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Submission to the parliamentary committee looking into the governance of football (DCMS) sent by Christian Müller, from 2001 until 2010 Chief Financial Officer of the DFL (German Football League), from 2007 until 2010 Member of the Managing Board of the League Association (Ligaverband) and Member of the Board of the DFB (German Football Association). Since 2002 he is member of UEFA's club licensing committee and since 2007 member of EPFL's Professional Football Finance Committee.

His duties included the administration of the accounts at the League Association, the DFL and its subsidiaries, and of the licensing procedure for the 36 clubs and joint-stock companies belonging to the Bundesliga and Bundesliga 2. Christian has overseen an ongoing process of development and adaptation of the licensing procedure, which itself is held in high esteem throughout Europe, and is outlined below. The fundamental aim of the licensing procedure is to ensure greater economic stability and promote the integrity of the professional game.

Christian is now working as an advisor to the Board of the DFL and representing the league in several international organizations, i.e. UEFA (Club Licensing Committee) and EPFL (Standing Committee on Professional Football Finance)

Executive Summary

– The Bundesliga and the Bundesliga 2 are governed by a trio of members' associations, which take an active role in maintaining the stability and integrity of the game.
– This manifests itself in two main policy areas: the regulation of ownership structures, and the licensing system.
– Clubs are required to regularly prove their solvency and positive liquidity, otherwise they will be refused a licence to compete.
– This has created widespread financial health, diversified and growing profit, an entertaining product, and extensive community integration.

The German Football Association (or DFB, formed in 1900 as a registered members' association) is responsible for overall governance of the game in Germany, whilst the League Association (*Ligaverband e.V.*) and its 100% subsidiary DFL Deutsche Fußball Liga GmbH control the top two divisions (the Bundesliga and Bundesliga 2), with each division containing 18 professional teams. These 36 teams are all members of the League Association, likewise a registered members' association that is an independent member of the DFB – and is therefore governed by its statutes. German sports policy has traditionally been defined by the socio-political importance of sport itself. The government in principle follows a non-interventionist sports legislation model, however the governing bodies in football are actively involved in the legislation and regulation of their members. This regulation takes the form of two key areas: the ownership structure of clubs, and the licensing procedure. ***(1)***

Firstly, the regulated ownership structure, which applies to all clubs competing in the Bundesliga and Bundesliga 2. Prior to 1998, all 36 clubs from the top two divisions were structured as registered members' associations (*eingetragener Verein* or *e.V.*). Under no circumstances were clubs allowed to be run as privately owned companies or corporations, a practice common in the Premier League and Football League. These members' associations were and are not-for-profit organisations, owned by their members who delegate decision rights to an elected board of representatives.. These representatives may act as the executives of the association or as the body which engages the executives. Starting in the eighties, clubs have begun to hire high profile professionals as club executives. The original volunteer organisation in German professional football transmuted into a business environment with a skilled and well remunerated staff. But still any revenue generated by a club in the legal form of an association must be funnelled back into the club. These two requirements ensure both accountability and stability. In 1998, the opportunity for clubs to convert their professional football sections into external limited companies (separate from their parent association) has been made available. This decision was taken by the General Assembly of the DFB in response to the increasing commercialisation of football across Europe and satisfying the increasing demand for more professionalisation from the biggest clubs like FC Bayern. This means that there are now three additional forms of limited company which football clubs can be run as, accompanied by the traditional e.V.. still the legal form of big clubs like Schalke 04, VfB Stuttgart and Hamburger SV). ***(2)***

Firstly an AG, a public limited company which outside the football industry is often, but not always, listed on the stock exchange. Examples of clubs that use this structure are FC Bayern and Eintracht Frankfurt, but their shares are not quoted on stock exchange. Sport supplier Adidas and car manufacturer Audi each hold almost 10% of the shares of Bayern, the remaining 80% belonging to the parent club FC Bayern e.V. Secondly, there is the GmbH, a private limited company. Examples for clubs operating in this legal form are Borussia Mönchengladbach and TSG Hoffenheim 1899. The GmbH allows scope for a more corporate form of governance whilst limiting the liability of the shareholders. . Thirdly, there is () the GmbH & Co. KG aA (a legal form of a private partnership limited by shares with a limited liability company as a general partner with the addition of elements of a joint stock company). The latter in particular has proven popular amongst professional football clubs, although to date only one (Borussia Dortmund GmbH & Co. KG aA) has been listed on the stock exchange. Whilst these are quite different in terms of legal structure from the traditional e.V, the process of transition and the subsequent day-to-day running of the company are strictly monitored, in both legal and practical terms. ***(3)***

A clause known informally as '50 + 1' holds that the parent club (i.e. the members' association) must hold a majority voting bloc in the affiliated corporation – hence the '50 + 1' moniker. This regulation is not relevant for the by definition democratic structure of associations (one man one vote principle) and thus applies only to affiliated corporations of parent clubs. The clause has two main intentions. Firstly, to safeguard the influence of the parent club on the affiliated company, and to avoid the promotion of external influences (creditors, lenders, minority shareholders and individual takeovers) over those of the members. Secondly, to ensure that the sporting competition of the national championship is not distorted. The clause is applicable to all three forms of private ownership structure, with the central principle of member/supporter ownership enshrined regardless of whether the club is an AG, GmbH or GmbH & Co. KG aA. In practical terms, the clause ensures that the dialogue between the club's management structure and members of the parent club (always in the legal form of an association) remains fluid and travels in both directions, unlike in England, where supporters often find themselves talking without ever being acknowledged. ***(4)***

The second element of regulation that operates in the Bundesliga and Bundesliga 2 is the licensing system, developed on a co-operative basis by the German game's governing bodies. The licensing system is arguably the main reason that Bundesliga clubs have, without exception, remained solvent entities throughout the past forty-seven years. Perhaps the most impressive feature of the system which applies also to clubs in the amateur divisions is that it is endorsed by all clubs and the public generally. . In essence, the licensing procedure requires clubs to submit economic data for scrutiny by the football authorities, thereby ensuring an openness and transparency to the business aspect of the game that is without parallel across Europe. The back bone of the system is to force clubs to reduce overspending by implementing specified planning procedures and seasonal application for a license. Clubs apply first to the DFL, in case of problems to prove enough liquidity to meet all obligations at any time the licensing committee as the appeal body plays a part. It is the League Association which then issues the license. Should a club be refused a license, they can appeal to the licensing committee, and if the appeal is unsuccessful the Court of Arbitration for German Professional Football. Should their appeal be successful there the application is returned to the licensing committee and, formally, the League Association, to grant the license. If, after all these avenues are exhausted a club has still not received a license, they are banned from competing in the forthcoming season. ***(5)***

For a club to receive a license, they must be solvent, and be able to demonstrate enough liquidity. This is assessed checking the following items:

- Assets
- Receivables
- Cash and bank balances
- Liabilities/provisions
- Current overdraft account facilities
- Loan commitments
- Projected profit and loss statements including planned income from ticket sales, advertising and transfers and planned payroll costs for match operations
- Cash inflows/outflows from investing and financing activities. ***(6)***

Additionally, net equity must be present at the end of each season or sanctions will follow. The forecast of liquidity centres around three main requirements: that all payment obligations can be met at all times, that regular match operations can be guaranteed at all times, and that any financial problems can be countered. There have been a number of recent instances in English football where clubs have been unable to fulfil one or all of those requirements, yet the same cannot be said for the Bundesliga. This is due to the strict criteria listed above, as well as the liquidity forecast undertaken by the DFL, using figures provided by each club and commented by the clubs' auditors. This begins with the audited club accounts as of the previous December 31st, and incorporates the budgeted figures for the following eighteen months. Submission of accounts is a heavily legislated area, and clubs are prevented from including anything that cannot be backed up with a written contract. This seems particularly sensible given the recent trend in England for clubs to base accounts on uncontrollable variables such as promotion or season ticket sales. The licensor has full discretion not only when deciding which figures to take into account when compiling the liquidity forecast but also when reducing projected income or increasing projected expenditures. This cannot be done without well founded reasons, but it often applies to budgeted income from ticket sale or intended cost cutting for player salaries. All of which leads to one of the following four outcomes:

1. Positive liquidity at the end of the season to be licensed is proved: The financial criteria have been fulfilled – the license is granted without any conditions or obligations.
2. Positive liquidity at the end of the season to be licensed could only be proved after meeting some conditions: The financial criteria have been fulfilled – the license is granted with obligations valid in the respective season
3. Positive liquidity at the end of the season to be licensed is proved but the balance sheet as of December 31st t-1 discloses a net debt (negative equity): The financial criteria have been fulfilled – the license is granted with the obligation to improve equity in the balance sheet as of December 31st t by a certain percentage
4. Conditions which were imposed to prove positive liquidity were not met - the financial criteria have not been fulfilled – no license is granted. (7)

As well as the pre-season examinations, the licensing procedure also includes an in-season confirmation of economic capability. This is a newly devised method which allows the authorities to monitor clubs on a more regular and closer basis. All clubs must submit revised and audited accounts as of June 30th, a revised budget for the upcoming season, and an auditor's report until October 31st. Should a gap in liquidity emerge, clubs are given four weeks to establish new income streams, and are barred from operating in the January transfer window without the approval of the licensor. Clubs are fined for late submission of the documents, and also face points deductions should they fail to meet the requirements to present fresh money. Again, the evaluation of the clubs's liquidity is at the discretion of the licensor. ***(8)***

As mentioned above, the licensing system also safeguards against any financial problems that may arise. Accepting the license from the League Association, all clubs agree upon a contingent funding of financially suffering competitors out of the income generated by the central marketing of media rights. This means that well run clubs would receive less TV money than they are entitled to just to generate financial aid for poor run rivals. But this potential support is limited to the amount of a two month pay roll and will inevitably lead to a point deduction for the delinquent. In practise, no club asked for that support since its inception in 2004. Crucially, this instrument is founded on the ubiquitous understanding and acceptance that financial difficulties of only one club can negatively impact the lives and businesses of other people and institutions.

In essence, the licensing system is intended to safeguard the integrity of the game and the league, as well as providing a seal of good governance, a quality assurance for the clubs and, as a side-effect, a benchmark from which both clubs and external observers (such as UEFA) can measure against. The benefits of implementing such a system are arguably self-evident, in commercial, social and political terms. An examination of UEFA's latest Benchmarking Report (published in January 2011) only furthers the notion that the Bundesliga can provide a solution for many of the issues that football across Europe (and the UK in particular) is currently wrestling with. Germany's top division gathered the largest average attendance of any league in Europe (42,500, over 8,000 more than the Premier League), as well as the largest estimated total attendance (13,005,000, again ahead of the Premier League). Given that there are two fewer clubs contributing attendances to the Bundesliga calculation, this is a telling statistic. Furthermore, of the so-called 'big five' European leagues (the Bundesliga, the Premier League, Serie A, La Liga and Ligue 1), the Bundesliga had the highest number of different champions between 2000/01 and 2009/10, with five. This competitive parity is a direct result of the level playing field created by the regulations regarding ownership and the licensing system. ***(10)***

Bundesliga and Bundesliga 2 clubs continue to combine financial stability with a keen eye for development and maintenance of diversified revenue, which rose above €2 BN according to Bundesliga figures. Transfers (8%), media rights (29%), gate receipts (21%), sponsorships (28%) and merchandising etc. (14%) are near-equal partners in the average turnover of the two divisions. In the UEFA Benchmarking report, figures for Advertising and Sponsorship revenue increased by over 10% during the 2009 financial year, whilst overall revenue and operating profit also increased by 10%; which given the current economic state of Europe, is no mean feat. This increase in profit was not spent on wages however, with German clubs spending 52% of their reported revenue on employee costs. These profits were also achieved without pricing fans out of the stadiums: the Bundesliga had the cheapest average ticket price out of the 'big five' European leagues, at €21, compared to €43 in the Premier League. In terms of overall losses, the Bundesliga was one of just four European divisions to break even in 2009, another indicator of its commitment to financial stability. ***(11)***

All of these successes are direct results of the stringent licensing and ownership structure rules which govern clubs competing in the Bundesliga and Bundesliga 2. In addition to this, the tradition of members' associations in German footballing culture ensures that all clubs, regardless of size, are deeply rooted in their local communities. This can be seen in many different features of the game in Germany, from the social activism of clubs such as St. Pauli, to Borussia Dortmund's Westfalenstadion, which houses the Südtribüne, Europe's largest still-existing terrace, and the resulting spectacular atmosphere. In wider terms, members' associations have traditionally held an important place in German society, and as such are well-placed to positively impact on the communities from which they draw their membership. Werder Bremen and Schalke 04 and others have taken a leading role in terms of community integration, with both clubs committing to large-scale improvement projects intended to enhance public life in their communities. ***(12)***