

# INSTITUTIONAL AND LEGAL ORDER'S EFFECT ON ECONOMIC SITUATION OF THE GERMAN SECTOR OF SPORTS ENTERPRISES

**Artur GRABOWSKI**

*University of Economics in Katowice, Faculty of Economics, Department of Economics,  
Bogucicka 3, 40-287 Katowice, Poland  
artur.grabowski@ue.katowice.pl*

## **Abstract**

*This article shows legal order in which German sports (football) enterprises exist. Due to the fact that German is the homeland of ordoliberalism and Walter Eucken was its leading representative we compare the principles of this legal order with the current situation in the sector of sports organization. Legal solutions that are applied, encourage the development of both professional football leagues where licensing procedure corresponds to the assumed objectives set out by the League Association.*

*The following research methods were applied: a descriptive, historical and comparison analysis. Literature studies on the law relating to the operation of professional football leagues in Germany and the history of economic thought (in particular ordoliberalism) were performed on German sources and legislation.*

**Key words:** *competition, football, ordoliberalism, sports enterprises.*

**JEL Classification:** *D40, K20, K22, K23*

## **I. INTRODUCTION**

Economic activity is carried out in different areas. One of the most rapidly growing sector of the German economy is professional sport. It covers all professional football league (1.Bundesliga). The competition takes place in a specific legal and institutional order, which refers to ordoliberalism (in particular to the principles created by Walter Eucken). For this reason, in the first part of the paper we discuss the principle that constitutes a competitive economic order, whereas in the second part we present the sector of legal framework of German sports enterprises (the term „sport enterprises“ will be used equivalently to „sport company“ and „sport firm“).

Literature studies on the German law on the functioning of the professional football leagues and the history of economic thought (in particular ordoliberalism) and the elementary, casual and logical analysis of collected material was conducted.

## **II. ECONOMIC ORDER BY WALTER EUCKEN**

The creation of the system, which was dominated by free competition previously required several conditions. The crucial condition proposed by W. Eucken was the creation of a legal framework by the state. The next was on existence of: private ownership of the means of production and the mechanism of supply and demand. Thus, the „process control“ market took place through the price mechanism in the context of full competition and the performance of individual companies. In addition to the basic act (in the legal sense of the Constitution), W. Eucken uses the term „economic constitution“, which included: private property, freedom of contract and competition. The holistic decisions concerning the right of economic life come from the economic constitution (Eucken, 1950, pp.52, 53).

In contrast, economic policy was result from the economic order which included the observation of the rules: general, establishing and governing. Constituting principles by Eucken included: a stable value of money, open markets, private ownership of the means of production, freedom of contract, liability for the results of economic activity and stability of economic policy. The governing rules were to influence the behavior of the functionality of the economic system based on competition. These principles were economic policies that were in line for the mechanism of the functioning of the market prices (Eucken, 1959, pp. 160-178). In the third part of this paper the comparison of the constitute principles by Eucken to the business practice in which German Football Enterprises operate will be presented.

### III. LEGAL AND INSTITUTIONAL FRAMEWORK OF THE ACTIVITY OF THE GERMAN SPORTS ENTERPRISES

Sport activity is the integral part of the economy. Each of the sport discipline (including football) has its specific rules on the relevant provisions of competition organization within the league and obligations aimed to participants. In the Federal Republic of Germany, the sport has legal autonomy guaranteed by the Federal Ministry of the Interior. However, in the Constitution of 23<sup>rd</sup> of May 1949 and subsequent amendment of the act, we do not find records on the sport.

For the smooth functioning of the football sector in Germany (including both clubs and association, as well as commercial companies), it was necessary to establish proper institutions and rules. These institutions were to enforce and monitor the situation of sports (football market). In case of Germany these are: the German Football Association (Deutscher Fussball Bund – DFB) and Deutsche Fussball Liga – DFL GmbH.

#### 1. DFB

DFB is one of the leading sport associations in the world. It was established in January 28, 1900 in Leipzig, as a result of the dynamic development of football in the area of contemporaneous Germany. Nowadays DFB is an institution with the structure of the „pyramid”. Where on headquartered in Frankfurt am Main top there is the board and officers. Below in the hierarchy there is the League Association (Ligaverband e.V.) and five regional associations (Nord, West, Süd, Südwest, Nordost). Including 21 national associations which are country and district.

The most important bodies responsible for the organization of football in Germany, except of board and officers, is DFB-Bundestag (commonly known as the parliament of the German football), which is responsible for legislation. The Bundestag is organized at the request of the Presidium, every three years. The right to participate has 259 delegates representing all levels of association. During Bundestag the officers and the board is chosen and all changes in the statutes and regulations are voted.

DFBs Presidium is executive and is responsible for keeping current operations. The Board deals with reports of various committees and auditors, advises the member of the Bureau how to work. During the 41<sup>st</sup> ordinary meeting of the DFB-Bundestag, which was held on 24-25 October 2013, there were changes within the structures of the bureau. The number of members has increased to 14. The activity of the DFB is conducted within the committees and commissions and its complemented with the work of the Foundation DFB and the League Association. The competence of the DFB include amateur, general and professional sports; and the a social and socio-political operations. Objectives and specific tasks resulting from the statutes of the DFB (Article 4) include: 1) conducting and organizing football events in a sustainable form, 2) the transmission of values through football, 3) socio-political support, 4) if possible to support the charitable and humanitarian activities, 5) creating, maintaining and expansion of sport facilities to achieve above mentioned the purposes (DFB-Satzung, pp. 4-6, 8).

#### 2. DFL

During the DFB-Bundestag on 30 September 2000 at the request of two professional leagues (1.Bundesliga and 2.Bundesliga) the structural reforms took place. As a result, professional leagues received even greater autonomy on the 18<sup>th</sup> December 2000 there were created: Deutsche Fussball Liga – DFL GmbH and the League Association. The division of powers between the DFB and the DFL has been defined in detail in the basic treaty. The first treaty was signed in 2001 and in subsequent years the agreement between these two associations was extended (the current document is valid until June 30, 2017). DFL is independent of the DFB and on behalf of the League Association it conducts operational activities. On the other hand, League Association is a full member of the DFB.

The DFB is responsible for the judges (working during matches), conducting disciplinary procedures (including anti-doping controls). Fees for mentioned operations are paid as a lump sums by the DFL. Players belonging to professional leagues who received the designation to play in Germany representation (senior and youth), are insured by the DFB. The damages for the amount of 600 thousand per year EUR is paid to football clubs for the possibility of having benefits from players. In addition, the League Association DFB receives a fixed rate (from 15 up to 30%) of the revenue from the organization of the senior national team matches in Germany. DFB is responsible for the German Cup (“DFB-Pokal” is played since 1935) subjects belonging to the League Association allocate 2% (from 1.Bundesliga) and 1% (from 2. Bundesliga) income derived from the sale of tickets in accordance to their affiliation to the national and regional associations DFB (Grundlagevertrag, pp. 5,6).

DFL is lead by two heads: Christian Seifert – the Chairman of the Board of the League Association and Andreas Rettig – the director. DFL deals mainly with the organization and marketing of both professional football leagues. DFL is responsible for the of competition that is organization and smooth running of all the matches of the season (Satzung die Liga – Fussbalverband e.V. pp. 16). Another goal of DFL is to carry out the process of licensing clubs/sports enterprises who apply for the right to participate in the competition 1.Bundesliga and 2.Bundesliga – Article 4, section 1a and 1c (Satzung die Liga – Fussbalverband e.V. pp. 5). The condition to receive a license to act in a professional league is dependeds on requirements to be fulfilled by the „Order license” (Lizenzierungsordnung, p.5). In the next part of this paper we discuss the detailed conditions and procedures for issuing (or refuse) the license. Another important task of the DFL is the contribution to the development and domestic and international promotion of Bundesliga. For this purpose, the company – DFL Sports Enterprises was established in September 2008, which sells brands and media rights (internet, radio, television). Another subsidiary of the DFL is the DFL Digital Sports (established in September 2012), which deals with official website ([www.bundesliga.de](http://www.bundesliga.de)) in three foreign-language versions: English, Japanese and Polish) and archiving materials relating to the Bundesliga. Another subject of the DFL is the SPORTCAST GmbH, which provides the television signals during all matches played in the Bundesliga season. Another subsidiary is Liga Travel who is responsible for supporting the sports players, sponsors, media and fans.

According to the charter of the League Association (Article 15, section 1) the main there bodies are: a) the board of directors, b) general gathering of members (36 members from both professional leagues), c) the license commission (Satzung die Liga, p.12).

The work of DFL is subjected to the control and supervision to the supervisory board which according to the Statue of the German Football League (Article 7, item 4) can choose and dismiss of the managers DFL, as well as to accept the annual report and decisions on profit distribution (Satzung Deutsche Fussball Liga GmbH, p.29).

### 3. THE LICENSING PROCEDURE

The main task of the League Association is the issuing of a licensee for the sports club and commercial law company. For these acts the is License Commission (Article 18a) is responsible (Satzung die Liga, p. 16). The licensing process is aimed to the following tasks: smooth running of the competition during the season, the stability of the efficiency and the competitiveness of licenses, improving the integrity of the competition, increase and credibility, supporting the financial management structures, supporting the positive image of the league and licensees, and to ensure they are stable part of the social order, and are reliable of sport and economy partner (Lizenzierungsordnung, p.3).

The condition for obtaining a license is fulfilling the criteria: sporting, legal, personnel and administrative infrastructure (primarily concerned with the stadium), media and technical, financial. Out of those, the economic and legal were selected as one of the leading in determining the ability of the entity to participation in the competition in the professional league. Applicants for a license are required to provide, the fulfilling documents: on abridgment from the register of associations or commercial companies determining compliance with applicable regulations posed by the DFB and DFL. In addition, sport subjects operating as commercial companies are required to present their shares in other market, but also about their own shareholders. Sports associations (so called „home”) must have minimum of 50%+1 of share in the company of commercial law at the general meeting (in the case of a limited partnership, the parent association must have 100% of shares in the subsidiary company and not less than 50% of the votes on general meeting (Lizenzierungsordnung, pp. 7-9, Satzung die Liga, p. 8).

In addition, the following documents are controlled: the report of the Board of Directors; balance sheet the at 31<sup>st</sup> of December each year, the income statement and the report for the first half of the new season (from 1 July to 31 December), the report of the external auditor; trade agreements with sports agencies and with sponsors and advertising, whose value exceeds 0,5 million EUR (Enterprises from 1. Bundesliga) or 0,1 million EUR (Enterprises from 2.Bundesliga); data on the legal structure of the company and the structure of income and expenses and the level of debt (creditors and maturities), data on persons that are employed; statements concerning – settlement of transfers for the players and to the tax office and the tax and social security contributions of employees (Lizenzierungsordnung, pp. 16-26).

Licensing process gives the right to act in a professional league and it is done according to the following scheme: in mid-November, sports entities shall submit a report of the external auditor to asses the DFL. At the beginning of December DFL sends a letter to the licensees asking for detailed information, that later will be evaluated. To the 15<sup>th</sup> March every year, each of the sports company has to submit required documents. In mid-April, DFL receives on individual results of the proceedings of each of the entities together with appropriate comments. In the end of April DFL decides on about the criteria to be fulfilled by licensees. If these criteria are not fulfilled, the subject applying for a license has to fulfill additional conditions. If not, it is necessary to accomplish it with additional requirements. If all criteria are fulfilled, the license receives a license. It is always

possible to appeal from the DFL’s decision. When the supplement is completed, then the entity receives a positive decision. In case of problems with the licenses, the final decisions are made by an arbitration tribunal. After validation of the decision, the Board of League signs a license agreement with football enterprises, and thus the process of granting the right to participate is finally completed (Anhang X, pp. 1-6).

**IV. PRINCIPLES CONSTITUING BY W.EUCKEN AND THE ECONOMIC ACTIVITY OF FOOTBALL ENTERPRISES**

Contribution in the competition on both professional leagues is possible for those, who have their headquarter registered in Germany and received a license from the DFL. On the other hand foreign companies can invest in sport market in many ways: by purchasing shares (eg. Hertha BSC 9,7% of the shares sold to the US private equity fund KKR&Co. LP), sponsorship (eg. Emirates Airline is the general sponsors of Hamburger SV and Gazprom of FC Schalke 04 Gelsenkirchen), or the naming rights (French Coface bought the naming rights to the stadium of FSV Mainz 05).

**Table 1. Shareholders in German soccer enterprises – Season 2014/2015**

Name	Shareholder Structure
1.FC Köln GmbH & Co. KGaA	100% FC Köln 01/07 e.V.
Bayer 04 Leverkusen Fussball AG	100% Bayer AG
Borussia Dortmund GmbH & Co. KGaA	60,67% free float 14,78 % Evonik Industries AG 8,59% Bernd Geseke 5,53% BVB 09 e.V. Dortmund 5,43% Signal Iduna 5% Puma SE
Borussia VfL 1900 Mönchengladbach GmbH	100% Borussia VfL 1900 Mönchengladbach e.V.
Eintracht Frankfurt Fussball AG	62,9 % <a href="#">Eintracht Frankfurt e. V.</a> 28,55 % Freunde der Eintracht Frankfurt AG 5 % BHF-Bank 3,6 % Wolfgang Steubing AG
FC Augsburg 1907 GmbH & Co. KGaA	100 % FC Augsburg 1907 e.V.
FC Bayern München AG	75,01% FC Bayern München e.V. 8,33% Adidas AG 8,33% Allianz SE 8,33% Audi AG
Hannover 96 GmbH & Co. KGaA	84,34 % Hannover 96 Sales & Service GmbH & Co. KG 15,66 % <a href="#">Hannoverscher SV von 1896 e. V.</a>
Hertha BSC Berlin GmbH & Co. KGaA	90,3% Hertha BSC e.V. 9,7% KKR&Co. L.P.
HSV Fussball AG	91% Hamburger SV e.V. 7,5% Klaus-Michael Kühne 1,5% Helmut Bohnhorst
TSG Hoffenheim Fussball-Spielbetriebs GmbH	51% TSG1899 Hoffenheim e.V. 49% Dietmar Hopp
VfL Wolfsburg-Fussball GmbH	100% Volkswagen AG
Werder Bremen GmbH & Co. KGaA	100% SV Werder 1899 e.V.

The characteristic of the German professional football is the legal solution commonly know as „the principle of the 50%+1”: Sports associations, which are converted into commercial companies should have a majority of shares in the newly established business entity. This record allows to keep preserve the interdependence of the German associations, and also gives the opportunity to external investors to buy shares in the company. At the same time it was to prevent a hostile takeover by the so-called speculative capital. This law allows the operator, which has continuously supported (sponsor) the football club for over 20 years before 1 January 1999, to take the majority in the football company with the prior agreement from the League Association. This situation applies only to enterprises operating as a commercial company (Satzung Die Liga, Article 8, item 2).

In the first place this right was benefited by Leverkusen and Wolfsburg Bayer has 100% shared in Bayer 04 Leverkusen Fussball GmbH and Volkswagen in VfL Wolfsburg Fussball GmbH. In February 2015 Dietmar Hopp (co-funder of software company SAP), that for more then a quarter-century finances activities by TSG Hoffenheim, took advantage of this opportunity and become the owner of the company.

Private ownership of the means of production by Eucken gives the companies an opportunity and freedom to have at their disposal interest of the general public (Eucken, 1959, p.169).

Since 1998, the General Assembly of the DFB agreed to permit to participate in the competition except of sports associations also commercial companies.

**Table 2. Form of law in German soccer enterprises – Season 2014/2015**

Form of law	1.Bundesliga	2.Bundesliga
Stock company	Eintracht Frankfurt FC Bayern München	
Partnership limited by shares	1.FC Köln Borussia Dortmund FC Augsburg Hannover 96 Hertha BSC Berlin Werder Bremen	Eintracht Braunschweig SpVgg Greuther Fürth TSV 1860 München
Limited liability company	Bayer 04 Leverkusen Borussia Mönchengladbach Hamburger SV TSG 1899 Hoffenheim VfL Wolfsburg	FSV Frankfurt Rasen-Ballsport Leipzig
Sport association	1.FSV Mainz 05 FC Schalke 04 Gelsenkirchen SC Freiburg SC Paderborn VfB Stuttgart	1.FC Heidenheim 1.FC Kaiserslautern 1.FC Nürnberg Erzgebirge Aue FC Ingolstadt FC St. Pauli Fortuna Düsseldorf Karlsruher SC SV Darmstadt 98 SV Sandhausen Union Berlin VfL Bochum VfR Aalen

Nowadays on the half of the 36 companies, operates as commercial company: stock company (2), limited liability company (7), limited partnership of whose members is a limited liability company (9) and rest is registered as sport association. companies in the sector are economically free. In contrast did not approved Eucken limited liability tendency for performance management in joint stock companies and limited liability companies (Eucken, 1959, p.173).

Doubts appeal about the inspections in joint stock companies, where there is a coincidence of interests by members of the management board and supervisory board: It is presented by the following economic example from the business practice: Martin Winterkorn is the CEO of Volkswagen AG and a member of the supervisory board of FC Bayern München AG. In contrast, Audi AG owned by Volkswagen AG holds 8,33% of the shares of FC Bayern AG. The Volkswagen AG has 90% shares of VfL Wolfsburg Fussball GmbH. FC Bayern AG has in the board directors CEO of Audi AG. DFL finally approved the purchase of shares by Audi AG in FC Bayern AG (Grabowski, 2013, p. 56). The corporate sector football functions under the national law and the European Union. Development and commercialization of existing law requires adapting to socio-economic reality. The Judgment of the Federal Court of Justice in 1996 said: „Clubs that have a licence under competition law (...) They take part in a variety of ways to competition, especially through the sale of passes, transfer of players and merchandising and contracting advertising” (Bundesgerichtshof, 1996).

The freedom of signing contracts by Eucken can not lead to a reduction or elimination of freedom. It also can not be used to create or build a monopoly, but it should be subjected to the order of competitiveness (Eucken, 1959, p. 172).

These words can be applied to the regulation of the market of media rights in the sector of football enterprises. Although DFL announces a public tender and selects a variety of offers made by bidders but the single club does not have an opportunity to sign on individual contracts with representatives of the television market to broadcast matches (eg. in Spain). In the case of the German law license of stakeholders and candidates (entities from III League), the participle is clear: unfulfilling and on conforming the requirements or additional conditions requested by the DFL means exclusion from participating in the competition among professional sports companies. As a part of the licensing system, the subsidiary company were also under control. Reason: this is where direct debt from new investments of parent company was addressed.

Eucken warned that the competition policy can not function when there is a lack of stability in economic policy (Eucken, 1959, p. 176). Economic policy led by the federal government, influences the sector of German sports enterprises. With particular pertain to the maintenance of the state monopoly on sports betting market. As a result, private companies can not be sponsors in professional sports sector. This implies the elimination a potential source of income for German clubs and the increase of the competitive advantage of other professional leagues (eg. in England), where there is no such prohibition.

In the sector of German football enterprises out of Eucken's competitions rules – the rule of private ownership of the means of production is respected. The freedom of concluding contracts by the participants of the sector, except the possibility of agreements with the media. The situation is worse with the material responsibility for the results of their activity (sports entities often use help from local authorities when they have financial problems), as well as the stability of the federal government's economic policy.

## V. CONCLUSION

To sum up, the law created by the two bodies (DFB and DFL) refers to the rules developed by Walter Eucken. It is stable and fulfils most of its functions which results from decade in the improving economic situation of football enterprises. The growth in revenues and tangible fixed assets was observed in the majority of the positive financial result was achieved. It also seems necessary to take care of the consequence conformity of the principles by Eucken to increase the international competitiveness of German football enterprises.

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