

## UK WHITE PAPER ON FOOTBALL GOVERNANCE

On 23 February, the UK Secretary of State for Culture, Media and Sport presented to the Parliament the "White Paper on Football Governance"<sup>1</sup>.

It is a programmatic document with which the British government, after identifying specific issues of its national football system following an extensive consultation process that began in 2021, illustrates the legislative reform it intends to adopt. A reform which, on the one hand, demonstrates full awareness and willingness to adapt, also through the appropriate regulatory safeguards, to the reality of modern football, which sees in the Premier League the supreme manifesto of "international" sport business opened to investments from all around the world, and on the other hand is impregnated with British tradition and aims to preserve the "local" sporting sentiment and heritage.

The English government, while deeming it preferable that the regulations to deal with the system's issues be prepared by the competent sports bodies, declares it is not confident that this will happen since *"the industry does not have the incentives and governance structures to make the behavioural and structural changes needed"*. This means that it is required *"a targeted government intervention to specifically address financial sustainability"* and *"a strong centre to take regulatory decisions away from the clubs"*.

The heart of the reform is the creation of an **"Independent Football Regulator"** with three primary duties:

1. clubs financial sustainability;
2. systemic stability of the English football pyramid;
3. cultural heritage.

When acting in a way that advances its primary duties, the Regulator must also have regard to its secondary duties (i) competitive balance of domestic competitions, (ii) competitive advantage of English clubs in international competitions, (iii) benefits of sustainable national and international investments.

### **THE INDEPENDENT FOOTBALL REGULATOR**

The Regulator is undoubtedly the protagonist of the reform. It will be an independent statutory body with regulatory production and surveillance tasks in the context of English men's top 5 football tiers.

The funding of the Regulator will be charged to the clubs through a "levy-funded model", with annual levy proportional to the average total revenue of each club.

The institutional location will be decided later but the government excludes that it can be incardinated within an existing football body in order to preserve the independence of the Regulator. This latter will be led by a Board of individuals (who will be appointed and may be replaced at the request of the Secretary of State) with skills and experience across, regulation, football and other industries and will operate through an "advocacy first" approach, inspired by collaboration and dialogue and only ultimately to sanction.

The Regulator's decisions would be appealed on judicial review principles before State courts, but there may be a limited right to appeal specific decisions on the merit.

### **THE LICENSING SYSTEM**

The primary task of the Regulator will be to implement and enforce a **system of annual licenses**. Release of a license will be a mandatory condition for practicing professional football.

The Regulator will be the custodian of the system and will have the task of granting (or denying the granting of) the licence, monitoring compliance with the rules and possibly imposing sanctions.

The release of license will be subject to compliance by the clubs with four general **"Threshold Conditions"**, to be implemented in the future on the basis of a "risk-based" approach, such that requirements would be targeted where the risk of harm was higher.

#### **1. "Appropriate resources"**

The first condition concerns the availability of adequate financial and non-financial resources. The government considers the rules currently in force, based on the principle of "permitted losses", to be not effective in encouraging sustainable investments and therefore decided to intervene by imposing specific **"Financial Regulations"** which has the ultimate aim of guaranteeing sustainability of clubs. In particular, the clubs will have to:

- rely on good basic financial practices;
- adopt scenario and contingency planning also over multi-year periods and with the provision of corrective measures to adapt to changing circumstances;
- carry on constant monitoring and reporting;
- hold adequate resources and calibrate financial decisions on their actual consistency.

The above shall be implemented pursuing a delicate balance which, on the one hand, facilitates the clubs in finding the necessary resources, without discouraging private investments, and on the other pushes the system towards virtuous behaviours that guarantee its stability. Also in this perspective, the Regulator will be assigned specific functions to protect the assets of the clubs and, for example, should pre-approve any stadium sale.

Still as part of the first Threshold, clubs will also be required to comply with specific governance rules, to be issued by the Regulator within a **"Football Club Corporate Governance Code"**. Its requirements will concern the adequacy of the corporate structure (with the constitution of an adequate board), the professional skills of the personnel, the transparency of the decision-making processes, the standards of integrity and internal policies.

The Regulator shall maintain an approach of dialogue and guidance in monitoring compliance to the rules. It will rely on a logic of flexibility and involvement in accordance with the "apply and explain" model (as opposed to the more common "comply or explain").

#### **2. "Fit and proper custodians"**

The second condition concerns the adequacy of the top managers of the clubs, meaning the owners and directors, defined by the White Paper as actual "guardians" of the social and cultural heritage of the club.

<sup>1</sup> <https://www.gov.uk/government/publications/a-sustainable-future-reforming-club-football-governance/a-sustainable-future-reforming-club-football-governance>

Abandoning the current system based on self-declarations, the Regulator would conduct tests to check, especially in the event of changes in club ownership:

- (i) the integrity, honesty, financial soundness and competence of owners and managers. For the sake of transparency, clubs will be required to declare their "Ultimate Beneficial Owner";
- (ii) the source of the owners' financial resources through enhanced due diligence;
- (iii) the implementation of comprehensive and sustainable financial plans.

It is the case to highlight that the Regulator's status as "statutory body" will allow it to have access to information gateways, including criminal ones, thus facilitating the effectiveness of checks.

### 3. "Fan interests"

It is the condition that most of all arises in the wake of British romanticism and aims to protect the social roots of football in local communities.

To obtain the licence, clubs will be required to demonstrate to have in place consultation processes that take into account the interests of fans with regard to strategic decisions and allow sharing relevant information.

In particular, fans will be given an effective veto in decisions that impact on the cultural heritage of the club such as the change of badge, name, club colours or stadium.

Set aside any plan of introducing a mandatory "Golden Share", the actual strategies adopted to implement the threshold condition will be left to the clubs, but the most widespread formula is expected to be the establishment of a "shadow board". Clubs may also be required to demonstrate supporter involvement through any MoU, meeting or draft sharing.

### 4. "Approved competitions"

The fourth threshold condition quite evidently originates from the recent Superleague case.

The Regulator will have the task of approving the competitions in which clubs can participate on the basis of predetermined criteria, which should include (i) the fairness and meritocracy of the competition, (ii) the potential impact of the competition undermining the sustainability of the existing English competitions, (iii) the opinion of the fans, (iv) the opinion of the FA (also following consultations with FIFA and UEFA).

In this way, the White Paper believes expects to create a protective lock against English clubs joining competitions that do not represent the values of the fans, while still carrying out a complete analysis of the specific project and of its costs/benefits, including economic ones.

## FINANCIAL DISTRIBUTION

Looking at the current revenue distribution system, which has led to substantial economic disparities between the top English football tiers (the Premier League alone attracts 83% of the revenues of the top 4 English leagues, the average revenues of a club of the Premier League is eight times higher than those of a Championship club), the White Paper concludes for its inadequacy to ensure the financial sustainability of the pyramid.

It therefore intends to entrust the Regulator, only in the event that sports bodies do not take necessary action to face the existing issues (circumstance which the government declares not to trust), with powers of intervention in the field of redistribution of revenues.

It would in principle entail carrying out a role of "mediator" in the negotiation between the parties, i.e. the Leagues, and only in last instance it would mean overseeing a model of "binding final offer arbitration", in which the Regulator is in charge of examining the proposals by the Leagues and to select the most appropriate one on the basis of the evidences submitted to it.

## INITIAL CONSIDERATIONS

Faithful to its traditional pragmatism, the British executive identified the problem and proposed its own solution: a straight leg tackle on a system which, in his opinion, does not prove capable of giving itself rules that guarantee its long-term sustainability. The recent financial struggles of historic clubs such as Leeds United (rescued from liquidation and now laboriously returned in the top tier) and the less fortunate Bury, Macclesfield Town and Derby County, but also the jolts of Chelsea following the anti-Russia sanctions, left their mark in the common sensibility and emphasized the perception of the cracks (also) in the wealthy English football system. The English government has thus deemed it necessary to intervene to safeguard the competitive advantage, in terms of interest both for fans and investors from all over the world, enjoyed by its championship over any other national competition, and which has been built through thirty years of forward-looking policies.

The message of distrust towards the football industry, considered as immature, incapable of freeing itself from the individual interests of clubs and of acting as a system, emerges very strongly from the White Paper. Such considerations are not necessarily erroneous and certainly have already been heard also in continental Europe.

However, the British government seems to gloss over lightly on the topic of the autonomy of this industry (or rather, to all intents and purposes, of this legal system). It is not a breaking news that, for some time now, sport has carved out its own perimeter of self-regulation where public authorities cannot intervene. This is engraved in the Olympic Charter and accordingly in the regulations of the International Federations, including FIFA, which in art. 15 of its statute requires the National Federations to "*be independent and avoid any form of political interference*".

Whether and how much the White Paper will constitute interference on the FA will be ascertained once the reform will be more exhaustively laid down.

However, what seems already evident is the exceptional nature of such a (at least intended) meticulous intervention by the public legislator. If most of the provisions do not in fact appear to present an absolutely novelty in themselves, being similar to those already in force in other legal frameworks (including the FIGC national licensing system), the difference seems to lie precisely in the intention of the ordinary authority - of which the Regulator will be a direct emanation - to go beyond the setting up of a general regulatory framework within which sports bodies are allowed to operate, but rather to dictate the financial, administrative and even sports (such as the approval of competitions) micro-rules of the football system.

While awaiting to know how the reform will be implemented in practice, it will be interesting to see the reactions of sports bodies, first of all FIFA and the IOC, for which the reform could set an uncomfortable precedent.