

Sports Law, Policy & Diplomacy Journal



Vol. 1 / No. 1 (2023)





Pravni fakultet Faculty of Law



Sveučilište u Rijeci
University of Rijeka



UNIVERSITY OF RIJEKA, FACULTY OF LAW
Sports Law, Sports Policies and Sports Diplomacy Centre &
Jean Monnet Chair in EU Sports Law, Policy & Diplomacy

in partnership with



Sports Law, Policy & Diplomacy Journal

ISSN (*Online*) 2975-6235

UDC 3:796

DOI <https://doi.org/10.30925/slpdj>

Vol. 1

No. 1

Rijeka, 2023



Co-funded by
the European Union

FOOTBALL TRANSFER FEES: ANTICOMPETITIVE?

ADAM SUBHAN*

UDC 34:796(4-6EU)

DOI <https://doi.org/10.30925/slpdj.1.1.6>

Received on November 16, 2022


Accepted on January 23, 2023

Preliminary communication

Abstract

This contribution considers the compliance of transfer fees as a part of the football transfer system with EU Competition law. Transfer fees were supposed to undergo an amendment after *Bosman*, based on the 2001 Agreement between FIFA and the European Commission. In the Agreement, objectives to pursue were set out, most notably stability of contract, pursuit of competitive balance, and promotion of youth development. This contribution aims to build on the existing literature to examine the transfer system under the current regulatory framework. The system is analysed based on Article 101 TFEU and alternatively justified by the *Wouters* test as established by *Meca-Medina*, or Article 101(3) TFEU. The pursuit of contract stability and of youth development was found inherent, but disproportional. The pursuit of competitive balance was not found effective. However, the culprit is not any single element of the transfer system, but rather their interaction that creates anti-competitive environment. The contribution discusses what elements of the regulation are most problematic and provides alternatives. The climate of necessity of football governance overhaul as a reaction to the impact caused by the Covid-19 pandemic provides a good opportunity for stakeholders to reform it accordingly.

Keywords: Article 101 TFEU, Football Governance, Football Transfers, Transfer Fee, Bosman, MecaMedina.

*  <https://orcid.org/0000-0001-8276-2209>. ✉ subhan.adam@seznam.cz.

1. INTRODUCTION

Transfer fees are not a natural employment phenomenon. A transfer fee is a payment which enables a player otherwise held to his temporary contract to buy out the contract and let their registration be transferred in order to become employed by another employer. In this context, the football transfer system is fittingly described as a no-poaching agreement.¹

15th December, 2020 marked 25 years from when *Bosman* dramatically changed the landscape of professional sports by stating that the practice of demanding transfer fees for players out of contract was unlawful.² However, fees for transfers of players still under contract were left untouched by the European Court. *The European Commission* (“the Commission”) believed that transfer fees for incontract players were infringing EU competition law, and Commissioner Monti went as far as stating that transfer fees should be prohibited.³ The new system was agreed on as a compromise between the football’s stakeholders and the Commission in 2001.⁴

And yet, data shows increasingly more money being spent on transfer fees, even adjusted for growth of the football market. This suggests that football governance has failed in limiting “arbitrarily calculated fees that bear no relationship to training costs.”⁵ Whereas football revenues in Europe grew from €16.2 billion in the 2010/11 season⁶ to €28.9 billion in the 2018/19 season,⁷ representing a 71% increase, transfer fees for only international transfers in that same period grew from €3 billion⁸ to €6.25 billion,⁹ a 108.3% increase. The results represent a 52% difference between transfer fees growth and football market growth, showing that transfer fees did not grow proportionally to revenues. That is not including the transfer fees for domestic transfers, which would represent a substantial figure. This supports the sentiment in literature that something is wrong. For instance, doubts were voiced by Pearson.¹⁰ Egger and Stix-Hackl were suspicious about the new system from the

-
- 1 For example by Sam Hoey, Thomas Peeters, and Francesco Principe. “The Transfer System in European Football: A Pro-Competitive No-Poaching Agreement?”, *International Journal of Industrial Organization* 75 (March 2021): <https://doi.org/10.1016/j.ijindorg.2020.102695>.
 - 2 Judgment of 15 December 1995, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*, Case C-415/93, EU:C:1995:463.
 - 3 Andrew Caiger and John O’Leary, ‘The End of the Affair: The Anelka Doctrine - The Problem of Contractual Stability in English Professional Football’, in Andrew Caiger and Simon Gardiner (eds), *Professional Sport in the EU: Regulation and Re-regulation* (TMC Asser, 2000), 204, cited in Geoff Pearson. “Sporting Justifications under EU Free Movement and Competition Law: The Case of the Football ‘Transfer System’”, *European Law Journal* 21, no. 2 (2014): 238–220, 228.
 - 4 For a detailed analysis of the 2001 agreement, see for example: Antoine Duval and Ben Van Rompuy. *The Legacy of Bosman Revisiting the Relationship between EU Law and Sport* (The Hague: T.M.C. Asser Press, 2016): 89 et seq.
 - 5 Communication CE 5 March, 2001 IP/01/824, cited in KEA and CDES, *The Economic and Legal Aspects of Transfer of Players, Report for the European Commission*, 2013. <https://ec.europa.eu/assets/eac/sport/library/documents/cons-study-transfers-final-rpt.pdf>, 89.
 - 6 Deloitte, Annual Review of Football Finance 2012, 8, “The European football market continued to show resistance to wider economic pressures, growing by 4% to €16.9 billion in 2010/11.”
 - 7 Deloitte, Annual Review of Football Finance 2020, 8, <https://www2.deloitte.com/ch/en/pages/technology-media-and-telecommunications/articles/annual-review-of-football-finance.html>, “European football market revenue for the 2018/19 season totalled €28.9 billion.”
 - 8 KEA and CDES, 2013 Report, 4.
 - 9 FIFA, Global Transfer Market Report 2019, 13.
 - 10 Pearson, “Sporting Justifications under EU Free Movement and Competition Law: The Case of the Football

start.¹¹ This contribution seeks to build on their work to examine compliance of the transfer rules in the regulatory environment of today.

As competition law increasingly becomes more preferred method of analysis of the *Court of Justice of the EU* (“the Court”), and the negative competition effect arising from increased spending on transfer fees is recognised by the Commission,¹² there is an increasing doubt whether the system would stand up to a challenge. The worldwide representative organization of players (“FIFPro”) lodged a complaint to the Commission in 2015. FIFPro alleged, among other things, that the new transfer system was anti-competitive.¹³ After a period of negotiations, FIFPro agreed with the *Fédération Internationale de Football Association* (“FIFA”), the global governing body of association football, over modifications to the transfer system and withdrew the complaint. A six-year deadline was agreed upon, set to expire in 2023.¹⁴ If FIFPro is not satisfied with the changes that FIFA will undertake, it could mark an opportunity for the Court to examine the system on competition grounds, after not having done so in *Bosman*.

2. BACKGROUND

2.1. DEVELOPMENT OF TRANSFER FEES

Employment and registration of footballers was traditionally governed by two sets of rules: transfer systems and nationality quotas.¹⁵ The roots lie in the registration system employed in the English Football League in 1893, where the only players who could participate in matches were the ones registered with the league for a particular club.¹⁶ The clubs in possession of a players’ registrations started to release them only against the payment of a compensation from the club that wished to employ them. If the valuation was not met, the current club would retain the registration and the player was not able to change employers.¹⁷

The system, characterized by a tendency to safeguard tradition, had to undergo substantial amendments in response to EU law concerns. The Commission launched an informal competition procedure to investigate the alterations made to the system, with a clear goal of limiting excessive transfer fees.¹⁸ Finally in 2001, an agreement on the Transfer System between *Union of European Football Associations* (“UEFA”) and the Commission was reached (“the 2001 Agreement”). The key principles agreed upon are that “in the case of players aged

“Transfer System”.

11 Alexander Egger and Christine Stix-Hackl, “Sports and Competition Law: A Never-Ending Story?”. *European Competition Law Review* 23, no. 2 (2002): 90-91.

12 KEA and CDES, 2013 Report, 255.

13 FIFPro Press Release 17/12/13, cited in Pearson, “Sporting Justifications under EU Free Movement and Competition Law: The Case of the Football ‘Transfer System’”, 274.

14 FIFPro drops bid to outlaw the transfer system as FIFA agrees to a review and gives players right to cancel contracts if clubs refuse to pay them. *Daily Mail*, [online] <https://www.dailymail.co.uk/sport/article-5055015/FIFPro-drops-bid-against-FIFA-outlaw-transfers.html> [Accessed 5 November, 2021].

15 Borja Garcia, “The 2001 Informal Agreement on the International Transfer System”, Loughborough University, January 1, 2011, 1, <https://hdl.handle.net/2134/9167>.

16 David McArdle, *From Boot Money to Bosman Football, Society and the Law* (London: Cavendish Pub, 2000): 19.

17 McArdle, *From Boot Money to Bosman Football, Society and the Law*, 20.

18 KEA and CDES, 2013 Report, 255.

under 23, a system of training compensation should be in place to encourage and reward the training effort of clubs, in particular small clubs,” and “that there should be the creation of solidarity mechanisms that would redistribute a significant proportion of income to clubs involved in the training and education of a player, including amateur clubs.” In addition, transfer windows and suspensions for players who breached their contract in the protected period were introduced as a mean to reinforce contract stability. Pearson observes that while the transfer fee system was at first sight abolished in the new system, in reality the transfer fee amounts rebounded after an initial brief reduction.¹⁹

2.1. NATURE AND REGULATION OF TRANSFER FEES

Interestingly, transfer fees are not mentioned anywhere in the applicable regulation. The fee itself is essentially a price of the player, or more accurately the price it takes to persuade a club to transfer the player’s registration. It comprises of sporting and economic value. The size of a transfer fee is uncertain and subject to negotiations, taking into consideration multiple factors.²⁰ There are two main approaches.

The costbased approach is based on the utility value of a player. However, it is recognised that application of economic analysis is difficult in sport and does not offer clear answers on how to measure such value in concrete terms.²¹

The talent-based approach, on the other hand, relies on quoted value of the player, like an artwork would.²² The talent of the player can be estimated from the following factors of sporting and nonsporting nature, such as past performance, age, the existing contract and its conditions, but also the marketability of the player.

Adhering to the pyramidshaped European sports model, the regulation of transfers in football is imposed by FIFA in its regulatory capacity of a global governing body. It functions as an umbrella association, governing national associations, who are members of FIFA. The relevant regulation for the scope of this contribution is provided by the FIFA Regulations on the Status and Transfer of Players (“RSTP”), issued and amended by the FIFA executive committee, that has since transformed into the FIFA Council. The RSTP, introduced as a result of *Bosman*, is a set of rules that governs international transfers, that is, transfers between clubs of different national associations. Domestic transfers, which take place between clubs within the same national association, are governed by the rules of that national association.²³ Nevertheless, domestic rules must be in line with the RSTP, so that a minimal standard is maintained. All transfer rules, domestic and international, must therefore be consistent with the RSTP.²⁴

19 Garcia, “The 2001 Informal Agreement on the International Transfer System”, 5.

20 Unless a transfer fee is directly stipulated in the player’s contract. This is commonly referred to as a buyout clause.

21 KEA and CDES, 2013 Report, 141-142.

22 KEA and CDES, 2013 Report, 141-142.

23 There are exceptions to this rule, such as when a transfer takes place between two clubs of the same association, but the player is affiliated to a club from a different association, see FIFA, RSTP Annex 5, Article 1, para. 2.

24 FIFA, RSTP, Article 1.

3. THE METHOD OF TRANSFER FEE ANALYSIS

It is long established that sport falls within the scope of the Treaty in so far as it constitutes an economic activity.²⁵ Therefore, the first part of the analysis is performed under the standard anti-competitive provisions of Article 101 TFEU. However, regulatory rules may be justified on concerns which are peculiar to sports. One such concern is the competitive structure. Unlike in a regular market where competitors seek an increase in market share on account of other competitors, in sports, competitors are mutually dependent. It takes two teams to conduct a football match, and one cannot be without the other. In many sports, including football, the mutual dependency of competitors is maintained by some form of financial solidarity. The theme of mutual dependency is the main principle by which the legal analysis of transfer fees is guided.

The applicable framework for justification of sporting rules is the *Wouters* test, provided by *Meca-Medina*. First, an account must be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects and, more specifically, of its objectives. Next, it must be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives and if they are proportionate to them.²⁶

It may appear that the rule examined in *Meca-Medina* differs from the rules on football transfers. The rule in question in *Meca-Medina* was an antidoping provision, a sporting rule. In contrast, the rules on football transfers govern the access of employers to workers. This difference is however irrelevant. In *Meca-Medina* the Court suggested that even if a rule was purely sporting, that would not remove it from the scope of the Treaty and would examine its objectives anyway.²⁷ As a sporting rule with an economic impact, it follows that the rules on football transfers are fit for the *Wouters* test justification.

Outside of the sporting context, the Court applies this balancing test in cases where public policy considerations stand in need of certain restrictions of competition.²⁸ In sporting context, it is the sporting objective instead of public policy consideration that might require, and therefore justify a restriction of competition. In case a rule does not pass the test, there is the traditional recourse of the efficiency exception in Article 101(3) TFEU still available. Therefore, the second part of the analysis, the justification, is performed under the *Wouters* test and alternatively under the provision of Article 101(3) TFEU.

25 Judgment of 12 December 1974, *Walrave and Koch v. Association Union Cycliste Internationale*, C-36/74, EU:C:1974:140.

26 Judgment of 18 July 2006, *David Meca-Medina and Igor Majcen v Commission of the European Communities*, Case C-519/04, EU:C:2006:492, para. 42.

27 Judgment of 18 July 2006, *Meca-Medina*, C-519/04, para. 27.

28 Moritz Lorenz, and Julia Dietrich. *An Introduction to EU Competition Law* (Cambridge: Cambridge University Press, 2013), 39.

4. RELEVANT MARKET, UNDERTAKINGS, AND NATURE OF TRANSFER RULES

In this chapter, the elements for exploring the restriction of competition are examined. First, the relevant market would be examined, then the nature of FIFA and clubs as undertakings, and finally, the nature of transfer fees and the restriction they impose in the transfer regulation are all presented.

4.1. DETERMINATION OF RELEVANT MARKET

To figure out if any anti-competitive behaviour is taking place, it is necessary to determine the market in which the competition takes place. The relevant market generally consists of two main parts: the geographic market and the product market.

4.1.1. Geographic Market

A geographic market in respect to transfer fees consists of an area where transfer rules are applied. The football transfer market is geographically interconnected. The transfer rules apply internationally and provide a minimal standard. As such, they are applied in all the territories where associations on all levels carry out a regulatory function. Following the rationale of the qualified effects test, the geographic market can be broader than the territory of Member States, as long as the agreement has immediate and substantial effect therein. The territory of UEFA includes all Member States. Regarding the volume of transfers, UEFA accounted for 68.1% of the total international transfers in 2019.²⁹ The data show that UEFA is impacted with a much greater magnitude than any other association, as in the same period only 5.3% of the total value of transfer fees did not involve a UEFA affiliated club.³⁰ Clearly, the transfer system has immediate and substantial effects in the territory of Member States. In addition, this effect is clearly appreciable since the total amount of transfer fees for international transfers within UEFA alone (excluding domestic transfers) accounted for almost €5 billion.³¹

4.1.2. Product Market

According to Egger and Stix-Hackl, there are three relevant interconnected product markets. The first is the exploitation market where performances of clubs and national and international associations are exploited, for example in a form of gate receipts or broadcasting rights for matches. In this market, the participating clubs do not have directly opposing interests. This can be well observed, for instance, in case of joint selling of broadcasting rights, which proved to be more beneficial for all the clubs involved.³²

Further upstream is the contest market. There, the competing teams jointly produce performances in form of a sporting contest, which are exploited. The players are an essential production factor, albeit not an only one. The clubs here have directly opposing interests, that

29 FIFA, Global Transfer Market Report 2019, 16.

30 FIFA, Global Transfer Market Report 2019, 26.

31 FIFA, Global Transfer Market Report 2019, 26.

32 Egger and Stix-Hackl, "Sports and Competition Law", 87.

is to perform well to the detriment of the opponent. While the exploitation market and the contest market are two separate markets, they tend to coincide in practice, in particular when the matches are either transmitted live or consumed at the venue.³³

Even further upstream, we find the third market, the supply market. Players on the supply side are engaged by clubs on the demand side. As in the contest market, the clubs' interests are opposed, that is in getting the best players available. The demand is generally not restricted as players are found to be exchangeable. In practice, clubs which fail in engaging their target player frequently engage a different one instead.³⁴

However, the player supply is not homogenous. Based on the players' ability, top-level players are more unique and therefore much less interchangeable than mid-level players. Since there are more mid-level players, the chance of finding an appropriate replacement is therefore greater. This is even more true for lowlevel players. Based on this consideration, the supply market can be further divided into three additional markets, where players are divided according to their skill: the higher primary market, the lower primary market, and the secondary market.

In the higher primary market, we find a small number of toplevel players with high market power face limited number of clubs. This market has a monopolistic structure. The highest transfer fees and wages are paid here. The toplevel players can negotiate higher wages based on their strong negotiating position. On the contrary, a high transfer fee may act to the player's detriment, as is shown further in *subchapter 5.2*. In addition, it is in players' interest to negotiate a buyout clause acting as a transfer fee cap so that the player maximises his chance to enter negotiations with other interested clubs in the future with whom he can negotiate higher wages. Due to the high financial cost of recruiting the top-level players, which consists of salary and a transfer fee for a player under contract, the top-level players may effectively only be engaged by a handful of clubs.³⁵

In the lower primary market, there are upper midlevel players who face a great number of clubs. Here, the number of players is larger than in the higher primary market, but it is not a substantial part of all the markets for players. This market has an oligopolistic structure.

In the secondary market, the remaining players who are neither superstars nor uppermid level players, accounting for a vast majority of total players, face a limited number of clubs. While there is a great total number of football clubs that could in theory recruit the substantial number of the remaining players, this is in practice limited by scouting and mobility issues.³⁶ As a result, this market has an oligopsony structure, so it is the clubs who hold the market

33 Egger and Stix-Hackl, "Sports and Competition Law", 87.

34 Egger and Stix-Hackl, "Sports and Competition Law", 87.

35 For example, Kylian Mbappé, one of the top-level players mentioned, commands a yearly salary of over €110 million according to Forbes. In addition, Paris Saint-Germain, the club which Mbappé plays for, paid €180 million in 2017 to purchase the player. It is unlikely that Paris would allow Mbappé leave for a fee that would be much lower. Therefore, it is estimated that only 4 clubs in the world can presently afford to sign the player.

36 For instance, German lowlevel clubs are more likely to develop their scouting networks in Germany and possibly a few neighboring associations, such as in Austria or Poland, rather than in Cyprus. Likewise, a lowlevel player is less likely to relocate significantly since the wage he could realistically secure is less likely to persuade the player to relocate. Therefore, the number of the clubs on the secondary market are limited.

power.³⁷

In conclusion, the relevant market is the worldwide supply market, where players are engaged by clubs. It is worthy to observe the higher primary market in particular, since it is the toplevel players whose engagement is a necessary requirement for competitive success, which intensifies all effects of the transfer fee regulation.

4.2. THE NATURE OF ASSOCIATIONS AS UNDERTAKINGS

According to the Court, an undertaking is every entity engaged in an economic activity regardless of its legal status and the way it is financed.³⁸ In this sense, economic activity means any activity consisting of offering goods or services on the market.³⁹

Even though FIFA and UEFA are private non-profit associations, that does not affect their status as undertakings since legal status is irrelevant in assessing whether the entity in question is undertaking or not. Instead, their economic activities are considered.

The economic activity of FIFA and UEFA can be derived from multiple channels. Both organizations engage in market activities, such as sales of broadcasting rights, marketing rights, and licensing rights related to the competitions they respectively organise. The magnitude of their market activity almost entirely overshadows the traditional methods of financing, such as membership contributions. While this activity is not directly linked to the supply market where transfers take place, the supply market itself is clearly linked enough to the exploitation market where the substantial part of economic activity of FIFA and UEFA takes place. The transfer rules are created and enforced by FIFA.⁴⁰ The conclusion therefore is that both FIFA and UEFA constitute an undertaking.

They may also be associations of undertakings to the extent of constituting groupings of clubs or athletes, who engage in sport as an economic activity.⁴¹ As clubs clearly are undertakings, their economic activity consists of supplying sporting events, which are available against payment, such as against broadcasting rights or admission fees.⁴² For that purpose, clubs recruit and remunerate players. Moreover, clubs compete for prize money, sell merchandise, and otherwise exploit their brand for economic profit.

37 KEA and CDES, An update on change drivers and economic and legal implications of transfers of players. Final Report to the DG Education, Youth, Culture and Sport of the European Commission, 2018, <https://sport.ec.europa.eu/sites/default/files/report-transfer-of-players-2018-en.pdf>, 4-5.

38 Judgment of 23 April 1991, *Klaus Höfner and Fritz Elser v Macroton GmbH*, Case C-41/90, EU:C:1991:161, para. 21.

39 Judgment of 16 June 1987, *Commission v Italy*, Case C-118/85, EU:C:1987:283, para. 7.

40 Prior to *Bosman*, it was UEFA who created and enforced the transfer rules for international transfers within Europe. FIFA then retracted the power of confederations to create and enforce transfer rules, and presently maintains it itself.

41 Judgment of 26 January 2005, *Laurent Piau v Commission of the European Communities*, Case T-193/02, EU:T:2005:22, para. 69.

42 European Commission Decision of 27 June 2002, Comp/IV/37.806 (ENIC/UEFA). https://ec.europa.eu/competition/antitrust/cases/dec_docs/37806/37806_7_3.pdf, para. 25.

4.3. THE NATURE OF TRANSFER RULES AS A DECISION OR AN AGREEMENT

The transfer rules are organizational rules governing transfers of players. Egger and StixHackl argue that it is not appropriate to analyse each individual component of a system, as the elements are connected and form a wider complex system. The examined rules are therefore, not strictly limited to transfer fees. Instead, the whole transfer system is examined with special consideration of the role of transfer fees and how they interact with different components of the transfer regulation.

In his opinion in *Bosman*, AG Lenz did not make a distinction whether transfer rules are a decision or an agreement. Indeed, beyond procedural law, there is little significance in distinguishing between a decision or an agreement, as long as the transfer rules fall within one of these categories.⁴³ For academic purposes, the transfer rules are considered to be a decision within the meaning of Article 101 TFEU.

The transfer rules are legally binding when it comes to international transfers. Regarding national transfers, according to the settled case law, it is not significant whether the rules are legally binding or a mere recommendation if followed by the substantial part of the market.⁴⁴ Nevertheless, international transfers constitute a substantial part of the transfer system. It therefore follows that any anticompetitive effects of international transfers would render the whole system anticompetitive, regardless of whether national rules were compliant or not.

5. RESTRICTIVE EFFECT

So far, it was established that on the player supply market, FIFA is an association of undertakings with respect to transfer rules, and the transfer rules are a decision of an association of undertakings. The regulation of transfers was also shown to have an appreciable effect on trade between Member States.

According to FIFA, the regulation aims to fulfil the principles of fairness and openness of the competition in the sporting sense. The specific objects of the transfer rules are mainly to ensure a fair and balanced competition, to promote youth development while protecting minors,⁴⁵ and to promote contractual stability.⁴⁶

In this sense, a fair and balanced competition means “[...] a competition in which everyone that participates has an equal chance of winning and is treated in the same way without discrimination.”⁴⁷ The competition in this case means competition on the contest market, such as in a particular match or a tournament. As will be presented further, success in the contest market largely determines success in the supply market. As such, a fair competition on the contest market should translate to procompetitive effects in the supply market. Therefore, it does not seem that the transfer rules are restrictive by their very nature. As such, the transfer

43 European Commission, *ENIC/UEFA*, para. 85.

44 Judgment of 29 October 1980, *Van Landewyck u. European Commission* [1980] EU:C:1980:248, joined cases 209-215 and 218/78, paras 86 and 89, cited in Egger and Stix-Hackl, “Sports and Competition Law”, 85.

45 KEA and CDES, 2013 Report, 2.

46 FIFA, RSTP Article 13.

47 KEA and CDES, 2013 Report, 2.

regulation does not seem to have restriction of competition as its object.

However, the system at first sight does impose a restriction by effect on the supply market, where clubs engage players. For the clubs, the system causes restriction in their access to players. This is particularly true at the higher primary market where elite players are recruited, and where transfer fees rise in a fashion that is more hyperbolic than linear.⁴⁸ Norbäck et al. observe that this rise of transfer fees for elite players can be attributed to the stronger bidding contest that was enabled by *Bosman* so far as it removed the nationality quotas.⁴⁹ It is players recruited at higher primary market who are essential for sporting success at European level and at domestic levels at the best European associations. Sporting success leads to prize money for clubs that participate and advance to latter stages of competitions, as well as associated revenues from broadcasting rights and other marketing opportunities. That makes sporting success a necessary requirement for improving the clubs' economic situation. This link is also observed by an updated KEA/CDES study, which notes a relation between money spent on transfers, sporting results, and economical revenues that shows an increasing gap between both, the clubs in top leagues and the different leagues.⁵⁰

Consequently, smaller clubs are prevented from improving their sporting performance, and therefore their long-term economic level, since they cannot afford to engage good players due to the required transfer fees. On the one hand, it could be argued that clubs can engage players whose contracts run out and their engagement is not restricted by transfer fees. However, a significant number of transfers taking place on the higher primary market are not endofcontract transfers, since clubs are usually successful either in retaining their prized assets by contract extensions or in selling them for a transfer fee. A substantial number of players does not even reach the stage of their contract when other clubs can negotiate a free transfer with them, which starts six months before the expiry of a contract. Clubs who face losing their players on a free transfer are motivated to sell the player before their contract expires just to recoup a portion of the transfer fee previously paid for them.

5.1. THE IMPACT OF RULES ON SPENDING

This restrictive effect is amplified by additional regulation. This was most obvious for the Financial Fair Play ("FFP"), according to which clubs could not spend more than they earn over a three-year period ("Breakeven rule"). Due to the Break-even rule, clubs could not improve their competitive success by heavy investment anymore. The clubs were previously allowed to do that, and many did. In the past, for a midlevel club of the English Premier League, it cost at least £357 million spent on transfer fees and £390 million on wages to win the Premier League title. The club in this example happened to be Manchester City following Sheikh Mansour's acquisition of the club in September 2008, who after ending the season at

48 In 2013, a new record was set by the transfer of Gareth Bale for a fee of €100 million. Only four years later, in 2017, a new transfer fee record was set for the transfer of Neymar at €222, more than double the amount. These examples are only available for players whose fee was 'affordable' enough to make the transfer happen. Many players were simply unattainable for all but a few clubs just because of the required transfer fee amount.

49 Pehr-Johan Norbäck, Martin Olsson, and Lars Persson. "Talent Development and Labour Market Integration in European Football", *The World Economy* 44, no. 2 (2021): 408–367, 401, <https://doi.org/10.1111/twec.13071>.

50 KEA and CDES, 2018 Updated Report, 56.

10th place in 2009 won the Premier League for the first time in 2012.⁵¹

The Covid19 pandemic caused an unprecedented hit to revenues of football clubs and rendered the Breakeven rule unenforceable. Consequently, in April 2022, UEFA introduced new regulation on spending which replaces FFP with the new UEFA Financial Sustainability Regulations (“FSR”). The FSR stands on three main pillars: no overdue payables, the stability and football earnings rule, and the squad cost rule. For the purpose of this article, the latter two are presented to the extent related to transfer spending.

The stability and football earnings rule is an evolved version of the Break-even rule. The three-year period remains, and the calculation is similar. The acceptable deviation increased from €30 mil. to €60 mil. with possible further deviation upon fulfilling additional criteria.

The squad cost rule restricts spending on transfers, wages, and intermediary fees to 70% of the club’s revenue. According to UEFA, “the requirement provides a direct measure between squad costs and income to encourage more performance-related costs and to limit the market inflation of wages and transfer costs of players.”⁵²

The purpose of this section is not to analyse rules on spending with respect to their objectives, but to show how FFP affected the transfer market. It was suggested that FFP entrenched the clubs that secured their good financial standing before them, as new clubs cannot break into this elite level, as some of the clubs have done before.⁵³ FSR is likely to continue in the same footsteps, despite the overall positive effect they might have on financial health of the clubs as a whole. The increased acceptable deviation eases the restriction a little bit, providing clubs with a better opportunity for investments on the player market in the short term that could be leveraged into better economical standing in the long term.

5.2. THE IMPACT OF RULES ON CONTRACTUAL STABILITY

The leading principle of contractual relationships between clubs and players is that contracts must be respected.⁵⁴ What makes transfer rules different from regular employment contracts is that their length is limited from a minimum of one year to a maximum of five years, or three years for players under 18.⁵⁵ Once the agreed period concludes and no extension is negotiated, the player becomes free agent, and no transfer fee may be demanded for the transfer of his registration. The player may even sign a new contract in his last 6 months of his current contract, provided that the new contract enters into force only in the nearest transfer window.⁵⁶

51 Stefan Szymanski, “The economic arguments supporting a competition law challenge to the transfer system”, 10, http://www.soccernomics-agency.com/wordpress/wp-content/uploads/2021/01/Szymanski_Transfer_System_Expert_Analysis_clean-1.pdf.

52 UEFA.com. “Explainer: UEFA’s New Financial Sustainability Regulations: Inside UEFA,” published April 7, 2022, <https://www.uefa.com/returntoplay/news/0274-14da0ce4535d-fa5b130ae9b6-1000--explainer-uefa-s-new-financial-sustainability-regulations/>.

53 Szymanski, “The economic arguments supporting a competition law challenge to the transfer system”, 19.

54 FIFA, RSTP, Article 13.

55 FIFA, RSTP, Article 18.2.

56 FIFA, RSTP, Article 18.3.

While termination by mutual agreement is not prohibited, contracts may not be unilaterally terminated unless there is a just cause to do so. The RSTP provide that just cause may be established in case of an abusive conduct aimed forcing the other party to change or terminate the contract.⁵⁷ Eventually, just cause may be established when the outstanding salaries are not paid.⁵⁸ In addition to just cause, the RSTP recognise a special case of sporting just cause, which may be triggered if a player who is an “established professional” appears in fewer than 10% of the official matches his club was involved in.⁵⁹ If contracts are unilaterally terminated without just cause, there are compensations due to the party that suffered the breach of contract.

Within the duration of a contract, there is a special period in which stability is pursued with stronger intensity, a so called “protected period.” It is the first two seasons or years after a contract comes into force for players before their 28th birthday, and three seasons or years for players after their 28th birthday.⁶⁰ If a party breaches the contract within the protected period, sporting sanctions may also be introduced apart from compensation. For players, sporting sanction are a ban on playing matches for up to six months, and for clubs a ban on registering new players for up to two transfer windows.⁶¹

In addition to the general rules on contract stability presented above, there are particular rules protecting young players. International transfers are generally permitted only for players aged 18 or above.⁶² However, the RSTP provides an exhaustive list of exceptions.⁶³

Promotion of contract stability could potentially be qualified as a restriction of competition by object, particularly if interpreted strictly to the detriment of rights of football stakeholders, such as right of movement for players. For the appraisal of transfer fees, this issue is considered mostly of contextual importance. Both Parrish⁶⁴ and Pearson⁶⁵ convincingly find restrictions arising from the rules on contract stability not from construction of the provision itself and its object, but mainly in its interpretation and enforcement as its effects. Therefore, this contribution concludes that the transfer fee regulation is not a restriction by object.

The restrictive effects can be observed from the way CAS has calculated compensation in player induced breach of contract cases. In some of these, the transfer fee paid for the player in breach became a basis for the final compensation. In *Matuzalem*,⁶⁶ CAS considered the market value of the player, the calculation of which was based on transfer payments. That included costs of replacement, which essentially means a transfer fee for a player of equal market value. This resulted in a total amount of almost €12 million. Likewise, in *De Sanctis*,⁶⁷

57 FIFA, RSTP, Article 14.

58 FIFA, RSTP, Article 14bis, which provides further details.

59 FIFA, RSTP, Article 15.

60 FIFA, RSTP, Definition 7.

61 FIFA, RSTP, Article 17.

62 FIFA, RSTP, Article 19.

63 FIFA, RSTP, Article 19bis.

64 Richard Parrish, “Article 17 of the FIFA Regulations on the Status and Transfer of Players”, *Maastricht Journal of European and Comparative Law* 22, no. 2 (2015), 270, <https://doi.org/10.1177/1023263X1502200206>.

65 Pearson, “Sporting Justifications under EU Free Movement and Competition Law”, 245.

66 CAS Arbitration of 19 May 2009, *Shakhtar Donetsk v. Matuzalem*, CAS Decision: 2008/A/1519.

67 CAS Arbitration of 28 February 2011, *Udinese v. De Sanctis*, CAS Decision: 2010/A/2145–2147.

the replacement costs were a part of the calculation that resulted in €2.2 million. The impact of transfer fees can be well observed in comparison of *Matuzalem* and *De Sanctis* to an earlier case of *Webster*.⁶⁸ Therein, the compensation was determined solely on the residual salary of his contract and amounted to £150 000, even though the club claimed £4.9 million based on the estimated transfer value. In all three cases, the breach occurred outside of the protected period. Since then, the basis for compensation never came back to *Webster*.⁶⁹ In the current case law, CAS follows *Matuzalem* in referring to the principle of positive interest, according to which the compensation should put the injured party in the same position as if the breach had not occurred.⁷⁰ This means that replacement costs, such as a transfer fee for a replacement, or a loss of a reasonably expected transfer fee to receive for a player in breach,⁷¹ are taken into account in order to establish the positive interest.

On the other hand, there are cases where CAS did not award any compensation, and therefore any loss of transfer fee. For instance, in *Mutu*,⁷² the player was subjected to a unilateral termination of contract with just cause by his club Chelsea. After transferring to Juventus without any transfer fee paid, Chelsea claimed compensation including a transfer fee from the player and his new club. However, CAS decided that Chelsea were not entitled to any compensation since it unilaterally terminated the player's contract, and stability of the contract was therefore no longer an objective to be protected in that situation.

Proposing that transfer fees restrict access to higher and potentially lower primary market players, it follows that the compensation calculation makes the system even more restrictive. The reason is that any new club that would try to recruit a player who owes compensation is jointly liable together with the player.⁷³ In such cases, the compensation would include the market value of the player, which could be unknown to the recruiting club at the time. Therefore, players who breached or are about to breach their contract would be undesirable for any potential employer.

In addition, there are sporting sanctions to consider. These may be imposed in case a breach takes place within the protected period, or outside the protected period but not in conformity with the rules set in Article 17 of the RSTP. A recruiting club therefore faces a transfer ban, unless it can refute the presumption that it induced the player to breach the contract.⁷⁴ Or the club may recruit a player whom they may not field in any official matches as a result of a ban on playing matches on that player. In extreme cases, this could result in removing the players from the market altogether. This would in effect further shrink the supply in the market and

68 CAS Arbitration of 24 July 2007, *Heart of Midlothian v. Webster and Wigan Athletic*, CAS Decision: 2007/A/1298–1300.

69 Pearson, "Sporting Justifications under EU Free Movement and Competition Law": 238.

70 Such as in the cases CAS Arbitration of 30 July 2018 *Ricardo Gabriel Álvarez v. Sunderland AFC*, CAS 2018/A/5925; CAS Arbitration of 8 December 2020 *Benjamin Acheampong v. Zamalek Sports Club*, CAS 2020/A/6727; CAS Arbitration of 20 November 2020 *Sabah Football Association v. Igor Cerina*, CAS 2020/A/6770; and CAS 2020/A/7231 *Nejmeh Club v. Issaka Abudu Diarra*, cited in FIFA, *Commentary for the Regulation on Status and Transfer of Players* (2021 edition).

71 Such as in CAS Arbitration of 7 October 2009, *Essam El-Hadary v. FIFA & Al-Ahly Sporting Club*, CAS 2009/A/1881, where the club was already negotiating a transfer fee at the time of the breach.

72 CAS Arbitrations of 21 January 2015, *Juventus Football Club S.p.A. v. Chelsea Football Club Ltd*, CAS 2013/A/3365 & *A.S. Livorno Calcio v. Chelsea Football Club Ltd.*, CAS 2013/A/3366.

73 FIFA, RSTP, Article 17.2.

74 FIFA, RSTP, Article 17.4.

increase prices accordingly.

Finally, for players, the application of the positive interest principle can lead to a substantial detriment if a player is found liable for a compensation. Worse yet, the skill of the player becomes detrimental to him, since better players have a higher transfer value, which will affect their compensation.

Based on the arguments presented above, this contribution contends that the transfer system presents a restriction to competition within the meaning of Article 101 TFEU as it restricts the clubs' access to player supply.

6. THE WOUTERS TEST - JUSTIFICATION

According to the *Wouters* test, let us reiterate that account must first be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects and, more specifically, of its objectives. Then, it must be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives and are proportionate to them.

The overall context of the transfer regulation was already partially explored in *subchapters 5.1 and 5.2* as it pertained to the restrictive effects of rules on spending and stability of contract. The rest will be presented in this chapter as it regards the objectives that the regulation aims to fulfil.

The major sporting objectives that shape the transfer regulation are to promote contract stability and integrity of the sport, to maintain a competitive balance, and to promote youth development. While the need for integrity of sport was affirmed by the Court in *MecaMedina*,⁷⁵ the latter two objectives were affirmed by the Court in *Bosman* as legitimate.⁷⁶

6.1. STABILITY OF CONTRACT – INHERENCY AND PROPORTIONALITY

It bears repeating that stability of contract is the leading principle behind the transfer regulation post-*Bosman*. The reason for the pursuit of contract stability is to ensure that clubs can field stable teams. In order to do so, multiple tools are employed in the RSTP. In examining inherency, let us consider whether the system would function without them.

Some parts of the transfer system are indeed necessary, as without them clubs would be opting to put similar or harsher terms in their contracts. The Court already ruled on some elements of the transfer system before. The existence of transfer periods and windows as the only time within a season when a player may transfer was affirmed by the Court in *Lehtonen*.⁷⁷

The maximum length of the contract is less straightforward. In football, it is conceivable that

75 Judgment of 18 July 2006, *Meca-Medina and Majcen*, C-519/04 P, paras. 45-46.

76 Judgment of 15 December 1995, *Bosman*, C-415/93, para. 106.

77 Judgment of 13 April 2000, *Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)*, Case C-176/96, EU:C:2000:201, para. 60.

it would take multiple seasons to build a competitive team, and as such there is a reasonable necessity to have the players committed for at least multiple seasons. Whether the same objective could be accomplished with a different term is debatable, and there are arguments against having both longer and shorter permitted period. The issue with longer periods is that it could be argued that it would reduce the player supply, as fewer players would be able to seek a transfer. While players are free to negotiate a shorter contract, experience shows that clubs prefer to tie players to longer contracts.⁷⁸ On the other hand, a maximum contract period that is too short would hinder clubs from building competitive teams, and it could undermine players' economic security in case they wished to be tied down with longer contracts.

In a way, the protected period serves as a compromise between longer and shorter contract terms, as it divides a contract into a "protected" and an "unprotected" period. The minimal length of the protected period must always be maintained, shorter contracts therefore do not have any "unprotected" period. The original aim was to balance the interests of the clubs in the protected period of the contract and interests of the players with the unprotected period. Some argue that the application of the rules makes the system not balanced like it was intended, but onesided.⁷⁹ "A player is effectively tied to a contract during the protected period and then strongly discouraged from unilaterally terminating during the un-protected period whereas a club can at any point in the contract effect a transfer by forcing the player to agree to leave." As such, "the stability of teams, which is purportedly a prime consideration, is undermined by the fact that transfers are an easy way of making big money. The system has a counterproductive effect."⁸⁰

In theory, a player cannot be forced to leave and may choose to sit out his contract. In practice, when a club forces a player to leave or to commit to an extension in order not to lose a player on a free transfer, clubs often opt not to field the player in matches. That causes players to lose performance bonuses and market value tied to any future salary, as well as losing match fitness and a decrease in likelihood of being nominated to play in international competitions. The player could invoke a just cause to break the contract if they proved an abusive conduct of the club. However, that does not happen very often. Even if the player qualifies for the sporting just cause by not being fielded enough, in that case the player would still be liable for compensation. The argument of onesidedness therefore carries some merit.

FIFA would have to prove that the liability for compensations even in case of unilateral terminations with sporting just cause together with the positive interest principle that is prevalent in current CAS case law is indispensable, and that other less restrictive rule would not suffice. This contribution contends that it would be difficult to successfully justify this part of the system. Furthermore, this issue also concerns freedom of movement, where it arguably carries more weight.

78 Caiger, and O'Leary, "The End of the Affair: The Anelka Doctrine", cited in Pearson, "Sporting Justifications under EU Free Movement and Competition Law", 233.

79 Parrish, "Article 17", 273.

80 Roger Blanpain, quoted in Gabriele Coppo, "Contractual Stability and EU Competition Law", *1 European Sports Law and Policy Bulletin* (2011), 303, cited in Parrish, "Article 17", 273.

6.2. COMPETITIVE BALANCE – INHERENCY AND PROPORTIONALITY

Maintaining a competitive balance means in the language of *Bosman*, “preserving a certain degree of equality and uncertainty as to results.” While this speaks to competitive balance on the contest market rather than the supply market, where the key restriction lies, the markets are substantially connected. Better players are key to winning in a sporting contest, and the prize money awarded allows the clubs to buy better players. As such, profit redistribution is a key element in examining competitive balance. The redistributive effects of transfer fees are assessed in the context of other mechanisms. Together, they form the three main redistributive mechanisms in football.

The first mechanism is redistribution through various programs to support grassroots football. According to FIFA, 81% of its revenue was reinvested back to football through contributions to each member association and each confederation in the 2015-2018 cycle. Likewise, UEFA provides solidarity payments to national associations. This mode of redistribution is observed as particularly effective for youth development, as it provides the recipient clubs with 50-100% of their youth development budget.⁸¹

The second way takes place through tournament prize money. In European context, the most substantial tournament redistribution takes place in the European competitions. In particular, the UEFA Champions League, the premier tier competition, provides the most substantial prize money. Through tournament structuring and payout schemes, UEFA can substantially influence the way revenue is distributed to its participants. Regarding the impact of the Champions League redistributive effects, data show that the nonparticipating clubs, who competed for qualification but did not advance to the tournament itself, only received less than 7% of the total money received by the 32 participating clubs. This redistributive system is therefore skewed in favour of the elite clubs, which happen to be the most economically successful in their respective associations.⁸² In addition, the system leads to an increased market concentration that can be observed in comparison to the Big Five Leagues⁸³ and all other association. Whereas between the years of 1985-1996, ten clubs from other leagues reached the semi-finals of the Champions League, in the subsequent decade it was only four. In the last observed decade between 2006-2017, no club from other league reached the semi-finals.⁸⁴

On the other hand, the study does not include the monetary streams of the UEFA Europa League, the second tier competition, and the newly created third tier Europa Conference League. Despite the lower prize money, the redistributive effects can be presumed to be stronger since most of the participants are not as commercially and competitively strong as in a higher tier competition. It therefore remains to be seen how the tournament prize money redistributive system will affect competitive balance in the future. Presumably, competitive balance will improve.

81 José Luis Arnaut, Rep. *Independent European Sport Review*, 2006, 148., cited in Katarina Pijetlovic, “EU Sports Law and Breakaway Leagues in Football” (The Hague: T.M.C. Asser Press, 2015), 275.

82 KEA and CDES, 2013 Report, 249.

83 The Big Five Leagues are a notorious collective term for the top tier leagues of England, Spain, Italy, Germany, and France.

84 KEA and CDES, 2018 Updated Report, 55.

Finally, the redistributive effects of transfer fees themselves can be categorised as either direct or indirect. The direct redistribution happens where the buying club pays a transfer fee to the selling club. The selling club is generally the only beneficiary of the direct redistribution.⁸⁵

The indirect redistribution affects clubs other than the selling club, if there are any. The RSTP provides a solidarity mechanism as a tool for indirect redistribution.

The solidarity mechanism aims to redistribute income to clubs that train players and incur costs in doing so. The mechanism results in a 'trickle down' effect, as a fixed percentage of any contribution is distributed to the clubs that trained the player at a respective stage of his career, including amateur clubs.

The amount of solidarity contribution is set at 5% of any compensation paid for a transfer, such as a transfer fee, except for training compensation. This amount is then deduced from the total compensation and distributed to the clubs that the player was registered with between his 12th and 23rd birthday. For every calendar year where the player was registered to a club between 12 and 15 years, the training club is awarded with 5% out of 5% of the transfer fee and 10% of 5% of the transfer fee from 15 to 23. That results in 0.0025% of the transfer fee for the former category and 0.005% for the latter for each year.⁸⁶

The system of transfer fees rests on two arguments. The first is that the profit redistribution effect of transfer fees should reward the clubs for training the players and act as an incentive to do so, thus fulfilling the objective of promoting youth development. This is discussed in detail in the next subchapter. The second is that the redistribution mechanisms either mitigate or neutralise the differences in economic situation of the clubs, thus fulfilling the objective of promoting competitive balance. If we assume that the redistribution mechanisms are efficient, it follows that they would discontinue the causality of commercial and competitive strength, where one is almost a requirement of the other. It is evident that the profit redistribution mechanisms should mitigate the natural financial polarization of competitors to level the playing field, as long as the substantial amount of transfers takes place from a relatively poor to relatively rich clubs. At this point, this contribution recognises that the profit redistribution mechanisms are inherently in pursuit of the legitimate objective of competitive balance.

To find out if transfer fees really achieve that, the monetary flows of transfers are considered. As for the direct redistributive effect of transfer fees, Hoey et al. found that the alleged effects between both, clubs and associations, are rather small. The only significant effect observed is one that takes place in the Champions League, where clubs with ambitions to win the cup are generally net spenders and other participating clubs are net gainers of the transfer system. The net gainers are generally the best of their national associations.⁸⁷ Since they frequently participate in European competitions, it seems unlikely that the redistributive effects from these clubs further down have a substantial effect. Otherwise, these clubs would not qualify

85 Unless there is a sell on agreement with the preceding club to the selling club, which provides the preceding club with a percentage of a transfer fee in case of a future transfer. That is generally compensated by a lower immediate transfer fee. As it replaces a portion of the original preceding transfer fee, this contribution considers it as a form of a direct redistribution.

86 FIFA, RSTP Article 21, and Annex 5.

87 Hoey et al., "The Transfer System in European Football", 13.

for European competitions so frequently compared to opponents in their own national association.

As for the highest transfer fees, it is interesting to observe that a substantial part of them takes place between the clubs who are already elite. As observed by Szymanski, "Transactions among these twenty clubs [featured in the 2015 edition of Deloitte Football Money League] alone amounted to €1.7 billion – between 15% and 20% of all transfer transactions in Europe. These transactions related to just 131 players represented 58% of all sales by the top 20 clubs and 32% of all their purchases."⁸⁸ This is problematic, because redistribution contributes to competitive balance only when less commercially successful clubs are the beneficiaries. Instead, the elite clubs often are.

In addition to the elite clubs, we can observe another class of clubs that have a specific transfer interest. These clubs, so called the net gainers, are characteristic by being established enough in their respective national leagues and therefore compete every year in the Champions League, but they do not have an ambition to win.⁸⁹ Therefore, they do not particularly attempt to retain their star players, and instead choose to sell them. The fee that they can secure is higher due to the exposure the players receive in Champions League matches and the resulting bidding wars of the elite clubs. In an analogy where the elite clubs enjoy commercial and competitive success behind the barrier of entry that is constituted by the financial requirements to field a competitive team, these clubs would be the gatekeepers on the outside.⁹⁰

In the matter of the indirect redistributive effect of transfer fees, the findings are equally unconvincing. The data show that solidarity compensations only account for 1.84% of the total agreed transfer fees within Europe.⁹¹ Even though the source study is dated, there is nothing to indicate that solidarity compensations rose substantially since then. Although some redistribution does take place from higher to lower leagues of the same national association, and from higher ranked to lower ranked national associations, its magnitude is insufficient to make any difference.⁹² The study concludes that the effects of the indirect redistribution do not have a sufficient positive impact on competitive balance.⁹³ Likewise, Hoey et al. argue that the redistributive effect of the transfer system is not strong enough to significantly reduce the gap between elite and other clubs.⁹⁴ This contribution finds their conclusions persuasive.

In conclusion, while the transfer system is in pursuit of improving competitive balance, it does not achieve it. The causal link between commercial and sporting success is not mitigated enough by the system. Therefore, even though some compensation is clearly necessary and inherent, the transfer fees in their current form do not seem to have the desired benefits.

88 Szymanski, "The economic arguments supporting a competition law challenge to the transfer system", 10.

89 These are typically the best clubs from Portugal and the Netherlands.

90 Examples include Ajax Amsterdam, a publicly listed company, SL Benfica, a publicly listed company, and AS Monaco, a privately owned company with an owner seeking to make a commercial profit on his investment.

91 KEA and CDES, 2013 Report, 7.

92 KEA and CDES, 2013 Report, 247.

93 KEA and CDES, 2013 Report, 248.

94 Hoey et al., "The Transfer System in European Football", 17.

6.3. PROMOTION OF YOUTH DEVELOPMENT – INHERENCY AND PROPORTIONALITY

The other major goal of promoting youth development should compensate clubs for the training costs incurred for players who leave, and thus incentivise clubs to continue train new talent. FIFA committed in the 2001 agreement to introduce mechanisms to support the training of players. Transfer fees are alleged to promote this objective. Additionally, the RSTP provide a mechanism of training compensation to promote youth development.

Training compensation is a financial amount that is paid to the club that trained the player in question. It is founded on the premise that the training and education of a player takes place between 12 and 23 years of age. This premise may be refuted by evidence to the contrary, in which case it might be concluded that a player terminated his training period even before the age of 21, even though this is rather the exception in practice. A training compensation is payable up to the age of 23 for any training that took place in this period up to the age of 21, or lower if training was terminated. The obligation to pay training compensation is triggered when the player registers as a professional or when he is transferred, both during and at the end of his contract. In the first case, the compensation is divided between all clubs that participated in the player's training, whereas in the latter the compensation is payable only to the club releasing the player.⁹⁵

The amount is determined in the following manner. Based on the quality of training that clubs provide, national associations divide the clubs into four categories. For each category, training costs are set based on the necessary amount to train one player. This number is further multiplied by the 'player factor,' the ratio of players who need to be trained to produce one professional player. This calculation mechanism reflects that not all trained players will play professionally, but the club still incurred the cost of training them. Nevertheless, there are exceptions to the general rule. The obligation to pay compensation does not arise when a player's contract was terminated without just cause. No compensation is payable, among other situations, when the player transfers to the lowest category, or if the player regains his amateur status, or in other words, the investment into his training has not paid off. Finally, in Europe, no compensation is payable when an unwanted player's contract runs out, the club does not offer an extension, except in cases when the club can justify why would it be entitled to compensation.⁹⁶

The solidarity mechanism as explained above contributes to promotion of youth development as well. The main difference between training compensation and solidarity mechanism is that solidarity mechanism is dependent on the transfer fee and is generally only triggered when a player under contract transfers for a fee. There are exceptions, such as in case of player exchanges. Conversely, the training compensation is in addition triggered when a player registers as a professional but may only be triggered up to the age of 23, and does not require a transfer fee, since it applies to outofcontract players as well.

In *Bernard*, the Court held that the system of training compensation can be justified based on the legitimate objective of training and education of young players, as long as it is calculated

95 FIFA, RSTP, Article 20, and Annex 4.

96 FIFA, RSTP, Article 20, and Annex 4.

on the actual training costs. However, FIFA admitted through one of its officials that it does not know what kind of costs should be taken in account when establishing training compensation fees.⁹⁷ Therefore, the link that training compensation relates to actual cost cannot be established as required by *Bernard*.

So how does the transfer fee system compare to transfer fees in relation to promotion of youth development? As AG Sharpston observes in her opinion to *Bernard*,⁹⁸ this contribution too observes a difference between *not discouraging* and *encouraging* recruiting and training new players. Training compensation has the effect of *not discouraging*, and transfer fees, as they translate into solidarity compensation, as positively encouraging. The reason is that whereas training compensation merely compensates clubs with training players, transfer fees potentially reward them with a profit. As noted above, the solidarity mechanism is not large enough to have an impact on competitive balance. However, for promoting youth development, it may amount to an encouraging effect. Crucially, this scales with the transfer fee. Thus, a substantial amount trickles down in cases of higher primary market transfers where a transfer fee is paid. Hence, it serves as an argument against criticism of escalating transfer fees.

The update on the KEA/CDES study contends that an adequate and proportionate reward mechanism represents a fundamental incentive for clubs to foster development of young players and improve their training facilities,⁹⁹ although the report presents so in context of transparency and does not provide an opinion on whether this system presents adequate and especially proportionate rewards.

Norbäck et al. observe that the increased sale prices translate into a stronger incentive for clubs to train their own players. Accordingly, this explains the fact that whereas the competitive balance in the Champions League became worse, the competitive balance in international matches improved. The national teams of smaller Member states where the big clubs do not operate improved their performance. The authors attribute that to what they call a “spill over effect.” As a result of increased player mobility that is observed post-Bosman, players from smaller Member states get the benefits of playing in bigger and better leagues.

A category of clubs, described as “nursery clubs,” is induced to prioritise training of new players rather than directly challenge the elite clubs. Nursery clubs are clubs which do not have sufficient financial standing to compete in the Champions League. When they are therefore presented with an offer for their star player, often enhanced by the stronger bidding competition, they are more likely to sell the player as their chances to compete for prize money that is equal of better is slim.¹⁰⁰

It follows that in the current system, maintaining competitive balance and promoting youth development are mutually exclusive goals for this category of clubs. In addition, this category

97 Omar Ongaro, “The system of training compensation according to the FIFA Regulations on the Status and Transfer of Players”, *The Bernard Case: Sports and Training Compensation, European Sports Law and Policy Bulletin, Rome (2010)*, 80-78, cited by Richard Parrish in Antoine Duval and Ben Van Rompuy, *The Legacy of Bosman*, (The Hague: T.M.C. Asser Press, 2016), 204.

98 Opinion of 16 July 2009, *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC*, Case C-325/08, EU:C:2010:143, para. 46.

99 KEA and CDES, 2018 Updated Report, 52.

100 Norbäck et al., “Talent Development and Labour Market Integration in European Football”, 371.

of clubs contains by far most clubs, as all clubs except those which regularly participate or even achieve results in the Champions League are in this category. It therefore brings up the question whether one transfer system can achieve both goals at the same time, and in case it cannot, which goal should it prioritise.

It seems that the transfer system has had a positive impact on youth development, as clubs are incentivised to train better players. This can be evidenced by the improved competitive balance in international competitions. It can be concluded that the system is in pursuit of promoting youth development and does achieve it.

Do the positive effects on promotion of youth development justify the restriction in access to the higher primary and lower primary supply market? Assuming that the restriction is intensified by the high transfer fees, it is necessary to find out to what extent are transfer fees based on objective criteria. Egger and Stix-Hackl contended that the main criterion should be cost of training,¹⁰¹ which was later affirmed by the Court in *Bernard*.¹⁰²

Applying the rationale of *Bernard* to transfer fees on the higher primary market, we can observe a discrepancy between cost of training and transfer fees. Even though the actual training costs are unknown, the mechanism of training compensation is based on a model that at least approximates the real cost based on the objective criteria. The training compensation provides a precise calculation based on a presumed quality of training that a player receives. Conversely, transfer fees contain a speculative dimension not related to the actual costs of training. To illustrate, a maximum amount of training compensation is €810 000,¹⁰³ whereas the transfer fee average ranged from €2.3 million to €2.5 million in the recent years,¹⁰⁴ and maximum transfer fee recorded so far is €222 million.¹⁰⁵

Whereas common transfer fee amounts for elite players are lower than the transfer fee record, they still regularly amount to tens of millions. However, many transfers of higher primary market players take place just between the elite clubs that previously purchased the player and did not train him. Therefore, in a substantial number of transfers, the training club is not the one that benefits from this speculative dimension of transfer fees. In addition, in relation to cases of transfers that directly reward training clubs with a fee, Szymanski contends that training relies on many outside factors and does resemble a lottery, and therefore it does not make sense to reward particular clubs.¹⁰⁶ Finding out to what extent is youth training random would be a potential opportunity for further research, as it would clarify whether there is a sound foundation for rewarding particular clubs over a class of clubs as a whole, and to what extent.

101 Egger and Stix-Hackl, "Sports and Competition Law", 89.

102 Judgment of 16 March 2010, *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC*, C-325/08, EU:C:2010:143, para. 45.

103 For a player trained exclusively by clubs from the highest categories, which can be considered to amount to the most advanced training possible.

104 FIFA, *Global Transfer Market Report 2019*, 13.

105 For the transfer of Neymar from Barcelona to Paris Saint Germain in 2017.

106 Szymanski, "The economic arguments supporting a competition law challenge to the transfer system", 10.

6.4. THE WOUTERS TEST CONCLUSION

Based on these arguments, a clear disproportionality is revealed between transfer fees for higher primary market players and costs of their training. On the one hand, the settled case law suggests that some sort of compensation for training is permissible in order to attain sport specific goals. On the other hand, even if compensation rules pursued legitimate goals, they must not go beyond what is necessary to achieve these goals. In the case of transfer fees for higher primary market players, the regulation clearly goes beyond what is necessary to promote the training of young players, as there is little link between transfer fees and actual costs of training. In particular, the high transfer fees for higher market primary players are the core cause of the restriction, since access to their supply is essential for competitive success, and yet they bear no relation to actual costs. Furthermore, even if the regulation promotes youth development to some extent, it does not improve competitive balance. Arguably, data shows that competitive balance changed for the worse.

As for the stability of contract, the justification of the positive interest principle is doubtful. Especially since it is being applied even in cases of unilateral termination with sporting just cause.

For these reasons, this contribution contends that the current transfer regulation cannot be justified based on the *Wouters* test on the grounds that it is disproportional to promoting youth development and does not attain the goal of competitive balance.

7. THE EXCEPTION UNDER ARTICLE 101 (3) TFEU

The transfer rules did not pass the *Wouters* test. However, they can still qualify for the exemption provision of Article 101 (3) TFEU. The purpose of the efficiency exception in Article 101(3) is to permit a pursuit of agreements, which are overall beneficial despite their negative effect on competition.¹⁰⁷

Four conditions must be satisfied to benefit from the efficiency exemption. First, the agreement must improve the production or distribution of goods or promote technical or economic progress. Second, consumers must get a fair share of the resulting benefits. Third, disproportionate restrictions, that is restrictions which are not essential to the attainment of the objectives of the agreement, are not allowed. Fourth, the agreement cannot lead to elimination of competition in substantial part of the product in question.¹⁰⁸

In general, only economic efficiencies are considered in this provision. However, public policy objectives (such as environment protection, or more relevant for sports, culture) may be considered if they can be subsumed under one of the four conditions.¹⁰⁹

This contribution employs an alternative approach by following the first step (improvement of

107 Stephen Weatherill, *European Sports Law Collected Papers* (The Hague: T.M.C. Asser Press, 2014), 326.

108 European Commission, *Guidelines on the application of Article 81(3) of the Treaty*, 2004, OJ No. C 101, para. 34.

109 Pijetlovic, "EU Sports Law and Breakaway Leagues in Football", 155.

production or economic progress) with the third step (proportionality) instead of the second one (customer sharing benefits). As the regulation did not pass the *Wouters* test on the grounds of disproportionality, this becomes an obvious crucial point.

Regarding efficiency gains, none of the traditional concepts of cost efficiencies¹¹⁰ or qualitative efficiencies¹¹¹ are applicable here. However, this contribution speculates that new sport specific efficiencies could be envisaged. In this case, it is conceivable that the restriction of the supply market has in fact led to better performing exploitation market. Or in other words, that the spectators enjoy this level of imbalance better than they would enjoy a more balanced competition. Since in this speculative hypothesis a better product is delivered, it would amount to a qualitative efficiency. This argument would be supported by the rising popularity of the game and the amount of revenues that are generated, some of which are further redistributed through the schemes presented above.

Of all club football competitions, the UEFA Champions League is the one that attracts the best broadcasting and sponsorship deals. That turns it into one of the most, if not the most popular competition in Europe, despite that it presents the starkest competitive imbalance.¹¹² However, it is necessary that the efficiency gain could not be achieved without the restriction. Whereas this contribution was not persuaded by this argument, let us assume that some degree of efficiency is indeed gained. This contribution leaves it to further research to verify this hypothesis.

The proportionality test consists of two steps. First is to find whether the restriction is necessary, or indispensable, to achieve the efficiency. Second is to find out if the restriction is proportionate to the efficiency gain. Or in other words, if there are no less restrictive alternatives which would also achieve the efficiency. The concept of proportionality¹¹³ within the Article 101(3) TFEU is not equal to proportionality of the *Wouters* test. In the *Wouters* test, proportionality means whether the rule goes beyond what is necessary in pursuit of sporting objective. Here, efficiency gains irrespective of objectives are weighed against the restriction. Therefore, the fact that transfer fees were found to be disproportionate under the *Wouters* test does not automatically make them disproportionate within the meaning of Article 101(3) TFEU.

From the outset, it seems likely that some restriction to the player supply market is necessary to maintain the quality of competitive football so that it is more enjoyable. Aside from the transfer windows which present an obviously necessary restriction, some compensations are also necessary so that the clubs at least recover their costs of training a player. Transfer fees in their current state do not appear to be indispensable, as player training costs are recovered through the training compensation together with the solidarity mechanism. Even if transfer fees were necessary, they would also be very unlikely to be proportionate in their current state. That is because the restriction to player supply that transfer fees cause is of a far

110 Such as synergies, economies of scale, economies of scope, development of new technologies, or production planning.

111 Such as R&D Agreements, License Agreements, Joint-Production Agreements, or Distribution agreements.

112 The same effect is observed by Norbäck et al., "Talent Development and Labour Market Integration in European Football", 401.

113 The application guidelines label the condition of "proportionality" as "indispensability".

greater magnitude than the improved consumer experience it could present in the exploitation market. For these reasons, this contribution concludes that the transfer fee system does not qualify for the exception under Article 101(3) TFEU.

8. DISCUSSION

The analysis showed that transfer fees as a part of the transfer system in its current form present a restriction by effect to the player supply market and as such breach Article 101 TFEU. The regulation did not qualify for the *Wouters* exception on the following grounds. While the regulation inherently pursues a legitimate sporting objective of maintaining competitive balance, its effect is not significant enough. The sporting objective of improving youth development is inherently pursued and achieved by the regulation but was found disproportionate. The training compensation and the solidarity mechanism already fulfil this objective without being unjustifiably restrictive in their effects. Transfer fees on the other hand are not linked to actual training costs, and as such do not satisfy the condition of *Bernard*.¹¹⁴ We can observe a direct proportion between the size of a transfer fee and the barrier of entry it creates on the supply market, but the benefits of high transfer fees do not translate into promotion of competitive balance at all, and to promotion of youth development only in part. The size of the transfer fee also plays a role in rules seeking to maintain stability of contract, in particular in calculating compensation for a breach of contract. Therein, the amount of lost transfer fee is a substantial factor for establishing positive interest, even in cases of just cause. As such, it clearly goes above what is necessary to achieve contract stability. It would suffice to apply the positive interest principle only in cases without just cause.

However, this contribution emphasises that it does not find transfer fees anticompetitive as such. Instead, they currently produce a significant anticompetitive effect because of their place in the today's overall organization of competitive football. The objectives of maintaining competitive balance could be achieved by the transfer fee regulation in its current state if other mechanisms of revenue redistribution did not contribute to competitive imbalance in the magnitude that they do now. In that case, the gap between the successful and other clubs could conceivably be bridged by transfer fees. For instance, if clubs were not restricted in their transfer investments by rules on spending, it would allow other clubs to leverage investments to challenge the successful clubs for competitive success. This contribution does not suggest that the rules on spending are not justifiable. Instead, it is suggested that for the system to function properly, the transfer fee regulation needs to be modified to fit in the current football organization.

Possible modifications are unlikely to depart from the principles of openness and promotion and relegation of the European sports model. This assumption finds support in Article 165 TFEU, which includes openness as one of the key principles. In comparison, the Northern American system of closed leagues and franchise system openly pursues commercial profits but features redistributive mechanisms that aim to achieve competitive balance, such as salary caps and a draft system. And yet, the Northern American system is "plagued with the same disease."¹¹⁵ It can serve as an inspiration for future development of football governance,

¹¹⁴ Judgment of 2 June 2010, *Olympique Lyonnais*, C-325/08.

¹¹⁵ Pijetlovic, "EU Sports Law and Breakaway Leagues in Football", 41.

yet an adoption of its features seems unlikely. For a proper adoption of the Northern American system, the whole system of football regulation would have to be revised from the top of the pyramid to the grassroots. This seems unlikely, unless we see a major policy shift, since the EU has taken a firm stand in support of the open model of promotion and relegation on a constitutional level through Article 165 TFEU.

However, some elements could still be adopted while maintaining the European principles. One alternative could be to establish the transfer regulation on a collective bargaining agreement, in which players represented by a union agree to labour terms with other stakeholders. It would provide regulatory bodies with a strong shield against the interventions of EU law, as collective bargains fall outside the scope of Article 101 TFEU. However, a player union is unlikely to agree with the system unless the position of players is improved. Any collective bargaining agreement system would have to somewhat depart from the current one. This would be an elegant solution to the dispute of FIFA and FIFPro, as they would not yield control over the future to the Court and the European Commission. In addition, the increased participation of FIFPro as an important stakeholder would be beneficial for the legitimacy of the system.

Other alternative would be to strengthen the redistribution mechanisms to increase their impact. The estimation of likelihood follows from the level of institutional support that the principles of European sports model receive, especially mechanisms of solidarity and financial redistribution between the elite and the grassroots level.¹¹⁶ This is the approach of the KEA/CDES study, which recommends increasing the percentage of solidarity contributions from 5% to 8%. Limiting transfer fees by linking them to salaries and establishing objective criteria for the use of buyout clauses form the backbone of the recommendation of the study.¹¹⁷

Another solution would be to introduce a transfer fee cap, a limit on a maximum transfer fee. The threshold would need to be fine-tuned so that the cap could function properly. A transfer fee cap should be clearly connected to the objective criteria in order to be compliant with the *Bernard* criteria. Compared to salary caps, transfer fee caps are more attractive and less restrictive to remuneration opportunities for players.

If transfer fees were limited in this fashion, the money not spent on other fees would likely find its way in players' salaries. That would affect the calculation of compensation in cases of a contract breach. In the extreme case of abolishing transfer fees altogether, the calculation of compensation could return to the formula used in *Webster*, that is to the remaining outstanding amount of the contract. Since the market value of the player would be recorded in the player's wages instead of being divided between wages and a transfer fee, this level of compensation would satisfy both, the club and the player. Both would know exactly what the cost of a breach would be. To be clear, this contribution does not argue for an abolishment of transfer fees. This argument is merely used to illustrate the effect of limiting the amounts of transfer fees.

Whereas some form of financial compensation, a transfer fee or otherwise, is clearly necessary, a formula that would balance the interests of both clubs and players is conceivable. One form

116 See European Parliament, "Resolution of 29 March, 2007 on the future of professional football in Europe", 2007, [2006/2130(INI)], par. O, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007IP0100>.

117 KEA and CDES, 2013 Report, 8.

the formula could take is a multiple of the contract value. It could be argued that salary is the best market indicator of the market value. This would still present a total sum, from which a solidarity contribution may be drawn.

On the other hand, a fixed sum would be problematic for a few reasons. For instance, wealthy clubs could afford to overpay on salaries and effectively pricefix players away from their less wealthy competitors, as can sometimes be the case today. In this case, the squad cost rule would provide for a better competition on the player market, since no club could overpay so drastically on its players. Another possible issue with fixed sum would be that the market value of the player may change, for example due to consistent underperformance, disciplinary issues, or injuries. In this instance, the contract value multiple would better function acting as an upper limit, a cap, which would attract more opportunities for the transfer of a player.

The multiple assigned to the contract value could be a way to link the overall success of football with the money spent on transfers and allow the amounts to rise in proportion to it. This could be achieved with a formula determining the multiple as a percentage of revenues. In addition, this system would be selfcorrective. In a supposed case of a crisis, like the Covid19 pandemic, the revenue base would be lower than usual and so would transfer fees.

Aside from a transfer fee cap, proper balance may be found by introducing a luxury tax on transfer fees from a certain amount, ideally with the increase of solidarity contributions. The proceeds of the luxury tax could be used to finance youth programs and academies. This would slow down the rise of transfer fees and lower the average transfer fee for higher primary market player. At the same time, it would provide a link that is currently missing between high transfer fees and promotion of youth development, albeit the selling club would not be the sole beneficiary of the sale. This is a positive, as it would further strengthen competitive balance in the nursery leagues by allowing other clubs besides those that receive benefits from regularly playing European competitions to catch up. At the same time, it would accommodate the element of randomness that seems to be present to some extent in youth training.

However, in the author's view, any modification to the transfer fee system would depend on the interaction with other regulation, such as with the rules on spending. Likewise, it remains to be seen if and how other revenue redistribution schemes are adjusted, since they also substantially affect competitive balance, the lack of which transfer fees were supposed to correct. By including even more teams in the lucrative redistribution scheme of European competitions, namely expanding the UEFA Champions League and introducing a third-tiered European competition, UEFA seems to be going in the right direction as far as European football is concerned.

9. CONCLUSION

The transfer fee regulation continues to attract attention even 25 years from *Bosman*. Therein, the Court did not apply competition rules to the transfer regulation.¹¹⁸ Even though the European Commission has given a green light for the new transfer system in the aftermath of *Bosman*, provided that the objectives of the 2001 Agreement were followed. However, the economic changes together with the new regulation caused the transfer system to depart from the one that was approved by the European Commission. The main goal of this contribution was to analyse transfer fees as a potentially problematic part of the transfer system in anticipation of a possible challenge on competition grounds.

In this contribution, the transfer system is analysed based on the hypothesis that the transfer fee regulation was not compliant with Article 101 TFEU. The analysis confirmed this hypothesis, finding that transfer fees restrict access to the supply market and as such undermine the competitive balance. Following the framework from *MecaMedina*,¹¹⁹ the analysis sought justification of the transfer system using the *Wouters* test.

Accordingly, the transfer fee regulation was determined to be a decision taken by an association of undertakings, and as such fell within the scope of Article 101 TFEU. Following the test, account was then taken of the objectives of transfer fee regulations, (i) maintaining contract stability, (ii) maintaining a competitive balance, and (iii) promotion of youth development.

The system was then examined in the context with other redistributive schemes of competition prize money and rules affecting competitive balance, namely with rules on spending. As for the pursuit of contract stability, this contribution contends that the way transfer fees are used to calculate compensation in unilateral breaches of contract is problematic, as it restricts clubs' access to the player market in a manner that is difficult to justify on grounds of proportionality. Regarding the legitimate objective of promoting competitive balance to maintain degree of uncertainty to the results, the positive effects are not significant enough to achieve that objective.

With respect to youth development, the system does have a positive impact. However, transfer fees are not a proportionate mean to promote youth development, since the goal can be achieved with other, less restrictive means. These presently are the training compensation together with the solidarity contribution. Since the objective of maintaining competitive balance was not achieved and the objective of promoting youth development was achieved in disproportionate manner, the analysis concluded that the transfer system could not be justified by the *Wouters* test. Consequently, the transfer system did not qualify for the sporting exception under *MecaMedina*.

Since the regulation did not qualify for justification under the *Wouters* test, the exception under Article 101(3) TFEU was considered on the basis that some efficiency could be achieved to improve the product. This assumption was made in a speculative nature, and even as such would most likely be found disproportionate. Based on these arguments, this contribution

118 Judgment of 15 December 1995, *Bosman*, C-415/93, para. 138.

119 Judgment of 18 July 2006, *Meca-Medina*, C-519/04 P.

showed that the transfer fee regulation is in breach of Article 101 TFEU and does not qualify for justification neither under *MecaMedina* nor the exemption under Article 101(3) TFEU.

The ongoing FIFPro challenge to the transfer system is currently on hold at least until 2023 following a successful negotiation with FIFA. It remains to be seen whether FIFA enacts changes to the transfer system to the satisfaction of both FIFPro and other stakeholders. Among those who stand to lose are the dominant clubs, which are currently unusually vulnerable, having lost some leverage after the failed breakaway attempt. FIFA, on the other hand, has arguably gathered a substantial momentum on the back of the Covid-19 pandemic and the resulting shock to football to enact significant changes that could deal with, among others, the concerns argued in this contribution. In the spirit of never letting a good crisis go to waste, the chances favour FIFA to use the mandate for football governance overhaul for good.

Bibliography

1. Arnaut, José Luis. *Independent European Sport Review*, 2006.
2. Caiger, Andrew and John O'Leary, 'The End of the Affair: The Anelka Doctrine - The Problem of Contractual Stability in English Professional Football', in Caiger, Andrew and Gardiner, Simon (eds), *Professional Sport in the EU: Regulation and Re-regulation* (TMC Asser, 2000).
3. Coppo, Gabriele, "Contractual Stability and EU Competition Law", *1 European Sports Law and Policy Bulletin* (2011).
4. Duval, Antoine and Ben Van Rompuy. *The Legacy of Bosman Revisiting the Relationship between EU Law and Sport*. The Hague: T.M.C. Asser Press, 2016.
5. Egger, Alexander and Christine Stix-Hackl. "Sports and Competition Law: A Never-Ending Story?". *European Competition Law Review* 23, no. 2, (2002).
6. Garcia, Borja. "The 2001 Informal Agreement on the International Transfer System". Loughborough University, January 1, 2011. <https://hdl.handle.net/2134/9167>.
7. Hoey, Sam, Thomas Peeters, and Francesco Principe. 2021. "The Transfer System in European Football: A Pro-Competitive No-Poaching Agreement?" *International Journal of Industrial Organization* 75 (March): 102695. <https://doi.org/10.1016/j.ijindorg.2020.102695>.
8. Lorenz, Moritz and Julia Dietrich. *An Introduction to EU Competition Law*. Cambridge: Cambridge University Press, 2013.
9. McArdle, David. *From Boot Money to Bosman Football, Society and the Law*. London: Cavendish Pub., 2000.
10. Norbäck, Pehr-Johan, Martin Olsson, and Lars Persson. "Talent Development and Labour Market Integration in European Football." *The World Economy* 44, no. 2 (2021): 367-408. <https://doi.org/10.1111/twec.13071>.
11. Ongaro, Omar, "The system of training compensation according to the FIFA Regulations on the Status and Transfer of Players." *The Bernard Case: Sports and Training Compensation, European Sports Law and Policy Bulletin, Rome (2010)*.
12. Parrish, Richard. "Article 17 of the FIFA Regulations on the Status and Transfer of Players." *Maastricht Journal of European and Comparative Law* 22, no. 2 (2015): 256-282. <https://doi.org/10.1177/1023263x1502200206>.
13. Pearson, Geoff. "Sporting Justifications under EU Free Movement and Competition Law: The Case of the Football 'Transfer System.'" *European Law Journal* 21, no. 2 (2014): 220-238. <https://doi.org/10.1111/eulj.12110>.
14. Pijetlovic, Katarina. *EU Sports Law and Breakaway Leagues in Football*. The Hague: T.M.C. Asser Press, 2015.
15. Szymanski, Stefan. "The economic arguments supporting a competition law challenge to the transfer system." available at: http://www.soccernomics-agency.com/wordpress/wp-content/uploads/2021/01/Szymanski_Transfer_System_Expert_Analysis_clean-1.pdf.
16. Weatherill, Stephen. *European Sports Law Collected Papers*. The Hague: T.M.C. Asser Press, 2014.
17. Weatherill, Stephen. "Never Let a Good Fiasco Go to Waste: Why and How the Governance of European Football Should Be Reformed after the Demise of the 'Superleague.'" <https://eulawanalysis.blogspot.com/2021/04/never-let-good-fiasco-go-to-waste-why.html>.
18. Deloitte, Annual Review of Football Finance 2020. <https://www2.deloitte.com/ch/en/pages/technology-media-and-telecommunications/articles/annual-review-of-football-finance.html>.
19. European Commission Communication of 5 March 2001, IP/01/824.
20. European Commission Decision of 27 June 2002, Comp/IV/37.806 (ENIC/UEFA). https://ec.europa.eu/competition/antitrust/cases/dec_docs/37806/37806_7_3.pdf

21. European Commission, Guidelines on the application of Article 81(3) of the Treaty, 2004, OJ No. C 101.
22. European Parliament, Resolution of 29 March 2007 on the future of professional football in Europe, [2006/2130(INI)]. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007IP0100>.
23. FIFA, Commentary for the Regulation on Status and Transfer of Players (2021 edition).
24. FIFA, Global Transfer Market Report 2019. <https://digitalhub.fifa.com/m/248987d86f2b9955/original/x2wrqjstwjoiainncnod-pdf.pdf>.
25. FIFPro, Press Release 17/12/13.
26. FIFA, Regulations on the Status and Transfer of Players, March 2022 edition.
27. KEA and CDES, The Economic and Legal Aspects of Transfer of Players, Report for the European Commission, 2013. <https://ec.europa.eu/assets/eac/sport/library/documents/cons-study-transfers-final-rpt.pdf>.
28. KEA and CDES, An update on change drivers and economic and legal implications of transfers of players. Final Report to the DG Education, Youth, Culture and Sport of the European Commission, 2018. <https://sport.ec.europa.eu/sites/default/files/report-transfer-of-players-2018-en.pdf>.
29. Matt Slater, FIFPro drops bid to outlaw the transfer system as FIFA agrees to a review and gives players right to cancel contracts if clubs refuse to pay them. *Daily Mail*, [online] <https://www.dailymail.co.uk/sport/article-5055015/FIFPro-drops-bid-against-FIFA-outlaw-transfers.html>.
30. UEFA.com. "Explainer: UEFA's New Financial Sustainability Regulations: Inside UEFA," published April 7, 2022. <https://www.uefa.com/returntoplay/news/0274-14da0ce4535d-fa5b130ae9b6-1000--explainer-uefa-s-new-financial-sustainability-regulations/>.
31. CAS Decision 2008/A/1519, *Shakhtar Donetsk v. Matuzalem*.
32. CAS Decision 2010/A/2145–2147, *Udinese v. De Sanctis*.
33. CAS Decision 2007/A/1298–1300, *Heart of Midlothian v. Webster and Wigan Athletic*.
34. CAS Decision 2018/A/5925, *Ricardo Gabriel Álvarez v. Sunderland AFC*.
35. CAS Decision 2020/A/6727; *Benjamin Acheampong v. Zamalek Sports Club*.
36. CAS Decision 2020/A/6770, *Sabah Football Association v. Igor Cerina*.
37. CAS Decision 2020/A/7231 *Nejmeh Club v. Issaka Abudu Diarra*.
38. Judgment of 15 December 1995, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*, Case C-415/93, EU:C:1995:463.
39. Judgment of 12 December 1974, *Walrave and Koch v. Association Union Cycliste Internationale*, C-36/74, EU:C:1974:140.
40. Judgment of 18 July 2006, *David Meca-Medina and Igor Majcen v Commission of the European Communities*, Case C-519/04, EU:C:2006:492.
41. Judgment of 23 April 1991, *Klaus Höfner and Fritz Elser v Macroton GmbH*, Case C-41/90, EU:C:1991:161.
42. Judgment of 16 June 1987, *Commission v Italy*, Case C-118/85, EU:C:1987:283.
43. Judgment of 26 January 2005, *Laurent Piau v Commission of the European Communities*, Case T-193/02, EU:T:2005:22
44. Judgment of 16 March 2010, *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC*, C-325/08, EU:C:2010:143.
45. Opinion of 16 July 2009, *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC*, Case C-325/08, EU:C:2010:143.