A FOOTBALL MONOPOLY: THE LACK OF PARITY AND FINANCIAL RESPONSIBILITY IN TODAY’S GAME

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I. INTRODUCTION

The transfer system associated with European football is completely unique from any other form of American sports. Unlike American sports where players are drafted, traded, and signed via free agency, European football players are bought and sold for substantial amounts of money. This system has undergone tremendous amounts of change in recent time, and while these changes have remedied many issues, they have also created others.

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1. In this Note, “football” refers to the British term for soccer.


4. See The Center For the Law and the Economics of Sport, supra note 2, at 4.
potentially be bound for life to whichever team they originally signed with.\textsuperscript{5} Teams were also limited by league rules to the amount of foreign players that could be on their rosters at any one time.\textsuperscript{6}

The new transfer system has greatly increased players’ rights in contractual negotiations and allowed for virtually unlimited player movement throughout the European Union (EU).\textsuperscript{7} While the changes have been incredibly advantageous for the players, these changes have resulted in an exponential increase in team expenditures.\textsuperscript{8} The transfer fees associated with the world’s top players have also risen to such a level that only a handful of teams are able to remain competitive.\textsuperscript{9}

The most controversial and well-documented transfer in history was that of Cristiano Ronaldo. In June 2010, the Portuguese forward was sold from Manchester United to Real Madrid for a record £80 million, or $141 million.\textsuperscript{10} This staggering amount of money does not cover any of Ronaldo’s roughly $450,000 a week salary.\textsuperscript{11} While Ronaldo’s salary alone is not significantly higher than those of other sports stars such as Lebron James ($17.5 million)\textsuperscript{12} or Peyton Manning ($20 million),\textsuperscript{13} neither one of their organizations paid $141 million just to bring them to the team.\textsuperscript{14} It quickly became apparent why football clubs spend astonishing amounts of money on player wages.


\textsuperscript{7} Id. at 295.

\textsuperscript{8} Paris Saint-Germain Dream into Action, supra note 3.

\textsuperscript{9} The Center For the Law and the Economics of Sport, supra note 2, at 226.


\textsuperscript{11} The Celebrity 100, FORBES (June 2013), http://www.forbes.com/profile/cristiano-ronaldo/ (last visited Sept. 16, 2013) (based on his $23 million annual salary which when divided by fifty-two equals $442,307).


\textsuperscript{14} Id.; Golliver, supra note 12.
By 2010, these “transfer fees” had become so high that despite record revenues across the continent, the total debt of European clubs had risen to €1.6 billion. Around the same time, European football represented a €16.3 billion market in Europe, which constituted a forty-two percent increase from 2006. According to European football’s governing body, the Union of European Football Associations (UEFA), the percentage of clubs reporting operating losses in 2011 had increased to a staggering sixty-three percent. This dramatic increase in debt occurred despite an increase in club revenue each year over the same time period.

As player wages continue to rise, so does the gap in competition. The staggering amount of money teams must presently spend to remain competitive has created a small group of teams that dominate each year. The disparity grows as players become more expensive. This ever-increasing “arms race” has been fueled by the tremendous influx of foreign investors and billionaire owners. These wealthy benefactors have enabled their respective teams to spend well beyond their capacity, which further undermines their club’s financial stability. In recent years, there has been a movement to curtail these irresponsible spending habits and force teams to balance their spending. The passage of the Financial Fair Play Regulations (FFP) in 2010 was the first step towards improving teams’ long-term economic viability. This regulation will require teams to balance their income and expenditures. Each team’s wage budget cannot exceed the revenue they generate through gate receipts, television, and

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15. The term “transfer fee” refers to the price one team pays another team to gain the rights to a player. This fee does not include the player’s wages. See The Center For the Law and the Economics of Sport, supra note 2, at 20.

16. Id. at 24.

17. Id. at 23.


19. Id.

20. The Center For the Law and the Economics of Sport, supra note 2, at 229.

21. Id.


23. Id.

24. See id. at 33.
Teams that do not abide by these rules face varying levels of penalties from fines to banishment from UEFA competitions. It is the purpose of this Note to describe the current situation in the European football transfer system and the changes needed to ensure the game's long-term economic sustainability. Part I of this Note will examine the history of the transfer system and the cases that have led the system to where it is today. Part II will focus on the current economic situation and how the current spending habits of teams are affecting the sport's long-term success. Lastly, Part III will focus on the implementation of the FFP, the changes that it will bring, and the need to implement a salary cap system into European football.

II. HISTORY OF THE TRANSFER MARKET

The beginnings of the transfer system coincide directly with the origins of football itself. In 1863, a small group of English clubs formed what is still known today as the Football Association (FA) and began to establish formal rules for the sport. As more players became full-time professionals, the owners sought to gain further control over their increasing wages. This led to the establishment of the "Retain and Transfer Rule." This system was originally established to prevent wealthy clubs from monopolizing all of the league's best talent. Clubs were required to register players with the FA each season. These players and their contracts then became tradable commodities between the different clubs.

Under this system, when a player's contract expired, an option period began that was controlled entirely by the club. The option contract could last as long as the player's original contract. Since original contracts were

25. Id.
27. Gary, supra note 6, at 297.
28. Id.
29. Katz, supra note 5, at 400.
30. Gary, supra note 6, at 297.
31. See id.
33. Id.
34. Katz, supra note 5, at 401.
35. See id.
not restricted as to length, a player may be bound for the rest of his career to whichever club originally signed him, without any possibility of negotiating a new agreement. This meant that in theory, and sometimes in practice, clubs could prevent players who refused to sign this option contract from playing anywhere else for the rest of their careers.

Under this system, other teams were allowed to sign players from their current club if they reimbursed the club for the remaining value of the player’s contract. This clause essentially rendered this occurrence nonexistent. While this system drastically limited a player’s ability to move freely within the market, it did allow smaller clubs to retain their talented players and prevented larger, wealthier clubs from sniping off the best talent and destroying the league’s competitive nature.

As globalization began to creep into the game, the FA implemented limits on the number of foreign players allowed on a club’s roster. Other leagues began to introduce similar regulations in order to maintain their league’s national identity and preserve the parity of the international game. While the intentions may have been well founded, these regulations greatly limited the ability of players to play throughout the rest of Europe.

A. Cases that Altered the Transfer System

1. Eastham v. Newcastle Football Club

George Eastham was a professional football player that played for Newcastle United from 1956 to 1960. In 1959, with his contract approaching expiration, Eastham refused to sign a new one and requested a transfer; however, Newcastle refused to let him go. Eastham was quoted referring to the Retain and Transfer system:

Our contract could bind us to a club for life. Most people called it the slavery contract. We had virtually no rights at all. It was

36. Id. at 402.
37. DOBSON & GODDARD, supra note 32, at 90.
38. Gary, supra note 6, at 297.
39. Id. at 298.
40. Id.
41. Id.
43. Id.
often the case that the guy on the terrace not only earned more than us—though there’s nothing wrong with that—he had more freedom of movement than us. People in business or teaching were able to hand in their notice and move on. We weren’t. That was wrong.44

Despite Newcastle United eventually granting his request to transfer, Eastham took his case to the High Court (of England) in 1963 to dispute the system as a whole.45 Eastham sought a declaration that the retention and transfer system should not be allowed because the system was an unlawful restraint on trade.46 The Chancery Division held that the retention provisions of the system interfered with a player’s right to seek employment and therefore could not be upheld.47 While this case did not overturn the limits on foreign players, it greatly increased a player’s negotiating power.

2. Union Royale des Sociétés Defendant Football Association ASBL v. Bosman

The transfer system was drastically altered after the landmark decision by the European Court of Justice (ECJ) in Union Royale des Sociétés defendant Football Association ASBL v. Bosman48 in 1995.49 Jean-Marc Bosman was a Belgian football player who played for RC Liège from 1988 to 1990.50 When his contract expired in 1990, Bosman had fallen out of favor with the team and the team placed a fee of £500,000 on him.51 This fee was more than five times what RC Liège paid for him just two years prior.52 When the French team, US Dunkirk, approached RC Liège about purchasing Bosman, RC Liège insisted the team pay the entire fee upfront.53 When the team refused, RC Liège pulled out of the deal and cut Bosman’s

44. JON SPURLING, REBELS FOR THE CAUSE 81 (Mainstream Publishing 2004).
45. Arsenal’s Greatest Midfielders, supra note 42.
47. See id. at 414.
49. Gary, supra note 6, at 294.
50. Id. at 301.
52. See id.
53. Id.
salary by seventy-five percent to just £500 per month. Bosman refused to sign this meager contract and brought suit against UEFA and RC Liège. Bosman went to court seeking a declaration that the nationality clauses of each league violated the Treaty Establishing the European Economic Community (ECC).

In Bosman, the ECJ held that the transfer fee system and its rule limiting the number of foreign players a club could field at a time violated Article 48 of the EEC. Article 48 of the EEC governs the freedom of movement for workers within the European Community (EC). The Court recognized that while there was no absolute ban on foreign players, the league’s rules preventing teams from fielding more than three such players for a match significantly limited a player’s opportunities; therefore, they constituted unlawful discrimination of EC members.

UEFA argued against this ruling claiming that these provisions had legitimate purposes, such as:

1) To field a team representative of the local population;
2) To develop a local pool of talent from which the national team could select players from; and
3) To maintain parity within the league.

The Court disregarded these arguments stating that the protection of nationalism as a means of “enabling the public to identify with its favorite team” was illogical given the absence of similar regulations ensuring proportional representation of residents hailing from a team’s “locality, town, region or . . . territory.” Further, the employment of foreign players did not compromise their eligibility to play for their respective national teams; and finally, that restrictions on foreign players had little or no effect on a league’s parity because the wealthy clubs were already using their influence to lure the best domestic players to their clubs.

54. Id.
55. Id.
57. Gary, supra note 6, at 301.
60. Id. ¶¶ 123–25.
61. Id. ¶¶ 123, 131.
62. See id. ¶¶ 131–35.
In actuality, this ruling meant that when a player’s contract ended he was no longer at the mercy of his current club and was free to sign with another team in any country he desired. The fallout from the ruling was chaotic at best. UEFA essentially ignored the ruling and maintained its current transfer system and its limitations on foreign players. In March 2011, an agreement was eventually reached between Mario Monti, the new head of the EU Competition Committee, and Sepp Blatter, the head of the Fédération Internationale de Football Association (FIFA). The agreement maintained much of the current transfer system but completely did away with the reserve system and allowed for an unlimited number of EU players to be on a team’s roster.

B. The Impact and Expansion of the Bosman Ruling

UEFA, FIFA, and most European teams argued that this ruling would greatly diminish a club’s income. This, however, did not come to fruition because the ECJ’s ruling in Bosman applied only to those transfer fees associated with players whose contracts had already expired. Almost ninety percent of transfer revenue came from transfers that occurred while a player was still under contract. Therefore, this decision did not have the far-reaching impact that many clubs had predicted.

Later, the case of Deutscher Handball Bund e. V. Maros Kopak expanded the Bosman ruling to eastern European nations as well as several North African nations. The ECJ reasoned that any country that had Association Agreements with the EU should be subject to the same rules as the actual members of the EU. The expansion of the Bosman ruling sparked a widespread belief that the football leagues of the EU’s wealthier nations would be flooded with players from poorer countries who would agree to work for much lower wages than their domestic counterparts.

63. Gary, supra note 6, at 295.
64. Id.
65. Id.
66. Id.
67. Id.
68. Id. at 304.
69. Id.
71. Id. ¶ 34.
72. See id.; see Gary, supra note 6, at 322.
73. See Gary, supra note 6, at 322.
In reference to a similar ruling in France, Jean-Jacques Amorfini, a member of France’s players union, stated: “A lot of players from Eastern European countries could be interested in joining French clubs for almost nothing. We already have enough jobless players not to create some more.” The number of foreign players in the various football leagues of Europe has climbed to record levels, with roughly thirty-six percent being non-native in the leagues in which they play, according to today’s research.

It is impossible not to see the impact that the Bosman ruling has had on professional sports in Europe. This decision has given players a far greater bargaining position in contract negotiations. As a result, both the number of foreign players in each league and the overall wages of each club have increased exponentially. In the year prior to the ruling, clubs from Italy’s top league, Serie A, and England’s top league, the English Premier League, spent on average €15 million a year on player wages. As of 2010, this figure almost tripled for both leagues to approximately €45 million per club.

The Bosman ruling opened the doors for players from across the EU as well as the rest of the world to play wherever they wanted. In 1994, the year before Bosman, there were eighteen French footballers in the four major leagues, i.e., in England, Germany, Italy, and Spain. By the year 1998, this number had swelled to 100. This illustrates just how restrictive the limitations on player movement were up until this landmark decision. While some still argue that this decision has led to a diminished level of football at the national team level, it is difficult to argue with the drastically increased revenue that has consistently gone up each of the last twelve years.

77. The Center for the Law and the Economics of Sport, supra note 2, at 127–30.
78. Id.
79. Id.
80. Id. at 127.
81. Id.
III. CURRENT ECONOMIC UNCERTAINTY

Today, football enjoys extraordinary levels of success and popularity, but the overall well being of the modern game is much less optimistic. Sport is an incredibly powerful social phenomenon, linked to both mediatization and globalization over the past thirty years. Over 101 million supporters attended the top European domestic league matches in 2011. A club like Manchester United estimates that it has as many as 659 million fans throughout the world. Nowadays, it seems difficult for anything to match the popularity of either the game or its biggest clubs. When the 2006 FIFA World Cup was held in Germany, 376 channels broadcasted the matches, and the total cumulative television audience for all matches was an astonishing 26.3 billion.

This global popularity has shown as European football accounted for €16.3 billion in revenue during the 2010–2011 season. Despite these historic levels, the majority of the clubs are experiencing severe economic difficulties. While the level of revenue has increased exponentially, so has the pressure to spend exorbitant amounts of money in order for the clubs to remain competitive. During the 1994 season, there were a total of 5735 transfers that accounted for a total of €402,860,000. During the 2010 season, there were a total of 18,307 transfers, accounting for a total of €3,002,198,000.

This runaway spending has created a snowball effect—forcing teams to spend outrageous amounts of money to remain competitive. Teams that cannot afford to spend at this rate are compelled to either accept mediocrity or spend themselves into debt with hopes that their expected success will result in increased revenue. While revenue is increasing, it is unable to keep pace with the overwhelming expenditures. The revenue of the first

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82. The Center for the Law and the Economics of Sport, supra note 2, at 25.
83. Id.
86. The Center for the Law and the Economics of Sport, supra note 2, at 23.
87. Id. at 4.
88. Id.
89. Id.
90. Id.
91. See Paris Saint-Germain Dream into Action, supra note 3.
fifty-three UEFA member countries has increased from €9 billion in 2006 to €16.3 billion in 2010.⁹² But overall, net losses increased steadily over the same period to reach €1.64 billion in 2010.⁹³

The reason for this lack of financial discipline was well summarized in the 2010-2012 House of Commons report on Football Governance:

Club owners are generally over optimistic about their management abilities and vision for a club . . . . All academic evidence is that there is a very strong correlation between squad wages and points won, something, which is obvious to owners. There is a natural tendency to borrow in the pursuit of success, although . . . not all teams can be successful . . . There are many examples of clubs where the directors (even true fans) have ‘chased the dream’—gambling short-term investment (or borrowing) in the hope of long-term success—but actually achieving the opposite. The pressure on the directors of a club to invest, to sign a star player . . . is often immense from ordinary supporters.⁹⁴

Even the most profitable leagues in Europe are experiencing periods of tremendous economic turmoil.⁹⁵ The top three—the English Premier League, Italian Serie A, and Spanish La Liga—are all in serious debt.⁹⁶ Specifically, the English Premier League, which is widely regarded as the world’s best league, has a total debt of £3.1 billion.⁹⁷ Spanish La Liga and Italian Serie A come in a close second and third with £3 billion and £2.1 billion of debt, respectively.⁹⁸

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⁹². The Center for the Law and the Economics of Sport, supra note 2, at 119 tbl.2 (Top Division Net Profit).
⁹³. Id.
⁹⁵. The Center for the Law and the Economics of Sport, supra note 2, at 166-67.
⁹⁷. Conn, supra note 96.
⁹⁸. Pagliara, supra note 96; Gibson, supra note 96.
The secondary effect of the financial model is the increasing gap in competition. Historically, football has not been the most balanced sport in terms of competition. Leagues have typically experienced periods of dominance by a select number of teams.\(^9\) However, this current economic climate has exacerbated this to a point where the majority of teams stand little to no chance of competing in their own leagues.\(^10\) The clubs from smaller markets are simply incapable of competing either on the pitch or in the transfer market with the more wealthy teams.\(^11\)

A few teams dominate nearly every major European league.\(^12\) The chasm that now exists between each league’s top teams and the rest of the league represents an impenetrable barrier for the smaller teams.\(^13\) Unless the current revenue-sharing system is amended, or a salary cap is put in place, this gap will continue to grow.

A. *The English Premier League*

The English Premier League is a microcosm of the financial uncertainty facing European football today. The league represents over €2.5 billion in revenue by itself, and yet still boasts a debt level of €3.38 billion.\(^14\) This enormous spending level has led to a few of Europe’s wealthiest teams dominating the sport for over a decade. During the past twelve seasons, the top three teams in the English Premier League, Serie A, and La Liga have won thirty-four out of the possible thirty-six national titles.\(^15\) This runaway spending has led to a complete lack of parity because only the wealthiest clubs are able to spend at a level that allows them to remain competitive year in and year out.

Much of the English Premier League’s debt can be attributed to a small group of the league’s most successful clubs.\(^16\) Chelsea Football Club is a rather unique example of financial irresponsibility.\(^17\) The club’s owner, Roman Abramovich, has lent the club a staggering £701 million

\(^9\) The Center for the Law and the Economics of Sport, supra note 2, at 7.
\(^10\) Id.
\(^11\) Id.
\(^12\) Id. at 7 tbl.1 (percentage of national titles won by the three most successful teams).
\(^13\) The Center for the Law and the Economics of Sport, supra note 2, at 166–67 (this amount is a conversion from pounds to euros).
\(^14\) Id. at 7.
\(^15\) See generally Conn, supra note 96.
\(^16\) Id.
\(^17\) Id.
since he purchased the club in 2003. While the Russian billionaire is not requiring the club to pay interest on these loans, the club is still liable to pay back this tremendous amount of money. This will place a significant burden on the club for the foreseeable future since this debt amounts to more than three times their yearly revenue of £261 million.

Accounting for the debt of three of the league’s wealthiest teams, Chelsea, Manchester United, and Arsenal, amounts to an astronomical £1.36 billion. Chelsea and Manchester City have both come under the ownership of foreign billionaires. These owners have injected hundreds of millions of dollars into their respective clubs. Both of these teams have seen increased revenues since the change in ownership, but neither team makes enough to offset their players’ salaries.

To put this irresponsible spending in perspective, of the thirty-two teams in the National Football League (NFL), only three teams, the Oakland Raiders, Pittsburg Steelers, and Detroit Lions, do not maintain an operating profit. These three teams, however, only combined for a net loss of $20.4 million for the 2012 season. These losses are miniscule compared to each of the team’s value, and they were mainly due to a large percentage of contractual obligations becoming due during that particular season.

This lack of responsible fiscal management has rendered the English Premier League completely void of any form of parity. Of the last twenty-one league titles, the League’s three most dominant teams have won nineteen: Manchester United (13); Chelsea (3); and Arsenal (3). These powerhouses have been able to dominate the League and consistently generate exponentially more revenue than their opponents from smaller markets. The vicious cycle has forced other teams to spend beyond their

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108. Id.
109. Id.
110. Conn, supra note 96.
111. Id.
112. See id.
113. See id.
115. Id.
116. See id.
118. The Center for the Law and the Economics of Sport, supra note 2, at 226.
means in order to maintain the hopes of winning what appears to be a losing battle.

While the English Premier League is no more at fault than any of the other financially irresponsible leagues, it is a good example of the problems affecting nearly every major football league in Europe. Despite record levels of revenue, the pressure to remain competitive and compete for championships has led to many teams spending millions more than they can afford year after year. The teams from larger markets and those with wealthy owners are essentially able to buy their way into championships. Some spectators argue that while there is a clear lack of competitive fairness in modern soccer, it actually makes the game more exciting for fans. Economist Jack Hirshleifer calls the phenomenon "the paradox of power." Fans always enjoy the David versus Goliath match; even seemingly disinterested fans love to cheer for the overmatched team. While this paradox may certainly be true in some situations, compare the English Premier League with the NFL. The NFL is the most profitable sports league on the planet and has by far the highest average attendance of any sport. The NFL attracts an average of 68,241 people to each game, while the English Premier League only manages 35,341. When people attempt to explain the NFL's unrivaled success, they often mention the league's motto: "On any given Sunday any team in our league can beat any other team." This motto would certainly not hold true for the English Premier League, with its three top teams dominating the last quarter of a century. While the English Premier League's revenue sharing is much more generous than its Italian and Spanish counterparts, it is completely overshadowed by the NFL. The NFL shares television income equally, forty percent of each game's gate receipts go to the visiting team and only one thirteenth of merchandise profit is kept by the respective team. While no system or league is perfect, the English Premier League could certainly take a few pages out of the playbook of American sports.

119. See id. at 226.
120. See id. at 7.
122. Id.
123. Id. at 165.
124. Id. (statistics for the NFL are current as of 2008 and the English Premier League for 2009).
125. Id.
126. KUPER & SZYMANSKI, supra note 121, at 165.
127. Id.
B. La Liga

While La Liga of Spain does not garner as much attention as their neighbor to the north, this league is certainly not without their own financial difficulties. Spain has been the dominant force in world football for the past five years, winning two UEFA European Championships and one FIFA World Cup. The country's two most successful teams, Barcelona and Real Madrid, are ranked first and fourth respectively in the world. However, this success has not resulted in financial prosperity for their domestic league. Despite their success both at home and abroad, La Liga is one of the most financially embattled leagues in the world. Miguel Cardenal, the President of the Spanish Sports Council, stated recently that the collective debt of all the clubs is now beyond €4 billion. Of that, €670 million, or $874 million, is owed to the tax authority.

To illustrate how severe this pecuniary crisis is, take Valencia CF, for example. This club has been very successful throughout its history; in 2007, it began construction on a world-class, 75,000 seat stadium. In 2009, after investing over $250 million into the project, the construction was halted when the club was unable to further finance the project. The bank, which the club owed most of its debt to, agreed to help finish the construction so that the club could begin to generate revenue from the new stadium. Even this venture would not succeed, because only a year later, the bank had to be nationalized due to its own financial difficulties, and the project was again suspended. Valencia CF was forced to sell off nearly all of its most valuable players to alleviate its financial imbalance.

Much like the English Premier League, La Liga’s lack of competitive fairness has exacerbated the economic situations of the league’s smaller clubs. Barcelona and Real Madrid have combined to win all but three of

128. The Center for the Law and the Economics of Sport, supra note 2, at 169–70.
131. Id.
132. Id.
134. Id.
135. Id.
136. Id.
137. Id.
the La Liga championships since 1996. Under the current television agreement, Barcelona and Real Madrid share thirty-four percent of the total television revenues (€140 million each), while the other forty teams in the top two divisions share the remaining sixty-six percent (€12 million each). This discrepancy is far greater than in any other major European league.

The pressure to rectify this situation is escalating from both the Spanish and German governments. German fans have been incensed that their teams are being beaten by Spanish clubs, which are effectively subsidized by tax breaks at a time when taxpayers believe they are paying to help Spain bail out the country’s debt-stricken banks. When the Spanish government suggested they might forgive many clubs’ tax debts, the president of Germany’s most dominant team, Bayern Munich, responded, “this is the last straw, it’s unbelievable . . . . We pay them hundreds of millions of Euros to help get them out of the shit and then Spain’s clubs don’t pay their debts.”

Professor José Maria Gay de Liébana of the University of Barcelona also stated:

Reckless lending—especially by former savings banks controlled by local politicians—had created a bubble that must eventually burst. When people ask me what clubs could be in danger, I reply with the list of the only clubs that are not in any kind of danger. They are Barcelona, Real Madrid and Athletic Bilbao. Hoeness (President of Bayern Munich) is, basically, right. If I don’t pay my taxes, then the authorities come after me. But that

138. Brezac, supra note 133, at 170.


143. Id.
doesn't happen to the clubs, which are not treated like other companies.144

The Spanish mess is a primary reason why Michel Platini, the president of UEFA, has implemented the FFP rule.145 This policy, which goes into effect next season, will affect the Spanish clubs of La Liga more than any other league.146 Clubs that spend more on player wages than they take in each year could potentially be expelled from the Champions League or the Europa League.147 Miguel Cardenal has begun to remind clubs of the ramifications their spending habits will have on both the league and its teams.148 He has acknowledged the fact that Spain will have to begin exporting most of its talented players in order to claw out of the financial crater they have put themselves in.149

Spain, perhaps more so than any other nation, is in desperate need of a salary cap. The league is dominated by two teams whose combined incomes dwarf the rest of the league.150 Therefore, the league is left with a system where two teams earn the most revenue and consistently win the championship year after year. While the new FFP was implemented to facilitate some sense of parity into the leagues, this rule will not solve the problems in Spain. The FFP only makes teams keep their spending to the same level as their income. Because Barcelona and Real Madrid have such higher levels of revenue than the rest of La Liga, they will continue to spend exponentially more money than any of their domestic counterparts.151

Imbalance in football is not a new concept. The old European Cup was seldom much fairer than the modern Champions League.152 Today's inequality in football bothers fans not because it is unprecedented, but because it is more of a product of financial imbalance than it used to be.153 In the past, a smaller club could experience years of success if it happened

145. Hughes, supra note 130.
146. Id.
147. Id.
148. Id.
149. Id.
150. Hughes, supra note 130.
151. See id.
152. KUPER & SZYMANSKI, supra note 121, at 176.
153. Id.
to sign a wonderful young player or hire an excellent up-and-coming manager.\textsuperscript{154} That occurrence is all but extinct from modern football.\textsuperscript{155} Today, a smaller team can seemingly only enjoy success if a foreign billionaire purchases it, as is the case with both Chelsea and Manchester City.\textsuperscript{156} Fans will not cry foul if a team is perennially winning because of solid management and player development. They will cry foul, however, when a team’s success is built upon the unsettled foundation of a foreign billionaire or quickly dissolving banks.\textsuperscript{157}

IV. INTRODUCTION OF THE FINANCIAL FAIR PLAY RULES AND THE NECESSITY OF A SALARY CAP

In September 2009, Michel Platini, announced that something was finally going to be done about the arms race in European football.\textsuperscript{158} UEFA’s Executive Committee unanimously approved the FFP.\textsuperscript{159} The rule was formally implemented in 2012 to try and repair some of the financial damage done to the game.\textsuperscript{160} The major objectives were to encourage clubs to compete within their revenues, to protect the long-term viability of the game, and to ensure that clubs settle their liabilities in a timely manner.\textsuperscript{161} UEFA acknowledged that despite the increased levels of income, many clubs were experiencing repeated and worsening financial loses.\textsuperscript{162} Over time, the regulation will force clubs to balance their books or face harsh penalties.\textsuperscript{163} Some of these penalties include: Fines, withholding of television revenue, and exclusion from UEFA competitions.\textsuperscript{164} However, despite clubs blatantly ignoring this policy and continuing to spend at record levels, UEFA has yet to fully initiate the so-called “break even rule” and has yet to hand out any significant punishment.\textsuperscript{165}

\textsuperscript{154} Id.
\textsuperscript{155} See id.
\textsuperscript{156} See id. (Chelsea was purchased by Russian oil billionaire Roman Abramovich, and Manchester City is now owned by an Abu Dhabi oil conglomerate.).
\textsuperscript{157} KUPER & SZYMANSKI, supra note 121, at 176.
\textsuperscript{158} Hughes, supra note 130.
\textsuperscript{160} Id.
\textsuperscript{161} Id.
\textsuperscript{162} Id.
\textsuperscript{163} Id.
\textsuperscript{164} KUPER & SZYMANSKI, supra note 121, at 176.
\textsuperscript{165} Id.
The FFP contains numerous cracks that are beginning to show through.\textsuperscript{166} One of the major criticisms of the FFP is the possibility of solidifying the so-called “big clubs,” which generate the largest revenues and earn the most profits, and therefore, can spend more money on transfers.\textsuperscript{167} Other commentators are concerned about possible loopholes in the legislation itself.\textsuperscript{168} For example, up until the end of the 2014–2015 season, clubs will be allowed to exclude the wages of players signed before June 2010 from the FFP calculation as long as they can show an improved trend in their accounts.\textsuperscript{169} Larger clubs are also able to artificially raise their income from massive sponsorship deals, e.g., stadium naming rights via companies with a vested interest in the club’s success, or from the sales of overseas rights to consortiums without clearly identified investors.\textsuperscript{170}

Perhaps the two largest challenges to the success of the FFP are third-party ownership and wealthy benefactors. Under the third-party ownership model, companies or wealthy individuals can purchase a percentage of a young player in the hopes that if his value increases in the future, they will make a profit based on their percentage. The advantage for clubs is that they can purchase players whom they would not normally be able to afford. While the English Premier League has banned such practices, it is permissible under the FFP.\textsuperscript{171}

Because of the growing number of wealthy benefactors, a number of clubs across Europe are able to spend substantially more than they earn as a result of the benevolence of their owners who make substantial financial gifts to the club, either by paying off existing debt or by providing direct injections of cash.\textsuperscript{172} In France’s top division (Ligue 1), Paris Saint-Germain (PSG) became the richest club in France, and one of the richest clubs in the world, after Qatar Investment Authority became the majority shareholder of the club after buying a controlling percentage of the shares in 2011.\textsuperscript{173} They purchased the club in a deal worth €50 million, which covered an estimated €15–20 million in debt and losses of €19 million from

\begin{footnotesize}
\begin{enumerate}
\item[166.] Id.
\item[167.] Conn, supra note 96.
\item[168.] See id.
\item[169.] Financial Fair Play Explained, supra note 26.
\item[170.] Id.
\item[171.] Paris Saint-Germain Dream into Action, supra note 3.
\item[172.] Id.
\end{enumerate}
\end{footnotesize}
the 2010–2011 season.174 PSG splashed a French record €26 million and were the biggest spenders in the world for the 2011–2012 season.175 These enormous loopholes in the FFP regulations have allowed many clubs to continue their reckless spending without facing any sanctions from UEFA.

However, the FFP alone will not be enough to remedy the current economic situation. The FFP will do nothing to bring balance to leagues in which only a handful of teams stand a chance of winning. Teams that wish to claw into the upper echelon of their leagues will be forced to spend beyond their means and will in turn be punished by UEFA for doing so. While the FFP rules are a step in the right direction, more must be done in order to truly rectify the problems facing football today.

A. The National Basketball Association’s Salary Cap System

Most major American sports, with the exception of baseball, have a salary cap system in place. The NFL and the National Basketball Association (NBA) are the two most profitable leagues that utilize a salary cap.176 The revenue sharing and salary cap system in the NBA would be well suited for European football.

Every team in the NBA must spend a minimum of $52.8 million and can spend no more than $58.7 million.177 This small window of salary cap space ensures that teams play on a relatively even field. The salary cap in the NBA is what is known as a “soft cap.”178 While the NFL and National Hockey League (NHL) have minimal exceptions for going over the cap, the NBA will allow teams to do so for a number of reasons. The soft cap in the NBA allows teams to exceed this cap, but those teams pay a “luxury tax” when they do so.179

The 2011 Collective Bargaining Agreement (CBA) instituted major changes to the luxury tax system.180 The dollar for dollar tax provisions of

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175. Paris Saint-Germain Dream into Action, supra note 3.


178. Id.

179. Id.

the previous CBA remains in effect through the 2012–2013 season. The previous CBA remains in effect through the 2012–2013 season. Starting in the 2013–2014 season, the tax imposed on violators will change to an incremental system. The tax will be assessed at different levels based on the amount that a team is over the luxury tax threshold. For example, a team that is $8 million over the tax threshold will pay $1.50 per dollar for each of its first $5 million over the tax threshold and $1.75 per dollar for the remaining $3 million. Starting in the 2014–2015 season, repeat offenders will be subject to additional penalties. In the first season, repeat offenders from all previous three seasons will pay a stiffer tax rate; from the 2015–2016 season beyond, teams paying taxes in three out of four years will be subject to the higher repeater rate. The money that these offenders pay is redistributed to the other teams in the League. So teams are able to exceed the salary cap if they can afford to do so, but in doing so they are also giving away millions of dollars to the NBA’s less wealthy teams.

This system would be well suited for European football because no matter what system is installed, certain teams such as Barcelona and Manchester United will always be willing and able to spend more than the competition. Similarly, in the NBA, teams such as the Los Angeles Lakers and the New York Knicks, which have much higher revenue streams, are willing to spend more on players. This type of system would allow the large market teams in Europe to continue to spend at the levels they are comfortable with, but would also give the smaller teams more of a fighting chance. Wealthy teams like Barcelona could continue to spend based upon their large revenue streams, but their excess spending would be redistributed to all other Spanish teams who did not exceed this tax threshold.

V. CONCLUSION

Europe represents the largest transfer market in the world of football. It has the most successful and well-known clubs in the world, and the best players are attracted to these European leagues. Its transfer system has undergone tremendous changes since the Bosman ruling. While the

181. Id.
182. Id.
183. Id.
184. Id.
185. NAT’L BASKETBALL ASS’N, supra note 180, at 29–33.
186. Id. at 30–33.
187. Id. at 19.
expansion of players' rights has led to increased salaries and transfer fees, it
has also led to a decline in competitive equality. The *Bosman* decision, the
increase in football revenues, the internationalization of the game, the
arrival of rich financiers, and the explosion of television rights have
undoubtedly contributed to the increase in value and the number transfers
across all the European football leagues.

The sport can simply not continue in the manner it is operating today.
Teams are being artificially supported through wealthy owners and
substantial television revenue. Clubs are earning more money than they
ever have and should have no problem operating within their budgets.
Teams must begin to operate responsibly in order to ensure the long-term
viability of the sport. The passage of the FFP is a promising first step
towards improving the sport's finances, however, until UEFA actually
enforces the rules and regulations contained in the FFP, football will
continue to suffer from both a financial and sporting perspective.

Implementing a salary cap and luxury tax similar to the NBA would
benefit the sport in numerous ways. Forcing clubs to operate within a
league-mandated budget would ensure that all teams compete on a level
playing field. Football has lacked any real form of parity for over a decade,
and the implementation of a salary cap would begin to remedy this
situation. For those teams who could afford to spend well above this line,
the use of a luxury tax would ensure the other teams would also benefit
financially. None of these regulations could be introduced without certain
opposition. These changes would represent a drastic transformation to a
system that went largely unchanged for over 150 years. With the landmark
ruling in *Bosman*, however, these changes have become necessary for the
sport's continued success.