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5. Professional football club licensing in Europe

Wino van Veen

1. INTRODUCTION

A licence in the world of sports technically is a formal permission to participate in a certain sports competition or other sport-related activities. It is a technique to subject for example athletes and clubs to rules and regulations that must be complied with if one is to participate in that competition. It enables the organiser of a sports competition to ensure that all participants in that competition are bound by the same set of rules. Because taking part in a sports competition is a voluntary affair, an organiser has considerable freedom to determine the conditions for taking part in its competitions. This being said, the power of the organiser is not unchecked. A condition for success of its competition is, after all, that the sports community for which it is intended accepts the terms for entering it. Therefore, typically the relevant sports community is involved in developing the rules as well as the monitoring of compliance and enforcement mechanisms. As we shall see, in the world of football this is no different.

This form of regulation by and for a collective is commonly referred to as self-regulation. The scope and level of detail of the rules and the measure of compliance required – for example, ‘comply or explain’ or just: ‘comply’ – that can be achieved by means of self-regulation, depend inter alia on the degree of cohesion within the collective, the commonly shared interests and urgency felt to adopt and abide by certain rules. For a treatise on self-regulation, its characteristics, conditions for its legitimacy and its meaning in the world of football, I refer to Chapter 3 in this book. What is relevant for this chapter is that sports licensing functions as an element in a self-regulatory framework.

This chapter is about the licensing of professional football clubs (‘club licensing’), more specifically about the architecture of the club licensing system, its objectives and key elements in terms of procedure as well as licensing criteria. Given the geographically related multi-layered structure of the club licensing system and regulations (see section 2), it is conducive to focus on one continent to obtain insight in the mechanics of the regulatory set up. This continent shall be Europe. Club licensing is a common phenomenon in Europe. Club licensing is required for admission to the club competitions organised under auspices of the *Union of European Football Associations* (the ‘UEFA-club competitions’).¹ In addition most national football federations (‘NFFs’) or their leagues operate a licensing scheme for their national club competitions.² Clearly, club licensing is considered a useful instrument of self-regulation by

¹ See for an overview of these competitions Art 49 UEFA Statutes.

² According to *The UEFA Club Licensing System: Overview of Implementation and Application across Europe*, available at <https://www.uefa.com/insideuefa/protecting-the-game/news/025f-0fd25b7d41bc-fd9eb2110749-1000--report-on-club-licensing-system/> (accessed 7 May 2023), pp. 9 and 10, only Montenegro has no club licensing system for its domestic competitions. According to *UEFA Club Licensing, 10 years on ...* available at https://editorial.uefa.com/resources/0229-0f842b3e197d-84c5c038bcd0-1000/club_licensing_-_10_years_on_.pdf (accessed 7 May 2023), however, England,

the professional football community. In this context, it should be noted that a licence merely is a technique involving formal permission. It is not a prerequisite for being able to subject clubs to certain rules and regulations. Clubs can be subjected to the same or similar rules and regulations for example based on membership of an NFF or league and/or a contractual relationship, without a licensing system.³

In the following paragraphs, I shall address the hierarchy in the licensing regulations (section 2), the configuration of the UEFA club licensing system and the different actors in it (section 3), the key elements in the UEFA club licensing criteria (section 4) and some deliberations on national club competition licensing systems and their interaction with the UEFA club licensing system (section 5).

2. CLUB LICENSING OBJECTIVES AND HIERARCHY

2.1 Club Licensing Objectives

The global organisational structure of football is set out in detail in Chapter 2 of this book. For the purpose of this chapter it is necessary to set out some of the elements of this structure. Since football is a sport that is popular worldwide and with international competitions between clubs and national representative teams, it is imperative that it has international umbrella organisations. These are necessary to represent the sectors' interests within various relevant international institutions within and outside the field of sports. Also they are necessary to determine the rules of the game in the broadest sense of the word and to initiate and enable international competitions.

At a global level this position is taken by the *Fédération Internationale de Football Association*, better known as 'FIFA'. The legal form of FIFA is an association governed by Swiss law. It has 211 NFF-members – defined as 'Member Associations' in its articles and regulations – that are bound to the FIFA articles of association, its other regulations and resolutions based on their membership. Furthermore FIFA recognises as part of its organisational structure six confederations, each covering a continent. The relation between FIFA and its confederations is set out in the FIFA statutes.⁴ By acknowledging in their own statutes that they are a FIFA confederation,⁵ the confederations acknowledge their position within the organisation of world football i.e., the FIFA organisation. Thus, the relation between FIFA and its confederation is of an organisational law character, each confederation being an organisational unit within the FIFA organisation. They are not members of FIFA but in my opinion

Spain, Gibraltar and Andorra also have no club licensing system for their domestic competitions. Absence of a licensing system does not mean that clubs taking part in a competition are not subject to (stringent) requirements and criteria based on membership of and/or a contractual relation with a federation or league. E.g., in England member clubs of the Premier League have to comply with the *Premier League Rules* based on their membership. In most cases, the Rules go beyond UEFA's requirements.

³ In fact this situation is reported to exist in England and Spain. See *UEFA Club Licensing, 10 years on ...*, *ibid.*, p. 19.

⁴ See Arts 22 and 23 FIFA Statutes.

⁵ See e.g., Art 3.1(1) UEFA Statutes. Interestingly, Art 3.2 UEFA Statutes states that it shall, if necessary, define its relations and respective jurisdictions with FIFA by contract. The question how this relates to Art 22 FIFA statutes falls outside the scope of this chapter.

chapters of FIFA in which the NFFs are sorted according to their geographic position.⁶ The confederations are bound to the FIFA articles of association, its other regulations and resolutions because they are (self-recognised) part of its organisational structure. UEFA is one of these confederations.⁷ As was set out above, I will focus on the phenomenon of club licensing in Europe.

FIFA does not operate a licensing system itself but considers club licensing to be a key element in promoting the professionalisation of football and therefore ‘encourages’ its confederations and NFFs to introduce club licensing.⁸ To that end FIFA has published a Club Licensing Handbook, designed to be a practical, step-by-step guide for NFFs as they establish their national club licensing system,⁹ and has set up the FIFA Professional Football Department to provide support and assistance to confederations and NFFs to establish and improve club licensing schemes. Furthermore, it has adopted the FIFA Club Licensing Regulations (‘FIFA CLR’),¹⁰ which obliges the FIFA confederations to establish a licensing system for their club competitions, as will be explained further in section 2.2.

Historically, club licensing was developed by UEFA as a result of discussions taken place between clubs, NFFs and UEFA in 1999. At that time there were a number of commonly known problems in European football. These included inter alia inadequate governance structures, lack of youth investment, poor facilities and poor financial planning. The club licensing system was designed to improve the quality of club management on a spectrum of matters by setting standards for them as a conditions for eligibility to take part in club competitions. The overall objective was to strengthen the organisational and managerial functioning of clubs and of the football system as whole.¹¹ Its effectiveness demonstrated, FIFA subsequently embraced this philosophy and included the promotion of club licensing in its policies.

The objectives for the club licensing system developed by FIFA are divided in six themes, including:¹²

- safeguarding the credibility and integrity of club competitions;
- improving the level of professionalism within the football family;
- promoting sporting values in accordance with the principles of fair play as well as safe and secure match environments;
- promoting transparency in the finances of clubs;
- promoting transparency in the ownership of clubs;

⁶ FIFA may in exceptional circumstances, authorise a confederation to grant membership to an association that belongs geographically to another continent and is not affiliated to the confederation on that continent: Art 22.(2) FIFA Statutes.

⁷ The other confederations being the Asian Football Confederation (AFC); Confédération Africaine de Football (CAF); Confederation of North, Central American and Caribbean Association Football (CONCACAF); Confederación Sudamericana de Fútbol (CONMEBOL); and Oceania Football Confederation (OFC). See for further details Chapter 2 of this book.

⁸ FIFA website, consulted January 2022.

⁹ Club Licensing Handbook, p. 5.

¹⁰ The confederation shall support the associations with the setting up, developing and implementing of the club licensing system at national level.

¹¹ See *The UEFA Club Licensing System: Overview of Implementation and Application across Europe*, p. 4, available at <https://www.uefa.com/insideuefa/protecting-the-game/news/025f-0fd25b7d41bc-fd9eb2110749-1000--report-on-club-licensing-system/> (accessed 7 May 2023).

¹² Art 1.1 FIFA CLR.

- promoting transparency in the control of clubs.

The objectives of the UEFA licensing system materially cover the same six themes but are more detailed and more extensive. Article 2 of the UEFA Club Licensing and Financial Fair Play Regulations ('UEFA-CL&FFPR') states the following objectives:

- to further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club;
- to ensure that clubs have an adequate level of management and organisation;
- to adapt clubs' sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities;
- to protect the integrity and smooth running of the UEFA club competitions;
- to allow the development of benchmarking for clubs in financial, sporting, legal, personnel, administrative and infrastructure-related criteria throughout Europe;
- to achieve financial fair play in UEFA club competitions and in particular:
 - (i) to improve the economic and financial capability of the clubs, increasing their transparency and credibility;
 - (ii) to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with employees, social/tax authorities and other clubs punctually;
 - (iii) to introduce more discipline and rationality in club football finances;
 - (iv) to encourage clubs to operate on the basis of their own revenues;
 - (v) to encourage responsible spending for the long-term benefit of football; and
 - (vi) to protect the long-term viability and sustainability of European club football.

What can be observed is that the objectives of the licensing system go beyond matters that are typically sport related, such as safeguarding the credibility and integrity of football competitions and promoting sporting values. They also cover matters that are not typically sport related such as improving the level of professionalism and transparency of clubs. What these objectives have in common, however, is that they are important for the credibility and viability of the game at a professional level and thus, indirectly, of the game at a grassroots level.

2.2 From FIFA Regulations to NFF Regulations

Given the organisational structure of football, FIFA takes the highest position in the hierarchy of regulators in the field of club licensing. Consequently, the FIFA CLR that entered into force on 1 January 2008 are the highest-ranking regulation to which the confederations must adapt their regulations. Historically, however, the UEFA club licensing regulations that were adopted March 2003, its version 2.0 of October 2005 and further elaborated since culminating in the current UEFA Club Licensing and Financial Fair Play Regulations, preceded the FIFA-regulations and served as its model.

The FIFA CLR prescribe that confederations must implement the FIFA CLR for their confederation competitions.¹³ The FIFA CLR furthermore determine that the confederation club licensing regulations are to be implemented subsequently by the NFFs in their regulations.¹⁴ To ensure that this is done adequately, the NFF-regulations must be accredited by the relevant confederation.¹⁵ By implication this means that the NFFs are the last link in the chain of regulators pertaining to confederation club competitions.

The confederation regulations are binding as to the results to be achieved: NFFs are allowed to adapt the wording of their regulations according to their objectives and priorities, their statutes and regulations, national law and flexibility given by the confederation.¹⁶ This method of regulating allows that the FIFA CLR, via the confederation regulations are transposed in national regulations in a way that is best suited to the laws and legal framework applicable to each individual NFF. Ultimately, the club licensing regulations promulgated by the NFFs are the regulations that are binding upon the clubs.

Another feature of the relation between the FIFA-regulations, UEFA-regulations and NFF-regulations is that the FIFA and confederation regulations set the minimum standards that must be implemented in lower ranking regulations.¹⁷ Thus, confederation regulations shall include the principles and minimum criteria set by the FIFA CLR, but confederations are free to increase the minimum requirements or to upgrade the criteria established by these regulations for the purpose of entering confederation club competitions.¹⁸ If a confederation increases requirements or upgrades criteria, the NFFs falling within that confederation are obliged to follow this in their regulations. The NFFs are obliged to transpose the relevant confederation regulations as a minimum in their regulations, but are also free to increase requirements and upgrade criteria established by confederation regulations as well as add additional criteria.¹⁹

As a final comment on this matter, the NFFs are not obliged to implement a club licensing system for their own national competitions nor, if they operate such a system, to include therein the criteria set in the FIFA CLR and the corresponding confederation regulations. NFFs merely have to decide whether and to what extent the confederation regulation shall apply to the national context.²⁰ Consequently, they retain their autonomy pertaining to their national competitions in this respect. Should, however, an NFF have a club licensing system for its national competitions and have introduced in its club licensing regulation any increased minimum requirements, upgraded or additional criteria, these shall also apply to a licence for confederation club competitions.²¹ Consequently, the NFF requirements for obtaining a con-

¹³ The confederations had to have established club licensing regulations by the 2009–2010 season at the latest. See Art 11 FIFA CLR.

¹⁴ Art 2.2.1.1 FIFA CLR. The NFFs had to have transformed the confederation regulations into national regulations and implement the club licensing system at national level by the 2010–2011 season at the latest.

¹⁵ Art 1 FIFA CLR.

¹⁶ Art 2.2.8.3 FIFA CLR.

¹⁷ An opening for obtaining exceptions is foreseen, however, in Art 2.2.8.2 FIFA CLR.

¹⁸ Art 2.2.4.2 FIFA CLR.

¹⁹ Art 2.2.8.3 FIFA CLR.

²⁰ Art 1(b) FIFA CLR.

²¹ Art 1(b) FIFA CLR.

federation club competition licence cannot be less stringent than the requirements for a licence for its national club competition. The opposite however, is allowed.²²

This being said, NFFs are encouraged to apply the system for confederation competitions to national competitions. As a minimum, the club licensing system must be implemented in respect of top-division clubs which qualify for confederation club competitions on sporting merit. Article 2.2.9 FIFA CLR, however, states that it is best practice to implement the club licensing system in respect of all top-division clubs of the member association. Furthermore, it is stressed that by further expanding the system to include all national competitions (top division and lower divisions) the quality standards would be improved on a broader basis and clubs of the same division would be treated equally.²³

3. UEFA CLUB LICENSING SYSTEM

3.1 The Regulatory Framework

In conformity with the FIFA CLR, the UEFA licensing system consists of two main components: The regulations that govern the actors and procedures involved in the licensing process, and the regulations that govern the requirements and criteria that must be met in order to be eligible for a licence. This section deals with the first component of the licensing system, being the regulation of its process.

The regulation of the licensing process is laid down in the UEFA-CL&FFPR and in addition in the Club Licensing Quality Standard, that supplements the UEFA-CL&FFPR. The relevant provisions are addressed to the UEFA member NFFs and describe the minimum requirements to be fulfilled in order to be eligible to act as the licensor for its clubs, as well as the minimum procedures to be followed by the licensor in its assessment of the club licensing criteria (see section 3.4). Furthermore they stipulate that clubs that qualify for the UEFA club competitions on sporting merit must obtain a licence issued by their licensor and that a licence is valid only for the season for which it was issued.²⁴

The same regulations also govern the rights, duties and responsibilities of all parties involved in the UEFA club monitoring process. The club monitoring process (part III of the UEFA-CL&FFPR) is put in place to monitor and, if necessary, enforce compliance with both the licensing process and the financial fair play rules *after* a licence is issued. The principal

²² The system does not seem airtight though, since the licensor and regulator for domestic competitions may be a league whereas the licensor and regulator for confederation competitions may be the NFF (see section 3.2 *infra*). Moreover, an NFF not operating a club licensing system for its domestic competitions may in fact, compared with confederation regulations, impose more stringent requirements on its clubs taking part in its domestic competitions but would – strictly following the wording of the relevant provisions – not be obliged to include these requirements in its confederation club competition licensing regulations. The law governing the membership may however in such case lead to a different result on grounds that the ratio of the rule is dominant.

²³ If a club is not subject to club licensing at the level described by UEFA-CL&FFPR – which is possible if it belongs to a lower division than the top division and no club licensing system is in place for that division – but qualifies on sporting merit for taking part in a UEFA club competition, a special licensing procedure applies to that club pursuant to Art 5 *UEFA-CL&FFPR*.

²⁴ See Art 14 *UEFA-CL&FFPR*, which also stipulates that a licence is strictly personal.

actor in this system is the UEFA Club Financial Control Body. The concept of financial fair play is that clubs over a period of time have to balance their books or break even. Broadly speaking it entails that clubs cannot repeatedly spend more than the revenue they generate, club owners must contribute capital to cover losses and prevent a build-up of debt and clubs must meet their financial obligations in relation to transfers and employees.²⁵

Non-compliance with either the licensing regulations or the financial fair play rules during a competition may, *inter alia* lead to disqualification from a club competition in progress and/or exclusion from future competitions.²⁶ Since the club monitoring system as such is not part of the licensing system, it falls outside the scope of this chapter. It is discussed in more detail in Chapter 7 of this book.

3.2 The Licensor – NFF or Affiliated League

Turning back to the club licensing system, as was mentioned above, the relevant provisions are addressed to the UEFA member NFFs. The NFFs are designated as the licensor in Article 5 UEFA-CL&FFPR. In that same provision, however, it is stated that if certain conditions are met, an NFF may delegate the club licensing system to its ‘affiliated league’.²⁷ A league is defined as ‘a combination of clubs within the territory of a Member Association and which is subordinate to and under the authority of that Member Association’.²⁸ Football leagues are essentially associations of football clubs playing in a certain division and that are *inter alia* responsible for organising the competition between its members. If my reading of the regulations is correct, after delegation to a league, the licensor within the meaning of the UEFA-CL&FFPR is the relevant league and not the NFF.²⁹

As a consequence the obligations set out in the regulations must come to rest on that league. Since leagues are not a member of UEFA, they have to be subjected to the provisions of UEFA-CL&FFPR in another way. This is achieved by requiring approval from the UEFA Executive Committee for delegation of the club licensing system to a league. That approval can be obtained only if certain conditions are fulfilled including *inter alia* that the NFF concerned provides written confirmation that the league is affiliated to it and has accepted in writing its statutes, regulations and the decisions of its responsible and competent bodies. Furthermore the NFF must demonstrate that the league has submitted a written decision by its legislative body to comply with a number of obligations towards UEFA, including:

²⁵ See *Club Licensing – 10 years on ...*, p. 12, available at https://editorial.uefa.com/resources/0229-0f842b3e197d-84c5c038bcd0-1000/club_licensing_-_10_years_on_.pdf (accessed 10 May 2023).

²⁶ See Art 29 *Procedural rules governing the UEFA Club Financial Control Body*.

²⁷ Such delegation and withdrawal thereof, *inter alia* requires the approval of the UEFA administration. See Art 1, Annex II *UEFA-CL&FFPR*, in which other conditions are summed up that must be met in order to obtain approval.

²⁸ Art I.(4) *UEFA Statutes*. Also see Art 7bis.(3) *UEFA Statutes*: ‘Leagues or any other groups of clubs at Member Association level shall only be permitted with the Association’s express consent and shall be subordinate to it. The Association’s statutes shall define the powers apportioned to any such group, as well as its rights and obligations. The statutes and regulations of any such group shall be subject to the approval of the Association.’

²⁹ See the definition of licensor in Art 3 *UEFA-CL&FFPR*; Part I.(2) *Club Licensing Quality Standard*; and Art 1.(c) *Procedural rules governing the UEFA Club Financial Control Body*.

- (i) to implement the UEFA club licensing criteria according to the provisions of the UEFA-CL&FFPR and any future amendments thereto into national club licensing regulations;
- (ii) to cooperate with UEFA and its nominated bodies/agencies for the purpose of club monitoring;
- (iii) to grant UEFA and its nominated bodies/agencies full necessary access to verify the operation of the club licensing system and the decisions of the decision-making bodies at any time;
- (iv) to allow UEFA and its nominated bodies/agencies to conduct compliance audits at any time of clubs that qualify for a UEFA club competition;
- (v) to accept any UEFA decision made with regard to exceptions and/or compliance audits;
- (vi) to issue the appropriate sanctions to the relevant parties according to UEFA's recommendations or decisions.

All of the above does not alter the fact, however, that the NFF concerned remains fully liable and responsible for the proper implementation of the licensing system.³⁰ The manner in which supervision over the league is exercised by the NFF is not regulated by UEFA. This matter is left to the relevant NFF and its league. Presumably the minimum legal requirement to qualify as an affiliated league – being that a league is subordinate to the NFF³¹ – offers enough comfort that an NFF is capable to arrange for adequate supervision and ad hoc intervention, if necessary. Furthermore, as an *ultimum remedium*, the NFF can request approval from the UEFA Executive Committee to revoke the delegation pursuant to Article 1 of Annex II UEFA-CL&FFPR, and this way resume full control over the club licensing process. In practice, 52 UEFA member NFFs operate the club licensing system themselves and three of them have delegated it to an affiliated league.³²

To conclude this paragraph, it should be noted that an NFF or, as the case may be its affiliated league, is not authorised to grant licences by virtue of their UEFA membership respectively delegation automatically. What is also required is that their licensing process is accredited by an independent certification body, which assesses compliance with all the requirements contained in Part II of the Club Licensing Quality Standard, to be discussed in section 3.4 *infra*.³³ If the requirements are met, the certification body issues a certificate which is valid for one season. The licensing process, consequently, is subject to an assessment by an independent certification body annually. If a non-conformity is detected, it must be rectified by the licensor. In case of a major non-conformity or repeated minor non-conformities certification may be withheld. If a licensor is not certified, the implication is that it cannot issue a UEFA club competition licence as a result of which its club(s) will be excluded from taking part in that competition.³⁴

³⁰ Art 5(2) *UEFA-CL&FFPR*.

³¹ See Art 7bis(3) *UEFA Statutes*.

³² *The UEFA Club Licensing System: Overview of Implementation and Application across Europe*, p. 30.

³³ Part I(4) *Club Licensing Quality Standard*.

³⁴ The number of non-certifications vary over the years from one to three. See for an overview *The UEFA Club Licensing System: Overview of Implementation and Application across Europe*, p. 17.

3.3 The Licence Applicant and its Obligations

A licence applicant can only be a ‘football club’, states Article 12 UEFA-CL&FFPR. In addition, it must qualify for the relevant competition on sporting merit. For licensing purposes the legal form adopted by football clubs is not relevant. The legal form in which football clubs are organised differs throughout Europe. Clubs can, depending on the legal framework in a specific country, for example, be organised under the form of foundations, associations, listed or privately held incorporated companies or specific sporting forms provided for by national law.³⁵ The regulations are adapted to reflect this reality, by defining a football club as a ‘legal entity fully responsible for a football team participating in national and international competitions’.³⁶

The regulations are flexible on another matter and that is that the licence applicant can either be (i) a registered member of a UEFA member NFF and/or its affiliated league or (ii) a legal entity that has a contractual relationship with a registered member. In the latter case the licence applicant (the football club) is referred to as ‘football company’. A football company, consequently, is not a member of the licensor, but affiliated to a member of the licensor. This means that it is not bound to the licensors’ regulations and decisions on the basis of membership. This matter is solved in the mandatory agreement between the registered NFF/league-member and the football company, that must meet specific requirements including that the football company subjects itself to the regulations and decisions of the licensor.³⁷

A restriction that applies to licence applicants is that the membership and the contractual relationship in case of a football company must have lasted – at the start of the licence season – for at least three consecutive years. This three-year period is deemed to be disrupted if certain changes in the legal form, legal group structure (including a merger with another entity or transfer of football activities to another entity) or identity (including headquarters, name or colours) have occurred to the detriment of the integrity of a competition or to facilitate the licence applicant’s qualification for a competition on sporting merit or its receipt of a licence. The main reasons for this rule are to safeguard the sporting integrity of the competition and protect the creditors’ interest by preventing that if a club were to go bankrupt it can create a new legal entity with the same or similar identity to avoid having to settle its debts. If any of the above events occur, the club can apply for an exception to the three-year rule. In about 92 per cent of the cases, the approval is granted.³⁸

As regards the obligations of the licence applicant, the regulations require that the licence applicant must provide the licensor with all necessary information and/or relevant documents to fully demonstrate that the licensing obligations are fulfilled as well as any other document relevant for decision-making by the licensor. Furthermore, it must notify the licensor of any event occurring after the submission of the licensing documentation representing a significant change to the information previously submitted (including a change of the licence applicant’s

³⁵ And apparently occasionally as municipal-owned or state funded entities. See *Club Licencing – 10 years on ...*, pp. 30 and 59.

³⁶ See Art 12 *UEFA-CL&FFPR*.

³⁷ See Art 45 *UEFA-CL&FFPR*.

³⁸ The UEFA Club Licensing System: Overview of Implementation and Application across Europe, pp. 14–15.

legal form, legal group structure or identity).³⁹ Failure to comply with its obligations may lead to refusal or withdrawal of the licence.

3.4 Requirements Pertaining to the Licensing Process – Obligations of the Licensor

The regulations pertaining to the licensing process are quite detailed and demonstrate the weight attached to a careful, fair and objective application and assessment procedure. The obligations of the licensor to this end are listed in Article 5 UEFA-LC&FFP. The first obligation is to integrate all applicable provisions pertaining to the licensing process into the national club licensing regulations, and submit them to the UEFA administration for review.⁴⁰ This obligation is to ensure that the national regulations are compliant with the UEFA regulations. This requires no further explanation.

The other obligations listed in this provision relate to the licensing process as such.⁴¹ These obligations are that the licensor must:

- (a) establish an appropriate licensing administration as defined in Article 6 UEFA-CL&FFPR;
- (b) establish at least two decision-making bodies as defined in Article 7 UEFA-CL&FFPR;
- (c) set up a catalogue of sanctions as defined in Article 8 UEFA-CL&FFPR;
- (d) define the core process as defined in Article 9 UEFA-CL&FFPR;
- (e) assess the documentation submitted by the licence applicants, consider whether this is appropriate and define the assessment procedures in accordance with Article 10 UEFA-CL&FFPR;
- (f) ensure equal treatment of all licence applicants and guarantee them full confidentiality with regard to all information provided during the licensing process as defined in Article 11 UEFA-CL&FFPR;
- (g) determine whether each criterion has been met and what further information, if any, is needed for a licence to be granted.

The obligations listed above are further elaborated in the respective provisions of the UEFA regulations referred to, as well as in Part II of the Club Licensing Quality Standard. The latter holds a total number of 16 requirements a licensor has to comply with. Some of which elaborate on the obligations mentioned above, others supplementing them. The key objective of these provisions is to accomplish a robust and credible licensing process.⁴² They cover a number of aspects.

³⁹ See Art 13 *UEFA-CL&FFPR*.

⁴⁰ Art 5(3) *UEFA-LC&FFP* and Requirement 4 *Club Licensing Quality Standard*. As was set out above the NFF club licensing regulations must be accredited by the confederation involved pursuant to Art 1 *FIFA CLR*. The regulations must be submitted in one of the four official UEFA languages. For the purpose of compliance audits, in the event of any discrepancy in the interpretation of the national club licensing regulations between the UEFA official language version and the official national language version, the UEFA official language version is authoritative. See Art 71 *UEFA-CL&FFPR*. In case of interpretation issues between one of the official UEFA languages and the regulations are also in English, the English version prevails. See Art 42 *Procedural rules governing the UEFA Club Financial Control Body*.

⁴¹ See Art 5(4) *UEFA-CL&FFPR*.

⁴² See also Part I(4) *Club Licensing Quality Standard*.

One of these aspects is that the licensing process is managed professionally and with dedication. To this end the licensor is, for example, required to ensure that a member of its top management is responsible for the club licensing system, that it shall establish an appropriate organisation for the club licensing system with all the necessary resources in order to implement and manage the club licensing system effectively including a licensing administration with qualified staff,⁴³ make sure to establish a written policy for the management of the club licensing system including its minimum requirements,⁴⁴ provide appropriate support to the licensing administration,⁴⁵ and standards for documentation management.⁴⁶

Another aspect is that all actors involved in the licensing process are well-informed about and understand the licensing process, understand their role in that process and what is expected from them and when. Obligations to this end include for example, that the licensor must take care of education and training programmes for all involved in the club licensing system,⁴⁷ assisting and advising of licensees,⁴⁸ regular communication both internally (via intranet, notice boards, meetings with all involved in the club licensing system) and externally (via official website, circular letters, newsletters, the media, etc.) on matters related to the club licensing.⁴⁹

The third aspect covers what is indicated as the ‘core process’. This entails the conduct of affairs and subsequent steps to be completed to evaluate a licence application and, where applicable, verification that the conditions for granting the licence are maintained throughout the season. The requirements imposed on the licensor include inter alia communication of a club licensing core process timetable, submission of the licensing documentation to the licence applicants, return of the licensing documentation to the licensor by the applicant, assessment of the documentation by the licensing administration, assessment and decision by the decision-making bodies, and communication of decisions to the licence applicants.⁵⁰

The fourth aspect concerns the credibility and trustworthiness of the licensing process. Under this heading one could list that the licensor must guarantee equal treatment and confidentiality,⁵¹ that it must ensure that all those involved in the licensing process respect the principle of independence and that there must be (at least) two decision-making bodies, the First Instance Body and the Appeals Body, that must be independent of each other. With respect to confidentiality the licensor is required to establishing a written procedure which must inter alia impose that all those involved in the club licensing system and club monitoring process sign agreements, as a minimum, upon their appointment which guarantee the licence applicants/licensees full confidentiality with regard to all information submitted during the club licensing process, describe how confidential information provided by the licence applicants/licensees

⁴³ See further Art 6 *UEFA-CL&FFPR*.

⁴⁴ See further Requirement 2 *Club Licensing Quality Standard*.

⁴⁵ See further Requirement 5 *Club Licensing Quality Standard*.

⁴⁶ See further Requirement 11 *Club Licensing Quality Standard*.

⁴⁷ See further Requirement 1 *Club Licensing Quality Standard*.

⁴⁸ See further Art 6 *UEFA-CL&FFPR*.

⁴⁹ See further Requirement 3, Requirement 10, Requirement 14 *Club Licensing Quality Standard*.

⁵⁰ Arts 9 and 10 *UEFA-CL&FFPR*, further elaborated in Requirement 9 *Club Licensing Quality Standard*.

⁵¹ Art 11 *UEFA-CL&FFPR*.

is handled, stipulate the consequences in case there are any breaches of confidentiality and stipulate for how long information submitted must remain confidential.⁵²

In the same vein, the licensor must establish a written procedure to ensure that all those involved in the club licensing system respect the principles of independence. The written procedure must inter alia impose that all those involved in the club licensing system and club monitoring process declare in writing their independence upon their appointment and require that the members of the decision-making bodies also declare orally their independence at the beginning of each meeting.⁵³ As regards the First Instance Body and Appeals Body, provisions must be put in place regarding their composition, qualification and number of their members and their terms of office and re-appointment. These provisions ensure that these bodies are in good shape, both in numbers and expertise. In addition, provisions apply concerning their competences, incompatibilities and independence in the decision-making process, the content of the minutes of their meetings and requirements pertaining to their decisions such as that the grounds for the decision are clearly stated.⁵⁴ To conclude this overview, UEFA and/or its nominated bodies/agencies have the right to, at any time, conduct compliance audits of the licensor and, in the presence of the latter, of the licence applicant/licensee. These compliance audits aim to ensure that the licensor, as well as the licence applicant/licensee, have fulfilled their obligations as defined in these regulations and that the licence was correctly awarded at the time of the final decision of the licensor.⁵⁵

The last aspect is that the efficiency and effectiveness of the club licensing system must be reviewed by the licensor at an annual internal meeting which must cover possible improvements/amendments to the national club licensing regulations, feedback from the licensing administration and licensing experts, feedback from the chairmen of the decision-making bodies, feedback from the licence applicants/licensees, UEFA assistance and compliance visits (if applicable), the Club Licensing Quality Standard certification audit and corrective actions (if any).⁵⁶ The relevance of this requirement is, obviously, that an annual evaluation of the process involving feedback from the relevant actors enables to register points for improvement of the process.

4. UEFA CLUB LICENSING SYSTEM – THE ASSESSMENT CRITERIA AND THEIR ENFORCEMENT

4.1 The Classification of Assessment Criteria – A Birds' Eye View

The second main component of the UEFA club licensing system are the criteria that must be met in order to be eligible for a licence. The licensing regulations distinguishes the assessment criteria according to content and their weight. To start with the latter category, some criteria are considered essential for obtaining a licence. If one of these so-called 'A' criteria is not met,

⁵² See further Requirement 6 *Club Licensing Quality Standard*.

⁵³ See further Requirement 7 *Club Licensing Quality Standard*.

⁵⁴ See Art 7 *UEFA-CL&FFP* and further Requirement 10 *Club Licensing Quality Standard*.

⁵⁵ Art 71 *UEFA-CL&FFPR*. See for the number of licensor and club audits performed over the years, *Club Licensing – 10 years on ...*, p. 25.

⁵⁶ See Art 7 *UEFA-CL&FFPR* and further Requirement 15 *Club Licensing Quality Standard*.

the application must be rejected. The other category of criteria are the ‘B’ criteria.⁵⁷ The applicant has to meet these criteria as well, however, if one of these criteria is not met the applicant may be granted the opportunity to rectify.⁵⁸

The criteria are otherwise grouped in five substantive themes, being Sporting, Infrastructure, Personnel and Administrative, Legal and Financial.⁵⁹ The main objective of each of these sets of criteria are explained on the UEFA website⁶⁰ and are quoted hereafter under each heading by way of introduction.

Sporting criteria

The sporting criteria are primarily aimed at encouraging investment in quality-driven youth development programmes which not only support the football education of youth players but also place the necessary emphasis on non-football education, medical care, fair play on and off the pitch, with the overall objective of attracting into football more and better-educated boys and girls.

The criteria organised under this heading are laid down in eight provisions, covering such issues as the requirement to have a youth development programme, requirements pertaining to the minimum number of youth teams in different age ranges, medical care of players, registration of players, the contract with professional players, refereeing matters and laws of the game including, racial equality and anti-discrimination practice and child protection and welfare. In particular the requirements concerning the youth development programme are fairly detailed including such items varying from infrastructure to medical support, education on laws of the game, anti-doping, integrity and anti-discrimination, and ensuring that youth players involved in its programme have the possibility to follow mandatory school education and non-football education in general. The background for this is that it is deemed absolutely necessary for the future of football to have a broad base of footballers with the necessary skills and motivation to become professional players.⁶¹

What is worth mentioning is that some of the criteria determine that clubs have to meet requirements set in other regulations including the FIFA and UEFA regulations and guidelines.⁶² This way the licensing system functions to promote consistency with and enforce other FIFA and UEFA regulations and guidelines, which strengthens its self-regulatory capacity. This is a technique used more often in the licensing system.

⁵⁷ The denotation ‘A’ criteria respectively ‘B’ criteria is but not as such used in the *UEFA-CL&FFPR* but stems from the *FIFA CLR* (Art 2(1)), which also mentions C-criteria, which are best practice recommendations.

⁵⁸ See Art 16 *UEFA-CL&FFPR*.

⁵⁹ The criteria that apply to the UEFA Women’s Champion League are somewhat less extensive, see Art 16bis *UEFA-CL&FFPR* and its Annex XIII.

⁶⁰ See <https://www.uefa.com/insideuefa/protecting-the-game/club-licensing/> (accessed 7 May 2023).

⁶¹ Art 6.1 *FIFA CLR*.

⁶² See Art 19 (*UEFA Medical Regulations*); Arts 21 and 22 (*FIFA Regulations on the Status and Transfer of Players*); Art 23 (*UEFA Safety and Security Regulations*); and Art 23bis, a catch-all: any relevant UEFA guidelines.

Infrastructure criteria

Clubs must have an approved stadium which fulfils the requirements of the UEFA Stadium Infrastructure Regulations and provides spectators and media representatives with a well-equipped, well-appointed, safe and comfortable environment. In addition, they must have suitable training facilities for their players to help them to improve their technical skills.

The infrastructure criteria in the UEFA-CL&FFPR are not elaborated much. They mainly require legal certainty that the club has at its disposal a quality stadium and training facilities. The main idea is that in order to attract spectators, clubs:

should try to provide a stadium that is attractive to visit, safe and secure, easy to reach by car (including parking facilities) and/or public transport, has comfortable seats with a close view of the pitch, clean hospitality facilities and shops, is equipped with hygienic and spacious toilets for both sexes, provides communication installations (loudspeakers and a video screen) and, finally, also offers interesting and exciting football on the pitch.⁶³

For the specific requirements that apply to the stadium reference is made to the UEFA Stadium Infrastructure requirements.⁶⁴ Setting the criteria for the training facilities is delegated to the licensor,⁶⁵ allowing the NFFs to tailor the requirements to what is needed and can reasonably be expected from their members.

Personnel and administrative criteria

The personnel and administrative criteria aim to provide the framework for clubs to acquire well-educated, qualified and skilled specialists with a certain know-how and experience to run operations in an efficient and effective manner and to ensure that both youth and first-team players are trained by qualified coaches and supported by the necessary medical staff.

Requirements imposed on the licence applicant in this field, include the presence of a club secretariat with an adequate number of skilled staff according to its needs to run its daily business and adequate office space. The club secretariat must ensure that its office is open to communicate with the licensor and the public and that it is equipped, as a minimum, with phone, fax, email facilities and a website. In addition to this, the club is required to have f14 types of officers and staff in its service, including a general manager, finance officer, media officer, medical doctor, physiotherapist, youth team medic, security officer, stewards, supporter liaison officer, disability access officer, head coach of first squad, assistant coach of first squad, head of youth development programme, and youth coaches. The qualifications required for these functions are included in the criteria.⁶⁶ Furthermore, their rights and duties must be laid down in writing and the club has the duty of replacement in case of vacancies during the season and notification thereof to the licensor.

⁶³ Art 7.3 *FIFA CLR*.

⁶⁴ For more on matters related to football stadiums see Chapter 11 in this book.

⁶⁵ See Art 26 *UEFA-CL&FFPR*.

⁶⁶ With this side note that with respect to the criteria applicable to coaches further reference is made to the *UEFA Coaching Convention*. See Arts 36–40 *UEFA-CL&FFPR*.

All these criteria are intended to accomplish that licence applicants are managed in a professional way, make well-educated, qualified and skilled specialists available to licence applicants and that the players of the first and other teams are provided with training by qualified coaches and support from the necessary medical staff.⁶⁷

Legal criteria

The legal criteria are aimed at ensuring clubs have a legally robust basis for applying the regulations, as well as ensuring transparency in terms of the legal entity responsible for the football team participating in national and international competitions, to establish a complete picture of the overall legal group structure and how it operates.

A substantial part of the legal criteria deal with basic but essential issues that are relevant in ensuring that the applicant is bound to the applicable rules and regulations and that the documentation and information provided are signed by and originate from persons that are authorised to represent the applicant. The number of these criteria and their level of detail is remarkable. They compel the competent bodies of the licence applicant, its officers and staff to take their responsibility in the licensing process in accordance with their position in the organisation of the applicant.

As clubs often are part of a group structure that manages also non-football activities, transparency of the group structure is key for a correct analysis of the license applicants' governance and financial situation. Part of the legal requirements, therefore, are aimed at achieving transparency of the legal group structure of the club, its position in it and its ultimate controlling party. Also parties that have a significant influence on the licence applicant, for example by a direct or indirect shareholding, voting agreements or otherwise must be disclosed. Furthermore, there are disclosure requirements pertaining to ownership interest, voting rights, and/or any involvement or influence whatsoever in relation to the governance of its financial and operating policies in another football club, which the applicant its group companies or parties that are considered to have a (potential) significant influence over the applicant, may have. The aim of these provisions is to achieve transparency on these matters.⁶⁸

What is noteworthy is that the FIFA CLR mention, rightly, that it is of fundamental importance that the sporting integrity of club competitions be protected.

To that end, FIFA and the confederations reserve the right to intervene and to take appropriate action in any situation in which it transpires that the same natural and legal person is in a position to influence the management, administration and/or sporting performance of more than one club participating in the same club competition.⁶⁹

Interestingly, however, neither the FIFA CLR nor the UEFA-CL&FFPR contain provisions to this end. Apparently this is too sensitive or complex to handle at a supranational level. In

⁶⁷ Art 8 *FIFA CLR*.

⁶⁸ Side note: The obligation to disclose the ultimate beneficial owner – which as a rule will be the same as the ultimate controlling party – is consistent with Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU. For more on this subject, see Chapter 17 of this book.

⁶⁹ Art 9.1 *FIFA CLR*.

this context, I submit, however, that multi-club ownership may lead to exclusion of a football club from a European club competition pursuant to the regulations of the relevant UEFA club competition.⁷⁰ The transparency requirements included in the licensing criteria, are conducive to enforcing these restrictions on multi-club ownership in the UEFA club competition regulations.

Financial criteria

The scope of the financial criteria is quite extensive in that they aim to deliver both short and long-term improvements for the clubs by safeguarding the financial health of European club football as a whole. The criteria should improve standards and the quality of financial management and planning, which should in turn increase transparency and credibility, protect creditors and provide a basis for fair competition.

The financial criterion first mentioned in the regulations is the obligation of the licence applicant to determine and provide the reporting perimeter, that is, the entity or combination of entities in respect of which financial information (e.g., single entity, consolidated or combined financial statements) has to be provided pursuant to Article 46bis *UEFA-CL&FFPR*. Transparency of the reporting perimeter is essential for correct analysis of the license applicants' financial situation and the money flow. For this purpose the financial criteria also contain detailed prescriptions concerning the financial statements the licence applicant must prepare, have audited, submit and publish.

In the interest of protecting creditors and to encourage clubs to settle liabilities on a timely basis, the financial criteria provide for a prohibition on overdue payables (i) towards other football clubs as a result of transfers undertaken between them,⁷¹ (ii) in respect of employees as a result of contractual or legal obligations; and (iii) towards social/tax authorities, as a result of contractual or legal obligations in respect of its employees, as well as provide detailed information on debts payable in these categories. In relation to the licensing process, the testing date for these payables is 31 December of the previous year. However, the overdue payment prohibitions continue to apply and include payment obligations after that date based on the financial fair play regulations.⁷²

In addition to the above, a licence applicant has to provide future financial information in order to demonstrate to the licensor its ability to continue as a going concern until the end of the licence season if certain indicators are breached that provide sufficient comfort that a club can indeed finish the competition. In this latter criterion obviously the interest of continuity of the competition is prevalent.

To conclude, the financial criteria also serve as a starting point for club benchmarking at a national level and European level, providing financial data on the state of affairs and devel-

⁷⁰ See inter alia Art 5 of each of the *Regulations of the UEFA Champions League*, *Regulations of the UEFA Women's Champions League*, and *Regulations of the UEFA Europa League*. For more on this matter, see Chapter 6 in this book.

⁷¹ In accordance with *FIFA Regulations on the Status and Transfer of Players*.

⁷² See Art 65 ff *UEFA-CL&FFPR*.

opments within the sector. Such data is useful for policy purposes, financial management and planning activities of UEFA, NFFs as well as clubs.⁷³

4.2 Enforcement

As was noted above, the regulations distinguish ‘A’ criteria from ‘B’ criteria. If an A criterion is not fulfilled, the licence must be denied.⁷⁴ Enforcement of compliance with these criteria lies in their immediate connection with eligibility for a licence.

The ‘B’ criteria cover obligations that are necessary to ensure a timely and proper licensing process. In this category fall obligations concerning (educative) programmes, the prescribed policies and guidelines, training facilities, presence of certain required staff and notification of changes in required staff. In case a criterion in this category is not fulfilled, the licence is not refused but the licensor must impose a sanction according to its catalogue of sanctions. The catalogue of sanctions may include a caution, a fine, the obligation to submit evidence or fulfil certain conditions by a certain deadline.⁷⁵ This catalogue is not limited and the general thought seems to be that the sanctions are designed to stimulate compliance with the criteria at hand.

In respect of violations of other (implied) licensing obligations, such as submission of falsified documents and non-respect of deadlines, reference is made to the national disciplinary regulations.⁷⁶ A violation of this nature, consequently, could also lead to refusal of the licence if so provided for in the NFFs’ regulations, apart from other sanctions such as fines, deduction of points, suspension or expulsion from membership or certain positions of individuals involved etc. In this context, I submit that Article 14 *UEFA-CL&FFPR* stipulates that a licence may be withdrawn by the licensor’s decision-making bodies if: (a) any of the conditions for the issuing of a licence are no longer satisfied; or (b) the licensee violates any of its obligations under the national club licensing regulations.

In addition to these enforcement mechanisms, UEFA has retained the power to conduct (or have conducted) compliance audits of the licensor and of the licence applicant/licensee at any time. The compliance audits ‘aim to ensure that the licensor, as well as the licence applicant/licensee, have fulfilled their obligations as defined in these regulations and that the licence was correctly awarded at the time of the final decision of the licensor’.⁷⁷ In case the audits bring to light that there has been a breach of the applicable regulations, the UEFA Club Financial Body is competent to deal with this in accordance with the Procedural rules governing the UEFA Club Financial Control Body.⁷⁸

The latter regulations provide for a number of disciplinary measures that can be imposed by the UEFA Club Financial Control Body⁷⁹ on any defendant/appellant licensor or licensee including inter alia a warning, a reprimand, a fine, deduction of points, withholding of reve-

⁷³ See the annual UEFA club licensing benchmarking reports titled *The European Club Footballing Landscape*.

⁷⁴ See Arts 16 and 16bis *UEFA-CL&FFPR*. The denotation ‘A’-criteria and ‘B’-criteria originates from Art 2.1 *FIFA CLR*, but is not taken over in the *UEFA-CL&FFPR*.

⁷⁵ Art 8(1) *UEFA-CL&FFPR*.

⁷⁶ See Art 8(2) *UEFA-CL&FFPR*.

⁷⁷ Art 71 *UEFA-CL&FFPR*.

⁷⁸ Art 72 *UEFA-CL&FFPR*.

⁷⁹ The CFCB is divided in two bodies, being the First Chamber, that decides in first instance, and the Chamber of Appeals that decides in appeal. See Art 3 *Procedural rules governing the UEFA Club*

nues from a UEFA competition, disqualification from competitions in progress and/or exclusion from future competitions, or a combination of the available measures.⁸⁰

5. UEFA AND NATIONAL CLUB COMPETITION LICENSING

As we saw in section 2.2, the relation between the FIFA and confederation licensing regulations on the one hand and NFF regulations on the other hand is that the NFFs must transpose the confederation regulations in their own regulations. The scope of these regulations must cover at least the football clubs that qualify and aspire to take part in the confederation club competitions and NFFs are encouraged to apply the same criteria to all their top division clubs. The NFFs are, however, free to deploy a club licensing system for their national competitions as well. Moreover, if they do, they are free to apply the confederation club licensing criteria or to use other criteria. If an NFF applies enhanced or additional criteria compared to the confederation regulations, these must be applied to the confederation club competition licensing regulations of that NFF as well.

In this section the focus lies on the interplay between the UEFA club licensing system and the national club licensing systems. Given the number of NFFs that have a national club licensing system it is not doable to give a comprehensive overview of how each NFF has organised its licensing systems and which assessment criteria it has developed. Therefore I shall try and give an impression of the diversity that is out there. Most findings are based on a report that was published fairly recently in 2020, *'The UEFA Club Licensing System: Overview of Implementation and Application across Europe'* and another report released by UEFA in 2015, *'UEFA Club Licensing, 10 years on ...'*, as well as answers to a questionnaire sent out to licensing administrators in seven countries, including Belgium, Denmark, England, Germany, Italy, the Netherlands, Norway and Portugal.

5.1 One Licence or a Dual Licensing System?

As we have seen above, UEFA encourages the national licensors to apply the UEFA criteria to all clubs in their top divisions. This 'nudge' had limited effect amongst its members. Only seven UEFA members have chosen for the option to apply the UEFA criteria to all clubs in their top divisions.⁸¹ The advantages that can be attributed to this system are obviously equal treatment of clubs and that one set of rules simplifies assessment and enforcement and thereby managing the licensing process in general.

The majority of UEFA member NFFs, however, have chosen to apply a dual licensing system, whereby separate licences are issued for the participation in UEFA club competitions and domestic competitions. The latter option allows more flexibility to design a licensing

Financial Control Body. Not all decisions taken in first instance are open to appeal. See Art 17 of the same.

⁸⁰ For natural persons in part other measures apply. See Art 29 *Procedural rules governing the UEFA Club Financial Control Body*.

⁸¹ Austria, Denmark, Germany, Iceland, San Marino and Slovakia. See *UEFA Club Licensing, 10 years on ...*, p. 19. England has no formal licensing for its domestic competitions, but the report from England mentions that almost all UEFA requirements apply to all clubs.

system and criteria that are better suited to the realities and needs of a given country and are easier to adapt if circumstance so demand. One can, for example, imagine that it is deemed too burdensome to impose all UEFA club licensing criteria on other clubs in the top division and/or lower divisions from a financial perspective for example, infrastructure and personnel criteria.⁸² Also, occasionally some additional requirements are in place for *lower* divisions in comparison with the top division, such as a bank guarantee to ensure payment of salaries if certain financial parameters are not met.⁸³

5.2 The Licence

As mentioned earlier, the UEFA licence is valid only for the season for which it was issued. Therefore, it has to be applied for every year. Most national licensing systems apply this format to their national club competition licences as well. In three countries however,⁸⁴ the licence for the domestic competitions are issued for an indefinite period of time, subject to the condition that the clubs continue to meet the licensing requirements and criteria. This system provides for a less hectic licensing process⁸⁵ and better enables continued monitoring of the clubs over the year than an assessment on a fixed moment in time.⁸⁶ Also such a system facilitates arrangements like a ‘plan of action’ in case a club no longer meets all criteria and needs some time to solve the issue step by step, potentially overlapping seasons.⁸⁷ For the UEFA club competitions however, this system does not seem to be immediately interesting since clubs need to qualify on sporting merit every year again. NFFs operating a continuous licence system, inevitably, have to have separate licensing cycles. One for their national club competitions and one for the UEFA club competitions.

5.3 The Licensor

The licensor for the UEFA club licence can be the NFF or its affiliated league.⁸⁸ This is also true for domestic club competitions for which a licence is required.⁸⁹ The implication of this is that in one country there can be different licensors for the UEFA club competitions and for

⁸² Some 15 countries are reported to use a licensing system only for their top division, and 34 countries are reported to use a licensing system for their lower professional divisions as well. *UEFA Club Licensing, 10 years on ...*, p. 20. E.g., with respect to infrastructure (Belgium and Norway), financial criteria (Belgium and Norway) or coaching (Norway).

⁸³ Reported from Italy.

⁸⁴ The Netherlands, Norway and Scotland. See *The UEFA Club Licensing System: Overview of Implementation and Application across Europe*, pp. 119, 123 and 137.

⁸⁵ This is speaking from experience, having served as a member of the body in first instance of the KNVB (*licentiecommissie*) in a period of some years before the continued system was introduced some years thereafter.

⁸⁶ I submit though that certain monitoring elements can be built in a one-year licence system as well, vide the UEFA club monitoring process.

⁸⁷ This instrument exists e.g., in The Netherlands and Norway, that both apply a financial rating system combined with a ‘plan of action’ for financial recovery if a club drops below certain financial parameters.

⁸⁸ Which is the case in only three countries, being Austria, Germany and Switzerland. See *The UEFA Club Licensing System: Overview of Implementation and Application across Europe*, p. 30.

⁸⁹ See footnote 2 *infra*.

the domestic club competitions. More specifically, this can be the case if the football clubs are organised in one or more leagues.

In a number of countries the licensor for the UEFA club competitions and for domestic competitions is the same. In such cases, the licensor for both licences can either be the NFF or the league.⁹⁰ Sometimes the licensor for men's and women's European club competitions are different.⁹¹ In other countries the NFF is the licensor for the UEFA club competitions whereas the domestic club licences are issued by a league.⁹² In these countries, the dual licensing system also has as a consequence that separate licensing organisations and processes for the UEFA licence respectively the domestic licence exist. Also multiple domestic licensing systems may exist for different leagues.⁹³

The decisions on issuing a licence and imposing sanctions for non-compliance with the licensing requirements and criteria are commonly delegated to a body in first instance, for example, a licensing committee, subject to appeal with an appeals body in line with the UEFA regulations on this point. Commonly known sanctions include a warning, fines, deduction of points, disqualification for taking part in a competition in progress or as *ultimum remedium* revocation of the licence. Also a plan of action covering a certain period of time and step by step improvements, is deployed as an instrument to rectify non-conformities. In some countries a variety of sanctions exist,⁹⁴ whereas in some countries only one sanction is reported.⁹⁵

5.4 The Licensing Organisation and Process

A dual licensing system does not impede that the licensor has one licensing organisation and process. If the domestic licence is issued for an indefinite period of time, obviously,

⁹⁰ In Belgium, Denmark, Italy, The Netherlands and Norway for example the licensor for both licences is the NFF (*Koninklijke Belgische Voetbalbond* or 'KBVB', *Dansk Boldspil-Union* or 'DBU', *Federazione Italiana Giuoco Calcio* or 'FIGC', *Koninklijke Nederlandse Voetbal Bond* or 'KNVB' respectively *Norges Football Forbund* or 'NFF'), whereas in Germany the licensor for both licences is a league (*Deutsche Fussball Liga* or 'DFL').

⁹¹ In e.g., England and Germany the league (Premier League respectively DLF) is the licensor for the men's European club competitions whereas the NFF (The Football Association (FA) respectively *Deutscher Fußball-Bund* (DFB)) is the licensor for the women's European Champions League.

⁹² This appears to be the case in France where the NFF *Fédération Française de Football* ('FFF') is the licensor for the UEFA licence and the *Ligue the Football Professionnell* ('LFP') is the licensor for the domestic professional football competitions. See *The UEFA Club Licensing System: Overview of Implementation and Application across Europe*, p. 30 and <https://www.lfp.fr/presentation-lfp/commissions> (accessed 7 May 2023) respectively.

⁹³ E.g., Portugal, where the licensor for the UEFA club competitions is the *Federação Portuguesa de Futebol* (FPF), the licensor for the two top divisions is the *Liga Portuguesa de Futebol Profissional* and the licensor for the third and fourth division is again the FPF. Similarly, in Germany the licence for the top two divisions is issued by the DFL whereas the licence for the third division is issued by the DFB.

⁹⁴ E.g., Belgium (fine, transfer restrictions, squad size limitations, deduction of points, relegation) Denmark (warning, fine, relegation, loss of licence); Germany (warning, fine, deduction of points, disqualification, relegation, loss of licence); The Netherlands (warning, fine, deduction of points, plan of action, bank guarantee, loss of licence, exclusion from UEFA licence – suspension and relegation pending); Norway (warning, fine, deduction of point, relegation, plan of action, loss of licence). England has no formal licensing system but Premier League members have to comply with the Premier League's Rules which provides for an extensive catalogue of sanctions. See the Premier League Handbook, section W.

⁹⁵ Portugal (loss of licence); Italy (refusal of licence).

some modifications to the *modus operandus* are needed to fit both licensing cycles but this does not require a separate licensing organisation. The same senior management, staff and decision-making bodies can function in both systems smoothly.⁹⁶ In fact, this seems the most efficient way to combine the UEFA and domestic club licensing systems.

In countries where a professional football league is involved, there can be an interesting interaction between the NFF and the league, because it is not a given which entity is authorised to regulate the UEFA and domestic club licences. We have seen that in some countries the NFF is the licensor for both licences and that in some countries the league is the licensor for both licences, whereas in yet other countries the NFF may be the licensor for the UEFA competition and the league the licensor for domestic competitions. There can be other variations as well. For example, in some countries the NFF is the licensor for both the UEFA competitions and the domestic competitions while within the NFF different departments and different bodies are charged with organising the licensing process and decisions.⁹⁷ Another variation is that the league is authorised to determine the regulations, that is, the add-ons to the UEFA-CL&FFPR, whereas the NFF is acting as licensor.⁹⁸

The alternative would be that the NFF issues the UEFA club licence and that the league issues the domestic club licence, which indeed can also be the outcome of the interaction between the NFF and the league as we have just seen. In terms of efficiency, the latter situations seem to be the most challenging. In this context I note that in England the NFF⁹⁹ and the league¹⁰⁰ have come to an arrangement whereby the league is to administer the licensing process on behalf of the NFF and to recommend to The Football Association board whether a UEFA Club Licence application should be granted or refused,¹⁰¹ whereas the NFF remains the licensor accommodating the decision-making bodies. I suppose a similar arrangement could be made to combine resources and set up one licensing organisation that serves both licensing procedures for reasons of cost efficiency.

5.5 The Licensing Criteria – Upgraded and Additional Criteria

As was explained earlier (see § 2.2), NFFs or as the case may be their affiliated league are free to determine if a licensing system shall apply to their domestic competitions as well and, if so, what rules, requirements and criteria shall apply in that system. The requirements and criteria applicable to national club competitions must also be applied to UEFA club competition licensing if they are more stringent or not covered at all in the UEFA-CL&FFPR. Adapted or additional criteria reflect what is considered to be a necessity or otherwise desirable by the football community in a specific country in response to specific issues that have occurred, are present or are anticipated in that country.

UEFA has published an overview of the adapted and additional criteria compared to the UEFA-CL&FFPR. This overview reveals that in 34 countries licensors introduced more

⁹⁶ E.g., in the Netherlands.

⁹⁷ Which is reported from Italy.

⁹⁸ E.g., in Denmark.

⁹⁹ The Football Association or 'FA'.

¹⁰⁰ The Football Association Premier League Limited or 'Premier League'.

¹⁰¹ See Art 3.2 *The Football Association Club Licensing Manual for Participation in UEFA Club Competitions*.

stringent, adapted criteria in their national licensing system. Higher standards are most commonly found in the field of youth teams (e.g., minimum number of teams, minimum number of coaches, coach qualifications, youth development plan), financial criteria (e.g., stricter overdue payments rules, mandatory future financial information, liquidity requirements) and personnel and secretariat requirements (e.g., qualifications, duty to replace). Less common are higher standards on anti-discrimination, medical examinations, infrastructure and child well-being.¹⁰²

Another 23 licensors are reported to have introduced additional criteria in their licensing system. These criteria cover the areas of Sporting (5), Infrastructure (2), Personnel and Administration (18) and Financial (7). No additional criteria are reported in the area Legal.¹⁰³ There is no country-by-country overview but some examples of additional criteria that are mentioned are that clubs are required to have a fitness coach or goal keeper coach for the first squad, a minimum number of locally trained players in the first squad or to submit a bank guarantee.¹⁰⁴ A number of countries have implemented no upgraded or additional criteria in comparison to the UEFA regulations.¹⁰⁵

Apparently, the inventory of UEFA did not cover any requirements regarding the corporate governance of a club. One would assume that additional criteria on this theme could be categorised under the heading Legal, but as we have seen no additional criteria were reported to have been detected here. In fact, additional criteria pertaining to the corporate governance of clubs are imposed in a number of countries in addition to any corporate governance rules that apply pursuant to the laws and regulations in that country. Many of these rules have been introduced in the wake of allowing clubs to organise themselves as companies with a share capital, as many clubs increasingly felt the need for more possibilities to attract financial means and more flexibility to structure their activities.¹⁰⁶ In countries where traditionally clubs had to organise in a non-profit legal form, that is, a foundation or association, measures were put in place to shield clubs from interference of the investors with the technical policy and sportive achievements of ‘their’ club. Such is in the interest of the club and the competition. An investor might after all be reckless and not qualified for the job or may have other interests than exclusively promoting the sportive achievements of the club. Also ownership and control can be transferred relatively easy and indirectly, which – if unchecked – could lead to instability of club management and intransparency of club ownership. These risks are significantly smaller if a club is organised under the form of a non-profit legal entity because these are not aimed at generating profit for the investor and not subject to transfer of corporate ownership and control.¹⁰⁷

The licensors have responded to these challenges differently. A well-known example of a corporate governance requirement that applies in relation to club licensing is the 51

¹⁰² See *The UEFA Club Licensing System: Overview of Implementation and Application across Europe*, p. 20.

¹⁰³ See *ibid.*, p. 21.

¹⁰⁴ Currently proposals for adding new criteria to the UEFA regulations are circulated, some of which include criteria mentioned here. So at the time of publication this work, they might be included in the UEFA-criteria.

¹⁰⁵ This was reported, for example, from Portugal and Italy.

¹⁰⁶ See also Chapter 6 and Chapter 9.

¹⁰⁷ This is why no additional governance requirements are felt necessary in Norway referring to the fact that all Norwegian clubs are associations.

per cent-rule in Germany and Sweden, which means that the majority of the shares in a football club in the form of company with a share capital, must be in the possession of the parent-association to achieve that the decision-making power remains with the association. Its purpose is to maintain the democratic character of the club and thus safeguard the influence of its constituency for example, its members and supporters.¹⁰⁸ In addition, in some countries, restrictions on multi-club ownership may exist.¹⁰⁹

A different approach is followed in for example the Netherlands, where the relationship of a club with its constituency is considered to be the primary responsibility for the club. Instead, a regulation was introduced that sets out the governance requirements a club has to comply with in order to be eligible for a licence or to keep it, as the case may be.¹¹⁰ This system is not based on a 'one-size-fits-all' approach but allows a club to implement the measures that best fit its legal form, group structure and specific circumstances. The ultimate result, however, must be that the club is adequately protected against undue influence of its investors and shareholders that have or may have interests that are adverse to the club, football in general or that could otherwise harm the integrity of the competition or the reputation of football as a sport.¹¹¹

It would take us too far to explain the system in detail,¹¹² but to give an impression of its structure I shall set out some key elements. One of these is that clubs¹¹³ must ensure by means of provisions in their articles of association that persons that have certain affiliations (as director, (indirect) shareholder or otherwise) with other European clubs¹¹⁴ cannot be (supervisory) director.¹¹⁵ These provisions must also be included in the articles of the club and any of the legal persons that hold priority shares or 25 per cent or more of the shares in a club that is a company. Also, the majority of the (supervisory) board members must be unrelated to financiers of the club. If a legal entity is a director or if the supervisory board is positioned in another entity in the group, the same requirement applies to that legal entity. Furthermore,

¹⁰⁸ See: <https://www.bundesliga.com/en/news/Bundesliga/german-soccer-rules-50-1-fifty-plus-one-explained-466583.jsp> (accessed 7 May 2023) for Germany with exceptions if an investor has supported a club massively financially for the last 20 years in which case a shareholding of 100 per cent is allowed. Currently, these cases exist for Bayer 04 Leverkusen, VfL Wolfsburg and TSG Hoffenheim. In Sweden the 51 per cent rule is imposed by the Riksidrottsförbundet – the Swedish sports confederation and applies not only to football but also to other team sports such as ice hockey. For further reading see <https://www.sdeurope.eu/post/keep-the-51-rule> (accessed 7 May 2023).

¹⁰⁹ E.g., in Germany where an investor is allowed to have max. 49.9 per cent in club A, max. 9.9 per cent in club B and max. 9.9 per cent in club C. For exceptions see the former footnote.

¹¹⁰ *Richtlijn waarborgen onafhankelijkheid en continuïteit licentiehouder* (freely translated: 'Regulation safeguarding independence and continuity licensee').

¹¹¹ Ibid. Safeguards for maintaining independence from sponsors is also covered in the *Sponsoringreglement betaald voetbal* ('Sponsoring regulation professional football'). Comparable governance rules are found in other countries as well, e.g., in Belgium and England, although the implementation and enforcement techniques differ.

¹¹² For further reading see. W.J.M. van Veen, 'De governance van betaaldvoetbalorganisaties', *Ondernemingsrecht* 2021/56.

¹¹³ A club being the licensee and if applicable the football company affiliated to the licensee.

¹¹⁴ To be more precise, a club that is a member of another UEFA member NFF.

¹¹⁵ This provision was softened in 2020 to bring it in line with the multi-ownership regulations in the UEFA club competition regulations (see footnote 70 *infra*), allowing that clubs permit a position with one foreign club, thereby accepting the risk that if the 'two-hats-situation' is not terminated in time, only one of the clubs can take part in the relevant competition pursuant to the system set out in the applicable UEFA competition regulations.

persons that are disqualified to function as a director or are found to have been responsible for insolvency of a legal entity by a court of law (Dutch or foreign), must be excluded from a position as (supervisory) director. These restrictions must be included in the articles of association in the form of an incompatibility for board membership. Furthermore, a certificate of good behaviour must be provided for all (supervisory) directors and shareholders¹¹⁶ (if any) of the club and if applicable, all group entities in a direct line above them up to and including the UBO.

The provisions above apply to all clubs, regardless of their legal form to the extent compatible with their legal form.¹¹⁷ For clubs in the legal form of a company with a share capital, additional requirements apply. Apart from notifications of any change in (indirect) shareholdings and share issuances, it is not allowed that a shareholder – including holders of a right of pledge of usufruct on shares with voting rights – is related to another Dutch or European club by way of direct or indirect shareholdings, a position as (supervisory) director or a position comparable with that. These restrictions must be included in the articles of association in the form of an incompatibility for shareholding, to the effect (legal) persons that do not fulfil this criterion cannot become a shareholder and that shareholders that no longer fulfil this criterion face suspension of their shareholder rights and must dispose of their shares.¹¹⁸ Apart from this, of course, in case of non-compliance sanctions can be imposed including, ultimately, revocation of the licence.

Another type of governance provisions is aimed at restricting the power of the shareholders' meeting with respect to certain major decisions such as a structural change, issuance of shares and decisions related to the clubs' identity (e.g., club name, club colours, playing city), youth programme and other football-related matters. The technique used for this purpose is to determine that a corporate body that is independent from the shareholders and the shareholders' meeting is authorised to decide on these matters or has to approve such resolutions. Provisions of this kind are not required if the majority of the voting rights are held by a parent association or foundation that is a member of the NFF.

To conclude, the regulations require prior approval for a club take over.¹¹⁹ The requirements on this theme include that certain provisions must be included in the articles of association of the club, including that the management board of the club must give its consent to a take-over of the shares by which the club would be transferred (directly or indirectly) and that the assessment of the licensing committee must be awaited before such consent is given. The goal

¹¹⁶ Including holders of a right of pledge or usufruct on shares with voting rights attached and in case this is a legal person, also those having control over that legal person in the capacity of (indirect) shareholder or (supervisory) director.

¹¹⁷ Obviously the requirements mentioned pertaining to shareholders are not applicable to clubs in the legal form of an association or foundation. Dutch professional football clubs come under the legal form of an association (*vereniging*), foundation (*stichting*), private limited liability company (*besloten vennootschap*) and public limited liability company (*naamloze vennootschap*) of which one is listed (AFC Ajax), with many variations in investment and group structures.

¹¹⁸ This provision was softened in 2020 to bring it in line with the multi-ownership regulations in the UEFA club competition regulations (see footnote 70 *infra*), allowing that clubs permit an affiliation with one foreign club and thereby accepting the risk that if the multi ownership/two hats situation is not terminated in time, only one of the clubs can take part in the relevant competition pursuant to the system set out in the applicable UEFA competition regulations.

¹¹⁹ That is, a transaction which results a shareholding or control over voting rights exceeding 25 per cent of the outstanding shares/votes.

of these regulations is to ensure transparency of the ultimate beneficial owner and that the investments in the club are from legitimate recourses. Since these measures are dealt with in Chapter 6 of this book, I shall refrain from elaborating on this subject.

6. CONCLUDING REMARKS

The world football pyramid is clearly reflected in the architecture of the regulation of professional football club licensing, with at its base the FIFA-regulations, transposed in the confederation regulations and subsequently the domestic regulations with a clear hierarchical structure. Its principal objective is to accomplish and continually improve professionalisation of football clubs, born out of a necessity felt in the football community all over the world. Since the regulations are promulgated by the football sector itself, one can conclude that it is part of a self-regulatory framework developed by the sector. Both in terms of the processes, criteria and requirements they hold, but also because the criteria and requirements are linked to several other regulation and guidelines, which enhances its self-regulatory capacity.

In that context, the club licensing framework has some noteworthy features. One of these is that much attention is given to the licensing process itself, safeguarding independent, well-informed decision-making prepared by qualified staff and taken by expert committees in two instances. This feature is essential for the acceptance and credibility of the system and is in line with the interests at stake for the individual clubs and the football sector as a whole.

The second feature is that there is ample room to adapt the licensing system to the needs and reality in a specific country. What we have seen is that there are interesting differences among the countries. UEFA would do well to take stock of these add-ons on a regular basis. This could provide insights for improvement of its regulations, be it for technical improvements, to promote a level playing field for the clubs or to keep up with developments. What stands out, for example, is that the FIFA and UEFA criteria are not particularly well developed on the point of corporate governance. I submit that corporate governance is a difficult subject to regulate at an international level since various governance codes and requirements may already be in place in a specific country. This being said, we have seen that in some countries there apparently is a need for additional corporate governance rules that are specifically developed for the football sport. Since corporate governance is on the agenda in many sectors, one could imagine that UEFA would give this subject more attention in its licensing regulations.¹²⁰

The third feature concerns the licensing criteria. Many of these criteria relate to the professionalisation of club management and exploitation. However, some criteria go beyond that and compel responsiveness to social issues such as anti-racism, anti-money laundering, creditor protection and youth welfare criteria. This category of criteria, that seems to be expanding,¹²¹ demonstrate that the professional football sector is aware of its potential and responsibility to contribute in a positive way to important social issues. This way the licensing system also contributes to maintaining and fostering social goodwill of the sports as a whole.

¹²⁰ Illustrative of this point is perhaps that the additional corporate governance licensing criteria that exist in several countries are not even registered or perhaps recognised as additional licensing criteria in *The UEFA Club Licensing System: Overview of Implementation and Application across Europe*.

¹²¹ Recently additional criteria are proposed and circulated on inter alia child protection, equality and inclusiveness, sustainability and environment.

To conclude, in my opinion one can state that football club licensing is a well-developed, intelligent instrument of self-regulation that not only promotes professionalisation of football clubs but also carries fundamental sporting principles such as fair play, respect and courage, cohesion, a level playing field and equal opportunities well beyond the pitch.