

Sustainable Project vs. LaLiga Impulse Project: response to LaLiga President's letters and additional comments

1. *Regarding the President of La Liga's letters on 3 and 5 December 2021*

- a) We regret that the Presidency of LaLiga has derived into a form of **personalism that is incompatible with the principles and values of football** and with the functions, responsibilities and duties of such a position.
- b) We observe that **none of the communications evaluate with the rigour it deserves**, neither the characteristics of the **Sustainable Project** nor the serious irregularities of the alternative project it promotes.
- c) **We reiterate the inescapable duty of the President of LaLiga to act as a loyal administrator of the association.** This duty is incompatible with his actions including (i) the purported execution of the La Liga Impulse Project without a prior competitive, open and transparent process, which maximises the conditions for all, (ii) the disparity in the treatment and access to information on said project granted to various members of LaLiga and (iii) the attack on the Sustainable Project from his own and related media, when it remains an alternative proposal that offers legal and reasonable solutions to the clubs and which should be valued.
- d) Consequently, **we require that the President of La Liga acts with the loyalty that is required of him as an administrator of said association**, overlooking any position or personal interest that could influence his behaviour.

2. *Regarding Sustainable Project*

- a) Contrary to what the President of La Liga claims, Sustainable Project is not a conceptual approach. It applies a common financing structure, commonly used by Spanish listed companies, leagues and North American teams. It has indicative prices from prestigious international banks (including in the form of a Highly Confidential Letter). **To claim that this proposal is not viable, without even taking an interest in its details, is simply not telling the truth.**
- b) There are **three essential advantages** of the Sustainable Project over the project promoted by the LaLiga President:
 - (i) in financial terms would be extraordinarily more attractive for the clubs. According to the base case presented by LaLiga, Sustainable Project would **save clubs more than 12 billion euros**, making it a proposal **15 times cheaper** and which, moreover, only includes **commitments for 25 years, not 50**;
 - (ii) in legal terms, it is **a fully legal proposal, as it is structured directly by the clubs without the direct involvement of LaLiga**. This does not infringe the clubs' ownership of the audiovisual rights, does not prejudice the rights of any

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third party (including lower level clubs and creditors) and does not use market structures and accounting concepts for artificial purposes; and

- (iii) in terms of corporate governance, it does **not give any non-footballing entity** any involvement in the management and **governance of LaLiga** (which, furthermore, would also be irregular from a legal point of view).
- c) Nor do the arguments of the LaLiga President regarding the need to provide the association with an industrial partner to help it grow stand up. It would be inexplicable to contract a financial investor as an industrial partner whose managers publicly announced their intention to disassociate themselves from the LaLiga Impulse Project within a maximum period of "8 to 10 years" and transfer their position to another investor. LaLiga must grow with its own means and make the necessary contracts to grow without losing its independence and full ownership. **It is not necessary to waste 12 billion euros to have the capacity to grow.**
- d) We reiterate that we place our experience and resources at the disposal of Spanish football in order to, working together, bring to a successful conclusion Sustainable Project or **any other operation that makes economic sense and respects the law.**

3. *Regarding the serious irregularities in the LaLiga Impulse*

- a) The structure of the operation devised by the President of La Liga is based on a serious - and obvious - conceptual error, already evident since its announcement, and which has never been corrected as it is not possible to do so. The operation is presented on the basis that the fund values LaLiga at 24.25 billion euros and is willing to make its investment on a multiple of 15 times EBITDA. The question is obvious: **how is it possible for LaLiga, a non-profit association, to reach such a valuation, if it does not own the audiovisual rights of the competition and cannot dispose of them, as they are the direct and exclusive property of the clubs?** Furthermore, these rights do not even belong to the clubs to which this operation is now being submitted for consideration, as they are the property of all the clubs playing in the competition for the next 50 years.
- b) On the basis of such a conceptual error, **the structure of the La Liga Impulse Project consists of a leap forward** which, among other things, has the main objective of ensuring that it is LaLiga, and not the clubs, which transfers a percentage of the audiovisual rights to the fund (even though it does not own them) and assumes payment obligations towards it. To do so, no hesitation is shown in structuring the operation around an original "joint venture" contract and a voluntarist concept of "commercialisation costs", all of this in **a contrived manner and constituting a clear violation of the law** (refer to the **appendix** of this letter).
- c) From the clubs' point of view, **the operation also constitutes an act of appropriation (expropriation) by LaLiga of their audiovisual rights for a period of 50 years.** This is further demonstrated by the fact that an alleged compensation mechanism in favour of "non-participating clubs" in the form of "additional

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commercialisation costs", which is nothing more than a new subterfuge to circumvent LaLiga's inability to dispose of the clubs' audiovisual rights, established now and not in the August proposal. However:

- (i) such a mechanism is legally ineffective in so far as a 'settlement agreement' to that effect requires the express and individual consent of the 'non-participating clubs'. **The very terms of the proposed agreement, establishing the need to compensate those who do not wish to take advantage of it, demonstrate its illegality;**
- (ii) **it is untrue that clubs that choose not to receive money from the fund are not affected by the Impulse Project. Absolutely untrue.** They are deprived of rights they own in exchange for "compensation". As members of LaLiga, they are forced to take part in illegal and artificial structures, built in violation of the law, to the detriment of third parties and creditors, in flagrant violation of RD-Law 5/2015 (a matter on which the Consejo Superior de Deportes will have to rule) and which, furthermore, jeopardise the financial stability of all clubs, whether they take part or not. They are forced to share ownership, governance and management of LaLiga's activities with the fund, in breach of the legal nature of this association; and
- (iii) furthermore, what would happen if the amount contributed by the fund to LaLiga under the joint venture agreement were to **be transformed into ordinary debt of La Liga at inordinate interest rates, as is expressly provided for in certain cases**, and does such debt not jeopardise the financial viability of the association and the economic future of all its members, present and future?
- d) Furthermore, **it is unprecedented, and very worrying, that the President of La Liga in certain cases induces clubs to potentially act fraudulently towards their creditors with guarantees on their audiovisual rights.** He has stated, even in writing, that the LaLiga Impulse Project can be carried out without such consent. This is not true. The structure of the transaction proposed by La Liga includes an implicit, and undisputed, transfer of audiovisual revenues from the clubs to the fund (given that the clubs agree to reduce for many, many years such revenues and transfer them to the fund in exchange for receiving financing); therefore, the implementation of the transaction without the consent of the relevant creditors would in such cases be a fraudulent scheme.
- e) **Moreover, with the agreement with the fund, LaLiga would place itself outside the legal framework of its competences, exceeding the powers attributed to it by the Sports Law.** The affiliation of football clubs to LaLiga is mandatory by legal mandate (Sports Law), on the basis of the legal limitation of its competences, as any other interpretation would be contrary to the principle of necessity (Article 9.2.b) of Law 17/2009) and to the freedom of association (Article 22 of the Constitution). No club is obliged to join an entity for the exercise of functions other than those provided for by law. Clubs are not obliged to bear the consequences of the carrying out of activities by LaLiga for which the compulsory affiliation was not foreseen, and

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much less in a regime of co-governance and co-ownership with third parties outside of LaLiga's own purposes and affiliations. By placing itself outside its legal framework of competences, **LaLiga loses its legitimacy to demand compulsory membership from football clubs. We trust that the Royal Spanish Football Association will also protect the interests of the football clubs in this matter.**

- f) All these matters - in addition to other considerations and additional irregularities in relation to the LaLiga Impulse Project such as, among others, the imposition of agreements in an abusive manner or the carrying out of operations contrary to the interest of the association without maximising the potential conditions of the transaction through competitive, open and transparent processes - **are of such seriousness that they will oblige the clubs to take legal measures, in the appropriate order, for the protection of their legitimate interests.**

4. *Regarding the economic control rules for LaLiga clubs*

- a) As we indicated in our letter on 2 December, we are fully aware of the financial situation affecting the Spanish football industry, exacerbated by the Covid pandemic. **Sustainable Project aims to help the clubs to regain their economic grip**, providing liquidity in market terms on the basis of rational structures. We are willing to work in this direction, either with our proposal or with any other proposal that, from a legal point of view, would yield similar benefits.
- b) However, we also show our deepest concern about a general feeling that we have observed in recent days: **the economic control rules of LaLiga pushed the majority of clubs in August to accept a project that we consider ruinous**, simply because it had been structured by the administrators of LaLiga as a valid solution to complete the registration of players or, even, to avoid additional consequences.
- c) LaLiga's economic control rules are at the service of the clubs. **They are not rules at the service of LaLiga's administrators, nor should they in any case serve as leverage, nor constitute a bargaining chip, for the promotion of operations such as the LaLiga Impulse Project.** This must change immediately.
- d) **While neighbouring countries relaxed their economic control rules due to the pandemic**, in order to provide their clubs with the necessary financial oxygen, **the opposite happened here, where, faced with such an unfavourable situation, a financially ruinous project** (and, we remind you again, chosen without a transparent and open selection process) **was linked to the relaxation of the financial control rules** (only for those clubs that voted in favour of the proposal made by the LaLiga administrators). This is intolerable.
- e) **We, the clubs, are the sovereigns of LaLiga, not prisoners of its administrators.** And, as sovereigns, we have the right and the obligation to provide ourselves with rules that make sense and conform to the current economic reality. **It cannot cost Spanish football 12 billion euros to survive the consequences of the pandemic because its administrators propose it.**

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In view of the seriousness of the facts, we believe it is necessary to undertake **a structural reform of Spanish football**, based on an in-depth assessment of the real situation of the needs of professional football, its clubs and the necessary mechanisms of solidarity with the other grassroots levels. All of this, defining and separating the necessary areas of strategic development from the necessary tools to alleviate the consequences of the impact of the pandemic, taking note of and defining the real needs for spending on professional structure and development for the activity entrusted to LaLiga for the commercialisation of television rights, and including those aspects of the economic control regulations that are appropriate.

We extend our hand to the rest of the football clubs and stakeholders in the sport for this, with Sustainable Project being an excellent opportunity to resume the consensus that is so necessary for the general interest of football, based on legality, good management and common sense.

Warmest regards,

Aitor Elizegi
Athletic Club

Joan Laporta
Futbol Club Barcelona

Florentino Pérez
Real Madrid Club de Fútbol

Appendix: on joint ventures and the concept of commercialisation costs

The structure of the LaLiga Impulse Project, articulated through the joint venture accounts contract, has the main objective of circumventing LaLiga's lack of ownership of the competition's audiovisual rights. It serves to establish that LaLiga (and not the clubs) undertakes payment obligations to the fund, while transferring a percentage of the audiovisual rights of the competition to the fund. The joint venture contract is used in this case in a contrived manner, constituting a clear violation of the law:

- (i) joint ventures legally require the named participant (in this case, the fund) to have a share in the "positive or negative results" of the business of the so-called administrator (i.e. LaLiga) (art.239 of the Commercial Code): it is therefore required to participate in the result or performance of the business, which by its very nature requires deducting or subtracting all the expenses incurred by the administrator in order to obtain this result or performance;*
- (ii) in this case, the "business" of LaLiga in whose "positive or negative results" the fund would participate cannot in any case be that relating to the income obtained by LaLiga from the commercialisation of the rights, for the simple reason that this income must be distributed in full among the clubs of LaLiga (art.5 RD-Law 5/2015), after deducting the expenses incurred by LaLiga for the commercialisation (art.2.3 of RD 2/2018);*
- (iii) in fact, LaLiga is a non-profit association (art.4 of its statutes), which as such cannot obtain any result or return from the exploitation of the audiovisual rights, as it can only deduct its own commercialisation costs and must distribute all net revenues among the clubs; the 'positive or negative results' from the exploitation of the rights belong only to the clubs themselves, their owners;*
- (iv) in order to circumvent this fact, LaLiga does not hesitate to declare - voluntarily - that LaLiga's payments to the fund under the joint accounts "constitute commercialisation and operating expenses of LaLiga for the purposes of RDL 5/2015"; but this is incompatible, not only with RDL 5/2015 (because they are configured as "commercialisation costs" which represent the anticipated sale or disposal of a percentage of the audiovisual rights whose ownership corresponds to the clubs), but also with the very notion of the joint venture accounts contract, which legally requires participation in the "positive or negative results" of the business once the expenses have been discounted or subtracted; in other words, it is either "expense" or "result", but not both at the same time; and*
- (v) this situation also demonstrates why LaLiga contributes the remaining activities to a newly created subsidiary in which the fund will participate as a shareholder, whereas in the case of the audiovisual rights it does not contribute them, but enters into the joint venture accounts contract; if LaLiga does not contribute them to that subsidiary, unlike the other activities, it is logically because it does not own them; and to compensate for that fact, LaLiga seeks to achieve the same economic result by concluding a joint account agreement which has no other purpose than to give a share in the rights to the fund equivalent to that which it would have obtained as a partner in that company if the rights had been contributed to it, thus constituting an obvious violation of the law.*