

TALLINN UNIVERSITY OF TECHNOLOGY

School of Business and Governance

Department of Law

Juuso Huovinen

**THE POSSIBLE IMPACT OF FIFA TRANSFER REFORM
PACKAGE ON TRAINING COMPENSATIONS OF
FOOTBALL PLAYERS IN THE LIGHT OF ARTICLE 45 TFEU**

Bachelor's thesis

Programme HAJB08/14 Law, specialization European Union and international law

Supervisor: Jenna Uusitalo, M.A.

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 been presented for grading.
The document length is 13,067 words from the introduction to the end of conclusion.

Juuso Huovinen.....

(signature, date)

Student code: 166381HAJB

Student e-mail address: juhuov@ttu.ee

Supervisor: Jenna Uusitalo, M.A.

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	5
INTRODUCTION	6
1. EU SPORTS LAW	9
1.1 Competence of the EU in relation to sports	9
1.2 The framework set by ECJ	9
1.3 Article 165 TFEU	12
2. ARTICLE 45 TFEU - THE FREEDOM OF MOVEMENT FOR WORKERS	13
2.1 The scope of application	13
2.2 Prohibition of discrimination	14
2.3 Legitimate objectives and justifications	16
3. FIFA TRANSFER SYSTEM	17
3.1 Overview of the FIFA	17
3.2 FIFA Regulations on the Status and Transfer of Players	18
3.2.1 Chapter IV RSTP - contractual stability	18
3.2.1.1 Articles 13-16 RSTP	18
3.2.1.2 Article 17 RSTP	19
3.2.2 Chapter VII RSTP - Training compensation and solidarity mechanism	20
3.2.2.1 Article 20 and Annex 4 RSTP	20
3.2.2.2 Article 21 and Annex 5 RSTP	22
3.3 FIFA Transfer Reform Package	23
3.3.1 Background	23
3.3.2 The Recommendations	24
3.3.2.1 Clearing house	25
3.3.2.2 Domestic transfer system	25
3.3.2.3 Licensing system for agents	26
3.3.2.4 Regulation of loans of players	27
3.3.2.5 Applying solidarity contributions in domestic transfers with an international dimension	27

4. TRAINING COMPENSATION IN THE LIGHT OF ARTICLE 45 TFEU.....	28
4.1 Background.....	28
4.1.1 C-415/93 Bosman	28
4.1.2 C-325/08 Bernard	30
4.2 Three stages of the current training compensation.....	32
4.2.1 Restriction.....	32
4.2.2 Justification.....	34
4.2.3 Proportionality	34
4.3 The impact of the Transfer Reform Package.....	38
4.3.1 Clearing house & Domestic Transfer System.....	38
4.3.2 Regulating the conduct of agents.....	39
4.3.3 Regulating the loan system	39
4.3.4 Solidarity contributions in domestic transfers with an international dimension...40	
4.3.5 Overall analysis of the impacts	40
CONCLUSION.....	41
LIST OF REFERENCES.....	43

ABSTRACT

Football is a sport where the players are most likely bound by the contract with their club and therefore unable to freely change their working place. If a player wishes to change the club he represents, the new club is obliged to pay a transfer fee, which can be interpreted as compensation for the premature conclusion of a contract.

When the player signs his first professional contract, all clubs which have contributed to his training between the seasons of his 12th and 21st birthday are entitled to training compensation. With each subsequent transfer until the end of the season of his 23rd birthday the new club is obliged to pay training compensation in addition to the transfer fee. According to the European Court of Justice, the existence of the restriction on free movement law established by this training compensation scheme can be justified in some conditions.

This thesis seeks to point out the weaknesses of the training compensation scheme by evaluating it thoroughly from the aspect of EU free movement law. The core problem is that the scheme is not the least restrictive way to collect training compensations and therefore it cannot be justified under the EU law. Furthermore, the possible impact on restrictions by the newly established Transfer Reform Package is evaluated. Nonetheless, the findings show that the package is not enough to repair the defects in the scheme and therefore young football players are hindered from exercising their right to free movement.

Keywords: EU free movement law, EU sports law, FIFA Transfer System, training compensation

INTRODUCTION

The topic of this thesis refers to the European Union (EU) sports law and its essential scope of application, namely football. Football is commonly referred to as the world's number-one game, and it is particularly prominent in Europe where the geographical scope of this thesis is.¹ More specifically this thesis focuses on the contradiction between the transfer rules on young football players laid down by the *Fédération Internationale de Football Association* (FIFA), which is the international governing body of football, and the rules on freedom of movement for workers provided by the Treaty on the Functioning of the European Union (TFEU).

The basic principle of the transfers of football players is that the players are free to change the club they represent only if they are not bound by any contract in effect or if the former and the new club reach an agreement on the terms of the transfer. This means that the transfer fee is paid by the new club to compensate for the premature termination of the contract. When the player signs his first professional contract training compensation is paid to all clubs which have contributed to his training between the seasons of his 12th and 21st birthday. Furthermore, training compensation is paid to the predecessor club by the new club with each subsequent transfer until the end of the season of his 23rd birthday.² Although FIFA has amended their regulations in regards to training compensation to comply with the EU law, the rules are still yet to face a real challenge in order to have certainty that they are not precluded by EU law.³ However, before the real challenge has even taken place FIFA has continued to amend the transfer rules, and implementation of the new Transfer Reform Package (TRP) has already begun.

¹ Delaney, T., & Madigan, T. (2015). *The sociology of sports: An introduction*. Jefferson, NC: McFarland & Company, Inc. p 21.

² Gardiner, S., & Welch, R. (2016). Nationality Based Playing Quotas and the International Transfer System Post-Bosman. - *The Legacy of Bosman ASSER International Sports Law Series*, 51-80. p 55.

³ Pijetlovic, K. (2015). *EU Sports Law and Breakaway Leagues in Football*. The Hague: Asser Press. p 133.

This thesis aims to evaluate to which extent the training compensation scheme can be regarded as proportionate under EU free movement law and furthermore how the Transfer Reform Package affects the proportionality. The selection of the topic is based on its extremely novel nature since the implementation of the TRP is currently taking place. Furthermore, Article 45 TFEU requires that the nationals of EU member states shall have the capability to reside and move freely within EU to seek and take up employment without restrictions, despite the specific characteristics of the profession.⁴ From these circumstances evolves the research problem where the core is that European Court of Justice (ECJ) has stated that in order to be justified the training compensation paid for the clubs should be related to real training costs incurred by the club.⁵ The problem is that in current training compensation scheme the paid compensation cannot be regarded as being related to the real costs, and this issue is not corrected by virtue of the TRP.

The research question of this thesis is a two-part question: Which factors breach the proportionality of the training compensation scheme in the light of freedom of movement for workers and how these factors are affected by the Transfer Reform Package? The research method used to evaluate the first part of this question is doctrinal⁶ since this thesis produces information about EU free movement law and systematizes the related case law to evaluate the legality of the transfer rules. For the latter part of the question, impact assessment is used by processing the data related to the TRP and evaluating its impact on the findings of the first part of the question.

This thesis starts with a small introduction to EU sports law. The purpose of the chapter is to gain an understanding of why and how the EU has competence over sports within its territory. The chapter emphasizes the development of EU sports law through the case law. The natural step from there is to move to the next chapter to handle the basic concept of freedom of movement for workers in the EU. Firstly the basic principles and the scope of the freedom is introduced. After that, the chapter moves on to evaluate the restrictions and justifications related to the

⁴ Barnard, C. (2013). *The Substantive Law of the EU: The Four Freedoms*. 4th ed. Oxford: Oxford University Press. p 272.

⁵ Court decision, 16.3.2010, *Olympique Lyonnais SASP v Bernard and Newcastle United*, C-325/08., EU:C:2010:143, point 46.

⁶ Aarnio, A. (2011). *Essays on the doctrinal study of law*. Dordrecht: Springer. p 19.

freedom. Altogether the purpose is to enlighten the idea of freedom of movement for workers to be able to evaluate its interaction with the rules on transfer fees.

Once the EU law basis for the topic has been established, it is time to introduce the FIFA transfer system and the transfer reform package. The chapter introduces FIFA, FIFA transfer system, training compensation scheme and the basic principles of the Transfer Reform Package. After that, the final chapter will evaluate the proportionality of the training compensation scheme under EU free movement law. In addition, the final chapter will evaluate the impacts of the TRP on the proportionality of the scheme.

It has to be reminded that this thesis uses the term 'football' to refer to the traditional sport also known as 'soccer' where the ball is kicked instead of carried in hand.⁷ It is also worth noting that the topic covers only men's football since females are not included in the training compensation system.⁸

⁷ Dunmore, T., & Murray, S. (2013). *Soccer for dummies*. New York: John Wiley & Sons, Inc. p 9.

⁸ The FIFA Dispute Resolution Chamber (DRC), 7.4.2011, S v A, No. 411375. point 11.

1. EU SPORTS LAW

1.1 Competence of the EU in relation to sports

One of the fundamental principles of EU law is the principle of conferral which means that the EU holds only the competence which has been conferred to it in the Treaties.⁹ Until 2009 and the adoption of the Lisbon Treaty, sports were not mentioned in the treaties. However, even before bringing sports within the explicit scope of the Treaty by virtue of the Lisbon Treaty EU had certain competence to regulate sports within its territory.¹⁰

TFEU, as well as the preceding treaties, contain provisions which impose EU a broad control over the economy and, for the purposes of this thesis, most importantly provisions on the free movement of persons and services. As sport possess economic dimension, sporting practices can be considered as falling within the broad scope of the Treaty and thus they have to comply with the rules established in the Treaties.¹¹ Therefore it can be derived that the EU cannot directly lay down the rules concerning the organizing of sports but has the competence to prohibit some rules and practices.

1.2 The framework set by ECJ

*Walrave and Koch*¹² was the first sports case ECJ had to deal with and therefore the very first step for the court was to define whether the Treaty covered the area of sports.¹³ In the ruling ECJ

⁹ Ashiagbor, D., Countouris, N., & Lianos, I. (Eds.). (2012). *The European Union after the Treaty of Lisbon*. Cambridge: Cambridge University Press. p 50.

¹⁰ Weatherill, S. (2014). *European Sports Law: Collected Papers*. 2nd ed. The Hague: Asser Press. p 2

¹¹ *Ibid.* p 2.

¹² Court decision, 12.12.1974, *Walrave and Koch v Association Union Cycliste Internationale and others*, C-36/74, EU:C:1974:140

¹³ Pijetlovic, *supra nota* 3, p 102.

stated that "the practice of sport is subject to Community law only in so far as it constitutes an economic activity...".¹⁴

The issue in *Walrave and Koch* was that two Dutch professional pacemakers who competed in motor-paced bicycle races sought for another team member for themselves from other nationalities in order to form a more competitive team. However, the rules of *Union Cycliste Internationale* required that both team members possessed the same nationality. The requirement was considered to be discriminatory based on nationality and against the provisions of Articles 18, 45 and 56 TFEU by Walrave and Koch.¹⁵

The ECJ ruled that the prohibition of discrimination based on nationality "...does not affect the composition of sport teams, in particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity."¹⁶ With this decision, the ECJ established so-called sporting exception in EU law. Respectively rules governing economic sporting activity would not be caught by the Treaty as long as the ground for the rules was 'purely sporting' and thus non-economic.¹⁷

The logic behind the decision is understandable since it is common sense that national teams consist of only nationals of the country which the team represents. However, the wording of the decisions serves a base for contradiction. Despite the fact that the national team selection rules are clearly of sporting interest they cannot be considered to be 'purely sporting interest' which 'as such has nothing to do with economic activity'. The participation in international sporting events offers exposure for sportspersons which enhances their profile and popularity and by virtue of that their earning potential is possibly improved.¹⁸

*Bosman*¹⁹ is the second landmark case in the field of EU sports law but for the purposes of this thesis, the case will be evaluated later since the ruling did not yet offer a clear solution for the

¹⁴ Walrave and Koch, *supra nota* 12, point 4.

¹⁵ Pijetlovic, *supra nota* 3, p 103.

¹⁶ Walrave and Koch, *supra nota* 12, point 8.

¹⁷ Pijetlovic, *supra nota* 3, p 103.

¹⁸ Weatherill, *supra nota* 10, p 3.

¹⁹ Court decision, 15.12.1993, *Union Royale Belge des Sociétés de Football Association ASBL and others v Bosman and others*, C-415/93, EU:C:1995:463

interpretation of economic aspects in EU sports law.²⁰ However over 30 years later the definition of the scope of EU law in regards to purely sporting rules was reached by virtue of the third EU sports law landmark case.

In *Meca-Medina* two swimmers had failed doping tests and were imposed a ban for two years. Nevertheless, the swimmers, David Meca-Medina and Igor Majcen, complained to the Commission about the violation of the competition rules of the Treaty. Although the complaint was unsuccessful in both CFI and ECJ, the difference lies in the reasoning offered by the courts.²¹

The CFI stated that the prohibition of doping is "based on purely sporting considerations and therefore has nothing to do with any economic consideration" and furthermore the purpose of the rules was to preserve 'the noble competition and other ideals of sport'.²² However, in its ruling ECJ stated that "the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down."²³

Thanks to this statement *Meca-Medina* had become a landmark case which invalidated the sporting exception and established the supremacy of EU law over the rules laid down by sports federations.²⁴ Although economic sporting activity is nowadays clearly a subject to EU law, restrictive sporting rules can still be justified. Sporting bodies can adopt all kind of rules as long as case-by-case assessment shows that they are proportionate to the legitimate genuine sporting interest pursued.²⁵

²⁰ Weatherill, *supra nota* 10, p 3.

²¹ *Ibid.* p 5.

²² Court decision, 30.9.2004, *Meca-Medina and Majcen v Commission*, T-313/02, EU:T:2004:282, points 47-49.

²³ Court decision, 18.7.2006, *Meca-Medina and Majcen v Commission*, C-519/04, EU:C:2006:492, point 27.

²⁴ Weatherill, *supra nota* 10, p 5.

²⁵ European Union, European Commission. (2007). *White Paper on Sport* (White Paper 52007DC0391). Brussels. point 4.1.

1.3 Article 165 TFEU

As stated before, the EU had the competence to some extent in the area of sports even though there was no mention of sports in the Treaties before the adoption of the Lisbon Treaty in 2009.²⁶ The Lisbon Treaty included Article 165 and by virtue of that EU was given "an explicit legal basis for acting in the field of sport." However, Article 6(e) TFEU limits the capacity of EU to actions which support, coordinate or supplement the actions of the Member States.²⁷ Another limitation for the actions is that the scope of Article 165 TFEU does not include harmonization of the laws and regulations of the Member States.²⁸

The inclusion of sports in the Treaty also, besides creating legislative competence, enables compiling of a budget for sports. On the other hand, it is worth noting that the legislative competence is merely supporting by nature which is considered to be the weakest competence type. Therefore it is unlikely that the EU will take a dominant role in the field of sports governance regulation. However, even if the role of the EU is not a powerful one, the adoption of the Article 165 TFEU removes the possibility of sporting bodies to claim that EU does not have the competence over sporting regulations.²⁹

²⁶ Weatherill, *supra nota* 10, p 2.

²⁷ Piris, J. (2010). *The Lisbon Treaty: A legal and political analysis*. New York, N.Y. : Cambridge University Press. p 322.

²⁸ *Ibid.*

²⁹ García, B., Weatherill, S. (2012) Engaging with the EU in order to minimize its impact: sport and the negotiation of the Treaty of Lisbon. - *Journal of European Public Policy*, No. 19:2, 238-256. p 251

2. ARTICLE 45 TFEU - THE FREEDOM OF MOVEMENT FOR WORKERS

The European Single Market is an essential feature of the EU, and it forms the economic base for the Union. The common market within the EU is established in Part Three of the TFEU which consists of many fundamental principles. The significance of Part Three of the TFEU for the common market lies in the fact that it lays down the free movement of goods, services, people and capital, often referred as 'four fundamental freedoms'.³⁰ For the purposes of this thesis, the most important freedom is the freedom of movement for workers in the EU which is established by the Article 45 TFEU.³¹

2.1 The scope of application

The wording in the Article 45 TFEU states that it can be invoked only by workers and therefore ECJ has stated that the term 'worker' should have a uniform European Union definition.³² According to ECJ to qualify as a worker under EU law a person needs to "perform services for and under the direction of another person in return for which he receives remuneration."³³ Furthermore, the above-mentioned performance of services should be "genuine and effective" and not just purely "ancillary and marginal".³⁴ However, despite the wording of Article 45, the ECJ has extended the freedom of movement for workers. The extended freedom requires that the Article 45 TFEU should be interpreted in a way which ensures the job-seekers a possibility to

³⁰ Craig, P., de Búrca, G. (2015). *EU law: Text, cases, and materials*. 6th ed. Oxford: Oxford University Press. p 607-608.

³¹ Storey, T., Pimor, A. (2014). *Unlocking EU law*. 4th ed. Milton Park, Abingdon, Oxon: Routledge. p 250.

³² Arnall, A., Chalmers, D. (2015). *The Oxford handbook of European Union law*. Oxford: Oxford University Press. p 460.

³³ Court decision, 13.7.1986, Lawrie-Blum v Land Baden-Württemberg, C-66/85, EU:C:1986:284, point 17.

³⁴ Court decision, 23.3.1982, Levin v Staatssecretaris van Justitie, C-53/81, EU:C:1982:105, point 17.

move and reside freely within the territory of other Member States to seek for employment.³⁵ The general rule for the determination of a worker has been that once the above-mentioned conditions for the work have been met, the purpose of the work is irrelevant.³⁶

It is also worth noting that naturally, the scope of EU law covers the EU Member States. Furthermore, the European Economic Area (EEA) agreement also grants the citizens of Iceland, Liechtenstein and Norway the possibility to enjoy the benefit from free movement provisions. Likewise, the Agreement with Switzerland broadens the scope of free movement provisions to cover the Swiss nationals as well.³⁷ Simultaneously purely internal situations are excluded from the scope of free movement provisions. This means that the absence of any foreign element pushes the issue out of the reach of EU law and leaves it to the scope of national law.³⁸

2.2 Prohibition of discrimination

Article 45 TFEU clearly prohibits any forms of discrimination. Discrimination can be divided into two different categories direct discrimination and indirect discrimination. Furthermore, there can nowadays exist a restrictive measure not connected to the nationality, namely an obstacle to access employment market.³⁹ In addition, the principle of non-discrimination between workers in the Union applies. According to the principle, all nationals of Member States have the same priority as regards employment as is enjoyed by national workers.⁴⁰

Direct discrimination, as its name suggests, refers to a differential treatment based on the ground of nationality.⁴¹ The ECJ has ruled that Article 45 TFEU is "directly applicable in the legal system of every Member State" and therefore all contrary national laws are inapplicable. However direct discrimination occurs rarely, but when it does the justification for it needs a

³⁵ Court decision, 26.1.1991, *The Queen v Immigration Appeal Tribunal, ex parte Antonissen*, C-292/89, EU:C:1991:80, point 13.

³⁶ Craig, P., de Búrca, G., *supra nota* 30, p 753.

³⁷ Rogers, N. *et al.* (2012). *Free movement of persons in the enlarged European Union*. 2nd ed. London: Sweet & Maxwell. p 278.

³⁸ Condinanzi, M. *et al.* (2008). *Citizenship of the union and free movement of persons*. Leiden: BRILL. p 72.

³⁹ Craig, P., de Búrca, G., *supra nota* 30, p 758.

⁴⁰ OJ L 141, 27.5.2011, recital 7.

⁴¹ *Ibid.*

steady basis.⁴² For example, the ECJ did not hold the nationality condition for the managing partner of Austrian company as a necessary or proportionate under the Article 346 (1)(b) TFEU despite the fact that the company traded military weapons and the nationality condition was based on the national security.⁴³

The general rule in the case of indirect discrimination is that if there exists a condition which is met more easily by a national worker than it would be by a non-national worker, the condition is likely to be in breach of Article 45 TFEU.⁴⁴ Indirect discrimination may exist in various forms from refusing the appropriate qualifications received in the home state to unnecessary language requirements for a job. Despite the slightly less restricting nature of indirect discrimination, these conditions have been defined as contrary to Article 45 TFEU if no clear justification is present.⁴⁵

In addition to the traditional distinction between direct and indirect discrimination, the scope of all freedoms has evolved to go beyond that to reach the obstacles to access market which are not based on nationality. Provisions of freedom of movement prohibit all measures which are likely to hinder or prevent market access and therefore restricts one's capability to exercise freedom of movement.⁴⁶ Coincidentally the landmark case in this field is *Bosman* where the legality of a transfer system for footballers was challenged.⁴⁷ However, for the purposes of this thesis further analysis of the case will be done later. The ruling resulted in challenging the legality of various measures and in principle almost all rules may possess the power to have a negative effect on the free movement of people. The guidelines for which provisions would be caught by the Article 45 TFEU were somewhat drawn by the ECJ.⁴⁸ According to the ruling of ECJ in case *Graf*, rules which have effects that are "too uncertain and indirect" are not in breach of Article 45 TFEU.⁴⁹

⁴² Craig, P., de Búrca, G., *supra nota* 30, p 759.

⁴³ Court decision, 4.9.2014, *Schiebel Aircraft GmbH v Bundesminister für Wirtschaft, Familie und Jugend*, C-474/12, EU:C:2014:2139, point 13.

⁴⁴ Craig, P., de Búrca, G., *supra nota* 30, p 758.

⁴⁵ Court decision, 29.4.2004, *Commission v Portugal*, C/171-02, EU:C:2004:270 ; Court decision, 16.4.2013, *Las v PSA Antwerp*, C-202/11, EU:C:2013:239

⁴⁶ Snell, J. (2010). Notion of market access: concept or slogan, the. - *Common Market Law Review* 47(2), 437-472.

⁴⁷ *Bosman*, *supra nota* 19.

⁴⁸ Craig, P., de Búrca, G., *supra nota* 30, p 762.

⁴⁹ Court decision, 27.1.2000, *Volker Graf v Filzmoser Maschinenbau GmbH*, C-190/98, EU:C:2000:49, point 25

2.3 Legitimate objectives and justifications

According to the Article 45(3) TFEU, discrimination based on nationality can be justified on the grounds of public policy, public security or public health. Consequently, employment in the public service is also excluded from the scope of the Article 45 TFEU. This means that for example rule stating that only Italians can work for the Ministry of Defence or can be appointed in the higher ranks of the Italian army can be justified under the derogations mentioned in the Article.⁵⁰

When it comes to the indirect discrimination and obstacles to access to the employment market the scale of possible grounds for justifications is broad. Therefore it is evident that the ground on which the discrimination can be based on cannot be laid down in the TFEU or in secondary legislation and case-by-case analysis is needed to evaluate the existence of legitimate objectives.⁵¹ When evaluating the restriction under free movement law, the ECJ examines closely the claims on which the justifications are based. Furthermore, a real connection between the restriction that is contested and the purpose of the restriction has to be shown. An excellent example of this analysis is incidentally the case *Bernard* which will be under comprehensive evaluation later on this thesis.⁵²

The complete model which ECJ exploits to resolve an issue under free movement law is the so-called three-step methodology. Firstly the question of whether or not the measure or action constitutes a restriction on free movement rights needs to be answered. Thereafter if the answer is yes, it needs to be evaluated if the measure or action can be justified. Finally, if the measure or action can be justified it is still left to evaluate is the measure or action nevertheless proportionate.⁵³ Under EU law the ECJ examines the proportionality at three levels. First and second levels examine if the measure was suitable and necessary for achieving the goal. The third level, often also referred as proportionality *stricto sensu*, examines if the measure imposes a burden on an individual that is excessive in relation to the desired goal.⁵⁴

⁵⁰ Van Overmeiren, F. *et al.* (2014). *Analytical Report - The notions of obstacle and discrimination under EU law on free movement of workers.*

⁵¹ Craig, P., de Búrca, G., *supra nota* 30, p 763.

⁵² *Ibid.*

⁵³ Shuibhne, N. N. (2014). *The coherence of EU free movement law: Constitutional responsibility and the Court of Justice.* Oxford: Oxford University Press. p 24.

⁵⁴ Craig, P., de Búrca, G., *supra nota* 30, p 551.

3. FIFA TRANSFER SYSTEM

3.1 Overview of the FIFA

The Fédération Internationale de Football Association (FIFA) is an international organization responsible for governing football, futsal, beach soccer and eFootball. From the aspect of this thesis, the most important objectives of FIFA are improving and promoting football globally in the light of its educational values particularly through youth and development programmes and drawing up regulations and provisions governing the game of football and related matters and ensuring their enforcement.⁵⁵

Football follows the classic European Model of Sport where the structure is divided into different layers. The base is formed by the clubs, amateur and professional both, which are the members of their national football federations which form the next layer of the pyramid. On top of that is the governing European body (UEFA) which is subject to the regulations of the global body (FIFA).⁵⁶ The same model goes within the FIFA as well. The Congress is on top of the pyramid and is the supreme and legislative body held every year.⁵⁷ Next on the structure is the Council which is the strategic and oversight body. The members of the Council shall be elected at the confederation level.⁵⁸ Furthermore under the Council works various standing committees which have their functions as advising and assisting the Council in their respective fields of function. For this thesis, the most important ones are Football Stakeholders Committee (FSC) and Players' Status Committee (PSC).⁵⁹

⁵⁵ FIFA. (2018e). *The FIFA Statutes*, August ed. Article 2.

⁵⁶ Pijetlovic, *supra nota* 3, p 36-37.

⁵⁷ FIFA (2018e), *supra nota* 55, Article 25.

⁵⁸ *Ibid.*, Article 33.

⁵⁹ *Ibid.*, Article 39.

3.2 FIFA Regulations on the Status and Transfer of Players

3.2.1 Chapter IV RSTP - contractual stability

Despite the fact that this thesis has its focus on the training compensation scheme, the topic needs somewhat clarification in order to conduct further analysis. In this sense, the contractual stability introduced in Chapter IV of RSTP is essential since it is one factor establishing the whole transfer scheme. This is due to the fact that the Chapter within its Articles from 13 to 18 *inter alia* defines the consequences of a termination of a contract without just cause.⁶⁰

3.2.1.1 Articles 13-16 RSTP

Article 13 RSTP stresses out the importance of the contract and declares that the only ways to terminate a contract are by mutual agreement or upon the expiry of the contract.⁶¹ However, Articles 14 and 15 RSTP provide some derogations to the prohibition of unilateral termination of the contract.

Either party of the contract is eligible to terminate the contract without consequences if there exists a just cause or in other words valid reason. In a case where any party of the contract is guilty of abusive conduct in order to force the counter-party to terminate or change the terms of the contract, just cause is present.⁶² Just cause may be present for the player for example if the club fails to pay at least two monthly salaries on their due dates.⁶³ An example case where the club may have the valid reason to terminate the contract is where the player possesses an uncooperative attitude towards the club, and the imposing of sanctions laid down in the club's internal regulations has not lead to any settlement.⁶⁴ Existence of just cause also justifies the termination of the contract during the season which would otherwise be forbidden.⁶⁵

⁶⁰ FIFA. (2018d). *Regulations on the Status and Transfer of Players*. 2nd ed., Article 17.

⁶¹ *Ibid.*, Article 13.

⁶² *Ibid.*, Article 14.

⁶³ *Ibid.*, Article 14bis.

⁶⁴ FIFA. (2015). *Commentary on the Regulations on the Status and Transfer of Players*. p 39-40.

⁶⁵ *Ibid.*, Article 16.

Furthermore, a player might be able to unilaterally terminate the contract if there is sporting just cause. Article 15 RSTP defines the sporting just cause to be the case where established professional has appeared in less than ten percent of the club's official matches. However, this is an issue to be solved with case-by-case analysis where the essential part is to declare whether the stay in the club restricts the player's opportunity to play in the sufficient level compared to his skills.⁶⁶

3.2.1.2 Article 17 RSTP

Once it has been established that the unilateral termination of the contract is prohibited by the RSTP, it is time to dive into the consequences of the termination without just cause. The enlistment of the consequences takes place in the Article 17 RSTP which is amongst the most disputed articles of the regulation and due to that its legality under EU law has been discussed frequently.⁶⁷ However, with regards to the legality of Article 17, the purposes of this thesis are satisfied by stating that the constant research on the topic confirms the fact that the FIFA transfer system still includes defects, and the ongoing challenge is needed for the sake of development.

The general rule for the breach of contract is that the liable party shall pay compensation. If the contract does not provide otherwise, the compensation shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. The criteria consist of the remuneration and other benefits due to the player, the remaining time of the contract that has been breached with a limitation to five years, fees and expensed covered by the former club and whether the contractual breach falls within a Protected Period.⁶⁸ Protected Period is a time lasting for three seasons if the contract was signed before the 28th birthday of the player or for two seasons in case of an agreement after the player's 28th birthday.⁶⁹ If the urge for compensation is present, it cannot be disposed to third party, but the player and the club are jointly and severally liable for its payment.⁷⁰

⁶⁶ FIFA (2015), *supra nota* 64, p 42.

⁶⁷ Parrish, R. (2015). Article 17 of the Fifa Regulations on the Status and Transfer of Players. - *Maastricht Journal of European and Comparative Law*, Vol. 22(2), 256-282.

⁶⁸ FIFA (2018d), *supra nota* 60, Article 17 (1).

⁶⁹ *Ibid.*, p 5.

⁷⁰ *Ibid.*, Article 17(2).

In addition to compensation also sporting sanctions are imposed if the player was in breach of contract during the Protected Period. The sanction removes the right of the player to play official matches for four months period and in aggravating circumstances the period is extended to six months.⁷¹ Furthermore, a club in breach of contract or inducing a breach of contract during the protected period is imposed sporting sanctions. In this case, the presumption is that the club has induced the player to breach the contract if they sign him. If the sanction is imposed, the club is banned from signing any new players for two registration periods.⁷² Likewise, any person subject to FIFA's regulations who acts in a manner designed to induce a breach of contract is sanctioned.⁷³

The consequences for the breach of contract can be described as very severe and harsh. A player in the worst case scenario risks his eligibility to play for his new club, and the club in turn risks its competitiveness since banning the registration of new players has a direct effect to it.⁷⁴ It is clear that these sanctions are imposed to promote contractual stability which is an essentiality for the sport since clubs need to be in a position to rely on the services of all its players during the course of the season.⁷⁵ However, at the same time the consequences direct clubs and players to reach mutual agreement on the termination of the contract to avoid the severe punishments. This is one factor that establishes the transfer fee system. It is a lot easier for a club to agree on the termination of the contract if the new club is offering a convenient amount of money or in other words transfer fee.

3.2.2 Chapter VII RSTP - Training compensation and solidarity mechanism

3.2.2.1 Article 20 and Annex 4 RSTP

The general rule for the training compensation is that the training club or training clubs of the player shall be entitled to training compensation firstly when the player signs his first professional contract and secondly each time a transfer involving the player takes place between

⁷¹ *Ibid.*, Article 17(3).

⁷² *Ibid.*, Article 17(4).

⁷³ *Ibid.*, Article 17(5).

⁷⁴ FIFA (2015), *supra nota* 64, p 49.

⁷⁵ *Ibid.*, p 44.

clubs of two different national associations until the end of the season of the players 23rd birthday. The obligation for the new club to pay training compensation exists despite the expiry of the contract.⁷⁶

No compensation shall be paid in three scenarios. Firstly if the club terminates the contract without just cause, the player is free to transfer to a new club without training compensation. Secondly, no compensation is due if the player is transferred to a category four club which in other words is a club on the lowest level in the categorization ladder of clubs. Finally if a professional reacquires amateur status by virtue of the transfer, no compensation is naturally paid.⁷⁷ It is also worth noting that if the player transfers from one association to another within the territory of the EU/EEA and the former club has not offered the player a new contract 60 days before the expiry of his current contract no compensation takes place unless the former club can justify its entitlement for the compensation.⁷⁸

The training clubs which are entitled to the training compensation in the case where a player signs his first professional contract are all the clubs which have contributed to the training of the player starting from the season of his 12th birthday until the season of his 21st birthday. However, if the player has terminated his training period before his 21st birthday the calculation of the compensation shall not take into account the seasons after the player actually completed his training.⁷⁹ After the signing of the contract, any subsequent transfers leads only to the payment of the training compensation for the former club for the time he was effectively trained by that club.⁸⁰

For the calculation of the training compensation, clubs are divided into four categories. The categorization is done by national associations on a confederation basis. The purpose of the categorization is to correspond to the amount of money needed to train one player for one year multiplied by an average number of players needed to be trained to produce one professional player. This means that for example for the year 2018 UEFA has defined that in Europe for clubs

⁷⁶ FIFA (2018d), *supra nota* 60, Article 20.

⁷⁷ *Ibid.*, Annex 4, Article 2.

⁷⁸ *Ibid.*, Annex 4, Article 6(3).

⁷⁹ *Ibid.*, Annex 4, Article 1(1).

⁸⁰ *Ibid.*, Annex 4, Article 3(1).

in category I it takes 90,000 euros to train one professional whilst for category IV club 10,000 euros is needed for the same result.⁸¹

So the purpose of the training compensation is to compensate for the costs that would have been incurred by the new club if it had trained the player itself. For the prevention of unreasonably high compensation, the calculation of the seasons between players 12th and 15th birthdays are based on the category IV clubs.⁸² Also in case of a player transferring within EU/EEA from a lower to higher category club, the calculation is based on the average cost of the two clubs. Contrarily in the transfer from higher to lower category club the calculation is based on the costs of the lower category club.⁸³

3.2.2.2 Article 21 and Annex 5 RSTP

Due to the complexity of the solidarity mechanism, this thesis excludes the legal analysis of the mechanism. However, the existence of the solidarity mechanism supports the statement that the player's training and education takes place between the ages of 12 and 23, and therefore brief introduction is in place.⁸⁴

Solidarity contribution is the proportion of the transfer fee paid to any club that has contributed to education and training between the seasons of players 12th and 23rd birthdays who transfers before the expiry of his contract between two national associations. The amount of the solidarity contribution is five percent of the compensation paid to the former club excluding the training compensation. It reflects the years a player was registered with the relevant club or clubs. The calculation follows the same procedure as the calculation of training compensation in a way that the earlier training years of the player are given less value than the latter years. For example, the clubs where the player was registered between the seasons of his 12th and 15th birthdays are entitled to five percent share of the contribution and the clubs whereas the clubs where the player

⁸¹ FIFA. (2018b). *Circular Letter No. 1627, Regulations on the Status and Transfer of Players – Categorisations of Clubs, Registration Periods and Eligibility*.

⁸² FIFA (2018d), *supra nota* 60, Annex 4, Article 6.

⁸³ *Ibid.*, Annex 4, Article 7.

⁸⁴ *Ibid.*, Annex 4, Article 1.

was registered between the seasons of his 16th and 23rd birthdays are entitled to ten percent share of the contribution.⁸⁵

3.3 FIFA Transfer Reform Package

3.3.1 Background

In September 2015 FIFPro, the worldwide representative organization for professional footballers, filed a complaint with the European Commission. The complaint challenged the legality of the transfer market system under EU law and *inter alia* stated that the system considered players as tradable assets.⁸⁶ This complaint was withdrawn as a consequence of the six-year cooperation agreement between FIFA and FIFPro aiming at strengthening the relationships between the two organizations and improving the governance of professional football worldwide.⁸⁷

The first group of notable changes took place in April 2018 when FIFA introduced various amendments to Regulations on the Status and Transfer of Players which were discussed in the previous sub-chapter. The amendments did not touch the issues discussed in this thesis since they consisted of the execution of monetary decisions, overdue payables provisions, abusive conduct and parameters for player compensation.⁸⁸ However, these amendments still foreshadowed that the pursuit for changes had still a long way to go.

Another consequence of the settlement was the establishment of the Task Force Transfer System to work under the Football Stakeholders Committee. The Task Force has been responsible for analyzing and investigating the broader issues of the transfer system in order to provide advice, suggestions and recommendations for possible changes or amendments for the committee. On 25th of September 2018, the Football Stakeholders Committee approved "a landmark reform

⁸⁵ *Ibid.*, Annex 5, Article 1.

⁸⁶ FIFPro. (2015). *FIFPro's EU Competition Law Complaint – Executive Summary*. p 1.

⁸⁷ FIFA.com. (2017). *FIFA and FIFPro sign landmark agreement and announce measures to enhance professional football*.

⁸⁸ FIFA. (2018a). *Circular Letter No. 1625, Amendments to the Regulations and Transfer of Players*.

package” introduced by the Task Force.⁸⁹ These recommendations, which are aimed at increasing the transparency of the transfer system, protecting its integrity and reinforcing solidarity mechanisms for training clubs, was endorsed by the members of the FIFA Council on 26th of October 2018.⁹⁰

3.3.2 The Recommendations

The work of the Task Force is basically still at the recommendatory level, and no concrete regulations have been drafted. Therefore it is once more worth noticing that this thesis researches how the framework introduced in the recommendations is going to fit under EU law. Furthermore, the FIFA Council stated that ” this document lays out the fundamental principles of what will eventually become a set of concrete regulations to be drafted by the Task Force Transfer System.”⁹¹ Therefore the need for complete regulations in order to research the effect on the compatibility of training compensation scheme under EU free movement law is not present. Additionally, at this point of research it is necessary to point out that the drafting of new regulations is always a long process and needs a lot of discussions, investigations and negotiations. Therefore official documents with precise wording and sufficient background research are published at a rather moderate pace. Since a lot of impact assessment and evaluation is done in roundtable discussions, articles based on those discussions are a necessity to gain aspects that are specific enough. Due to that, the cornerstone of this analysis of the recommendations is the article enlightening the discussion from the project event held on 27th of September 2018.⁹²

The recommendations consisted of five key principles to be taken into account when adopting the regulations. Firstly the recommendations emphasized the importance of ”clearing house” which would process payments related to transfers. Secondly, the introduction of domestic electronic transfer & registration systems is mandatory. Next, the recommendations introduced the establishment of new and stronger regulations for agents. After that, the development of the

⁸⁹ FIFA.com. (2018b). *Football stakeholders endorse landmark reforms of the transfer system.*

⁹⁰ FIFA.com. (2018a). *FIFA Council makes key decisions for the future of football development.*

⁹¹ *Ibid.*

⁹² Gunawardena, T. (2018). *Changing the game: Dissecting the landmark reforms endorsed by the FIFA Football Stakeholders Committee.*

loan system was stressed out. Finally, the recommendations stated that solidarity contributions should apply to domestic transfers which have an 'international dimension'.⁹³

3.3.2.1 Clearing house

The essence of the concept of clearing house lies in the fact that it would be an external body, most likely financial services company such as a bank. Clearing house would have a contract with FIFA, and it would be inspected by independent accountants. The area of responsibility of the clearing house would consist of the payments associated with transfers such as solidarity contributions, training compensation, agents' commissions and, potentially, transfer fees.⁹⁴

In theory training compensation and solidarity payments would be automatically deducted from the transfer fees and handed over to the clubs entitled for those payments. The data of the clubs who deserve to enjoy from the training compensation and solidarity payments shall be collected from the FIFA Transfer Matching System, which will be introduced in the next sub-chapter. This innovation is designed to tackle down the problem with clubs having an inadequate or outdated register of their former players. These defects in the register lead to a situation where the former players are hard to trace, and a vast amount of the compensations and payments are not conducted.⁹⁵

3.3.2.2 Domestic transfer system

The recommendations introduced the mandatory implementation of an electronic transfer system at the national level following the model of the FIFA Transfer Matching System (TMS). TMS was established in 2010 following the recommendations of yet another task force, this time called "for the good of the game". In a nutshell, TMS is a platform aiming to provide football authorities more details on international transfers.⁹⁶

The core of this recommendation is that it allows the creation of a complete electronic player passport to fight the problems with inadequate player records discussed above. This will add

⁹³ FIFA.com. (2018a), *supra nota* 90.

⁹⁴ Gunawardena, *supra nota* 92.

⁹⁵ *Ibid*

⁹⁶ FIFA TMS. (2019a). *About us*.

transparency and helps to fill the gaps in the TMS. Therefore this recommendation can be seen as a supporting act for the introduction of the clearing house. Be that as it may the implantation of domestic transfer system was the first step of the Transfer Reform Package officially commented by FIFA to its member associations. On 26th of November 2018 FIFA offered the domestic transfer system for the online management of national transfers and the FIFA Connect platform for the electronic registration of all players at a national level free of charge to all of its member associations.⁹⁷

3.3.2.3 Licensing system for agents

In 2015 FIFA decided to de-regulate the agents' industry. This argued decision led to decreased transparency and quality as a consequence of the increased number of agents inspired by the poorly enforced area of business. This wild west of agents has led to a situation where several agents conducted double representation or in other word acted on behalf of the player and the buying club or behalf of the player and the selling club or on behalf of the buying and selling club. There has also existed instances where the agent has represented all of the parties in the transfer. Therefore the need for change is undisputed.⁹⁸

The proposed changes introduced the registration of agents through the TMS. Also, the payments for agents shall go through the new clearing house. In order to be registered through the TMS agents shall pass an exam and periodic continual professional development courses. Furthermore, emphasis will be put on the regulation of agents representing multiple parties. Triple presentation and acting on behalf of a player and a selling club or on behalf of selling and buying club is prohibited.⁹⁹

Furthermore, the recommendations introduced compensation restrictions. The primary argument in favor of these restrictions is that it protects players from paying too much by aligning the remuneration more closely with the value of the services provided by agents.¹⁰⁰ Finally a

⁹⁷ FIFA. (2018c) *Circular Letter No. 1654, Implementation of the first Transfer Reform Package.*

⁹⁸ Gunawardena, *supra nota* 92.

⁹⁹ *Ibid*

¹⁰⁰ Parrish *et al.* (2018). *Promoting and Supporting Good Governance in the European Football Agents Industry - Interim report conclusions on remuneration and representation restrictions.* p 18.

separate investigatory and adjudicatory chamber will be established to monitor and sanction agents in violation.¹⁰¹

3.3.2.4 Regulation of loans of players

The recommendations will also amend the rules on loans by limiting the number of loans per season and the number of loans between each club. Furthermore, bridge transfers and sub-loans will be prohibited. Sub-loan means that a player who is already on loan from another team is loaned forward to a third team. Bridge transfer in turn refers to an act where a player is transferred to a club with a purpose of loaning him immediately to another club.¹⁰²

The need for the regulation of loans is explained by the fact that wealthy clubs stock up talent to themselves and then put them on loan until needed for service. This is one way of considering players as tradable assets, which was one of the primary reasons for the urge for changes coming from the players' side.¹⁰³ One noteworthy club in this field seems to be London based Chelsea F.C. that competes in the highest level of English football. The club currently has 41 players on loan, most notably Todd Kane and Kenneth Omeruo, who have never played for the club and have been on loan from the year 2011 and 2012 respectively.¹⁰⁴

3.3.2.5 Applying solidarity contributions in domestic transfers with an international dimension

As discussed previously in this thesis solidarity contributions apply only in case of a transfer between two national associations. TRP aims at applying the solidarity compensation even in the case where the transfer takes place within the same national association, but it has an international dimension. In principle, international dimension refers to a situation where a foreign player transfers from one club to another one within the same national association. For example the club who trained a German player transferring from one Portuguese club to another one is not entitled to the solidarity contribution despite the fact that the player is still transferring from one foreign club to another one. Therefore the recommendations suggest that also this kind of situations would fall within the scope of solidarity contribution.¹⁰⁵

¹⁰¹ Gunawardena, *supra nota* 92.

¹⁰² *Ibid*

¹⁰³ FIFPro. (2015), *supra nota* 86.

¹⁰⁴ Chelsea F.C. (2019). *On-Loan Players*.

¹⁰⁵ Gunawardena, *supra nota* 92.

4. TRAINING COMPENSATION IN THE LIGHT OF ARTICLE 45 TFEU

4.1 Background

4.1.1 C-415/93 *Bosman*

*Bosman*¹⁰⁶ is a case that has been discussed widely ever since the ECJ gave its ruling. The discussion varies from the evaluation of its effects on the football industry to accusations stating that the case caused the competitive imbalance between the clubs in European football to go even further. It has even been stated to be the case that gave birth to the EU sports law.¹⁰⁷ All the same, the case is undeniably the cornerstone for the evaluation of the FIFA transfer system.

The case involved Belgian footballer Jean-Marc Bosman who played for the club RFC Liège from the city of Liège in Belgium. He was offered a new contract with less favorable terms which he refused to sign. After that, he was put on a ‘compulsory’ transfer list where he was subject to a compensation fee which would have been paid in case of a transfer. Compensation fee would have been based on his gross annual income multiplied by a factor derived from his age. However, he was not able to find a new club which meant a start of a period where the possible compensation would have been negotiated and agreed by both, the selling and the buying club.¹⁰⁸

During this period of ‘free’ transfer, a French club US Dunkerque was willing to hire him and agreed about the transfer fees with RFC Liège. However, RFC Liège was not confirmed about the financial stability of the US Dunkerque, and they did not apply for an international clearance

¹⁰⁶ *Bosman*, *supra nota* 19.

¹⁰⁷ Pijetlovic, *supra nota* 3, p 108.

¹⁰⁸ *Ibid.*, p 107.

certificate from the Belgian football association which was mandatory for an international transfer to take place. As a consequence of that Bosman was suspended for one season in accordance with the rules of the Belgian football association. Nevertheless Bosman received a court order securing him the possibility to enter into a contract with any club without a transfer fee. Nonetheless, he was unable to find any clubs offering him steady employment, and he reckoned that he was boycotted by most European clubs. After that, the transfer rules were challenged in the Belgian national court which referred for a preliminary ruling from the ECJ. The other challenged rule was so-called 3+2-rule which imposed nationality quotas to clubs.¹⁰⁹ However, evaluation of the rule is excluded from the scope of this thesis.

The application of the rules did not depend on the factor if the transfer took place within clubs belonging to different national associations or to the same national association.¹¹⁰ However, it did not matter how the rules were applied in different situations since they directly affected players' access to the employment market in other Member States.¹¹¹ Despite this, the rules would not have constituted an obstacle to freedom of movement for workers if they had pursued legitimate aim compatible with the Treaty and furthermore be justified by pressing reasons of public interest.¹¹²

Based on the social importance of football "maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results" and "encouraging the recruitment and training of young players" were accepted as legitimate aims.¹¹³ However, the transfer system could not be considered as an adequate means of maintaining financial and competitive balance in the world of football.¹¹⁴ Furthermore, the transfer rules were contingent and uncertain, and since it is impossible to know how many players are going to play professionally, the rules are in any event unrelated to the actual cost borne by clubs of training both future professional players and those who will never play professionally.¹¹⁵ The international transfer rules were amended

¹⁰⁹ *Ibid.*

¹¹⁰ Bosman, *supra nota* 19, point 98.

¹¹¹ *Ibid.*, point 103.

¹¹² *Ibid.*, point 104.

¹¹³ *Ibid.*, point 106.

¹¹⁴ *Ibid.*, point 107.

¹¹⁵ *Ibid.*, point 109.

after the ruling and players whose contracts had expired were considered as free agents, and they were able to transfer without any fees.¹¹⁶

4.1.2 C-325/08 Bernard

In 1997 Olivier Bernard, 17-year old at the time, entered into a training contract for three seasons with the French football club Olympique Lyonnais (Lyon). However, after three seasons Bernard refused to sign a professional contract with the club and concluded a professional contract with English club Newcastle United FC. This was considered to be against the Charter which regulated the employment of footballers by Lyon.¹¹⁷

According to the Charter, players aged between 16 and 22 who were employed by a professional club under a fixed-term training contract formed the category known as *joueurs espoir*. The Charter regulated that the clubs were justified to require the trainee to sign a professional contract with it after the expiry of the training contract. In a case where the player refused to sign a contract, he was ineligible to sign a contract with another French club for three years if the training club did not issue a written agreement. If the club did not offer a professional contract, the player was able to sign a contract with any club without the payment of any compensation.¹¹⁸

The Charter did not include any compensation system despite the fact that it implied that compensation is due when the player refused to sign a contract. However, Lyon relied on the French Employment Code and demanded compensation from Bernard and Newcastle United for ‘damages corresponding to the loss suffered’ due to the breach of contractual obligations. The case eventually proceeded to the French court of last resort which referred to ECJ for a preliminary ruling. The two questions presented to the ECJ were firstly ”whether Article 39 EC (now Article 45 TFEU) precludes the provision of a national law requiring *joueurs espoir* to pay damages in the described context” and secondly ”if so, does the need to encourage the

¹¹⁶ Pijetlovic, *supra nota* 3, p 107.

¹¹⁷ *Ibid.*, p 124.

¹¹⁸ *Ibid.*

recruitment and training of young professional players constitute a legitimate objective capable of justifying such restriction.”¹¹⁹

In regards to the first question, the ECJ did not change its interpretation from the *Bosman* as it stated that rules which require the player to sign the professional contract or otherwise being sued for damages are likely to discourage the player from exercising his right of free movement. Despite the fact that the rules do not formally prevent the player from signing a professional contract with a club in another Member State, the exercise of the right is still less attractive by virtue of the rules, and therefore the rules constitute a restriction on freedom of movement for workers.¹²⁰

When it comes to the evaluation of the existence of legitimate objectives the ECJ accepted the view established in *Bosman* that the possibility of training compensation ”is likely to encourage football clubs to seek new talent and train young players.”¹²¹ However, the ECJ also acknowledged that the nature of the compensation was uncertain since it was impossible to know which of the trained players were going to be professionals. In addition to that, the ECJ also held that the costs of training players were only partly compensated by the benefits derived from the players.¹²² Therefore the training compensation scheme could be justified by the objective of encouraging the recruitment and training of young players. On the other hand, ”such a scheme must be actually capable of attaining that objective and be proportionate to it, taking due account of the costs borne by the clubs in training both future professional players and those who will never play professionally.”¹²³ In this case, the damages were not calculated based on the training costs caused by the training, but in relation to the total loss suffered by the club. Furthermore ”the amount of that loss was established on the basis of criteria which were not determined in advance.”¹²⁴ Therefore ”the possibility of obtaining such damages went beyond what was necessary to encourage recruitment and training of young players and to fund those activities.”¹²⁵

¹¹⁹ *Ibid.*

¹²⁰ Bernard, *supra nota* 5, points 33-35.

¹²¹ *Ibid.*, point 41.

¹²² *Ibid.*, points 42-43.

¹²³ *Ibid.*, point 45.

¹²⁴ *Ibid.*, point 47.

¹²⁵ *Ibid.*, point 48.

4.2 Three stages of the current training compensation

The basic principles of the training compensation scheme discussed in Chapter 3 were established in 2001 after the French rules were at issue.¹²⁶ ECJ has given an informal green light on the training compensation scheme established after the *Bernard* case. However, these training compensation rules still satisfy the criteria of the judgment only *prima facie*, and before an actual challenge to the rules, it is not possible to say whether they need to be amended.¹²⁷ Therefore the rules will be evaluated through the three-step methodology where it is analyzed if they constitute a restriction on free movement rights and if so, can the rules be justified and finally if they can be justified, are the rules still proportionate.¹²⁸

4.2.1 Restriction

On the basis of *Bosman* and *Bernard*, it is quite reasonable to state that there clearly exists a restriction on the free movement of workers established by the training compensation scheme. As discussed in Chapter 2.2 the restriction on the free movement of workers can be based on a directly or indirectly discriminatory measure or furthermore even to a measure which is not connected to a nationality. The training compensation scheme is clearly not directly discriminatory since no nationalities are mentioned in the Article 20 or Annex 4 of the RSTP. Nonetheless despite the lack of mention about the nationality of the players the rules may be indirectly discriminatory based on the comparison with national training compensations.

UEFA Club Coefficients are used to rank the member associations of UEFA based on the results of each association's clubs in the five previous UEFA Champions League and UEFA Europa League seasons, which are the two highest level football competitions for clubs in Europe.¹²⁹ Therefore these statistics can be interpreted as reflecting the level of professionalism in the country which also includes the training of the players.

¹²⁶ Van den Bogaert, S. (2013). From Bosman to Bernard. - *Leading Cases in Sports Law*, 91-108. p 101.

¹²⁷ Pijetlovic, *supra nota* 3, p 133.

¹²⁸ Shuibhne, N. N., *supra nota* 53.

¹²⁹ UEFA.com. (2019a). *How association club coefficients are calculated*.

Let us compare the top level country England, currently ranked as second, and average level country Finland, currently ranked as 38th out of 55 countries.¹³⁰ In the Premier League, the highest league of football in England, the so-called Academy system is in use. This means that the most talented young players are trained by the Academies of the clubs. When the player is moved from one Academy to another one, the payable compensation is based on the category of the club. Currently the fixed fee for one year of training in category I club is £40,000.¹³¹ However, if the category I club belongs to category I of the FIFA transfer rules, the fixed compensation for one year of training payable upon the international transfer is 90,000€.¹³²

In Finland, the training compensation is paid via separate training compensation fund, and the calculation is based on the number of players appearances in official matches. For comparison's sake the highest level league, *Veikkausliiga*, is reviewed. In *Veikkausliiga* the amount payable to training compensation fund per each player covered by the training compensation scheme is 12,5€ per match multiplied by the number of years the player has been trained by the club. The average amount of matches for a team is 27 which results in payments of 337,5€ in a year per one training year.¹³³ If the club belongs to category III of the FIFA transfer rules, which is the highest category for Finnish club, the amount payable upon international transfer is 30,000€ per year.¹³⁴

As can be noted from the comparison the compensation in case of an international transfer is higher, and the contrast between national and international transfer is even increased with smaller clubs. Therefore the FIFA training compensation scheme could be described as indirectly discriminatory since the national transfer rules provide lower compensation.

When examined beyond the discrimination level and considering the possible restriction without connection to the nationality, the *Bosman* is clearly a landmark case.¹³⁵ It was ruled by the ECJ that even if the provisions hindering the exercise of the right are applied without regard to the

¹³⁰ UEFA.com. (2019b). *UEFA Coefficients - Country coefficients*.

¹³¹ Premier League. (2018). *Youth Development Rules 2018/19*. p 96-97.

¹³² FIFA (2018b), *supra nota* 81.

¹³³ Suomen Palloliitto. (2019). *Kasvattajarahamääräykset*. 5 §.

¹³⁴ FIFA (2018b), *supra nota* 81.

¹³⁵ Craig, P., de Búrca, G., *supra nota* 30, p 761.

nationality, they constitute an obstacle to freedom of movement.¹³⁶ Furthermore, it was ruled in *Bernard* that training compensation scheme makes the exercise of the free movement less attractive.¹³⁷ Therefore it is clear that there is at least an obstacle to access the employment market.

4.2.2 Justification

Under free movement law, the roadmap for the justification is to firstly define the justification and then evaluate its proportionality. It has been defined that the acceptance of the restriction is based on the determination whether the restriction pursues "a legitimate aim compatible with the Treaty and is justified by overriding reasons in the public interest".¹³⁸

As previously discussed "encouraging the recruitment and training of young players" was accepted as a legitimate aim in *Bosman*¹³⁹ and this was furthermore confirmed by the *Bernard*.¹⁴⁰ The reason for accepting the legitimate aim in *Bernard* is based on the social and cultural dimension of sport. This is clearly a consequence of the Lisbon Treaty and the long-awaited introduction of sports in it.¹⁴¹

4.2.3 Proportionality

It was ruled in the *Bernard* that clubs could be discouraged from training young players if they are not able to have any compensation in a case where a player signs a professional contract with another club. Therefore a scheme which provides compensation for clubs in these cases could be justified "by the objective of encouraging the recruitment and training of young players."¹⁴² The essence of evaluating the suitability of the scheme lies in the difference of wording between *Bosman* and *Bernard*. In the latter case the encouraging was interpreted as "not discouraging".¹⁴³

¹³⁶ *Bosman*, *supra nota* 19, point 96.

¹³⁷ *Bernard*, *supra nota* 5, point 36.

¹³⁸ Pijetlovic, *supra nota* 3, p 125.

¹³⁹ *Bosman*, *supra nota* 19, point 106.

¹⁴⁰ *Bernard*, *supra nota* 5, point 41.

¹⁴¹ Lindholm, J. (2010). Case C-325/08, *Olympique Lyonnais SASP v. Olivier Bernard and Newcastle United UFC*, Judgment of the Court of Justice (Grand Chamber) of 16 March 2010, not yet reported. - *Common Market Law Review*, 47(4), 1187-1197. p 1191.

¹⁴² *Bernard*, *supra nota* 5, points 44-45.

¹⁴³ Pijetlovic, *supra nota* 3, p 128.

As discussed above the training compensation rules are less favorable in international transfers than in national transfers from the view of freedom of movement of a single player. On the contrary, in case of a single transfer, the rules on international transfer can be seen as more favorable than rules on national transfer from the training club point of view, since the economic benefit is greater in the first one. Therefore the rules could be regarded as suitable for achieving the objective of not discouraging the clubs from training young players.

However, the problem in *Bernard* was that the amount of compensation "was unrelated to the real training costs incurred by the club."¹⁴⁴ In the case where compensation paid for clubs is higher in international transfer than national transfer for the training of the same player the relation of the increased amount with the real training costs is clearly questionable. For example in a hypothetical situation where the training compensation is 3000€ per year in country A, and the same in country B. Player transfer from category IV club in country A to a club in the same category in county B and the training compensation suddenly bounces to 10,000€. That leaves 7,000€ which relation to the training costs is unidentified. Therefore the suitability of the scheme for reaching a situation where the clubs are not discouraged from training young players is somewhat ethically questionable since it is based on the unjustified enrichment of clubs in certain situations.

The defects in the calculation system without a connection to the real training costs incurred by the club also reflects to the necessity of the scheme. Again based on the facts presented above it can be stated that a scheme where the clubs are not left without any compensation if the player decides to sign a professional contract is necessary or otherwise clubs would be discouraged from training young players. In *Bernard*, it was further emphasized that particularly small clubs would be affected if they are not able to obtain any compensation and this again harms the social and educational function of sports by virtue of decreased recruitment and training of young players at the local level.¹⁴⁵

However, a scheme where the training compensations are not based on the costs incurred by the club cannot be necessary for achieving the legitimate aim. It is clear that training a world star

¹⁴⁴ Bernard, *supra nota* 5, point 46.

¹⁴⁵ *Ibid.*, point 44.

player is a jackpot especially for a small club and obtaining transfer compensation from him is justified. Nonetheless, it is worth noting that as discussed in Chapter 3, in case of transfer within EU/EEA from a lower to higher category club the calculation is based on the average cost of the two clubs. Or in other words, the calculation of the compensation is partly based on the factor on how much money would have been needed for the new club to train the player instead of the real training costs incurred by the old club. Again a hypothetical case where German category I club is willing to sign a professional contract with a player trained for six years starting from the season of his 12th birthday by the Estonian category III club. Even though the German club would not be bothered by the 160,000€ training compensation, the compensation scheme is still not necessary. The overwhelming compensation which partly designates the amount of money that would have been needed by the German club to train the player clearly exceeds the amount of money that was needed from the Estonian club to train that one specific professional.

Firstly it has to be noted that, as also the RSTP states, the player's training and education takes place between the ages of 12 and 23.¹⁴⁶ People responsible for training players at that age are driven by the intrinsic motivation which means that their inner interest and love for the sport motivate them to coach, not the money.¹⁴⁷ Therefore it can be stated that only a scheme where the real amount of training costs are compensated instead of imposing extra reward for successful training could be necessary. Secondly, it is however reasonable that the clubs still receive compensation for losing a very skilled player, but it is the transfer fees which are designed to cover that. Consequently, training players in the hope of training compensation cannot be regarded as a profitable business when taking into account \$20.8 million paid in training compensation in 2018 compared to the spent of \$7.03 billion on transfer fees in the same year.¹⁴⁸

Since the training compensation as it currently is cannot be regarded as being suitable or necessary for achieving the legitimate aim, it clearly imposes a burden on a single player which is excessive in relation to the objective of encouraging the recruitment and training of young players and therefore is not proportionate *stricto sensu*.

¹⁴⁶ FIFA (2018d), *supra nota* 62, Annex 4, Article 1.

¹⁴⁷ McLean, N., & Mallett, J. (2011). What motivates the motivators? An examination of sports coaches. - *Physical Education and Sport Pedagogy*, 17(1), 21–35. p 26-27.

¹⁴⁸ FIFA TMS. (2019b). *Global Transfer Market Report 2018*. p 25.

As been discussed above the problem of the scheme is not the idea behind it but the execution of it. The training compensation scheme does not reflect the amount of money invested in the training of the player but rather tries to reward for it. Therefore the compensations climb too high and possibly hinders players possibility of exercising free movement if his compensation is considered to be too high compared to his value. Nevertheless, the FIFA Dispute Resolution Chamber (DRC) has the power to review disputes concerning clearly disproportionate training compensations.¹⁴⁹ However, it is still unclear to what extent DRC are able or willing to readjust the compensations and how derogations from pre-determined criteria, which was required in *Bernard*,¹⁵⁰ go together with legal certainty.

It has been argued that even higher training compensation paid by the first category clubs would encourage lower-tier clubs to invest even more in the training of the young players.¹⁵¹ However, this is yet another way of treating the compensation as a reward and raises the burden on a single player. Even if the training compensation would be one million euros per year, the predictability of the sporting future of young players and the number of players ending up to play professionally as stressed out in *Bosman*¹⁵² would not increase. On the other hand, it is clear that a reward for training remarkably skilled player could be justified. However, this could be granted better by virtue of solidarity contribution. It is yet open to dispute and outside the scope of this thesis if the current solidarity contribution scheme is effective enough or if it should be amended to be based on some kind of ranking system.¹⁵³

All in all treating training compensation as a reward for training a player rather than just financial assistance to compensate the costs imposes too much appreciation for the club instead of a player. It has to be noted that not even the best club can train a youngster to be a world class professional if he does not have the potential for it. Therefore the current scheme punishes players for developing themselves into too skilled versions. The current scheme works in a way

¹⁴⁹ FIFA (2018d), *supra nota* 62, Annex 4, Article 5(4).

¹⁵⁰ *Bernard*, *supra nota* 5, point 46.

¹⁵¹ Najarian, A. C. (2015). The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers. - *Sports Lawyers Journal*, 22, 151-192. p 187.

¹⁵² *Bosman*, *supra nota* 19, point 109.

¹⁵³ Najarian, *supra nota* 151.

where in principle the skill level of the player is directly related to the restriction level. The more skilled the player, the more his freedom of movement is restricted.

4.3 The impact of the Transfer Reform Package

4.3.1 Clearing house & Domestic Transfer System

As discussed in Chapter 3, the clearing house would be responsible for the payments associated with transfers such as solidarity contributions or training compensations. Furthermore, the contributions and compensations would be automatically deducted from the transfer fee and distributed to the entitled clubs. The automated system clearly could be a way to increase the amount of money paid in training compensation since a lot of compensations and contributions never end up to the intended recipient. In 2017 only \$64 million out of the estimated \$318 million was paid out in solidarity contributions.¹⁵⁴ It is reasonable to expect that the same loss effect is happening with the training compensations as well.

A reform which increases the efficiency of the scheme can be interpreted as being a factor that increases the suitability of the scheme in some way. However, to what extent the clearing house will improve the efficiency depends on the powers it has. The relevant question is, for example, whether the clearing house has any power to investigate and demand from clubs all the relevant information related to the transfer. There might exist some failure in bank details or even fraudulent player passports in regards to former club details.¹⁵⁵ All these factors hinder the automated transfer of the money. However as previously established in Chapter 3 the introduction of domestic transfer system is designed to rectify the problems in player passports, and FIFA has already started to implement the system. The transparency increased as a result of the system evidently smoothens the automated payment process but only time shows to what extent.

¹⁵⁴ Marcotti, G. (2018). *Revealed: FIFA wants to fix transfers, deal with shady agents and address the loan system. Here's how.*

¹⁵⁵ Court of Arbitration for Sport, 28.4.2016, Nömme JK Kalju v. FK Olimpik Sarajevo, CAS 2015/A/4214

4.3.2 Regulating the conduct of agents

At first sight, this form of reform seems distant from the transfer compensation scheme, but the nucleus of it lies once more in the money. Limiting the representing capacity of agents and the commission paid for them might have a significant effect on the training compensation scheme. This is due to the fact that the compensation paid to agents is 22 times more than the amount paid in training compensation.¹⁵⁶ This might have led to a situation where the clubs have lost faith in the training compensation and believe that the transfer system exists only for the benefit of the agents.¹⁵⁷ If the oversized amounts of agent commissions result in a reluctance to exploit the benefits of the training compensation scheme for some clubs, the scheme clearly stands there without any benefits in regards to encouraging clubs to recruit and train young players. Hence balancing the spreading of money might evolve the training compensation scheme.

4.3.3 Regulating the loan system

As discussed earlier limiting the number of loans is clearly designated to prevent clubs from stocking up players and putting them on loan until needed for service. However, this limitation combined with the prohibition of bridge transfers and sub-loans might have a significant impact on the training compensation scheme. At this point, it is needed to remind that training compensation is only due in case of a transfer between two national associations and not in case of loans.

Firstly it is evident that if the clubs have only a limited amount of loans in use, it will result in more players being transferred instead of put on loan. Secondly, the loan system has been abused in regards to certain payments, such as taxes, solidarity contribution and most importantly training compensation. High rated players have signed a professional contract with low tier clubs, and in a short time they have been loaned by a high-level club. This action is clearly designed to avoid training compensations and solidarity contributions.¹⁵⁸ Any regulations restricting this conduct clearly leads to a more efficient transfer compensation scheme.

¹⁵⁶ Gunawardena, *supra nota* 92.

¹⁵⁷ *Ibid.*

¹⁵⁸ Court of Arbitration for Sport, 30.7.2009, MTK Budapest v. FC Internazionale Milano S.p.A., CAS 2009/A/1757

4.3.4 Solidarity contributions in domestic transfers with an international dimension

As proposed in Chapter 4.2, the solidarity contributions should be used for rewarding clubs for successful training of players and training compensation should be dedicated to compensate for the costs incurred by the training. It has been already established that the collection of both training compensation and solidarity contribution is most likely to become more efficient. In addition, including domestic transfers with an international dimension in the scope of solidarity contribution will promote the status of solidarity contribution as a reward for successful training and therefore supports the fact that current training compensations are too high.

4.3.5 Overall analysis of the impacts

The Transfer Reform Package is likely to improve the effectiveness of the training compensation scheme which can have an impact on the encouragement of the clubs to recruit and train young players. It can be deduced that the more compensation is being paid, the less restrictive the scheme is. From this aspect, the reform package is a step to the right direction since it might have the power to restore faith in the use and benefits of the scheme, and therefore it increases the suitability of the scheme.

However, the reform package does not remove the indirect discrimination arising from the differences between international and national schemes. Firstly due to different financial conditions between European countries, the sums for compensation set by UEFA are too imprecise and airy and thus should be set by national associations to be able to reflect the real costs more precisely.¹⁵⁹ Furthermore, the compensation rules within EU/EEA do not reflect the real training costs in all situations, but the savings made by the club or even worse they facilitate the unjustified enrichment of the clubs.¹⁶⁰ Since training compensation does not reflect the real costs incurred by the training of the player, but rather tries to reward for it, they go beyond what is necessary for encouraging the recruitment and training of young players and therefore imposes a burden on players freedom of movement which is excessive in relation to the objective sought to be achieved.

¹⁵⁹ Pijetlovic, *supra nota* 3. p 134.

¹⁶⁰ Dabscheck, B. (2006) The Globe At Their Feet: FIFA's New Employment Rules – II, - *Sport in Society*, 9:1, 1-18. p 5.

CONCLUSION

The aim of this thesis was to evaluate to which extent training compensation scheme can be regarded as proportionate under EU free movement law and how the Transfer Reform Package affects the proportionality. The findings show that the basic concept behind the training compensation scheme is justified under EU law for it encourages clubs to recruit and train young players. However, the execution of the scheme does not pass the proportionality test.

Firstly the scheme compensates clubs for the training of the players, and therefore it could be regarded as suitable for the purpose of encouraging clubs to train young players. However, the compensations are not related to the real training costs since it gives international transfers more attractive status by rewarding with higher training compensations than national transfer would result in. This can be regarded as unjustified enrichment for the clubs, and thus the suitability is ethically questionable.

Secondly, it is clear that a scheme where the clubs are compensated for their efforts in the area of training can be defined as necessary for clubs not be discouraged from training players. However, in a case where the player moves from a lower to a higher category club within EU/EEA, the calculation is based on the average training costs of the two clubs. Therefore the compensation is not related to the real costs but rather rewards smaller category clubs for successful training of skilled player noticed by the bigger clubs. Therefore overcompensating scheme is not necessary for the desired purpose.

Thirdly the scheme cannot be proportionate *stricto sensu* since it imposes a burden on a single player which is excessive in relation to the objective of encouraging the recruitment and training of young players since the scheme rewards for training instead of compensating. High rewards for achieving highly skilled player as a result of successful training do not increase the predictability of the players sporting future. Even exaggerated amounts paid in compensation do

not facilitate the player to become successful and skilled if he does not have the potential. Contrarily high compensations only punish skilled player for being successful at the training level. Other fees are designed to reward clubs for training and training compensation should only cover the costs of the training.

Transfer Reform Package is a package which consists of five key principles designed to improve the transfer system, and its implementation has already begun in the form of introducing domestic transfer systems. The package is clearly a step towards the right direction since it has features which improve the effectiveness of the training compensation due to better control over the payments.

The package still does not remove the problem related to indirect discrimination due to the more favorable training compensations in international transfers. This problem could be tackled if the amounts were set by national associations instead of confederation level. Secondly, the package does not change the fact that training compensation based on the average training costs of two clubs in transfer from lower to higher club within EA/EEA does not reflect the real costs of the clubs but rewards for successful training. Nevertheless, a reward for successful training is justified but could be granted better by virtue of solidarity contribution.

LIST OF REFERENCES

Scientific books

1. Aarnio, A. (2011). *Essays on the doctrinal study of law*. Dordrecht: Springer.
2. Arnall, A., Chalmers, D. (2015). *The Oxford handbook of European Union law*. Oxford: Oxford University Press.
3. Ashiagbor, D., Countouris, N., & Lianos, I. (Eds.). (2012). *The European Union after the Treaty of Lisbon*. Cambridge: Cambridge University Press.
4. Barnard, C. (2013). *The Substantive Law of the EU: The Four Freedoms*. 4th ed. Oxford: Oxford University Press.
5. Condiñanzi, M., Lang, A., & Nascimbene, B. (Eds.). (2008). *Citizenship of the union and free movement of persons*. Leiden: BRILL.
6. Craig, P., de Búrca, G. D. (2015). *EU law: Text, cases, and materials*. 6th ed. Oxford: Oxford University Press.
7. Delaney, T., Madigan, T. (2015). *The sociology of sports: An introduction*. Jefferson, NC: McFarland & Company, Inc.
8. Dunmore, T., Murray, S. (2013). *Soccer for dummies*. New York: John Wiley & Sons, Inc.
9. Pijetlovic, K. (2015). *EU Sports Law and Breakaway Leagues in Football*. The Hague: Asser Press.
10. Piris, J. (2010). *The Lisbon Treaty : A legal and political analysis*. New York, N.Y.: Cambridge University Press.
11. Rogers, N., Scannell, R., & Walsh, J. (2012). *Free movement of persons in the enlarged European Union*. 2nd ed. London: Sweet & Maxwell.
12. Shuibhne, N. N. (2014). *The coherence of EU free movement law: Constitutional responsibility and the Court of Justice*. Oxford: Oxford University Press.
13. Storey, T., & Timor, A. (2014). *Unlocking EU law*. 4th ed. Milton Park, Abingdon, Oxon: Routledge.
14. Weatherill, S. (2014). *European Sports Law: Collected Papers*. 2nd ed. The Hague: Asser Press.

Scientific articles

15. Dabscheck, B. (2006) The Globe At Their Feet: FIFA's New Employment Rules – II, - *Sport in Society*, 9:1, 1-18.
16. García, B., Weatherill, S. (2012). Engaging with the EU in order to minimize its impact: sport and the negotiation of the Treaty of Lisbon. - *Journal of European Public Policy*, No. 19:2, 238-256

17. Gardiner, S., & Welch, R. (2016). Nationality Based Playing Quotas and the International Transfer System Post-Bosman. - *The Legacy of Bosman ASSER International Sports Law Series*, 51-80.
18. Lindholm, J. (2010). Case C-325/08, Olympique Lyonnais SASP v. Olivier Bernard and Newcastle United UFC, Judgment of the Court of Justice (Grand Chamber) of 16 March 2010, not yet reported. - *Common Market Law Review*, 47(4), 1187-1197.
19. McLean, N., & Mallett, J. (2011). What motivates the motivators? An examination of sports coaches. - *Physical Education and Sport Pedagogy*, 17(1), 21–35.
20. Najarian, A. C. (2015). The Lost Boys: FIFA's Insufficient Efforts to Stop Trafficking of Youth Footballers. - *Sports Lawyers Journal*, 22, 151-192.
21. Snell, J. (2010). Notion of market access: concept or slogan. - *Common Market Law Review* 47(2), 437-472.
22. Parrish, R. (2015). Article 17 of the Fifa Regulations on the Status and Transfer of Players. - *Maastricht Journal of European and Comparative Law*, Vol. 22(2), 256-282.
23. Van den Bogaert, S. (2013). From Bosman to Bernard. - *Leading Cases in Sports Law*, 91-108.

EU and international legislation

24. Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p 1-390.
25. Regulation 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union, OJ L 141, 27.5.2011, p 1-12.

Other court decisions

26. Court decision, 12.12.1974, Walrave and Koch v Association Union Cycliste Internationale and others, C-36/74, EU:C:1974:140
27. Court decision, 23.3.1982, Levin v Staatssecretaris van Justitie , C-53/81, EU:C:1982:105
28. Court decision, 13.7.1986, Lawrie-Blum v Land Baden-Württemberg, C-66/85, EU:C:1986:284
29. Court decision, 26.1.1991, The Queen v Immigration Appeal Tribunal, ex parte Antonissen, C-292/89, EU:C:1991:80
30. Court decision, 15.12.1993, Union Royale Belge des Sociétés de Football Association ASBL and others v Bosman and others, C-415/93, EU:C:1995:463
31. Court decision, 27.1.2000, Volker Graf v Filzmoser Maschinenbau GmbH, C-190/98, EU:C:2000:49
32. Court decision, 29.4.2004, Commission v Portugal, C/171-02, EU:C:2004:270
33. Court decision, 30.9.2004, Meca-Medina and Majcen v Commision, T-313/02, EU:T:2004:282
34. Court decision, 18.7.2006, Meca-Medina and Majcen v Commision, C-519/04, EU:C:2006:492
35. Court decision, 16.3.2010, Olympique Lyonnais SASP v Bernard and Newcastle United, C-325/08., EU:C:2010:143
36. Court decision, 16.4.2013, Las v PSA Antwerp, C-202/11, EU:C:2013:239

37. Court decision, 4.9.2014, Schiebel Aircraft GmbH v Bundesminister für Wirtschaft, Familie und Jugend, C-474/12, EU:C:2014:2139
38. Court of Arbitration for Sport, 30.7.2009, MTK Budapest v. FC Internazionale Milano S.p.A., CAS 2009/A/1757
39. Court of Arbitration for Sport, 28.4.2016, Nömme JK Kalju v. FK Olympic Sarajevo, CAS 2015/A/4214
40. The FIFA Dispute Resolution Chamber (DRC), 7.4.2011, S v A, No. 411375

Other sources

41. Chelsea F.C. (2019). *On-Loan Players*. Accessible: <https://www.chelseafc.com/en/teams/on-loan-players> , 16 March 2019
42. European Union, European Commission. (2007). *White Paper on Sport* (White Paper 52007DC0391). Brussels. Accessible: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0391&from=EN> , 13 March 2019
43. FIFA. (2015). *Commentary on the Regulations on the Status and Transfer of Players*. Accessible: <http://www.thefa.com/-/media/files/thefaportal/governance-docs/registrations/december-2015-updates/commentary-on-the-regulations-for-the-status-and-transfer-of-players.ashx> , 14 March 2019
44. FIFA.com. (2017). FIFA and FIFPro sign landmark agreement and announce measures to enhance professional football. Accessible: <https://www.fifa.com/governance/news/y=2017/m=11/news=fifa-and-fifpro-sign-landmark-agreement-and-announce-measures-to-enhance-2918747.html> , 17 March 2019
45. FIFA. (2018a) *Circular Letter No. 1625, Amendments to the Regulations 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> , 17 March 2019
46. FIFA. (2018b) *Circular Letter No. 1627, Regulations on the Status and Transfer of Players – Categorisations of Clubs, Registration Periods and Eligibility*. Accessible: <https://resources.fifa.com/image/upload/1627-regulations-on-the-status-and-transfer-of-players-categorisation-of-clubs-r.pdf?cloudid=s2ptbqwpum5jfdulebeu> , 15 March 2019
47. FIFA. (2018c) *Circular Letter No. 1654, Implementation of the first Transfer Reform Package*. Accessible: <https://resources.fifa.com/image/upload/1654-implementation-of-the-first-transfer-reform-package.pdf?cloudid=rtvdrygondrqdfuv5h36> , 16 March 2019
48. FIFA. (2018d). *Regulations on the Status and Transfer of Players*. 2nd ed. Accessible: <https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players.pdf?cloudid=adi1292xtnibmwrqnimy> , 14 March 2019
49. FIFA. (2018e). *The FIFA Statutes*. August ed. Accessible: <https://resources.fifa.com/image/upload/the-fifa-statutes-2018.pdf?cloudid=whhncbdzio03cuhmwfxa> , 14 March 2019
50. FIFA.com. (2017). FIFA and FIFPro sign landmark agreement and announce measures to enhance professional football. Accessible: <https://www.fifa.com/governance/news/y=2017/m=11/news=fifa-and-fifpro-sign-landmark-agreement-and-announce-measures-to-enhance-2918747.html> , 17 March 2019
51. FIFA.com. (2018a). *FIFA Council makes key decisions for the future of football development* . Accessible: <https://www.fifa.com/about-fifa/who-we-are/news/fifa-council-makes-key-decisions-for-the-future-of-football-development> , 17 March 2019

52. FIFA.com. (2018b). *Football stakeholders endorse landmark reforms of the transfer system*. Accessible: <https://www.fifa.com/governance/news/y=2018/m=9/news=football-stakeholders-endorse-landmark-reforms-of-the-transfer-system.html> , 17 March 2019
53. FIFA TMS. (2019a). *About us*. Accessible: <https://www.fifatms.com/about-us/> , 17 March 2019
54. FIFA TMS. (2019b). *Global Transfer Market Report 2018*. Accessible: https://www.fifatms.com/wp-content/uploads/dlm_uploads/2019/01/GTM-2018_Men_online_v1.2.pdf , 17 March 2019
55. FIFPro. (2015). *FIFPro's EU Competition Law Complaint – Executive Summary*. Accessible: <https://fifpro.org/attachments/article/6156/FIFPro%20Complaint%20Executive%20Summary.pdf> , 16 March 2019
56. Gunawardena, T. (2018). *Changing the game: Dissecting the landmark reforms endorsed by the FIFA Football Stakeholders Committee*. Accessible: <https://www.lawinsport.com/topics/articles/item/changing-the-game-dissecting-the-landmark-reforms-endorsed-by-the-fifa-football-stakeholders-committee?tmpl=component&print=1> , 17 March 2019
57. Marcotti, G. (2018,). *Revealed: FIFA wants to fix transfers, deal with shady agents and address the loan system. Here's how*. Accessible: <http://www.espn.com/soccer/blog/marcottis-musings/62/post/3640189/fifa-wants-to-fix-transfers-deal-with-shady-agents-and-address-the-loan-system> , 18 March 2019
58. UEFA.com. (2019a). *How association club coefficients are calculated*. Accessible: <https://www.uefa.com/memberassociations/uefarankings/country/about/> , 16 March 2019
59. UEFA.com. (2019b). *UEFA Coefficients - Country coefficients*. Accessible: <https://www.uefa.com/memberassociations/uefarankings/country/#/yr/2019> , 16 March 2019
60. Parrish *et al.* (2018). *Promoting and Supporting Good Governance in the European Football Agents Industry - Interim report conclusions on remuneration and representation restrictions*. Accessible: <https://www.edgehill.ac.uk/law/files/2018/11/Interim-Conclusions-Remuneration-Representation-November-2018.pdf> , 12 March 2019
61. Premier League. (2018). *Youth Development Rules 2018/19*. Accessible: <https://pulse-static-files.s3.amazonaws.com/premierleague/document/2018/08/14/086099c6-5a70-43e3-a053-70c0ddb3e82/Youth-Development-Rules-2018-19.pdf> , 16 March 2019
62. Suomen Palloliitto. (2019). *Kasvattajarahamääräykset*. Accessible: <https://www.palloliitto.fi/jalkapalloperhe/saannot-ja-maaraykset/seuratoiminta/kasvattajarahamaaraykset> , 16 March 2019
63. Van Overmeiren, F. *et al.* (2014). *Analytical Report - The notions of obstacle and discrimination under EU law on free movement of workers*. Accessible: <https://ec.europa.eu/social/BlobServlet?docId=13535&langId=en> , 8 March 2019