

TALLINN UNIVERSITY OF TECHNOLOGY

School of Business and Governance

Department of Law

Yusuf Jama

Article 17 of the FIFA Regulation for the Status and Transfer of Players in the light of EU

Law

Bachelor's thesis

Programme HAJB08/14

Supervisor: Jenna Uusitalo

Tallinn 2019

I declare that I have compiled the paper independently
and all works, important standpoints and data by other authors
have been properly referenced and the same paper
has not been previously presented for grading.
The document length is 7935 words from the introduction to the end of summary.

Yusuf Jama

(signature, date)

Student code: 156980

Student e-mail address: yusuf.jama18@gmail.com

Supervisor: Jenna Uusitalo

The paper conforms to requirements in force

.....

(signature, date)

Chairman of the Defence Committee:

Permitted to the defence

.....

(name, signature, date)

TABLE OF CONTENTS

ABSTRACT	4
INTRODUCTION	5
1. EU AND SPORTS	8
1.1. Sport is subject to EU law.....	8
1.2. Pyramid structure of European sports organizations	11
2. FREE MOVEMENT OF WORKERS AND COMPETITION LAW.....	13
2.1. Overview.....	13
2.2. Article 45 TFEU	14
2.3. Article 101 TFEU	16
2.4. Article 102 TFEU	17
3. TERMINATION OF PLAYER CONTRACT	20
3.1. With just cause and sporting just cause	20
3.2. termination of contract without a just cause- article 17 RSTP	21
4. ASESMENT OF THE ARTICLE 17 IN THE LIGHT OF EU LAW	25
4.1. Free movement of workers & article 17 RSTP.....	25
4.2. Competition law & article 17 RSTP	27
CONCLUSION	30
LIST OF REFERENCES	32

ABSTRACT

Early termination of the player agreement is a constant issue in football context. Players who terminate the agreement early without a reason recognized by the FIFA are subject to the disciplinary sanctions.¹ The aim of the research is to critically analyze the football governing body FIFA regulation, in particular its compatibility with EU law. Through qualitative research method and by analyzing academic literature related to this topic, the research will answer the following question: “is the article 17 Regulation for the Status and Transfer of Players(hereinafter RSTP) in harmony particularly with the free movement of workers article 45 Treaty on the Functioning European Union(hereinafter TFEU)and competition law articles 101 and 102 TFEU”. The thesis also examines whether the recent amendment on the article 17 RSTP gives the much-needed reform to the subject matter. The study finds that the biggest problem is the requirement to compensate regardless of the financial status of the player. Therefore, the research introduces a proposal for the amendment which would improve the article 17 RSTP in a way that players would not often be subject to the disciplinary sanctions.

Keywords: European Union, Free movement of workers, Competition law, Regulation on status and transfer of players

¹ FIFA Regulation of Status and Transfer of Players, edition 2018 article 17.

INTRODUCTION

Regulations concerning player transfers and contractual restrictions have always existed in the football context.² Current regulation for the international player transfer between the clubs is governed by the RSTP.³ The objective of the regulation is to provide contractual stability between the player and the club in order to secure players right to free movement.⁴ Nevertheless, in 2015 worldwide representative organisation for all professional footballers, *Fédération Internationale des Associations de Footballeurs (FIFPro)*, started a legal action against the Fédération Internationale de Football Association (FIFA), and required from the commission to investigate the transfer regulations with the presumption that contractual stability provided in the RSTP is preventing fair competition between the clubs while undermining interest of the players.⁵ The main concentration of the FIFPro's complaint was towards the articles 18(3) and 17(RSTP).⁶ The article 18(3) RSTP prohibits players from concluding a new agreement before the existing agreement has expired.⁷ Whereas, the article 17 RSTP imposes consequences for the party who prematurely terminate the agreement without a Just Cause.⁸ Whether the claim on contractual stability being undermining players interest is valid argument requires a more comprehensive analysis on the matter, therefore this thesis the focus is limited towards the article 17 of RSTP.

² Pijetlovic.K. (2015). EU sports law and breakaway leagues in football. ASSER International Sports Law Series. p 109.

³ Czarnota, P, A. (2013). FIFA Transfer Rules and Unilateral Termination without Just Cause. –*Berkeley Journal of Entertainment and Sports Law* 2, p 2-46.

⁴ *Ibid.*

⁵ FIFPro World Players' Union. (2015). *FIFPro legal action against FIFA transfer system*. Accessible: <https://www.fifpro.org/news/fifpro-takes-legal-action-against-fifa-transfer-system/en/>. 21.3.2018.

⁶ FIFPro, (2015). *FIFPro's EU competition law complaint – executive summary*. Accessible: <https://fifpro.org/attachments/article/6156/FIFPro%20Complaint%20Executive%20Summary.pdf>, 31.12.2018.

⁷ FIFA Regulation of Status and Transfer of Players, edition 2018 article 18.

⁸ FIFA Regulation of Status and Transfer of Players, edition 2018 article 17.

According to the article 17 (1) RSTP, the party who is guilty of annulling the agreement without just cause is obligated to perform compensation for the suffered party.⁹ Compensation is calculated in accordance with the law of the territory in question as well as taking account the specific nature of sports and various objective criteria.¹⁰ However, the interpretation of this provision has caused difficulties when determining the amount of compensation.¹¹ For instance, in Matuzalem Court of Arbitration for Sports (CAS) awarded 11 858 934 euros to be paid as a compensation for breaching the article 17(1).¹² Subsequently, similar awards were seen in many cases where the issue concerned infringement of the article 17(1) RSTP. Hence, the compensation was deemed to be excessive by making impossible for players to terminate their contract early and leave to another club.¹³ Furthermore, article 17 (4) RSTP imposes sporting sanctions and compensation for a party who infringes the agreement or encourages the infringement.¹⁴ This is the other provision that has caused criticism due to capability of endangering the livelihood of the player.

The aim of this research is to assess whether the article concerning the consequence of the termination of a contract is accordant with the EU policy. Therefore, the research question is the following: is the article 17 RSTP in harmony particularly with the free movement of workers article 45 TFEU and competition law articles 101 and 102 TFEU?

The topicality of this thesis is evident since June 2018 FIFA introduced unexpected amendment regarding on the article 17(1) RSTP.¹⁵ The current amendment further specifies the method to be used when calculating the compensation which gives a player possibility to foresee the amount of compensation.¹⁶ Notwithstanding, the content of the article is more or less the same, therefore, due to the fact that compensations are still payable and assumption that compensation is excessive the hypothesis of this thesis is that article 17 RSTP violates at least the free movement of workers article 45 TFEU.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Pearson, G. (2015). sporting justifications under EU free Movement and Competition law: The Case of the Football 'Transfeer System', – *European Law Journal*, p 220-238.

¹² Court of Arbitration for Sport. CAS 2008/A/1519, (2009). point 177

¹³ Pijetlovic.K. (2015). EU sports law and breakaway leagues in football. ASSER International Sports Law Series. P 109.

¹⁴ FIFA Regulation of Status and Transfer of Players, edition 2018 article 17.

¹⁵ FIFA newsletter. (2018). *Amendments to the Regulations on the Status and Transfer of Players*, Accessible: <https://resources.fifa.com/image/upload/1625-amendments-to-the-regulations-on-the-status-and-transfer-of-players.pdf?cloudid=bmkwifiiyexkdnicpsip>. (last accessed 24.12.2018).

¹⁶ *Ibid.*

The author is using a qualitative research method by analysing academic literature relating to this topic and research question. The objective of this research and methodology used is to critically examine football governing body FIFA regulation and specifically *de facto* compatibility with the EU law. In addition, the thesis is divided into four chapters that lead to the research question. The chapters are the following:

The First chapter presents the evolution of the European Union approach in sports matter while emphasizing European Court of Justice (hereinafter ECJ) contribution for the development of the European sports law. It also introduces how European sports are organized and who regulates the sports in question.

The second chapter will briefly present the framework of the relevant European Union legislation. European Union legislation used in this thesis are the free movement of workers article 45 TFEU and competition law articles 101 TFEU concerning the anti-competitive agreement and 102 TFEU which apply to dominant abuse.

The third chapter will take a close look at the topic. In addition, the third chapter will briefly approach the articles 13,14 and 15 of the RSTP to give comprehensive insight regarding the applicability of the article 17 RSTP,

The fourth chapter will resolve whether the article 17 RSTP is accordant with the EU law, in particular, free movement of workers article 45 TFEU and competition law articles 101 and 102 TFEU. In order to do so, the assessment exploits the relevant sports cases that have referred to the ECJ.

1. EU AND SPORTS

1.1. Sport is subject to EU law

Former treaties European Economic Community (EEC) and European Communities (EC) did not mention at all about sports.¹⁷ Therefore, EU had no competence over sports until 2009 when the Lisbon treaty took an effect.¹⁸ In this chapter, the author will demonstrate how EU interacted with sports while emphasizing the significance of the European Court of Justice (ECJ) contribution to the EU sports law. Due to the length requirement of this thesis landmark cases will be briefly examined from the application of the EU law point of view.

Prior Lisbon EU had no formal competence, sports was generally viewed as a self-regulating entity which did not require legal intervention.¹⁹ However, EU exercised two policy approaches when interaction with the sports.²⁰ One of them was using sports as a tool to gain political interest in the field of sports.²¹ EU recognized the potential that sports had when it comes to influencing the European citizens and how they view the EU.²² The other policy approach by the EU was intervening sports through the ECJ to legitimatise sports practices which conflicted with the free movement and competition law.²³ Particularly, due to the economic elements of the sports, EU acknowledge that sporting practices should follow the rules of the treaty.²⁴ This kind of approach from the EU was seen in 1974 when the Walrave case was referred to the ECJ. The subject matter of the case was motor-paced cycling, in particularly, cycling associations rule which laid down a precondition requirement for pacemakers and competitors to be same nationals in order to be

¹⁷ Weatherill, S. (2014). *European Sports Law: Collected Papers*. 2nd edition. ASSER International Sports Law Series The Hague: T.M.C. Asser Press, p 2.

¹⁸ *Ibid.*, p 2.

¹⁹ Pijetlovic, K. (2015). *EU sports law and breakaway leagues in football*. ASSER International Sports Law Series. T.M.C. Asser Press. p 12.

²⁰ Parrish, R. (2003). *Sports Law and Policy in the European Union*. Manchester: Manchester University Press, p 5.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ Weatherill, S. (2014). *European Sports Law: Collected Papers*. 2nd edition. ASSER International Sports Law Series The Hague: T.M.C. Asser Press, p 2.

eligible to compete in championship level.²⁵ The court had to question whether the EU law is even applicable in sports since it was the first case that was brought to the ECJ.²⁶ Nevertheless, the court stated the following: “(...) *the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty*”.²⁷ Thus, it established that EU law is applicable in sports when there is noticeably economic activity.

Additionally, in the Walrave case, the court recognized the existence of the intersection between the EU law and sports by ruling that prohibition of different nationals in the national teams is purely sporting interest and does not constitute as an economic activity.²⁸ Hence, the ECJ had created an exemption for the sporting rules which are of non-economic in nature to fall outside of the scope of EU law giving that they are restrained to their legitimate objective.²⁹ Subsequently, two years later in the Dona case, the ECJ reinstated the purely sporting interest exemption by clarifying that rules that are non-economic and which restrict foreign players for the selection of national teams or similar to these kinds of occasions are not subject to the EU law.³⁰

Even though ECJ had established two general principles in the field of EU sports law, these principles where is still questionable in sports practices among the sporting organizations. They consistently tried to avoid applying the EU law for restrictive practices by claiming that sport is non-economic, and some rules comply with the purely sporting exception.³¹ These arguments from sport and the sporting organizations was seen nearly two decades after the Walrave and Dona case when the Bosman³² was referred to the ECJ.

The Bosman case concerned the football transfer system, in particular, transfer rules which restricted players mobility and discriminated foreign nationals by imposing nationality clauses for teams to follow in order to be eligible in UEFA competitions.³³ One of the main questions that arise from the Belgian national court was that whether the EU law should be applied in this case. Hence,

²⁵ Judgment of the court, 12.12.1974, Walrave & Koch V Association union cycliste internationale, C-36/74, EU:C:1974:140

²⁶ Lahti, J. (2010). *Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja Urheiluoikeun sarja: UEFA's Homegrown Player Rule in the light of EU Law*. Volume no 29. Turku, Uniprint, p 15-16.

²⁷ Judgment of the court, 12.12.1974, Walrave & Koch V Association union cycliste internationale, C-36/74, EU:C:1974:140., point 4

²⁸ *Ibid.*, point 8.

²⁹ *Ibid.*, point 8-9.

³⁰ Judgment of the court, 14.7.1976, Gaetano Donà v Mario Mantero, C-13/76, EU:C:1976:115, point 14.

³¹ Lahti, J. (2010). *Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja Urheiluoikeun sarja: UEFA's Homegrown Player Rule in the light of EU Law*. Volume no 29. Turku, Uniprint, p 16-17.

³² Judgment of the court, 15.12.1995, Union Royale Belge des Sociétés de Football Association and others v Bosman and others, C-415/93, ECLI:EU:C:1995:463, point 28-122.

³³ *Ibid.*

Belgian court decided to refer the case to the ECJ with the intention of receiving assistance regarding on the application of the EU law.³⁴

UEFA and the German Government opposed the applying the EU law by arguing that economic is difficult to separate from the sports and sport is non-economic.³⁵ Regardless, of these justifications the court pointed out that sport is economic activity, hence it should be subject to the EU law.³⁶ Furthermore, the court emphasized its ruling on Walrave and Dona by stating that purely interest exception only applies for national teams or and not the clubs.³⁷

All in all, the importance of the ECJ contribution to sports relation EU is evident as seen above. By establishing that the EU law can be applied in sports, meant that athletes could rely on their rights and freedoms which helped them pursue their sporting careers. Additionally, sport organizations had to modify their practices to be more accordant with the EU law, thus they had to lose the grip on their autonomy.

³⁴ Jesse, G. (2005). "The Demise of Sport - The Effect of Judicially Mandated Free Agency on European Football and American Baseball, – *Cornell International Law Journal*: Vol. 38: Iss. 1, Article 9, p 301.

³⁵ Judgment of the court, 15.12.1995, Union Royale Belge des Sociétés de Football Association and others v Bosman and others, C-415/93, ECLI:EU:C:1995:463, point 28-122.

³⁶ *Ibid.*

³⁷ *Ibid.*

1.2. Pyramid structure of European sports organizations

The common feature in European sports is the pyramid shape of the sporting organizations.³⁸ The base of the pyramid comprises from the clubs which have an important role in this system since they provide the foundation for the pyramid.³⁹ There are two kinds of clubs, amateur, and professional clubs, and they act generally differently from each other. Amateur club's objective is to give equal opportunity for people to pursue their interest in particular sport while emphasizing on improving young athletes.⁴⁰ Whereas, the professional clubs aim to gain profit through their collective performance and activities.⁴¹ Thus, their functionality reminds quite similar to everyday businesses. Regardless, whether the club is amateur or professional, they belong to the national federation which establish the next level of the pyramid structure.⁴² National federation provides the national competitions and selects the national team for the international tournaments.⁴³ The European continental federation along with the world governing body creates the top of the pyramid.⁴⁴ They interact closely between each other by regulating everything from the amateurs to professionals.⁴⁵ Hence, every decision that is made in the pinnacle of the pyramid by are for the other levels beneath them. Also, as a general rule of the pyramid, there can only be one national association and one international association.⁴⁶ This rule has seen to be necessary for the competitive balance of the sports since the existence of several associations would cause conflict between them.⁴⁷

³⁸ Pijetlovic, K. (2015). *EU sports law and breakaway leagues in football*. ASSER International Sports Law Series. T.M.C. Asser Press. p 36-37.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Bogusz, B., Cygan, A, J., Szyszczak, E, M. (2017). *The Regulation of Sport in the European Union*. Cheltenham, UK: Edward Elgar Publishing Limited, p 6.

⁴⁴ Pijetlovic, K. (2015). *EU sports law and breakaway leagues in football*. ASSER International Sports Law Series. T.M.C. Asser Press. p 36-37.

⁴⁵ *Ibid.*

⁴⁶ Freeburn, L. (2018). *Power, Legal Authority and Legitimacy in the Regulation of International Sport*. Neatherland: Brill | Nijhoff, p 29.

⁴⁷ Weatherill, S. (2014). *European Sports Law: Collected Papers*. 2nd edition. ASSER International Sports Law Series The Hague: T.M.C. Asser Press, p 295.

In Football context the pyramid structure of the sports organizations is clearly visible.⁴⁸ The pinnacle of the pyramid hierarchy comprises from the world governing football body FIFA.⁴⁹ Below the pinnacle lies the UEFA which is the continental association of European Football.⁵⁰ The National associations for the different Member States is placed in the next layered.⁵¹ And lastly, comes the base of the pyramid which composes from several actors such as clubs and player associations.⁵²

The pyramid structure has been criticized from the regulatory point of view.⁵³ As the one authority for each sports principle establishes a monopolistic position for the regulatory governing body.⁵⁴ Furthermore, it elevates questions regarding the application of the EU law.⁵⁵ These questions mainly arise from the alternative dispute resolutions conduct, particularly how far they have been willing to apply EU law for employment matters.⁵⁶ Due to the assumption that sporting issues should be handled by a person who is an expert in the field of sports, sporting governing bodies utilizes alternative dispute resolution which in turn forces athletes to use internal mechanism rather than tribunal courts, thus making them subject to the disciplinary sanctions of the governing body.⁵⁷ In fact, in chapter 3 the author will analyse Matuzalem case where the CAS made a ruling which concerns this subject matter. Keeping that in mind, however, the purpose of this paper was not to argue the monopolistic position of the sporting governing bodies, rather to give the reader perception on how the sport is organized national and international level.

⁴⁸ Lahti, J. (2010). *Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja Urheiluoikeus sarja: UEFA's Homegrown Player Rule in the light of EU Law*. Volume no 29. Turku, Uniprint, p 8.

⁴⁹ Weatherill, S. (2014). *European Sports Law: Collected Papers*. 2nd edition. ASSER International Sports Law Series The Hague: T.M.C. Asser Press, p 302.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Bogusz, B., Cygan, A, J., Szyszczak, E, M. (2017). *The Regulation of Sport in the European Union*. Cheltenham, UK: Edward Elgar Publishing Limited, p.6.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

2. FREE MOVEMENT OF WORKERS AND COMPETITION LAW

2.1. Overview

The purpose of this paper is to analyse the article 17 RSTP in light of the EU competition law and free movement of workers. In order to, do so this chapter will present briefly core of these relevant articles separately by starting first with the free movement of workers article 45 Treaty on the functioning of the European Union (TFEU) and then competition law articles 101 and 102.

Even though competition and free movement law have many differences, competition law concerns undertakings and the free movement of workers is addressed to the states, they both have the same objective which facilitates the creation of the internal market.⁵⁸ Internal market of the European Union (EU) refers to a territory without any internal borders or other regulatory restriction on the free movement of capital, goods, services, and persons.⁵⁹

The fundamental right of free movement of workers is provided in article 45 TFEU. Rights that derives from this article have been clarified through several directives and regulations which provides the conditions of entry, residence, and treatment of EU worker and their families.⁶⁰ In addition, due to the restriction implemented in regulation 494/2011 free movement of workers only applies to nationals of the Member States and not for non-EU nationals.⁶¹ Free movement of workers along with the other fundamental freedoms is directly applicable.⁶² This means that individuals can rely on these rights in their national courts and challenge the national action which is inconsistent with the EU law.⁶³

Article 101 TFEU is an extensive prohibition of all agreements and concerted practices distorting competition between undertakings. The article is applicable regardless whether the agreement in question is horizontal (undertakings that are equivalent to each other in the market) or vertical

⁵⁸ Mortelmans, K.J.M. (2011), Towards a Convergence of the Application of the Rules on Free Movement and Competition? *Common Market Law Review*, – *Kluwer law international*, Issue 3 p 623.

⁵⁹ Craig, P., de Búrca, G. (2011) *EU Law: Text, Cases, and Materials*. 5th ed. New York: Oxford University Press, p 582.

⁶⁰ *Ibid.*, p 718

⁶¹ *Ibid.*, p 719 (Replaced the former regulation 1612/68).

⁶² Ehlers, D., Becker, U., *et al.* (2007). *European Fundamental Rights and Freedoms*, de Gruyter Textbook, Berlin, Boston: de Gruyter, p 255.

⁶³ Lahti, J. (2010). *Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja Urheiluoikeus sarja:UEFA's Homegrown Player Rule in the light of EU Law*. Volume no 29. Turku, Uniprint, p 27.

agreements(undertakings which act in different market spheres).⁶⁴Article 102 prohibits the abuse of a dominant position. Protection of the consumers of the European Union is the leading goal of the competition law and this can be seen in the content of these articles.⁶⁵ Nevertheless, competition law has various aims just as the previously said integration of the Internal Market, effective competition, protection of the competitors and freedom to compete.⁶⁶

2.2. Article 45 TFEU

Free movement of workers is placed in the treaty of the functioning European Union(TFEU) article 45 which provides as follows:

- ‘‘1. Freedom of movement for workers shall be secured within the Union.*
- 2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.*
- 3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:*
- (a) to accept offers of employment actually made;*
- (b) to move freely within the territory of Member States for this purpose;*
- (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;*
- (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.*
- 4. The provisions of this Article shall not apply to employment in the public service.’’⁶⁷*

⁶⁴ Whish, R., Bailey, D. (2012). Competition Law. 7th ed. New York: Oxford University Press. p 117.

⁶⁵ Moisejevas,R.(2013), *Some thoughts concerning the main goals of competition*, Accessible: <https://www.mruni.eu/upload/iblock/b0c/JUR-13-20-2-14.pdf>, 20 march 2018 p 630-632.

⁶⁶ *Ibid.*

⁶⁷ In accordance with the TFEU article 45

To analyse the article 45: the first paragraph establish positive obligation towards the Member State of the Union. There is no definition for the worker in the treaty and it can be different depending on the context of the EU law.⁶⁸ However, ECJ has provided certain guidelines to follow in order to determine whether the person can be considered to be a worker or not.⁶⁹ According to ECJ person is a worker with the meaning of article 45 when he or she pursues employment activities which are effective and genuine, to the exclusion of activities on such a small scale as to regarded as purely marginal and ancillary.⁷⁰ This includes full-time workers, part-time workers, seasonal workers, frontier workers, and jobseekers.⁷¹ Additionally, an essential characteristic of the employment relationship is the receiving remuneration as well as being in a subordinate relationship.⁷²

The second paragraph prohibits any kind of discrimination base on the nationality of the worker. Discrimination may occur either directly or indirectly.⁷³ Direct discrimination appears when national rules clearly divides on the grounds of nationality causing unfair treatment to non-nationals compared to nationals.⁷⁴ Recognizing the indirect discrimination is often challenging since they theoretically occur when rules are formed neutrally and do not perhaps discriminate on the grounds of nationality but in practice, they tend to have an unequal effect towards a certain group.⁷⁵ They may arise for instance as a consequence of the law, place-of-education or residency requirements which benefits the other group comparing others.⁷⁶ In addition, ECJ established in landmark case Bosman that non-discriminatory rules which restrict worker from accessing to the employment market of another Member State are incompatible with the article 45 TFEU.⁷⁷

The third paragraph of the article provides justification grounds for the limitations. Moreover, the fourth paragraph extends the justification with the additional ground which is an exception of public service. Direct discrimination can only be justified on the basis of the paragraph three and

⁶⁸ Craig, P., de Búrca, G. (2011) EU Law: Text, Cases, and Materials. 5th ed. New York: Oxford University Press, p 719.

⁶⁹ *Ibid.*

⁷⁰ Judgment of the Court, (08.06.1999), Meeusen, C-337/97, ECLI:EU:C:1999:284, point 13.

⁷¹ Van Overmeiren, F., *et al.* (2014). FreSsco analytical report 2014: The notions of obstacle and discrimination under EU law on free movement of workers – *European Commission*, p 15.

⁷² Judgment of the Court, (20.11.2001), Aldona Malgorzata Jany and Others V Staatssecretaris van Justitie, C-268/99, ECLI:EU:C:2001:616, point 34.

⁷³ Craig, P., de Búrca, G. (2011) EU Law: Text, Cases, and Materials. 5th ed. New York: Oxford University Press, p 730-731

⁷⁴ Van Overmeiren, F., *et al.* (2014). FreSsco analytical report 2014: The notions of obstacle and discrimination under EU law on free movement of workers – *European Commission* p 13

⁷⁵ *Ibid.*

⁷⁶ Craig, P., de Búrca, G. (2011) EU Law: Text, Cases, and Materials. 5th ed. New York: Oxford University Press, p 730-731

⁷⁷ *Ibid.*

four from the article 45 which are public policy, public security, public health, and public service.⁷⁸ Unlike direct discrimination, indirect discrimination and non-discriminatory rules can be justified on various grounds such as public policy grounds and the imperative requirements of public interest, provided that they are in harmony with the EU law and essential for the aim to be achieved additionally the means must be proportional.⁷⁹

2.3. Article 101 TFEU

Article 101 TFEU is divided into three paragraphs. The first paragraph lays down the general prohibition, by prohibiting agreements between companies which prevent, restrict or distort competition in the internal market and which may influence the Member States.⁸⁰ The provision includes a non-exhaustive list of prohibited restraints such as direct or indirect price fixing and agreements on controlling the production or sharing the market.⁸¹ The Second paragraph provides the legal consequence of infringement of the article.⁸² Thus, agreements which fall under the first paragraph are automatically void and therefore it does not impose any legal effect towards the contracting parties or neither to the third parties.⁸³ Third paragraph provides dispensation for the agreements which are caught to be anti-competitive with the meaning of the article 101(1) if they satisfy simultaneously four cumulative conditions; improving the production or distribution of goods or economic progress, giving a portion of the benefit to the consumer and does not restrict the undertakings which are not indispensable for the accomplishment of these objectives and not

⁷⁸ Van Overmeiren, F., et al. (2014). FreSsco analytical report 2014: The notions of obstacle and discrimination under EU law on free movement of workers – *European Commission* p 14

⁷⁹ *Ibid.*

⁸⁰ Lorenz, M., (2013). *An Introduction to EU Competition Law*. New York: Cambridge University Press, p 62.

⁸¹ *Ibid.*

⁸² *Ibid.*, p 63.

⁸³ *Ibid.*, p 114.

giving possibility of eliminating competition in respect of substantial part of the products in question.⁸⁴

For article 101(1) TFEU to be applicable, the agreement must have an influence on trade between the Member State or any other way the agreement in hand falls within the jurisdiction of the particular Member State.⁸⁵ In the absence of direction in the treaty for defining the effect on trade between the Member State, The Court of European justice have created an extensive test which purpose is to demonstrate whether it was possible to predict with an adequate enough of a probability that the agreement in question may have an influence, directly or indirectly, actually or potentially on trade between the Member State.⁸⁶ However, the *de minimis* doctrine applies if the agreement between the undertakings does not ascertainable impact the competition in EU.⁸⁷ Putting in another word, despite the agreement would constitute anticompetitive effect between the Member States but does not have an significant influence inter-state trade it does not fall under the scope of the article 101(1)TFEU.

2.4. Article 102 TFEU

Article 102 TFEU prohibits undertakings abusive use of dominant position.⁸⁸ In other words, this provision is imposed on all the persons and entities engaged in an economic activity⁸⁹ which have managed to obtaine a dominant position and distorts the competition in the internal market.⁹⁰ Dominance can be in a form of sole dominance where only one undertaking holds dominancy or it can appear in form of collective dominance when there are more than one undertakings in question.⁹¹ It is important to notice that the article does not prohibit the dominance of the

⁸⁴ Craig, P., de Búrca, G. (2011) *EU Law: Text, Cases, and Materials*. 5th ed. New York: Oxford University Press, p 984.

⁸⁵ *Ibid.*, p 983.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ Lorenz, M., (2013). *An Introduction to EU Competition Law*. New York: Cambridge University Press, p 188.

⁸⁹ *Ibid.*, p 190.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

undertaking merely imposes restriction on the undertaking which has a dominant position⁹² and gives a special responsibility.⁹³ Hence, dominance itself is not an indicator for unlawful conduct.⁹⁴

Three vital aspects must be assessed when deciding the presence of the dominant use. Firstly, should be defined the relevant market which includes the product market and the geographic market as well as depending on the case in hand the definition of the criteria known as temporal market.⁹⁵ The product market is generally assessed with the interchangeability analysis as it shows the extent which the services and goods are interchangeable with other products.⁹⁶ This must be done by examining both consumer and supply side of the market.⁹⁷ The Geographic market is defined as an area where all merchants function in the similar or adequately in so called homogenous conditions of competition in connection to relevant product or services.⁹⁸ In case of lack of relevant information, the geographical market may even comprise from the entire EU.⁹⁹ The temporal factor reveals the temporary element of the market and due to temporal factor company may have a seasonal market power comparing to other products in the market.¹⁰⁰

Secondly, after the relevant market is defined then must be investigate whether the undertaking is dominant within that area.¹⁰¹ The common test for the dominance has been established by the ECJ in the United Brands case where the Court identified that the dominance describes a position where the undertaking has acquired economic strength in a sense which gives that undertaking the power to prevent effective competition maintained in the relevant market by giving it the ability to behave to an significant extent autonomously of its competitors, customers and eventually of its consumers.¹⁰² Further, ECJ have recognized that the dominance of a undertaking may derive from other factors as well hence it declared that it must be examined from the perspective of the market share of the undertaking, barriers to entry or other signs of the market power.¹⁰³

⁹² Lorenz, M., (2013). *An Introduction to EU Competition Law*. New York: Cambridge University Press, p 188.

⁹³ Bernanrd, C., Peers, S. (2014). *European Union Law*. 1st ed. New York: Oxford University Press. p. 531.

⁹⁴ Monti, G. (2007), *EC Competition Law*, New York: Cambridge University Press. p 160.

⁹⁵ Pijetlovic, K. (2015). *EU sports law and breakaway leagues in football*. ASSER International Sports Law Series. T.M.C. Asser Press. p 158-160.

⁹⁶ Craig, P., de Búrca, G. (2011) *EU Law: Text, Cases, and Materials*. 5th ed. New York: Oxford University Press, p 1012.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, p 1015.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*, p 1017.

¹⁰¹ *Ibid.*, 1018.

¹⁰² Judgment of the Court, (14 February 1978), *United Brands v Commission*, Case 27/76, ECLI:EU:C:1978:22, para. 65.

¹⁰³ Lorenz, M., (2013). *An Introduction to EU Competition Law*. New York: Cambridge University Press, p, p 196.

The final and third aspect to be assessed is the abuse of the dominant position. Article 102 TFEU lays down a non-exhaustive list of practices which constitutes an abuse of the dominant position. They may occur for example on price fixing, restriction on products or discrimination towards trading partners.¹⁰⁴ In addition, it is required that the abusive use of the dominant position effect the trade between Member States in order to be incompatible with article 102 TFEU.

In contrast to article 101(3) TFEU, article 102 does not have similar exemptions for undertakings. Hence, the Commission and the ECJ use the approach of objective justification and proportionality to give adaptability for this article.¹⁰⁵ Moreover, there is efficiency defence available for the dominant company in cases of abusive exclusionary conduct.¹⁰⁶ Efficiency defence follows the same cumulative measures as in the article 101(3).¹⁰⁷

¹⁰⁴ Craig, P., de Búrca, G. (2011) EU Law: Text, Cases, and Materials. 5th ed. New York: Oxford University Press, p 1025.

¹⁰⁵ Pijetlovic, K. (2015). EU sports law and breakaway leagues in football. ASSER International Sports Law Series. T.M.C. Asser Press. p 161-162.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

3. TERMINATION OF PLAYER CONTRACT

3.1. With just cause and sporting just cause

As a general rule in contractual relations, agreement between a qualified player and team can only put to end either by mutual understanding or due to expiry.¹⁰⁸ Nevertheless there exist a two exceptions from this rule which allows clubs or players prematurely discharge each other from the agreement on the grounds of just cause and sporting just cause, giving that the termination does not occur during the season.¹⁰⁹ The following chapter will outline these two different concepts for premature annulment of contracts which are laid down in articles 14 and 15 RSTP. Regardless, of the fact that this thesis substantially focuses article 17 of RSTP ,however, it is more than necessary to give reader the complete framework.

Club and a player can annul their existing agreement without having to suffer from compensation or sporting sanction on the grounds of just cause.¹¹⁰ Just cause prerequisite appears where either the party behaves in away which breaches their employment contract, thus enables the other party to have a valid reason to annul the agreement.¹¹¹ The existences of just cause should be solved with diligence, meaning that the relevant authority should approach each case individually and take it into account the presence of serious reason.¹¹² The element of just cause may occur due to coercion, when either of the party abusively misuse their position to change the terms of the agreement.¹¹³ In addition, player who does not get paid his wages during a two month period and despite contacting a debtor on that matter is entitle to revoke the agreement on the grounds of just cause.¹¹⁴ Clubs on the other hand, are entitle to terminate their relationship with the player if he does not fulfil his obligations towards them, for instance player misses the match without a permission or a valid reason.¹¹⁵

Fifa governance provides an additional option only for players to prematurely annul their agreement with the club when there exist a sporting just cause. In contrast to just cause exception,

¹⁰⁸ FIFA Regulation of Status and Transfer of Players, edition 2018, article 13.

¹⁰⁹ FIFA Regulation of Status and Transfer of Players, edition 2018, article 16.

¹¹⁰ FIFA Regulation of Status and Transfer of Players, edition 2018, article 14 para 1.

¹¹¹ Colucci.M., Majani.F (2008), The FIFA Regulations on the Labour Status and Transfer of Players. – *Indonesian Journal of International Law*, p 681-709.

¹¹² *Ibid.*

¹¹³ FIFA Regulation of Status and Transfer of Players, edition 2018, article 14 para 2.

¹¹⁴ FIFA Regulation of Status and Transfer of Players, edition 2018, article 14bis.

¹¹⁵ FIFA Regulations on the Status and Transfer of Players Commentary, article 14

to gain entitlement to invoke the sporting just cause provision the player must be identified as established player¹¹⁶ and possibly need to perform compensation.¹¹⁷ The Fifa regulation on status and transfer of players does not define the established player, instead, the Fifa Dispute Resolution Chamber (DCR) have come up through their precedents that player in question must justify its accomplishment of the training period and his skills has to be at adequate level.¹¹⁸ Furthermore, to have the right to invoke provision the player had to play less than 10% of his clubs official matches during the season and 15 days have passed from the last official match of his clubs season.¹¹⁹ However, injuries or suspensions which have prevented the players from not taking part in the match cannot be justified as a sporting just cause.¹²⁰

3.2.termination of contract without a just cause- article 17 RSTP

In the event that party of the agreement terminates the contract without a just cause, article 17 RSTP becomes applicable. *Pacta sunt servanda* principle is the cornerstone of the article as it emphasize respect of the contractual relationship by imposing compensation requirement and sporting sanctions for the party who breaks the agreement.¹²¹ Current article 17 RSTP was recently amended and it came into force on June 2018.¹²² Comparing to the former article, there is a new method how compensation should be calculated.¹²³ Otherwise, the article is still more or less the same content wise. In this chapter the author will give provide insight regarding on the content of the article 17 RSTP.

The article 17(1) of the regulation provides that party who is guilty of annulling the agreement without just cause is obliged to perform compensation for the suffered party.¹²⁴ The amount of compensation should be determined accordance with the law of the territory in question as well as

¹¹⁶ FIFA Regulation of Status and Transfer of Players, Commentary, article 15.

¹¹⁷ FIFA Regulation of Status and Transfer of Players, edition 2018, article 15.

¹¹⁸ Colucci, M., Majani, F. (2008). The FIFA Regulations on the Labour Status and Transfer of Players. – *Indonesian Journal of International Law*, p 681-709.

¹¹⁹ FIFA Regulation of Status and Transfer of Players, edition 2018 article 15.

¹²⁰ Colucci.M., Majani, F. (2008), The FIFA Regulations on the Labour Status and Transfer of Players. – *Indonesian Journal of International Law*, p 681-709

¹²¹ Pearson, G. (2015). sporting justifications under EU free Movement and Competition law: The Case of the Football ‘Transfeer System’, – *European Law Journal*, p 220-238.

¹²² FIFA newsletter. (2018). *Amendments to the Regulations on the Status and Transfer of Players*, Accesible: <https://resources.fifa.com/image/upload/1625-amendments-to-the-regulations-on-the-status-and-transfer-of-players.pdf?cloudid=bmkwifiiyexkdnicpsip>. (last accessed 24.12.2018).

¹²³ *Ibid.*

¹²⁴ FIFA Regulation of Status and Transfer of Players, edition 2018, article 17 (1).

taking into account specific nature of sports and other objective criteria.¹²⁵ The objective criteria listed in the article are following: “ (...)the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club and whether the contractual breach falls within a protected period”.¹²⁶

However, in practise when it comes to calculation of compensation, CAS struggled on interpreting and applying these above mention criteria.¹²⁷ For instance, in Webster case where the subject matter concerned termination of the contract without a just cause outside of the protected period.¹²⁸ The player decided to terminate his contract while it was still in force for one more year.¹²⁹ Thus, club demanded the estimated transfer fee of the player which was around 5 million pounds¹³⁰, but CAS ruled only 150 000 pounds to be paid.¹³¹ CAS calculated the compensation based on the residual value of the contract.¹³²

Subsequently, in the Matuzalem case, the player also unilaterally terminated his contract with the club outside of the protected period.¹³³ When calculating the transfer fee, CAS applied the positive interest principle which aims to determine the amount that should be compensated by putting the injured party to the hypothetical position were the breach would have never occurred.¹³⁴ Accordingly, CAS awarded 11 858 934 euros to be paid as a compensation based on the lost value of the player.¹³⁵ Supposing that CAS would have taken the similar approach as it did in the Webster case by only focusing in the residual value of the contract, the compensation payable in the Matuzalem would have been 2.4 million euros.¹³⁶

As seen above, both cases were quite similar in a since that the termination occurred outside of the protected period but the difference between the both outcomes was enormous due to CAS procedure. Hence, the compensations received a image being a excessive and restricting players

¹²⁵ *Ibid.*, art 17.

¹²⁶ *Ibid.*, art 17.

¹²⁷ Pearson, G, (2015). sporting justifications under EU free Movement and Competition law: The Case of the Football ‘Transfeer System’, – *European Law Journal*, p 220-238.

¹²⁸ Court of Arbitration for Sport. CAS 2007/A/1299, (2008), point 22.

¹²⁹ *Ibid.*, point 10, 20.

¹³⁰ *Ibid.*, point 32.

¹³¹ *Ibid.*, point 153.

¹³² *Ibid.*, point 152.

¹³³ Court of Arbitration for Sport. CAS 2008/A/1519, (2009), point 15.

¹³⁴ *Ibid.*, point 86.

¹³⁵ *Ibid.*, point 177

¹³⁶ Pearson.G, (2015). sporting justifications under EU free Movement and Competition law: The Case of the Football ‘Transfeer System’, – *European Law Journal*, p 220-238.

from leaving the club.¹³⁷ In addition, these previously mentioned cases were only few of many examples where the interpretation of the 17 (1) RSTP was unsuccessful.

Recently FIFA amended the article 17(1) and added further clarification how should the compensation be calculated while taking into account previously mentioned provision. Nevertheless, it is impossible to know how this new amendment will work out since it has not applied in any cases yet. Keeping that in mind, according to the amendment, given that the player has not concluded to another contract after terminating his former contract, the compensation should be the same as leftover worth of the prematurely terminated contract.¹³⁸ Whereas ,if the player has concluded a new agreement prior to the ruling, financial worth of the recent contract from same extent of time is reduced from the leftover worth of the prematurely terminated contract.¹³⁹ Furthermore. additional compensation of 3 to 6-month salaries is applied when premature termination of contract is due to unpaid wages¹⁴⁰. All things considered, the compensation can not surpass the leftover worth of the prematurely terminated contract.¹⁴¹

As to the article 17 (2), it declares the professional player and the new club jointly liable to pay the compensation.¹⁴²Moreover, article 17 (3) assigns sporting sanctions for any player who prematurely terminates the contract without just cause during the protected period.¹⁴³ This sanction can be either a four to six months.¹⁴⁴

Additionally, article 17(4) imposes sporting sanctions and performance of compensation to any club who infringes the contract or encourages the infringement during the protected period.¹⁴⁵ Unless justified, it should be assumed that club which sings the player who has terminated his contract without just cause is liable of encouraging the player to commit the infringement.¹⁴⁶ Furthermore, article 17(5) provides that any person subject to the FIFA regulations who encourages the infringement of the contract between a player and a club may face sanctions ¹⁴⁷

¹³⁷ Pijetlovic, K. (2015). EU sports law and breakaway leagues in football. ASSER International Sports Law Series. T.M.C. Asser Press. p 109.

¹³⁸ FIFA Regulation of Status and Transfer of Players, edition 2018, article 17.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² FIFA Regulation of Status and Transfer of Players, edition 2018, article 17.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ FIFA Regulation of Status and Transfer of Players, edition 2018, article 17.

To conclude, amendment gives a positive change when it comes to calculation of compensation since the players and clubs can now possibly foresee the compensation. However, whether the compensations would be less is still questionable since many of the clubs nowadays concludes with a player agreement which includes a buyout clause which in turn rises the value of the contract. For example, football player Lionel Messi signed 2017 a contract with his current club Fc Barcelona until 2021 which includes a buyout clause set at 700 million euros.¹⁴⁸ Does this mean then that if he prematurely terminates his contract without a valid reason after two years after that he liable to compensate around 350 million euros? Whether or not the other contracts includes buyout clauses, it is fact that value of the football contracts are constantly increasing due to the commercialization. Despite the current amendment makes the calculation of the compensation more transparent, however, it is evident that the compensations will stay high.

¹⁴⁸ Telegraph sport, (2017). *Lionel Messi signs new Barcelona contract to 2021 with a new buyout clause set at £626million*. Accesible: <https://www.telegraph.co.uk/football/2017/11/25/lionel-messi-signs-new-barcelona-contract-2021-new-buyout-clause/>, (31.12.2018).

4. ASSESSMENT OF THE ARTICLE 17 IN THE LIGHT OF EU LAW

4.1. Free movement of workers & article 17 RSTP

Firstly, it should be recognized whether there exists a restriction on free movement in the article 17 RSTP. The fundamental right of free movement of workers provided in the article 45 TFEU gives a right to employees to freely pursue their careers in other member states without any restrictions imposed to them. In other words, they are entitled to accept job opportunities and move without any hesitation in the region of the member state. However, in football players are not allowed to early terminate their contract to join another club in other member states unless there exists a just cause.¹⁴⁹ In case, the players do not comply with this rule they are subject to consequences in form of sporting sanctions and compensation.¹⁵⁰ Since both forms of consequences limit the player's ability to freely change his club, one can be sure that there is a restriction on free movement in this article.

As stated previously in chapter 2, article 45 states that discriminative restrictions based on the nationality of the employees are deemed to be contrary to the free movement. There are two forms of discriminative restrictions. Direct discrimination appears when national rules clearly divide on the grounds of nationality causing unfair treatment to non-nationals comparing to nationals.¹⁵¹ Indirect discrimination, on the other hand, appears when certain provision seems to be impartial but instead are a disadvantage in nature for the migrants comparing to the citizens of the Member States.¹⁵² When looking into the article 17, there is no noticeable characteristic of direct or indirect discrimination based on the nationalities of the workers since the consequences laid down in the article are for all professional footballers who are under the jurisdiction of FIFA. Thus, nationalities of the footballers is not a factor that plays any kind of role when deciding the amount of compensations or sporting sanctions. Instead, when deciding the compensation and sporting sanctions other factors are to be considered such as objective criteria, specify of sports and residual value of the contract.¹⁵³ On that basis, we can exclude the direct and indirect discrimination.

¹⁴⁹ FIFA Regulation of Status and Transfer of Players, edition 2018, article 14.

¹⁵⁰ FIFA Regulation of Status and Transfer of Players, edition 2018, article 17.

¹⁵¹ . Van Overmeiren, F., et al. (2014). FreSsco analytical report 2014: The notions of obstacle and discrimination under EU law on free movement of workers – *European Commission*, p 14-15.

¹⁵² Maliszewska-Nienartowicz, J. (2014). Direct and Indirect Discrimination in European Union Law – How to Draw a Dividing Line? – *International Journal of Social Sciences* p 43.

¹⁵³ FIFA Regulation of Status and Transfer of Players, edition 2018, article 17.

Additionally, there may still exist non-discriminatory restriction in article 17 RSTP which can infringe the article 45 TFEU. In *Bosman*, the ECJ stated that rules which do not particularly restrict workers based on their nationality, yet prevent them from exercising their fundamental right of free movement of workers constitutes obstacle to the freedom.¹⁵⁴ Article 17 RSTP seems to be non-discriminatory restriction since it restricts the movement of the players to another Member states by imposing them to perform monetary obligations which are more likely to be excessive. Nevertheless, there is a possibility to non-discriminatory restriction to be compatible with the EU law given that restriction fulfils four conditions provided in the *Gebhard* case.¹⁵⁵ According to the conditions rule in question must be applied in a non-discriminatory matter, it is justified the imperative requirement of general interest, suitable for achieving the object which it pursues and proportionate.¹⁵⁶ Its important to notice that *Gebhard* case concerned the free movement of service article 46 TFEU, however, the legal theories that ECJ presented in that case are generally applicable for all indispensable freedoms protected in the treaties thus they must be applicable on the matters concerning the free movement of workers.¹⁵⁷

Hypothetically thinking, what would happen if there would not be any consequences for a player or the club who prematurely terminates the contract without a valid reason? Players would most likely change their clubs constantly without any hesitation in order to receive better earnings for them self. While, the wealthy clubs could purchase all the best footballers without a need to pay the compensations for persuading the players to terminate their contract prematurely.¹⁵⁸ This would presumably weaken the ability of less wealthy clubs to compete against the financially stronger clubs, thus harming the competitive balance.¹⁵⁹ Accordingly, in *Bosman*, the ECJ accepted the competitive balance as a legitimate objective to secure equality between the clubs.¹⁶⁰ Therefore, is more than likely that the main justification for FIFA would be controlling competitive balance in this matter.

¹⁵⁴ Judgment of the court, 20.05.2008, *Bosman*, C-352/06, ECLI:EU:C:2008:290, paragraph 96-103.

¹⁵⁵ Judgment of the court, 30.11.1995, *Gebhard*, C-55/94, ECLI:EU:C:1995:411, paragraph 37, referring to Judgment of the court, 31.03.1993, C-19/92, *Kraus*, ECLI:EU:C:1993:125, paragraph 32.

¹⁵⁶ *Ibid.*

¹⁵⁷ Van Overmeiren, F., *et al.* (2014). *FreSsco analytical report 2014: The notions of obstacle and discrimination under EU law on free movement of workers.*, Brussels, Belgium: European Commission. p 14-15.

¹⁵⁸ Czarnota, P, A. (2013). *FIFA Transfer Rules and Unilateral Termination without Just Cause.* – *Berkeley Journal of Entertainment and Sports Law* 2, p 2-46.

¹⁵⁹ *Ibid.*, p 8.

¹⁶⁰ Judgment of the court, 15.12.1995, *Union Royale Belge des Sociétés de Football Association and others v Bosman and others*, C-415/93, ECLI:EU:C:1995:463, point 28-122.

Whether the article 17 RSTP goes beyond what is necessary to accomplish the objective¹⁶¹ is another separate question which requires assessing the proportionality of the consequences provided in the provision. Proportionality is tested by examining possible alternatives which could be less restricting.¹⁶² Even though the FIFA pro stated in their complaint that article 17 RSTP objective is unnecessary and disproportional¹⁶³, they did not suggest any other alternative methods for securing both players and clubs interest which would be less restrictive. Nonetheless, National Basketball Association(NBA) provides an early termination option for NBA players to resign from their existing contract giving that the termination is executed before the end of the fourth year.¹⁶⁴One could argue, that rules provided by FIFA have totally different interest than NBA. In fact, considering the early termination option provided by the NBA does not require existent of the just cause precondition and compensation for players to perform makes it less restrictive compared to the article 17 RSTP. Since there are other possible alternatives available, article 17 has the potential to be disproportionate.

To conclude, article 17 RSTP constitutes a non-discriminatory restriction on free movement of workers which can be possibly justified for being necessary maintaining the competitive balance between the clubs. However, disproportionality of the article raises the questions regarding on the compatibility with the EU law. Due to the existence of less restrictive way for player to terminate their contract early, it could be assumed that article 17 RSTP possibly infringes the article 45 tfeu.

4.2. Competition law & article 17 RSTP

Since the Walrave case established that EU law can be applied in sports given that it constitutes economic activity¹⁶⁵, it is more than necessary before considering the possible application of the articles 101 and 102 TFEU to first to recognize whether the FIFA execute economic activity. In

¹⁶¹ Judgment of the court, 30.11.1995, Gebhard, C-55/94, ECLI:EU:C:1995:411, paragraph 37.

¹⁶² Lahti, J. (2010). *Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja Urheilu-oikeun sarja:UEFA's Homegrown Player Rule in the light of EU Law*. Volume no 29. Turku, Uniprint, p 14.

¹⁶³ FIFPro, (2015). *FIFPro's EU competition law complaint – executive summary*. Accessible: <https://fifpro.org/attachments/article/6156/FIFPro%20Complaint%20Executive%20Summary.pdf>, 31.12.2018.

¹⁶⁴ NBA News, (2016). *Free Agency Explained*. Accessible: <https://www.nba.com/news/free-agency-explainer/>, 31.12.2018.

¹⁶⁵ Judgment of the court, 12.12.1974, Walrave & Koch V Association union cycliste internationale, C-36/74, EU:C:1974:140, point 4.

Piau case the court provided that even though FIFA itself does not pursue economic practices, being the authority enables them to participate in economic activity through its members which are the clubs and players as they mainly conduct economic activity.¹⁶⁶ Hence, FIFA can be undertaking with the meaning of 102 TFEU and an association of undertakings with the meaning of 101 TFEU.¹⁶⁷ In addition, to facilitate their objectives FIFA provides binding regulations for its members, therefore the regulations constitute a decision by an association of undertakings.¹⁶⁸

For article 101 TFEU to be applicable, it must be assessed if the article 17 RSTP object or effect is prevention, restriction or distortion of competition within the common market.¹⁶⁹ It could be assumed that the main objection for the article 17 is to avoid players who are under the contract to transfer to another club. Thus, clubs are restricted when it comes to signing a player who have an existing contract. Furthermore, recognizing the restriction itself is not enough for article 17 RSTP to be caught in 101 (1) TFEU, since it must affect the trade between the Member States.¹⁷⁰ In football context, trade indicates the supply and demand of the football players.¹⁷¹ That said, FIFA as an international sporting organisation which regulates the sports and provides competitions will most likely affect the trade between the Member States due to their extension of application.¹⁷² Hence, it is obvious that article 17 RSTP restriction affects the trade between Member states,.

In Meca-Medina case, the ECJ established that even though the sporting rule is capable of restricting competition, it may not infringe the article 101 (1) TFEU.¹⁷³ Prior to the Meca-Medina case, this approach was seen in the Wouters case where the court stated that in order to determine the compatibility of the restrictive sporting rule with the article 101 (1), it should be considered the overall context of the rule, its objectives and whether the restriction is inherent.¹⁷⁴ In addition, it should be also recognized the proportionality of the rule.¹⁷⁵ When applying the similar approach in article 17 RSTP, as stated in the previous chapter the objective of the rule is more likely

¹⁶⁶ Judgment of the Court of first instance, 26.01.2005, Piau v Commission, T-193/02, ECLI:EU:T:2005:22, point 112-116.

¹⁶⁷ *Ibid.*, point 112-116 and 69-75.

¹⁶⁸ *Ibid.*, point 75.

¹⁶⁹ Judgment of the court, 30.06.1966, Société Technique Minière v Maschinenbau Ulm, C-56/65 - ECLI:EU:C:1966:38.

¹⁷⁰ Kienappel, P., Stein, A., (2007). *The application of Articles 81 and 82 EC in the sport sector*. Accessible: http://ec.europa.eu/competition/publications/cpn/2007_3_6.pdf, 31.12.2018, 31.12.2019. p 7-9.

¹⁷¹ Egger, A., Stix Hackl, C (2002) Sports and Competition law: A Never ending Story? – *European Competition law review*, Vol.23(2), p 81-91 (p89).

¹⁷² Pijetlovic, K. (2015). *EU sports law and breakaway leagues in football*. ASSER International Sports Law Series. T.M.C. Asser Press. p 170.

¹⁷³ Judgment of the court, 18.07.2006, Meca-Medina, Case C-519/04, ECLI:EU:C:2006:492 point 42.

¹⁷⁴ Judgment of the court, 19.02.2002, Wouters, C-309/99, ECLI:EU:C:2002:98, point 97.

¹⁷⁵ Judgment of the court, 18.07.2006, Meca-Medina, Case C-519/04, ECLI:EU:C:2006:492 point 42.

defending the competitive balance between the clubs. In case, article 17 would not exist the football the balance between the clubs would suffer since the less wealthy clubs could not compete properly against the financially stronger clubs.¹⁷⁶ Hence, it could be assumed that the article 17 RSTP restriction is inherent for the proper conduct of competitive sports.¹⁷⁷ However, as seen in the previous chapter the issue with the article 17 RSTP is the disproportionality of the rule. Since there exists an alternative method for the article to pursue the same objective less restrictively, article 17 RSTP likely infringes the article 101 (1) TFEU.

Despite the article 17 RSTP is possibly anti-competitive with the meaning of article 101 (1) TFEU, in case it satisfies four cumulative conditions provided in the 101(3) TFEU it may receive a dispensation from not complying with article 101(1).¹⁷⁸ However, due to the lack of information on consumer share and the objective of this paper, further assessment is not required.

Anyhow, now that we have concluded that article 17 RSTP is conceivably anti-competitive, thus not compatible with the 101 TFEU, it is necessary to examine whether FIFA constitutes abuse of dominant position with the meaning of article 102 TFEU. When determining whether there exist abuse of dominant position, it will be done in this paper by examining two concepts separately. Firstly, it should be recognized the presence of dominance. FIFA can be regarded as dominant in the market since they impose mandatory rules for clubs to follow and not acting accordance with those rules may lead to exclusion from the market.¹⁷⁹ Secondly, it should be established the essence of abuse. In the Bosman case, the Advocate General Lenz stated that FIFA and UEFA rule which restraints the clubs choices on players signings, causes restriction between the clubs.¹⁸⁰ Furthermore, according to MR. Lenz that cannot be regarded as abuse since it only affects the connection between the players and their clubs.¹⁸¹ When considering the content of the article 17 RSTP and comparing it to Mr. Lenz interpretation on the abuse, article 17 RSTP clearly imposes a restriction for players and clubs, therefore it can be concluded that article does not violate the article 102 TFEU.

¹⁷⁶ Czarnota, P, A. (2013). FIFA Transfer Rules and Unilateral Termination without Just Cause. – *Berkeley Journal of Entertainment and Sports Law* 2, p 8.

¹⁷⁷ Kienappel, P., Stein, A., (2007). *The application of Articles 81 and 82 EC in the sport sector*. Accessible: http://ec.europa.eu/competition/publications/cpn/2007_3_6.pdf. 31.12.2018. p 8.

¹⁷⁸ Craig, P., de Búrca, G. (2011) *EU Law: Text, Cases, and Materials*. 5th ed. New York: Oxford University Press. p 984

¹⁷⁹ Geeraert, A., (2016). *The EU in International Sports Governance A Principal-Agent Perspective on EU Control of FIFA and UEFA*, 1 ed. The European Union in International Affairs series, New York, Palgrave Macmillan UK, p 96.

¹⁸⁰ Opinion of Advocate General, 20.09.2018. Opinion of advocate general Lenz, C-415/93, ECLI:EU:C:1995:29. point 286.

¹⁸¹ *Ibid.*

CONCLUSION

The aim of this research was to critically examine football governing body FIFA regulation compatibility with the EU law. In particular, question the article 17 RSTP harmonization with free movement of workers article 45 TFEU and competition law articles 101 TFEU and 102 TFEU. From the free movement of workers point of view article 17 RSTP constitutes a non-discriminatory restriction which can be objectively justified. Due to the assumption that amended article 17 RSTP would not significantly decrease the compensations as long as the value of the player contracts are increasing it can be assumed that consequences imposed towards the player are unreasonable. Furthermore, since there exists an alternative measure in other sports, the excessive consequences of the article 17 RSTP can be possibly challenged from violating the right to free movement of workers.

Being in accordance with the competition law is another separate question which requires more comprehensive assessment on the matter. Nevertheless, in this research, the author finds that the article 17 RSTP restricts the competition and has an influence on trade between the Member states by limiting club's ability to conclude an agreement with players who are either nationals or non-nationals of the particular country. Due to the disproportionate effects caused by the rule as stated in above, the article 17 RSTP can be anti-competitive with the meaning of article 101(1)TFEU. Further assessment on the matter is, however required since there exists also the possibility that article 17 RSTP falls into to the 101(3) TFEU, thus receiving immunity from not complying with the provision. Due to a lack of relevant information on the consumer shares, any additional examination could not be done in this thesis. Regarding the possible violation of article 102 TFEU, the thesis concluded that FIFA does not misuse its position as a regulatory body, thus it does not violate the article.

Regardless of the amended article 17 RSTP questions concerning compatibility with the EU law will always be present. Nowadays professional players conclude an agreement between the clubs which can make them easily millionaires as seen in the news or average wage level. Forcing the players to compensate regardless of their financial status in case of early termination of the agreement is the main issue of the provision. It must take into account that player who is a millionaire would have to lose most likely his assets. Whereas the player whose financial status is close to the average person lives his professional life payday to payday, thus requiring him to compensate even a residual value of the contract would be excessive. Therefore, the author would

introduce a proposal which would improve the article 17 RSTP in away that players would not so often be subject to the article 17 RSTP.

The proposal concerns Sporting Just cause article 15 RSTP¹⁸². Amending the article by adding a provision which gives the player right to prematurely terminate his contract due to a replacement of the manager or owner who bought him, would give the players much-needed flexibility in contractual relations. It would also recognize the limited length of the football career. After all, coach and the owners of the club are the ones who persuade the player into the contract. Therefore, they are the ones who can affect the most to the players career positively or negatively.

As a former professional footballer, I considered that the issue with the Sporting Just Cause is that it does not acknowledge the importance of transparent communication between the player or the club. In case the club is not satisfied on the players skills or personality unless they received the expected transfer value, they will most likely keep the player in their roster until the contract has expired or asked transfer value has been paid. In order to do so, the club is required to give the player to participate more than 10% of the official matches.¹⁸³ However, this requirement is impartial since the club can bypass the rule by giving the player to play in less meaningful match. One could argue, that there are no such as less meaningful matches. In fact, during the end of the season there might be a period that results of the games won't affect the position of the club in their league. In addition, there exist less important cup competitions where this kind of behaviour is evident.

Furthermore, particularly in football managers changes constantly, this means to the player and the new manager that they are required to start their relationship from the start. Since the managers are placed above the players, they do not have to explain their decisions whether it concern the playing time of the player or transfer of the player. Hence, this proposed provision would provide a safeguard for the player to early terminate the agreement if he or she assumes that their career is in jeopardize. After all, the maximum length of the football career is around 15 years, therefore their right to free movement should be protected.

¹⁸² FIFA Regulation of Status and Transfer of Players, article 15.

¹⁸³ *Ibid.*

LIST OF REFERENCES

Scientific books

1. Bernanrd, C., Peers, S. (2014). *European Union Law*. 1st ed. New York: Oxford University Press.
2. Bogusz, B., Cygan, A, J., Szyszczyk, E, M. (2017). *The Regulation of Sport in the European Union*. Cheltenham, UK: Edward Elgar Publishing Limited.
3. Craig, P., de Búrca, G. (2011) *EU Law: Text, Cases, and Materials*. 5th ed. New York: Oxford University Press,
4. Ehlers. D., Becker, U., et al. (2007). *European Fundamental Rights and Freedoms*, de Gruyter Textbook, Berlin, Boston: de Gruyter.
5. Freeburn, L. (2018). *Power, Legal Authority and Legitimacy in the Regulation of International Sport*. Neatherland: Brill | Nijhoff.
6. Geeraert, A., (2016). *The EU in International Sports Governance A Principal-Agent Perspective on EU Control of FIFA and UEFA*, 1 ed. The European Union in International Affairs series, New York, Palgrave Macmillan UK.
7. Lahti, J. (2010). Turun yliopiston oikeustieteellisen tiedekunnan julkaisuja Urheiluoikeun sarja:UEFA's Homegrown Player Rule in the light of EU Law. Volume no 29. Turku: Uniprint.
8. Lorenz,M (2013), *An Introduction to EU Competition Law*, New York: Cambridge University Press.
9. Monti. G, (2007), *EC Competition Law*, New York: Cambridge University Press.
10. Parrish, R. (2003). *Sports Law and Policy in the European Union*. Manchester: Manchester University Press.
11. Pijetlovic, K. (2015). *EU sports law and breakaway leagues in football*. ASSER International Sports Law Series. T.M.C. Asser Press.
12. Weatherill, S. (2014). *European Sports Law: Collected Papers*. 2nd edition. ASSER International Sports Law Series The Hague: T.M.C. Asser Press,
13. Whish, R., Bailey, D. (2012). *Competition Law*. 7th ed. New York: Oxford University Press.

Scientific articles

14. Colucci.M., Majani.F (2008), The FIFA Regulations on the Labour Status and Transfer of Players. – *Indonesian Journal of International Law*, p 681-709.
15. Czarnota, P, A. (2013). FIFA Transfer Rules and Unilateral Termination without Just Cause. -*Berkeley Journal of Entertainment and Sports Law* 2, p 2-46.
16. Egger, A., Stix Hackl, C (2002) Sports and Competition law: A Never ending Story? – *European Competition law review*, Vol.23(2), p 81-91 (p89).
17. Jesse, G. (2005). "The Demise of Sport - The Effect of Judicially Mandated Free Agency on European Football and American Baseball, – *Cornell International Law Journal*: Vol. 38: Iss. 1, Article 9, p 301.
18. Maliszewska-Nienartowicz, J, (2014). Direct and Indirect Discrimination in European Union Law – How to Draw a Dividing Line? – *International Journal of Social Sciences*. p 43.
19. Mortelmans, K.J.M. (2011), Towards a Convergence of the Application of the Rules on Free Movement and Competition? *Common Market Law Review*, Issue 3, Kluwer law international, p 623.
20. Pearson, G. (2015). sporting justifications under EU free Movement and Competition law: The Case of the Football ‘Transfeer System’, – *European Law Journal*, p 220-238.
21. Van Overmeiren, F., et al. (2014). FreSsco analytical report 2014: The notions of obstacle and discrimination under EU law on free movement of workers – *European Commission*

Online sources

22. FIFA newsletter. (2018). *Amendments to the Regulations on the Status and Transfer of Players*, Accesible: <https://resources.fifa.com/image/upload/1625-amendments-to-the-regulations-on-the-status-and-transfer-of-players.pdf?cloudid=bmkwifiiyexkdnicsip>. (last accessed 24.12.2018).
23. FIFPro, (2015). FIFPro’s EU competition law complaint – executive summary. Accesible: <https://fifpro.org/attachments/article/6156/FIFPro%20Complaint%20Executive%20Summary.pdf>, 31.12.2018.

24. FIFPro World Players' Union. (2015). FIFPro legal action against FIFA transfer system. Accessible: <https://www.fifpro.org/news/fifpro-takes-legal-action-against-fifa-transfer-system/en/>. 21.3.2018.
25. Kienappel, P., Stein, A., (2007). The application of Articles 81 and 82 EC in the sport sector. Accessible: http://ec.europa.eu/competition/publications/cpn/2007_3_6.pdf. 31.12.2018, p 7-9.
26. Moisejevas, R. (2013), Some thoughts concerning the main goals of competition, Accessible: <https://www.mruni.eu/upload/iblock/b0c/JUR-13-20-2-14.pdf>, 20 march 2018 p 630-632
27. NBA News, (2016). Free Agency Explained. Accessible: <https://www.nba.com/news/free-agency-explainer/>, 31.12.2018.
28. Telegraph sport, (2017). Lionel Messi signs new Barcelona contract to 2021 with a new buyout clause set at £626million. Accessible: <https://www.telegraph.co.uk/football/2017/11/25/lionel-messi-signs-new-barcelona-contract-2021-new-buyout-clause/>, (31.12.2018)

European Court of Justice decisions

29. Judgment of the Court, (20.11.2001) Aldona Malgorzata Jany and Others V Staatssecretaris van Justitie, C-268/99, ECLI:EU:C:2001:616.
30. Judgment of the court, 20.05.2008, Bosman, C-352/06, ECLI:EU:C:2008:290, paragraph 96-103.
31. Judgment of the court, 14.7.1976, Gaetano Donà v Mario Mantero, C-13/76, EU:C:1976:115
32. Judgment of the court, 30.11.1995, Gebhard, Case C-55/94, Gebhard, ECLI:EU:C:1995:411, paragraph 37, referring to Judgment of the court, 31.03.1993, C-19/92, Kraus, ECLI:EU:C:1993:125, paragraph 32.
33. Judgment of the court, 18.07.2006, Meca-Medina, Case C-519/04, ECLI:EU:C:2006:492 point 42.
34. Judgement of the court, (08.06.1999), Meeusen, C-337/97, ECLI:EU:C:1999:284,
35. Judgment of the Court, 26.01.2005, Piau v Commission, T-193/02, ECLI:EU:T:2005:22, point 112-116.
36. Judgment of the court, 30.06.1966, Société Technique Minière v Maschinenbau Ulm, C-56/65 - ECLI:EU:C:1966:38.
37. Judgment of the Court, (14 February 1978), United Brands v Commission, Case 27/76, ECLI:EU:C:1978:22.
38. Judgment of the court, 15.12.1995, Union Royale Belge des Sociétés de Football Association and others v Bosman and others, C-415/93, ECLI:EU:C:1995:463.

39. Judgment of the court, 12.12.1974, Walrave & Koch V Association union cycliste internationale, C-36/74, EU:C:1974:140.
40. Judgment of the court, 12.12.1974, Walrave & Koch V Association union cycliste internationale, C-36/74, EU:C:1974:140.
41. Judgment of the court, 19.02.2002, Wouters, Case C-309/99, ECLI:EU:C:2002:98, Wouters point 97.

Other sources

42. Court of Arbitration for Sport. CAS 2007/A/1299, (2008),
43. Court of Arbitration for Sport. CAS 2008/A/1519, (2009).
44. FIFA Regulation of Status and Transfer of Players, edition 2018.
45. FIFA Regulations on the Status and Transfer of Players Commentary,
46. Opinion of Advocate General, 20.09.2018. Opinion of advocate general Lenz, C-415/93, ECLI:EU:C:1995:29, point 286.