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# **Football – Funding and re-structuring in today's markets**

**Sports Law Commission**

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**National Report of France**

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## **PART 1: The organisation of professional football clubs**

### **1. How are professional football clubs organised in France from a legal standpoint?**

The legal status enjoyed by football clubs in France today is the result of a long legislative evolution. From simple associations under the French act of 1901, they evolved to the full businesses they are today:

One of the main purposes of the French act no. 75-988 of 29 October 1975 for the development of physical education and sports was to allow professional clubs to set up local semi-public companies (*SEML: société d'économie mixte locale*) including public and private investments. SEMLs were the first trading companies set up to manage professional clubs.

Under the **French act no. 84-610 of 16 July 1984**, later supplemented by the French decree no. 86-407 of 11 March 1986 on the organisation and furtherance of physical and sporting activities, it became mandatory to set up a company where the association's revenues or payroll exceed a certain threshold. Clubs may choose between setting up a sporting company (*SAOS: société à objet sportif*) or a local semi-public sporting company (*SEMSL: société d'économie mixte sportive locale*). Both forms must follow standard articles of association and by-laws laid down by decree under which the clubs may turn to private or public investors. With that act, the French legislator drew up a unique legal framework for professional clubs that still applies today: an association in charge of the amateur sector and a specific trading company for managing the professional side of things. The purpose of such a bicephalous grouping was on the one hand to modernise clubs by offering them a legal status suited to their financing model and football's economic stakes and on the other hand to preserve a certain sports model based on the solidarity between amateurs and professionals.

When it became clear that some sporting associations met with difficulties when obliged to set up a company, the French act no. 87-979 of 07 December 1987 softened the new regime by waiving the mandatory company set-up for sports grouping exceeding the regulatory thresholds: indeed, they could continue to manage the professional side of things through the association, provided however that the association adopt strengthened articles of association and by-laws.

That choice was only temporary however as the sporting associations with strengthened articles of association and by-laws option disappeared with the French act no. 92-652 of 13 July 1992, which nonetheless authorised existing associations to maintain the newly abolished legal form provided their certified annual accounts did not show losses for two consecutive financial years.

Finally, the **French act no. 99-1124 of 28 December 1999** definitively put an end to the last remaining sporting associations with strengthened articles of association and by-laws such as AJ Auxerre and FC Sochaux. Moreover, it introduced two new forms of sports companies: one-person private limited sports companies (*EUSRL: entreprise unipersonnelle sportive à responsabilité limitée*) and public limited professional sports companies (*SASP: société anonyme sportive professionnelle*).

Consequently, today there are four types of sports companies that enjoy a specific status<sup>2</sup>: EUSRLs, SAOSs, SASPs, and SEMSLs.

Existing SEMSLs may continue to exist but it has not been possible to set up new ones since the French act of 28 December 1999.

Among the legal forms available to clubs, the SASP is the better suited and most attractive, as the “football scene” of professional clubs proves. During the 2008-2009 season, nineteen 1<sup>st</sup>-league clubs out of twenty were SASPs; at the end of 2009, the Auxerre club was the only SAOS still held at 99 % by the AJA football association. Of the twenty 2<sup>nd</sup>-league football clubs, eighteen were SASPs, the Bastia club an SAOS and the Ajaccio club an EUSRL.

Legal form of 1<sup>st</sup>-division professional football clubs from 1977 to 2009:

FORM	1977	1989	1995	1999	2002	2009
Association (under the French act of 1901 or with strengthened articles of association and by-laws)	19	15	8	7	0	0
SEMSLs	1	3	6	1	1	0
SAOSs	0	2	6	10	2	1
SASP	0	0	0	0	15	19
TOTAL	20	20	20	18	18	20

*Source: LFP*

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<sup>2</sup> Article R.122-1 of the French Sports Code

Each company is governed by mandatory standard articles of association and by-laws published in an appendix to the French Sports Code<sup>3</sup> and, inasmuch as they do not deviate from ordinary law, by the provisions of the French Civil Code and of the French Commercial Code according to their form.

Professional clubs in France therefore largely took advantage of legislative changes concerning sporting associations to attract private investors. Nevertheless, the future and competitiveness of French professional clubs has been a recurrent topic of discussion for several years with the central issue concerning the rules applicable to sports companies. The people involved argue that they are too restrictive and that they lead to a “competitiveness handicap for French football compared to France's European neighbours”. Therefore, one of the recommendations included in the report “How to increase the competitiveness of French professional football clubs” (“Accroître la compétitivité des clubs de football professionnel français”) drawn up by Éric Besson in 2008 is to “bring the articles of association and by-laws of sports companies closer to ordinary law while maintaining the link with associations”.

In fact, the **French act no. 2012-158 of 01 February 2012** for strengthened sports ethics and sportspeople's rights makes it possible for new or existing sports companies to adopt if they wish one of the “classic” company forms not governed by the standard articles of association and by-laws set out in the French Sports Code: private limited company (*SARL: société à responsabilité limitée*), public limited company (*SA: société anonyme*), or simplified joint-stock company (*SAS: société par actions simplifiée*)

Nowadays, according to article L.122-2 of the French Sports Code, a sports company may be either:

- “1° a private limited company with only one shareholder, i.e., a one-person private limited sports company (*entreprise unipersonnelle sportive à responsabilité limitée*) or
- 2° a sports public limited company (*société anonyme à objet sportif*) or
- 3° a professional sports public limited company (*société anonyme sportive professionnelle*) or
- 4° a private limited company (*société à responsabilité limitée*) or
- 5° a public limited company (*société anonyme*) or
- 6° a joint-stock company (*société par actions simplifiée*) ”

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<sup>3</sup> French Sports Code, appendices I-1 to I-4

**Legal form of 1<sup>st</sup>-league clubs as of 30 June 2009** (source: LFP)

1 <sup>st</sup> League			
Clubs	Private shareholders	Association	Form
<b>Auxerre</b> 	0 % (9 shares)	100 %	SAOSs
<b>Bordeaux</b> 	99.83 %	0.17 % (10 shares)	SASP
<b>Caen</b> 	100.00 %	0 % (3 shares)	SASP
<b>Grenoble</b> 	98.00 %	2 %	SASP
<b>Le Havre</b> 	70.00 %	30 %	SASP
<b>Le Mans</b> 	100.00 %	0 %	SASP
<b>Lille</b> 	100.00 %	0 %	SASP
<b>Lorient</b> 	97.90 %	2 %	SASP
<b>Lyons</b> 	100.00 %	0 % (1 share)	SASP
<b>Marseilles</b> 	100.00 %	0 % (1 share)	SASP
<b>Monaco</b> 	51.00 %	49 %	SASP
<b>Nancy</b> 	93.36 %	7 %	SASP
<b>Nantes</b> 	98.00 %	2 %	SASP
<b>Nice</b> 	100.00 %	0 % (3 shares)	SASP

<b>Paris</b>		100.00 %	0 % (1 share)	SASP
<b>Rennes</b>		100.00 %	0 %	SASP
<b>Saint-Étienne</b>		90.06 %	10 %	SASP
<b>Sochaux</b>		100.00 %	0 % (1 share)	SASP
<b>Toulouse</b>		99.83 %	0%	SASP
<b>Valenciennes</b>		100.00 %	0 %	SASP

### Legal form of 2<sup>nd</sup>-league clubs as of 30 June 2009 (source: LFP)

2 <sup>nd</sup> League			
Clubs	Private shareholders	Association	Form
Ajaccio	0.00 %	100 %	EUSRL
Amiens	38.00 %	62 %	SASP
Angers	97.00 %	3 %	SASP
Bastia	17.00 %	83 %	SAOSs
Boulogne	80.00 %	20 %	SASP
Brest	98.00 %	2 %	SASP
Châteauroux	66.00 %	34 %	SASP
Clermont	86.00 %	14 %	SASP
Dijon	99.00 %	1 %	SASP

 Guingamp	72.00 %	28 %	SASP
 Lens	100.00 %	0 %	SASP
 Metz	74.76 %	25 %	SASP
 Montpellier	100.00 %	0 %	SASP
 Nîmes	-	-	SASP
 Reims	100.00 %	0 %	SASP
 Sedan	100.00 %	0 %	SASP
 Strasbourg	98.67 %	1 %	SASP
 Tours	-	-	SASP
 Troyes	99.00 %	1 %	SASP
 Vannes	-	-	SASP

During the 2011-2012 season, the 1st league was composed of 18 clubs organised as SASPs, with AJ Auxerre remaining an SAOS and AC Ajaccio being set up as an EUSRL.

## 2. The ownership structure of professional football clubs

The French 2012 reform modernised the law applicable to the entities running professional football clubs.

<b>Sports companies</b>	<b>Distribution of capital</b>	<b>Remuneration of managers</b>	<b>Number of shareholders</b>	<b>Dividend payments to shareholders</b>
<b>SAOS</b> (société anonyme à objet sportif)	At least 1/3 of capital held by the supporting association	No	7 incl. the association	No, profits are appropriated to reserves
<b>EUSRL</b> (entreprise unipersonnelle sportive à responsabilité limitée)	The supporting association holds the entire capital	Yes (the company's manager)	1	No, profits are appropriated to reserves
<b>SASP</b> (société anonyme sportive professionnelle)	The capital is freely distributed among shareholders The supporting association must hold at least one share at the time of set-up	Yes	7 incl. the association	Yes
<b>SAS</b> (société par action simplifiée)	The capital is freely distributed among shareholders The association may initiate the setting-up of the trading company without being a founding shareholder and therefore without making any contribution	Yes	At least 1 (SASU: one-person simplified joint-stock company)	Yes
<b>SARL</b> (société à responsabilité limitée)	Ditto	Yes	At least 1 (EURL: one-person private limited company) 100 maximum	Yes
<b>SA</b> (société anonyme)	Ditto	Yes	At least 7 No maximum	Yes

### **3. Restrictions and constraints relating to clubs' legal status and ownership**

#### **3.1. Restrictions and constraints relating to clubs' legal status**

Even though the French act of 01 February 2012 opened up three new forms of ordinary law companies (and hence not governed by the standard articles of association and by-laws included in the French Sports Code) to professional clubs, namely the SARL, the SA, and the SAS, sports companies, whatever their chosen form, are still subject to common constraints. In fact, according to the French Sports Code, sports companies originate from a sporting association (3.1.1) that becomes the company's supporting base because of the agreement without which the company's purpose cannot be fulfilled (3.1.3). Furthermore, the supporting association will always have a say in the management of the sports company (3.1.2).

##### **3.1.1. The mandatory setting-up of a trading company by the association**

Contrary to ordinary company law, a sports company may not be set up *ex nihilo*. In fact, according to article L.122-1 of the French Sports Code, a sports company necessarily originates in a sporting association: *“Any sporting association that ordinarily takes part in the organisation of paying sporting events from which it obtains revenues in an amount that exceeds the threshold set by decree of the French State Council or that employs sportspeople for which the total amount of remunerations exceeds the figure set by decree of the French State Council shall set up a trading company governed by the French Commercial Code for the purpose of managing such activities”*.

Nevertheless, the sporting association may also set up a sports company where it does not exceed one of the two legal thresholds.<sup>4</sup> In any case, the affiliate association must set up a sports company within one year of exceeding either one of the thresholds set by article R.122-1 of the French Sports Code, failing which it shall be excluded from any sporting competitions organised by the federations.<sup>5</sup> To conclude, a sports company, whichever form it may choose, must always be set up by an association.

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<sup>4</sup> Article L.122-1 section 2 of the French Sports Code

<sup>5</sup> Article L.122-4 of the French Sports Code

### **3.1.2. The association has a say in the company's business**

The French legislator gave the supporting association an actual say in how the sports company is run.

According to article L.122-17 of the French Sports Code:

*“a sporting association setting up a sports company shall be sent the resolutions of the company's governing bodies. It may take any action provided for in articles L.225-30 to L.225-232 of the French Commercial Code”.*

Consequently, whichever form the company may choose, the association may apply in court for the removal of the company auditor or for management consulting and, twice per financial year, ask questions in writing to the managers about any fact liable to jeopardise the further running of the company.

### **3.1.3. The agreement between association and company**

According to the French Sports Code, the relationship between both entities of the sporting group is not based exclusively on the association's interest in the company's capital, as the case may be, but also on an agreement negotiated between both legal entities.

Such an agreement, whose nature and contents are set by decree<sup>6</sup>, must necessarily specify:

- the sectors of activity allocated to each of the structures making up the sports grouping;
- the distribution of training activities;
- the terms of use of sporting equipment (especially those made available by local authorities);
- the terms of use of the association's name, trademark, or other distinguishing signs (name, colours, logo, etc.) by the company, including the amount of the financial agreement reached between both entities;
- the agreement's term (5 years maximum) and the terms of renewal (no automatic renewal allowed);

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<sup>6</sup> French decree no. 2001-150 of 16 February 2001 modified by French decree no. 2004-550 of 14 June 2004, article R.122-8 of the French Sports Code

- the use of the association's affiliation number by the company for the purpose of taking part in professional competitions;
- that the association's and the company's executives, managers, or management board members must be different persons;
- that no executive of the association may be compensated by the company and that no executive of the company may be compensated by the association.

The French act of 01 August 2003 made it possible to assign trademarks and distinguishing signs vested in clubs, in which case the association retains the gratuitous use of the elements making up the club's trademark.<sup>7</sup>

### **3.2. Restrictions and constraints relating to clubs' ownership**

#### **3.2.1. The prohibition of plural ownership**

Article L.122-7 of the French Sports Code provides that:

*“It is forbidden for the same private individual:*

*1° to control exclusively or jointly several sports companies whose purposes concern the same discipline or to have a significant influence over them in the meaning of article L.233-16 of the French Commercial Code;*

*2° to be an executive with several sports companies whose purposes concern the same sports discipline;*

*3° to control exclusively or jointly a sports company or to have a significant influence over it in the meaning of article L.233-16 of the French Commercial Code and to be an executive with another sports company whose purpose concerns the same sports discipline.*

*Failure to abide by the above provisions shall be punished by a EUR 45,000 fine.”*

Consequently, managing a sports company entails a twofold prohibition:

- from managing another sports company in the same discipline and
- from having a significant influence over or controlling another sports company in the same discipline.

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<sup>7</sup> Article L.122-16 of the French Sports Code

A legal author commenting on the French act of 01 February 2012 recalled the history and purpose of article L.122-7 of the French Sports Code:

*“Therefore, the French legislator had to modify article L.122-7 in order to prohibit an individual only from controlling more than one sports company in the same discipline in the meaning of article L.233-16 of the French Sports Code (see the French act no. 2004-1366 of 15 December 2004). This prohibition, very soft compared to the initially planned wording, was deemed not to be sufficient to prevent conflicts of interest liable to alter the outcome of sporting competitions. It was consequently revised by the French act no. 2012-158 of 01 February 2012 and now encompasses situations of capitalistic but also managerial multiple influence over several sports companies whose purposes concern the same sports discipline (see Poracchia D., Regulating the financing of sports companies, Journal des sociétés 2012, issue 97, page 27).”*

### **3.2.2. The prohibition of plural financing**

Here again article 11 of the French act no. 2012-158 of 01 February 2012 softened the provisions of article L.122-9 of the French Sports Code regarding the possibility for people with an interest in a sports company to grant loans to or stand surety for companies in the same sports discipline. This prohibition of the plural financing of clubs was not suited to the economic context anymore. In view of the crisis affecting all French clubs, it had become necessary to strengthen the possibility for banking institutions to lend money to sporting clubs.

For example, under the provisions then in force, a bank holding 1 % of the capital in a club could not act as a bank for another club.

The French legislator therefore modified the provisions of article L.122-9 of the French Sports Code so that only individuals controlling exclusively or jointly or having a significant influence over a sports company could not grant a loan to or stand surety for another sports company in the same discipline:

*“It is prohibited for any private individual controlling exclusively or jointly or having a significant influence over a sports company in the meaning of article L.233-16 of the French Commercial Code:*

*1° to grant a loan to another sports company whose purpose concerns the same sports discipline;*

*2° to stand surety or provide a security for such a sports company.*

*The failure for any natural person or any president, administrator, or manager of a legal person to comply with the provisions of this article shall be punished by a EUR 45,000 fine and one year's imprisonment.”*

## PART 2: Financing professional football clubs

### 4. What is the annual turnover of professional clubs in France?

French football generated EUR 5.070 billion in revenues in the 2010-2011 season (a 10 % increase over the previous season – quite a good result in the current economic context<sup>8</sup>), of which French professional football (1<sup>st</sup> and 2<sup>nd</sup> league, excluding transfers) represents EUR 1.243 billion (decreasing slightly from the previous season's turnover).

Economic impact of professional football (in millions of Euro and in jobs)

	Season 2008-2009 turnover	Season 2010-2011 turnover	Share of total season 2010-2011 turnover	Turnover evolution between 2008-2009 / 2010-2011
<b>Clubs</b>	1,276	1,243	25%	-3%
<b>Local and regional turnover</b>	560	660	13%	18%
<b>National turnover</b>	2.792	3.167	62%	13%
<b>Total</b>	4.629	5.070	100 %	10%

Source: Ernst & Young 2012 analysis

### 5. Describe how professional football clubs are financed generally and how losses are treated

*“Where the French championship has a hard time generating more than EUR 1 in revenues, the English championship generates EUR 2.5. This discrepancy alone is enough to show how much less economically competitive French professional football has become.”* Such is Éric Besson's scathing statement of the facts in his report “How to increase the competitiveness of French professional football clubs” (“Accroître la compétitivité des clubs de football professionnel français”)<sup>9</sup>.

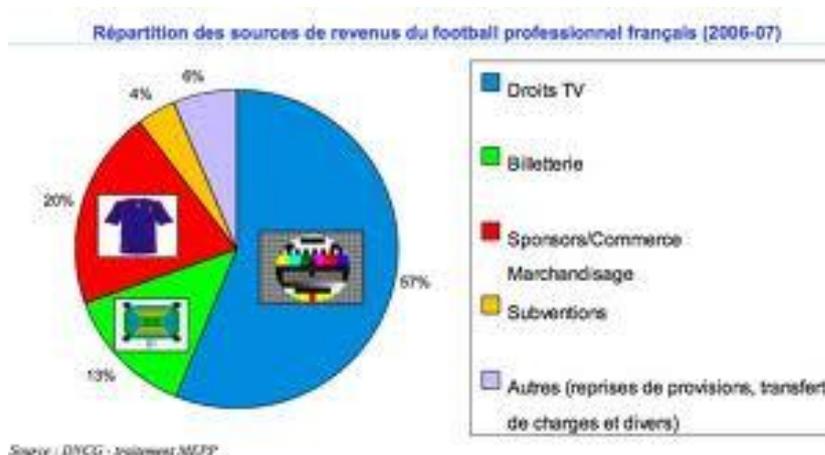
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<sup>8</sup> Ernst & Young, 2<sup>nd</sup> barometer for Professional Football, Economic and social impacts (Impacts économiques et sociaux), 2012

<sup>9</sup> Report to the French Prime Minister, November 2008

The annual turnover of French professional football totalled EUR 1,200 million in 2010. The revenue structure is highly imbalanced: (national and international) television rights represented EUR 680 million, i.e., 57 % of the total, followed far behind by sponsoring, advertising, and merchandising revenues (EUR 244 million, i.e., 20 % of the total) and then ticketing revenues for matches (EUR 160 million, i.e., 13%).

On the fringe, local and regional subsidies represent 4 % of the total revenues of the 40 French professional football clubs (1<sup>st</sup> and 2<sup>nd</sup> league). Article L.113-1 of the French Sports Code limits the amount of such subsidies by forbidding professional clubs from receiving more than EUR 2.3 million in subsidies per sporting season.



Therefore, television broadcasting rights, ticketing revenues, and sponsoring contracts account for most of professional clubs' revenues.

Nonetheless, professional clubs try to diversify their sources of revenue and conquer new markets. For instance, there is a trend towards “naming” in France. The Le Mans club, for example, a forerunner in the matter, is paid one million Euro per year by insurance company MMA for naming its stadium after the them.

On the whole, French football's deficit is still borne for a great part by the clubs' shareholders via substantial capital increases notably, which according to the DNCG, the independent management control commission hosted by the LFP (Ligue du Football Professionnel), “cannot constitute a viable solution for most clubs”.

The other most common solutions to tackle deficits are to transfer players, streamline the payroll, and reduce amortisations.

The table below shows the evolution of French professional football's financing sources (in % of millions of Euro for the 1<sup>st</sup> division, excluding transfer fees):

Source (in %)	1970-1971	1980-1981	1990-1991	1997-1998	2002-2003	2010-2011
<b>Public</b>	81	65	29	20	15	13
<b>Local authorities</b>	18	20	24	12	4	2
<b>Sponsors</b>	1	14	26	20.5	20	18
<b>Television</b>	0	1	21	42	52	58
<b>Sundry revenues (merchandising, food, refreshments, etc.)</b>	0	0	0	0	0	9
<b>Total revenues</b>	5.7	29.4	202.1	322.7	689	1008

Source: DNCG, LFP

Revenues generated by transactions relating to player transfers by and to French professional clubs over the 2011-2012 season were as follows:<sup>10</sup>

- **Transfers from the 1<sup>st</sup> league to foreign clubs:**

- Transfers of 1<sup>st</sup>-league players to foreign clubs (20 transfers):  
EUR 107 million
- Transfers of players playing for foreign clubs to the 1<sup>st</sup> league (43 transfers):  
EUR 114 million
- Balance:  
EUR - 7.5 million

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<sup>10</sup> DNCG report, "Situation of professional football, season 2011-2012" ("Situation du football professionnel, saison 2011-2012"), page 44

- **Transfers from the 2<sup>nd</sup> league to foreign clubs:**

- Transfers of 2<sup>nd</sup>-league players to foreign clubs (16 transfers):  
EUR 18 million
- Transfers of players playing for foreign clubs to the 2<sup>nd</sup> league (10 transfers):  
EUR 14 million
- Balance:  
EUR + 4 million

On the other hand, French professional clubs do not have extensive debts, as most of the time stadiums are financed by the local or regional authorities. Still, rent for stadiums could increase significantly in the next few years.

To sum up, for the 2011-2012 season, net revenues for all 1<sup>st</sup>-league clubs (EUR 1.301 billion) break down as follows:<sup>11</sup>

- Sponsors:	EUR 184 million	14 %
- Match revenues:	EUR 124 million	9.5 %
- TV rights:	EUR 613 million	47 %
- Sundry revenues:	EUR 236 million	18 %
- Transfer transactions:	EUR 144 million	11 %

**6. Are there French professional football clubs listed on the stock exchange?**

Before the French act no. 2006-1770 of 30 December 2006 came into force, French clubs' shares could not be traded on the stock exchange. Now, professional football clubs that have evolved from simple associations to full businesses may access the capital markets in virtually the same way as any other business.

At the end of 2010 however, only two clubs, The Olympique Lyonnais, the leading club in the 2000s, and the less high profile FC Istres, had made the jump, with mixed results.

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<sup>11</sup> DNCG report, "Situation of professional football, season 2011-2012" ("Situation du football professionnel, saison 2011-2012"), pages 36 and 46

**a) Are there general and special rules?**

Only public limited sports companies may list their shares on the stock exchange, which therefore excludes EUSRLs, SARLs, and SASs. In order to reduce the influence of sporting outcomes on the price of listed securities, article L.122-8 of the French Sports Code provides that clubs that wish to float their shares on the stock market must include in the short form prospectus required by article L.412-1 of the French Monetary and Financial Code the information pertaining to their plans to develop sporting activities and acquire assets in order to strengthen their stability and durability, such as if they hold a real right on the sporting equipment used in the organisation of the sporting events or competitions in which they take part.<sup>12</sup>

**b) Assess how listing football clubs on the stock market may help them**

First of all, one of the main benefits of floating a sports company on the stock exchange is its new ability to raise funds and therefore to tap a new source of financing. The cash obtained can be used to acquire new players but above all to invest in new infrastructures such as training centres or stadiums.

For instance, in the brochure it released before floating its company on the stock exchange, Olympique Lyonnais stated that it planned to use the new revenue :

*“to further its development by tapping new ways of financing its activities in order to pursue its growth targets, reinforce its strategy, and strengthen its financial structure with a view especially to financing the construction of a new stadium”*<sup>13</sup>.

There are however numerous other benefits for sports clubs floating their shares on the stock exchange, such as retaining a control shareholding while making cash available to other shareholders, turning supporters into investors, and increasing the clubs' reputation.<sup>14</sup>

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<sup>12</sup> Article 204-55, Specific duty of information, DROITDUSPORT.COM encyclopaedia

<sup>13</sup> Olympique Lyonnais' short form prospectus (visaed by the AMF, the French securities and markets authorities, under the no. 07-028), page 8

<sup>14</sup>

## **7. What is the role of rich benefactors in regard of professional football clubs?**

### **a) Are there rules they must abide by?**

Investors must abide by the rules pertaining to plural ownership and plural financing explained under 3.2 above.

### **b) Describe how rich benefactors legally finance the football business in your country**

#### **Dmitri Rybolovlev (AS Monaco):**

This 45 year old Russian oligarch bought the Principality of Monaco's leading club (currently playing in 2<sup>nd</sup> league). Officially majority shareholder of AS Monaco since 23 December 2011 via Monaco Sport Invest (66.67 %), Dmitri Rybolovlev undertook to inject at least EUR 100 million over the next four years. The world's 93<sup>rd</sup> fortune according to Forbes Magazine, he weighs an estimated EUR 7.1 billion. He is an actual Monegasque resident.

#### **Sheikh Tamim Bin Hamad Al-Thani (PSG):**

In May 2011, QSI, the investment fund controlled by Qatar crown prince Tamim al-Thani, bought 70 % of PSG's capital from Colony Capital Europe for approximately EUR 40 million. The arrival of Qatari on the French football scene caused some gnashing of teeth. The new owners of the capital's club initiated an ambitious hiring programme including Argentinian player Javier Pastore, bought for EUR 42 million in July 2011, and English player David Beckham.

They have long-term sports plans that are part of a larger strategy for an increased Emirates presence in sports (acquisition of sporting rights, organisation of big events such as the Olympic Games, etc.). A project that for the time being bears fruit as PSG is currently the 1<sup>st</sup> league leader.

#### **Robert Louis Dreyfus (Olympique de Marseille):**

Weighing over EUR 1 billion, Robert-Louis Dreyfus, who died in 2009, took control of the club in 1996 for a derisory sum. A sports enthusiast, "RLD", who also owned Adidas, explained later that he wanted to avoid Nike getting ahold of the club. Over 12 years, he invested approximately EUR 210 million in the club, but the latter did not win any major title.

By a strange irony of fate, in the year following his death, OM became the French champion and won the League Cup after 17 years in the wilderness. RLD's heir (along with his three sons), his wife Margarita Louis Dreyfus is now the club's majority shareholder. With a personal fortune valued at only EUR 300 million, she does not have the same resources at her disposal to support the club.

**François Pinault** (Stade Rennais):

After joining the Breton club in 1993 as a simple sponsor, François Pinault, the former boss of the Pinault Printemps Redoute (PPR) group, invested in Stade Rennais FC in 1998. With a fortune currently evaluated at over EUR 6.3 billion, François Pinault, who is very attached to the club of his youth, injected EUR 100 million between 1998 and 2008 in the club.

Since the club was defeated by Guingamp in the French cup finals in 2009, the rumour is that he is willing to sell part of his interest (he became the club's sole shareholder in 2001 through his holding Artemis). Although he remains involved in the club's day-to-day life (strategic recruiting only happens with his approval for instance), he has handed strategic communications over to his son François-Henri.

**8. What is the role of third-party ownerships in your country?**

Third-party ownerships are prohibited in France.

### **PART 3: The reorganisation of professional football clubs**

**9. Describe the financial position of professional football clubs in France**

During the 2011-2012 season<sup>15</sup>, the accounts of professional 1<sup>st</sup>- and 2<sup>nd</sup>-league clubs continued to worsen. According to the LFP, the aggregate net result of the 40 1<sup>st</sup>- and 2<sup>nd</sup>-league clubs shows losses in amount of EUR 107 million (it was EUR 65 million in the previous season). 25 clubs show net losses (9 in the 1<sup>st</sup> league and 16 in the 2<sup>nd</sup> league) although the turnover generated by professional football increased by 8.5 % to EUR 1,349 million.

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<sup>15</sup> LFP 2011-2012 activity report and DNCG 2011-2012 report

On the other hand, the level of indebtedness remains quite reasonable at EUR 110 million, especially when compared to that in neighbouring countries.

As regards the tax and social contributions made to the state by French professional football (taxes, duties, and social charges paid by clubs, employees, players, and professional bodies), they increased again from EUR 622 million to a record EUR 640 million, although local and regional subsidies decreased further (-30 % over 5 years).

In 2011-2012, the 1<sup>st</sup> league showed aggregate losses in amount of EUR 60 million (EUR 46 million in 2010-2011) on a turnover of EUR 1.135 billion. The 2<sup>nd</sup> league showed net losses in amount of EUR 47 million in 2011-2012 (EUR 19 million in the previous season).

Still, despite the overall poor results, professional bodies worry mostly about the 2<sup>nd</sup> league. In fact, considered to be a second-rank championship, with much less media exposure, the 2<sup>nd</sup> league has a hard time generating the revenues and creating the new resources it desperately needs.

With 14 out of 20 clubs showing losses that were multiplied by 2.5 in the course of one year, the 2<sup>nd</sup> league is a source of concern. When it was relegated, Auxerre had suffered EUR 16.4 million in losses; although they are “big stables”, Lens' losses amount to EUR 17.2 million, Nantes' to EUR 12.1 million.

Within the 1<sup>st</sup> league, there is much contrast. Whereas some clubs such as PSG spend without counting the cost thanks to the Qatari shareholders' investments, others were forced to manage their resources much more strictly or even take austerity measures. OL shows the most substantial losses (EUR 28 million over the previous two seasons), Bordeaux doubled its losses in barely 12 months (from EUR 7 million to EUR 14 million), and Nice is also showing major losses (EUR 7.8 million). Still, for the 2011-2012 season, 10 out of 20 clubs showed net profits (there were 9 for the 2010-2011 season).<sup>16</sup>

The top foursome is:

- Lille: +3.8 million €
- Ajaccio: +3.2 million €
- Montpellier: +1.2 million €
- Lorient: +1.1 million €

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<sup>16</sup> Individual clubs' accounts for the 2011-2012 season (DNCG)

The bottom foursome is:

- Marseilles: - 8.2 million €
- Bordeaux: - 14.2 million €
- Auxerre: - 16.4 million €
- Lyons: - 28.0 million €

#### **10. Describe how French professional football clubs manage to survive financial difficulties**

When clubs hit financial difficulties, they usually call the shareholders for help. According to the DNCG<sup>17</sup>, the amount contributed to professional clubs by the shareholders in order to finance losses and investments mainly (and especially player acquisitions) is EUR 250 million just for 2011-2012 (they contributed approximately EUR 120 million over 2009-2010 and 2010-2011).

Shareholders are more and more often called upon for ever bigger amounts, and the DNCG checks their levels of solvency and their financing plans. In that regard, the DNCG noted that more and more club shareholders do not have the means to follow their club's financial difficulties.

#### **11. Has there already been a case of a football club going bankrupt in your country? Describe how it came about and what the sporting consequences were for the championship**

A professional club going bankrupt is always tragic, both on a sporting level (with the subsequent downgrading to several levels below, assuming the club is taken over and continues to exist) and on an emotional level (town and supporter image).

The last unfortunate instance of such a bankruptcy is that of the **Strasbourg club**. Relegated to the 2<sup>nd</sup> division following a terrible series of matches (eleven consecutive defeats during the 2007-2008 season), the club missed going back to 1<sup>st</sup> division by a few points at the next season. The club then went through a delicate period marked by administrative instability (changes in president, coach) and by a new administrative downgrading (to the “national” level). Undermined by internal problems, unable to pay its debts, the club was administratively relegated to 4<sup>th</sup> division on financial grounds.

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<sup>17</sup> DNCG report, “Situation of professional football, season 2011-2012” (“Situation du football professionnel, saison 2011-2012”)

The main consequence was that it lost its professional status. The club was subsequently placed into administration by the High Court (Tribunal de Grande Instance) in Strasbourg and liquidated on 22 August 2011. It finally chose to be administratively downgraded to the 5<sup>th</sup> division rather than to be relegated anew as provided for by sports regulations in case of liquidation at the end of the sporting season.

Enrolled in group C of the 2<sup>nd</sup> French amateur championship (CFA 2) for the 2011-2012 season, the team was promoted to CFA after one season. During the season, matches were seen by an average 6,412 spectators, with a record 10,880 spectators for the match against Schiltigheim. As its financial position remained delicate, the club was bought by a group of investors led by Marc Keller (including Sébastien Loeb, Thierry Herrmann, Egon Gindorf, and Ivan Hasek) for the token price of EUR 1. At the start of the 2012-2013 season, the club changed its name to Racing Club de Strasbourg Alsace.

Although tragic, the judicial liquidation of a club can be viewed as a way to „settle past debts“.

## **PART 4: The law and sporting rules: UEFA's Financial Fair-Play Regulations**

### **12. Describe the relationship between the law and sporting rules generally: Are sporting rules separate from ordinary law?**

The fact that there exists a sporting legal system apart from the main state legal system is not a point of contention anymore. Nonetheless, the fact that there is a special law for sports does not mean that ordinary law ceases to apply. In fact, ordinary law applies where special sporting rules cease to be necessary. In truth, the main difficulty resides in the fact that the applicable legal system is a mix between special and ordinary law. For example, sportspeople's employment contracts are first and foremost subject to labour law, but they include specificities in connection with the sporting activity: use of fixed-term contracts, mandatory recordation of the contract with the sports federation in order to be effective, etc.

Likewise, as explained for the legal status of sports companies, although they are for the most part subject to ordinary company law, the French Sports Code does include a series of specific provisions in order to take the specificities of professional clubs into account.

In fact, there are three possible situations: ordinary domestic law applies; sports law applies; or sports-specific domestic law applies. Sports law is an intermediate legal system where the state enacts the rule but takes the specificities and aspirations of the sporting world into account.

### **13. Do you think UEFA's Financial Fair-Play Regulations contravene the law of your country?**

Long before UEFA's Financial Fair-Play Regulations were implemented the French professional sports bodies set up an independent commission hosted by the LFP (Ligue de Football Professionnel) tasked with monitoring the accounts of professional football clubs in France: the DNCG (Direction Nationale du Contrôle de Gestion).<sup>18</sup> Although the DNCG never prevented professional clubs from contracting debts, it at least prevented them from accumulating excessive debts. In fact, where the big neighbouring European championships show debts in amount of EUR 10 billion, France managed to limit its deficit to EUR 100 million. Many believe that this is why French clubs lack competitiveness on the European scene. Consequently, French football fought for several years to promote the control and better management of clubs at European level and is a direct cause of UEFA implementing its Financial Fair-Play Regulations.

In fact, the president of LFP published in June 2005 a report entitled “Promoting the management control of clubs at European level” (“Pour un contrôle de gestion des clubs au niveau européen”) which prefigured the concept of a European DNCG. According to him:

*“a financial control commission could be set up within the UEFA, tasked each season with examining the accounts of the clubs taking part in the Champions' League and taking any resulting, possibly binding, decisions”.*

Likewise, the UEFA's president, Michel Platini, confirmed on 28 August 2008 plans for a European DNCG which according to him would set up “*a commission that would check accounts and say whether they are OK or not*” in order to “*give football a better economic reputation*”. The principle of financial fair-play was finally adopted unanimously by the UEFA on 15 September 2009 (with a new version adopted in 2012). Therefore, far from contravening French law, the UEFA's Financial Fair-Play Regulations were actually to a large extent inspired by it.

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<sup>18</sup> DNCG: Direction Nationale du Contrôle de Gestion

#### **14. Describe the general impact of the UEFA's Financial Fair-Play Regulations in your country**

How professional clubs are managed in France is special: the DNCG controls the legal and financial situation of 1<sup>st</sup>- and 2<sup>nd</sup>-league professional clubs.

The main purpose of such control, which the DNCG exercises fully independently, is to ensure the durability and fairness of competitions by checking notably that each club's sporting investments do not exceed its financial standing.

On the other hand, the DNCG's task does not include auditing clubs' accounts as a company auditor, i.e., verifying and certifying them (it does not have either the technical or the legal means to do so). The DNCG publishes every year a report on the state of French professional football but also a separate report for each club. The purpose of such a control is to curb debts and deficits in order to guarantee the clubs' sound and durable management.

Where it finds problems, the DNCG is authorised to take action:

- total or partial prohibition from hiring new players under contract;
- monitoring of player hiring;
- administrative downgrading;
- total or partial prohibition from hiring new players;
- administrative upgrading prohibition;
- exclusion from national championships

For instance, Toulouse and Marseilles were administratively downgraded in 2001 and 1994 respectively.

One of the most common penalties is the monitoring of player hiring (Lens in 2011 and 2012, Grenoble and Marseilles in 2002).

Over the past few years, this French specificity has furthered a better management of French clubs compared to their European neighbours, even though the last two seasons were a delicate matter, especially in view of the current economic crisis. Clubs aggregated EUR 34 million and EUR 130 million in losses in 2008-2009 and 2009-2010. Still, since the DNCG was created, the number of clubs suffering from financial difficulties has decreased sharply and has even practically disappeared in the 1<sup>st</sup> and 2<sup>nd</sup> league.

Contrary to other heavily indebted European championships, the general impact of the UEFA's Financial Fair-Play Regulations should be quite limited and is welcomed as a salutary measure.

According to a memorandum drawn up by UCPF (the French union of professional football clubs) following the DNCG's report for the 2009-2010 season :

*“the financial fair-play soon to be applied by the UEFA could be an asset for French clubs. Since they have been monitored by the DNCG for a long time, they should easily meet the UEFA's requirements: for instance, if the financial fair-play had been applied during the 2009-2010 season, 99 % of French clubs would have passed the exam. Given the financial position of many a European club, France could win back some of its competitiveness in a once again level field.”*

Nevertheless, the implementation of the Financial Fair-Play Regulations is being taken very seriously by the French authorities.

For instance, a parliamentary commission was just set up to study the implementation of the regulations in regard of the economic model of French football clubs. Although the report is due in May or June 2013, French deputy Thierry Braillard, appointed Commission Rapporteur by the French National Assembly, gives its outlines in an interview with Lyon Capitale magazine:

**« Lyon Capitale : En quoi consiste votre mission parlementaire sur l'application du fair-play financier au modèle économique des clubs de football professionnels français ?**

**Thierry Braillard :** *Nous voulons comprendre la situation économique du football français. Le déficit cumulé des 40 clubs professionnels était de 112 millions d'euros en 2012 et devrait être de 250 millions d'euros en 2013. En Europe, ce déficit a été multiplié par plus de deux en trois ans et atteint 1,7 milliard d'euros. Il y a de quoi tirer la sonnette d'alarme.*

**Qu'est-ce que change cette nouvelle obligation de fair-play financier imposée par l'UEFA (Union des associations européennes de football) ?**

**T B :** *Elle change tout. Jusqu'à présent, un club peut dépenser comme il le souhaite tant qu'il passe devant la Direction nationale de contrôle de gestion (DNCG) avec des comptes à l'équilibre. Avec l'obligation de fair-play de l'UEFA, un club n'a le droit de dépenser que les recettes qu'il génère. C'est complètement différent.*

**Comment allez-vous produire votre rapport ?**

**T B :** *Nous allons auditionner une soixantaine de personnes d'ici le mois de mai. Nous avons déjà rencontré Michel Platini (président de l'UEFA) à la mi-janvier, Noël Le Graët (président de la Fédération française de football) et Jérôme Champagne, l'ancien secrétaire général adjoint de la FIFA (Fédération internationale de football association). Nous irons à Bruxelles auprès de l'instance du fair-play financier pour comprendre comment l'UEFA a étudié ses 630 clubs de*

*foot professionnels. On va entendre les présidents de sept clubs français (Lyon, Paris, St-Étienne, Lille, Caen, Créteil, Rennes), les élus locaux de Marseille, Bordeaux et Montpellier, le syndicat des joueurs mais aussi Canal+ et BeIN Sport. À la fin de notre mission, nous avons prévu de rencontrer la Ministre des sports Valérie Fourneyron. Nous rendrons notre rapport en juin.*

***Quelle est la finalité de votre mission parlementaire ?***

***T B : Permettre à la France de légiférer ou pas. Nous comptons aussi faire des préconisations aux instances politiques européennes parce qu'il y a des problèmes d'harmonisation fiscale et de droits. Quand le foot français a 600 millions d'euros en droits téléés, la Ligue anglaise en a 4 milliards. Du coup, cela crée des problèmes de distorsions entre les clubs et explique notamment pourquoi Newcastle vient d'acheter pas mal de joueurs français (Ndlr, cinq joueurs en trois semaines de mercato). Cette situation interpelle. Il faut convaincre les propriétaires d'investir dans les centres de formation et les infrastructures plutôt que sur les salaires des joueurs. ”***

In fact, the UEFA's financial fair-play differs from the DNCG's control scheme:

- by its scope (the former aims to control European competitions whereas the latter is only concerned with the French championship),
- by its means of implementation (the UEFA was forced to take into account the differences in development of its member states to demand a minimum of information according to the technique of the lowest common denominator),
- by the prerogatives granted to local bodies (the DNCG in France enjoys broad powers under the supervision of the French courts).

## **15. List the regulations' positive and negative aspects**

### **15.1. Positive aspects**

In 2012, Chelsea FC finally reached its goal when it won its first Champions' League for its owner, the Russian Roman Abramovitch. In order to succeed, the English club spent EUR 1 billion over 9 years. Although winning a great competition is not due only to investing unlimited sums of money in a professional club, such resources are admittedly an effective contributor.

This raises the question of financial equity between clubs. With the Financial Fair-Play Regulations prohibiting clubs from spending more than they win, we will possibly see an end to what amounts to “financial doping” or, to cite Michel Platini, the UEFA's president, “*an end to victories on credit*”.

In fact, the DNCG established a correlation between budget rankings and sports rankings.

For 2011-2012 for instance, there are very few exceptions, i.e., for the most part the budget ranking equals the sports ranking :

- The exception is Olympique de Marseilles who is only 10<sup>th</sup> in the sports rankings although it is 2<sup>nd</sup> in the budget rankings.
- Save for two or three other clubs, most clubs are distributed along a diagonal line with the budget ranking as X-axis and the sports ranking as Y-axis:
  - PSG ranks 1<sup>st</sup> as per budget and 2<sup>nd</sup> as per results,
  - Girondins de Bordeaux 5<sup>th</sup> and 5<sup>th</sup>,
  - AJ Auxerre 18<sup>th</sup> and 20<sup>th</sup>,
  - Dijon FCO 19<sup>th</sup> and 19<sup>th</sup>, etc.<sup>19</sup>

## 15.2. Negative aspects

Now that Paris has Qatari investors, France enjoys the financial standing and media coverage necessary to attract stars and it can again dream of winning new titles on the European scene. Therefore, the UEFA's Financial Fair-Play Regulations could have a negative effect in that it might prevent new clubs from moving up. Indeed, the combined application of regulations at European level (the UEFA's Financial Fair-Play Regulations) and at local level could trump free competition and help maintain existing situations.

For Richard Olivier, the DNCG's chairman, *“clubs such as Chelsea were allowed to develop their goodwill unrestrictedly whereas newcomers should be profitable straight away. Roman Abramovitch invested this side of one billion. The Qatari are still far behind.”*

It seems that neither the UEFA's Financial Fair-Play Regulations nor the rules established by the DNCG address the main contentious issue anyway, that of the players' salaries, although they represent the biggest investment and in the end the first source of imbalance (according to the DNCG in its report for the 2011-2012 season).

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<sup>19</sup> DNCG report, “Situation of professional football, season 2011-2012” (“Situation du football professionnel, saison 2011-2012”), page 61

## 16. Do you think there could be more effective ways? If so, which?

The Germans have implemented a policy centred around shareholding. German clubs are subject to the 50+1 rule. In other words, a shareholder may not own more than 50 % of a German club unless he has been a shareholder for more than 20 years. This rule was established in order to prevent German clubs from going the same way as the English Premier League clubs and from depending on one majority shareholder.

In the United States of America, several professional leagues have implemented a “salary cap”, i.e., rules to limit the payroll that a club may spend on its players. This concept is also found in France, albeit for rugby. In fact, appendix 3 to the by-laws of the DNACG (which is to rugby what the DNCG is to football) provides in its article 1.1 that *“the total amount of sums and benefits due to the players of each professional club (1<sup>st</sup> and 2<sup>nd</sup> division) for the 2012-2013 season may not exceed EUR 9.5 million”*.

Interestingly, the aim of such a payroll cap for rugby is not too different from that of the financial fair-play implemented by the UEFA, i.e.:

- to guarantee the economic stability of French professional rugby clubs and
- to prevent market deregulation and the deregulation of clubs' economics.

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