IS THE CURRENT VERSION OF THE GERMAN 50+1 RULE THE "HOLY GRAIL" IN BALANCING THE PROTECTION OF MEMBER OWNERSHIP AND EXTERNAL INVESTMENT IN FOOTBALL CLUBS? [1]

A VERSÃO ACTUAL DA REGRA ALEMÃ 50+1: O "SANTO GRAAL" NO EQUILÍBRIO ENTRE A PROTECÇÃO DOS SÓCIOS E O INVESTIMENTO EXTERNO NOS CLUBES DE FUTEBOL?

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> *"When you start supporting a football club, you don't support it because of the trophies, or a player, or history, you support it because you found yourself somewhere there; found a place where you belong."*[3] - Dennis Bergkamp.

INTRODUCTION

This paper will provide a discussion on Section 16c (2) and (3) of the *Statutes of the German Football Association (DFB)*[4], also known as the "50+1 Rule"[5], that determines that German football clubs may only acquire a competition participation license if the parent member association has the majority of voting rights of the commercial company in which the professional football department of that association is structured.

The focus will be in determining whether the 50+1 Rule represents an adequate balance between protection of member ownership and allowance of external investment in football clubs. The adequate equilibrium between these two interests will be unfolded throughout the paper and will be referred as the "Holy Grail".

For that purpose, firstly, an overview of the legal forms of football clubs in Europe will be made in order to expose the roots of the issue, that is connected with the relationship to be established

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[3] Peter Henry, 'Dennis Bergkamp - 15 of the Best Quotes by the Dutch Master', *The Football Faithful* (Web Page, 27 August 2019) <https://thefootballfaithful.com/dennis-bergkamp-15-of-the-best-quotes-by-the-dutch-master/>.

[4] *Satzung des Deutschen Fußball Bundes* (Statutes of the German Football Association) s 16c (2) and (3).

[5] Alexander Scheuber, 'German soccer rules: 50+1 explained', *Bundesliga* (Web Page, online at 14 January 2019) <https://www.bundesliga.com/en/news/Bundesliga/german-soccer-rules-50-1-fifty-plus-one-explained-466583.jsp>.

between the parent member association and the commercial company from the moment when its professional section of the football department is transformed into a commercial company. The 50+1 Rule, which comes into action in relation to this relationship, will then be outlined along with the evolution that took place and that led to the current version of the rule.

On that legal basis, a consideration of the conflicting interests of both members of the clubs and possible investors will be made in order to clearly identify the interests that a rule on sports entities has to accommodate from different stakeholders. It will be through the framework of those interests that the possible criticisms and the actual strengths of the 50+1 Rule will be accessed at different levels in order to establish if this rule has the potential to be considered the "Holy Grail".

In the end, and through a deconstructive look at the current version of the 50+1 Rule, it will be argued that, in its several components and because of its strengths at the legal, economic and financial level, this sports law rule represents the "Holy Grail" in the difficult task of balancing the conflicting interests at stake, in this case, the interests of football club members and the interests of potential investors in football clubs.

A Legal Form of Football Clubs in Europe

Football clubs in the "Old Continent", Europe, were born mostly in the end of the Nineteenth Century or in the beginning of the Twentieth Century. These football clubs were deeply bonded and rooted on local communities and were normally run as member associations. These associations usually involved the practice of several sports, including football, by its members. The member of the association would typically have to pay a monthly or yearly fee. Accordingly, the members were collectively responsible for the decision-making in the association. In Continental Europe, the paradigm remained unchanged until the last decade of the Twentieth Century.

However, in England, from the very beginning of the life of football clubs, clubs were rapidly incorporated. For instance, Manchester United was formed by railway workers in 1878 and was incorporated in 1892 on the occasion of the club joining the Football League First Division, the professional Football League at the time, the ancestor of the English Premier League[6]. The normal situation throughout the Twentieth Century was that English football clubs were incorporated through the legal form of public limited companies (PLC)[7]. At the time, the main reason for clubs to adopt such legal form was the limitation of liability.

In Continental Europe, despite the beginning of European Club competitions, namely the European Champion Clubs' Cup in 1955, the legal form of these local associations remained unchanged.

The contrast was clear between these two different approaches in legally shaping a football club. On the one hand, the English approach where the football club was shaped in a corporate form. On the other hand, the Continental Europe handling where the football club consisted in an unincorporated member association.

Such distinction was to be struck in the last decade of the Twentieth Century with the introduction of legislation in Continental Europe countries like Germany, Spain or Portugal[8] that allowed, in the case of Germany, or required, in the case of Spain and Portugal, the above-mentioned member associations to transfigure the professional section of their football departments into commercial companies.

The main reasons for this change in paradigm were related with the nature of member associations and its governance[9]. Firstly, because of the unpractical way of governance these associations offered, as the decision-making process was greatly dependent from the general assembly formed by all of

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[6] Ryan Murphy, 'Playing Fair in the Boardroom: An Examination of the Corporate Structures of European Football Clubs' (2010) 19(2) *Michigan State University College of Law Journal of International Law* 409, 437.

[7] Ryan Murphy (n 5) 431.

[8] Ryan Murphy (n 5) 423 and 424.

[9] Christian Keidel and Alexander Engelhard, 'Football club ownership in Germany – less romantic than you might think', *LawInSport* (Web Page, 28 July 2015) <https://www.lawinsport.com/topics/item/football-club-ownership-in-germany-less-romantic-than-you-might-think>.

the members, rendering decision-making more complex. Secondly, because associations benefited from a "non-profit tax regime that is hardly compatible with the realities of modern club football commercial activities"[10]. Lastly, the commercial company form brings the possibility of investments through the acquisition of shares, which is impossible in relation to membership rights in a given association.

Also, this change came along with the transformation of the European Champion Clubs' Cup into the ultra-commercialised and professional UEFA Champions League, in 1992, that posed updated and increased legal, financial and commercial demands for clubs.

This transition and the requirement for transformation into commercial companies was granted without further limitations in most countries in Continental Europe, as it is the case of Spain and Portugal[11], in 1990.

However, in 1998, the German rule[12] that allowed for such transformation came with the limitation that the majority of the voting rights[13] of the commercial companies, that could be created, would have to remain controlled by the parent associations, which were member-run. It is on that rule that this paper will focus from now on.

A short legal terminology reference has to be made before advancing. In Germany, a limited liability company by shares is referred as *Aktiengesellschaft, AG*, and a registered association is referred as *eingetragener Verein, eV*[14]. So, for example, in the case of the German football club, *Bayern Munich*, the professional section of its football department is structured into *Bayern Munich AG*, while the member association that holds the majority of voting rights in that corporation is *Bayern Munich eV*.

[10] Christian Keidel and Alexander Engelhard (n 8).

[11] Ryan Murphy (n 5) 423.

[12] *Satzung des Deutschen Fußball Bundes* (Statutes of the German Football Association) s 16c (2) and (3).

[13] More than 50% of the voting rights.

[14] Ryan Murphy (n 5) 424 and 425.

B The 50+1 Rule

1 The Evolution

The 50+1 Rule, introduced in 1998, in the above-described context, is set out in Section 16c (2) and (3) of the *Statutes of the German Football Association*[15] and replicated in Section 8 (2) and (3) of the *Statutes of the German League Association*[16]. This rule determines that German football clubs may only acquire a competition participation license if the parent member association holds "more than 50% of voting shares plus one additional vote in the shareholders assembly"[17] of the commercial company in which the professional football department of that association is structured. The limitation introduced by this rule operates through a requirement for the issuance of a competition participation license.

Along with the main body of this 50+1 Rule an exception was introduced. The exception, present in Section 16c (3) of the *Statutes of the German Football Association*[18] and Section 8 (3) of the *Statutes of the German League Association*[19], determined that the requirement of participation by the parent member association would not apply in cases "where another legal entity has continuously and significantly promoted the football sport of the mother club for more than 20 years"[20], before 1 January 1999. This exception was specifically designed to address the cases of two football clubs, *Bayer 04 Leverkusen* and *VfL Wolfsburg*, which were founded by the German corporations of Bayer and Volkswagen, respectively. That circumstance granted this exception the nickname of "Lex Leverkusen" or "Lex Wolfsburg"[21].

[15] *Satzung des Deutschen Fußball Bundes* (Statutes of the German Football Association) s 16c (2) and (3).

[16] *Satzung des Ligaverbandes* (Statutes of the League Association) s 8(2) and (3).

[17] *Satzung des Deutschen Fußball Bundes* (Statutes of the German Football Association) s 16c (3) para 2.

[18] *Satzung des Deutschen Fußball Bundes* (Statutes of the German Football Association) s 16c (3) para 5-6.

[19] *Satzung des Ligaverbandes* (Statutes of the League Association) s 8(3) para 5-6.

[20] *Satzung des Deutschen Fußball Bundes* (Statutes of the German Football Association) s 16c (3) para 5; *Satzung des Ligaverbandes* (Statutes of the League Association) s 8(3) para 5.

[21] '50 + 1 rule remains, "Lex Leverkusen" not', *Kicker* (Web Page, 30 August 2011) <https://www.kicker.de/557196/artikel/502b1-regel-bleibt-lex-leverkusen-nicht>.

However, this exception also determined "that the shares in the corporation will not be resold or will only be returned to the parent club free of charge"[22]. In case of violation of this norm, the competition participation license would be revoked.

The introduction of the 50+1 Rule along with its exceptions was met with a lot of criticism. For now, and for the purpose of outlining the current format of this rule, it is important to refer to one of the critiques that actually had an impact on the current version of the rule.

The critique made to the 50+1 Rule that impacted its formulation was carried out by *Hannover 96* in the person of its President, Martin Kind. In November 2009, an application was submitted by *Hannover 96* with the intent of abolishing the 50+1 Rule limitation. However, that application was met by the overwhelming opposition of the *Bundesliga* clubs that all voted, except for *Hannover 96*, against such proposal. Ultimately, that led to a claim filled by *Hannover 96* in the DFL Court of Arbitration that claimed for this rule to be declared void.

The DFL Court of Arbitration, in 2011, after a change in the initial application by *Hannover 96*, declared void the segment of the exception present in Section 16c (3) of the *Statutes of the German Football Association* and Section 8(3) of the *Statutes of the German League Association*[23] that determined that the exception should only apply to investments made before 1 January 1999 because of inequality of treatment reasons[24]. Accordingly, the DFB and the League amended the 50+1 Rule "to allow all investors who financially supported a club for more than 20 years to request from the League a special permission to obtain the majority of voting shares in a club independent from the initial reference date"[25]. The argumentation developed by the Court at the light of German and European Law will be addressed ahead when discussing the criticism made to the 50+1 Rule.

[22] *Satzung des Ligaverbandes* (Statutes of the League Association) s 8(3) para 6.

[23] *Satzung des Deutschen Fußball Bundes* (Statutes of the German Football Association) s 16c (3) para 5; *Satzung des Ligaverbandes* (Statutes of the League Association) s 8(3) para 5.

[24] Schiedsgericht DFL [DFL Court of Arbitration], 25 August 2011 reported in (2011) I1 SpuRt 6/2011 259.

[25] Christian Keidel and Alexander Engelhard (n 8).

Finally, in 2015, the 50+1 Rule legal net was further condensed by the introduction of Section 8(6) of the *Statutes of the German League Association*[26] that imposes that "no one may be involved directly or indirectly with a stake of 10% or more of the voting rights or capital in more than one corporation [i.e. a football club organised as a commercial company]. Regardless of the stake no one may be involved directly or indirectly with voting rights or capital in more than three corporations. The restrictions under clause 1 and 2 shall not apply to stakes that were acquired prior to March 4, 2015."[27]

This norm introduces a limitation on multiple participations in football clubs, following and further deepening, the limitations already introduced by Article 5.01 of the *Regulations of the UEFA Champions League 2018-21 Cycle*[28], in order to protect and promote the integrity of the competition. The UEFA rule demands majority of voting rights in several clubs in order to establish that there is an inadmissible multiple participation in football clubs. The German rule is more demanding than the UEFA rule, as the first one establishes the link of multiple participation with only 10% or more of the voting rights.

2 The Current Version

Having outlined the evolution of the 50+1 Rule, the Rule that will be discussed throughout this paper will be addressed in its three main components: the general rule that reserves the majority of voting rights for the parent member association[29], the exception for cases of investment for more than 20 years along with its appendix regarding the restriction in the case of transfer of shares of the

[26] *Satzung des Ligaverbandes* (Statutes of the League Association) s 8(6).

[27] Christian Keidel and Alexander Engelhard (n 8) translated version of '*Satzung des Ligaverbandes* (Statutes of the League Association) sec 8(6)'.

[28] 'Regulations of the UEFA Champions League 2018-21 Cycle', *UEFA* (Web Page, online at 22 January 2020) <https://www.uefa.com/MultimediaFiles/Download/Regulations/uefaorg/Regulations/02/60/37/12/2603712_DOWNLOAD.pdf>.

[29] *Satzung des Deutschen Fußball Bundes* (Statutes of the German Football Association) s 16c (2) and (3); *Satzung des Ligaverbandes* (Statutes of the League Association) s 8(2) and (3).

corporation by the external investor[30] and lastly the limitation on multiple participations in football clubs[31].

C The Conflicting Interests

1 Member Ownership

From the previous exposition on the legal forms of European football clubs and the one regarding the 50+1 Rule one can realise a particularity on that model: the members of the member association detaining the majority of voting rights of the commercial company in which the professional football department of that association is structured being the ones that ultimately run and own the club.

It is through the legal vehicle of the association, that detains the majority of voting rights on the commercial company, that members exercise their power over the club. Members collectively own the club through the associative intermediary.

In practice, the manifestation of the ownership of the club by members is conveyed through the body of the general assembly of the association. It is in this body that most of the power of decision-making is concentrated, as voting members will make their decision democratically on the most relevant issues of the club. For instance, it is in the general assembly that members elect the members that will form the board of directors of the club. This degree of influence on decision-making is the core of the member ownership of football clubs in leagues like the *Bundesliga*.

It is this interest and this influence of members that the 50+1 Rule protects, when it restricts the majority of the voting rights on the commercial company where professional football is structured to the member association.

The membership in a football club does not come without a price, as membership fees are normally due by the members. However, along with the political rights members have, members usually benefit from commercial benefits, such as reduced prices on season tickets and merchandising.

With that said it is natural that such influence and involvement in the club's life results in a degree of engagement with the club that justifies members being unwilling to consider the possibility of an investor restricting them of such influence. Usually, not even the idea of increased liquidity for investment that may increase the club's possibilities of success is enough to change the football club member mindset. As the *Borussia Dortmund* CEO Hans-Joachim Watzke put it, regarding the German football club member culture and its relationship with the 50+1 Rule: "the German spectators traditionally have close ties with their club, and if they get the feeling that they are no longer regarded as fans but instead as customers, we'll have a problem."[32]

The idea of protection of member ownership is ultimately rooted in the traditional idea of reduced involvement of directors in the definition of a club's path. As the iconic Liverpool Football Club coach between 1959 and 1974, Bill Shankly, said: "At a football club, there's a holy trinity - the players, the manager and the supporters. Directors don't come into it. They are only there to sign the checks."[33]

All in all, the member's interests can be summarised as the willingness to maintain decision-making power in the relevant determinations to be made in the football club[34].

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[30] *Satzung des Deutschen Fußball Bundes* (Statutes of the German Football Association) s 16c (3) para 5-6; *Satzung des Ligaverbandes* (Statutes of the League Association) s 8(3) para 5-6.

[31] *Satzung des Ligaverbandes* (Statutes of the League Association) s 8(6).

[32] Alexander Scheuber (n 3).

[33] Bill Shankly, 'Football Clubs Quotes', *AZ Quotes* (Web Page, online at 24 January 2020) <https://www.azquotes.com/quote/574752>.

[34] The willingness to maintain such power it is also reflected in the amount of fans that support "member-owned" clubs that make the decision to become members of the club. For instance, the Top 5 of clubs with more members are all "member-owned": three German clubs (Bayern Munich, Borussia Dortmund and Schalke 04) and two Portuguese clubs (Sporting CP and SL Benfica): 'Why Bayern Munich are the best-supported club in world football', *Bundesliga* (Web Page, online at 26 January 2019) <https://www.bundesliga.com/en/news/Bundesliga/why-bayern-munich-are-the-best-supported-club-in-world-football-467212.jsp>; 'Estes são os clubes com mais sócios no mundo' [These are the clubs with more members in the world], *SOL* (Web Page, 8 March 2018) <https://sol.sapo.pt/artigo/603502/estes-sao-os-clubes-com-mais-socios-no-mundo>.

2 External Investment

The precarious position of someone who has this interest of investing in a football club was perfectly summarised by Roman Abramovich, the owner of Chelsea Football Club: "I'm realising my dream of owning a top football club. Some will doubt my motives, others will think I'm crazy."[35] This quote exposes the double fragile position of an investor in a football club, specially if the investor is a natural person. On the one hand, the idea that external investors are normally met with distrust of the motives they might have to get involved in football clubs. On the other hand, the idea of great financial risk by embarking in such an investment.

The interest of investing in football clubs comes mostly from two sources: extremely wealthy individuals and companies. Normally, the investment that is sourced from extremely wealthy individuals is based on a personal interest on football along with a financial interest[36]. For companies, the interest of investment is mostly based on financial return, in the placement of a brand through the club or both. Examples of that are the situations of Liverpool FC, owned by Fenway Sports Group and Manchester City FC, owned by the City Football Group, a holding company owned by the Abu Dhabi United Group.

The investment in football clubs is also normally associated with large sums of money being invested in the club. In exchange, usually investors wish to detain the majority of voting rights in the football clubs to ensure they have the adequate control in defining the path of the club.

The case in the English Premier League is representative of an openness to external investment. This is linked with the corporate form tradition of football clubs in the English Premier League. This corporate form tradition is related with the possibility of transferring shares in football clubs without limitation. As a result, nowadays, thirteen out of the twenty clubs in the English Premier League (more than a half) are owned by foreign majority investors.[37] The situation in the *Bundesliga* is different from the one in the English Premier League. The English competition accommodates the interests of investors in an unregulated framework.

All in all, the external investor interests, whether the investor is a natural person or a company, can be summarised as the intention to make an investment that seeks financial or marketing returns along with the intention of obtaining a relevant degree of control over the decision-making process of the football club.

D The Criticism to the 50+1 Rule

1 On the Legal level

As outlined before, the major legal challenge to the 50+1 Rule was made by the German football club *Hannover* 96 in 2011. The DFL Court of Arbitration decided to declare void the segment of the exception present in Section 16c (3) of the *Statutes of the German Football Association* and Section 8(3) of the *Statutes of the German League Association*[38] that determined that the exception should only apply to investments made before 1 January 1999[39]. That led to an updated version of the 50+1 Rule that contemplated all investors in the 20 years investment exception to obtain the majority of voting shares in a club.

The criticism in the Court's reasoning was mostly focused in the inequality of treatment conveyed by this rule, as there would be discrimination between investors who supported a club for more than 20 years before 1 January 1999 and the

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[35] Roman Abramovich, 'Football Clubs Quotes', *AZ Quotes* (Web Page, online at 27 January 2020) <https://www.azquotes.com/quote/660458>.

[36] "I love this game, I love this sport, I love this league. Why don't I get my own team? (English Premiership football club).": Roman Abramovich, 'Football Clubs Quotes', *AZ Quotes* (Web Page, online at 27 January 2020) <https://www.azquotes.com/quote/660457>.

[37] David Conn, 'Premier League finances: the full club-by-club breakdown and verdict', *The Guardian* (Web Page, 23 May 2019) <https://www.theguardian.com/football/2019/may/22/premier-league-finances-club-guide-2017-18-accounts-manchester-united-city>.

[38] *Satzung des Deutschen Fußball Bundes* (Statutes of the German Football Association) s 16c (3) para 5; *Satzung des Ligaverbandes* (Statutes of the League Association) s 8(3) para 5.

[39] Schiedsgericht DFL [DFL Court of Arbitration], 25 August 2011 reported in (2011) I1 SpuRt 6/2011 259.

ones who would do it after that date[40]. Also, this segment of the exception was clearly designed to accommodate the specific situations of *Bayer 04 Leverkusen* and *VfL Wolfsburg*. Thus, the Court considered that there was no material difference between investors that supported a club for 20 years before 1 January 1999 and others that might do it in the future: "The contested regulation lacks sufficient support for the unequal treatment, an objective reason. Between the ones favoured by the key date in the regulation and the others there are no relevant differences; and no characteristics in the disadvantaged group of such weight that they can justify the unequal treatment."[41]

Although the above-mentioned criticism is the most relevant as it impacted the 50+1 Rule content there are other relevant legal criticisms made to the current version of the rule.

One of the criticisms is that the DFL Court of Arbitration, as discussed by Keidel and Engelhard, "did not fully assess the validity of the rule under European and German competition law and (...) there is indeed no clear justification as to why a member association would be more capable of controlling the sporting and managerial fate of a club than perhaps a single owner."[42] Keidel and Engelhard focus on the main content of the 50+1 Rule that restricts the control to the club to the member association and their critique highlights a possible legal lack of proportionality in the restriction made by the rule. Also, a possible reference to the arbitrariness of this rule may be implicit in this comment as there would not be a strong and solid justification to restrict the control of the club only to a member association.

Also, some critics[43] raise their voice against the 50+1 Rule for violating the Article 63 and 101 of the *Treaty on the Functioning of the European Union*[44] that protects the free movement of capital and prohibit agreements that can go against free competition, respectively. It is considered by Deutscher that: "Majority investors may be uncomfortable for the DFB and the DFL, but this is tolerable in business. Under no circumstances can immanent considerations justify restricting competition in the sense of Article 81 *EC Treaty*[45] (corresponds to the current version of Article 101 of *FEU*)."[46] Under this position, the 50+1 Rule is considered to be restrictive of competition and therefore automatically void pursuant to Article 101(2) of *FEU*.[47] This position defends a strictly objective reading of Article 101 of the *FEU* that will be challenged on this paper.

The probability of new challenges arising in the future remains high.[48] To the criticism made on the legal level to the 50+1 Rule, one has to additionally consider the criticism made on the economic and competitive level as usually those are the motives that spark legal challenges.

2 Economic and Competitiveness Effects

In the 2018 FIFA World Cup, after a shocking elimination of Germany in the group stage, some voices starting raising concerns about the state of German football and of its youth academies. Namely, the 1990 World Cup winner for Germany, Jürgen Klinsmann, considered the following: "I understand

[40] "The cut-off date discriminates against all members who in the period thereafter have met or meet the statutory requirements for granting an exception.": Schiedsgericht DFL [DFL Court of Arbitration], 25 August 2011 reported in (2011) I1 SpuRt 6/2011 259, 262.

[41] Schiedsgericht DFL [DFL Court of Arbitration], 25 August 2011 reported in (2011) I1 SpuRt 6/2011 259, 262.

[42] Christian Keidel and Alexander Engelhard (n 8).

[43] Gabriel Burghardt, ,Die Ausgliederungslösung und die 50+1-Regel: Ein System mit Zukunft?' [The Outsourcing Solution and the 50 + 1 rule: A System With a Future?] (2013) 4 *Zeitschrift für Sport und Recht* [Magazine for Sport and Law] 142; Jörg Deutscher, ,50 + 1-Regelung in der Fußball- Bundesliga - Zur Mehrheitsbeteiligung von Investoren an Fußballklubs' [50 + 1 Regulation in the Football Bundesliga - on the Majority Participation of Investors in Football Clubs] (2009) 3 *Zeitschrift für Sport und Recht* [Magazine for Sport and Law] 97.

[44] *Treaty on the Functioning of the European Union*, opened for signature 7 February 1992, [2012] OJ C 326/47 (entered into force 1 November 1993) ('*FEU*'). *[cited as amended]*

[45] *Treaty Establishing the European Community*, opened for signature 7 February 1992, [1992] OJ C 224/6 (entered into force 1 November 1993) ('*EC Treaty*'). *[cited historically]*

[46] Jörg Deutscher, ,50 + 1-Regelung in der Fußball- Bundesliga - Zur Mehrheitsbeteiligung von Investoren an Fußballklubs' [50 + 1 Regulation in the Football Bundesliga - on the Majority Participation of Investors in Football Clubs] (2009) 3 *Zeitschrift für Sport und Recht* [Magazine for Sport and Law] 97, 100.

[47] *FEU* (n 43) art 101(2).

[48] Markus Schäflein, Philipp Schneider and Thomas Hummel, 'Ismaik will gegen 50+1-Regel klagen' [Ismaik wants to sue against the 50 + 1 rule], *Süddeutsche Zeitung* (Web Page, 3 June 2017) <https://www.sueddeutsche.de/sport/tsv-1860-ismaik-will-gegen-50-1-regel-klagen-1.3533713>.

the 50+1 rule, it stems from the old club idea, but you can only get money from investors if they are allowed to have a say in the club, which is why the rule is a disadvantage for the *Bundesliga* on the international stage."[49]

The underlying idea is that the 50+1 Rule creates a perverse effect of reducing investment and money flow in the *Bundesliga*. The reduced flow of money is pointed out by some as the reason for the decrease in the quality of performance of the professional and youth sections of German football clubs. Ultimately, that is deemed to reflect on the performance of the German national team.

However, some[50] defend that the link between the restriction of the 50+1 Rule and reduced investment in the *Bundesliga* may not be established. For that purpose a contrast with the English Premier League is made: "While there is no evidence of a line-up of billionaires to buy into the *Bundesliga* there is literally a line-up of billionaires lining up to buy English Championship sides for the chance to move the team up into the English Premier League and make a fortune. The TV money that comes to an English Premier League team is just so large a *Bundesliga* team cannot compete with that income flow. A bottom feeding English Premier League team will get as much or more TV money as Bayern will."[51]

The idea of Jürgen Klinsmann could be refuted on the grounds that the reality of sports television broadcasting contracts in the English Premier League that attracts investment is not the same in the *Bundesliga*. In England, broadcasting rights are so appealing that they constitute one of the main reasons for investors to embark in a journey with a club in a lower division in England (English Championship) in order to promote the club to the English Premier League and benefit from the revenue resulting from such rights. Such investment promotes development of new talents and makes easy facilitates securing rising talents, increasing overall league quality. However, the motives that attract investors in the English Premier League and that lead to increased league quality are not present in the context of the German *Bundesliga*.

Hence, it can't be firmly established that the 50+1 Rule discourages investors. Alternatively, the nature of *Bundesliga* and its economic attractiveness for investors has to be regarded.

Also, some consider that the 50+1 Rule might have an adverse effect on league competitiveness as there would be a lack of investment dynamic in the league and that would perpetuate the winners and the clubs that tend to rank in the top spots of the leagues[52]. The situation that is pointed out is specifically the one of the difference of performance by *Bayern Munich* and other clubs: "Germany's strong application of its rules has created a gulf between one team (*Bayern Munich*) and the rest of the league."[53]

In theory this idea can be followed, as if there is a restriction (but not a barrier) to investment, like the 50+1 Rule, it may create difficulties for some clubs to reach a higher level of competitiveness. However, it will be discussed ahead that the reality is not so clear, as more and more clubs diversify creative and sustainable forms of financing which are efficient in capturing money to develop a stable football department in a club. For now, an interesting fact can be exposed: as of today, the difference between the first position and the sixth position[54]

[49] 'Red alert! – Klinsmann calls for 'complete rethink' to German football', *Goal* (Web Page, 18 March 2019) <https://www.goal.com/en/news/red-alert-klinsmann-calls-for-complete-rethink-to-german/1dwq2o6cmgm7q1e4ijh2d4scf2>; Ryan Kelly, 'What is the 50+1 rule? Ownership model affecting Bayern Munich, Dortmund & Bundesliga clubs explained', *Goal* (Web Page, 25 March 2019) <https://www.goal.com/en/news/what-is-50-1-rule-ownership-model-bayern-munich-dortmund/1tbauau8p6cm01xbm8ok60k1uc>.

[50] 'Thoughts on the 50+1 Rule', *Bavarian Football Works* (Web Page, 7 April 2019) <https://www.bavarianfootballworks.com/2019/4/7/18299242/thoughts-on-the-50-1-rule>.

[51] 'Thoughts on the 50+1 Rule', *Bavarian Football Works* (Web Page, 7 April 2019) <https://www.bavarianfootballworks.com/2019/4/7/18299242/thoughts-on-the-50-1-rule>.

[52] "Some clubs would argue that without substantial outside investment they could never achieve the heights of the current industry leaders *FC Bayern Munich, Borussia Dortmund, VfL Wolfsburg* or *Bayer Leverkusen*.": Christian Keidel and Alexander Engelhard (n 8).

[53] Natalie St Cyr Clarke, 'How financial regulation affects competition across Europe's big five football leagues', *LawInSport* (Web Page, 6 June 2014) <https://www.lawinsport.com/topics/item/how-financial-regulation-affects-competition-across-europe-s-big-five-football-leagues>.

[54] The first six positions grant qualification for European club competitions in the next year.

in the English Premier League table is 37 points and in the *Bundesliga* is 8 points.[55]

E The Conformity of the 50+1 Rule and its Advantages

1 On the Legal level

(a) With European Law

It will now be argued that the 50+1 Rule is in conformity with European Law. When deciding on the costs, the DFL Court of Arbitration considered briefly the conformity of the 50+1 Rule with German and European Law. The discussion developed by the Court was not made in depth but it left two important comments on the 50+1 Rule.

The Court considered the conformity of the 50+1 Rule with European Law, namely under Article 63 and 101 of *FEU*[56], in two different levels. Firstly, the fundamental consideration was that: "The defendant league association is legally authorised, within the scope of its statute autonomy, to design requirements so that it meets its association goals - integrity, stability and balance of sporting competition."[57] The idea is that the statutory autonomy of the German Football Association and the League Association includes defining the requirements to obtain a competition participation license in order to pursue its pre-established associative goals. Ultimately, the principle is that within the scope of activity of the DFB and DFL, it is of the competence of these entities to define the requirements considered essential to obtain a competition participation license.

This statutory autonomy, that the Court defended[58], is protected under European Law by Article 12 (1) of the *Charter of Fundamental Rights of the European Union*[59].

Secondly, the Court considered that the restriction to external investment made by the 50+1 Rule was proportionate: "After all, it opens up to investors a participation in voting rights of 49%. These can be used for the appointment of board members along with other relevant shareholder rights."[60] The important aspect of the possibility of investment until 49% of voting rights was brought to the discussion. It is relevant to emphasise this aspect because of all the shareholder rights that such investment would bring with it. Later it will be overviewed how in practice investors still want to acquire participations in *Bundesliga* clubs and how they can actually exercise influence through their shareholders rights. Moreover, such restriction operates proportionally, it is not a disproportionate restriction such as, for instance, a restriction of 1% to external investors would be.

Considering those two lines of reasoning regarding statutory autonomy and proportionality, the 50+1 Rule can be deemed to be valid.

However, as seen the critics[61] to the 50+1 Rule mostly focus in a possible violation of Article 63 and 101 of *FEU*[62]. It is defended that the 50+1 Rule, by limiting the extent of the investment possible, is a "restriction or distortion of competition within the internal market"[63] of the European Union. At first sight the 50+1 Rule, as a norm that restricts investment, can be said to have an effect on competition, as the investors are restrained to develop their economic activity in football. This would be a strictly objective and literal interpretation of the European rule.

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[55] 'Premier League Table', *Premier League* (Web Page, online at 5 February 2020) <https://www.premierleague.com/tables>; 'Bundesliga Table', *Bundesliga* (Web Page, online at 5 February 2020) <https://www.bundesliga.com/en/bundesliga/table>.

[56] *FEU* (n 43) art 63 and 101.

[57] Schiedsgericht DFL [DFL Court of Arbitration], 25 August 2011 reported in (2011) I1 SpuRt 6/2011 259, 262.

[58] "The panel concluded in a summary examination that, apart from the exception, the 50+1 rule would most likely be valid and justified under German and European Law in light of the autonomy of associations guaranteeing the right to create an own regulatory frame work.": Christian Keidel and Alexander Engelhard (n 8).

[59] *Charter of Fundamental Rights of the European Union*, opened for signature 7 December 2000, [2012] OJ C 326/02 (entered into force 1 December 2009) ('*CFREU*').

[60] Schiedsgericht DFL [DFL Court of Arbitration], 25 August 2011 reported in (2011) I1 SpuRt 6/2011 259, 263.

[61] Jörg Deutscher, '50 + 1-Regelung in der Fußball- Bundesliga - Zur Mehrheitsbeteiligung von Investoren an Fußballklubs' [50 + 1 Regulation in the Football Bundesliga - on the Majority Participation of Investors in Football Clubs] (2009) 3 *Zeitschrift für Sport und Recht* [Magazine for Sport and Law] 97, 100.

[62] *FEU* (n 43) art 63 and 101.

[63] *FEU* (n 43) art 101(1).

Notwithstanding, the appeal to an eclectic approach to statutory interpretation that weighs the purposive element of a rule has to be made in relation to this European rule. Considering this eclectic approach recently, some scholars, such as Pinar Akman[64], proposed a different interpretation of Article 101 of *FEU*[65] by adopting a "specific anti-competitive intent test"[66]. Accordingly, a Member State rule would only be deemed as anti-competitive if it could be unveiled an anti-competitive intent in such regulation. In the 50+1 Rule such purpose can not be asserted, as the objectives of this rule are rather focused in the "integrity, stability and balance of sporting competition."[67] Thus, in relation to Article 101 of *FEU*[68], and because an eclectic interpretation must be adopted instead of a strictly objective approach as defended by Deutscher[69], the 50+1 Rule is not anti-competitive.

All in all, considering statutory autonomy, proportionality and an eclectic interpretation to the European rules, one has to consider the 50+1 Rule in conformity with European Law.

(b) With Constitutional Law

The gross legal inequality, that was corrected with the before-mentioned amendment to the 50+1 Rule, represented a big clash with one of the most basilar principles of the *Basic Law of the Federal Republic of Germany*: equality before the law.[70] That inequality was rightly noted and corrected by the decision of the DFL Court of Arbitration.[71]

Also, within the German Constitutional framework, it could be argued that the 50+1 Rule in the original version was unconstitutional because of the exception that was designed to address the situations of the corporate-owned clubs *Bayer 04 Leverkusen* and *VfL Wolfsburg*. It could be then considered that this norm would violate Article 19(1) of the *Basic Law of the Federal Republic of Germany*[72] that determines that a "basic right may be restricted by or pursuant to a law, such law must apply generally and not merely to a single case"[73]. This norm, that restricts a basic right of economic investment, was not meant to apply generally. Rather it would only be applied to the single case of the corporate-owned clubs *Bayer 04 Leverkusen* and *VfL Wolfsburg*, being unconstitutional for that reason.

Moreover, pursuant to other Continental European Constitutions, an exception like the one before the amendment to the 50+1 Rule was made, would similarly be unconstitutional as a law designed to fit the needs of a clearly identifiable entity, in this case *Bayer 04 Leverkusen* and *VfL Wolfsburg*. For instance, under Article 18(3) of the *Constitution of the Portuguese Republic*, inspired in the German Constitution: "Laws that restrict rights, freedoms and guarantees must have a general and abstract nature and may not have a retroactive effect or reduce the extent or scope of the essential content of the constitutional precepts."[74] The 50+1 Rule would fit in the category of a law that restricts rights and freedoms, in this case the right of economic freedom of investment, and it would not be general and abstract. Rather, it would be an individual and concrete norm that would probably be declared unconstitutional.

However, in relation to the current version of the 50+1 Rule, there is no evident menace to constitutional rules or principles in Germany. Actually, as in European Law[75], accordingly to the Article 9(1) of the *Basic Law of the Federal Republic of Germany*[76],

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64 Pinar Akman, 'The Tests of Illegality Under Articles 101 and 102 TFEU' (2016) 61(1) *The Antitrust Bulletin* 84, 103-104.

65 *FEU* (n 43) art 101.

66 Pinar Akman (n 62)

67 Schiedsgericht DFL [DFL Court of Arbitration], 25 August 2011 reported in (2011) I1 SpuRt 6/2011 259, 262.

68 *FEU* (n 43) art 101.

69 Jörg Deutscher, ,50 + 1-Regelung in der Fußball- Bundesliga - Zur Mehrheitsbeteiligung von Investoren an Fußballklubs' [50 + 1 Regulation in the Football Bundesliga - on the Majority Participation of Investors in Football Clubs] (2009) 3 *Zeitschrift für Sport und Recht* [Magazine for Sport and Law] 97, 100.

70 *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law of the Federal Republic of Germany] art 3(1).

71 Schiedsgericht DFL [DFL Court of Arbitration], 25 August 2011 reported in (2011) I1 SpuRt 6/2011 259.

72 *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law of the Federal Republic of Germany] art 19(1).

73 *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law of the Federal Republic of Germany] art 19(1).

74 *Constituição da República Portuguesa* [Constitution of the Portuguese Republic] art 18(3).

75 *Charter of Fundamental Rights of the European Union*, opened for signature 7 December 2000, [2012] OJ C 326/02 (entered into force 1 December 2009) ('CFREU').

76 *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law of the Federal Republic of Germany] art 9(1).

the statutory autonomy of associations is constitutionally protected. Hence, the statutory space of freedom of both the DFB and the DFL is protected and there is no case of unconstitutionality in relation to the current version of the 50+1 Rule.

2 The Advantages of the 50+1 Rule

(a) Reasons for the Adoption of the 50+1 Rule

Having established the legal conformity of the 50+1 Rule, one has to overview and discuss the policies behind this regulation. In the words of an article published on the website of *Bundesliga*, the 50+1 Rule was adopted so: "private investors cannot take over clubs and potentially push through measures that prioritise profit over the wishes of supporters. The ruling simultaneously protects against reckless owners and safeguards the democratic customs of German clubs."[77] The idea was to protect the clubs from irresponsible investors that could regard the club as a money-making entity instead of a sports entity with specific competitive goals.

The policy grounds for this regulation lays also upon a comparison with other leagues and with cases of clubs where takeovers by investors were disastrous. The common idea in Germany is that nobody wants "to see German fans being "milked" for money as is happening in England."[78] Generally, this refers to an increase in individual or season ticket pricing in order to increase the overall revenue for the club. It is possible that investors want to increase revenue by increasing the prices for fan accessibility to sports events. However, one should not assume an extreme position of characterising investors as "milkers" for two reasons.

The first reason consists in the fact that if investors limit their action within the club in increasing prices for tickets without promoting the competitiveness of the team in the field, that will eventually backfire as fans will start attending less games due to worst results on the field along with high ticket prices.

The second reason is that clubs do not have an unlimited power in increasing prices because normally Leagues assume a role in controlling those values as well as establishing limits for ticket prices for away fans, for example. Hence, it is not correct to generalise all investors as "milkers". What the 50+1 Rule does is to protect against the possibility of ill-intentioned investors.

Thus, the main goal of the 50+1 Rule is, on the one hand, to protect against irresponsible investment but, on the other hand, to allow and promote a responsible and stable investment in football clubs.

It is in relation to the allowance of a responsible and stable investment in football clubs that the case of the German football club, *TSG 1899 Hoffenheim*, will be overviewed. *Hoffenheim's* case is a case study of the archetype of investment that the 50+1 Rule allows and promotes, through the exception that contemplates investors to guarantee more than 49% of voting rights in the case of investment of more than 20 years.

Dietmar Hopp was the founder of a successful German software corporation, and having played in the club while young, invested for more than 20 years large amounts into *Hoffenheim*[79]. During this period, the club obtained several promotions until getting to the *Bundesliga* and after more than 20 years of investment, in 1 July 2015, the League allowed Dietmar Hope to obtain the majority of voting shares, as provided in the 50+1 Rule.[80] Fundamental for such acceptance was that "for more than 20 years Dietmar Hopp has provided considerable financial support for both the professional as well as the amateur teams of the club, a DFL statement read at the time."[81] This is the responsible and stable investment that the 50+1 Rule welcomes and promotes, through its exception.

[77] Alexander Scheuber (n 3); In other words: "to guard clubs against the motives of private investors, who could potentially prioritise and fiercely pursue profit over the will of the supporters or the long-term health of the club.": Ryan Kelly, 'What is the 50+1 rule? Ownership model affecting Bayern Munich, Dortmund & Bundesliga clubs explained', *Goal* (Web Page, 25 March 2019) <https://www.goal.com/en/news/what-is-50-1-rule-ownership-model-bayern-munich-dortmund/1tbauau8p6cm01xbm8ok60k1uc>.

[78] Alexander Scheuber (n 3).

[79] Christian Keidel and Alexander Engelhard (n 8).

[80] *Satzung des Deutschen Fußball Bundes* (Statutes of the German Football Association) s 16c (3) para 5; *Satzung des Ligaverbandes* (Statutes of the League Association) s 8(3) para 5.

[81] Alexander Scheuber (n 3).

(b) Financial Sustainability

Previously, the idea that the 50+1 Rule has economic impacts on the *Bundesliga* was exposed, as there would be less money invested in the league resulting in overall decrease in quality and competitiveness. That idea was already refuted on the grounds that this affirmation disregards the different characteristics of the *Bundesliga* when establishing a comparison with the English Premier League.

Now, to further refute that idea, two forms of sustainable and stable financing used by *Bundesliga* clubs will be discussed along with a consideration of how the corporate structure of German clubs, involving the members of the club, is the one that suits more adequately the requirements imposed by *UEFA Club Licensing and Financial Fair Play Regulations*.[82]

Firstly, although external investment is limited to 49% of the voting rights, clubs do resort to equity-financing. Normally, that operation is done through the investment made by corporations with the intent of marketing placement of their brands. Basically, the club welcomes strategic partners while the member association maintains the majority of voting rights. The German rule allows for a combination of "fan involvement with the ability to raise equity and effectively manage the business operations of the club."[83]

One can refer on this matter, to the case of *Bayern Munich* and *Borussia Dortmund*. In both cases of the German clubs, the member association detains the majority of voting rights in the commercial company in which the professional football department is structured, but not its totality. For instance, *Bayern Munich AG*, the corporation, is detained by *Bayern Munich eV*, the member association, in 75,01%. The remaining 24,99% are divided equally between three commercial partners, the sports brand Adidas, the car manufacturer Audi and the insurance company Allianz. It is through such investment that German clubs can capitalise themselves without losing control of the club and granting certain shareholder rights to investors along with commercial placement of their brands. This symbiotic relationship brings both monetary and corporate benefits for both parties[84].

Secondly, clubs naturally resort to debt-financing and, as recent operations made show, German clubs do it creatively and effectively. The DFB Bundestag, in a brief Statement, in 2018, celebrating the anniversary of the 50+1 Rule, made a consideration regarding how in practice clubs respond to the criticism that the 50+1 Rule prevents adequate financing to football clubs in the Bundesliga: "New sources of income such as corporate bonds, *FC Schalke 04*, or fan bonds, *1. FC Köln*, have emerged."[85] This shows that less powerful clubs in terms of commercial image, comparing with *Bayern Munich*, can capitalise themselves without having to argue for a need to open the door to external investors without limitation.

Situations like these can also be seen in other countries where clubs are still detained by the member association. For instance, *Sporting Clube de Portugal*, recently issued a bond sale of 30 million euros, to avoid the imminent risk of defaulting, which was met with a large amount of subscriptions from fans, rather than strictly economically interested investors.[86]

Finally, an extremely relevant consideration on how the corporate structure of German clubs, involving the members of the club, is the one that suits better the increasing requirements of the *FFP Regulations*[87] has to be made. In general, one can say that the German model is more compatible

[82] UEFA Club Licensing and Financial Fair Play Regulations', *UEFA* (Web Page, online at 4 February 2020) <https://www.uefa.com/MultimediaFiles/Download/Tech/uefaorg/General/02/56/20/15/2562015_DOWNLOAD.pdf> ('*FFP Regulations*').

[83] Ryan Murphy (n 5) 447.

[84] Ryan Murphy (n 5) 447: It can be said that the 50+1 Rule "balances the desire for fan involvement with the commercial and financial realities of the competitive club."

[85] Deutschen Fußball Bundes-Bundestag (German Football Association Bundestag), '50+1 mal ausgegliedert' [It survived 50+1 times] (Statement, October 2018).

[86] Henrique Almeida, 'Ronaldo's Old Soccer Club Gets a Financial Lifeline', *Bloomberg* (Web Page, 23 November 2018) <https://www.bloomberg.com/news/articles/2018-11-23/ronaldo-s-old-soccer-club-gets-a-financial-lifeline>.

[87] 'UEFA Club Licensing and Financial Fair Play Regulations', *UEFA* (Web Page, online at 4 February 2020) <https://www.uefa.com/MultimediaFiles/Download/Tech/uefaorg/General/02/56/20/15/2562015_DOWNLOAD.pdf> ('*FFP Regulations*').

with *FFP Regulations*[88] than other models by introducing the element of ponderation that members of the association might provide and by not allowing for the creation of conditions for large one time investments, as it could happen if there were no limitations for external investment. The 50+1 Rule follows the UEFA Objectives of "preventing build-up of debt"[89] and "encouraging continued owner investment"[90].

Concerning the UEFA Regulations one should add the considerations of Ryan Murphy, when discussing "what types of football club structures might be preferable for a financially sustainable club"[91], where it is deemend that "the German model provides the optimum amount of fan involvement in club affairs while providing the benefits of centralized control."[92]

Essentially, the key idea is that, in line with the UEFA Regulations, the 50+1 Rule is related with decreased financial risk-taking by introducing an element of ponderation in decision-making, which is the interests and reasoning of the members of the member association.[93]

(c) Promotion of Fans Engagement with the Clubs

Finally, coming back to the quote of Bill Shankly[94] that emphasises the athletes and the fans as the two pillars of a football club, one has to refer the advantage that the 50+1 Rule has in promoting the engagement of fans with the club by conserving and protecting the control of the club to its members. This is connected with the fact that the fans, if they are members of the club, regard themselves as part of the club, as the long-established owners of the club. That creates a dynamic between the fan and the club of belonging and control.

As a proof of that connection, one can refer to the attendance statistics in the *Bundesliga*. The statistics show that twenty three clubs from *Bundesliga* and *Bundesliga 2* are in the the Top 100 of average attendance in football matches in Europe, with *Borussia Dortmund* and *Bayern Munich* showing up in the Top 3, with an average attendance of 80830 and 75000, respectively.[95]

F The "Holy Grail"

The characteristics, the effects, both positive and negative, of the 50+1 Rule have been discussed in order to determine whether in the end this rule can be considered the "Holy Grail" in balancing the interests of football club members and the interests of potential investors in football clubs. Specially, the issue of legal conformity and economic and financial issues were addressed. Only with this previous discussion and with the consideration that this rule is in legal conformity and has beneficial economic and financial effects, one can consider that this rule has the potential to be the archetype in balancing the interests at stake.

As stated in the beginning of this paper, the 50+1 Rule was going to be considered as a whole that includes the general rule that limits the majority of voting rights for the parent member associations, the exception for investments of more than 20 years and the corresponding limitation of not being able to sell shares of the corporation and only transferring it back to the association along with the limitation on multiple participations in football clubs.

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[88] 'UEFA Club Licensing and Financial Fair Play Regulations', *UEFA* (Web Page, online at 4 February 2020) <https://www.uefa.com/MultimediaFiles/Download/Tech/uefaorg/General/02/56/20/15/2562015_DOWNLOAD.pdf> ('*FFP Regulations*').

[89] 'Financial Fair Play', *UEFA* (Web Page, 5 June 2019) <https://www.uefa.com/insideuefa/protecting-the-game/financial-fair-play/>.

[90] 'Financial Fair Play', *UEFA* (Web Page, 5 June 2019) <https://www.uefa.com/insideuefa/protecting-the-game/financial-fair-play/>.

[91] Ryan Murphy (n 5) 448.

[92] Ryan Murphy (n 5) 448.

[93] "The governance of clubs by a majority of members has helped to foster a degree of financial stability, with fewer risks being taken.": Ryan Kelly, 'What is the 50+1 rule? Ownership model affecting Bayern Munich, Dortmund & Bundesliga clubs explained', *Goal* (Web Page, 25 March 2019) <https://www.goal.com/en/news/what-is-50-1-rule-ownership-model-bayern-munich-dortmund/1tbauau8p6cm01xbm8ok60k1uc>.

[94] Bill Shankly (n 30).

[95] 'Borussia Dortmund and Bayern Munich lead the way as Bundesliga dominates European attendance rankings', *Bundesliga* (Web Page, online at 14 January 2020) <https://www.bundesliga.com/en/news/Bundesliga/borussia-dortmund-bayern-munich-bundesliga-best-attendances-in-europe-463031.jsp?utm_source=twitter&utm_medium=social&utm_term=english&utm_content=post>.

So, as proposed in the Introduction of this paper, a deconstructive look on the 50+1 Rule will now be made in order to identify the way this rule adequately protects both of the interests.

On the one hand, the general rule has the main goal of protecting the interests of the members of the member association that detain the majority of the participations in the football club. On the other hand, the current version of the exception introduces an element of ponderation and addresses and protects the interests of investors by allowing investors to obtain the majority of shares in the football club in cases of continuous and stable investment of at least 20 years. That allowance and provision for the interests of the investors is nevertheless corroborated by the determination that those shares must not be sold and can only be transferred back to the club. That, once again, safeguards the interests of the members of a club.

Also, the limitation on multiple participations in football clubs by investors, following and exacerbating the guidelines left by UEFA[96], protects the clubs and its members from an attack to the integrity of competitions, in this case, the *Bundesliga*.

Quintessential is also the idea that this dichotomy in protection of interests of the members and investors by the 50+1 Rule is followed by legal conformity and has beneficial effects. So, when the rule protects the interests of the members of having a say in the club's direction, by limiting investment, it does so in legal conformity. And, when the rule allows for limited investment by an external investor, it is safeguarding the economic and financial benefits of a sustainable and stable investment.

Overall, as seen, the interests of both sides are protected by different components of the 50+1 Rule. This protection is represented in the balance reached by the German rule that indirectly provides for economic and financial issues that affect clubs, doing so within legality. The 50+1 Rule represents a model that constitutes the "Holy Grail" as it achieves two aims at once: protecting members as the long-established owners of the club and allowing for investors to pursue a stable project for investment in football clubs.

CONCLUSION

All in all, the 50+1 Rule is a rule in legal conformity, one that promotes economic responsibility and financial sustainability. As a result from that, and because in its components addresses adequately the conflicting interests at stake, it can be concluded that the 50+1 Rule is the "Holy Grail" in balancing the interests of football club members with the interests of potential investors in football clubs.

More than the rule itself, the relevance of the 50+1 Rule is the balance in governance that promotes, where fans are represented in the decision making process as the relevant stakeholders they are in a football club, along with the possibility of investment.

Notwithstanding, the difficulty of implementing such model across Europe has to be recognised, as every European country has different structures for football clubs resulting from different social and economic contexts. So, for that reason, the established structures of football clubs in some European countries would not be flexible, for instance, to an European regulation that introduced as mandatory the German model for football clubs[97].

However, this paper sought to establish that the German model, introduced by the 50+1 Rule, is a model that adequately balances the interests at stake, within the law and with economical and financial benefits, both in the context of Germany or potentially in any other European country where such model was considered to be implemented.

96 'Regulations of the UEFA Champions League 2018-21 Cycle', *UEFA* (Web Page, online at 22 January 2020) <https://www.uefa.com/MultimediaFiles/Download/Regulations/uefaorg/Regulations/02/60/37/12/2603712_DOWNLOAD.pdf>.

97 "Although UEFA may argue that this is the best way to balance fan interest and commercial realities, the European Union is extremely unlikely to agree to implement a plan that effectively deprives many owners of a multi-million Euro asset.": Ryan Murphy (n 5) 447.

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