

## Transfers of players: Towards a new regulatory framework to acquire a new legitimacy?

If transfers of players have become the focus of much attention and continue to make headlines, this is both due to their extravagant amount as well as their irrational nature and also the fact that they raise the fans expectations. French club Paris Saint-Germain (PSG) provides an edifying example. Since summer 2011 and the arrival of Qatari investors, PSG has spent more than €250 million, undoubtedly the price which they hope will put their club up among the top European teams. Three players have thus been recruited for a sum of more than €40 million. Other clubs are not being outdone and the €94 million spent by Real Madrid (2009-2010) to recruit Cristiano Ronaldo constitutes the absolute record. Nevertheless, in parallel, professional sport and in particular European football are facing a debt crisis which is threatening financial and contractual stability in the sector. In 2010, the losses of first division clubs have increased by 33% compared to the previous financial year, to reach an all-time high of €1.6 billion. In that same year 2010, 56% of the 733 European clubs have experienced losses. At a time when the European Union is engulfed in a serious economic, financial and social crisis, clubs' management require an answer from sport governing bodies in charge of regulating the sector.

17 years after the Bosman ruling which transformed transfer practices in professional sport and above all 11 years after the informal agreement between FIFA, UEFA and the European Commission on the transfers of players, the so-called "2001 Agreement"; a study coordinated by KEA for the European Commission provides a mapping of the legal and economic issues related to transfers of players in the European Union.

### 2001 Agreement: an overhaul of the transfer system by FIFA

Following complaints and after more than two years of negotiations between stakeholders, a "political" agreement made in 2001 has led to a significant reform of the transfer rules as established by FIFA for the football family.

The 2001 Agreement had notably three objectives<sup>1</sup>: i) ending exorbitant transfer fees; ii) ensuring a minimum degree of contractual stability; iii) providing financial solidarity between football clubs so as to promote a competitive balance in football competitions.

New rules established – despite violations of Community law in relation to freedom of movement and labour law – would be justified under European law as they respond to the specific requirements of the sporting activity: ensuring balanced and fair competition as well as promoting youth development. At the core of transfer rules and their validity under EU law lay the question of sport's specificities justifying derogation from normal employment practices.

### A decade after the implementation of the 2001 Agreement what are the results?

Under European law, transfer rules are justified by the implementation of the objectives previously described provided that they respect the following principles<sup>2</sup>: 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. Consequently, to remain legitimate, these derogations must prove their efficiency in meeting the pursued goals while remaining compatible with EU law requirements. We will focus on the implementation of two objectives followed by sporting regulation: on one hand, balanced competition and on the other hand, fair competition.

## BALANCED COMPETITION – EQUITY

### Is professional football in Europe slowly embracing a system of closed leagues at elite level, where the same teams dominate year after year?

Transfer rules are intended to address competitive imbalance while ensuring clubs a certain level of contractual stability. Yet, the transfer markets' evolution affects the balance of sporting competitions. Clubs that benefit from significant financial means are able to recruit the best players and consequently reinforce their dominance to win titles. In return, their sporting results ensure that they receive a higher income. These clubs can then keep spending high amounts of money on the transfer market and they are thus maintaining the already existing competitive imbalance. This self-sustaining mechanism brings into question the necessary uncertainty of results, that should essentially reward and reflect sporting accomplishments independently



1. Communication CE 5 March 2001 IP/01/824. Letter of Michel Zen-Ruffinen, to Mario Monti, European Commissioner, of 30 October 2000.  
2. The CJEU Meca Medina decision set the rules and scope of authorities' assessment of the validity of transfer rules in relation to EU law principles. Case C-519/04P David Meca Medina and Igor Majcen v. Commission (2006) ECR I-6991.

of financial means. The very essence of sports competitions, and what distinguishes them from traditional economic competition, is at stake.

Current transfer rules do not manage to 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.

At national level, the 3 top teams – those which have won most titles – have generally been sharing more than 80% of the titles since the season 2000-2001; and the top team often represents 50% of these winning titles.

At European level, since the 2001-2002 season, the Big-5<sup>3</sup> qualifies more and more clubs in the “UEFA Champions League (UCL)” to the detriment of other leagues, which have seen their number of qualified clubs in quarter finals cut in half.

This phenomenon concerning the European competitions strongly affects the balance of competition at national and European levels. Considering UEFA policies on solidarity mechanisms, the system is skewed towards supporting the most successful clubs, which happen to be the wealthiest in their respective leagues. Indeed, 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 same competition.

## FAIR competitions and the issue of transfer of players whose OWNERSHIP partly belongs to third parties, not connected to football

### Players’ ownership by third parties (not connected to clubs) and competitions’ integrity: what stakes? New threat on football?

This practice invented in South America is spreading to Europe. It refers to the possibility for a third party (i.e. an independent investor from the club of which the player is an employee or self-employed) to acquire rights on the future transfer value of the player.

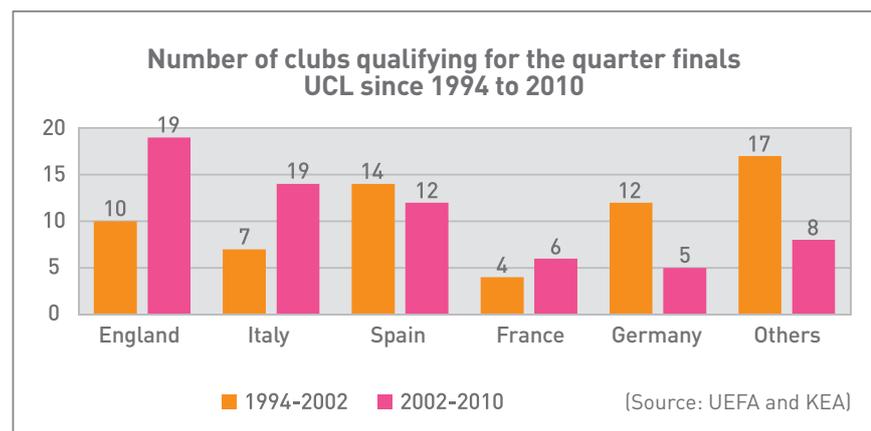
At European level, clubs and football governing bodies are divided in their view of the value of such a mechanism.

For some, this practice endangers the fairness of competition as third parties may have an interest in manipulating the result of a game through influencing the behaviour of players in whom they have a stake. Similarly, a third party could both have ownership of some players and be the owner of a club. This situation could reinforce the third party’s will to influence sporting performances of “his” players in his club’s interest<sup>4</sup>. This mechanism can also go against the objective of contractual stability since if this practice spread to the whole of Europe, movement of

players is likely to increase so as to achieve financial gains. In addition, this would exacerbate inflationary pressures on transfer fees.

Eventually, from an ethical point of view, this practice also raises the question of undue control over a human being’s life for profit.

For others, this mechanism is a way to attract new investors in football. It could help clubs to reduce the competitive gaps, in particular for those that cannot recruit top players due to lack of financial means and the economic weakness of numerous national championships.



In this context, the study proposes to address the need to improve competitions’ equity. It supports the implementation of UEFA Financial Fair Play but also considers a limit on the number of players per club. Furthermore, it proposes the establishment of a “fair play levy” on the transfer fees beyond a certain amount. This should fund a redistribution mechanism from rich to less wealthy clubs in order to restore some competitive balance.

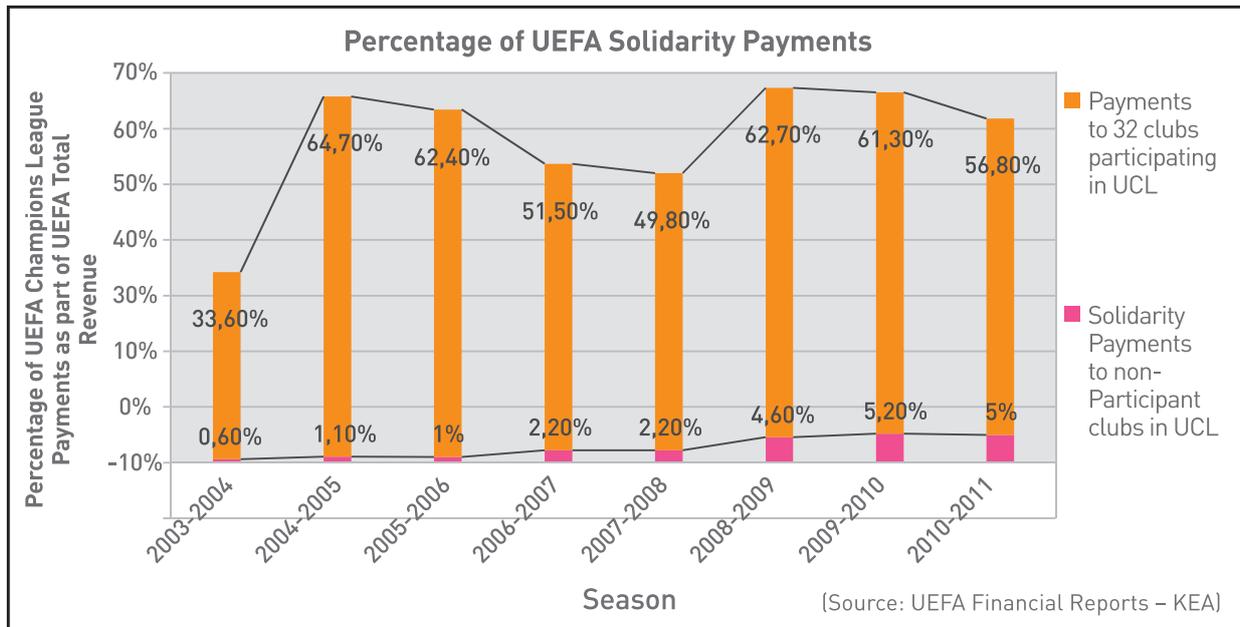
UEFA’s Executive Committee<sup>5</sup> has recently adopted an unequivocal stance on the ownership of football players by third parties – namely, that it should be prohibited as a matter of principle. UEFA has requested FIFA “to issue worldwide regulations banning third-party ownership of players, which is seen in particular as potentially distorting the integrity of competitions”. So far, three countries in the EU have adopted specific provisions to ban “third-party ownership”: England, France and more recently Poland.



3. The Big-5 corresponds to the five top European championships. It is composed of the English, German, French, Spanish and Italian championships.

4. This could happen during a direct confrontation when players he has stake in play against his clubs. However, it can also happen in an indirect manner when players he has stake in play against a club which proves to be in competition with his own club – either for a qualification, to win a title or to avoid relegation.

5. www.uefa.com, 11/12/2012 <http://fr.uefa.com/uefa/aboutuefa/organisation/executivecommittee/news/newsid=1906458.html>



The possibility of invoking sport specificity to justify the regulation or even prohibition of this practice must comply with Community law. The latter notably guarantee free movement of services and free movement of capital.

### What conclusions?

A decade after the 2001 Agreement, the study highlights the difficulties and issues that the transfer market faces in order to ensure balanced and fair competitions. Sport governing bodies are committed to implementing these two objectives. Yet, fairness is today threatened by the emergence of a new investment practice; and balance is less and less guaranteed for national and European competitions as only a very limited number of clubs is able to

compete to claim the trophies. The transfer market system participates in maintaining the existing supremacies as there is a strong link between transfer expenditures and sporting results. It is appropriate to consider amendments to the international rules in relation to transfers of players so as to give the sporting regulatory framework, guarantor of the spirit of the game, a new legitimacy.

The report (in English) as well as the executive summary (in English and in French) can be downloaded on KEA's website: [www.keanet.eu](http://www.keanet.eu)

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