

Transfers of players: PART 2

Under European law, transfer must respect the following principles¹: 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 of the 2001 Agreement: on one hand, ending "exorbitant" transfers fees and on the other hand, ensuring solidarity between clubs and youth development.

TRANSFER FEES, FREE MOVEMENT, "BUY-OUT" CLAUSES

Has the new regulatory framework on transfers of players manage to end "exorbitant" transfer fees?

Between the 1995-1996 and 2010-2011 seasons, the number of transfers in the EU multiplied by a factor of 3.2 from 5,735 to 18,307; while over the same period, the total value of transfer fees went up by a factor of 7.4, from € 403 million to € 3 billion.

| Seasons | 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 | 8 307 | € 3 002 198 000 |

Figure: Estimation of the weight of transfers in Europe during 94/95, 99/00, 05/06, 10/11 seasons (source: KEA-CDES)

The objective of reducing transfer fees was initially met since the transfer market was marked by a period of recession and stagnation from 2001 to 2006.

However, transfer expenditures have increased again, reaching new records especially for top players.

The richest league – the English Premier League – saw its transfer expenditures rise from € 600 million during the 2001-2002 season to € 932 million in the 2007-2008 season, and € 854 million the year after. Transfer fees have thus reached new records – € 94 million was paid to recruit Cristiano Ronaldo – and this evolution mostly benefits players

in the primary segment (i.e superstars and good/experienced players). [See diagram on p. 2]

One of the reasons for this situation is the way the mechanism of protected period is regulated. It has become common practice amongst clubs to regularly renew the contracts of their best players so as to create a new contract and therefore start a new protected period. This contractual practice led to an effective circumvention of the aim of the 2001 Agreement with the European Commission.

Reform on transfer rules was to end "arbitrarily calculated fees that bear no relationship to training costs".
Mario Monti the then European Commissioner in charge of Competition

Therefore, our report proposes a limit on transfer fees between clubs after contract extension. For instance, a system could provide that the transfer fee is capped at 70% of the gross salary owed by the club to the player for the entire period of his contract.

To avoid drifts and inefficiency, threshold effects, some exceptions or complementary criteria could be taken into consideration when determining the maximum cap, as is already the case when calculating training compensations. Moreover, the established percentage can be flexible depending on the level of the salary since a uniform percentage rate will not effectively take into account different players' situations. This would limit the renewal of a player's contract for the purpose of increasing transfer fees.

FOCUS: Exorbitant transfer fees, free movement and « buy-out » clauses

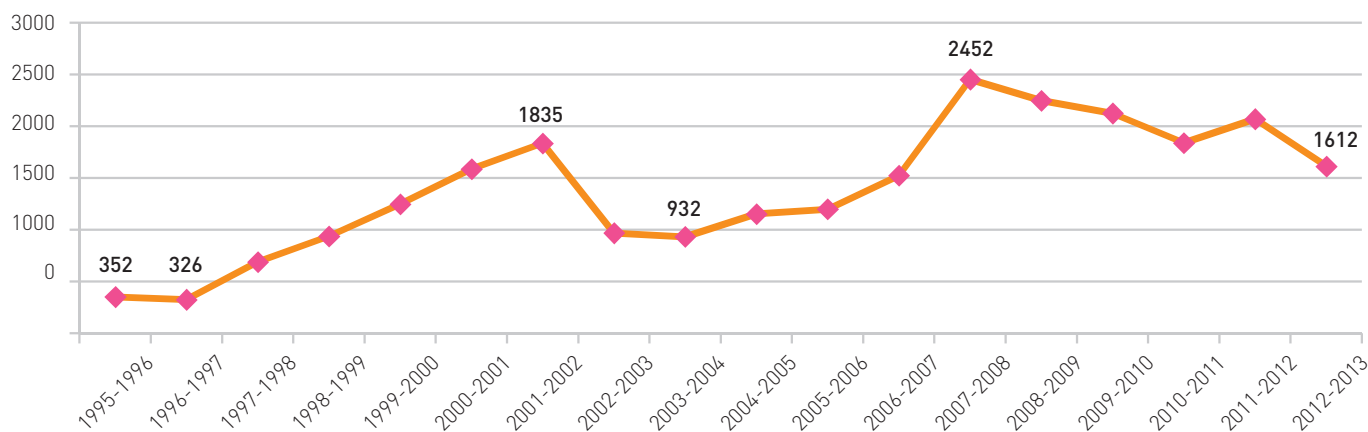
The issue of very high transfer fees must also be addressed in light of the criticisms from FIFPro on the re-establishment of a barrier to the free of movement of players.

Currently, should a player unilaterally terminate his contract without just cause, he is then liable to pay compensation for the damage suffered by the club employer, both sporting and financial. This contractual compensation can dissuade the player from taking such an initiative. The recent decision from the CAS which set in the 2009 "Matuzalem" case the principle of "positive damages" exposes players to paying compensation at such levels that it effectively prevents the free movement of players. In this respect, FIFPro considers that players are likely to be less free than before 1995, before the Bosman era.



1. 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.

Evolution of transfer expenditures of the big-5 between 1996 and 2012 (€m)



[Source: www.transfermarkt.de, press (processing CDES)]

When recruiting a player, there is a possibility for clubs and players to insert a “buy-out-clause” in the contract. This stipulates an agreed amount of money for which, if matched, players would be able to leave the club. However, despite the benefits of such a mechanism, these clauses often result in an excessive amount of compensation being fixed by the club, which effectively prevents the player from leaving his club². Lionel Messi’s buy-out clause, for instance, was increased from € 150 million to € 250 million after he signed his last contract, and that of his partner Pedro to € 150 million after he signed an extension to 2016. It is said that Cristiano Ronaldo’s contract has a € 1 billion buy-out clause.

Nonetheless, these clauses have the effect of reinforcing the principle of contractual stability desired by the football authorities, a principle that is the cornerstone of FIFA RSTP. The KEA’s recent study on transfers of players proposes regulating the use of buy-out clauses to prevent abusive practices and establishing objective criteria, which would complement the current Article 17 of FIFA RSTP, to limit the amount of compensation.

REDISTRIBUTION, SOLIDARITY AND TRAINING

What is the situation of redistribution between clubs? Of solidarity mechanism directly linked to transfers? And of youth development? What role does it play on competitive balance?

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 the solidarity mechanism which aims to reward clubs previously involved in a player’s development), only account for 1.84% of the total agreed transfer fees within Europe. Redistribution linked to transfers does not have sufficient impact to affect competitive balance in a positive way.

1.84% appears to be a derisory figure to promote effectively youth development via training compensation mechanisms. Indeed, the solidarity mechanism does not work sufficiently well for youth development despite being an objective of the 2001 Agreement. KEA’s recent study has pointed out the inadequate role played by the solidarity mechanism in the redistribution of income to clubs involved in the training and education of football players. Therefore, more efforts should be made in this direction.

The solidarity mechanism and youth development should be called upon to play a key role in addressing the lack of competitive balance in national and European competitions as well as encouraging training of young players. Therefore, the KEA study proposes the establishment of strong sanctions to better ensure the payment of these contributions and the increase of the solidarity mechanism percentage from 5% to 8% for international transfers.

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² For a Spanish contract, DRC decision no. 16394, labour, meeting of January 2006;

For a Brazilian contract, DRC decision no. 114796, labour, meeting of November 2004.

The relevant approach was confirmed by the Court or Arbitration for Sport (CAS) in its jurisprudence:

TAS 2006/A/1082 Real Valladolid CF SAD c/Diego Daniel Barreto Caceres & Club Cerro Porteno;

TAS 2006/A/1104 Diego Daniel Barreto Caceres c/ Real Valladolid CF SAD;

CAS 2004/A/780 Christian Maicon Henning v/Prudentopolis Esporte Clube & FIFA

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