 of them have to be economists or auditors, 2 of them Law Graduates, and all of them must have at least 5 years of professional expertise.

Its powers are: to supervise and control the exact fulfilment of the obligations established by the Regulations, verify the documents presented by the clubs, establish corrective measures in case of risk detection and supervise their implementation, and impose the disciplinary sanctions provided in the Regulations.

## **>> The process to obtain the Certificate begins with the presentation by the clubs of the documentation**

### **Financial control Regulations**

The Regulations on Financial Control establish the existence of another member of the structure: the Head of the Economic Control Department, whose competences cover the analysis of the documents issued by the LFP's Members, and the supervision of the Annual Audit that the clubs shall present at the end of each season. His most important role is to initiate the process to certify the degree of compliance of every club member of the LFP and render the final Certificate. The latter is binding in order to prove the fulfilment of the

requisites established in the Regulations, and may be rendered with three different contents: positive, negative and positive with recommendations, depending on the articles breached by the club.

The process to obtain the Certificate begins with the presentation by the clubs of the documentation established by the Regulations, which includes annual accounts, financial statements, etc. These documents are revised and analysed by the Head of the Economic Control Department, who sends his conclusions to the Committee. Once it is approved, the Committee authorizes the Head of the Department to issue the Certificate of compliance.

### **Concrete rules and standards**

In line with the UEFA Financial Fair Play Regulations, there are two levels of debt importance, a main one, whose violation leads to disciplinary consequences for the club, and a secondary one that allows the club to obtain a positive certificate even if it does not strictly accomplish the requisites.

The first and most important level of debts includes the debts towards (art. 16 to 18) other clubs, employees and authorities. In order to fulfil this requisite, every club has to certify that it has no overdue payables (as defined in Annex II) towards employees, public authorities, or other football clubs with regards to transfer activities that occurred prior to the previous 31 December, regardless if they are members of the LFP or not.

To certify this, every club will have to provide the Committee with:

- A certificate of nonexistence of debts towards any other football clubs regarding transfer activities that occurred prior to the previous 31 December and a list of all the transfers (buy and sell operation) it took part in until the previous

31 December even those where there is no pending amount;

- A certificate of nonexistence of debts towards employees, and where applicable, a list with the information regarding any debt that may exist towards any employees, including an explanation of the specific circumstances of such debt;

- A certificate of nonexistence of debts towards any public authority. In cases of a deferred payment agreed with the corresponding public authority, the club shall present a copy of the agreement concluded.

At this point and to avoid cases like the *Málaga* case, the LFP Regulations establish that in order to prove the nonexistence of debts towards the public authorities, the deferred payment has to be requested at least before the previous 31 December and if not, the agreement has to be concluded before the date of presentation of the documents to request the LFP's Certificate of Compliance. If the clubs fail to comply, the agreement will not be taken into account for the analysis.

The second level (art. 20 to 23) includes certain indicators such as the Balance Point defined in Annex I of the Regulations as *"the difference between the relevant income and relevant expenses, adjusted for the quantified qualifications in the auditor's report"*. It is to be monitored for four years periods, T being the year the documentation is being presented until T-4. The accepted deviation of the balance point is of EUR 5 million in the first division and EUR 2 million in the second division, notwithstanding that higher deviations can be accepted if they are completely covered by contributions from shareholders. In those cases, the Regulations establish the following maximum deviations:

- EUR 45 million from 2011-12 season until 2014-15 season, both included;



- EUR 30 million for the 4-year period ending in seasons 2015-16, 2016-17 and 2017-18;

- For the following years, the amount will be updated in a decreasing progression.

In this respect, the relevant incomes are considered:

- Ticket revenues;
- Publicity;
- TV rights;
- Commercial activities;
- Merchandising;
- Transfer operations;
- Real Estate operations;
- Financial revenues;
- Etc.

The relevant expenses are considered:

- Purchase of equipment;
- Salaries;
- Financial expenses;
- Youth team development expenses;
- Social activities expenses;
- Transfer operations.

The second indicator is the first team salaries' ratio, which is expected to be maintained under 50% of the relevant incomes for every season.

The last one is the ratio of net debt in relation to relevant income. It is considered indicative of a possible situation of future financial economic imbalance when the net debt on 30 June of each sports season exceeds 100% of the relevant income of the entity that season.

The noncompliance of the requisites included in any of the two aforementioned levels will force the club to present a proposal of corrective measures, notwithstanding that the Committee, through the Head of the Department, is able to render concrete measures that could lead the club to fulfil the requisites.

### **Disciplinary rules**

In cases of flagrant violation of the Regulations or noncompliance with the measures proposed by either the club itself or the Committee, the Disciplinary regime is established in article 78 bis of the LFP Statutes.

The Disciplinary rules establish three degrees of breach: minor, serious and very serious. The very serious infringements in terms of Economic Control are:

- Disregarding the decisions rendered by the Committee;
- Blocking the supervision of the Financial Statements ordered by the Committee;
- The non-presentation of the relevant documents required in the regulations;
- Tampering or hiding the relevant documents;
- Obtaining a negative certificate from the Head of the Department.

The serious infringements are:

- Infringing the recommendations of the Head of the Department or the Committee;
- Partially presenting the relevant documents required in the regulations;
- Obtaining a positive certificate with recommendations;
- Having been sanctioned for a minor infringement in the same season.

The minor infringements are:

- Infringing the recommendations of the Head of the Department or the Committee when the offense in question is not considered a serious one;
- Adopting passive attitudes in compliance with the instructions, decisions and resolutions of the Department of Economic Control;
- Any other infringement of the regulations contained in the Statutes, the Regulations or the current legislation when it is not considered a serious or very serious infringement.

The sanctions that may be imposed by the Committee for the very serious infringements are:

- Prohibition to register new players during the next two seasons, even if those come from the youth teams of the club when they have been recently transferred;
- Prohibition to register in the next season of the Liga BBVA (first division) or Liga Adelante (second division) during the next two seasons;
- Definitive expulsion of the competition in cases of both recidivism and special seriousness;
- Suspension of political and economic rights during the next two seasons;
- Deduction of up to 9 points;
- Fine from EUR 3,005.06 to EUR 300,506.05, which may be imposed together with other sanctions.

The sanctions that may be imposed by the Committee for the serious infringements are:

- Prohibition to register new players for the next season, even if those come from the youth teams of the club when they have been recently transferred;



- Prohibition to register in the next season of the Liga BBVA (first division) or Liga Adelante (second division) for the next season;
- Warning, in cases where the breach does not exceed three months or is not particularly serious;
- Suspension of political and economic rights for the next season;
- Deduction of up to 6 points;
- Fine from EUR 601.01 to EUR 3,005.06, which may be imposed together with other sanctions.

The sanctions that may be imposed by the Committee for minor infringements are:

- Prohibition to register new players even for the next six months, even if those come from the youth teams of the club when they have been recently transferred;
- Suspension of political and economic rights for the next three months;
- Fine up to EUR 601.01, which may be imposed together with other sanctions;
- Public reprimand.

Demotion may also be imposed as a general rule.

The disciplinary regulations are in force since the beginning of this 2014/15 season and it already found its first two “victims”. The *Real Murcia SAD*, which was demoted to the third division (it necessarily means to be excluded from the LFP since it only includes the clubs pertaining the two first divisions) for its debts towards the Spanish tax authorities, and the *Getafe SAD* which was sanctioned with the prohibition to register the player *Pedro LEÓN* for exceeding the maximum ratio of salaries. •