Is Financial Fair Play Really Justified? An Economic and Legal Assessment of UEFA's Financial Fair Play Rules

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Contents

1 | Introduction

The UEFA and first and foremost its president Michel Platini have been very concerned about some recent developments in European Club Football. Many clubs have reported continuing and worsening deficits. According to the UEFA's Benchmarking Report 2012 the aggregate losses in European club football have increased from 0.6 billion Euro in 2007 to 1.7 billion Euro in 2011 (cf. UEFA 2012). Some clubs' deficits have climbed to record-high levels and equity participants have extended their influence in professional club football. Some of them have experienced liquidity shortfalls unable to pay other clubs or players on time. Others in contrast have made their way to the top in Europe with the support of equity participants.

These developments are considered to be potentially threatening to long-term financial stability and violating the integrity of European club football. In order to ensure long-term financial stability and to protect the integrity of the game, UEFA, in conjunction with the European Club Association, have set in place a set of rules called "financial fair play" (hereinafter denoted as FFP). From the season 2013/14 on, clubs will have to fulfil the new rules and requirements in order to become licensed for the Europa League and the Champions League. The FFP rules imply for the first time a harmonized European-wide and much tighter regulation for all European clubs most likely expected to cause some fundamental changes in European club football.

There is an ongoing debate on how FFP will affect European club football and whether it is really fair (cf. for example, Vöpel 2011, Müller et al. 2012 or Preuss et al. 2012). So far regulations have been very different among national leagues. Therefore, FFP is expected to trigger some asymmetric adjustments among clubs and leagues thereby leading to some changes in the competitive balance and probably to a new competitive equilibrium in European club football in an inter- as well as in an intra-league comparison. In the following economic and legal analysis, it will be discussed to what regard and to what extent FFP rules are really needed to remedy market failure and whether these rules are legitimate or justifiable with respect to their objectives and potential conflicts with EU competition law.

2 | Preliminaries

2.1 | Means and Objectives of FFP Rules

The FFP rules represent the enhanced version of the former UEFA Club Licensing Regulations. The new document includes an improvement to the former club-licensing criteria as well as new requirements in the FFP concept. It is important to note that only those clubs that qualify for UEFA club competitions on sporting merit are subject to the monitoring process. Different to the club- licensing, the club-monitoring is conducted by UEFA itself – that is by the so-called Club Financial Control Panel (CFCP), composed of qualified experts in the financial and legal fields.

The core element of the club-monitoring is the break-even requirement: Once the rule takes effect the relevant expenses of a club are no longer allowed to exceed its relevant income. In the first monitoring period 2013-14 the two previous seasons 2012-13 and 2011-12 are assessed. From the license season 2014-15 onwards always the three previous seasons are covered. Article 61 of the concept states acceptable deviations of € 5 million to the break-even rule (UEFA, 2010a). Yet the deviation can exceed € 5 million up to € 45 million in the license seasons 2013-14 and 2014-15 and up to € 30 million for the license seasons 2015/16, 2016/17 and 2017/18, if the deficit is covered by contributions from equity participants or related parties. This accepted deviation will be further reduced thereafter.

Within the FFP rules, another element is of major importance, i.e. the enhanced rules concerning overdue payables (art. 65-66). The wording of the most relevant articles of the FFP rules is as follows:

Article 57 – Scope of application and exemption

1) All licensees that have qualified for a UEFA club competition must comply with the monitoring requirements, i.e. with the break-even requirement (Articles 58 to 63) and with the other monitoring requirements (Articles 64 to 68).
2) (…).

Article 58 – Notion of relevant income and expenses

1) Relevant income is defined as revenue from gate receipts, broadcasting rights, sponsorship and advertising, commercial activities and other operating income, plus either profit on disposal of player registrations or income from disposal of player registrations, excess proceeds on disposal of tangible fixed assets and finance income. It does not include any non-monetary items or certain income from non-football operations.
2) Relevant expenses is defined as cost of sales, employee benefits expenses and other operating expenses, plus either amortisation or costs of acquiring player registra-

tions, finance costs and dividends. It does not include depreciation/impairment of tangible fixed assets, amortisation/impairment of intangible fixed assets (other than player registrations), expenditure on youth development activities, expenditure on community development activities, any other non-monetary items, finance costs directly attributable to the construction of tangible fixed assets, tax expenses or certain expenses from non-football operations.

3) (…).
4) Relevant income and expenses from related parties must be adjusted to reflect the fair value of any such transactions.

Article 60 – Notion of break-even result

1) The difference between relevant income and relevant expenses is the break-even result, which must be calculated for each reporting period.
2) If a licensee's relevant expenses are less than relevant income for a reporting period, then the club has a break-even surplus. If a club's relevant expenses are greater than relevant income for a reporting period, then the club has a break-even deficit.
3) (…).
4) The aggregate break-even result is the sum of the break-even results of each reporting period covered by the monitoring period (i.e. reporting periods T, T-1 and T-2).
5) (…). If the aggregate break-even result is negative (below zero) then the licensee has an aggregate break-even deficit for the monitoring period.
6) In case of an aggregate break-even deficit for the monitoring period, the licensee may demonstrate that the aggregate deficit is reduced by a surplus (if any) resulting from the sum of the break-even results from the two reporting periods prior to T-2 (i.e. reporting periods T-3 and T-4).

Article 61 – Notion of acceptable deviation

1) The acceptable deviation is the maximum aggregate break-even deficit possible for a club to be deemed in compliance with the break-even requirement as defined in Article 63.
2) The acceptable deviation is EUR 5 million. However it can exceed this level up to the following amounts only if such excess is entirely covered by contributions from equity participants and/or related parties:
   a) EUR 45 million for the monitoring period assessed in the licence seasons 2013/14 and 2014/15;
   b) EUR 30 million for the monitoring period assessed in the licence seasons 2015/16, 2016/17 and 2017/18;
   c) a lower amount as decided in due course by the UEFA Executive Committee for the monitoring periods assessed in the following years.

Article 63 – Fulfilment of the break-even requirement

1) The break-even requirement is fulfilled if no indicator (as defined in Article 62(3)) is breached and the licensee has a break-even surplus for reporting periods T-2 and T-1.

2) The break-even requirement is fulfilled, even if an indicator (as defined in Article 62[3]) is breached, if:

   a) the licensee has an aggregate break-even surplus for reporting periods T-2, T-1 and T; or

   b) the licensee has an aggregate break-even deficit for reporting periods T-2, T-1 and T which is within the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60[6]).

2) The break-even requirement is not fulfilled if the licensee has an aggregate break-even deficit for reporting periods T-2, T-1 and T exceeding the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60 [6]).

Article 65 – No overdue payables towards football clubs

1) The licensee must prove that as at 30 June of the year in which the UEFA club competitions commence it has no overdue payables towards other football clubs as a result of transfer activities undertaken up to 30 June.

2) Payables are those amounts due to football clubs as a result of transfer activities, including training compensation and solidarity contributions as defined in the FIFA Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions.

3) (…).

Article 66 - No overdue payables towards employees and/or social/tax authorities

1) The licensee must prove that as at 30 June of the year in which the UEFA club competitions commence it has no overdue payables towards its employees and/or social/tax authorities (as defined in paragraphs 2 and 3 of Article 50) that arose prior to 30 June.

2) (…).

Article 72 – Disciplinary procedures

Any breach of these regulations may be penalised by UEFA in accordance with the Procedural rules governing the UEFA Club Financial Control Body.

In the light of the above, UEFA's own-perception of the break-even rule's objectives can be summarized as follows:

- To protect the long-term viability and sustainability of European Club football.
- To ensure the smooth running and integrity of the UEFA club competition.
- To stop the inflation of "player costs" (salaries and transfer fees) and consequently guaranteeing that the clubs "stand on their own two feet".
- To avoid that "overspending clubs", because of such behaviour, would "gain an advantage on the field"; making sure that clubs "operate on a level playing field"; "preserving fair competition between football clubs".

2.2 | Methodology and Design of the Analysis

The UEFA has implemented the FFP rules in order to reach well-defined objectives by such a regulation. The explicitly mentioned objectives of the FFP rules according to the UEFA are the following:

- To ensure the long-term financial viability of European club football
- Tp protect the integrity of the game and to ensure a smooth running of competition
- To avoid overdue payables in order to ensure a level playing field.

The core elements of the FFP rules are:

- the 'break-even requirement' that means expenses are not allowe to exceed the revenue beyond a threshold value over a three-year period, and
- the definition of the 'relevant income' that excludes all kinds of external funding.

To this regard the economic and legal analysis can be addressed to the following questions:

- Are the objectives of the FFP rules economically reasonable or legitimate from a legal point of view, i.e. necessary?
- Are the effects of FFP rules consistent or inherent with the objectives of FFP, i.e. adequate?
- Are the effects of the FFP rules related to potential causes of market failure or violating other fundamental rights, i.e. proportionate?

The economic assessment analyses whether the FFP rules are effective and consistent with regard to the objectives and whether these objectives can be derived from or are justified by market failure in football. Moreover, it will be shown whether the set of rules applied by FFP provides a 'second-best' solution. In addition, the legal assessment shows whether the FFP rules are legitimate according to the methodological approach suggested by the Meca-Medina judgment.

3 | Economic Assessment of FFP rules

3.1 | A Simple Model of the Economic Effects of FFP Rules

In the following a simple model is developed by which the economic effects of FFP rules can be analyzed with regard to the objectives of FFP rules. Profits of club i in period t are defined as

$$\pi_{ti} = R_{ti} - W_{ti} - FC \qquad \text{(equ. 1)}$$

where R, W and FC denotes the football-related revenue, wages and fixed costs respectively. It is widely accepted that the primary objective of a professional club – unlike firms in other markets – is to maximize sporting succes rather than profits. In competitive markets profits are in any case zero. Therefore, profits are zero since surpluses of revenue over costs are immidiately reinvested into the quality of the team. Since club managers pursue sporting success as the primary objective this leads to max W_t and hence $\pi_t = 0$ for any period t. It will be argued later on that it is exactly the deviation from profit maximization in football that potentially leads to moral hazard in various principal-agent relationships within a club, e.g. between the owner and the manager, eventually being causal for overspending rather than market failure.

Football related revenue that can be invested in period t, consists of prize money P depending on the ranking in the previous season $t-1$ and revenue M from ticketing and merchandising depending on the local market size:[1]

$$R_{ti} = P_{ti}\left(rank_{t-1,i}\right) + M_{ti} \qquad \text{(equ. 2)}$$

The pay-off scheme of the prize money may be modelled for example as a linear function:

$$R_{ti} = \frac{(N - rank_{t-1,i})}{N} E_{t-1} + M_{ti}\,, \qquad \text{(equ. 2b)}$$

where E_{t-1} is the total prize money in $t-1$ and N the number of teams in the league. In a linear form total revenue is given as:

$$R_{ti} = \beta rank_{t-1,i} + M_{ti} \qquad \text{(equ. 2c)}$$

Wage payments are not limited to football-related revenue prior to FFP rules. Since there is only a soft budget constraint it turns out that under given assumptions wage payments are given as follows:

$$W_{ti} = R_{ti} + I_{ti} + D_{ti} - FC\,, \qquad \text{(equ. 3)}$$

[1] Sass (2012) assumes more realistically that the market size varies with sporting success. This assumption implies different adjustment dynamics towards the steady-state equilibrium that even more depends on initial sporting success.

where I_t and D_t denotes external investor's money and the debt-financed budget deficit respectively. Under FFP rules equ. 3 modifies to

$$W_{ti} = R_{ti} - FC \qquad \text{(equ. 3b)}$$

since 'relevant expenditures' are limited to 'relevant income' according to the break-even requirement as part of FFP rules, i.e. external money and running a budget deficit is no longer allowed.[2]

As an additional objective FFP rules are designed to limit the inflation of players' wages. According to equ. 3 and equ. 3b players are clearly worse-off under FFP rules since wages are restraint to the level of football-related revenue. Moreover, since expenditures are limited to 'relevant income' smaller clubs will less often be able to transfer players by paying higher wages. As a result, FFP rules imply rent shifting from players to clubs, especially to richer clubs who are prevented from being contested by smaller clubs.

Sporting success measured by the final ranking in league competition is assumed to be determined by relative wages ω (measured as a share of total wage payments since a league competition is a relative ('positional') competition, cf. Tullock, 1980) and a random effect containing bad and luck, unexpected injuries etc. as a catchall variable:

$$rank_{ti} = \alpha\omega_{ti} + z_{ti} \qquad \text{(equ. 4)}$$

with α translating relative wage payments, defined as $\omega_{ti} = \frac{W_{ti}}{\sum_i^N W_{ti}}$ to sporting success. Thus, inserting equ. 3 and equ. 2c into equ. 4 yields

$$rank_{ti} = \alpha\beta rank_{t-1,i} + \alpha m_{ti} + \alpha\phi_{ti} + \alpha\delta_{ti} + z_{ti} \qquad \text{(equ. 5)}$$

with

$$m_{ti} = \frac{M_{ti}}{\sum_i^N M_{ti}},\ \phi_{ti} = \frac{I_{ti}}{\sum_i^N I_{ti}} \text{ and } \delta_{ti} = \frac{D_{ti}}{\sum_i^N D_{ti}}$$

Under FFP rules Wti is limited to Rti and thus, equ. 5 modifies to

$$rank_{ti} = \alpha rank_{t-1,i} + \alpha m_{ti} + z_{ti}\ . \qquad \text{(equ. 5b)}$$

Inserting for $rank_{t-1}$ and for $rank_{t-2}$ and so on and so forth, it turns out that current sporting succes is determined by local market potential, initial success and a weighted sum of random effects that have occurred in the past unless regulation of league competition allows for running a budget deficit or for investors injecting money into the club. UEFA's notion of 'relevant income' implies that $I_t = 0$ and the break-even requirement that $D_t = 0$ Therefore:

[2] To this regard FFP can be regarded as a 'collusion' of richer clubs that serve as a barrier to entry for smaller clubs preventing them from overspending. As a result, FFP makes football a less contestable market (cf. the theory of contestable markets). Moreover, due to such a collusion clubs act like a monopsonist on factor markets (player market). Peeters and Szymanski (2012) argue that FFP implies a 'vertical restraint' that leads to a kind of rent-shifting between clubs as well as clubs and players.

$$rank_{Ti} = (\alpha\beta)^T rank_{0i} + \alpha \sum_{t=0}^{T} (\alpha\beta)^t m_{ti} + \sum_{t=0}^{T} (\alpha\beta)^{T-t} z_{ti}. \quad \text{(equ. 6)}$$

The persistent effect of the initial success and the size of the local market on future succes can only be offset by additional funding from external sources I_t and D_t. Moreover, it has been shown that the pay-off scheme of the price money has a crucial effect on sporting success. Smaller clubs are typically caught in a 'poverty trap': If the market value of a club's players increase by more than the revenue after an initial succes, e.g. triggered by a random effect z_t, the club must sell some of its players and therfore falls back to initial position (cf. Vöpel, 2006). In addition, it has also been shown that due to spill-over effects good players are more productive when combined with other good players (instead of weaker players) better clubs are able to pay higher wages to good players than weaker clubs (cf. Vöpel, 2006b). It has been shown that the marginal revenue of sporting success must be diminishing in order to compensate for this effect. This is certainly not the case right now.

As has been shown, in case of FFP rules sporting succes is predetermined by the initial success and the local market size. If according to FFP smaller clubs are not allowed any longer to invest in advance into long-term sporting success by restricting them to football-related income (UEFA's notion of 'relevant income'), the competitive balance is adversly and counterintentionally (even if not explicitly mentioned) affected by FFP. In the following table the effects of FFP rules with regard to financial stability, integrity of the game and competitive balance are summarized:

$D_{ti} = 0$ (break-even requirement)	$\Rightarrow$ *long-term financial stability of football is enhanced*
$I_{ti} = 0$ (definition of 'relevant income')	$\Rightarrow$ *integrity of the game is protected*
$D_{ti} = 0 \wedge I_{ti} = 0$	$\Rightarrow$ competitive balance is adversely affected

As a conclusion several options to restore the competitive balance can be derived from the above analysis. The random effect z_t can be manipulated in order to make the outcome more uncertain. This could only be done by changing the rules. It can not seriously be expected that the UEFA (jointly with FIFA) is able or willing to change the rules of the game. More likely and more effectively is a change in the pay-off scheme of the prize money P depending positively on sporting success (cf. e.g. Franck, 2010). More evenly distributed prize money would mitigate the rate-race competition and the implied incentives to overspend. Monopolization and overspending in football have their common cause in the rat-race competition that is even exacerbated by UEFA's prize money pay-off scheme. According to the Tinbergen rule as many means are needed as many objectives in order to address these objectives. With regard to FFP rules, in addition to the break-even requirement and the notion of 'relative income' that implies $I_t = D_t = 0$ a third method is needed to restore the competitive balance that is negatively affected by FFP rules. As a result, FFP rules are shown to be inadequate since they are incomplete and inconsistent with regard to reasonable objectives of regulations.

From an economic point of view, regulations or any kind of interventions in the market should be justified by market failure. In order to show whether FFP rules are really needed or necessary market failure must be proven to exist in professional league competitions. Since league competition is specific for several reasons (cf. Tullock, 1980), there might be contagion between clubs in regard to overspending arising from 'rate race' incentives and a winner's curse due to individual overconfidence. It should be noted that it is the UEFA that has significantly contributed to rat-race competition and short-term orientated incentives by the price-money scheme for participants in European-wide competitions. It has turned out that participating in the UEFA champions league is a tipping point for clubs since an upward spiral of of sporting and financial success is triggered.

It must be distinguished between an individual intertemporal budget constraint and a collective intertemporal budget constraint for football as a whole in order not to run into the fallacy of macroeconomic aggreagtion of microeconomic behavior. The individual intertemporal budget contsraint is given by:

$$V_{ti}^{e} = \sum_{t}^{\infty} \frac{W_{ti}}{(1+i)^{t}} + \sum_{t}^{\infty} \frac{FC_{ti}}{(1+i)^{t}}. \qquad \text{(equ. 7)}$$

where V_{ti}^{e} denotes the expected present value of future revenue streams and given as:

$$V_{ti}^{e} = \sum_{t}^{\infty} \frac{M_{t}}{(1+i)^{t}} + \sum_{t}^{\infty} \frac{P_{t}^{e}}{(1+i)^{t}}, \qquad \text{(equ. 7b)}$$

The sum of all expected present values is hence given by:

$$V_{t}^{e} = \sum_{i}^{N} V_{ti} = \sum_{i}^{N} \sum_{t}^{\infty} \frac{M_{ti}}{(1+i)^{t}} + \sum_{i}^{N} \sum_{t}^{\infty} \frac{P_{ti}^{e}}{(1+i)^{t}} \qquad \text{(equ. 8)}$$

The actual aggregate intertemporal budget constraint is given as:

$$V_{t}^{a} = \sum_{i}^{N} \sum_{t}^{\infty} \frac{M_{ti}}{(1+i)^{t}} + \sum_{t}^{\infty} \frac{E_{t}}{(1+i)^{t}} \qquad \text{(equ. 9)}$$

Where $\sum_{t}^{\infty} \frac{E_{t}}{(1+i)^{t}}$ is the present value of total future prize money that is determined by broadcasting and other media rights and assumed to be fixed and known in every period t.

Long-term financial stability is potetially negatively affected if the sum of individually expected discounted values exceeds the actual value and thereby violates the aggregate budget constraint:

$$V_{t}^{e} > V_{t}^{a} \Rightarrow \sum_{i}^{N} \sum_{t}^{\infty} \frac{P_{ti}^{e}}{(1+i)^{t}} > \sum_{t}^{\infty} \frac{E_{t}}{(1+i)^{t}}. \qquad \text{(equ. 10)}$$

Equation (10) states that there is an aggregate overspending if the expected present value exceeds the actual present value. This might be due to contagion between clubs arising from overconfidence or rat-race incentives. Player transfers are often similar to auctions. For auctions it is known that the winning bid is sometimes over-optimistic (‘winner’s curse’). Also paying efficiency wages in order to avoid shirking cannot pay-off on aggregate in a league competition with a fixed aggregate budget constraint. The UEFA could more effectively and less restrictive change the prize-money scheme in order to mitigate the rat-race incentives.

An important question with regard to the objectives of the FFP rules is whether insolvency of individual clubs might spread to become a systemic risk for football as a whole. Overconfidence and short-term incentives can be considered as a source of financial distress for individual clubs but should be controlled by a licensing rather than by a ban of running temporal deficits which is part of business in any other branch. Football claims to be different in this regard but has not proven yet. This kind of idiosyncratic risk should furthemore be monitored and controlled by an adequate corporate governance design that helps to avoid moral hazard within clubs between managers and owners. In case of insolvency the club in question would immidiately be replaced by another one. If then the pool of players is not affected by insolvency the overall qualitiy of football is not reduced. It can be argued that the supply of players is completely inelastic with respect to the wage rate since the reservation wage (depending on opprtunity costs) is sufficiently far below the prevailing wage level.

Another objective of the FFP rules is limiting the ‘inflation’ of players’ salaries. It is argued by the UEFA (cf. UEFA Benchmarking Report 2012) that cost control is one of the most imortant tasks to avoid financial distress. Economically, players are the most important factor of production and therefore should be paid according to market wages. Due to scarcity of decisive players (they are scarce by definition since not all players can be ‘decisive’) they are able to shift economic rents towards themselfes.

Another objective of the UEFA is to control costs by limiting the ‘inflation’ of transfer fees and players salaries. It is argued that the wage-turnover ratio is too high (cf. UEFA, 2012). Such an argument is economically not justified as can easily be shown. If as argued above

$$\pi_t = 0 \Rightarrow R_t = W_t + FC \qquad \text{(equ. 11)}$$

then the ratio of wages to revenue can be written as:

$$\phi := \frac{W_t}{R_t} = \frac{R_t - FC}{R_t} = 1 - \frac{FC}{R_t}. \qquad \text{(equ. 12)}$$

This in turn implies that the ratio is converging to one for constant fixed costs and (at least theoretically) infinitely increasing revenue:

$$\lim_{R\to\infty}\left(1 - \frac{FC}{R}\right) = 1. \qquad \text{(equ. 13)}$$

To summarize the results of the above analysis, FFP rules can help to ensure long-term financial stability in European club football. Nevertheless, it is doubtful whether such a tight and restrictive regulation, addressing the cash flow of clubs rather than long-term profitability, is really needed or in any sense is an adequate measure of financial stability. The ‘inflation’ of wages can be limited by FFP rules since external injections of money into football are banned. But since also the frequence of transfers is likely to be reduced a rent shifting between various agents in the football business is implied by FFP. Rent shifting should not be a legitimate objective of FFP from an economic point of view as has been shown. As the most important effect of FFP the competitive balance is negatively or adversely affected by FFP. To put it differently, FFP is anti-compeititive since it restraints smaller clubs to catch up to richer clubs. As regards competition economics FFP can be considered as a collusion of the richer clubs to prevent them from beeing contested by smaller clubs. According to the Tinbergen rule a second instrument is needed in addition to FFP to restore the competitive balance that is distorted by implementing only FFP. It is argued here that a stronger redistribution of revenue or revenue sharing is required.

Insolvency might be considered a more severe event in a league competition than in a ‘normal’ competition because a smooth running of course must be guaranteed in advance. It can be argued that this can be ensured by a licensing process that is much less restrictive than FFP rules.

3.2 | Causes of Market Failure in Professional Football Leagues

The basic rule of the financial fair play is the “break-even requirement”. According to this rule the expenses of each club are not allowed to exceed a club’s revenue. It is important to note that the notion of “relevant income” does not include income from non-football operations, i.e. externally acquired money, from equity participants or patrons e.g., is not allowed to finance a club’s expenditures unless it is used for youth development activities or infrastructure. All these expenditures are excluded from the notion of “relevant expenses” because they are considered to be “good” expenditures as opposed to excessive transfer fees.

First, it has to be proven whether the “break-even requirement” is effective with regard to the objectives of the FFP rules. The “break-even requirement” consists of a deficit limit and a definition of “relevant income” and “relevant expenses”. Limiting the clubs’ deficit to an acceptable amount is clearly effective in enhancing financial stability. But just imposing a ceiling on the deficit would violate the other goal of the financial fair play, i.e. to restore the competitive balance. Unless donors, patrons or other equity participants are excluded from engaging in professional club football those clubs not having access to external money would be hit more seriously by a debt limit and would suffer a unilateral competitive disadvantage. To remedy such an unintended outcome the deficit limit is supplemented by a notion of “relevant income”. All income accrued by non-football operations are strictly excluded from "relevant income" upon which the "break-even result" is calculated (cp. Article 58).

Hence, it has been shown that the two primary goals of the financial fair play are not contradictory to each other with regard to the "break-even requirement". But as can easily be seen the "break-even requirement" is not sufficient to restore the competitive balance. As has been derived theoretically an unregulated professional sports league tends to increasingly monopolize due to a self-perpetuating spiral of success ("success breeds success"). An initial success leads to higher revenue which in turn can be used to strengthen the team making further success even more likely. Therefore, an additional redistribution of income or revenue sharing is needed in a professional sports league to remedy market imperfections and to avoid an unchallenged dominance of a few clubs. Such dominance could predetermine the championship violating thereby the roots and the objectives of sports and undermining the acceptance of fans and spectators which is the commercial basis of professional sports.

Competition in professional sports leagues is quite different from competition in regular markets since it strictly implies a zero-sum game for the participants. Anyone's win always means another one's defeat. And in the final ranking of a season each position is assigned only once and in every season there are only one champion and always some teams going down regardless of how good they are in absolute terms. Such a "positional" competition is very similar to a "rat race" that induces specific (short-term) incentives for the competing teams. If it is only the victory that counts at the end competitors are likely to take a higher risk. This could lead to an over-investment and overspending behaviour resulting in a kind of a debt fallacy since not all teams can succeed simultaneously. At least some of them fail to fully refinance their initial investments due to unexpected low revenue. In an unregulated league this could end up in an insolvency of clubs causing thereby an unwarranted discontinuity especially during a currently running competition.

In contrast, those teams who succeed in the competition and qualify for the Europa League or the Champions League receive much higher revenue. They can use additional income to invest into new players thereby becoming an even stronger team which most likely will manage to re-qualify the following year. So an upward spiral of self-sustaining development has been triggered by an initial success. In the long run this process could finally end up with the dominancy of a few teams predetermining the championship and making it less interesting. As a result fans and spectators followed immediately by the media and sponsors would increasingly turn away from football which in turn would lower aggregate revenue for the league as a whole.

Obviously, there is an inherently arising conflict between individual clubs pursuing their own interests and trying to be successful as much as possible at the expense of all competing clubs as opposed to the league as a whole representing all clubs together whose common interest is to ensure an attracting championship in order to maximize aggregate income (for a more detailed discussion of the specific properties of competition in professional sports leagues see El Hodri and Quirk 1971, Sloane 1976, Vroomann 1995, e.g.). This kind of competition is sometimes called “associative competition” indicating the inherent conflict between individual and collective rationality in professional sports leagues which is similar to a “common resource” that tends to be excessively used until it exhausts and therefore needs to be protected by regulation. Müller et al. argue that the integrity of the game is a “common-pool” resource (cf. Müller, Lammert, Howemann, 2012). More precisely, it is the competitive balance that is a common resource. Integrity is just an outcome of competitive balance. As a consequence, a benevolent regulator needs to restore the competitive balance in order to prevent integrity from eroding.

A specific regulation can be regarded as a bargaining solution whose allocation must lie inside the “core” in order to be stable institutional arrangement. The “core” is a concept used in Game Theory for solving coalition games and is defined as the set of all distributions of pay-offs for which no sub-coalition could be better-off by deviating (cp. Osborne 2004). A bargaining solution contains an institutionalized rule according to which aggregate income is distributed among “market participants”. But a national regulation of the domestic football league cannot be set independently of other leagues since they compete with each other in several supranational contests like the Europa League or the Champions League. Hence, a specific regulation implicitly reflects also national preferences regarding the competitive balance of the domestic league and the international competitiveness of national champions representing the domestic league in supranational contests. A redistribution of income among domestic clubs can lead to a more favourable competitive balance within the national league but can weaken the international competitiveness of the national champions and therefore constitutes a trade-off. Thus, a European-wide harmonized regulation may be violating national preferences. On the other hand it can be argued that an exogenous institution like the UEFA is needed to solve the coordination failure that arises from a prisoner’s dilemma problem. Unless there is a binding agreement among the various national football associations each would have an incentive to defect cooperation at the expense of the others, even if restoring the competitive balance can make all participants better-off (according to the ”associative competition” defined above).

All in all professional sports leagues tend to cause market failure. For two reasons a professional sports league might be regulated. First, the competitive balance is inherently instable since initially successful clubs can enhance endogenously their dominancy leading to an oligopoly in football. Secondly, the “positional” competition in a professional sports league which is similar to a “rat race” implies a biased incentive for participants to take too high risks. Hence, regulation might be needed at least from a theoretical point of view to remedy market failure occurring presumably in a professional sports league (cp. Sloane 1976, Szymanski 2003).

Competition in professional sports leagues can therefore be summarized as follows:

- There is a specific (so-called "positional") competition that is similar to a "rat race" (cf. Akerlof), i.e. "The winner takes it all". This implies a self-perpetuing spiral of sporting and financial success ("success breeds success.") causing an increasing degree of monoplization and concentration of market power in football.
- Therefore, there is a strong short-term biased incentive for clubs to over-spend to win the "rat race" (also known as "tournament incentives" that can cause bubbles to evolve) and to trigger an upward spiral of success. "Positional" competition implies that not all clubs can succeed, so that some of them could end up in financial distress. A smooth course of competition might be threatened by financial distress.
- Monopolization on the other hand makes it inevitable for clubs to run a deficit, as it is not possible to break up the monopoly power of some clubs. Initial investments (either by loans or private investors) are required, otherwise long-term success would solely depend on the size of the domestic or local market and an initial success in the past ("path-dependency")
- As a result, "overspending" and "monopolization" are closely related to each other and both derived from the specific kind of competition in a professional sports league. Consequently, competitive balance might be distorted due to inherently existing monopolization in a professional sports league and long-term financial stability could be threatened due to over-investing behaviour. FFP rules will most likely adversly affect the competitive balance as has been shown in section 3.1.

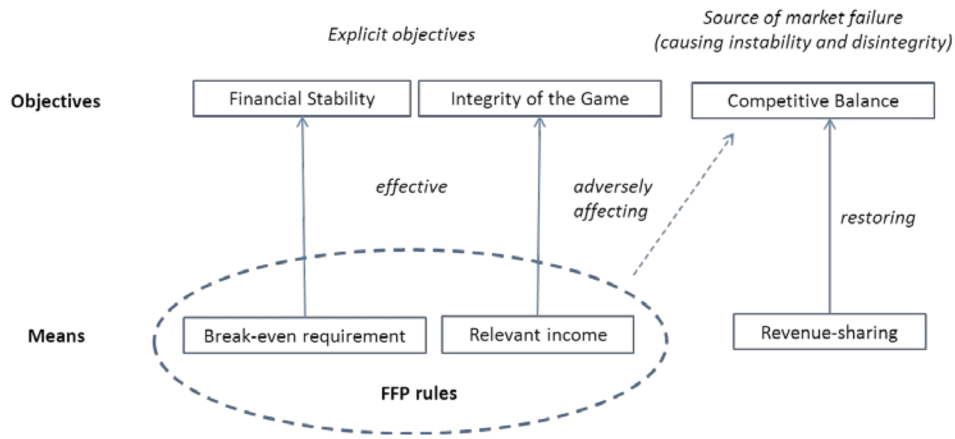
3.3 | Conclusions from the Economic Analysis

According to the methodological approach applied in this analysis the FFP rules are assessed with regard to whether they are i) necessary, ii) adequate, and iii) proportionate. It has been argued that the FFP are most likely not necessary since insolvency has apparently not been a wide-spread phenomenon in football. The empirical evidence supporting the FFP rules is rather weak. Secondly, no systemic risks arise from insolvency because an insolvent club would immediately be replaced by another club and the supply of labour (football players) is rather inelastic with respect to wages so that the overall quality of football would not be diminished by insolvency.

Moreover, regarding the adequacy of FFP, it has been shown that the FFP rules, i.e. the 'break-even requirement' and the notion of 'relevant income', are effective with respect to the explicitly mentioned objectives of FFP. But both rules combined are adversely affecting the competitive balance since it is almost impossible to catch-up to the bigger clubs without external funding. An agreement to limit investments of clubs into their long-term success constitutes 'collusion' and act as a barrier to entry. Bigger clubs can even enhance their national dominance and thereby, with the help of the prize money earned in European-wide competitions (UEFA Champions League and the Europa League) gain distance to their competitors. To qualify for the UEFA Champions League is a kind of 'tipping point'. Added as a further reasonable objective of regulation (as the only one that can be derived from market failure) the FFP rules alone are incomplete and therefore potentially lead to contradictory effects regarding the given set of objectives. According to the "Tinbergen rule" the number of means must at least as high as the number of objectives in order to address these objectives at the same time (cp. Tinbergen, 1978). Otherwise a hierarchy (priority order) of objectives would be needed to avoid contradictory and inconsistent effects (cf. figure 1).

Figure 1

Regulatory Relationship between Methods and Objectives of FFP



Source: HWWI.

In this regard the competitive balance can hardly be assessed as less important than financial stability and the integrity of the game since it has been shown that competitive imbalances are the ultimate cause of financial instability and disintegrity of the game. To limit the 'inflation' of player salaries cannot be derived as a reasonable objective of regulation. In the table below it is shown that FFP rules are contradictory to other reasonable objectives unless an additional revenue sharing is established that restores the competitive balance according to the 'Tinbergen rule'.

From the above analysis it can be concluded that the FFP rules are clearly not adequate. The FFP rules even enhance the dominant position of the richer clubs. If the competitive balance is added as a further reasonable objective of regulation the FFP rules turn out to be incomplete and inconsistent (cf. table 1). According to the 'Tinbergen rule' a mechanism of revenue-sharing must be implemented in addition to the FFP rules in order to restore the competitive balance (for the discussion of revenue-sharing and competitive balance see, e.g., Késenne, 2000). As has been shown monopolization and overspending are effects of the same cause, i.e. the rat-race competition and its short-term incentives. It is the UEFA itself that could mitigate the incentives to overspend by offering a more equally distributing pay-off scheme of the prize money. Thus, as a general result of the economic assessment, the FFP rules have been proven not to be adequate.

Table 1

Objectives, Methods, and Effects of FFP Rules

OBJECTIVES	Explicit objectives of FFP rules			Other reasonable objectives		
Methods	Long-tern financial stability	Integrity of the game	Limiting Inflation of players' salary	Competitive balance	Consumer benefits	Free enterprise
Market failure	maybe	no	no	yes	maybe	maybe
Break-even requirement	*positive* (sufficient, but not necessary)	no effect (Rent shifting)	*positive*	negative	ambiguous	negative
Relevant income	no effect	*positive* (sufficient, but not necessary)	*positive*	negative	ambiguous	negative
Revenue sharing	*positive*	*positive*	*positive*	*positive*	ambiguous	ambiguous

Source: HWWI.

Moreover, the 'break-even requirement' and the 'relevant income' measures are sufficient but not necessary. Insofar they tend to be unnecessarily restrictive since the same effects could be reached with a licensing procedure allowing in turn for a higher degree of managerial competition. Hence, the FFP rules are not proportionate as well. However, they have been proven not to be necessary and not to be adequate. From an economic point of view, the FFP rules are clearly not a second-best solution to market failure in unregulated markets since they are incomplete, inconsistent and too restrictive. Other methods are available that are less restrictice and at the same time do not worsen the competitive balance. A "guaranteed overspending" can avoid financial distress since losses are covered by external sources. A "luxury tax" as successfully applied to the NBA could additionally redistribute income from all sources irrespective of whether it comes from football-related business or not. By the way, such a luxury tax would also mitigate the incentive for sugar daddies to engage in football (cf. e.g. Schokkaert, 2013).

4 | Legal Aspects of FFP Rules

4.1 | EU Law and Sport: General Principles

Given the results of the economic analysis, it will be shown in the following whether the objectives of the FFP rules are legitimate and proportionate from a legal point of view. To date, from the legal point of view, sport has been organised almost exclusively by Member States which regulate (often in a specific and rigorous manner) – by means of appropriate legislation – the activities of the various stakeholders in the sporting arena (federations, clubs, players, etc.). No claims have ever been made with regard to the fact that this application of national law to the sports sector was going against the "autonomy required" by the federations in order to perform their duties or that this application could be a source of "legal uncertainty". As with all other sectors of society, the sports sector and its protagonists conform – at national level – to the constraints of the rule of law.

The European Union has no explicit "hard" competence conferred on it when it comes to sport. Consequently, it only intervenes in this sector by means of the implementation of other powers invested in it, particularly with regard to free competition and free movement for persons, services and capital. By means of numerous judgments and decisions, the ECJ and the European Commission have gradually developed a jurisprudence:

– which ensures that the various stakeholders in the sports sector, including international federations, respect fundamental freedoms of movement and competition law;
– which, as for all other sectors, including self-employed professionals, rejects the concept of routine exemption for sports federations but, on the other hand, takes into consideration the specificity of the sport (such as its social role, the need for a certain sporting equilibrium between the participants in a given competition, the need to support training, etc.);
– which, consequently, decides on a case by case basis – in view of all the circumstances of the case in point – on the question of whether restrictions of fundamental freedoms or of free competition created by a rule issued by a federation or by the conduct of a club or a federation are justified by an objective of general interest and are proportionate to the pursuit of this objective. A summary of this jurisprudence can be found in the recent MECA-MEDINA and MAJCEN judgment of 17 July 2006 which we will discuss later.

In brief, the FFP rules cannot – per se and just due to the fact they have been adopted by a sport association – fall outside of the scope of EU Law (cf. Lindholm, 2011, Wathelet, 2007). Therefore, it is relevant to examine – in concreto – if these rules (and in particular the break-even rules) are likely to conflict with some EU Law provisions.

4.2 | EU Law and the FFP Rules: Contact Points

From an EU Law perspective:

- professional football clubs are “undertakings”;
- professional football players are “workers”;
- player agents are “free workers”;
- UEFA is an “association of undertakings”.

Hence, the UEFA break-even rule is a regulation that:

- has been adopted and is implemented by an “association of undertakings”;
- fixes the maximum level of expenses/investment that a football club can inject, in a given year, in its activities (pursuant to the definitions of “relevant income” and “relevant expenses” as defined under article 58 of the UEFA FFP rules), in particular in player transfers and player salaries.

Therefore, as we will examine in more details further on, the UEFA break-even rule and the EU legal order are connected to the extent that EU law includes provisions that aim at guaranteeing:

- free competition (in particular articles 101 and 102 TFEU);
- free movement of capital (article 63 TFEU);
- free movement of workers (article 45 TFEU and article 15 of the “Charter of fundamental Rights of the EU”);
- free movement of services (article 56 TFEU);
- more generally, freedom of enterprise (article 16 of the “Charter of fundamental Rights of the EU”).

Free competition

In order to guarantee the establishment of a thoroughly single market, the TFEU provides for the fundamental principle of free competition between undertakings, within the EU territory.

1) Article 101.1 TFEU states that:
   The following shall be prohibited as incompatible with the internal market: 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 in particular those which:

a) directly or indirectly fix purchase or selling prices or any other trading conditions;
b) limit or control production, markets, technical development, or investment;
c) share markets or sources of supply;
d) (…).

2) 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. Such abuse may, in particular, consist in:
a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
b) limiting production, markets or technical development to the prejudice of consumers;
c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Free movement of capital

Article 63 TFEU states as follows: "(…) all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited".

It is obvious that the UEFA break-even rule is likely to produce such restrictions of free movement of capital.

Free movement of workers

Article 45 TFEU reads as follows:

1) Freedom of movement for workers shall be secured within the Union.
2) 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.

Additionally, article 15 of the "Charter of fundamental rights of the European Union" states that:

1) Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2) Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

It is undisputed that the break-even rule will limit the opportunities for EU citizens (professional football players) to leave their home State and to find an employment in a club from another Member State. In fact, UEFA itself claims that these rules will end up reducing the squad size and "player hoarding".

4.3 | Legal Assessment of FFP Rules in the Light of the Meca-Medina Judgment

There is a well-established ECJ case-law regarding the "fundamental freedoms" whereby some obstacles/restraints to these freedoms are acceptable if they are justified by the pursuit of a "raison impérieuse d'intérêt general" and proportionate to such noble objective. Mutatis mutandis, this case-law is equivalent to the Meca-Medina pattern. As specifically mentioned by the European Commission in its "White Paper on Sport", dated 11 July 2007 (background document, p.64):

The recent ECJ Meca-Medina judgment is the first judgment in which the Community Courts applied Articles 81 and 82 EC (note: now articles 101 and 102 TFEU) to a sporting rule adopted by a sports association relating to a sporting activity. The Commission had already applied Articles 81 and 82 EC in individual cases concerning sporting activities, and the ECJ's ruling broadly confirmed the Commission's approach adopted in these cases. Sport cases previously decided by the Community Courts had concerned the application of the EC Treaty provisions on the economic freedoms, such as free movement of persons or services. The ECJ's judgment in Meca-Medina provides valuable guidance as regards the methodological approach towards assessing a sporting rule under Articles 81 and 82 EC.

In line with the ECJ's Meca-Medina judgment, the Commission follows the methodological approach described below:
Step 1: Is the sports association that adopted the rule to be considered an "undertaking" or an "association of undertakings"?

Step 2: Does the rule in question restrict competition within the meaning of Article 81(1) EC or constitute an abuse of a dominant position under Article 82 EC?

This will depend, in application of the principles established in the Wouters judgment, on the following factors:
1) the overall context in which the rule was adopted or produces its effects and its objectives;

2) whether the restrictions caused by the rule are inherent in the pursuit of the objectives; and

3) whether the rule is proportionate in light of the objective pursued.

Step 3: Is trade between Member States affected?

Step 4: Does the rule fulfil the conditions of Article 81(3) EC?

Ad step 1

This is the case. Indeed, as mentioned by the European Commission in its « White Paper on Sport » (Background document, p. 66 et 67):

It is settled case law that sport clubs/teams are undertakings to the extent they carry out economic activities. Sport clubs/teams carry out economic activity, e.g., by selling tickets to the sport events, selling broadcasting rights or concluding sponsoring or advertising agreements.

Ad step 2

As stated by the European Commission in its White Paper on Sport (Background document, p.67):

"National and/or international sports associations are rules, which sport clubs/teams and athletes need to adhere to. Sporting rules adopted by national or international sports associations may constitute agreements or decisions by undertakings or associations of undertakings within the meaning of Article 81(1) EC.

Such sporting rules, like any other decisions or agreements, are prohibited if they have as their object or effect the restriction or distortion of competition within the common market and affect trade between Member States".

This is the case for the UEFA break-even rule. Furthermore, applied to the principles established in the Wouters judgment:

What are the objectives of the rule, according the UEFA?

The objectives that can be seen as related to the break-even rules are the following:

- to protect the integrity and smooth running of the UEFA club competitions;
- to encourage clubs to operate on the basis of their own revenues;
- to encourage responsible spending for the long-term benefit of football;
- to protect the long-term viability and sustainability of European club football.

Are such objectives legitimate?

So far, in relation to the sport sector, the "long-term financial stability" of club football, as such, has not been granted, by the ECJ, the statues of "legitimate objective". In short, the concept of "financial equilibrium" or "economic balance", is not considered as a legitimate objective as such, but only as an instrumental objective whose purpose is to achieve a fundamental objective, i.e. the sporting competitive balance between the clubs participating in the same football competition, or – at least – another fundamental objective (to be defined and established by UEFA), i.e. an objective that can qualify as an indispensable ingredient for the very existence of the sport competition itself.

At this stage, we just take note of the fact that it is doubtful that the "long-term financial stability" of club football can be considered, as such, as being a legitimate objective under EU Law. This does not mean that the long-term financial stability of club football is not a positive concept; it simply means that this value does not, as such, justify restrictions on competition.

As regards the integrity of the UEFA competitions, such objective has been recognized the status of "legitimate objective" by the European Commission in its ENIC decision (case COMP/37806: ENIC/UEFA). This decision was not appealed and can consequently be considered final. In ENIC, the European Commission confirmed the legality of UEFA's rule prohibiting one individual to own 2 clubs participating in the UEFA clubs competition.

Are the restrictions of competition generated by the UEFA break-even rule "inherent" in the pursuit of these objectives?

In order to be "inherent", the restriction of competition caused by the rule must be necessary/adequate for the attainment of the legitimate objective, keeping in mind the "general context" in which the rule operates (which means that the EU judge duly takes into account the fact that the ultimate objective of the rule may be a non-economic objective).

Are these restrictions proportionate?

Under article 101 TFEU and the MECA-MEDINA case law, the issue of proportionality arises only if and when the restrictions entailed by the break-even rule have passed the test of inherence (necessity/adequation). As stated above, the break-even rule has failed such a test and therefore is to be deemed null and void pursuant to article 101.2 TFEU.

Consequently, in principle, there is no need to address the proportionality issue (and the diverse attenuations added by UEFA to the break-even rule itself are not relevant since they relate to the proportionality debate but cannot redeem the lack of inherence/necessity/adequation). In particular, this is the case regarding the "integrity objective" since it has clearly been established the absolute lack of causal link between the break-even rule and the integrity of the UEFA competitions.

Indeed, UEFA itself stated that competitive balance is not the objective of the rule (while at the same time and in a contradictory manner, letting understand that – some-how – the break-even rule – in fine – will "do some good" to the overall competitive balance within European club football). In fact, it appears that the break-even rule – far from being positive as regards the competitive balance (or –at best – neutral) – entails a significant weakening of this competitive balance as has been shown in the economic analysis.

Consequently, the restrictions of competitions caused by the UEFA break-even rule (and therefore the rule itself) are clearly not necessary/adequate for the achievement of the legitimate objective of maintaining UEFA club competitions' integrity. On the contrary, this rule and its corollary restrictions are undoubtedly counterproductive as regards such an objective.

4.4 | Conclusions from the Legal Analysis

In the light of the above, the UEFA break-even rule – in our view – is to be considered incompatible with fundamental provisions of EU Law, in particular articles 101, 63, 56 and 45 TFEU, as well as articles 15 and 16 of the "Charter of Fundamental rights of the European Union".

Due to the principles of primacy and direct application of EU Law, the EU Law judge has most likely to declare the UEFA break-even rule illegal.

For the same reasons as those exposed in this opinion regarding the UEFA rule, such national break-even rules will also be contrary to EU Law and in particular to article 101 TFEU (and, therefore, such rules will also infringe the national competition law provisions in place in each relevant Member State). Therefore, for identical grounds to those examined under article 101 TFEU, these restrictions of the 'fundamental freedoms' cannot be considered as justified by the pursuit of a higher and noble objective.

FFP is basically a joint agreement between clubs to limit their freedom to hire players by restraining their ability to spend on wages and transfers. This restraint of free competition may at the same time constitute a violation of the free movement of workers.

The next question is whether the objectives of FFP are legitimate and necessary. UEFA has put forth several objectives for FFP, the first of which is preserving the long-term financial stability of European football. This is laudable but unlikely to be considered such a fundamental objective that it justifies restricting competition. A second objective, to preserve the integrity of the game in UEFA competition, might be looked upon better. But in fact, FFP is more likely to hinder than help in this regard.

Even if FFP were sufficiently legitimate and necessary to justify its distortions of EU principles, however, it would still have to clear a final hurdle: proportionality. UEFA would need to convince the EU's judges in Luxembourg that FFP is the least restrictive means of achieving its aims. This seems unlikely. Existing UEFA regulations already require clubs to prove before the start of each season that they have no overdue payables to other clubs, to their employees or to tax authorities.

None of this implies, however, that competition law prevents UEFA from improving football's financial model. If UEFA is serious about tackling the issue, it should address the root causes of the competitive imbalances among teams. UEFA's territorial model could be redrawn, for instance, to allow clubs from major cities but small countries to become more competitive. More ambitious revenue-sharing between clubs and/or whole leagues, partly financed by a "luxury tax" on high-spending clubs, would also help. But such solutions would run against the interests of the clubs with the most political clout. Some of Europe's biggest clubs are, unsurprisingly, the loudest supporters of rules that entrench their dominance (cf. Dupont, 2013).

5 | Final Conclusions

The combined economic and legal assessment of the FFP rules has shown that these rules are neither necessary nor adequate. From an economic point of view the FFP rules are incomplete and therefore not consistent since the competitive balance, the main cause of market failure in professional sports leagues and common root of financial instability and disintegrity in football is adversely affected by FFP rules. As a result, the core elements of FFP, the 'break-even requirement' and the 'relevant income', can be considered as a barrier to entry for smaller clubs and therefore implement 'collusion' that results in rent shifting. Adding the competitive balance as a further reasonable objective of regulation, the FFP rules can be proven to be contradictory with respect to the full set of reasonable objectives. According to the Tinbergen rule an additional revenue-sharing mechanism is required as a third means to restore the competitive balance. Therefore, the FFP rules are just a 'ban' of the effects of market failure without tackling the common source of market failure.

Since the FFP rules have been proven to be neither necessary nor adequate from an economic point of view, it is obvious that according to the Meca-Medina methodological approach towards assessing a sporting rule under Articles 81 and 82 EC the FFP rules are not sufficiently justified with respect to restrictions on fundamental freedoms, especially with regard to EU competition law, and therefore, cannot be considered as being proportionate. As a general outcome of the joint economic and legal assessment the FFP rules should be rejected as neither necessary nor adequate and hence not proportionate. Less restrictive (and at the same time more effective) means are available, e.g. a "luxury tax", to address the objectives of FFP.

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Mai 2013

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Mai 2013

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Michael Bräuninger, Arno Hantzsche, Sven Schulze, Friso Schlitte
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Christina Boll, Julian Leppin
März 2013

74 *Mit einer Agenda 2020 ist Vollbeschäftigung möglich!*
Thomas Straubhaar
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