

Neymar and the financial fair play rules--a game changer or business as usual?

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Commercial analysis: Brazilian footballer Neymar Jr has completed his transfer from Barcelona FC to Paris St-Germain (PSG) for a fee reported to be around £200m, a move which some argue violates UEFA's financial fair play (FFP) rules. Michael Savva, senior associate at Watson Farley & Williams, examines the background to the FFP rules and what impact this transfer might have on their future application.

What is the rationale behind UEFA's FFP rules and how do they work?

As UEFA itself notes, 'financial fair play is about improving the overall financial health of European club football'.

UEFA's Club Licensing and Financial Fair Play Regulations (more commonly known as the FFP Regulations) were approved by UEFA's executive committee in May 2010 with the general aim of ensuring the long-term viability and financial stability of European club football. In part, this was to be achieved through:

- o improving the economic and financial capability of clubs (principally through the so-called 'break-even requirement')
- o placing the necessary importance on the protection of creditors, by ensuring that clubs settle their liabilities with players, social/tax authorities (as a result of contractual or legal obligations towards employees) and other clubs punctually
- o introducing more discipline and rationality in club football finances
- o encouraging clubs to operate on the basis of their own revenues, and
- o encouraging responsible spending

The FFP Regulations were updated in June 2015 with a view to encouraging more sustainable investment while maintaining control on overspending.

What is break-even compliance and how has the revision to the FFP rules in 2015 changed the landscape of FFP?

The key principle underpinning the FFP Regulations is the so-called 'break-even requirement', which states that clubs should 'live within their means', especially in relation to transfer fees and player wages which, together, account for the vast majority of a club's expenditure.

UEFA updated (some would say 'softened') the FFP Regulations in 2015 with the aim of encouraging more sustainable investment while maintaining control on overspending. With this in mind:

- o despite the 'break-even' name, clubs can in fact spend up to EUR 5m more than they earn in each three year 'assessment period' and any losses beyond that level, up to EUR 30m, are permitted only if covered in their entirety by a direct contribution/payment from the club owner(s) or a related party, and
- o investment in stadia, other infrastructure and youth development are excluded from the break-even calculation

Critics of this revision have argued that clubs with wealthy owners can now simply rely on those owners injecting additional cash into the club to fund these losses. This revision may also be aimed at ensuring that clubs do not need to artificially inflate the value of their commercial deals to boost their income for the purposes of the 'break-even' calculation, as PSG were reprimanded for in 2014.

Could PSG face investigation for breaching UEFA's FFP regulations?

It is worth noting that, as things stand, there is no indication that PSG have breached the FFP Regulations or any other relevant rules in signing Neymar from FC Barcelona.

There has, however, been a lot of speculation in the press about the implications of the £200m Neymar transfer and whether PSG are likely to face any sanctions, including various reports as to the sources of the transfer funds.

UEFA have sought to play down the prospect of any formal investigation, indicating that it would take some time before it would be in a position to determine whether the impact of the Neymar transfer will result in PSG breaching FFP.

One point that may work in PSG's favour is the fact that football clubs account for payment of transfer fees on a 'straight-line' (ie even) basis over the length of the player's contract, rather than upfront. In the case of the Neymar transfer, assuming the reported £200m fee is correct, PSG would only need to account for around £40m (plus an amount calculated in a similar way per year for wages) in their accounts for each of the five years of Neymar's contract.

This being the case, PSG would appear to have several years to raise sufficient revenue to fund the Neymar transfer and to procure and maintain compliance with FFP. Some would even consider the transfer to make good business sense, despite the size of the transfer fee involved, given the increased revenues it is likely to generate (whether through new commercial deals (one can expect a huge number of endorsements using the Neymar 'brand') and through the aspired improved team performance in the Champions League and the increased prize money and broadcasting income that would bring--no doubt one of the key drivers of the transfer itself). That, coupled with likely player sales over the next two to three years, clearly gives PSG plenty of options in their attempt to bring or keep themselves within the break-even test.

Which bodies/organisations can bring forward a claim and what is the process for doing so?

If press reports are to be believed, La Liga had indicated that it might have sought to block the deal under FFP (Javier Tebas, the president of La Liga, felt that the transfer could only have been achieved by some system of 'financial doping', for example, borrowing heavily in order to contract and pay high-performing players)--however, it does not have jurisdiction to do so.

Similarly, FC Barcelona would not be able to ask UEFA to look into the FFP implications of the transfer, as the FFP Regulations do not give clubs the right to complain against another club's potential breach of the FFP regime.

It is for UEFA's club financial control body (CFCB) to determine if a club is in compliance with the FFP Regulations and, if not, the appropriate measures and sanctions.

What is the price to pay for non-compliance and are PSG likely to face further action in the future?

The CFCB has a variety of sanctions at its disposal, depending on the severity of breach (for example, taking into account the trend of the break-even result). Sanctions range from warnings, fines and points deductions, at the more lenient end of the spectrum, to withholding of UEFA competition revenues, prohibiting new player registrations, restricting the number of players that can be registered for UEFA competition, bans from European competitions and withdrawals of titles or awards, for more serious breaches.

PSG and Manchester City were penalised for FFP breaches in 2014. In addition, a number of other European clubs, including from Turkey, Russia and Bulgaria, have been reprimanded to a lesser extent.

The CFCB have, in certain circumstances, taken a rehabilitative approach rather than a punitive approach by concluding 'settlement agreements' with clubs. Such agreements require clubs to make certain financial contributions while at the same time imposing various restrictive conditions on them, with the intention of assisting the club to reach break-even in the foreseeable future.

Between 2011 and 2015, six clubs were denied access to UEFA competitions because they had not paid wages to players or fees to other clubs for transfers and one club was excluded from UEFA competitions due to a failure to comply with break-even requirements.

It is worth noting that, given the way the FFP Regulations work (ie they are based on the accounts for the three previous seasons), the first time that PSG could be sanctioned is during the 2018/19 season, when their finances for the three previous seasons will be reviewed by UEFA. Interestingly, if the CFCB subsequently determines that PSG are in breach of FFP and decides to invoke one of its more serious sanctions (given that this would not be PSG's first offence), PSG could have their Champions League winner's title revoked (should they win it this season) or be ejected from the competition in the 2018/19 season (if they qualify for it and are still in it).

Is there a danger that the sanctions available are insufficient to deal with the large sums of money at the disposal of Europe's largest football clubs?

PSG (as well as Manchester City) were reprimanded for FFP breaches in 2014. Both were fined EUR 60m, EUR 40m of which was suspended, and had their Champions League squads cut from 25 to 21 players.

Given the volume of money in the 'football family' currently, many would argue that the sanctions imposed by the CFCB are not fit for purpose. On the other hand, sanctions only become relevant if a club has actually breached the FFP Regulations so, if the FFP regime promotes and procures financial discipline by football clubs in general and results in financial stability across the European football world, many would argue that that, in itself, represents a success for FFP.

That said, if in time PSG are found to have fallen foul of the FFP Regulations, in part as a result of their investment in the Neymar transfer, it is unlikely that UEFA and the CFCB will take as lenient an approach as they took in 2014.

Are there any other trends or interesting issues in this area?

There have been a number of legal challenges to the FFP Regulations, including the case of *Striani and Others*, Case C-299/15, which contends that FFP is contrary to EU rules on free markets, as well as certain clubs refusing the offer of FFP 'settlement agreements' and taking their cases to the CFCB adjudicatory chamber. It remains to be seen whether FFP can withstand these and any other challenges in the future.

As regards the implications of the Neymar transfer, much attention will focus on PSG and their commercial and transfer activities over the next couple of years.

Meanwhile, international players' association FIFPro, who lodged a legal complaint to the competition unit of the European Commission in 2015, has demanded an investigation into what they consider to be 'anti-competitive, unjustified and illegal' FIFA transfer rules and the flow of money via transfer fees within the EU territory to:

- o understand their impact on competitive balance in the region, and
- o protect the rights of players as workers and safeguard the best interests of the game

In the meantime, FFP does appear to be helping to move clubs in the right direction.

Interviewed by Sean Delaney.

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