



# The Economic and Legal Aspects of Transfers of Players

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## EXECUTIVE SUMMARY

### I. Transfer of Players in Sport

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

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

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

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

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

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

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

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

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

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

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

## **II. Transfer rules in the European Union**

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

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

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

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

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

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

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

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

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

The *Bosman* ruling<sup>2</sup> had a decisive influence on the development of professional football in Europe and beyond by reinforcing the social rights of players and by abolishing nationality requirements in the composition of teams at club level. Remarkably, the Court assessed the proportionality of the rules in force at that time in relation to an important criterion: the ability of a rich club to recruit the best players and therefore to undermine the balance of competition<sup>3</sup>.

The CJEU *Meca Medina* decision<sup>4</sup> set the rules and scope for the assessment of the validity of transfer rules in relation to EU law principles on free movement and competition. According to the Court in Luxembourg, such rules can avoid prohibition if they pursue a legitimate aim compatible with the Treaty: i) They must be applied in a non-discriminatory manner; ii) They must be justified by overriding reasons in the public interest; iii) They must be suitable for securing the attainment of the objective they pursue and; iv) They must not go beyond what is necessary for that purpose.

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

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

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

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

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

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

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

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

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

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

### III. The Economics of transfers

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

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

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

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

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

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

But overall net losses increased steadily over the period 2006-2010 to reach €1.64 billion in 2010. 56% of the clubs concerned are reporting net losses for the year 2010<sup>5</sup>.

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

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

- the higher primary market, on which a limited number of players (the "superstars") faces a limited number of clubs, has a monopolistic structure. In this market, the players (and their representatives) have a considerable market power. On this market, we can observe the highest transfer fees and the highest wages.
- the lower primary market, on which a limited number of players (the good and experienced ones) faces a huge number of clubs, has an oligopolistic structure. The players (and their representatives) have less market power than the superstars and can not negotiate the highest wages.

<sup>5</sup> The European Club Footballing Landscape, Club licensing benchmarking report, financial year 2010, UEFA



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

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

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

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

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

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

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

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

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

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

#### IV. Conclusions and Recommendations

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

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

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

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

The study highlights 4 main findings:

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**2. Limit transfer fees:**

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

**3. Support youth development and protection of minors:**

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

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

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

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

Three proposals are considered: i) Use the existing EU sectorial Social Dialogue Committee in the Professional Football sector established by the Commission decision of 20 May 1998 – 98/500/EC (started in July 2008) to consider rules on the following issues: protection of minors; excessive transfer

fees; solidarity; fair and balanced competition; rules on non-EU players; ii) Improve and extend law/rules enforcement; iii) Establish within FIFA a Clearing House and Transfer Compliance Unit working with public authorities on law enforcement.

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## GLOSSARY

- **Agent:** a person who introduces players to clubs (for certain amount of fee) and negotiates or renegotiates an employment contract or introduces two clubs to one another with a view to concluding a transfer agreement.
- **Basketball Arbitral Tribunal (BAT):** an independent body, competent to hear disputes between clubs, players and agents, also regarding the breach of contract.
- **Breach of contract without just cause:** breach of contract without justifying grounds requiring the party in breach to pay compensation.
- **Buy-out clause:** a clause by which the parties stipulate in the contract the amount that the player shall pay to the club as compensation in order to unilaterally terminate the contract
- **Collective bargaining agreement:** a document based on an agreement between employers and employees, expressing the employment relationship between the employers and employees, varying with the type of sport, however covering aspects such as disciplines, option clauses, remuneration, vacation, duration, etc.
- **Commission to an agent:** earnings of an agent for representing a player.
- **Conditional transfer fee:** a variable amount that the player's new club may end up owing to the former club, generally dependent on the player's performance during his tenure with the new club (number of appearance, number of goals, objectives, etc)
- **Contractual stability:** principle aimed at securing compliance within the obligations of the contract signed by a professional player and a club in order to ensure that this contract will be honoured by both parties.
- **Corruption:** means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.
- **Court of Arbitration for Sport (CAS):** an institution independent of any sports organisation which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world.
- **Dispute Resolution Chamber (DRC):** FIFA's deciding body that provides arbitration and dispute resolution on the basis of equal representation of players and clubs and is competent for employment-related disputes between clubs and players that have an international dimension as well as for disputes between clubs related to training compensation and solidarity mechanism.
- **Financial Fair Play:** rules developed by UEFA to control finance of clubs to protect UEFA competition's integrity and financial stability of clubs
- **Home-grown player:** their According to UEFA; 'home-grown' players are players who, regardless of their nationality, have been trained by their club or by another club in the same national association for at least three years between the age of 15 and 21. Each sport association may give a different definition to players trained locally.
- **Human trafficking:** the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
- **International transfer:** a movement of a player between clubs affiliated to different national associations.
- **International transfer certificate:** a certificate provided from one national association to another to facilitate the transfer of a player between countries.



- **Letter of clearance:** a document regulating a player's transfer from one sports organisation to another sports organisation.
- **Loan:** specific type of transfer where no transfer fees are being paid, as the player is being transferred temporarily. Under the written agreement between clubs, a player is transferred following the new registration.
- **Loan with promise of future transfer:** a loan contract between two clubs which includes a clause that indicates an agreed amount of fee/money to be paid by the transferee club at the end of the contract if it wants to recruit definitively the player.
- **Minor:** a player who has not yet reached the age of 18.
- **Money laundering:** the way used by criminals to disguise the illegal origin of profits generated by illegal activities.
- **Monitoring system:** a system of keeping track and checking off the transfer operations and transfer contracts on regular and ongoing basis.
- **National basketball authority:** sport organisation that has a regulatory function in basketball at national level.
- **National football authority:** sport organisation that has a regulatory function in football at national level.
- **National law:** the system of rules adopted by public institutions in application of the powers stemming from the state at national level, including private law (e.g. contract law, labour law, etc.) and public law (e.g. constitutional law, criminal law, etc.).
- **National transfer:** movement of a player between clubs affiliated to the same national association
- **Non-EU player:** player coming from a country outside the European Union.
- **Operations of transfer:** actions within the framework of a transfer (including the change of player's registration from one association to another, the payments related to transfers and contractual obligations).
- **Out of contract transfer:** Agreement between a player, not under contract with any club at the time of the transfer, and a club that allow the player to be registered for this new club.
- **Protected period:** as stemming from FIFA regulations on the Status and Transfer of Players, a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28<sup>th</sup> birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28<sup>th</sup> birthday of the professional.
- **Registration period:** reference period set by sport governing bodies where transfer operations are permitted.
- **Retention clause:** a clause in the contract, which implies that a player can leave or can be recruited by another club only if the new club equals or increase the offer made by the former club.
- **Salary cap:** an agreement or rule that places a limit on the amount of money that a sporting club can spend on player salaries. It can either be qualified of "hard" when there are no possibilities to infringe the limit; or "soft" if some exceptions exist and allow exceeding the limit.
- **Social dialogue:** it refers to the European social dialogue in accordance with Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectorial Dialogue Committees promoting the dialogue between the social partners at European level.
- **Solidarity contribution:** a percentage of the agreed transfer fee, most commonly used in football, distributed between the clubs that trained a player up to the age of 23, due to the player's transfer before the expiration of the contract.
- **Sport law:** law that regulates sporting activities at national level, adopted by national public authorities.
- **Sport regulation:** rules adopted by sport governing bodies to regulate the respective sport.

- **Sporting just cause:** A justifying premature termination of a football contract without resulting in the payment of indemnities or sporting sanctions as defined in article 15 of the FIFA RSTP.
- **Sporting sanctions:** sanctions imposed to players or/and clubs found to be in breach of contract or (for a club) found to be inducing a breach of contract during the Protected Period.
- **Third-party involvement:** interference of a third-party in relation to transfer operations between clubs.
- **Third-party ownership:** refers to the practice for a third party (i.e. not the club to which the player is an employee) to acquire rights on the future transfer value of players.
- **Training compensation:** payments between clubs made in accordance with Annexe 4 of the FIFA Regulations on the Status and Transfer of Players to cover the development and the training of young players.
- **Transfer:** an agreement between a player and clubs to change the player's registration from one club to another (loan and definitive transfer).
- **Transfer fee:** Payments made between clubs in relation to a transfer operation usually including an early termination of the player's contract without just cause (excluding training compensation).
- **Transfer indemnity:** payments due by one club to another in the frame of a transfer. We distinguish two types of transfer indemnity: transfer fee and training compensation.
- **Transfer Matching System:** according to FIFA, a web-based data information system with the primary objective of simplifying the process of international player transfers as well as improving transparency and the flow of information.
- **Transfer rules:** rules regulating transfer operations.

## **LIST OF ABBREVIATIONS**

**AG:** Advocate General

**BAT:** Basketball Arbitral Tribunal

**CAS:** Court of Arbitration for sport

**CIES:** International Centre for Sports Studies

**CJEU:** Court of Justice of the European Union

**DRC:** Dispute Resolution Chamber

**EC:** European Commission

**ECA:** Association of European Clubs

**EP:** European Parliament

**EPFL:** European Professional Football Leagues

**EU:** European Union

**FIBA:** International Basketball Federation

**FIFA:** Fédération Internationale de Football Association (International Federation of Association Football)

**FIFA RSTP:** Regulations for the Status and Transfer of Players

**FIFPro:** International Football Players' Union

**TFEU:** Treaty on the Functioning of the European Union

**TMS:** Transfer Matching System

**UEFA:** Union Européenne des Associations de Football (Union of European Football Associations)

## FOREWORD

The study on the economic and legal aspects of the transfer of players has been carried out for the European Commission (Directorate-General for Education and Culture). The objective of the study is to deepen our knowledge about transfer rules in sport in the EU, notably in football and basketball, its governance and operations. The document seeks to map the rules that govern transfers in the EU, assessing their efficiency and impact at both economic and social levels. It considers the importance of transfers in the economy of sport. The study will provide conclusions and recommendations on the need for action.

This study was carried out over a period of 10 months from January to October 2012. It was conducted by KEA European Affairs (KEA) in collaboration with the Center for the Law and Economics of Sport (CDES).

KEA is a Brussels based consultancy specialising in sport and creative industries. Its research department has carried out a wide range of national and European studies relating to sport<sup>6</sup>, culture and creative industries and policies, copyright and media.

CDES is a department of the Law and Economic Sciences Faculty of the University of Limoges. It specialises in carrying out studies and research in sports law, economy and management, but also in providing monitoring services, as well as training and scientific publications.

To carry out this study, KEA and CDES set up and led a consortium of international expertise. Mr Meinolf Schwens assisted the consortium in its tasks as an independent expert in charge of social issues. The Centre International d'Etude du Sport (CIES) supported CDES in data collection on the economics. Finally an Experts' Committee<sup>7</sup> contributed to peer review draft conclusions and recommendations.

The principal mission of CDES was to consider the economic specificities of the sports sector, the importance of transfers in the economy of sport (the economics of transfer), their social and economic impact. It contributed to the assessment of the efficiency of transfer rules to pursue the objective of competitive balance. CDES also researched and drafted the review of international and national jurisprudence or arbitration on transfers.

KEA, as lead contractor acted as liaison with the European Commission. On the research side, KEA was essentially responsible for the legal and regulatory mapping of transfer rules in the EU. This included the analysis of the EU's involvement in transfer issues. KEA was responsible for the overall integration of various inputs into a final report. KEA drafted the introductory chapter 1.

The study aims to analyse transfers across sports disciplines. However the economic and legal mapping concentrates on football and basketball. Other sports (notably handball and rugby) are subject to review. The geographical scope of the study is the European Union. Nevertheless, the study refers to transfer practices on other continents (North America, Australasia) to enable comparative analysis.

The study was originally written in English.

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<sup>6</sup> More particularly, the Study on sports agents and the Study on "Match-fixing in sport. A mapping of criminal law provisions in EU 27". Both studies can be found on [www.keanet.eu](http://www.keanet.eu) or on the website of the sport unit of the European Commission (DGEAC).

<sup>7</sup> The Experts committee consisted of: Vilma Cingiene – economist and sport specialist for Lithuania and Baltic countries, Sean Hamil – specialist and expert in governance and football, Andreu Camps – sports lawyer, Placido Rodriguez – economist and president of the International Association of Sport Economists (IASE) and Raffaele Poli – sports expert and head of the Professional Football Players Observatory.

The various stakeholders who have been consulted via questionnaire and/or interviews within the framework of this study are listed in Annex 1. We would like to thank them for their interest and their contributions.



## **CHAPTER 1 – INTRODUCTION: TRANSFER OF PLAYERS IN SPORT**

### **1.1 About the Study**

The study focuses on the system of transfers of professional players in team sports, notably football and basketball. It takes place in the context of increased political scrutiny at the European level on the impact of transfer rules. In July 2007 in its White Paper on Sport, the European Commission considers the compatibility of transfer rules with EU competition provisions and rules on the free movement of workers (European Commission 2007). In January 2011, the European Commission indicated in its Communication on Developing European Dimension in Sport that “transfers of players regularly come to public attention because of concerns about the legality of the acts and about transparency of financial flows involved. The Commission considers that the time has come for an overall evaluation of transfer rules in professional sport in Europe” (European Commission 2011).

As a result, the specific objectives of the study are as follows:

- To understand the transfer market and its governance;
- To map private and public rules governing transfers in the EU
- To analyse the compatibility of transfer rules and practices with national and EU law; and to analyse the functioning of those rules
- To assess the efficiency of transfer rules as implemented in relation to their main objectives: ensuring a competitive balance (through contractual stability, registration periods, solidarity mechanism and transparency rules); protecting minors and ensuring youth development. .
- To consider the importance of transfers in the economy of sport;
- To provide some conclusions and recommendations on transfer rules and to consider whether EU action is needed.

The work has been carried out in consideration of the following set of hypotheses:

- Transfer rules contribute to balanced and fair competition safeguarding uncertainty in sports results.
- Transfer rules limit excessive transfer fees.
- Transfer rules encourage the development of young talent.
- Transfer rules contribute to the economic development of sport.
- Transfers serve the social function of sport and contribute to the pursuit of public interest objectives.
- Derogations from normal employment rules are justified by sport's specificities.

### **1.2 Definitions and scope**

#### **1.2.1 Definitions**

A full list of definitions can be found in the glossary.

Within the framework of this study, “transfer” refers essentially to the contractual relationship and rules that oblige a player and a club. The term “transfer” does not aim to describe the economic value of such relationship. A transfer is whenever a player moves from one club to another and implies the transferring of a player's registration from one club to another. Therefore, a transfer does not necessarily lead to a financial transaction. Such transaction takes place mainly when a player moves to another club whilst he/she is still under contract with a club (i.e. transfer for early termination of contract).

The economic and monetary aspects of the transfer operation are described by using the terminology transfer indemnity. There are two types of financial indemnities related to transfers:

- Transfer fee: fee for an early termination of a contract without a just cause; or in case of loan and exchange transfer.
- Training compensation: fee to compensate clubs for the training of the player.

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

- They limit the freedom of players to move from one employer to another and set restrictive conditions for such a move. Contracts may be terminated by either party without consequences (sporting sanctions) only if justified by “just cause”<sup>8</sup>.
- They establish a system of transfer fees between clubs for clubs to overcome transfer restriction rules.

Free movement of players is restricted under transfer rules with a view to maintain a fair and balanced competition. Rules on competitive balance relates to provisions on:

- Contractual stability: rules aimed at ensuring that both parties honour the terms of the contract to avoid that players change clubs in the course of a competition and thus affect the fairness of the competition.
- Registration periods (or transfer windows): fixed periods in a year where movement of players is authorised,
- Redistribution and solidarity mechanisms: systems to compensate clubs that invest in the training of young players.
- Transparency in transfer transactions: rules to limit and prevent fraud occurring during transfers between clubs including tax evasion or money laundering

These employment rules are aimed at taking into account sport specificities: principles originally set by sporting bodies to pursue the objective of fair and balanced competition. The interpretation of the nature of sport specificities is essential in the apprehension of transfer rules as sport specificities are principles justifying derogations from employment and labour law. Sport and football notably, is one of the few economic sectors which benefit from such extensive derogations relating to labour law.

Transfer rules in sport are subject to EU institutions’ scrutiny on the compatibility of such exceptions with EU law on free movement of workers and/or competition law. Transfer rules in sport are objectionable in so far as they may lead to:

- Excessive transfer fees
- Social and financial fraud
- Disproportionate restrictions on the freedom of movement of players
- Discrimination on the basis of nationality
- Unbalanced competition

It is important to distinguish national transfer rules from the international transfer rules. The transfer of players between clubs belonging to the same association (national transfer) is governed by specific regulations issued by the national association concerned. The transfers of players between clubs belonging to different national associations are laid down by international associations such as FIFA for football or FIBA for basket-ball. Such international transfer rules are important to set universal competition parameters. These contribute to the organisation of worldwide competition and to promote international sporting exchanges.

Transfers can be classified as follows:

- Transfer without indemnities

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<sup>8</sup> Article 14 and 15, FIFA Regulations on the Status and Transfer of Players, 2010.



- Transfer with indemnities

### **1. Transfer without indemnities**

In football, transfer without indemnities relates to players out of contract and which are older than 23 years old<sup>9</sup>.

A transfer consists primarily in the administrative acknowledgment that a player's registration is changing from one club to another. Without such formal registration the player cannot obtain the licence to play in a championship.

According to FIFA, in 2011, financial compensation is an issue in less than 14% of transfers. In 86% of cases the transfer is conducted without any money changing hands (FIFA Global Transfer Market, 2011).

### **2. Transfer with indemnities**

According to FIFA Global Transfer Market (2011), 70 % of international transfers relate to out-of-contract players and only 10% of transfers constitute a club to club agreement for the permanent move of a player. This means that 20% of agreements between clubs for the transfer of a player is a loan (either outgoing or returning).

In 2011 over € 2.6 billion in financial indemnities was declared by transferring clubs. 82% of this amount constitutes agreed transfer fees; 10% are conditional transfer fees and the remaining 8% relates to training compensation (both training compensation and solidarity contribution). There are four types of transfer with indemnities:

- Transfer out of contract;
- Transfer for early termination of contract;
- Loan transfer; and
- Exchange transfer.

#### **- Transfer out of contract**

Such transfer is an agreement between a player, no longer under contract with any club, and a club that allow the player to be registered for this new club.

No transfer fees are to be paid by the recruiting club; however, if the player is aged 23 or less, the transferee club must pay training compensation to clubs that have been involved in the development and training of the player.

#### **- Transfer for early termination of contract**

Transfer can be described as an agreement between a professional player (the "Player"), the club he is leaving (the "Transferor Club") and the club he is joining (the "Transferee Club") whereby (i) the Transferor Club agrees to early termination of the fixed term employment contract into which it entered with the Player, (ii) the Transferee Club agrees to pay a transfer fee to the Transferor Club as compensation for such early termination of the contract, (iii) the Transferee club shall pay solidarity and/or training compensation to the clubs that have contributed to the education and training of the player, and (iv) the Player agrees to leave the Transferor Club for the Transferee Club.

As defined, a transfer is a tripartite agreement between the Player, the Transferor Club and the Transferee Club on the transfer operations: the change of the player's registration from one professional club to another, the contractual negotiations between the two clubs and the final payment.

The main features of a transfer for early termination are:

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<sup>9</sup> Except for the first register of the player as a professional.

- A common agreement between the Player and the Transferor Club for early termination of the employment contract;
- A transfer agreement signed between the Transferor Club and the Transferee Club, which, in particular, may specify the financial terms of the transfer, especially transfer fees;
- A new fixed term employment contract signed between the Player and the Transferee Club setting out the new terms governing the contractual relationship.

In parallel to the transfer fee, training compensations and solidarity contribution are also due by the transferee club to player's former club(s). Rules on training compensations and solidarity contribution vary according to the nature of the transfer whether it is domestic or international. These rules are described in chapter 2.

For international transfers, Training compensations may intervene when the player leaves his/her club at the end of the training contract or at the end of his/her first professional contract. Solidarity contribution is due when a professional moves during the course of a contract.

A transfer for early termination of contract can also lead to bonuses due to conditional transfer compensation (usually clauses are inserted in the contract). For instance, there are clauses establishing a share of the financial risks between the contractual parties. It can consist in a profit surplus for the transferor club depending on the sportive performance of the player or transferee club – the buying club will have to pay the transferor club a designated amount if the player scores a certain number of goals or play a certain number of matches during one season.

It can also be a clause in the transfer agreement mentioning that the transferor club benefits from rights on the next transfer of the player he is selling. This clause stipulates that the transferor club will receive either a percentage of the transfer fee or a part of the plus-value made by the transferee club when deciding to let his player join a new club.

#### **- Transfer as a loan**

In this case, a player moves temporarily from one club to another whilst he/she remains under contract with his former club. Loan includes free loan, where no financial indemnities are paid; loan including financial indemnities; and/or loan with promise of future transfer

. Any such loan is subject to the same rules as applied to the transfer of players, including the provisions on training compensation and solidarity mechanism.

#### **- Exchange transfer**

It refers to a transaction involving an exchange of existing players' contracts. It can lead to the payment of transfer fee between the two clubs but this is not always the case.

The study focuses on transfers with indemnities in particular: i) Definitive transfer for early termination of contract; ii) Transfer as a loan.

### **1.2.2 Scope**

Professional transfers are regulated by a complex set of sporting regulations established by sports governing bodies at national and international levels. Rules are subject to a large degree of standardisation at international level through international sports institutions such as FIFA for football

and FIBA for basketball. The justification for international standardisation stems from the ambition to make competition rules universal in order to promote international sporting exchanges.

However the transfer environment is subject to different layers of rules and regulations. The large autonomy granted to sporting bodies to self-regulate their activities is a fundamental characteristic of sport as compared to other economic and social activities. This power of self-regulation is subject to intense scrutiny at a time of economic, financial and ethical crisis, as the latter is largely considered as a consequence of too much “laissez-faire”.

The study aims to document the different layers of rules and consider their interactions. It is important to distinguish between the following:

- Sporting bodies' regulations:  
International sports associations such as FIFA, FIBA lay down global and sometimes binding rules on the players' movement between different countries. Members of such international associations must establish and implement these mandatory international rules taking into consideration public laws and regulations of their respective states. In some instances, national sporting bodies have room for manoeuvre to adapt international rules to local circumstances.
- Public law and rules:  
These relate essentially to rules implementing the provisions of the EU Treaty on free movement of workers and competition law and, at national level, to laws or regulations governing contractual relationships between employers and employees, sport and labour law.

The rules will also be examined in relation to sport's alleged specificity as an activity deserving specific treatment in the implementation of general law and which justify to a large extent the autonomy of sports institutions in regulating their competition. The notion of sport specificity is essential in the implementation of EU rules and the carving out of specific exemptions from national law. The EU institutions and notably the European Court of Justice are playing a key role in defining the scope of sport's specificity (see Chapter 2.2)

Transfer rules will be analysed in the context of the evolution of professional sport in society, notably its economic and social impact. The scope of the study essentially covers professional team sports but focuses on football and to a lesser extent basketball. Football is by far the most active transfer market of all professional sporting activities. Whilst the NBA, the most prestigious basketball league in the world, registered 187 international transfers in 2011 (NBA, 2012), football registered 6 348 international transfers in Europe in 2011 (FIFA, 2012)<sup>10</sup>.

In football, the transfer market is dominated by a handful of countries, all based in the EU. European football clubs are by far the most active in the international transfer market: in 2011 396 of the top 400 transfers took place in Europe (Transfermarkt, 2012).

In 2010 football represented a € 16.3 billion market in Europe (Deloitte, 2011), a growth of 5% over the previous year. It is one of the few fast-growing industries in Europe. According to UEFA, from 2006 to 2010 the aggregate income in football clubs increased by a remarkable 42% whereas Europe's economies expanded by only 1% (UEFA – Club Licensing Benchmarking Report Financial Year 2010).

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<sup>10</sup> FIFA recorded 11 500 international transfers in 2011 (Transfer Matching System Report 2012).

The market was worth € 11.4 billion in 2002/2003. Europe's five largest football markets (England, France, Germany, Italy, Spain) contribute almost two thirds of the revenue to the overall European market size (Deloitte, 2011).

Transfer plays an important role in the economy of clubs as a source of revenues and debts. Transfers and players' contracts represent the main assets of clubs. UEFA estimates the reported assets of 734 European top clubs represent € 21 bn (UEFA – Club Licensing Benchmarking Report Financial Year 2010).

Whether this growth is sustainable remains another question at a time when the total debts of European clubs amounted to € 1.6 billion in 2010 (UEFA, 2011)<sup>11</sup>. The Bundesliga and Premiere League are the only two "big five" leagues to have generated an operating profit for the period 2000 to 2010 (Deloitte, 2011). The industry faces the challenge of cost control. Wage costs in the big five leagues in Europe (France, Germany, Italy, England and Spain) reached € 5.5 billion in 2010 (it was €1.27 billion in 1997). The wages/revenue ratio of clubs rose from 52.2% in 96/97 to 66.4% in 2009/10. Among these big five leagues, only Germany has managed to keep this ratio under control, from 50% to 54% (Deloitte, 2011).

According to UEFA, debt problems at club levels are largely due to increased transfer losses, caused by a slowdown of transfer activities during the 2010 financial year. 61% of football clubs are reporting losses. The amount payable on transfer fees in 2011 was € 2.3 bn, a decrease of € 300 million over the previous year. Net losses from transfer activities in the financial year 2010 amounted to € 933 million (double that of the previous year). There were 33 large transfers (€ 15 mill +) in summer 2009 and January 2010 (UEFA – Club Licensing Benchmarking Report Financial Year 2010).

At players' level, according to Jérôme Champagne former number 2 at FIFA (Le Monde 14.01.2012), out of 65 000 professional players in the world, 60 000 are under paid, paid late or not paid at all. Inequalities are larger in football today than 20 years ago. FIFPro has also highlighted the fact that a significant number of professional players do not enjoy a labour contract and operate as self-employed with few legal safeguards (FIFPro Black Book Eastern Europe, 2012). In the Czech Republic the vast majority of players are self-employed. According to FIFPro research, non-payment on time seems to be a major problem in Greece, Poland and Slovenia.

### **1.3 Methodology on Data Collection**

With a view to understanding the transfer market and its governance and to assess the importance of transfer markets, the team sent questionnaires (**see Annex 3**) to gather relevant economic and legal data.

The questionnaires were sent electronically to:

- Ministries in charge of sports/or other relevant ministry in the 27 EU Member States;
- The international sports bodies (football, handball, rugby and basketball);
- The national football federations (26 Member States plus England and Scotland) and leagues (17 Leagues plus England and Scotland);
- The national Basket Ball federations (26 Member States plus England and Scotland) and leagues (13 Leagues plus England and Scotland);

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<sup>11</sup> For instance the famous Glasgow Rangers with GBP 166 million debts has been relegated to the 4<sup>th</sup> division of the Scottish League in July 2012. Founded in 1872 the club, a city and national institution, was 54 times Scottish champion and winner of the European Cup in 1972. The average attendance at matches is 45 000 supporters. The debts of Manchester United were estimated at GBP 423 million (€527 million) on 31.03.2012 with a turnover of €412 million and profits amounting to €15.7 million for the last accounting year (Source: L'Echo, 5 July 2012).

- National rugby and handball federations;
- International rugby and handball federations.

The questionnaires were developed to understand the practice of implementing international sports bodies' rules and to identify national specificities.

The data collection served to establish the economic and legal mapping. The economic mapping was the responsibility of CDES with the support of KEA and the legal mapping the responsibility of KEA with the support of CDES for the jurisprudence and for certain countries.

The mapping on football highlights specificities and interesting practices in relation to the following topics:

Governance, competition equity, monitoring and policing, dispute resolution, protection of minors, non EU players, contractual stability and finally solidarity and redistribution mechanisms.

The study presents economic and legal mapping for the 27 countries (simplified) and a more in depth mapping for the 9 selected countries (Belgium, England, France, Germany, Italy, Lithuania, Poland, Portugal and Spain). In relation to basketball, the study concentrates on the following countries: France, Italy, Spain, Germany, Belgium and Lithuania.

To complete the data collection, CDES and KEA teams visited five countries (Belgium, France, Italy, Spain, England), organised telephone interviews with representatives from federations, leagues, associations, clubs, athletes and attended sport conferences. The list of interviewees is in Annex 2 of the report.

The aim of the interviews and visits was to:

- Understand the transfer system from a practical point of view;
- Gather stakeholders' points of view on the rules (whether international or national), their pertinence and efficiency in relation to the objective pursued;
- Brainstorm alternatives to the transfer system or its development.

In order to enable comparative analysis on transfers, the team has gathered information through desk research on transfers from other sports in Europe, Australia and the USA.

#### **1.4 The Relevance of EU Policy to the Transfer of Players**

Sport is at the heart of social changes and therefore triggers considerable interests beyond sport competition. Transfer is a reflection of the media circus and passion associated with sport. A large number of commercial interests have a stake in sporting activities: tourism, advertising, media industry (TV, Internet, telecommunication, publishing, press) , sportswear, fashion, betting, beverage and catering industries, tourism for instance.

Sport is the most powerful social phenomenon of the last 30 years, linked to mediatization and globalization. 101 million supporters attended European top division domestic league matches in 2011(UEFA, 2011). A club like Manchester United estimates that it has a community of 659 million fans throughout the world!<sup>12</sup> Some clubs have become leading entertainment brands with worldwide appeal and have a major influence on a city or a region's economic development.

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<sup>12</sup> L'Echo, 5 July 2012, p15.

Players are young people's idols with international and iconic status. They nourish the media and communication industry hungry for producing and publicizing stars. Players are entrusted with the responsibility of representing the values of a club or a nation.

National authorities have an interest in ensuring that sport illustrates a country's competitive strength or that it contributes to attracting foreign investment (Russian, Indian, American or Quatari and tax revenues as well as to social cohesion.

There is simply no equivalent to this level of media interest. When the World Cup was held in Germany in 2006, 376 channels broadcast the matches, and the total cumulative television audience for all matches during the 2006 World Cup was an amazing 26.3 billion<sup>13</sup>.

Edmans, García and Norli (2007) have shown that losing an international soccer match can lead to lower next day returns on the national stock market of up to 49 basis points.

Transfers are an integral part of sport's power and influence. Players' transfer values are now even seen as a bank guarantee for financial institutions threatened by the crisis. The serious *Süddeutsche Zeitung* suggests that the most expensive footballer in history (Cristiano Ronaldo) may now be used to guarantee the solvency of a Spanish bank<sup>14</sup>.

This media, social and economic importance has naturally attracted the attention of regulators at national and European levels, especially as sporting activities are essentially subject to self-regulation.

The European Union is both an economic and political project. The treatment of sport at EU level is focused primarily on its economic aspects, as the European Union is primarily about the establishment of an economic union in which people, finance, goods and services move unhindered within an internal market.

With the entry into force of the Lisbon Treaty in December 2009, the European Union (EU) acquired a specific competence in the field of sport for the first time. Article 165 of the Treaty on the Functioning of the European Union (TFEU) sets out the details of EU sports policy. Moreover, sport is mentioned in Article 6 TFEU, as one of the policy fields where the Union has competence to support, coordinate or supplement the actions of its Member States (a so called "subsidiary competence").

Article 165 of the Treaty on the functioning of the European Union (TFEU) provides that the Union shall "contribute to the promotion of European sport issues while taking into account the specific nature of sport, its structures and social functions". The aim of the Union is "to develop the European dimension of sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen".

This study takes place in a context in which many are questioning the involvement and competence of the EU on the regulation of sport. For some, EU regulations would prevent the development of universal

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<sup>13</sup> Working paper Series No 1424/February 2012, The pitch rather than the pit investor inattention during FIFA World Cup matches, Michael Ehrmann and David-Jan Jansen.

<sup>14</sup> The German daily newspaper reports that the Bankia group of savings banks, which financed Real Madrid's acquisition of the Portuguese player, is now seeking to borrow funds from the European Central Bank. In response to the ECB's demand for guarantees, Bankia are putting up Ronaldo and the Brazilian Kaka, who also plays for the Madrid football club. In 2009, Real borrowed 76.5 million euros to pay transfer fees of 100 million euros to Manchester United, and 60 million to Milan AC. "Could we see a situation in which the ECB seizes one of the players?" wonders the Munich daily. "In theory, it is possible. Bankia would first have to become insolvent. Thereafter, Real would have to default on its loans, which are secured by advertising and television revenues.

"Ronaldo in the bailout fund 26 July 2011 *Presseurop, Süddeutsche Zeitung*

sporting rules. It would support the merchandising of sport and contribute to threatening sport's social and competitive values. For others, EU intervention is necessary to protect the economic interests of stakeholders, encourage a minimum of social dialogue and act as a catalyst for changes in governance structures to safeguard the principle of self-regulation.

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

Transfer is at the heart of sport's governance, notably in football.

- For sport governing bodies, implementation of transfer rules are linked to competition fairness and balance. They are necessary tools to enable fair and regular competition amongst clubs. They enforce collective mechanisms to ensure redistribution and solidarity between rich and less wealthy clubs or federations in order to maintain the principle of competitive balance and to support youth development.
- For clubs, transfers are an important source of revenue and represent one of the most prominent features of clubs' assets. Transfers determine not only the financial performance of a club but also its capacity to attract spectators and supporters and consequently the media.
- For players, transfers are a yardstick for their reputation and sporting value.
- For agents, transfers are a key source of income.
- For football supporters, transfers are part of the football season as they contribute to the overall excitement about the game and a judge of a club's ambition.
- For public regulators and judges, transfer mechanisms are to be judged in the light of sport's specificities justifying derogation from mainly labour and social law.
- For politicians, the press and public opinion, transfers - and notably transfer fees paid to the most successful talents - are a subject of intense scrutiny at a time of social and financial crisis.

This study comes 17 years after the Bosman ruling which transformed transfer practices in professional sport in Europe and 11 years after the informal agreement between FIFA, UEFA and the European Commission which, to a large extent, established the new FIFA rules on transfers.

It also takes place at a time when professional sport is confronted by new challenges:

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

At the heart of this assignment lies the question of sport's specificities and the justification for derogation from normal employment practices.

Professional sport is divided between individual (sportsmen, agents, clubs executives) and collective interests (clubs, federation, leagues and state). It has to find a balance between rewarding the best and ensuring a minimum of solidarity for sport to remain true to its values.

With the formidable economic development of sport the tension is exacerbated with the classical opposition between the views that:

- The market and competition is the best judge.
- Sport requires stronger regulation.

The debate on transfers is a reflection of this tension. International and national federations, the sports governing bodies, are responsible for finding a balance to enable self-governance on a collective basis that satisfies both the “champions” (the top clubs and football players) and the “others” (the other clubs and players without which there would not be the very precious and lucrative national competitions).

The issue of solidarity is exacerbated in the European context with the fragmentation in national sports markets and its corollary: an extraordinary difference of powers between federations and clubs from large countries (the big five: England, France, Germany, Italy and Spain) and federations and clubs from medium to smaller ones.

In particular, since the entry into force of the Lisbon Treaty the EU regulator is playing an interesting partition as it tries to reconcile EU Treaty-specific objectives (the establishment of an internal market) with sport’s non-economic objectives (representation of local cultures, the preservation of social and competitive values including youth development).

The Bosman decision contributed to establishing a more favourable status for players. It should be recalled that before Bosman in some countries players were linked to a club for life, with clubs effectively having a decision of life or death over the career of a player. The 1995 court decision contributed to increasing cross border movement of players.

Football is one of the few economic and social activities which have taken a true European dimension. The composition of football teams is a reflection of this. Indeed, professional football is characterized by a very high degree of cross-border mobility. In the UK, 55 % of the total number of players are non-nationals whereas non-nationals represent only 4.4% of the total labour force (UEFA 2004/2005). According to UEFA, 34% of squads playing on the main stage of the UEFA Champion’s League and UEFA Europa League are made up of non-nationals. This is far higher than in other industries (UEFA 2004/2005).

The study shows that EU institutions are increasingly taking the dimension of sport’s specificity into consideration, notably in relation to training compensation, youth development or redistribution schemes. It will be up to the sports movement to demonstrate its ability to enforce sports rules that truly contribute to competitive balance and fairness and thus justifying derogation from traditional employment rules. Initiatives from FIFA on the Transfer Matching System and UEFA to establish Financial Fair Play are certainly moving in this direction.

## **1.5 A Brief Historical Approach to Transfers**

In 1885 for the first time, the Football Association of England brought in the concept of a transfer when it introduced requirements for the registration with the federation of players who were going to be employed by clubs. Prior to this, players enjoyed a strong bargaining position enabling them to move from one club to another at any time (Magee, 2006). Under the new system, the Football Association required a player to be signed for a club for a season, preventing his move to other clubs without the consent of the Association and the club. This system of licence was introduced in France in 1925. Before then players could move freely from one club to another. Professionalism spread in Europe from the 1920’s onwards.



Although the registration system was designed to protect smaller clubs (by preventing players from swapping clubs) it resulted in the 'bought and sold' phenomenon and the creation of the transfer market, as the club was considered eligible for compensation for losing the player.

Until 1959 in England, professional players were signed under one year contracts with minimum and maximum salary terms. With the expiry of the contract, the club could retain the player offering them a minimum salary, transfer the player to another club for an agreed transfer fee<sup>15</sup> or cancel the player's registration to enable the latter to become a free agent. The club had total employment control over its players.

During the 1960-70s, the Player's Union continued to question the transfer rules considering them restrictive. Even though players were granted a certain level of contractual freedom, their previous clubs were still entitled to receive a compensation fee for out-of-contract players. In 1963 the English High Court declared that the 'retain and transfer' system was "an unreasonable restraint of trade".

France abolished all forms of compensation when the player was at the end of his contract as from 1969. The same took place in Germany in 1979<sup>16</sup>.

It was in 1995 with the intervention of the European Court of Justice in the Bosman case that the transfer market (often described as "a slave market", because players were not able to move freely to another club even if they were out-of-contract) was transformed. Bosman was the opportunity for the European Court to acknowledge sport's specificities and consider its scope in relation to EU law. It also in effect standardised transfer rules already adopted in some EU countries.

The decision meant increased freedom for players to move with a radical change in recruitment patterns. The impact of Bosman was felt worldwide by increasing players' mobility and reinforcing their bargaining positions with clubs. It also forced international sporting bodies such as FIFA to review transfer rules and make them compatible with EU law on competition, on nationality (no discrimination) and on free movement of people. The matter of transfers was then the subject of an informal agreement between the European Commission and international football bodies in 2001 (see chapter 2.2). This agreement influenced provisions of the FIFA rules on transfers.

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<sup>15</sup> Also known as 'retain and transfer' system.

<sup>16</sup> Transferregelung in Fussballsport, Thema 7, Seminar zum Sportrecht, Universität Bayreuth, 2005

**The history of transfers:**  
**The French story**

The issue of transfers is intrinsically linked to the appearance of professionalism in sport. Professionalism had great difficulty in becoming established in the 1920s. Two phenomena developed to circumvent amateur status: “false amateurism” and “soliciting”.

- “False amateurism” meant that players threatened not to play, if they didn’t receive some monetary compensation to cover expenses in connection to competitions: travel expenses; medical and pharmaceutical expenses; and any shortfall in relation to their official jobs.
- In “Soliciting”, or “touting”, players had total freedom to transfer to another club. Players and clubs very quickly made it a business operation contrary to the principles of amateurism.

To fight against creeping professionalism, the French Football Federation introduced the A licence, awarded to players licensed in a club for at least one year. Only the A Licence gave access to the first team. That meant that all newly transferred players had to play in a reserve team, with a view to fight against soliciting. On 18<sup>th</sup> April 1925, the A Licence was automatically awarded to all newly transferred players provided that the former club had given its formal agreement. This rule, which should have put an end to soliciting, had perverse effects. In fact, some clubs refused to give their agreement for the transfer, but others were eager to do so, which obviously concealed a hidden financial transaction. The new club made a double offer; one to the player that it wanted to recruit and the other to the former club to have its approval.

The transfer system was born...

This encouraged the mobility of players, who could not refuse their transfer. It also marked the beginnings of the players’ union (in 1936).

The football player was thus compared to a “slave” that clubs could sell at will. In June 1969, the freely fixed-term contract came into force. It meant that at the end of his engagement, the player could negotiate with a new employer without the former club being able to intervene or receive any compensation.

French football thus experienced a reversal in the balance of power in favour of the players. Clubs and players signed Football Charter, the first collective bargaining agreement.

In this context, the footballer’s situation improved to the extent of influencing club budgets as from the 1980s.

## **1.6 The Study**

The study is divided into four remaining parts:

### **Chapter 2 – Transfer Rules in the European Union**

This chapter provides a mapping of rules from sporting bodies as well public authorities throughout the EU and a more in depth examination in relation to 9 Member States. It looks at alternative regulations to transfer rules as applied to football. The mapping also includes relevant jurisprudence and rulings from the European Court of Justice, international arbitration, and relevant national judgements and arbitration mechanisms. This chapter also covers the analysis of the EU “legal acquis” and its impact on the definition of sport’s specificities and sporting bodies’ autonomy.

### **Chapter 3 – The Economics of Transfers**

This part deals with the economic analysis of the transfer, highlighting the specifics of the labour market and the economic determinants of transfers. It provides an economic assessment of transfers based on research into 9 EU countries. This section will then consider the impact of transfer compensation (transfer fees) on the economy of clubs as well as on the objectives of ensuring a competitive balance. The efficiency of transfer mechanisms is analysed in relation to this latter objective.

### **Chapter 4 – Which transfer rules for the future? Conclusions and Recommendations**

This section summarizes the main findings of this research. It considers issues and challenges posed by transfer practices and rules in light of policy objectives. It formulates concrete recommendations related to competitive balance, transfer fees, governance and youth development.



## CHAPTER 2 – TRANSFER RULES IN THE EUROPEAN UNION

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

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

Transfer regulation stems essentially from the self-regulatory power of international and national sport organisations. The power to self-regulate sporting activities is linked to the intrinsic nature of sporting activities; the organisation of fair and open competition that must safeguard sport from excessive commercial pressures and from fraud and cheating. The implementation of transfer rules is also dependent on efficient and fair dispute resolution mechanism. It relies on the scrutiny of tribunals as well as regulators' monitoring and sanctioning power.

This chapter focuses mainly on transfer rules in football, in relation to both international and national transfers. These rules are the most developed. They have been subject to intense scrutiny at EU level by the European institutions. However it also provides an overview of transfer rules in basket-ball and other sports notably rugby, handball and sporting rules outside of Europe with a view to inspire our analysis on transfer regulations.

The legal analysis of transfer rules specifically focuses on the review of transfer rules by EU authorities and the compliance of such rules with EU Treaty provisions. The main topics for legal analysis relate to the justification of derogatory legal provisions to implement sport alleged specificities (Chapter 2.2).

The analysis distinguishes between transfer rules aimed at ensuring a fair and balanced competition on the one hand (contractual stability, registration periods, redistribution mechanisms, financial fair play and transfer monitoring) and rules to protect minors and encourage youth development on the other hand.

The analysis is taking into consideration the way such rules are being interpreted by arbitration and jurisdictional or administrative bodies at international and European levels (Chapter 2.3).

### 2.1 Transfer Market Regulations in the EU

The part consists of a mapping of rules that apply to transfers in the EU. Rules can stem from public authorities, sport institutions and judicial or arbitration bodies. The mapping is organised into a general mapping providing general consideration on transfers from information collected throughout the 27 Member States.

The general mapping concentrates on football. It provides a mapping of countries with specific law governing contractual relationship between clubs and players, a review of main provisions related to the transfer of non EU players as well as rules on agents.

The issues related to national public provisions on dispute settlement in relation to transfers are considered in both this chapter as well as in chapter 4.3 which review the important legal cases.

A specific mapping limited to 9 EU countries looks into the national implementation of FIFA rules in relation to:

- Contractual Stability (and especially, breach of contract without just cause and registration periods)
- Monitoring of transfer operations.
- Protection of minors and promotion of youth development.
- Competition fairness and openness (solidarity and re-distribution mechanisms).
- Dispute resolution mechanisms.
- Third-party ownership.

The mapping on basketball relates to 6 EU countries (Belgium, France, Germany, Italy, Lithuania and Spain). The legal mapping intends to describe international and national rules in relation to:

- Registration periods (“transfer deadline”).
- Contractual stability.
- Training compensation in relation to young players.
- Protection of minors.
- Dispute resolution mechanisms in relation to transfers.

This mapping is meant to deliver general information collected throughout the 27 Member States. Although a part of the mapping is dedicated to basketball, most of the information focuses on football. The final section reviews transfer rules in other sports.

The questionnaire addressed to public authorities and sport bodies used as a basis of this mapping is in Annex 3.

### **2.1.1 The level and scope of national public regulation**

This section provides information on the level of public law intervention related to transfer rules. It considers the scope of public regulation and it identifies countries that provide specific legislation to cover transfers in general and early termination of contracts in particular. This section also gives information on public regulations related to the access of non-EU players to the European transfer market.

The tables below indicate Member States which have adopted rules related to transfers in the EU plus Scotland and England.

Countries	Countries with legal provisions on transfers	Rules exclusively set by sport bodies
Austria		+
Belgium	+	
Bulgaria	+	
Cyprus		+
Czech Republic		+
Denmark		+
England		+
Estonia		+
Finland		+
France		+
Germany		+
Greece	+	
Hungary	+	
Ireland		+
Italy	+	
Latvia		+
Lithuania	+	
Luxembourg		+
Malta		+
Netherlands		+
Poland		+
Portugal	+	
Romania		+
Scotland		+
Slovakia		+
Slovenia		+
Spain	+	
Sweden		+

#### Countries with legal provisions on transfers

The following table shows the extent of state control over the regulatory power of sport governing bodies.

Full autonomy	Acting on delegation of state power with supervision	Supervision from the state
England	France	Poland
Germany	Spain	Latvia
Denmark	Greece	Romania
Estonia		Portugal
Finland		Italy
Ireland		Cyprus
Belgium		Bulgaria
		Hungary
		Lithuania
		Czech Republic

#### Level of autonomy granted to sport governing bodies

### 2.1.1.1 National legislation on transfers

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

On one hand countries such as Bulgaria, Greece, Hungary and Lithuania have established legal provisions on transfers in their respective Sports Acts (see table below). On the other hand, Belgium, Italy, Portugal and Spain govern transfers via other laws (mostly laws on employment of sports professionals). The little amount of public rules aims in general at empowering sport bodies to regulate certain matters such as transfers but without being prescriptive.

The EU norm is the absence of specific public intervention but the application of common legal rules stemming from common law, civil or labour law. The EU legal framework is characterised by a large power of self-regulation granted to sport authorities<sup>17</sup>.

#### Public law and governance of transfers

Country	Legal provisions on Transfers		Legal provisions on transfer indemnities <sup>18</sup>
	Sport Act	Other laws	
Austria	NO	NO	NO
Belgium	NO	YES <sup>19</sup>	NO
Bulgaria	YES <sup>20</sup>	NO	NO
Cyprus	NO	NO	NO
Czech Republic	NO	NO	NO
Denmark	NO	NO	NO
England	NO	NO	NO
Estonia	NO	NO	NO
Finland	NO	NO	NO
France	NO	NO	NO
Germany	NO	NO	NO
Greece	YES <sup>21</sup>	NO	YES <sup>22</sup>
Hungary	YES <sup>23</sup>	NO	NO

<sup>17</sup> A sport authority is an authority that has the power to determine, adjudicate and settle disputes related to various aspects in a particular sport area.

<sup>18</sup> One of the most controversial aspects of transfers relates to the level of transfer fees reach. It is interesting to note that policy makers throughout the EU have decided not to legislate on this specific issue, but may intervene more broadly on the transfer indemnities.

<sup>19</sup> Flemish Parliament Act of 24 July 1996; French Community Parliament Act of 8 December 2006; Act of 24 February 1978 relating to contract of employment for sports professionals

<sup>20</sup> In Bulgaria, Sports Act (Law on Physical Education and Sport) deals with transfers

<sup>21</sup> Law 2725/99, (FEK\* 121/A/17-06-1999) and more specifically articles 85-95 are related to transfers. These articles provide the grounds for relationship between clubs and athletes, employment issues, transfer compensations, prohibition of transfers. However, most importantly Articles 87 and 88 provides that sport federations are entitled to regulate transfer indemnities in athletes' contracts.

<sup>22</sup> See reference 22.

<sup>23</sup> Law on Sport (Act I of 2004) Hungary, and more specifically, provisions such as 7-11, 22 and 35 which regulate transfers of amateurs and professionals as well as the correlation between employment and transfers. Interestingly, the state requires sport organizations to establish policies on transfers, paying more attention to the protection of young athletes (Article 23.1.).



Ireland	NO	NO	NO
Italy	NO	YES <sup>24</sup>	NO
Latvia	NO	NO	NO
Lithuania	YES <sup>25</sup>	NO	NO
Luxembourg	NO	NO	NO
Malta	NO	N/A	N/A
Netherlands	NO	NO	NO
Poland	NO	NO	NO
Portugal	NO	YES <sup>26</sup>	YES <sup>27</sup>
Romania	NO	NO	NO
Scotland	NO	NO	NO
Slovakia	NO	NO	NO
Slovenia	NO	NO	NO
Spain	NO	YES <sup>28</sup>	NO
Sweden	NO	NO	NO

The following table identifies countries which have adopted specific rules related to contracts between players and clubs as well as specific provisions on the termination of contracts without just cause<sup>29</sup>. The mapping shows that Belgium, Greece, Hungary, Italy, Lithuania Portugal and Spain have rules related to employment contracts in sport. Nevertheless, except for Belgium, Portugal and Spain the laws provide few detailed provisions.

An essential aspect of these regulations relates to the early termination of a contract without just cause. In Spain, according to Article 16.1 of the Royal Decree 1006/1985, the club can claim compensation when a player breaches his contract without just cause. In absence of an agreement, the compensation shall be determined by the labour jurisdiction according to three criteria: sporting circumstances, reasons for the breach and damage caused to the entity. It implies that the Royal Decree expressly authorises the so called “buy out clauses”. Moreover a club that would recruit such player during a period of one year after the termination of the previous contract is subsidiarily responsible for the payment of the compensation.

In Belgium, the law of 24 February 1978 relating to contract of employment for sports professionals allows both athletes and employers to breach the contract before its terms, upon payment of compensation. The law however makes a distinction between fixed-term and permanent contracts. For the first one, a simple notification is required. In the absence of this notification, the employer must be compensated with an amount equivalent to the remuneration of the player for the period of six months according to the Article 40 of the same law. For fixed term contracts, successive Royal Decrees<sup>30</sup> determine such level of compensation. It relates to a number of month’s remuneration depending on the yearly remuneration of the professional football player and the start of his contractual relationship (Article 1 Royal Decree 13 July 2004). The compensation to be paid by a player who breaches his contract without just cause is limited to twice the amount of compensation that would have been due if an unlimited contract had been concluded.

<sup>24</sup> Law No. 91 of 23 March 1984.

<sup>25</sup> Article 37 of the Law on Physical Education and Sport of Lithuania.

<sup>26</sup> Lei n.º 28/98, 26 of June 1998. In relation to the public regulation of transfer indemnities, Article 24 states that if the player/club and the agent do not agree differently the percentage of payment the agent fees is fixed at 5%.

<sup>27</sup> See reference 27.

<sup>28</sup> Royal Decree 1006/1985, 26 of June.

<sup>29</sup> Breach of contract without justifying grounds requiring the party in breach to pay compensation.

<sup>30</sup> The latest Royal Decree is dated 13 July 2004.

In Portugal, Article 27 of the Law 28/98 stipulates the obligations of both parties in case of termination of contract with and without just cause. When there are unjustified reasons, the party that caused or unduly promoted the breach of contract shall be deemed liable by virtue of the damage caused by the termination of the contract. An important point is that the compensation cannot exceed the value of the considerations due to the player had the labour contract expired under its contractual term.

**Public law and contracts in sports**

Country	Legal provisions on labour contracts in sport	Legal provisions on early termination of a contract without just cause
Austria	NO	NO
Belgium	YES <sup>31</sup>	YES <sup>32</sup>
Bulgaria	NO	NO
Cyprus	NO	NO
Czech Republic	NO	NO
Denmark	NO	NO
England	NO	NO
Estonia	NO	NO
Finland	NO	NO
France	NO	NO
Germany	NO	NO
Greece	YES <sup>33</sup>	NO
Hungary	YES <sup>34</sup>	NO
Ireland	NO	NO
Italy	YES <sup>35</sup>	NO
Latvia	NO	NO
Lithuania	YES <sup>36</sup>	NO
Luxembourg	NO	NO
Malta	N/A	N/A
Netherlands	NO	NO
Poland	NO	NO
Portugal	YES <sup>37</sup>	YES <sup>38</sup>
Romania	NO	NO
Scotland	NO	NO
Slovakia	NO	NO
Slovenia	NO	NO
Spain	YES <sup>39</sup>	YES <sup>40</sup>
Sweden	NO	NO

<sup>31</sup> Law of 24 February 1978 relating to contract of employment for sports professionals.

<sup>32</sup> Article 5, Law of 24 February 1978. Article states that compensation fee should be paid for the termination of a contract without urgent cause.

<sup>33</sup> Article 90 of the Law 2725/99.

<sup>34</sup> Articles 8-10 and 35 of the Law on Sport.

<sup>35</sup> Articles 3-6 of Law No. 91 of 23 March 1984.

<sup>36</sup> Article 35 of the Law on Physical Education and Sport establishes the requirements for sporting activity contract.

<sup>37</sup> Lei n.º 28/98, 26 of June 1998. The law establishes the legal regime of the employment contract of the athlete.

<sup>38</sup> Article 27, Lei n.º 28/98, 26 of June 1998.

<sup>39</sup> Royal Decree 1006/1985, 26 of June regulates the employment relationship of professional athletes.

<sup>40</sup> Articles 15 and 16, Royal Decree 1006/1985, 26 of June.

Some public rules are inconsistent with FIFA Regulations on the Status and Transfers of Players (RSTP) notably in relation to the length of players' contracts<sup>41</sup>. In practice, such public rules are not that much significant as players sign exclusively fixed-term contracts lasting between one to five years, in compliance with FIFA regulations. However, Belgium authorise permanent contracts for athletes. Portugal fixes the limit at 8 years.

The tables below indicate Member States which have adopted rules related to transfers in the EU plus Scotland and England.

Countries	Countries with legal provisions on transfers	Rules exclusively set by sport bodies
Austria		+
Belgium	+	
Bulgaria	+	
Cyprus		+
Czech Republic		+
Denmark		+
England		+
Estonia		+
Finland		+
France		+
Germany		+
Greece	+	
Hungary	+	
Ireland		+
Italy	+	
Latvia		+
Lithuania	+	
Luxembourg		+
Malta		+
Netherlands		+
Poland		+
Portugal	+	
Romania		+
Scotland		+
Slovakia		+
Slovenia		+
Spain	+	
Sweden		+

Countries with legal provisions on transfers

### 2.1.1.2 Public rules related to non-EU players' access to the EU transfer market

<sup>41</sup> Belgium Public Law from 24/02/1978 stipulates that the contracts can be both fixed-term and permanent. For fixed-term contracts however, the length cannot exceed five years.

Spanish public law, Royal Decree 1006/1985, 26 of June, only imposes one clause: contracts of athletes must be fixed-term. Portugal rules differ from FIFA RSTP since, under Article 8 of the Law 28/98, the length of contract should be not less than one sporting season and not more than eight seasons.

The predominance of Public Law as source of the regulation on these players must be acknowledged. When recruiting non-EU nationals, sport stakeholders must comply with laws and regulation related notably to immigration policies. It is however not the aim of this report to review immigration policies.

Nevertheless, it should be noted Member States or sport bodies implement specific criteria on non-EU players in order to be eligible to pursue sporting careers. These criteria differ from one country to another and may constitute barriers to entry in some transfer markets. This is a matter that could be subject to harmonisation to enable full implementation of EU international agreements. As a result some national authorities implement specific legislation on the remuneration that apply to non-EU players<sup>42</sup> while others apply sportive criteria (e.g national selection in the country of origin) to condition the entry<sup>43</sup>.

For instance, in Belgium, the remuneration of employees in sport is fixed annually by the King after taking advices from the “commission paritaire nationale des sports” (Art. 2, § 1er, of the 24/02/1978 law relative to the contract of remunerated sportsmen). Therefore, based on Royal Decrees advised by such Commission<sup>44</sup>, the minimum wage for these professional athletes that are non-EU nationals must be multiplied by eight. For the 2012-2013, it corresponds to €9.027 multiplied by eight, that is 72.216€ per year.

In the Netherlands<sup>45</sup>, a non-EU player has to fulfil two criteria to be able to play as a professional: i) an income criteria (the guaranteed income for players 18 and 19 years: at least 75% of the determined average gross annual income in the Eredivisie amounts; the guaranteed income for players aged 20 and older should be at least 150% of the determined average gross annual income in the Eredivisie amounts. The average gross income in the Netherlands Premier League in the season 2010/2011 was € 335.000. This has as a consequence that the income criterion in the season 2011/2012 is set at: € 266.000 for players aged of 18 and 19 years; and € 533.000 for players aged 20 and older); ii) a sportive criteria (either the country has to be ranked in the top 40 of the FIFA World Ranking list at the moment the player applies for the permit; or the player played in a match for the National Team, or another represented National Team; or the player has played in a match of the UEFA Cup or of the Champions League).

The regulation was a result of close cooperation between the federation, the league, the players and the Ministry of Justice in order to develop a transparent model which is acceptable for every party.

In the UK<sup>46</sup>, to play at the highest level (i.e. clubs competing in the Premier Leagues and Football Leagues in England and Scotland, the Welsh Premier League and the Irish Premier League in Northern Ireland), two sportive conditions are required: i) a player must have played for his country in at least 75% of its competitive 'A' team matches he was available for selection, during the two years preceding the date of the application; and ii) the player's country must be at or above 70th place in the official FIFA world rankings when averaged over the two years preceding the date of the application.

In 2003<sup>47</sup> and in 2005<sup>48</sup>, the European Court of Justice extended the principle of equal treatment to sportsmen from third countries having an Association Agreement with the European Union. The

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<sup>42</sup> Article 3, Law of 24 February 1978 (Belgium).

<sup>43</sup> Tiers 2 and 5 of the UK Border Agency Points Based System for the 2012-13 season.

<sup>44</sup> The last one is the Royal Decree of 13 July 2004.

<sup>45</sup> §13 of the Implementation and Delegation Decree, Annex to the Foreign Nationals Employment Act; Aliens decree, 2000. Within this section is a specific passage recognised in respect of the professional football sector. On the basis of this section, three conditions must be met in order to qualify for a work permit for a professional footballer, namely:

- The professional footballer to play in the top division of the sport; - The income criterion, and - The quality criterion.

<sup>46</sup> Tiers 2 and 5 of the UK Border Agency Points Based System for the 2012-13 season.

<sup>47</sup> Case C-438/00, Deutscher Handballbund V Maros Kolpak of 8/05/2003

<sup>48</sup> Case C-265/03 Igor Simutenkov v Ministerio de Educación y Cultura, Real Federación Española de Fútbol of 12/04/2005

principle of non-discrimination is reaffirmed in similar terms in the Cotonou Agreement<sup>49</sup> between the European Union and 78 African, Caribbean and Pacific countries.

<b>Specific Criteria Applying to Non-EU players in 9 countries</b>									
Countries	England	Belgium	France	Germany	Spain	Italy	Portugal	Poland	Lithuania
Sportive Criteria	Yes <sup>50</sup>	No	Yes <sup>51</sup>	No	No	No	No	No	No
Financial resources criteria	No	Yes <sup>52</sup>	Yes <sup>53</sup>	No	No	No	Yes <sup>54</sup>	No	No

### 2.1.1.3 Public rules on Agents<sup>55</sup>

<b>Countries with specific legislation on the activity of agents</b>	
<b>Bulgaria</b>	Law on sport and Physical activities of 9 July 1996 grants the right for an agent to deal with “competition rights” or “federation rights”
<b>France</b>	Code of Sport sets legislative regulations of the activities of agents
<b>Greece</b>	Ministerial decision (upon Law 2725/1999) sets legislative regulations of the activities of agents
<b>Hungary</b>	Law on sport 2000 requires that only registered and fulfilling the requirements by the national/international sports federation are entitled to conclude mediation contracts.
<b>Portugal</b>	Laws 28/29 of 26 June 1998 and Law n°5/2007 of 16 January 2007 regulate specific activities of agents, such as definitions, remuneration, etc.

The activity of a sport agent is inherent to the system of employment and the transfer of sportspersons. Agents act as mediators between sport clubs and players to organise transfers. Only 5 countries in the EU have adopted specific public regulation on the activity of agents.

<sup>49</sup> Article 13, par.3 of the ACP EU Partnership Agreement signed in Cotonou on 23 June 2000.

<sup>50</sup> See reference 38.

<sup>51</sup> Article 552 of the Charte du Football Professionnel (Charter of Professional Football), season 2011-2012: “Clubs may only conclude a contract with players that are nationals of countries which are subject to an association or cooperation agreement with the EU if such players can justify that they have been selected at least once for a match in an official confederation or FIFA competition, or that they have played under a three-year amateur licence in France”.

<sup>52</sup> From the 24/02/1978 Law (Article 3), it is said that to be considered as a “sportif rémunéré”, the player must prove that during one year he earns at least eight times the minimum salary. For the season 2012-2013, this corresponds to: 8 X 9 027€, that is 72 216€.

<sup>53</sup> “The employment and remuneration conditions offered to foreign employees. Such conditions must correspond to the norm for the trade in question and for the type of employment concerned, the salary proposed must be at least equal to the SMIC (French minimum wage) (even in the case of a part time job).”

*Study on training of young sportsmen/women in Europe*, Ineum and Taj, 2008, Page 19: “In France, a non EU player has to provide, further to a resident permit and a medical certificate, documents testifying of sufficient financial resources.”

<sup>54</sup> *Study on training of young sportsmen/women in Europe*, Ineum and Taj, 2008, Page 19: “In order to obtain work and residence permits, players must justify of a work contract and prove to be economically self-sustainable.”

<sup>55</sup> For a more complete mapping of agent rules please consult KEA-CDES-EOSE Study on sports agents in the European Union, 2009, European Commission. Available on [www.keanet.eu](http://www.keanet.eu).

In Bulgaria, agents are given the right to be involved in the negotiations only to “competition rights” when it comes to transfer (where “competition rights” are the athletes’ right to participate in the training and competitions of a sport club). In France and Greece the law provides the regulatory framework for agents to be able to exercise. The Hungarian Law requires agents to fulfil the registration and sports’ federation requirements. Portugal regulates specific aspects of agency, such as remuneration (again without special mentioning of agent’s role in transfer of players). Apart in France there is in essence very little in term of public regulation governing the activities of agents.

### **2.1.2 The Level and Scope of Sport Body Regulations**

Transfer regulation stems essentially from the self-regulatory power of international and national sport organisations. Sports governing bodies have historically regulated the transfer market with a view to establish the principle of stability of teams during competition: the principle of “contractual stability” whereby fixed-term contracts are due to be respected by both employers and employees.

Sport body rules also have as a main objective the protection of minors and the promotion of youth development as part of sport’s essential social function.

In order to fight malpractices, abuses and criminal activities, linked to the important money flow related to transfer activities sport organisations are increasingly adopting rules aimed at monitoring and sanctioning practices that endanger sport’s ethic and with the same token societal’ values on integrity, justice and fairness. Sport organisations require the public authorities’ collaboration to enforce and police such rules.

The phenomenon of third party investment in football players is adding a new dimension to the regulation of transfers between clubs and players. The self-regulatory power of international and national sport organisations extends to the settlement of disputes on transfers.

The mapping essentially distinguishes between sport rules aimed at ensuring a fair and balanced competition and rules aimed at protecting minors and promoting youth development.

Rules on fair and balanced competition relates to provisions on:

- Contractual stability
- Registration periods (or transfer windows)
- Redistribution and solidarity mechanism
- Transparency in transfer transaction and clubs’ financial position.

#### **2.1.2.1 Football**

The mapping distinguishes between rules that:

- Ensure fair and balanced competition between clubs.
- Protect minors and encourage youth development.
- Establish and enforce dispute settlement mechanism.
- Relate to third party ownership (TPO)

##### **2.1.2.1.1 Rules to ensure a fair and balanced competition**

Measures aimed at ensuring that football competition obey the principle of fairness relates to:

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

A balanced and fair competition is a competition in which everyone that participates has an equal chance of winning and is treated in the same way without discrimination. Specific transfer rules that derogate to traditional labour law are justified by the need to ensure that players and clubs respect the duration of fixed term contract to enable clubs to build and count on a stable team of players during competitions.

### **1. Contractual stability**

Clubs and federations/leagues attach a great importance to contractual stability rules as they are aimed at guaranteeing that players commit to the team for the duration of their engagement.

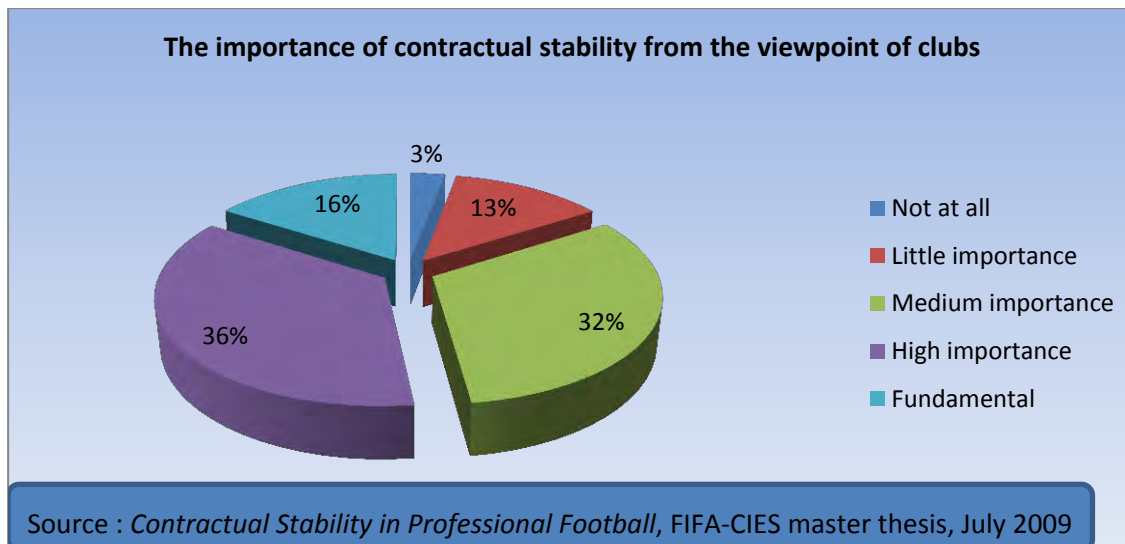
Players' representative point out that clubs financial instability is a great cause of contractual instability as well as clubs' policy to push players to change clubs in order to accommodate a new recruitment policy. Contractual stability rules are being watched closely by EU authorities as they may enter into conflict with free movement of players' rules (see Chapter 2.2). There is also an abundant jurisprudence from sport arbitration tribunal on the matter in particular in relation to the calculation of compensation due when contracts are terminated before their terms without just cause (see Chapter 2.3).

The following chart reveals the importance given to contractual stability by clubs. As we can see, only 16% give little importance or not importance at all; while 52% believe it is fundamental or of high importance<sup>56</sup>.

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<sup>56</sup> *Contractual Stability in Professional Football*, FIFA-CIES master thesis, July 2009.

"A representative sample of 39 first division European football clubs was consulted. Clubs were categorised in three groups according to the 2010-2011 UEFA association coefficient ranking. The first group include the top 10 leagues; the second one includes leagues ranking from the 11<sup>th</sup> to the 25<sup>th</sup> position; and the last group from the 26<sup>th</sup> position to the 53<sup>rd</sup>."



The study proposes to review FIFA regulations on contractual stability to then map national specificities.

#### FIFA regulations on contractual stability

Under the FIFA Regulations on the Status and Transfer of Players (FIFA RSTP), contractual stability is governed by articles 13 to 18.

FIFA rules provide that a contract between a player who plays professional football and a club can be terminated only by the expiry of the contractual term or by mutual agreement. Article 13 provides for the obligation of both parties to respect the term of the contract signed (*pacta sunt servanda*).

The remaining articles (14 to 18) give provisions on the maximum length of a contract and regulate the situation of breach of contract by distinguishing breach with and without just cause.

Article 18 stipulates that contract should be as a minimum for 1 year and a maximum of 5 years. In relation to minors (players aged under 18 the contract cannot be longer than 3 years).

Articles 14 and 15 provide that a contract can be terminated before the agreed fixed term by one of the parties in case of “just cause”. Such breach of contract doesn’t lead to any consequences, both in terms of compensation payments or sportive sanctions. The concept of “just cause” is not properly defined and is established on a case by case basis<sup>57</sup>.

The most important rule relates to the termination of a contract without just cause (Article 17). It provides that when a party breaches a contract, the latter is obliged to pay compensation to the other party. In addition it may be liable to sporting sanctions. Such sanctions can be imposed during the so-called “protected period”<sup>58</sup>. Sporting sanctions include the restriction to play matches or the ban to register a player for a competition.

<sup>57</sup> Article 14 and 15, FIFA Regulations on the Status and Transfer of Players, 2010.

<sup>58</sup> FIFA Regulations on the Status and Transfer of Players, 2010.

The protected period is “a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28<sup>th</sup> birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28<sup>th</sup> birthday of the professional”. For the players, sanctions may be 4 month restriction on playing in official matches (under aggravating circumstances – up to 6 months). For clubs, the ban to register players nationally or internationally can be imposed for two seasons.



The new club which signs a player breaching his contract without just cause will be held jointly liable to pay compensation to the former club. If no amount of compensation is mentioned in the contract (which is the norm), the calculation of the compensation must take into account the specifics of each situation (law of the country, the behaviour of the parties, remuneration, terms of the contract, etc.).

National specificities on contractual stability

**The buy-out clauses**

Should the player unilaterally terminate his contract without just cause, then he is liable to pay compensation for the damage suffered by the club employer. This contractual compensation can dissuade the player from taking such an initiative. This is the main objective of a "buy-out clause." As such, these clauses have the objective of reinforcing the principle of contractual stability desired by the football authorities, a principle that is the cornerstone of FIFA RSTP.

However, such clauses often result in an excessive amount of compensation being fixed by the club<sup>61</sup>, which effectively prevents the player from leaving his club.

To prevent abuse and excessive amounts, it is proposed that the European social dialogue take up this issue so that retrospectively the power of control exercised by judges may be a useful complement. It would define objective criteria, which would complement the current Article 17 of FIFA RSTP, to limit the amount of compensation.

Collective bargaining agreements (CBA) signed in a large number of EU countries between federations, leagues, clubs and players' representatives contribute to the enforcement of contractual stability.

One national peculiarity deserves attention: the "buy-out clause" in force in Spain.

The Spanish royal decree of 1985<sup>59</sup> expressly recognises the possibility for clubs and players to have a "buy-out-clause" in the contract with players. Such clause stipulates an agreed amount of money for which, if matched, players would be able to leave the club. According to Article 17 paragraphs 1 and 2 of the FIFA RSTP, the amount of compensation payable by a party (player or club) to the other party in case of terminating a contract without just cause may be stipulated in the contract that was agreed between the parties (i.e. player and club). Consequently, FIFA rules authorise "buy-out clauses". The Dispute Resolution Chamber<sup>60</sup> (DRC) has, however, made it clear that such a clause needs to be proportionate, otherwise it will be up to the competent deciding-body, in case of a dispute, to reduce the relevant amount to a reasonable and acceptable level.

Rules on contractual stability reinforce powers of clubs on players by making more costly financially and sportingly the move of players before the expiration of their fixed term contract. However rules have done little to limit or control the inflation of certain transfer indemnities (for elite players).

<sup>59</sup> DR n°1006/1985 from 26th June 1985.

<sup>60</sup> For a Spanish contract, DRC decision no. 16394, labour, meeting of January 2006;

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

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

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

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

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

<sup>61</sup> See previous footnote.

## 2. Registration Period

The registration period makes reference to the period of time set by sport governing bodies in which transfer of players are permitted. It relates to the obligation to register a transferred player by a given deadline. The failure to respect such deadline means that the player is automatically prevented to play for his new club.

The objective of the registration period is to guarantee fairness and balance of the different competitions by preventing the movement of players during competition or before decisive games.

The FIFA rule on “registration period” is in article 6 of the FIFA RSTP which provides that: “The first registration period shall begin after the completion of the season and shall normally end before the new season starts. This period may not exceed twelve weeks. The second registration period shall normally occur in the middle of the season and may not exceed four weeks”. It means that a professional player can only be registered during the two annual transfer windows set by the national association.

International harmonisation is a must to avoid situation in which clubs in a given country can no longer recruit whilst clubs in other countries can shop around and make recruit players from such teams. The rule enables some flexibility to take into account the geographical position or weather conditions of countries. However this remains an objective difficult to achieve at international level. Flexibility is required to take into account local circumstances including weather conditions as well as customary practices in lower leagues<sup>62</sup>.

### National provisions

In terms of registration periods for transfer occurring at national level in the European Union, there are two groups of countries. The first one represents by mostly top leagues of Western Europe that share the same time period (cf. table below); and another one composed of several countries having their own transfer windows in accordance with their specificities (competition calendar, weather...).

#### Countries sharing the most common registration periods for the 2010-2011 season

Countries	Most Common Registration Periods
Belgium; England; France; Germany; Portugal; Spain; Italy; Austria; Cyprus	First registration Period: 1 <sup>st</sup> of July until 31 <sup>st</sup> of August Second registration Period: 1 <sup>st</sup> of January until 31 <sup>st</sup> of January

<sup>62</sup> Such as the system implemented by the Football league in England (second to fourth division football) with an extended registration period. For the national transfers, the Football League used to exercise so-called “transfer deadlines” that allowed clubs to sign players on loan 7 days after the window closes and circa 5 days before it reopens in both the first and second half of the season. The loan period must be for a minimum of 28 days (Emergency loans and youth loans) to maximum 93 days (Emergency loans).

## Countries with their own specific registration periods for the 2010-2011 season

Countries		Lithuania	Poland	Czech Republic	Denmark	Finland	Ireland	Sweden
Registration Periods	First Registration Period	15/02 to 09/03	01/07 to 31/08	1/07 to 22/09	12/06 to 01/09	14/02 to 07/05	01/12 to 22/02	08/01 to 31/03
	Second Registration Period	29/06 to 29/07	01/02 to 28/02	25/01 to 21/02	05/01 to 31/01	07/08 to 03/09	01/07 to 31/07	01/08 to 31/08

All the surveyed countries have transfer windows period that fit with the most common registration periods. In addition, some countries are very close to the system implemented by main leagues. There can also be variations between top leagues- for instance the registration period in France put French clubs at a disadvantage as the local transfer market was open until the 4<sup>th</sup> September whilst the market was closed in the main European countries on 31<sup>st</sup> August 2012.

### 3. Redistribution and financial solidarity mechanisms

FIFA and national rules provide systems of redistribution of money to clubs to implement a system of solidarity mechanism designed to compensate clubs for their contribution to the transfer market and the development of elite players. Such mechanism contributes to fair and balanced competition as they operate in favour of less wealthy clubs whose financial means affect their capacity to figure well in competition. The solidarity mechanism was introduced by FIFA in its Regulations as of 1 September 2001 following the agreement reached with the European Commission in 2001 (described in Chapter 2.2). The solidarity contribution is directly linked to the transfer market system and has an essential component of transfer regulations.

#### FIFA Regulations on solidarity mechanism:

The provisions on solidarity mechanism are in Article 21 and Annex 5 of the FIFA RSTP.

Article 21 provides: "If a professional is transferred before the expiry of his contract, any club that has contributed to his/her education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution)." The principle is simple: the new club must keep 5% of the transfer fee he has agreed to give to the transferor club and must distribute this amount between all the clubs in which the player has played and has been trained between the ages of 12 and 23<sup>63</sup>.

<sup>63</sup> An age criteria must be taken into account when the distribution is handled by the new club. From the age of 12 to 15 years, clubs shall receive 5 % of the total compensation for each year which corresponds to 0.25% of the total compensation for each year. From 16 to 23 years old, clubs are entitled to receive 10% of the total compensation for each year, that is 0.5% of the total compensation for each year.

This solidarity mechanism of FIFA is only applicable to international transfers. According to FIFA solidarity contribution only accounts for 1% of the total world transfer fees reaching € 23.192 million in 2011<sup>64</sup>. The solidarity contribution seems to be implemented in Europe only. Many clubs are still unaware of such mechanism, in particular smaller clubs with little resources to track down the career of their former registered players. The recent implementation of FIFA Transfer Matching System (FIFA TMS) will help clubs to identify compensation opportunities<sup>65</sup>.

### National specificities

In relation to domestic transfers, FIFA's regulations do not oblige member associations to use a specific redistribution scheme or programme. The matter is left to the discretion of the FIFA member associations. It seems that as far as Europe is concerned, only the Royal Dutch Football Federation has implemented in its regulations a solidarity mechanism similar to the one chosen by FIFA. A large number of FIFA associations have renounced to implement such mechanism.

England, Poland and Lithuania have established a levy on transfer fees. Belgium, Germany and Italy have implemented provisions supporting youth development. However, provisions are very close to what is integrated in training compensation mechanism.

For instance, France has not implemented properly a solidarity mechanism. However, when calculating training compensations, it integrates the concept of "valorisation de la formation" taking into account future performances of the player with its national team. In Italy, such performance is not integrated when calculating training compensations but a solidarity payment exist when a player performs his first game with the national team. Indeed, all the clubs that have trained him since he is 12 years old receive a solidarity contribution from the club in which the player is registered when he performs this first game.

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<sup>64</sup> Conversion Euro-US Dollar made on the 25<sup>th</sup> of September 2012 (1 USD = 0.773078 EUR).

<sup>65</sup> For instance Belgium player Witsel was in September 2012 transferred from Lisbon to St Petersburg for € 40 million. Its training club Liège is entitled under the mechanism to 2.2 million Euro in solidarity compensation.

National Provisions on Solidarity Mechanism									
Countries	England	Belgium	France	Germany	Spain	Italy	Portugal	Poland	Lithuania
Criteria									
Countries implementing solidarity mechanism on national transfers	Yes	No	No	No	No	No	No	Yes	Yes
Levy on transfer fee, close to FIFA RSTP	Yes <sup>66</sup>	No	No	No	No	No	No	Yes <sup>67</sup>	Yes <sup>68</sup>
Other mechanisms	No	Yes <sup>69</sup>	No	Yes <sup>70</sup>	No	Yes <sup>71</sup>	N/A	No	No

#### 4. Monitoring of transfer transactions and financial accounts of clubs

Very recently international and European football bodies have taken steps to tackle abusive, fraudulent, and financial practices that threaten the fair and competitive balance of competition. Such mechanism aims at improving transparency of financial dealings and transactions. It is to limit the enrichment without cause in the case of transfers and prevent clubs developing an unfair competitive advantage by spending on players without control or limits. Today financial instability of clubs is the greatest threat to contractual stability. It is also the greatest menace to sport bodies' self-governing power as financial malpractices and abusive transfer fees is causing alarm amongst supporters, the general public and public authorities.

Monitoring systems are meant to keep track of transfer operations and collect data to enable control on the validity and legality of such transactions as well as to allow enforcement of transfer rules, notably registration periods, protection of minors but also the payment of financial compensation. FIFA has set up and is managing the Transfer Matching System (TMS) which operated for the first time in 2011<sup>72</sup>.

National federations and confederations are also taking steps to develop monitoring of national transfers. As from this year UEFA is pilot testing its financial fair play rules (FFP). The objective of FFP

<sup>66</sup> The solidarity payment varies in the Premier League (4% under the M rule 38, Premier League Handbook 2011-2012) and the Football League (5%, according to the Article 49.2.8 of the Football League Regulations, Chapter 6 – Players, season 2011-2012).

<sup>67</sup> Article 69.2 of the PZPN Board Resolution of 29 June 1992.

<sup>68</sup> Lithuania follows FIFA Regulations on the status and transfer of players (2010) establishing the levy from 5-10%.

<sup>69</sup> Article 149 of the URBSFA Regulations on Football, Season 2012-2013.

<sup>70</sup> Regulations on the licensing of players (LOS Annex 3) establish guidelines for setting the compensation for training young licensed players and solidarity mechanism.

<sup>71</sup> Article 99 and 99Bis of the Internal Organisation Norms of FIGC - Parte II Le Funzioni – season 2011-2012

It refers to the career price: when a player plays his first game with the national team, all the clubs that have trained him since he is 12 years old receive a solidarity contribution from the club in which the player is registered when he performs this first game.

<sup>72</sup> Global Transfer Market, FIFA T.M.S, 2011

is to control clubs' finances and establish a system of sanctions that would prevent unaccountable clubs to participate in UEFA competitions.

FIFA Rules – the Transfer Matching System (TMS)

The FIFA RSTP provides in Annex 3 and 3a information on the Transfer Matching System (TMS). The system is designed to regulate the international transfers of male professional footballers. TMS does not apply to transfers of players who retain their amateur status when moving between clubs, although the transfer of a player from amateur to professional status must be registered in accordance with the system.

The FIFA Transfer Matching System				
Information to be provided	Other guarantees needed	Responsibilities of stakeholders to enter information in the system		Purpose of the TMS
		Clubs	Associations	
<ul style="list-style-type: none"> <li>- The names of the clubs</li> <li>- The member associations</li> <li>- The player details (date of birth, nationality, first last and middle names)</li> <li>- Type of transfer (permanent, loan, exchange)</li> <li>- Possible commission payments</li> <li>- The total transfer fee</li> <li>- Details of any training compensation or solidarity contributions</li> <li>- Payment deadlines (of which there may be one or more)</li> <li>- The payment schedule (including dates, amounts paid and recipients)</li> <li>- Details of payments already made (including information on the paying bank, the payee bank, the amount paid, the date of payment and the recipient).</li> </ul>	<p>Clubs and associations are required to upload a series of documents in the system.</p> <p>These are as follows:</p> <ul style="list-style-type: none"> <li>- Documents providing proof of the nationality,</li> <li>- correct spelling of name and age of the player</li> <li>- A copy of the player's new contract of employment</li> <li>- A copy of the transfer agreement and proof of payments.</li> </ul>	<p>In order for a transfer to be validated the two clubs involved must enter the relevant information on the deal.</p>	<p>Member associations must keep all information relating to the league season in question up to date, as well as information on player registrations, clubs and agents.</p>	<p>1-Increase transparency of international transfers</p> <p>2-Improve the protection of Minors</p> <p>3-Fight money laundering</p>

UEFA rules – the financial fair play (FFP)

UEFA has no competence in matter of transfers. However The Financial Fair-Play<sup>73</sup> contributes to the monitoring and implementation of transfer rules by contributing to more fairness in football competition. FFP's objective is to "encourage clubs to compete with(in) their revenues."

The ultimate penalty considered within the Financial Fair-Play Rules is the impossibility for infringing clubs to participate to UEFA competitions. The system is in a pilot phase. On 11 September 2012<sup>74</sup> UEFA announced that 23 clubs, including Atletico Madrid, winner of the Europa League and Supercoupe of Europe, will see the payment of their financial bonus suspended in the expectations of further investigations on their finances. On 21 December 2012<sup>75</sup>, sanctions were confirmed on eight clubs, among which Málaga CF. They are motivated by the fact that such clubs failed to pay in time other clubs, employees or fiscal authorities.

FFP Rules<sup>76</sup> introduce several requirements for clubs to observe to prevent the latter to spend more than the revenues generated. Clubs are required to issue guidelines on salaries as well as transfer-related expenses and to provide indicators of debt sustainability<sup>77</sup>. Therefore, the system will introduce more transparency and control on transfer operations and this should be welcomed. The UEFA measures will be introduced gradually over a three-year period.

In the short term, the supervision of expenditure and compliance with the regulations is entrusted to an independent body called the investigation chamber (i.e. the UEFA Club Financial Control Body's (CFCB) investigatory chamber<sup>78</sup>) chaired by the former prime minister of Belgium, Mr Jean-Luc Dehaene. Composed of legal and financial experts, the panel will carry out audits to ensure that the UEFA FFP is applied correctly across all UEFA member associations.

#### National specificities on monitoring domestic transfers

Before the implementation of the FIFA TMS at the international level, some national associations had already established monitoring schemes for national transfers. The following table map the different initiatives and their scope.

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<sup>73</sup> The UEFA Financial Fair Play Regulations, which were approved in May 2010 after an extensive consultation period and updated in the 2012 edition, are being implemented over a three-year period, with clubs participating in UEFA club competitions having their transfer and employee payables monitored since the summer of 2011, and the break-even assessment covering the financial years ending 2012 and 2013 to be assessed during 2013/14.

<sup>74</sup> Le Monde 13 September 2012, page 25.

<sup>75</sup> UEFA, 2012 {HYPERLINK "<http://www.uefa.com/uefa/mediaservices/mediareleases/newsid=1908757.html>"}

<sup>76</sup> Chapter 3.1.1.5 gives a detailed presentation of the FFP Rules.

<sup>77</sup> "UEFA Executive Committee Nyon decisions – Financial Fair Play concept approved", media release published on the UEFA website on 15 September 2009.

<sup>78</sup> Articles 32(3) and 34Ter UEFA Statutes – Procedural rules governing the UEFA Club Financial Control Body, edition 2012.

Countries		Belgium	England	France	Germany
Monitoring					
Countries that monitor national transfer		Yes	Yes	Yes	Yes
Scope of the monitoring (if existing)	Transfer fees	No	Yes	Yes	No
	Contracts	Yes	Yes	Yes	Yes
	The payments related to transfers	Yes	Yes	No	Yes
	The commissions paid to agents	No	Yes	Yes	Yes
	The names of the clubs and players	Yes	Yes	Yes	Yes
Purpose of the Monitoring (if existing)		Registration of Players Financial Control of Clubs <sup>79</sup>	Registration of Players Clearing-house system	Registration of Players Financial Control of Clubs	Registration of Players Financial Control of Clubs

Monitoring and scope per country (sources: KEA and national sporting regulations)

<sup>79</sup> Articles 244, 337, 342 and 406 of the URBSFA Regulations on Football, Season 2012-2013

A licensing system is also implemented in Belgium. According to Article 406, to be awarded such license, clubs must among other things prove that they have paid a financial guarantee to the Federation and mainly that they are not in default payments, especially concerning potential debts towards other clubs.

The Futsal License Commission is the one entitled to enforce such principles. It can for instance lift the transfer embargo imposed to one club when this latter proves to have covered the debts it had accrued giving rise to the transfer ban.



Countries		Italy	Spain	Portugal	Poland	Lithuania
Monitoring						
Countries that monitor national transfer		Yes	Yes	Yes	No	No
Scope of the monitoring (if existing)	Transfer fees	N/A	No	No	No	No
	Contracts	Yes	Yes	Yes	Yes	Yes
	The payments related to transfers	N/A	No	No	No	No
	The commissions paid to agents	N/A	No	No	No	No
	The names of the clubs and players	Yes	Yes	Yes	Yes	Yes
Purpose of the Monitoring (if existing)		Registration of Players Financial Control of Clubs <sup>80</sup>	Transfers are always stamped, monitored and where appropriate, approved by the Department of Licenses and the Register of the RFEF.	Registration of Players.	Registration of Players.	Registration of Players. The transfers are made in three copies. However, the upcoming salary is not open to public as it is against Public Law.

Monitoring and scope per country (sources: KEA and national sporting regulations)

The scope and extent of the monitoring differs between the analysed countries. France, since the creation of an independent body, the Direction Nationale du Contrôle de Gestion in 1984; and Germany,

<sup>80</sup> It differs from France and Germany since the clearing house regulates the economic aspects of transfers. Payments are regulated through this system guaranteed by the league. When a player is recruited, the balance of a club can be calculated (one month after his transfer). All clubs must pay to cover the net operation result.

Example: on the 8th of August, one club must pay 50% of the transfers he made in July in cash. The other 50% must be guaranteed thanks to bank guarantee on a payment schedule based on seven months.

The main objective of this clearing house system is to have all the transfer payments paid in cash or in bank guarantees to avoid non-payments problems. Such pattern is not focused on every transfer but to the global transfer balance, that is the total of the purchases minus the total of the selling.

with the implementation of its domestic licensing model, can be considered as the most sophisticated mechanisms to control clubs' finances. .

To obtain licence to compete in the championship a German club must be solvent and be able to demonstrate capacity to finance the next season. Transfer assets are subject to assessment when assessing the clubs' financial health. If the club fails to meet the economic criteria, possible sanctions include fines, deductions of points, transfer embargo and, ultimately, expulsion from the three division national league structures.

In France, DNCG is the organisation responsible for monitoring and overseeing the accounts of professional association football clubs in France. The mission of the DNCG is to oversee all financial operations of the 44 member clubs of the French football league (LFP). At the end of each football season, the DNCG reviews the accounts of all the teams in the top five divisions in France. Clubs found to be in breach of rules can lead to serious sanctions including relegation.

The Belgian monitoring<sup>81</sup> is also based on a licensing system, as in Germany. The Italian system <sup>82</sup> differs since it focuses on the global transfer balance and not on each transfer. It is essentially meant to guarantee that no club can default on their transfer payments.

A specific mention should also be made in relation to the monitoring system in place in England. The system aims to gather data on transfer operations. It is set up in partnership between the Premier League (PL) and the Football League (FL). It is aimed to control domestic and international transfers but also agents' commissions. The paramount goal is to guarantee the payments related to transfer operations between clubs with a view to control financial flows and ensure financial and accounting transparency. Thus, the monitoring concerns the destination of funds and verifies consistency of the amounts perceived with the information contained in the transfer convention.

Concretely, when two English clubs transfer a player, transfer fee is paid through the intermediary of the PL. The transferee club pays the amount on a bank account identified within the PL ("compensation fee account") which is then responsible for re-allocating this amount to the transferor club. In case of a default payment on a transfer fee, the league can execute compensations either on other payments (TV rights for instance) or on an outgoing domestic transfer made by this club. Financial penalties can also apply if two of the previous solutions cannot be executed. Finally, if the PL and FL are unable to sanction financially the defaulting club, several possibilities exist: i) transfer embargo; ii) fines; iii) payment of default interest.

A tax of 5% is collected on each transfer as administrative expenses. A player obtains his registration only when the payment of the first instalment of the transfer fee is made by the transferee club. In case of dispute, an independent arbitration tribunal is competent.

The English FA (Football Association) is in charge of monitoring international transfers. It follows two objectives : i) to supervise the consistency of the paid amounts by English clubs in relation to the transfer convention; ii) to control the destination of the paid amounts by the English clubs. The system only concerns transfer fees paid by the English clubs; those received by them are not monitored. When a player is recruited from a foreign country, the transfer fee is paid to the FA which has also a specific bank account. The FA re-allocates then the fee to the English club.

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<sup>81</sup> See reference 80.

<sup>82</sup> See reference 81.

The FA is also in charge of monitoring the commissions paid to agents. This allow the FA to verify the consistency of the amount paid with the remuneration contained in the contract but also to control information provided on the recipient. The FA then pays the commission to the agent.

#### **2.1.2.1.2 Rules on minors and youth development**

FIFA transfer rules also aim at protecting minors as well as promoting youth development policies within football clubs. Rules aim to prevent that young and promising future football players fall victim of unscrupulous traffics generated by the promises of future financial gains. Young people from all over the world are attracted by the opportunity of a lucrative career in Europe. Very few will be able to live from their football passion. Every club dreams to discover at a young age a future star for both sportive and financial reasons. International governing bodies have taken steps to prevent transfers of players before the age of 18.

In 2007, the association representing players FIFPro filed a complaint against Danish club, FC Midtjylland, for infringement of article 19 of the FIFA Regulation. Under an agreement with Nigeria club FC Ebodei, the Danish club was given purchase option on high skilled players while many of them were minors. The final decision on the appeal was issued by CAS in 2008<sup>83</sup> stating that minors moved to Denmark for football reasons, and therefore could not be considered as students. In the aftermath of this case FIFA adopted a new article, the article 19bis, so as to increase the control on international transfer of minors. In addition rules aim to promote youth development.

#### **1. Rules to ban transfers of minors**

Minors are players who have not yet reached the age of 18. Article 19 was amended in 2001 to strengthen the ban on transfers of minors following the agreement with the European Commission. These rules, in relation to international transfers, cannot be subject to national adaptation.

#### FIFA regulation

The FIFA Regulations on the Status and Transfer of Players<sup>84</sup> (RSTP) tackles the issue of minors in the Article 19 and 19Bis under the title “International Transfers involving Minors”.

Article 19 states that international transfers of players are only permitted if the player is over the age of 18n. However, exceptions to the ban are possible provided the following conditions are fulfilled related:

1. Domicile change<sup>85</sup>.
2. EU nationals for whom players aged between 16 and 18 years-old are allowed to be transferred if it takes place within the territory of the European Union (EU) or European Economic Area (EEA).
3. Players domiciled living close to another country's border<sup>86</sup>.

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<sup>83</sup> CAS 2008/A/1485 - FC Midtjylland A/S v/ Fédération Internationale de Football Association.

<sup>84</sup> FIFA Regulations on the Status and Transfers of Players, 2010.

<sup>85</sup> The players' parents move to the country in which the new club is located for reasons not linked to football.

<sup>86</sup> The player lives no further than 50km from a national border and the club with which the player wishes to be registered in the neighbouring association is also within 50km of that border. The maximum distance between the player's domicile and the club's headquarters shall be 100km. In such cases, the player must continue to live at home and the two associations concerned must give their explicit consent.

In relation to the EU national exceptions, FIFA Regulations provides a number of minimum obligations that the new club must obey. The new club has to provide the player with an “adequate football training” and guarantee the player an “academic and/or school and/or vocational education and/or training [...] which will allow the player to pursue a career other than football should he cease playing professional football.” Furthermore, the new club has to arrange that “the player is looked after in the best possible way (optimum living standards with a host family or in club accommodation, appointment of a mentor at the club, etc.).”

Finally, these rules “apply to any player who has never previously been registered with a club and is not a national of the country in which he wishes to be registered for the first time.”

Since the 1<sup>st</sup> of October 2009, every international transfer and first registration of a minor at an association in a country of which he is not a national is subject to the approval/supervision of the sub-committee appointed by the FIFA Players’ Status Committee for that purpose (cf. art. 19 par. 4 of the Regulations).

Also introduced in the 2009 amendment Article 19bis provides that clubs that operate an academy with legal, financial or de facto links to the club are obliged to report all minors who attend the academy to the national FIFA affiliate in which the academy operates. The implementation of TMS represents also a new step in control as the procedure for registering a minor is managed by the system (TMS; cf. art. 19 par. 5 in conjunction with Annexe 2 of the Regulations).

#### National specificities on minors

At national level, countries must integrate the FIFA provisions “without modification” and therefore, no specificities are to be found in terms of international transfers. When considering domestic transfers, regulations are quasi non-existent and refer to common and civil law notably on family law.

In Italy, football players under 16 can play for a club only if the family residence is proved to be located in the region or in a province of an adjacent region at least six months before the request is submitted<sup>87</sup>,

## **2. Rules on youth development**

Following the 2001 agreement with the European Commission FIFA rules establish that in relation to the transfer of players under the age of 23, a system of training compensation should operate to encourage and reward the training effort of clubs, in particular smaller clubs.

Youth development is considered as a major justification of the transfer rules as it contributes to implement an essential objective of sport: improve equal opportunities and reward excellence independently of social backgrounds.

The 2011 FIFA Global transfer market report<sup>88</sup>, estimates that 7% of the € 2.319 billion<sup>89</sup> financial compensations paid by clubs for international transfers relates to training compensations. This accounts for € 162.378 million worldwide. According to FIFA figures, training compensations within Europe also represents 7% of the total transfer compensations reaching a total value of € 11.396.000. It means that for international transfers, training compensations in Europe only accounts for 0,61% of the total transfer fees.

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<sup>87</sup> Article 40 of the Internal Organisation Norms of FIGC - Parte II Le Funzioni – season 2011-2012.

<sup>88</sup> Global Transfer Market, FIFA T.M.S, 2011.

<sup>89</sup> Conversion Euro-US Dollar made on the 25<sup>th</sup> of September 2012 (1 USD = 0.773078 EUR).

### FIFA Regulations

Article 20 and Annex 4 of FIFA RSTP provides rules on training compensation in relation to both international and national transfers.

- In relation to the international transfer of a player, FIFA rules provide:

FIFA RSTP on training compensation for international transfer	
Age and Time criteria	The calculation of training compensation
<p>Training compensation must be paid when:</p> <ul style="list-style-type: none"> <li>- a player signs his first contract as a professional</li> <li>- Each time a professional is transferred until the end of the season of his 23<sup>rd</sup> birthday</li> </ul> <p>Training period of a player is reputedly lasting from the age of 12 years old and the age of 21.</p> <p>Specificity:</p> <ul style="list-style-type: none"> <li>- The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract</li> </ul>	<p>Training compensation = Amount to train one player X "Player factor"</p> <ul style="list-style-type: none"> <li>- Amount to train one player: Associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year.</li> <li>- Player factor: Ratio of players who need to be trained to produce one professional player.</li> </ul>

Article 6 of Annex 4 introduces special provisions for the EU and EEA (European Economic Area). For players moving from one association to another inside the territory of the EU/EEA, the amount of training compensation payable shall be established based on the following: i) if the player moves from a lower to a higher category club, the calculation shall be based on the average training costs of the two clubs; ii) if the player moves from a higher to a lower category, the calculation shall be based on the training costs of the lower-category club. Moreover, the final season of training may occur before the season of the player's 21<sup>st</sup> birthday if it is established that the player completed his training before that time. Finally, If the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation.

In terms of sanctions, the FIFA RSTP (Annexe 4, Art.7) stipulates that "the FIFA Disciplinary Committee may impose disciplinary measures on clubs or players that do not observe the obligations set out in this annexe." According to Article 10, 11, 12 of the FIFA Disciplinary code<sup>90</sup>, both natural and legal persons can receive a fine, a transfer ban or even may have to return competition awards.

UEFA has also adopted rules regarding the training of young players.

<sup>90</sup> FIFA Disciplinary Code, 2011 edition.

UEFA Home grown player rule

According to article 18.08 of the Champion's League regulation<sup>91</sup>, a minimum of 8 players on the 25 players' list, must be reserved exclusively to "locally trained players" and no club may have more than four "association-trained players" listed on these eight places. To be more precise, UEFA defines locally-trained or 'home-grown' players as those who, regardless of their nationalities, have been trained by their club or by another club in the same national association for at least three years between the age of 15 and 21. Up to half of the locally-trained players must be from the club itself, with the others being either from the club itself or from other clubs in the same association.

However, this rule concerns only the registration of players in clubs that will compete in UEFA competitions. Clubs have no obligation to put a certain number of home-grown players on the field during games.

National specificities on youth development

Origin and Type of Regulations at national level on training compensation									
	Belgium	England	France	Germany	Italy	Portugal	Spain	Poland	Lithuania
Club to club agreement		X					X		
Collective Agreement			X	X <sup>92</sup>					
Federation/League Regulations	X				X	X		X	X

There are three groups of countries (table below): a first one composed of England and Spain, for which contractual freedom is the rule. Training compensation is a matter for negotiation between clubs. A second group is composed of four countries (Belgium, Portugal, Italy, Germany) since there are specific rules on training compensation. The main difference with FIFA rules relates to the integration of the training infrastructures' quality when calculating the compensation. Portugal establishes a system of contractual freedom that must follow a minimum set of rules (i.e. the compensation for the training club can't be inferior to 20 times the annual wage bill of the working contract the new club proposes). In Belgium, Flanders provides that no compensation can be paid to a club for the transfer of amateur players to professional clubs.

<sup>91</sup> Regulations of the UEFA Champions League, 2010-2011.

<sup>92</sup> Agreement between DFB and League.

Finally, the third group is composed of France, Poland and Lithuania as they have provisions on training compensation which are close to the ones set by FIFA rules. The 3 countries rely to a large extent on the categorisation made by FIFA in relation to training infrastructures. France has established its own criteria (Article 105 and 106<sup>93</sup>) to decide which clubs pertain to which one of the four categories. It provides stakeholders with a broader frame considering at the same time the contract of the player; the hosting services and environment; and the quality of training infrastructure and staff.

<b>Provisions on calculation of training compensation at national level compared to FIFA RSTP</b>									
	Belgium	England	France	Germany	Italy	Portugal	Spain	Poland	Lithuania
No specific provisions – Free calculation		X					X		
Regulations that differ from FIFA RSTP	X			X	X	X			
Regulations close to FIFA RSTP			X					X	X

<sup>93</sup> Charte du Football Professionnel (Charter of Professional Football) – Title II: Training centres of professional clubs, 2011-2012.

Specifics regarding the calculation criteria for training compensation at national level									
	Belgium	England	France	Germany	Italy	Portugal	Spain	Poland	Lithuania
Age and time	Yes <sup>94</sup>	No	Yes <sup>95</sup>	No	Yes <sup>96</sup>	No	No	Yes <sup>97</sup>	No
Calculation of training compensation	Yes <sup>98</sup>	No	Yes <sup>99</sup>	Yes <sup>100</sup>	Yes <sup>101</sup>	Yes <sup>102</sup>	No	Yes <sup>103</sup>	No
Other	Yes <sup>104</sup>	No	No	No	No	No	No	No	No

<sup>94</sup> Article 928, URBSFA Federal Regulations – « Titre 9: Les mutations des joueurs et des affiliés » - season 2012-2013

Training compensation must be paid since the player is affiliated to the URFSBA. It can start at 6 years old. Moreover, it is compulsory each time a professional is transferred until the end of the season of his 25<sup>th</sup> birthday, not 23<sup>rd</sup> birthday as in FIFA RSTP.

<sup>95</sup> Article 261, Charte du Football Professionnel (Charter of Professional Football), Title III: the Players, 2011-2012

Training compensation is due when the player signs his first contract but also each time he re-signs/extends his contract before the age of 23. Furthermore, the training compensation goes from the age of 12 to 20.

<sup>96</sup> Article 99 and 99Bis of the Internal Organisation Norms of FIGC - Parte II Le Funzioni – season 2011-2012

The age for training compensation is not from 12 to 21 but is divided in two categories “21 years and before” and “from 22 to 25 years”.

<sup>97</sup> Article 1-2 of the Resolution 16 June 2011 by the Management Board of the Polish Football Association( - rules for determining the lump-sum compensation for a player on the status of training amateur and professional player, which the club did not offer contract renewal).

Training compensation starts at 9 years old and finishes at 23.

<sup>98</sup> Article 928, URBSFA Federal Regulations – « Titre 9: Les mutations des joueurs et des affiliés » - season 2012-2013

A fixed training compensation from the age of 6 to 21 is already provided by the URFSBA. No club categorisation on the quality of the training infrastructure.

<sup>99</sup> Article 261, Charte du Football Professionnel (Charter of Professional Football), Title III: the Players, 2011-2012

The concept of “valorisation de la formation” allows clubs to take into account performance of their players in the calculation. Moreover, when a player definitely leaves his club, French regulations also entitle the parties to pay a levy (20%) on the transfer fee.

<sup>100</sup> Agreement between DFB and League

At present there is a rule for a voluntary payment. If a player under 23 years signs his first professional contract, the League organization pays compensation to the training clubs for the last 5 years (max. € 50.000).

<sup>101</sup> Article 99 and 99Bis of the Internal Organisation Norms of FIGC - Parte II Le Funzioni – season 2011-2012.

Training compensation depends on the league division and not on the quality of the training infrastructure (categorisation of clubs). Moreover, the amount relating to the award of training and technical training should not be higher than a specific amount provided in the Regulations and may be reduced by written agreement between the two companies.

<sup>102</sup> Article 33 Collective Bargaining Agreement (CCT LPFP e SJPF) – provided by the Portuguese League for Professional Football

First of all, Training compensation should, whenever possible, be agreed between the clubs, through minimum documents. Moreover, the training compensation may not be fixed below the minimum competition amount in which the club is incorporated. Finally, the compensation for the training club can't be inferior to 20 times the annual wage bill of the working contract the new club proposes.

<sup>103</sup> Article 1-2 of the Resolution 16 June 2011 by the Management Board of the Polish Football Association( - rules for determining the lump-sum compensation for a player on the status of training amateur and professional player, which the club did not offer contract renewal).

The Regulations gives its own amount (in Polish currency) for the age 9 to 23 for amateur player and those who have not been proposed a contract; but it also provide with other amount for players that have been proposed a contract for the same or better conditions and refused to sign it.

<sup>104</sup> Flemish Parliament Act of 24 July 1996

With regards to question on compensation regulated by employment legislation, there is specificity. After Bosman, Flemish government adopted law stating that no compensation can be paid to a club for transfer of amateur players to professional clubs. If a professional player is transferred from club A to professional club B while he is still under contract with club A, the total amount of salary that player was supposed to receive from the club, has to be paid by club B to A, unless both parties



It should be noted that the calculation of training compensations in Belgium is not in line with the FIFA rules as applied to international transfers. In Belgium, the scope of the provisions<sup>105</sup> is not limited to national transfers but to any transfer of players between Belgian clubs and clubs in any other country of the European Union. Moreover, even though FIFA leaves the implementation of such training compensation schemes to the discretion of its national member associations Belgium, France, Italy and Poland have adopted age criteria that differ from FIFA rules.

Disputes on the level of training compensation are frequent. Clubs are often reluctant to pay training compensation. Smaller clubs may not bother considering the time and resources required to submit a complaint.

In addition to training compensation pattern, national sporting bodies also regulate the composition of teams. Different purposes are followed:

- Promotion of youth development – local training of young players
- Limit the number of non-EU players allowed per team
- Limit the number of non-EU players that can be fielded

As for UEFA, the home grown player rules aim to encourage the local training of young players, and increase the openness and fairness of competitions. It also aims to counter the trend for hoarding players, and to try to re-establish a 'local' identity at clubs.

In parallel, quotas imposed on non-EU players are justified to promote local youth development.

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find other agreement. However, in Wallonia, law does leave an opening for money to be paid for transfer of amateur to professional club.

<sup>105</sup> Règlement Général football 2011/2012 of the Belgian football Federation (URBSFA).

Specific Criteria Applying to Non-EU players in 9 countries										
Countries		England	Belgium	France	Germany	Spain	Italy	Portugal	Poland	Lithuania
Quotas of Non-EU players allowed per team	1 <sup>st</sup> division	No	No <sup>106</sup>	Yes <sup>107</sup>	No <sup>108</sup>	Yes <sup>109</sup>	Yes <sup>110</sup>	No	No <sup>111</sup>	Yes <sup>112</sup>
	2 <sup>nd</sup> division	No	No	Yes <sup>113</sup>	No <sup>114</sup>	Yes <sup>115</sup>	No	No	No <sup>116</sup>	Yes <sup>117</sup>

<sup>106</sup> "Quota for foreign football players allowed to play in a club – a comparative analysis at national level" – Updated 30<sup>th</sup> of May 2008, Colucci.eu

No quota for non EU-players. But Gentlemen's Agreement between clubs in first category: 4 of the 18 home grown players (2007/2008), 5 in 2008/2009 and 6 in 2009/2010.

<sup>107</sup> Article 553 of the Charte du Football Professionnel (Charter of Professional Football): « in League 1, there are a maximum of four players who are not nationals of an EU country or of the EEA, and whose countries do not have an association or cooperation agreement with the EU"

<sup>108</sup> "Quota for foreign football players allowed to play in a club – a comparative analysis at national level" – Updated 30<sup>th</sup> of May 2008, Colucci.eu

The teams of the first and second Bundesliga need to have a maximum of 12 players who hold the German nationality. In 2007/2008 there have to be a min. of 6 home grown players in the teams, in 2008/2009 a min. of 8 home-grown players.

<sup>109</sup> "Quota for foreign football players allowed to play in a club – a comparative analysis at national level" – Updated 30<sup>th</sup> of May 2008, Colucci.eu

Primera Division (First Category): - 3 non-EU players can be licensed per team, and 3 non-EU players can be fielded.

<sup>110</sup> Italian football federation, Official communication N. 6/A, season 2010-2011 – [http://www.rdes.it/comunicato\\_FIGC.pdf](http://www.rdes.it/comunicato_FIGC.pdf)

Since the 2008–09 season, 3 quotas have been awarded to clubs that do not have non-EU players in their squad (previously only newly promoted clubs could have 3 quota); Clubs that have one non-EU player have 2 quotas. Those clubs that have 2 non-EU players, are awarded 1 quota and 1 conditional quota, which is awarded after: 1) Transferred 1 non-EU player abroad, or 2) Release 1 non-EU player as free agent, or 3) A non-EU player received EU nationality. Clubs with 3 or more non-EU players, have 2 conditional quotas, but releasing two non-EU players as free agent, will only have 1 quota instead of 2.

<sup>111</sup> "Study on training of young sportsmen/women in Europe", Ineum and Taj, 2008, Page 21 "No quotas on non-EU players; but, in Poland, professional football teams may at least hire 8 nationals"

<sup>112</sup> There are no proper limitations on numbers of non-EU players per team, but only five can be fielded per game.

<sup>113</sup> Article 553 of the Charte du Football Professionnel (Charter of Professional football), season 2011-2012: « in League 2, there are a maximum of two players who are not nationals of an EU country or of the EEA and whose countries do not have an association or cooperation agreement with the EU"

<sup>114</sup> "Quota for foreign football players allowed to play in a club – a comparative analysis at national level" – Updated 30<sup>th</sup> of May 2008, Colucci.eu

Teams entering the competition need to have 2 home grown-players in the first year. In the second year the teams need to have 4 home grown players on the participating list of which 1 has to be formed by the club (1+3). In the third year there has to be 7 home grown players of which 3 has to be formed by the club (3+4) and in the fourth there has to be 8 home grown players of whom 4 have to be formed by the club. - Teams entering in 2007/2008 are obliged to follow the 1+3 rule from the first year of participation. Teams entering in 2008/2009 are obliged to follow the 3+4 rule in the first year and 4+4 rule in the second year of participation. Teams entering in 2009/2010 are obliged to follow the 4+4 rule in the first year of participation.

<sup>115</sup> "Quota for foreign football players allowed to play in a club – a comparative analysis at national level" – Updated 30<sup>th</sup> of May 2008, Colucci.eu

Liga BBVA (Second Category): - 2 non-EU players can be licensed per team, and 2 non-EU players can be fielded.

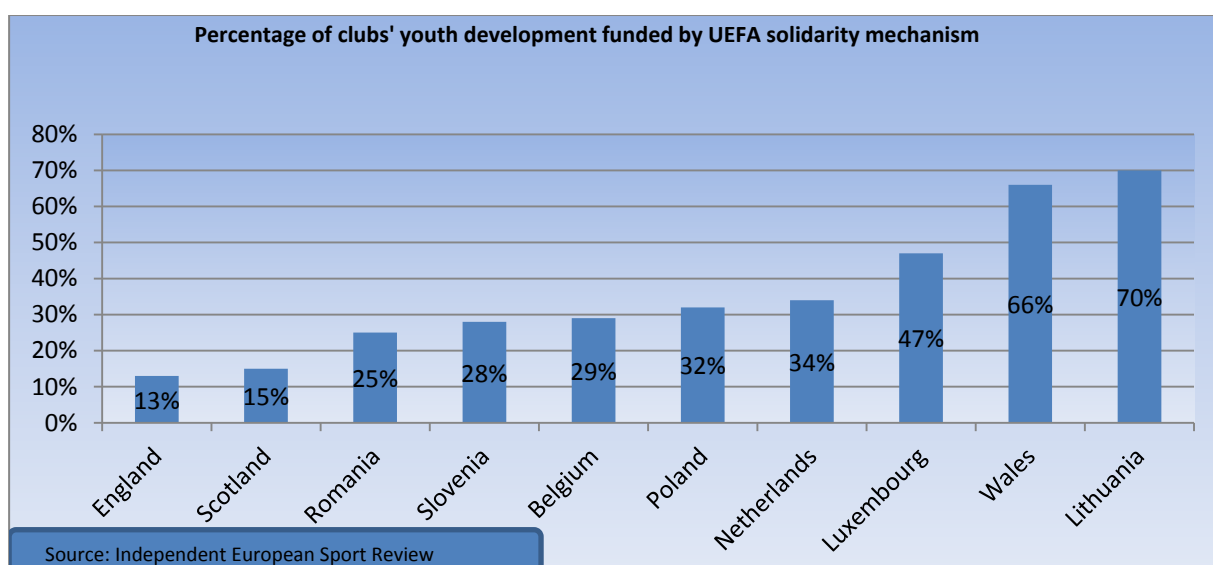
<sup>116</sup> See reference 112.

<sup>117</sup> See reference 113.

The table (above) shows that France, Spain, Italy and Lithuania have imposed quotas limiting the number of non-EU players allowed per team. However, the amount of authorised players differs since France allows clubs in first division to register four non-EU players; it is only three players in Spain and Italy. Lithuania imposes a limit not on the registration itself but in relation to the number of players that a team can field (five).

Other countries have chosen to implement home grown player rule instead: Belgium, Germany and Poland impose clubs to register a certain amount of locally trained players. Respectively, a minimum of 6, 8 and 8 home grown players must be registered for the 2008-2009 season in the first division.

Finally, Investment in youth development in medium and small leagues benefit from UEFA solidarity mechanisms which provide support to clubs from leagues which do not participate in the UEFA group stage competition. Approximately € 55 million were available for redistribution during the season 2009/2010. According to a report a large proportion of this fund is used to finance youth club budget<sup>118</sup>.



#### 2.1.2.1.3 *Dispute settlement and enforcement mechanisms*

There cannot be efficient rules' enforcement without strong dispute settlement mechanisms. This section aims to map rules related to dispute settlement at international and national levels.

##### FIFA regulation

Disputes related to international transfer of players are falling under the jurisdiction bodies established by FIFA and, in case of appeal, under the Court of Arbitration for Sport (CAS) based in Lausanne.

This latter is an institution independent of any sports organisation which has the task of resolving legal disputes in the field of sport through arbitration<sup>119</sup>.

The only possible appeal against a CAS decision is an action brought before the Swiss Federal Tribunal. The grounds for appeal are however strictly limited<sup>120</sup>.

Article 4.2 of the FIFA statutes<sup>121</sup> claim that "FIFA shall provide the necessary institutional means to resolve any dispute that may arise between Members, Confederations, clubs, Officials and Players".

<sup>118</sup> International Transfers of Minors: Recommendations to improve the protection of young players in the current transfer system, July 2010, FIFA, CIES, Page 23.

<sup>119</sup> See also Chapter 2.3.

<sup>120</sup> Article 190, Swiss Federal Statute on Private International Law of 18 December 1987 – version of 1<sup>st</sup> January 2011.

Article 64.2 prohibits recourse to ordinary courts of law unless specifically provided in the FIFA Regulations, as it is the case for employment-related (Art.22) disputes.

Within FIFA, two decision-making bodies are responsible for solving disputes related to international transfers: the Players' Status Committee (PSC) and the Dispute Resolution Chamber (DRC). There are also two unique judges (article 23 and 24 of FIFA RSTP) to accelerate the decision making process in some instances<sup>122</sup>.

FIFA<sup>123</sup> is competent for:

1. Disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an International Transfer Certificate (ITC) request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;
2. Employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement;
3. Employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level;
4. Disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;
5. Disputes relating to the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations;
6. Disputes between clubs belonging to different associations that do not fall within the cases provided for in 1), 4) and 5).

### National specificities

So far, the national dispute resolution bodies of the following associations/leagues within the European Union have been recognised by FIFA: England, France, the Netherlands, Italy, Republic of Ireland and Portugal. Efforts have to be made at national level to comply with FIFA guidelines in this respect.

Other associations have opted for a system which leans rather towards mediation and conciliation. Germany<sup>124</sup> and Austria, for example, provide for a conciliation system within the framework of the

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<sup>121</sup> 2011 FIFA Statutes.

<sup>122</sup> Article 23.3, FIFA RSTP, 2010

In cases that are urgent or raise no difficult factual or legal issues, he may adjudicate as a single judge. Cases in question are those falling within the competence of the Players' Status Committee. Single judge may also adjudicate for decisions on the provisional registration of a player in relation to international clearance.

Article 24.2, FIFA RSTP, 2010

Cases that may be settled by a DRC judge: "The DRC judge may adjudicate in the following cases: i. all disputes up to a litigious value of CHF 100,000; ii. disputes relating to training compensation without complex factual or legal issues, or in which the DRC already has a clear, established jurisprudence; iii. disputes relating to solidarity contributions without complex factual or legal issues, or in which the DRC already has a clear, established jurisprudence."

<sup>123</sup> Article 22, FIFA RSTP, 2010.

<sup>124</sup> The labour courts are competent for disputes arising from contracts between clubs and players, §2, 101 Arbeitsgerichtsgesetz (Arb GG). Before reference to the court, every party is entitled to file an application at the Ligaverband

association/league. In case the mediation is not successful, the matter shall be referred to ordinary civil courts. Similar solutions exist also in Spain (seemingly in parallel with an actual dispute resolution system established within the structure of the association/league), Belgium, Denmark and Sweden. Such dispute resolution systems have not been formally recognised by FIFA. Unfortunately FIFA does not monitor or control dispute resolution systems put into place by its national associations. In this respect some EU countries have to improve their record on this issue notably Cyprus, Greece and Romania which are often quoted as implementing unfair dispute resolution systems (with no equal representation between clubs and players for instance).

In line with the minimum standards required for such a national chamber to be recognised (art. 22 lit. b) of the Regulations), at the core of standard regulations lie the principles that the members of the national dispute resolution chamber must be composed of an equal number of player and club representatives and that the national chamber must also guarantee fair proceedings (cf. the FIFA circular no. 1010 of 20 December 2005).

Eventually, it has to be noted that arbitration bodies are sometimes attached to national Olympic committees. This is especially the case in Belgium, Spain, France, Italy and Luxembourg.

#### **2.1.2.1.4 Third-party ownership (TPO)**

TPO refers to the practice for a third party (i.e. not the club to which the player is an employee or self-employed) to acquire rights on the future transfer value of players. Third-party ownership practices are common in Latin America, and become more widespread in Europe. It is currently one of the most controversial issues considered by sport governing bodies as it goes against the principle that a player is attached economically to a given club.

TPO is used by clubs to finance the transfer of valuable players at a minimum cost for the club finances and reduce the investment risk. In exchange the club abandons part of its claim on the economic rights linked to a player to the third party investor.

A large number of football authorities take the view that such investment is dangerous for the integrity of sport and introduce unacceptable threats to the fairness of competition as well as the physical and moral integrity of players (that may fall victim of investor's pressure to influence their performances). They argue that this is a case in which sport specificity can be called upon to develop specific rules that would protect fair and balanced competition. The concern is that players could be attached to an owner of various players' economic rights who has financial stakes in different clubs and thus with the power to manipulate match results or the sporting destiny of clubs. They promote the view that only clubs should have interests in a player's economic rights with a view to reinforce contractual stability.

FC Porto's latest annual report shows that the club owns 100% of the total economic transfer rights to only seven members of their 29 man strong squad. Porto argues that the system enables it to compete on the transfer market with more wealthy clubs and build a competitive team at European level.

#### FIFA regulation

FIFA rules provide in its article 18bis some rules on third party involvement but are not specific on TPO. Article 18bis states that "no club shall enter into a contract which enables any other party to that

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for arbitration by an arbitration board; if the arbitration is successful, a binding settlement will be conducted by both parties (arbitration agreement (attachment No. II of the LOS)) – § 9 LOS.

contract or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams.”

FIFA Regulations on Players’ Agents<sup>125</sup> also provides “No compensation payment, including transfer compensation, training compensation or solidarity contribution, that is available in connection with a player’s transfer between clubs, may be paid in full or part, by the debtor (club) to the player’s agent, not even to clear an amount owed to the players’ agent by the club by which he was engaged in its capacity as a creditor. This includes, but is not limited to, owning any interest in any transfer compensation or future transfer value of a player”.

The existing FIFA Regulations refers to “third-party influence”<sup>126</sup>.

### National provisions

Three national leagues and federations in the EU have adopted specific provisions to ban “third-party ownership”: England, France and Poland. Italy seems to be moving in the same direction.

In England, the “Premier League Rules L37-38<sup>127</sup>” and in the “FA Third Party Player Ownership Regulations<sup>128</sup>” prohibit “Third-Party Player Ownership” (TPPO) outright. They require that a player’s registration and economic rights belong to the club and not to any third party. The club must be the sole owner of these rights. This condition must be respected to enable the validation of a transfer.

The new FA rules ensures that any future transfer sums, should the player be subsequently transferred, would be kept by the transferor club. This eliminates any third party element to any future transactions. The FA rules sets out the mechanism where a club can buy out a third party interest in a player so as to ensure compliance with the regulations. The rule stipulates that any sums payable have to be made through a designated FA account and that the agreement then has to be filed to obtain FA’s final approval.

In France, the “Ligue de Football Professionnel” (LFP) has also implemented a ban on third-party ownership. It is contained in the Regulations on players in article 221<sup>129</sup>. LFP Regulations are less exhaustive but as in England, clubs must to sign contract or convention only with other clubs if and only if such contract doesn’t establish direct or indirect financial rights to other persons.

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<sup>125</sup> 2008 FIFA Regulations on Players Agents.

<sup>126</sup> Recently UEFA’s Executive Committee took a position against the TPO – UEFA.com – on Tuesday 11 December 2012. More details in chapter 2.2.4 below.

<sup>127</sup> Premier League Handbook, season 2011-2012, Page 156-157.

“In respect of a player whom it applies to register as a Contract Player, a Club is permitted to make a payment to buy out the interest of a person or entity who, not being a Club or club, nevertheless has an agreement either with the club with which the player is registered, or with the player, granting it the right to receive money from a new Club or club for which that player becomes registered.”

<sup>128</sup> FA Third Party Ownership Regulations, season 2011-2012.

<sup>129</sup> Article 221, Charte du Football Professionnel (Charter of Professional Football), Title III: the Players, 2011-2012

“A club may not conclude with a corporation, with the exception of another club, or an individual, any agreement aiming to bring about, directly or indirectly, to the benefit of such persons, the transfer or the total or partial acquisition of property rights resulting from the fixing of various indemnities which that club may receive as a result of the transfer of one or several of its players.”

Finally, third party ownership has also recently been forbidden by the Polish Football Association<sup>130</sup>.

Italy: “accordo di partecipazione”

Compared to third-party ownership the transaction in this instance is made between two clubs. The two clubs are in a position to share the proceeds of a future transfer. Under the mechanism a player is transferred from one club to another one against a participation in favour of the transferor club, that is an interest on the value of the player. At the end of the season, clubs can agree on the way to settle the participation that is to take back 100% of the player's economic rights. It can be negotiated between the two clubs; but if an agreement is not reached then the two clubs must call on the Italian football league. The best offer allows the club to keep or recruit the player.

However, the entities that are part of the agreements are clubs and not investors unrelated to football. This makes this practice acceptable in the eyes of football authorities.

Opponents to TPO argue that the mechanism poses risks:

- On competition regularity (match fixing to serve the interest of investors)
- By encouraging speculation and high transfer fees.
- By putting at risk the ability of sport bodies to exercise their regulatory powers.
- By restricting clubs freedom and independence.
- By supporting irresponsible financial behaviours as money flow would be more difficult to track (off shore investment vehicle).
- To the integrity of players and their freedom as they would be considered as investment vehicle rather than individuals.
- By granting an unfair advantage to clubs that can make use of the mechanism.

The proponents of TPO highlight that this a convenient way to attract investment in football and restore some competitive balance in favour of clubs that cannot afford the recruitment of elite players with their own resources.

The TPO issue poses interesting questions on the extent of sport specificity and its relationship with EU law as the latter promotes free movement of players but also guarantee the free provision of services and free movement of capital. The matter will be considered in Chapter 2.2.

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<sup>130</sup> Article 33.4 of the Status and Players Regulation states that “clubs cannot sign any contract with a third party which may have an impact on loans or transfers or may create any obligation from clubs towards a third party in case of temporary or permanent transfer of a player”.

### **2.1.2.2 Basketball**

Transfer markets in football and basketball are not similar and do not face the same challenges. In size and importance the total amount of transfer fees worldwide in basketball reaches approximately €12 million, i.e. only 0,4% of the total expenses on transfer of players for football within Europe.

The transfer market in basketball has its specificities: contractual stability is not an issue as the length of contract are very short (usually between one to three years maximum) and players are only recruited at the end of their contract.

The governance in basketball also differs as FIBA rules are less prescriptive and not as exhaustive. Nevertheless, basketball like football is facing a trend whereby few clubs dominate European competitions.

The mapping considers rules aimed at ensuring a fair and balanced competition and which relate to the protection of minors and the promotion of youth development. In addition it will look into dispute resolution mechanisms.

#### **2.1.2.2.1 Rules to ensure a fair and balanced competition**

The main rule to enforce competitive balance relates to registration periods. The concept of registration period differs in basketball since “transfer deadline” are usually preferred to stricter “transfer window” that exist in football. In addition, contractual stability is also being considered.

### **1. Registration Periods**

Transfers can usually occur whenever in course of a season until a precise date. This date usually corresponds to or is very close to the beginning of the play-off period. This gives clubs more flexibility while maintaining a minimum of competitive fairness. However, some countries do not even implement transfer deadline and transfers can occur at any time during a season.

#### *FIBA Rules*

According to chapter III, article 105, FIBA regulations<sup>131</sup> state that “prior to the start of each season, each Zone<sup>132</sup> shall establish a deadline for the registration of foreign players under its jurisdiction.” As a result national associations are free to determine their own registration periods.

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<sup>131</sup> FIBA Book 3 – Players and Officials, 2010.

<sup>132</sup> Article 17, FIBA General Statutes 2010

A total of 213 national federations are now members, organized since 1989 into five zones or “commissions”: Africa, Americas, Asia, Europe, and Oceania.



*National rules*

Countries	Spain	France	Lithuania	Germany	Italy	Belgium
Criteria						
Are there restrictions on registration period?	Yes. Every country has implemented provisions on registration period.					
If yes, what are the dates or provisions?	Transfers are allowed until Play-offs starts <sup>133</sup> .	No transfer allowed from the first official game to the last official one <sup>134</sup> .	Yes, there is a deadline but exceptions are given. A team can register up to 22 players per season <sup>135</sup> .	Yes <sup>136</sup>	Provisions for new Italian athletes or foreigners ones <sup>137</sup>  Provisions for national transfer <sup>138</sup>	Transfers are allowed 30 days before the first demi-final game of the elimination series <sup>139</sup> .  A team can register up to 20 players per season <sup>140</sup> .

**National provisions on registration period**

Most of the surveyed countries have adopted a transfer deadline in which transfers are allowed until the final games (Play-offs) of the season.

Harmonisation between different associations at end of February seems to be the final date agreed by Italian, German and Lithuanian leagues. However in France transfers may not occur in the course of the

<sup>133</sup> Answer provided in the questionnaire by the Spanish Basketball League.

<sup>134</sup> Article 113 of LNB Administrative Regulations, Chapter 5 "The Players", season 2012-2013.

"A principle of transfer ban during a season, and so of registration and qualification of new players, is implemented from the first national championship game to the last official game of the season". But despite this principle numerous exceptions exist to recruit players until the end of February (jokers, unpaid players or in case of injury)

<sup>135</sup> *Players eligibility in Europe*, Union of European Leagues of Basketball, season 2011-2012.

Deadline for registering players is February 29, 2012. During the period between February 29 until March 23 each team is allowed to additionally register 2 extra players. The fee for the first player s 580 euros (2000 litas); the fee for the second player is 1160 euros (4000 litas). The fees are paid to the League.

<sup>136</sup> The information has been provided by written answer from the German Basketball League:

"1 October 2011 to 28<sup>th</sup> of February 2012.

1 October 2012 to 28<sup>th</sup> of February 2013."

<sup>137</sup> Disposizioni Organizzative Annuali Settore Professionistico, Italian Basketball federation, Season 2011-2012

Deadline for enrollment for the first day of the championship on the second day before the first race. Deadline for Affiliation of new Italian and foreign athletes within two days before the first race of Play Off.

<sup>138</sup> Disposizioni Organizzative Annuali Settore Professionistico, Italian Basketball federation, Season 2011-2012

Transfer of athletes inside of Serie A by February 28, 2012 11:00 am. Deadline for membership of athletes from Legadue March 30, 2012 11:00 am; Deadline for membership of athletes from National Championships Amateurs and Regional Championships March 28, 2012 11:00am.

Transfer of athletes inside Lega due before February 28, 2012 11:00 am. Deadline for membership of athletes from the World Cup March 30, 2012 11:00 am; Deadline for membership of athletes from National Championships Amateurs and Regional Championships March 28, 2012 11:00.

<sup>139</sup> Answer provided in the questionnaire by the Belgian Basketball League.

<sup>140</sup> *Players eligibility in Europe*, Union of European Leagues of Basketball, season 2011-2012.

season. Besides, Lithuanian regulation is also specific as it awards the registration of two new players after the transfer deadline in exchange of additional fees.

Finally, along with the registration period, Lithuania and Belgium also request information on the number of players that a team can register per season. Respectively, a maximum of twenty-two and twenty players can be registered per season.

## **2. Contractual Stability**

In basketball, the length of contract is quite short (usually between one to three years maximum) and players are only recruited at the end of their contract.

Nevertheless, the practice of multiplicity of contracts signed during a season by the same player is a characteristic that contributes to contractual instability.

In Germany for instance clubs would offer players “try-out contract” that last between 4 to 12 weeks. Players sign several try-out contracts during one season to be able to play. According to the German Basketball Player Union, such contracts are in conflict with the German labour law that requires a minimum period of time for fixed-term contracts.

In addition players must sign a specific contract to play for the Euroleague. Hence, in parallel to the contract signed to play in national championship, players must also sign the Euroleague “Uniform Player Contract”.

According to the Association of Italian Basketball Players<sup>141</sup>, this specific contract is not necessarily in compliance with national law and/or CBAs signed at national level. For instance, when considering the clause 10 of the Euroleague contract, there can be a conflict with Italian common labour law<sup>142</sup>. Indeed, “according to the collective bargaining agreement in Italy, disciplinary sanctions on players follow a specific and gradual scale that if not respected render the sanctions invalid. The regulation provided by the Euroleague draft is generic and submits the player to the will (or potential abuse) of and by the Clubs, in conflict with the common labour law. In Germany, some provisions of the Euroleague contract may not be lawful. The article 11.1 set for example a limit to the access of the German labour court which is not legal under German and European law<sup>143</sup>.”

### *National specificities on contractual stability – the retention clause in Spain*

The retention clause in Spanish basketball works as follows: If a club proposes a contract so as to recruit a player whose contract is about to end; the transferor club can keep the player in his team by having the priority if he matches, equals or increases the offer made by the club interested in recruiting the player.

This concept is integrated in the CBA signed by the Spanish League and the players. Its use is quite frequent. However, such clause can only apply in relation to transfers between two Spanish clubs.

Another specificity of the Spanish basketball rules relates to players leaving Spain to work in foreign leagues. Its former club retains rights when the player comes back to play in Spain for another club. This

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<sup>141</sup> Legal analysis of the Euroleague “Uniform Player Contract” in Italy, Germany, Israel, Association of Italian Basketball Players, 2006 – as seen on the website on the 17<sup>th</sup> of September 2012- <http://www.giba.it/index.php/ube/42-ube/351>

<sup>142</sup> See reference 142.

<sup>143</sup> See reference 142.

was the case of Rudy Fernandez who, when coming back from NBA, interested the club of Real Madrid which had to negotiate with his former Spanish club (Club Joventut Badalona, S.A.D.) to recruit him<sup>144</sup>.

#### 2.1.2.2.2 *Minors and youth development*

##### 1. Rules on minors

FIBA does not follow the rules that have been agreed between the EC and FIFA (2001 EC/FIFA informal Agreement) in relation to transfers between the age of 16 and 18.

##### *FIBA Rules*

The rules are in chapter II from articles 50 to 55<sup>145</sup>. It provides that an international transfer is not permitted before the player has reached the age of 18. In special cases the transfer may be authorised by the Secretary General of FIBA “after examination of the matter with the member federations and, if necessary, with the clubs and the player concerned.”

Cases for which transfer of minors is authorised	
The transfer is not linked to basketball (domicile change, new employment for the parents, etc.)	The transfer is linked to basketball
The transfer may be authorised after examination by the Secretary General.	<p>Some criteria must be fulfilled for the transfer to be authorised:</p> <ul style="list-style-type: none"> <li>a. The player's new club shall guarantee adequate academic and/or school and/or vocational training which prepares him for a career after his career as a professional player.</li> <li>b. The new club shall provide appropriate basketball training in order to develop and/or further the player's career as a professional player.</li> <li>c. The new club shall demonstrate that it conducts an appropriate training programme for young players of the nationality of the club's home country.</li> <li>d. The new club shall make a contribution to a Solidarity Fund established by FIBA to support the development of young players.</li> <li>e. The young player, his parents, the new club, and the new national member federation shall declare in writing that, until his eighteenth (18) birthday, the player will make himself available for his home country's national team and, if necessary, for the preparation time as well as for training camps provided that they do not interfere with school activities.</li> <li>f. The transfer does not disrupt the player's schooling.</li> </ul>

<sup>144</sup> On 20<sup>th</sup> September 2011, because of the NBA lock-out, Rudy Fernandez moved back to Spain to play with Real Madrid with a clause mentioning he can move back in the NBA if the overseas strike finishes. However, in July 2012, Fernández announced on his Twitter he would not return to the NBA, opting for a 3-year deal with Real Madrid Baloncesto.

<sup>145</sup> FIBA Book 3 – Players and Officials; Part II International Transfer of Players, 2010.

Under article 53, FIBA Regulations makes clear that one national member federation can't approve more than five outward transfers of players under the age of 18 per year; and more than ten inward transfers. Furthermore, under article 54, FIBA considers that when a player lives close to the border, on a case by case basis: "FIBA may waive the contribution to the solidarity fund and not include such transfers in the total inward/outward number of transfers of the national member federation involved."

#### *National specificities on transfer of minors*

As in football, even though not compulsory, national federations follow FIBA rules on minor protection in relation for international transfers. As an example, article 5.1 of the Lithuanian Regulations<sup>146</sup> perfectly crystallises such integration of provisions on minors at national level.

Some countries promote the idea to guarantee a decent education to young athletes in parallel to their sport career. For instance, some countries, as France, establish accreditation procedure of training centres, and promote training convention between clubs and young players<sup>147</sup>.

## **2. Rules on Youth Development**

FIBA rules provide a system of training compensation to encourage and reward the training efforts of clubs, in particular small clubs. However, the system notably to calculate the amount of compensation due is less developed as in FIFA.

#### *FIBA Rules*

<b>FIBA Regulations on training compensation for international transfer<sup>148</sup></b>		
<b>Age and Time criteria</b>	<b>The calculation of training compensation</b>	<b>Restrictions</b>
<p>Training compensation must be paid when:</p> <ul style="list-style-type: none"> <li>- A transfer of young players has been accepted at the international level.</li> <li>- A young player wants to leave its "club of origin" (the club or other organization the player is licensed at 18 years old) and refuses to sign his first contract.</li> </ul> <p>Then, the two clubs shall agree on a compensation sum to be paid as per article 3-62 and inform FIBA.</p>	<p>Article 3-62:</p> <p>The compensation sum shall be based primarily, but not solely, on the investments made by the club(s) that have contributed to the development of the player.</p> <p>It shall be paid to the national member federation of origin which will decide on how to re-distribute the compensation sum among the clubs that have contributed to the development of the player according to specific provisions that the national member federation has officially adopted.</p> <p>FIBA is to be informed of the compensation in all cases where compensation is agreed.</p>	<p>The player shall not be allowed to play for his new club until the compensation agreed upon by the two clubs (article 3-58) or determined by the Secretary General (articles 3-59 and 3-60) has been paid as per article 3-62.</p>

<sup>146</sup> Article 5.1, Rules governing player transfers and compensations to sports (basketball) schools (clubs) for primed players, June 2012

"International transfers of players are not permitted before a player's 18th birthday, except in special cases as decided by the Secretary General of FIBA after examination of the matter with the member federations and, if necessary, with the clubs and the player concerned."

<sup>147</sup>Article L. 211-4 and L. 211-5 D. 211-83 and following; R. 211-91 and following – French Sport Code, September 2012 edition.

<sup>148</sup> FIBA Book 3 – Players and Officials, Part II International Transfer of Players, 2010.

### *National rules*

Some countries (Italy, Lithuania and Germany) provide a procedure to calculate transfer compensation. The system does not take into account the market value of the player or the investment made on players by clubs. It is mostly a fixed amount which varies according to the league division.

Thus, in Italy<sup>149</sup>, the amount of the training compensation depends on the age of the player and for which division the new club is competing. The older the player, the higher the compensation. The lower the division, the lower the compensation.

In Lithuania, the training compensation is based on the minimum wage for primed players depending on the league division<sup>150</sup>. Moreover, it also specifies the training compensation that Lithuanian sports (basketball) schools (clubs) must pay between them when recruiting a young athlete between the age of 10 to 17<sup>151</sup>. These amounts are once again fixed by the regulations without taking into account the quality of the infrastructure for instance.

Finally, Germany also provides determined training compensation fees based on the club's league division<sup>152</sup>.

Other countries have more complex systems. France integrates the concept of "valorisation de la formation" (taking into account the International status of a player), the global investment on training centres and provides a minimum and maximum amount<sup>153</sup>. Spain<sup>154</sup> is close to the French system and based on a point system.

Belgium is a specific case. The top division (Ethias league) does not provide any rule on training compensation. However, there is a system of solidarity. Indeed, every year all clubs contribute to a youth promotion fund (Jeugdfonds).

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<sup>149</sup> See reference 159.

<sup>150</sup> See reference 177.

<sup>151</sup> Article 6.2.5, Rules governing player transfers and compensations to sports (basketball) schools (clubs) for primed players, June 2012

"For a player whose age is between 10 to 12 years (inclusively) (full year) and who transfers to another sports (basketball) school (club) 1000 LTL;

For a player whose age is between 13 to 14 years (inclusively) (full year) and who transfers to another sports (basketball) school (club) 1,500 LTL;

For a player whose age is between 15 to 16 years (inclusively) (full year) and who transfers to another sports (basketball) school (club) 2,000 LTL;

For a player whose age is between 17 to 17 years (inclusively) (full year) and who transfers to another sports (basketball) school (club) 3,000 LTL".

<sup>152</sup> See reference 158.

<sup>153</sup> See reference 157.

<sup>154</sup> See reference 160.

National Regulations on training compensation for national transfer						
	Belgium <sup>155</sup>	France <sup>156</sup>	Germany <sup>157</sup>	Italy <sup>158</sup>	Spain <sup>159</sup>	Lithuania
Existence of training compensation rules	No <sup>160</sup>	Yes <sup>161</sup>	Yes <sup>162</sup>	Yes <sup>163</sup>	Yes <sup>164</sup>	Yes <sup>165</sup>
Age and time criteria	No <sup>166</sup>	Yes <sup>167</sup>	Yes <sup>168</sup>	Yes <sup>169</sup>	Yes <sup>170</sup>	Yes <sup>171</sup>

<sup>155</sup> In the official documents concerning the Ethias League (Belgium top division), nothing refers to the payment of training compensation. However, based on the answer received in the questionnaire, transfer rules within the federation are basically based on solidarity. Every year all member teams of the federation transfer money into a fund (Jeugdfonds). This money is then redistributed based on the number of years the player in question has been trained by a specific team.

However, provisions can be found for the AWBB competition: Association Wallonie-Bruxelles Basketball, règlement d'ordre intérieur, partie mutations, season 2011 – 2012.

<sup>156</sup> Article 152.3 of LNB Administrative Regulations, Chapter 5 "The Players", season 2012-2013.

The training compensation are calculated on a three years basis maximum for five players incremented by the global investment of the training centre. Depending on the international status of the player, an increase of 30% ("International Cadet et Junior"), 40% ("International 20 and less") and 50% ("International Senior") must apply. Eventually, Training compensations, throughout a point mechanism cannot exceed a certain amount (24.391X 13.065 = € 318. 668) or be inferior to another one (1.200 X 13.065 = € 15.678).

<sup>157</sup> Article 4 of Directive on support to juniors ("Nachwuchsförderungsrichtlinie"), season 2011-2012

No fees have to be paid for: a) players under 24, that are engaged by a BBL-club (Basketball Bundesliga); b) players under 22 that are engaged in a pro A club; c) Players under 20 that are engaged in a pro B club; d) when special licenses. I changed into "complete licenses"; e) when players transfer back to their previous BBL club; f) For all transfers within a club, as long as a player had played there, at least for one year.

Players falling into paragraphs a) and c), for whom a fee has already been paid, are not excluded.

Fees for each new contract amount to:

- BBL club's: €3.000 (VAT excluded)
- Pro A : €1.500 (VAT excluded)
- Pro B: €750 (VAT excluded)

These fees have to be paid on the first November, first January and after the end of the each transfer period.

<sup>158</sup> Article 4 and 4bis Regolamento Esecutivo – Italian Federation of Basketball – updated version June 2011

Training compensations are due when the player signs a professional contract when he has reached 15 years old. Above 21, transferee clubs are not entitled to pay anymore such compensation. The amount depends on the age of the player and for the division of the club he will play for.

Players born in the years 1994-1995-1996 playing in Serie A equals € 70.000; while those playing in Legadue (second division) equals € 50.000. Players born in the years 1991-1992-1993 playing in Serie A equals € 100.000; while those playing in Legadue (second division) equals € 75.000.

<sup>159</sup> Article 37 and Annex 2, General and Competitions Regulations, May 2009.

The number of consecutive seasons is taken into account as well as the age of the player when transferred and the number of teams per clubs in lower division. Once the number of point added, you multiply it by the amount given per point (€ 40, established and revised by the General Assembly of the Federation), a multiplying factor based on the category of the top team and another multiplying factor based on international status of the player.

<sup>160</sup> See reference 156.

<sup>161</sup> See reference 157.

<sup>162</sup> See reference 158.

<sup>163</sup> See reference 159.

<sup>164</sup> See reference 160.

<sup>165</sup> See reference 172 and 177.

<sup>166</sup> See reference 156.

<sup>167</sup> See reference 157.

<sup>168</sup> See reference 158.

<sup>169</sup> See reference 159.

<sup>170</sup> See reference 160.

<sup>171</sup> Article 7, Rules governing player transfers and compensations to sports (basketball) schools (clubs) for primed players, June 2012

Compensations are paid only for the first registration of the player.

Calculation of training compensation criteria	No <sup>172</sup>	Yes <sup>173</sup>	No <sup>174</sup>	No	Yes <sup>175</sup>	Yes <sup>176</sup>
Other	Yes <sup>177</sup>	No	No	No	No	No

### 2.1.2.2.3 *Dispute Settlement*

It is reported that disputes in basketball related to transfer of players are rare and mainly concern whether the player is under contract at the time of transfer. This type of disputes is settled by the General Secretary of FIBA. But FIBA does not address the financial aspects of transfers; such issue is within the jurisdiction of the Basketball Arbitral Tribunal (BAT), an independent tribunal established by FIBA in 2006. This arbitral jurisdiction provides services for the resolution of disputes between players, agents and clubs through arbitration<sup>178</sup>. It seems that few disputes are brought to the BAT (5% of mutations in basket involve financial transactions) and, so far, no decisions have been subject to appeal before the CAS.

#### 1. FIBA Rules

FIBA rules implement different dispute resolution systems depending on the nature of the dispute. When dealing with dispute linked to international transfer two types of procedures co-exist:

##### a. Disputes settled by the FIBA Secretary General

All disputes arising from a refusal to issue a letter of clearance shall be decided within seven (7) days of the point in time when the dispute has arisen by the Secretary General of FIBA with the possibility of appeal (see article 3-112). The Secretary General of FIBA is also competent to settle disputes linked with training compensation for transfers of minors (article 3-55). In such cases, this latter “shall fix a reasonable compensation”.

<sup>172</sup> See reference 156.

<sup>173</sup> See reference 157.

<sup>174</sup> See reference 158.

<sup>175</sup> See reference 160.

<sup>176</sup> Article 7, Rules governing player transfers and compensations to sports (basketball) schools (clubs) for primed players, June 2012

Compensation amount: i) For a player in the first division, it is ten (10) minimal monthly salaries; ii) In the second division, it corresponds to (5) minimal monthly salaries the minimum wage. Distribution of the compensation: 25 % for the school and 75 % for the trainer.

<sup>177</sup> Flemish Parliament Act of 24 July 1996

With regards to question on compensation regulated by employment legislation, there is specificity. After Bosman, Flemish government adopted law stating that no compensation can be paid to a club for transfer of amateur players to professional clubs. If a professional player is transferred from club A to professional club B while he is still under contract with club A, the total amount of salary that player was supposed to receive from the club, has to be paid by club B to A, unless both parties find other agreement. However, in Wallonia, law does leave an opening for money to be paid for transfer of amateur to professional club.

<sup>178</sup> FIBA Arbitration Rules of the Basketball Arbitral Tribunal, May 2012

It recommends that parties wishing to refer their possible disputes to the BAT use the following arbitration clause: "Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President.[...]"

The decision can be subject to appeal in front of the Appeal Chamber of FIBA. It is composed of a panel of three members acting as judges, unless the Chairman of the Appeals' Panel decides that a matter can be ruled upon by a single judge because of its minor importance or it requires an immediate decision (article 3-155). The decision of the Appeal Chamber is given within a two months period maximum.

A further appeal against the decision by the Appeals' Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within thirty days following receipt of the reasons for the decision (article 3-178). The Court of Arbitration for Sport shall act as an arbitration tribunal and there shall be no right to appeal to any other jurisdictional body.

b. Disputes settled by the basketball arbitration tribunal (BAT)

Any dispute arising from or related to the contract of a player in a transfer context shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva. It will be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. This organ has been created in 2007 by FIBA in accordance with Swiss law. The parties to the dispute must agree in writing to submit the dispute to the BAT (article 3-289)<sup>179</sup>. The BAT is primarily designed to resolve disputes between clubs, players and agents.

Parties remain free to go before this arbitration jurisdiction or national civil courts instead. Initially, the regulations provided the possibility to appeal before CAS, but this provision has been deleted in 2010 in such a way that the only possibility to appeal BAT's decisions is to go before Swiss federal Tribunal.

## 2. National rules

FIBA<sup>180</sup> provides national federations with the following requirements: "National member federations shall establish a system for the resolution of disputes by independent arbitration, excluding – to the extent legally possible – recourse to the state courts. They shall promote recourse to and recognise decisions of the Court of Arbitration for Sport (CAS) and the decisions of the Basketball Arbitral Tribunal (BAT) and shall ensure that said decisions and decisions are legally binding for national member federations, clubs, leagues, players, managers, officials and agents."

As a consequence, it appears that most countries do provide arbitration bodies to solve disputes. Spain has established a system which is more oriented towards mediation and conciliation thanks to the CBA<sup>181</sup> which provides a Joint Commission (seemingly in parallel with an actual dispute resolution system established within the structure of the association/league – The disciplinary authority of the Spanish Basketball Federation corresponds to National Competition Committee and the Committee National Appeal<sup>182</sup>). It is the same for Italy and France. For instance, the latter<sup>183</sup> provides players,

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<sup>179</sup> FIBA Arbitration Rules of the Basketball Arbitral Tribunal, May 2012.

It is recommended that parties wishing to refer their possible disputes to the BAT use the following arbitration clause in their contracts:

"Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PILA), irrespective of parties' domicile. The language of arbitration shall be English. The arbitrator shall decide the dispute *ex aequo et bono*."

<sup>180</sup> Article 9.5, FIBA General Statutes, September 2010 – new edition.

<sup>181</sup> Article 6.4, Collective Bargaining Agreement ACB-ABP for professional basketball, Chapter III – Joint Commission.

<sup>182</sup> Article 4, Disciplinary Regulations of the FEB, approved by delegated commission – 17 May 2012.

<sup>183</sup> French Basketball National League, Administrative regulations – Chapter 1 Disciplinary Rules – season 2012-2013.



coaches and clubs with a Disciplinary and Legal Commission<sup>184</sup> that can play a mediation role. Of course, it does not prevent stakeholders to have access to competent jurisdictions.

Belgium provides that their bylaws allow teams to settle disputes before sports arbitration body of national Olympic committee.

Finally, Germany also provides both mediation<sup>185</sup>, and the recourse to an arbitration court<sup>186</sup>.

Only Lithuania, under Article 4.1.7 and 4.1.9<sup>187</sup>, states that disputes related to the validity of the contract and monetary conflicts when issuing a letter of clearance must be resolved following the procedures prescribes by law. However, Rules also set up an ambiguous conflict regulation provision in Article 8, which says that "conflicts arising due to player transfers, are resolved by competitions executors, and if they do not resolve the conflict - by the LBF, LBF Executive Committee or a Disciplinary Commission appointed by the LBF Executive Committee". Therefore, Lithuanian Rules do not provide for: i) clear clarification how disputes arising out of players transfers should be resolved; ii) no clarification what does it mean "if they (competition executors) do not resolve the conflict"; iii) no clarification whether a final decision of the LBF or its appropriate committee could be appealed to national courts or the CAS (since Lithuanian basketball authorities acknowledge CAS); (iv) no clarification, which body shall handle an appropriate case in the LBF.

In case of failure of these arbitration bodies to settle the dispute, parties usually go before the FIBA instance, the BAT or the CAS as required by FIBA<sup>188</sup>. It doesn't mean that they can not go before civil courts but stakeholders usually prefer relying on sport arbitration bodies.

On this aspect, German Regulations<sup>189</sup> may prove unlawful as it states that "if the arbitration regulation is applicable, resort to general courts of law is excluded."

Finally, countries have increasingly established collective bargaining agreement (CBA) that regulates labour conditions and provides rules between Clubs and Players' Associations. Under the six analysed countries; France, Spain and Italy have adopted one.

#### **2.1.2.2.4 Specific national rules with no equivalent internationally**

It is worth mentioning specific national rules which have not been subject to international harmonisation: eligibility clause.

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<sup>184</sup> Article 4, LNB Administrative Regulations – Chapter 1 Disciplinary Rules – season 2012-2013.

<sup>185</sup> The information has been provided by written answer from the German Basketball League.

<sup>186</sup> Procedure and Rules of Arbitration ("Verfahrens-und Schiedsgerichtordnung"), season 2011-2012

Art. 1-1: "the regulation on arbitration is applicable to all competitions organised by the BBL-GmbH, to all legal relations between the participants in the games, and to all contracts concluded this context, as well as on the implementation of all regulations, stated directives of the BBL-GmbH."

Art. 1-2: "if the arbitration regulation is applicable, resort to general courts of law is excluded."

Art.2: "the arbitration court decides about all conflicts incurred between BBL and Clubs of the BBL, between BBL and players, between club and players, according to article 1-1."

<sup>187</sup> Article 4.1.7, Rules governing player transfers and compensations to sports (basketball) schools (clubs) for primed players, June 2012

"The duration period of the sports activity agreement (contract) between the player and a sports organization having come to an end, issues of monetary conflict between that sports organization and the player cannot be a reason for not issuing a Letter of Clearance. In this case, the Letter of Clearance has to be issued (as indicated in Article 4 of the Rules), and monetary conflicts between the player and sports organization must be resolved following the procedures prescribes by law." Article 4.1.9, Rules governing player transfers and compensations to sports (basketball) schools (clubs) for primed players, June 2012

"Should conflict arise concerning the validity/invalidity of a sports activity agreement (contract), it must be resolved in courts following the procedures prescribed by law".

<sup>188</sup> See reference 180.

<sup>189</sup> See reference 186.

**Eligibility Criteria**

Criteria mainly concern national rules that oblige clubs to have locally trained players or players with the same nationality of the national association. In addition, some provisions also deal with financial resources criteria or foreign/non-EU players. Such rules do not seem to comply with EU law.

For instance, in Lithuania, all players who are not national of the country are deemed foreigners. It means that EU national players may possibly be refused to be recruited by a Lithuanian club based on this rule if the team has already registered six “foreign players”.

Players Eligibility for the season 2011-2012 (Source: ULEB <sup>190</sup> )							
Criteria	Countries	Spain	France	Lithuania	Germany	Italy <sup>191</sup>	Belgium
Minimum requirements on national players		No	No	Yes <sup>192</sup>	Yes <sup>193</sup>	Yes <sup>194</sup>	Yes <sup>195</sup>
Provisions on locally trained players		Yes <sup>196</sup>	Yes <sup>197</sup>	No	No	Yes <sup>198</sup>	No
Provisions on non-EU and/or foreign players		Yes <sup>199</sup>	Yes <sup>200</sup>	Yes <sup>201</sup>	No <sup>202</sup>	Yes <sup>203</sup>	No
Financial provisions		No	No	Yes <sup>204</sup>	Yes <sup>205</sup>	No	No

<sup>190</sup> All the following references and footnotes that do not specify a specific regulation all come from the same and following source: *Players eligibility in Europe*, Union of European Leagues of Basketball, season 2011-2012.

<sup>191</sup> There are two options in SERIE A (main championship):

- 3 foreign players, regardless of their nationality, in a 10-man roster, plus 2 from FIBA Europe countries and 5 home grown players, one of which can be naturalized, but for this to happen he must meet one of these requirements: having played in the Italian League as Italian prior to May 2009 or be eligible for the Italian National Team. The score sheet can be complete with two Under-21 home grown players.

- 2 foreign players, regardless of their nationality, in a 12-men roster, plus 4 from FIBA Europe countries and 6 Italians, one of which can be naturalized, same as in point 1. Among them teams can have two Under 21 home grown players but not add because in that case you will have 14 players and this is not admitted.

<sup>192</sup> See reference 202.

<sup>193</sup> A minimum of 4 German players if 10 are registered on the score sheet and 5 if the team registers 11 or 12 on the score sheet. For 2012-2013 season, the ratio will be 4 German players if 10 in score sheet, 5 if 11 and 6 if 12. Moreover, in Pro A championship, there must always 2 German players on the court

<sup>194</sup> See reference 192.

<sup>195</sup> At least 5 Belgian players among the 12 in the score sheet. No restrictions of nationality for the remaining 7.

<sup>196</sup> The July 19, 2011 agreement between ACB, Federation and Players Union creates the "home grown player" (HGP). It will be considered as HGP any player who was under license with any team of the Spanish Federation at least for 3 seasons in the period he was 14 to 20 years old.

For 11-player rosters, minimum of 4 HGP

For 12-player rosters, minimum of 5 HGP

<sup>197</sup> The League created the "locally grown player" (LGP) in 2010. A player is considered LGP when he has had player license in France during 4 seasons in the period between he was 12 and 21 years old. Pro A teams have to register at least 5 LGP's in the score sheet if they have a 10-player roster, 6 for a 11-player roster, or 7 for a 12-player roster on the score sheet of the match.

In PRO B, each team must have 7 LGP if it's to register 10 in the score sheet, 8 for 11 or 9 for 12.

<sup>198</sup> See reference 192.

<sup>199</sup> Any ACB team is allowed to a maximum of 2 players from non-FIBA Europe countries. This agreement will be valid for 4 seasons (until June 30, 2015).

<sup>200</sup> Art 131 of LNB Administrative Regulations, Chapter 5 "The Players".

<sup>201</sup> Each team is allowed to sign up to 6 foreign players. All players who have not Lithuanian nationality are deemed foreigners. LKF Ruling on the limits of basketball players without the citizenship of the Republic of Lithuania, in registering them in Lithuania Basketball League 2010/2011 Season Championship, 2010. June 3. No. 10.1.

<sup>202</sup> Obligations only concern German players (see reference 194). The rest of the players can be foreigners, regardless of their nationality. There will no distinction between Americans, Europeans, etc.

<sup>203</sup> See reference 192.

<sup>204</sup> The team must pay 50.000 litas (approx. 15.000 €) to the Lithuanian Federation for the sixth foreign player. LKF Ruling on the limits of basketball players without the citizenship of the Republic of Lithuania, in registering them in Lithuania Basketball League 2010/2011 Season Championship, 2010. June 3. No. 10.1.

<sup>205</sup> There is a system on place according to which every team must pay 3.000 € plus 3.000 € per new player registered.

### **2.1.2.3 Alternatives and different models of sports**

This section aims to review specific rules adopted by sport bodies on transfers notably with a view to address the issue competitive balance and contractual stability. Its objective is to highlight interesting practices and map alternatives to transfer rules in football.

#### **2.1.2.3.1 The French National Rugby League**

The professional French National Rugby league (LNR) was created by the French Rugby Union in 1998 in order to manage and organize professional competitions. Its mission is to manage the sector's professional rugby, under delegation from the Ministry of Youth and Sports and the French Rugby Union.

##### *LNR Regulations established to promote competition balance and equity:*

- 1- The number of contracts per club is limited to 35 professional contracts, with some exceptions such as related to home-grown players.
- 2- Clubs are obliged to have a certain number of home-grown players per club.
- 3- It also introduces a salary cap (fixed to a limited amount each season, taking as a reference from the highest pay of the previous season with a maximum increase of 10%.)
- 4- Most of all, it strictly forbid the payment of financial compensations in transfer operations which are not linked to the training costs or the conditions foreseen in the contracts for early termination. It even forbid third-party ownership or awarding any patrimonial value for the clubs to possible or future transfer compensations (art. 52 and 53<sup>206</sup>).

The LNR transfer rules regulate compensation between clubs on the basis of objective criteria: either training costs or conditions foreseen in the contract. Moreover, the composition requirements of the teams also back the promotion of training and the competitive balance.

#### **2.1.2.3.2 The Australian Football League**

In the 1980's the Australian Victorian Football League (AVFL) underwent a series of financial problems and the game registered a decline in attendance. As a result many clubs declared for insolvency. In parallel, following a Court case<sup>207</sup>, VFL's employment rules were declared to be an unreasonable restraint of trade and therefore VFL was forced to amend its employment rules.

In 1988, new rules abolished transfer fees for VFL players whose contracts with clubs had expired and who wished to move to a new club. They implemented a draft system for both new and existing VFL players out of contract.

##### *VFL new employment rules:*

- 1- Introduction of a maximum 50-man senior training list for each of the then twelve VFL clubs.
- 2- Players who had played out their contracts were free to seek employment with other clubs, but the club which lost such a player could be compensated by the club obtaining the player. If the clubs concerned could not agree on the amount of the transfer fee, then the matter would be solved by a VFL appointed Appeal Board.

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<sup>206</sup> Statutes and General Regulations of the National Rugby League, season 2011-2012.

Foschini vs VFL and South Melbourne, Supreme Court of Victoria, 1982, No. 9868, Page 27.

- 3- A salary cap introduced for the 1985 season. It places limits on the total income that clubs can pay senior, reserve and under 19 players.
- 4- The introduction of a draft system to recruit new players. Draft players are “bound” to the club that chooses them for a period of three years. Each club is allowed to draft only one player. Small transfer fees are to be paid to clubs whose players are drafted by VFL clubs.

Following the implementation of these new rules transfer fees were abolished. Furthermore, clubs no longer had an incentive to request players to move as a means to overcome or reduce their financial problems.

In 1999, the VFL became the Australian Football League (AFL) and current rules on working conditions of the players are negotiated through Collective Bargaining Agreement with the AFL Player's Association. The convention agreed for the period 2007-2011 also sets the frame for contractual relationships, including the transfer of players. It must however be noted that the rules penalise players' mobility. The principle of “free agent” has only just been introduced in 2012. Players may become free agents only after 8 seasons playing for the same club.

#### **2.1.2.3.3 The Australian Soccer League**

The transfer market system established by such league is close to the one promoted by FIFA, especially concerning contractual stability, training compensations, registration periods, youth development, prohibition of third-party ownership, etc.

However, few rules that differ from the EU transfer market systems deserve to be mentioned as part of specifics that contribute to regulate the Australian soccer transfer market so as to maintain competitive balance and equity.

ASL specific rules<sup>208</sup>:

- 1- Each team has a minimum and maximum number of players to be registered: 20 to 23 players; with a maximum of 5 foreign players.
- 2- The A-League prohibits any transfer between A-League clubs (top division) to ensure that players' contracts expire before leaving for another team. Transfer fee cannot be requested in these circumstances.
- 3- Transfer fee are only accepted with other league clubs, whether national or international, if the player is considered as professional. However, a club may request a transfer fee for one of its professional players up to a maximum amount of 50% of the total salary owed to the player for the remainder of his contract.
- 4- A “hard salary cap” has also been implemented giving provisions on maximum and minimum wage per player, even for youth player. It only allows “marquee players” (2 maximum, among which one foreign player maximum) whose salary is exempt from the salary cap.
- 5- When a transfer fee is paid, in addition to training compensation and solidarity mechanism as implemented by FIFA, there is also 10% of this transfer fee that goes to the Football Federation of Australia to be used in development and elite performance programs.

Like for French Rugby and Australian Football, the Australian Soccer League has implemented regulatory rules that limit the number of players per team, the payment of transfer fees, and the total wage bill per clubs.

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<sup>208</sup> National Registration Regulations, Football Federation Australia, January 2007.

#### 2.1.2.3.4 *The US closed leagues*

Professional players in the USA experienced the same obstacle as Europeans in their freedom of movement; they then gained some freedom in the late 70s. However, this is much more restricted than in Europe; on the whole, it reflects the strong market regulation made acceptable by collective bargaining. Thus, players can be transferred during their contract, without their consent. The moves are not necessarily motivated by financial gains as transfer fees are strictly limited. The US sport leagues are very highly regulated in accordance with US antitrust law<sup>209</sup>.

This anti-trust tolerance requires two major conditions – the measures must be:

- 1- Commensurate with the aims of maintaining competitive balance and promoting the interest of the fans;
- 2- Validated within the framework of collective bargaining agreements.

This strict regulation especially concerns the labour market. Its main elements are:

- Limiting competition between clubs to sign new players coming into the league (Draft system<sup>210</sup>);
- Limiting wages (individual and/or collective – salary cap, ceiling and floor on wages and luxury tax, etc.);
- Limiting player mobility within the league (transfer rules and dates/very strict and restrictive signing).

The different US sport leagues, distinguishes between:

- Players under contract
- Restricted free agent<sup>211</sup>
- Unrestricted free agent<sup>212</sup>

Although the latter can transfer freely, others have more restricted freedom of movement.

For instance, the situation of players under contract itself is very different from that of European footballers.

#### 1. **Basketball (NBA)**

In the NBA, for example, transfers of players under contract, and compensation paid and received, are strictly limited. It is the contract that is transferred and the new club must comply with its various provisions. In general, the player's agreement is not required, except in certain specific cases<sup>213</sup>.

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<sup>209</sup> *L'exemple Américain*, JuriSPORT n° 119 – Avril 2012.

*Pay and Performance in Major League Baseball*, Scully Gerald W (1974), the American Economic Review, 64, Page 915-30.

<sup>210</sup> A draft is a process used to allocate certain players to sports teams. In a draft, teams take turns selecting from a pool of eligible players. When a team selects a player, the team receives exclusive rights to sign that player to a contract, and no other team in the league may sign the player.

<sup>211</sup> A restricted free agent is a professional athlete who plays in the KHL, NFL, NHL, or NBA. Such players have special restrictions on the terms under which they can retain or change employment status with their athletic club teams.

<sup>212</sup> It is a player who is eligible to sign with any club or franchise, i.e. not under contract to any specific team.

<sup>213</sup> *NBA Salary Cap FAQ*, Question 97, Larry Coon's, revised July 14 2012 – <http://www.cbafaq.com/salarycap.htm#Q97>

Transfers can only take place at certain times (transfer windows) and the money both spent and received is regulated. For the 2011-12 season, each team could only pay \$3M in transfer fees (the sum was fixed at \$3.1M for the 2012-13 season). In case of transfer, the player himself can receive a bonus, but this is limited to 15% of the outstanding amount of the contract.

Multiple and simultaneous transfer operations can be carried out. They may also include the transfer of rights concerning the future round draft picks.

The contract may also be terminated on the player's initiative, when he has a five-year contract (Early Termination Option<sup>214</sup>) or on the decision of the club to release the player (Waivers<sup>215</sup>). In this case, if no other club wants to take up the contract after a period of several days, the player becomes totally free. The club must then pay the full salary; on the other hand, the terms of payment can be negotiated.

## **2. American football (NFL)**

In American Football (NFL) only a player with at least 4 seasons' presence in the League will be completely free at the end of his contract. It should be noted that careers in the NFL are rather short. Clubs which lose a player then, in return, benefit from additional possibilities to recruit a player from outside the league via a "draft pick<sup>216</sup>".

The player who has three years seniority in the league becomes a "restricted free agent" at the end of his contract. In this case, his team may make him an offer before the opening of the period for signing. As in the NBA, the club has a right of first refusal<sup>217</sup>.

The NFL also protects certain players, the "franchise player" and the "transition player" (one per team only each time). This status has the effect of limiting the freedom of movement of the player, who becomes a restricted free agent. In return, minimal conditions are imposed for the contract: e.g. a salary increase of 20% compared to the previous season or a salary equal to at least the average of the five highest salaries in the league for the same post.

## **3. American Baseball (MLB) and Ice-hockey (NHL)**

In Baseball (MLB), the system is similar to that of the NFL, with compensation in the "draft pick" in case a player leaves a club. In Ice-hockey (NHL), the player becomes an "unrestricted free agent" when he is out of contract after the age of 27 or after 7 years in the league.

System of salary arbitration is established in ice-hockey and baseball, which allows players to reassess this salary, if this latter is clearly lower than those received by equivalent players.

A luxury tax<sup>218</sup> is implemented by the Major League Baseball and the National Basketball Association; its utility is somewhat limited in the NBA by the fact that there is soft salary cap provision.

The tax is aimed to prevent clubs from signing the more talented players which would affect the competitive balance.

In the NBA, since 2011, clubs pay \$1 for every \$1 their salary is above the luxury-tax threshold in 2011-12 and 2012-13. Starting in 2012-13, teams pay an incremental tax that increases with every \$5 million above the tax threshold (\$1.50, \$1.75, \$2.50, \$3.25, etc.). Teams that are repeat offenders (paying tax at least four out of the past five seasons) have a tax that is higher still -- \$1 more at each increment (\$2.50, \$2.75, \$3.50, \$4.25, etc.). The money collected is then divided among smaller clubs.

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<sup>214</sup> Early termination option is a clause in sports contracts that allows players to forgo their option year.

<sup>215</sup> NBA procedure of releasing a player under contract.

<sup>216</sup> Draft order in the NFL is determined in a reverse-record order (the previous season's worst team picking first, the Super Bowl winner picking last).

<sup>217</sup> Article 8 and 9, Collective Bargaining Agreement between NFL and NFL Players Association, 4<sup>th</sup> August 2011.

<sup>218</sup> It is a surcharge put on the aggregate payroll of a team to the extent to which it exceeds a predetermined guideline level set by the league.

From 2003 to 2010, clubs paid \$1 for every \$1 their salary was above the luxury-tax threshold reaching a total collected amount of \$ 567 million. The 2008-2009 luxury-tax threshold reached \$71.15 million and \$69.92 million for the 2009-2010 season. The new system is still targeting redistribution for smaller clubs but it is mainly aimed to limit the increase of some club's payroll.

In Major League Baseball, clubs whose total payroll exceeds a certain figure (determined annually by the league) pays a penalty of 22.5% of the amount above the cap in the first five-year period<sup>219</sup>. The cap limit for 2010 was \$ 170 million and \$178 million in 2011.

The money collected is then used by the Major Baseball League for pre-defined purposes: the first \$ 5 million (USD) is withheld to cover potential luxury tax refunds. It goes to the Industry Growth Fund (IGF) if no refunds are forthcoming. The remains above \$ 5 million (USD) is divided as follows: 50% for players, 25% to develop baseball, and 25% for the IGF.

Since its implementation in 2003, only four teams have ever exceeded the luxury tax threshold: the Boston Red Sox, the Los Angeles Angels of Anaheim, the Detroit Tigers, and the New York Yankees. From 2003 to 2011, the money collected through the luxury tax has reached \$ 227 million.

The "hard" salary cap of the National Football League and the National Hockey League has prevented any need for a luxury tax arrangement.

#### **2.1.2.3.5 Handball**

In handball, the International Handball Federation (IHF) has competence to regulate transfers between different continents. Meanwhile, continental federations are responsible for transfers taking place within their continents. In Europe, the European Handball Federation is the competent authority consisting of 50 members – national federations.

Generally, when international transfer takes place, a club that is interested in recruiting a player, has to inform the national federation. The national federation makes a request for international transfer either to the continental handball federation or IHF<sup>220</sup>. The national federation of the new club informs the club about the request. The continental federation (or IHF, depending on the transfer) checks whether a player fulfils the requirements<sup>221</sup>. If everything is correct, the International Transfer Certificate is signed by the federation and transfer is approved. In the end of the process, IHF has to approve the ITC, however all the process is managed by the continental federation.

Certain specificities in handball:

- 1- As ITC is approved by the IHF, all the data regarding the contracts are going into the IHF database. IHF has on-line form within the database – this means that all the transfers are made on-line. IHF monitors transfers in all continents (continents need to inform IHF about every transfer). There is a registration fee (which then goes to various handball projects).
- 2- In relation to the IHF Regulations for Transfer Between Federations, special attention should be given to Article 9. As in football, when a player is under a contract and another club wants to

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<sup>219</sup> For the second time, the club is fined a 30% penalty, and clubs that exceed the limit three or more times pay a 40% penalty.

<sup>220</sup> All transfers that are in one continent are being managed by the respective continental federation, transfers between clubs that are from two different continents are supervised by international federation – this is different from other sports.

<sup>221</sup> Requirements for the player (in order to be eligible for the transfer) – national federation checks whether the player not still under the contract, or the existence of financial disputes between the club and the player. The requirements are called material reason as the possible reason to prevent the issuance of the ITC (International Transfer Certificate). If a player is not under the contract, nor there are any financial disputes between the club and the player, the issuance of ITC cannot be prevented.



sign him, the old club is entitled to request financial indemnities. However under the Article 9 of the regulations, if no agreement regarding the amount of the transfer indemnities between the releasing club and the receiving club is reached, the releasing federation/club may refuse the release of the player.

- 3- The length of the contract in handball is not limited (usually clubs sign players for 1-3 years).
- 4- In relation to the transfer indemnity, the amount usually depends on a country. In Western Europe (Germany, Spain) significant amount of transfers are being made with the high value of compensation. Highest fee (€ 1.4 million) was paid for a player moving from a club in Croatia to Hamburg in Germany.
- 5- There are no specific regulations regarding players coming from outside Europe for two reasons - 1) it is difficult to find good players outside the territory of Europe; 2) financial reasons.
- 6- In addition, there are no transfer windows *per se*. The requirements for registration period depend on the competitions.
- 7- In relation to the training compensation, there is education compensation. The club has the right to demand compensation for education for players between the ages of 16-23. No redistribution system is established from the transfers, as the money from a transfer goes directly to one club. It is unusual to have early transfers (before the age of 23) in handball.

#### **2.1.2.3.6 The specific issue of transfer and administrative fees for amateurs**

It is important to highlight that such administrative fees cannot be considered as transfer fees. Indeed, a transfer fee refers to the compensation for an early breach of a contract and not to the administrative fee required to players for moving in another country to practice his/her sport as an amateur. Federations tend to charge administrative fees to amateur players. This may affect the freedom of movement of amateur players. The issue is subject to debate at EU level<sup>222</sup>.

### **1. Administrative fees charged by the International/European organisations**

#### **a) Football**

In football, FIFA Regulations on the Status and Transfer of Players (2010) do not have any provisions regarding the administrative fees payable to international governing body. In addition, article 9 of the regulations provides that no fee is charged for the issuance of the International Transfer Certificate.

#### **b) Basketball**

In relation to basketball, FIBA regulations<sup>223</sup> do not make any distinction between amateur and professional players. As a consequence, both are subject to the same rules, in particular those governing the international transfer of players. According to FIBA regulations, the only reason for which an international transfer can be refused by the association of origin is if the player is still under a valid

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<sup>222</sup> Parliamentary Questions for written answer No. E-007477/2012 and No. E-007556/2012 to the European Commission.

<sup>223</sup> FIBA Internal Regulations – Book 3 – Players and Officials, 2010.

contract with a club beyond the scheduled transfer date. In principle, therefore, the international transfer will take place at the end of the player's contract, once all financial aspects have been sorted out between the parties so that no additional payment (transfer fee) applies. Art. 3-47 of the FIBA Internal Regulations allows the association of origin to charge an administrative fee for the processing of the transfer of up to 200CHF (approx. 150EUR). Most associations charge a lesser amount while also some of them do not charge anything. In addition, there is no fee foreseen by FIBA regulations. No association of destination charges an administrative fee to the club/association of origin. Some associations do however charge an administrative fee to their own member club for the registration of the player within the association. Eventually, no fee is charged by the International Federation (FIBA). In view of the fact that FIBA (World) is the sole competent authority to control and supervise the international transfer of players (including those taking place between member states of the European Union), the European association (i.e. FIBA Europe) does not/cannot charge any fee in relation to the international transfer of players.

### **c) Handball**

According to the International Handball Federation (IHF) Regulations<sup>224</sup> for Transfer between Federations Article 3.1.1 point 2 states that in order for an amateur player to be eligible to play for his new federation, the "proof of payment of the transfer fee of CHF 500" should be delivered to the releasing federation and to the IHF. Since January 1st, 2012, following a decision of the EHF Executive Committee, the administrative fee related to an amateur's transfer is set at € 150 for the EHF. As from July 1st 2011, administrative fees for professionals stand at IHF/CHF 1,500 – EHF/€1,230. In relation to amateurs it is set at: IHF/CHF 500 (€ 400).

## **2. Administrative fees charged by the national football federations**

The research showed that only few countries require an administrative fee from amateurs. The fee is a registration fee, required by:

- France – 20 EUR
- Lithuania – 14,48-28,96 EUR
- Sweden – 23,55-412,08 EUR

In Hungary and Poland an administrative fee is requested according to the level of competition. Countries, such as Belgium, Denmark, England, Estonia, Germany, Ireland, Latvia, Luxembourg, Netherlands, Romania, Scotland and Spain do not require any type of fees whatsoever.

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<sup>224</sup> Attachment 1, Article 3.1.1, Chapter IV – Regulations for Transfer Between Federations, July 2011.

## 2.2 Transfer Rules and EU law

Transfer rules are a sport specificity as they derogate from normal rules (national labour or EU law for instance) with a view to implementing certain sports principles:

- Fair and balanced competition; Promotion of youth development.

### 2.2.1 Transfer rules and the CJEU

The Court of Justice of the European Union (CJEU) has had the opportunity to review some of these transfer rules and to examine their compatibility with EU law. Transfer rules adopted by sports federations have been subject to the CJEU's scrutiny in relation to:

- nationality requirements (*Bosman*);
- contractual stability requirements (*Bosman*);
- transfer windows (*Lethonen*);
- training compensation (*Bernard*).

As mentioned above, the CJEU *Meca Medina* decision set the rules and scope of authorities' assessment of the validity of transfer rules in relation to EU law principles on free movement and competition. Hence, rules which require payment of transfer, training or development fees between clubs are in principle an obstacle to freedom of movement of workers. Nevertheless, according to the Court in Luxembourg, such rules can escape prohibition if they pursue a legitimate aim compatible with the Treaty:

- They must be applied in a non-discriminatory manner;
- They must be justified by overriding reasons in the public interest;
- They must be suitable for securing the attainment of the objective they pursue and,
- They must not go beyond what is necessary for that purpose.

- **Contractual stability and nationality requirement in transfer rules**

It is important to remember that the survival of the entire transfer rules in football was in the balance in 1995. Indeed in the opinion in the *Bosman* case, Advocate General Lenz<sup>225</sup> was particularly critical of the transfer rules in football, questioning their justification.

According to AG Lenz, the payment of transfer fees to encourage youth development might be vital for football but he questions the need to make the transfer of players dependent on the payment of a transfer fee for that purpose<sup>226</sup>. Judge Lenz proposes instead the redistribution of a share of income or the establishment of another system of redistribution. He continues by stating that a redistribution of a part of income appears "substantially more suitable for attaining the desired purpose than the current system of transfer": "present rules on transfer do not guarantee the survival of smaller clubs"<sup>227</sup>. For him, transfer rules are not proportionate to the objective of ensuring the economic and sporting equilibrium of the clubs.

He found training compensations more acceptable in principle<sup>228</sup>.

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<sup>225</sup> Opinion of the Advocate General Lenz, on the case C-415/93 Union Royale Belges des Societes de Football Association and others v Bosman and others, (1995) ECR I-04921.

<sup>226</sup> Id., para. 241.

<sup>227</sup> Id., para. 233.

<sup>228</sup> Id., para. 239.

The court did not follow its AG in his condemnation of transfer rules. However, the *Bosman* case enabled the European Court of Justice to consider the question of the compatibility with EU law of some aspects of transfer rules.

Notably, the Court felt that sports rules restricting the ability of a player to move to another club on the expiry of a contract and rules on nationality clauses were contrary to EU law. The *Bosman* decision had a decisive influence on the development of professional football in Europe and beyond by reinforcing the social rights of players and by abolishing nationality requirements in the composition of teams at club level.

First, the Court established that article 45 TFEU<sup>229</sup> extends not only to the actions of public authorities but also to rules of any other nature aimed at regulating gainful employment in a collective manner<sup>230</sup>.

Secondly, the Court held that rules governing relationships between employers in a sector of activity are subject to community provisions on the free movement of workers<sup>231</sup>. Rules relating to transfers of players between clubs “although they govern the business relationship between clubs rather than the employment relationship between clubs and players” are such rules.

Thirdly, transfer rules were inappropriate for achieving their objectives as they prevented a professional footballer from being employed by another club on the expiry of his contract unless the latter club had paid the former club a transfer, development fee<sup>232</sup>.

Such rules were not compatible with EU law as they had the potential to restrict free movement.

According to the Court, such rules were not proportionate to the aims of maintaining a financial and competitive balance between clubs and supporting the search for talent and the training of young players, since:

- the rules did not prevent the richest clubs from securing the services of the best players, “thus altering the balance between clubs”<sup>233</sup>;
- fees provided are uncertain and not related to the actual costs of training;
- the same aims could be achieved by other means which did not impede freedom of movement of workers.

Fourthly, such rules were also not compatible with EU law in so far as they restricted the ability of clubs to field only a limited number of professional players who were nationals of other Member States.

The Court clearly states that the national composition of clubs intended to enable supporters to identify with a club was not justified on the basis of the sport specificities.

It is important to stress the Court’s decision to assess the proportionality of the rule in relation to an important criterion: the ability of a rich club to recruit the best players and therefore to undermine the balance of the competition<sup>234</sup>.

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<sup>229</sup> The principle of free movement of workers is established in article 45 of the TFEU developed by secondary legislation (regulation 1612/68 (OJ L 141, 27.5.2011) and directive 2004/38/CE (OJ L 158 30.04.2004) and Directive 2005/36/CE (OJ L 255 of 30.09.2005).

The aim of such provision is to enable European citizens to travel freely within the Union to work and to enjoy social benefits. It contributes to the establishment of an Internal Market with an added social dimension, promote social inclusion and integration of migrant workers.

Sport rules are bound by EU law in so far as they constitute an economic activity. As a result, whether professional or amateur, sportsmen can invoke EU law in defense of their rights.

<sup>230</sup> C-415/93 Union Royale Belges des Societes de Football Association and others v Bosman and others, (1995) ECR I-4921, para 82.

<sup>231</sup> Id., para. 104.

<sup>232</sup> Id., para. 114.

<sup>233</sup> Id., para. 14.

<sup>234</sup> C-415/93 Union Royale Belges des Societes de Football Association and others v Bosman and others, (1995) ECR I-4921., para 137.

- **Transfer deadline requirements (windows)**

In the *Lehtonen* decision<sup>235</sup> the European Court decided whether EU law on free movement precluded a basketball federation from prohibiting a club fielding a player in matches in a national championship where the transfer had taken place after a certain date.

The issue relates to the compatibility of transfer deadlines with EU law. Is this obstacle to free movement of workers objectively justifiable?

The Court recognized that the setting of deadlines for transfers of players may meet the objective of ensuring the regularity of sporting competition. But does the measure go beyond what is necessary to achieve the desired aim?

The Court felt that a different treatment of transfers may not be justified in relation to differing transfer dates; whether the player was coming from the EU or from certain member countries. The matter should be subject to assessment by the national court on a case by case basis.

- **Rules on financial compensation for training young players**

In the *Olivier Bernard* case<sup>236</sup> the Court had to consider the compatibility of a sporting organization's scheme aimed at guaranteeing compensation to a club providing training for young players. The scheme may discourage free movement of players. It can, however, be justified on the grounds that it encourages the recruitment and training of young players through a club receiving training fees.

The scheme must ensure that the damages to be paid are not unrelated to the actual costs of the training (test of proportionality). Payments should be related to actual training costs and not to damage suffered by the training club.

In his comments on the case Julien Zylberstein, advisor to UEFA, (*Revue de l'Union Européenne*, n°543, December 2010) considers that the case validates Annex 4 of FIFA rules which provides for financial compensation to clubs that contribute to training football players when a player signs his first contract and then all subsequent contracts until the age of 23. In addition, the FIFA rule provides that for players above the age of 23, a levy of 5% is raised on the value of the transfer to be redistributed to training clubs. According to the doctrine, the *Bernard* decision validates FIFA rules setting training compensation.

Does it, however, validate the system of UEFA (Circular of 2005) which requires clubs to register eight home grown players in their respective squads? A home grown talent is defined as a player that has played for at least 3 seasons between the age of 15 and 21 in the same club, irrespective of nationality.

UEFA is arguing that such a rule is necessary to combat the lack of investment in youth development and to promote training policies. The rule also aims at weakening the domination of a small number of clubs which makes the result of competition more predictable. The locally trained player rule and a maximum squad size limit is an attempt to remedy excessive successes of "wealthier" clubs.

In a press release (European Commission 2008), the European Commission took the view that the UEFA rule is potentially compatible with EU law although the measure may lead to indirect nationality discrimination. The measure pursues the legitimate objective of promoting training of young players and consolidating the balance of competition.

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<sup>235</sup> C-176/96 *Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v. Federation Royale Belge des sociétés de basket-ball ASBL (FRBSB)* [2000], ECR I-02681.

<sup>236</sup> C-325/08 *Olympique Lyonnais v Olivier Bernard and Newcastle United FC* [2010], ECR I-02177.

However the EC considered the 6+5 rule of the FIFA proposal, according to which a club must begin a game with at least 6 players entitled to play for the national team of the country where the club is located, incompatible with EU law. FIFA rapidly abandoned this proposal.

In conclusion, it can be asserted that the European Court of Luxembourg recognizes the following specificities in the implementation of EU rules with respect to transfer rules, whilst exercising a control on the proportionality and necessity of the measure (*Meca Medina*):

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

### **2.2.2 Transfer rules and the European Commission**

Transfer rules in football have been subject to an informal agreement between the European Commission and international football bodies since 2001: “The 2001 Agreement”. This “political” agreement is still guiding sports authorities in the adoption of rules related to the transfer of players. The agreement led to a profound reform of the transfer regulations in football as set by FIFA rules. The informal agreement was negotiated at the highest level between relevant commissioners in charge of competition, social and sporting matters with the presidents of respectively FIFA and UEFA and was finalised on 5 March 2001<sup>237</sup> (García 2011, 17).

The agreement was never made public<sup>238</sup> but served to close the file against old FIFA rules governing international transfers. This is heralded as an example of flexible implementation of EU law even if “the deal” remains to be evaluated by the CJEU.

The main issue was to find an appropriate balance between a player’s fundamental right to free movement and the stability of contracts between clubs and players.

As a result of this informal agreement, the new FIFA rules governing international transfers of football players became applicable on 1 September 2001.

“The settlement with the Commission required FIFA to amend its transfer regulations on the following points:

- Training compensation fees to be allowed in the case of transfer of players under 23;
- The creation of one transfer period per season and a further limited mid-season window;
- Minimum and maximum contract duration would be 1 and 5 years respectively, except where national legislation provides otherwise;
- Creation of a solidarity mechanism that would redistribute income to clubs involved in the training and education of football players” (García 2011, 17).

The European Commission attaches great importance to transfer rules that aim to promote youth development and that consolidates solidarity mechanisms between clubs.

Its decision on home grown players in 2008 (as detailed above) is further evidence of the EC’s priorities in assessing transfer rules.

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<sup>237</sup> Communication CE 5 March 2001 IP/01/824.

<sup>238</sup> However, an answer was given by Mr Špidla on behalf of the Commission to parliamentary question P-4889/2005 of 1 February 2006. It mentioned and recognised such agreement between the different members.

It should be observed that in its White Paper on Sport (European Commission 2007) the European Commission highlights misuse of transfer money as a justification for monitoring the practice of transfers. At a time of inappropriate economic greed the political focus has shifted to the perceived excessive level of transfer fees. As a result, the principles underlying transfer rules' specifics from labour law does not seem to be questioned but rather the level of transfer fees between clubs.

The 2001 Agreement had different main objectives objectives<sup>239</sup>: i) ending exorbitant transfer fees; ii) ensuring a minimum degree of contractual stability; iii) providing financial solidarity between football clubs so as to promote a competitive balance in football competitions

This lead to the following comments on whether the Agreement has been successful in fulfilling its aims:

- The stated aim to end “arbitrarily calculated fees that bear no relationship to training costs” (Communication CE 5 March 2001 IP/01/824) has clearly not been achieved. Level of transfer fees is breaking new records regularly.
- The mechanism of protected period seems to contribute to increasing contractual stability. However, in practice, this protection period has been circumvented by clubs to generalise the continuation of the old and traditional system of the negotiating and payment of transfer fees. This is not in the spirit of the informal agreement signed between the European Commission, UEFA and FIFA. This matter should be reviewed as a mean to address high transfer fees.
- Financial solidarity between football clubs does not seem sufficient to guarantee and promote a better competitive balance in football competitions. Indeed, the current system is encouraging competitive imbalance as there is a strong link between transfer expenditures and sporting results in particular since 2001.

FIFPRO is also arguing that recent decision from the CAS which set in the 2009 “Matuzalem” case the principle of “positive damages” is contrary to the letter and spirit of the 2001 Agreement by increasing compensation fees to such levels that it effectively prevents free movement of players (see development in section 2.3.2 below)

### **2.2.3 Social dialogue and EU law**

According to article 154 of the TFEU the European Commission can take measures to facilitate the social dialogue between stakeholders. A committee of social dialogue in the field of football was set up in July 2008. The *Bosman* decision was instrumental in getting clubs and federations to engage in a much needed dialogue with players' representatives.

This dialogue led to the adoption of an agreement regarding the minimum requirements for standard player contracts in the professional football sector in the EU and the rest of UEFA territory in April 2012.

Parties to the agreement are UEFA, EPFL (European professional football leagues – 30 members), ECA (Association of European clubs with 204 members) and FIFPro (international federation of football players – 24 members). The agreement sets the minimum terms for use in employment contract between clubs and players, laying down the obligations of both clubs and players. It establishes that clubs and players are bound by FIFA, UEFA and national association statutes and decisions as well as by national collective bargaining agreements. FIFA should be invited to participate in the social dialogue as it is the competent body in the field of international transfers.

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<sup>239</sup> Communication CE 5 March 2001 IP/01/824.

Letter of Michel Zen-Ruffinen, to Mario Monti, European Commissioner, of 30 October 2000.

It sets minimum rules in case of contractual disputes. Article 12 provides that, subject to national legislation and collective bargaining agreements, disputes concerning contracts are to be submitted to arbitration, either in accordance with the relevant national association's statutes or through CAS. Article 12 also underlines that in some countries labour law disputes cannot be submitted to arbitration.

At the end of 2012, a mixed social dialogue committee composed of different sport organisations has been launched, including basketball in a test phase.

#### **2.2.4 Third Party Ownership, Financial Fair Play and Free Movement of Capital**

In general, a player registered to play in a club is part of the club's assets. More and more often, third parties (agents, investors, investment funds) buy a stake in the future value of a player on the transfer market. They acquire an economic right over the career of a professional player.

Third Party Ownership (TPO) can be described as a financial mechanism that helps clubs acquire promising players. It constitutes a new source of revenues for clubs and helps to reduce the acquisition cost of a player while it also limits the capacity of clubs to generate transfer revenues.

Clubs and football bodies are split on the value of such a mechanism.

For some, this practice endangers the fairness of competition as third parties may have interest in manipulating the result of a game through influencing the behaviour of players, they have stake in. TPO would go against the objective of transfer rules which is to ensure contractual stability, because TPO would promote the movement of players to realise the investment and would exacerbate inflationary pressures on transfer fees. Ethically, TPO also raises the question of undue control on a human being's life for investment purposes (the player as a person becomes primarily an investment vehicle responding to market imperatives rather than sporting or personal objectives).

For the proponent of the concept, TPO is a way to help clubs reduce the competitive gaps with wealthier clubs and to find a way to exist on the transfer market. FC Porto in Portugal traces its recent sporting success to the implementation of TPO to attract good players in the club.

The practice is now widespread in Europe and, as a consequence, the issue of regulating this practice has arisen. International football bodies do not regulate the matter. This is left to the national federation and leagues. The English<sup>240</sup>, the French<sup>241</sup> and more recently the Polish leagues have decided to ban TPO. UEFA intends to regulate the matter and has started consulting clubs, leagues, federations and players' representatives<sup>242</sup>.

Under article 63 of the TFEU all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.

As a result it remains to be seen whether restrictions or bans on third party ownership would or would not infringe EU rules on the free movement of capital. One could argue that a ban or restrictions prevent the establishment of an internal market for investors in football players and that restrictions may tend to affect the ability of players to move from one club to another, thus infringing free movement rules. Others argue that rules restricting or preventing TPO may be justified by sport specificities notably to ensure integrity of sport competition.

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<sup>240</sup> Article 21 of Premiere League Rules.

<sup>241</sup> Article 221 of the French League administrative rules.

<sup>242</sup> [www.uefa.com](http://www.uefa.com), 11/12/2012

UEFA's Executive Committee has adopted an unequivocal stance on the ownership of football players by third parties – namely, that it should be prohibited as a matter of principle. As a result of the Executive Committee's decision, world football's governing body FIFA will be requested to issue worldwide regulations banning third-party ownership of players, which is seen in particular as potentially distorting the integrity of competitions, and leads to money being taken out of the game by parties who invest in players and who profit from transfers of these players as a result.



In this context the Decision of the European Commission in the case ENIC/UEFA should be recalled<sup>243</sup>. A complaint was lodged against UEFA rules restricting the ability of investors to own stakes in different clubs participating to UEFA competitions. The rules provided criteria determining the ability of clubs under common control by a same owner to play in a competition. The plaintiff ENIC owned stakes in 6 different clubs throughout Europe. The European Commission validated UEFA rules as inherent to the proper functioning of its competitions and accepted multi-club ownership restrictions in light of sport specificities notably the integrity of the sport result.

Article 65 of the TFEU enables Member States to take measures which are justified on grounds of public policy or public security. Would TPO justifiably fall within this category of measures? Would an outright ban of TPO or a ban for clubs using TPO to access some competition be proportionate?

Currently, there are no State measures on TPO. Sport governing bodies in France and England have decided to prohibit TPO. Specific sporting rules to regulate or ban TPO will have to find their justification in the safeguard of sport specificities such as the integrity of sport competition.

In case of a formal complaint the European institutions would have to exercise a control on the proportionality and necessity of the measure adopted by sporting bodies (in line with the decision of the ECJ in Meca Medina (see 2.2.2).

TPO represents a risk to fair and balanced competition. Therefore, it is important for sporting bodies to regulate this practice with due respect to EU law. The sport governing bodies to clearly show the threats TPO poses to integrity of the game, to justify specific sport rules. Such justification should be subject to consultation with EU authorities. Regulatory measure should have an international scope.

### **2.2.5 Conclusions**

The intervention of EU authorities on transfer rules has had enormous repercussions in the world of professional team sport. It has led to questioning of the self-regulatory power of sporting bodies and the content of such power.

It has set a number of limits and safeguards aimed at ensuring that sports rules are compliant with EU Treaties' provisions on the establishment of an Internal Market based on free movement of people, enterprises and capital.

However EU authorities are taking into account sport specificities and are assessing rules of sporting bodies in the light of their objectives to ensure competitive balance, integrity of competition and/or youth development. Are the rules justifiable, proportionate, non-discriminatory and necessary?

The interpretation by EU institutions of sport specificities is essential to understand the future of sporting bodies' self-regulatory power. Based on the analysis above, it is imperative that competitive balance and integrity be maintained so as to justify football or other sports not being treated like any other economic sector.

The EU institutions seem to emphasise the importance of rules aimed at supporting integrity of sport results, solidarity, redistribution of resources amongst clubs (to promote balanced and fair competition) and youth development as key objectives justifying derogations from traditional implementation of EU Treaty rules.

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<sup>243</sup> Case Comp/37 806 ENIC/UEFA (2002)

In this respect it is important to qualify the impact of the 1995 *Bosman* ruling which for many in the sporting federations has contributed to a dangerous evolution.

Indeed the *Bosman* decision is accused of contributing to the deregulation of the football market and to encouraging a spiraling of costs to the detriment of the game and its values. “*Bosman*” would have enriched agents and players to the detriment of clubs, contractual stability and ultimately the fairness of sporting competition. It would also contribute to make sports rules less universal by setting up a European specificity in the implementation of transfer rules designed for international implementation across the 5 continents.

It is certain that the *Bosman* decision has dramatically improved the contractual situation of players in the European Union (at least for professional players benefiting from such contracts). It has enabled a legal control over certain abusive practices such as clubs preventing a football player from moving from one club to another even at the end of a contract or by limiting the impact of contractual clauses between clubs and players that would limit a sportsman’s freedom.

Undoubtedly the decision has contributed to encouraging international transfers in the European Union. Football is one of the few economic and social activities which has taken a true European dimension. The composition of football teams is a reflection of this. Indeed professional football is characterized by a very high degree of cross-border mobility and free movement is a reality in professional football.

In the UK 55 % of total players are non-nationals whereas non-nationals represent only 4.4% of the total labour force (UEFA 2004/2005). According to UEFA 34% of squads playing in the main stages of the UEFA Champion’s League and UEFA Europa League are made up of non-nationals. This is far higher than in other industry (UEFA 2004/2005). This is an important contribution to the promotion of European integration.

However *Bosman* has also promoted the relevance of talent and excellence over nationality criteria. As a result the Court’s decision has shown that values and ethics associated with a club do not have to be associated with the nationality of the players but rather to the values and identity defended by a club (the club increasingly becoming a brand with local or international appeal<sup>244</sup>).

Thus the decision has increased the power of clubs as economic entities (notably clubs with international appeal). This increased mobility has strengthened their ability to buy or attract the best players in Europe; this capacity being supported by increased revenues from local and international TV and other media buying transmission exclusivity. This has contributed to making European clubs the most popular in the world and, as a corollary, the most successful both economically as well as sportingly. Naturally players, who are at the root of the game and the entertainment have benefited.

*Bosman* and now *Bernard* have also encouraged youth development as part of clubs’ economic development strategy. A successful youth strategy is perceived as one of the alternative ways to climb the ladder of success (in the absence of a billionaire investor). This has served the economy of French football clubs well.

Yet critics also rightly emphasise that “*Bosman*” has benefited some national football competitions over others and reinforced the power of some leagues and clubs participating in such leagues, because of the ability of such leagues and clubs to be active on the international transfer markets to increase the value of their championships. *Bosman* would have contributed to increased inequality between leagues and clubs.

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<sup>244</sup> European clubs such Manchester United, Liverpool, Arsenal, AC Milan, FC Bayern, FC Barcelona or Real Madrid have millions of supporters throughout the world.

However such economic inequality stems as much from the power of such leagues to collect media revenues and attract private investment in the game as from the impact of the *Bosman* ruling. Indeed the Premier League will collect GBP 3 billion media revenue over three years (The Guardian, 2012) putting this league far ahead of any other league in terms of resources.

Such media revenue together with more favourable investment environments undoubtedly favours some clubs over others. The race between Member States for favourable investment conditions in sport is not a consequence of *Bosman* but rather the result of differing regulations in Member States related to taxes and social security..

Nevertheless, *Bosman's* legacy will also be judged on the ability of the sporting movement to ensure that smaller leagues and clubs playing in such leagues (notably with less media income) are not sacrificed on the sacred principle of free competition. Unfettered free market principles would unite the football market in Europe and lead to the establishment of a super league with the largest clubs (the UEFA Champion League risks heading towards this outcome). However this would be to the detriment of football's function as a fundamental means of expression of social diversity, identity, values and cohesion.

It will be for national and EU institutions, together with sporting bodies to decide the kind of sporting environment to which Europe should aspire. The definition of sport specificities at European level is a key indicator of Europe's objectives. The European Court of Justice as well as the European Commission in its capacity as competition watchdog have set appreciation criteria to help determine the compatibility of sporting rules implementing sport specificities with EC law.

However the 2001 Agreement between football bodies and the European Commission has failed to achieve some of its objectives, notably limiting the amount of transfer fees but also restoring fair and balanced competition by limiting the impact of transfers through solidarity mechanisms.

## **2.3 The Resolution of Disputes on Transfers**

This chapter aims to review mechanisms for dispute resolutions at international and national level and to consider relevant case law and arbitration decisions in relation to disputes on transfers of players.

### **2.3.1 General remarks**

This section provides an overview of the types of disputes related to transfers, the processes of arbitration and the issue of applicable law to international transfers.

#### **2.3.1.1 Typology of disputes**

In team sports, player transfers are mainly governed by the rules laid down by international, continental or national sports authorities. International transfers (the transfer of players between clubs belonging to different national federations) come, in principle, under international sports regulations, while domestic transfers (the transfer of players between clubs belonging to the same national federation) come under national sports regulations.

The rules define the conditions – in form and in substance – in which an amateur or professional player can change club. The rules in question may, in particular, provide for:

- the specific formalities to be completed by the player, the former club and the new club (a request for prior authorisation from the federation or league concerned, authorisation from the former club, etc.);
- the transfer windows outside which players cannot, without exception, change club;
- the limitations relating to the number of licensed or contracted players in the same club;
- the limitations relating to the nationality of players who can be recruited or who play in competitions by the club (nationality clauses);
- the financial conditions (registration fees, training or pre-training fees, compensation relating to early termination of the employment contract following a transfer agreement between clubs or to the unilateral termination by one or other of the parties involved...).

Such rules have the effect of restricting the individual freedom of players (contractual freedom, freedom of movement and freedom to work if a professional player is involved, etc.), as well as that of clubs (freedom to recruit). The result is a potentially significant risk of litigation.

By reviewing case law, several types of dispute relating to transfers can be identified. Essentially, it is a question of disputes that pit clubs or players against the federation or the professional league in relation to the legality of a transfer settlement or an individual decision taken pursuant to this settlement (a refusal to officially recognise an employment contract or a denial of player qualification). There are also disputes between clubs about, for example, the application of the financial conditions to a transfer or in relation to fees compensating youth training; or disputes between players and their clubs (or clubs and their players) about terminating a contract of employment (fixed-term). The former ones relates to the implementation of sporting rules. The latter forms of disputes are of a contractual nature and relate mainly to the settlement of diverging financial interests.

### 2.3.1.2 Mechanisms and procedures

Sports federation regulations generally provide internal mechanisms for resolving disputes. These mechanisms<sup>245</sup> exist both at the international federation and at the national league or professional league level<sup>246</sup>. The parties have the possibility (the right) to submit their dispute to a court (civil or administrative) or possibly to an arbitration tribunal, once internal processes have been exhausted.

Jurisdictional<sup>247</sup> arbitration occupies a growing importance in sports' litigation, especially in resolving international sport disputes<sup>248</sup>. This alternative method of disputes resolution presents a certain number of advantages. Often arbitration offers all parties a justice that can be faster and often less expensive. Arbitration is particularly suited to dispute resolution of an international nature<sup>249</sup>. It allows parties to overcome, on a voluntary basis, the complexity of the rules of jurisdiction, of procedure and substantive law (conflict of law rules).

A number of sports' federations recognise the Court of Arbitration for Sport (CAS)<sup>250</sup> as the Court of Appeal for decisions taken as a last resort by their internal bodies. As a result this institution has become the "*Supreme Court of World Sport*"<sup>251</sup>.

FIFA recognised the jurisdiction of the CAS following the agreement reached in 2001 between FIFA, UEFA and the European Commission. All decisions taken by FIFA internal bodies regarding international transfers can therefore be appealed to the CAS<sup>252</sup>.

FIBA rules also provide for appeal to the CAS, but only for disputes in which it or a member federation is involved (eg disputes concerning the issuance of a "letter of release"). Contractual or financial disputes between clubs, players or players' agents are the competence of the BAT (Court of Arbitration for Basketball). This body was created by FIBA in 2007 (originally called the "FIBA Arbitral Tribunal"), in accordance with Swiss law on international arbitration. The existence of this single disciplinary arbitration tribunal explains why very few international transfer disputes in basketball are presented to the CAS.

At national level, arbitration in sports disputes is also expanding. Arbitration bodies are attached to national Olympic committees. This is especially the case in Belgium, Spain, France, Italy and

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<sup>245</sup> Federal regulations may provide for different bodies and procedures, according to the nature of the disputes to be dealt with. They may also provide for several levels of appeal within the institution.

<sup>246</sup> For a detailed analysis of the means of resolving sports disputes, both on a national (in France) and international level (FIFA, FIBA, FIA, TAS), see "*Settling disputes in sport*" a collective work coordinated by C. Dudognon, B. Foucher, J.-P. Karaquillo and A. Lacabarats, Dalloz Juris éditions, 2012.

<sup>247</sup> (Jurisdictional) arbitration can be defined as "*the institution whereby a third party settles the dispute between two or more parties, exercising the judicial function that has been entrusted to it by them*" (C. Jarrosson, *La notion d'arbitrage*, LGDJ, 1987, p. 372). It is based on a voluntary foundation, in the sense that the parties choose to submit their dispute to an arbitrator or arbitration tribunal, rather than to a state court. The expression of the willingness of the parties is shown by an arbitration agreement which can take the form of an arbitration clause (an agreement prior to the dispute) or a post-dispute agreement to arbitrate (an agreement subsequent to the dispute). Arbitration differs from other form of alternative dispute resolution, such as conciliation and mediation, by the fact that the decisions of the arbitrator have a judicial nature (they have the force of *res judicata*).

<sup>248</sup> On legal arbitration in sport, see not.: A. Rigozzi, *L'arbitrage international en matière de sport*, Hebing and Lichtenhahn, 2005 ; M. Maisonneuve, *L'arbitrage des litiges sportifs*, LGDJ, 2011.

<sup>249</sup> A dispute is considered to be international when the parties involved come from different countries.

<sup>250</sup> The Court of Arbitration for Sport (CAS) - an institution independent of any sports organisation which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world.

<sup>251</sup> The expression is from Juan Antonio Samaranch, who was responsible for the creation of the CAS in the early 1980s.

<sup>252</sup> See art. 22, 23 and 24 of the RSTP. The competent bodies of FIFA dealing with transfers are the Players' Status Committee, the single judge of the Players' Status Committee, the Dispute Resolution Chamber and the judge of the Dispute Resolution Chamber.

Luxembourg. In some countries, like in England, parties may rely on arbitration bodies that are not specialised in sports disputes. The field of jurisdiction of these arbitration bodies varies from one country to another. Some domestic laws prohibit appeals to arbitration for certain disputes, such as individual labour disputes, which come under the exclusive jurisdiction of state courts. This is the case, for example, in France or Germany<sup>253</sup>. Article 22 of FIFA's Regulation on the status and transfer of players (hereinafter "RSTP"), which deals with FIFA's competence, clarify that this competence is exercised *"without prejudice to the right of any player or club to seek redress for employment-related disputes in a civil court."*

Arbitration should not exclude, as a last resort, the intervention of state courts. In its assessment of the FIFA rules that govern the status and transfer of players, the European Commission questioned the compatibility with EU law of provisions prohibiting national associations, clubs and players from turning to civil courts to resolve their transfer disputes<sup>254</sup>.

### 2.3.1.3 Applicable law

The issue of the law applicable to sport disputes can prove complex, because of the overlapping between sport rules and state or international law.

The principle is that rules coming from private sources must be compatible with the legal system of the State in which the federations concerned have their registered office. Therefore, the settlement of internal disputes does not pose any particular difficulty with regards to the applicable law. The influence of national (and EU law) is total and exclusive, except when the parties have recourse to alternative settlement methods, such as arbitration, which allow the "arbitrator" to decide which law will be used.

The law applicable to international disputes is more complex. It depends on the conflict of law rules in force in each country or on the application of international conventions, such as the Convention of Rome of 19<sup>th</sup> June 1980 on the law applicable to contractual obligations. However as most international sports disputes nowadays are brought in front of the CAS, it is necessary to look at the rules applied by this institution.

According to Article R.58 of the Code of arbitration for sport, the CAS gives a decision according to the applicable regulations and according to the legal rules chosen by the parties; or, if there is no choice, according to the law of the country in which the federation, association or other sports organisation whose decision has been challenged is registered. This is most often Swiss law, as most international federations are registered in Switzerland. It may even be the legal rules which the panel considers appropriate to be applied (in this last case, the panel's decision has to be substantiated).

The CAS may, therefore, base its decision on a multiplicity of legal sources, both national and/or international, public and/or private. For disputes concerning international transfers, the CAS's panels apply primarily private rules of the international federations. They allow themselves great freedom with regards to the choice of law (most often the law chosen by the parties or non-mandatory Swiss law)<sup>255</sup>. *Some decisions show that sport body rules clearly prevail, even when parties require the application of*

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<sup>253</sup> In France, for example, Article 2060 of the Civil Code provides appeals to arbitration "for all matters of public policy". The main result of it is that the decisions taken by the national sports federations, as delegates of the State, exercising their prerogatives as public authorities, are not subject to arbitration.

<sup>254</sup> See Chapter 2.1.2.1.3 entitled "Dispute settlement and enforcement mechanisms".

<sup>255</sup> See, for example: CAS 2008/A/1644, *Mutu v. / Chelsea Football Club Limited*, 30<sup>th</sup> July 2009 ("*Mutu*"). In this case, the player argued that English law, chosen by the parties when the contract was concluded, should apply in this case, and that this law did not provide for the compensation for the damage for which he had been sentenced (compensation for Chelsea commensurate with the not yet amortized transfer fee paid to Parma for acquiring the player). The CAS held that the dispute should be settled both by applying English law (the law chosen by the parties) and by the RSTP (the law incorporated into player contract by reference), and noted that the concurrent application of both these sources of law was possible, in the circumstances (no contradiction).

public law. In a decision of 12<sup>th</sup> July 2006, CAS stated that “the purpose of FIFA Regulations [on player status and transfer] is to establish uniform rules that are valid for all cases of international transfer and to which all actors in the football family are subject. This goal could not be achieved if we had to recognise that different rules adopted in a particular country were applicable. This means that unless the fundamental purpose of the international rules established by FIFA is called into question, the arrangements or other provisions of national significance can only be applied if they are in accordance with, or complementary to, FIFA rules, but certainly not if they are contrary to them.”<sup>256</sup>

The arbitration panels refer to the general principles of law, mostly inspired by national legal systems (the principles of equality, non-discrimination, proportionality and respect for the rights of the defence, etc.); but also the specific sport principles, such as principles of fair competition and fair play. Some authors talk about these principles as a real *lex sportiva* (Latty 2007). Furthermore, it is not uncommon for the CAS to decide, at the request of the parties involved, whether international sports rules are compatible with the principles derived from the EC Treaty (which is now the Treaty on the Functioning of the EU). In the CAS decision on 5<sup>th</sup> July 2010 the arbitration tribunal reviewed the compatibility of the player transfer regulations in water polo in relation to EU law <sup>257</sup>. In this case, the CAS was applied to by the French Swimming Federation (FFN) in an appeal against a penalty delivered by the European Swimming League (ESL). In this decision, CAS noted the similarity between the transfer rules in force in water polo with that in other disciplines, particularly in football. It referred to the judgement of the Court of Justice of the European Communities in the “*Lethonen*” case as well as the decision of the European Commission recognising FIFA regulations on player status and transfer<sup>258</sup>. It concluded that the rules of the ESL did not violate the principle of free movement when these rules were pursuing a legitimate objective and could be considered as being proportionate.

In the context of international sport disputes, Swiss law occupies a privileged position: on the one hand, because the CAS has its headquarters in Switzerland and therefore finds itself subject to arbitration rules based on Swiss federal law concerning private international law; on the other hand, because the IOC and most international sports federations have their headquarters in Switzerland, which could justify the application of Swiss law as non-mandatory (see above); and lastly, because the Swiss Federal Court can, in the context of proceedings for annulment, verify the compatibility of the judgement given by the CAS with Swiss substantive public policy. Thus, on this basis, the Swiss High Court set aside a decision from CAS for the first time in a judgement of 27<sup>th</sup> March 2012<sup>259</sup>. The CAS decision of 29 June 2011 on the Matuzalem case was annulled as it contravened section 27 of the Swiss Civil code<sup>260</sup>. The Brazilian player Matuzalem was threatened with a ban on exercising his profession and, more broadly, any activity to do with football if he did not agree to pay damages to his former employer<sup>261</sup>.

<sup>256</sup> See CAS 2005/A/983 and 984, *Club Atletico Peñarol v/ B., R. and Paris Saint-Germain*, 12<sup>th</sup> July 2006. See also: CAS 92/80, *B. v/ FIBA*, 25<sup>th</sup> March 1993: “The federal law adopted by FIBA is a regulation of private law having international or global authority, to be applied in the field of sports rules governing basketball. To settle the present dispute, the court will therefore apply this federal law, without resorting to the application of a particular national law on its merits.”

<sup>257</sup> CAS 2009/A/1957, *FFN v/ LEN*, 5 juillet 2010, obs. J.-P. Dubey (advisor to the CAS), *Panorama des sentences du TAS*, *Jurisport* n° 110, June 2011, p. 24.

<sup>258</sup> IP/02/824, 5<sup>th</sup> June 2002, “The Commission closes its investigations into FIFA rules concerning the international transfer of footballers”. According to the Commission, “the new rules adopted by FIFA balance the fundamental right of players to free movement with stability of contract and the legitimate objective of the integrity of sport and the stability of championships.”

<sup>259</sup> Tr. fed., 27<sup>th</sup> March 2012, *Matuzalem v. FIFA*, n° 4A\_558/2011, obs. Ph. Landolt, *Annulment of Swiss international arbitration awards for incompatibility with substantive public policy: first annulment in over twenty years*, in *Mealey's International Arbitration Report*, vol. 27, avr. 2012; obs. J.-M. Marmayou, *Les Cahiers de droit du sport* 2012, n° 27, p. 9

<sup>260</sup> This provision punishes violations of human rights.

<sup>261</sup> Press release of the Federal Court, 29<sup>th</sup> March 2012.

### **2.3.2 Most relevant decisions in relation to the implementation of transfer rules on contractual stability**

Rules on contractual stability are the pillars of the transfer rules. This section will review the main jurisprudence and arbitration at international and then national level.

#### **2.3.2.1 International disputes on contractual stability**

Contractual disputes (between players and clubs, and between clubs themselves)<sup>262</sup> now represent a very high proportion of disputes submitted to CAS. Disputes concerning football are by far the most numerous. Hence the following analysis will focus exclusively on this discipline and more particularly on the interpretation and application of the provisions of the RSTP designed to enforce contractual stability<sup>263</sup>.

This relates to the implementation of Articles 13-17 of the RSTP which generate most of the litigation before the Dispute Resolution Chamber (DRC) of FIFA and the CAS. The most controversial issue is linked to the calculation of the financial compensation due to the employer club, in case of early termination of the contract without just cause (Article 17).

##### **2.3.2.1.1 The principle of compensation in case of breach of contract without just cause**

Article 17 provides: the party which breaks a fixed term contract without just cause is required to pay compensation to the other party<sup>264</sup>. Paragraph 2 of the same article states that if it is the player who is found guilty, his new club is jointly required paying compensation to the former club, independently of its involvement in the breach of contract<sup>265</sup>.

It is not so much the principle of financial compensation for the benefit of the injured party that is subject to intense debate but rather the method to calculate the financial compensation.

The principle of financial compensation aims to dissuade clubs or players from unilaterally terminating a contract before its term with a view to protect the integrity and stability of competition. Furthermore, the dissuasive effect has to be reinforced by the impossibility of the party breaking the contract to be able to accurately assess the amount of the compensation due.

However setting excessive (and unspecified) compensation when a player unilaterally terminates a contract may hinder players' mobility and freedom of movement. As a result the International Federation of Professional Players (FIFPRO) is requesting for the opportunity of players of terminating unilaterally their contract at the end of the protected period in return for compensation of equal value to the residual

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<sup>262</sup> *The vast majority of contractual cases relate to two types of dispute: those that frame the contract between an athlete and his club, the main difficulty of which is the non-respect of contractual clauses or the existence of illegal, or even illegal, clauses (unpaid or late wages, breach of contract of employment with or without cause, or a unilateral renewal clause, etc.); and those that frame the contract between two clubs to secure the services of an athlete (transfer contract), the main difficulty of which are the financial conditions governing the conclusion of the contract (transfer fee, training compensation and solidarity contributions, etc.)*

J.-P. Dubey, Overview of CAS awards, RJES n° 89, Dec. 2008, p. 72.

<sup>263</sup> For the application of other provisions of the RSTP (the amateur or professional status of players, the transfer of minors, training compensation and solidarity allowances, etc.), see the RSTP commentary.

<sup>264</sup> The application of Article 17 of the RSTP means the absence of a transfer contract. See, for example: CAS 2009/A/1960 *Trabzonspor v. / LOSC Lille Métropole* et CAS 2009/A/1961, *LOSC Lille Métropole v. / Trabzonspor and T.*, 5th May 2010 ("LOSC").

<sup>265</sup> See, for example: DRC n° 117294, November 2007, *recital* 28.



value of the contract, i.e. the amount of wages due for the contracted period not served to be coupled with a reimbursement of the expenses incurred by the former club and not yet amortized over the contractual period.

### **2.3.2.1.2 Calculating the severance payment due upon termination without cause by the Player (CAS Decision)**

Article 17 of RSTP provides a number of criteria to be taken into account for calculating the compensation payable by the party who breaks the contract without just cause.

Parties to a contract can include specific provisions related to deal with the early termination without just cause by specifying the amount of compensation payable. This is the “buyout clause”<sup>266</sup>. The DRC and the CAS consider that such a clause takes precedence<sup>267</sup>. However the DRC and CAS have the right to set the amount of compensation under the principle of proportionality<sup>268</sup>. When the amount is paid by the new club, the buyout clause allows the player to break his contract at any time, including during the protected period, without incurring any sporting sanction. However, this type of clause is allowed only in a few European countries usually as part of contractual freedom (apart in Spain where the matter is subject to regulation).

In the absence of a buyout clause, arbitration tribunals take into consideration the following criteria to calculate the compensation:

- The law and agreements in force in the country concerned (agreements, laws and/or national collective bargaining agreements). It is a question of making sure that the decision to be taken is compatible with the law of the country concerned (in principle, the law and regulations that governs the working relations between the player and his former club);
- Criteria related to safeguarding elements of the specificity of sport. This is linked to the conduct of the party who initiated the break, the timing of the break as regards to the transfer window or the importance of the player in the team, etc.<sup>269</sup>;
- The remuneration and other benefits due to the player under the existing contract and/or the new contract. When it is the player who breaks the contract without just cause, the CAS considers that outstanding wages under the old contract must be deducted from the severance payment due to the former club, as it is a matter for the latter of saved expenses (the principle of damages and positive interests);
- Fees and expenses paid or incurred by the former club. Compensation for the club can take into account the investment made in securing the services of the player and the fact that it had not been amortized at the time of the termination of the contract. The amortization period, which is taken into account by the DRC and the CAS, is not the length of the protected period, but the duration of the contract, which, in principle, cannot exceed 5 years. It is for this reason that the DRC and the CAS consider it necessary to take into

<sup>266</sup> A clause in a player's contract with the club which guarantees the club allowing the player to leave if new club makes an offer that meets the value.

<sup>267</sup> See, for example: the DRC n° 59674, May 2009, *recital* 23 and the CAS 2007/A/1298 and 1299 and 1300, “Webster” 30<sup>th</sup> January 2008; CAS 2007/A/1358, “FC Pyunik Yerevan”, 26<sup>th</sup> May 2008; CAS 2008/A/1519 and 1520, “Matuzalem”, 19<sup>th</sup> May 2009; CAS 2009/A/1880 and 1881, “FC Sio”, 1<sup>st</sup> June 2010; CAS 2009/A/1909, *RCD Mallorca SAD and A. v./ FIFA et UMM Salal SC*, 25<sup>th</sup> January 2010...

<sup>268</sup> See, for example: the DRC n° 114796, Nov. 2004; DRC n° 16394, January 2006; CAS 2004/A/780; CAS 2006/A/1104.

<sup>269</sup> For example, in the “Matuzalem” case, the CAS condemned the player who had prematurely terminated his contract without just cause to an additional payment, equivalent to six months salary, because he had left his club - Shakhtar Donetsk – barely several weeks before the qualifying round of the 2007/8 UEFA Champions League, after a season during which he became team captain. See CAS 2008/A/1519 and 1520, 19<sup>th</sup> May 2009; on applying the specificity of sport criteria, see also CAS 2007/A/1358, “FC Pyunik Yerevan”, 26<sup>th</sup> May 2008; CAS 2010/A/2145, 2146 and 2147, “De Sanctis”, 28<sup>th</sup> February 2011.

account, in calculating the severance payment, the amount of the transfer fee possibly paid by the former club to acquire the player and not yet amortized over the contractual period<sup>270</sup>.

- Moreover, some CAS panels seem to admit that the amount of a transfer missed because of the early termination of his employment contract by the player could also be taken into account. However, the former club must show that it really engaged in negotiations and/or that tangible proof of transfer offers was made<sup>271</sup>. On the other hand, the simple loss of opportunity is not admissible for CAS.

The question is whether the costs of replacing the player should also be taken into account. In the “*Matuzalem*” case, CAS did not rule out this possibility, but didn’t accept it in this case for lack of evidence. For CAS, it is up to the former club to demonstrate that there is a direct causal link between the costs incurred in acquiring the services of a new player and the early termination of the contract by the former player. However in its decision “*De Sanctis*” CAS included, in the amount of financial compensation due to Udinese, all the costs that the club had to pay to replace its goalkeeper following the early termination without just cause of his contract<sup>272</sup>.

- The protected period<sup>273</sup>. In addition to the sporting sanctions that can be imposed on the player or the club that terminates the contract during the protected period, this circumstance shall confer a right, according to the DRC and the CAS, to additional compensation in favour of the injured party. At first, the panels of the CAS refused to take this criterion into account when calculating the compensation. But since the “*Matuzalem*” judgement, the CAS considers that a breach of contract without just cause during the protected period is

<sup>270</sup> For example, in the “*Mutu*” award of 30<sup>th</sup> July 2009, the CAS confirmed the decision of the DRC in which the Romanian player, Adrien Mutu, was sentenced to pay €17 173 990 to Chelsea, which corresponded to the non-amortized amount of the transfer fee that this club had paid to Parma (the duration of the contract was five years and its termination occurred after fifteen months). The case is interesting because, in this case, it is not the player who terminated the employment contract, but the club, on the grounds that the player was tested positive for cocaine following an anti-doping test. In a first judgement, the CAS considered that although the club had actually taken the initiative to terminate the contract, it was nonetheless due to the player and justified the application of Article 17 of the RSTP (CAS2008/A/1644, “*Mutu*”, 30<sup>th</sup> July 2009). In a judgment of 10<sup>th</sup> June 2010, the Swiss Federal Court dismissed the action for annulment brought by the player against the sentence. On the substance of the case, the Swiss judge stated that in the field of international arbitration, he does not rejudge a case, as in a court of appeal, but rather only controls certain very limited aspects of it on the basis of the facts stated in the contested award. In this case, the Federal Court had only to consider whether the amount of damages awarded to Chelsea undermined the core values that every legal system should respect (public policy). He came to the conclusion that this was not the case. (Tr. fed., 10<sup>th</sup> June 2010, 4A\_458/2009, Press release of the Federal Court, 14<sup>th</sup> June 2010).

<sup>271</sup> CAS 2008/A/1519 and 1520, “*Matuzalem*”, 19<sup>th</sup> May 2009; CAS 2009/A/1960 and 1961, “*LOSC*”, 5<sup>th</sup> May 2010; CAS 2009/A/1880 and 1881, “*FC Sion*”, 1<sup>st</sup> June 2010, obs. J.-P. Dubey, Panorama 2010 des sentences du TAS, Jurisport n° 110, June 2011, p. 28 and s.

<sup>272</sup> CAS 2010/A/2145, 2146 and 2147, “*De Sanctis*”, 28<sup>th</sup> February 2011, obs. J.-P. Dubey, Panorama 2011 des sentences du TAS, Jurisport n° 121, June 2012, p. 32 and s. In this case, Udinese argued that it had to bring back a young goalkeeper, who was on loan to FC Rimini, which led it not only to abandon the amount of the transfer fee that the club was willing to pay for this player (the loan included an option to purchase for €1.2m that Rimini had raised), but also to pay a sum of €250 000 to exercise a counter-option to purchase to buy the player. It was also argued that the departure of its goalkeeper, who was an undisputed incumbent and an international, could not be compensated for by the young goalkeeper because of his inexperience, and that consequently it had to recruit a second, older and more experienced goalkeeper. The CAS followed this reasoning on the basis of evidence from Udinese. The amount of financial compensation for the costs of replacing the player De Sanctis was calculated, in this case, as follows: €1.2m corresponding to the compensation lost on the transfer of the young goalkeeper to FC Rimini; €250 000 corresponding to the counter-option to buy the young goalkeeper; €1 179 000 corresponding to the young goalkeeper’s salary over three years; and, lastly, €1 881 000 corresponding to the more experienced goalkeeper, also over three years.

<sup>273</sup> The protected period is defined by the RSTP as a period of three full seasons or three years following the entry into force of a contract, if the contract in question was entered into before the player’s 28<sup>th</sup> birthday; or as a period of two full seasons or two seasons if the contract was entered into after the player’s 28<sup>th</sup> birthday. It is stated in Article 17 para. 3 of the RSTP that “the protected period restarts when during the renewal of the contract, the duration of the previous contract is extended.”

particularly reprehensible behaviour and is therefore an aggravating factor that justifies an increase in compensation. Conversely, the fact that this breach occurs outside the protected period should not, in its opinion, be interpreted as a mitigating factor that might justify a reduction in the compensation. It follows that breach of contract (without just cause) is always considered as illegal and reprehensible conduct, especially if it happens during the protected period<sup>274</sup>.

On the question of the protected period, the DRC and the CAS also consider that the provisions of Article 17 para. 3 of the RSTP must be interpreted in the sense that if the contract is extended beyond the end of the protected period, the former protected period ends and the new protected period begins<sup>275</sup>.

Arbitration panels consider it incumbent on the parties to submit the criteria they consider relevant and, above all, provide evidence of the damage that may be invoked<sup>276</sup>. The issue of compensation requires a case by case approach as each situation is specific.

However in its famous “*Matuzalem*” ruling, the CAS set out a guiding principle, namely that of “positive damages” (“*the principle of the so-called interest*”). For CAS the granted compensation must allow the injured party to be placed in the financial situation that it would have found itself in, if the debtor had exercised his contractual obligations.

Subsequent decisions given in relation to the implementation of Article 17 of the RSTP have all confirmed this guiding principle which now leads the arbitration panels to take into account, when assessing the damages suffered by the former club, the economic value of the player on the transfer market and his/her replacement costs<sup>277</sup>. CAS states in the its “*Matuzalem*” decision that “*in the world of football, players are the main asset of a club, both in terms of their sporting value in the service for the teams for which they play, but also from an economic point of view in relation to their valuation in the balance sheet of a certain club, if any of the value for merchandising activities or the possible gain which can be made in the event of transfers to another club*”.

The CAS seems, therefore, to have (definitively?) abandoned the approach it used in the “*Webster*” case, in which it stressed, in respect of a breach of contract outside the protected period, the principle of compensation for the former club on the basis of the remaining value of the contract with the latter, thus refusing to take into account the market value of the player<sup>278</sup>.

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<sup>274</sup> CAS 2008/A/1519 and 1520, “*Matuzalem*”, 19<sup>th</sup> May 2009; see also: CAS 2009/A/1960 and 1961, “*LOSC*”, 5<sup>th</sup> May 2010; CAS 2009/A/ 1880 and 1881, “*FC Sion*”, 1<sup>st</sup> June 2010.

<sup>275</sup> See, for example: CAS 2009/A/1960 and 1961, “*LOSC*”, 5<sup>th</sup> May 2010.

<sup>276</sup> See, for example: CAS 2009/A/1960 and 1961, “*LOSC*”, 5<sup>th</sup> May 2010; CAS 2009/A/1880, *FC Sion v./ FIFA and Al-Ahly Sporting Club* and CAS 2009/A/1881, *El Hadary v./ FIFA and Al-Ahly Sporting Club*, 1<sup>st</sup> June 2010 (“*FC Sion*”). According to Article 8 of the Swiss Civil Code, the burden of proof remains with the person claiming the compensation.

<sup>277</sup> See, especially: CAS 2009/A/1960 and 1961, “*LOSC*”, 5<sup>th</sup> May 2010; CAS 2009/A/1880 and 1881, “*FC Sion*”, 1<sup>st</sup> June 2010; CAS 2009/A/1856, *Fenerbahçe Spor Kulübü v./ S.* and CAS 2009/A/1857, *S. v./ Fenerbahçe Spor Kulübü*, 7<sup>th</sup> June 2010 (“*Fenerbahçe*”); CAS 2010/A/2145, *Sevilla FC SAD v./ Udinese Calcio Spa*, CAS 2010/A/2146, *De Sanctis v./ Udinese Calcio Spa*, CAS 2010/A/2147, *Udinese Calcio SpA c./ De Sanctis et Sevilla FC SAD*, 28<sup>th</sup> February 2011 (“*De Sanctis*”). See also, for a previous award to the “*Matuzalem*” award:

CAS 2007/A/1358, *FC Pyunik Yerevan v./ Carl Lombe, AFC Rapid Bucuresti and FIFA* et CAS 2007/A/1359, *FC Pyunik Yerevan v./ Edel Apoula Edima Bete, AFC Rapid Bucuresti et FIFA*, 26<sup>th</sup> May 2008 (“*FC Pyunik Yerevan*”).

<sup>278</sup> CAS 2007/A/1298, *Wigan Athletic FC v./ Heart of Midlothian* and CAS 2007/A/1299, *Heart of Midlothian c./ Webster and Wigan Athletic FC* et CAS 2007/A/1300, *Webster v./ Heart of Midlothian*, 30<sup>th</sup> January 2008 (“*Webster*”).

In the “*Bouabé*” and “*El Mouataz*” decisions<sup>279</sup>, dealing with similar cases (breach of contract by the player outside the protected period), the CAS held that in determining the compensation due to the former club, it is necessary to carry out a combined application of Article 17 para. 1 of the RSTP and its (non-regulatory) provisions contained in a document entitled, “*Compensation for the breach of contract*”, drawn up jointly by the player unions and the clubs on 22<sup>nd</sup> and 23<sup>rd</sup> September 2005<sup>280</sup>.

FIFPRO is opposed to CAS decisions on compensation criteria taking the view that such criteria amount to a breach of the 2001 Agreement with the European Commission and the principle of free movement of players. The level of compensation required would amount to preventing players to move clubs and would therefore represent a return to the Pre-Bosman situation as the EC made clear that after the protected period clubs should no longer be in a position to retain players against their will. It considers that the dispute resolution system is not in compliance with EU Law. FIFPRO notes that the compensation in situation when clubs end the contract before its term is fixed at the residual value (Webster decision) and not at the positive interest value (Matuzalem). It notes a double standard in CAS decision that favours clubs over players. It regrets the reluctance of swiss lawyers and CAS panels to implement EU rules<sup>281</sup>.

FIFPRO’s general counsel takes the view that in the De Sanctis decision CAS failed to requalify the contract of the player into a long term contract as provided by the EU Working Time Directive<sup>282</sup> in relation to a succession of short term contracts. This was another evidence of the inability of CAS to implement EU law. FIFPRO is requesting that CAS set a specific chamber responsible for EU territories. FIFPRO representative also stated that the cost of CAS as too expensive (on average 14 000 SFR as advance payment) and that players cannot go to civil courts in the Netherlands.

### 2.3.2.2 National disputes on contractual stability

A transfer subject to payment assumes in general the existence of an employment contract linking the player to his club. Neither the membership nor the licence link could, in fact, justify the right to compensation for the former club. It follows that transfers of amateur players, both in team and individual sports, in principle operate without financial compensation between clubs. At most, in this case, administrative fees could possibly be requested from the club by the federation concerned. Moreover, the employment contract, which is the base of the transfer operation subject to payment,

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<sup>279</sup> CAS 2007/A/1314, *Bouabé and Sporting Lokeren Oost-Vlaanderen c./ Assoc. sportive des forces Armées Royales*, 31st Jan. 2008 (“*Bouabé*”); CAS 2007/A/1315, *El Mouataz and Sporting Lokeren v./ Assoc. sportive des Forces Armées Royales*, 31<sup>st</sup> Jan. 2008 (“*El Mouataz*”).

<sup>280</sup> In both cases, the CAS panels held that, in calculating severance pay, the following provisions could be applied:

- Article 17 para. 1 of the RSTP which allows for the amortization, over the term of the contract, of costs and expenses incurred by the club in its relations with the player, in order to calculate the residual value of the contract on the time remaining to run;
- Article 4.2 b) of the document, “*Compensation for breach of contract*”, which makes it possible to carry out the calculation of the average between the remuneration owed until the end of the contract and the remuneration owed by the new contract over the same period of time;
- Article 4.2 c) of the document, “*Compensation for breach of contract*”, which makes it possible to take into account the exceptional circumstances of the case in point and Article 43 para. 1 of the Swiss Civil Code, applicable supplementarily, relating to determining compensation, which allows the judge to determine “*the extent of the compensation according to the circumstances and seriousness of the fault*”.

To our knowledge, CAS panels no longer subsequently expressly refer to the document “*Compensation for breach of contract*”.

<sup>281</sup> Interview with General Counsel of FIFPRO, 23<sup>rd</sup> March 2012, Brussels.

<sup>282</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

must be a fixed-term contract. Indeed, in the context of a contract for a permanent period, the parties have, in principle, a right of unilateral termination. Also, if the player is tied to his club by such a contract, he may at any time resign (terminate his contract), without his club being able to claim any compensation.

This is not the case in the context of a fixed-term contract, where early termination is prohibited in principle (only exceptional circumstances could justify it). It is hardly surprising, therefore, that in most EU countries, the employment relationship between a sports professional and his club is formalised by a fixed-term contract. Without having recourse to this type of contract, which establishes a certain rigidity (stability) in the contractual relationship, the transfer rules as it operates now, especially in professional football, would probably not exist. The transfer operation subject to payment supposes that the fixed-term contract will be terminated before completion. So, if the contract has expired, there is no reason that the former club, which in this case has suffered no prejudice, should enjoy any financial compensation. The judgement of 15<sup>th</sup> December 1995 (*Bosman*) thus condemned out-of-contract transfer fees as a restriction on the free movement of workers.

It should be noted that the ban applies only to transfer fees themselves (severance payment) and not to compensation for training that can be collected by the training club, even when the player is out of contract<sup>283</sup>.

Finally, there can only be in principle a transfer subject to payment insofar as the contract is terminated early without just cause. As we saw previously for the RSTP of FIFA with the concept of “just cause”, if the player can claim a legitimate breach of contract with regard to the law or to the national collective bargaining agreement applicable, such as, for example, a serious fault by the club employing him, then the club is not entitled to claim financial compensation, as the rupture is, in this case, attributable to it. It is ultimately only the player’s decision to leave his club early without a valid reason which establishes the right to compensation, as this decision should be considered at fault and therefore prejudicial to the employer.

That being said, there are in practice two types of situation that must be distinguished. The first is that in which one or other of the parties decides to terminate unilaterally the contract. The second is that, which is more common in practice, in which the two parties agree to terminate the contract before it ends.

#### **2.3.2.2.1 The unilateral termination of the contract**

Disputes can arise following an early termination of the employment contract by either the club or the player<sup>284</sup>. Generally, in this case, the legal debate focuses on the merits of the grounds relied on by the party that decides to terminate the contract early. If it could take advantage of a reason for termination provided for by the law or collective bargaining agreement applicable, the termination will then be considered as justified and will not, in principle, give rise to compensation in favour of the other party. Conversely, if the termination is considered as unjustified, the injured party will generally be entitled to financial compensation under the legislative or conventional provisions applicable.

In the light of the national laws studied, the reasons likely to justify an early termination of a contract can vary significantly from one country to another: there may be more or less restrictive general reasons that are often common to both parties (breach of contractual obligations, serious reason, just cause,

<sup>283</sup> See CJCE 16<sup>th</sup> March 2010, *Bernard*, case C-325/08. According to this ruling, compensation for training must be proportionate to the costs actually incurred by the training club.

<sup>284</sup> It is necessary to dissociate the action of terminating from its liability. One party may indeed take the lead in the termination, while shifting the responsibility onto the other party. A player can, for example, decide to terminate his contract because his club has not paid his wages. In such a case, the termination initiated by the player could be declared against the club that employs him.

compelling reason, serious fault or force majeure, etc.); or more specific reasons may be invoked by only one or the other parties (the player medically certified as physically unfit, dereliction of duty or non-payment of wages by the club). In the first case, the discretion of the judge hearing the case is obviously greater. It should be noted that the concept of “just cause” contained in FIFA regulations on the status and transfer of players is not compatible with certain national laws which demand, for example, a serious offence, i.e. an offence making it immediately impossible to continue the employment contract (France and Belgium, etc.).

The financial consequences of an early unjustified termination of the employment contract can also vary from one country to another. It appears from the national laws studied that, when the termination is attributable to the club, the player is generally entitled to a lump-sum compensation, usually equivalent to the wages that the club would have had to pay if the contract had gone to completion. In this case, some laws provide for a minimal or capped compensation. In Spain, for example, the royal decree 1006/1985 provides that, in the absence of any agreement between the parties, the compensation is determined judicially and must be equal to at least two months’ salary. In Belgium, the law of 24<sup>th</sup> February 1978 provides that the injured party is entitled to compensation corresponding to the amount of the outstanding salary, while specifying that compensation may not exceed twice the amount fixed by the King on the advice of the competent joint committee. When the termination is attributable to the player, the financial compensation due to the former club is rarely determined by law. Most laws refer to the damage suffered by the club, leaving the courts to assess the amount of compensation on the basis of evidence provided by the latter. However, some laws in this case provide for the same rule for compensation as those applicable in favour of the player, i.e. the residual value of the contract.

In Portugal, Article 27 of Law No. 28/98 of 26 June 1998 as amended by Law No. 114/99 of 3 August 1999 provides that the compensation due to the club left, in case of termination without just cause by the player, must be limited to the value of contractual obligations. In an important case, the Supreme Court of Justice ruled that the collective bargaining agreement concluded between the Portuguese Professional Football League and the professionals players’ union could not validly depart from the rule for compensation in a less favorable way to the player. Indeed, the collective agreement provided for a minimum ceiling for compensation due to the club as well as the possibility for the latter to receive compensation exceeding the value of the consideration due (as under Article 27 § 1 of the law this value is a maximum)<sup>285</sup>.

The rigidity of the legal rules on the unilateral breach of the fixed-term employment contract – which goes some way towards the contractual stability wished for by FIFA – has led parties to resort to, in practice, contractual clauses aimed at escaping from these rules. Two main types of clauses can be distinguished:

- unilateral termination clauses and avoidance clauses that tend to facilitate the early termination of the contract by giving one or the other party, or both, a right of unilateral termination based either on their own volition or on reasons other than those provided by law (e.g. an event external to the parties, such as the relegation of the club to a lower division). If such clauses may be acceptable in some jurisdictions, particularly when the employee benefits, they are mostly considered illegal because they call into question the very nature of the fixed-term employment contract<sup>286</sup>.
- the “transfer clause” that tends to arrange in advance the financial consequences of an early breach of contract by one or other of the parties. These clauses are very common in professional footballer contracts ((even when they are not allowed by national legislation), as they allow to the club to ensure, in case of early departure of the player, the payment (in principle, by the new club) a lump-sum

<sup>285</sup> Affaire “Zé TO”, Tribunal supreme de justice, 7 mars 2007.

<sup>286</sup> For the French Court of Cassation, the provisions of the Labour Code relating to the early termination of a fixed-term employment contract are public policy. It has repeatedly held that an employee cannot accept in advance the termination of his contract by the employer for reasons other than those provided by law. See, for example: Cass., soc., 24<sup>th</sup> Oct. 2000, *pourvoi n° 98-40.447*.

severance compensation in line with its economic interests. This would not (necessarily) be the case if it relied on a contentious application of legal rules on compensation. Thus, in countries where the law provides that in case of unjustified termination of contract by the player, the employer is entitled to compensation for damages, it is almost certain that the sum awarded by a state court would not as high as that provided by the transfer clause. In addition, the object and the effect of these clauses is to ensure the stability of the contractual relationship, by dissuading the player from wrongfully terminating his contract.

In Spain, the so called « buyout » clauses are expressly authorised by article 16.1 of the Royal Decree 1006/1985. Nowadays, in professional Spanish football, it is extremely rare to find a contract where the parties do not agree in advance on the amount of the compensation due to the club in case of unilateral breach by the player without just cause. However, the issue of determining the right amount of compensation is still being debated. Like the CRL and the CAS, Iberian courts can reduce the amount of financial compensation contractually agreed by the parties if they feel that it is disproportionate (abusive)<sup>287</sup>. At first, the courts have been quite favourable to players, reducing significantly the amount of compensation due to the clubs<sup>288</sup>. Jurisprudence has then evolved. It now seems that the player's value is a criteria much more often considered by the courts when deciding if the amount of the termination clause is disproportionate<sup>289</sup>. Yet, it cannot be said that there is a clear and consistent interpretation on this issue<sup>290</sup>.

#### **2.3.2.2.2 Termination of the contract by agreement**

Obviously, it is in the interest of the parties to opt for termination of the contract by mutual agreement. Implementing a unilateral termination does make for uncertainty (insecurity) for them, especially as far as the financial consequences they will face if the termination is declared against them. The terms of transfer outlined above somehow reflect this mutual agreement. In this way, the club and the player agree in advance on the fact that the contract may be terminated, especially by the player, on payment of a certain sum of money supposed to compensate for the value of the player in question. This agreement may also result in the drawing up, during the termination, of a transfer contract, separate from the employment contract. The purpose of such a contract is to organise the early termination of the fixed-term employment contract by mutual agreement, bringing together the player and his former club (Jacotot 2003, 196), especially by determining the financial arrangements (transfer fee) in agreement with the new club. Part of this view thus tends to define the transfer agreement as an agreement *sui generis* allowing a club to demand the payment of a sum of money in return for accepting to release the player from his contractual obligations and to report to the national and, where appropriate, international federation the availability of this player for registration with his new club (Rizzo 2005, 50; Simon 1990; Kamara 2007; Karaa 2009, 177). In the case of an "organised" termination through a transfer agreement, the compensation negotiated by mutual agreement with the new club can hardly be regarded as compensation for damage suffered by the old club. In fact, as the latter agrees that the contract can be terminated before completion, it cannot logically invoke any damage. A majority view tends to consider that the transfer fee is not compensation for the damage suffered by the old club, but

<sup>287</sup> See Tribunal Supremo, Sentencia de la sala de lo social, Case Zubiaurre, 12 May 2008. In this case, a « buyout » clause of 30M agreed by the parties has been reduced to 5M. The High Court ruled that the clause was abusive as it was not proportional to the salary of the player.

<sup>288</sup> For an example in relation to a basketball player, see: Case Loreto, Andalusia Superior Court of Justice, 3rd of May 1994.

<sup>289</sup> For an example relating to a basketball player, see Mataro Labour Court n°1, Case Miralles, 21 march 2003. In this case, the court ruled that the clause could not be considered unreasonable when the reality is that the amounts accepted by the club for termination clauses regarding players of the same level or lower level are equal to or greater than the one provided in this case.

<sup>290</sup> V. Miguel Cardenal Carro, *Compensation in case of breach of contract in civil law countries: Spain*, in European Sports law and policy bulletin n 1, 2011, p. 249 and following

consideration for the agreement given by the latter for the release of the player for the benefit of the new club.

Over time, drawing up contracts between two clubs has become more complex, especially with the inclusion of incentive clauses in these contracts (e.g. a future transfer) or bonus clauses (e.g. the ranking of the new club in national and European competitions, or depending on the number of games played by the player with the new club, etc.). This has resulted in an increase in disputes between clubs concerning the application of these clauses, the wording of which can sometimes be open to interpretation<sup>291</sup>. There are thus certain trends in transfer litigation in the football sector. Besides the traditional disputes between players and clubs relating to unilateral breaches of contract, subject to the courts and the right to work, disputes between clubs linked to the execution of contracts between two clubs are growing, subject to the civil and commercial courts and the law of contracts and torts.

### **2.3.3 A short survey on dispute settlement in EU countries**

This section reports on responses to questionnaires received from ministries and national football federations and leagues on the issue of dispute settlement, the ability to have recourse to ordinary tribunals in case of disputes on transfers, the frequency of such disputes as well as the most important issues resulting in conflicts.

#### **2.3.3.1 Public Law on dispute settlement**

When a dispute arises for a national transfer (within the same association), the regulations provided by sport bodies are essentially the ones to follow.

Nevertheless, when a dispute on a national transfer also implies a breach of labour contract then state rules in relation to contract and labour law have naturally vocation to be enforced.

The legal mapping in Chapter 4.1 shows that in the majority of countries<sup>292</sup> parties to a dispute can refer the dispute to the court. Although the right to go to court can be considered as one of the key rights under the rule of law, some football federations (for example, in Estonia, Romania Ireland and Luxembourg) declared that a party does not have such opportunity.

Furthermore, it appears that most countries do not have to handle and face dispute on the interpretation of transfer rules. Only France, England, Belgium, Cyprus, Germany, Romania, the Netherlands, Scotland have reported that transfer rules have been subject to disputes before a court or an arbitration tribunal.

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<sup>291</sup> For an example of disputes between French clubs over the interpretation of a contract between two clubs, see CA Douai, 16th Sept. 2010, *SASP Stade Malherbe de Caen v./ SASP LOSC Lille métropole*, n° 09/05120 ; JCP édité. gen. 2011, n° 16, 450, p. 745, note F. Rizzo.

<sup>292</sup> Austria, Belgium, Denmark, England, France, Germany, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Spain.

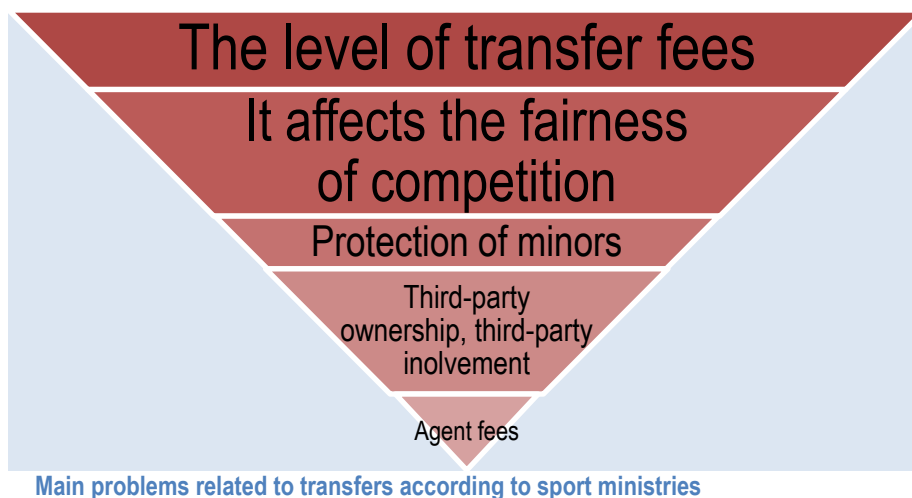


Disputes on the implementation of transfer rules<sup>293</sup>

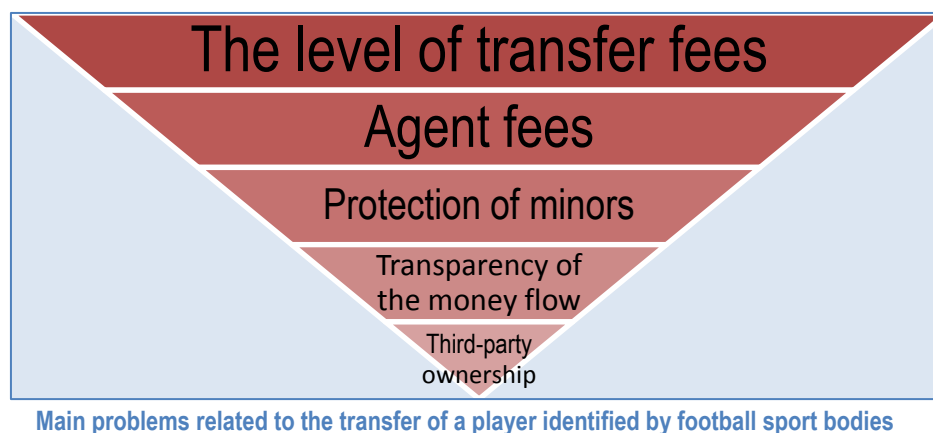
Country	Ability for a party to refer to a normal court	Existence of disputes on transfer rules ruled by court or arbitration
Austria	YES	NO
Belgium	YES	YES
Bulgaria	N/A	N/A
Cyprus	YES	YES
Czech Republic	N/A	NO
Denmark	YES	NO
England	YES	YES
Estonia	NO	NO
Finland	N/A	NO
France	YES	YES
Germany	YES	YES
Greece	N/A	N/A
Hungary	YES	NO
Ireland	NO	NO
Italy	YES	N/A
Latvia	YES	NO
Lithuania	YES	NO
Luxembourg	NO	NO
Malta	N/A	N/A
Netherlands	YES	YES
Poland	YES	NO
Portugal	YES	NO
Romania	YES	YES
Scotland	YES	YES
Slovakia	YES	NO
Slovenia	N/A	NO
Spain	YES	NO
Sweden	N/A	NO

<sup>293</sup> Answers have been provided either by national federations or national leagues when answering questionnaires.

### 2.3.3.2 Main problems related to disputes<sup>294</sup>



The table above shows the way sport ministries classify the importance of problems related to transfers. It is interesting as it differs from the point of view of sport governing bodies (see below). Notably the issue of competition fairness is a key matter for public authorities whilst agent fees and third party ownership have the favour of football governing bodies. However both agree that the level of transfer fee is an important issue



### 2.3.4 Conclusions

The use of alternative dispute resolution systems, such as arbitration courts, allows to better take into account the specificity of sports activities and organizations, the general idea is to coordinate rather than oppose the different legal orders.

Arbitration plays a crucial role in the resolution of disputes in sport. Disputes are generally settled at the level of sport organisations.

<sup>294</sup> Answers received by the team on the sent questionnaire:

Combined, 13 football Associations and football Leagues (sport bodies) answered (Austria, Belgium, Czech Republic, Denmark, England, Finland, France, Germany, Hungary, Ireland, Portugal, Slovenia and Sweden).

12 Member States answered (Belgium, Bulgaria, Cyprus, Czech Republic, Greece, Hungary, Ireland, Lithuania, Luxembourg, Netherlands, Romania, Slovakia).

Disciplinary authority of the international sports organisations promotes spontaneous application of decisions, thus avoiding the need to refer disputes to a national civil court under the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Decisions (exequatur procedure). More generally, the use of sport "justice" allows a more uniform implementation of the sporting regulations. This would be more difficult if disputes were subject to different national courts each applying their own corpus of law.

According to FIFA<sup>295</sup>, labour disputes between clubs and players are going down. This would be due to the fact that CAS and DRC decisions have established a large degree of legal security. FIFA observes that 90% of disputes relates to unpaid salaries.

The main complaints on dispute settlement relates to the following points:

- Clubs take the view that dispute resolution could be handled in a quicker way if matters were organised at confederal levels. It was felt by ECA representatives that the international dispute resolution mechanism was too slow and costly<sup>296</sup>. This is why ECA has recently put in place a mediation for disputes of a financial nature (including transfers) between clubs members. The goal is to make mediation mandatory prior to litigation process. This procedure, however, has had limited success so far to the extent that no agreement has been reached with FIFA as to whether clubs that do not comply with the mediation agreement should be subject to disciplinary actions.
- Players' representatives are requesting a special chamber within CAS with the competence to apply EU rules to compensation disputes to avoid that compensation is being used to block the career of players after the protected period. This chamber should settle the residual vs. positive interest rules.
- The European commission is adamant that players and clubs should have access to national courts as a last resort so as to ensure the proper implementation of EU law in case of disputes. It is important that FIFA and FIBA ensure that such principles are complied with at national level by their member federations.
- FIFA should take steps to review dispute resolution mechanisms in the European Union and take decisions against federations that do not comply with minimum procedural requirements set by FIFA in 2007 (implemented by the big 5 and the Netherlands). Fair representation of different stakeholders notably players remain a problem in Cyprus, Greece and Romania.

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<sup>295</sup> Interview with FIFA representatives, 6<sup>th</sup> September 2012, Brussels.

<sup>296</sup> Interview with ECA representatives, 6<sup>th</sup> June 2012, Brussels.



## CHAPTER 3 – THE ECONOMICS OF TRANSFERS

In this time of global economic crisis, the economy driven by professional sport – and more especially on transfer spending or on transfer fees by clubs – is often criticised by the general public. It does, indeed, seem inconceivable today that clubs that are already heavily in debt continue to spend significant amounts in the transfer market for the benefit of overpaid players. One of the aims of this chapter is to highlight that what really shocks opinion in fact represents only the visible part of the iceberg. Behind the small number of transfers that give rise to the payment of large fees, a very large number of transfers are made without there being any payment at all. This is the case in football and even more so in other sports, especially in basketball, and can be explained by the structure of the labour market for professional athletes.

The economic part of this study will therefore pursue several objectives:

- To describe the economic specificities of European team sports.
- To underline the importance of the labour market. This will also lead us to an analysis of the particular structure of the labour market.
- To assess the economic value of transfers in order to gauge what transfers represent at a European level.
- To analyse the economic foundations of the transfer system. This part will deal with two main questions: what are the economic justifications of the system and what are the explanatory factors for the level of transfer fees?
- To explain the real functioning of the transfer system, especially on the basis of the interplay of stakeholders.
- And to assess the efficiency of the transfer system.

### 3.1 Economic framework: the sports sector and its specificities

#### 3.1.1 Economic weight of professional sport: framing data

The emergence of sport as an economic sector in Europe is relatively new. And despite its media and social importance, it remains a relatively small sector on the scale of the overall economic activity. Professional sport, the most visible part of this sector, is just a minor part and has little weight economically.

##### 3.1.1.1 The weight of the sport sector and its evolution

The exact weight of this sector is difficult to establish due to a lack of national accounting specific to sport in all countries and a lack of production of data at the international level. Therefore, the figures presented must be taken with a great deal of caution and are only estimates.

At the global level the total weight of the sector is estimated at about €650bn for 2011 (Bourg and Gougnet, 2012).

## Turnovers of the main global sport markets

Markets	Estimate in €bn
Market of sporting goods and services	600 to 650
Market of sporting goods	200 to 226
Market of professional sport	92
<i>Ticketing</i>	32
<i>Sponsorship</i>	26
<i>TV rights</i>	20
<i>Merchandising</i>	14

[Source: Bourg-Gouguet, 2012; Andreff, 2012]

For the same year 2011, the weight of the sporting goods industry was estimated at €226bn and the sporting spectacle (ticketing, sponsorship, merchandising, TV rights) was estimated at €92bn. Football represents nearly half of the total turnover of the sector with a turnover of approximately €250bn (Bourg and Gouguet, 2012) to €270bn (Andreff, 2012) .

Even if the reliability of this raw data is questionable, many indicators show that the sports industry has expanded greatly since the 90s, especially in Europe. In France, expenditure on sport was estimated at 0.5% of GDP in 1971, 1.2% in 1985 and 1.8% in 2008<sup>297</sup>.

In England, expenditure on sport showed a similar trend, from 1.2% in 1985 to 1.5% in 2008 (1.7% in 2005)<sup>298</sup>

This sector is already highly developed in North America. According to Rascher, its turnover rose from \$47bn in 1986 from \$152bn in 1995 i.e. an annual increase of 8.8% over the period.

According to the definition chosen for the sports industry, the turnover of the latter is evaluated at \$194bn in the USA<sup>299</sup> for 2002 (i.e. €122bn at the current exchange rate) or \$411bn i.e. about €334.36bn at the current rate.

At the European level, the total turnover of the sports sector has been estimated at €153.8bn for the 27 EU countries, more than €182bn if we take volunteer work into account<sup>300</sup>.

The economy of the sector is mainly driven by household expenditure and then by local authorities expenditure. The detail is as follows:

- €101.0 bn is paid by the households themselves;
- €26.0 bn comes from local authorities (regions, municipalities, etc.);
- €10.7 bn comes from national government budgets (this includes €2.1bn from lotteries, betting and gambling operators channelled to sport via state budgets);
- €10.5 bn comes from companies, mainly through sponsorships & donations;
- €5 bn comes from media rights;
- €0.2 bn comes from compulsory levies on the revenues generated by state lotteries, betting and gambling services' operators: this is the part of the revenue that is allocated directly to the sport organisations, without transiting through the central government's budget or funds created by the public authorities;
- €0.4bn comes from other sources, including EU funding.

About €71bn would directly go to the funding of sport organised within federations.

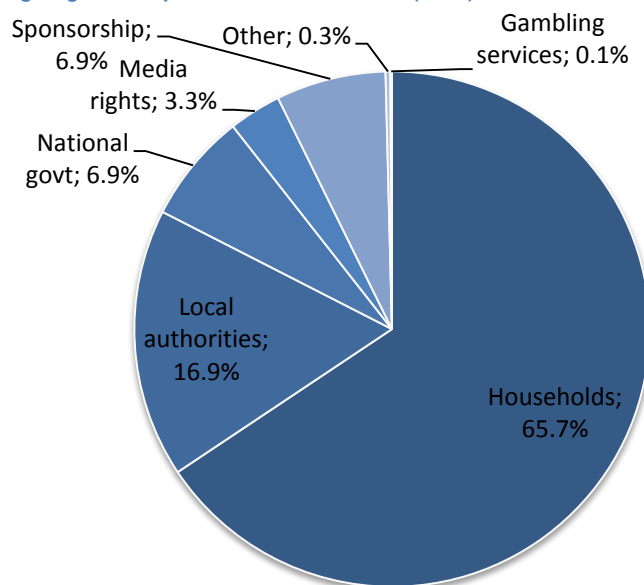
<sup>297</sup> French Ministry in charge of sports, key figures of sport, 2011.

<sup>298</sup> According to the SIRC (2010) cited by Wladimir Andreff in: Andreff W., (2012), *Mondialisation économique du sport*, De Boeck Management & Sport, 488 pages.

<sup>299</sup> Source "Matthew T. Brown – Daniel A.Rasher – Mark S.Nagel – Chad D. Mc Evoy "Financial management in the sport industry" Holcomb Hattaway Publishers , Scottsdale, Arizona, 2010.

<sup>300</sup> Study on "Funding of the grassroots sports in the EU" Eurostratégies, Amnyos, CDES, Deutsche Sport Hochschule 2011.

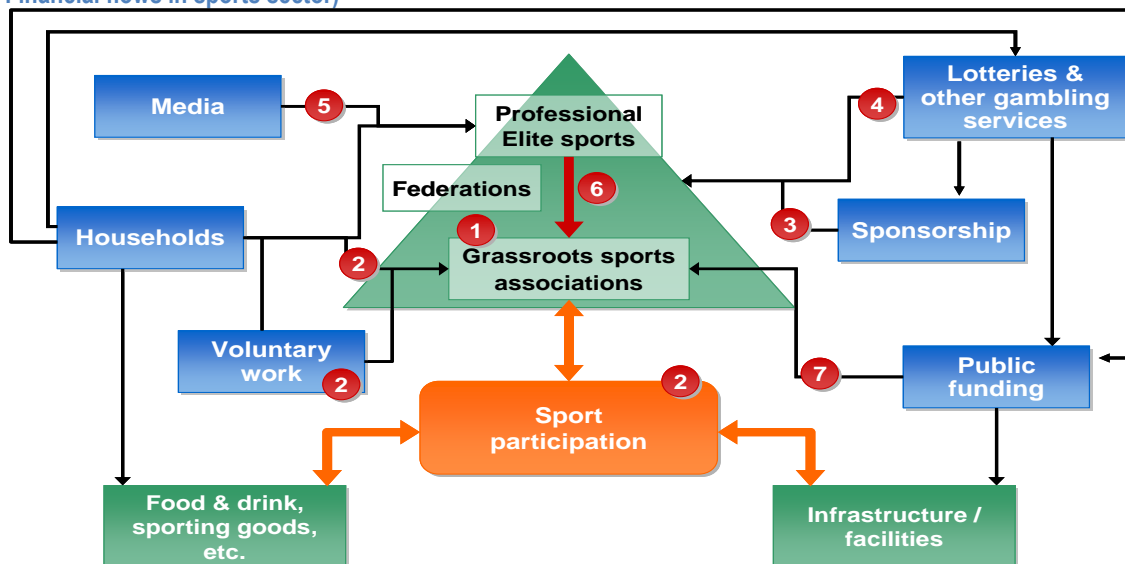
Structure of revenues going to the sports sector at EU level (2008)



[Source: study on the funding of grassroots sport in the EU]

Different flows can be represented as follows:

Financial flows in sports sector)



[Source: study on the funding of grassroots sport in the EU]

In major Western European countries (Germany, France, United Kingdom, the Netherlands, Finland), the weight of expenditure on sport is generally estimated between 1.4% and 1.8% of GDP (Amnyos 2008). It rather ranges between 0.8% and 1.2% in the southern and northern European countries, for cultural reasons or because of the level of economic development.

According to the most recent study published by European Commission<sup>301</sup>, *“the share of sport-related value added (direct effects) of the total EU Gross Value Added is 1.76% and amounts to €173.86bn. The direct effects of sport combined with its multiplier (indirect and induced) effects add up to 2.98% of the EU Gross Value Added (€294.36bn). Furthermore, the share of sport-related employment (direct effects) amounts to 2.12% of total EU employment, equivalent to 4 460 888 people. If indirect effects are added, sport employs 7 378 671 people (3.51% of EU employment).”*

### 3.1.1.2 A limited relevance

#### 3.1.1.2.1 *Limited weight of the sports events industry*

According to PriceWaterhouseCooper – 2012, sports events represent a turnover of approximately €92bn worldwide, and about €32bn for Europe/Africa.

Such a figure seems consistent with the results of the study on the funding of grassroots sport conducted for the European Commission<sup>302</sup> (see above). To obtain an assessment of the weight of the sporting spectacle in the EU to the funding of sport in Europe (€153.8bn, excluding volunteer work) we must take away from it the €71bn intended for grassroots sport practised within federations, as well as expenditure relating to sport practised in other structures (fitness clubs, schools, universities, firms, etc.), sport practised independently, and equipment and sporting goods, etc<sup>303</sup>...

The work that we have undertaken on France confirms that the weight of the sporting spectacle and / or professional sport in the sports expenditure is smaller than appreciated generally by people <sup>304</sup>.

Based on these factors, the weight of the sporting spectacle in Europe could be estimated between €20bn and €30bn. It therefore represents a small sector of the European economy, but whose impact in the media is significant. The London Games have recently proved it.

#### 3.1.1.3 The football spectacle: a huge media impact

Professional football represents a turnover of €12bn billion for the whole of Europe, according to UEFA<sup>305</sup>. Although this sum is greater than that of the combined turnover of the two major American professional leagues, the NFL and MLB - estimated at about €11bn in 2011 – it still makes it a relatively small industry in terms of its turnover in the European economy.

The biggest sports clubs (Real Madrid, FC Barcelona) generate turnovers of more than €400m<sup>306</sup>, which is quite significant at the European level. What then can be said of basketball clubs, the budgets of

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<sup>301</sup> Study on the contribution of sport to economic growth and employment in the EU” Study commissioned by the European Commission Directorate General education and culture – November 2012

<sup>302</sup> Eurostratégies, Amnyos, CDES, Deutsche Sport Hochschule – 2011.

<sup>303</sup> Summarized extract of the study on funding of grassroots sport in the EU: *“The bulk of the difference between the €71.7 bn budget for grassroots sport and the €153.8 bn budget for all sports, comes from household expenditure on sport not specifically related to the active practice of grassroots sport: in fact, 60% of household expenditure on sport<sup>303</sup> is associated with the purchase of sporting goods, equipment and sportswear (which account for roughly half of consumers’ total expenditure on sport), the purchase of tickets to attend high-level and professional games, expenditure on TV sport channels, sport’ betting, etc.”*

<sup>304</sup> Note for the Amateur Football Association (unpublished)– estimate established around 10%.

<sup>305</sup> UEFA European Landscape of professional football 2012 – The report focuses on the use of financial data - collected within the framework of the licensing procedure, of 665 clubs of the 53 UEFA member associations...

<sup>306</sup> According to Deloitte - Football Money League 2012 - €479M for Real Madrid and €450,7M for FC Barcelona.



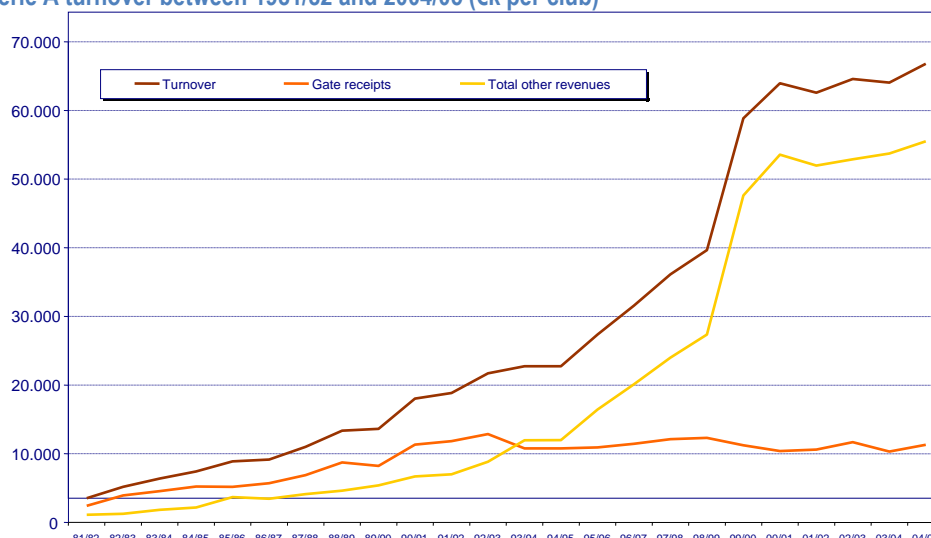
which do not exceed €40m for a handful of them and range from €2 to €10m for 90% of the top clubs in Europe.

Yet the media and social impact of these clubs is significant and often higher than that of very large worldwide companies (Shell, BP, Volkswagen...).

### 3.1.1.4 A financial crisis despite strong income growth

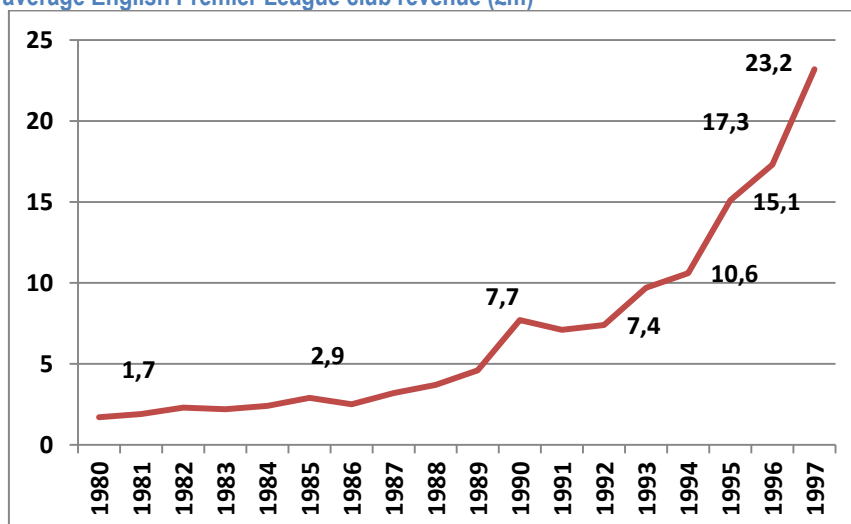
Incomes in football have increased steadily in Europe since the 80s, the years identified as the beginning of the industrial era for football. Although the growth rate was initially relatively little sustained, it accelerated particularly in the 1990s, as the examples of the Italians and the English showed.

Growth of Serie A turnover between 1981/82 and 2004/05 (€k per club)



[Source: Italian report for "The Impact of the UEFA Champions League on national championships", CDES study, unpublished, 2006]

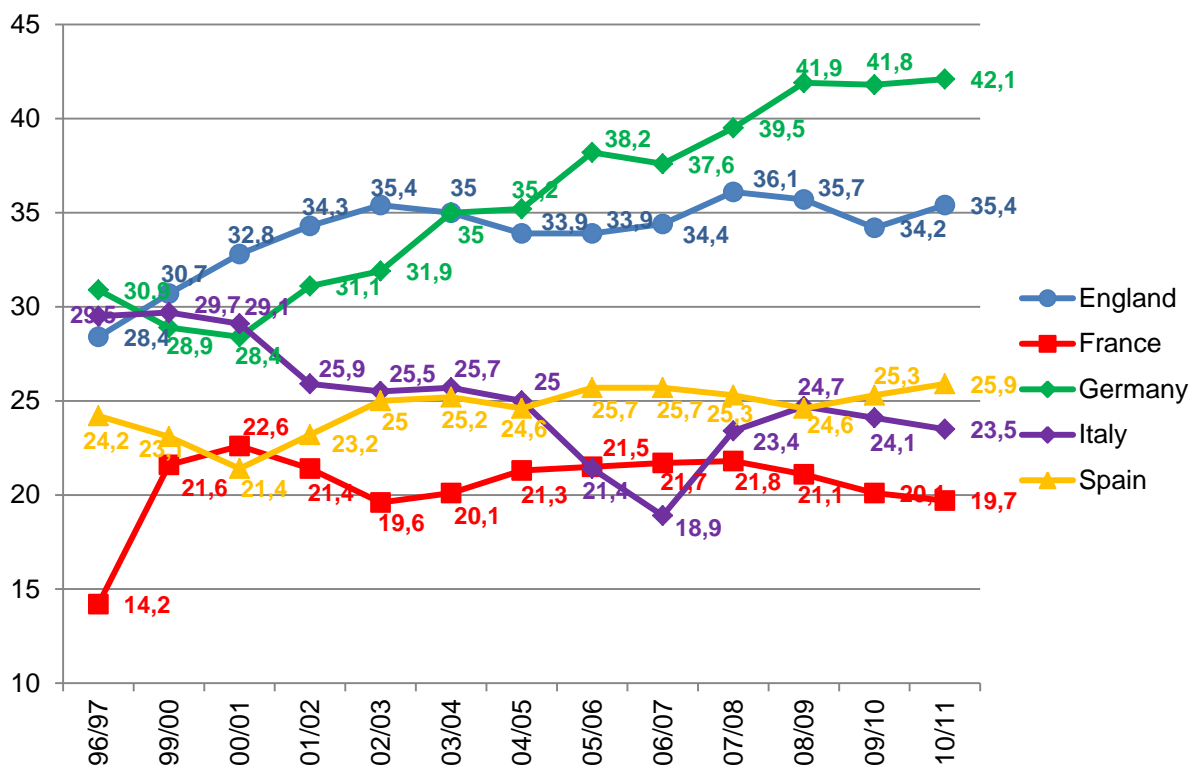
Development of average English Premier League club revenue (£m)



[Source: English report for "The Impact of the UEFA Champions League on national championships", CDES study, unpublished, 2006]

More recently, this revenue growth of the Big-5 has slowed down a little, as shown the following table.

Income growth of the big-5 between 1996 and 2010

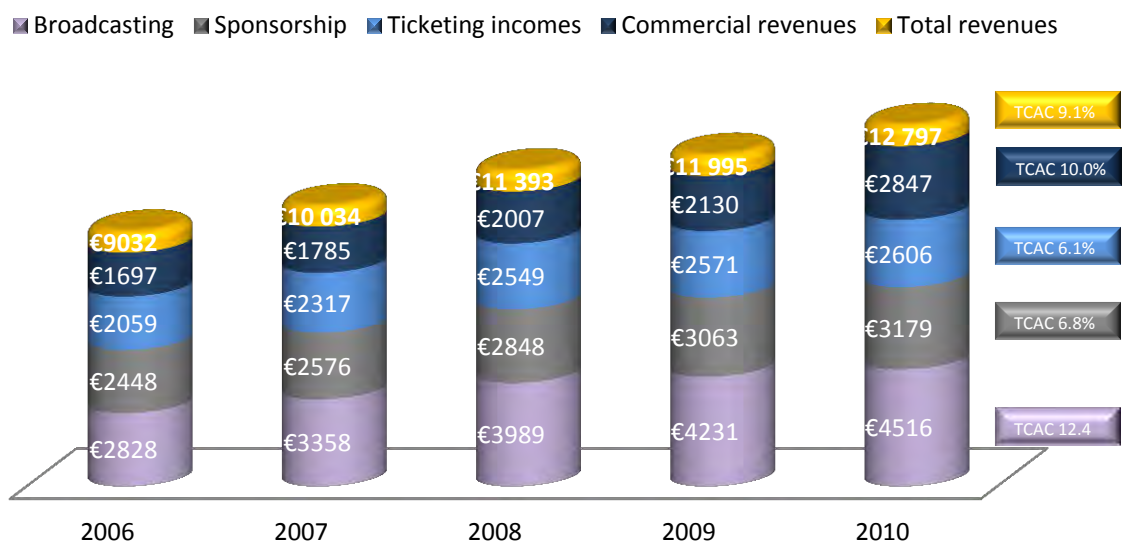


[Source: Deloitte]

This growth has continued in recent years, despite the economic and financial crisis. The turnover of the first division championships of the 53 UEFA member countries increased from €9bn in 2006 to €12.7bn in 2010. Representing an increase of 9.1% per year on average, this is the result of a general increase of all types of income of more than 6% p.a., even though the growth of broadcasting revenues is the highest (12.4%).

Even during the 2008-2010 period, which was marked by the economic and financial crisis, the economic growth was still above 6% on average.

### Income growth in European first divisions between 2006 and 2010 (€m)



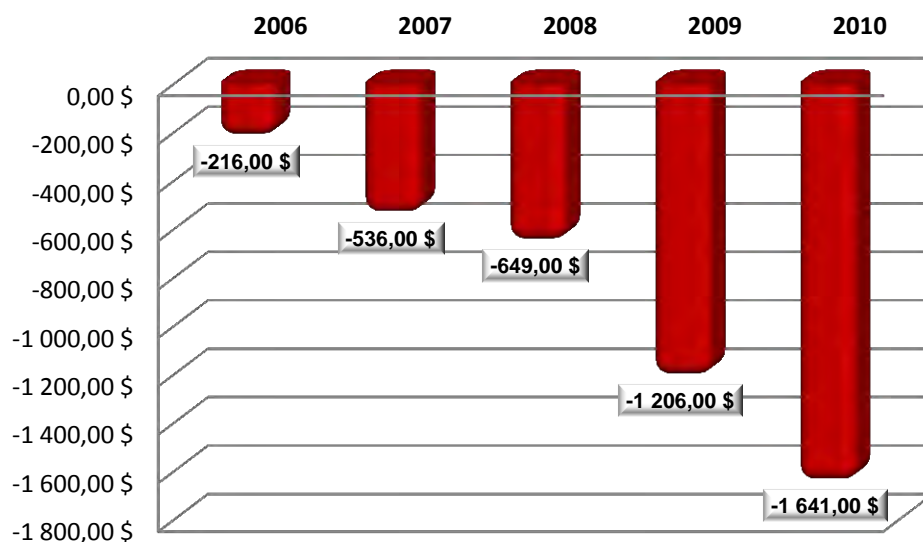
[Source UEFA – 2012]

However, this positive picture is not altogether favourable:

- Income growth has to be put into perspective, insofar as it is mainly due to the income growth of the Big 5, which was established for that period at 9.1% per year in average, even if for the last fiscal year Russian, Turkish and Ukrainian leagues experienced the highest growth in income. Between 2009 and 2010, the income growth was about 6.7%.
- The cost growth is even greater than this income growth: 9.3% between 2009 and 2010.

This resulted in an overall net loss increasing steadily over the period 2006-2010 to reach €1.64bn in 2010 or 12.8% of revenues and over €4bn of cumulative losses for 2006/10. 56% of the clubs concerned reported net losses for the year 2010. The debt is therefore considerable.

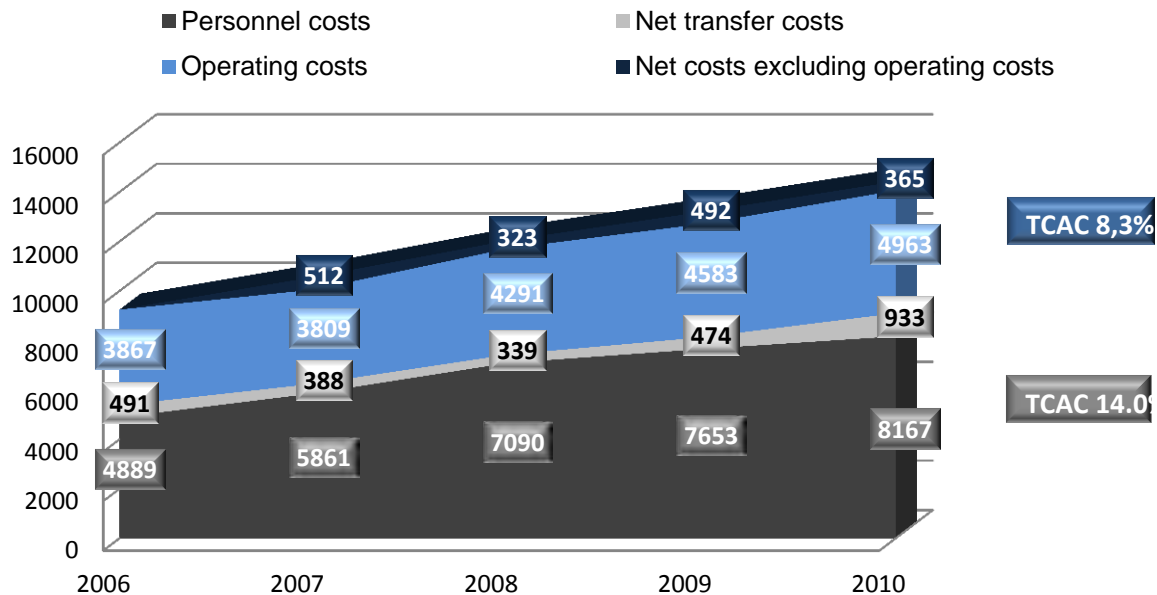
### Top division net profit / (losses) (€millions)



[Source: UEFA – 2012]

The first factor responsible for this situation is personnel costs (salaries and net transfers), which increased by 14% p.a. given that the net costs related to transfer activities have increased by 18% p.a. on average, but this increase actually only covers the period 2009-2010 (96%!).

Evolution of costs of the first divisions in Europe between 2006 and 2010 (€m)



[Source UEFA – 2012]

The situation is very worrying and the analysis is not new<sup>307</sup>: football (and professional team sports in general) does not control these costs.

It is partly to address this problem that UEFA, after having introduced club licensing in the early 2000s, wants to impose stronger regulation through the Financial Fair Play system

### 3.1.1.5 Financial fair-play: a suitable response to the crisis situation?

#### 3.1.1.5.1 Objectives and terms

After an observation period, UEFA's FFP (Financial Fair Play) policy officially comes into force from the 2012-13 season on and has several theoretical objectives<sup>308</sup>.

- To encourage clubs to be more rational and disciplined.
- To encourage clubs to manage with the revenues generated by the football itself.
- To encourage clubs to develop long-term projects and so ensure the financial stability of the sector.

In practice, Financial Fair play aims to:

- Prevent clubs from spending more than what they generate over a given period of time (or to put it another way, prevent them from over-investing in the sporting talent to win).

<sup>307</sup> Gouguet – Primault – Journal of Sports Economics, 2005.

- Encourage clubs to operate with their incomes alone, without contributions from owners or third parties and without debts.
- Encourage spending in sport facilities and other activities for the long-term profit of the club, rather than short-term speculative spending.

Until recently, as for the overall system of FFP, the “Club Financial Control Panel” (CFCP) ensures its coordination. It is a group composed of nine independent experts who are economic and financial specialists. It is chaired by the former Prime Minister of Belgium, JL Dehaene. This body has been replaced in 2012 by the UEFA Club Financial Control Body<sup>309</sup>.

The rule is financial balance or the “break-even requirement”, calculated from a combination of a profit and loss account and cash-flow calculations. The analysis is based on an Anglo-Saxon approach which takes into account profit and loss (P & L), rather than the elements of balance sheets.

Adjustments are made to favour certain types of behaviour: for example, to encourage investment in the stadium, some infrastructure expenditure is not taken into account; to encourage training, some training costs are not taken into account (salaries of coaches, etc.). In this way, the accounting situation of the club is improved proactively.

Conversely, some income not related to football is not taken into account in the revenues and all contributions of owners must be calculated at a fair value.

The first checks will actually occur in 2013 for the financial years ending in 2011 and 2012 (i.e. two seasons). Then, in 2014, three seasons will be taken into account (2011, 2012 and 2013) and in some of them, even 5 seasons. In this multiannual framework, a certain level of loss is tolerated; it is the concept of “acceptable deviation”.

- Over three seasons, a total loss lower than €5m will be acceptable.
- If the loss is greater than €5m, it is possible to restore the net position by an exceptional capital injection within the limit of €45m over 3 years. This amount will then be reduced.

#### **3.1.1.5.2 FFP and transfers**

FFP is not supposed to have a direct effect on transfers. Revenues and expenditures of transfers are processed in a neutral manner by the system. However, it favours the development of player training (e.g. infrastructure expenditures are deducted from expenditures in the reconstituted operating account); therefore, the transfer policy could see its relative cost raised.

Finally, one of the main objectives of these regulations is also to ensure that European clubs can fund their success in sporting terms. On the issue of transfers, the introduction of FFP should, therefore, limit the possibility of newcomers destabilising the market by massively investing in acquiring talent, as Chelsea, Manchester City and Paris Saint Germain have recently done. Similarly, implementing this measure should put an end to transfer fee inflation. Recent developments in the transfer market also seem to confirm this (see section 3.1.4.1.2.c), with most clubs having apparently anticipated the implementation of these new regulations. In the future, transfer fees paid should necessarily be in line with the financial power of clubs, particularly with the revenue they make. This will limit their importance unless clubs are able to identify new incomes.

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<sup>309</sup> These rules were adopted by the UEFA Executive Committee at its meeting on 18 May 2012.

**Lessons to be drawn**

The gap between the media and social impact of sport and its real economic importance – seen, in particular, for the most popular of them, football - often disrupts the analyses of observers and sometimes even of governors or stakeholders. The same holds true for transfers, which are often seen through this misleading representation. The observer and the analyst must be careful not to be deluded by this distorted picture.

**3.1.2 The relationship between sporting logic and economic logic**

**3.1.2.1 Product and production process characteristics**

Three specific characteristics deserve to be emphasised<sup>310</sup>: the product is the result of the joint production by business competitors (a), the production functions of the various business firms are inseparable (b), while every product is unique (c).

a. The match, which is the basic product, is the result of the joint production by business competitors – the clubs - which are opponents in the sporting sense. These businesses are therefore, at the same time, economic partners and opponents, in the sporting sense. They are required not only to work together to organise the match that pits them against each other, but also to produce the championship in which they play. This situation is very specific and is totally unique in the world of economics. It is as if market rules required Pepsi Cola and Coca Cola to produce a fizzy drink together, without it being a strategic choice by either business, but rather a very condition of being present in the market.

*Neale "[...] a business firm cannot produce any of these streams of utility alone. It must have the cooperation of a second business firm even to produce the game; to produce the other utilities it must have the cooperation of several business firms."*

b. As a consequence of this joint production, the production functions of the various business firms are inseparable. It is impossible to determine how much of the revenue each team is responsible for during a match, or each club within a championship. The fates of all the business firms are interrelated. They are effectively interdependent, since a portion of their revenues is jointly generated; the success of each depends, therefore, on the success of the whole.

Neal has provided a very vivid illustration of this reality, the Louis/Schmelling paradox:

- ...*"He wants to earn more money, to maximize his profits. What does he need to do so? Obviously, a contender, and the stronger the contender the larger the profits from fighting him. And, since doubt about the competition is what arouses interest, the demonstration effect will increase the incomes of lesser fighters".*
- *"Pure monopoly is a disaster: Joe Louis would have had no-one to fight and therefore no income."*

<sup>310</sup> S. Rotenberg – 1956; W.C. Neale – 1964, Andreff & Szymanski Introduction in "Handbook on sports economics", Szymanski "The assessment: the economics of sport" Oxford Review of economic Policy – 2003; .....

c. In a sports competition, the result is decisive and this, by definition, is unknown when the production process begins. So that, owing to the uncertainty of the result, as well as the progress of the match, every product is totally unique. This uncertainty makes any prediction about the quality of the product rather random, which is a weakness in economic terms; but it is also the strength of this type of product, as this uncertainty creates an incomparable sense of expectation and spectacle<sup>311</sup>. And it is this degree of uncertainty that determines, in part, the quality of the sporting spectacle “product”, both at the match and the championship level. This also has a consequence on the lifetime of this product; it is extremely short, because the sporting spectacle is consumed immediately, it is ephemeral and loses nearly all its value as soon as production is ended. At this level, the contribution of television is negligible, as once stripped of its uncertainty, the deferred match no longer has any value.

Although this link between uncertainty and product may have been proved for the USA<sup>312</sup>, it struggles to be proven scientifically beyond doubt<sup>313</sup>.

### 3.1.2.2 The necessary market regulation

The previously-described characteristics have consequences in terms of the governance of the sector, especially economically. Indeed, when sports competition and economic competition are incompatible (1) one imperative is clear: to preserve competitive balance (2) however, in Europe there has been a gradual deregulation since the 1980s.

#### 3.1.2.2.1 *An imperative: to preserve competitive balance*

The special characteristics of this industry, as outlined above, lead to the necessity of preserving a minimum level of uncertainty, which is the guarantee of the product value.

This objective may be pursued by action in three different fields: financial resources, human resources and competition format.

Although often forgotten, action concerning competition format is the most natural means of balancing the forces involved. Indeed, organising a knock-out competition or a 38-fixture championship with home and away matches is not immaterial. This latter format still leaves the wealthiest club with more chance of winning.

The action concerning financial resources is more immediately obvious. Revenue-sharing is a very effective means of reducing the differences between the minor and major markets, as can be seen in many European leagues with broadcasting rights (England, France and Germany) or even with gate receipts in American football (NFL), for example.

Finally, action concerning the distribution of talent - in an industry where it is so important – could obviously be used to preserve competitive balance. Limiting player mobility (registration windows) and the transfer system are designed, for example, to act through this channel.

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<sup>311</sup> Rotenberg: “The nature of this industry is such that competitors must be of approximately equal size if any are to be successful; this seems to be a unique attribute of professional competitive sport” (The baseball labour market - 1956).

<sup>312</sup> From Szymanski, “Economic design of sporting contest” in “The comparative economics of sport” – Smith and Berri – 2001; Rasher – 1999; Knowles - 1988

<sup>313</sup> Szymanski, “Economic design of sporting contest” in “The comparative economics of sport” 2002

### **3.1.2.2.2 *Economic competition between clubs must be controlled***

For supporters of the market economy, competitive balance has to be looked for, as it is most likely to favour the most effective allocation of resources (labour and capital). The good health of the market can be assessed by the degree of competitive balance. However, in the professional sports sector, encouraging this economic competition is inconsistent with the fact that clubs have to cooperate in order to produce the sports spectacle and with the fact that a balance of opposing forces has to be sought, in order to ensure the uncertainty of the sports result.

Work done not only by many sports economists, but also by certain reports, whether sponsored (or carried out) by the sports movement or by public authorities<sup>314</sup>, show that when economic competition takes place more freely, sporting competition is damaged. This result is because of the fact that there is a correlation between budget (or payroll) and sports results<sup>315</sup>.

Given the greater ability of the major markets (large cities) to collect revenues, this means that a framework of economic competition between clubs is needed, for those who want to preserve competitive balance. This framework involves limiting the market power of these clubs from large cities and using revenue redistribution mechanisms.

In Europe, there has been a gradual deregulation of professional sport since the 1980s. The combination of the liberalising of the audiovisual market, the growing professionalism of sport and the increasing freedom given to actors in the sports spectacle has led to a strengthening of the budget/sports result relationship. The result has been an almost universal tendency to reduce uncertainty in national football championships in Europe, as well as in European competitions<sup>316</sup>.

### **3.1.3 The central role of the labour market**

#### **3.1.3.1 A highly-segmented market**

In general, contemporary markets are very far from the theoretical presentation made in economics textbooks, particularly with the conventional assumptions about the atomicity of the supply, its homogeneity and the perfect nature of the information... Observing the real functioning of the labour market differs considerably from this ideal of pure and perfect competition model. In particular, the segmentation of the market means that we are far from a single market with a supply and demand obeying traditional assumptions. On the contrary, there are several market segments that reveal a very great heterogeneity in the supply.

In the early theories of segmentation, the labour market is divided into two segments:

- The primary sector focused on privileged jobs: high wages, stability, career prospects and good social protection, etc.

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<sup>314</sup> E.Besson "Accroître la compétitivité des clubs de football professionnel français" Report for the French first Ministry - Nov 2008 - UEFA Club licensing Benchmarking Report financial years 2008 and 2009 ; .....

<sup>315</sup> Particularly, Hoehn Szymanski "The Americanization of European football" in Szymanski "Football economics and policy"; Michie – Oughton "State of the game" ; A.Barajas, C.Fernandez-Jardon, L.Crolley "Does sport performance influence revenues economics results in Spanish football ? - ....

<sup>316</sup> See, for example: M.Kringstadt "Competitive Balance in Complex Professional Sports Leagues" Thesis – University of Leeds – 2008 ; W.Andreff – S.Szymanski Handbook on the economics of sport – Edward Elgar – 2006 and also Gouguet – Primault: "Impact de la champions league sur les championnats nationaux" RJES n° 88 – September 2008



- The secondary sector had the opposite characteristics: low wages, job insecurity, poor social cover and limited career prospects, etc. Moreover, in the second sector, employees were condemned to put up with very low mobility, compared to the primary sector.

The important thing to remember is that these two segments of the labour market obey a radically different logic from business. The primary segment would be business leaders who need a reliable and highly-qualified workforce and who are therefore willing to create a kind of internal market to find and retain such employees. The secondary segment obeys more the rules of the flexibility of pure and perfect competition in an external market.

The problem is whether such a theory of segmentation can be applied to the sports sector, in order to explain the very peculiar way of functioning of the labour market.

It seems, therefore, that there are the two previously mentioned segments:

- Star players enjoy high, even very high, salaries (particularly in football), additional benefits in terms of salary protection and fringe benefits, selected upward mobility to the most top performing sports clubs, rewarding positions and media exposure, long careers and contracts, etc.
- On the other hand, players in the secondary market experience short-term contracts, enforced mobility, even unemployment, and much lower pay, etc.

Nevertheless, besides this essentially correct dualist structure, and to be more in line with sporting reality, it appears preferable to retain three segments, each having specific market structures:

#### **3.1.3.1.1     *The higher primary market, where the stars play***

The higher primary market for stars has an almost monopolistic structure. In fact, as the stars are not substitutable and are by definition rare, the adjustment is made through price. This helps us to understand that the level of wages and transfer fees only reflect a unique supply faced with the many clubs wanting to acquire exceptional sporting talent. The only limit to the supply of stars is the financial ability of the interested clubs. These clubs very often go into debt to acquire sports talent and then have financial problems if the sports results do not come up to scratch.

#### **3.1.3.1.2     *The lower primary market, where the good, experienced players play***

The lower primary market has an oligopolistic structure. It consists of good players with experience, but who do not have the status of superstars. Nevertheless, they are an essential part of the backbone of a team. In this segment, there is a relative scarcity of supply against the demand by many clubs, i.e. an oligopolistic structure. As in the case of the higher primary market, the adjustment between supply and demand is through price. It is, therefore, subject to the risk of financial failings or speculative bubbles, hence the increase in salaries and transfer fees.

#### **3.1.3.1.3     *The secondary market, where the ordinary players play***

The secondary market for ordinary players is an oligopsony: very many suppliers (the players) are faced with a more limited number of those making the demand (the clubs). In this market, the players are substitutable, contrary to the superstars. The adjustment between supply and demand is, therefore, no longer by price, but by quantity. In contrast to the constraint of the scarcity of superstars which raises

prices, adjustment by quantity lowers wages and increases the precariousness of these substitutable and plentiful players: unemployment, downgrading, length of career, etc. We are nearer here to a regular labour market, with the tension of supply and demand rather benefiting the demand from clubs.

#### ***Lessons to be drawn***

- *The phenomena of segmentation mark the economy of European football.* It must also be taken into account in analysing the transfer system and its economy.

### **3.1.3.2 The important change in the 1990s**

This important change observed during the 1990s is due to the combined effects of the deregulation on the TV market and the liberalisation of the labour market symbolised by the Bosman Case.

#### **3.1.3.2.1 Observation**

We must first recall here two things:

1. The Bosman ruling had two aspects: the ban on compensation at the end of a contract and the ban on nationality clauses within the EU. Only the second aspect has had a significant impact on the market.
2. The Bosman ruling, even taking the second aspect into account, was not responsible for the impacts described below, but in a particular economic context – globalisation and the deregulation of the media market, etc. – by imposing the de facto freedom of movement of sport professionals, it was nonetheless a trigger.

These developments had four significant effects on the market which can be highlighted here<sup>317</sup>.

#### **a) Effect 1: increased international mobility of professional players**

Countries have been variously affected by this phenomenon changing either into selling countries, such as France in football (see following table, Page 119), or into purchasing countries, of which Great Britain is an example. The increase in player movement suffered a 6-12 month delay, relating to the inertia due, on the one hand, to the length of contracts at the time of the European Court of Justice ruling and, on the other, opportunities to move reduced by the limited length of the transfer windows.

The Bosman case concerned football, but any doubt about the fact that it could apply to other sports disciplines was quickly dispersed. Initially at least, the impact was dependent on the history and culture of each discipline. So it was that in France, ice-hockey and basketball proved to be more likely to export players. Intra-European migration in professional football is not new, but with the Bosman case, it saw a progression unheard of in the modern era of professionalism.

These movements are governed by two types of factor:

- Sport: quality players move to clubs that allow them to meet their sporting ambitions.
- Economic: the most lucrative championships attract the best players.

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<sup>317</sup> The Bosman Case itself has had, however, some extremely significant political and social effects, particularly concerning the protection of players' rights and the development of a dialogue between the different actors involved in sport.

**b) Effect 2: wage inflation in the five major European leagues**

The inflationary effect differs, depending on the league and their policy for importing players. Italy and England, the strongest economically and, corresponding, in sports, have the most difficulty in controlling this inflation. The liberalisation of the player market is not the only reason for this inflation. It is also the explosion of TV rights over this period and the significant changes in the way of funding sport that resulted from it<sup>318</sup>. The star players were the first to benefit from this “improvement”, which caused increased segmentation of labour market in professional sport. In addition, these same players benefit from additional remuneration, relating to promoting their image.

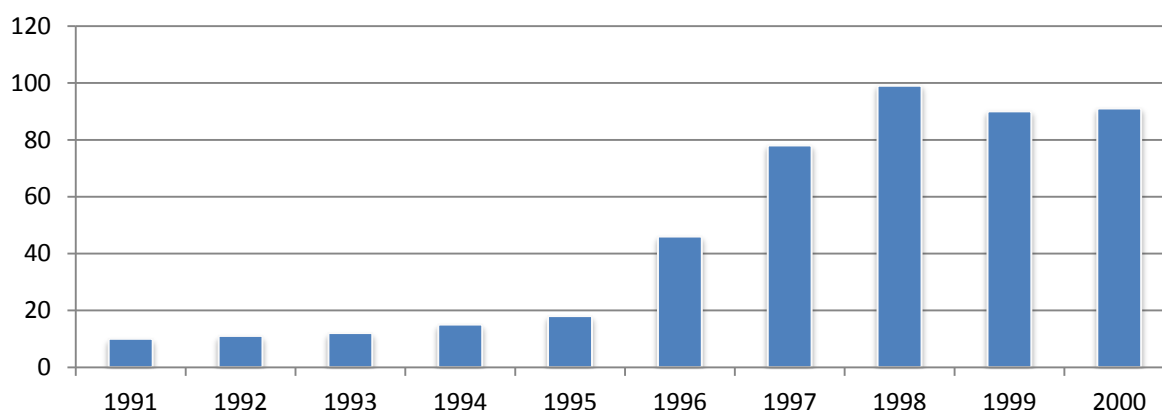
**c) Effect 3 : an exponential growth in transfers up till 2000**

The evolution of transfer fees reflects the speculative trading of players in the five years following the Bosman ruling. It also shows a shift in the objectives of clubs, some of which became traders in players, rather than producers of a sports spectacle. The return to some form of sanity, after the record-beating season of 2000-01, is less a case of awareness than a lack of “combatants”. The increasing difficulties of Italian clubs and, to a lesser degree, Spanish, have reduced the competition to secure the best players and the boost of modifying FIFA rules, in favour of more regulation, did the rest. In the French case, this return to sanity caused several difficulties, which nevertheless were managed with the accompaniment of the DNCG<sup>319</sup>.

**d) Effect 4 : a strengthening of the power of the major markets**

The hierarchy of current average salaries was well-established for the 2000-1 season. It ranks in descending order: Italy, England, Spain, Germany and France, with a significant difference between France and Italy (2.65 times more). This difference is due, in particular, to the greater ability of Italy, Spain and England to generate significant revenue, especially in ticketing and merchandising. It could also be explained by a very lax policy vis-à-vis clubs that do not honour their liabilities (Italy and Spain) or by the charges on wages that are decidedly higher in France. In any event, analysing the economic means available to the clubs is crucial; it turns out that liberalising the market, as symbolised by the Bosman case, has clearly strengthened the link between budget and sports results over the last few years.

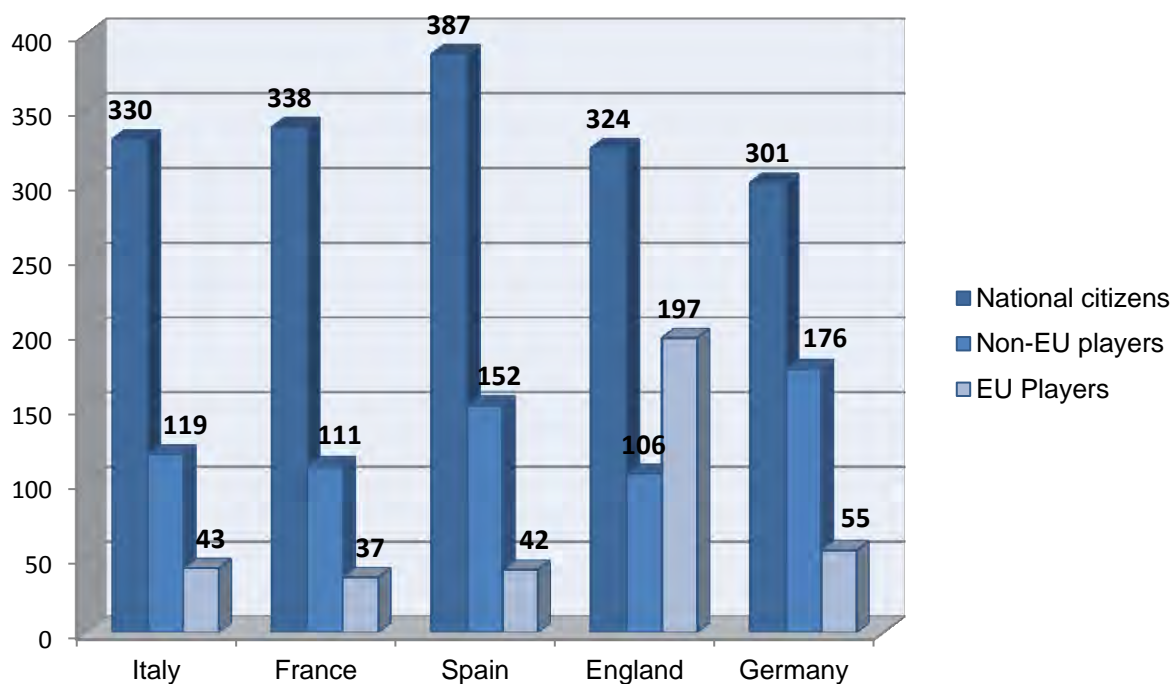
**Growth of number of French player in the 4 major European leagues (England, Germany, Spain and Italy) between 1991 and 2000**



<sup>318</sup> BOLOTNY F., “Professional sport after Bosman Case – an international analysis”, 2005.

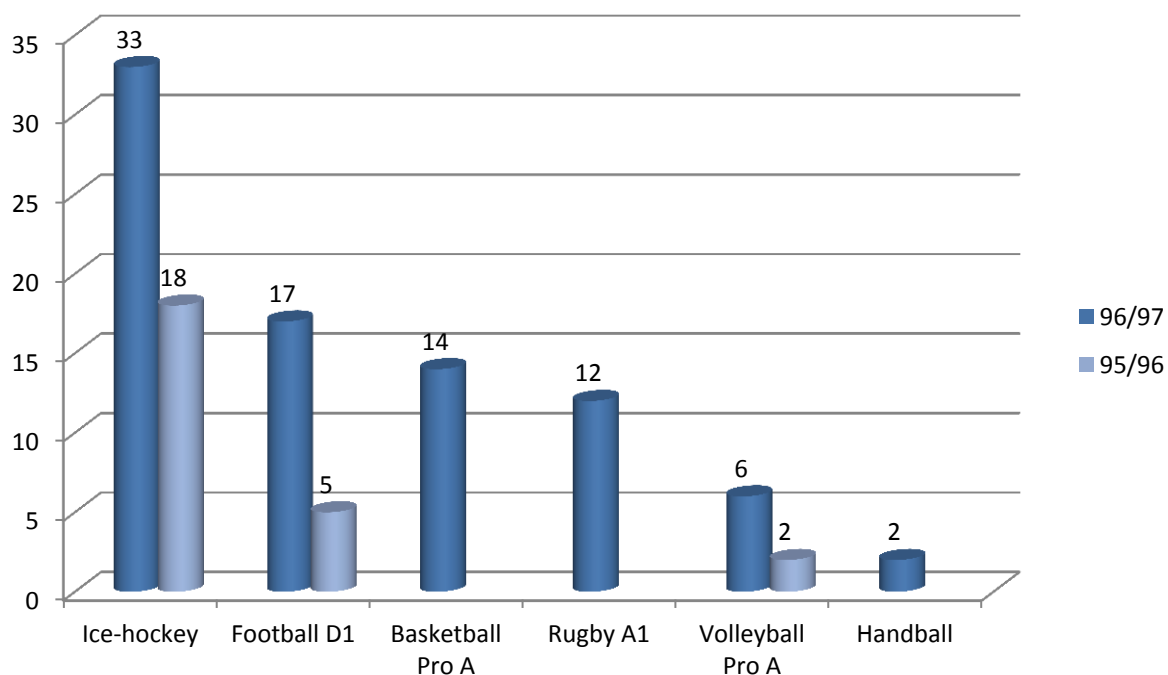
<sup>319</sup> National Directorate of Management Control

Professional football players in Europe, results by country, 2001.



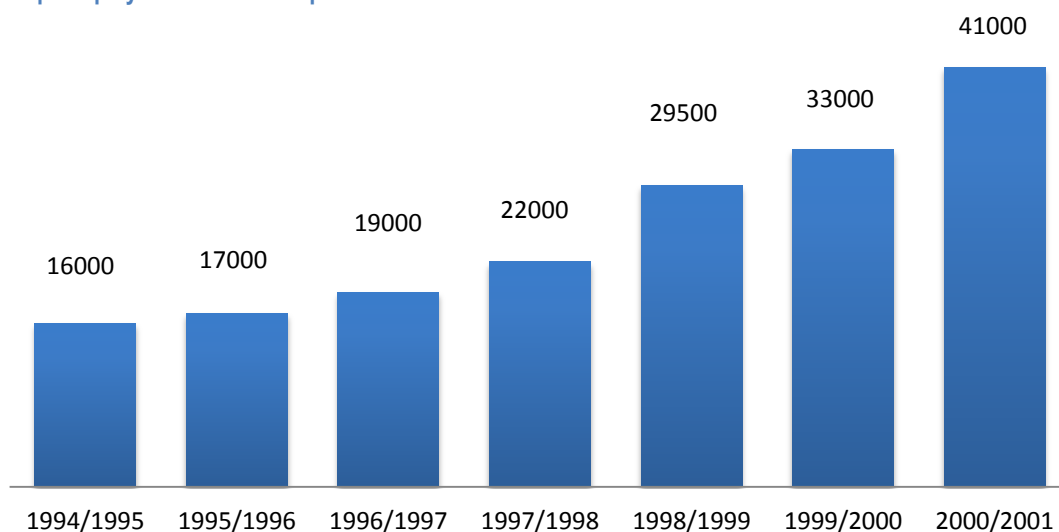
[Source: French National Professional Football Players]

European players of different sports in France after Bosman Case



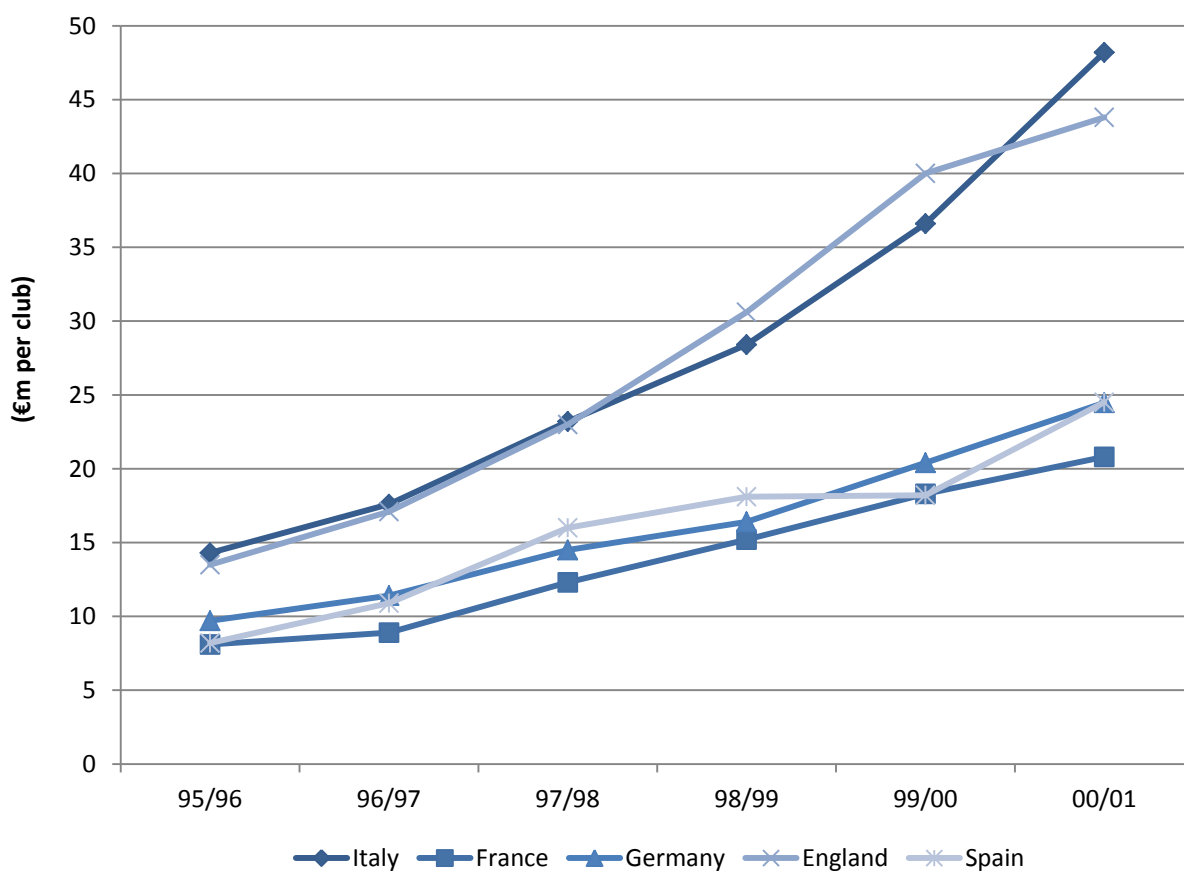
[Source: Professional sport after Bosman Case – an international analysis – 2005]

### European players of different sports in France after Bosman Case



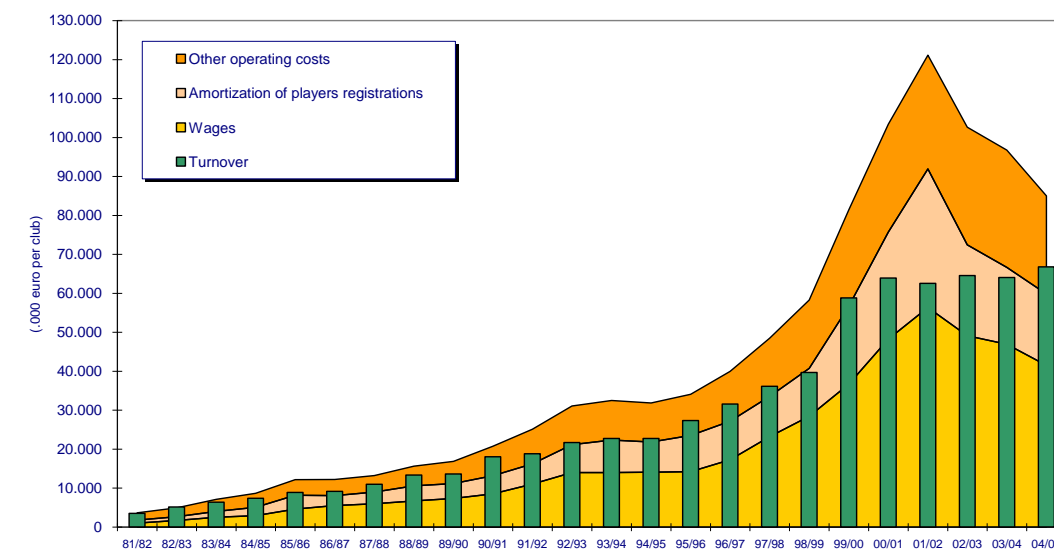
[Source: Professional sport after Bosman Case – an international analysis – 2005]

### Growth of football players' wages in Europe between 1995/96 and 2000/01



[Source: Professional sport after Bosman Case – an international analysis – 2005]

Chart 3 - The growth of players costs (wages and amortization) and other operating costs in Serie A between 1981/82 and 2004/05



(Source: our own analysis of FIGC - Co.Vi.So.C. figures and clubs accounts)

[Source: Italian report for “The Impact of the UEFA Champions League on national championships”, CDES study, unpublished, 2006]

### 3.1.3.2.2 Explanatory factors: market power of the actors

To truly understand the impact of the developments presented above on the functioning of the labour market during the 1990s, it is necessary to take into account the profound market segmentation as we presented it in the previous point. The outcome has been an increase in the international mobility of players, resulting in a significant impact on the competitive balance of the various European leagues.

In order to propose efficient regulatory instruments for the mobility of players in the market, it is necessary to take into account its deregulation and, particularly, to adapt to the particular structure of each segment, as presented above. The market powers of the actors on each of these segments are, in fact, radically different.

**In the higher primary sector**, there is, first of all, a very strong concentration of spending on wages and transfers fees for a few stars. It should be remembered that 10% of the best-paid players are worth about 50% of the total wage bill. Limiting superstars' wages, the cost of which deviates too much from the real value, should be considered.

The second feature of the upper primary segment is the concentration of superstars in the hands of a few agents (individual or agencies). It is a question of knowing what the actual market power of these agents is and what can be done to regulate their actions. For example, let us note that Gestifute, the Portuguese agency led by Jorge Mendes, has in its portfolio José Mourinho, Cristiano Ronaldo, Nani, Anderson, Pepe, Ricardo Carvalho, Raul Meireles and Miguel Veloso. This agency has generated €369.85m in transfer rights (Poli, 2012)<sup>320</sup>.

The role of the major sporting agents should be better known, in order to assess whether they are responsible for an increase in the dualisation of the labour market and, therefore, for a deterioration in competitive balance. Small championships can no longer hang on to their stars and the major

<sup>320</sup> POLI R., ROSSI G., BESSON P. “Football agents in the five biggest European markets”, CIES, February 2012.

championships are competing to attract them, thus contributing to the inflation of speculative bubbles regarding the salaries and transfer fees of these stars.

**In the lower primary market**, as in the higher primary market, the role of agents is decisive in transactions and we once more find the same recommendations:

- An analysis of the concentration of wage bills.
- An analysis of the concentration of transactions at the agent level.

**In the second segment**, unlike the previous segments, the action of agents is certainly weaker insofar as this type of player is not managed by the major sporting agents. Therefore, it is not at this level that the risks of imbalance are played out. On the contrary, there should rather be regulations in favour of defending the rights of players who are not in a favourable situation to negotiate.

To sum up, there is a strong segmentation of the labour market of European football and the main risks of undesirable consequences concern the primary segment (both higher and lower). It is at this level that an international financial control should be established (see its tasks in our recommendations).

#### **3.1.4 Development of the transfer market since 1995**

Beyond the impact on the labour market of football players as we just described it, the Bosman ruling has had a significant impact on the transfer market. While movements of players between clubs from different countries were still relatively rare before the liberalisation of the labour market in Europe, they have boomed following the decision of the CJEU.

Before 1995, the transfer market operated with regulations which, *de facto*, limited the free movement of players. Certain provisions therefore, especially those relating to nationality quotas, did not allow for the significant development of player transfers between different countries. Club squads were thus relatively stable, with competition in recruitment being mainly limited between clubs in the same country and for national players, although there was also a relatively small international market for star players<sup>321</sup>

Since 1995, clubs have been competing in a transfer race favoured by the income growth of major European leagues and the liberalisation of the labour market, with the dual objective of:

- Constituting a competitive team in sports terms: a concentration of talents in the top European championships can be seen, at least in clubs who have the greatest resources.
- Achieving significant capital gains on the resale of players.

This period was marked, year after year, by the setting of numerous records for transfer fees.

In this context of high inflation and significant speculation, the early 2000s mark a reversal with a return to greater moderation in transfer expenditure. Even though transfer fees remained high, records were rare. Why this reversal? Two phenomena could explain this situation: the economic and financial crisis of the early 2000s which hit European top leagues, and more especially, Italian clubs and the conclusion of the transfer agreement signed in 2001 between the European Commission and the different stakeholders (FIFA, UEFA, FIFpro, EPFL, etc.).

##### **3.1.4.1 High inflation and a return to stability**

Over the last 16 seasons, the transfer market has experienced two successive periods:

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<sup>321</sup> In most countries two foreign players per club.

- From 1995 to 2002, the market was in a period of strong transfer growth, both in volume and value. This period was marked by an explosion of costs related to players (transfer fees and salaries). During this period, the desire of most European clubs was clearly to effect profitable financial operations in the transfer market, by taking advantage of the inflation that was common at the time.
- Then between 2002 and 2011, the market returned to some form of moderation. Although the total volume of transfer fees had not necessarily declined, the bursting of the speculative bubble ended the inflation surrounding transfer operations. Admittedly, the transfer market was marked by a new peak at the end of the 2000s (2007-2009) caused, in particular, by the strategy of some of the stakeholders (Chelsea and Manchester City), who were anxious to build a successful team quickly through heavy investment in talent. But the period cannot be compared to what was in force between 1995 and 2002.

#### **3.1.4.1.1 1995 - 2002: a logic of inflation and speculation**

As we saw in the section on the economic weight of professional sport and particularly of football, club incomes significantly increased between 1980 and 2010. This income growth of football clubs, coupled with the liberalisation of the labour market due to the Bosman ruling, laid the foundation for the establishment of an inflationary and speculative transfer market. From 1995, a significant rise in the transfer of football players both in domestic and international markets (Drut 2011) was observed, as well as an exponential growth of the transfer fees paid.

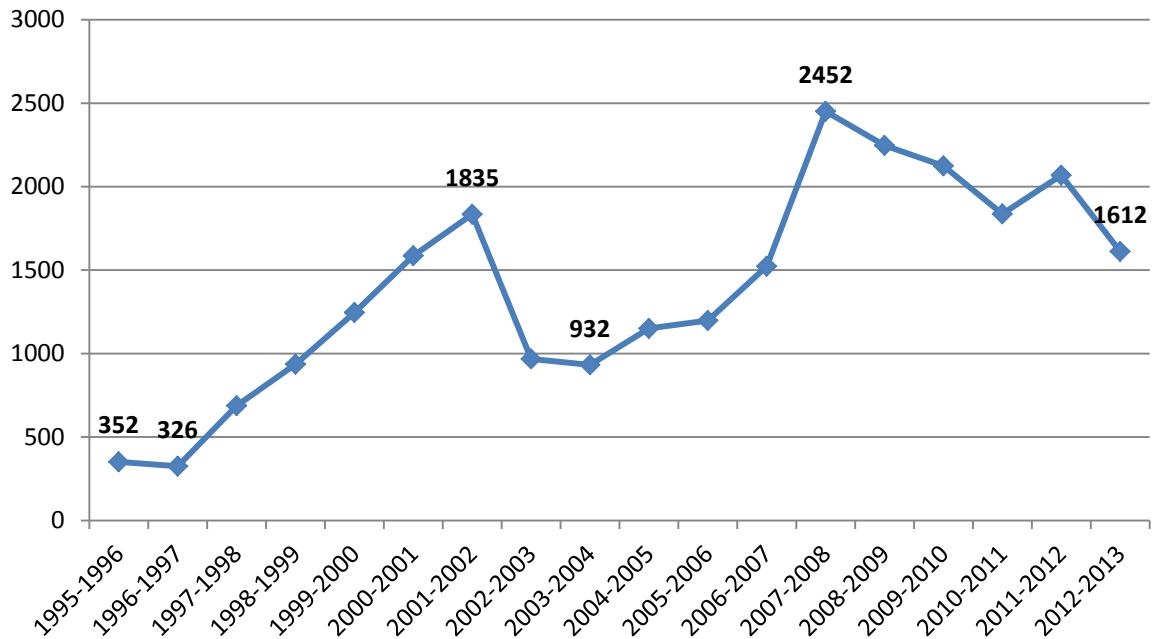
During this time, the major European clubs embarked on a real arms race, investing heavily in the acquisition of sports talent and competing fiercely in the transfer market. Inflation, which was common at the time, demanded they increase the number of player movements in order to be profitable. There were many player movements and fees were increasingly large. At that time, Italian clubs were among the most active, and did not hesitate to invest record amounts to acquire players. Spanish and English clubs were also particularly active in the labour market and also spent very significant. . This nearly generalised movement resulted in two major elements:

##### **a) A significant growth in transfer expenditure made at EU level.**

During the period 1995-2001, transfer fees paid by member clubs of the five major European leagues increased from €352m in 1995/1996 (Spain is not counted in this total because the data is not available on the website [www.transfertmarkt.de](http://www.transfertmarkt.de) ) to €1835m in 2001/2002, which was the first peak regarding transfer expenditure. This expenditure has increased 5-fold during that period.



Evolution of transfer expenditures of the big-5 between 1996 and 202 (€m)



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

This growth was largely borne by Italian and English clubs and, to a lesser extent, by Spanish clubs which spent the most.

Premier League clubs spent €2 326m on transfers during this period, while Italian Serie A clubs spent €2 284m. Behind those, Spanish Liga clubs also contributed to this spending spree by spending €1134m. Bundesliga (€690m) and Ligue 1 clubs (€536m) were, for their part, still behind, which is not surprising for a country like France which is traditionally more an exporter of talent and which did not have the same resources as its European counterparts, while being at the same time more controlled than others by the National Directorate of Management Control (DNCG).

### b) Setting of successive records

Apart from greater sums invested by big-5 clubs in the market, the 1995-2002 period was also marked by very high inflation in transfer fees. This resulted in a setting of records almost every season during this period. In seven seasons, the record transfer fee for the recruitment of a player increased by 5.7 from €13m for the transfer of the English player Stan Collymore from Nottingham Forrest to Liverpool in the summer of 1995 to €73.5m for the transfer of French midfield maestro Zinedine Zidane from Juventus FC to Real Madrid in 2001/2.

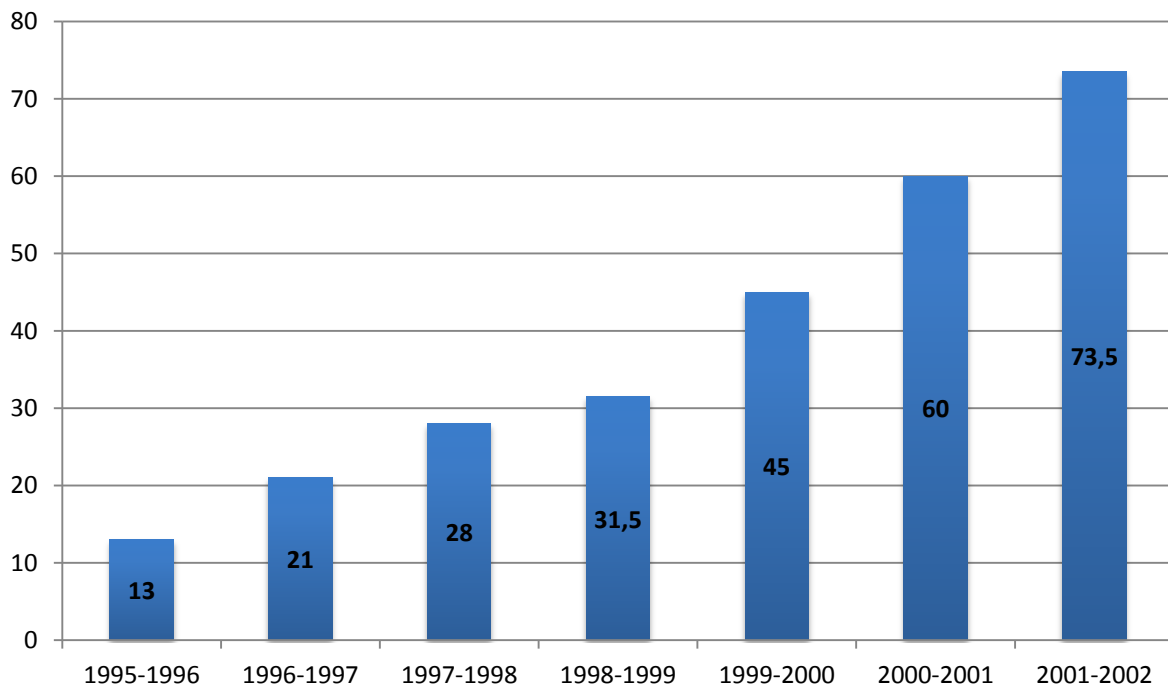
Meanwhile, records were broken regularly, sometimes several times during the same registration period, largely at the instigation of some Italian clubs which invested heavily in the transfer market (Lazio, Juventus and AC Milan) and, to a lesser extent, by English clubs (Manchester United and Leeds essentially at this time) or Spanish clubs (with the implementation of the "Galácticos" policy at Real Madrid in the late 90s-early 2000s). During the 2001/2002 season, of the 20 most expensive transfers, 13 were made by Italian clubs (for a total of €425.65m), 3 were made by Spanish clubs (€130.4m) and English clubs (€89.1m) and one by the German club, Borussia Dortmund (€25m).

During the 1996-2002 period, transfer records progressed every season:

- In 1997-98, Ronaldo (Brazil) transferred from FC Barcelona to Inter Milan for €28m.
- In 1998-99, Denilson (Brazil) left the Brazilian club Sao Paulo for Real Betis for €31.5m.

- In 1999-2000, the Italian striker Christian Vieri left Lazio for Inter Milan for €45m.
- In 2000-01, Luis Figo transferred from FC Barcelona to Real Madrid for €60m.

Progression of transfer record amounts 1995 - 2001 (€m)



[Source: [www.transfermarkt.de](http://www.transfermarkt.de)]

How can we explain such a progression?

- One of the key elements is the dual phenomenon of the increased resources of clubs and the liberalisation of the labour market of European football players resulting from the Bosman ruling.
- But this strong growth is also explained by club strategy (see Chapter 3) which associated transfers as a means to make significant financial gains in the short or very short term during this period, the majority of clubs hoping to benefit from the inflation in transfer fees. A special feature of the post-Bosman period lies in the fact that this strategy was valid for major transfers.

In the end, the 1995-2002 period was characterized by:

- A growing number of player movements High inflation in transfer fees (increase in total amount paid by the clubs of the big-5, setting numerous records)
- Strong speculation around transfer operations in order to achieve capital gains.

#### **3.1.4.1.2 2002-11: transition from a speculative logic to a sporting logic**

After these six years of constant inflation, the European transfer market came to its senses. It also reflected the transition from a speculative logic to a logic that could be described as a 'sporting' one. Over the recent period, clubs have sought less to make financial gains on transfer operations (except for young players) than to form competitive sports teams, which has led some of them to make major purchases. This was especially true for those who have seen new investors take over their leadership (Chelsea, Manchester City and Paris Saint-Germain).

The 2002-11 period, however, should be considered in three ways:

- From the 2002-3 to the 2005-6 season, the amounts of transfer fees fell substantially and then stagnated.

- A new peak was observed between 2006 and 2009, before experiencing again a fall in the sums invested in the market by clubs of the big-5.
- An new decrease seems to have taken place since 2009

#### a) 2002-06: fall and stagnation

After the euphoric period of the late 1990s, the growth of the European transfer market abruptly stopped in the early 2000s. Between the 2001-2 and 2002-3 seasons, the total amount spent by clubs of the big-5 in acquiring players dropped by half; from €1835m to €968m.

Progression of transfer fees paid by big-5 clubs 2001-2 and 2002-3 (€m)

	Germany	England	Spain	France	Italy	Total (EUR million)
<b>2001-2002</b>	184	574	268	142	667	1835
<b>2002-2003</b>	123	340	147	65	294	968
<b>Progression (%)</b>	-33%	-41%	-45%	-54%	-56%	-47%

[Source: [www.transfertmarkt.de](http://www.transfertmarkt.de)]

All Big-5 championships have been affected to varying degrees. The championship which has experienced the smallest decrease is the Bundesliga (-33%). Conversely, Italian clubs are those which have reduced their investments the most, with expenditure reduced by more than half between the two seasons (-56%). For the others, the fall was also significant (between -41% and -54%), generating a clear slowdown of transfer market activity, which is visible on the previous graph.

#### b) 2006-8: return to growth

Following this steep decrease, the transfer market experienced a period of stagnation (from 2002-3 to 2006-7) before transfer fees rose again, under the influence of some stakeholders investing heavily in order to build up a competitive team rapidly (Chelsea with the arrival of its Russian owner, Roman Abramovich, or Manchester City following its takeover by Sheikh Mansour bin Zayed Al Nahyan), until reaching a new peak in 2007-8.

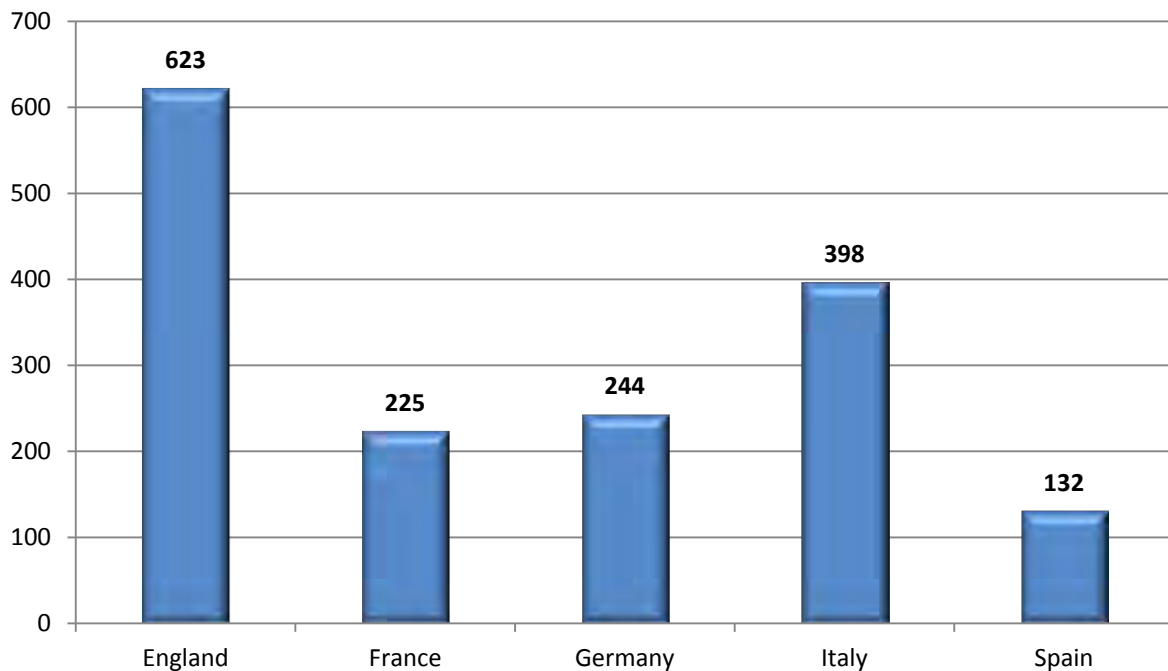
However, unlike what happened in the previous period that was marked by a degree of irrationality, transfer expenditure made during this period seems to form part of club strategy, the financial speculation surrounding each transfer has disappeared over the last 10 years. It is also interesting to note that although in terms of volume, the market has finally experienced a significant increase (by 1.9), this increase is much less visible regarding the average transfer fee paid by members of the Big-5, which rose from €710000 to €870000 between 2002 and 2011, i.e. a 22% increase (against a 163% increase between 1995 and 2001).

#### c) 2009-12: towards a new fall?

The end of the recent period seems to mark again a standstill for the European transfer market. Thus, since the season 2007-8, the record season in terms of investment made by Big-5 clubs in the transfer market, the transfer market seems to be experiencing a decline.

At the end of the transfer window that has just closed (summer 2012), investment by the Big-5 clubs amounted to €1612m, which brought the market back to its level during the 2006-7 season. This trend to be rigorous was observed across Europe, except in England whose clubs have continued to invest heavily, and in Germany thanks to its comfortable financial situation.

Big-5 transfer fees during summer 2012 (€m)



[Source: press]

If we conduct a rapid analysis of the five largest markets, we can draw some lessons from this transfer market.

**In the English market**, clubs have continued to invest heavily (€623m in total) even though expenditure of the 20 Premier League clubs has stagnated compared to the previous season, despite the decline in expenditure made in the market by Manchester City (€64.2m against €94.8m for the previous season). The market was especially troubled by the activity of some big clubs, in particular Chelsea which wanted to renew a large part of its squad (€100.3m spent). Tottenham (€65.4m) and Manchester United (€64.7m) complete the podium of clubs that spent the most.

**In the Italian market**, clubs have spent a total of €398m. Again, activity was largely driven by a small number of clubs, among them, Juventus (€56m) and Inter Milan (€46.5m). In contrast, a club like AC Milan has significantly reduced its investments in the transfer market by spending only €17.8m in the summer of 2012, and especially by transferring its best players to Paris Saint-Germain for significant transfer fees (€42m for the transfer of Thiago Silva and €21m for the transfer of Zlatan Ibrahimovic). This is a widespread tendency that has been observed as the balance of transfers in Italy is in a position of surplus for the first time.

**The German market** was the only market up during the summer (€244m). The financial situation of German clubs being particularly healthy (thanks to a different business model from other leagues), they were able to invest in the transfer market. This was especially the case of Bayern Munich (€70.3m, including €40m received by the Spanish club Athletic Bilbao for the transfer of Javi Martinez, which is the highest fee ever paid by the Bavarian club). The second club which was the most active in the transfer market this summer was Borussia Mönchengladbach, which invested €30.4 million.

**In France**, the market must be analyzed with and without Paris Saint-Germain. In total, French clubs have invested €225m, of which €145m was invested just by the Parisian club alone (64% of total expenditure), owned by the Qatari corporation QSI. The club has invested heavily to recruit players from the higher primary market (that of the star players). The redistributive effect for French football has been

zero, since all these amounts were paid to foreign clubs (Italian, for the main part). Other French clubs could not invest, except Lille OSC which has injected a part of the €40m it received for the transfer of Belgian player Eden Hazard to Chelsea. Other traditional participants of the French transfer market (Olympique de Marseille and Olympique Lyonnais) for their part sought essentially to reduce the costs related to players (salaries and transfers).

Finally, **the Spanish market** was also hardly busy with expenditure amounting to only €132m. Real Madrid (€33m), FC Barcelona (€30m) and Valencia (€23.2m) were the most active clubs, being however far from their record expenditure on the transfer market.

Overall, two trends have emerged since the 2008-09 season:

- Only clubs that are owned by investors with significant financial resources continue to invest (Chelsea with Roman Abramovich, Manchester City with Sheikh Mansour bin Zayed Al Nahyan, and Paris Saint-Germain with QSI).
- A reduction in the activity of most Big-5 clubs, which were concerned about reducing costs related to players. Among these clubs, only those benefiting from the redistributive effect of investments of the clubs listed are still active on the market.

#### **3.1.4.2 Explanatory factors**

After highlighting the development of the transfer market over the last 16 seasons, it is advisable to look at the factors that may explain both the reversal observed in 2001 and the recovery experienced by the market during the 2000s.

Two events seem to explain this movement:

- The external economic factors.
- The 2001 agreement on the transfer of players between various stakeholders.

##### **3.1.4.2.1 *External economic factors***

###### **a) The reversal of 2002**

The collapse of the European transfer market observed in 2001-2 seems to be explained by the effect of the financial crisis that hit European football at that time, making the current speculative bubble burst. While clubs invested heavily in the transfer market under the dual effect of the liberalization of the labour market and the advent of pay television across Europe, the 90s also marked a “turning point *in* the financial history of clubs” (Gouguet-Primault, 2004).

This financial crisis has primarily affected Italy, Spain and England and has led to numerous bankruptcies of clubs in these countries. Other countries were also affected.

In Italy, club debt was estimated at €1.9bn in the early 2000s for a turnover of €1.15bn. A symbol of the huge debt of Italian clubs was the bankruptcy of Fiorentina in 2001. Other Italian clubs were also highly indebted, but managed to maintain their activity, particularly thanks to the financial strength of their owners. At the end of the 2002-3 season, Lazio (€313m), AS Roma (€224m), AC Milan (€247m) and Inter Milan (€247m) all had serious financial problems. These problems may, in fact, explain the very clear fall of the transfer market in Italy, as we have highlighted. It even obliged the government of the time to intervene twice:

- In August 2003, first with the decree "Salva-Calcio" which allows clubs to extend the depreciation period of transfer fees (up to 10 years). This decree, however, was reviewed by the European Commission, who thought that the mechanism "breaches EU accounting laws."
- In April 2004, to allow the spreading of tax and social debts of clubs. This decree was never implemented.

In Spain, clubs had also a poor financial situation. The total debt of clubs at the time amounted to €1.6bn, despite the fact that they had been cancelled by the government in the early 90s. The most affected clubs were (FC Barcelona (€250m), Valencia (€125m) and La Coruña. Real Madrid was also highly indebted, but its debt... was settled after the completion of a property transaction.

In England, the situation was not much better, with a nearly generalised debt of clubs and the bankruptcy of some of them, including Leeds United, which decided to speculate on the transfer market and made huge investments in order to build a very competitive team (reached the semi-finals of the Champions League in 2000).

Even in Germany, which had not yet hosted the 2006 World Cup, the financial situation of clubs was not so good, with accumulated debts amounting to €700m.

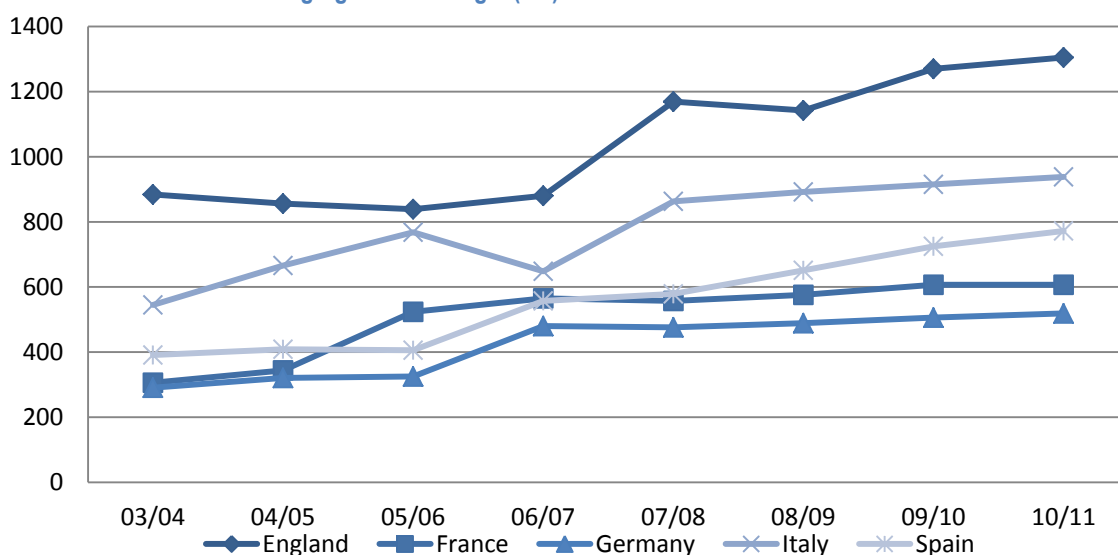
Other smaller leagues were also affected by the financial crisis like in Scotland: accumulated debts of clubs of the Scottish Premier League amounted to €285m.

In this general context of economic crisis in football, the speculative bubble of transfers finally burst provoking the collapse of the market at European level.

## b) The recovery of the market with the peak of 2008

The second period of growth of the European transfer market also has internal explanatory factors relating to football. We believe it originates mainly in the income growth of the five major leagues and especially in the income growth of broadcasting rights.

Evolution of the broadcasting rights of the Big-5 (€m)



[Source: Deloitte]

The graph above shows the evolution of the TV rights received by the clubs of the Big-5 during the period 2003-2011. We note that the peak of transfer expenditures observed in 2007-8 corresponds to the entry into force, in the five major European leagues, of new agreements around TV rights, which led to a significant increase in revenues.

In England, the 2007-08 season is an important milestone in the history of Premier League clubs. It is indeed the season that clubs incomes received under TV rights have exploded to over one billion euro (€1,169m). The multi-year contract concluded at the time secured significant resources for English clubs; they were then able to invest massively in the transfer market (but also in salaries). In addition, it should be noted here that this period also corresponds to the takeover of Manchester City by Sheikh Mansour and the launch of his policy of massive investment in the transfer market. We think that these two phenomena explain the increase of 67% in transfer expenditures of English clubs during the 2007-08 season.

In France, the renegotiation of TV rights led to the signing of a new contract which constituted a record, thanks to the competition between the two pay-television operators, Canal Plus and TPS. This contract, which entered into force in 2005-6, had generated an increase in revenues of French clubs received under TV rights of 52%.

In Germany, broadcasting fees received by clubs had experienced a clear increase between the season 2005-6 and the season 2006-7, the Bundesliga clubs benefiting fully from the dynamism of their football and the effect of the World Cup 2006 (very modern stadiums, etc.). Between these two seasons, incomes earned from TV rights thus increased by 48%.

In Italy, the transition occurred during the season 2007-8 with an increase of broadcasting fees of 33%. Finally, in Spain, between the seasons 2005-6 and 2006-7, broadcasting fees also increased significantly (from €406 to €557m, +37%) and especially for Real Madrid and FC Barcelona, where the rights are negotiated individually.

### **c) The decline observed since 2008**

As for the collapse of the transfer market observed in 2002, the decline observed recently seems to be also a result of the global economic crisis, which has strongly affected the western economies. Indeed, in a bleak economic environment, football is no exception to the crisis. Many governments have taken steps to restore the normal situation of football. Two examples can be cited here:

In France, the government terminated the system of "Collective Image Rights" considering that this tax loophole should not exist while the country was heavily indebted. In concrete terms, this provision (which was voted in 2004) has contributed to increase the cost of labour by restoring employee contributions payable by clubs on all the amounts they receive.

In Spain, the Professional League has signed an agreement with the Ministry of Sports and the Superior Council of Sports for the control and reduction of their tax and social debts. In 2012 these debts amounted to €752m (including €673m for Liga clubs). This was a revolution in a country where a significant tolerance (largely questionable) surrounded the non-payment (or even the cancellation like for Real Madrid for example) of tax debts of football clubs<sup>322</sup>.

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<sup>322</sup> Notice also the end in January 2010 of "the Beckham law" (Royal Decree 687/2005): a Spanish Tax decree passed in June 2005 to diminish the tax level of some foreign workers.

#### **3.1.4.2.2     *Internal factors: the 2001 agreement and financial fair play***

##### **a) What part the agreement of 5<sup>th</sup> March 2001 on transfers had in the reversal of the early 2000s?**

The impact of the 2001 agreement between the different stakeholders on the slowdown in the transfer market is relatively difficult to establish and isolate from the other factors that we have highlighted. However, it seems to us that this agreement has also had its share of responsibility for the collapse of the European transfer market during the 2001-02 season. Several provisions of this agreement appear to be having an effect such as:

- The provision concerning contractual stability.
- The introduction of two transfer windows during a sports season and the ban on players playing for more than two clubs during the same reference period.

If these two provisions have not limited the number of transfers, they have nevertheless a share of responsibility for reducing the frequency of transfers and for the bursting of the speculative bubble and inflation surrounding transfers fees of players. By reaffirming the importance of contractual stability and limiting periods of transfers, movements of players during a single sports season were presumably affected.

It is, however, difficult at this stage to go further in the analysis of the real impact of the amendment of FIFA regulations that followed the agreement of 5<sup>th</sup> March 2001.

##### **b) What part the UEFA Financial Fair Play has had in the reversal of the late 2000s?**

In a context of general deficit of European football (€1.6bn for 2011), UEFA has managed to impose the establishment of a financial fair play at the European level. This system, which we described previously (see section 3.1.1), seems to be one of the main reasons for the clear slowdown of the transfer market observed during recent seasons and especially during the summer of 2012. FFP measures will enter into force during the 2013-4 season.

In the face of sanctions that could be taken by UEFA against clubs not respecting the measures imposed, most European clubs, including the biggest spenders, have begun to anticipate by reducing costs related to players. This explains the reduced activity observed in the transfer market in recent seasons, as the majority of clubs are seeking to reduce their payrolls and hesitate to position themselves in the recruitment of players under transfers subject to payment.

Two examples illustrate this strategy:

- In France, except Paris SG, only Lille recruited players because the club benefited from the payment of a fee for the sale of Eden Hazard to Chelsea.
- In Spain, apart from Real Madrid and FC Barcelona, only Valencia really invested in the transfer market this summer, due to the departure of its defender Jordi Alba for the Catalan club for a transfer fee of €14m.

The clubs owned by wealthy owners (Paris Saint-Germain, Chelsea) continue to invest but even these clubs are beginning to anticipate the FFP, as evidenced by the reduced activity of Manchester City this season. It is very likely that this measure, if strong sanctions are actually applied (for example, the exclusion from European competitions), will have a major impact in the coming years on the transfer market.



In conclusion, although it may appear certain that the agreement of 5<sup>th</sup> March 2001, its announcement and the subsequent implementation of the rules of FFP have necessarily played their part in the bursting of the speculative bubble and the widespread inflation around transfer fees, it is on the other hand difficult to establish conclusively how far these two events were responsible for them. All the more so since, as we have already mentioned, they were decided upon and implemented in an overall context of a global economic crisis and of the large debts of many European clubs.

### **3.2 The economic foundations of the transfer system**

#### **3.2.1 The legitimacy of transfers**

When we are dealing with the issue of transfers, two fundamental questions arise:

- What is the legitimacy of the transfer system?
- What compromise can be found between the interests of the different stakeholders in the system?

The issue of the economic legitimacy of transfers depends on the idea one has of sport and, particularly, of the problem of the sporting exception. Should the football player be considered as an ordinary employee with total freedom to change employer, or not?

- For the players' unions, the player must regain his freedom of movement. It is enough for the new club to pay the former club a transfer fee equivalent to the amount of the outstanding salary.
- For the owners and organisers, the player cannot unilaterally break his contract without harming competitive balance. This was the point of view accepted by the European Commission in suggesting sanctions in case of unilateral breach and providing a framework for the transfer fee in case of a negotiated breach.

Thus, the strongly-held ideas of the different stakeholders can clearly be seen, but transfers have not in any way been called into question. On the other hand, there is an attempt at compromise, with the need to reconcile an industrial economic logic and a sports logic, without which there is a risk of questioning the sporting spectacle and, therefore, the profit. This means that it would be difficult to abolish the transfer system which, contrary to what some people think, has a real value and is based on unquestionable economic logic:

- Transfer fees are a way of internal funding that has the merit of allowing the sports sector to retain some autonomy. This system is perhaps not perfect, but nobody knows what to replace it with, at the risk of generating new perverse effects (black market and wage inflation, etc.). We will later create scenarios about the disappearance of the transfer system in order to make a number of recommendations for improvement.
- Transfer fees also make it possible to distribute revenue between clubs, which could improve the distribution of sports talent between clubs, as well as improve the flexibility of all faced with the financial difficulties of certain clubs (see examples below).

The second issue relates to the need to find a compromise between the different stakeholders and is no longer disputed. It would be interesting to resume the negotiations that were held between 1996 and 2001 that resulted in an agreement about transfers. The problem was how to guarantee, at the same time, the players' freedom of movement, the stability of teams and the integrity of competitions. The position of players, for example, is essentially structured around opposition to compensation for training, which is deemed too high, as well as to the system of sporting sanctions, in case of unilateral breach of contract. Conversely, the union has come out in favour of the total freedom of players and a transfer system based on paying outstanding wages. It can be seen that it is not always easy to reconcile the interests of all the stakeholders. It is up to football players to continue the dialogue, in order to reach negotiated solutions that are in everyone's interest. It is a question of promoting a collective bargaining process to resolve the problem of disputes relating to sharing revenue from sport. Transfers are subject to divergent views between clubs and player unions; between players' agents and clubs; between professional leagues and clubs; and between players and agents. But the important thing to remember,

behind this negotiation, is the attempt to reconcile fair economic competition with balanced sporting competition.

### **3.2.2 Return on the value**

#### **3.2.2.1 Determinants of the level of transfer fees**

The transfer system can only be justified if we recognise a certain specificity of sport. We saw above that some characteristics of professional team sports impose the principle of some regulation. The necessity to preserve the “uncertainty of outcome” (or “competitive balance”) and the regularity of the competition is the main particularity of professional sport.

There are two major ways to achieve these objectives: a revenue sharing system or (and) the regulation of talent to avoid the domination of big markets. Given the very fragmented organisation of sport in Europe, it is difficult to impose strong revenue sharing, as exists in the NFL. Consequently, market regulation appears necessary, given the importance of the labour market in this industry. It implies that the freedom of the different actors is limited.

As we saw above, a certain stability of the contractual relationships between clubs and players is required to ensure the regularity of the sports competition. And the requirement is recognised by the European Union (validation of transfer windows by CJCE – Lethonen, contractual stability as a stated objective during the negotiations between sports institutions and Commission in 2000-1, etc.).

Since the need for contractual stability is recognised, it requires, de facto, maintaining a system of limiting the mobility of players during the season (transfer system). Or, at least, a contract system derogates from common law regarding the transfers themselves (a short-term contract, rather than an unlimited contract) or regarding the possibility of breach of contract (at least, limited transfer windows).

The legitimacy of some form of contractual stability is widely recognised. The transfer system can be used as a means to achieve this objective. Is it an appropriate and efficient system to achieve that? Can we consider the restriction of freedom it needs to be proportionate to the aim pursued? The transfer fee is the financial amount that accompanies the transfer of a player from one club to another. The basic problem is to know how and what determines such amounts. We must, therefore, react against the commonly-held idea that the amount of the transfer fee is based on arbitrary foundations. On the contrary, it seems that we can draw the parallel between the economics of culture and the economics of sport.

Since the pioneering work by Baumol<sup>323</sup>, economic theory has set out to answer the question: how to determine the value, the quoted value, of such and such a painter or such and such a picture? In order to do this, two approaches have been developed: the cost-based approach (1) or the talent-based approach (2).

##### **3.2.2.1.1 *The cost-based approach***

It is possible to assimilate the transfer fee into the use value of the player. This value can be calculated at the club level from the perspective of labour value, or at the player level in a neo-classical perspective of utility value:

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<sup>323</sup> W. BAUMOL – W.G. BOWEN, *Performing arts, The economic dilemma*, Twentieth Century Fund, Cambridge, Mass., 1966

- From the club point of view, it is the employer who has invested in football, who took the risks...he could therefore consider himself to have every right to recover the total of his contribution and to ask, in compensation for the loss of a player, a sum of money equivalent to the use value of the latter. In this hypothesis, it is assumed, of course, that the club is owner of the player.
- In the opposite hypothesis, where it is postulated that the player is completely free to use his abilities, one could look for the theoretical basis of player demand in G.S. Becker and the theory of human capital: the rational individual invests in human capital in order to optimise the overall return of his asset portfolio (monetary, financial, real and human). In order to do this, he carries out a standard calculation of opportunity cost: the capitalised cost of the capital acquisition must be inferior to the converted sum of the anticipated income. Very often, it is training which is considered as the main means of increasing the stock of human capital. The individual follows his training until the capitalised cost of this investment (the income of which is relinquished while not working during training, the time spent studying, and school fees, etc.) is equal to the capitalised income due to the training being completed.

In total, whatever the theory called on (labour value or utility value), the economic basis of transfer fees can always be found in the use value of the player. Of course, the problem is to know, speaking in concrete terms, how to measure such a value. It is at this level that economic analysis has more difficulty and it has to be recognised that there is a severe lack of studies applied to sport.

#### **3.2.2.1.2    *The talent-based approach***

The value of the transfer fee lies here in the quoted value of the player, just as the value of a painting lies in the quoted value of the painter. The problem is, therefore, to determine such a quoted value relatively objectively.

In the field of art, econometric studies carried out by analysing multiple regressions have given convincing results<sup>324</sup>. Four determining factors in the value of an artist and his work have shown to be useful:

- The number of exhibitions already had and the number of prizes received.
- The time passed since the first exhibition.
- The flexibility of the artist.
- The price of previous sales

As far as we know, this type of exercise has been carried out very rarely in sport<sup>325</sup>, but econometric tests confirm the results obtained in the field of art. The variables to be retained are known:

- The number of years spent at the top level.
- The list of sporting honours.
- The position occupied.
- The flexibility of the player.
- The age.
- The nationality.
- ...

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<sup>324</sup> POMMERHNE W. - FREY B. "La culture a-t-elle un prix ? Essais sur Paris» - Plon – 1993.

<sup>325</sup> DOBSON and GERRARD (1997) "Testing for the rent sharing in football transfer fees: evidence from the English football league" in DONWARD P. and DAWSON A. "The economics of professional team sport" Routledge - London – 2000 – Szymanski –Kuypers " Winners and Losers – p 1

On this basis, it should be possible to establish a quoted value for the players which could be used to calculate the transfer fee. Nevertheless, if the principle is simple, we are, as in the field of art, going to come up against a formidable question: who has to establish the quoted value?

- Can this task be entrusted to an independent external operator?
- Can it be left to the market?

Up till now, it is the second procedure which has prevailed, which would not necessarily be a bad solution, if the labour market in professional sport and transfers were functioning correctly. Talent intervenes in a decisive way in determining the relative value of players, along with other elements which disturb the transactions and explain the discrepancies between price and value of players in the market.

### 3.2.2.2 The problem of the difference between value and price

On the other hand, the value of the transfer fee in the market is defined concretely by the meeting of the willingness-to-pay of the buying club and the consent-to-accept of the selling club. If the market works perfectly, the price of the player will reflect his true value. But if the market is failing because of the presence of many externalities (asymmetric information and the dominant positions of the stakeholders, etc.), the price will be far from his value.

- The consent-to-pay by the purchasing club. The purchasing club here forecasts expected future receipts due to acquiring the player:
  - o Strengthening the team, which manifests itself in better sports results? Many examples can be given of clubs which have recruited a well-known player who has proved himself and is fully mature.
  - o Financial receipts directly linked to the player himself: merchandising, increasing spectator receipts, increasing TV rights, and sponsorship contracts, etc.

Many studies have been carried out in this field by the pioneers of sports economics in the United States<sup>326</sup>. Their transposition to the European case of open leagues would appear difficult; there are many more factors and their complex inter-relations to take into account, in calculating the Marginal Revenue Product.

- The consent to accept from the selling club. Three factors have to be taken into account:
  - o Firstly, the assessment of this consent will be based on the capitalised sum of the investments made by the selling club in training, care and improvement of the player.
  - o Secondly, the club will estimate the amount of net losses which the departure of the player risks costing it, as much from the sports point of view as the financial one.
  - o Thirdly, the club will estimate the cost of replacing the player from which it has separated.

Nevertheless, this process does not affect all players in the same way. We are witnessing a deep “dualisation” [difference between rich and poor] of the footballers’ labour market, and it is on this basis that the already-mentioned difference between value and price at the higher-segment level of the market must be assessed. Beyond this analysis, it appears that the level of transfer fees is determined

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<sup>326</sup> For a summary, see FORT R. “Sports Economics” Prentice Hall – Upper Saddle River – New Jersey - 2003

by different criteria. With regard to the analysis of the bibliography<sup>327</sup>, our own expertise and the interviews we carried out, we can summarise the key determinants of the level of transfer fees as follows:

- The characteristics and abilities of the player (age, nationality, position on the field, personality, etc.)
- The player's experience (titles, member of national team, number of seasons in the league, characteristics, etc.)
- The player's performance (numbers of matches, statistics, etc.)
- The player's contractual situation (wage level, duration of contract, number of years remaining, level of the buy-out in the contract, etc.)
- The clubs' characteristics (selling and buying clubs)
- The international context (level of competition between clubs, economic environment, economics of football in the main leagues, legal and institutional environment, etc.)

In the end, the difference between value and price comes from three imperfect elements:

- A player's value is not just his value on the pitch. A player also has an economic value as, thanks to his image, he is used to sell things. This non-sports value of the player may, therefore, be the subject of much speculation by the buying club and by the selling club, which has an effect on the final price of the transaction.
- The best players and their representatives have significant market power, which may lead to abuse of their dominant position.
- Transfer fees inevitably have a speculative dimension, hence a certain number of doubtful transactions that must be identified.

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<sup>327</sup> Note that we have little research regarding post- Bosman and post- new FIFA periods: Fees and AI 2004 – G. Rossi 2012

### **3.3 Transfer weight assessment and economic mapping**

Although transfers are very often at the centre of current developments in sport, it is worth mentioning that no reliable macroeconomic assessment of their weight has yet been carried out. Whether based on official sources or not, many firms publish yearly reports of the transfers in the main European markets. Using a methodology that we will submit to you and taking the difficulties of the task into account, this section will seek to establish the weight of transfers in Europe (the number of transfers and the fees). In particular, this assessment will enable us to set out the economic differences between football and basketball.

#### **3.3.1 Assessing transfer weight at the European level**

##### **3.3.1.1 Introduction: general characteristics**

On the basis of existing data from international sports bodies, we first sought, using a dual approach, to establish what the main characteristics were of the transfer market in football and basketball:

- A quantitative approach based on studying published reports and data by FIFA and FIBA which, because of either their deficiency or their unavailability (confidentiality), we supplemented with information provided by CIES (the International Centre for Sport Studies), an independent study centre in Neuchâtel, Switzerland
- A qualitative approach based on interviews done with the various stakeholders.

##### **3.3.1.1.1 *Football***

###### **a) The global market**

With the "Transfer Matching System" (TMS)<sup>328</sup>, developed by FIFA, we now have reliable and first-hand data to analyse transfers at the international level. Unfortunately, we were unable to use the raw database, as FIFA could not send it to us because it undertook to keep details of the system's stakeholders confidential. To draw a more complete picture of international transfers we will, therefore, use other sources and in particular those of CIES, which issued a report on migration of the footballers in the world (Global Migration Report 2011).

In early 2012, TMS GmbH published its first annual report, "Global Transfer Market 2011", which includes much important information about international transfers. This report highlighted 4 key factors:

###### **1. *A significant number of transfers***

Contrary to popular belief, the number of international transfers is very high. With more than 11 000 international transfers in 2011, the market registered a transfer approximately every 45 minutes, i.e. an average of 31 transfers per day. However, the activity is concentrated mainly in winter (January) and in summer (July-August), which corresponds to the two transfer windows of most associations.

###### **2. *Few transfers during a contract***

The blinding effect of some transfers, and the media impact that they have, suggest that most transfers happen when the players are under contract. At the international level, the report published by FIFA

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<sup>328</sup> See more details about TMS in Annex 6.

TMS GmbH shows, instead, that the majority of transfers happens while players are no longer under contract (in 70% of cases), either because the contract had come to an end (in half the cases) or because it had been terminated prior to the transfer (30%) or even because the transferred player was registered as an amateur (15%). The second most important type of transfer is the loan of players (departure or return), since it represented 20% of the total in 2011. On the other hand, the transfer of players in breach of contract (which, therefore, needed an agreement between clubs) only represented 10% of the 11 565 transfers, i.e. a little fewer than the 1 200 international transfers for 2011.

### **3. A highly concentrated market in volume (number of transfers) <sup>329</sup>...**

As we will later show, activity in the transfer market is extremely concentrated, with 50% of international transfers carried out by 24 of the 208 associations using TMS. What is more, 18% of the activity was carried out by just 5 countries, including 1 350 transfers for the largest market. Although the data is anonymous, we believe that it was Brazil that was also the biggest market in the first half of 2012 (see below).

### **4. ...and in value**

In 2011, activity in the transfer market generated the payment of \$3bn in fees, divided between:

- Agreed transfer fees (82% - around \$2.46bn)
- Conditional transfer fees (10% - around \$300m)
- Training fees (7% - around \$210m)
- Solidarity contributions (1% - around \$30m).

It is interesting to note that as well as being marked by a strong concentration of activity in a few associations, the transfer market is also marked by a concentration in value, as shown by the significant difference between the average (\$1.5m) and the median (\$200 000) value of a transfer fee. This effectively means that large transfer fees are relatively few, with most transfers (86%), in reality, being made without any compensation paid.

We will also return to this aspect later in our analysis of the transfer market.

It should be noted that this amount of \$3bn does not include the fees paid to sports agents, in the case of international transfers. These commissions represented around \$130m in 2011. Here again, the data illustrates a certain concentration, since the average commission amounted to \$240 000 (i.e. 16% of the average transfer fee), while the median commission was only \$80 000 (40% of the median transfer fee).

FIFA TMS GmbH also provides some additional interesting information about player transfers, including:

- Data concerning the age of players who are subject to international transfer. These players are primarily younger than 28 years old (75% of transfers). The transfer of minors younger than 18 years old only represented 1% of the total (these transfers were subject to very strict conditions).
- Data concerning the nationality of players: of the ten most represented nationalities, Brazilians (13%) and Argentineans (7%) were the most popular. After these two nationalities, the distribution was more balanced.
- Data concerning the salaries of transferred players: from a sample of 10 associations, FIFA highlighted the fact that the average salary of a professional footballer totalled \$244 000. Here again, the difference with the median demonstrates a certain segmentation of the

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<sup>329</sup> See above a more detailed analysis of this concentration phenomenon.



labour market of European footballers. The median salary, in fact, amounted to only \$43 000, which means that high revenues are concentrated in a small percentage of players. This data, however, must be refined to allow for different associations. Unsurprisingly, western European countries pay players the most, while Africa and the Middle East pay the least.

FIFA TMS GmbH also published an activity report for the first half of 2012. Additional information brought to our attention complements the data observed during 2011. Over the first six months of the year, 4 973 transfers were registered on the TMS (-9%) compared to the same period in 2011, for a total amounting to \$576m (-294m). FIFA interpreted this data as a sign *“that the global recession has been felt in the international transfer market”* (FIFA TMS GmbH, July 2012). The summer market, which had just ended, would seem to confirm this trend, as we saw in Chapter 2.

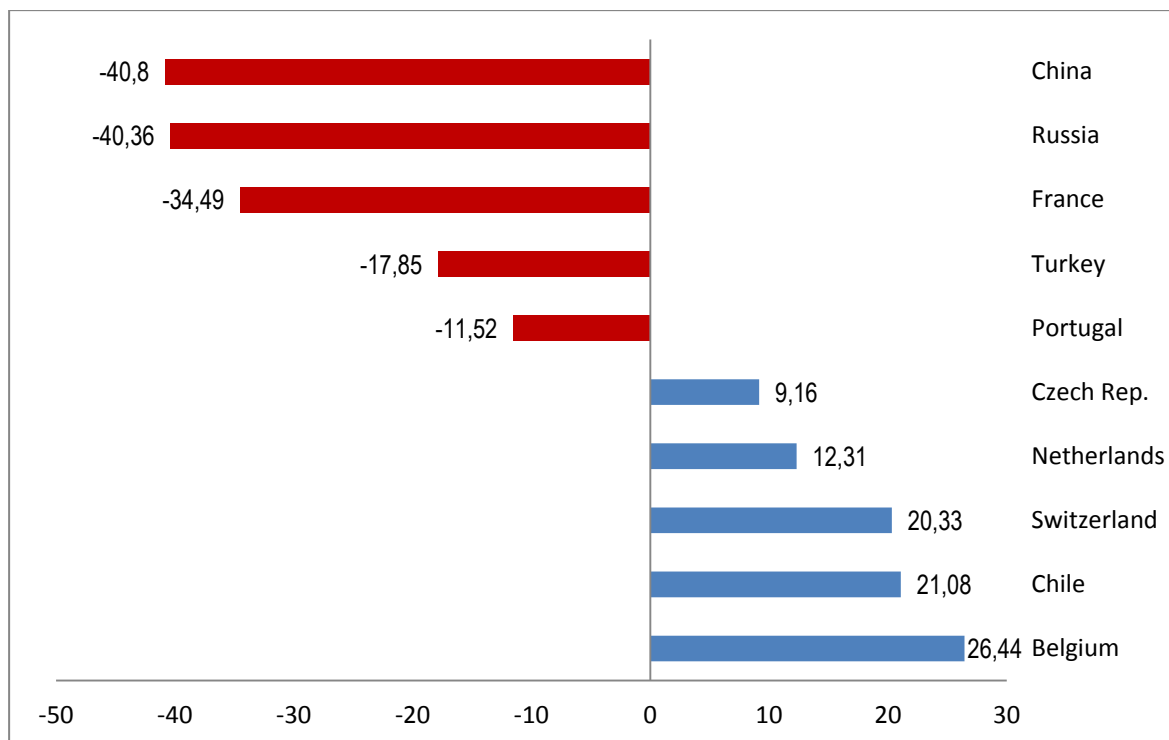
The information in this mid-year report includes new features compared to the 2011 report, especially with the geographical analysis of the transfers that took place. Thanks to an agreement reached with user associations, TMS GmbH was able to disclose certain data, country by country. The table below provides information on the most active countries in terms of volume (the number of transfers) over the first six months.

Country	Outgoing transfers	Incoming transfers	Total
Brazil	478	230	708
England	140	186	326
Argentina	73	174	247
Portugal	61	156	217
Sweden	115	88	203

Most active countries in the transfer market during the first half of 2012.

[Source: FIFA TMS GmbH]

The graph below shows the five countries having the best balance of transfers (thus, those that are exporters of talent) and the five having the worst balance (importers).



Five countries having the best and the worst balance of transfers during the first half of 2012 (in \$m).

[Source: Mid-year review of the international transfer market, FIFA TMS GmbH]

However, this data should be treated with caution, as it does not include the summer transfer window from most European associations. The classification of countries, both in volume and in value, would be greatly altered if it were included. Normally, FIFA TMS GmbH should produce a progress report concerning the summer market.

Thanks to work by CIES, we know a bit more about the nationality of the main migrants.

### b) The European market

On the same basis as the Global Transfer Market, FIFA TMS GmbH gave us some information on the European transfer market for the following associations: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, England, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Northern Ireland, Poland, Portugal, Romania, Scotland, Slovakia, Slovenia, Spain, Sweden and Wales (i.e. 30 associations in total).

It indicates a total amount of international transfer fees at a European Union level of approximately \$2.4bn (80% of the total) for 6 348 transfers (55% of all transfers worldwide)

	Transfers	%	Against payment	%	Without payment	%
Engage out of contract	4 181	66%	60	6%	4 121	78%
Engage permanently	805	13%	693	66%	112	2%
Engage on loan	818	13%	291	28%	527	10%
Return from loan	544	9%	0	0%	544	10%
<b>Total</b>	<b>6 348</b>	<b>100%</b>	<b>1 044</b>	<b>100%</b>	<b>5 304</b>	<b>100%</b>

Distribution of the number of transfers by type in Europe.

[Source: FIFA TMS GmbH]

Some clarifications are needed here for the terms used in the previous table:

- Engage out of contract means the transfer of players made when they are no longer under contract, either because it has expired or because it has been terminated before the player engages with his new club or even the transfer of players who previously had amateur status.
- Engage permanently means the transfer of players made when they are still under contract with their previous club. This, therefore, is where transfers give rise to the payment of a fee between clubs.
- Engage on loan means the recruitment of players under contract with a club in the form of a loan.
- Return from loan means the end of player loans. This is when players return to their home club at the end of their loan period.

This \$2.4bn is distributed between the same four categories that we previously saw, in the following way:

Type of fee	World (\$m)		Europe (\$m)		Europe/World (%)
	N°	%	N°	%	
Agreed transfer fees	2 460	82%	2 062	86%	84%
Conditional transfer fees	300	10%	296	12%	99%
Training fees	210	7%	15	1%	7%
Solidarity contribution	30	1%	29,7	1%	99%
<b>Total</b>	<b>3 000</b>	<b>100%</b>	<b>2 403</b>	<b>100%</b>	<b>80%</b>

Distribution of the number of transfers by category. World-Europe comparison

[Source: FIFA TMS GmbH]

Here again we need to clarify the different categories as defined by FIFA:

- Agreed transfer fees: this is when there are transfer fees that clubs agree on as part of the transfer of a player under contract.
- Conditional transfer fees: this category includes variable transfer fees that the new club must pay to the previous club. It is a question of a sort of bonus that can be tied either to the performance of the player himself (number of matches played, etc.) or to the performance of his future team (qualification for European competitions or championship titles, etc.). This will be analysed in greater detail in Section 3.4.1.1.1.c.
- Training fees: these are fees calculated on the basis of the indicative costs of training. It is paid by the player's new club to his former club<sup>330</sup>.
- Solidarity contribution: this is a percentage of the agreed transfer fee which is then distributed between all the clubs which helped to train the player up to the age of 23<sup>331</sup>.

As at the international level, most transfers are concentrated into three months: January, July and August (69% of transfers in Europe take place during these three months). In terms of nationality, the

<sup>330</sup> For more details, see Annex 4 of the "Regulations on the status and transfer of players."

<sup>331</sup> For more details, see Annex 5 of the "Regulations on the status and transfer of players."

five countries that are the most represented are France (346), England (264), Portugal (222), Spain (221) and Italy (159).

### The European transfer market: a very concentrated market

As FIFA stated in its TMS annual report, the global transfer market is characterised by a high concentration. More precisely, this means that a small number of clubs and transfers make up a significant percentage of the total transfer spend in the global market. This feature can also be observed in Europe. Two elements can be highlighted:

#### 1. A concentration in a limited number of clubs

At a European level, most transfer spending is made by a very limited number of clubs. Therefore, we have calculated the percentage of transfer spending by the 20 European clubs with the highest turnover (Deloitte, 2012) in the total transfer spending in Europe that we assess in this section.

These clubs (all members of the Big-5) have the highest income and are practically the only ones capable of attracting the best players (those from the higher primary market), whose transfers generate the highest fees. By themselves, these 20 clubs are responsible for 33% of transfer spending by clubs in the EU. For their part, the five clubs at the top of this ranking (Real Madrid, FC Barcelona, Manchester United, Bayern Munich and Arsenal) are responsible for 8% of this total.

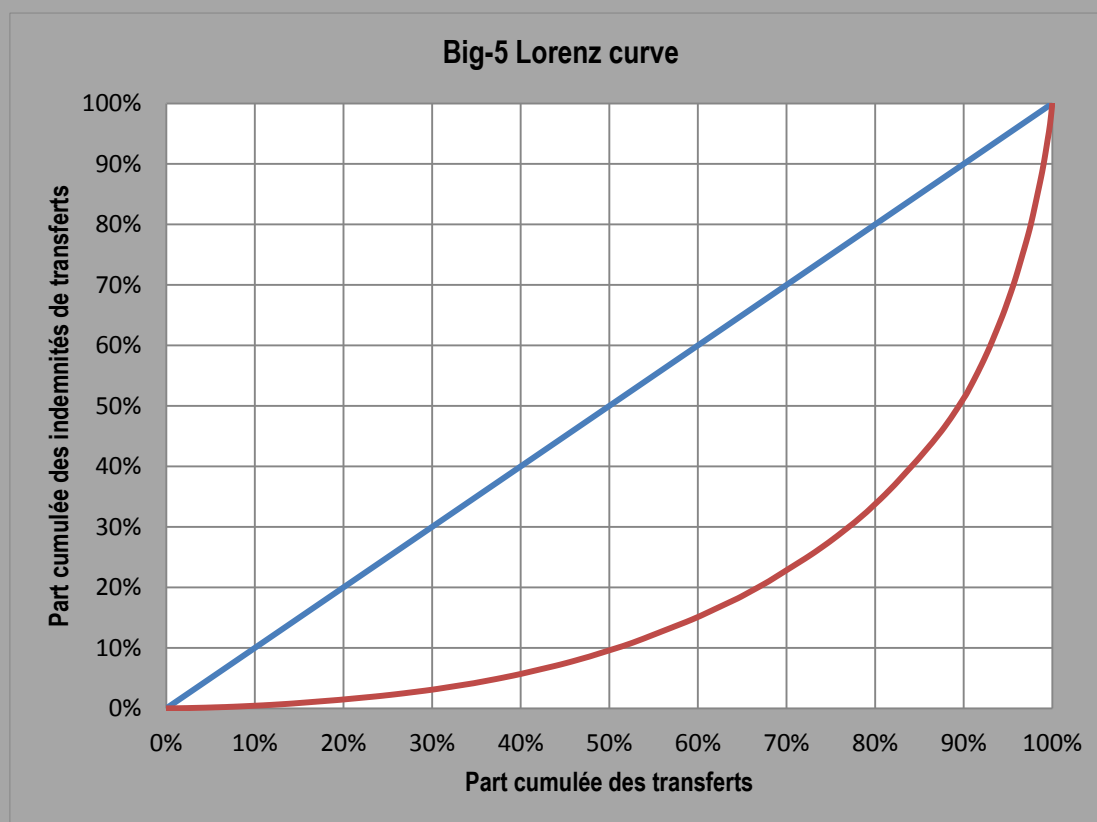
Clubs	Percentage of transfer spending			
Real Madrid	8%	19%	33%	
FC Barcelona				
Manchester United				
Bayern Munich				
Arsenal				
Chelsea				
AC Milan				
Internazionale				
Liverpool				
Schalke 04				
Tottenham Hotspur				
Manchester City				
Juventus				
Olympique de Marseille				
AS Roma				
Borussia Dortmund				
Olympique Lyonnais				
Hamburger SV				
Valencia				
Napoli				

#### 2. A concentration in a limited number of transfers

Transfer fees paid by European clubs, and more especially those of the Big-5, are also concentrated in a small number of transfers. To support this claim, we can provide two examples.

We first sought to set out the Lorenz curves, which make it possible to indicate the cumulative percentages of total transfer spending, compared to the cumulative number of transfers made.

Concerning the Big-5, 10% of the transfers made in 2010-11 as part of a breach of contract involving the payment of a fee by the club that recruited the player, generated about 50% of transfer fees paid by all clubs.



[Source : {HYPERLINK "<http://www.transfermarkt.de>"}, CIES, CDES]

NB: The blue curve represents perfect distribution, i.e. the situation in which all transfers would be made for the same amount. The red curve represents the reality of the transfer market.

Taken at the level of each country, this concentration varies. Thus, 10% of the most expensive transfers represent between 45% (Premier League, Bundesliga and Série A) and 50% (Ligue 1 and La Liga) of transfer spending in each country<sup>332</sup>.

We have also sought to establish the weight of the 10 transfers that generated the highest fees in the total transfer spending in each country. Here again, this analysis illustrates quite well the prevailing concentration in the European transfer market. Thus, these 10 transfers generated 40%-66% of the total fees paid by Big-5 clubs in 2010-11.

Country	Amounts of 10 highest transfers	Percentage of national total
England	354 250 000 €	47.4%
France	141 115 000 €	66.3%
Germany	193 450 000 €	55.2%
Italy	382 746 000 €	40.1%
Spain	303 940 000 €	57.4%

[Source : [www.transfermarkt.de](http://www.transfermarkt.de), CIES, CDES]

<sup>332</sup> For a more detailed analysis of each country of the big-5, see Annex 7.

### 3.3.1.1.2 *Basketball*

Unlike FIFA, FIBA does not have an automated registration system for international transfers (such as the TMS). However, as the people we spoke to at FIBA indicated, implementing such a system is currently being studied. As FIBA does not have the same needs (especially in terms of securing transactions) given the radically different nature of transfers in basketball, the system should be different from that of TMS in economic terms.

Nevertheless, FIBA already registers inter-club, international transfers. In addition, our team had access to the entire database. Our analysis was based on the processing of this database by CIES, on behalf of FIBA<sup>333</sup>. Although it is a particularly interesting database, it does have some faults. As highlighted in the report produced by CIES, it thus seems to lack some data for three continents (South America, Africa and Asia) for which the number of international transfers appears to be underestimated, compared to the real number. On the other hand, the data is quite comprehensive with regard to Europe, North America, and Oceania.

The database provided by FIBA contains all international transfers for men and women which took place in 2011, i.e. all movements of players between two different national associations that required a “Letter of Clearance” (which can be compared to the International Transfer Certificates of FIFA). This makes it possible to retrace the flow of players between different countries, which were the subject of a report published by CIES, but it gives no indication as to the transfer fees that remain relatively marginal - as we were told by all of the people that we spoke to from the world of basketball (see list in appendix).

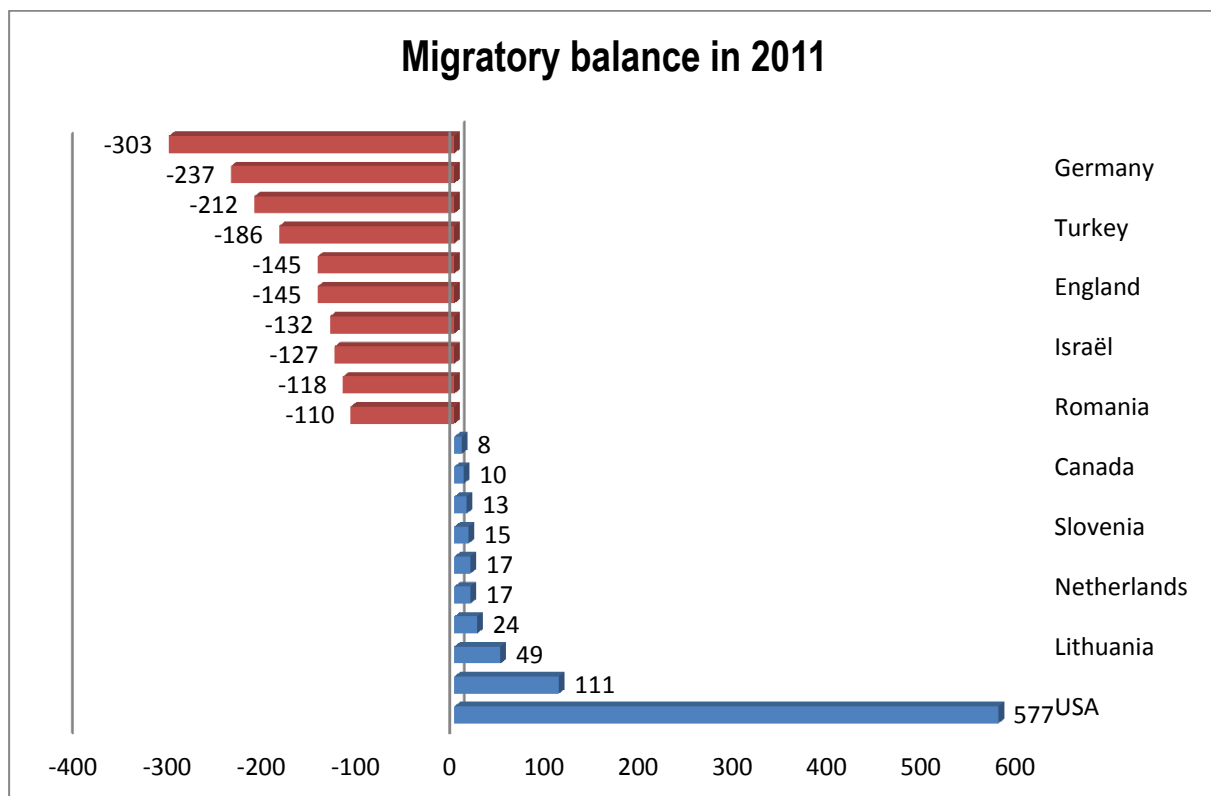
We will try, nonetheless, to assess the amount of these fees in the following section.

Some interesting results emerge from the report published by CIES. 2011 was marked by 6 392 transfers; including a total of 5 160 players. That means that the same player was transferred more than once during the year. The CIES analysis also makes it possible to draw up the mapping of player movement between different countries in the world. Several lessons can be drawn from this analysis:

- Europe is the main importer of basketball players (77%), far ahead of the American continent (10%), Asia (8%), Oceania (3%) and Africa (2%). The ten leading world importers are also European countries.
- Among European countries, Spain recruits the most players from outside its borders, with 428 incoming international transfers during 2011. Germany (358) and France (306) come in second and third.
- The American market attracts an enormous number of players: both American players returning to play in their own country and foreign players. Spain (12), Turkey (11) and France (7) are the main countries that supplied players to the U.S.A. in 2011.
- Unsurprisingly, the U.S.A. (652) is the main exporter of players, very far ahead of France (162) and Serbia (141).
- Those players who learn their trade in the U.S. (of which 86% have American citizenship) leave the country mainly go to Europe, more particularly to Spain (67), Romania (35) and Italy (31). It should be noted that among the non-EU countries attracting players playing in the U.S., we find, once more, Turkey (67), China and Israel (47).
- The CIES report allows us to draw up the list of the main countries importing (Spain, Germany and Italy) and exporting (U.S.A., Serbia and Lithuania) sports talent. The strong presence of eastern European countries (Lithuania, Latvia and Slovenia) should be noted, as they have much more of a basketball “culture” than in western European countries. The graphic below shows the main importing/exporting countries.

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<sup>333</sup> International Basketball Migration Report, CIES Observatory, 2012.



Migratory balance of the 10 most exporting and importing countries in 2011 (number of players).

[Source: CIES, International Basketball Migration Report, 2012]

As in football, the average age for a basketball player for leaving his country is about 23-24 years old.

### 3.3.1.2 Assessment methodology

#### 3.3.1.2.1 The difficulties of the task

It is really difficult to assess the weight of the transfer market at European level because of non-availability of data. This data is difficult to have access to for two distinct types of reason: the lack of data (a) and, when it does exist, the difficulty of obtaining it (b)

##### a) Lack of data

At an international level, although international federations ensure the supervision of the transfer system and its control in case of conflict, they do not provide the actual management on a daily basis. This management is decentralised and domestic transfers are carried out by each national association; for international transfers by the national federations involved, in each case. As a result, it was only recently that there was centralisation of data in a joint database, managed internationally.

But things have changed recently, especially after the explosion of transfer fees related to the liberalisation of the labour market in Europe, mainly triggered by the Bosman Case, as well as the income growth of the main European leagues

Thus, FIBA has been organising a transfer database since 2008, while FIFA launched a very ambitious programme, with the creation of the Transfer Matching System (TMS). This now enables these two

Federations to have relatively comprehensive databases, even if, for FIBA, things still need to improve. The latter has closely studied the possibility of implementing a TMS-style system for basketball.

Similarly, on a national level, only the federations and the most professionalised leagues have organised an ambitious and rigorous data management system for transfers. Their primary mission is, in fact, to ensure that the player is entitled to take part in the competition with the club that wants him. It is only incidentally to ensure better management and, more particularly, to better control the policy that the leagues and federations may be persuaded to organise exploitable databases, so that a detailed economic analysis of transfers, both nationally and internationally, can be carried out.

### **b) A reality that is still poorly known**

This situation is not unique to the transfer system: sports economics suffers more generally from a lack of reliable data. The fault lies with national statistical systems that are insufficiently involved in this sector, with a historical and cultural reluctance by the sports sector to compensate for this deficiency; and with the lack of a method of observation and control established by the sports authorities themselves<sup>334</sup>...

Despite recent progress in football in the area of transfers, access to reliable data is still difficult, because when there is some, certain imperatives still prevent wide its dissemination. For example, the data contained in TMS was not published in its entirety in 2011, because of a confidentiality agreement.

The potential for progress with TMS at this level is enormous, but the system could only have been set up quickly through an extremely large investment, as well as very strong commitments to confidentiality. Consequently, it is not possible for the moment to access highly aggregated data.

However, things are improving, as evidenced by the disclosure of data in the half-yearly report on transfer activity published by FIFA, which contains data not found in the Global Market Report 2011 (for example, the names of the Federations that agreed have been unveiled, which allows national data on international transfers to be collated).

In other cases, lobbying issues impede the dissemination of information. Thus, there are two examples in England that are representative of the opacity that still surrounds transfers today:

- In 2007, the Stevens Report was commissioned by the federation and it underlined numerous undesirable results. It was never published.
- Manchester United, which had decided to make public all the transfer operations it carried out, gave up this idea when the Glazer family took over the club.

These operations involve many stakeholders and the economic stakes are high. However, they are subject to transactions, sometimes of questionable legality, which may or not flirt with the black economy. These operations are not well known, either economically or statistically (see below, part 3.4.2).

Because there is little publically-available data, there are very few academic studies or statistical analyses on the question of transfers, as analysts do not have comprehensive and reliable data in this field<sup>335</sup>.

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<sup>334</sup> cf. for example, the European study on sport satellite accounts

<sup>335</sup> For a survey, see G.Rossi – 2011.



### **3.3.1.2.2    *The method used by the team : an approach by cross-checking different sources***

The issues to do with the transfer system are different in basketball and football. As we previously saw, transfer fees are the exception when transfers happen in basketball; hence the reason why we will not try to estimate the overall value of transfer fees in basketball in the same degree of detail<sup>336</sup>.

In order to estimate the weight of the transfer market on the European level, and to compensate for the absence or confidentiality of data in this field, our analysis was conducted using many sources.

#### **a) Data directly provided or published by the sports movement**

- International federations (FIBA and FIFA)

Our team used the data presented in the introductory part of this section to assess the amount of transfer fees at the European level. This was made possible by the cooperation of both FIFA and FIBA. The two federations provided us with all or part of their databases (while respecting their confidentiality). It is, however, regrettable that as far as football is concerned, we did not have greater access to the TMS database, as the strong confidentiality agreement between FIFA TMS GmbH and the national associations prevents it.

- National federations or professional leagues

We contacted all the federations and professional leagues through an online questionnaire. The economic results have proved rather disappointing, especially as most European federations and leagues have not established a system for monitoring transfers.

As well as using the questionnaire approach, we had numerous qualitative interviews (see the list of appendices for the list of people interviewed), which allowed us to better assess the functioning of different markets, without providing us with more figures.

#### **b) An agreement with CIES in Neuchâtel**

As part of this study, our team reached an agreement with CIES in Neuchâtel in order to have data about the field of transfers. This agreement enabled us to have data on the composition of all the teams that make up the Big 5 (England, France, Germany, Italy and Spain) over four seasons (1995-06, 2000-1, 2005-6 and 2010-11). Our analysis will rely heavily on this database to assess the amount of national transfer fees across Europe.

#### **c) Academic studies and books**

As we have already mentioned, academic work in the field of player transfers is fairly limited, because of the unavailability of data that would allow robust analyses to be made. However, there are a few that we have relied on to conduct our assessment of the weight of transfer fees. These studies are listed in the bibliography of the study.

The most recent work in this field likely to be useful to us is the PhD thesis of G. Rossi, Birkbeck College, University of London<sup>337</sup> and the Erasmus Master Thesis of E. Van der Berg<sup>338</sup>. But these studies, as well

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<sup>336</sup> Given the economic weight of handball, rugby and volleyball at a global level, we can consider that the weight of transfers in these sports is even less than in basketball.

as the previous ones<sup>339</sup>, were more interested in finding the explanatory variables of transfers, rather than measuring the weight of transfers in the economics of football.

In conducting this analysis, many studies were consulted. Amongst them, we could mention “Pay as you Play,” by Paul Tomkins, Graeme Riley and Gary Fulcher<sup>340</sup>.

#### **d) Reports published by consultancies**

We have had access to some reports published by consultancies, which has allowed us to recover some data on the European transfer market.

For example, we had access to the statistical data for England thanks to Deloitte (Annual Review of Football Finance, June 2011, appendix p.11), and other consultancies: Grant Thornton Report on transfer market (summer 2011) and Prime Time Sport annual review on transfers (summer 2011).

### **3.3.1.3 Assessment of the weight of transfers in Europe**

#### **3.3.1.3.1 *An extrapolation based on the most accessible data***

The objective was to complete the data provided by FIFA which gave us information only on international transfers, but not on domestic transfers. We tried to estimate the value of national transfers for all European countries.

We put forward the hypothesis that the big five represented an enormous part of the transfer market both in Europe and in the world (cf. chapter 2). With knowledge of this part of the market, we were able to propose a better estimate of the weight of transfers in Europe.

We proceeded as follows (a) calculated the number of transfers (domestic and international) and the total amount of transfer fees (idem) in the big five (or of a part of it); (b) calculated the part of the big five in the total given by FIFA for the whole of the EU; (c) estimated the total number and the total amount of domestic and international transfers in the EU.

To carry out this analysis, our thinking was based on information provided by FIFA (extracted from the TMS for 2011) and on information provided by CIES in Neuchâtel (dealing with the 2010-11 season). The analysis we are presenting makes it possible to assess the weight (with the last complete financial accounts of professional clubs). We proceeded with the same method for the four other seasons chosen, in order to show the development of the weight of transfer fees on a European scale since 1995.

#### **3.3.1.3.2 *Assessment of the weight of transfers in football***

With the cooperation of FIFA, we have the number of international transfers and the amount of transfer fees for 2011, both at a global and a European level. However, to estimate the total weight of transfers, we had to take into account not only international transfers, but also domestic transfers, about which there is no precise data, as we have seen. Therefore, we carried out statistical processing in order to

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<sup>337</sup> The Economic Value of Professional Football Players: An Empirical Analysis on Serie A Players - 2012

<sup>338</sup> “ The Valuation of Human Capital in the Football Player Transfer Market - An investigation of transfer fees paid and received in the English Premier League ” Erasmus School of economics - July 2011

<sup>339</sup> Frick, Carmichael, Gougnet-Primault, Simmons...

<sup>340</sup> Tomkins, Riley G., and Fulcher G. 2010. “Pay as you play: The true price of success in the Premier League Era”. GPRF Publishing.

estimate the number and amount of these transfers at the European level. After presenting our working methodology and estimating the weight of transfers for the 2010-11 season, we will show how this weight has developed by taking four moments in time since the Bosman case (1994-5, 2000-1 and 2005-6) and the agreement on transfers on 5<sup>th</sup> March 2001.

#### **a) Assessment and estimate methodology for the 2010-11 season**

To determine the weight of domestic transfers at the European level, we developed the following hypothesis based on the international transfers: the percentage of spending of the Big-5 clubs in the total of international transfers (worldwide and European) is the same as it is in domestic transfers (e.g. if the Big-5 clubs carry out 50% of their international transfers in Europe, we take the hypothesis that domestic transfers made by these same clubs are equivalent to 50% of the domestic transfers made in Europe). This choice was guided by the lack of reliable and official data regarding the transfer market and, more particularly, regarding domestic transfers.

To assess the weight of transfers in Europe, we therefore initially had to establish the weight of transfers made by members of the Big-5. For this, we relied on the database specially made for our study by CIES.

From this data, we were able to assess the costs of transfers of member clubs of the first division of the five major European leagues<sup>341</sup>, both those relating to domestic transfers (i.e. between clubs within the same country) and international transfers (i.e. between clubs from different countries). In order to avoid duplication, our analysis focused on transfer spending. If we take incoming and outgoing transfers, some would have been counted as spending for some clubs and as receipts for other clubs (e.g. Yaya Touré left FC Barcelona for Manchester City: it was an outgoing transfer and therefore is a receipt for the Catalan club, but an incoming transfer and therefore spending for the English club; ditto for domestic transfers).

To assess the transfer spending of the Big-5 clubs, we have taken into account all the transfers recorded in our database i.e. transfers involving payment of a fee by the new club (in case of breach of contract) and transfers without a fee (when the player is no longer under contract or if there is an agreement between the club and the player to terminate the contract). It should be noted that for some transfers having taken place for a fee, not all the financial data was available. Therefore, we took the option of assuming zero for transfers for a fee, as some data was not available in the database. Hence, we have assumed them to be equal to zero.

Our analysis of the data provided by CIES made it possible to establish both the number and the value of the domestic and international transfers of the members of the Big-5 for the 2010-11 season. According to our processing, there were a total of 1159 transfers for the season for a total of €1 708m. The table below helps us to understand the divisions between domestic and international transfers.

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<sup>341</sup> Domestic incoming transfers of clubs not in the national top divisions are, therefore, excluded. However, players from the lower divisions recruited by the Big-5 are recorded.

	Number of transfers		Value of transfers	
Domestic transfers of the Big-5 clubs	757	65.3%	€744 656 000	43.6%
International transfers of the Big-5 clubs	402	34.7%	€964 230 000	56.4
<b>Total transfers of the Big-5 clubs</b>	<b>1 159</b>	<b>100%</b>	<b>€1 708 886 000</b>	<b>100%</b>

Number and value of domestic and international transfers of the Big-5 clubs 2010-11.

[Source: CIES, CDES processing]

On that basis, we then established the percentage represented by international transfers of the Big-5 in total international transfers, both worldwide and European, based on data provided by FIFA (2011).

	Value (€) <sup>342</sup>	Percentage in European total	Percentage in world total
International transfers of the Big-5	€964 230 000	<b>56.92%</b>	45.6%
International transfers of European clubs	€1 693 948 000	100%	80.1%
International transfers Globally	€2 114 760 000	-	100%

Relative weight of the Big-5 in international, global and European transfers in value, 2010-11 season.

[Source: FIFA, CIES, CDES processing]

	Number of transfers	Percentage in European total	Percentage in world total
International transfers of the Big-5	402	<b>6.33%</b>	3.5%
International transfers of European clubs	6 348	100%	55.2%
International transfers Globally	11 500	-	100%

Relative weight of the Big-5 in international, global and European transfers in number, 2010-11 season.

[Source: FIFA, CIES, CDES processing]

These two tables show us, therefore, that the Big-5 clubs made 6.3% of the international transfers of European clubs and are responsible for 56.9% of the transfer spending of European clubs. Referring to the global data, they made 3.5% of transfers for 45.6% of spending. The concentration of spending in these five major leagues is thus confirmed, as is the concentration of large transfer fees in several players in these championships.

Based on this data, we then focused on estimating the weight of domestic transfers for all of Europe, based on those in the countries of the Big-5. Our working hypothesis was as follows: the relative weight of the domestic transfers of the Big-5 in the transfers from European countries is identical to the relative weight of the international transfers of the Big-5 in the European total. This hypothesis means that:

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<sup>342</sup> 1\$ = 0,7049€.

- The 757 domestic transfers made by the Big-5 in 2010-11 account for 6.3% of the domestic transfers made by the clubs of the 27 member countries of the EU.
- The €744 656 000 spent by clubs in the five major European leagues for domestic transfers is equivalent to 56.9% of spending on domestic transfers by clubs in all 27 countries that are members of the EU.

Based on this hypothesis, we arrive at the estimate below regarding domestic transfers.

	Number of transfers	Value (€)
Domestic transfers of the Big-5	757	€744 656 000
Hypothesis of the weight of domestic transfers of the Big-5	6.3%	56.92%
<b>Estimate of the weight of domestic transfers in Europe</b>	<b>11 959</b>	<b>€1 308 250 000</b>

Estimate of the weight of domestic transfers in Europe, 2010-11 season.

[Source: CIES, CDES processing]

In the end, and by aggregating the weight of international transfers (source: FIFA TMS GmbH) and that of transfers (CDES estimate), we could, therefore, assess the weight of transfers in Europe for the 2010-11 season. The data is shown in the table below.

	Number of transfers	Value (€)
Estimate of the weight of domestic transfers in Europe	11 959	€1 308 250 000
International transfers of European clubs	6 348	€1 693 948 000
<b>Estimate of the weight of transfers in Europe</b>	<b>18 307</b>	<b>€3 002 198 000</b>

Estimate of the weight of transfers in Europe, 2010-11 season.

[Source: CIES, CDES processing]

The transfer market in Europe for the 2010-11 season thus represented, according to our estimate, 18 307 transfers in total (both domestic and international) for an amount of more than €3bn.

#### b) Assessment of the 1994-5, 1999-2000 and 2005-6 seasons

We conducted the same assessment of three other seasons, in order to assess the development of the weight of transfers in Europe by taking the same working hypotheses and by considering that the ratios (the weight of transfers of the Big-5 in all transfers carried out at a European level) remained unchanged. As far as international transfers are concerned, they have also been estimated for these seasons (on the same basis as the estimate of domestic transfers), since the data from FIFA did not go back far enough for us to use it as an official source.

The data obtained thus made it possible for us to draw up the following estimates.

	Number of transfers	Value (€)
<b>1994-5</b>	5 735	€402 869 000
<b>1999-2000</b>	8 531	€1 704 603 000
<b>2005-6</b>	15 952	€1 952 066 000

Estimate of the weight of transfers in Europe, 94/95, 99/00, 05/06 seasons.

[Source: CIES, CDES processing]

This data indicates a very large increase in the weight of transfers, both in value and in volume. Thus, the number of transfers in Europe more than tripled between 1995 and 2011, a period marked by the liberalisation of the transfer market (Bosman) and the inclusion of transfers into club strategy (financial profitability and the determination to balance the books). In terms of value, the progression was even greater, since the transfer fees of European clubs were multiplied by 7.4 over the same period, according to our estimates.

### 3.3.1.3.3 *Assessment of the weight of transfers in basketball*

In estimating the weight of transfers in basketball, we have very little data available (much less than that for football).

There are several reasons to explain that:

- A very much less developed economy in basketball than in football: according to FIBA, fewer than 10 transfers exceeded \$1m in the last ten years and the transfer fees for a player to move to NBA was \$500 000 maximum, according to NBA rules.
- Sports bodies collect only little information relating to transfers.

To carry out our assessment, we therefore relied on several sources of information:

- That of the report drawn up by CIES, based on data compiled by FIBA<sup>343</sup>.
- That provided by the French National Basketball League.
- Possibly that provided by ACB (the Spanish professional league).

Although the accuracy of our estimate could be questioned, the objective we are pursuing here is to be able to draw up a valid comparison of the weight of transfers in football and basketball respectively.

#### **a) Method used:**

Given the lack of available data, we decided to cross-reference two types of source and to use two methods to approximate the amount of transfer fees in basketball, managed by FIBA.

- **Method 1:** *we worked on the theory that there was a certain consistency, for the major basketball countries (Spain, France, Germany, Italy and Greece), in the ratio between the respective weights in basketball and football.*

##### ○ Presentation:

After establishing the ratio between the weight of transfers of basketball in France (an average of five domestic and foreign seasons) and the weight in football (domestic and international) for the 2010-11 season, we applied the percentage found above to the total amount of transfer fees in football for the EU, and then for the whole world.

That enabled us to estimate:

- The amount of transfer fees in basketball for the EU.
- The amount of transfer fees in basketball for the whole world.

##### ○ Implementation

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<sup>343</sup> International basketball migration report 2012, CIES Observatory, 2012.

The ratio between the weight of transfers in basketball in France (an average of five domestic and foreign seasons) and the weight in football (domestic and international for the 2010-11 season) gave a value of **0.54%**. We applied that percentage to the total amount of transfer fees in football for the EU, i.e. about €3bn.

We obtained an estimate of **about €16m for European basketball**. Using the same method at the global level, we obtained a figure of **about €20m** for the whole of FIBA.

Basketball (5 last seasons)		Football (2010-11 season)	
Average annual amount of international transfer fees	€592 453.16	Amount of international transfer fees in France	€122 715 000
Average annual amount of domestic transfer fees	€163 300.00	Amount of domestic transfer fees in France	€18 400 000
Average aggregated amount of transfer fees in France	€755 753.16	Aggregated amount in transfer fees in France	€141 115 000.00
basketball/football ratio		<b>0.54%</b>	
<b>Estimate of transfer fees in EU</b>	<b>€16 078 523.99</b>	<b>Estimate of transfer fees in EU</b>	<b>€3 002 198 380.49</b>
<b>Estimate of transfer fees in world</b>	<b>€20 071 535,43</b>	<b>Estimate of transfer fees in world</b>	<b>€3 747 777 543,86</b>

Estimate according to Method 1 of the weight of transfers in Europe and at the global level in basketball.

[Source: CIES, FIBA, LNB, CDES processing]

- **Method 2:** we worked on the theory that there was a certain consistency between the respective weights of transfer fees in the total of basketball transfers in France and in Europe.

- Presentation

From the FIBA report and/or data, we found the ratio between the number of transfers in France and the total number (in the world). We then used this ratio to assess the total amount for Europe and the world, from the average amount (domestic + international).

- Implementation

1. Calculating the percentage of French transfers in the total for 2011:

We identified 360 incoming transfers in France out of a total of 6 392 international transfers (CIES, 2012), most of them being made without a fee. That represented 5.63% of international transfers recorded by FIBA during 2011.

2. We used this same ratio to extrapolate the sums spent at a global level, we arrived at a result of about €13.5m

FIBA data 2011	
Incoming transfers in France	360
Total FIBA transfers in 2011	6392
% France/FIBA	5.63%
Amount transfer fees France	€755 753.16
Estimate transfers world	<b>€13 418 817,22</b>

Estimate according to Method 2 of the weight of transfers in Europe and at the global level in basketball.

## b) Results:

Our two calculations result in fairly similar orders of magnitude concerning the amount of transfer fees paid by all of FIBA, with **a global range of €13.5m - €20m** and a European one of **€12m - €16m**.

However, our estimate does not take into account transfer spending made by NBA clubs (which have the possibility of transferring players for a fixed maximum amount of €3m per franchise per year). In order to have the total weight of transfers in the world, the sums spent by the NBA should be added. In the event of each club spending its sum of money entirely within the NBA (this is not the case), a maximum sum of \$90m, i.e. €70m, can be added to our estimate. More realistically after a debate with some actors involved in NBA, it appears that a maximum of 8 to \$10m are really spent.

**In the end, the total value of transfer fees in basketball globally would still be within the €83.5m – €90m range. However, a more realistic estimation (with an amount paid by NBA clubs around \$8m or \$10m) would retain between €20m to €27m for the total transfer fees paid at a global level in basketball**

This estimate, which seems to be greatly overestimated, represents:

- Less than the single transfer of the Portuguese footballer, C. Ronaldo.
- The equivalent (at the most) of 2.4% of the total global transfer fees in football in 2010-11.
- Less than the sums spent by PSG and Chelsea in the transfer market during the summer of 2012.

In view of these elements, it appears clear that the issues raised by transfers in football, and the proposed solutions to address them, cannot be generalised and applied to basketball.

### Lessons to be drawn

*The transfer market is highly concentrated, both in value and in volume.*

*The amount of domestic and international transfer fees for 2010-11 represented about €3bn for the entire EU.*

*Transfers from the Big-5 represented 6.33% of all EU transfers and 56.9% of the total amount for 2011. Within the Big-5, domestic transfers represented 43.6% of the total amount of transfer fees for 65.3% of transfers. These first elements already give an idea of the strong concentration in the market.*

*Between 1995 and 2011, the number of transfers in the EU has been multiplied by 3.2 whilst the total value of transfer fees has been multiplied by 7.4.*

*The global transfer market in basketball is very active in terms of number of transfers, but has very little weight economically: a maximum of €27m for the 2010-11 season, i.e. of global transfers and three times less than the record transfer fee in football (C. Ronaldo, €94m paid by Real Madrid to Manchester United).*

### 3.3.2 Economic mapping by country

The economic mapping that we have undertaken is based on several documentary sources:

- The CIES country sheets
- The different studies on football conducted by CIES and published regularly (Annual Review of the European Football players market, Demographic Study, Global Migration report)
- The CIES report on basketball
- UEFA reports on the landscape of European football clubs



- Reports produced by FIFA TMS GmbH on international transfers (including Global Market Report 2011)
- And secondarily the answers to our questionnaires, interviews and data provided directly by the leagues themselves or by some studies done by consulting firms.
- When needed, we supplemented with data from the “transfertmarkt” website.

### 3.3.2.1 National economic mapping of football

#### 3.3.2.1.1 *Preamble*

The economic mapping that we have undertaken is based on a classification of countries into three groups according to the economic weight of the leagues measured based on UEFA data for the year 2010 (UEFA, 2012):

- Group 1: leagues constituting the big 5 and whose clubs have an average budget of €54m - €134m: **England, Germany, Spain, Italy and France.**
- Group 2: leagues whose clubs have an average budget of €13 - €23m: Netherlands, Scotland, **Portugal, Belgium**, Austria, Denmark, and Greece.
- Group 3: leagues whose clubs have an average budget of €7m – Sweden, **Poland**, Romania, Czech Republic, Cyprus, Slovakia, Croatia, Hungary, Slovenia, Finland, Bulgaria, Ireland,

For lack of specific data on transfers, Ireland, Latvia, **Lithuania**, Luxembourg, Estonia and Malta are treated at a minimum.

Within each group countries are presented in descending order of their economic weight.

From a methodological point of view, we must add two remarks:

- 1 The situation within a same league is rarely homogeneous: there are often differences in the strategies of clubs according to the market segment on which they are positioned.
- 2 The data used below sometimes covers just one year; as a result the conclusions should be treated with caution.
- 3 In this section, issues that at first sight seem unconnected with player transfers (such as the results of national teams and the issue of training) are discussed. In fact, the results of a national team and the training system in place can affect the status of “importer” or, conversely, “exporter” of talent. The example of France could be highlighted: after the success of the 1998 World Cup and the 2000 UEFA Euro, French internationals became particularly sought after in the transfer market. Similarly, France’s position and the organisation of its training system have long made the country an exporter of sports talent.

#### 3.3.2.1.2 *Description*

For each country we chose the following structure:

- incoming movements of players and characteristics of players recruited ;
- outgoing movements and positioning of the league on the transfer market;
- the balance of transfers;
- the sports positioning of the league;
- its economic weight and financial health.

#### a) Group 1 – the Big 5

## **1. England (importing country with a highly negative impact on net results)**

According to data compiled by CIES, for the season 2010-11 the recruitment of English clubs is done, in order, in Spain (28), France (24) and equally in Scotland and the Netherlands (16). There is an average of 8.8 players imported per club (174 movements in total) with an average age of 24.2 years.

England as the largest European market (with €2.5bn of cumulative revenue against approximately €1.8bn for Germany, the second largest market) is a very attractive destination for players and especially for star players with a strong integration in the international market.

It is a very active market both internally (115 players recruited in 2010-11, a total of 73% of the players in England during this season were recruited on the national market) and at the international level (only 58 players recruited but with a more qualitative recruitment).

At the international level, England essentially recruits locally (from other countries of the Big-5 or in Scotland). Players arrive in England after stages in European championships mainly for two reasons:

- The sporting level of English Premier League requires to have proven oneself in high level championships before it can be accessed,
- In addition the sports regulation requires that the players recruited are already internationals players in their country.

It is a very cosmopolitan championship: it has 55% of expatriates, which is the highest level in Europe with Portugal (except Cyprus). Squads are among the highest in number (26.2 players on average per club).

All clubs are relatively active on the number of players recruited. However, if we think in terms of value a few clubs clearly dominate the market. After Leeds and Chelsea, it is now Manchester City which is the most active in the transfer market.

In some cases, these clubs alone concentrate more than 25% of total expenditure of the Premier League (Chelsea 39% in 2003-4, Manchester City 26% in 2010-1). For 2010-11 Manchester City, Chelsea and Liverpool together total 57.7% of the Premier League expenditure.

Exports of players involve few national players (English players rarely leave their championship) but mainly expatriates, who are re-exported (88.3% of cases). For 2010-11, 3 clubs (Liverpool, Sunderland, and Newcastle) received 52.4% of transfer revenues. The fact that Liverpool and Newcastle are here can be explained by the transfer of Spanish striker Fernando Torres to Chelsea (€58.5 million) on the last day of the winter transfer market 2010-11, which led to an urgent strengthening of the team by recruiting at high prices; Andy Carroll from Newcastle (€41m) and Luis Suarez from Ajax Amsterdam (€26.5m).

The balance of transfers has been significantly negative for many years. For the period 1996-2002 net transfer expenditure of Premier League clubs has amounted to nearly £1bn or €1.25bn at the current exchange rate. Among the 10 clubs whose balances of transfers were the least profitable during this period, only Manchester United recorded a net benefit; all the other clubs faced deficits, despite a positive operating account for 7 of them.

Similarly, between 2004-05 and 2009-10, the Premier League saw its positive cumulated operating results turn into a systematic deficit every year, after taking transfers into account. And in 2009-10 while the operating profit amounted to €103m, the net result was negative up to €230m (£184m), after taking transfers into account (player trading) i.e. a debit of €330m. The result before tax and after interest was negative at minus €556m (£445m). The situation deteriorates further in 2010-11 with a result after transfers negative at minus €316m (£253m) even though the result before tax and after interest is a little better.

The English Premier League presents the paradox of a league that generates huge revenues with continued growth (+12% again between 2009-10 and 2010-11 for an average of 6.8% per year between 1999-00 and 2010-11) but whose expenditure growth is even stronger. This has led to a strong

deterioration of the situation and an increase in debts, whose total amounted in 2011 to €2.87bn (£2.3 bn).

In sporting terms, English clubs put their country at the forefront in Europe: Manchester United, Chelsea and Arsenal are ranked 3rd, 4th and 6th respectively in UEFA club rankings. That's why they are attractive to the best players.

The national team, for its part, does not get results (no major title since 1966, failure to qualify for Euro 2008, eliminated in the qualifying stage of Euro 2012) and probably suffers from a long neglected training policy and a championship which leaves little opportunity for young English players to express themselves.

#### **Lesson to be drawn**

*An importer of players, both in volume and value. Recruitment focused primarily on the other countries of the Big-5 or on countries that are geographically close.*

*The Premier League is experiencing a strong revenue growth, but also increasing debt. The Premier League is ranked first in Europe, both in sporting terms and economically.*

## **2. France: (exporting country with a reduced impact on net results - improvement for some clubs)**

Recruitment from French clubs is made mainly with England (14) according to the report of the CIES. There are approximately 4.1 imported players per club (166 transfers in total) with an average age of 24.7 years, which puts it at the same level as the EU average (25.8 years). Most signings correspond to those players who are already established in the country (79%). It can be assumed that French clubs recruit both young players and experienced players. French clubs are very committed to training (which is confirmed by a limited use of expatriate players, see below) with the aim of financing some of their activities by transfers of players to foreign clubs in particular.

French clubs only have 6.9 foreign players per club on average (27% of the squad), which is very far from the other countries of the Big-5. They mostly come from non-European countries (70%), particularly from Africa, with whom relations are very close. The most active club in terms of the number of players recruited is Dijon FCO with 12 new players in 2011-12 i.e. 7.2% of total transfers observed in France. The latter and the clubs Evian Thonon Gaillard FC and FC Lorient are the 3 clubs that recruit the most, up to 20.5% of the total. If we only focus on the recruitment of players from abroad, the two previous clubs and Paris SG are the most active clubs (32.8% of transfers for these three clubs).

In terms of exports, France is the second largest exporter of players with 239 "exported" players in the 36 European leagues in 2009. Regarding outgoing international transfers France transferred 284 players for a total of €212m. As a result France gets one of the most important positive balances of transfers exceeding €53m in 2010-11, which confirms the importance of the training of players in France (training sporting talent then transfer abroad).

France is a hub for transfers. It is both:

- At the heart of the relationship between Europe and Africa.
- At the heart of transfers in Europe for its long-standing and structured training policy.

Transfers have frequently enabled Ligue 1 to balance operating accounts that were mostly unprofitable. The French balance of transfers is mostly positive since 2003-04 (only years 2005-06 and 2009-10 - €91m- were in deficit). France is an exporter of talent; the profit of balance with foreign countries amounted to €91m in 2010-11. 15 out of 20 clubs had a positive balance for the season 2010-11.

French Ligue 1 is the fifth and last power of the Big 5 in economic terms (€1.04bn revenue). The average income of a French club was €52m in 2010-11.

Regarding income, only two clubs (Marseille and Lyon) were in the 20 largest budgets of European football in 2011, ranked respectively 14<sup>th</sup> and 17<sup>th</sup> (Deloitte, 2012) with amounts of €130 and €150m. 12 out of 20 clubs had a positive operating result for the season 2010-11. However, the overall operating result of clubs was negative at about 8% of total income. This showed a certain dependence of French clubs on the sale of players. French clubs are fairly resistant to the financial crisis compared to their Italian, Spanish or English counterparts. For the last three known seasons (2008-09 – 2010-11), the Ligue 1 operating result was in deficit. This deficit (between €250 and €300m for the 20 clubs) was slightly reduced by a positive transfer contribution.

In the end, the final net results were negative up to €18m in 2009-10 and €139m in 2010-11, which was far from the loss observed in England, Italy and Spain in recent years.

In sporting terms, French clubs has fallen back in the UEFA rankings: Portugal is now ahead and is ranked 5<sup>th</sup>. No French club has reached a European final since Monaco in 2004, even though Lyon is a club has regularly progressed beyond the group stage of the UEFA Champions League in recent years. This enables Lyon to be ranked 10<sup>th</sup> in the ranking of European clubs.

The national team was very successful between 1998 and 2006 (World Cup victory in 98 and in the final in 2006, European Championship in 2000), particularly because of the experience gained by its expatriate players in major Big-5 clubs, but it has been at a standstill since.

#### **Lessons to be drawn**

*A training country and exporter of players, France also plays an important role in the relations between Africa and Europe.*

*Ligue 1 has found itself in a fragile financial situation - even if it has never known the extent of deficits of England, Italy, or Spain as a result of a highly regulated economy - because its operating account is structurally in deficit and the balance of transfers is not enough to compensate.*

*Ligue 1 is ranked 5<sup>th</sup> in Europe in terms of economy and 6<sup>th</sup> in terms of sport.*

### **3. Germany (importing country but without heavy impact on the result)**

According to data provided by the CIES, Germany recruits mainly in England (17), the Netherlands (12) and equally in Japan, Spain and Switzerland (10). Germany stands out by recruiting Japanese players, who are under-represented in Europe. There are approximately 8.4 imported players with an average age of 24.3 years since 2009. Recruitment is mainly done within the country, up to 64%. The recruitment, diverse and done in countries of the European Union, accounts for 67% (East, North, and South). German clubs have an average of 8.1 foreign players i.e. 35% of their total squad. 60% of them come from countries of the European Union.

The most active club in recruitment in 2011-12 was VfL Wolfsburg with 16 new players for the 2011-12 season i.e. 11.7% of the total movement of players. The two other most active clubs are Borussia M'gladbach and Hamburger SV. These three clubs recruited 36 new players i.e. 26.3% of the total of German clubs. These three clubs are also the biggest recruiters of foreign players with 23 new players i.e. 35.9%.

With regard to exports of domestic players, Germany is ranked 9<sup>th</sup>, with 97 players exported in the 36 European leagues in 2009. Germany transferred 267 players during the 2010-11 season, for a total of €213m.

The Bundesliga is one of the less active championships in the transfer market of all the countries of Group 1 and 2 with an average of 7.6 new players per club in 2010-11. The German championship hardly makes the headlines with transfer records; it may partly be explained by the wisdom of its top club, Bayern Munich.

The balance of transfers of the Bundesliga in 2010-11 is slightly positive (€790000). Three clubs have generated more than 58% of revenue relating to the transfers of players. However, the Bundesliga is rather an importer of talent; this positive balance in 2010-11 was the only case of a surplus in the previous 4 seasons.

In economic terms, Bayern Munich is 4<sup>th</sup> in the ranking of European clubs with the largest budgets in 2010-11 (Deloitte, 2012), with income of approximately €321m. The estimated average income of German clubs in 2010 amounted to €91m, i.e. 2<sup>nd</sup> in the European ranking for the average income (UEFA, 2012). German football is the only one to be truly in excellent health with high record of attendance in modern stadiums and rigorous management imposed for years by a demanding control commission. It was also ranked second in the leagues generating the most income with €1.82bn in 2010-11 (Deloitte, 2012). This is one of the few countries with a total operating profit (up to 8-9% of income with 10 out of 18 profitable clubs). Its revenues are also better structured than those of other European leagues. The good financial health of German clubs helped them to be quite active on the transfer market in recent years.

In terms of sport, German clubs are well represented at the highest level, in particular by Bayern Munich, the 4-time Champions League winner; the last one was in 2000-01. It has since reached the final three times, but again without being successful. The club is ranked 2<sup>nd</sup> in the club rankings of UEFA. Germany is ranked 3<sup>rd</sup> in the country rankings. The national team is also very efficient. It won three World Cups (1954, 1974, and 1990) and finished 2<sup>nd</sup> in 2002 and 3<sup>rd</sup> in 2006 and 2010. It also won 3 European Championships and reached the final of the 2012 competition.

#### **Lesson to be drawn**

*Germany is a major country in Europe in sporting terms and economically, but plays a relatively small part on the transfer market, even if it is generally an importer of talent.*

*This is the most regulated, consistent and sustainable economy in the Big 5.*

*The Bundesliga is ranked 3<sup>rd</sup> in Europe on a sporting level and 2<sup>nd</sup> in terms of income generated.*

#### **4. Spain: (highly importing country, highly negative contribution to the net result)**

According to data provided by the CIES, Spanish clubs mainly recruit in Portugal (24), Italy (21) and England (19). Clubs had on average 24.3 players for the 2011-12 season, including 9.2 foreign players, i.e. 38%. The average age of those players was 26.4 years. Since 2009, 7 players per club on average were imported, mainly from the domestic market (66%). We can observe that foreign players mainly came from Argentina (32) and Brazil (24), confirming the strong relationship that this country has with Latin America.

The most active club in recruitment for the 2011-12 season was Malaga CF with 16 new players i.e. 9.2% of the total transfers in Spain. Regarding the 3 most active clubs (Malaga CF, Granada CF and Real Zaragoza), they represent 25.4% of the total transfers of players. They are also the three clubs weighing the most, regarding the recruitment of foreign players up to 33.7%. In terms of value, the market is dominated by Real Madrid and FC Barcelona, even if they invested less in 2010-11 than in the previous season. However, they account for 57% of Spanish clubs' expenditure (80% in 2009/10).

In terms of exports of domestic players, Spain is the 18th largest exporter with 62 players playing in the 36 European leagues in 2009. Spain transferred 264 players during the 2010-11 season, for a total of €310m. La Liga is one of the major championships in Europe, which allows it to attract some of the best players and makes this country an obvious importer of talent (driven largely by Real Madrid and Barcelona).

The balance of transfers is usually negative or strongly in deficit (more than €200m in 2009-10). However, here again, the weight of the two major players in the Spanish market is very important. There is a very important phenomenon of concentration: between 2009 and 2012 the balance was in deficit; €130m for FC Barcelona and €281m for Real Madrid!

In economic terms, Real Madrid and FC Barcelona have the highest incomes of all European clubs; they are ranked respectively 1<sup>st</sup> and 2<sup>nd</sup> with incomes of €479m and €451m in 2010-11 (Deloitte, 2012). The estimated average income per club is €82m, which puts Spain in the 3<sup>rd</sup> place in Europe (UEFA, 2012). According to UEFA, Spain has a slight operating profit, but a negative overall net result. It suffers especially from major indebtedness.

In sporting terms "investments" made by Real Madrid and FC Barcelona, however, are successful since the two leading clubs combine 13 UEFA Champions League titles. The last three were in 2006, 2009 and 2011 for the Catalan club (which has also reached the finals in 2012). Both clubs also monopolise all national titles. Since 1984, only three other clubs have won the championship: Atletico Madrid (1995-1996), La Coruña (1999-2000) and Valencia (2001/02 and 2003/04). Spain ranks second in the UEFA rankings, while FC Barcelona and Real Madrid are ranked 1<sup>st</sup> and 5<sup>th</sup> in the ranking of clubs. The national team is doing just as well and just won the 2010 World Cup and the European Championships in 2008 and 2012.

#### **Lessons to be drawn**

*Spain is a major country in Europe in sporting terms and economically, which has played a decisive role in the transfer market in recent years. It has the least open championship, where the concentration of resources is the strongest and is in the hands of two dominant clubs.*

*La Liga is a net importer of talent, it is the 3<sup>rd</sup> largest economy in Europe in terms of income today, but it is a very fragile economy which lives beyond its means.*

*La Liga is ranked 1<sup>st</sup> in Europe in sporting terms in regard to football clubs and in regard to national teams.*

#### **5. Italy (importing country: significantly negative impact on net result)**

Italy had on average 26.9 players per club in 2010-11 with 13.1 foreign players (49%). Foreign players were mainly recruited in non-European countries (56%), especially in Argentina (27 new players). Italy also recruited from Spain (23 players) and from France (21). Besides Italians, the most represented nationalities in the Italian league are Argentineans (52 players) and Brazilians (36). Since 1999, there have been, on average, 7.7 arrivals of foreign players per club per year. However, in general, most recruitment is done on the domestic market (68%). The average age of recruits of Italian clubs in 2011-12 was 24.3 years.

The most active club for the season 2011-2012 was Bologna FC with 17 new players i.e. 6.6% of total transfers. The 3 most active clubs on the market (Bologna FC, U.S. Palermo and AC Cesena) represent 19.1% of the overall movement. Concerning the recruitment of foreign players, these 3 clubs are not among the most active; that shows that their recruitment is more focused on national players. Regarding

the recruitment of foreign players, AS Roma, FC Genoa 1893 and Udinese are the most active, with 30.8% of the total of the league).

Italy appears very active on the transfer market with a significant number of players recruited. In 2010-11, 165 domestic transfers were made by the clubs of Serie A for 91 international transfers (the highest total after Portugal and Cyprus). This data demonstrates an approach that is probably still very speculative, despite the current economic context. The average period of presence in the club is in fact the smallest of the Big-5 with only 1.63 years, confirming a greater mobility than in the other major championships. This strong speculation and recruitment results in overstaffing, which is the highest in Europe, with 26.9 players per club on average.

On this basis, the strategy of a club like Udinese, for example, is clearly to achieve profitable financial operations, as was confirmed by the representatives of the Italian Federation (FIGC) or the Professional League (Lega Calcio). The club had a very large number of scouts to identify talent in the world, recruit them and transfer them to the best Italian or European clubs.

The balance of transfers of the Italian Serie A is largely negative (2<sup>nd</sup> most negative balance in Europe behind England) at minus €76m. Compared to the 1999-2000 season, the deficit of the balance of transfer had greatly improved, since it was negative at minus €201m. However, it has deteriorated significantly since 2005-6, with a deficit of minus €27m.

The estimated average income of Italian clubs amounted to €79m in 2010 (UEFA, 2012). The League has been in structural deficit for years: it accumulated €2.6bn of debt at the end of the 2010-11 season, an increase of 17% compared to the previous season. Serie A saw a slight operating profit in 2010-11 (10% of income) for the 2009-10 season, but had a negative balance of transfers. The net result was negative by €300 million for 2010-11.

Among Italian clubs, 5 are among the 20 clubs generating the most income at European level (Deloitte, 2012): AC Milan, Inter Milan, Juventus, AS Roma and Napoli. They are ranked 7<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup> and 20<sup>th</sup> respectively, with revenues ranging from €114m to €235m. However, this should not mask a downward trend in incomes of Italian clubs and a steep decline in the European hierarchy since the crisis of 2001-2.

In sporting terms, Italy is experiencing a steep decline. It is now ranked 4<sup>th</sup> in the UEFA rankings after leading Europe 15 years ago. Inter Milan is ranked 7<sup>th</sup>, AC Milan 12<sup>th</sup> and Juventus 43<sup>rd</sup>, due to its relegation in Serie B following the match-fixing case (Calciopoli). The national team is maintaining its ranking with a victory in the World Cup 2006 and a final at the Euro 2012.

#### **Lessons to be drawn**

*Italy appears as one of the most active countries in the transfer market among the big countries which have a domestic activity as intense as at the international level; to the point of falling into excess regarding squads under contract and the number of new players each season.*

*The league has clearly been declining in the sporting and economic hierarchy for 10 years; it is the result of a less favourable economic context and weak regulation and governance.*

#### **b) Group 2**

- 1. The Netherlands (training country and exporter of talent, but with a lower contribution to the financial result - improvement for some clubs)**

The inclusion of the Netherlands in the international transfer market is quite similar to that of Belgium: there are on average 23.1 players under contract per club including 8.1 foreign players (35%); there have been 6 arrivals on average since 2009 (CIES, 2012), knowing that a clear majority of players (69%) are recruited in the national market.

The Netherlands, notably driven by Ajax Amsterdam, has specialised in the training and promotion of players. As a result, recruitment favours very young players (22.6 years on average). It is mainly a local recruitment especially from countries that are geographically or culturally close, such as Sweden, Belgium, and Denmark, etc.

The most active club, Vitesse Arnhem, was responsible for 9.2% of transfers. If we add SBV Excelsior and Roda, we even get the quarter of the total recruitment of Dutch clubs (25.6%). The recruitment of foreign players is also made mostly by three clubs (Arnhem, Roda, De Graafschap) which accounted for 35% of the total in 2011.

Historically, the Netherlands exports a significant number of players: 70 in the 36 European leagues in 2009 (Poli, 2010). They have provided players, especially since the mid-70s, (the impact of the results of Ajax Amsterdam and the national team) for the biggest clubs and the biggest European leagues: the transfer of J.Cruyff to FC Barcelona in 1973 (€2m) R.Gullit (€6.5m) and M. Van Basten in 1987 then C.Seedorf to AC Milan in 2002; R.Van Nistelrooy to Manchester United in 2001; D.Bergkamp to Inter Milan in 1993 then Arsenal in 1995; A. Robben to Chelsea, Real Madrid and Bayern Munich, etc.

Therefore, the balance of transfers of the Netherlands has been steadily in surplus (€33 million in 2010-11) for many years (already about €30 million in 1999/00), which made the Netherlands probably one of the championships with the largest balance of transfers in surplus in Europe.

The turnover of the league is €414m, i.e. €23m on average per club (UEFA, 2012). No Dutch club is among the 20 largest European budgets. The operating result of the league is showing a deficit of more than 10% and only two clubs are profitable (UEFA, 2012).

In sporting terms, Dutch clubs have seen their competitiveness significantly decline, compared to the 70s (Ajax, Eindhoven) and even the 80s. The league no longer has a direct place in the group stage of the UEFA Champions League; its representatives have to go through qualifying stages, passed successfully by Ajax Amsterdam in 2010-11 and Twente in 2011-12. But no club has reached the quarter finals since PSV Eindhoven in 2006-7.

The national team remains successful in particular because of the experience of its expatriate players playing in the Big-5 championships, even if it has not won any major tournament since Euro 1988. However, the team reaches regularly the last rounds of European and international competitions.

## **2. Scotland (regional hub, entrance to the English championship - neutral impact of transfers on the economic level)**

The inclusion of Scotland in the international transfer market is strong. There are on average 23.8 players under contract per club including 11.7 foreign players (49%); on average, there have been 9 arrivals since 2009, with a slight majority of players (55%) being recruited in the national market.

The Scottish league is dominated by two leading clubs, which also are competitors, Celtic F.C and Glasgow Rangers. Even though they rely on a strong local support (45,500 spectators on average for the first 47,500 for the second in 2010/11), they have largely used labour from outside the league, or "foreign" labour (66 recruited abroad, as against 47 in Scotland).



It is, however, local recruitment: only 6% of players are recruited from outside Europe and UK players are the most recruited (77 English, 5 Welsh) and exported (England 49, Ireland 15, Northern Ireland 11). Recruited players are quite experienced (25.1 years).

The most active club for the 2011-12 season (Kilmarnock) was responsible for 9.2% of player recruitment. If we add Hibernians and Aberdeen, the weight of these three clubs was 31.9% of total transfers and 43.9% of those regarding foreign players in 2011-12. The Scottish Premier League plays a major role as a regional hub in particular with the English market (Global Migration Report 2011). For confirmed players, Scotland can be an entrance to the number one market in Europe: outgoing players are transferred mainly to England or re-imported to their league of origin.

The balance of transfer is positive with approximately €11m in 2010-11. Over the last 8 seasons, the cumulative balance is positive with approximately €35m with 5 profit-making years. On the economic front, the Scottish league generated a total income of €204m in 2010, i.e. an average of €17m per club (UEFA, 2012). It was systematically in deficit between 1999 and 2004. From 2004 however, the operating result was positive for 5 years. Despite this budgetary consolidation, the league is still highly indebted (€136m in 2010), i.e. more than €11m per club, but with two clubs responsible for 57.8% of the total. In 2003-4, a quarter of the clubs were in receivership (*administration*).

With budgets of £61m and £56m in 2010, Celtic F.C and Glasgow Rangers have among the most important European budgets. However, despite the strong popular support, their economic model does not appear viable, given the weakness of the Scottish league economy as a whole. The share of the turnovers of the Celtic F.C and Glasgow Rangers represent more than 69% of the total turnover of the SPL! A symbol of this hardly viable economy: Glasgow Rangers, unable to honour its debt of more than €166m, was put into liquidation and relegated to the fourth division at the end of the 2011-2season, having already been sanctioned by a penalty of 10 points the previous season.

In sporting terms Scottish clubs have suffered from the market liberalisation that started in the late 90s. The country has dropped to the 18<sup>th</sup> position in UEFA rankings. Celtic Glasgow was the last club to have taken part in the round of sixteen of the UEFA Champions League in 2007-8, but it is now ranked 63<sup>rd</sup> in UEFA rankings. Glasgow Rangers is ranked 50<sup>th</sup> but is going to drop following its relegation. These two clubs have shared all the championship titles since 1986.

#### **Lessons to be drawn**

*Scotland is a regional hub for transfers to the major championship in England. It is an exporting country, but whose economic model is very fragile, for reasons of market size, its proximity to the English market and for reasons of very strong segmentation.*

### **3. Portugal (highly importing country - "hub" for players from Brazil, but relatively low contribution to the final result):**

A first observation gives the impression that Portugal is a hub for the European and international transfer market. This is confirmed by the available data.

Players are primarily recruited from Latin America, with which Portugal has a special relationship. It recruits young players (24.2) in Brazil, in particular, (60 players recruited in 2010), and the country is clearly an entrance to the European market. Many of these players are indeed re-exported, mainly to other European countries: it was the case for 95 Brazilians in 2010 (Global Migration Reports CIES).

This role is obviously facilitated by the linguistic and cultural proximity, as well as by the fact that Portugal adapts well to the system of "third party ownership", which is widespread in South America.

Portugal is, therefore, highly integrated in the system of international transfers (14 foreign players per club, 9.9 arrivals on average). Only 52% of players are recruited within the national market. The recruitment of foreign players concerns all clubs which are all very active on the transfer market. Expatriates account for 55% of players and 86% of them are non-European, including 130 Brazilians in 2010-11, i.e. 8.2 on average per club! The market is not highly concentrated; all clubs have a very active transfer policy. In 2011, the most active club (UD Leiria) alone accounted for 9.2% of player transfers. If we add Sporting Portugal and Benfica, we obtain 24.8% of incoming transfers and 36.6% of the recruitment of foreign players.

However, the concentration is real in the light of the sums at stake. In 2010-11, the club making the most outgoing transfers (Benfica) received 51% of total revenues of all Portuguese clubs, whereas the club that recruited the most (Porto) accounted for 45% of the total amount paid by Portuguese clubs. Moreover, Benfica with the sale of three players (Andre Luiz, Ramirez and Di Maria - €85m) received 48% of all transfers revenue of the Portuguese 1st division.

As a result of the special position of Portugal (on the geographic, economic, sporting and legal levels), the Portuguese company, Gestifute, led by the players' agent Jorge Mendes (who manages in particular the interests of José Mourinho and Cristiano Ronaldo) is the market leader. It has generated €369.85m since its creation in transfers, according to the report made by the CIES.

Portugal is one of the European countries that export the most players in the various championships: 129 players of Portuguese nationality have been transferred in Europe (Poli 2010). Portugal also exports many players from South America (e.g. careers of players such as Deco, Pepe, Lisandro or Di Maria).

The Portuguese balance of transfers was clearly positive in 2011 and this had been the case for several years. For the last 9 seasons, Portuguese clubs have collected more than €980m of transfer revenues with a positive balance of more than €390m. However, there should be a more detailed analysis to see the real financial impact on clubs, given the widespread use of "third party ownership".

The turnover of the league amounts to €272m, i.e. an average of €17m UEFA, 2012). It is therefore only ranked 9th in Europe. The league is very unbalanced economically, since the 4 clubs who spend the most have payrolls that are 16.6 times higher than the rest of the clubs in the league. The Portuguese league is totally dependent on transfer operations. In fact, the operating result of the Portuguese league is significantly negative (almost 20%) and no club balances its accounts before transfer operations are taken into account. If we adopt an accounting entry, Portugal is the only country among the 15 biggest European championships to maintain a positive impact (and even very positive) of transfer operations on its financial results. However, the league had an overall negative net result according to UEFA in 2009/10.

In sporting terms, Portugal has had good results for several years with its national team and its club teams. Just like France, the national team benefits from the experience of expatriate players playing in the best European championships. In addition to the quality of national players, club teams benefit from the contribution of South American players. Thus, FC Porto qualified for the round of sixteen of the UEFA Champions League in 2009-10, won the Champions League in 2004, after winning the Europa League in 2003 (won again in 2011). Sporting Portugal was also in the last sixteen of the UEFA Champions League in 2008-09. This good health in sporting terms is reflected in its 5<sup>th</sup> position in the UEFA rankings this year, ahead of France.

**Lesson to be drawn**

*Portugal appears to be the most active country in the transfer market and a hub for relations between Brazil and Europe. It is also the main entry point of the Third Party ownership in Europe. It is the country that exports the most, but its highly profitable balance did not prevent it from having a negative net result in 2009-10. This does not prevent it from having financial problems.*

**4. Belgium (exporting country, but without a real impact on net result):**

Through its flexible regulation in terms of number of foreign players allowed, Belgium is an active country in the European labour market. Purchases are primarily done with immediate neighbours (France, the Netherlands). Belgian teams recruit relatively young players (24.2 years on average) in the minor leagues and in the secondary market of the Big-5 leagues (Spain and France)

Belgium is, in some cases, a stage towards the clubs of the Big-5 (see careers of players such as Van Buyten, Hazard, as well as Gervinho, Rozenhal, Romaric, Aruna Dindane, etc.). Some English clubs have even used the Belgian championship to enable some future recruits to adapt well to Europe (Arsenal-Beveren agreement) or to wait for a work permit.

The Belgian championship is, therefore, quite cosmopolitan (12.3 foreign players per club, i.e. 51% of expatriates). Only 53% of players recruited by the Belgian clubs come from the domestic market. Recruitment of foreign players concerns all clubs, who are very active in the transfer market. The market was not highly concentrated, at least for 2011. The most active club (Lierse) ensured 8.75% of the movements of players, the first 3 clubs account for 24.4% of movements.

The Belgian balance of transfers is in small surplus for the year 2010 according to the accounting approach of UEFA. However, it was largely profitable on net transfers for the season 2010-11 (€23m) and highly in surplus for the 2011-12 season (67), as well as for 2008-09 (35). Over the past ten years, the balance has a surplus of €240m.

However, it should be pointed out here that phenomena of concentration often occur. For 2011-12, the surplus was due to a reduced number of clubs who have made one or two major transfers: Standard Liege (€24.2 m), Anderlecht (€21.7m) and Genk (€14.8m). These three clubs represent 89.8% of the total amount received by the entire league. The club that made the most from outgoing transfers (in value) is Anderlecht, which received 28% of total transfers revenue of Belgian clubs. This share was even greater for the 2010-11 season (30% again for Anderlecht). For the same season, 9 clubs have recorded a balance of transfers in surplus, 4 had a balance in deficit and 3 were in equilibrium.

The turnover of the league is €240m, i.e. €15m on average per club (UEFA 2012). In sporting and economic terms the championship is fairly homogeneous. The Belgian league is one of those that generated a positive net result before transfer for the year 2010. Half of the clubs made profits. In sporting terms, Belgian clubs have suffered from the market liberalisation from the late 90s. RSC Anderlecht, which was one of the biggest European clubs with several victories in the European Cup in the 70s and 80s, is no longer able to appear in the UEFA Champions League, and neither do other Belgian clubs. Belgium is ranked 12<sup>th</sup> in UEFA rankings. RSC Anderlecht is ranked 41<sup>st</sup>.

**5. Austria (not very active in the transfer market - slight importer):**

Recruitment is mainly in Germany and Spain. There is, on average, 5.1 imported players per club. Recruitment focuses on experienced players (26.1 years old on average) which indicates a rather limited inclusion in the international trade of players. This is confirmed by the fact that 73% of players are recruited in the national market and expatriates represent only 26% of players from the championship.

In 2011, the three most active clubs were responsible for 40.5% of transfers, including 15.7% for the most active of them (SC Wiener Neustadt). The Austrian League makes few financially profitable operations with transfers: over the period 2008-11, the contribution of transfers to the profit and loss account was slightly negative (UEFA 2012). On net movements, the balance was slightly positive (€3m) in 2010-11.

In sporting and economic terms, the country does not belong to the elite of European football. It is in an intermediate group of the third level behind the Big-5 and behind a second group (Portugal, Netherlands, etc.) composed of countries that have a better economy and are more efficient in sporting terms.

The turnover of the league is €150m or €15m on average per club (UEFA 2012). The cumulative operating profit and net result are slightly negative.

In sporting terms, the country has no significant results. Generally, the clubs do not participate in the UEFA Champions League. Austria is ranked 15<sup>th</sup> in UEFA rankings. We must go down to the 69<sup>th</sup> position in the ranking of club to find the first Austrian club (Salzburg). The national team does not shine particularly at international level; Austria is not known for its training and is not a hub for transfers.

## **6. Denmark (exporting country historically)**

Recruitment is mainly from Norway, Sweden and Germany. There was an average of 3.9 players imported per club. The average age is 24.7 years, which demonstrates the recruitment of players at a fairly young age. Denmark does most of its transfers in the country, as 74% of players are Danish. The number of expatriates is, therefore, quite low (5.9 per club - 26% of players).

In 2011, the most active club in the transfer market was FC Copenhagen, with 12 new players representing 17% of the movements of players. The top 3 clubs alone represented 40% of the movements of players in the country. Regarding exports of players, Denmark transferred 62 players to foreign leagues (Global Migration Report 2011-12). The country has a tradition of exporting players to other Nordic countries and to Great Britain.

The balance of transfers of Denmark is positive and amounted to €11m in 2010-11, if we think in net terms. However, if we think from an accounting approach, it becomes negative (UEFA 2012). We note that the Danish championship remains healthy financially, despite the reduction in capital gains achieved on the transfer market since 2005-6 for which the balance still showed a surplus of €23m.

The turnover is €13m on average per club (UEFA 2012). In 2009-10, the operating result and net result were positive. The operating profit was due to the surplus of 3 Danish clubs only (other clubs are in deficit).

Denmark is ranked 13<sup>th</sup> in the UEFA rankings. FC Copenhagen is ranked 44<sup>th</sup> in the ranking of clubs. This country is not a hub for transfers and its activity in the market is relatively small. In sporting terms, the national team benefited from the experience of expatriate players, especially during the surprise victory in the European Championship in 1992. Since then, neither the national team nor Danish clubs has obtained convincing results, even if FC Copenhagen was in the group stage of the UEFA Champions League in recent seasons.

## **7. Greece (importing country and highly negative contribution to the global net result)**

Mainly recruited from Spain (21 players), Cyprus and Portugal. There are on average 8.6 imported players per club, who are mainly experienced players (27.3 years on average). A large part of recruitment is done in the domestic market (60%). We note, however, that the championship is cosmopolitan with 12.3 expatriates per club i.e. 49%.

In 2011, the two most active clubs were Olympiakos FC and OFI Crete FC with 15 new players each, i.e. 18.8% of the movements of players. According to the Global Migration Report (CIES 2012), Greece has seen 146 players transferred abroad, including a high number of players who returned to their country (i.e. 95% re-exported). This is a type of movement similar to that observed for Cyprus, which makes one wonder to what strategy it corresponds.

The Greek balance of transfers is negative. It reached a deficit of €6m in 2011. However, the deficit has been declining, since in 2005-6, it was still €9m in total.

The turnover of the league is €182m, i.e. €13m on average per club. The operating result of the league is clearly negative (UEFA 2012): only 3 out of 14 clubs generate an operating profit. Accounts deteriorate significantly after taking transfers into account, to reach approximately 30% of income, even though for this period the effects of the economic crisis have not yet been felt.

In sporting terms, Greece is ranked 10<sup>th</sup> in Europe. The first Greek club, Olympiakos, is ranked 32<sup>nd</sup>. To everyone's surprise, the national team won the European Championship in 2004, but did not subsequently confirm this, in particular because of a generation of aging players. Greek clubs regularly qualify for the group stage of the UEFA Champions League without really shining.

### **c) Group 3**

#### **1. Sweden (exporting country overall contribution to the financial result)**

According to data compiled by CIES, Swedish clubs mainly recruit from Norway (24) and Denmark (17). There are, on average, 4.5 imported players per club of 24.6 years on average. 68% of imports come from national clubs. There are on average 6.6 expatriates per club (i.e. 28%).

In 2011, the three most active clubs in recruitment (Orebro SK, IFK Norrköping and Syrianska FC) accounted for 39% of the transfers, including 13 (13.7%) for the club Orebro SK. These three clubs also accounted for 36% of the recruitment of foreign players.

Sweden exported 166 players in 2010-11 for €11 million. 97 Swedish players were transferred to the 36 European leagues in 2009 (Poli 2010).

The Swedish balance of transfers is positive (€8m). It has improved significantly since the 1999-2000 season, when it was negative (minus €2m).

The turnover of the league amounted to €112m, i.e. €7 million per club on average. The operating result of the League is in deficit (from 10% to 20% of income). Transfers enable the league to improve its net situation, as in the end 6 Swedish clubs make profits but with very contrasting results between clubs.

## **2. Poland (exporting country with low contribution to the financial result)**

Polish clubs mainly recruit from Serbia (14). There are on average 6.7 imported players per club of 25.4 years on average. A clear majority of players (66%) come from the domestic market: there are approximately 8.3 expatriates per club (34%).

The most active club in 2011 was MKS Cracovia with 15 new players recruited. It alone represented 9.5% of the movements of players. The 3 most active clubs (Cracovia, Jagiellonia Bialystok and LKS Lodz) accounted for 26.6% of recruitment of national clubs.

The balance of transfers of Poland was in surplus of €4m for the 2010-11 season, with a major phenomenon of concentration: the 3 most important clubs in terms of transfer revenues represent 75% of total revenues. These clubs are mainly responsible for the positive situation of Poland in the transfer market.

The turnover of the league is €90m, i.e. an average of €5m per club. The financial result of the league is highly in deficit in terms of operating result and net result (up to 30% of the income of the league). All clubs experience an operating deficit, and ten of them have an operating deficit of more than 20% of their income. The financial situation of Polish football clubs is alarming. Transfers enable some of them to have positive results.

In sporting terms, Poland is ranked 20<sup>th</sup> in the UEFA rankings, no club is in the top 50 positions. Neither the national team nor the clubs are obtaining good results on the European scene.

## **3. Romania (Importing country)**

There are on average 25.7 players per club including 7.6 foreign players (30%). There are about 5.5 arrivals on average per year. Recruitment takes place mainly in the domestic market (71%). The average age of players is one of the highest in Europe; 26.7 years.

According to the report of CIES, Romanian clubs mainly recruit in Portugal (27 players). It is also the second European destination for Brazilians players, according to the Global Migration Report, which can be explained by the significant presence of Portuguese coaches or managers within Romanian clubs according to the interviews we conducted. This confirms the important role of coaches in player transfers. A few years ago the country was clearly an exporter of players; it seems less the case today. The most active club in recruitment for the season 2011-12 was FC Petrolul Ploiesti with 20 new players (9.3% of total transfers). The share of the three clubs that recruit the most amounted to 24.7% (FC Petrolul Ploiesti, FCM Targu Mures and FC Brasov).

Romania is extremely active in the international transfer market and in its domestic market. The balance of transfers is significantly positive and reached more than €18m in 2010-11. On the contrary during the 2005/06 season, the balance of transfer was negative (minus €2m).

The turnover of the league was €120m or €5m on average per club. The operating result was negative (20% of income), but this did not prevent some of them (6) making profits of about 0 to 10% of their income. Romanian clubs are largely dependent on the sale of their players in order to stabilise their financial situation.

In sporting terms, Romania is ranked 22<sup>nd</sup> in Europe. At club level, the first of them, Steaua Bucharest (who won a European Champions Cup in 1986) is low in the European rankings (76<sup>th</sup>).

#### **4. Czech Republic: (exporting country slightly positive contribution to the net result)**

Czech clubs mainly recruit in neighbouring countries such as Slovakia (32 players). Czech teams are composed of 23.3 players on average with about 4.4 foreign players per club (19% of the squad). Clubs recruit about 3.1 players per season. The Czech Republic specialises in the training and promotion of young players, as shown by the average age of players who play there. Therefore, recruitment favours very young players (23.2 years) and takes place mainly in the domestic market - up to 74%.

The most active club in recruitment is FK Viktoria Zizkov with 17 new players (11.2% of the total). The top 3 clubs account for 28.9% in the recruitment of players (Zizkov, FC Banik Ostrava and SK Slavia Praha).

The Czech Republic exported 118 players in the 36 European leagues in 2009 (Poli 2010). During the 2010-11 season, Czech clubs collected a total of €26m relating to the transfer of players (263) for expenditure of €5m (267 transfers), which resulted in a largely positive balance (€21m) and confirmed the training policy of clubs in this country.

The average turnover per club is only €4m. The operating result is negative up to 10% of the income of the clubs in the league. Transfers operations enable many clubs (5) of this country to balance their accounts.

#### **5. Cyprus (Importing country, negative contribution to the result - a hub for international transfers in Europe)**

Players are mainly recruited in Greece (32 players) and Portugal (23). Cypriot teams are composed of approximately 23.8 players per club with 16.7 foreign players (70%) of 29.1 years on average, which is one of the highest in Europe. No club has employed players under 27. There are about 11.5 new players per club mainly from abroad, with an average age of 27.8 years.

The 3 most active clubs in the recruitment of players are Alki Larnaca FC, AEL Limassol FC and Nea Salamis Famagusta and they realize alone 31.8% of the total recruitment, including 11% (19 players) for the first one. Clubs that recruit the most abroad are AEL Limassol FC, Apollon Limassol FC and Nea Salamis Famagusta). They account for 29.3% in the recruitment of players from other countries.

Cyprus has a specific profile with a strong activity of international transfers but favours a movement of return of foreign players that is questionable. Like in Greece, the number of players re-exported (i.e. returning to their country) is very high (96%) according to the Global Migration Report (CIES 2012). Transfers revenues of Cypriot clubs amounted to €920,000 in 2010-11 (276 players) but did not offset expenditure: the balance of transfers is negative (at minus €640,000).

The turnover of the league is €42m or €3m (UEFA 2012) on average per club. The financial result of the league is significantly negative (about 30% of incomes), but due to a limited number of clubs (6). The situation gets worse after transfers are taken into account since only 4 clubs are not in deficit. In sporting terms, this expensive policy has partly been successful, since for the first time a Cypriot club (A.Famagousta) took part in the group stage of the Champions League in 2009-10 and 2011-12.

## **6. Slovakia (exporting country)**

Players are mainly recruited in the Czech Republic (49 players). There are approximately 23.7 players per club including 6.7 foreign players (28%) of 25.7 years. Half of the clubs count foreign players among their squad.

The most active club in recruitment is SK Slovan Bratislava with 15 new players i.e. 15.4% of total movements. The three clubs that are recruiting the most are, in addition to Bratislava, DAC 1904 Dunajska Streda and FK Senica. They account for 39.2% of total recruitment. Regarding the recruitment of foreign players, these three clubs account for 41.3% of the total.

Slovakia exported 92 players in the 36 European leagues in 2009 (Poli 2010). Transfers revenue in 2010-11 amounted to €3m for 196 transfers, it enabled the league to achieve a positive balance (€2m). The turnover of the Slovakian league was €24m, i.e. €2m on average per club.

## **7. Hungary (exporting country, strong contribution to the financial result)**

According to data of the CIES report, most recruitment takes place in Serbia (21) and Croatia (10). Apart from recruitment in these two countries, foreign players come mainly from other member countries of UEFA and do not belong to the European Union (41%). Hungarian clubs have on average 26 players in their squad including 8.9 foreign players (34%) of 26.5 years old on average. Since 2009, there are approximately 6.7 new players per club of 25.4 years who are recruited mainly in the domestic market (65%).

The most active club in recruitment is BFC Siofok with 18 new players representing 10% of the total. If we add recruitment made by Budapest Honved FC and Zalaegerszegi TE, we obtain 26.7% of total movements.

Hungary transferred 288 players in 2010-11 generating total transfer revenues of about €6m. This enabled the country to have a positive balance (€3m).

In 2010, the estimated average income of clubs was €1m. 9 out of 16 clubs made an operating profit. However, the league as a whole is experiencing an operating deficit of more than 20% of income, due to the bad results of some clubs. This deficit was more than offset by a significantly positive balance of transfer fees which enabled an overall positive net result for the league.

## **8. Slovenia (Exporting country significant contribution to the financial result)**

Players are mainly recruited in Croatia (10), according to the CIES report. Clubs have approximately 25.4 players including 3.5 foreign players (14%). Since 2009, 2.5 players per club on average have



been recruited, most of them from within the country (81%). The Slovenian League is one of the smallest with only 10 clubs.

The most active club in recruitment is FC Koper with 16 new players, i.e. 14.7% of total purchases in 2011-12. The three most active clubs (NK Rudar Velenje and NK Nafta) account for 36.7% of player transfers.

In 2010-11, Slovenia transferred 197 players for total revenues of €11m. As recruitment is mostly made for free (free players or who reached an agreement with their previous clubs), its balance of transfer is strongly positive (€11m).

In 2010, the estimated average income of the clubs was €1m. Slovenia is one of the countries with the most important operating deficit: 30% of income of the league. Just one club has an operating profit (0%-10% of its income). But as with Hungary, the balance of transfers can generate a positive net result.

#### **9. Finland (exporting country but small contribution to the net result)**

According to the report of the CIES, Finland has 24.3 players per club. In 2010-11, recruitment was done mainly in neighbouring countries: Sweden (9) and Norway (6). There are 5.5 foreign players per club (23%) of approximately 25.2 years, which is explained by a significant recruitment of players in non-European countries: 8 Nigerians, 5 Americans and 4 Brazilians and Canadians. 60% of foreign players come from non-European countries.

Between 2009 and 2012, the League counted 3.8 arrivals per club with players of 23.9 years. Recruitment is done mainly on the domestic market up to 76%. Regarding recruitment of foreign players, 42% come from non-European countries.

The three most active clubs in recruitment are Rovaniemi PS, IFK Mariehamn and Myllykosken Pallo-47 and they account for 38.7% of the total. The most active of them accounts for 14.5% (18 new players). Regarding the recruitment of foreign players, Rovaniemi PS, IFK Mariehamn and FC Inter Turku have been the most active with 42.7% of the total.

In 2010-11, the Finnish clubs made 167 transfers collecting €1.3m. In fact, the balance of transfers reached €1.3m. During the 1999-2000 and 2005-6 seasons, the balance was also positive, but with a lower number of players being transferred.

The estimated average income of Finnish clubs amounts to €1.2m. Finland is one of the countries with the largest operating deficit, in terms of its income (-30%). No Finnish club generates an operating profit. This result is slightly improved thanks to transfers, which enabled 2 clubs to generate a positive net result.

#### **10. Bulgaria (exporting country, strong contribution to the result)**

Bulgaria recruits largely in Brazil (12 players) and Cyprus (9) during the season 2010-11. Clubs have on average 24.3 players including 4.8 foreign players (20%) in their squad. 41% of foreign players are recruited in non-European countries. Since 2009, there have been 3.8 arrivals per club with players 25.2 years old on average. Most players were recruited in the domestic market (75%), which is one of the most active in Europe with 8.9 players recruited on average.

The most active club in recruitment during the 2011-2012 season was PFC Ludogorets Razgrad with 24 new players, i.e. 11.6% of the total. If we add the two most active clubs (PFC Svetkavitsa and CSKA Sofia), we obtain 28% recruitment made by the Bulgarian clubs. Recruitment of foreign players has been significant for three clubs: PFC Ludogorets Razgrad, CSKA Sofia and PFC Slavia Sofia. These three clubs have recruited 25 foreign players (38.5% of the total).

In 2010-11, Bulgarian clubs have transferred 263 players, which enabled them to generate €11m in revenues. Conversely, they recruited 276 players for a total of €2m). This enabled Bulgaria to have a positive balance of transfers (€9m).

The estimated average income of Bulgarian clubs is €1.2m. The operating deficit of Bulgaria reaches 30% of incomes just like Finland. 6 clubs generate an operating profit, but fail to reverse the situation of the Bulgarian league. Transfers do not have enough impact to significantly improve the net situation.

### **11. Republic of Ireland (Exporting country, small contribution to the result)**

During the season 2010-11, Irish clubs recruited mainly in neighbouring countries, such as England (14 players) and Scotland (6 players). There are on average 25.9 players per club including 4.6 foreign players (18%). 83% of foreign players playing in Ireland come from countries of the European Union and essentially from England (19) and Northern Ireland (12). Since 2009, there have been 2.1 arrivals per club on average knowing that the majority of recruitment occurred on the domestic market (88%). The average age of players is 23.9 years old (i.e. 2 years below the European average), which shows that Irish clubs have a policy of training young talents in order to resell them subsequently to other countries, like England.

The most active club in recruitment in 2011-12 was Drogheda United FC with 21 new players i.e. 23.6% of the total movement of players. This club is followed by Shamrock Rovers FC and St Patrick's Athletic FC. These three clubs represent 50.6% of total recruitment. Recruitment of foreign players is mostly done by 4 clubs which account for 76.9% of the total of the league.

The balance of trade of Ireland in 2010-11 was positive (€117000). Ireland does not have a very important place in the transfer market. It is a training country, but players do not necessarily play in the best European clubs.

The estimated average income of Irish clubs was €1.2m in 2010. The Irish league is experiencing a deficit up to 5% of its income. However 6 out of 10 clubs generate an operating profit.

Regarding **Latvia, Luxembourg, Estonia, Malta and Lithuania**, CIES has no data that would allow a reliable analysis; other potential sources cannot fill this gap either.

In these countries the football economy is very fragile and unprofessional: the average budgets of clubs range from €0.2m (Malta, Estonia) to €0.6m (Lithuania, Latvia). Operating results are systematically negative. Latvia, and more clearly Lithuania and Estonia, seem to improve their financial results thanks to transfers. We can note that the Lithuanian federation plans to implement a device like the TMS, but for the moment data is not available.

#### **3.3.2.1.3 Summary and general findings**

We can learn some valuable lessons from this mapping of transfers by country. We can distinguish importing and exporting countries, identify countries that play a key role in some or all of the transfer market in Europe and/or worldwide, and the impact of transfers on the general economy of the countries.

- Two kinds of exporting country can be distinguished:
  - o Either they provide their economy sustainably with the revenue from transfers; e.g.:
    - Portugal;
    - several Nordic countries (Sweden, Iceland and Finland);
    - countries in eastern Europe (Czech Republic, Hungary and Bulgaria) and the Balkans (Slovenia);
  - o Or this contribution is less significant or more irregular; e.g.:
    - Belgium, the Netherlands, Denmark and France.
- Some countries are importers of talent:
  - o In certain cases they systematically damage their financial results by these transfers, e.g.:
    - Three of the Big-5 countries (England, Spain and Italy);
    - Less well thought of championships in southern Europe (Cyprus and Greece);
  - o For other countries, this activity has little impact on their financial results, e.g.:
    - Germany
- Lastly, some countries operate as a hub, e.g.:
  - o Portugal, between Brazil and Europe;
  - o Scotland, between the continent and England;
  - o France is a favoured entry hall for the Big-5 and a hub between Africa and Europe;
  - o Cyprus exercises considerable activity, considering the size of its market and, in terms of sport, the level of its national championship.

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	Importing country	Exporting country	Area of recruitment	Impact of transfers on financial results	Notes
England	X		Big-5 – Scotland	Very negative	
France		X	Africa – England	Relatively positive	Entrance hall for African players
Germany	X		All Europe and Japan	Neutral	
Spain	X		Big-5 – South America (Brazil, Argentina)	Very negative	Entrance hall for Brazilian and Argentinean players
Italy	X		Big-5 – Argentina	Very negative	Entrance hall for Argentinean players
The Netherlands		X	Recruitment from proximity (Sweden, Belgium, Denmark)	Weakly positive	
Scotland		X	Pays Anglo-Saxons	Neutral	Entrance hall for access to England
Portugal		X	South America, especially Brazil	Strongly positive even if difficult to establish (third-party ownership)	Hub between Brazil and Europe especially for strong tolerance of TPO
Belgium		X	Proximity (France, The Netherlands) and second market of Big-5	Positive	Entrance hall for big-5
Austria	X		Centred on the national market	Negative	Weak insertion in international market
Denmark		X	Proximity (Norway, Sweden, Germany)	Neutral	
Greece	X		Hispanic countries (Spain-Portugal) – Cyprus	Very negative	High number of re-exported players
Sweden		X	Proximity: Norway-Denmark	Positive	
Poland		X	Proximity: Serbia	Weak	
Romania	X		Portugal, Brazil	Positive	
Czech Republic		X	Proximity: Slovakia	Relatively positive	
Cyprus	X		Greece, Portugal	Negative	Hub for international transfers
Slovakia		X	Proximity: Czech Rep.	Neutral	
Hungary		X	Serbia, Croatia	Strongly positive	
Slovenia		X	Croatia	Strongly positive	
Finland		X	Proximity: Sweden, Norway	Slightly positive	
Bulgaria		X	Brazil, Cyprus	Strongly positive	
Ireland		X	Proximity: England, Scotland	Neutral	

### National economic mapping for football

#### 3.3.2.2 National economic mapping of basketball

The elements presented below are mainly from the FIBA database, reprocessed by CIES within the framework of its report; International Migration Report 2012. We are only dealing with leagues of the EU for which the data were processed, i.e. Spain, Germany, France, Italy, Greece and the Adriatic league which includes Slovenia. More specifically, the approach aims at describing the profile of the players playing in the country, identifying international transfers and assessing the degree of stability or mobility of players.

##### 3.3.2.2.1 Spain – Liga ACB

Spain is one of the most important championships in the world, both in sport and in economic terms. The ACB league is composed of 18 clubs. In 2011-12, there were 218 players playing in the ACB League. The Spanish league is one of the most important leagues in terms of recruitment of foreign players. There are 59.6% of foreign players while there is on average 38.5% of foreign players in all the other leagues combined<sup>344</sup>. Foreign players represent 38 different nationalities. 47% of them come from

<sup>344</sup> The study of CIES makes an analysis of a sample of 12 leagues : Liga ACB (Spain), BBL (Germany), Pro A (France), Serie A (Italy), Adriatic League (Croatia, Israel, Montenegro, Serbia, Slovenia), A1 League (Greece), TBL (Turkey), PBL

North America, including 31% from the USA. Regarding other nationalities, there are 6 Serbian players, 5 players from Brazil, Croatia and France. Spain is the largest importer of players with 428 players. Spain is also ranked 4<sup>th</sup> in the world in terms of exports of players with 125 players.

The average length of stay in a club practically reaches the same level as the other leagues: 1.86 year for the ACB League and 1.94 for other leagues<sup>345</sup>. If we make a distinction between foreign players and national players, a difference can be observed. National players stay 2.23 years in the club, as against 1.61 for foreign players. Foreign players playing in Spanish clubs are older than national players: 28.11 years old against 27.32 years old. 46.5% of foreign players are between 27 and 31 years old. And 30.7% of national players are more than 32 years old.

#### **3.3.2.2.2 Germany – Basketball Bundesliga**

The Basketball Bundesliga is composed of 18 teams. This is the league which is the most dependent on foreign players. In 2011-12, the league had 217 players; 61.8% were foreign players. Players are mainly recruited in the United States (77.6% of foreign players are American). The German league is a hub for foreign players. It enables them to integrate into the European market.

Unlike Spain, few countries are concerned (14 different nationalities in the league). Apart from the United States, players are mainly recruited in Eastern Europe. Germany is the 5<sup>th</sup> largest exporter of players in the world (121 players). Regarding imports, Germany is the 2<sup>nd</sup> largest importer in the world with 358 players.

National players are much younger than foreign players when they are recruited (24.89 years old, as against 28.02 years old). Foreign players stay about 1.38 year in the German league against 1.8 year for national players. Foreign players playing in the BBL are between 27 and 31 years old (48.1% of them), while national players are between 22 and 26 years old (47.6%).

#### **3.3.2.2.3 France – Pro A**

Pro A is composed of 16 teams with 191 players including 77 foreigners (40.3%) in 2011-12. This league, therefore, uses more foreign players than other leagues in the panel (38.5% on average over the 12 leagues studied). Only 10 nationalities are represented. Players are mainly recruited in the United-States (62 players) and then in Africa (13% of foreign players are coming from Africa).

In terms of imports, France is ranked 3<sup>rd</sup> in the world with 306 players recruited. France is the second largest exporter of players behind the United States with 162 players.

Players stay more than two years in the French league (2.13 years against 1.94 year for all leagues combined). If we compare foreign and national players, we observe a large difference: 2.52 years for national players and 1.56 for foreign players.

Regarding the average age, Pro A is slightly below the average of other leagues (26.57 years old against 26.8 years old) especially for national players (24.87 years old). This shows the role played by France in the training, development and promotion of national players. 55.8% of foreign players are between 27 and 31 years old, while 34.2% of national players are less than 22 years old.

#### **3.3.2.2.4 Italy – Serie A**

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(Russia), NBL (Australia), CBA (PR China), Liga A (Argentina and Superleague (Ukraine). In these leagues, there are on average 38.5% of foreign players.

<sup>345</sup> Same leagues mentioned in the previous footnote.

Serie A is composed of 17 clubs with 200 players in 2011-12. There are 48.5% of foreign players (compared to 38.5% in all leagues). In Serie A, 24 different nationalities are represented. Players are mainly recruited in the United States (50 of them). The other players recruited mainly come from countries of Eastern Europe (Croatia, Greece, Lithuania, Serbia, Slovenia, etc.) and some traditionally come from Argentina. No players come from Asia. There are as many players coming from the American continent as from Europe (49% for both).

Regarding imports of players, Serie A is ranked 4<sup>th</sup> with 276 imported players. Conversely, it is only ranked 7<sup>th</sup> in the world in terms of export of players with 65 players playing abroad.

The players playing in Serie A stay less time than players playing in other leagues (1.78 year for the first, compared to against 1.94 for the second). If we make a distinction between national and foreign players, we observe that national players stay more than two years (2.21 exactly) in the championship, compared to 1.37 year for foreign players.

Serie A has the oldest players (28.21 years old, as against 26.8 years old all leagues combined). What characterises Serie A is that national players playing in the clubs are recruited at a late stage, just like foreign players (27.73 years old for national players against 28.66 years old for foreign players). 38.8% of foreign players are between 27 and 31 years old, while 54.6% of national players are between 27 and more than 32 years old.

#### **3.3.2.2.5 Greece – A1 League**

The Greek Basketball League (A1) is composed of 13 teams with 176 players including 58 foreigners in 2011/12. The Greek clubs are composed with less foreign players (33% of the squads in average) than other leagues in average (38.5%). in 2011-12. This is the lowest percentage of European leagues. 15 nationalities are represented in the Greek league. 55% of the players are recruited in North America. The recruitment of other foreign players is mainly done in countries of the former Yugoslavia (Serbia, Bosnia...). Greece is ranked 9<sup>th</sup> in the world regarding the number of imported players with 131 players and is ranked 14<sup>th</sup> in the world regarding the number of exported players (45 players). Just like the other leagues, national players stay more than two years (2.14 exactly) in the championship and a little more than a year for foreign players (1.16 exactly).

The average age of players is 26.77 years old. Foreigners (27.79) are older than national players (26.27) in average. 41.4% of foreign players are recruited between 27 and 31 years old against 28% for national players.

#### **3.3.2.2.6 Lithuania – Baltic League**

The Lithuanian Basketball League belongs to the Baltic League which is composed of 5 countries: Lithuania, Latvia, Estonia, Sweden and Kazakhstan. This league works the same way as the Adriatic League championship, i.e. that the best teams from each country participate in the Baltic championship, and in the national championship of their country and possibly in European competitions. Players from the Baltic League and playing in Lithuania are not considered as foreign players. According to the report of the CIES 2012, Lithuania is the 3<sup>rd</sup> country in the world rankings for the number of players returning to their country after moving abroad (38 players<sup>346</sup> returned to Lithuania). Lithuania is also the 6<sup>th</sup> in the world rankings for the number of exports of players, with 95 players exported. The Lithuanian migration balance is positive since it has only imported 46 foreign players. It is ranked 3<sup>rd</sup> in the world rankings in terms of positive migration balance.

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<sup>346</sup> Our different sources give here a difference of two units

	2009/2010	2010/2011	2011/2012
Lithuanians gone abroad	94	78	92
Lithuanians returned home	43	52	40
Foreigners playing in Lithuania	46	58	52
Foreigners gone leaving Lithuania	20	21	37

Characteristics of transfers: total number, incoming number, outgoing number, national transfers. If possible, number of transfers with fees, number without fees, and number of loans

As elsewhere, the majority of foreign players are American (27 in 2011-12), but the other foreign players recruited are in order of importance Serbs (3), Latvians (3), Croatians (2) Ukrainians (2).

The number of exported Lithuanian players peaked during the season 2009-10 with 46.3% of players exported compared to the total number of transfers of players during the season. However, during the following season, they accounted for only 37.3%. Finally, in 2011-12, 41.6% of the players movements resulted from Lithuanians transferred abroad.

Lithuanian players exported	Recruiting country	Positioning of Lithuania compared to the number of players imported by the recruiting country
5	Germany	3 <sup>rd</sup> position
5	Italy	2 <sup>nd</sup> position
2	Greece	4 <sup>th</sup> position
2	Turkey	2 <sup>nd</sup> position
3	Russia	3 <sup>rd</sup> position

Exportation of Lithuanian players in Europe.

This table shows the importance of Lithuania in the recruitment in foreign countries. Lithuanian players are present in many championships and for the 5 countries listed in the table, they represent a significant number compared to the mass of foreign players recruited.

The exports of players in 2009/2010 represented 56.2% (foreign and national players) of the total movement. During the last season, the percentage of exports was up to 58.4% of the total movement. Logically imports (foreign players and national players returning to Lithuania), therefore represented 43.8% of the total movement in 2009-10. This percentage is lowered during the season 2011-12 with 41.6% of players imported compared to the total movement.

### 3.3.2.2.7 Adriatic league

The Adriatic league brings together several countries: Bosnia and Herzegovina, Croatia, Israel, Montenegro, Serbia and Slovenia. However, each country has its own league and its own championship. In this league, the best teams of each country are grouped to form a championship.

The league is composed of 14 teams with 177 players. In 2011-12 there were 33.9% of foreign players. This percentage is slightly below the average of other leagues (38.5%). Regarding the origin of players, 63% come from Europe and 37% from America. Players are not recruited from any other European countries (excluding Adriatic league) nor from any other continents. One country stands out in terms of export of players: Serbia. Indeed, this league is the 3<sup>rd</sup> largest global exporter with 141 players.

Players stay 1.96 year in the league against 1.94 on average in the other leagues. If we make a distinction between national and foreign players, just like in other European countries the same situation is observed: national players stay 2.36 years in the league against 1.18 year for foreign players.

The average age of the players is lower than the overall average (25.81 against 26.8 years old). The Adriatic league is considered as a hub for foreign players and as a launching pad for national players. In addition, foreign players from each league come from neighbouring countries. It explains the following figure: 41.4% of foreign players are recruited between 22 and 26 years old and 34.2% of national players are recruited in the same age group.



### **3.4 Assessment of the transfer system**

#### **3.4.1 The operation of the system**

To reach a better understanding of the practical operation of the transfer market, we have adopted a three-stage approach in this section. The first is a description of the different forms that transfers will take (1). The second shines a light on the concrete situations encountered as part of our own experiences, our bibliographical analyses and our interviews and questionnaires (2). Lastly, the third is to highlight these initial observations as part of an analysis of the actors involved in this market.

##### **3.4.1.1 How does it work? Case studies: interplay of stakeholders**

Three broad categories of situation are encountered (see also point above for transfer typologies): transfers with a fee, a loan and transfers without a fee.

###### **3.4.1.1.1 *Definitive transfers with fees***

Since the Bosman Case, for there to be a fee, it has been necessary that the transfer takes place when the contract is still valid <sup>347</sup>.

###### **a. The contract**

For there to be some form of compensation, a fee, it is necessary for the player to be under contract. In this, specific clauses may deal with the issue of transfers<sup>348</sup>.

###### **- Buyout clauses<sup>349</sup>**

If the player's contract has a buyout clause and if sports and state regulations allow it (e.g. Spain), then any club that provides proof of payment of the amount provided may recruit the player, without any particular negotiation with the seller club.

The price of the player on the transfer market is known, in theory. For example, the amount would be €250m for L. Messi and €200m for several other Barcelona players (C. Fabregas, L. Piqué, A. Iniesta and A. Sanchez, etc.). But the sum is actually theoretical because, if for whatever reason, the club wishes to let the player go (incompatibility, poor performance or a need to lighten the wage bill, etc.), then his departure will be negotiated at a lower price. This was the case for Yaya Touré. In 2010, he left FC Barcelona for Manchester City for €30m, even though his contract seemingly provided a leaving clause at €100m. The clause is, therefore, a means of dissuading the player from unilaterally terminating his contract.

In those countries where such clauses are not accepted, either with respect to public regulations or to sports regulations (e.g. France), this does not preclude their existence...or their implementation. The transfer to Arsenal during summer 2012 of the Montpellier player, Olivier Giroud, the leading scorer in the French championship, for the payment of the clause set at €12m when he signed it two years ago,

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<sup>347</sup> We must distinguish between actual transfer fees and training fees; the latter can be collected, in principle, by the training club, even when the contract has ended.

<sup>348</sup> See, for more details, the legal section: dispute resolution.

<sup>349</sup> Or Transfer Clauses, even if a distinction can be made, as the CAS did.

illustrates this situation. This was also what happened with E. Hazard, when he left Lille for Chelsea. In both cases, this has led to a fast negotiation without major conflict.

When there are buyout clauses or clauses that provide for a buyout, they can take many forms<sup>350</sup>:

- Unconditional clauses
- Conditional clauses:
  - Sports: e.g. club staying up or, on the contrary, being relegated;
  - Modalities: the clause can only be activated only during a given time: “the player can leave the club for compensation set at €xxxm. The player should inform the club no later than xxx of his wish to activate the aforementioned clause”.
  - Relating to the destination (non-competition clauses):
    - Possible transfer abroad;
    - In basketball, more specifically, the clause is valid only in case of departure for the NBA;
    - Priority right of offer for such a club<sup>351</sup>;
    - In certain extreme cases, a clause can even exclude certain clubs<sup>352</sup>.
  - Relating to the amount: the clause can differ depending on the year, be reduced automatically every year or be differentiated according to the club Championship that will activate it;
  - Relating to how this amount is allocated: it may be that a part of this amount comes back to the player (the Marlet transfer from Lyon to Fulham in 2001<sup>353</sup>).

#### - **No buyout clauses**

In the absence of any release clause in the contract, the player may still leave the club, but in this case there will be negotiation without prior basis concerning the amount.

This situation is common in those countries that do not allow release clauses. It also sometimes occurs in basketball, especially for domestic players. So it was that this year, in France, saw the departure of A. Albicy from BCM Gravelines to Paris-Levallois while he had a two-year contract without a release clause. Paris had to pay €60 000 to release the French international player from his contract.

In this case, we find all the elements in the negotiation, the result of which will depend on the strategies of the different actors involved and the forces present.

#### - **Other contract clauses**

Other clauses in the contract may have an impact on the player's future transfers.

Thus, a player who negotiated a long-term contract with a very high salary can be made to leave if his performance does not match this remuneration. This is the present case with Kaka at Real Madrid, in 2012.

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<sup>350</sup> Very great creativity can sometimes be seen here.

<sup>351</sup> This was the case with L. Rémy's contract in France; in the case of leaving Nice, Lyon could have got the player back, if it had offered an equivalent amount to that of its competitors.

<sup>352</sup> E.g. in Italy, Jovetic, who played for Fiorentina, could not be transferred to Juventus! In the 1980s, CSP Limoges was able to block its American basketball star from signing for another French club. The legal validity of some of these non-competition clauses must be seriously doubted.

<sup>353</sup> Quoted by “Le milieu du terrain”

Conversely, a player trained or discovered by a club and, therefore, having a relatively low salary in relation to the market, will experience very different changes of career and salary terms, depending on whether or not he negotiated a buyout clause in his first contract right at the outset.

In the field of contracts in professional sport, the stakeholders may demonstrate great creativity, for better or for worse. Most of these original clauses do not directly concern transfers, yet they can, in some cases, have an impact on the transfer policy of the club.

A French player provides us with a perfect example. When he signed for an English club, he inserted an original clause in his contract, which was, unbelievable as it seems, accepted by the club<sup>354</sup>: his salary had always to be amongst the three highest in the club. Although this clause served the player's financial interests, it also ended up making his position untenable in the club, which pushed him to leave.

Sometimes, clauses provide for an automatic extension of the contract or bonuses...when the player has played in a certain number of matches in the season. We have even seen club presidents tell their coaches not to play such a player, in order to avoid the extension of the contract or the payment of a bonus.

## **b. The negotiation**

### **- The theory**

It is customary that the club interested in a player under contract makes contact with the club to show its interest in the player (at the same time, the player is discretely sounded out via his agent to test his interest). In all countries – and in most sports – the periods of contact between a club and a player under contract with another club are regulated. These regulations are intended to avoid the promise of a transfer affecting the regularity of competitions. However, these regulations are difficult to apply and offenders are rarely sanctioned<sup>355</sup>.

There are two mainly distinct situations:

- In some countries, offers of a contract are regulated by a strict procedure (Spain and England);
- In others, the procedure does not exist and only the registration of a contract is strictly regulated (France, in football and basketball, and Belgium).

When a player's employer gives his agreement in principle, an initial general discussion takes place on the possible conditions for the sale of the player. Armed with this (verbal) agreement, the club that is the potential recruiter then approaches the player, with whom it negotiates the general conditions for his signing: salary, signing bonus, benefits in kind, duration of contract and possible later leaving terms, etc.

In most cases, discussions are conducted by the agent (or agents) of the player, on the one side, and a representative employee of the club (Sports Director, Manager or the President) and, where necessary, a club advisor (agent or lawyer), on the other side. Once both parties agree, the discussion with the employer club is finalised and the different documents (contract, transfer agreements, etc.) are sent to the sports bodies. If it is an international transfer, the sports federation of the employer club for the

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<sup>354</sup> We saw that the club was also quite creative in management; which led to its bankruptcy in 2004.

<sup>355</sup> In France, the OM of B.Tapie made a speciality of this strategy. The best player of the opposing team often became, in the period preceding the match, the target of a potential transfer.

previous season should, both in football and in basketball, issue a transfer certificate attesting that the player is no longer under contract and, therefore, allowing his transfer (see the legal section above).

Approval of the contract requires respecting the substantive and formal conditions (see legal section).

If the contract's approval is accepted by the league and the federation, then it produces all these effects. If approval is refused, which is more common in countries with a strict control of the management of clubs, legal questions arise concerning the future of the contract (see the legal section).

But things do not always happen as described above.

- **Practices sometimes differ**

To obtain more favourable transfer terms, the interested club may enter into contact directly or indirectly (agent – friend) with the player to show its interest and even to try and lure him with much improved salary conditions. It is the player who then tells his managers of his desire to leave. The player then begins a negotiation, even a “show of strength”, with his club to obtain a “good exit”.

On his own, or at the instigation of his agent, the player can trigger a showdown with the club with a clear objective in mind: to increase his salary. This objective could be achieved by two different means: obtain this increase in his current club (as with Rooney with Manchester United in 2011 and C. Ronaldo in 2012) or obtain these conditions as part of a transfer (as with Ibrahimovic, Modric and even Van Persie in 2012). In the former case, the contract is extended and the release clause upgraded.

- **Information: a strategic element**

We have described the importance of asymmetric information in analysing the labour market in sport. As this information is strategically important, it is used and even manipulated by the different parties involved: rumours, information and disinformation are an integral part of the game of negotiating.

The information is used to sharpen or discourage competition to up the “auctions” of transfer fees and salaries, or more simply to “put pressure” on the negotiating partner.

This policy of information manipulation is even easier as the public enjoys this type of information and many forms of media specialise in this information or they willingly relay all the information, true or false, verified or not. Club managers and agents are favoured actors in this media war of attrition.

Transfers also appear as a form of communicating football to fill the media; for a large public, it clearly presents a passionate soap-opera, involving “celebrities” and is virtually disconnected from the activity of football itself.

- **The schedule: a key element**

Just what a major role the schedule plays is clearly shown by the number of transactions validated during the last day of the transfer window: e.g. 36 transfers on 31<sup>st</sup> August 2011<sup>356</sup> in France, i.e. 34.3% of transfers of the total window. The phenomenon is the same everywhere; hence in England in 2012, 22.45% of the money was spent on the last day.<sup>357</sup>

Some discussions end only a few minutes before the deadline, at the risk of being subject to technical uncertainties which could prevent the transfer being validated: take the case of Nice in August 2011, with the transfer of Y. Djalo four minutes beyond the deadline, which was finally refused despite the club appealing to FIFA and then to CAS.

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<sup>356</sup> 13 arrivals from abroad, 7 departures abroad, 8 definitive transfers within France and 7 temporary transfers within France.

<sup>357</sup> Press 7/09 £110m out of £490m

A number of important transactions were finalised during the final day: Ronaldo from Inter to Real in 2002, Makelele from Real to Chelsea in 2003, Rooney from Everton to Manchester in 2004 and, more recently, Pjanic from Lyon to Rome in 2011 and, this year, Lloris from Lyon to Tottenham, Hulk from Porto to St Petersburg for a record transfer fee in 2012 (€58m), and Witzel from Benfica to St. Petersburg.

### **c. Compensation**

The issue of compensation has several components: not only that of the amount, but also that of the agents' additional compensation, that of possible bonuses on top of the agreed fixed sum, as well as that of the crucial question of the methods of payment, given the constant liquidity problems that clubs may encounter.

#### **- Determining the amount of compensation**

We consider here that in the event of there not being a release clause, or that it is disconnected from the reality of the market, it will not be applied. The amount will then be determined as described at the beginning of the present chapter, according to the willingness-to-pay of the buyer club and the willingness-to-receive of the seller club. These depend on the respective situations of the two clubs, on the structure of the relevant market and the strategies of the different actors in it, on the economic and sporting context at the time, and on the player's characteristics and his contractual terms.

But in addition to these factors, two issues play a major role:

- The urgency of either club to sell or buy and hence the issue of the schedule becomes important, as in every negotiation process;
- The state of market competition.

Two previously described periods must be distinguished in order to describe the situation:

- 1996-2001 was a period of generalised inflation for transfer fees and a period of strong speculation when clubs hoped for financial gains through transfer operations.
- 2002-12 was a period when the speculative dimension had virtually disappeared and the market was more concentrated and dependent on the spending of just some clubs, funded by resources outside football.

We will see how the decisions of one or more of the actors involved can drive the market; this is particularly true in the first segment (segmentation and concentration phenomena). Seller clubs were able to benefit from the extravagant spending policies of, especially, Chelsea 2003-7, of Manchester City since 2008, of Real Madrid 2000-3 and 2006-11, and of PSG today.

#### **- Negotiating the agent's or agent's commission**

For several reasons, the issue of negotiating the agent's or agents'<sup>358</sup> commission could become central during discussions.

Sometimes, an agent has such power that, in the end, it is he who decides whether a transfer will be finalised or not. From that, it might be thought that it is this amount that will ultimately tip the decision. This is what Alex Ferguson seemed to imply in the context of E. Hazard's transfer to Chelsea<sup>359</sup>, when

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<sup>358</sup> Up to five agents per transfer could be used.

<sup>359</sup> Daily Mail

the commission seemed to be about 20% of the transfer fee. As part of Bebe's transfer to Manchester United in 2011, Jorge Mendes received a commission of £3.6m for a transfer fee of £9m, i.e. a 40% commission!<sup>360</sup>

In certain cases, it could be the point that blocks the end of the discussion.

The commission is then taken from the transfer amount; it can be paid in one go or in several instalments over the term of the contract.

#### - Incentive or conditional compensation

This practice is increasingly common and involves both clubs and players.

- The large sums exchanged during transfers can make the players themselves envious. Some of them and their agents have thought to include a clause in their contracts that provide for profit-sharing, calculated in % of the amount. Thus, thanks to a clause in his contract, E. Hazard received 6% of the amount received by Lille, i.e. about €2.5m<sup>361</sup>. S. Marlet had such a provision in his contract with Olympique Lyonnais: 60% of a transfer fee beyond €19m came back to him as a bonus. Implemented for his transfer to Fulham, he is alleged to have received 30m French francs<sup>362</sup>.
- But the practice of an incentive clause in favour of the clubs is equally widespread. It can take many forms.
  - The simplest and oldest form consists of an incentive from seller club A when the player is again transferred from buyer club B to a third club C. It is then simply agreed that at the player's next transfer, club A receives a sum of €xxm or a % of the net sum received by club B. Such clauses can sometimes lead to problems of interpretation (see the dispute between Caen and Lille and OL about Mathieu Bodmer's transfer). Such a clause was included, for example, in Wayne Rooney's transfer from Everton to M.U.: "If he [W. Rooney] does leave then Everton would be in line to scoop a small fortune. The Toffees have a sell-on clause in Rooney's contract which states that they would get 25% of any excess sum over the £27m United eventually paid for the striker." BBC.co.uk 19<sup>th</sup> Oct 2010." When discussions are difficult, the percentage of the bonus may increase to 50% or more of the next transfer fee: e.g. N. Roux, because of a negotiated clause in his transfer from Lens to Brest in 2010: Lens received €4m out of the €8m transfer fee paid by Lille to Brest in early 2012.
  - A more sophisticated form, which has become widespread over the last few years, is to provide additional compensation if the buyer club achieves certain objectives: league champion, qualification for a European competition or the number of matches the transferred player plays, etc. These clauses can lead to a significant increase in the final compensation<sup>363</sup>. See the recent example of H. Lloris, the French goalkeeper, who was transferred to Tottenham for around €10m plus bonuses of up to €5m i.e. an increase of 50% in the amount.

In its first annual report, FIFA estimated that the amount of conditional compensation was 10% of the total compensation paid, i.e. \$300m. For Europe, if that percentage were the same, it would lead to an estimate of \$300m in total (domestic and international transfers included).

#### - Methods of payment

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<sup>360</sup> The Guardian

<sup>361</sup> Source: L'Equipe.

<sup>362</sup> Denis Robert *Le milieu du terrain* – p 156.

<sup>363</sup> An element that makes assessing the compensation paid even more difficult.

This is a key issue, as most clubs experience cash and cash-flow problems<sup>364</sup>. It is even more sensitive as after years of dithering, most countries have now put restrictions on these methods (e.g. Italy).

During periods of speculation, the issue of the payment schedule is critical, because to a certain extent it is possible to buy a player without paying the full agreed price and to pay with the fee received when the same player is transferred and, in doing so, receive a substantial rise in value. Clubs are only copying well-known practices in the financial markets. It is a strategy that becomes extremely dangerous when there is a downturn in the market.

During periods of recession, the issue of the payment schedule for compensation is obviously just as important. If it were very lax, you could expect to receive income from sporting success made possible by the talent of the recruited player to pay for his transfer. Staggering payment for transfers appeared an important issue in the view of sports bodies, insofar as it very clearly favoured payment default<sup>365</sup>. To the extent that provisions were put in place to avoid such a staggering of payments: in Italy, with the clearing house and the rule that required payments to be made within a maximum of three years<sup>366</sup> (see description below); or, at the European level, with the club licence provisions put in place by UEFA which excluded, from its implementation in the early 2000s, “football” debts including those from transfers.

**Focus: The Italian clearing house system**

*The main feature, peculiar to Italy, is the clearing house system to regulate the economic aspects of transfers. It is the payments that are regulated in a clearing house system and are guaranteed by the league. When players are bought or sold (one month after the transfer), the balance can be calculated. All clubs must pay to cover the net result of the operations.*

*Example: on 8<sup>th</sup> August, a club must pay 50% of the transfer fees made in July in cash. The other 50% has to be guaranteed through bank guarantees, staggered over seven months. Every month for seven months, an instalment must be paid. This system is used for all domestic transfers.*

*The main aim of the clearing house is: to have all transfer payments paid in cash or guaranteed to avoid problems with non-payment. This system is not attached to a transfer, but to the balance of overall transfers (total purchases-total sales).*

*Example: a club releases a player for 50 and recruits another for 100: the club has to pay the difference, i.e. 50. Half in cash and the other half in instalments. All payments must be made completely by the end of March.*

*In winter, January: 80% must be paid in cash in January and two payments of 10% in February and March, so that all payments are completed in March. Payment in cash or through bank guarantees.*

*3-year maximum for payments for transfers. When clubs bank guarantees, it refers to the overall amount. This “clearing house” system works because the League has guarantees that cover it in its entirety. All transfers are guaranteed for the three professional leagues (Serie A, Serie B and Lega Pro). All transfers, even between a professional league and an amateur, are regulated through the clearing house. For international transfers, it is the TMS that has the same function. But not the same system of guarantee. Negotiation between clubs.*

- **A distinctive method of transfers: exchanging players**

<sup>364</sup> One of our interlocutors even told us that the issue of “cash” was key to analysing professional football.

<sup>365</sup> See, also the Deloitte Report or Calcio Report for transfers to pay debts.

<sup>366</sup> According to our interview with Marco Brunelli, Director of the Lega Calcio.

In some cases, several transfers are made between two clubs at the same time. The transfers – for example, two simultaneous movements – can be made in the same direction from club A to club B. This was the case with the transfers of A. Keita and M. Bodmer from Lille to Lyon in 2007 or with Hulk and Witzel to Zenith St Petersburg in 2012<sup>367</sup>. The amount of the transfer fee for each player can thus be uncertain or even subjected to favourable “adjustment” (e.g. trying to minimise the sale price for the player for whom an incentive has to be repaid).

But movements can also be made in the opposite direction. J1, a player, is transferred from club A to club B and J2, another player, from club B to club A. This was the case with Z. Ibrahimovic from Inter to FC Barcelona and S. Eto’o from Barcelona to Inter in 2009.

#### **Lessons to be drawn**

*Transfer operations are strongly dependent on market structure, the economic context at the time and the state of competition between clubs. But in the end, there are two elements that appear essential in negotiating transfers: information and the schedule (timing).*

#### **3.4.1.1.2 Temporary transfers (loans)**

##### **a. Context**

As a general rule, a loan is considered when the player cannot play in the team for a significant time or his performance is well below expectations. These operations involve a large number of transfers in Europe – 21% i.e. 1333 in 2011, according to TMS.

Two essentially different situations can be observed:

1. A promising young player often trained at the club, but not playing enough to become tougher and more experienced. In this case, the loan is intended to improve the player or to test his true value at the highest level.
2. An experienced player, but who does not play because of the large squad or who has difficulty adapting, which prevents him from progressing to his real level. The club seeks to reduce its squad and lends the player because it could not sell him. This situation can be encountered both in football and basketball. It is, however, obviously less common in basketball because of the reduced number of multiannual contracts.

##### **b. The contract**

When there is a transfer, the contract between the player and his club logically remains in force, but it is accompanied by a supplementary clause that temporarily modifies the terms of its execution and, in particular, it transfers authority to a new employer. Therefore, the loan cannot exceed the duration of the player’s contract. In most cases, the duration of the loan is one year and is renewable.

Depending on the country, the remuneration of the club releasing the player by the host club may be allowed or not (in France for example). This clearly changes the economics of the system, since the loan policy may or may not be a lucrative activity, as the case may be.

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<sup>367</sup> This type of transaction can be the opportunity for an extra means of pressure when the club mainly wants just one of the two players. The seller club or the agent could then insist that the negotiation with the unwanted player be wrapped up before starting the second discussion.



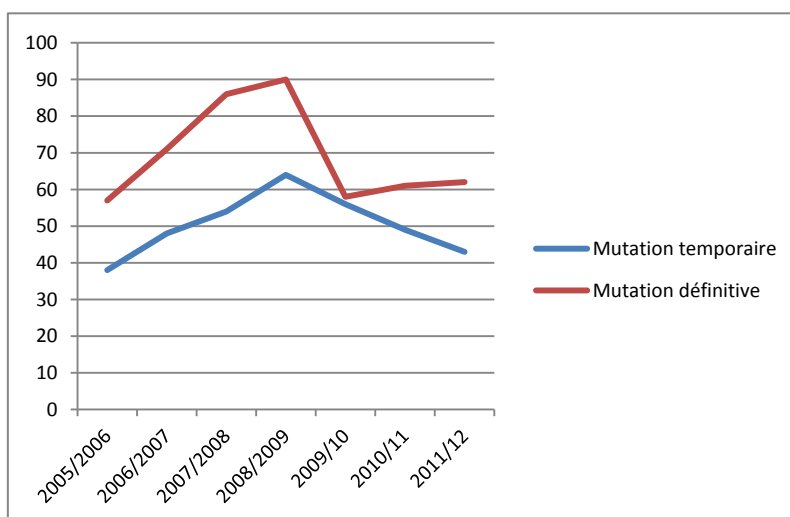
### c. Simple temporary transfer

The loan of a player may be motivated by sporting policy and by player development considerations. Training clubs can only rarely offer all their young players enough playing time to complete their training with the acquisition of a first experience at the top level. The loan in a club level immediately below, or in a less ambitious team in the same championship, will ensure this part of post-training.

- Either he is a promising player in the club and no definite transfer clause is provided for in the loan contract, because the club wants to reintegrate him into the team at the end of the season or expects to transfer him (an alternative system in Italy: “l’accordo di partecipazione”).
- Or the player’s qualities are more uncertain and there may be a buy-back clause for the player’s contract, the amount of which is possibly already provided for in the loan contract.

The number of loans increases particularly during periods when the transfer market is sluggish, because the main motivation for clubs using the loan is less a question of training than managing an overmanned squad. As it is unable to transfer the player, the club tries to reduce its squad in order to avoid problems managing players for the season who have no prospects in the club.

A delayed effect in the growth of the number loaned compared to the number transferred can then be observed (see graphic above).



Respective changes in the number of definitive and temporary transfers in France

[Source: LFP]

The number of disputes in different countries (France, Spain and Italy, etc.) involving training conditions for players left out of the team attest to the rise of this phenomenon and to the difficulties created by this overmanning.

The other motivation may be to reduce not just the squad, but the club’s wage bill too, especially the high salaries. In this case, part of the salary may be paid by club A (e.g. the case of Joe Cole in Lille last year, paid in part by Liverpool – club A); this type of situation can also be found in basketball. The player returns to his club at the end of the season and his contract resumes its normal course. In football, some players - especially young ones - having been hired by ambitious clubs, move on to different clubs and even different countries until the end of their contract (Sinama-Pongolle and Le Tallec ; Alliadière, Campbell, etc.), before being finally transferred or let go.

In order, the European countries which use loans the most are Italy (9.3%), Portugal (7.8%), The Netherlands (6.7%) and Scotland (5.9%)<sup>368</sup>.

#### **d. Temporary transfer with option to buy**

In the context of a loan with option to buy, the club clearly intends to part with its player, but cannot find a club prepared to pay a transfer fee. The loan agreement thus provides for the amount of the transfer fee that must be paid to permanently acquire the season  $n+1$ .

The loan with option to buy allows the host club, before deciding to hire the player definitively, to know with certainty that the player will bring more than the club expects and/or to defer payment of the transfer fee to the following year, for accounting reasons.

#### **Lessons to be drawn**

*The importance in the number of these operations shows that it is a very important policy of adjustment for clubs, and that it may be appropriate to regulate it a little better, possibly by more strictly limiting the number of players under contract, whether they be permanent or on loan.*

#### **3.4.1.1.3 Transfer without fee**

This situation is now quite rare for players who have a potential market value. In this case, clubs start negotiations early enough before the end of the contract (a year and a half, even two years) in order to be able to anticipate what may happen. Either the player accepts the contract extension through a pay adjustment and one or several clauses for a negotiated departure, or he refuses this extension and the club then prepares to replace the player for the following season.

In the following section, we will see that the first assumption has become widespread in recent years.

#### **3.4.1.2 Some instructive stories**

##### **3.4.1.2.1 The transfer as a means of pressure to increase his salary. Rooney and Manchester: "je t'aime moi non plus".**

This example perfectly illustrates the game of negotiation, consisting of declarations and rumours, for a star player aiming to increase his salary. Between October 18 and 22, 2010, several reports have been successively announced in the press: the end of the negotiations for the contract extension of Wayne Rooney; his intention to leave from Manchester United; rumours of negotiations with other clubs (Manchester City). In the end, Wayne Rooney signed a new five-year contract for an annual salary of more than €9.7m, the highest in the club's history and declared that "*the manager's a genius and it's his belief and support that convinced me to stay*".

Many other examples of such strategies could be mentioned. They have been confirmed by many testimonies during our work in gathering information. This year, C. Ronaldo offered yet another excellent illustration of this type of strategy and its effectiveness: salary increased by 50% with an increase from

<sup>368</sup> Source: "Demographic study of footballers in Europe 2011", CIES, PFPO, 2012 (p64). This is the average percentage of players on loan in the total number of players registered.

€10m to €15m p.a. This same C. Ronaldo had earlier, in 2009, tried out the pressure strategy to leave the club.

#### **3.4.1.2.2    *The power of stars... and of the richest clubs. The transfer of Cristiano Ronaldo.***

This is an article from an American reference site – the Bleacher Report – which best sums up the saga of the transfer of Cristiano Ronaldo to Real Madrid that was finalised during the summer of 2009. Everything was: announcements, denials, definitive statements, and contradictory statements every few days... a good summary of the transfer negotiations for stars.

“For the last year, former Manchester United star Cristiano Ronaldo has stated his wish to go to Spanish giant Real Madrid, but was continuously denied by United’s manager Sir Alex Ferguson. However, after giving Man Utd €94M to get Ronaldo, everything is finally over. Now that saga that brought Cristiano Ronaldo to Real Madrid is finally over after a long year, here is a look back at how everything unfolded”.

- **May 21, 2008:** The Spanish tabloid Marca reports that Ronaldo will be with Real Madrid next season.
- **May 22, 2008:** After winning the Champions League final, Ronaldo announces that he wants to stay at Manchester United.
- **June 5, 2008:** Sky Sports reports that Ronaldo had expressed an interest in moving to Real Madrid, if they offered him the same amount of money the team had allegedly promised him earlier in the year (£71.6m).
- **June 9, 2008:** Man Utd files tampering charge to FIFA over Madrid's alleged pursuit of Ronaldo.
- **June 16, 2008:** FIFA finds that there are no tampering charges to report by Real Madrid over their pursuit of Ronaldo.
- **July 10, 2008:** After Ronaldo has ankle surgery in Amsterdam, he announces that being with Real Madrid would be best for his career.
- **July 14, 2008:** Ferguson meets with Ronaldo in Lisbon, and both agree that Ronaldo will stay at Old Trafford for at least the next season.
- **Aug. 5, 2008:** Ferguson tells media that the entire Real Madrid saga is over, and he will be a member of Man Utd for at least the next year.
- **Dec. 8, 2008:** Spanish newspaper El Mundo reports that Ronaldo will join Real Madrid at the end of the season as Man Utd and Real Madrid both agree to this secretly.  
In response to this, Ferguson responded, “Do you think I would get into a contract with that mob? Jesus Christ, no chance. I wouldn’t sell them a virus.”
- **Jan. 13, 2009:** A Real Madrid director announces that Ronaldo will join Real Madrid next season as club president Ramon Calderon has agreed to the transfer in the summer.
- **May 27, 2009:** Man Utd lose Champions League final to Barcelona in what turns out to be Ronaldo's last ever game as a Red Devil.
- **June 1, 2009:** Florentino Perez becomes Real Madrid president for the third time. Says he is going to sign Ronaldo and Kaká to Real Madrid in continuation of his 'Galacticos' policy.
- **June 8, 2009:** Gets Kaká from AC Milan for €56m. Announces afterward that his next transfer will be for Ronaldo.
- **June 10, 2009:** Makes offer of €94m to Man Utd to acquire Ronaldo's services.
- **June 11, 2009:** After consulting with Ferguson along with the Glazer family, chief executive David Gill decides to accept the offer from Real Madrid for Ronaldo for €94m, making Ronaldo the richest transfer in history.

Finally, here is a recap of how the entire Cristiano Ronaldo transfer saga went, and now he joined Real Madrid reportably for €10m a year for six years, adding up to €94m overall in the richest contract in football history.

#### **3.4.1.2.3     *The power of an agent in basketball in 1990s in France***

D. Rose was an all-powerful agent in 1990s France. He had all the best French players under contract. It was common knowledge that to gain access to certain clubs (Limoges, Antibes or Mulhouse), D. Rose had to be the agent. Some practices were fraudulent and he was convicted for it (we'll talk about it in the following section). Other practices were perhaps not legally condemnable, but do reveal the bargaining power of the agent or player. For example, if a club desperately wanted a particular major player, not only would it pay dearly, but beforehand it would also either extend the contract of a less important player in the club who worked with the same agent or recruit another player of this agent.

#### **3.4.1.3 Strategic issues**

As the functioning of the labour market proves to be different, depending on the segment in which it is located, it is appropriate to begin by these segments, in order to analyse the strategies of the different parties involved.

##### **3.4.1.3.1     *Strategies of the parties involved in the higher primary segment***

It should be remembered that in this segment, the market structure is that of a monopoly. The most talented players, rarely in the market, find themselves in a very favourable situation against the clubs. In this segment, the clubs are considered as the group of those which regularly take part in the UEFA Champions League final round (i.e. the top clubs of the big-5).

##### **a. Clubs**

In this segment, clubs are not able to produce all the talent they need to achieve the highest ambitions (victory in the domestic championship and in the UEFA Champions League).

The distinction is, therefore, made between those who produce a part of their talent and those who buy all of it.

We will develop two different cases:

1. That of a club that produces most of the talent it uses: FC Barcelona today (M.U. yesterday);
2. That of a club that buys in the primary market virtually all the talent it needs to satisfy its ambitions: Chelsea, yesterday (Manchester City or PSG, today).

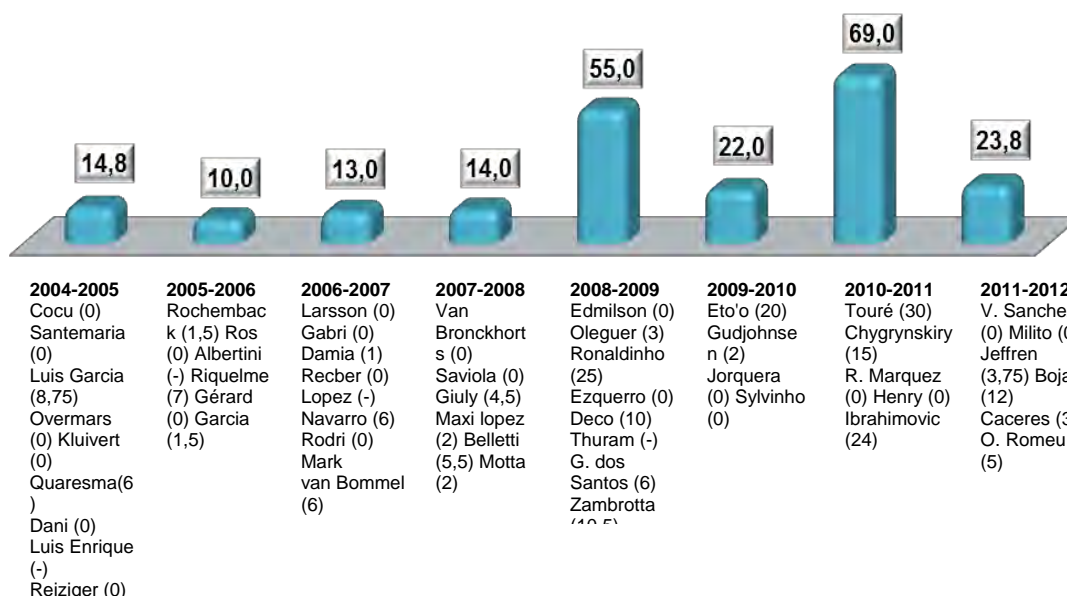
##### **1. That of a club that produces most of the talent it uses: FC Barcelona**

FC Barcelona has both the highest percentage of international players at 81% and one of the highest percentages of home-grown talent at 42.9%. This is one of the highest among the clubs in the higher primary segment, except for Bayern Munich (66.7%) and B. Dortmund (54.2%), and is very far ahead of most of the others (Inter Milan 7.4%, Milan AC 11.1% and Juventus 13.8%).

FC Barcelona has one of the most stable teams of all the Big 5, with an average of 3.05 seasons per player (second only to Everton with 3.08 and Athletic Bilbao with 3.07<sup>369</sup>. It only included 3 new players (14%) for the 2011-12 season<sup>370</sup>. It is a consistent and already a longstanding strategy when FC Barcelona appeared, in 2006, among those clubs that included the most trained players in its squad<sup>371</sup>.

However, that does not mean that FC Barcelona has been absent from the market for the highest transfer fees over the last few years, both as a seller and as a buyer:

- As a seller, because:
  - o Its players are invariably sought by the wealthiest competitors, who offer them attractive financial terms. For example, Y. Touré transferred to Manchester City in 2010 for a fee of €30m, with a salary is more than €10m p.a., i.e. one of the highest in the world.
  - o It has to renew its squad to maintain its dynamic and, therefore, lets players leave: e.g. the transfer of Maxwell to PSG in 2011, Caceres to Seville and Eto'o to St Petersburg.
  - o Lastly, some operations may have a financial purpose: e.g. the transfer of Bojan to AS Roma for €12m in 2011.
  - o Several major transfer fees:
    - Z.Ibrahimovic 24M€ in 2010 (depreciation of around €45m!);
    - Y.Touré 30M€ in 2010;
    - S.Eto'o 20M€ in 2009;
    - Ronaldinho 25M€ in 2008;
    - D.Shygrynskiy 15M€ in 2010 (depreciation of €10m in one year).
- As a buyer, since it has been involved in some of the biggest transfers in recent years:
  - o Z.Ibrahimovic €69.5M in 2009;
  - o D. Villa €40m in 2010;
  - o D. Alves €35.5m in 2008;
  - o C.Fabregas €34m in 2011.



Transfers made by FC Barcelona between 2004/05 and 2011/12  
[Sources Transfermarkt /Prime Time Sport]

<sup>369</sup> CIES - Demographic Study of football players 2012

<sup>370</sup> idem

<sup>371</sup> CIES Annual review of football players 2006 – p 22

That does not mean either that it has a more “reasonable” wage policy than the other equivalent clubs. In fact, L.Messi, A.Iniesta and X.Hernandez have some of the highest wages in the market. The club is very much part of the global economy of football and can hardly escape from its standards.

This club strategy, which relies on trained players in its academy, is also followed among the richest clubs, especially by:

- Manchester United, even if it was more true in the past than now (37.9% of players were trained at the club in 2011-12);
- Bayern Munich, which trained 66.9% players of its squad in 2011-12.

However, both are also obliged to act in the transfer market and to offer high salaries.

Several purchases and sales in the transfer market by Manchester United:

- Purchases
  - o D.Berbatov €38m 2008
  - o Anderson €31.5m 2007
  - o R.Van Persie €30.7m 2012
  - o M.Carrick €27.2m 2006
  - o Nani €25.5m 2007
  - o D.De Gea €20m 2011
- Sales
  - o C.Ronaldo €94m 2010
  - o D.Beckham €37.5m 2003
  - o J.Stam €25,7m 2001
  - o J .Veron €22.5m 2003
  - o R.Van Nistelrooy €15m 2006

For a long time, Manchester maintained a very strict wage policy (with a wage bill limited to roughly 40% of revenue), but in 1999-00 the club move closer to market standards under pressure from its captain, R Keane. It is completely obvious that the pressure about a possible departure was, at the time, the major argument of R. Keane, as for W. Rooney today.

It has been difficult for M.U. to resist, given the presence over the last few years of very extravagant neighbours, like Chelsea and Manchester City recently.

Bayern Munich has suffered less pressure from its immediate environment (no “Sugar Daddy” at the head of German Clubs) and is involved in a more interventionist league than the English league, as far as management is concerned. It is, however, also subject to pressure because of the globalisation of football.

Several purchases and sales in the transfer market by Bayern Munich:

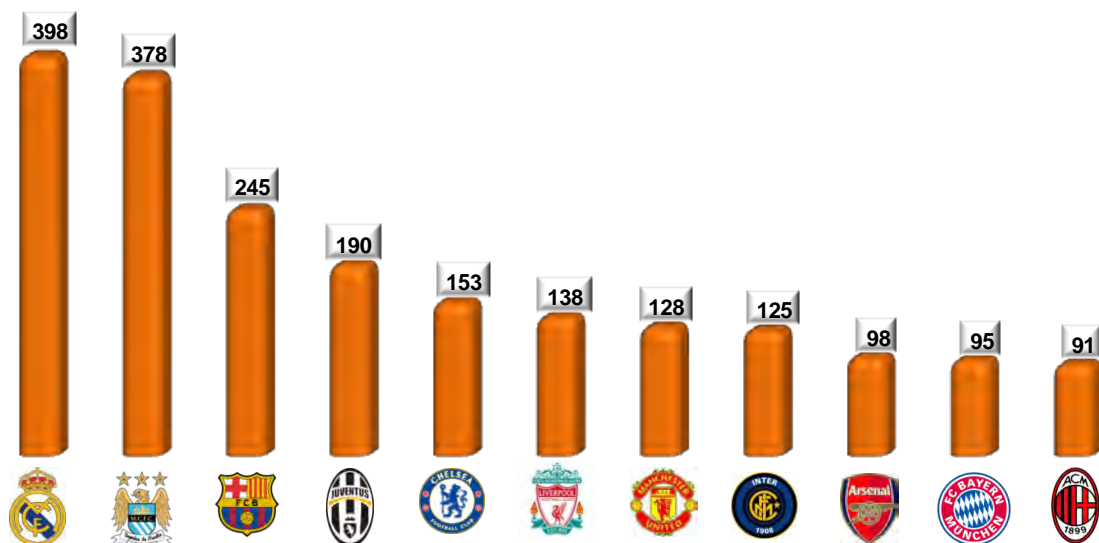
- Purchases
  - o M.Gomez €30m 2009
  - o A.Robben €25m 2009
  - o F.Ribery €25m 2007
  - o M.Neuer €22m 2011
  - o R.Makkay €19.7m 2003
  - o L.Gustavo €17m 2010
- Sales
  - o H.Heargreaves €25m 2007
  - o L.Podolsky €10m 2009

- M.Janssen €8m 2008
- Lucio €7m 2009

Bayern also pays high salaries to some of its players. Thus, F. Ribéry is paid more than €11m p.a. However, of our three examples, Bayern Munich seems a little less dependent on global market standards as compared to its position in the transfer market and relative to its wage policy.

There are two probably reasons for this:

- The political choices and strategy of the club that requires it to live within its means (the club is systematically in surplus every year);
- The environment created by the Bundesliga, a league that assumes a strong regulatory role in order to preserve the regularity and durability of the competition.



Top European teams spending ranking (aggregated season 2009/10, 2010/11 and 2011/12)

[Sources [www.transfermarkt.de](http://www.transfermarkt.de), Prime Time Sport]

## 2. That which buys the vast majority of its talent in the primary market; Chelsea, Real Madrid, Manchester City and, presently, PSG

Manchester City built its recent success in the English championship just by its actions in the transfer market. The club has spent €581m since Sheikh Mansour bin Zayed bin Sultan Al Nahyan bought it in August 2008 for a balance of transfer deficit of €453m over the four-season period.

This policy is also reflected in the very large number of transfers, with 129 arrivals for 128 departures (see table below). The squad is made up virtually only from transfers of experienced players; it has not resorted to any player trained at the club.

	Revenue	Number	Spending	Number	Balance
2011/12	29 700 00	38	94 835 000	28	-65 135 000
2010/11	41 608 000	33	182 450 000	39	-140 842 000
2009/10	30 950 000	32	147 300 000	28	-116 350 000
2008/09	26 625 000	25	157 350 000	34	-130 725 000
<b>TOTAL</b>	<b>128 883 000</b>	<b>128</b>	<b>581 935 000</b>	<b>129</b>	<b>-453 052 000</b>

Transfers made by Manchester City since the arrival of new investors (Euros and number of players)

[Source [transfermarkt.com](http://transfermarkt.com)]

The club employs the highest percentage of international players in the English league (73%) and a high number of expatriate players (65.4%); it has an unstable squad, with only an average of 1.85 years per player presence in the club.

As often happens, in this case it appears that the new owners were faced with an entry cost or a cost of learning in the market, something PSG is also faced with today. The lack of sporting credibility required that in order to convince players in the higher primary segment to join this nouveau riche club, the club must overpay them and/or overpay for the transfer: e.g. Robinho or Y. Touré for Manchester City; Thiago Silva (transfer) or Lucas Moura recently for PSG.

For such clubs, the strategy is very clearly to buy sporting talent quickly, even very dearly, to position itself among the leaders in the sport. The aim is less to develop a lucrative activity than to reap short-term image and public relations benefits - and then trigger a more economically virtuous spiral (talent recruitment – sporting success – increased revenue) to reduce costs.

This, too, was the strategy implemented by R. Abramovitch when he took over Chelsea in June 2003. As soon as he arrived, he injected more than €172m in transfer fees, then again more than €160m the following year (€870m gross transfer expenditure). This is also the strategy now being implemented by PSG in France.

In all three cases below, development occurs at the cost of a very high club debt. The impact of this strategy on the whole market is quite significant. Thus, the spending on transfers:

- By Chelsea in 2003-4 represented 39% of all club spending in the Premier League (32% the following year);
- By Manchester City in 2008-9 represented 18% of all spending (25% the following year);
- By PSG in 2011-12 represented 43% of all club spending in the French L1.

In the light of these figures, the impact of such behaviour appears clearly destabilising. To limit market destabilisation, it would probably be useful to cap these amounts.

It should be noted that the origin of the player is an important factor in the greater or lesser destabilisation of the domestic championship. If the players are recruited nationally, the Sugar Daddies directly make their sporting competitors rich – as in the case of FC Barcelona when it recruited Dani Alves, David Silva and Jordi Alba; if this is not the case – currently PSG – the differences become irretrievably bigger.

Real Madrid's strategy appears quite close to those described above with regard to its spending over the periods 1999-2000 – 2001-2 and then 2009-10 – 2011-12. For the most recent period, this position has been reinforced by the mass effect of C. Ronaldo's record transfer fee in 2009. However, Real Madrid's policy differs a little from the above examples insofar as it has been accompanied – at least, several years ago – by a quite ambitious training policy (Raul, Casillas and Guti, etc.) and it maintains, despite everything, a certain stability in its squad, with 2.61 seasons on average per player<sup>372</sup>.

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<sup>372</sup> CIES - Demographic Study of football players 2012



**Lesson to be drawn :**

*A major club in the Big 5, even if it favours internal training for its sporting development, has to be positioned in the transfer market. It is therefore subject to pressure and constraints.*

*This pressure appears to differ slightly according to its choice of governance, as well as to the method of regulation of the league in which it operates.*

*The major clubs of the Big 5 that favour buying talent, aim to position themselves as leaders in their domestic markets through a very heavy and very quick investment in the transfer market, in order to set in motion a virtuous cycle of sports results → increase in revenue → strengthening of sporting power.*

**b. Players and agents**

To analyse this part of the market, the players' strategies, we are going to describe the career paths of some of them, favouring an approach through illustrations concerning a subpart of the higher primary segment, that of the superstars. It is, in fact, at this level that their forms of behaviour are more visible and more striking and which will provide us with the most lessons.

To enrich the illustrations, we selected players with different profiles, European and non-European; from Big 5 countries or not; with straight career paths or not; during distinct periods of the recent history of transfers:

- For a period of transfer fee inflation and speculation (1995-2002), we have chosen Z. Zidane (France) and Ronaldo (Brazil)<sup>373</sup>.
- For a more recent period of "Sugar Daddy" predominance (2006-10), we could have chosen C.Ronaldo (Portugal) and Z.Ibrahimovic (Sweden)<sup>374</sup>. The lessons are not fundamentally different, we will not detail these two trajectories.
- In basketball, two illustrations are presented; that of a European player and that of an American player.

We present here a summary of the analysis that you can find in detail in Annex 8 of the study.

**1. Football**

**- Z. Zidane**

Zidane experienced upward mobility from an average French Ligue 1 club (the fifth country of the Big 5) to one of the richest clubs in the world with the complete winner's list, via one of the biggest French (Bordeaux) and Italian (Juventus) clubs.

His career was undoubtedly due to his talent, but the success that accompanied it also owes a great deal to two other elements:

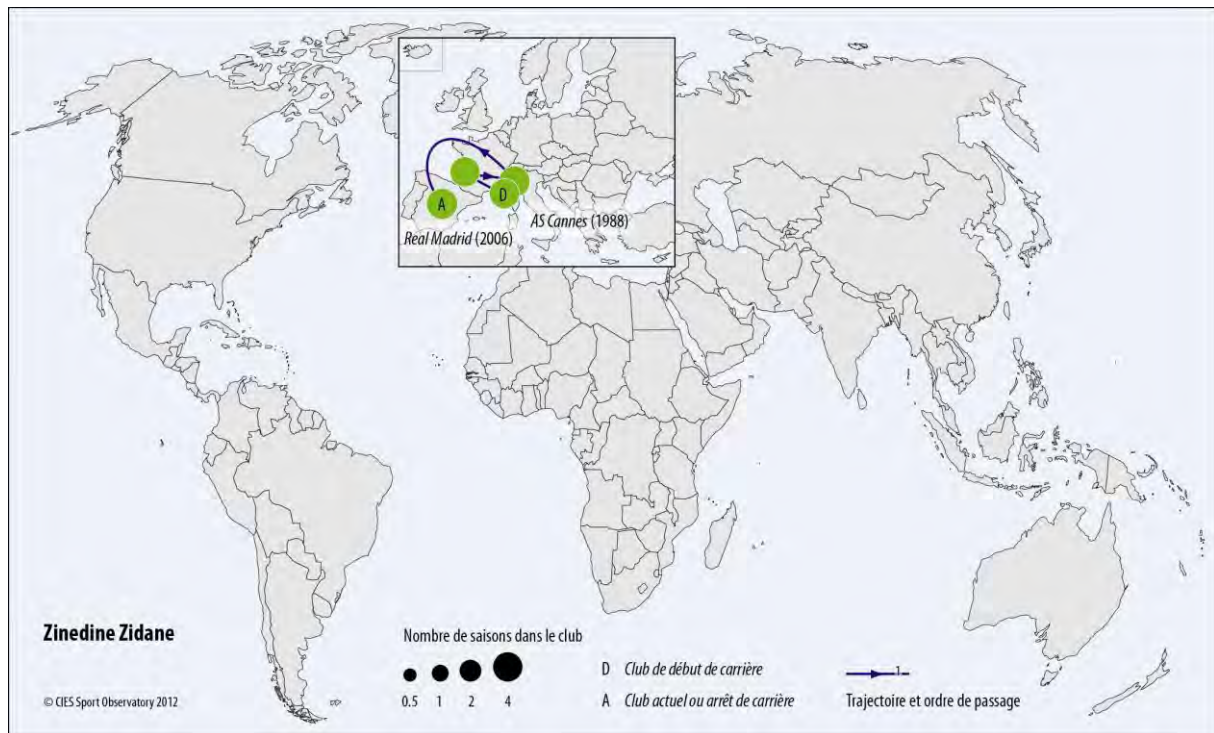
- The increase mobility of players, made possible by the consequences of the Bosman Case.
- Club strategy: that of the "galacticos", launched in Real Madrid by Florentino Perez in 1999 with the transfer of Luis Figo.

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<sup>373</sup> We could have also developed the case of P. Nedved (Czech Rep.) with a profile a little different and less "star", but who still received a 'Ballon d'Or'.

<sup>374</sup> D.Drogba (Ivory Coast/France) could have been another illustration, presenting a career path that started, this time, in Africa.

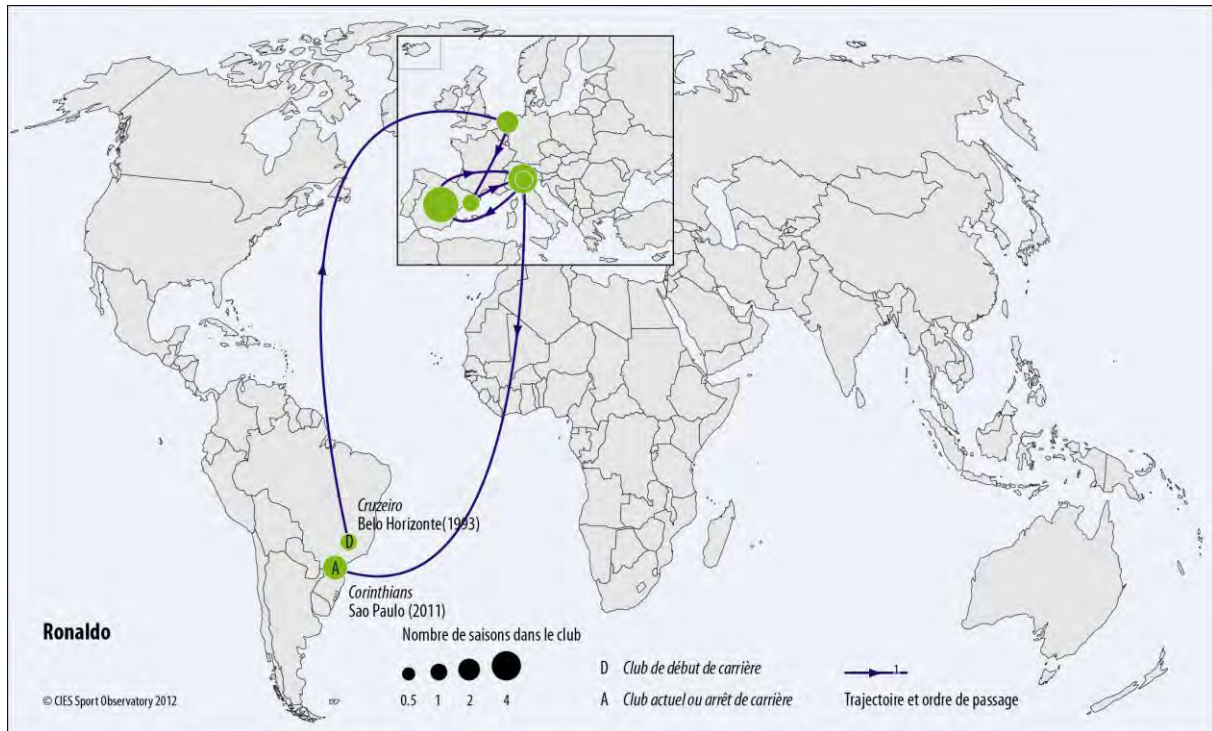
The competition between clubs to acquire the best players is more open and the power of the stars in the higher primary segment has increased. It has also been increased greatly by the policy implemented by Real, as it was later by the policies of Chelsea, Manchester City and, nowadays, PSG.



#### - **Ronaldo**

Ronaldo experienced upward mobility from a little Brazilian club to a bigger Brazilian club (not without entering into a third-party ownership arrangement or its earlier version). The exposure offered by the latter club opened the opportunity to have access to the European market. He had access to it through one of the hubs: The Netherlands (PSV Eindhoven) and then moved upward towards the Spanish and Italian markets, to the richest clubs in the world, having the most complete list of victories in Europe: Barcelona, Inter Milan, Real Madrid and AC Milan. He was the subject of the biggest transfer deals of the time and had one of the highest salaries. He also had one of the finest individual and collective record of achievements in the history of football.

It should be noted that he moved much more than his French counterpart and team-mate at Real. It should also be seen as an effect of managing a different career, because of the intervention of investors.



### ***Lessons drawn from a player in the higher primary segment in football***

*In this primary segment, players' careers are generally under control, upwardly mobile and enable the players concerned to develop both their sporting ambitions and their income.*

## **2. Basketball**

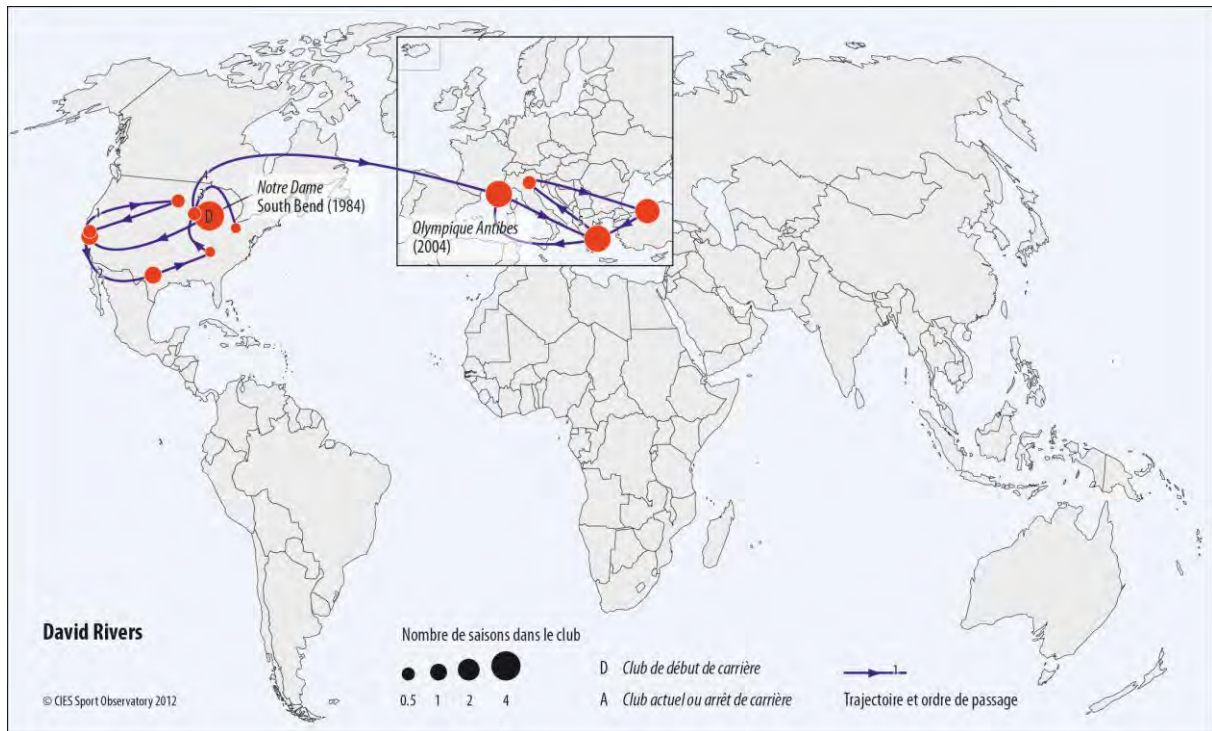
We presented an analysis of the career of two players: A.Rigaudeau, a French whose career spread over the period before and after the Bosman Case; D.Rivers, an American player which who found stability after coming in Europe after having played for many clubs in the USA.

Other star American players in Europe found a certain stability (Josh Childress spent 6 years in Greece); this was even truer for national star players in the major leagues: Gasol only played in Spain, as a professional, in Barcelona, before leaving for the NBA. This, too, was true for B. Diaw in Pau in France and for G. Gallinari (Pavia) in Italy.

Both in football and in basketball, agents in this sector can achieve quite considerable market power (Poli – Rossi – 2012) for two reasons:

- They benefit from the power conferred on them by the mandate given by players of exceptional talent;
- The concentration of agent activity in the hands of a small number greatly increases this power.

- **D.Rivers**



**Lessons drawn from a player in the higher primary segment in basketball**

- *The modification of the market structure, especially following the Bosman Case, had a major effect on the situation of star players, who were able to negotiate much more advantageous terms than in their national markets.*
- *Transfer fees are, nonetheless, still insignificant compared to those in football. For the two players mentioned (Rigaudeau and Rivers, there no huge transfer fees paid (\$1m for Rigaudeau leaving Pau to Kinder Bologna and then the buyout for NBA (\$500.000)*
- *Salaries, too, cannot be compared to those enjoyed by footballers at the same level (Rigaudeau was paid around €115.000 a year during his contract with the Italian club).*
- *Their mobility is not very different from star footballers with few movements (except in the USA for Rivers).*

**3.4.1.3.2 Strategies of actors involved in the lower primary segment**

This segment is made up of the other clubs of the Big 5 and 2-3 of the most important clubs of the Group 2 of European championships (see section 3.3.2.1.1)<sup>375</sup>.

**a. Clubs**

As a general rule, clubs in this segment are not able to compete with the major clubs in having access to players in the higher primary segment of transfer market.

<sup>375</sup> Remember that the first group is composed by leagues constituting the big 5 and whose clubs have an average budget of €54m - €134m; the second group is composed of leagues whose clubs have an average budget of €13 - €23m; the third group is composed by leagues whose clubs have an average budget of €7m.

They have had, therefore, to develop two different strategies:

1. Either they produce this talent themselves and try to keep it as long as possible, in order to improve their sports results primarily within the domestic framework, but exceptionally within the international one;
2. Or they develop their recruiting and development skills with players from the second market.

**1. Some develop their recruiting and development skills with players from the second market.**

Two examples can be quickly analysed here; those of FC Porto and Udinese.

**- FC Porto**

On the strength of its two successive successes in the Europa League in 2002-3 and in the UCL in 2003-4, FC Porto has established itself as one of the main providers to the major European clubs over the last 7-8 seasons. By transferring 38 players, the club had a total turnover of more than €379m during this period.

Most of these transfers were with clubs from the Big 5. Thus in 2004-5, 79.5% of revenue from transfers in this record year came from clubs from the Big 5 and it mainly concerned the transfers of just eight players. These eight players were all previously mostly bought in the Portuguese market.

The gain was quite high, in the order of €71m.

The same goes for the 2006-7 and 2010-11 seasons, with most players being transferred to clubs from the Big 5. It should be noted that the 2005-6 season was an exception, when most of the revenue came from Russia.

The club strategy is to buy talent in the secondary market (to clubs which have less media and sports exposure in Portugal or on the Brazilian market), to promote it domestically and internationally and then resell it with a comfortable gain.

In this case, the role of Jorge Mendes of Gestifute, the leading agent in this market, must be highlighted. It was he who was involved, in 2004, in most of the transactions. It was even easier for him as he was the agent of J. Mourinho, the FC Porto coach, who was transferred himself that year to Chelsea. Two transfers totalling €50m were made that year with Abramovitch's club (i.e. 52.5% of Porto's transfer income).

**Lessons to be drawn**

*Observed in this case, but almost certainly a caricature*

- *A very strong redistributive effect: the Big 5 (the buyers of Porto players) → Clubs outside the Big 5 (FC Porto) → Portuguese Group 2 clubs (from which the transferred players had been recruited).*
- *The emergence of eastern European clubs, investing large amounts in transfers.*

This same strategy was used by Udinese in Italy or Lille in France<sup>376</sup>.

<sup>376</sup> It should be noted that no similar example can be found in Germany.



- **Udinese**

It is the European club which has exported the most players (23) in the 101 leagues analysed by the Global Migration Report, carried out in 2011 by CIES.

This policy has brought its net revenue of more than €100m over the last five seasons (2008-09 – 2011-12), €170m since 1997-8 (more than €310m in revenue for €140M in expenditure), but at the cost of a very large number of transfers. Indeed, the club trains only at the margin these players with whom he made financial gains: it gets its players at an already advanced stage in their training thanks to a very developed system of scouting (see below) and deals only with post-training.

These transfers were mostly made with Italian clubs and more widely with the clubs from the Big 5. Out of the more than 24 transfers completed by Udinese since 97-8, 69% were made with Italian clubs from Serie A and 93% with clubs from the Big 5.

This success is the result of a clear strategy based on a very large investment in scouting young players (€10m was allocated in the club budget<sup>377</sup>) anywhere in the world thanks to a strong team of scouts<sup>378</sup> and a system for monitoring players by satellite networks. A system that is reminiscent of that used by the basketball clubs of the NBA, for example, and which has only spread to major European clubs in the last ten years. Other clubs also use service companies which provide their own networks of scouts and/or databases (Scout 7; The Scouting Network).

This strategy of Udinese works by a kind of perpetual movement of arrivals and departures and an overmanned squad which could reach 95<sup>379</sup>. Lastly, the club has a close partnership with Grenada (Spain) and Watford (England).

For these clubs to have a viable economic model, they must be rigorous with respect to wages that they themselves enjoy. They must also demonstrate great consistency both internally and in their external communication. They cannot afford, once they have actually promoted the player, to try and keep him at the cost of substantial wage increases, because their economic potential does not allow them to fight against the richest clubs on the continent.

**Lessons to be drawn**

*This strategy of promoting players trained in the secondary market, applied with consistency, continuity and substantial resources, is today probably more economically efficient than a training policy using the same means.*

**2. Other clubs producing this talent themselves**

These clubs try to keep this talent as long as possible to improve their sports results, mainly in the domestic context, but exceptionally in the international one. They subsequently sell these players to try and balance their books and to continue to fund the cost of their training. It appears that this strategy, which was possible in the 1990s and early 2000s (see a – below), would no longer be possible to implement today in the richest championships.

<sup>377</sup> Interview in Italy – the club employed 20 scouts according to R. Poli – 2011.

<sup>378</sup> Some are employees at the club in Italy, but many are appointed to report on players in their countries – we were told during our interviews of the case of a scout appointed in South America for €60 000 p.a. just to report on players...

<sup>379</sup> See article in L'Equipe.fr 9/2/2012.

- **In the 1990s**

France provided the best examples of this kind of strategy with clubs such as FC Nantes and AJ Auxerre, which could *out-perform* in the domestic championship and achieve good European results based on an ambitious training policy.

In the course of the four championships from 1997 to 2000, Nantes and Auxerre both secured a league finish higher than their budget ranking 75% of the time. This fact is clearly illustrated in the table below, which ranks average league position and financial strength for the period, side by side:

1997/98 – 2000/01	Sporting index	Financial index
Auxerre	10.5	13.5
Nantes	6.5	8.25

Ranking of average league position and financial strength

Cannes, having also developed a youth system of extremely high quality<sup>380</sup>, sold its players off because it lacked a coherent overall strategy for long-term development.

- **In the 2000s**

This strategy seems to be increasingly difficult implement in the major championships. And when it is implemented in championships at a lower economic level, even by prestigious clubs (Ajax Amsterdam, Feyenord Rotterdam, Real Sociedad, Athletic Bilbao, Slavia Prague and Zagreb<sup>381</sup>), it no longer allows them to join in the fight at european competition level.

Since the application of FIFA rules in 2001, the temptation in this segment has been great, particularly to offer players a one-year, or one-and-a-half-year, extension before the end of their contracts to ensure that they receive a considerable transfer fee. If the negotiations fail, the player can then be transferred before the end of his contract. But the price to pay is to agree to a salary increase for the player, an increase that was not, in fact, planned for.

**Lessons to be drawn**

*In this higher primary segment, it appears that the clubs which do best out of it (important gains in the market) are those which exploit the training work of the second markets and which maintain a minimum sporting level (a good level in a Group 1 (Big 5) or 2 championship).*

*In fact, effective training without post-training in a major championship strongly reduces a player's value or, rather, does not value it as well.*

**b. Players and agents**

Although the power of players and agents in this lower primary segment is significantly smaller than in the market for superstars, or even the higher primary market as a whole, it still remains strong, particularly in a domestic context. These players are key elements in their clubs, mostly members of

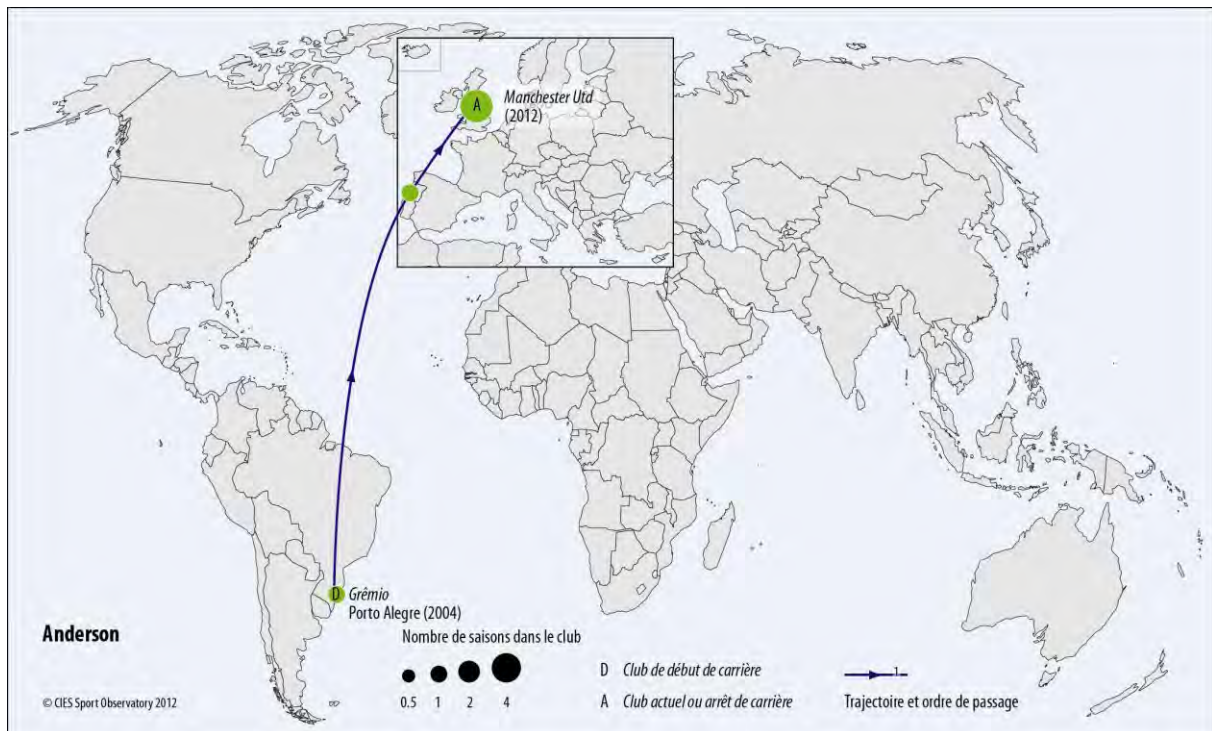
<sup>380</sup> Cannes is undoubtedly the French club with the best track record over the last decade when it comes to producing top quality players (Zidane, Vieira, Zebina, Micoud, Frey, etc.); however, the club now finds itself in the second flight!

<sup>381</sup> All these clubs appear on the list of the 33 clubs listed by CIES in its Demographic Study 2012 which resort most to players trained in their academy.

their national teams and likely to enter the international market. They easily find contracts and have extremely comfortable salary terms.

In football, these players are seldom exported when they play in the economically strong championships, as in England, Spain, Germany and now Italy, despite a lowering of lifestyle (CIES GMR 2011 p 23). To illustrate, we take the example of three players<sup>382</sup>:

- Scott Parker, an English international player under contract with Tottenham.
- Tiago, a player who does not come from a major market (big-5).
- Anderson, the Manchester United's midfielder whose career has been typically upward and has followed the traditional path: Brazil-Portugal-Big-5.



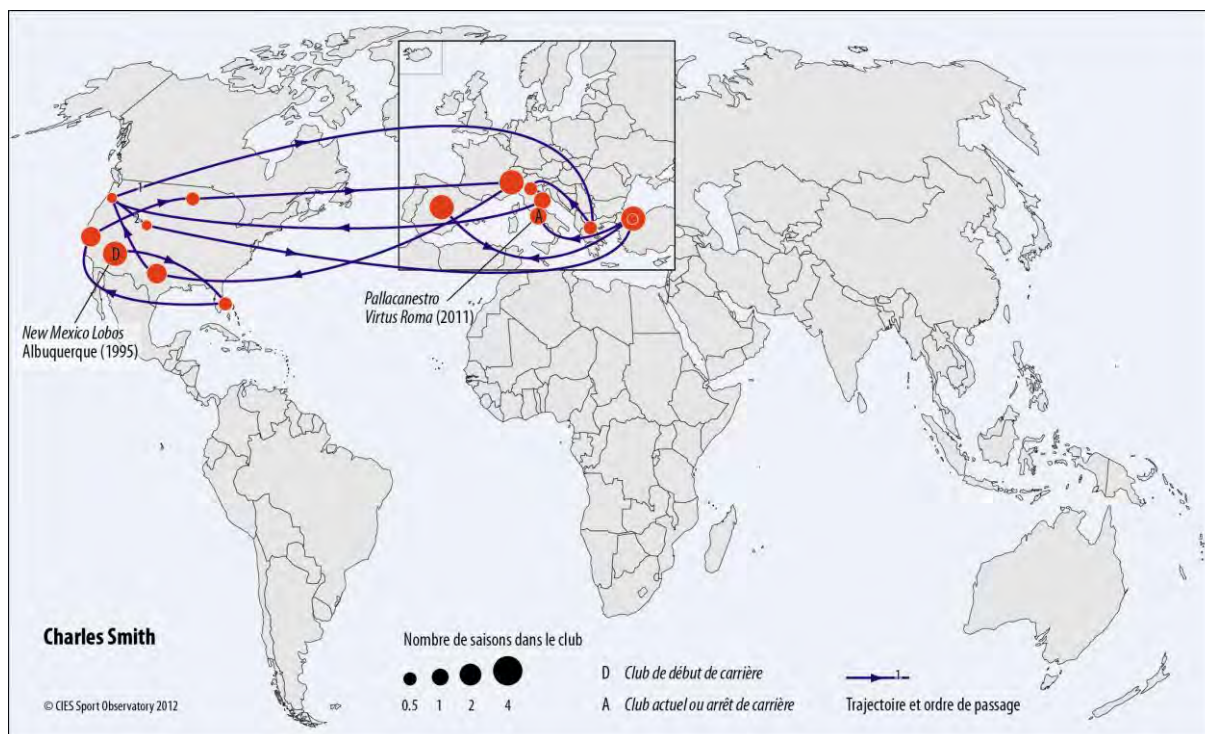
In basketball, as in football, players in the economically strongest championships do not leave very much (except in the NBA); this is the current situation with Spanish players and it was the case with Italian players in the 1990s.

In basketball, however, there are very few economically strong championships; except for Spain, and even there the economic situation is really unfavourable. There are either economically homogenous championships, but with a much lower level (France, Germany and Italy) or very heterogeneous championships, with several rich and powerful clubs (Greece, Russia and Turkey). For this reason and given the more important freedom of movement allowed by the regulations, the players are more generally mobile than footballers in the framework of this higher primary segment.

We offer three illustrations of this mobility, with the careers of players with different profiles: with an American player from the NBA (Charles Smith), a French international player (Makan Dioumassi) and a Greek player of Serbian origin (Igor Milosevic). All three are talented players who have always had a succession of contracts.

<sup>382</sup> See details in Annex 8.





### Lessons to be drawn

*What can be observed is:*

- That as soon as the superstar segment is left, the mobility of basketball players is much greater than that of footballers and it nearly systematic.
- Nevertheless, stability is a little greater for national players (see mapping).

*That a significant number of contracts only last a few months, even for players of this talent.*

#### 3.4.1.3.3 Strategies of actors involved in the secondary segment

##### a. Clubs

Clubs are here clearly in a position of strength faced with most players and they are even more so as regulations allow recruitment to be broadened. We discuss here the situation of clubs with the smallest budgets in Groups 1 or 2 in the first professional division of the countries; or, clubs in the second division of the same groups when they have no ambition to go up to the first division.<sup>383</sup> They now have in Europe and even beyond, especially in South America, a major reservoir of potential players. However, it is for this reason that the club has to be organised in a sufficiently professional way, so as not to be dependent on the information provided by agents or on just the coach's competence. It is not certain, however, that this strategy would make the implementation of a sustainable policy for the club possible.

The French club, Arles Avignon, provided an illustration in 2010-11 of an incoherent policy that was a caricature (the President and the coach very quickly stopped talking about it), that was expensive and finally catastrophic both in sporting terms (relegation) and economic terms, through the effect of

<sup>383</sup> For, in this case, they put themselves under the power of the agents and players of the higher primary segment.

relegation. The club recruited 23 players and transferred 26 for a slightly positive final balance. It actually negotiated with players who would not have been readily accessible to it, had it been in Ligue 2 (e.g. C. Meriem) but it acted in haste and without a coherent project, which resulted in sporting failure and its relegation to Ligue 2. This is a division which the club been promoted from only two years earlier, after a surprising trajectory that led it, in four years, from the fourth division to Ligue 1, thanks to intelligent recruitment, but without a player training policy. This example illustrates the fragility of such a model.

The history of Belgian club Beveren is also very interesting. The club, founded in 1934, reached the national first division for the first time in 1967 and won the championship in 1979. It had its golden age in the 80s, with several qualifications for European competitions. The 1990s were much less favourable as a team (drop to the second division) and financially (major difficulties in early 2000s). The club has developed, since 2002, a totally new project headed by the French technician JM Guillou. It proposed a partnership with the Academy of Abidjan. The club was the ideal place to receive young players trained in the Ivorian academy. Beveren was a step in their inclusion into the European market. The club benefited from these talents and succeeded on the field (qualification for the UEFA Cup in 2005), but the project was abandoned and JM Guillou was ousted. The club dropped to the Second Division in 2007 and had new financial difficulties, which led it to quit professionalism in 2010.

Basketball may also provide us with many examples, given the almost total liberalisation of the labour market in this field. Often sports clubs in difficulty change players, hoping for a miracle. These are primarily foreign and especially American players who cost the most. But the proposed solution is mostly a mirage. In our interviews, players highlighted such abuses in the French championship: Besançon in the late 1990s, Evreux in 2000.

Other similar examples could be developed for every country with Groups 1 and 2.

#### **Lessons to be drawn**

*For clubs in the secondary market, the deregulation of the labour market offers new opportunities to access players every year in the market and even to access players with talent, normally destined for the most exclusive clubs. But this facility is also a trap, because it tends to make clubs give in to the temptation of choice and short-term policies.*

*We could see from the examples above that these choices can be detrimental to the survival of the club in the long-term. In both cases, the possibility of recruiting a lot of players does not seem to lead to a sustainable project.*

#### **b. Players and agents**

##### **- Football**

As we saw earlier in this segment, the mobility of players is not really controlled and is undesired. We chose to illustrate this situation with the careers of three players from different origins: two from one of the Big 5 countries and one from Eastern Europe.

- Romeo Filipovic is German / Croatian. Born in Germany, he began his career in Duisbourg and then played for 13 clubs in 11 different countries between 2005 and 2012, the vast majority of them being only six-month contracts. It is doubtful that his wages were ever very high.
- Lajo Terjék is Hungarian and played for 8 clubs in 3 different countries between 1998 and 2012. He played only in countries with limited economic means.

- Cédric Bardon is a French player, trained by Olympique Lyonnais and although he was an international with youth team and had a promising good career, he never really fulfilled this promise. His career took him to clubs in many different countries: French Ligue 1 and 2 and then Bulgaria, Israel, Cyprus and lastly to a third-level club in France to end his career.

This type of career is typical of players who are not in the higher market segments and they are the majority in football. The career paths of footballers are increasingly fragmented in many national associations. Contrary to the expectations of clubs, agents and the players themselves, transnational career paths are more often downwards than upwards.

For example, many Brazilians who first migrate to Portugal are unable to move up to better leagues and end up playing for Cypriot, Romanian or Armenian clubs. Similarly, many Irish and Welsh footballers who move to England fail to settle in this country and are subsequently re-transferred to Scotland. The only significant transnational circuit in which the intermediate association is a stepping stone is that leading players from Argentina to Mexico through Chile” (CIES, Global Migration Report 2011, p 22).

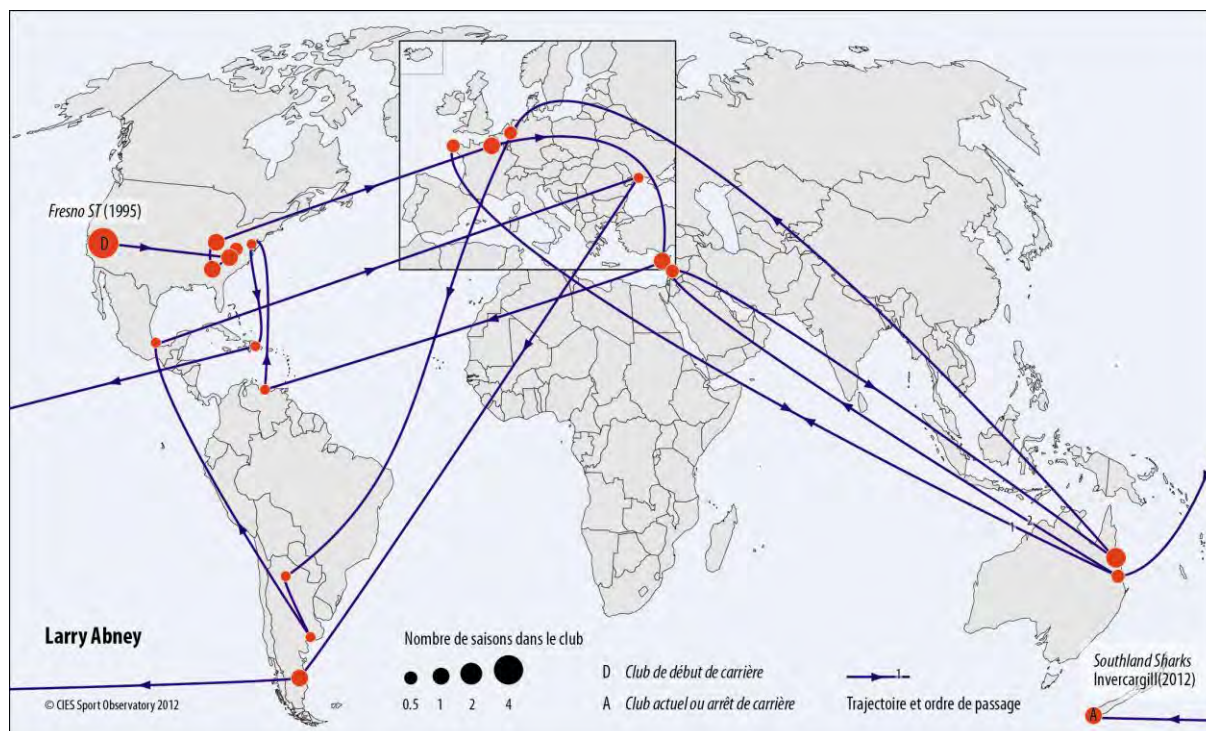
#### - **Basketball**

In this segment, the mobility of players is more developed than in others. It results in a "race to the contracts." Players only sign very short contracts (even less than one year), and do not hesitate to play in many different countries all over the World. Their wages are low compared to what is practiced in other segments of the labour market. The career of Abney Larry, an American globetrotter is a good illustration of this huge instability (12 countries visited in 10 years). We also present the careers of other players<sup>384</sup>:

- Janiska Mindaugas: a minor Lithuanian player
- Jiri Hubalek: a Czech player, partly trained in the USA
- Ingus Bankevics: a Latvian player on the edge of professionalism

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<sup>384</sup> See more details in Annex 8



In this segment, there are very many agents for an effectively reduced market. Competition between them is very strong and, therefore, there are no holds barred. On the one hand, those who are well established in areas where talent is plentiful survive well; on the other hand, those who were able to find a place in the most economically viable markets.

### Lessons to be drawn

*Once again, a distinction has to be made between basketball and football, mainly because although contractual stability is important in football, the problem of stability in itself is essential in basketball.*

*In this segment, players have much less control of their career paths; the ones that we describe here are very chaotic, but are quite representative of the careers of players in the upper secondary segment: they still have access to the international market and have a succession of contracts.*

*Others who are not so lucky can find themselves rejected to the outer limits of professionalism in their country or in championships that are increasingly distanced from truly professional championships (e.g. the Latvian player Bankevics and, to a lesser extent, the Czech player, Hubalek).*

### 3.4.2 The risk of undesirable system consequences

As already stated in the White Paper on Sport 2007 the European Commission considers that "many criminal activities (match fixing, corruption, etc.) are the result of the spiral of spending, salary inflation and the subsequent financial crises faced by many clubs."<sup>385</sup>

<sup>385</sup>White Paper on Sport, Brussels 11.7.2007 {HYPERLINK "[http://ec.europa.eu/sport/white-paper/the-2007-white-paper-on-sport\\_en.htm](http://ec.europa.eu/sport/white-paper/the-2007-white-paper-on-sport_en.htm)"}

The European Commission saw one of the reasons why the Independent European Sport Review 2006<sup>386</sup> was launched in the fact that it identified "a range of problems – such as doping, corruption, racism, illegal gambling, money-laundering and other activities detrimental to the sport – where only a holistic approach between football and the EU and national authorities will be truly effective."<sup>387</sup> The Review carried an analysis of these worrying trends in economic crime offences in the sports sector and identified the following key problem areas: "player transfers, payments to agents, investment in clubs and a variety of other commercial deals associated with football, such as sponsorship".

In this context the Commission states clearly that, "Given the sector's high degree of internationalisation, corruption in the sport sector often has cross-border aspects. Corruption problems with a European dimension need to be tackled at European level. EU anti-money laundering mechanisms should apply effectively also in the sport sector".

The White Paper challenges the role of players' agents in view of the rise in the level of players' salaries and an increasingly complex legal environment: "There are reports on bad practices in the activities of some agents which have resulted in instances of corruption, money laundering and trafficking in underage players."

With respect to Transfers, the Commission asserts that, "the transfer of players also gives rise to concerns about the legality of the financial flows involved."

Given the fact that, "sport is one of the many sectors that are at risk of being infected with criminal money", The Financial Action Task Force (FATF-GAFI) produced in 2009 a study on "*Money Laundering through the Football Sector*".<sup>388</sup> The aim of the project was to study money laundering schemes in both the amateur and professional football sector, bearing in mind that these schemes "may be occurring in other sports".

Based on the fact that the sports industry (in this particular case, the football industry) is influenced by many important stakeholders, the study states that "if there is fraud, corruption, tax evasion, or money laundering it takes place within the complex network of relations between these actors."<sup>389</sup> As a common and significant structure for most of the sport sectors, FATF identified the clubs, the players, corporate sponsors, media, individual investors, local business clubs or talent pools, players' agents, (local) governments, tax authorities, and real estate proprietors. Furthermore, supporters and so-called fan clubs have also a substantial influence.

Based on the collected data by questionnaires, the study sets out a list of possible reasons that make the football sector and the sport in general specifically vulnerable to money laundering. The vulnerabilities vary depending, "on the specific size and size of the football sector on an international, national or even local level. Most of them apply to professional football; a smaller set occur also in amateur football."<sup>390</sup> While the football sector is certainly the most vulnerable sport to criminal offences, given its popularity and economic importance, all the other sports sectors may be considered to be

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<sup>386</sup> Independent European Sport Review 2006 " , José Louis Arnaut, October 2006

<http://supporters-direct.coop/downloads/pdfs/EU/European%20Sports%20Review.pdf>

<sup>387</sup> White Paper on Sport – Commission staff working document "Background context": [http://ec.europa.eu/sport/white-paper/swd-the-organisation-of-sport\\_en.htm#4\\_6](http://ec.europa.eu/sport/white-paper/swd-the-organisation-of-sport_en.htm#4_6)

<sup>388</sup> Money laundering through the Football Sector", FATF-GAFI July 2009; {HYPERLINK "http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20through%20the%20Football%20Sector.pdf"}

<sup>389</sup> "Money laundering through the Football Sector", FATF-GAFI July 2009, *op.cit* .p.13

<sup>390</sup> Money laundering through the Football Sector", FATF-GAFI July 2009, *op.cit* .p.14.



equally affected – both professional and amateur – by these phenomena of criminal affinity due to the fact that the same “structures” exist in a globally comparative way in all sports sectors.

Given the findings of the study, FATF has identified three areas of vulnerability:

- Related to the sector’s structure (e.g. complicated network of stakeholders; management lacks professionalism);
- Related to the sector’s finance (e.g. considerable sums of apparently irrational character are involved; financial needs of football clubs);
- Related to the sector’s culture (e.g. societal role of football; social vulnerability of some players; non-material rewards)<sup>391</sup>.

### **3.4.2.1 Terminological clarifications**

In conducting the analysis of criminal offences and illegal activities in the context of player transfers, case descriptions and analyses made from other sources have been used. The methodological approach is based on internationally recognised legal definitions of the respective financial crimes.

#### **3.4.2.1.1 Corruption**

In accordance with the Civil Law Convention on Corruption of the Council of Europe<sup>392</sup> “*corruption*” means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.

The Council of Europe has emphasised, with respect to this definition, that the Convention has, as one of its main characteristics, a relatively wide scope. This, itself, reflects the Council of Europe’s comprehensive approach to the fight against corruption as a threat, not only to international business or to the financial interests but to democratic values, the rule of law, human rights and social and economic progress.

#### **3.4.2.1.2 Money Laundering**

The Financial Action Task Force (FATF) gives the following description of laundering offences: “The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising their source.”<sup>393</sup>

In accordance with the FATF typology, the mechanism of money laundering is generally effected in three steps defined as: placement, layering, integration:

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<sup>391</sup> Money laundering through the Football Sector”, FATF-GAFI July 2009, *op.cit.* p.14-16.

<sup>392</sup> Civil Law Convention on Corruption, Council of Europe CETS No.: 174.

<sup>393</sup> FATF-GAFI: The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. <http://www.fatf-gafi.org/pages/faq/moneylaundering/>

- In the initial - or placement - stage of money laundering, the launderer introduces his illegal profits into the financial system. This might be done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders, etc.) that are then collected and deposited into accounts at another location.
- After the funds have entered the financial system, the second – or layering – stage takes place. In this phase, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channelled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe.
- Having successfully processed his criminal profits through the first two phases, the launderer then moves them to the third stage – integration – in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds in real estate, luxury assets, or business ventures.

FATF clearly states: “Corruption and money laundering are intrinsically linked. Similar to other serious crimes, corruption offences, such as bribery and theft of public funds, are generally committed for the purpose of obtaining private gain. Money laundering is the process of concealing illicit gains that were generated from criminal activity. By successfully laundering the proceeds of a corruption offence, the illicit gains may be enjoyed without fear of being confiscated.”

#### **3.4.2.1.3 Fraud**

“Fraud is when trickery is used to gain a dishonest advantage, which is often financial, over another person.”[Action Fraud]<sup>394</sup>.

There are different types of fraud:

- **Asset misappropriation fraud**<sup>395</sup>

Asset misappropriation schemes include those frauds in which a perpetrator employs trickery or deceit to steal or misuse an organisation’s resources (either in cash or non-cash assets). In these cases, the specific assets of the organisation are taken to directly benefit the individuals committing the fraud. This type of fraud can be committed by company directors, or its employees, or anyone else entrusted to hold and manage the assets and interests of an organisation.

The misappropriation may occur under different circumstances: (1) before they are recorded in the books and records of an organisation (i.e. skimming), (2) while assets are currently held by the organisation (e.g. larceny or misuse of equipment, supplies, cash etc.), or (3) during the process of purchasing goods or services (e.g. billing, expense reimbursement, payroll schemes).

Asset misappropriation schemes generally start small and get larger as perpetrators gain confidence in their ability to get away with their dishonest schemes. At one end of the scale, asset misappropriation fraud may be limited to isolated cases of expense fiddling by an employee. At the other end, it might involve organised crime groups infiltrating organisations to take advantage of weak processes and inadequate internal systems and controls. If they are not tackled, opportunistic one-off frauds can become systemic and spread throughout an organisation, creating a culture of theft and fraud. When

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<sup>394</sup>Action Fraud is the UK's national fraud and internet crime reporting centre.

<sup>395</sup> Ch. Albrecht, M.-J. Kranacher, St. Albrecht, *Asset Misappropriation Research White Paper for the Institute of Fraud Prevention*, 2008. <http://www.theifp.org/research-grants/IFP-Whitepaper-5.pdf>

this happens, fraudsters think their actions are acceptable and fail to make the distinction between the assets of the organisation and their own funds.

- **Tax fraud (tax evasion)**

The illegal non-payment or under-payment of taxes, usually by making a false declaration or no declaration to tax authorities; it entails criminal or civil legal penalties.<sup>396</sup>

Compared to tax fraud or evasion, aggressive tax avoidance “is the practice of seeking to minimise a tax bill by attempting to comply with the letter of the law whilst avoiding its purpose or spirit.” Special complex schemes (usually by taking advantage of jurisdictions commonly referred to as “tax havens” or “offshore finance centres”) are often created purely for this purpose. Since avoidance often entails concealment of information and it is hard to prove intention or deliberate deception, it may be difficult to make the difference clearly between avoidance and evasion.

FATF/ GAFI have recognised that tax evasion and money laundering often use the same mechanisms.

#### **3.4.2.1.4 Human trafficking**

In accordance with the Council of Europe Convention<sup>397</sup> “Trafficking in human beings” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

#### **3.4.2.2 Case and typologies**

##### **3.4.2.2.1 The transfer market and money laundering**

In its study 2009, The Financial Action Task Force identified and analysed several cases of illegal activities, such as money laundering with respect to player transfers<sup>398</sup>

FATF has described the crucial factors behind the vulnerabilities of the transfer market and its attractiveness for money laundering offences: lack of transparency in relation to the funding of transfer transactions, opportunity for offshore payments and funding and use of offshore financing vehicles. The lack of transparency in transfer settlements, given the large amounts involved, often paid in various instalments by international wire transfers in favour of various beneficial owners, may provide opportunities for money laundering.

According to FATF, ‘the over-evaluation of a player corresponds to a money-laundering technique similar to the over-invoicing of goods and services seen in trade-based money laundering. The key element of this technique is the misrepresentation of the price of the good or service in order to transfer additional value’.<sup>399</sup>

The study describes concrete cases of money-laundering and their inherent typologies, such as unknown (anonymous) investors willing to allocate funds (constituted in tax heavens) in football clubs with debts or in an irregular situation in order to acquire football players.

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<sup>396</sup> [http://www.taxjustice.net/cms/front\\_content.php?idcat=2](http://www.taxjustice.net/cms/front_content.php?idcat=2)

<sup>397</sup> Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197

<sup>398</sup> “Money laundering through the Football Sector”, FATF-GAFI July 2009, op.cit .p.20 ff

<sup>399</sup> FATF, op.cit .p.21



Furthermore, the role of football agents who are often accomplices in money-laundering activities is challenged. FATF addresses the concrete case of the involvement of an unlicensed agent in money-laundering offences, thus increasing awareness of the crucial position held by the agents in the international transfer market.

Concerning the problems related to the activities of agents and their possible involvements in illegal activities in the context of the transfer market, KEA-CDES-EOSE produced a comprehensive study in 2009.<sup>400</sup> The study deals inter alia with the independent inquiry commissioned by the English Football Premier League in 2006 with respect to revelations of corruption and fraud in English football (commonly referred to as the “Stevens-Report”)<sup>401</sup>. The report revealed serious deficiencies in the monitoring and supervision of transfers by the Football association and the Premier League.

The recently published study by the CIES Football Observatory about football agent activity in Europe corroborates again in general the existence of intricate situations in the player transfer and representation market<sup>402</sup>.

#### **3.4.2.2.2 Specific asset misappropriation schemes and transfer market**

In fact, fraud cases in the context of the transfers of players are always a combination of various fraudulent practices and offences at different levels of sophistication: embezzlement, misappropriation of funds/ assets, forgery, fiscal and social fraud (tax evasion).

#### **3.4.2.2.3 Overvaluation of the transfer prices and secret fees or “bungs”**

These methods were used in the “Olympique de Marseille Case”, when the major shareholder and CEO of one of the worldwide leading manufacturers of sportswear articles acquired the professional football club as part of his strategy to promote the brand of company, which was in his personal and the company’s interest. In pursuing the strategy he decided, in his capacity as President of the club, to hire as many of the best European football players as possible. Given the fact that the fiscal conditions in France were less favourable than in other European countries, he profited from the so-called system of the “player’s participation”. This consisted in agreeing with the “selling club” outside France that 15-25% of the transfer price will be paid back to the player and that this amount will be deducted from the remuneration to be received from the new club. This type of arrangement took place in order to pay as little social security contributions as possible.

In essence, the method used consisted in overvaluing the transfer price, i.e. the transfer price was fixed higher than its real value, and the payment of secret fees or “bungs”.

It was revealed during the legal proceedings against the suspected persons that the system worked only because of the complicity of a network of people, including the President of the club, club managers, players’ agents and a coach (13 people in total were convicted at the end of the trial in 2008). The principal imputed criminal offences in this case comprised embezzlement and misappropriation of corporate club assets committed against the club, as well as forgery.

The same criminal offences had been committed in the “Girondins de Bordeaux Case” which went to trial in 1999; it concerned the former president of the professional football club of Bordeaux along with a total of four club managers, as well as “intermediaries” between the club and football players.

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<sup>400</sup> “Study on Sports Agents in the European Union”, KEA-CDES-EOSE November 2009; {HYPERLINK [http://ec.europa.eu/sport/news/study-on-sports-agents-in-the-european-union\\_en.htm](http://ec.europa.eu/sport/news/study-on-sports-agents-in-the-european-union_en.htm)}

<sup>401</sup> “Study on Sports Agents in the European Union”, KEA-CDES-EOSE November 2009, *op.cit.* p. 115-116

<sup>402</sup> “Football agents in the biggest five European football markets – An empirical search report”, CIES Football Observatory, Neuchâtel 2012 - [http://www.football-observatory.com/IMG/pdf/report\\_agents\\_2012-2.pdf](http://www.football-observatory.com/IMG/pdf/report_agents_2012-2.pdf)

By means of forged contracts, the amounts to be paid for the transfers of the players to the Bordeaux club were artificially inflated. These transfer amounts were paid partially in accounts held abroad (i.e. Luxembourg or Switzerland) by the “intermediaries” or by companies controlled by them and based in offshore financial centres (Panama).

Only a portion of the transferred amounts represented the transfer amount finally contracted with the transferring club. The remaining portion was used by the intermediaries on demand of the President and his club managers to pay “hidden fees” in favour of themselves for services supposedly rendered to the club or in favour of coaches or to pay “undisclosed” transfer indemnities for other players.

Additional transfer indemnities were paid to players through their agents and/ and or through the latter’s artificially inflated fees

In order to minimise fiscal and social charges, transfer payments to the players were channelled through companies (special purpose financing vehicles) controlled by agents and intermediaries on the basis of false contracts and invoices. This system was reported in 2006 in the trial against managers, sponsors, investors, agents and intermediaries of the Paris Saint Germain (PSG) football club. These false contracts could represent fictitious supervision, search or negotiation mandates for the intermediaries<sup>403</sup>. Another fraudulent practice developed between the agents and the players whereby - in order to avoid the payment of the commissions by the players themselves (causing tax charges) - the agents did not declare all their players under contract, with the intent to be paid directly by the club. To that effect, a predated contract for the search of a player was signed *a posteriori* between the agent and the club. This contract was deliberately vague and did not mention the name of the player.

It should be noted that in the PSG case again, the fraudulent system which was developed and practised over years could only work because of the complicity of a network of a very powerful media (principal investor) and sportswear company (sponsor), club presidents and managers and (partly unlicensed) agents/ intermediaries.

#### **3.4.2.2.4 Fiscal and social fraud**

In the context of his transfer to the German professional football club of Bochum, the football player negotiated, beside his monthly salary, some sort of “signing fee” with club officials<sup>404</sup>. Later, when he played for the club, he received directly from the club a smaller part of the total amount as “moving expenses” (not mentioned in the contract); a further payment of the remaining major part of the commission was allegedly made in favour of an agent in Monaco. The agent did not transfer the whole amount to the player, but applied part of it for services rendered by another intermediary which were later attributed by the club for the transfer of another player. The German court considered that as a sham contract. The agent had transferred the funds to the player in four instalments, without the knowledge of the German tax authorities. The differential amount which was not paid to the player could have been a compensation payment to another competing professional football club who had signed a pre-contract with the player. According to the court ruling, “the system was well thought-out and well-organised”. The player avoided social substantial amounts of security contributions. The player was sentenced to 20 months probation.

Preliminary proceedings against the officials of the club re complicity in tax evasion were abandoned after three years in 2011, in return for four- and five-digit money contributions to charitable organisations.

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<sup>403</sup> For detail on this case see for example: ALBERT R., “Les secrets du PSG. La danseuse de Canal Plus. Mai 1991-Avril 2006”, Editions Privé, Paris 2006. And/or: JESSEL J., “La face cachée du foot business”, Patrick Mendelevitch, Flammarion, 2007.

<sup>404</sup> <http://www.derwesten.de/sport/teurer-schwarzlohn-fuer-kalla-id1675846.html>. The Raymond Kalla Case 2008-2011, District Court, Bochum/ Germany

### 3.4.2.2.5 *The transfer market and human trafficking*<sup>405</sup>

The project team is not aware of any recently reported cases in this context in Europe.

But one of the findings of the “Rochebloine report: Good governance and ethics in sport”<sup>406</sup> are problems with respect to the migration of young sportsmen and women, characterised as: “serious but less noticeable abuses”. In the opinion of the author of the report, certain cases of psychological and physical abuses of young sportsmen and women can even fall under the definition of “trafficking” within the meaning of the CoE convention on Action against trafficking in human beings.

According to the report the emergence of swindlers and rogue agents, profiteers who abuse the trust of young people to make money totally illegally, is another worrying phenomenon and may have serious consequences. It is difficult to approach statistically this phenomenon. Some papers<sup>407</sup>, books<sup>408</sup>, some documentaries<sup>409</sup> deal with this subject and some associations<sup>410</sup> propose witnesses. But there are few official reports on this field and, when there are some, it is difficult to have access to it (same example as the “Stevens Report” explained in section 3.3.1.2.1.b.).

### 3.4.2.2.6 *The transfer market and interference with organised crime areas*

There is sufficient evidence that professional and even amateur sports are largely exposed to organised economic crime areas: illegal betting, match-fixing, drug trafficking (doping). Although not directly affecting transfers of players, these criminal areas can result in players, clubs, managers being already in contact with networks of organised crime which can have an impact on the transfer system and the transfer proceedings. According to the German football player Thomas Cichon, about 75% to 80% of his football player colleagues bet on football matches<sup>411</sup>. Moreover, Ms Anne Brasseur (MEP, member of council of Europe), has stated in her report “*The need to combat match-fixing*”, March 2012 that, besides the players and sports participants “other stakeholders may be involved in corruption and match-fixing; frequently associated with it are: Coaches..., referees or judges..., sports managers...”<sup>412</sup>. With respect to interference of match-fixing and illegal betting with the transfer market the “classic scenario” was reported in the 2011 court ruling of the District Court in Bochum, Germany against a

<sup>405</sup> For more details, see also: POLI R., “The migration of African football players to Europe. Human trafficking and neo-colonialism in question.” {HYPERLINK [http://www.footballfordevelopment.net/uploads/tx\\_drblob/storage/Poli\\_migration-of-African-football-players\\_01.pdf](http://www.footballfordevelopment.net/uploads/tx_drblob/storage/Poli_migration-of-African-football-players_01.pdf)}. Raffaele Poli distinguishes the human trafficking in football and the human trafficking through football. In the first case, it takes place when some abuses are ascertained (such as keeping the player in illegal situation, work exploitation...). In the second case, often underlined, traffickers use false promise of transfer in football clubs abroad to convince young players and their families to pay money for expatriation.

<sup>406</sup> Good governance and ethics in sport”, Mr François Rochebloine, CE Committee on Culture, Science, Education and Media, resolution adopted on 25 April 2012,

{HYPERLINK “<http://www.assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=18258&Language=FR>”}

<sup>407</sup> Quand le Congo sert de Marchandise – R.Molina – Sharkfoot – juin 2012 <http://media.sharkfoot.fr/downloads/2012/05/sharkfoot-8-enquete-congo1.pdf>

<sup>408</sup> For example Négriers du foot Maryse Éwanjé-Épée Le Rocher Editions 2010

{HYPERLINK [http://www.amazon.fr/s/ref=ntt\\_athr\\_dp\\_sr\\_1?encoding=UTF8&field-author=Maryse%20%C3%89wanj%C3%A9-%C3%89p%C3%A9&search-alias=books-fr](http://www.amazon.fr/s/ref=ntt_athr_dp_sr_1?encoding=UTF8&field-author=Maryse%20%C3%89wanj%C3%A9-%C3%89p%C3%A9&search-alias=books-fr)} Le Rocher Editions 2010

<sup>409</sup> For example « Chair à Ballons » Gründ Romans Real. JP Navarre – France Culture 2012

<sup>410</sup> Mani foot forever (HYPERLINK “<http://www.manifootball.org>”), Foot Solidaire (HYPERLINK “<http://www.footsolidaire.org>”) this association dealt with 1200 cases in five years.

<sup>411</sup> FAZ Sport „Wettbetrug im Fußball – Riskante Querpässe“, 11.10.2010

<sup>412</sup> „The need to combat match-fixing“, Ms Anne Brasseur, CE Committee on Culture, Science, Education and Media, draft resolution dd 6 March 2012, <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=18264&Language=EN>

Croatian-led syndicate which had infiltrated since 2008 the Belgian professional football club Union Royale Namur (URN), which played in the second national division<sup>413</sup>.

The head of the syndicate was a Croatian gambler, a sports “friend” who was introduced to the president and owner of the highly indebted club by an agent, Croatian as well. The “friend” promised to invest in the club and to pay the debt of c. €700 000 owed by the club to its President. In return, he became member of the club’s administrative board. In the context of the funds advanced to the club and its President, the Croatian borrowed a substantial amount of money from another member of the syndicate, a leading person in the regional Bochum red-light milieu. He transferred and hired seven players which he deemed as corrupt and whom he paid the salaries for. He admittedly intended to transfer as many as 20 players. With the help of the players being paid bribes by him to lose deliberately the respective matches, he established a system of match-fixing and illegal betting around the matches of the club. According to the judgement, five matches of URN were evidenced as manipulated.

Approximately at the same time, in July 2011, a man from Singapore, Wilson Raj Perumal, was sentenced in Finland to two years in prison for bribing players in the Finnish soccer league.<sup>414</sup> Nine players (seven Zambian and two Georgian) of the Rovaniemi team were convicted for accepting bribes to affect the outcome of matches. Perumal was part of a network of criminals working out of Singapore and Malaysia, and with links to Eastern Europe, who had been attempting to corrupt matches for at least three years<sup>415</sup>. There have been close links to the Croatian crime-ring under investigation in Bochum. In the course of the investigations run in Finland and Germany, it was realised that the transfers of players were instrumentalised and financed systematically and globally by gangs trying to manipulate match results worldwide.<sup>416</sup> To that extent, the fixers practically bought the clubs (URN, Rovaniemi) in order to infiltrate them by transfer of players prepared to manipulate matches for bribes. Furthermore, the systematic approach of the instrumentalisation of transfers of players as part of the organised match-fixing network is highlighted by the fact that the gangs arranged for transferring those players back to other clubs under their control as some sort of “respite areas”, when it was felt that the manipulating activities of the players attracted too much attention.

### **3.4.3 *Efficiency of the system***

#### **3.4.3.1 Variations around competitive balance**

##### **3.4.3.1.1 *The search for competitive balance***

To assess the effectiveness of the transfer system established in 2001 after lengthy negotiations between the European Commission, FIFA, UEFA and players' representatives, it is necessary to divide the five themes that structure the eleven principles of the agreement:

- Youth development and protection of minors;
- The training compensation;
- The stability of contracts;
- Solidarity between clubs;
- Dispute resolution.

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<sup>413</sup> <http://www.spiegel.de/spiegel/print/d-77222635.html>

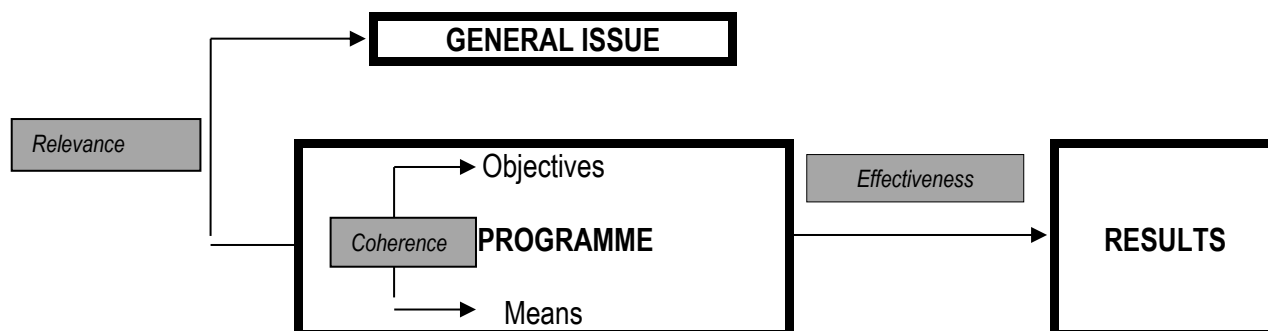
<http://www.derwesten.de/sport/hohe-haftstrafen-im-fussball-wettskandal-verhaengt-id4668011.html>

<sup>414</sup> [http://espn.go.com/sports/soccer/news/\\_/id/6782929/wilson-raj-perumal-singapore-convicted-match-fixing-finland](http://espn.go.com/sports/soccer/news/_/id/6782929/wilson-raj-perumal-singapore-convicted-match-fixing-finland)

<sup>415</sup> <http://www.telegraph.co.uk/sport/football/8496786/Fifa-alarmed-by-global-match-fixing-threat.html>

<sup>416</sup> [http://espn.go.com/sports/soccer/story/\\_/id/7927946/soccer-wilson-raj-perumal-world-most-prolific-criminal-match-fixer-espn-magazine](http://espn.go.com/sports/soccer/story/_/id/7927946/soccer-wilson-raj-perumal-world-most-prolific-criminal-match-fixer-espn-magazine)

It may be recalled that these five themes are part of a fundamental issue: how to guarantee, at the same time, the freedom of movement of players, the stability of teams and the regularity of competitions? It is in response to this type of question that we will be seeking to assess the effectiveness of the transfer system. For this we can use again the table of the assessment of public policies.



The general objective related to the transfer system is the achievement of competitive balance. This is the very essence of athletic competition which must be preserved, if we want to sustain its attractiveness. To meet this objective, a programme to regulate transfers was signed in 2001 between the different stakeholders. Behind the main themes of the agreement, three major objectives prevail:

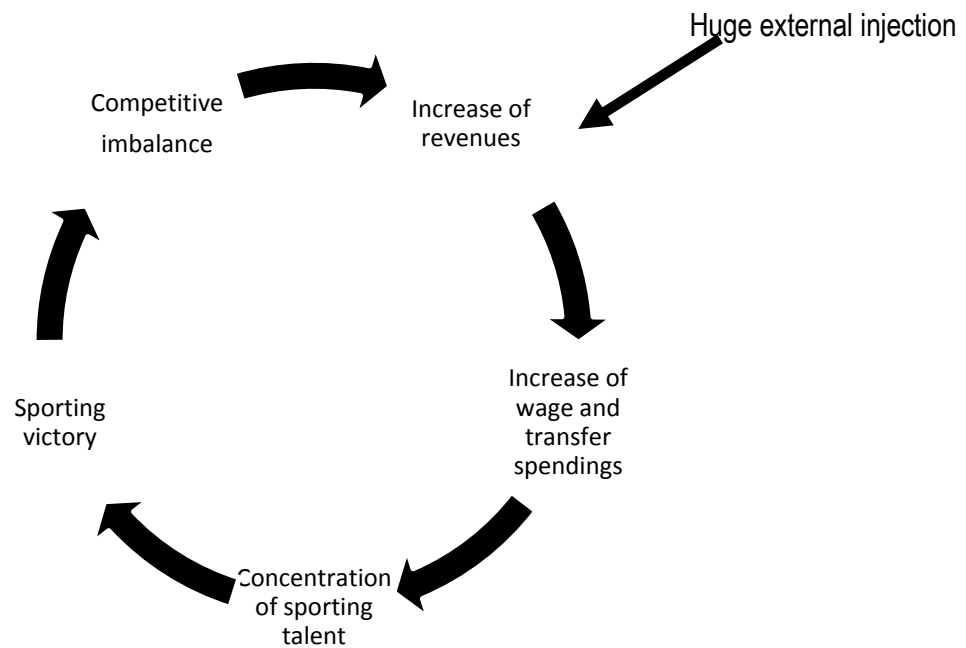
- The balanced distribution of talent between clubs
- The regularity of competitions
- The protection of the rights of players

In addition to the implemented regulatory tools (see legal assessment), we would like to try testing the effectiveness of the system in achieving the first objective. Competitive balance can be improved through a better distribution of sporting talent, compared to a situation where the best players are concentrated systematically in the same clubs.

We will see that the exercise is difficult, since the search for competitive imbalance is dominant in today's football, as one tries to ensure sporting victory. It is in this context that the relationship between transfers and competitive balance should be analysed more deeply.

#### 3.4.3.1.2 *The logic of competitive imbalance*

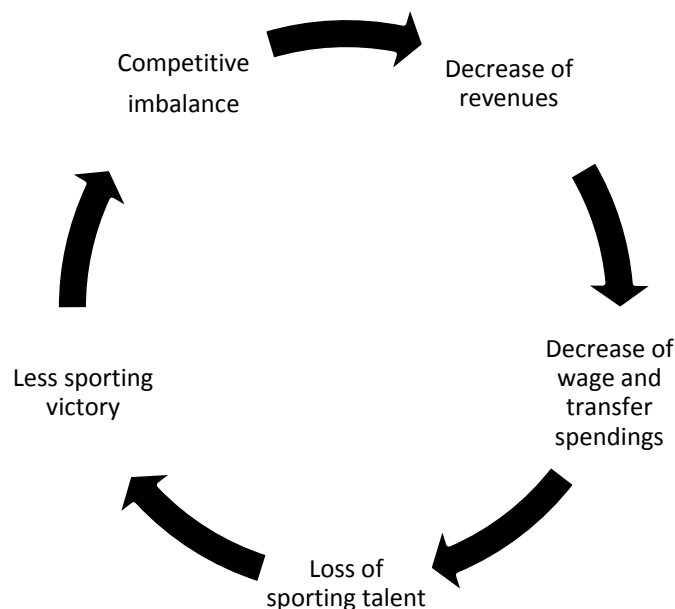
Based on academic work, there would appear to be a causal link between sporting victory and maintaining a competitive imbalance, because of the following sequences:



#### Vicious circle of competitive imbalance

There is a virtuous circle for the richest clubs, which could therefore be self-perpetuating. The virtuous circle can obviously transform into a vicious circle, if the sporting results are disappointing despite the purchase of talent. However, one factor may help to ensure the sustainability of sequences: the huge external injection of capital.

Conversely, there is a vicious cycle for smaller clubs struggling to avoid relegation:



#### Vicious circle for smaller clubs

We must therefore wonder how we can fight against this logic of imbalance, which either benefits a minority of clubs or threatens the majority of clubs. Spain is a good example of a duopoly which concentrates the bulk of the sporting talent and victories, on one side, and has a majority of clubs experiencing financial difficulties, on the other side.

In the previous diagrams, it is clear that the two elements on which we need to take action are, on the one hand, the clubs' income and, on the other hand, their expenditure on salaries and transfers. High incomes allow large expenditure, which makes it possible to acquire the talent necessary to win.

Regarding income, we must consider both an internal regulation (in the form of a share of total revenue) and an external regulation to prevent drifts associated with huge external funding (it is the role of financial fair play). We will not develop these points, but it should be kept in mind that in addition to the issue of transfers, it is necessary to think about regulating the sector.

Regarding transfer expenditure, we return to our question about the effectiveness of the current system to improve competitive balance by:

- Generating a redistribution of income that would allow smaller clubs to partially settle their financial problems and do better;
- Leading to a better distribution of athletic talent between clubs.

The transfer system contributes to maintain the sector as a whole, in its state of competitive imbalance as we have previously formalised; this is for two main reasons:

- A financial redistribution not sufficient enough;
- A concentration of sporting talent in the club paying the highest wages.
- 

We therefore must ask how this system can be ultimately improved and be more at the service of competitive balance than competitive imbalance.

#### **3.4.3.1.3    *Transfer relationships – competitive imbalance***

In the previous section, we emphasized the importance of salary and transfers expenditure in the purchase of sporting talent which then explains the success rate. Everything has been written about the relationship between salary and sporting success (especially Kuper and Szymanski, 2009 who consider that the salary explains the sports ranking, which would not be true for transfers). In contrast, Tomkins, Riley, Fulcher (2010) consider that the positive relationship between transfers and sports ranking would be even stronger than salaries. It is this latter original work that we are going to synthesize.

Without going into technical details, we can say that the *Pay as you play* team has developed a number of indicators and indexes to analyze the relationship between the level of transfers and sports performance in the English Premier League: cost of the team as a whole (£ sg) average cost of the starting team (£XI), Transfer Price Index (TPI from the database on all transfers from 1992 to 2010), Current transfer Purchase Price (CTPP to make inter-temporal comparisons).

With these tools, the team *Pay as you play* tried to understand the evolution of the competitive balance over the 18 years of operation of the Premier League. For this, two rankings were developed:

- The ranking of teams based on their cost of setting (transfers), expressed in percentage of the cost of the most expensive team
- The sport ranking of the end of the season

The results appear in a table<sup>417</sup> which lists team in term of finishing position and graphs the average cost of the starting team (£XI) of each Premier League season (1992-93 to 2009-10).

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<sup>417</sup> TOMKINS P., RILEY G. and FULCHER G., "Pay as you play: the true price of success in the Premier League Era", p40, 2010.

Reading the table is clear: before 2001, there were up- and down-grading of teams in the rankings (a team was more or less well ranked according to its ranking in terms of cost). This means that teams that were expensive to constitute had a poor ranking, conversely, cheap teams had a good ranking.

After 2001, there was a strong correlation between costs of teams and sporting results. Over 18 years, no team among the first two teams in the rankings had a cost of less than 50% of the most expensive one. On average, during 18 seasons, the winner of the championship had a cost of 89% of the most spending team. There are, however, some notable exceptions:

- Arsenal (2004) champion with a cost of only 63.7% of the most expensive team (Chelsea).
- Manchester United (1997) with 51.4% of the cost of Newcastle United

But on average between 1992 and 2001, although the champion was at 87% of the most expensive team since 2001, this percentage rose up to 91%.

£XI Rank For season	Season	Champions	% of season's most expensive £XI	£ XI	Cost Per Point	Points
1	1992-3	Manchester United	100,00%	£73,379,127	£873,561	84
1	1993-4	Manchester United	100,00%	£92,208,897	£1,002,271	92
1	1994-5	Blackburn Rovers	100,00%	£87,541,696	£983,615	89
5	1995-6	Manchester United	79,20%	£70,776,892	£863,133	82
6	1996-7	Manchester United	51,40%	£59,611,462	£794,819	75
2	1997-8	Arsenal	93,90%	£85,245,901	£1,092,896	78
1	1998-9	Manchester United	100,00%	£106,197,289	£1,344,269	79
2	1999-0	Manchester United	82,00%	£104,323,670	£1,146,414	91
5	2000-1	Manchester United	78,60%	£78,358,412	£979,480	80
1	2001-2	Arsenal	100,00%	£104,115,888	£1,196,734	87
1	2002-3	Manchester United	100,00%	£113,757,434	£1,370,571	83
4	2003-4	Arsenal	63,70%	£95,692,961	£1,063,255	90
1	2004-5	Chelsea	100,00%	£195,163,150	£2,054,349	95
1	2005-6	Chelsea	100,00%	£229,619,425	£2,523,290	91
2	2006-7	Manchester United	69,20%	£171,702,282	£1,929,239	89
2	2007-8	Manchester United	88,50%	£167,770,664	£1,928,398	87
2	2008-9	Manchester United	95,50%	£158,436,770	£1,760,409	90
1	2009-10	Chelsea	100,00%	£187,436,346,00	£2,179,492	86
2.1			89,00%	£121,185,459	£1,393,678	86

Comparison between the transfer expenditures (in % of the most expensive) and final ranking

[Source: Pay as you Play]

It seems established that winning the title relies on transfers, especially as one wants to win the title for the first time, or win it after a long time. Indeed, the team is to be rebuilt massively. There are, therefore, cycles of teams, as was demonstrated by Marc Lavoie in Canada in the case of ice hockey.

The interest of the work of the *Pay as you Play* team is the long-term vision (18 years) it gives of the evolution of the requirements for a club in transfer expenditure to finish at the top of the rankings.

In addition, the controversy between this team and S. Szymanski has taken the discussions forward to recognize that the results obtained with salaries or transfers are closely correlated. Even if salaries explain a little better the sports performance, transfer expenditure is also decisive. As is explained by



the team *Pay as you Play*, before negotiating salaries, sports talent must be acquired first, through transfer.

The solution can then consist in building a model using the total value of teams, i.e. estimating the cost of building the team (transfers) and maintaining it (salaries) during a season. The results always go in the same direction, when we wonder how much money should be invested to finish in the top rankings.

The history of the Premier League is full of lessons:

- Abramovich opened the arms race in transfers and salaries with Chelsea. Then there are those who could follow and those who could not.
- The clubs who wanted to finish in the Top 4 had to invest 3 to 6 times more than the average club.
- Hence, problems when the results were disappointing (Leeds United).
- Gradually, the Premier League has become an oligopoly. Some clubs can mobilise the total expenditure necessary to stay at the top of the championship

It is time to ask what can be done to improve the transfer system and counter this logic of competitive imbalance, which is symbolised by some European leagues (such as the English Premier League or the Spanish Liga), as it has a very low rate of home players and thus a large part left to transfers.

### **3.4.3.2 Measures for improvement**

#### **3.4.3.2.1 *Impact of the transfer system***

We need to focus on the ability of the system to weigh on the distribution of sporting talent between clubs. It is clear that the quality of the teams is at the heart of sporting success and if a better distribution of talent is not guaranteed, competitive imbalance will remain. To strengthen this relationship between distribution of sporting talent and the transfer system, four points should be considered.

- The first one is the analysis of the redistributive effects of the transfer system. In the event of a transfer there are incoming and outgoing flows between clubs, between leagues of different levels, between countries. The issue is how to better regulate these financial flows in order to improve competitive balance. This is all the more important because it is part of the future framework of financial fair play. A transfer is, in fact, an internal source of income to the sports sector and which remains in the system. It is therefore better suited to stabilize the whole system in the absence of external disruptions.
- The second point is the analysis of the incentive effects of training compensation on the internal production of sporting talent. Again this may affect the competitive balance of the various championships. Selling countries are improving their balance when their best players go abroad, but their championship is pulled down. Conversely, buying countries see their balance deteriorate because of the concentration of the best players in the richest clubs.
- The third point regards the analysis of suspicious transactions of players. As we have shown, the value and the price of players should not be confused. The value of the player reflects his ability to contribute to the victory of the club who hired him, the price of the player is the result of a balance of power in the market between the buying club and selling club. A big gap between price and value means market failure, which threatens the whole competitive balance of championships, as well as their viability. Speculative bubbles on transfers can generate excessive debt in clubs.
- The fourth point is the analysis of the impact of the transfer system on the stability of teams, the regularity of competitions, the respect for the rights of players, and improvement of their loyalty, etc. Again, the competitive balance of championships depends a lot on a positive response to these questions.

The analysis of these four themes would be necessary to understand fully the impact of the transfer system on competitive balance. But, as always, the main difficulty lies in the non-availability of the information needed to test these relationships:

- Can the transfer system improve the distribution of income?
- Can the transfer system identify suspicious transactions?
- Can the transfer system encourage the training of players?
- Can the transfer system improve the situation of players?

In the face of the difficulties encountered, we are left with the analysis of the redistributive effects of the transfer system and, subsequently, we will indirectly address the other aspects in the presentation of scenarios.

### 3.4.3.2.2 Redistributive effects

We can have a first idea of the redistributive effects of the transfer system thanks to a UEFA report of October 2000. This report shows that the transfer system is effective in redistributing wealth to small countries, leagues and clubs. Consequently, transfer fees are a mechanism allowing the weakest clubs to survive in a dual football system.

Two important results emerge:

1. Transfer fees received by countries that are net exporters of sporting talent to help cover the current losses of their clubs.

	Turnover	Operating Result (without amortisation)	Net Balance of Transfers	Transfers/Turnover (%)	Transfers/Operating Result (%)
France	393,2	-70,4	66,2	16,8	94
Netherlands	178	-51,6	37,8	21,2	73,3
Portugal	99,8	(79,8)*	57,8	57,9	72,4
Denmark	51,7	-5,3	6,9	13,3	130,1
Sweden	44,9	(5,6)**	3,5	7,8	62,5
<b>TOTAL</b>	<b>767,6</b>	<b>-212,7</b>	<b>172,2</b>	<b>22,4</b>	<b>81</b>

Table 1: Turnover, Operating Results and Transfer Revenue in certain European countries (top divisions only) 1998-99 (€ m)

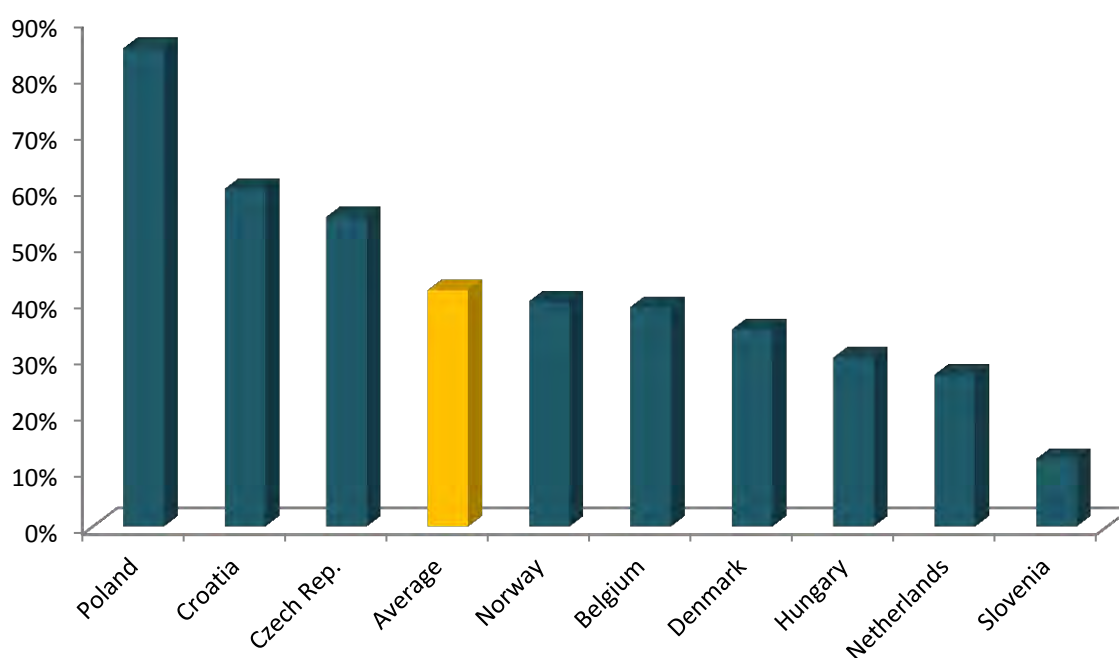
[Source: LNF, Dutch Football Federation, Swedish F.A., Deloitte & Touche Sport analysis]

\* includes amortisation

\*\* half of the clubs book transfers directly onto the Income Statements (P&L) and half amortise the contract over the contract period

Note: We have excluded amortisation from Operating Result in order to derive a true financial picture of the day-to-day activities of clubs. The amortisation that we have excluded from the Operating Result (where possible), relates to the amount of player's transfer value that is "written off" as a cost during the year. For example, a £4 million transfer fee for a players with a four year contract would create £1 million amortised (written off as a cost on the Income Statement) annually over the four years (assuming that the player does not move or extend his contract).

In France, the losses in 1999-2000 amounted to €70.4m. However, the balance of transfers was €66.2m in surplus, covering 94% of losses. Some small countries have even made a real strategy out of it; transfers represent most of the income in the league (Poland, Croatia, and the Czech Republic).



Gross transfer income as a proportion of turnover (top two divisions) - annual average 1997-98 – 1999-2000<sup>418</sup>

[Source: National Associations (UEFA survey), Deloitte & Touche Sport analysis]

- Transfers received by the small clubs in all leagues to help them cover their current account deficits fully or partially, as shown in the following table

Country/Division	Club	Net Transfer income over a 5 year period	Operating losses before player transfers over a 5 year period	Percentage of losses covered by transfer receipts (%)
English Division One	Norwich City	16,7	(16,3)	102
	Tranmere Rovers	10,1	(11,6)	87
	Crewe Alexandra	7,1	(3,5)	203
	Grimsby Town	4,1	(2,7)	152
English Division Two	Oldham Athletic	7,5	(7,7)	97
	Notts Country	5,0	(6,0)	83
	Bristol Rovers	4,5	(5,2)	87
English Division Three	Southend United	4,4	(6,4)	69
	Plymouth Argyle	1,2	(1,8)	67
Italian Serie B	Cesena	8,4	(6,2)	135
	Verona	10,8	(8,7)	124
Italian Serie C1	Foggia	11,9	(12,3)	97
	Castel di Sangro	2,0	(3,9)	51
Portuguese First Division	Benfica	6,5	(7,2)	90
	Boavista	3,2	(4,5)	71

Sample of European Clubs where transfers help cover losses and sustain viability aggregate – 1994-95 – 1998- 99 (Euro, m)<sup>419</sup>

[Source: Annual Review of Football Finance (England and Portugal), Centro Studi Lega Calcio (Italy), Deloitte & Touche Sport Analysis]

<sup>418</sup> Note: Where separate information has been supplied by a National Association for two divisions, the average of the two has been used.

<sup>419</sup> Note: For English clubs, transfer income is the net of payments and receipts for players. In Italy, the figures are the profit on disposal of players.

This means that the transfer system provides an opportunity for small clubs to remain in a competitive system. These small clubs can make a real strategy of producing sporting talent for big clubs in economically less developed areas, which would not give them the means to finance themselves otherwise. The transfer system was therefore considered by UEFA as a way to improve the economic and territorial cohesion of football.

In conclusion, we can say that in the 2000s, most professional clubs were net beneficiaries of the transfer system in Europe. This means that the majority of clubs rely on transfers to survive and compete.

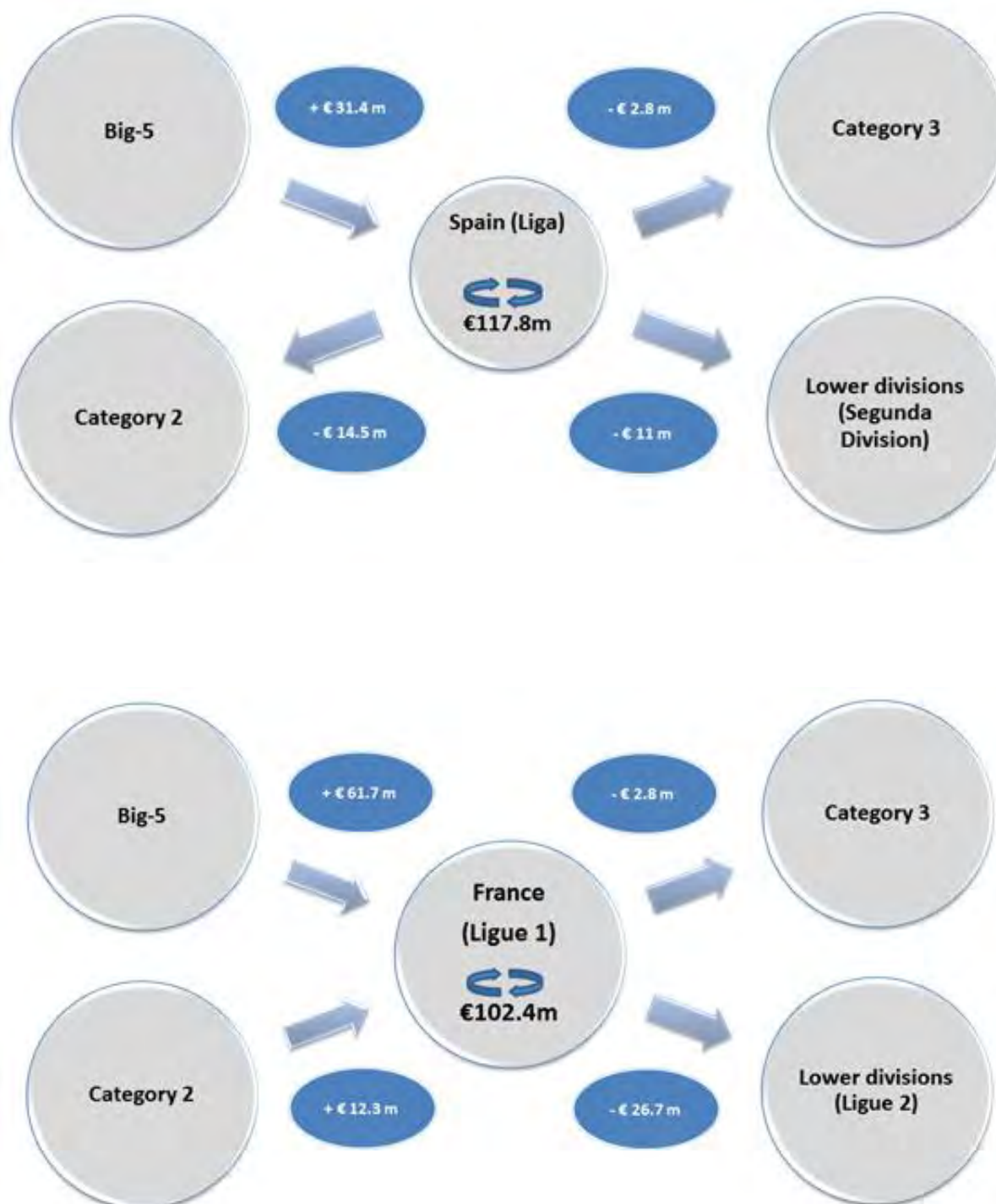
We must now analyse the situation to see if ten years after the 2001 agreement on transfers, the redistributive effects of the system are still important. To do this, we will use data from the Deutsche website [www.transfertmarkt.de](http://www.transfertmarkt.de) applied to three types of leagues<sup>420</sup>:

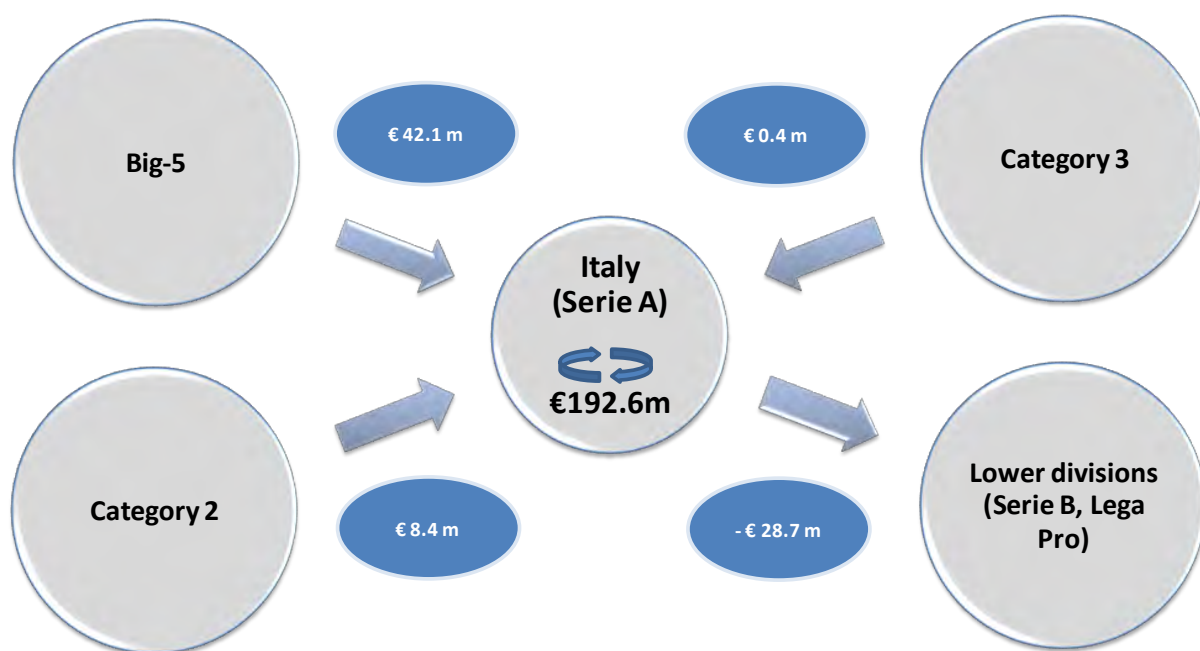
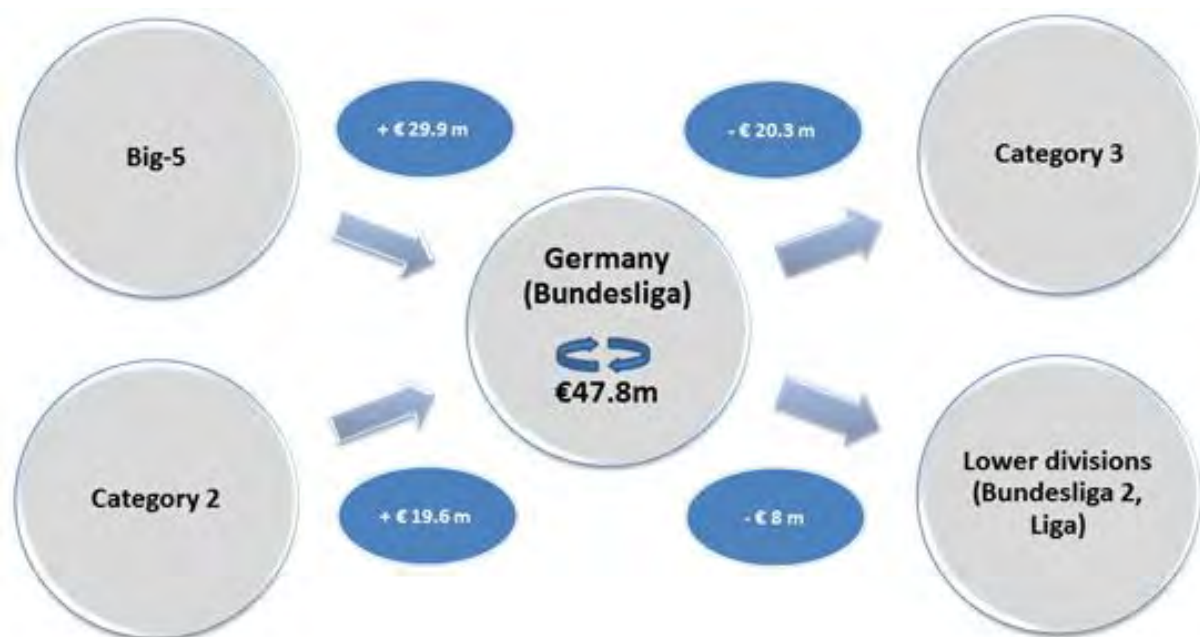
- The leagues of the Big 5.
- Leagues of category 2: Netherlands, Scotland, Portugal, Belgium, Russia, Turkey...
- Leagues of category 3: Sweden, Poland, Romania, Czech Republic, Cyprus Israel...

If we take the example of the 2010-2011 season, the results are as follows for the Big-5 countries.



<sup>420</sup> See also section 3.2.2.1.1 p137.







It is possible from there to make a summary table:

	<b>Big-5</b>	<b>Category 2</b>	<b>Category 3</b>	<b>Lower division (same country)</b>
England	-165 255 000	-92 665 000	-6 000 000	-18 542 000
Spain	31 400 000	-14 650 000	-2 850 000	-11 020 000
France	61 730 000	12 325 000	-2 850 000	-26 700 000
Germany	29 950 000	19 670 000	-20 350 000	-8 220 000
Italy	42 175 000	8 415 000	450 000	-28 749 000
<b>TOTAL</b>	<b>0</b>	<b>-66 905 000</b>	<b>-31 600 000</b>	<b>-93 231 000</b>

Summary of redistributive effects linked to transfer expenditures by big-5 clubs in 2010-2011 (Euro).

[Source: CIES, processing CDES]

There are two types of redistributive effect:

- Between countries
- Within the same country

### 1. Between countries

Regarding the Big 5, England is an exception with a negative balance of transfers of €165m. Net purchases of England can, therefore, supply the transfer market between rich countries. All the other countries of the Big 5 have indeed a positive balance of transfers, which means they are net sellers of sporting talent.

Regarding category 2, the two countries are net buyers: England and Spain for a total of €107.1m. The three other countries of the Big 5 are net sellers for a total of €40.3m. Countries in Category 2 generally manage to receive more than €60m, thanks to their sales in England and Spain which exceed their purchases in France, Italy and Germany.

Moreover, the positive balances regarding these three countries may be due to a few purchases from countries in Category 2:

#### *France*

Expenditure	Income	Balance
9 390 000	21 715 000	12 325 000

Transfers of Mamadou Niang (€8m), Issiar Dia (€ 6.5m) and Juan Pablo Pino (€3m) to Turkey, i.e. 8.1% of the number of transfers, alone account for 80.6 % of total income.

#### *Germany*

Expenditure	Income	Balance
22 500 000	42 170 000	19 670 000

Transfers of Obafemi Martins (€9m, Russia), Misinnovic (€8.5m, Turkey) and Carlos Eduards (€20m, Russia), i.e. 8.8% of total transfers, account for 91.2% of the total value of transfers towards countries in Category 2.

#### *Italy*

Expenditure	Income	Balance
18 685 000	27 100 000	8 145 000

Transfers of Quaresma (€7.3m, Turkey) Bochetti (€9.5m, Russia), Lukovic (€7m, Russia), i.e. 8% of the number of transfers represent 87.8% of their total value.

Regarding Category 3, all countries of the Big 5 are buyers from these small countries, with the exception of Italy, whose balance is slightly in surplus (€0.4m). These countries receive €32m and it is worth noting the important part of sales to Germany (€20.3m or 63% of total of their sales).

## 2. Within each country

First there is the gross expenditure of transfers between elite clubs. The share of these internal transactions varies among countries, both in absolute value and in relative value, as shown in the following table:

	€m	%
England (Premier League)	205	42
Italy (Serie A)	192.6	71
Spain (Liga)	117.8	66
France (Ligue 1)	102.4	50
Germany (Bundesliga)	47.8	38

England stands out once again with the highest amount of internal transactions to the Premier League in absolute value but relatively small in relative value (behind the Bundesliga), which means greater redistributive effects for countries of lower category or other divisions. In contrast, Italy and Spain are experiencing the highest rates of internal transactions, France has an average position.

The analysis carried out by UEFA for 2010<sup>421</sup> confirms that “[...] the transfer system acts as a strong and important financial solidarity mechanism towards clubs in the small and medium income divisions with all larger leagues being net importers in financial year 2010 with the exception of Portugal. Transfers improved the bottom line profit margin by over 10% for 110 individual clubs and 9 leagues [...]”

Among them, you encounter clubs of the Big 5, as we saw previously with the case of Udinese or with French clubs, but these clubs mainly form part of smaller leagues.

We can illustrate that with the example of Romanian clubs.

It appears “that the gross export of the entire top division Romanian football amount an average of €18.1m, per year between 2006 and 2011” (Rosca – 2012). The net exports of players were constantly positive from 2006 to 2011. The table below shows that the revenue provided by transfers is higher than those provided by TV rights for the five main clubs in Romania:

<sup>421</sup> European Club Footballing Landscape, UEFA, 2010.



Club	CFR Cluj	U Cluj	Dynamo	Rapid	Steaua	All 5 clubs
1- Revenue(profit) from broadcasting rights	1,5	1,8	2	2,2	2,2	9,7
2 - Gross revenue from footballers exports	9,7	0,25	2,15	1,5	7,2	20,8
3 – Profit from footballers exports	8,1	0,15	1,65	1,5	0,8	12,2
4 – Total revenues (1+2)	11,2	2,05	4,15	3,7	9,4	30,5
5 – Total Profit ((1+3)	9,6	1,95	3,65	3,7	3	21,9

Comparison between the revenues from broadcasting rights and the revenues of footballers exports (€m)  
[Source: Rosca, 2012]

Then there are the lower divisions who get a contribution of €93m from the highest divisions of the Big-5. It is in Germany that the purchases are the lowest (€8m) and the highest in Italy with €28.7m.

Ultimately, transfers generate redistributive effects:

- Between the countries of the Big 5, thanks to the role played by the English Premier League
- Towards countries of Category 2 and 3, which benefit from the sale of sporting talent to the countries of the Big 5
- Within each countries of the Big 5 between elite clubs
- Towards the lower divisions in all countries of the Big 5

Beyond this global approach of the different financial flows related to transfers, we need to refer to the analysis of the strategies of clubs and countries to understand the amounts:

- Some countries are net importers of sporting talent; others are net exporters or hubs.
- Some clubs produce their sporting talent, others buy it on the market

As a result, there are radically different redistributive effects according to the strategies adopted and it is precisely on these strategic elements that action must be taken if we want to improve the redistributive effects of the transfer system. We will come back to this issue again, in presenting the scenarios.

### 3.4.3.3 What future of the transfer system?

Two scenarios can be considered:

- A scenario of the removal of transfer fees.
- A scenario of improvement of the current system.

#### 3.4.3.3.1 *Removal scenario*

What would happen if transfer fees were to be removed? Three effects can be identified.

#### 1. **Redistributive effects would stop, with two consequences:**

- Difficulties for all stakeholders who benefit from it (small clubs, countries and leagues) even if these amounts can be considered as not important enough.
- Transfers being replaced by pay increases in all the big clubs; hence, a risk of greater concentration of sporting talent.

Regarding the last point, clubs have an overall budget for the players and if transfer fees are suppressed they can propose higher salaries to attract players. And given the very strong competition between the best players (primary market), they will be conducted actually to pay higher wages. That was partly what has happened in the countries where transfer fees at the end of the contract have been suppressed after Bosman case.

In addition, transfer fees allow the income generated in the sports sector to remain within the sector, although some payments benefit to actors outside from it (agents, third-party companies...). Conversely, considering paid salaries or commissions, there would be a significant leakage of financial flows from the sports circuit.

In the end, the removal of the transfer system could result in a deterioration of competitive balance, coupled with an increase of financial instability.

This means, as already suggested by UEFA in 2000, that there are two financial redistribution mechanisms in football:

- The transfer system
- The instruments of solidarity by redistributing commercial income (mainly TV rights).

UEFA suggested that we had arrived at a balance between these two mechanisms insofar as neither of them could replace the other by itself. This argues for the maintenance of the transfer system, for lack of an alternative.

## **2. The training of young talent could be less attractive.**

Transfer fees do provide an additional revenue stream for training clubs. Those clubs prefer in fact to have a transfer fee in addition to the single training compensation. This can be explained by the fact that transfer fees are often much more lucrative than training compensation if the player signed his first professional contract in his training club, after his training had finished. Removing or eliminating transfer fees would, therefore, deprive many training clubs of the opportunity to be able to fund their development. Thus, they would not have an incentive to invest in training.

In addition, the training of sporting talent in small clubs allows them to acquire a competitive quality in signing their promises players – those coming from their own youth academies – at better conditions without having to go on the international transfer market. This contributes to the maintenance of competitive balance without the risk of indebtedness.

The analysis of club strategy (see above) showed a relative economic advantage compared to training clubs that develop players trained by other clubs (e.g. Udinese) and/or for clubs that, while being trainers, manage to keep their players long enough to receive transfer fees, rather than just training compensations (e.g. some French clubs: Lille several years ago, Rennes now). Eliminating transfer fees would no longer allow such strategies. They nevertheless contribute to maintaining the competitiveness of sports clubs with limited financial means, compared to those operating in the major markets.

## **3. More power for stars and great clubs; more precarious for players on the secondary segment**

The removal of transfer fees for players would probably mean more uncertainty and instability for a majority of players and clubs.

However, these consequences will not affect the sports sector in the same way, depending on the market segment which is concerned. It is therefore essential to return to the analysis of market

segmentation by adding, to the removal of transfer fees, one more assumption: players are forced to continue in any case until the end of their contract.

- **Higher primary market**

In this market of stars, the clubs strategy will be to try to block these players under long contracts which they can hardly terminate, thus limiting their market power. We understand that these players will be very reluctant to sign such contracts that would significantly reduce their bargaining power and the control of their career development.

Therefore, it can be assumed that negotiations could lead to the signing of contracts of two or three years. Players would then be in a position to require comfortable bonuses when signing; this is what happens nowadays when such players are out of contract. This practice is encouraged by agents who find there the opportunity to secure the payment of their compensation or to make it change (see the example of basketball in France in the early 90s).

But competition between clubs in this segment is still very strong for this type of player; the budget to cover the total costs of the team (salaries and transfers) will be automatically moved to the players' salaries, with an obvious large increase in these salaries.

For example, let us look at the transfer record of C. Ronaldo. Real Madrid considers that the total cost of the player (salary, taxes and charges over the length of the contract + transfer fee) is covered by the increases in revenue from the sale of rights (TV, sponsorship and merchandising) and the increase in matchday revenue. In this case, let us assume that this cost is €200m, including €94m transfer fee. In the absence of a fee, if Real Madrid were in competition with another club to recruit this player, it could spend the whole of this €200m on the player's wages (including taxes and charges), i.e. an increase, in this case, in the order of 100%.

**Expected effects**

- Moving the item transfers to the item salary with no effect on the operating income of clubs
- Record salaries increasing
- A disappearance of redistributive effects and income leakage outside the football sector
- A disincentive to train players

- **Lower primary market**

The strategy of clubs will be to attempt to block good players in contracts of 3 or 4 years. But these players have no reason to accept such long-term contracts; their objective is to reach as quickly as possible a club of a higher level.

This means that the strategy of some clubs to get or train sporting talent may be completely disrupted:

- o The clubs who live on the promotion of players they do not train (Porto, Udinese) will have their funding strategy based on transfers completely challenged
- o The economic model of clubs that import sporting talent from Africa or South America will be threatened
- o The training clubs (Ajax, Rennes) may lose an opportunity to balance their operating accounts and compete in sporting terms with wealthier clubs.

**Expected effects**

- A risk of deeper inequalities between clubs
- A disincentive to train players
- A disappearance of redistributive effects

- **Secondary segment**

The strategy of clubs will be to limit the duration of contracts of these additional players who can be replaced easily. These players who are in strong competition with each other are not able to get favourable conditions of salaries and protection. This will result in short-term contracts (one season), a very high mobility (involuntary) and the precarious status of players. This is the situation observed in the secondary market of European basketball.

**Expected effects**

- Uneven distribution of salaries with wage floors decreasing and a concentration of the best salaries on some players.
- A disincentive to train for small clubs who could thus lose their economic model

We see, therefore, that the removal of the transfer system could completely destabilise the economy of football. Even though the current system is far from perfect, its removal would do more harm. The question then is to know how it can be improved.

**3.4.3.3.2 Improvement scenario**

To improve the transfer system, two strategies can be considered:

- Price regulation which will require coming back to the issue of determining the amount of transfers.
- Quantity regulation to regulate the number of transfers

**1. Price regulation**

Three options are possible.

- **Limitation of the overall amount by club**

Again many options could be considered. Simulations are needed to measure the impact on clubs:

- o Limitation in absolute value. What level of the ceiling?
- o Limitation based on the segment of the club
- o Limitation in relative value (as a percentage of total income of the club)

- **Limitation of the amount of each transfer**

Two options are possible:

- o Limitation in absolute value identical for any transfer. What level of the ceiling?
- o Limitation based on the player's salary

Our interviews and our expertise lead us to identify two possibilities:

- The first one is inspired by the law called "Pele Law" (Law 9.615/98) in Brazil; it provides compensation capped at 100 times the annual salary of the player, 200 times if he was trained by the club. This standard is appropriate for Brazil, where the salaries of the majority of players are very low and probably lower than in Europe where the transfer of Ibrahimovic or C. Ronaldo would be around €1.5bn! Its effectiveness would be therefore zero.
- The second possibility suggested for example by the union of football players (FIFPro): a limitation of transfers to the strict amount of salaries remaining until the end of the contract +

the share of the transfer paid when signing the contract on a pro-rata basis. Clubs fear then that these minor amounts would encourage very frequent terminations of contracts from the players.

*Focus Pelé law (doc Brazilian Sport Law an overview – Sports Law Journal – 2004/1)*

*Wikipedia* Paragraph 2 of article 28 is one of the most controversial aspects of the Pelé Law, once it has abolished the “passé”. “Passe” was a legal determination that an athlete remains “tied” to the club even after the termination of a Labor Contract. Therefore a tie-release amount was due to the club by another club if the latter wished to offer the athlete a new labor contract. Pursuant article 93 of Pelé Law, the abolishment of “passé” only took effectiveness on March 24, 2001.

After the extinction of the “passé”, what will keep the athlete bound to a football club is his labor contract, and at the final term of this the athlete will be free to change teams without payment of any indemnification whatsoever to his former club.

However, in case the athlete wishes to change clubs during the effectiveness of his contract or in case the club wishes to release the athlete during the contract effectiveness, the payment of penalty for rescission shall be due, according to the contract provisions for such events.

According to paragraph 3 of article 38 in Pelé Law, the amount of the penalty clause is freely established by the parties entering the contract, but shall be limited to 100 times the annual remuneration agreed to. Paragraph 4 of that same article establishes an automatic annual reduction on the penalty clause. On the first year of the accomplished contract, the penalty clause shall have a reduction of 10 %; on the second year, the reduction shall be of 20 %; on the third year, 40 %; and on the fourth year, 80 %.

It is important to note that according to Pelé Law, the limit of the penalty clause and the referred to reductions will only be applicable in the transfers between Brazilian clubs. When such transfer occurs to foreign clubs, the amount of the penalty clause is of free stipulation.

There are two more exceptions to the amount of the penalty clause, being both of them only applicable in the event of the club having formed the player from its base categories:

1. In this case, the maximum amount for the penalty clause, in the rescission of a labor contract during its effectiveness, is no longer of 100 times the annual remuneration, but increases to 200 times such value ; and
2. If at the end of the labor contract, for the period of 6 months as counted from the end of the contract, and provided the club continues paying that athlete's wages, the amount for the penalty clause can be up to 150 times the contracted annual remuneration.

- ***Luxury Tax***

Applied in the USA in the NBA and MLB, the luxury tax consists of a financial levy beyond a certain threshold of expenditure. Rather than being prohibitive, such a tax is made to change the behaviour of actors, which are seen as contrary to the common interest. The tax proceeds can then be assigned to an action to promote this common interest. For example, in our case it could be used to finance a training project for players. Again, the basic problem is to determine the optimal amount of the tax, whether with regard to the first dividend (behaviour changes by actors) or the second dividend (tax proceeds).

Given the market structure on the higher primary segment, it is possible that an action on prices will be more effective at this level. In contrast, on the secondary segment an action on the quantities is likely to be more effective.

**2. Quantity regulation**

The action on the quantities may be done by limiting the number of transfers by club, by limiting professional squads of each club or by constraints on some player profiles.

- ***Limiting the number of transfers per club***

This solution is difficult to implement in terms of requirements related to the free movement of workers in Europe.

- ***Limiting professional squads***

We observed that in the countries where the movements of players are significant, the total squads (Italy, England) or the number of expatriate players are numerous (Cyprus, Portugal). Moreover, where such a measure has been removed, existing transfers have increased greatly in value and volume. It

was the case in France until May 2000<sup>422</sup>; Premier League has imposed recently such a measure. This is a very simple measure, the effectiveness of which is proven. The debate on the acceptable and effective threshold will be addressed as before.

- **Home Grown Players Rule**

The rule established by UEFA regarding its own competitions provides an illustration of a rule that may have an impact on the transfer market (additional pressure on the market of these players) but can also lead to the limitation of the positions available for players recruited from outside and thus exerting downward pressure on the number of transfers.

It should be noted that in Premier League a new text was introduced in January 2010 limiting the squads to 25 players, but players of 21 years of age are not included in the list which creates an incentive to train or recruit these young players.

**Lessons to be drawn**

*Implementing each of these propositions requires conditions that are both necessary and identical: ability to control and sanction non-compliance with the rule. This means an overall ability to regulate the sector.*

*We have seen that depending on the different segments, different interventions can be implemented to respond to market conditions and different club strategies.*

*Moreover, it is fairly obvious that even if the management bodies of these questions must be independent, the rules of these mechanisms must be defined and the non-compliance sanctioned by sports institutions.*

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<sup>422</sup> ROUGER A., "Professional sport after the Bosman Case", directed by GOUGUET J.-J., PULIM 2005.

## CHAPTER 4 – WHICH TRANSFER RULES FOR THE FUTURE? CONCLUSIONS AND RECOMMENDATIONS

Je crois à la pureté du sport et aux messages très forts qu'il envoie  
Novak Djokovic<sup>423</sup>

### 4.1 Main findings and conclusions

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

Transfer rules are characterised by a large degree of international harmonisation through FIFA and, to a lesser extent, FIBA. This is important in view of the universal nature of the game and the internationalisation of transactions.

The report shows that there is very little interference from national public law. EU law has had an important impact on the evolution of the rules, by encouraging mobility of players, by fighting discrimination on nationality grounds and by recognizing to a significant extent sport specificities legitimizing the recourse to rules that derogate from common law. The intervention of European court has also contributed to harmonise rules on transfers already decided by some national courts.

90% of labour disputes in football relate to unpaid salaries. We found little evidence of a large number of national disputes relating to the implementation of transfers between clubs and players. Matters are usually settled in an amicable way and fairer arbitration mechanisms seem to be in the process of being implemented across Europe.

The system of transfer fees relating generally to the early termination of a contract essentially benefit clubs and intermediaries (which often act on a club's instructions) as transfers constitute an important source of revenue for clubs or the individuals serving them.

Rules that impose greater transparency of transfer transactions (such as FIFA TMS) will contribute significantly to fighting fraud and malpractices generating illegal activities; and more generally to improving transparency in football.

#### 4.1.1 Transfer fees: the evolution

At international level, the FIFA TMS GmbH report<sup>424</sup> reveals that 86% of contracts in football do not involve a financial indemnity. Only 14% of transfers lead to compensation and/or fees to the player's former club and the value of international transfers is as high as € 2,4 billion. 82% of this amount is agreed between clubs, 8% relates to the solidarity mechanism (redistribution to clubs that trained the players who are being transferred as part of the training compensation (7%) and a solidarity contribution<sup>425</sup> (1%)). The remainder is linked to the future performance of the player (10%). The average transfer compensation is € 1,2 million.

The 1995 European Court of Justice Bosman decision as well as the increase in football revenues with the internationalisation of the game, the arrival of rich financiers and the explosion of TV rights have

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<sup>423</sup> Le Monde 2 June 2012.

<sup>424</sup> Global Transfer Market, FIFA T.M.S, 2011.

<sup>425</sup> It corresponds to a percentage of the agreed transfer compensation amount and is distributed between all the clubs that trained the player up to the age of 23.

undoubtedly contributed to the increase in the number and value of transfers across the national football leagues.

In order to assess the scale and size of the transfer market in the EU, the study adds the total value of national transfers to the amount of international ones.

The study shows that the scale of transfers in the EU has gone up significantly since 1995. By crosschecking different data, the situation is as follows:

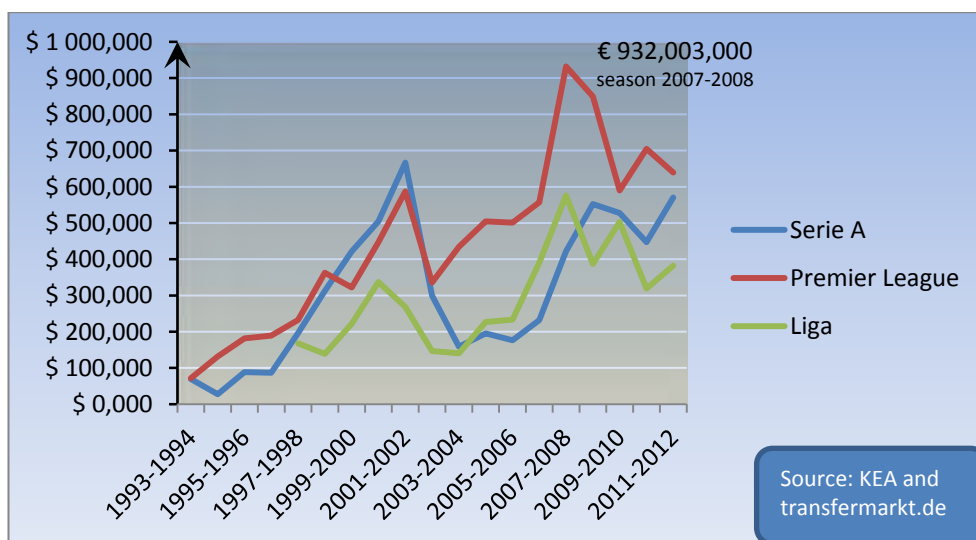
	Number of transfers	Value (€)
<b>1994-95</b>	5 735	€402 869 000
<b>1999-2000</b>	8 531	€1 704 603 000
<b>2005-06</b>	15 952	€1 952 066 000
<b>2010/11</b>	18 307	€ 3 002 198 000

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

This data shows that there has been an important increase in both transfer indemnities (x7.4) and number of transfers (x3.2). The five largest European football leagues represent a very large proportion of this volume with approximately 60% of all transfer fees in the EU.

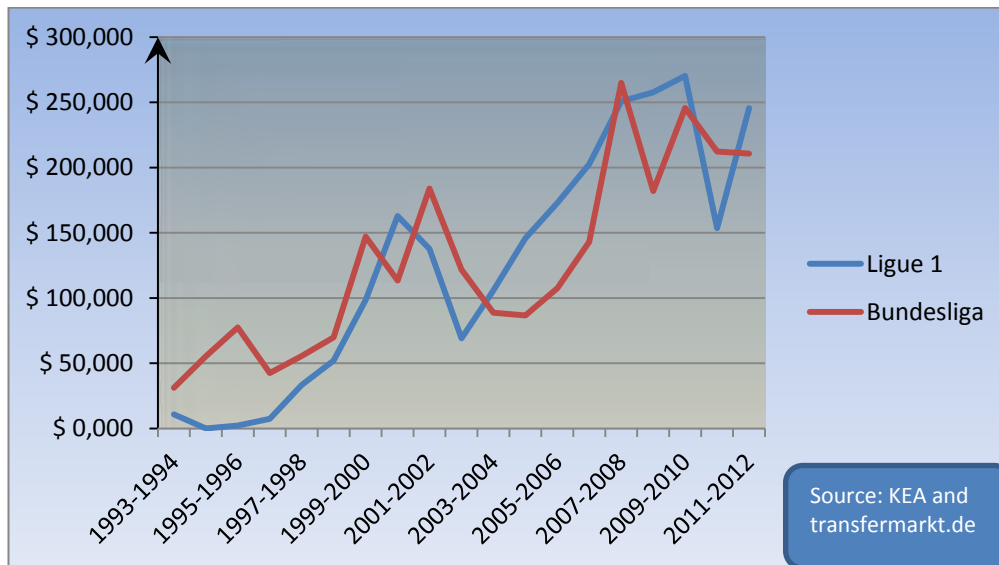
With regard to basketball there is a high number of transfers but with a limited amount of transfer fees. The scale assessment shows that the scale of transfers in basketball is about 20 to 27m€ in the World and around 12 to 16 m€ for Europe.

The following tables show the evolution of transfer expenditures in 8 football leagues in Europe.

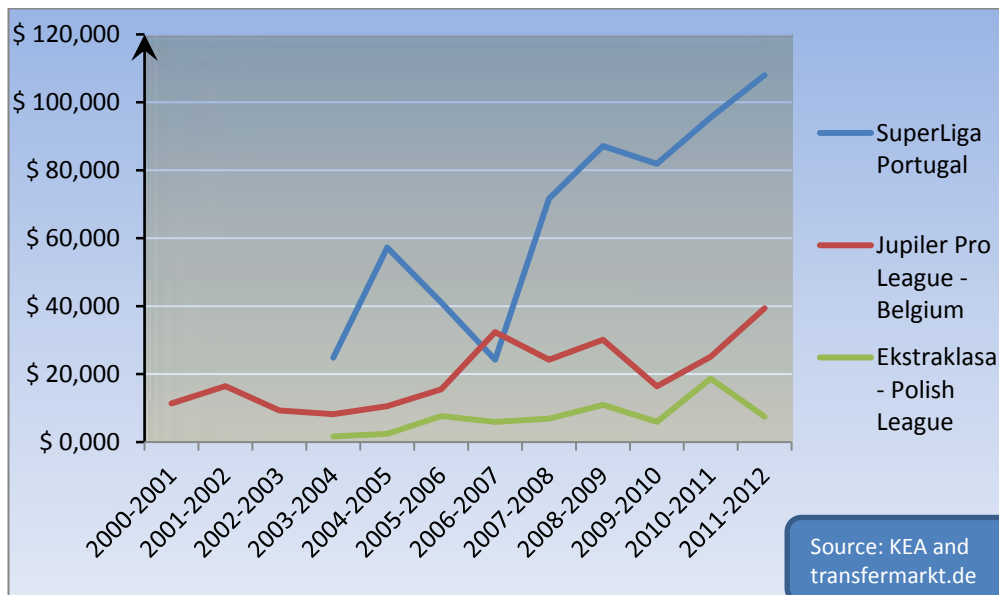


Transfer expenditure (in million euros) per Football league from 1993 to 2012





Transfer expenditure (in million euros) per Football league from 1993 to 2012



Transfer expenditure (in million euros) per Football league from 2001 to 2012

Mario Monti the then European Commissioner in charge of Competition, in justifying the informal agreement with football governing bodies in 2001, stated that such a reform to the transfer rules was to end “arbitrarily calculated fees that bear no relationship to training costs<sup>426</sup>”. On 31<sup>st</sup> August 2000, FIFA’s President Sepp Blatter then stated: “this is the end of exorbitant transfer compensations<sup>427</sup>”.

The above tables confirm these predictions of the impact of the new 2001 transfer rules with spectacular reductions in transfer fees<sup>428</sup>.

However, since the 2005-2006 season, a sharp rebound in transfer spending has been observed in all of the sampled leagues, even though it is less marked in Belgium and Poland. The wealthiest, the

<sup>426</sup> Europa press releases RAPID 2000 SPEECH/00/152

<sup>427</sup> IOL Sport, [www.iol.co.za](http://www.iol.co.za), 31.08.2000, *Fifa agree to transfer changes, but need time*. – As seen on 26.09.2012.

<sup>428</sup> But other factors can explain this movement on transfer fees especially external economic factors such as the financial crisis, especially in Italian football in the beginning of the 2000's which was the biggest market at this time and which has an important role in speculation in the transfer market.

English Premier League, shows an increase in transfer fees from €600 million in 2001-2002 to € 932 million in 2007-2008. The counter example is Spain with a dramatic turnaround on the transfer market for the season 2012-2013. Thus, the top ten transfer purchases amounted to only € 95,7 million, while the top ten transfer sales equalled € 127 million<sup>429</sup> for the 2012 summer registration period. This leads us to question the true impact of the 2001 Agreement between the EC and the football governing bodies.

What drives the speculative bubbles in football?

- The increase in TV rights deals (this is clearly the case in England and other countries with important Pay-TV channels, where football is used as a premium product in the bundling of TV offers).
- The ability of players to move more easily from one club to another, leading to more fluidity in the transfer market to the benefit of both clubs and players (but differentiated according to the segment).
- The internationalisation of football and its corollary: important marketing investment required to build global brands.
- The arrival of rich private investors (for instance Abramovitch in Chelsea in 2004, Sheikh Mansour bin Zayed bin Sultan Al Nahyan in Manchester City in 2006, Sheikh Al-Thani in Malaga in 2010 or QSI in Paris in 2011).
- Existing transfer rules have failed to deal with the amount of transfer indemnities in relation to some star players.

This formidable development has essentially benefited the elite of football, the superstars of the “beautiful game”. Indeed, the study shows that the labour market in football is extremely segmented.

Our study, based on the economic literature and on all the expert advice (including the scientific committee of the study), has shown that the labour market, especially in football, is not a market of pure and perfect competition; none of the hypothesis of the model is verified. This market is highly segmented and that challenges the traditional hypothesis of the functioning of markets (including the hypothesis of atomicity and homogeneity of products).

Thus, on each segment, the hypothesis of atomicity is not verified and each operates in a particular market structure:

- the primary market which is segmented between:
  - the higher primary market for “superstars” with a monopolistic structure : there are very few players (who are the suppliers) in this market (maybe fewer than 50 in the EU) with a very limited number of clubs (the demanders) which can pay transfer fees and wages for them. In this market, players and their agents have a lot of power to negotiate high wages and transfer fees.
  - the lower primary market where the good and experienced players develop. This market has an oligopolistic structure: a limited number of players for a high number of clubs. These players have not the same market power and cannot negotiate as well as the so called superstars. But they have greater power than ordinary players.
- the secondary market for “ordinary” players which has an oligopsony structure i.e. very many suppliers (players) and a limited number of demanders (clubs).

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<sup>429</sup> [www.forzafutbol.com](http://www.forzafutbol.com), 09.09.2012, *La Liga Talent Drain aka 2012 Transfer Window recap*.

The hypothesis of homogeneity also cannot be validated because all players are not substitutable i.e. a superstar cannot be replaced by an “ordinary” player from the secondary market. Players in the higher primary market have the most power and can negotiate the highest wages. By contrast, players of the secondary market do not have a strong position in the market and are dependent on clubs.

This structure has an impact on the transfer market:

- The highest transfer fees are paid by clubs in order to recruit players from the higher primary market.
- In the secondary market, transfer fees are more reasonable.

The analysis shows that the functioning of the transfer market, and with it the determination and the level of transfer fees, is not the same for all football players.

It is important to state that the vast majority of sports professionals are earning decent salaries. The issue is blurred by a “star” driven system that exists in other entertainment businesses (Hollywood, Rock stars etc.) without creating so many press headlines<sup>430</sup>.

With the financial crisis, a large number of European football clubs are suffering financially. The level of bankruptcies or financial problems has risen dramatically over the last few years across Europe. This has contributed to damping down to some extent the transfer market in some leagues<sup>431</sup> but also to threatening contractual stability to the detriment of players<sup>432</sup>.

However, the research shows that overall, gross transfer spending has increased from € 1.9 billion in 2005 to 3 billion in 2011 (see previous footnote).

#### **4.1.2 The need to address the increasing competitive imbalance**

While one of the main objectives of sporting institutions is to guarantee the integrity of competition and to achieve competitive balance, the report observes that the evolution of the transfer market has contributed to undermining the fairness of competition in sport. This trend puts at risk the uncertainty of sports results, the essence of sporting competition which aims to reward sporting accomplishment independently of financial means.

The following tables illustrate the extent to which sporting competition in Europe is now rigidified in both football and basketball. It leads some to question the idea that sports rules in Europe are based on promoting sporting excellence through a system of promotion and relegation or whether ‘de facto’ Europe is slowly embracing a system of closed leagues (at elite level) without the transfer rules associated with closed leagues such as those implemented in the USA.

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<sup>430</sup> According to the different financial control commissions the average gross monthly salaries in France for the season 2010-2011 for the different sports are the following: i) Football (Ligue 1): € 43 000; ii) Rugby (Top 14): € 13 200; iii) Basket (Pro A): € 10 300; iv) Handball (Division 1): € 5 000 ; v) Volley (Ligue A): € 3 200.

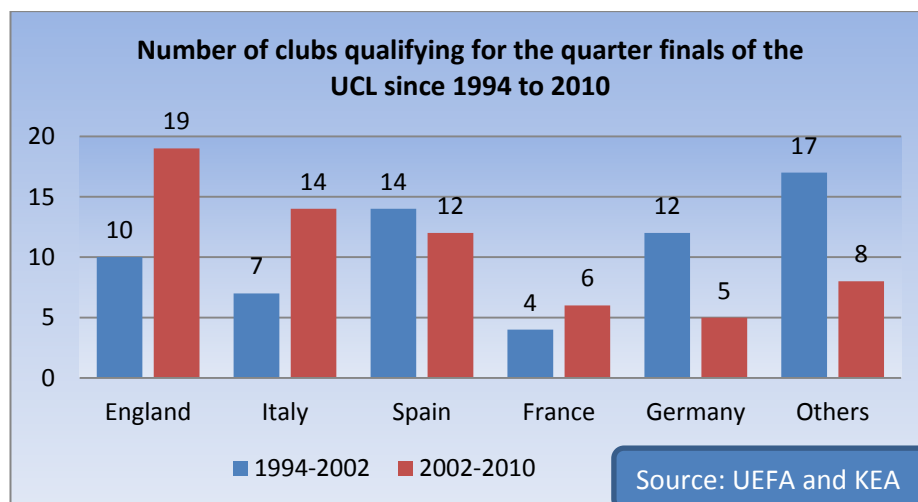
<sup>431</sup> In handball, only F.C Barcelona can maintain a competitive budget compared to other leagues’ top clubs. The second top club (i.e. Atletico Madrid) had to sell its top players. Furthermore, two clubs had to leave the first division (Torrevieja and San Antonio Pampelune). Leon club has also sold ten players and Valladolid will not play the EHF Cup (similar to the UEFA champions league in Handball) this season for economic reasons.

<sup>432</sup> UEFA Club Licensing Benchmarking Report, Financial year 2010 & Financial Fair Play, 2010.

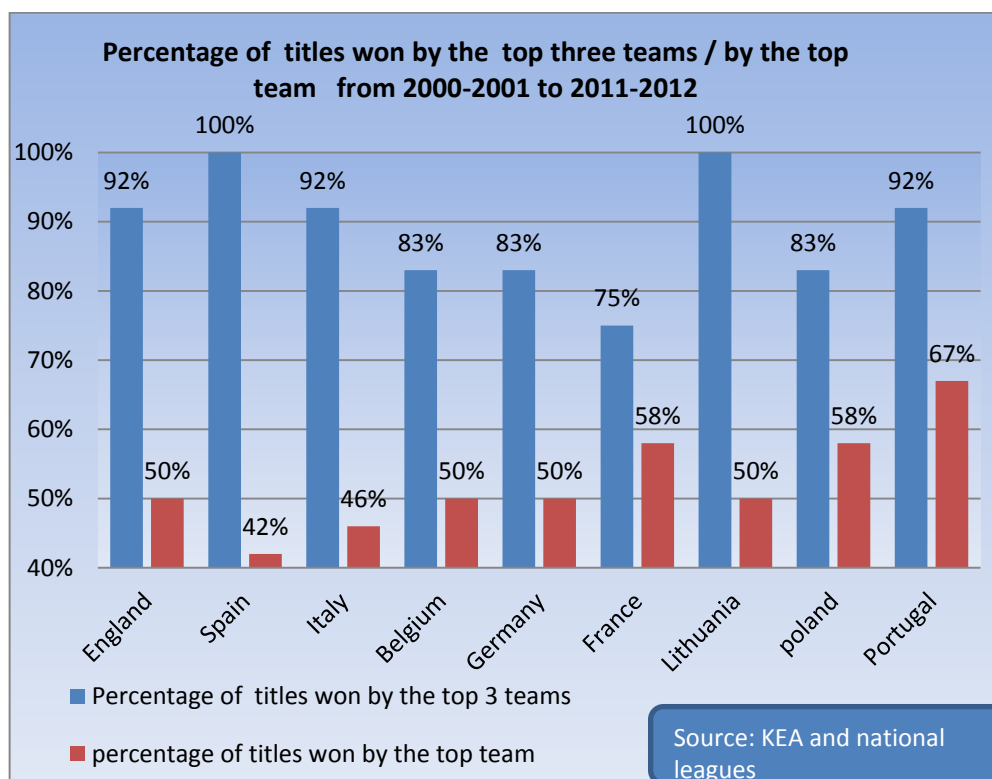
According to UEFA, during the period 2006 /2010, the income of European clubs increased steadily, but so did the cost structure. This resulted in overall net losses which increased steadily over the period 2006-2010 to reach €1.64bn in 2010 or 12.8% of revenues; representing over €4bn of cumulative losses for the period 2006-2010. According to UEFA, 56% of the clubs participating in UEFA competitions reported net losses for the year 2010.

The study shows that the current system is encouraging competitive imbalance as there is a strong link between transfer expenditure and sporting results, in particular since 2001. This observation is valid at both national and European levels of competition.

The table shows the origins of clubs that qualify for the quarter finals of the UEFA Champions League and illustrates the fact that clubs from smaller leagues find it more difficult to qualify than before.



The table below shows the dominance of a limited number of clubs in national competitions. The results of national competitions determine the participation of clubs in the lucrative European Champions League.



The percentage of national titles won by the three most successful teams is always more than 80% (except for France which stands at 75%). The UEFA Champions League increasingly demonstrates the characteristics of a closed league in which the same teams compete for the title. These clubs are the

main beneficiaries of the current transfer rules which do not challenge their acquired position but, on the contrary, reinforce their dominance in sporting competition, whether at national or European level.

The role of transfer rules is to a large extent aimed at addressing fairness and competitive balance. The main tool to address such issues relates to the implementation of financial compensation between clubs and the promotion of youth development schemes.

#### 4.1.3 **Redistribution and solidarity compensation: the impact on competitive balance**

With regard to redistribution linked to transfer activities, the economic analysis highlights two main findings:

- A redistributive effect between clubs of the same countries from top leagues to lower leagues

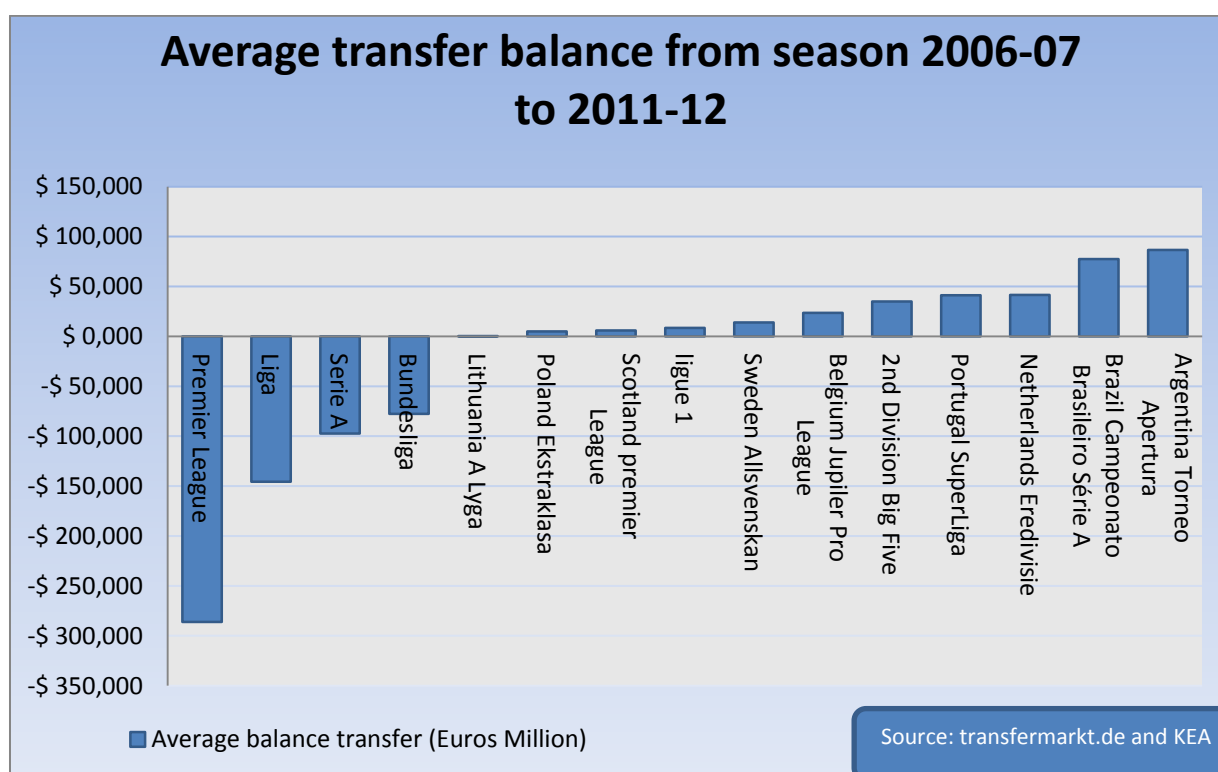
On the redistribution aspect of the transfer regulations, according to the transfer data<sup>433</sup>, it seems that there is a substantial redistribution from the top Big Five leagues to both the second Big Five division leagues.

In the Big Five leagues, the top ones have average transfer budgets in deficit (except French Ligue 1) whilst second division leagues and others declare a surplus in their transfer balance sheets.

Other leagues in countries such as Portugal, Poland, Belgium and the Netherlands also show a net surplus in their average transfer balance sheets in both top and second division leagues.

- A redistributive effect between countries

The economic analysis shows that the transfer market allows redistribution between the Big Five and clubs of other categories. This effect allows clubs from smaller leagues to clean their balance sheets. Some of them specialise in the “production of talent”.



<sup>433</sup> [www.transfermarkt.de](http://www.transfermarkt.de), 26.09.2012; calculation of KEA European Affairs

Overall, solidarity compensation directly linked to transfers (i.e. training compensation and solidarity mechanism), only accounts for 1,84% of the total agreed transfer fees within Europe. As a result, the redistribution linked to transfers has no significant positive impact on addressing the issue of competitive balance.

#### **4.1.4 Transparency of transactions is key to avoiding fraud**

Even if the situation has improved since the implementation of the TMS by FIFA, the transfer market is still subject to fraudulent or dubious practices which are difficult to detect and to punish (money laundering, corruption, tax evasion, black payments and undue enrichment).

#### **4.1.5 Solidarity compensations to address competitive balance**

From the outset it is important to stress that both FIFA and UEFA operate generous systems of solidarity aimed at either national federations or clubs.

The FIFA Statutes provide in their article 2 that “[o]ne of FIFA’s objectives is to improve the game of football globally in the light of its unifying, educational, cultural and humanitarian values, particularly through youth and development programmes”.

For the current financial cycle 2011-2014, approximately € 120 million a year will be dedicated to football development through different programmes. It accounts for 18% of FIFA’s total budget<sup>434</sup>. The strategic focus can be summarised as follows:

- Structural, organizational and administrative empowerment of FIFA Members
- Capacity building of football professionals (coaches, referees, administrators, doctors, etc.)
- Development of youth practice and competitions (including specific actions for girls)
- Football facilities and equipment<sup>435</sup>

FIFA’s financial support policy aims essentially to develop sports infrastructure (equipment, governance structure) in the least developed countries.

Furthermore, UEFA solidarity mechanisms have a two-fold objective<sup>436</sup>: to reduce the financial gaps between clubs and to make UEFA competition more accessible.

UEFA Solidarity payments are made available to:

- National associations to develop infrastructure and support internal governance.
- Clubs eliminated in the preliminary stages of the UEFA Champions League and UEFA Europa League.
- Other top division clubs in the national association that do not qualify for UEFA competitions.

The main findings were the following:

- The Big Five represent 9% of the countries’ members of UEFA (53 national associations); yet they receive 24% of the total solidarity payments.

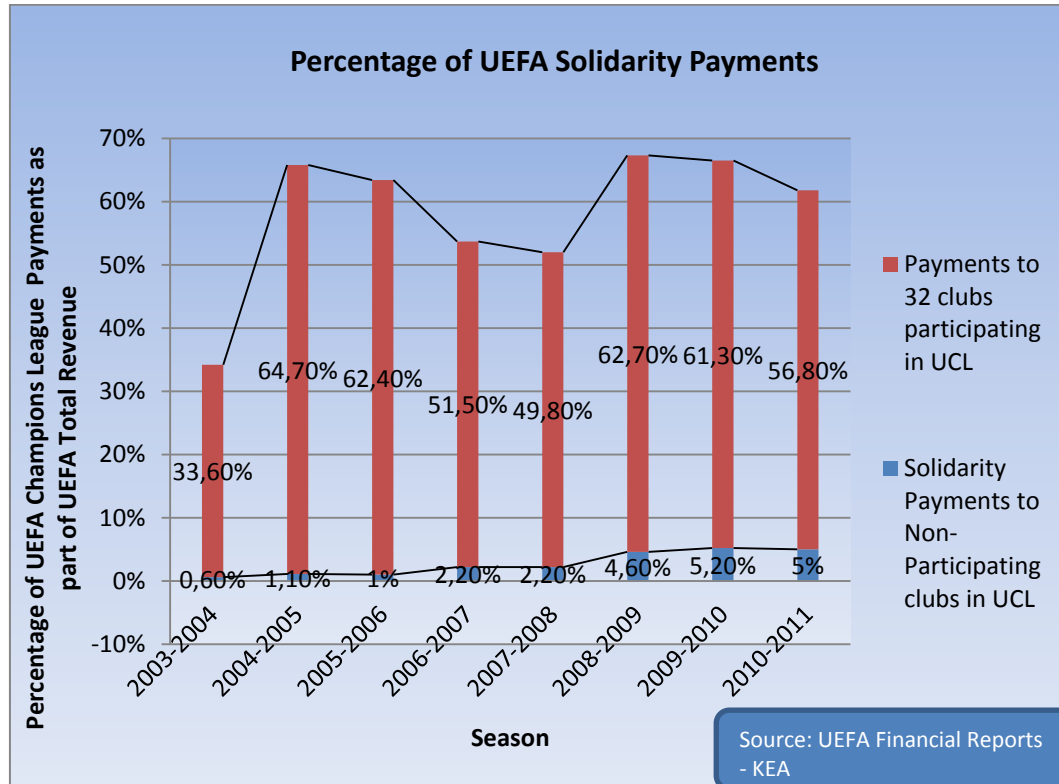
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<sup>434</sup> For the financial cycle 2007-2010<sup>434</sup>, FIFA has spent € 616 million on development related expenses, representing 22% of total expenses. In the previous financial cycle (2003-2006<sup>434</sup>), FIFA awarded € 461 million for development expenses, corresponding to 23% of total expenses.

<sup>435</sup> Source FIFA correspondence, September 2012.

<sup>436</sup> UEFA Financial Report, 2010-2011, Page 11.

- The impact of UEFA solidarity payments is very powerful in the field of youth development programmes in Europe amongst clubs belonging to smaller leagues. However the table shows how the system is skewed towards supporting the most successful clubs, which also happen to be the wealthiest in their respective leagues.



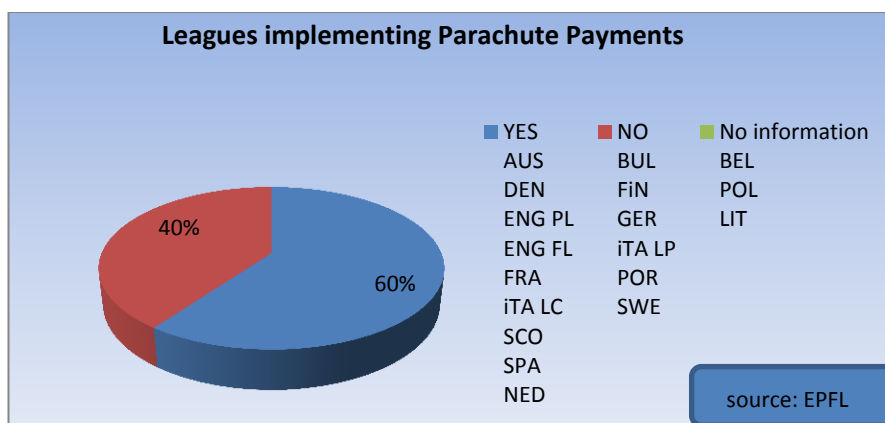
The graph above shows that solidarity payments to non-participating clubs in UCL competition represent less than 7% of the total money received by the 32 clubs. This contributes to consolidating existing supremacies and fails to address the competitive imbalance. It is reflected in the results of UEFA competitions year after year.

This is acknowledged by UEFA which has taken steps to open up UEFA competitions to smaller leagues and clubs. Recently, the format and qualification system of the UEFA Champions League (UCL) have been modified. 22 out of 32 teams qualify directly for the final stage of the UCL; but the 10 other teams must compete in a preliminary round to increase opportunities for clubs from smaller leagues.

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

However, it seems that competitive balance is increasingly being skewed to limit the financial risks of clubs and to spread the impact of a crisis due to poor sporting results. The following mechanisms should be highlighted as they run counter to the culture of promotion and relegation which are the pillars of European sporting culture (as opposed to the closed league culture in the USA):

1. The FIFA club protection programme which essentially benefits the most successful clubs<sup>437</sup> in which players developing in national teams operate.
2. The Memorandum of Understanding between UEFA and ECA<sup>438</sup> establishes two redistribution patterns that benefit clubs, especially the top ones since they have many athletes who are members of national teams. The first one is an insurance to cover the risk of the temporary total disablement of players while they are released to their national teams. The second one is a share-out between clubs of the UEFA European Football Championship benefits.
3. The increased tendency of national leagues to provide financial parachutes<sup>439</sup> to clubs that are being relegated to lower divisions.



4. Increased revenues for rich clubs participating in the Champions League<sup>440</sup>.
5. Individual TV rights negotiation in some leagues (e.g.: Spain and Portugal)

These measures are evidence of a shift of power in football governance in favour of clubs. This is, after all, to be expected considering their role as producer and main investor in the game. However, sports bodies should make sure that the use of such power to limit a club's investment risk does not lead to the detriment of competitive balance and sports specificities. The principle of collective interest should remain the determinant in the adoption of rules, and notably the implementation of transfer rules, as transfer indemnities can act as an important lever to address competitive balance. It is important to take

<sup>437</sup> FIFA has put a Club Protection Programme (CPP) in place on behalf of its member associations, according to which clubs will be indemnified, to a certain extent, if their players are injured while on duty with men's representative "A" teams for matches listed in the international match calendar between 1 September 2012 and 31 December 2014. The programme covers the entire release period for matches between two representative "A" teams played on dates listed in the international match calendar or on dates covered by the corresponding release periods as defined in Annexe 1 of the FIFA Regulations on the Status and Transfer of Players. The limits and conditions of the programme are described in the technical bulletin that was sent to the member associations in June 2012 (annexed to FIFA Circular 1307). The total estimated cost of the insurance policy is USD 75 million for the year 2014 (it was 40 million in 2010). Source: FIFA, meeting 6.9.2012 and correspondence.

<sup>438</sup> Articles C.3 and C.5, Memorandum of Understanding between UEFA and ECA, 2012.

For the second article, Clubs will now receive an increased amount of € 100 million from the UEFA EURO 2012 revenues, as recognition of the significant contribution they make to the success of the tournament. This amount will be further increased to € 150 million for UEFA EURO 2016 in France.

<sup>439</sup> A vertical solidarity system implemented by Leagues by means of distributing a certain portion of their television revenues to clubs that are relegated to a lower division, in the form of "parachute payments". These so called "Parachute Payments" to relegated Clubs are designed to help teams adjust to the substantial loss in terms of broadcasting and sponsorship revenues which results from such relegation.

<sup>440</sup> UEFA Financial report:

From the season 2006-2007 to the season 2008-2009, the 32 remaining clubs participating in UCL received almost € 600 million. It reached an historic high with € 802,42 million in 2009-2010.



this into consideration as it will contribute to preventing professional sporting activities being regarded by public authorities in the same light as any other industrial and commercial ventures. The principle of collective interest will also support the case for such activities to benefit from derogations to general public law.

#### - **Conclusions**

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

1. How to increase transparency in transactions (to prevent fraudulent activities and to support better governance and implementation of rules).
2. How to maintain competitive balance through improved redistribution mechanisms via transfer indemnities.
3. How to sustain the social functions of sport (youth development).
4. How to establish a fair and efficient dispute resolution system ((to ensure equal representation and limit costs and delays).
5. How to increase public order cooperation in order to police unlawful activities (money laundering, undue investment in sport).

Authors of the report take the view that transparency in transaction dealings will help to limit opportunities for fraud and unlawful conducts. Therefore TMS from FIFA and FFP from UEFA constitute very key developments whose implementation should be encouraged. They show the willingness of sports bodies to take serious action against abuses related to some extent to the transfer market.

Up to this point, transfer fee issues are limited to professional football. Other sports are not confronted with the same inflationary pressures, excesses and malpractices associated with football transfers.

## **4.2 Policy Recommendations**

Authors of this report are making recommendations to sports governing bodies and policy makers with a view to responding to the following policy objectives:

- Maintain justification for specific sporting rules to govern contracts between clubs and players (contractual stability, registration period, protection of minors);
- Maintain a universal system compatible with the principles of EU law;
- Maintain the uncertainty of sports results through better financial accountability and redistribution mechanisms, rewarding as a matter of priority sporting excellence independently of financial strength;
- Combat excesses in transfer fees;
- Maintain and support clubs' financial stability to promote contractual stability;
- Protect youth development and the social value of sport through training compensation;
- Combat fraud, money laundering, tax evasion and match-fixing;
- Promote dialogue amongst stakeholders (federations, leagues, clubs, players, agents, public authorities and supporters);
- Ensure cohesion between national and international sport regulations and in their implementation.

The proposed recommendations take into account the following considerations:

1. Sports governing bodies have a duty to ensure a fair and balanced competition.
2. Rules aimed at implementing sports specificity derogating from normal labour or competition laws that apply to traditional industries, can only be justified if sports bodies guarantee, through adequate mechanisms, that sporting values are upheld against strict commercial objectives. Such values relate essentially to the organisation of fair and balanced competition, the enforcement of collective solidarity mechanisms and youth development.
3. Sport's function as a fundamental means of expression of social diversity, identity and cohesion needs to be promoted and upheld.
4. Public regulators and notably the EU institutions, together with sport governing bodies should continue to debate the kind of sporting environment to which Europe should aspire. The definition of sports specificity at the European level will be a key indicator of Europe's objectives; likewise transfer rules from sports governing bodies that aim to maintain fair and balanced competition, limit excess fees, protect youth development and ensure good and fair governance.

Finally the recommendations on transfer rules are guided by the following principles:

- Maintain the principle of self-regulation by sports governing bodies.
- Reinforce the collaboration between public authorities and sports authorities to enforce the law, and sporting rules.
- Practicality and ease of implementation.
- Justify the specifics of transfer rules in the eyes of policy makers, supporters and judges.

The findings do not argue for the end of transfer rules as implemented by sports governing bodies. It is proposed that amendments to the regulatory framework governing transfers be considered in order to attain the policy objectives set above. Five lines of actions are proposed to sports stakeholders:

1. Increase fair and balanced competition through better and increased redistribution between clubs as well as through control over financial transactions and accounting linked to transfers.
2. Limit excesses linked to transfer fees.
3. Support youth development and protection of minors.
4. Improve governance through transparency and fair dispute resolution mechanisms.
5. Develop cooperation with public authorities for better law and transfer rules' enforcement.

The rules adopted by sports federations are undoubtedly those which can best reflect the specificities of each sport, unlike government or EU regulations, which are necessarily more general in nature. The sports movement must continue to play the leading role in adopting and implementing regulations with due respect to EU standards. It must be supported in this role by public authorities, given the ethical and legal problems linked to the transfer of players, particularly with regard to their cross-border dimension.

#### **4.2.1 Proposed measures to improve competitive balance through redistribution mechanisms as well as financial accountability**

- Proposal 1: Establish a “fair-play levy” on transfer fees beyond a certain amount linked to the “star” segment of the transfer market.

The threshold, the rate of the levy and its scope should be determined by international football governing bodies on the basis of an economic analysis with a view to harmonising the rate and methods of collection and redistribution. The national federation would collect the levy and distribute on a fair basis to clubs in order to address the issue of competitive balance.

Main stakeholders: International federations with the support of national federations.

- Proposal 2: Better publicise the movement of players to ensure that solidarity compensation payments are made to clubs and that the latter are aware of their rights in this respect. This should be made possible through TMS. TMS should proactively help clubs to claim their dues. An international harmonisation of player “passports” should be considered in order to know the transfer history of a player. The international Federations should define the general framework. This should encourage national federations (at least for major ones with the support of FIFA) to develop an electronic system for player registration, including amateurs. With this system, it would be easier to determine the amount and the distribution of the solidarity contribution between clubs.

Main stakeholders: International federations with the support of national federations.

- Proposal 3: Consider the establishment of a limit on the number of players per club<sup>441</sup>. A limitation on the size of the squad would contribute to improving competitive balance.

We propose to limit the number of players to 25 per squad. This rule would contribute to competitive balance as it would prevent or limit:

- Abusive loan practices
- Abusive transfer practices which help maintain the sporting domination of wealthy clubs and which limit sporting career potential.

Main stakeholders: International federations, national federations and leagues.

- Proposal 4: Regulate the loan transfer

Abusive loan transfer practices contribute to competitive imbalance and unfairness of the competitions.

We suggest regulation to limit or prevent such abusive practices. This could encompass:

- Limiting the number of loans by the lending clubs
- Limiting to xx the number of loans to the beneficiary clubs

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<sup>441</sup> Squad limits exist in different sports: French rugby, Australian soccer and football leagues, US sports. For instance, the French Rugby League stipulates in Article 23.1 (By-law and general regulations, season 2012-2013) that clubs from first and second divisions can register a maximum of 35 players under contract, except for promoted clubs that can register 36 players. Football has recently started to implement such restrictions in a soft way. UEFA is limiting squads to 25 players for the Champions League. From the national perspective, the English Premier League in the season 2010-2011 implemented a squad limit measure which was coupled with provisions on locally trained players. For the 2011/12 season, the squads should contain no more than 17 players who do not fulfil the Home Grown Player criteria. The remainder of the squad, up to a total of 25 players, must be Home Grown (more information on EPL rules).

- Regulating loan contracts between clubs which pose a risk to the integrity of competition (for instance: a contractual clause that prevents a player from participating in a certain competition or a given match).

Main stakeholders: International federations, national federations and leagues.

➤ Proposal 5: Address the third-party ownership issue

This matter should be discussed thoroughly with a view to considering options that protect the integrity and freedom of players, the integrity of the game and transactions, the capacity to attract investment in sport and the capacity for sporting bodies to monitor and sanction abusive practices.

Considering the policy implications of such a debate (ethical, financial – free movement of capital and sporting) it is proposed that the European Commission facilitates discussions and wide consultation among sports stakeholders on the matter. FIFA should take a leading position in such consultation as this should help FIFA clarify rules on Third Party Ownership and consider restrictions justifiable by sports specificities.

Main stakeholder: FIFA and international federations.

➤ Proposal 6: Support the implementation of Financial Fair Play (FFP) rules as an instrument to prevent clubs from financing their position in the transfer market and their sporting results through unacceptable debt levels.

The implementation of the FFP rules could discriminate in favour of 'good' debts or 'good' expenses e.g. if used for youth development and training. . This would encourage clubs to invest in talent.

It could be put at the service of the development of redistributive effects for transfers which are not subject to the tax set out in Proposition 1 above. This system could also be put at the service of incentives to develop solidarity actions for grassroots football (consider these expenses as "good" ones). Training compensation, solidarity contribution or expenditure in favour of amateur sports associations would be considered as good expenses.

Main stakeholder: European federations, national federations and leagues.

➤ Proposal 7: Address teams' instability in basketball

In order to address teams' instability in basketball and to be influenced by football rules, the matter of a harmonised compulsory registration periods should be considered by FIBA.

In addition, a limit to the number of clubs a player can be registered with during a season (like in football) could also be introduced.

Main stakeholder: FIBA.

#### **4.2.2 Proposals to limit excessive transfer fees**

➤ Proposal 8: Limit excesses in transfer fees after contract extension

The study highlights the fact that the 2001 Agreement has not succeeded in limiting excessive transfer fees. One of the reasons for this situation is the way the mechanism of protected periods is regulated. It has become a common practice amongst clubs to regularly renew the contracts of their best players so as to create a new contract and therefore start a new protected period. This contractual practice led to an effective circumvention of the aim of the 2001 Agreement with the European Commission.

Therefore, it is proposed to limit transfer fees between clubs when a player's contract has been renewed by the transferor club and the player has played a minimum of three or two years (according to the stability period) for the same club. This would be in order to limit the extension of a player's contract for the purpose of increasing transfer fees. It would be justified because a club would have amortised its initial investment in the player. For instance, a system could provide that the transfer fee is capped at 70% of the gross salary owed by the club to the player for the entire period of his contract. Alternatively, the cap could be valued on the remaining period of the contract; for instance it could be set at 100% of the gross salary still due.

The concept of a protected period could still be maintained (even though not necessary after a contract extension within the same club) and transfer fees would not be subject to any limit if the player is still under his first contract. This would support youth development.

The established percentage can be flexible depending on the level of the salary since a uniform percentage rate will not effectively take into account different players' situations. Moreover, so as to avoid threshold effects, some exceptions or complementary criteria could be taken into consideration when determining the maximum cap, as is already the case when calculating training compensations. Therefore, the value of the player could be increased based on his international status, the number of games with an "A" team (both in national team and in club), etc.

This proposal is aimed at remedying the failed attempt of the 2001 Agreement to limit excessive transfer fees.

Main Stakeholders: The matter should be discussed as part of the European social dialogue in the field of football.

➤ Proposal 9: Regulate the use of "buyout clauses"

These clauses have the effect of reinforcing the principle of contractual stability desired by the football authorities, a principle that is the cornerstone of FIFA RSTP.

However, to prevent abuse and excessive payments, it is proposed that the European social dialogue take up this issue so that retrospectively the power of control exercised by judges may be a useful complement. It would define objective criteria, which would complement the current Article 17 of FIFA RSTP, to limit the amount of compensation.

Main Stakeholders: The matter should be discussed as part of the European social dialogue in the field of football.

#### **4.2.3 Proposals to support youth development and youth protection**

➤ Proposal 10: Strong sanctions to better ensure training compensation and solidarity contribution

Provide strong penalties and sanctions for non-payment of training compensation and solidarity contribution to clubs; for example, FIFA to stipulate a transfer embargo and national federations to withdraw points in national competition.

Payment of the solidarity contribution is left to clubs recruiting players. This system favours the non-payment of this contribution. Indeed, practice often shows that a large number of clubs delay the payment or do not pay at all. The recovery of the indemnity and its distribution could be entrusted to FIFA and national federations. At each transfer, the national federations could collect the money and distribute it between the clubs, on the basis of information collected on the transfer history of a player (players' passports; see Proposition 2).

Main stakeholders: FIFA with the support of national federations.

➤ Proposal 11: Increase the solidarity mechanism percentage

The study shows that, overall, solidarity compensations directly linked to transfers (i.e. training compensation and solidarity mechanism), only account for 2% of the total transfer fees within Europe. As a result, the redistribution linked to transfers has no significant positive impact on addressing the issue of competitive balance.

The solidarity mechanism does not work sufficiently well for youth development and yet it was an objective of the 2001 Agreement. The study has pointed out the inadequate role played by the solidarity mechanism in the redistribution of income to clubs involved in the training and education of football players. Therefore, more efforts should be made in this direction. FIFA should ensure the payment of solidarity contributions and should consider an increase in the percentage from 5% to 8% as part of the solidarity mechanism for every transfer. In addition, the percentage could be higher in relation to top transfer fees above a certain threshold.

Main stakeholders: International federations.

➤ Proposal 12: Harmonise conditions of entry for young players from third countries into the EU.

Different financial and sporting criteria are required by EU Member States to access the market. In addition, sports bodies often implement different quota rules for non-EU players and home grown players.

FIFA should propose harmonised rules in order to avoid different treatment and discrimination. These rules should be developed in close coordination with EU authorities considering EU rules on free movement of players from third countries.

Main stakeholders: FIFA and stakeholders involved in the European social dialogue in the field of football.

➤ Proposal 13: Improve rules on minors in accordance with EU law

Many stakeholders expressed dissatisfaction with the way rules on minors operate. It would be relevant to start a dialogue on this topic. The following issues should be considered as a matter of priority:

- Training compensation for transfers between the ages of 16 and 18 (increasing the level to 10-15%, conditions, etc.);

- Proper implementation of FIFA rules on minors and the monitoring of compliance by clubs and federations of such rules as the provision of adequate training and education;
- Terms of initial contracts for minors (extend from 3 to 5 years, etc.);
- UEFA Licensing System to cover FIFA minors' rules implementation.

Main Stakeholders: The matter should be discussed as part of the European social dialogue in the field of football.

#### **4.2.4 Improve governance through transparency and fair dispute resolution mechanisms**

- Proposal 14: Extend mission and impact of the TMS on three aspects: monitoring, transparency and domestic transfers

The Transfer Matching System or national equivalent should be applied to the national level to extend the monitoring to both international as well as national transfers.

FIFA should be able to publicize the data collected and make the information widely available to enable scrutiny and monitoring by third parties to a transaction. Data should be made available on line and be shared with law enforcement authorities to fight against fraud and illegal activities. Such publications will have to conform to rules on data protection. This is also an important proposal to control the activities of agents.

Main stakeholders: FIFA, and then national federations.

- Proposal 15: Make compulsory the publication online for each national federation of a standardised annual report on transfers with minimum information including name of parties and agents. This will increase monitoring, control of transactions and agents activities.

National federations should be encouraged to set up such reports, based on the English Premier League example, which constitutes a model of "good practice".

Such publications will have to conform to rules on data protection.

Main stakeholder: National federations or leagues.

- Proposal 16: Make compulsory the publication online of top European clubs' transfer dealings. The information provided should be at the same level of detail as that provided by clubs quoted on the stock exchange.

Main stakeholders: National federations or leagues and UEFA.

- Proposal 17: Improve dispute settlement by developing national dispute resolution mechanisms.

National dispute resolution chambers should be established throughout the EU through the proper and rapid implementation of the FIFA Circular 1129 of 2007. The aim should be to ensure equal numbers of players' and clubs' representatives in instances and to guarantee fair proceedings.

Players and clubs should always be in a position to call upon normal courts in the case of disputes; this with a view to guarantee proper implementation of EU Law.

Disputes between clubs should be treated more rapidly and FIFA should consider delegating some areas of disputes (which require rapid actions) to confederations so as to speed up the decision-making processes. A way to accelerate dispute resolution is to encourage the recourse to a national arbitration mechanism.

The concern that CAS decisions are taken outside the jurisdiction of the EU should be addressed. EU law should be taken into consideration in sports arbitration mechanisms in particular when the issue relates to cross border transfer activities within the EU. .

Main stakeholders: National federations.

- Proposal 18: For basketball, improve the capacity and means of the dispute commission of FIBA as it is under resourced.

The current system works pretty well but appears fragile because of weak human and material resources dedicated to this mission (obviously, only two persons are responsible for this task: the General Secretary of FIBA and Legal Affairs Manager).

Main stakeholder: FIBA.

#### **4.2.5 Develop cooperation with public authorities for better law and sports rules' enforcement**

- Proposal 19: Use the existing EU sectorial Social Dialogue Committee in the Professional Football sector established by the Commission decision of 20 May 1998 – 98/500/EC (started in July 2008) to consider the following points:

- Protection of minors;
- Excessive transfer fees;
- Solidarity;
- Fair and balanced competition;
- Rules on non-EU players

Extend this to basketball.

Main Stakeholders: The matter should be discussed as part of the European social dialogue in the field of football. FIFA should be invited to participate in the social dialogue as it is the competent body in the field of international transfers.

- Proposal 20: Improve and extend law/rules enforcement.

Sports federations are not adequately equipped to combat and punish offences against public order, particularly in the fields of human trafficking in sport and financial crime (a matter of financial supervision, fiscal control and crime prevention/law enforcement policies). The European Commission should be instrumental in fostering cooperation between law enforcement agencies and sports governing bodies.



Within its current competences and missions, Europol should be encouraged to play a major role in improving law enforcement. Moreover, cooperation between international and European federations with enforcement agencies EUROPOL and EUROJUST should be promoted<sup>442</sup>.

Main Stakeholders: European Commission, law enforcement agencies and sport governing bodies.

➤ Proposal 21: Establish within FIFA a Clearing House and Transfer Compliance Unit working with public authorities on law enforcement

Transfers of players can lead to illegal or fraudulent transactions; the idea is to create a unit to deal with such cases and punish such behaviours that remain rarely sanctioned. The unit should have an independent status and be responsible for the direct management of transfers beyond a certain threshold (to be defined spot governing bodies).

The principle is to create an autonomous unit within FIFA specifically focused on tracking suspicious deals (on minors notably) and financial transactions. It would have a power of investigation alongside policy and judicial authorities at international and national level. It should be composed of independent personalities competent in the field of crime prevention. It should be inspired by the system set up in England.

National federations which experience transfer related problems should be encouraged to establish clearing houses as implemented in England to control financial transactions linked to transfers. Such federations should be supported financially by FIFA if required.

Main Stakeholder: FIFA.

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<sup>442</sup> *Match-fixing in sport*, KEA European Affairs, March 2012.

## ANNEX 1: LIST OF STAKEHOLDERS CONTACTED FOR THE INTERVIEWS

- Andreas BACHMANN, Public Prosecutor, Bochum (Germany),
- Jonas BAER-HOFFMANN, General Secretary SPINBB,
- Yann BARBITCH, former basketball player,
- Carlos BEJARANO, Manifoot,
- Jair BERTONI, Head of Cabined EPFL,
- Maurizio BEZZECCHI, Lega Basket Director Media Relations & Communication,
- Yann BONATO, basketball player,
- Jacques BONDALLAZ, Head of Sports Legal Service UEFA,
- Hristo BOSKOSKI, IHF Head of Office, sports department,
- Marco BRUNELLI, Lega Calcio General Manager,
- Bill BUSH, Director of communications and public policy, Premier League,
- Massimo CAMPIOLI, AC Milan,
- Lorenzo CANTAMESSA, Manager of TMS operations, AC Milan,
- Eric CARRIERE, former professional player
- Thomas CAYOL, FFF, TMS Manager,
- Michele CENTENARO, General Secretary ECA,
- Jérôme CHAMPAGNE, FIFA former Director of international relations,
- Benjamin COHEN, Head of Legal Affairs FIBA,
- Elodie CROCQ-MARTIN, Legal Officer Stade Rennais FC,
- Olivier DACOURT, former professional player
- Dirk DE VOS, Nationaal Verantwoordelijke Sporta, Responsable National Sporta,
- Eric DECROIX, former football player,
- Mathieu DESVALOIS, LNB Financial Council,
- Philippe DIALLO, President French Professional Club Association,
- Zornitsa DIMITROVA-HOFFMEISTER, Economic Analyst, Free Movement of Capital, the European Commission,
- Makan DIOUMASSI, former professional player
- Niccolo DONNA, FIGC development department,
- Pierre DREOSSI, Manager Stade Rennais FC,
- Renaud DUCHÊNE, Legal affairs RCS Anderlecht,
- Yann DUCLOS, Salaree of national direction of management control, LFP,
- Nerijus DUNAUSKAS, LFF Competition and Event Manager,
- FATF, Office of the Executive Secretary, Paris,
- Francesc FERNANDEZ, General Secretary ULEB,
- David FROMMER, Public Affairs and EU Advisor ECA,
- Mario GALLAVOTTI, FIGC Lawyer, Arbitrator at CAS, Member of DRC,
- Umberto GANDINI, AC Milan Organising Director,
- Michael GERLINGER, Legal Director of Bayern Munich,
- Theodore GIANNIKOS, Legal Director and International Relations Director of Olympiakos CFP,

- Peter GREEN, Certified Anti-Money Laundering Specialist (ACAMS), previous Member of the ACAMS European Task Force, Advisor to the AMLP (Anti-Money Laundering Professionals) Forum,
- Giani INFANTINO, General Secretary UEFA,
- Dimitrios KONTIZAS, Head of Sector Free Movement of Workers, the European Commission,
- Stephanie LEACH, Financial Analyst UEFA,
- Jean-Marc LHERMET, General Manager ASM Clermont Auvergne rugby
- Anne-Marie LITT, General Secretary, GIBA,
- Rasa LIUIMIENE, Director Lithuanian Basketball Federation,
- Peguy LUYINDULA, Football Player,
- Emanuel MACEDO DE MEDEIROS, CEO EPFL,
- MAKUTA, Agent,
- Bruno MARTINI, former handball player,
- Vittori MAUGGERI, COVISOC Secretary General,
- Fani MISAILIDI, Head of Public Affairs, FIFA,
- Olivier MOLINA, LNB Legal Manager,
- Mathieu MOREUIL, Head of European Public policy Premier League,
- Loic MORIN, LFP Legal Director,
- Vim van MEGEN, Head of Legal Department FIFPro,
- Rodrigo NEBOT, Legal Council, Spanish Football Players Association,
- Christian NERLINGER, Sport Director FC Bayern Munich,
- David NEWTON, Head of Integrity, the FA,
- Graham NOAKES, Head of Professional Game, the FA,
- Bhakti ONG, Handball Agent,
- Omar ONGARO, Head of Payers' Status & Governance, Legal Affairs Division, FIFA,
- Walter PALMER, General Secretary UBE,
- Daniel Lorenz PEREIRA, Director of Legal Affairs FC Porto,
- Philippe PIAT, Vice President FIFPro,
- Alex PHILIPPS, Head of Executive Office UEFA,
- Reinhard PREUSCHE, Managing Partner, MLT Compliance Solutions GmbH,
- Jane PURDON, Director of Governance Premier League,
- Chris van PUYVELDE, Sports Manager FC Beerschot,
- Esther QUERALTO, Secretary General of ACB,
- Zoran RADOVIC, Sport Development Director FIBA,
- Tomasz RAKOWSKI, Polish Union of Footballers,
- Jörg REINBOTHE, Head of Unit Free Movement of Capital, the European Commission,
- Jean-François REYMOND, Development Director, French basketball players Association, EU Athletes,
- Antoine RIGAudeau – former basketball player,
- Arnaud ROUGER, LFP Sport Director,
- Giorgio ROVATI, Lega Calcio,
- Luis RUBIALES, President Spanish Football Players Association,

- Piotr RUTKOWSKI, Board Member for Sports, KKS Lech Poznan,
- Willy SAGNOL, former football player,
- Manfred SCHULTE, agent, Board Member of DFV,
- Ludwig SNEYERS, Director General Pro League,
- Felix van der STEEN, German Professional Football Players Union,
- Agnes SZARKA, Case Handler DG Competition, the European Commission,
- Marcin STEFANSKI, Ekstraklasa, Head of Competition,
- Ruggero STINCARDINI, Lega Calcio lawyer,
- Michael TATTERSALL, Deputy Operations Director, the Football League,
- Gordon TAYLOR, CEO PFA,
- Luigi TERRIERI, Virtus Bologna Manager,
- Michele UVA, FIGC Chief Development Officer,
- Bertil VAGNHAMMAR, Policy Analyst, Free Movement of Capital, the European Commission,
- Dejan VIDICKI, AEBA President, basketball agent,
- Pierre WANTIEZ, Director General FC Valenciennes,
- Andy WILLIAMSON, Chief Operating Officer, the Football League,
- Zinédine ZIDANE, former professional player
- Julien ZYLBERSTEIN, EU Legal Affair Advisor, UEFA.



## **ANNEX 2: LIST OF STAKEHOLDERS CONTACTED FOR THE QUESTIONNAIRE**

### **National ministries in charge of sport**

1. The Ministry of Sports, Sport Division (Austria)
2. Departement Cultuur, Jeugd, Sport en Media (Belgium)
3. BLOSO - Flemish Sports Agency (Belgium)
4. Ministère de la Communauté française - Aide à la Jeunesse, Santé et Sport (Belgium)
5. Ministerium der Deutschsprachigen Gemeinschaft Belgiens – Sportdienst (Belgium)
6. The Ministry of Physical Education and Sport, National Information Center Directorate (Bulgaria)
7. Cyprus Sports Organisation (Cyprus)
8. The Ministry of Education, Youth and Sport (Czech Republic)
9. The Ministry of Culture (Denmark)
10. The Ministry of Culture (Estonia)
11. The Ministry of Education, Sports Division (Finland)
12. Ministère des Sports (France)
13. Bundesministerium des Innern (Germany)
14. The Ministry of Culture and Tourism, Secretariat General of Sport (Greece)
15. The Ministry of Health & Social Solidarity  
Deputy Minister's Office, responsible for Sports-for-all and Nutrition (Greece)
16. The Ministry of National Resources (Hungary)
17. The Department of Transport, Tourism and Sport (Ireland)
18. Presidency of Council of Ministers (Italy)
19. The Ministry of Education and Science (Latvia)
20. The Department of Physical Education and Sports under the Government of the Republic of Lithuania
21. Ministère des Sports (Luxembourg)
22. Kunsill Malti għall-iSport – KMS Malta Sports Council (Malta)
23. The Ministry of Health, Welfare and Sport (Netherlands)
24. The Ministry of Sport and Tourism (Poland)
25. Instituto do Desporto de Portugal
26. The Ministry of Youth and Sports (Romania)
27. The Ministry for Education, Science, Research and Sport (Slovakia)
28. The Ministry of Education and Sport (Slovenia)
29. High Council for Sports (Spain)
30. The Ministry of Culture (Sweden)
31. Department for Culture, Media and Sport (United Kingdom)

### **National football federations**

1. The Football Association
2. Deutsche Fußball-Bund
3. Österreichischer Fußball-Bund
4. Union Royale Belge des Sociétés de Football-Association
5. Bulgarian Football Union
6. Cyprus Football Association
7. Dansk Boldspil-Union
8. The Scottish Football Association

9. Real Federación Española de Fútbol
10. Eesti Jalgpalli Liit
11. Suomen Palloliitto
12. Fédération Française de Football
13. Hellenic Football Federation
14. Magyar Labdarugo Szövetség
15. The Football Association of Ireland
16. Federazione Italiana Giuoco Calcio
17. Latvian Football Federation
18. Lietuvos Futbolo Federacija
19. Fédération Luxembourgeoise de Football
20. Malta Football Association
21. Koninklijke Nederlandse Voetbalbond
22. Polski Związek Piłki Nożnej
23. Federação Portuguesa de Futebol
24. Football Association of the Czech Republic
25. Federatia Romana de Fotbal
26. Slovenský Futbalový Zväz
27. Nogometna Zveza Slovenije
28. Svenska Fotbollförbundet

#### **National basketball federations**

1. Deutscher Basketball Bund
2. England Basketball
3. Österreichischen Basketballverbandes
4. Fédération Royale Belge de Basketball
5. Bulgarian Basketball Federation
6. Cyprus Basketball Federation
7. Danmarks Basketball-Forbund
8. Basketball Scotland
9. Federación Española de Baloncesto
10. Estonian Basketball Federation
11. Suomen Koripalloliitto
12. Fédération Française de Basketball
13. Hellenic Basketball Federation
14. Magyar KosarlabdazokOrszágos Szövetsége
15. Basketball Ireland
16. Federazione Italiana Pallacanestro
17. Latvian Basketball Federation
18. Lietuvos Krepšinio Federacija
19. Fédération Luxembourgeoise de Basketball
20. Malta Basketball Association
21. Nederlandse Basketball Bond
22. Polski Związek Koszykówkil
23. Federação Portuguesa de Basquetebol
24. Česká Basketbalová Federace
25. Federatia Romana de Baschet
26. Slovenská Basketbalová Asociácia

27. Košarkarska zveza Slovenije
28. Svenska Basketförbundet

### **National football Leagues**

1. DFL Deutsche Fußball Liga GmbH (Germany)
2. Premier league (UK)
3. Österreichische Fußball Bundesliga (Austria)
4. Pro League (Belgium)
5. Bulgarian Professional football league (Bulgaria)
6. Divisionsforeningen (Denmark)
7. Veikkausliiga (Finland)
8. Ligue de Football Professionnel (France)
9. Super League Greece
10. Lega Serie A (Italy)
11. Lega Serie B (Italy)
12. Eredivisie NV (Netherlands)
13. Polish Professional Football League (Poland)
14. Liga Portugal
15. Union of 1. SNL (Slovenia)
16. Scottish Premier League (Scotland)
17. Liga Nacional de Fútbol Profesional (Spain)
18. Föreningen Svensk Elitfotboll (Sweden)
19. The Football League (UK)
20. Gambrinus Liga (Czech Republic)

### **National basketball leagues**

1. ABL Austria
2. ACB Spain
3. ALK Czech Republic
4. BBL Britain
5. LKL Lithuania
6. BLB Belgium
7. FEB Netherlands
8. HEBA Greece
9. LEGA Italy
10. PLK Poland
11. BBL Germany
12. LPB Portugal
13. LNB France

### **Rugby organisations**

1. International Rugby Board
2. Fédération française de rugby
3. Rugby Football Union England



4. Rugby Football Union Ireland
5. Federazione Italiana Rugby

#### **Handball organisations**

1. International Handball Federation
2. Spanish handball federation
3. German handball federation
4. French handball federation

**ANNEX 3: QUESTIONNAIRES NATIONAL SPORT BODIES AND NATIONAL PUBLIC AUTHORITIES  
IN CHARGE OF SPORT**

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Questionnaire to national public authorities

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**Part 1 – THE LAW GOVERNING TRANSFERS OF PLAYERS**

**I (a) - Is there a specific legal provision regulating the operations of transfers of players?**

Sport law ☐ Labour law ☐ Tax law ☐ Other (please specify) ☐

*Please provide the relevant texts or references to the legal provisions*

If Yes please describe the legislative provisions regulating the transfers of players stemming from:

If No to question 1 (a) which law applies to the employment contracts between players and clubs

Sport law ☐ Labour law ☐ Contract law ☐ Tax law ☐ Other (please specify) ☐

*Please provide with the relevant texts*

**I (b) - What does the law provides in case of early termination of a fixed term contract between a player and a club?**

*Please provide relevant text*

**II - Is there a specific regulation dealing with the loan of players?**

Yes ☐ No ☐

*Please provide the relevant texts*

**III - Is there a specific provision governing the early termination of a player's contract without just cause?**

Yes ☐ No ☐

*If yes, please describe*

**IV - Does your law authorise or prohibit:**

1. The right for the third parties<sup>443</sup> to claim rights in relation to the act of transfer of a player

Yes ☐ No ☐

Please provide relevant legal provision or references

2. A “buy-out” clause<sup>444</sup> in the employment contract between a player and a club.

Yes ☐ No ☐

*Please provide with the relevant texts and jurisprudence*

**Part 2 – TRANSFER FEES<sup>445</sup>**

**I - What is the legal basis for transfer fees in contracts between players and clubs?**

*Please provide with the relevant legal texts or jurisprudence*

**II - Does the law regulate or limit transfer fees?**

Yes ☐ No ☐

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<sup>443</sup> Third party – private investor, another club or a company.

Third party ownership – an investment transaction, related to the sale to a third party of a future transfer value.

<sup>444</sup> A Buy-out Clause – a clause in the employment agreement allowing the parties to terminate the contract by restructuring the conditions of the termination of the contract for the sum defined in advance, intended to ensure compliance with commitments made by the player for the duration of a contract and deterring any temptation to break or to allow the player or a club to terminate the contract unilaterally.

<sup>445</sup> The fee paid to the Transferor club relates primarily to the payment to compensate the breach of the contract before the end of the period foreseen in the contract. This indemnity is due by the Transferee club to the Transferor club in order to compensate the early breach of the contract.

*Please provide with the relevant texts and jurisprudence*

### **Part 3 – ECONOMIC ASPECT OF THE TRANSFER**

**I - Who has the responsibility, under your law, to pay social charges on transfer fees in case of the transfer?**

**II - How much is the transfer fee taxed in your country?**

Please name the relevant direct or indirect tax that applies to transfer.

**III - Do you gather economic information on the economic value of transfer in your country?**

Yes ☐ No ☐

*Please provide relevant references on economic data*

### **Part 4 – CASE LAW**

**I - Please list relevant high court decisions related to transfers of players in your country (contractual disputes, case-law related to economic crimes through transfer, compatibility of sport body rules and national law etc.).**

*Please provide relevant texts or references*

**II - Please list relevant arbitration decisions related to transfer of players in your country.**

*Please provide with the relevant texts*

### **Part 5 – PRESERVATION OF PUBLIC ORDER**

**I - What kind of control is exercised by public authorities with regards to the transfer of players?**

**II - Please also provide with the information on police enquiries or judicial decisions that relates to the infringement of public order through the act of transfer (including money laundering, corruption, human trafficking).**

*Please provide with the relevant texts*

**III - Are there control mechanisms to ensure transparency of transfer transactions and limit possibilities of fraud and crimes?**

Yes ☐ No ☐

*Please provide with the relevant texts*

**Part 6 – RELATIONSHIP WITH THE RULES OF SPORTS ASSOCIATIONS/FEDERATIONS**

**I - What is the legal basis for national sport bodies (federation, leagues)**

1. To adopt regulations governing transfers

*Please provide with the relevant texts*

2. To establish control mechanisms over transfers

*Please provide with the relevant texts*

**II - Are rules adopted by national associations/federations subject to control by public authorities?**

Yes ☐ No ☐

*If yes please provide name of the authority with supervising power.*

**III - Are there examples of rules adopted by national or international sport bodies (federation/league) related to the transfer operations which have been declared incompatible with the legislation in your country?**

Yes ☐ No ☐

*If yes, please provide evidence or information*

**IV - Please provide information on relevant official/academic reports and economic data/statistics on the transfer system in your country (if there are any).**

*Please provide references or relevant documents*

## **Part 7 – ASSESSMENT OF TRANSFER MECHANISM**

**I - What are the main problems related to the transfer of a player before the end of his contract? Please rank by order of importance (1 - the most important problem to 9 – the least important)**

- It affects the fairness of competition ☐
- The levels of transfer fees ☐
- Agent fees ☐
- It affects loyalty with clubs ☐
- Protection of minors ☐
- Economic crimes ☐
- Transparency of money flow ☐
- Third-party ownership ☐
- Third-party influence ☐

**II - Do you consider that the current transfer system is efficient to:**

- Promote solidarity within sport Yes ☐ No ☐
- Protect minor players Yes ☐ No ☐
- Improve contractual stability Yes ☐ No ☐

Preserve fairness of competition

Yes ☐ No ☐

**III - Should the system of transfer fees be banned or amended?**

**IV - What should replace the current transfer system?**

*Are there proposals to legislate in this respect in your country?*

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Questionnaire to national sport bodies

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**Part 1 – ECONOMIC ASPECT OF THE NATIONAL TRANSFER MARKET**

**I - How many national transfers<sup>446</sup> took place in 2010 and 2011 in your country? (if it is not possible to give a number please give an estimate in % of all transactions)**

- |   |                      |
|---|----------------------|
| a. Engaging a player with transfer fee    | <input type="text"/> |
| b. Engaging a player without transfer fee | <input type="text"/> |
| c. Engaging a player on loan              | <input type="text"/> |
| d. Return of a player from loan           | <input type="text"/> |

**II - What was the total value (in Euro) of the national transfer market in your country in 2010 and 2011?**

**III (a) - What was the average value of the transfer fee<sup>447</sup> in your country in 2010 and 2011?**

**III (b) - Please provide the average value in your country in 2010 and 2011 of the types of payments that can occur in relation to the transfer:**

- |  |                      |
|--|----------------------|
| 1. Agreed transfer fee                     | <input type="text"/> |
| 2. Conditional transfer fee <sup>448</sup> | <input type="text"/> |
| 3. Training compensation <sup>449</sup>    | <input type="text"/> |
| 4. Solidarity contribution <sup>450</sup>  | <input type="text"/> |

**IV - How much is the transfer fee taxed in your country? (in %)**

**V - What was the average age of players subject to transfers within your association in 2010 and 2011?**

**VI - Please provide the number of:**

- |  |                      |
|--|----------------------|
| 1. Affiliated professional players in your association | <input type="text"/> |
| 2. Affiliated professional clubs in your association   | <input type="text"/> |

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<sup>446</sup> A national transfer – a transfer of a player between two clubs belonging to the same association

<sup>447</sup> The fee paid to the Transferor club relates primarily to the payment to compensate the breach of the contract before the end of the period foreseen in the contract. This indemnity is due by the Transferee club to the Transferor club in order to compensate the early breach of the contract

<sup>448</sup> A Variable amount that the player's new club may owe to the former club, dependent on the player's performance during his tenure with the new club

<sup>449</sup> Compensation calculated based on indicative costs and paid by the new club to his former club with regards to the player's transfer

<sup>450</sup> Contribution calculated as a percentage of the agreed amount of transfer fee and distributed between all clubs that trained the player up to the age of 23



**VII - Please provide a copy of your latest annual report on transfers in your country (also any report from academia or research center on this issue, or as a minimum references):**

## **Part 2 – RULES GOVERNING TRANSFERS OF PLAYERS**

**I - What is the legal competence for your association/federation/league to adopt rules on transfer of players at national level? Does your competence stems from sport or social law?**

*Please refer to the legal texts that give your association the right to adopt such rules.*

**II - Is there specific legislation in your country governing the labour contract between clubs and players?**

*If yes please can you provide information on legal provisions relating to the early termination of a fixed term contract between a player and a club.*

**III - Are contractual provisions by which a contracting party undertakes to pay the other a compensation sum authorised under your national employment legislation?**

**IV - What are the rules governing transfer of players in your country?**

*Please describe rules that are different and specific from rules adopted at international level by international federations such as FIFA or FIBA*

*Please provide a copy of relevant legal texts and regulations on transfer of players in relation to national transfers*

**V - Please describe the rules originating from your association**

1. Scope of the rules

☐ professional   ☐ amateur   ☐ national   ☐ international

2. Does your association/federation/league authorises:

- Loans with promise of future transfer Yes ☐ No ☐
- Free loans Yes ☐ No ☐
- Transfers with bonuses Yes ☐ No ☐
- Third party involvement<sup>451</sup> Yes ☐ No ☐
- Third party ownership Yes ☐ No ☐

3. Time of transfer window

4. The obligations on clubs when a transfer takes place

5. The rules on national transfers involving minors

6. The rules on dispute settlement

7. The types of sanctions in relation to non compliance of your transfer rules

8. Any other rules or set of conditions that apply to national transfers (which are different from international sporting rules)

*Please provide a copy of relevant rules*

**VI - Is there a specific provision governing the early termination of a player's contract without just cause?**

Yes ☐ No ☐

*If Yes, please describe*

**VII - How many clubs and players are subject to national transfer rules?**

<sup>451</sup> An investor owning transfer rights of a player

Clubs

Players

**VIII - Have your transfer rules been a subject to dispute before a court or an arbitration tribunal?**

Yes ☐ No ☐

*If yes please provide relevant decisions*

**IX - Please can you provide text or reference to high court decisions in your country related to the transfers of players.**

**X - In relation to the transfer rules for non-professional players (amateur), does your association charge an administrative fee?**

Yes ☐ No ☐

*If Yes, please give us the amount of the fee:*

**Part 3 – ENFORCEMENT OF THE RULES**

**I - Do you monitor national transactions related to transfer of players?**

Yes ☐ No ☐

**II - If yes, what is the subject of monitoring:**

- ☐ the actual financial transaction
- ☐ the contracts (do you get a copy of the contract?)
- ☐ the payments related to transfers
- ☐ the commissions paid to agents
- ☐ the names of the clubs and players

**III - Do you control transfer as a part of a system to monitoring the finance of a club?**

Yes ☐ No ☐

**IV - Please provide an estimate of the cost on monitoring transfers in your association (budget, full-time employees, database costs etc.)**

**V - Please describe sanctions for clubs or players which do not comply with the rules on transfers of players.**

*Please provide relevant texts*

**VI - What are the measures taken to prevent economic and social crimes occurring at the time of a transfer transaction in your sport (money laundering, corruption, tax fraud, human trafficking) ?**

*Please provide relevant texts*

**VII - Have you established partnership or cooperation with:**

International organisations (OECD, NGOs) Yes ☐ No ☐

Government bodies Yes ☐ No ☐

Anti-fraud / anti-money laundering / anti-corruption entities (nationally, regionally (i.e. Europe), globally) Yes ☐ No ☐

Financial intelligence units Yes ☐ No ☐

National and international law enforcement agencies Yes ☐ No ☐

Basel Institute on Governance Yes ☐ No ☐

*Please describe*

#### **Part 4 – DISPUTE RESOLUTION**

**I - How many disputes related to transfer of players took place in 2010 and in 2011?**

**II - What are the main grounds for disputes? Please rank by order of importance (1 - the most important to 6 – the least important)**

Transfer fee ☐

Solidarity contribution <sup>452</sup>	<input type="checkbox"/>		
Agent fees		<input type="checkbox"/>	
Non-compliance with duration of transfer windows			<input type="checkbox"/>
Contractual obligations between the player with his selling club			<input type="checkbox"/>
The transfer contract between the clubs	<input type="checkbox"/>		

**III - Please describe the dispute resolution mechanism.**

**IV - Please provide examples of disciplinary sanctions adopted by your association in relation to non-compliance with transfer rules.**

**V - Please provide information on transfer disputes brought before high level national courts or arbitration in the last 4 years.**

*Please provide references to the cases*

**Part 5 – ASSESSMENT OF TRANSFER MECHANISM**

**I - What are the main problems related to the transfer of a player before the end of his contract? Please rank by order of importance (1 - the most important problem to 9 – the least important)**

It affects the fairness of competition	<input type="checkbox"/>
The levels of transfer fees	<input type="checkbox"/>
Agent fees	<input type="checkbox"/>
It affects loyalty with clubs	<input type="checkbox"/>
Protection of minors	<input type="checkbox"/>
Economic crimes	<input type="checkbox"/>
Transparency of money flow	<input type="checkbox"/>
Third-party ownership	<input type="checkbox"/>
Third-party influence	<input type="checkbox"/>

<sup>452</sup> Contribution calculated as a percentage of the agreed amount of transfer fee and distributed between all clubs that trained the player up to the age of 23.

**II - Do you consider that the current transfer system is efficient to:**

- |                                  |  |
|----------------------------------|--|
| Promote solidarity within sport  | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Protect minor players            | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Improve contractual stability    | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Preserve fairness of competition | Yes <input type="checkbox"/> No <input type="checkbox"/> |

**III - Should the system of transfer fees be banned or amended?**

**IV - What should replace the current transfer system?**

**Part 6 – ASSESSMENT OF INTERNATIONAL TRANSFER RULES (adopted by international federations such as FIFA or FIBA)**

**I - Do you consider International Rules on the transfer of players as an efficient tool to regulate and monitor transfers?**

Yes ☐ No ☐

Why?

**II - Please provide your views on the transfer monitoring system of your International Federation. Did it affect your approach on regulating and monitoring transfers?**

**III - What steps have you taken to implement the international transfer system into your association/federation? (TMS in relation to FIFA for instance)**



## ANNEX 4: BIBLIOGRAPHY

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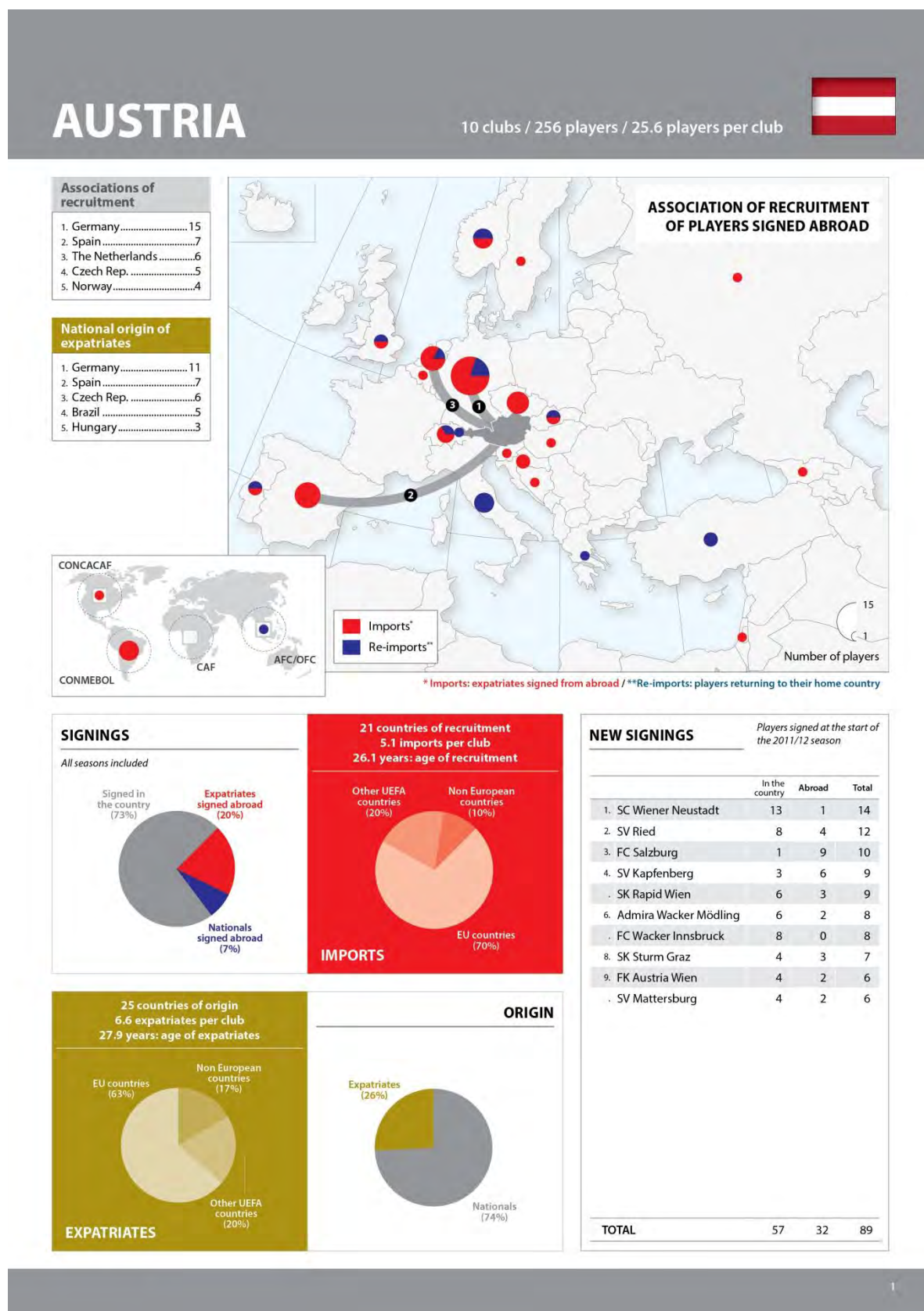
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## ANNEX 5: COUNTRY PROFILES





# BELGIUM

16 clubs / 401 players / 25.1 players per club

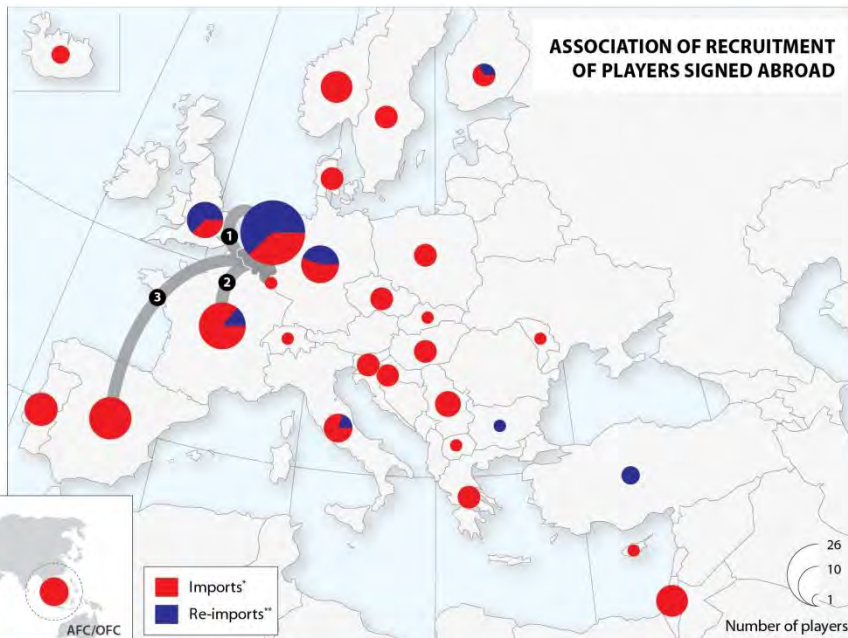
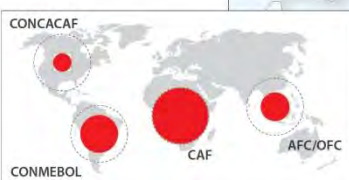


## Associations of recruitment

1. The Netherlands .....	26
2. France .....	14
3. Spain .....	11
4. Germany .....	9
5. England .....	8

## National origin of expatriates

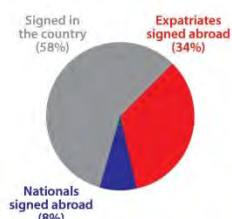
1. France .....	27
2. Brazil .....	13
3. Senegal .....	11
4. Serbia .....	9
5. Israel .....	8



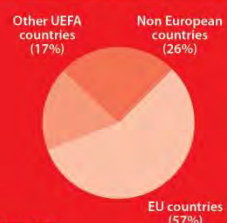
\* Imports: expatriates signed from abroad / \*\* Re-imports: players returning to their home country

## SIGNINGS

All seasons included



47 countries of recruitment  
8.6 imports per club  
24.2 years: age of recruitment



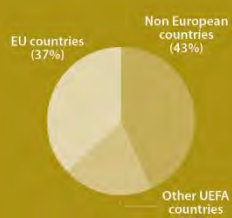
IMPORTS

## NEW SIGNINGS

Players signed at the start of the 2011/12 season

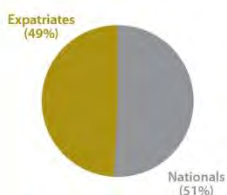
	In the country	Abroad	Total
1. Lierse SK	6	8	14
2. Beerschot AC	6	7	13
3. St. Truidense VV	6	6	12
4. KV Kortrijk	7	5	12
5. RAEC Mons	7	5	12
6. Club Brugge KV	2	9	11
7. KAA Gent	4	7	11
8. Standard Liège	4	7	11
9. Oud-Heverlee Leuven	8	3	11
10. RSC Anderlecht	4	6	10
11. KVC Westerlo	6	4	10
12. SV Zulte Waregem	2	7	9
13. KRC Genk	3	6	9
14. KV Mechelen	4	3	7
15. Cercle Brugge	3	3	6
16. KSC Lokeren	1	1	2
<b>TOTAL</b>	<b>73</b>	<b>87</b>	<b>160</b>

57 countries of origin  
12.3 expatriates per club  
25.7 years: age of expatriates



EXPATRIATES

## ORIGIN



# BULGARIA

16 clubs / 389 players / 24.3 players per club

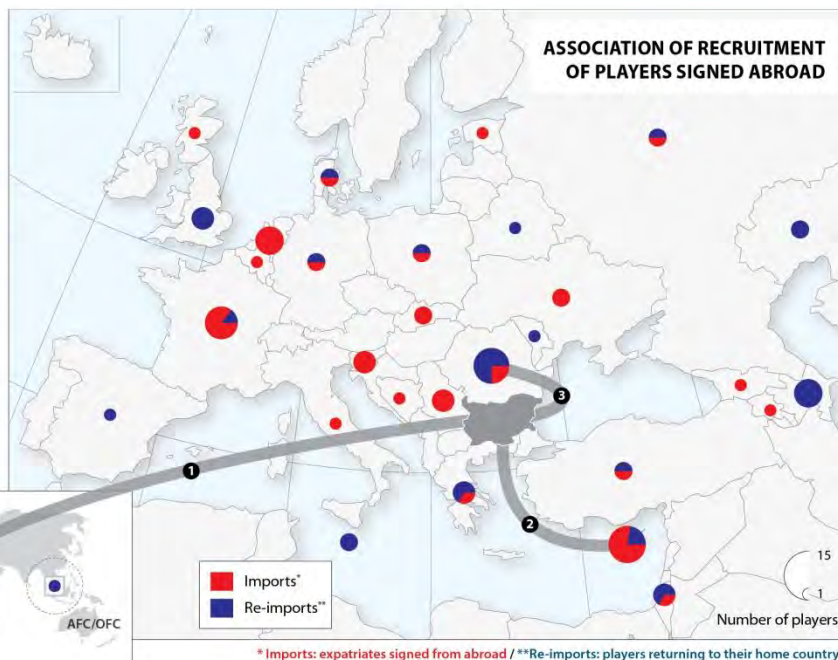
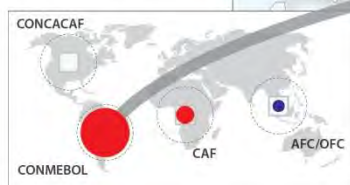


## Associations of recruitment

1. Brazil .....	12
2. Cyprus .....	9
3. Romania .....	8
4. France .....	7
5. Azerbaijan .....	5

## National origin of expatriates

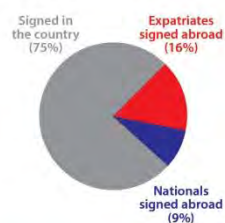
1. Brazil .....	20
2. France .....	11
3. Serbia .....	9
4. Egypt .....	4
Slovenia .....	4



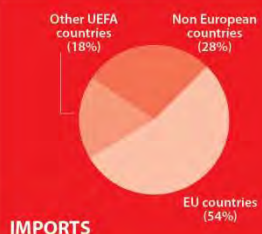
\* Imports: expatriates signed from abroad / \*\* Re-imports: players returning to their home country

## SIGNINGS

All seasons included



27 countries of recruitment  
3.8 imports per club  
25.2 years: age of recruitment



IMPORTS

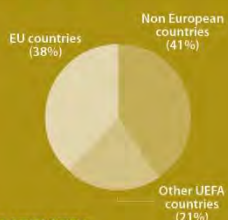
## NEW SIGNINGS

Players signed at the start of the 2011/12 season

	In the country	Abroad	Total
1. PFC Ludogorets Razgrad	13	11	24
2. PFC Svetkavitsa	14	4	18
3. CSKA Sofia	9	7	16
4. PFC Slavia Sofia	7	7	14
5. PSFC Chernomorets	9	5	14
6. PFC Beroe Stara Zagora	9	4	13
7. PFC Minior Pernik	11	2	13
8. OFC Botev Vratsa	12	1	13
9. PFC Levski Sofia	8	4	12
10. PFC Kaliakra Kavarna	11	1	12
11. PFC Vidima-Rakovski	11	1	12
12. PFC Lokomotiv Plovdiv	6	5	11
13. PFC Montana	10	1	11
14. PFC Chernomorets Varna	7	2	9
15. PFC Lokomotiv Sofia	4	4	8
16. PFC Litex Lovech	1	6	7

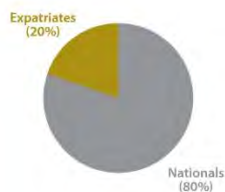
**TOTAL** 142 65 207

23 countries of origin  
4.8 expatriates per club  
25.9 years: age of expatriates



EXPATRIATES

## ORIGIN





# CYPRUS

14 clubs / 333 players / 23.8 players per club

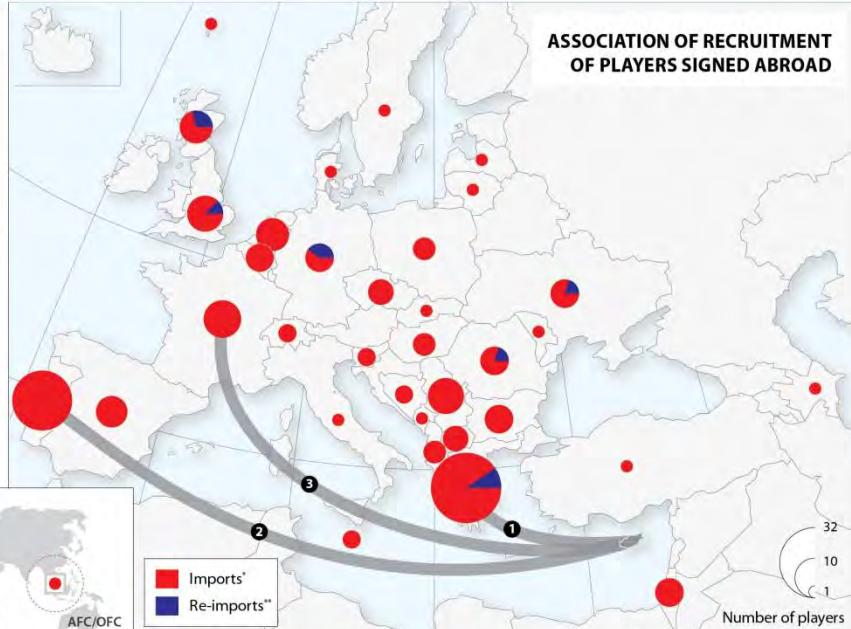


## Associations of recruitment

1. Greece .....	32
2. Portugal .....	23
3. France .....	9
4. England .....	8
Serbia .....	8

## National origin of expatriates

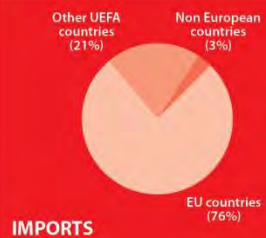
1. Portugal .....	33
2. Brazil .....	27
3. Serbia .....	15
France .....	15
5. Greece .....	13



\* Imports: expatriates signed from abroad / \*\* Re-imports: players returning to their home country

## SIGNINGS

All seasons included

39 countries of recruitment  
11.5 imports per club  
27.8 years: age of recruitment

IMPORTS

## NEW SIGNINGS

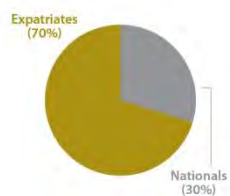
Players signed at the start of the 2011/12 season

	In the country	Abroad	Total
1. Alki Larnaca FC	11	8	19
2. AEL Limassol FC	8	10	18
3. Nea Salamis Famagusta	9	9	18
4. Ermis Aradippou FC	10	6	16
5. Anagennisi Derynia	6	8	14
6. Apollon Limassol FC	3	10	13
7. Anorthosis Famagusta	4	9	13
8. Aris Limassol FC	6	5	11
9. AEK Larnaca FC	3	7	10
10. Enosis Neon Paralimni	3	7	10
11. Olympiakos Nicosia FC	2	7	9
12. Ethnikos Achna FC	3	6	9
13. AC Omonia	5	2	7
14. APOEL FC	1	5	6
<b>TOTAL</b>	<b>74</b>	<b>99</b>	<b>173</b>

52 countries of origin  
16.7 expatriates per club  
29.1 years: age of expatriates

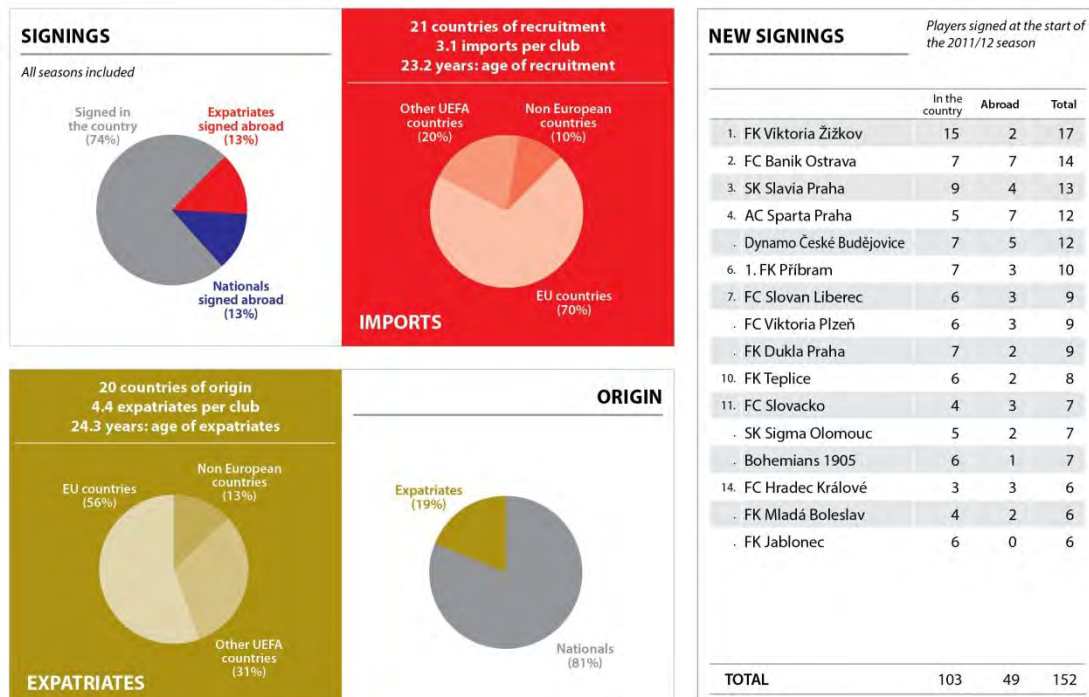
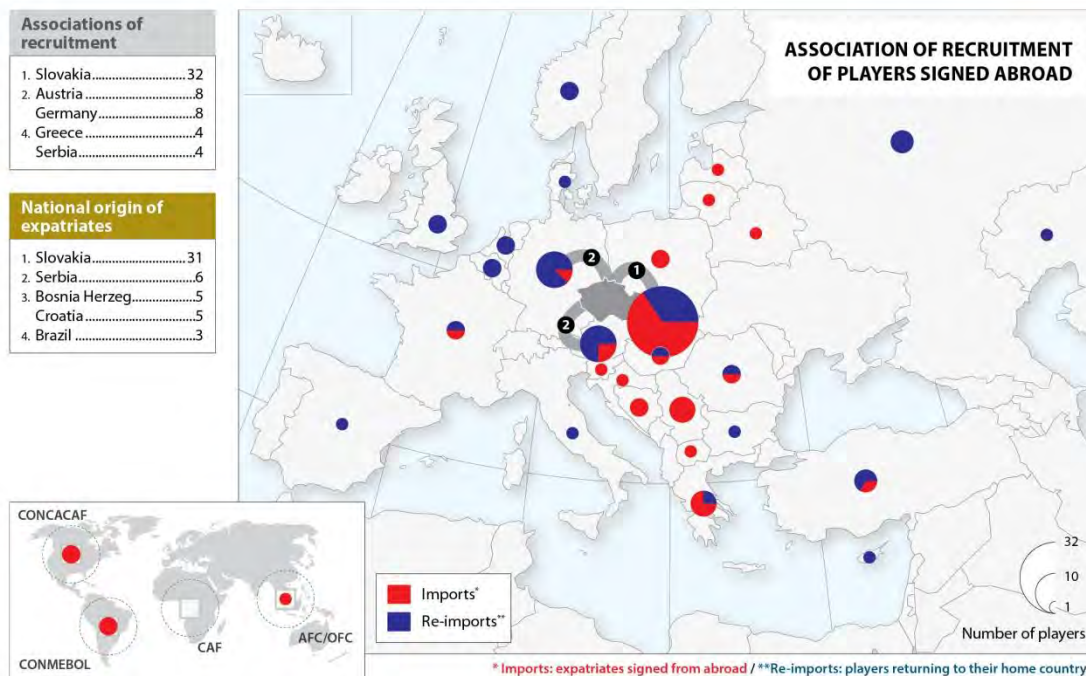
EXPATRIATES

## ORIGIN



## CZECH REPUBLIC

16 clubs / 372 players / 23.3 players per club





# DENMARK

12 clubs / 278 players / 23.2 players per club

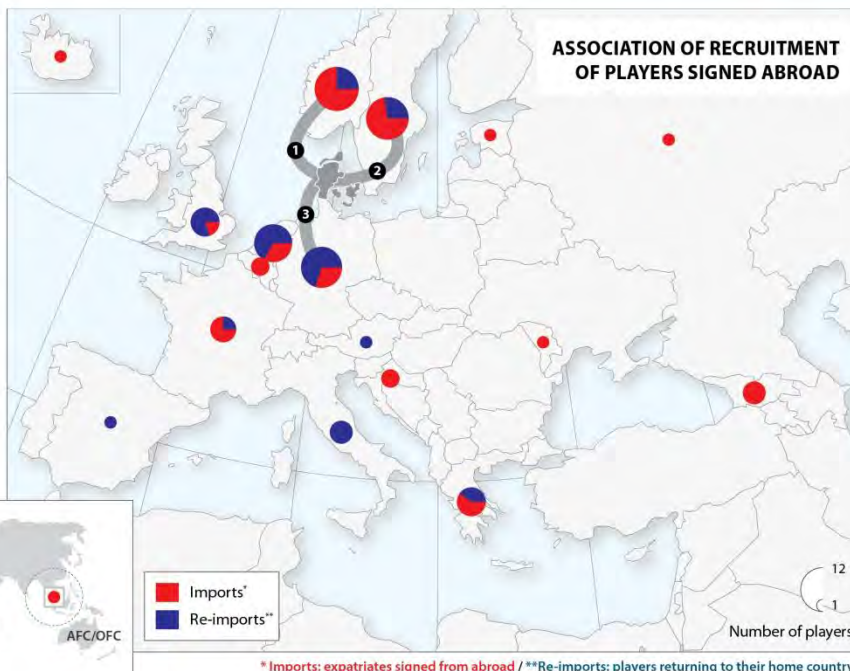


## Associations of recruitment

1. Norway.....12
2. Sweden.....11
3. Germany.....10
4. The Netherlands.....9
5. England.....5

## National origin of expatriates

1. Nigeria.....9
2. Sweden.....8
3. Iceland.....7
- Norway.....7
5. Brazil.....5

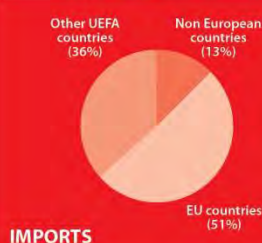


## SIGNINGS

All seasons included



18 countries of recruitment  
 3.9 imports per club  
 24.7 years: age of recruitment



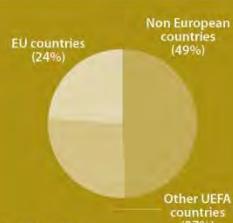
## NEW SIGNINGS

Players signed at the start of the 2011/12 season

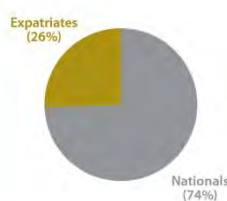
	In the country	Abroad	Total
1. FC København	6	6	12
2. AGF Aarhus	4	4	8
3. Lyngby BK	8	0	8
4. Sønderjysk Elitesport	4	3	7
5. Odense BK	2	4	6
6. HB Køge	3	3	6
7. Brøndby IF	1	4	5
8. Aalborg BK	2	3	5
9. Silkeborg IF	1	3	4
10. AC Horsens	4	0	4
11. FC Midtjylland	2	1	3
12. FC Nordsjælland	2	1	3

**TOTAL** 39 32 71

23 countries of origin  
 5.9 expatriates per club  
 26.1 years: age of expatriates

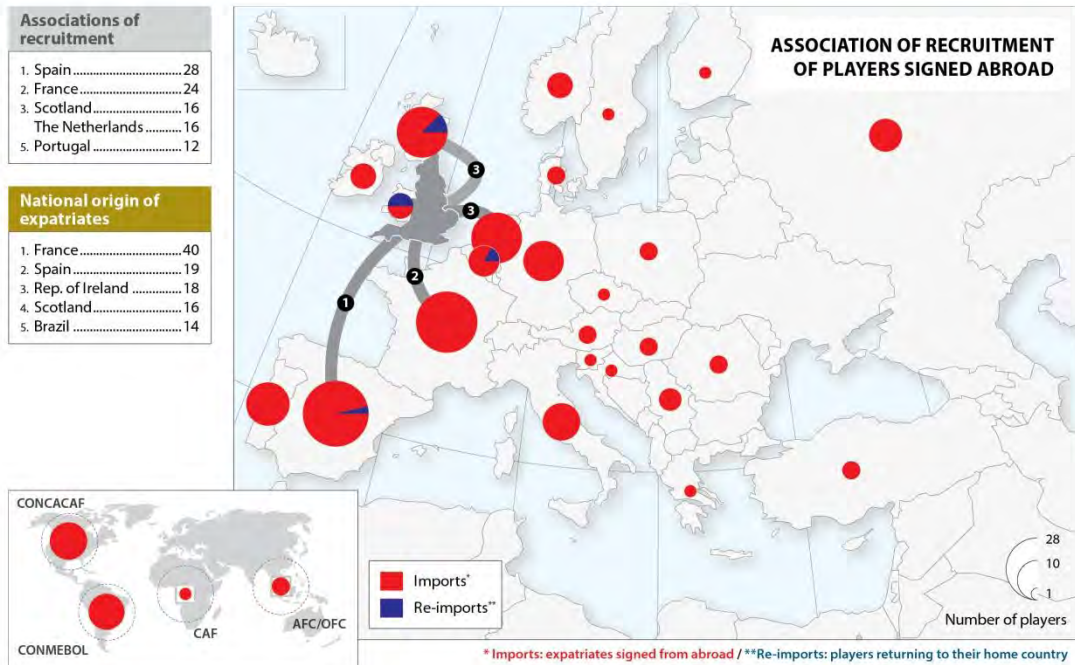


## ORIGIN



# ENGLAND

20 clubs / 524 players / 26.2 players per club

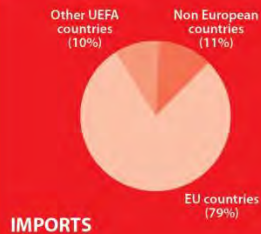


## SIGNINGS

All seasons included



34 countries of recruitment  
8.8 imports per club  
24.2 years: age of recruitment

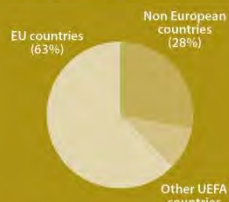


## NEW SIGNINGS

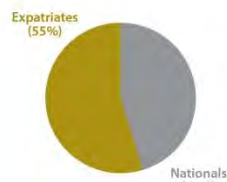
Players signed at the start of the 2011/12 season

	In the country	Abroad	Total
1. Queens Park Rangers FC	11	3	14
2. Arsenal FC	7	5	12
3. Norwich City FC	11	0	11
4. Liverpool FC	6	4	10
5. Sunderland AFC	7	3	10
6. Swansea City AFC	7	3	10
7. West Bromwich Albion	9	1	10
8. Blackburn Rovers FC	2	7	9
9. Manchester City FC	6	3	9
10. Manchester United FC	6	3	9
11. Aston Villa FC	9	0	9
12. Fulham FC	2	6	8
13. Chelsea FC	4	4	8
14. Bolton Wanderers FC	7	1	8
15. Newcastle United FC	3	4	7
16. Tottenham Hotspur FC	5	2	7
17. Wigan Athletic FC	2	4	6
18. Stoke City FC	6	0	6
19. Everton FC	1	4	5
20. Wolverhampton	4	1	5
<b>TOTAL</b>	<b>115</b>	<b>58</b>	<b>173</b>

61 countries of origin  
14.3 expatriates per club  
26.9 years: age of expatriates



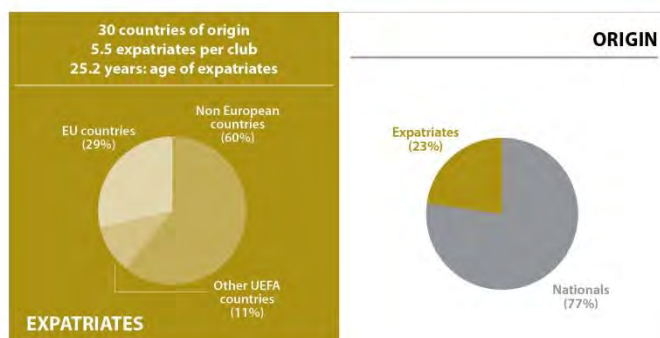
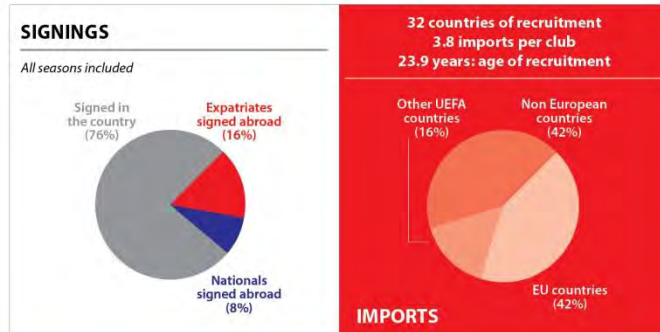
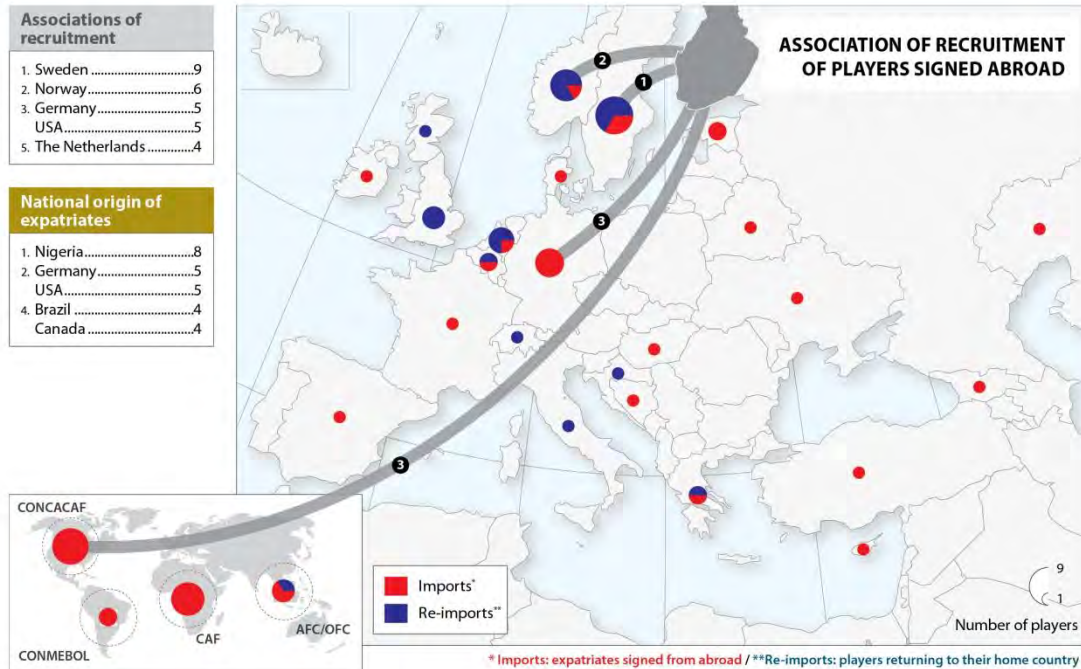
## ORIGIN





# FINLAND

12 clubs / 291 players / 24.3 players per club



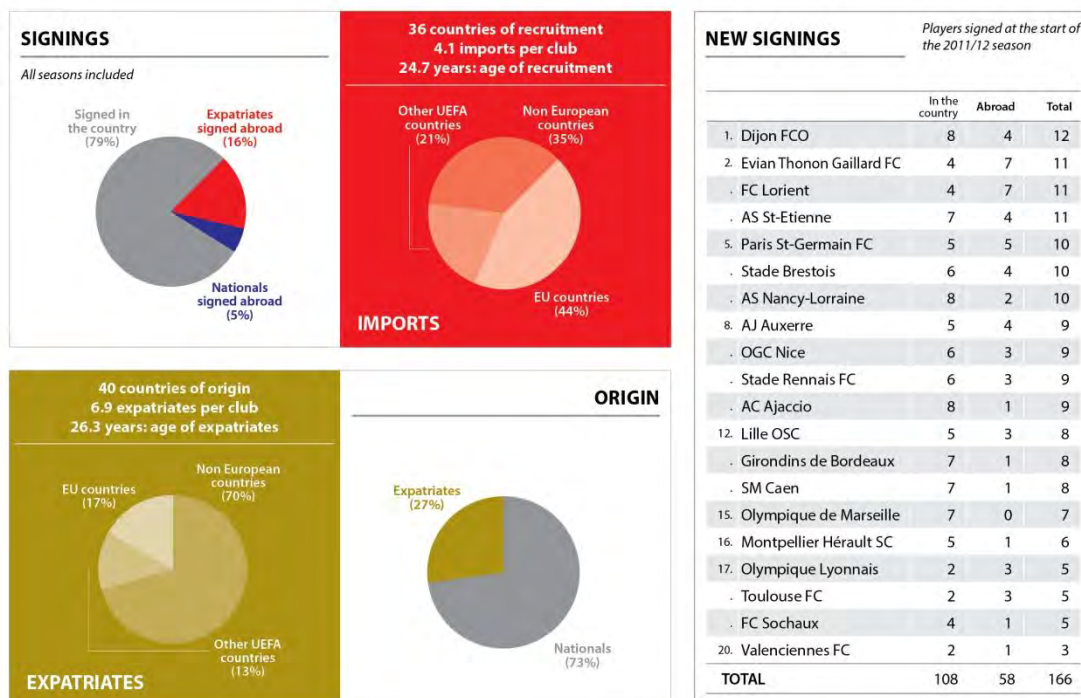
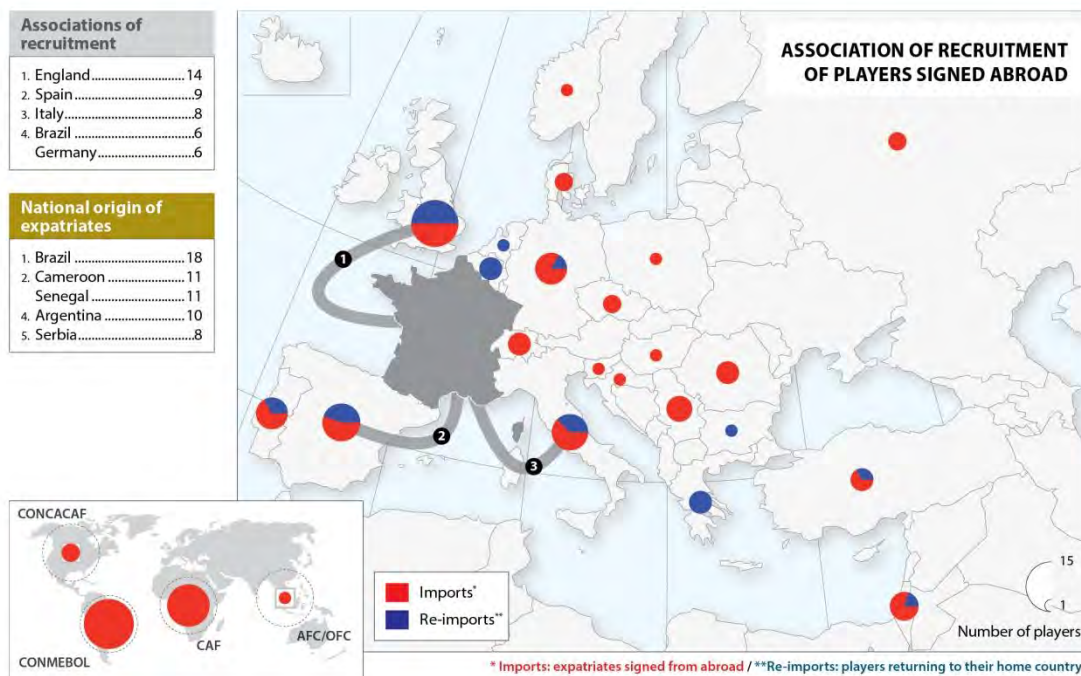
**NEW SIGNINGS**

Players signed at the start of the 2011 season

	In the country	Abroad	Total
1. Rovaniemi PS	12	6	18
2. IFK Mariehamn	10	5	15
Myllykosken Pallo-47	11	4	15
4. Valkeakosken Haka	13	1	14
5. VPS Vaasa	10	2	12
6. FC Inter Turku	4	6	10
HJK Helsinki	9	1	10
8. Kuopio PS	3	4	7
FC Honka	5	2	7
10. JJK Jyväskylä	5	1	6
11. FC TPS Turku	2	3	5
FF Jaro	4	1	5
<b>TOTAL</b>	<b>88</b>	<b>36</b>	<b>124</b>

## FRANCE

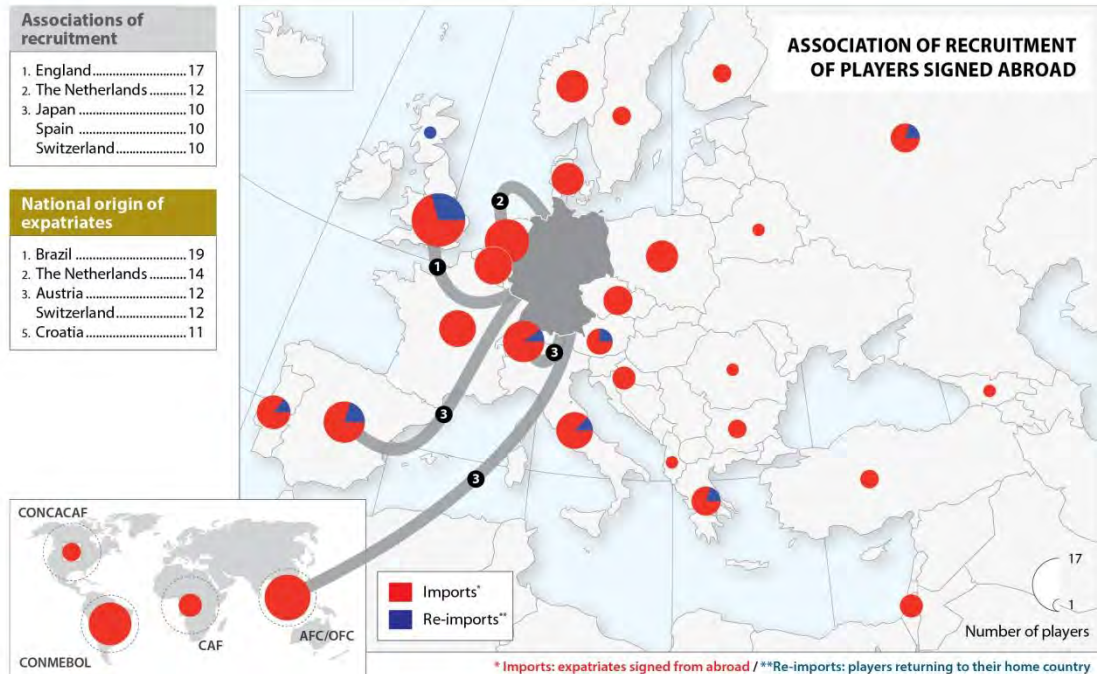
20 clubs / 507 players / 25.4 players per club





# GERMANY

18 clubs / 455 players / 25.3 players per club

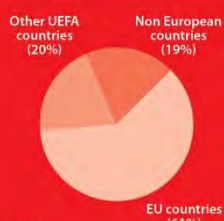


## SIGNINGS

All seasons included



39 countries of recruitment  
8.4 imports per club  
24.3 years: age of recruitment

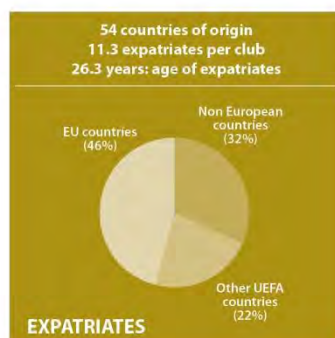


## IMPORTS

## NEW SIGNINGS

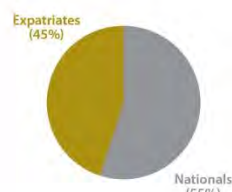
Players signed at the start of the 2011/12 season

	In the country	Abroad	Total
1. VfL Wolfsburg	6	10	16
2. Borussia M'gladbach	3	7	10
3. Hamburger SV	4	6	10
4. TSG 1899 Hoffenheim	5	4	9
5. 1. FSV Mainz 05	6	3	9
6. 1. FC Köln	2	6	8
7. FC Bayern München	5	3	8
8. FC Augsburg	6	2	8
9. FC Schalke 04	6	2	8
10. 1. FC Nürnberg	5	2	7
11. Bayer 04 Leverkusen	6	1	7
12. 1. FC Kaiserslautern	2	4	6
13. VfB Stuttgart	3	3	6
14. Hannover 96	1	4	5
15. SC Freiburg	2	3	5
16. SV Werder Bremen	2	3	5
17. Borussia Dortmund	4	1	5
18. Hertha BSC Berlin	5	0	5
<b>TOTAL</b>	<b>73</b>	<b>64</b>	<b>137</b>



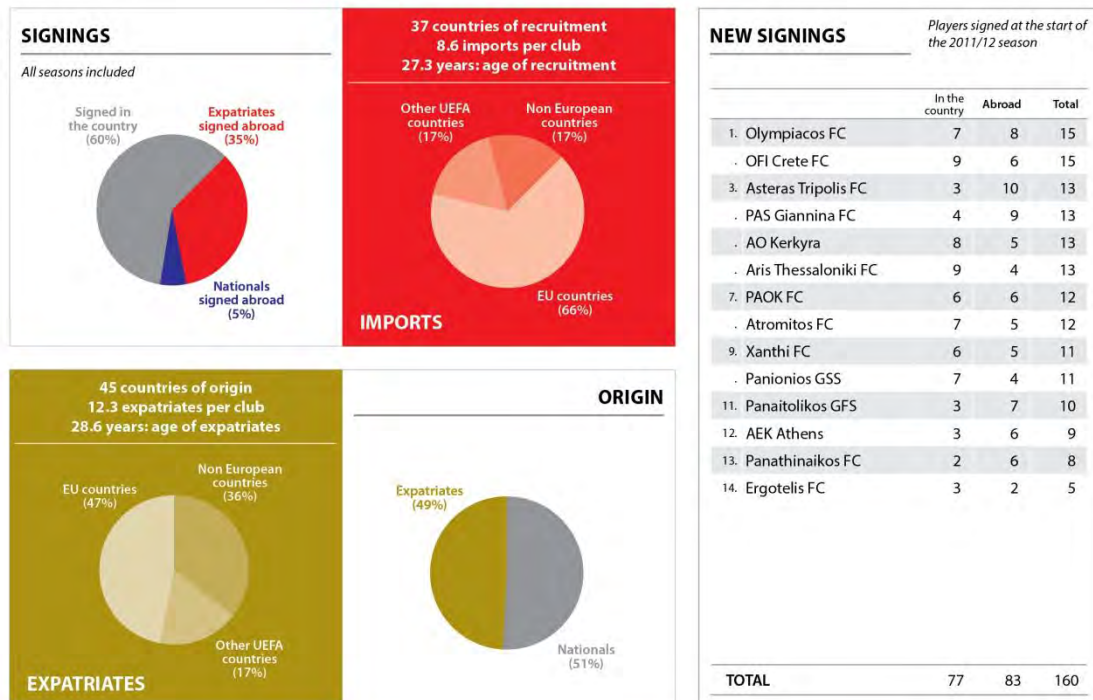
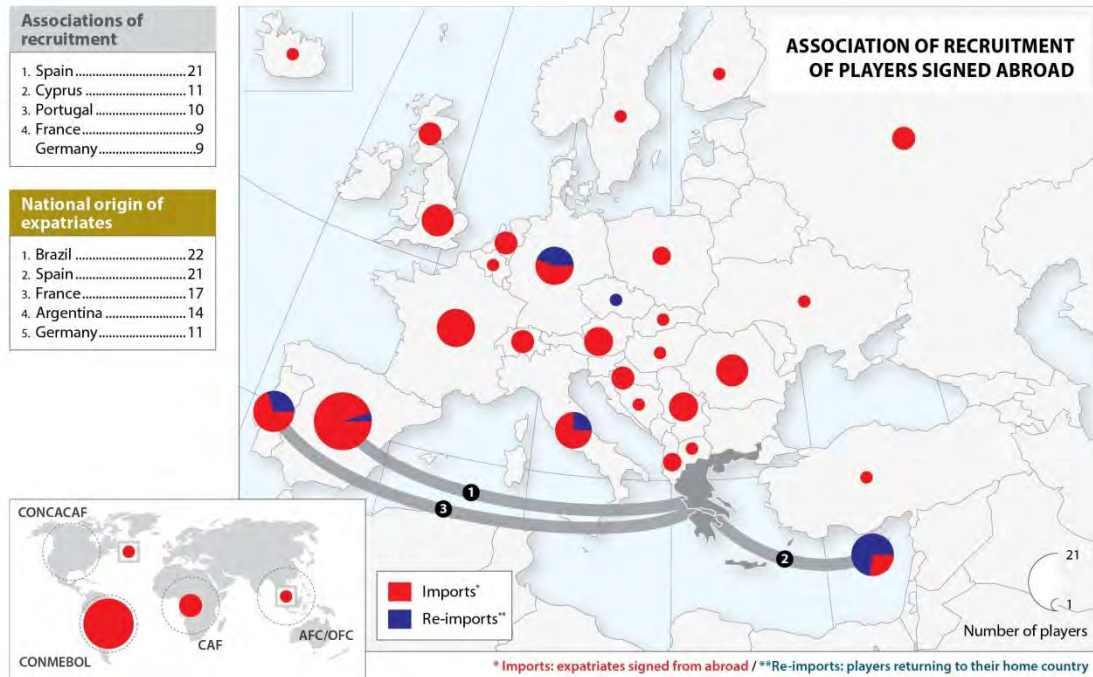
## EXPATRIATES

## ORIGIN



# GREECE

14 clubs / 350 players / 25.0 players per club





# HUNGARY

16 clubs / 416 players / 26.0 players per club

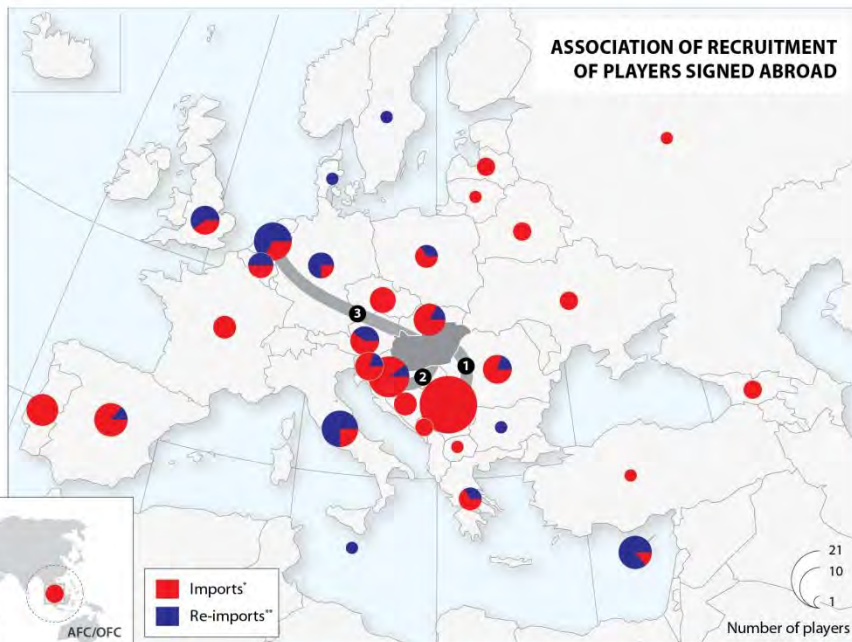
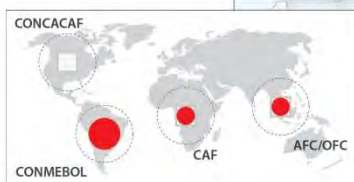


## Associations of recruitment

1. Serbia.....	21
2. Croatia.....	10
3. The Netherlands.....	9
4. Italy.....	8
5. Cyprus.....	7

## National origin of expatriates

1. Serbia.....	28
2. Brazil.....	10
Croatia.....	10
4. Montenegro.....	9
Slovakia.....	9



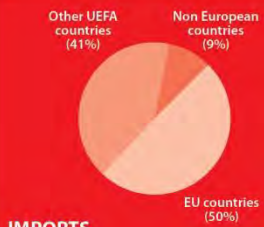
\* Imports: expatriates signed from abroad / \*\* Re-imports: players returning to their home country

## SIGNINGS

All seasons included



36 countries of recruitment  
6.7 imports per club  
25.4 years: age of recruitment



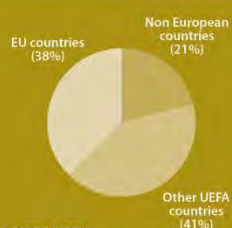
IMPORTS

## NEW SIGNINGS

Players signed at the start of the 2011/12 season

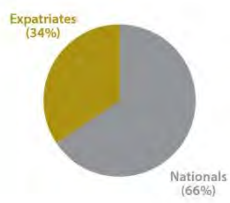
	In the country	Abroad	Total
1. BFC Siófok	15	3	18
2. Budapest Honvéd FC	6	9	15
3. Zalaegerszegi TE	7	8	15
4. Pécsi MFC	12	3	15
5. Ferencvárosi TC	7	6	13
6. Vasas SC	8	5	13
7. Kaposvári Rákóczi FC	7	5	12
8. Kecskeméti TE	9	3	12
9. Videoton FC	1	10	11
10. Diósgyőri VTK	5	6	11
11. Lombard-Pápa TFC	9	1	10
12. Debreceni VSC	4	5	9
13. Szombathelyi Haladás	5	4	9
14. Újpest FC	5	3	8
15. Győri ETO FC	5	1	6
16. Paks SE	2	1	3
<b>TOTAL</b>	<b>107</b>	<b>73</b>	<b>180</b>

42 countries of origin  
8.9 expatriates per club  
26.5 years: age of expatriates



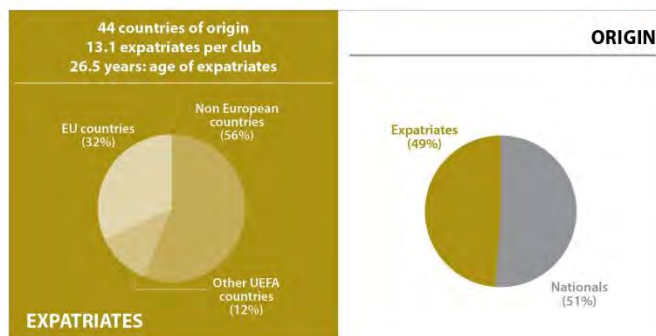
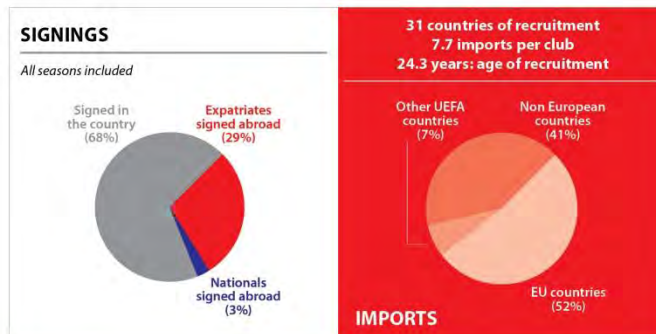
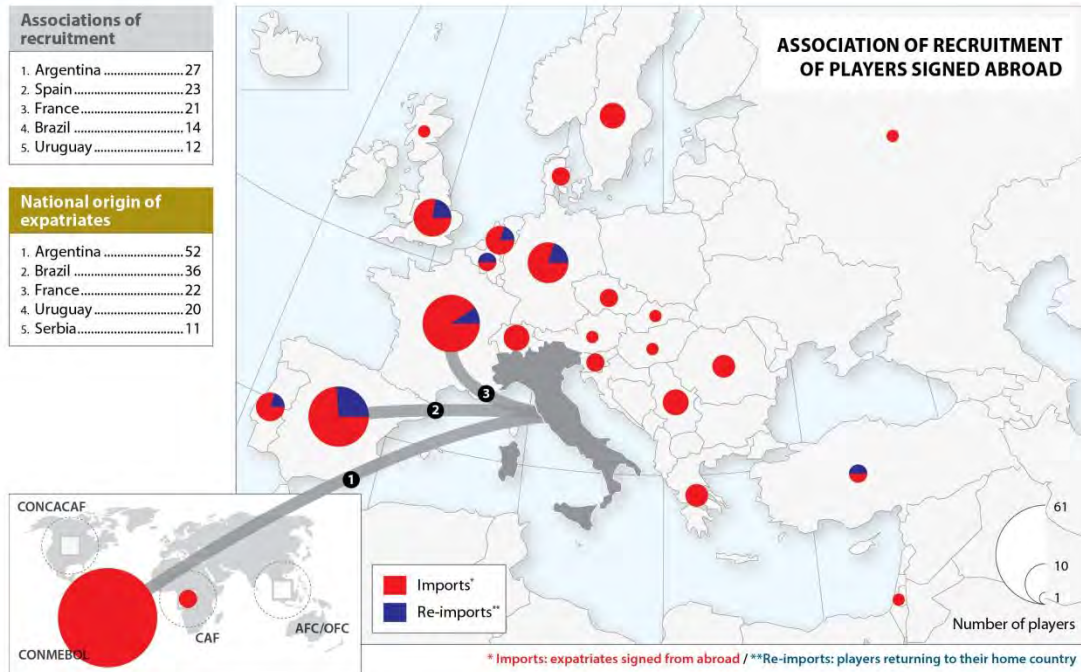
EXPATRIATES

## ORIGIN



# ITALY

20 clubs / 538 players / 26.9 players per club



## NEW SIGNINGS

Players signed at the start of the 2011/12 season

	In the country	Abroad	Total
1. Bologna FC	14	3	17
2. Palermo US	9	7	16
3. AC Cesena	14	2	16
4. FC Genoa 1893	7	8	15
5. AS Roma	2	12	14
6. AC Chievo Verona	8	5	13
7. FC Parma	10	3	13
8. SSC Napoli	10	3	13
9. AC Siena	11	2	13
10. US Lecce	12	1	13
11. Novara Calcio	13	0	13
12. Udinese Calcio	4	8	12
13. AC Fiorentina	7	5	12
14. Calcio Catania	8	4	12
15. Juventus FC	8	4	12
16. Atalanta Bergamo	10	2	12
17. S.S. Lazio	4	7	11
18. Internazionale Milano	6	5	11
19. Cagliari Calcio	3	7	10
20. Milan AC	5	3	8
<b>TOTAL</b>	<b>165</b>	<b>91</b>	<b>256</b>



# POLAND

16 clubs / 387 players / 24.2 players per club

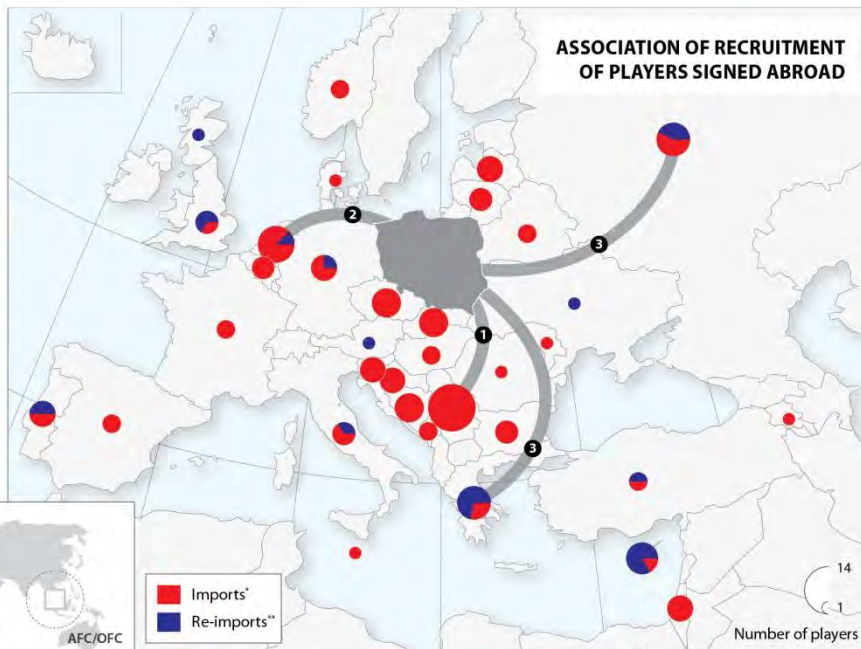


## Associations of recruitment

1. Serbia.....14
2. The Netherlands.....8
3. Greece.....7
4. Russia.....7
5. Cyprus.....6

## National origin of expatriates

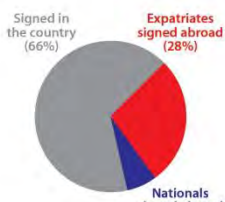
1. Serbia.....16
2. Slovakia.....15
3. Brazil.....9
4. Czech Republic.....8
5. Croatia.....7



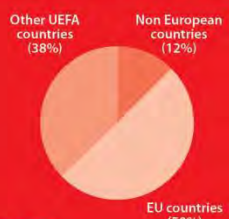
\* Imports: expatriates signed from abroad / \*\* Re-imports: players returning to their home country

## SIGNINGS

All seasons included



41 countries of recruitment  
6.7 imports per club  
25.4 years: age of recruitment



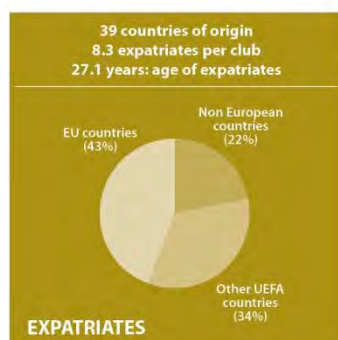
## IMPORTS

## NEW SIGNINGS

Players signed at the start of the 2011/12 season

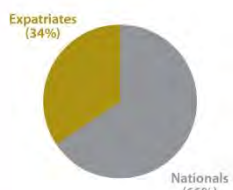
	In the country	Abroad	Total
1. MKS Cracovia	7	8	15
2. Jagiellonia Bialystok	7	7	14
3. LKS Lodz	10	3	13
4. KSP Polonia Warszawa	6	6	12
5. Podbeskidzie Bielsko-Biala	7	4	11
6. Korona Kielce	11	0	11
7. Wisla Kraków	0	10	10
8. Ruch Chorzów	6	3	9
9. Zaglebie Lubin	6	3	9
10. KP Legia Warszawa	3	5	8
11. RTS Widzew Łódź	3	5	8
12. KS Lechia Gdansk	4	4	8
13. Górnik Zabrze	5	3	8
14. WKS Slask Wroclaw	5	3	8
15. GKS Belchatów	7	1	8
16. KKS Lech Poznan	3	3	6

**TOTAL** 90 68 158



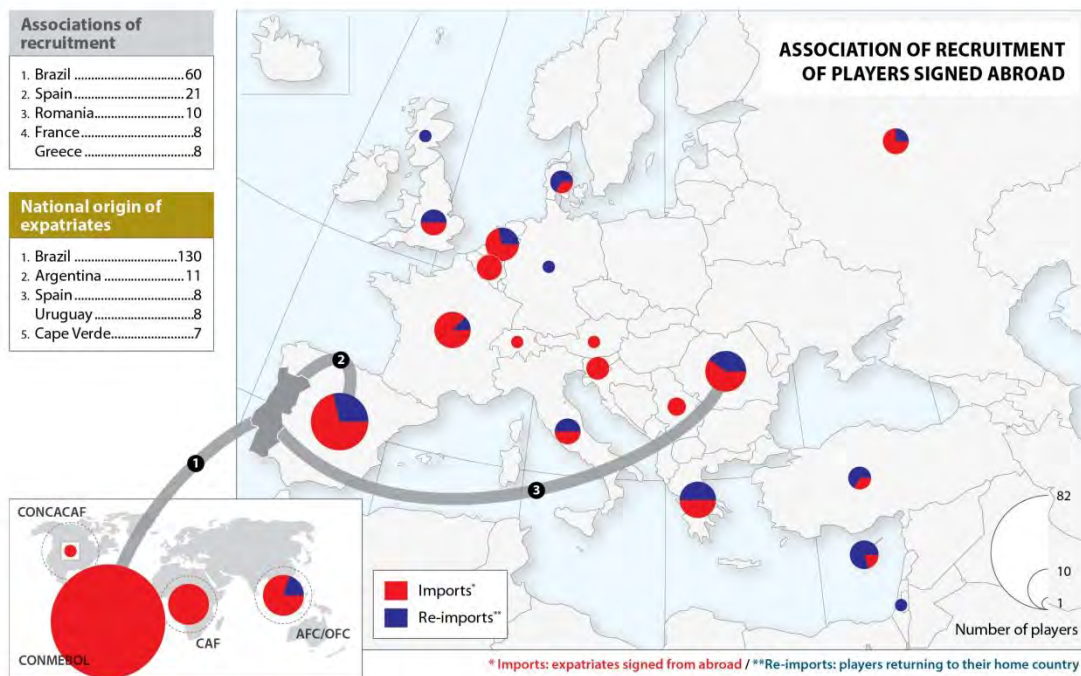
## EXPATRIATES

## ORIGIN



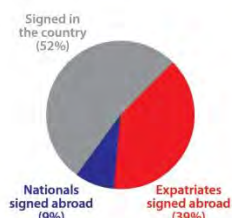
# PORTUGAL

16 clubs / 408 players / 25.5 players per club

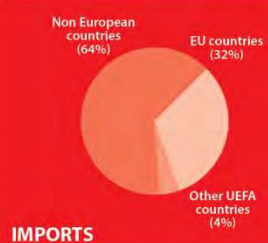


## SIGNINGS

All seasons included



38 countries of recruitment  
9.9 imports per club  
24.2 years: age of recruitment

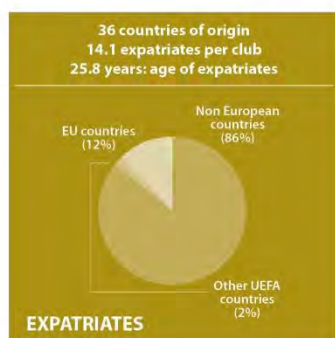


## NEW SIGNINGS

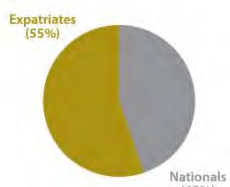
Players signed at the start of the 2011/12 season

	In the country	Abroad	Total
1. UD Leiria	8	11	19
2. SC de Portugal	2	14	16
3. SL Benfica	4	12	16
4. FC Paços de Ferreira	9	7	16
5. SC Braga	9	6	15
6. SC Beira-Mar	10	5	15
7. CD Feirense	8	6	14
8. SC Olhanense	9	5	14
9. Académica de Coimbra	8	5	13
10. Vitória FC	10	2	12
11. Vitória de Guimarães	3	8	11
12. Gil Vicente FC	7	4	11
13. Rio Ave FC	7	4	11
14. CS Marítimo	5	4	9
15. CD Nacional	3	5	8
16. FC Porto	3	3	6

**TOTAL** 105 101 206



## ORIGIN





# REP. OF IRELAND

10 clubs / 259 players / 25.9 players per club

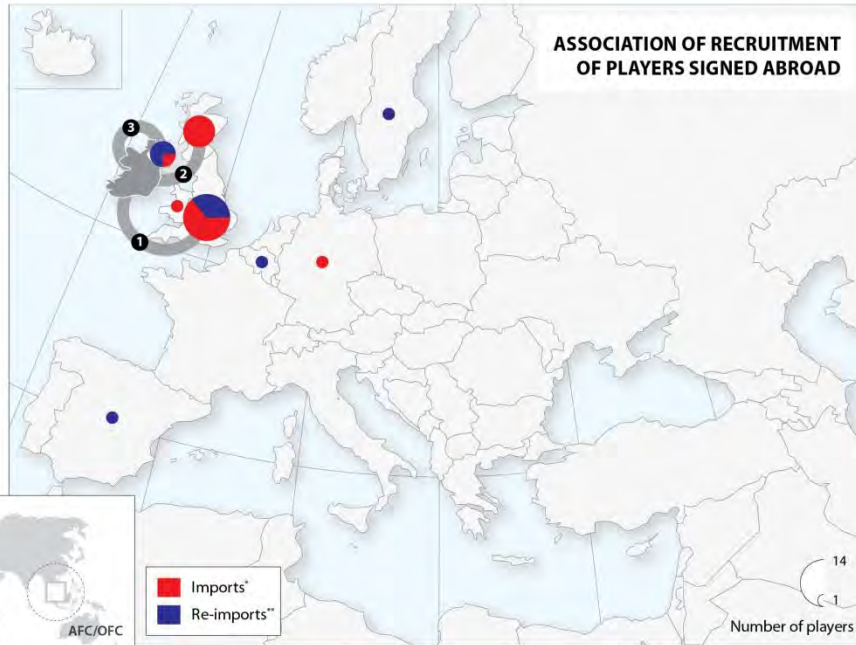


## Associations of recruitment

1. England.....	14
2. Scotland.....	6
3. North. Ireland.....	4
4. USA.....	2
5. Belgium.....	1

## National origin of expatriates

1. England.....	19
2. North. Ireland.....	12
3. Scotland.....	6
4. Rep. of Korea.....	2
5. Australia.....	1



## ASSOCIATION OF RECRUITMENT OF PLAYERS SIGNED ABROAD

Imports\*  
Re-imports\*\*

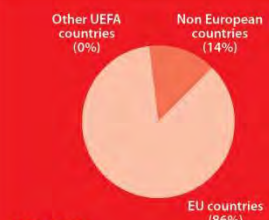
\* Imports: expatriates signed from abroad / \*\* Re-imports: players returning to their home country

## SIGNINGS

All seasons included



7 countries of recruitment  
2.1 imports per club  
25.0 years: age of recruitment



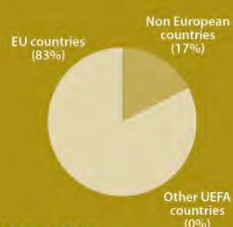
IMPORTS

## NEW SIGNINGS

Players signed at the start of the 2011 season

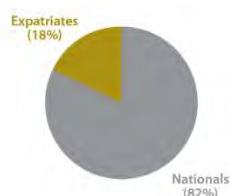
	In the country	Abroad	Total
1. Drogheda United FC	19	2	21
2. Shamrock Rovers FC	9	4	13
3. St Patrick's Athletic FC	10	1	11
4. Bohemian FC	7	2	9
5. Derry City FC	7	2	9
6. Galway United FC	8	1	9
7. Sligo Rovers FC	6	1	7
8. Dundalk FC	7	0	7
9. UC Dublin AFC	2	0	2
10. Bray Wanderers AFC	1	0	1

11 countries of origin  
4.6 expatriates per club  
26.7 years: age of expatriates



EXPATRIATES

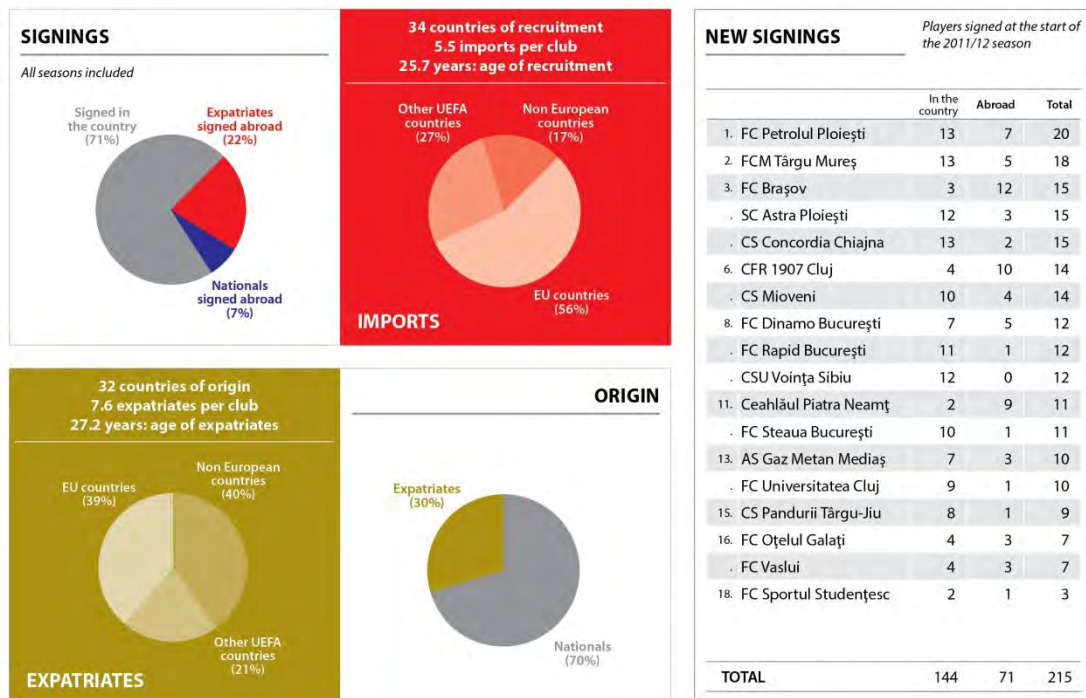
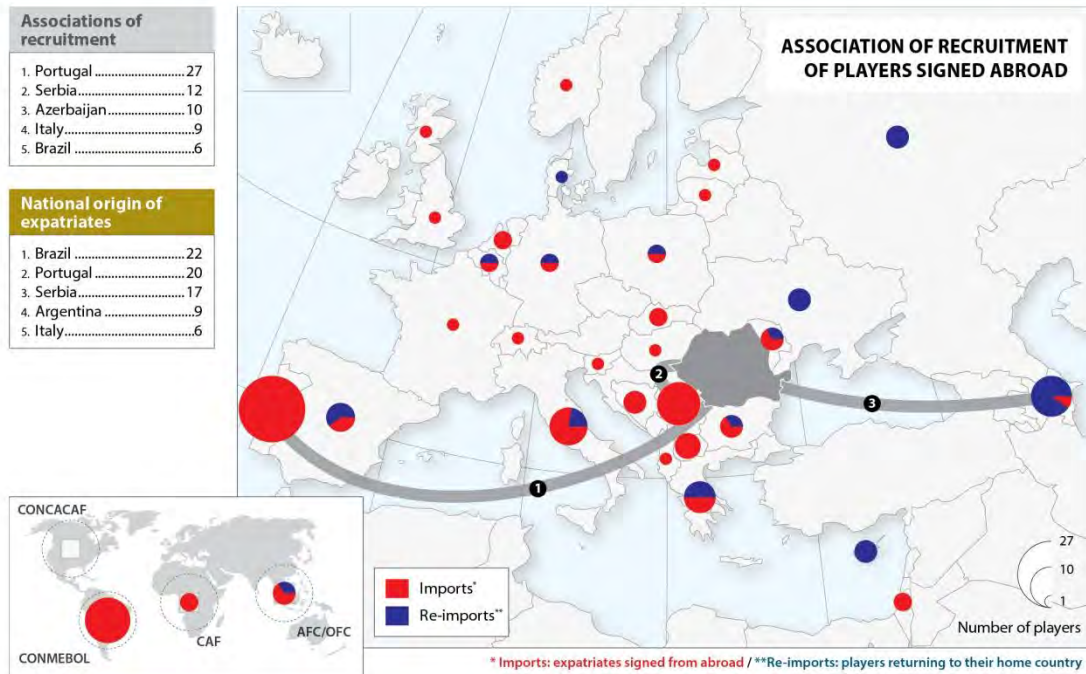
## ORIGIN



TOTAL 76 13 89

# ROMANIA

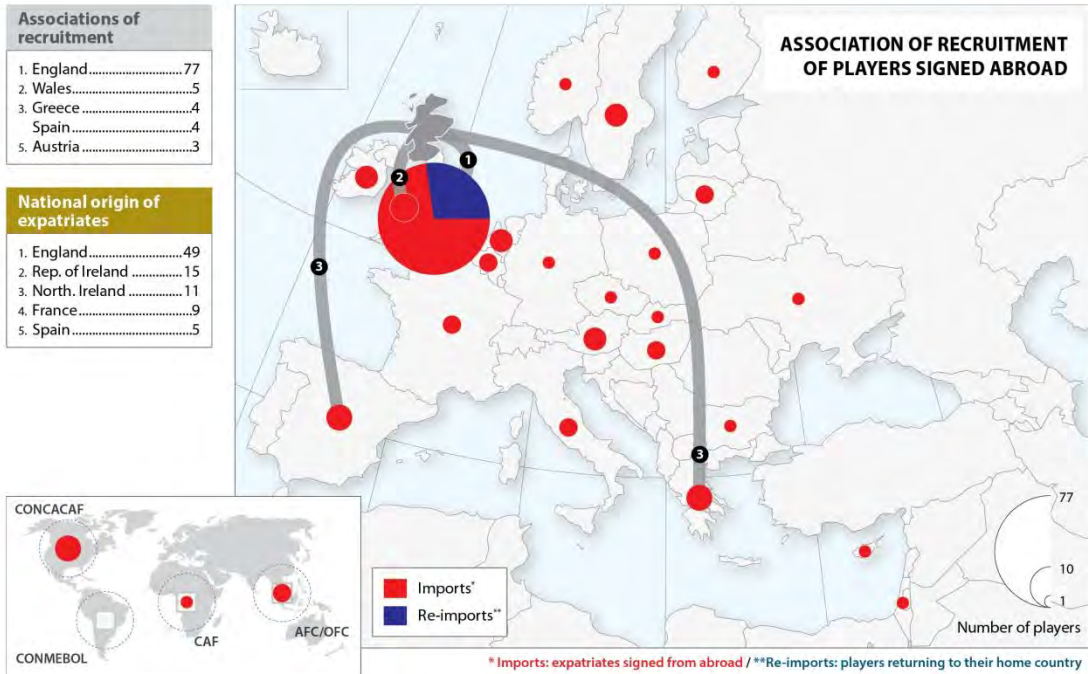
18 clubs / 462 players / 25.7 players per club





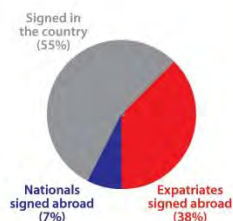
# SCOTLAND

12 clubs / 286 players / 23.8 players per club

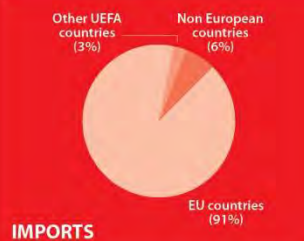


## SIGNINGS

All seasons included



29 countries of recruitment  
9.0 imports per club  
25.1 years: age of recruitment



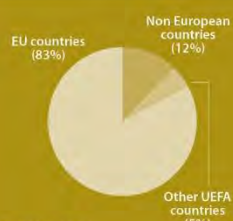
## NEW SIGNINGS

Players signed at the start of the 2011/12 season

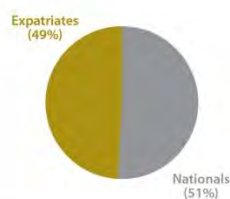
	In the country	Abroad	Total
1. Kilmarnock FC	2	11	13
2. Hibernian FC	3	9	12
3. Aberdeen FC	2	9	11
. Dunfermline Athletic	10	1	11
5. Rangers FC	3	7	10
. Invern. Caledonian Thistle	4	6	10
. Saint Johnstone FC	4	6	10
. Saint Mirren FC	4	6	10
9. Celtic FC	0	7	7
. Dundee United FC	5	2	7
. Heart of Midlothian FC	7	0	7
12. Motherwell FC	3	2	5

**TOTAL** 47 66 113

37 countries of origin  
11.7 expatriates per club  
26.1 years: age of expatriates

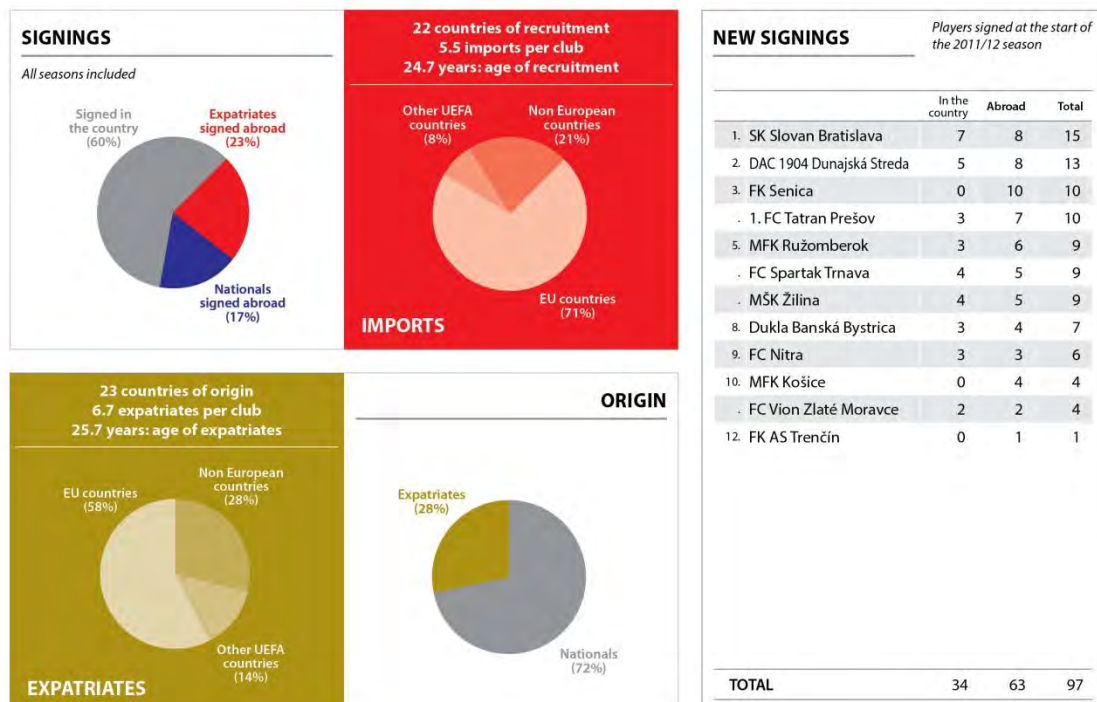
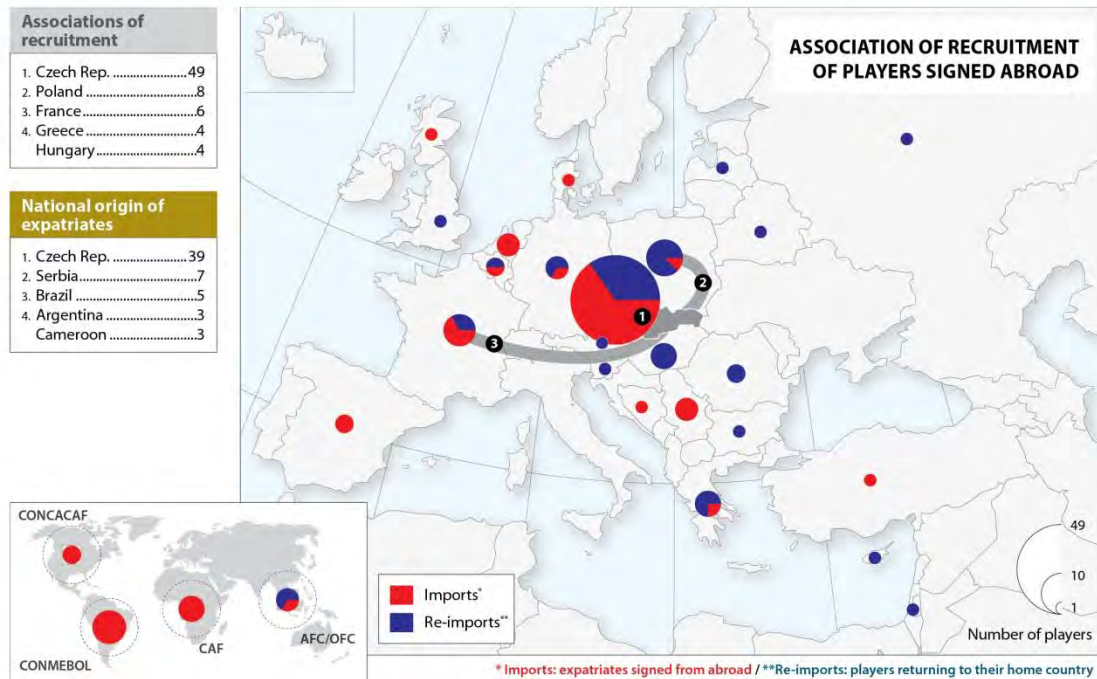


## ORIGIN



## SLOVAKIA

12 clubs / 284 players / 23.7 players per club





## SLOVENIA

10 clubs / 254 players / 25.4 players per club

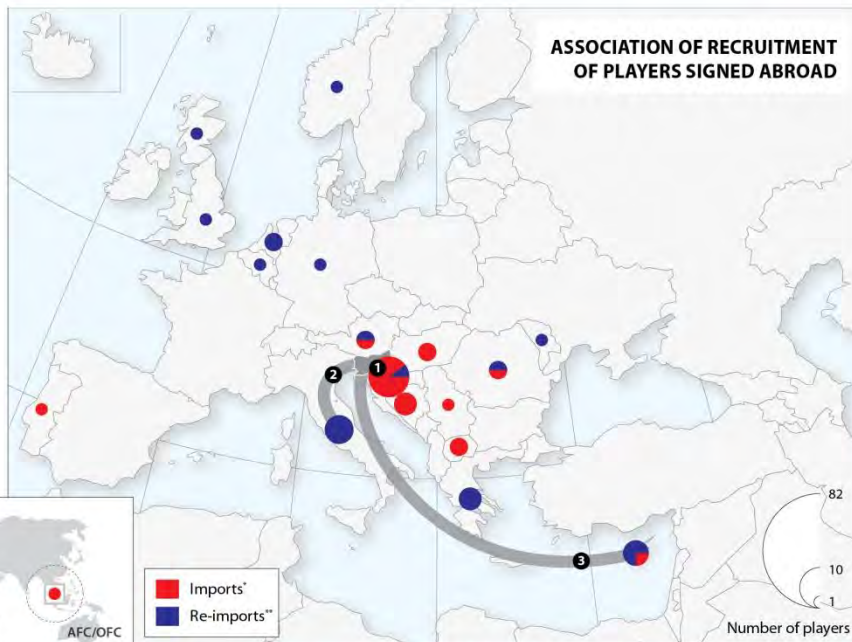
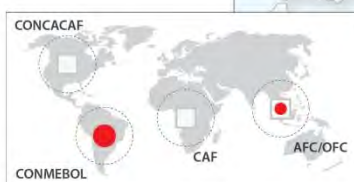


## Associations of recruitment

1. Croatia	10
2. Italy	5
3. Cyprus	4
4. Bosnia Herzeg	3
Greece	3

## National origin of expatriates

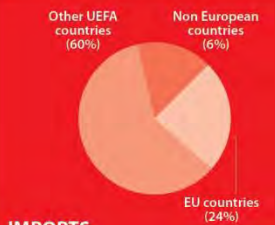
1. Croatia	11
2. Bosnia Herzeg	5
Brazil	5
Serbia	5
5. Macedonia FYR	3



\* Imports: expatriates signed from abroad / \*\* Re-imports: players returning to their home country

## SIGNINGS

All seasons included

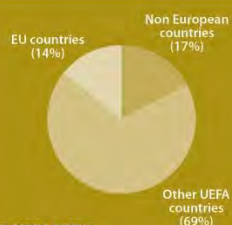
12 countries of recruitment  
2.5 imports per club  
24.6 years: age of recruitment

## IMPORTS

## NEW SIGNINGS

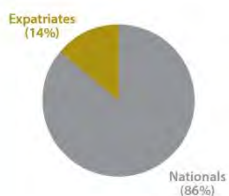
Players signed at the start of the 2011/12 season

	In the country	Abroad	Total
1. FC Koper	9	7	16
2. NK Rudar Velenje	11	2	13
3. NK Nafta	7	4	11
ND Gorica	8	3	11
ND Mura 05	9	2	11
NK Celje	9	2	11
7. NK Maribor	6	4	10
NK Olimpija Ljubljana	6	4	10
NK Domžale	9	1	10
10. ND Triglav	6	0	6

9 countries of origin  
3.5 expatriates per club  
26.2 years: age of expatriates

## EXPATRIATES

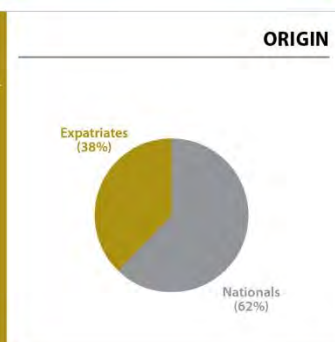
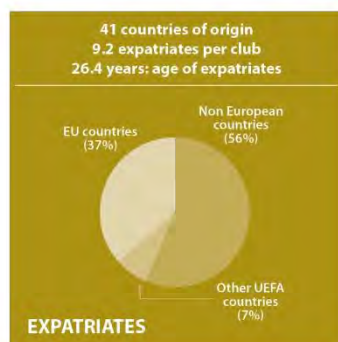
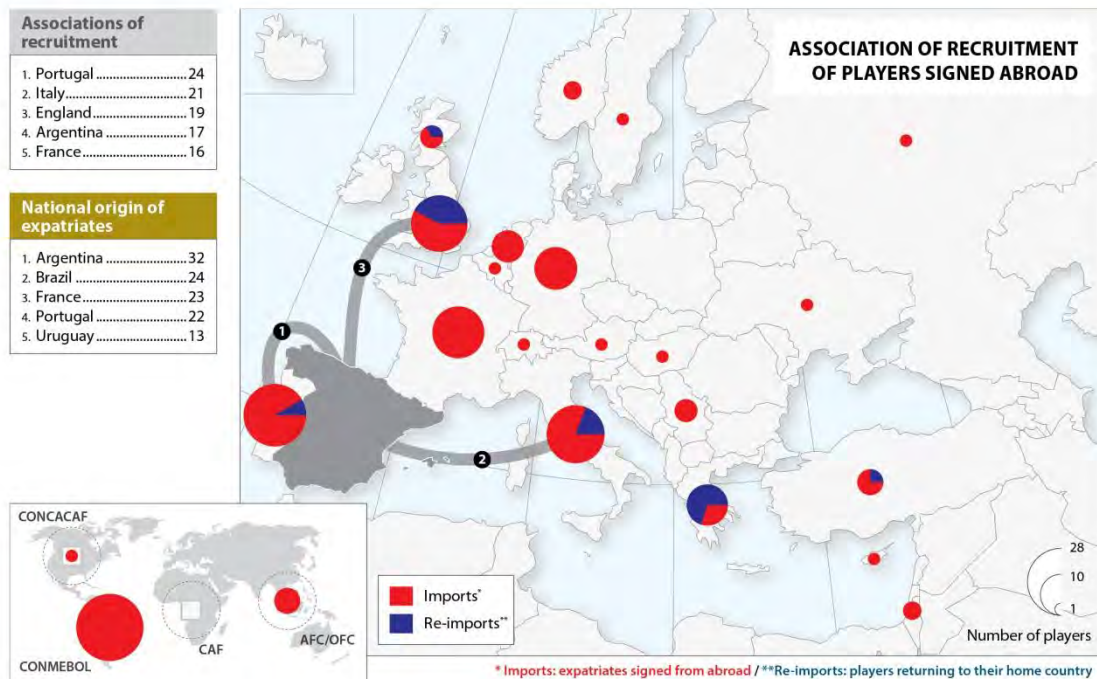
## ORIGIN



TOTAL 80 29 109

# SPAIN

20 clubs / 486 players / 24.3 players per club



**NEW SIGNINGS**

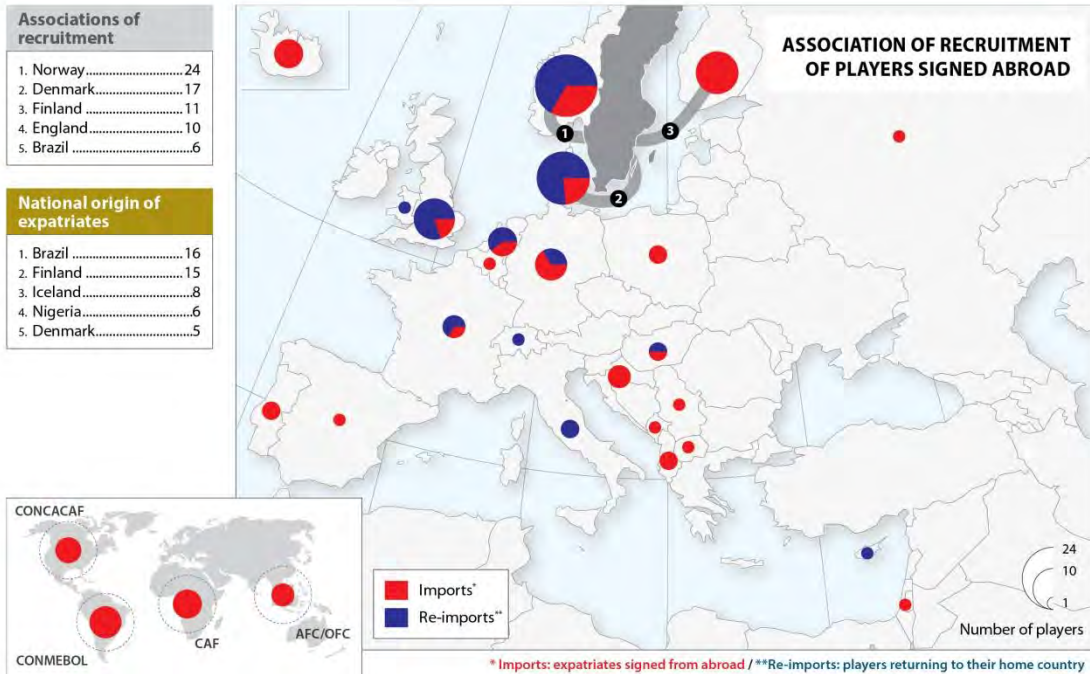
Players signed at the start of the 2011/12 season

	In the country	Abroad	Total
1. Málaga CF	8	8	16
2. Granada CF	4	11	15
3. Real Zaragoza	4	9	13
4. Getafe CF	9	4	13
5. Club Atlético de Madrid	4	8	12
6. CA Osasuna	9	2	11
7. Valencia CF	6	4	10
8. Rayo Vallecano	7	3	10
9. Real Betis Balompie	8	2	10
10. RCD Mallorca	3	6	9
11. Sevilla FC	4	4	8
12. Levante UD	5	3	8
13. RCD Espanyol	4	3	7
14. Villarreal CF	4	3	7
15. Real Madrid CF	1	4	5
16. Racing Santander	5	0	5
17. Real Sociedad	0	4	4
18. Real Sporting de Gijón	2	2	4
19. FC Barcelona	0	3	3
20. Athletic Club Bilbao	3	0	3
<b>TOTAL</b>	<b>90</b>	<b>83</b>	<b>173</b>



# SWEDEN

16 clubs / 381 players / 23.8 players per club

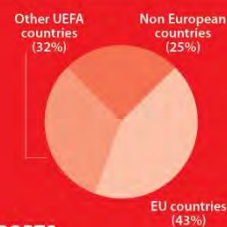


## SIGNINGS

All seasons included



30 countries of recruitment  
4.5 imports per club  
24.6 years: age of recruitment



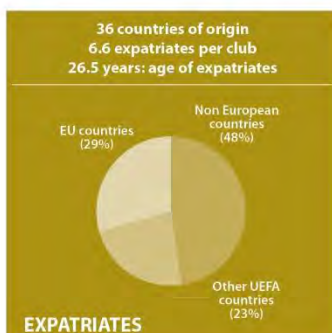
## IMPORTS

## NEW SIGNINGS

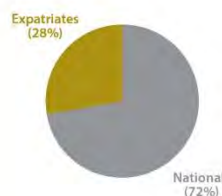
Players signed at the start of the 2011/12 season

	In the country	Abroad	Total
1. Örebro SK	7	6	13
2. IFK Norrköping	7	5	12
3. Syrianska FC	7	5	12
4. Helsingborgs IF	2	5	7
5. Djurgårdens IF	2	4	6
6. GAIS Göteborg	5	1	6
7. BK Häcken	2	3	5
8. Kalmar FF	2	3	5
9. IF Elfsborg	1	3	4
10. IFK Göteborg	2	2	4
11. Mjällby AIF	3	1	4
12. Trelleborgs FF	3	1	4
13. Malmö FF	4	0	4
14. AIK Solna	1	2	3
15. Halmstads BK	1	2	3
16. Gefle IF	2	1	3

**TOTAL** 51 44 95

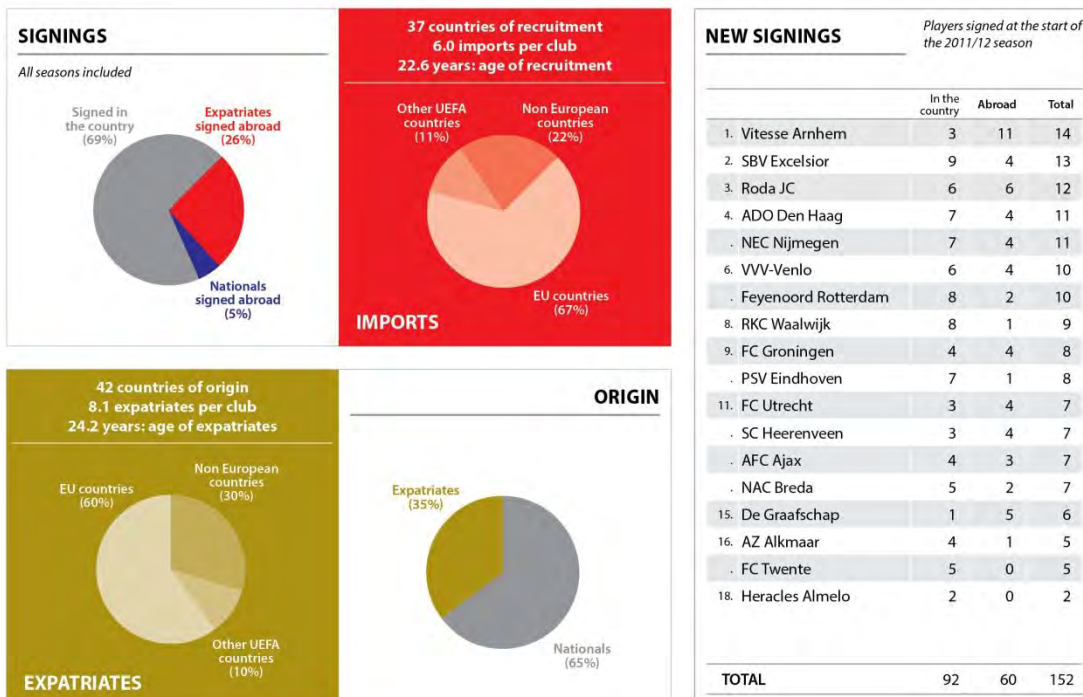
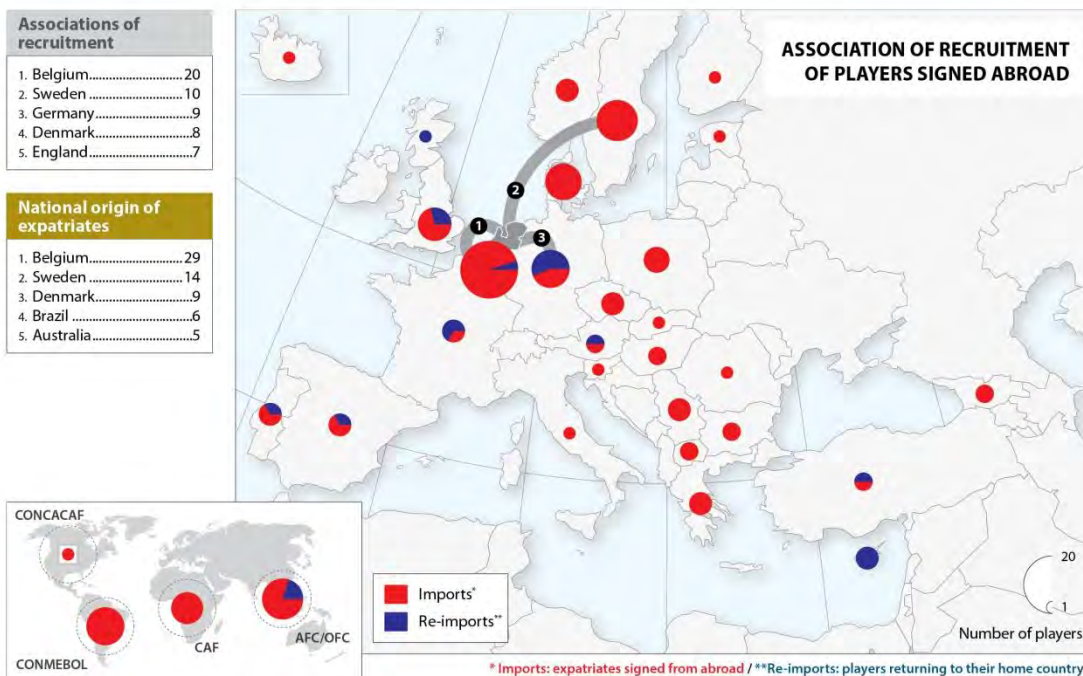


## ORIGIN



# THE NETHERLANDS

18 clubs / 415 players / 23.1 players per club





**ANNEX 6: DESCRIPTION OF THE TRANSFER MATCHING SYSTEM (TMS) of FIFA**

TMS is a solution that was put forward by the Task Force on “For the Good of the Game”, which was set up in 2005 with the objective “to transform the international transfer process”. TMS was proposed during the 2007 FIFA Congress and was phased in between 2008 and 2009. A great deal of training work, directly carried out by FIFA, was needed in each user association.

Since 1<sup>st</sup> October 2010, using the TMS has been a requirement for all international transfers of male professional players playing 11-a-side football. It should also be noted here that by “professional player”, FIFA means “any player contractually bound to his club and who earns more than the costs he incurs to play football”. That means that among the transfers listed in the TMS system, some concern players who play in the lower divisions than the recognised professional divisions. Since that date, only electronic International Transfer Certificates (ITC) have been accepted for this type of transfer. A complete revision of TMS is underway for implementation in October 2012.

<b>TMS is</b>	<b>TMS is not</b>
Applicable to international transfers of professionals	Applicable to domestic or amateur transfers
A safeguard of key FIFA regulations: <ul style="list-style-type: none"> <li>Protecting minors</li> <li>Adhering to transfer registration periods</li> <li>Enforcing suspensions (association, club, agent)</li> </ul>	A safeguard of all FIFA regulations: <ul style="list-style-type: none"> <li>Solidarity contributions and training fees can be declared, but are not automatically calculated</li> </ul>
The source for all ITC for professional players	A negotiating tool

**Description of the role and missions assigned to TMS**

[Source: FIFA]

All the stakeholders involved in transfer operations are included in this system: clubs, national federations, FIFA services and the company managing the TMS (TMS GmbH).

TMS<sup>453</sup> is intended to:

- Ensure that the football authorities have all detailed information on international transfers available
- Promote transparency for every transaction
- Increase the credibility of the entire transfer system.

In total, more than thirty pieces of information have to be supplied for each transfer, especially dealing with the player, the club, the payments – and, more particularly, the amount, the payment deadlines, as well as bank details – and even solidarity contributions owed to previous clubs. All the information is directly provided by professional clubs. This information must also be accompanied by corresponding documentary evidence, such as electronic copies of player identification documents, his new employment contract, as well as the transfer contract signed between his former club and his new club.

**Key figures for 2011:**

- 11 565 transfers registered 1<sup>st</sup> -31<sup>st</sup> December.
- 75 000 players in the database.
- 208 associations.
- 5 000 clubs (none in Oceania; 2 304 in Europe; 917 in the African Confederation; 807 in the South American Confederation; 354 in the North American Confederation; and 799 in Asia)
- \$3bn worth of transactions.
- 1 500 requests for international transfers for minors.

<sup>453</sup> Meeting with FIFA on 24<sup>th</sup> February 2012 and “Global Transfer Market 2011”, FIFA TMS GmbH, 2012.





## ANNEX 7: THE TRANSFER MARKET: A VERY CONCENTRATED MARKET

At this stage of the study, we could provide two illustrations which would highlight this phenomenon of concentration: the very high concentration of transfer fees paid in a limited number of transfers (1) and the significant percentage represented by the richest clubs in the European total and by their respective championships (2).

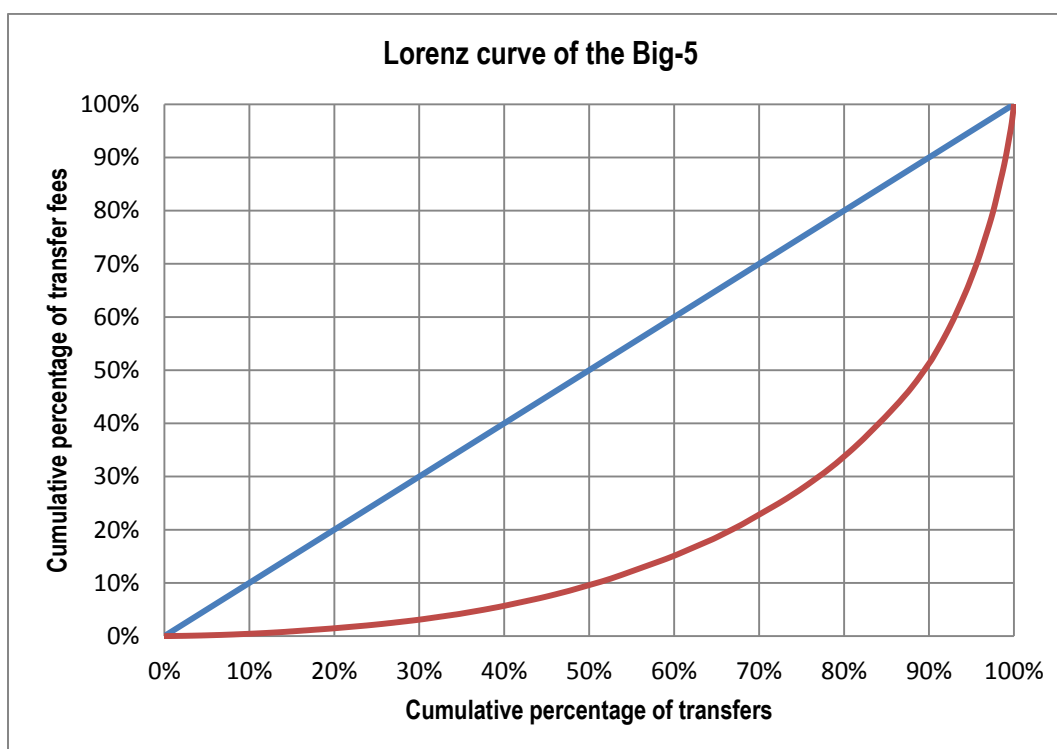
### 1. The concentration of transfer fees in a limited number of transfers

The transfer market for European footballers is marked by a very high concentration of transfer fees in a limited number of transfers. This is also related to the analysis of segmentation made in the chapter devoted to the economics of transfers.

To illustrate our words, we have drawn up Lorenz curves, which allow us to demonstrate this concentration. This type of curve is used to measure the distribution of statistical data, in order to assess equality or, on the contrary, inequality.

The graph below represents the breakdown between the cumulative percentage of transfers made by the five major European leagues (England, France, Germany, Italy and Spain) and the cumulative percentage of transfer spend by clubs from the five leagues; and then the same distribution for each of these five countries. This allows us to show the very high concentration which prevails there:

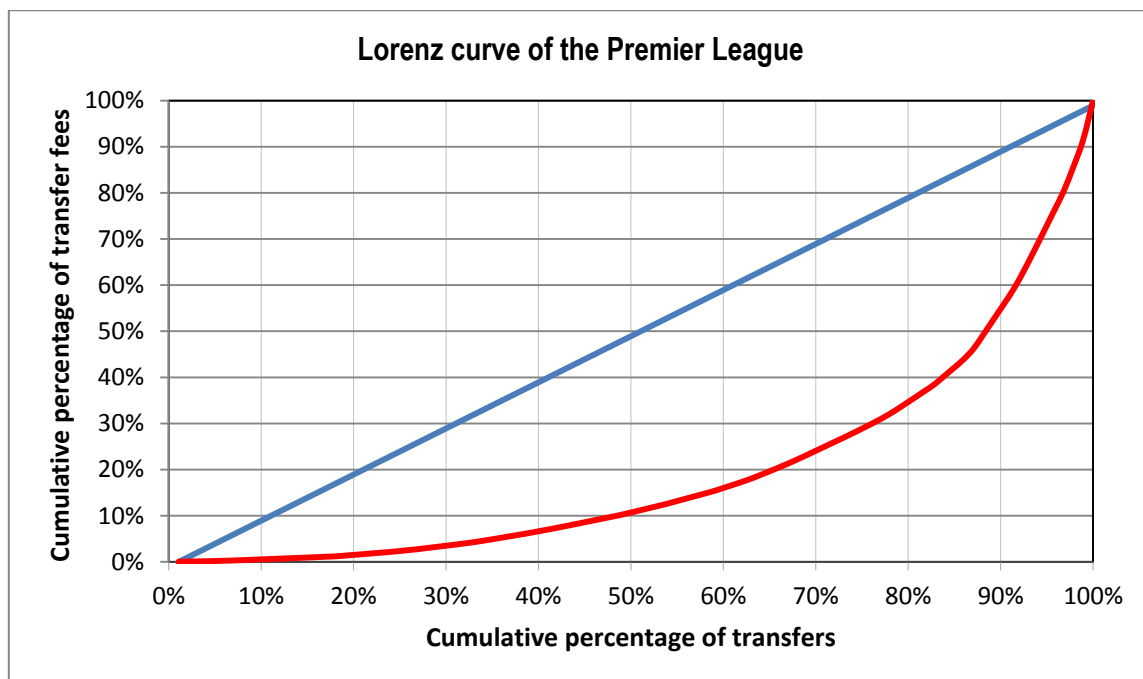
- Across the Big-5, 10% of the transfers made in the context of a breach of contract and payment of a fee by the club that recruits the player generate about 50% of the total sum of transfer fees paid by all the clubs.
- Taken individually, the data varies from one league to another, but all are illustrative of a certain concentration. In these countries, the 10% of the highest fees generate:
  - 45% of the transfer fees paid by clubs in the Premier League, the Bundesliga and Série A.
  - 50% of the transfer fees paid by clubs in Ligue 1 and the Liga.



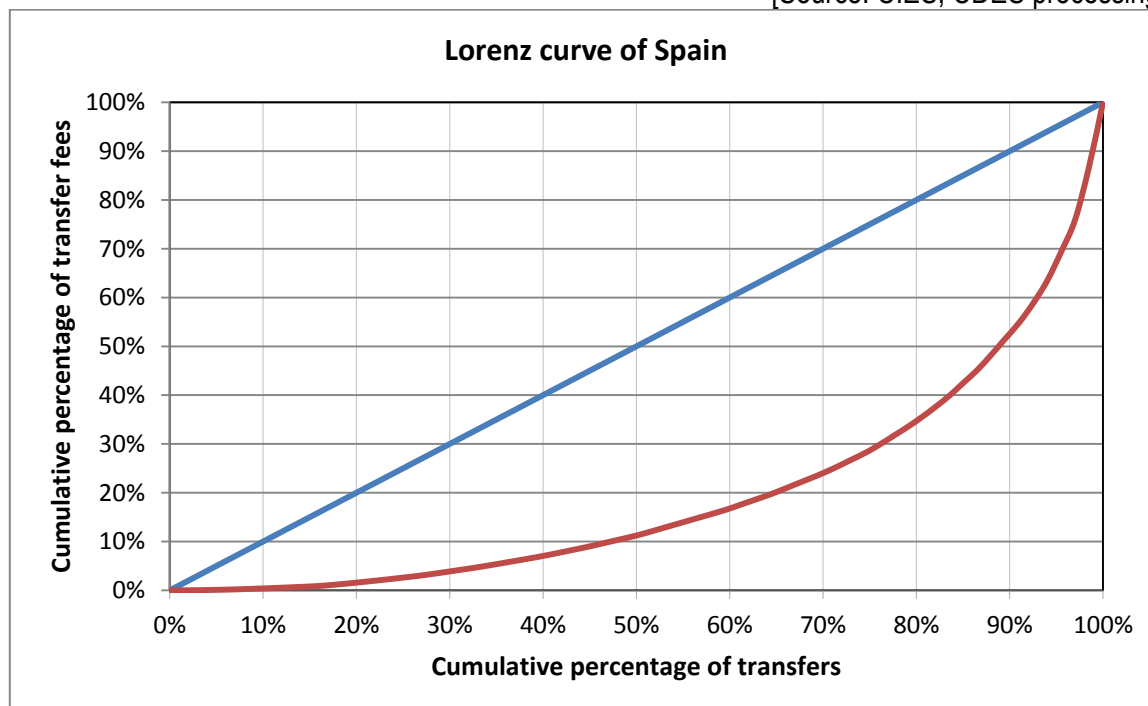
[Source: CIES, CDES processing]

The blue curve represents perfect distribution, i.e. the situation in which all transfers would be made for the same amount. The red curve represents the reality of the transfer market. It enables us to see that a very large percentage of transfer fees is generated by a limited number of transfers. In 2010-11, therefore, 10% of the transfers made for a fee (non-free transfers are excluded from the calculation) were responsible for about 50% of the amounts paid by the Big-5 clubs.

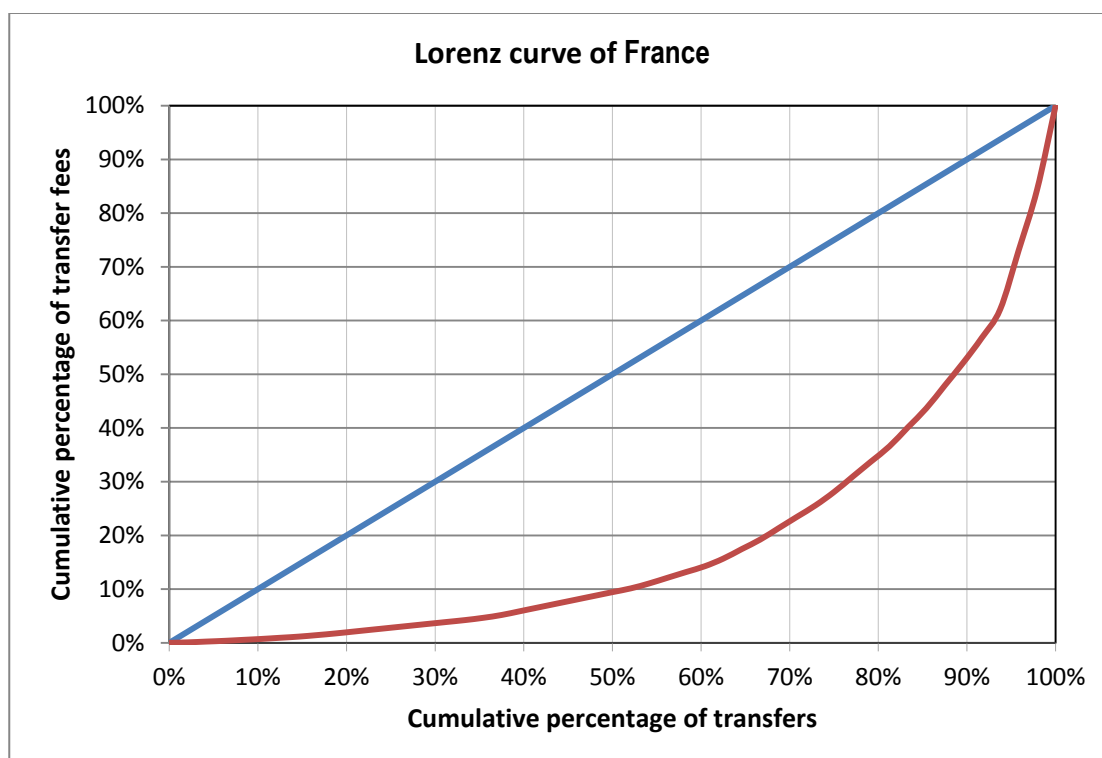
If we look more closely at the detail country by country, we notice that the concentration is still relatively high, even if it is more in some countries (especially, Italy and Germany). The five Lorenz curves enable that to be assessed.



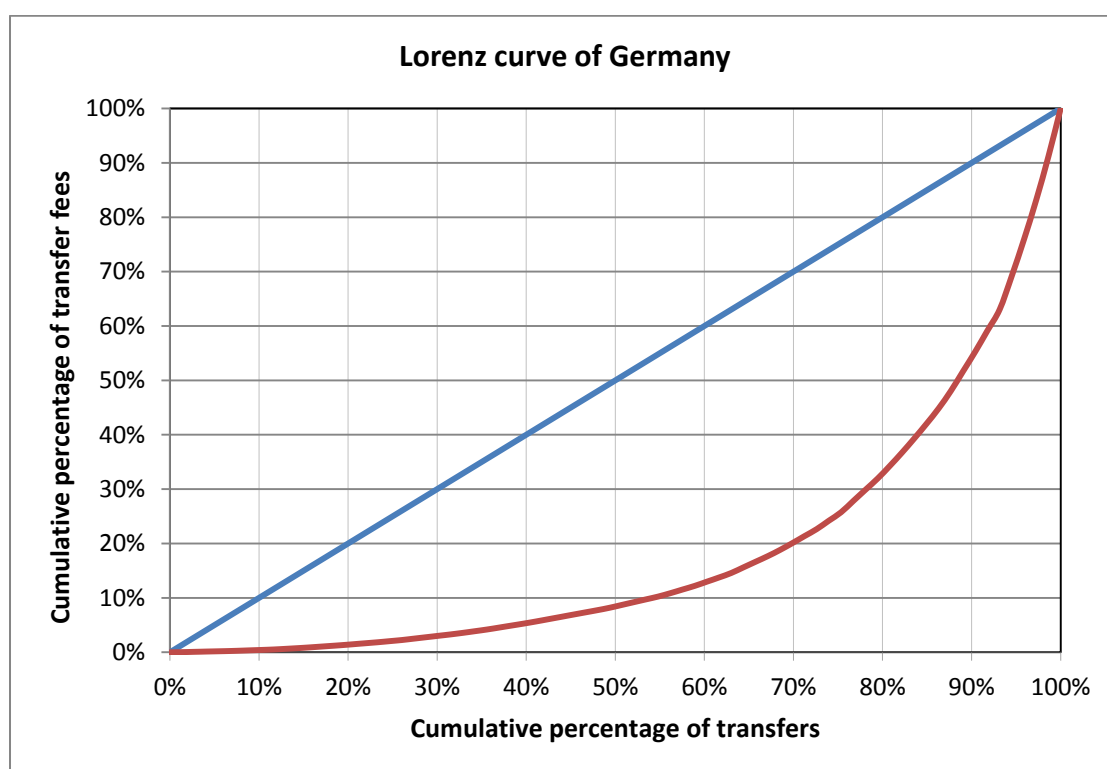
[Source: CIES, CDES processing]



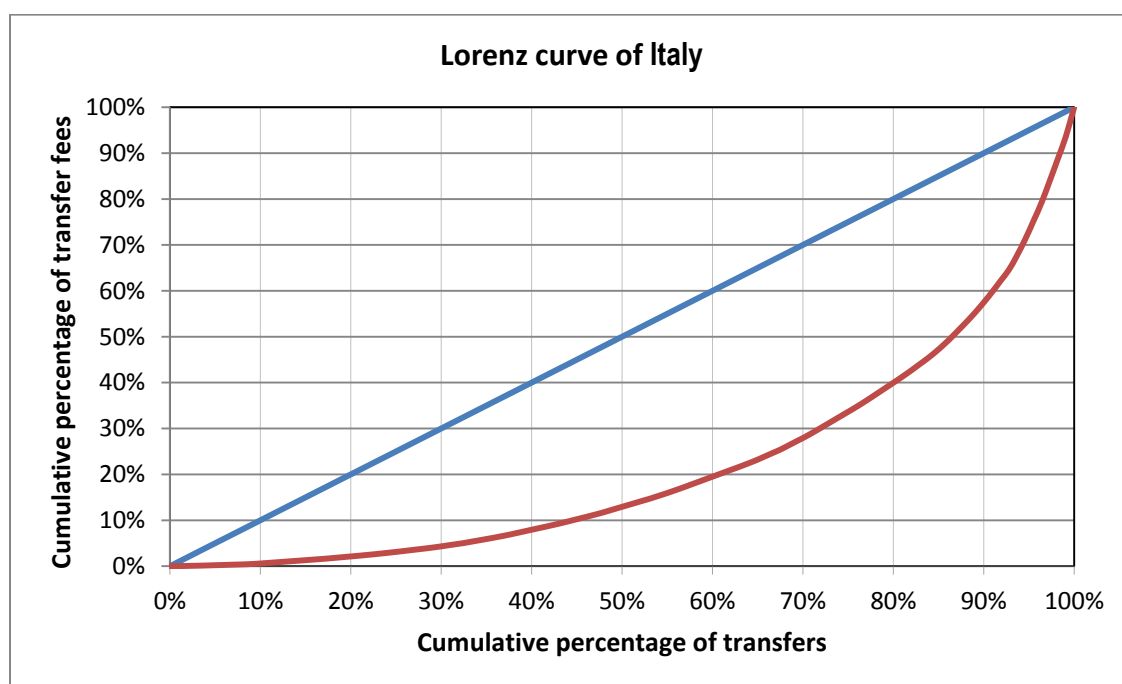
[Source: CIES, CDES processing]



[Source: CIES, CDES processing]



[Source: CIES, CDES processing]



[Source: CIES, CDES processing]

Based on the breakdown between the cumulative percentage of transfer fees and the cumulative percentage of the number of transfers, we are also committed to calculating the Gini Index, which according to the World Bank, “indicates how the distribution of revenue (or, in some cases, consumer spending) between individuals or households within an economy deviates from perfect equality.” With regard to our subject, this therefore indicates the extent of how the distribution of transfer fees between different players deviates from equality. Again, according to the World Bank, “the Gini Index indicates the area between the Lorenz curve (*in red on the above graphs*) and a hypothetical line of absolute equality (*in blue*) as a percentage of the maximum area found below this line. The Gini coefficient ranges from 0 (perfect equality) to 100 (absolute inequality)”. The table below shows the value of different Gini indices for the 2010-11 season.

Country	Value of the Gini Index
England	0.45
France	0.35
Germany	0.49
Italy	0.46
Spain	0.38
<b>Big-5 (cumulative)</b>	<b>0.57</b>

Interpreting these indices enables us to know more about the level of concentration of transfer fees. Thus, we realise that it is in Germany and in Italy that the concentration is the highest (i.e. that the smallest number of transfers realizes the highest percentage of fees paid) and that it is in France and Spain that the distribution is the least concentrated, even if with a value higher or equal to 0.35, the concentration remains quite high.

### 1. The concentration of transfers in a limited number of clubs

To illustrate this, we made two calculations. The first enables the concentration of transfer fees in the wealthiest clubs to be shown. The second calculation enables this concentration to be shown at the national level, by indicating the percentage of the 10 largest transfers in the total for each country.

- **A concentration in several clubs**

To assess the concentration of the transfer market, we compared the list of the 20 wealthiest clubs in Europe (Deloitte, 2012) with their percentage of transfer spend made by clubs from the 27 countries of the European Union (see Chapter 3). The table below clearly shows that the richest clubs – those having the most resources and attracting players from the higher primary sector – make significant transfer spends. Thus, the 20 richest clubs were responsible for a third of the total estimated transfer spend of EU clubs for the 2010-11 season! The table also allows us to see that the concentration is even higher, with 8% of total European spending made by the five clubs having the highest revenue.

Richest clubs	Transfer spend	Individual percentage of total EU spend	Percentage of the five richest clubs	Percentage of the ten richest clubs	Percentage of the twenty richest clubs
Real Madrid	€93 000 000.00	3.1%	8%	19%	33%
FC Barcelona	€72 500 000.00	2.4%			
Manchester United	€29 300 000.00	1.0%			
Bayern Munich	€17 000 000.00	0.6%			
Arsenal	€23 000 000.00	0.8%			
Chelsea	€126 500 00.00	4.2%			
AC Milan	€40 900 000.00	1.4%			
Internazionale	€46 680 000.00	1.6%			
Liverpool	€97 525 000.00	3.2%			
Schalke 04	€38 600 000.00	1.3%			
Tottenham Hotspur	€26 100 000.00	0.9%			
Manchester City	€182 450 000.00	6.1%			
Juventus	€59 270 000.00	2.0%			
Olympique de Marseille	€41 000 000.00	1.4%			
AS Roma	€11 200 000.00	0.4%			
Borussia Dortmund	€6 050 000.00	0.2%			
Olympique Lyonnais	€28 440 000.00	0.9%			
Hamburger SV	€15 200 000.00	0.5%			
Valencia	€27 950 000.00	0.9%			
Naples	€19 800 000.00	0.7%			
Estimate of transfer spend by clubs in 27 countries of the EU	€ 3 002 198 380.50	100%			

[Source: Deloitte, [www.transfertmarkt.de](http://www.transfertmarkt.de), CIES, CDES processing]

Besides this data, transfer fees are also very strongly concentrated in several clubs in championships and, especially, those playing in European competitions, as shown in the table below.

- **Concentration in several players**

The table that we present below shows the percentage of the ten highest transfer fees in the total transfer spend of each country. This serves to show that this costly expenditure is concentrated in just several players.

Country	Amounts of the ten highest transfer fees	Percentage of the national total
England	€354 250 000	47.4%
France	€141 115 000	66.3%
Germany	€193 450 000	55.2%
Italy	€382 746 000	40.1
Spain	€303 940 000	57.4%

In the end, all these statistics show a very strong concentration of transfer fees both:

- in a limited number of players in the higher primary market;
- in a limited number of clubs among the richest in Europe.

This concentration of talent can sometimes cause a problem, especially regarding the demand for competitive balance, which is one of the main aims of sports bodies. As it is at the moment, the way the system operates is hardly compatible with this aim, which is not without its problems (see Chapter 3).

This concentration is also an illustration of the segmentation of the labour market, since the highest transfer fees are concentrated in players from the higher primary market; other players, despite being a very large majority, only count for a very small percentage of the transfer spend made by clubs.

## ANNEX 8: STRATEGIES OF PLAYERS AND AGENTS ON THE TRANSFER MARKET

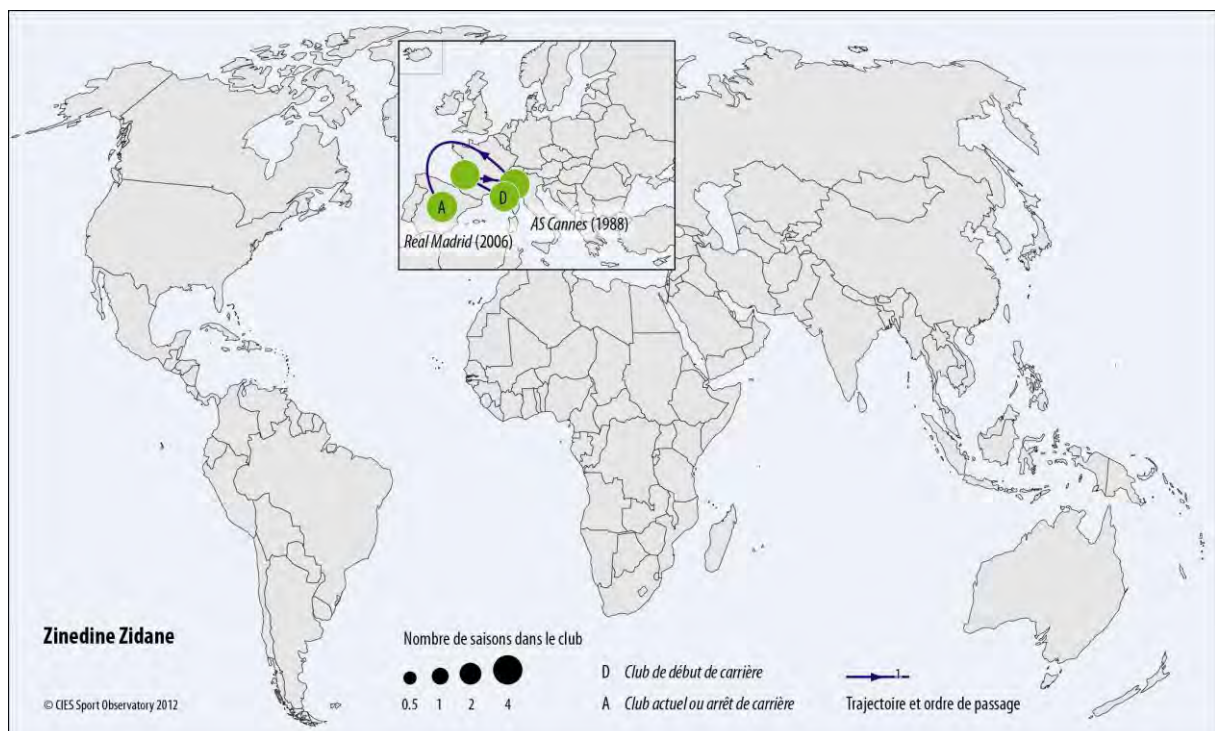
### 1. Higher primary segment

To analyse this part of the market, the players' strategies, we are going to describe the career paths of some of them, favouring an approach through illustrations concerning a subpart of the higher primary segment, that of the superstars. It is, in fact, at this level that their forms of behaviour are more visible and more striking and which will provide us with the most lessons.

To enrich the illustrations, we selected players with different profiles, European and non-European; from Big 5 countries or not; with straight career paths or not; during distinct periods of the recent history of transfers:

- For a period of transfer fee inflation and speculation (1995-2002), we have chosen Z. Zidane (France) and Ronaldo (Brazil)<sup>454</sup>
- For a more recent period of "Sugar Daddy" predominance (2006-10), we could have chosen C.Ronaldo (Portugal) and Z.Ibrahimovic (Sweden)<sup>455</sup>. The lessons are not fundamentally different, we will not detail these two trajectories.
- In basketball, two illustrations are presented; that of a European player and that of an American player.

#### a. Z.Zidane



While living and playing in a Marseille neighbourhood, he was recruited at the age of 15 by AS Cannes, one of the most efficient training centres in Europe at that time<sup>456</sup>. He started in the first division in 1989

<sup>454</sup> We could have also developed the case of P. Nedved (Czech Rep.) with a profile a little different and less "star", but who still received a 'Ballon d'Or'.

<sup>455</sup> D.Drogba (Ivory Coast/France) could have been another illustration, presenting a career path that started, this time, in Africa.



at the age of barely 17. The club found itself in a difficult situation both on the sports field (relegated to Ligue 2 in 1992) and economically, so was forced to leave its players go relatively early.

Z. Zidane was transferred to Bordeaux in the summer of 1992. In 1996, the Girondins de Bordeaux reached the UEFA Cup final. In its wake, Z. Zidane was recruited by Juventus of Turin for a €3.5m transfer fee (transfermarkt). He then enlisted the services of who would be his agent until the end of his career, A.Migliascio<sup>457</sup>. He stayed five years at Juventus, winning two championship titles and played in two UCL finals in 1997 and 1998.

He joined Real Madrid in 2001 for a record transfer fee at the time – about €77m. He signed a four-year contract and received a salary estimated to be €7.6m p.a. (€50m net p.a.). In return, he gave up most of his image rights. The strategy of the club was then to rely on strong player brands to promote the Real brand through increased sponsorship and commercial contracts (merchandising and friendly matches, etc.). With the Spanish club, he won the UCL in 2002 and the Spanish championship in 2003.

In 2005, he received about €15m p.a., of which nearly 45% was in the form of image contracts<sup>458</sup>.

Zidane was first selected for the French team in 1994. He was picked 108 times, won a victory in the World Cup and the title of European champion. He was elected the best player in the world in 1998. The French captain ended his career after the 2006 World Cup without honouring his final year of his contract with Real Madrid, with its agreement.

## **b. Ronaldo**

Born in a Rio suburb in 1976, he started in Futsal and was then recruited a second division club, San Cristovao. As the club had financial difficulties, it ceded Ronaldo's exclusive negotiating and image rights to some investors, Alexandre Martins and de Reinaldo Pitta. In October 1992, the player signed a contract with these representatives for 10 years for a payment to the club of \$7 500<sup>459</sup>. In early 1993, he was transferred to Cruzeiro de Belo Horizonte for \$25 000 and signed a contract for 30 months. He was transferred to PSV Eindhoven during the summer of 1994 for a \$6m fee, after having played in his first World Cup at the age of 16. Two years later, he signed for Barcelona for €18m and became the leading goalscorer in the Spanish championship and 'Ballon d'Or' aged only 20. He left Barcelona the next season to sign for Inter Milan for a transfer fee of €30m. He stayed 5 years, but was often injured. In August 2002, he signed for Real Madrid for €42m and he finished his career in Brazil.

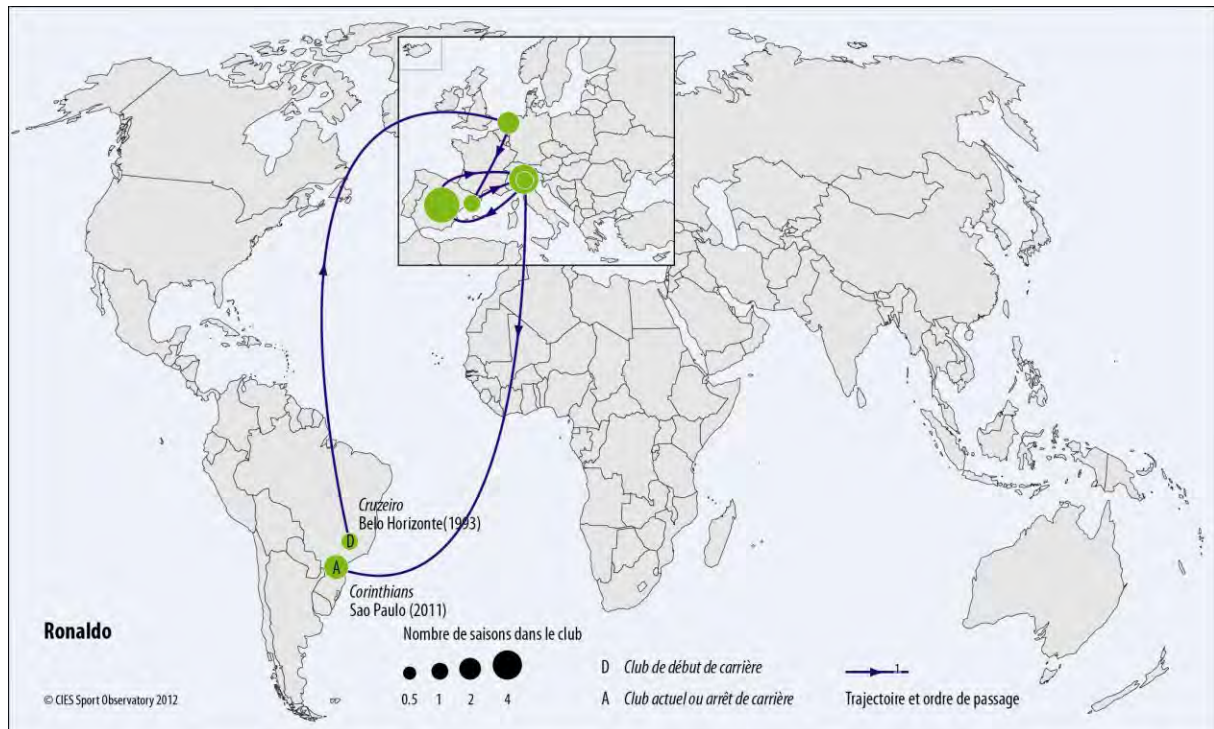
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<sup>456</sup> P.Viera, S.Frey, Y.Micoud, G.Clichy, J.Zebina and J.Escudé, etc. were also trained in Cannes.

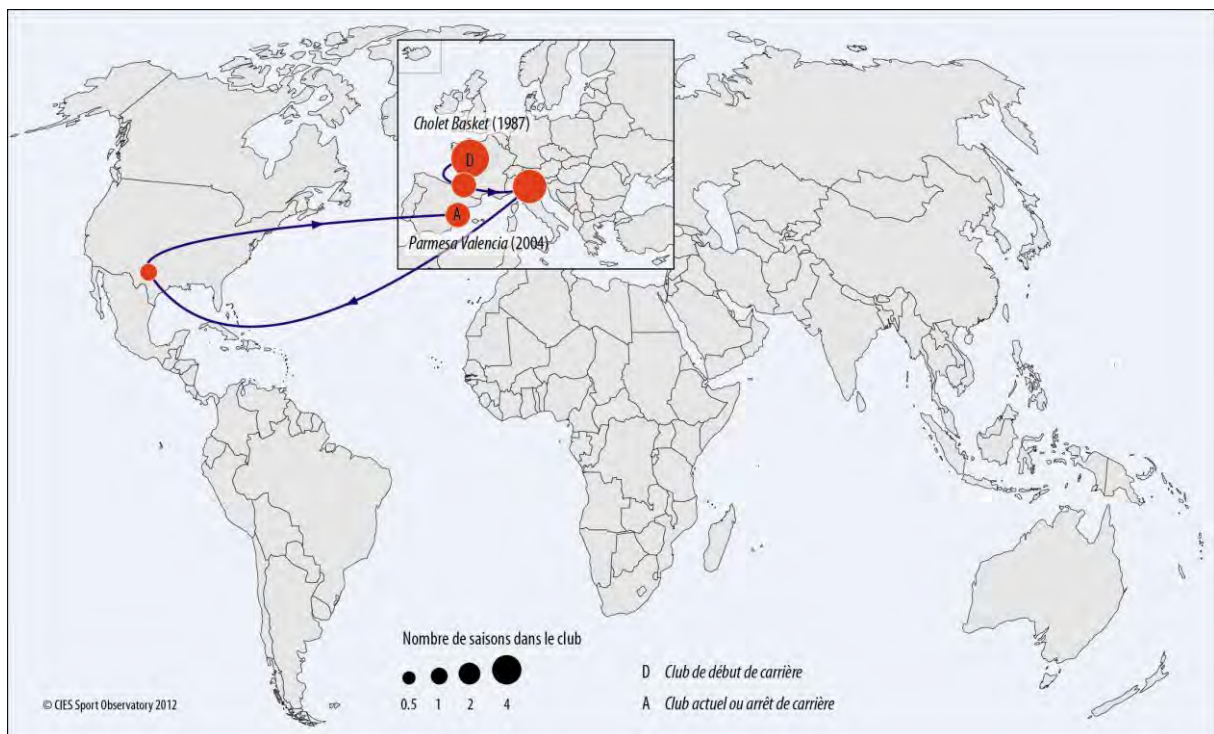
<sup>457</sup> To have access to these major European clubs, it is also necessary to have good contacts and often "good agents". Alain Migliascio has been Zidane's agent since 1992 (Liberation, 18/4/09). It was he who negotiated the transfer to Real Madrid. He became a regular interlocutor with Juventus and Real and a way in to the biggest clubs. He ensured the transfers of C. Karembeu and C. Makele to Real; Franck Ribery used him to sign for Bayern Munich in 2006. In basketball, a European player wanting to access the NBA, necessarily has to go through an agent approved by the players' union. For some countries, certain agents are essential; B. N'Diaye, for example, for France.

<sup>458</sup> Source Presse – RDP CDES and interview

<sup>459</sup> Jean-Jacques Sévilla, [Le phénomène Ronaldo](#), Plon, 2002, p. 48. Quoted by Wikipédia



### c. A.Rigaudeau



In basketball, it would be interesting to take the example of a player whose career spread over the period both before and after the Bosman Case<sup>460</sup>.

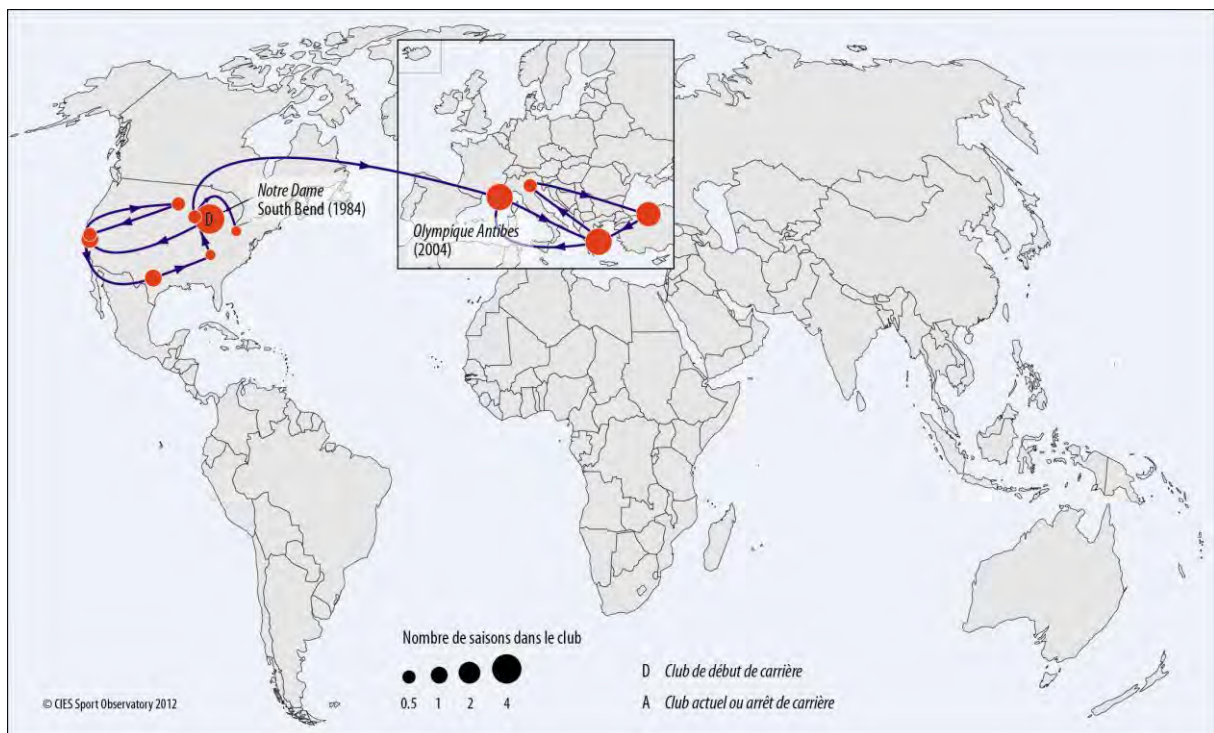
<sup>460</sup> Interview with the player

Born in 1970 in Cholet, he quickly joined a team and became professional with Cholet Basket at the age of sixteen and a half. He also played in Italy (Bologna), in the NBA (Dallas – Golden State) and Spain (Valencia). He was included in the French team in 1990 and was selected 127 times in total.

He was elected Best French Player five times; European All-Star in 1998 and 1999. He was French champion with Pau; Italian champion twice with Bologna; European champion twice with Bologna; and runner-up at the Sydney Olympics in 2000.

He left Cholet, the club where he trained, in 1994-5 for one of the two major clubs in France, EB Pau. He was already one of the best paid French players through a training allowance and a transfer fee totalling between €228 000 and €457 000. Several French clubs – including Limoges, the most prestigious – wanted to sign him up and he signed a contract for an annual salary of around €36 000 net. In 1997, he was approached by the best European clubs, which were all the more interested now that nationality rules were more flexible. The competition was better equipped financially than the French clubs (Barcelona, Real Madrid and Olympiakos, etc.). In Italy, he signed for one of the best European clubs, Kinder Bologna, through a transfer fee in the order of \$1m and an annual salary of around €115 000, as part of this first contract. He played there till 2001, when he left for the Dallas Cowboys in the NBA for the maximum amount allowed for a NBA club: \$500 000. He remained there for a few months, before signing for Valencia in Spain, where he finished his career.

#### d. D.Rivers



During the same period (1989-2002), after spending the first part of his career in the NBA (the Lakers, then the Clippers), the American player emigrated to Europe because of the lack of any really interesting prospects for him in the major American league. He was first of all recruited by a French club (then 3<sup>rd</sup> or 4<sup>th</sup> in the economic hierarchy of sport, behind Italy, Spain and Greece), and then transferred to Greece (Olympiakos) where he became European champion and was elected Best European Player. He subsequently played in Italy (Bologna), again in France (Antibes) and Turkey.



Other star American players in Europe found a certain stability (Josh Childress spent 6 years in Greece); this was even truer for national star players in the major leagues: Gasol only played in Spain, as a professional, in Barcelona, before leaving for the NBA. This, too, was true for B. Diaw in Pau in France and for G. Gallinari (Pavia) in Italy.

Both in football and in basketball, agents in this sector can achieve quite considerable market power (Poli – Rossi – 2012) for two reasons:

- They benefit from the power conferred on them by the mandate given by players of exceptional talent;
- The concentration of agent activity in the hands of a small number greatly increases this power.

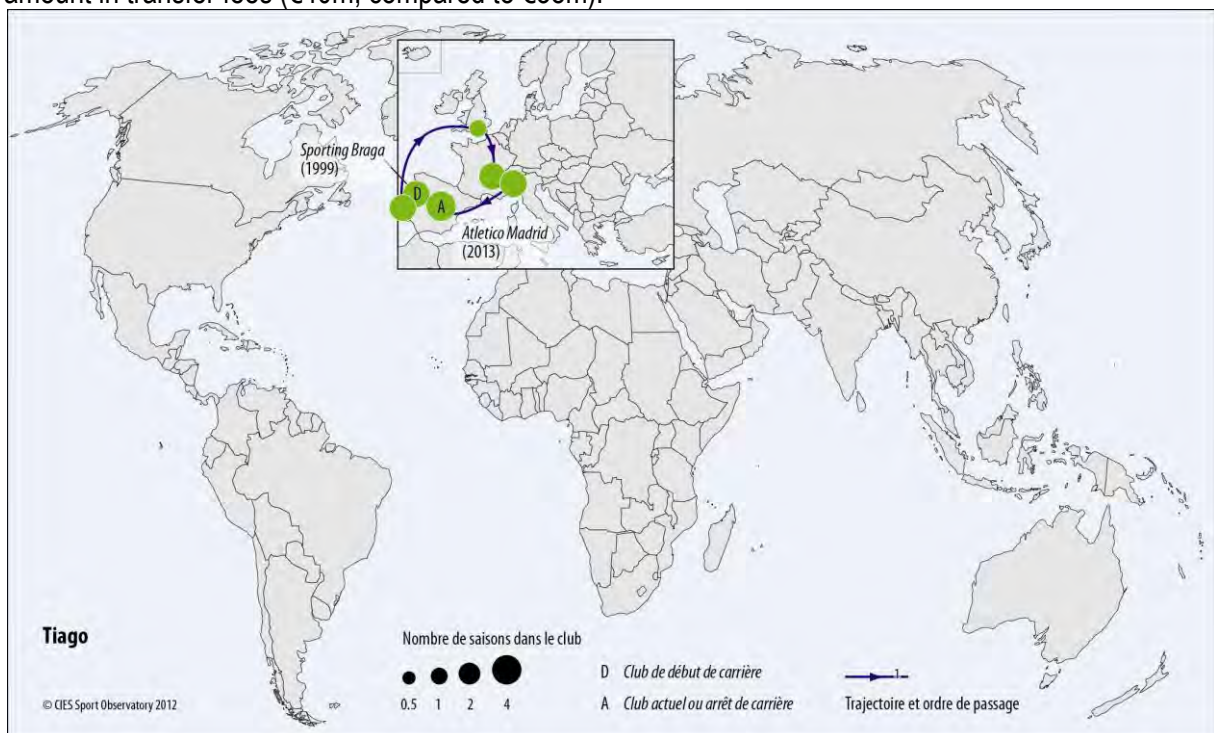
## 2. Lower primary segment

### a. Scott Parker

Scott Parker, the Tottenham player who is an English international, may be considered as being part of this group. He is not a striker and he does not play in any of the four major English clubs – even if he did play one season at Chelsea and was therefore the subject of a high transfer fee (€14m) – and he became an international later. His career is upward and quite typical, from a club with moderate means and ambitions (Charlton) up to a club in the top 6 of the league (Chelsea, Tottenham and Newcastle). In addition to his talent, he benefits from favourable conditions (market structure, status and finances) in England for national players who make a name for themselves on the pitch.

### b. Tiago

On the other hand, when the player does not come from a major market, his career is different. Tiago, with a similar sports profile to that of the previous player, could be considered as a good illustration. His career path took him through much more varied destinations and he also generated a fairly similar amount in transfer fees (€40m, compared to €38m).

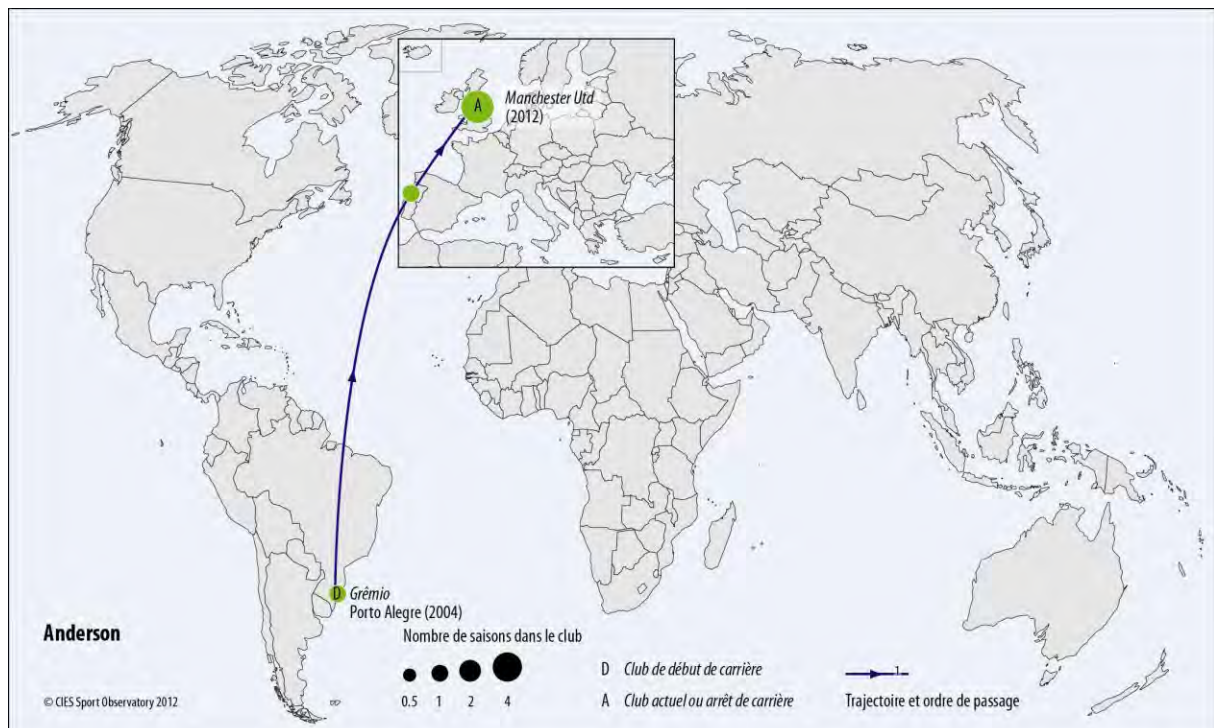


The player who comes from an African or South American country is in a different situation. He must, first of all, make himself visible in the eyes of scouts and European clubs. This could lead to unfortunate

consequences for all those who try their luck and do not have the ability to be accepted into European professional football. Certain unscrupulous middlemen or clubs profit from this situation.

### c. Anderson

Lastly, a third case can here be highlighted: that of a player from South America. This is the case with Anderson, the Manchester United Brazilian player, whose career has been typically upward: Brazil-Portugal-Big-5. After a short professional career in his native country (Gremio Porto Alegre), he joined FC Porto (Portugal) in January 2005 for a transfer fee of €5m. He stayed there for two seasons, during which he won two league titles and played in the Champions League. Manchester recruited him in July 2007 for €31.5m, enabling the Portuguese club to complete a financially viable operation (a speciality that FC Porto has developed over several years and favoured by its ties with South America and Brazil).



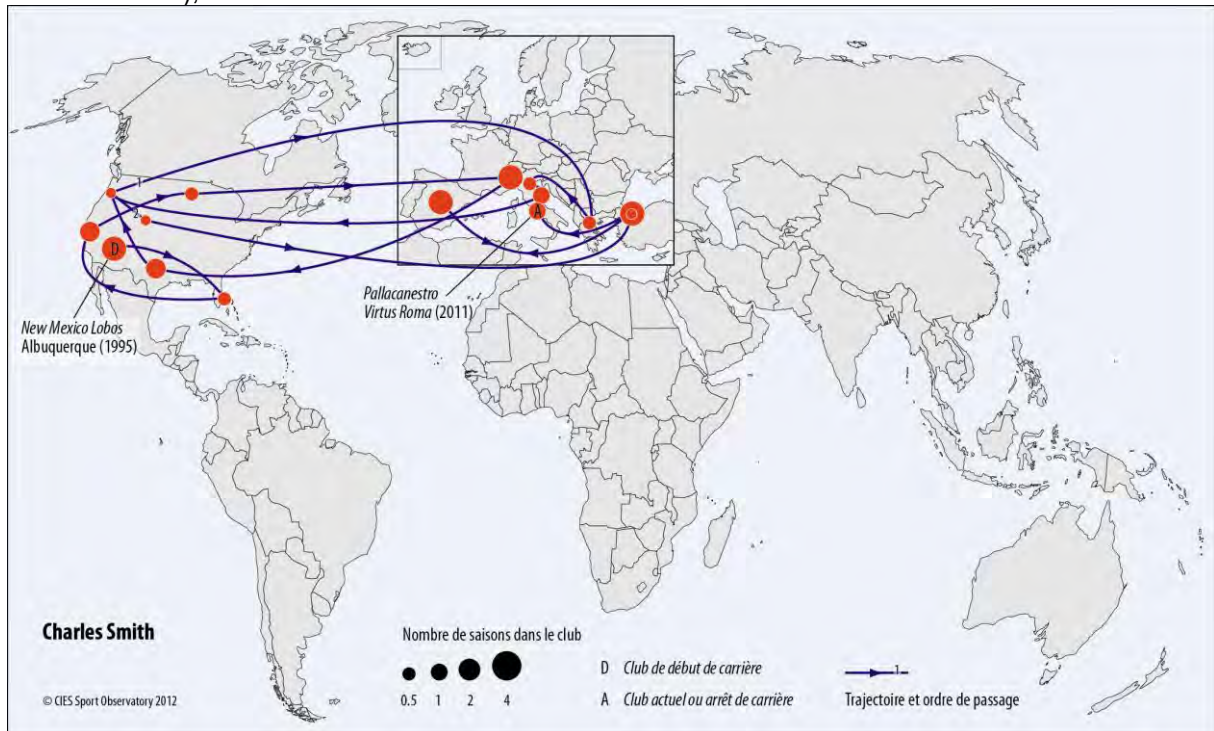
In basketball, as in football, players in the economically strongest championships do not leave very much (except in the NBA); this is the current situation with Spanish players and it was the case with Italian players in the 1990s.

In basketball, however, there are very few economically strong championships; except for Spain, and even there the economic situation is really unfavourable. There are either economically homogenous championships, but with a much lower level (France, Germany and Italy) or very heterogeneous championships, with several rich and powerful clubs (Greece, Russia and Turkey). For this reason and given the more important freedom of movement allowed by the regulations, the players are more generally mobile than footballers in the framework of this higher primary segment.

We offer three illustrations of this mobility, with the careers of players with different profiles: with an American player from the NBA, a French international player and a Greek player of Serbian origin. All three are talented players who have always had a succession of contracts.

#### d. Charles Smith

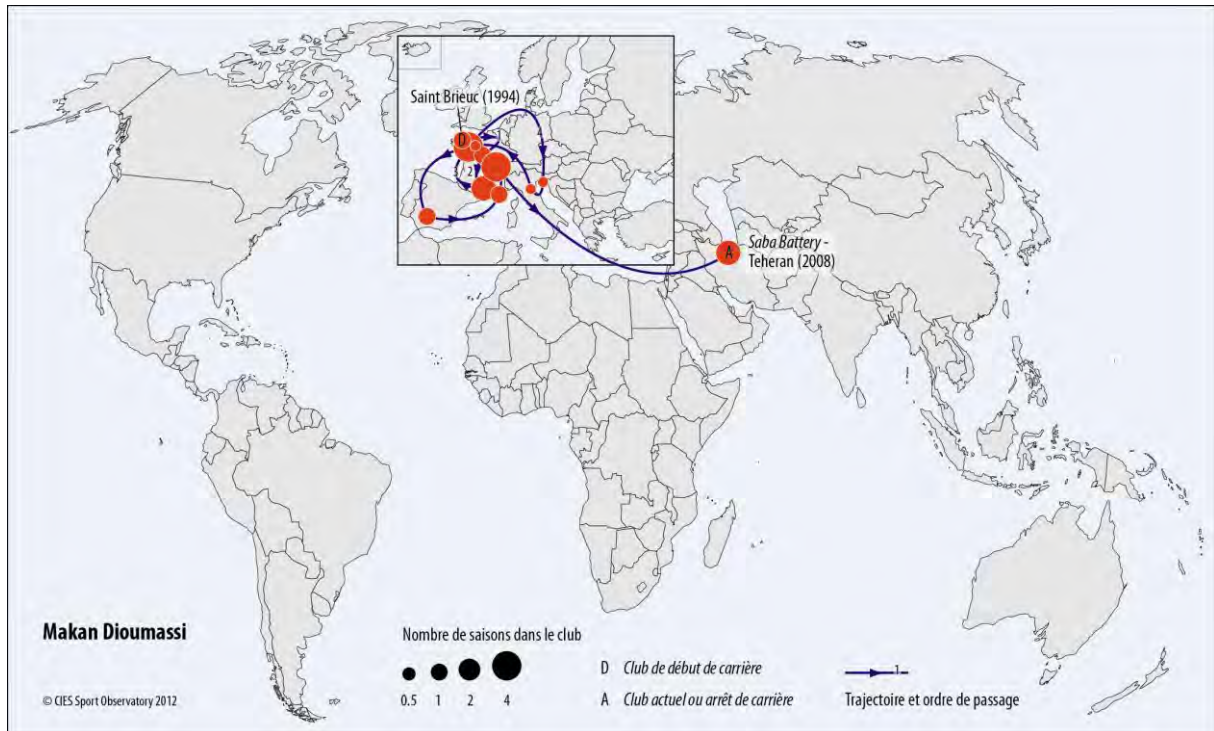
He was a star player in Europe with a solid background in the NBA. The contracts that he signed (\$1m p.a.) and the prestigious clubs where he played (Pesaro, Real Madrid, Efes Pilsen Istanbul), attest to this. But he still showed that his great mobility was not always well handled (breach of contract in Greece in 2003), which would have been unthinkable in football for someone with this talent



#### e. Makan Dioumassi

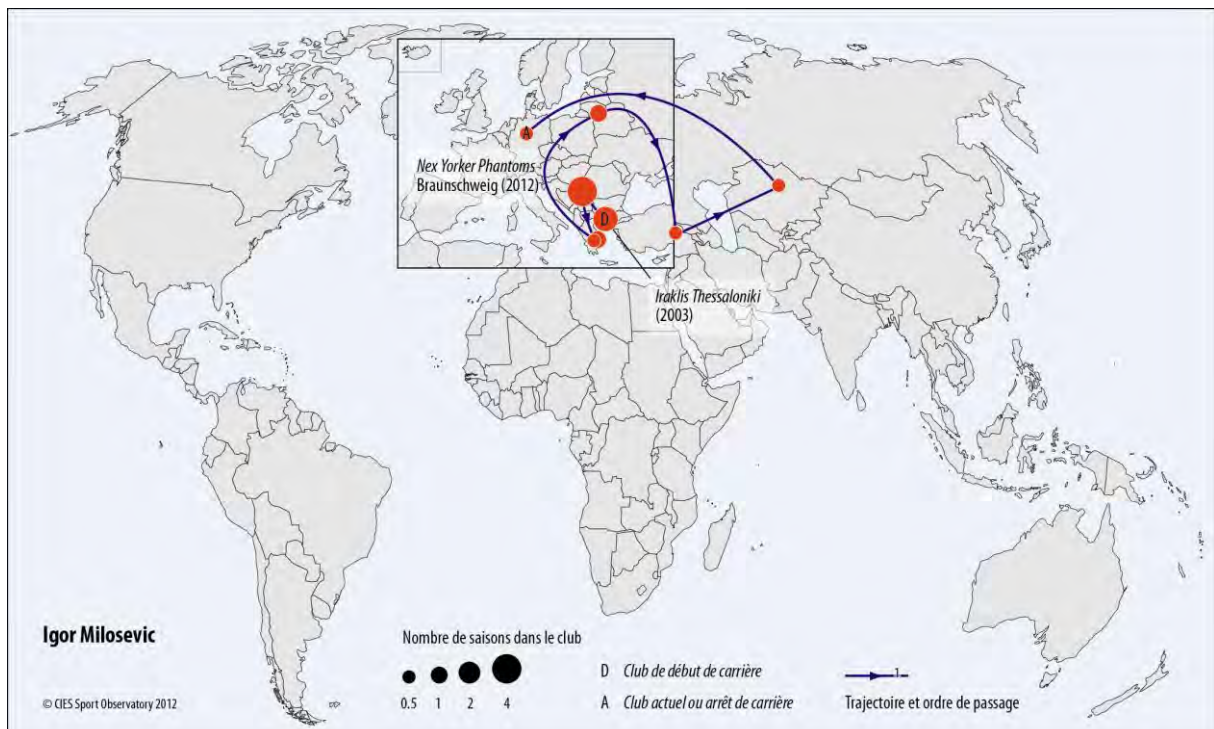
In this case, too, a reasonably cosmopolitan career combined with a solid career in the national team (silver medal at the Sydney Olympics in 2000). He, too, had one of his contracts terminated and his career included some very short piecework (e.g. only two matches for Evreux for the 2001 play-offs).





#### f. Igor Milosevic

This Greek player of Serb origin is a good example of the career of a talented player, a native of the Balkans. A rather early exile (17 years old), in order to have access to a stronger championship (Greece) and a more lucrative market, was followed by a career with lots of mobility. In this case, too, there was a loan (Maroussi – Greece) and breaches of contract and, therefore, short-term contracts (Rytas Vilnius in December 2010; Astana in early 2012); in total 26 years, he played with eight professional clubs.



### 3. Secondary segment

#### - Football

As we saw earlier in this segment, the mobility of players is not really controlled and is undesired. We chose to illustrate this situation with the careers of three players from different origins: two from one of the Big 5 countries and one from Eastern Europe.

- Romeo Filipovic is German / Croatian. Born in Germany, he began his career in Duisbourg and then played for 13 clubs in 11 different countries between 2005 and 2012, the vast majority of them being only six-month contracts. It is doubtful that his wages were ever very high.
- Lajo Terjék is Hungarian and played for 8 clubs in 3 different countries between 1998 and 2012. He played only in countries with limited economic means.
- Cédric Bardon is a French player, trained by Olympique Lyonnais and although he was an international with youth team and had a promising good career, he never really fulfilled this promise. His career took him to clubs in many different countries: French Ligue 1 and 2 and then Bulgaria, Israel, Cyprus and lastly to a third-level club in France to end his career.

This type of career is typical of players who are not in the higher market segments and they are the majority in football. The career paths of footballers are increasingly fragmented in many national associations. Contrary to the expectations of clubs, agents and the players themselves, transnational career paths are more often downwards than upwards.

For example, many Brazilians who first migrate to Portugal are unable to move up to better leagues and end up playing for Cypriot, Romanian or Armenian clubs. Similarly, many Irish and Welsh footballers who move to England fail to settle in this country and are subsequently re-transferred to Scotland. The only significant transnational circuit in which the intermediate association is a stepping stone is that leading players from Argentina to Mexico through Chile” (CIES, Global Migration Report 2011, p 22).

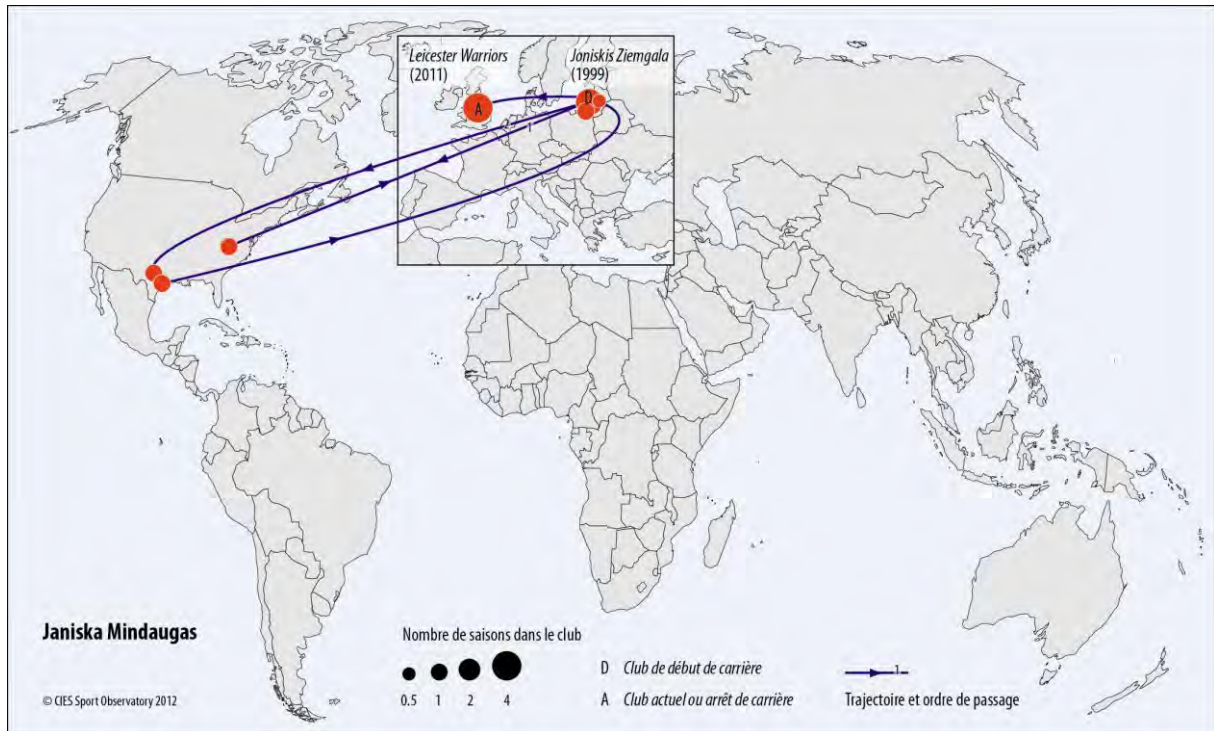
#### - Basketball

- **Janiska Mindaugas: a minor Lithuanian player**

After completing part of his training at an American university (Huston-Tillotson University – Austin, Texas), the player returned to Europe for a journey that took him from east to west: from Alytus (Lithuania), to Nijmegen (Holland), Liepaja (Latvia), Delikatesas (Lithuania) and Leicester R (England) Leicester W (England 2009-11).

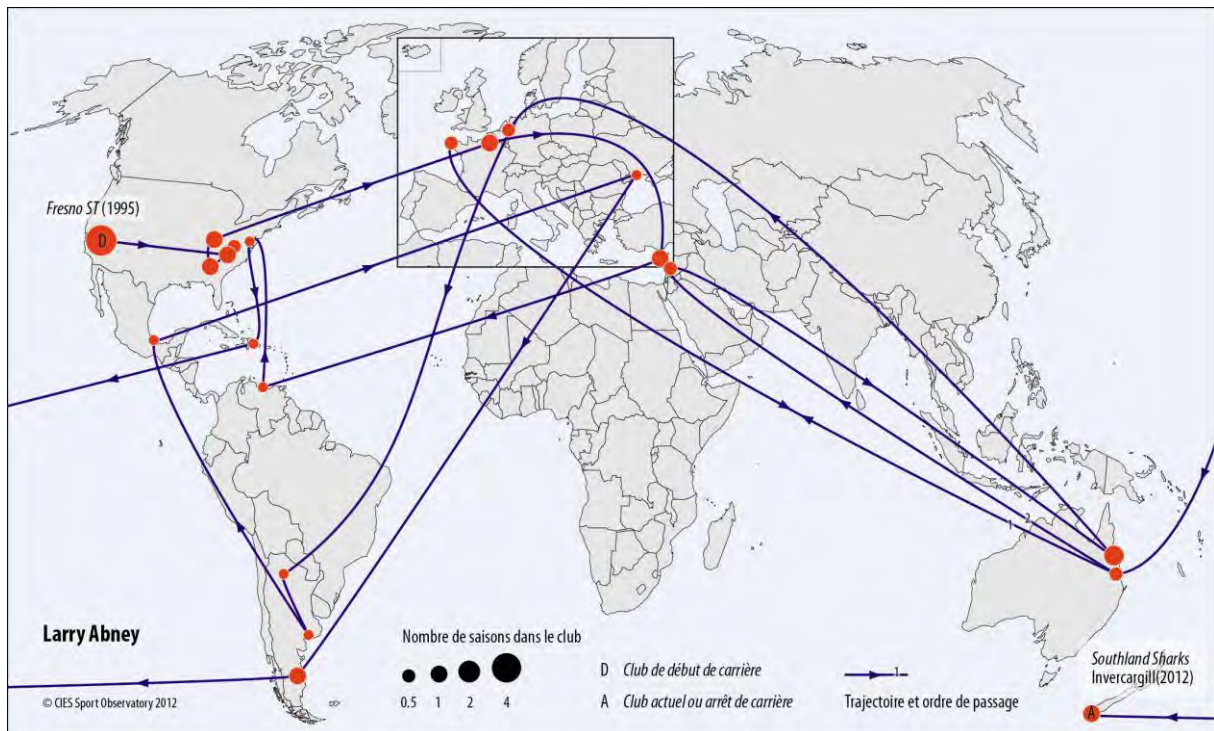
Breaches of contract (Leicester City Riders 2008), including non-payment (Alytus – Dec. 2004); short-term contracts; expatriation to the minor championships (Latvia, Holland and England) – a chaotic, but fairly typical, career for a minor European player from Eastern Europe.





○ **Larry Abney: a globetrotting American player**

This shows the incredible journey of an American globetrotting player, probably through choice, but in all likelihood through necessity, who was not in control of his career. The player sought one contract after another and, therefore, “visited” 12 countries in 10 years; he had his share of breaches of contract, short-term piecework (Venezuela, Dominican Republic, France and Mexico, etc.) and exotic destinations (Syria and South Korea, etc.).



- **Jiri Hubalek: a Czech player, partly trained in the USA**

After starting basketball in the Czech Republic, he continued his training at university in the U.S.A., before signing with the Italian Lega 2 after unsuccessful attempts in NBA camps. After several matches in Serie A, his contract was terminated and he left for Iran and then Lebanon, before returning to the Italian Lega 2.

- **Ingus Bankevics: a Latvian player on the edge of professionalism**

The player played initially in the Latvian championship, then found an opportunity to go abroad to France, but only for a few matches (4). He returned to Latvia and then signed again for France in the third division, which is a semi-professional championship.

In this segment, there are very many agents for an effectively reduced market. Competition between them is very strong and, therefore, there are no holds barred. On the one hand, those who are well established in areas where talent is plentiful survive well; on the other hand, those who were able to find a place in the most economically viable markets.

