

The DFL considers changing the 50+1 rule

governance. The International Olympic Committee (‘IOC’), the Commonwealth Games Federation (‘CGF’), and football’s major governing bodies FIFA and UEFA all made commitments to embed human rights into the delivery of their mega-sporting events in accordance with the UNGPs¹⁴. The emerging policy consensus culminated on 30 November 2017 with a joint announcement by the representatives of many key stakeholders to establish an independent Centre for Sport and Human Rights in 2018 to provide the institutional means to enable sport to identify and meet its human rights responsibilities¹⁵.

These commitments represent a historic turning point in the governance of world sport, and can be largely attributed to the longstanding efforts of multi-stakeholder groups such as the Sports and Rights Alliance¹⁶ and the Mega-Sporting Events Platform for Sport and Human Rights¹⁷.

Importantly, the emerging policy consensus includes the athletes. The CGF and FIFA have already provided further leadership through the adoption of human rights policies which make express reference to the athletes and players and accord with the framework of the UNGPs¹⁸. FIFA’s Human Rights Policy echoes the four-step framework of the WPRP¹⁹. Its implementation is seeing FIFA greatly increase its engagement with FIFPro and national footballers’ unions, review its regulations and ensure grievance mechanisms are rights compatible and provide players with access to an effective remedy²⁰.

In further support of the emerging policy consensus, athletes within both the IOC and the World Anti-Doping Agency (‘WADA’) have called for the adoption of an international charter of athlete rights and responsibilities²¹. To be legitimate and effective, this undertaking must be anchored in internationally recognised human rights and address salient human rights risks and violations. By following the WPRP and enshrining the rights articulated in the UDPR, sport can proactively ensure it protects the very people - the athletes - without who athletic competition and the business of sport cannot exist.

The Deutsche Fußball Liga (‘DFL’) is reviewing the 50+1 rule, which requires that in order for a club to obtain a licence to compete in the Bundesliga, the majority of voting rights within the club must be controlled by its parent member association (e.g. FC Bayern München e.V.). The clause within the regulations of the DFL is designed to ensure that a football club’s members retain overall control, requiring the parent member association to own at least 50% plus one additional share of a football company to protect clubs from the influence of external investors. The DFL announced in a press release on 5 February 2018 that it would seek to review the wording and implementation of the 50+1 rule in the coming months. On the same day Hannover 96 President Martin Kind announced the suspension of a challenge to the 50+1 rule even though he is still prevented from taking a majority of the voting shares at the club despite his long-term investment. The move by the DFL to review the 50+1 rule and what is described by the DFL as the necessity of embarking on an open-ended policy debate on the matter within the DFL and its committees, and the contents of possible new regulation, has sparked renewed debate on the matter.

The 50+1 rule was created to ensure the economic stability of clubs, preserve the relationship between professional and amateur sport as well as the integrity and credibility of the competition, but Alexander Engelhard, Senior Associate at Arnecke Sibeth, notes that opponents to the 50+1 rule believe that it has led to smaller investments in the Bundesliga than in other EU leagues. “The DFL believes it is losing competitiveness when compared to other international leagues, especially the Premier League,” said Engelhard. “DFL CEO Christian Seifert, who has managed and successfully marketed the league for more than ten years, in his New Year’s address expressed his fear that constant insistence on old customs would distract from the discourse about the issues that are vital to the league. Seifert demanded an honest commitment to commerce in football, if necessary at the expense of traditions and traditional rules, such as the 50+1 principle.”

Martin Kind is one of the 50+1 rule’s most vocal opponents, who has previously questioned whether the rule could be in breach of EU competition law. The effectiveness of the rule has also been questioned following the rise of RB Leipzig. “The 50+1 rule may violate EU competition law, as it restricts commercial entities in their right to take autonomous commercial decisions,” comments Dr Martin Stopper, Partner at Lentze Stopper Rechtsanwälte. “Taking this into account and the additional pressures with regard to the commercially driven rat race within the EU football leagues, it is quite likely that we can expect an adjustment to the rule.” Stopper thinks it would be a good idea for the DFL to develop regulations that give clubs more freedom to create their own financial and corporate set up. “But I would not give up on the idea of replacing the too strict 50+1 rule with a regulatory framework that protects the clubs, and maybe even more importantly, the Bundesliga, from entering into self-destructive financial experiments,” adds Stopper.

The DFL’s general meeting of the 36 clubs will be held on 22 March 2018. DFL President Reinhard Rauball commented recently that it will be at this meeting that the first step in the procedure used to obtain a comprehensive opinion of all the clubs on the matter will be agreed.