



The Economic and Legal Aspects of Transfers of Players

Executive Summary

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KEA – CDES: Study on the economic and legal aspects of transfers of players

EXECUTIVE SUMMARY

I. Transfer of Players in Sport

Professional transfers are regulated by a complex set of regulations established by sports governing bodies. Rules are subject to a large degree of standardisation at international level through international sports institutions such as FIFA for football and FIBA for basketball. The justification for international standardisation stems from the ambition to make competition rules universal in order to promote international sporting exchanges.

The extensive autonomy granted to sporting bodies for the self-regulation of their activities is a fundamental characteristic of sport as compared to other economic and social activities. The transfer environment is subject to different layers of rules and regulations. The study aims to document the different layers of rules and to consider their interactions.

Transfer rules in sport are a derogation from normal employment practices in the following ways:

- i) They limit the freedom of players to move from one employer to another and set restrictive conditions for such moves. Contracts may be terminated by either party without consequences (such as sporting sanctions) only if justified by “just cause”¹;
- ii) They establish a system of transfer fees between clubs in order to prevent a total ban on players’ mobility.

Free movement of players is restricted under transfer rules with a view to maintaining fair and balanced competition. Are these derogations still justifiable in particular in a context of high transfer fees? Should those rules be revisited in light of economic and legal development in the sport sector? Are there alternatives that could satisfy the objective of ensuring fair and balanced competition?

This study comes 17 years after the Bosman ruling which transformed transfer practices in professional sport and 11 years after the informal agreement between FIFA, UEFA and the European Commission which, to a large extent, established the new FIFA rules on transfers. It takes place at a time when professional sport is confronted by new challenges:

- A debt crisis which threatens financial and contractual stability in the sector;
- The influence of criminality on the game (trafficking of players, illegal betting, corruption and fraud, abusive terms of employment);
- New forms of investment in players which endanger the capacity of sporting bodies to regulate their activities (Third party ownership – TPO);
- The questioning of federations’ role and power in organizing and regulating the game in the face of more powerful clubs, run like businesses and, sometimes quoted on the stock exchanges with an obligation to deliver financial results to their shareholders.

At the core of this assignment lies the question of sport’s specificities and the justification for derogation from normal employment practices. The rules are examined in relation to sport’s alleged specificity as an activity deserving specific treatment in the implementation of general law and which, to a large extent, justifies the autonomy of sports institutions in regulating their competition. The EU institutions

¹Article 14 and 15, FIFA Regulations on the Status and Transfer of Players, 2010.

and notably the European Court of Justice are playing a key role in defining the scope of sport's specificity.

Therefore, this research has been undertaken in the context of the policy objective to assert a European dimension of sport that goes beyond the mere implementation of rules on the free movement of players or competition.

II. Transfer rules in the European Union

Transfer rules are at the heart of sport's governance in particular in football. They influence regulation over:

- The promotion of youth development and the protection of minors;
- Competitive fairness and openness through rules on contractual stability, solidarity and redistribution mechanisms.

Measures aimed at ensuring that football competition obeys the principle of fairness and openness relate to:

- Contractual stability between clubs and players;
- Registration periods of players for transfers (transfer windows);
- Redistribution of revenues between clubs as part of the solidarity mechanism and youth development;
- Monitoring of transfer transactions and clubs' financial accounts to prevent fraud and other abuses.

A fair and balanced competition is a competition in which everyone that participates has an equal chance of winning and is treated in the same way without discrimination.

The spectrum of public intervention in transfers can be considered as broad but quite superficial. The scope of the provisions varies from a brief description of player transfers (Lithuania) to more detailed provisions covering transfer fees or employment relationships between clubs and players (Greece, Belgium).

On one hand, countries such as Bulgaria, Greece, Hungary and Lithuania have established legal provisions for transfers in their respective Sports Acts. On the other, Belgium, Italy, Portugal and Spain govern transfers via other laws (mostly laws on the employment of sports professionals). In general the small number of public rules is intended to empower sporting bodies to regulate certain matters such as transfers but without being very prescriptive.

The interpretation by EU institutions of sport's specificities is essential to understand sporting bodies' self-regulatory powers. EU institutions emphasise the importance of rules aimed at supporting solidarity, redistribution of resources amongst clubs (to promote fair and balanced competition) and youth development as key reasons for justifying derogations from traditional implementation of EU Treaty rules.

Another specific argument for justifying specific transfer rules in Europe relates to the way Europe has historically organised its competitions. The latter are characterised by a system of promotion and relegation both at national and European levels.

The *Bosman* ruling² had a decisive influence on the development of professional football in Europe and beyond by reinforcing the social rights of players and by abolishing nationality requirements in the composition of teams at club level. Remarkably, the Court assessed the proportionality of the rules in force at that time in relation to an important criterion: the ability of a rich club to recruit the best players and therefore to undermine the balance of competition³.

The CJEU *Meca Medina* decision⁴ set the rules and scope for the assessment of the validity of transfer rules in relation to EU law principles on free movement and competition. According to the Court in Luxembourg, such rules can avoid prohibition if they pursue a legitimate aim compatible with the Treaty: i) They must be applied in a non-discriminatory manner; ii) They must be justified by overriding reasons in the public interest; iii) They must be suitable for securing the attainment of the objective they pursue and; iv) They must not go beyond what is necessary for that purpose.

The European Court of Justice recognises the following specificities in the implementation of EU rules with respect to transfer rules, whilst exercising a control on the proportionality and necessity of the measure (*Meca Medina*):

- Training compensation and youth development (*Bernard*);
- Measures to ensure fair and balanced competition (*Bosman* and *Lethonen*);

Transfer rules in football have also been subject to an informal agreement between the European Commission and international football bodies since 2001: “The 2001 Agreement”. This “political” agreement led to a profound reform of the transfer system in football as set by FIFA rules. The Commission required FIFA to amend its transfer regulations with regard to the following points:

- Training compensation to be allowed in the case of transfers of players under 23;
- The creation of one transfer period per season and a further limited mid-season window;
- The duration of minimum and maximum contracts would be 1 and 5 years respectively, except where national legislation provides otherwise;
- The creation of a solidarity mechanism that would redistribute income to clubs involved in the training and education of football players.

The European Commission attaches great importance to transfer rules that seek to promote youth development and that consolidate solidarity mechanisms between clubs. Its initial opinion on UEFA's home-grown players rule in 2008 is further evidence of the EC's priorities in assessing transfer rules.

The mapping highlights these specificities in transfer rules, distinguishing sports rules aimed at ensuring a fair and balanced competition and those aimed at protecting minors and promoting youth development.

The report examines transfer rules adopted in other sports or in other continents and which are aimed at promoting fairer competition: the quasi-absence of transfer fees in American major leagues, or the limit on transfer fees as implemented by the Australian soccer league are two illustrative examples.

² C-415/93 Union Royale Belges des Societes de Football Association and others v Bosman and others, (1995) ECR I-4921

³ C-415/93 Union Royale Belges des Societes de Football Association and others v Bosman and others, (1995) ECR I-4921., para 135.

⁴ Case C-519/04P David Meca Medina and Igor Majcen v. Commission (2006) ECR I-6991.

III. The Economics of transfers

The legitimacy of transfer fees and their main determinants are analysed in relation to both a cost-based approach and a talent-based approach. Historically, the second determinant has prevailed. This is not necessarily a bad solution. Indeed, talent is critically important in determining the relative value of players. However, other elements disturb the transactions and explain the discrepancies between the price and value of players in the market. The gap between value and price comes from three different elements: i) A player's value is not just his value on the pitch, he may also have an economic value (image, commercial impact...); ii) The best players have a stronger negotiating position; iii) Transfer fees have a speculative dimension which can also lead to legally doubtful transactions.

The study demonstrates that the total amount of transfers in football for 2010/11 was about €3bn in the EU with significant elements of concentration: the "big-5" represented more than 55% of this amount. The study establishes that between 1995 and 2011, the number of transfers in the EU has been multiplied by 3.2 and the total value of transfer fees by 7.4.

	Number of transfers	Value (€)
1994-95	5 735	€402 869 000
1999-2000	8 531	€1 704 603 000
2005-06	15 952	€1 952 066 000
2010-11	18 307	€3 002 198 000

Source: CDES (based on data provided by FIFA and CIES)

From an economic point of view, the global transfer market has much less importance in basketball, representing a maximum of €27m for the 2010-11 season.

Professional football has recently been confronted with a financial crisis in spite of strong income growth. The turnover of the first division championships of the 53 UEFA member countries increased from €9 billion in 2006 to €12.7 billion in 2010.

But overall net losses increased steadily over the period 2006-2010 to reach €1.64 billion in 2010. 56% of the clubs concerned are reporting net losses for the year 2010⁵.

Furthermore, the report focuses on the relationship between sporting and economic logic. It highlights an existing paradox, since competing teams must cooperate with each other to produce a viable league competition. Special characteristics of the sports industry consequently lead to the need to preserve a minimum level of uncertainty, which in return guarantee the value of the competition.

The study highlights the strong segmentation of the labour market in European football and its main developments. Based on the economic literature and on many experts' advice, the study shows that, unlike theories traditionally used, the market is not a market of pure and perfect competition. It is composed of three main segments with different structures and on which the market power of the different stakeholders are not the same.

- the higher primary market, on which a limited number of players (the "superstars") faces a limited number of clubs, has a monopolistic structure. In this market, the players (and their representatives) have a considerable market power. On this market, we can observe the highest transfer fees and the highest wages.
- the lower primary market, on which a limited number of players (the good and experienced ones) faces a huge number of clubs, has an oligopolistic structure. The players (and their

⁵ The European Club Footballing Landscape, Club licensing benchmarking report, financial year 2010, UEFA

representatives) have less market power than the superstars and can not negotiate the highest wages.

- The secondary market, on which many players face a limited number of clubs, has an oligopsony structure. On this segment, it is the clubs who have the most important market power in determining the prices (wages, transfer fees).

It concludes that the main risks of unwanted consequences concern the primary segment (both higher and lower). Furthermore, the study shows that the market suffers from an important concentration: a limited number of clubs (those with the largest incomes and/or supported by investors economically powerful) makes the most important part of transfer expenditures. This situation can lead to many problems.

An economic mapping of football demonstrates that there are two kinds of countries in the transfer market: exporters and importers of players. Among exporting countries, the study highlights two different profiles: one in which clubs support their economic sustainability through revenue from transfers (Portugal, Sweden, Iceland, Finland, Czech Republic, Hungary, Bulgaria and Slovenia); or one in which this contribution to clubs is less significant or more irregular (Belgium, the Netherlands, Denmark and France). For countries that are importers of talent, the study identifies two different cases. In certain countries, clubs systematically damage their financial results by these transfers (England, Spain, Italy, Cyprus and Greece); while, for clubs in other countries, this activity has little impact on their financial results (Germany). Finally, the mapping emphasises the idea that some countries operate as a transfer hub: i) Portugal, between Brazil and Europe; ii) Scotland, between the continent and England; iii) France is a favoured entry hall for the Big-5 and a hub between Africa and Europe.

In basketball, mapping shows that Spain is the leading market for professional basketball in Europe. The report highlights that Balkan and Baltic countries have nurtured a large proportion of world-class players in basketball. It mainly highlights the great instability in teams' composition.

The analysis then considers the actual functioning of the transfer system and the different types of transfers. Two elements appear essential in negotiating transfers: information and the schedule (timing). The study notices that loans prove very important as part of clubs' adjustment policy.

Strategies of actors are also key factors in explaining the functioning of the transfer system. Since the *Bosman* case, some players and agents involved in the higher primary segment have increased their bargaining position. This led also to create the superstar effect.

In the primary lower segment, clubs have developed two different strategies, either: i) They produce talent themselves and try to keep it as long as possible; or ii) They develop their recruiting and development skills with players from the second market.

Although the power of players and agents in this lower primary segment is significantly less than in the market for superstars, or even the higher primary market as a whole, it still remains strong, particularly in a domestic context. In basketball, outside the superstar segment, the mobility of basketball players is much greater than that of footballers and is almost the norm.

In relation to the secondary segment, clubs here are rather in a position of strength with regard to most players. On this segment, football players have some difficulties to master the development of their career – changing clubs is often imposed and is rarely a personal choice. This situation is even more true for basketball players.

In general the transfer market suffers from a lack of transparency in transactions. The analysis shows that the current system is encouraging a competitive imbalance.

IV. Conclusions and Recommendations

The EU is the largest transfer market in the world. It has the most successful and well-known clubs in the world and the best players are attracted to the European national leagues.

The report shows that there is very little interference from national public law but that EU law has had an important impact on the evolution of the rules by favouring mobility of players and by recognizing to a significant extent sport's specificities thus legitimising the recourse to rules that are a derogation from normal employment practices.

Football is one of the few economic and social activities which has taken on a true European dimension. Professional football is indeed characterised by a very high degree of cross-border mobility. The composition of football teams is a reflection of this. 90% of labour disputes in football relate to unpaid salaries. We found little evidence of a large number of national disputes related to the implementation of transfers between clubs and players. Matters are usually settled in an amiable way and fairer arbitration mechanisms are to be encouraged.

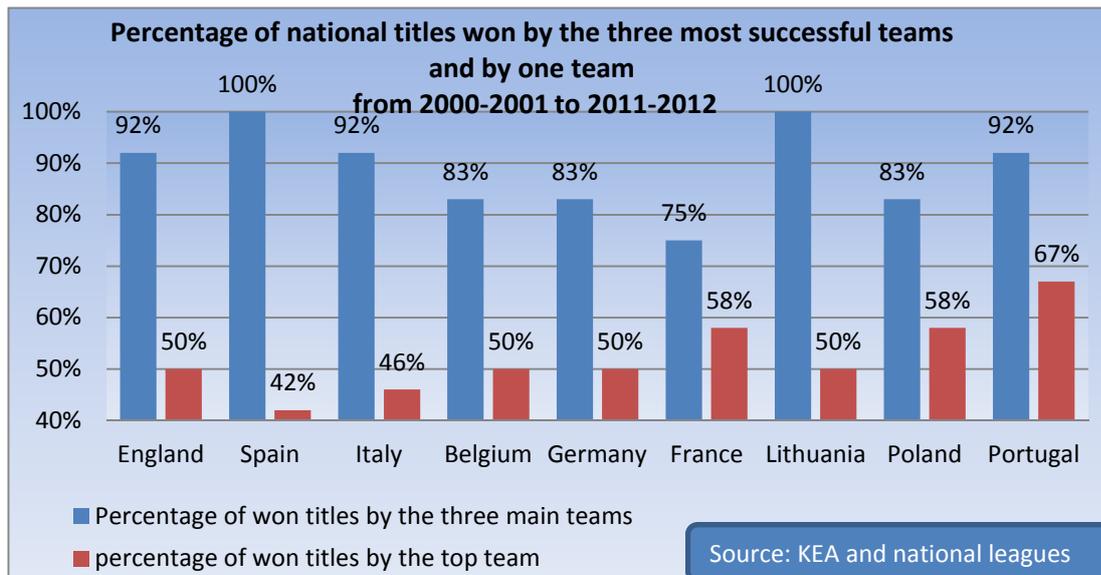
The system of transfer fees essentially benefits clubs and intermediaries (which often act on a club's instructions) as transfers constitute an important source of revenue for them. Rules that impose more transparency of transfer transactions (such as FIFA TMS) will contribute significantly to fighting fraud and malpractices generating illegal activities; and more generally to improve transparency in football.

The study highlights 4 main findings:

1. The Increase in transfer fees: The study establishes that between 1995 and 2011, the number of transfers in the EU has been multiplied by 3.2 whilst the total value of transfer fees has been multiplied by 7.4.
2. The need to address competitive imbalance: While one of the main objectives of sporting institutions is to guarantee the integrity of competitions and to achieve competitive balance, the report observes that the evolution of the transfer market affects the openness of sports competitions and questions the imperative of uncertainty in sport results. This is the very essence of sports activities which aim to reward sporting accomplishment independently of financial means.

The extent to which sports competition in Europe is now rigidified in both football and basketball leads to question the idea of whether sports rules in Europe are still based on promoting sporting excellence through a system of promotion and relegation or whether *de facto* Europe is slowly embracing a system of closed leagues (at elite level).

In any event the study shows that the current transfer rules do not fight effectively against competitive imbalance as there is a strong link between transfer expenditures and sporting results in particular since 2001. This observation is valid at both national and European level competition.



3. Redistribution and solidarity compensation (linked to the funding of youth development) derived from transfers have a limited impact on competitive balance

Redistributive effects of transfers between clubs of the same country from top leagues to lower leagues and redistributive effects between countries are observed. However, overall solidarity compensations directly linked to transfers (i.e. training compensation and solidarity mechanism), only account for 1.84% of the total agreed transfer fees within Europe. Redistribution linked to transfers does not have a sufficient impact to affect competitive balance in a positive way.

4. Solidarity schemes managed by international federations should better address competitive imbalance

Both FIFA and UEFA operate generous systems of solidarity aimed at either national federations or clubs. Considering UEFA policies on solidarity mechanisms, the report highlights that the system is skewed towards supporting the most successful clubs, which happen to be the wealthiest in their respective leagues. This means that solidarity payments to non-participating clubs in the UCL competition represent less than 6% of the total money received by the 32 clubs participating in the Champions League. This contributes to consolidating existing supremacies and fails to address the competitive imbalance. It is reflected in the results of UEFA competitions year after year.

It is felt that solidarity mechanisms and youth development programmes should play a more important role in addressing the issue of competitive imbalance.

The report has identified the following main challenges that need to be addressed by sports authorities:

1. Increase transparency in transactions (to prevent fraudulent activities and to support better governance and implementation of rules);
2. Maintain competitive balance through better redistribution mechanisms;
3. Sustain the social functions of sport (youth development);
4. Establish a fair and efficient dispute resolution system (to ensure equal representation, limit costs and delays);
5. Increase cooperation with law enforcement authorities to police unlawful activities (money laundering, undue investment in sport).

Authors of the report take the view that transparency in transaction dealings will contribute to limiting opportunities for fraud and unlawful practices. Therefore, the Transfer Matching System (TMS) from FIFA and Financial Fair Play (FFP) from UEFA constitute very key developments whose implementation should be encouraged. They show the willingness of sporting bodies to tackle in a serious manner abuses related to some extent to the transfer market.

The findings do not argue for the end of transfer rules as implemented by sports governing bodies. It is proposed to consider amendments to the regulatory framework governing transfers to achieve the policy objectives set out above. The report formulates 21 proposals according to five action lines:

1. Improve fair and balanced competition through better and increased redistribution between clubs as well as control over financial transactions and accounting linked to transfers:

Seven proposals are formulated: i) Establish a “fair play levy” on transfer fees beyond a certain amount in order to fund a redistribution mechanism from rich to less wealthy clubs. The aim of the levy would be to restore some competitive balance. The threshold, the rate of the levy and its scope should be determined by international football governing bodies in consultation with clubs; ii) Better publicise the movement of players to ensure that solidarity compensations are paid to clubs and that the latter are aware of their rights in this respect; iii) Establish a limit on the number of players per club; iv) Regulate the loan transfer mechanism; v) Address the third-party ownership issue by adopting sport rules implementing sport specificity to protect the integrity and freedom of players as well as the fairness of sport competition. The rules should not disproportionately hinder financial investment in sport and should be compatible with EU rules on free movement of capital; vi) Support the implementation of Financial Fair Play (FFP) rules; vii) Address teams’ instability in basketball.

2. Limit transfer fees:

There are two proposals: i) Limit excesses in transfer fees after contract extension. Such limit aims to avoid the possibility for clubs to extend the protected period with a view to trigger the payment of transfer fees. The system could provide for the transfer fee to be capped at 70% of the gross salary owed by the club to the player for the entire period of his contract; ii) Regulate the use of “buy-out clauses” to prevent abusive practices and to establish objective criteria.

3. Support youth development and protection of minors:

Four proposals are made : i) Strong sanctions to ensure more effective compliance with solidarity payments; ii) Increase the solidarity mechanism percentage from 5 to 8% of every transfer fee; iii) Harmonise conditions of entry of young players from third countries into the EU; iv) Improve rules on minors in the context of the European social dialogue.

4. Improve governance through transparency and fair dispute resolution mechanisms:

Five proposals are formulated: i) Extend the mission and impact of the TMS on three elements: monitoring, transparency and domestic transfers; ii) Make compulsory the publication online for each national federation of a standardised annual report on transfers with minimum information including name of parties and agents; iii) Make compulsory the publication online of top European clubs’ dealings on transfers; iv) Improve dispute settlements by developing national dispute resolution mechanisms; v) For basketball, improve the means of the dispute commission of FIBA as it is under resourced.

5. Develop cooperation with public authorities for better law and transfer rules’ enforcement:

Three proposals are considered: i) Use the existing EU sectorial Social Dialogue Committee in the Professional Football sector established by the Commission decision of 20 May 1998 – 98/500/EC

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(started in July 2008) to consider rules on the following issues: protection of minors; excessive transfer fees; solidarity; fair and balanced competition; rules on non-EU players; ii) Improve and extend law/rules enforcement; iii) Establish within FIFA a Clearing House and Transfer Compliance Unit working with public authorities on law enforcement.