

An update on change drivers and economic and legal implications of transfers of players

Final Report to the DG Education, Youth, Culture and Sport of the European Commission

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***Final Report to the
DG Education, Youth, Culture and Sport
of the European Commission***

written by



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Executive summary

The aim of this report is to analyse the developments of the transfer market since 2013 in terms of main economic trends and legal evolution. The study was commissioned in October 2017 by the Directorate-General for Education, Youth, Sport and Culture (DG EAC) of the European Commission and undertaken by KEA, supported by Ecorys. This research draws on and updates the findings of a previous study on the topic, published in 2013¹.

Background and context

The transfer of players is a relatively unique and complex economic and legal construct, because of the difficulties in distinguishing between sporting and economic matters. In fact, while sporting rules and regulations are designed to preserve fairness in the competition, the volume and level of transfer amounts (especially in the football market) have significant economic consequences on sports clubs.

In this sense, the study firstly and foremost takes into account the legal framework provided by the EU in addressing the peculiarity and the dual nature of transfers: a way to maintain fair and balanced competition, as well as an economic activity. Under EU law, the transfer system is justified by the specificity of sport, as set out in the 2007 White Paper on Sport, which substantially recognizes that the transfer of players between clubs plays an important role in the functioning of team sports. This is particularly relevant in a context of sharp growth of the transfer market in the last decade.

Key findings

Chapter 2 of this study analyses the most relevant economical features of the EU football market. This chapter also focuses on the potential discrepancies and unbalances of this market, thus looking at the impact on the competitiveness of the financial concentration and lack of economic redistribution. In particular, the study here takes into account the impact of the existing redistribution mechanisms, such as the solidarity and training compensation, but also the redistribution of broadcasting and commercial revenues. This chapter evidences that the size of the European football market is growing sharply, reaching a total of €24.6 billion for 2015/2016,² and this growth is reflected across all aspects of the transfer market:

- International transfer fees have grown from USD2.71 billion in 2012 to USD4.79 billion in 2016.³

¹ KEA & CDES (2013). The economic and Legal Aspects of Transfer of Players. A report prepared for the European Commission, DG EAC.

² Deloitte (2017) Annual Review of Football Finance: Ahead of the Curve. Sports Business Group, July 2017.

³ FIFA TMS (2017) Global Transfer Matchmaking Report 2017. Zurich, Switzerland.

- Transfer fees (including domestic transfers) in the big five leagues have grown significantly from €2 billion in 2012 to €5.9 billion in 2017.⁴
- Revenues stemming from broadcasting rights have more than doubled since the previous study for the big five leagues, with a cumulated amount totalling €8.518 billion 2017/2018 compared to €4.238 billion in 2011/2012.⁵

Importantly, this chapter evidences the concentration of resources across top leagues and a small number of clubs, along with the relation between the amount of money spent on transfers, sporting results and economical revenues. As a result, the study shows an increasing gap between top clubs within the top leagues, but also between the different leagues in terms of economic and sporting performances.

Chapter 3 of the report is based on the recent legal developments in terms of regulations implemented by the football authorities since the publication of the previous study, in 2013⁶. The legal analysis focuses on those legal developments originally aimed at balancing the sporting competitions, at increasing transparency in football transfers, at protecting youth development and finally at regulating the profession of intermediaries, a professional role which is increasingly influential in the football transfer market. In particular, important legal developments are analysed, such as the implementation of the Financial Fair Play by UEFA, the ban on third-party ownership and the FIFA Regulation on Working with Intermediaries. Key findings of this chapter include:

- Regarding the Financial Fair Play (FFP), the break-even requirement mechanism has produced considerable results on its core objective: improving financial stability for clubs. Conversely, the FFP has not led to significant side-effects in addressing competitive balance between clubs (it is important to note this was not the purpose of this regulation, however).
- On another level, the ban on Third Party Ownership (TPO) might actually worsen the current unbalances of the system, because of the difficulties for smaller clubs to receive external forms of investments. It might however lead to being more ethically acceptable and, most importantly, not affecting the integrity of the game if adequately implemented. In particular, it still requires some adjustments in order to prevent loopholes to the ban, such as the bridge transfers.
- Our analysis shows that the newly implemented FIFA regulation on football intermediaries has not fixed the issues identified. It stresses the importance of a centralised licensing system – based on the example of the National Basketball Players Association (NBPA) Regulations⁷ governing player agents in the US - and calls for clearer rules on agents' remuneration, in consultation with key stakeholders and based on market practices.

⁴ Raffaele Poli, Loïc Ravenel and Roger Besson (2017) Transfer market analysis: tracking the money (2010-2017). CIES Football Observatory Monthly Report n°27, September 2017.

⁵ Deloitte (2017) Annual Review of Football Finance: Ahead of the Curve. Sports Business Group, July 2017.

⁶ KEA & CDES, *supra* note 1

⁷ NBPA. (2016). NBPA Regulations Governing Player Agents.

- Issues linked to youth protection and development, discussed in section 3.4, are fields where a clear consensus emerges across football stakeholders to take action to enhance minors' protection. Greater involvement of public authorities, both at the national and European levels, would be helpful to address harmonisation issues in terms of minors' protection or entry rules within the EU.
- The lack of transparency on the transfer market has direct impacts on the enforcement of the training compensation and solidarity mechanisms, which remains a challenge and shows no signs of improvement over the years. The development of a Global Clearing House could increase transparency and strengthen the effectiveness of current measures for the redistribution of revenues, including the solidarity and training compensations.

However, it should be noted that most of the issues covered and analysed by this report are currently being discussed and will soon be subject to a process of reform by the relevant football stakeholders interviewed in this study. The outcomes of these discussions should be closely monitored in light of the findings of this report.

At this stage, the study has identified 8 potential policy recommendations to feed into this reform process:

1. Better exploit the existing social dialogue process on professional football to explicitly address issues linked to transfer of players;
2. Recast of the FIFA Regulations on Working with Intermediaries;
3. Improve transparency tools in the football market (TMS database, Football Associations reports, Global Clearing House);
4. Increase the solidarity mechanism percentage and strengthen its enforcement;
5. Address the issue of bridge transfers by strengthening investigation tools monitoring club ownership;
6. Regulate the loan transfers by limiting the number of loans per beneficiary and lending clubs;
7. Improve the rules on minors and the condition of entry for young players;
8. Establish a "luxury tax" on transfer fees beyond a certain transfer fee amount.

1.0 Introduction

1.1 Objectives of the study

In 2013, a study produced by KEA and CDES⁸ for DG Education and Culture provided an important overview of the functioning processes of the transfer of players in different sporting activities. The study examined both the legal and economic factors at the base of this peculiar transfer market within the EU legal framework and provided an overarching evaluation of the rules implemented in this market. Moreover, the study not only focused on the analysis and evaluation of this market, but also tried to suggest relevant policy recommendations aimed at fixing and balancing the existing distortion and discrepancies of the market. Since the study was completed in 2013, there have been some significant developments with regards to regulations adopted by sport governing bodies. Moreover, the economic aspects of the transfer market have transformed since the previous study was completed, with considerable changes to player valuation and inflation within the internal transfer market.

Considering this context, the aim of this report will be to update and complement the findings of the previous study. For this reason, the 2013 study will initially drive the process of analysis within this report, thus focusing on an evaluation of the policy recommendations listed in the 2013 study. This approach will serve to verify which recommendations have been implemented and how they have been enforced. This process will then be at the heart of an evaluation of the most recent legal and economic development of the transfer market, either deriving from the previous study's suggestions or from regulatory initiatives by the relevant authorities and stakeholders. The purpose of this new study is however not to explore all topics covered in the 2013 study. Due to time and resources for this research, this report is mostly restricted to transfer of players in football, with some insights identified in a small number of other sports.

The 2007 White Paper on Sport and the 2011 Communication on Developing the European Dimension in Sport had also raised questions about the sustainability and the transparency of the transfer of players system. Moreover, as briefly mentioned above, this market could be considered as unusual because of the 'specificity of sport', which has become "a legal concept established and developed through the rulings of the European Court of Justice and through decisional practice of the European Commission"⁹. As outlined in the study on the specificity of sport, it is important to consider the peculiarities of this market, especially for what concerns competition rules and how these might affect the policy implementation and enforcement processes by the football authorities.

⁸ KEA & CDES (2013). The economic and Legal Aspects of Transfer of Players. A report prepared for the European Commission, DG EAC.

⁹ Ecorys, KEA, Sport and Citizenship (2016). Mapping and Analysis of the Specificity of Sport. Final report to the DG Education & Culture of the European Commission

1.2 Background information and context

The specificity of sport and transfer of players

Before moving onto the analysis of the transfer of players, several considerations should be taken into account. Firstly, the transfer of players is a relatively unique economic and legal construct. Under EU law, the transfer system is chiefly justified by the specificity of sport, as set out in the 2007 White Paper on Sport¹⁰ and also noted in the European Commission study on the specificity of sport¹¹. It recognises that the transfer of players between clubs plays an important role in the functioning of team sports and, in particular, professional team sports. In the Bosman Case¹², for example, the European Court of Justice states (para. 106) that:

"In view of the considerable social importance of sporting activities and in particular football in the Community, the aims of maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate."

Transfers is one area where there are difficulties in distinguishing between economic and sporting matters. While football transfer rules are designed to preserve fairness in competition, for example by compensating smaller clubs for the training and development of young players, the large sums involved in the transfer market clearly have economic consequences in so far as they provide commercial benefits for the clubs involved. A specific test for the application of specificity of sport was laid down in the previous study:

"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."¹³

The previous study goes on to suggest that the definition of sport specificity at the European level will be a key indicator of Europe's objectives. Particular specificity tests that are used to justify the transfer system include the role of transfers in maintaining fair and balanced competition, limiting excess fees and protecting youth development.

¹⁰ Commission of The European Communities, (2007), *Commission Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport*, Published 11 July 2007

¹¹ Ecorys, KEA, Sport and Citizenship, *supra* note 9

¹² Case C-415/93 of 15/12/1995

¹³ KEA & CDES, *supra* note 1

A number of developments in recent years may have changed the assessment of how the sporting benefits of transfers weigh up against their economic consequences. Questions to consider might include:

- Changes in the concentration of transfer payments and the extent to which transfer payments trickle down to smaller clubs.
- Changes in the extent to which transfer payments compensate clubs (particularly smaller clubs) for investment in younger players.
- Changes in the extent to which transfer fees contribute to the revenues and commercial success of larger clubs.

Four key recent developments guiding our analysis

The 2013 study highlighted some of the key issues affecting especially the current football transfer market, also identifying potential measures to counter both the ethical and financial discrepancies of this market sector. Among the different proposals, some have been directly addressed by the football authorities, while other issues are still to be tackled. In this sense, in the past five years there have been at least four key developments:

1. Financial Fair Play: in 2013 UEFA has launched a process of reform of its Financial Fair Play Regulations¹⁴, which was originally drafted in 2010. However, the 2013 recast of the Regulations has attempted to address the financial stability of football clubs through the establishment of the 'break-even assessment', which has indirectly affected the transfer market. The impact of this measure and of the Club Financial Control Body has, in fact, direct implications on the transfer market as sanctions may now limit the abilities of clubs to sign new players;
2. Third Party Ownership Ban: on the 1st of May, 2015, FIFA has set up a global ban on Third Party Ownership¹⁵, which is aimed at enhancing the fairness and integrity of the football competitions. However, this important change within the football transfer market has also triggered a debate over the compliance of this ban with the European Law. The debate has eventually resulted in a formal complaint lodged by the Spanish and Portuguese leagues to the Commission¹⁶, whose investigation into the ban is still pending.
3. Intermediary Regulation: in 2015 FIFA has introduced a new regulation on football intermediaries¹⁷, and changing, *de facto*, the existing FIFA Players' Agents Regulation. This new regulation has produced important changes in this sector of the football market, since it has removed the obligation for players' agents to hold a specific license to operate in the market, thus opening up the profession to other intermediaries. However, it is still possible for the national federations to

¹⁴ UEFA (2015). UEFA Club Licensing and Financial Fair Play Regulations.

¹⁵ FIFA (2016). Regulation on the Status and Transfer of Players.

¹⁶ La Liga (2015). Las ligas española y portuguesa denuncian ante la Comisión Europea la prohibición de los TPO de la FIFA. Retrieved from: <http://www.laliga.es/noticias/las-ligas-espanola-y-portuguesa-denuncian-ante-la-comision-europea-la-prohibicion-de-los-tpo-de-la-fifa>

¹⁷ FIFA (2015). Regulation on Working with Intermediaries.

impose stricter rules and set up similar licenses system as the one previously in place.

4. Attempts to improve transparency: following the launch of the 2010 Transfer Matching System for international transfers, FIFA has proposed in 2013 a similar platform to be used for domestic transfers¹⁸. The Domestic Transfer Matching System has however been adopted, so far, only by 5 national football associations, in Netherlands, Iran, Malawi, Nigeria and Ecuador¹⁹. This partial application of the system is certainly limiting its scope to address the transparency issue in the football transfer market, which still remains an urgent argument of debate among the football stakeholders. In this sense, a further step forward has been undertaken by UEFA, whose Financial Fair Play assessment mechanism has slightly enhanced the clarity and transparency of this market sector, for instance by addressing the issue of overdue payables, which in turn might produce a more efficient system of payments for the training and solidarity compensations.²⁰

1.3 Overview of the main developments since previous study

As already mentioned in section 1.2, the conclusions of the previous study highlighted some policy recommendations to address those issues of the football market identified in the analysis. The 21 proposals were listed into 5 different groups. The first group includes 7 suggested measures aimed at improving the competitive balance through redistribution mechanisms as well as financial accountability. Among these suggested measures, the main developments could be observed in relation to the issue of Third Party Ownership, to the support to the Financial Fair Play and to the limit on the number of players per squad.

In particular, the proposal to address the Third-Party Ownership has been welcomed by the football authorities and the main stakeholders – with few exceptions from some football associations, resulting in the official ban of this mechanism by FIFA in 2015. Arguably, this measure would produce a significant impact on football integrity and fairness, notwithstanding some potential loopholes to the ban that would allow some actors to circumvent the ban, as it will furtherly be explained in the analysis.

Concerning the suggested measure on the support and application of the Financial Fair Play mechanism, it could be argued that the measure has already produced significant results in the economic performances of clubs, by decreasing their debt values. Finally, the limit of the number of players per squad has been introduced in the main European football federations and also at the European competition level by UEFA, ensuring a more balanced and fair system for the sporting competitions.

¹⁸ FIFA. (2013). FIFA TMS launches DTMS, the first Domestic Transfer Matching System. Retrieved from: <http://www.fifa.com/governance/news/y=2013/m=10/news=fifa-tms-launches-dtms-the-first-domestic-transfer-matching-system-2192738.html>

¹⁹ Retrieved from <https://www.fifatms.com/fr/dtms/> on 2 March 2018

²⁰ Interview

Another important aspect that this study aims to cover is related to the increasing importance of women's football. For this reason, the study also encompasses a brief analysis of the main developments in this market sector of football, and looks at the main trends and drivers in terms of economic growth and legal evolution. Moreover, despite the predominant focus of the study on the football market, it has been noted how important changes to other sports might be applied to football: in this sense, the recently implemented regulation on players' agents in the American basketball might represent an example of 'good practice' that could also be employed in football. For this reason, chapter 3 includes an analysis of the National Basketball Players Association (NBPA) Regulation on players' agents²¹. This analysis, together with the one on the recently implemented FIFA Regulation on Intermediaries, will provide a clearer framework of the activities of agents in sport, thus highlighting potential strengths and weakness emerging from the comparison of the two regulations.

The following table summarizes the main developments in relation to the policy recommendations of the previous study listed in the five different groups according to their field of action. This provides an overview of what has been taken into account and which measures shall instead still be implemented:

Table 1: Overview of policy developments since the 2013 study

Policy recommendations	Key developments	No implementation yet
Improve competitive balance through redistribution mechanisms and financial accountability	<ul style="list-style-type: none"> - TPO ban; - Limit to the number of players per squad to 25; - Support to the implementation of FFP; 	<ul style="list-style-type: none"> - Fair play levy for high-level transfers; - Players passport development for training and solidarity compensation overdue payables; - Regulation of the loan transfer;
Limiting the excessive transfer fees		<ul style="list-style-type: none"> - Introducing cap on transfer fee for players with extended contracts; - Regulate the use of buyout clauses;
Support youth development and youth protection		<ul style="list-style-type: none"> - Strong sanctions to better ensure training and solidarity compensations; - Increase solidarity mechanism percentage; - Harmonise conditions of entry for young players from third countries into the EU;

²¹ NBPA. (2016). NBPA Regulations Governing Player Agents.

		- Improve rules on minors in accordance with the EU law (e.g. monitoring tools)
Improve governance through transparency and fair dispute resolution mechanisms	- Extend the mission of TMS to the domestic transfers;	- Extend the impact of TMS (monitoring and transparency); - Compulsory publication online for each national federation of a standardised annual report on transfers; - Compulsory publication online of top European clubs' transfer dealings; - Development of national dispute resolution mechanisms;
Develop cooperation with public authorities for better law and sports rules' enforcement		- Extend the mission of the Social Dialogue Committee in the Professional Football to more fields (e.g. protection of minors, excessive transfer fees); - Improve and extend law/rules enforcement in the fields of human trafficking and financial crimes; - Establish with FIFA a Clearing House and Transfer Compliance Unit working with public authorities.

The outcomes of the previous study will actually drive the analysis, will consider the impact of those suggested measures which have been implemented, and then will look at those developments which were not considered or suggested in the previous study, as for instance the reform on the activities of football intermediaries.

In order to provide a better understanding of the evolution of the transfer market in the last five years, the research will be based on two layers of analysis: the first one will evaluate these developments from an economical and financial point of view, while the second layer will focus on the legal analysis. By operating in this way, the research process aims to provide an overarching framework of the main developments in the football market. Thus, at the end of the analysis it will, eventually, be possible to identify and suggest proposals and measures aimed at tackling those potential new issues emerged from the analysis process, but also considering those outcomes and proposals suggested by the previous study.

2.0 Evolution of the economic and financial context

2.1 Introduction

This section aims to provide an overview of the key features and data related to the transfer market, and to analyse several aspects of the economic drivers underlying the overall boom of the transfer market.

The transfer of player markets has displayed an **unprecedented increase in terms of transfer fees** and global volume of financial transactions.

The previous report found that transfer fees have grown over 7 times between 1995 and 2011, while the number of players that have been transferred has increased by over 3 times over the same time period. Since then, the transfer fee record has been broken three times since 2013, culminating in the record transfer of Neymar from Barcelona to PSG for €222 million in the summer of 2017. More importantly, the total value of transfers is estimated to have reached €5.9 billion for the big 5 leagues in 2017.²²

The **main economic drivers** behind these trends are:

- The increase in TV rights deals (this is clearly the case in England with the Premier League and other countries with important Pay-TV channels, where football is used as a premium product in the bundling of TV offers).
- The development of marketing and merchandising in football, with clubs becoming highly-valued global brands.²³
- The arrival of high net worth private investors acquiring clubs.
- Existing transfer rules have not succeeded in capping the amount of transfer indemnities in relation to some star players.

While the nature of these issues has not changed since the 2013 study²⁴, they have certainly intensified, also driven by the increased internationalisation of football and its corollary: the important marketing investment required to build global brands, but also the international sales of TV rights. Another aspect of football's internationalisation is the increased activity of additional countries on the transfer market (for example, China, USA and Mexico).

2.2 Transfer of players – volume of transactions and financial flows

The transfer of players market has been in the spotlight as a consequence of the recent high-profile transfers, as noted above. This section aims to provide a longer-term perspective on the state of play of the transfer market and the main dynamics at play. It

²² <http://www.football-observatory.com/IMG/sites/mr/mr27/en/>

²³ See for example the evolution of club brand valuation by Brand finance: http://brandfinance.com/images/upload/bf_football_2017_report_final_june_6th_1.pdf

²⁴ KEA & CDES, *supra* note 1

presents key data related to the transfer market since the previous study, with a focus on the years 2012-2017.

2.2.1 Volume of the transfer market – international transfers

This section presents an overview of the key aspects and main evolutions on the transfer market since 2012. It is mainly based on data extracted and compiled from the FIFA Transfer matching system²⁵. To date, this is the most accurate and reliable source of data on the transfer markets, which provides data on all international transfers. Additional insights for selected leagues are presented in section 2.2.2, also taking into account domestic transfers.

The volume of international transfers is increasing every year over the period of reference, and broke a new record in 2016 with 14,591 transfers completed (a 7.3% year-on-year augmentation).

Figure 1: Number of international transfers 2012-2016 (source: FIFA TMS)

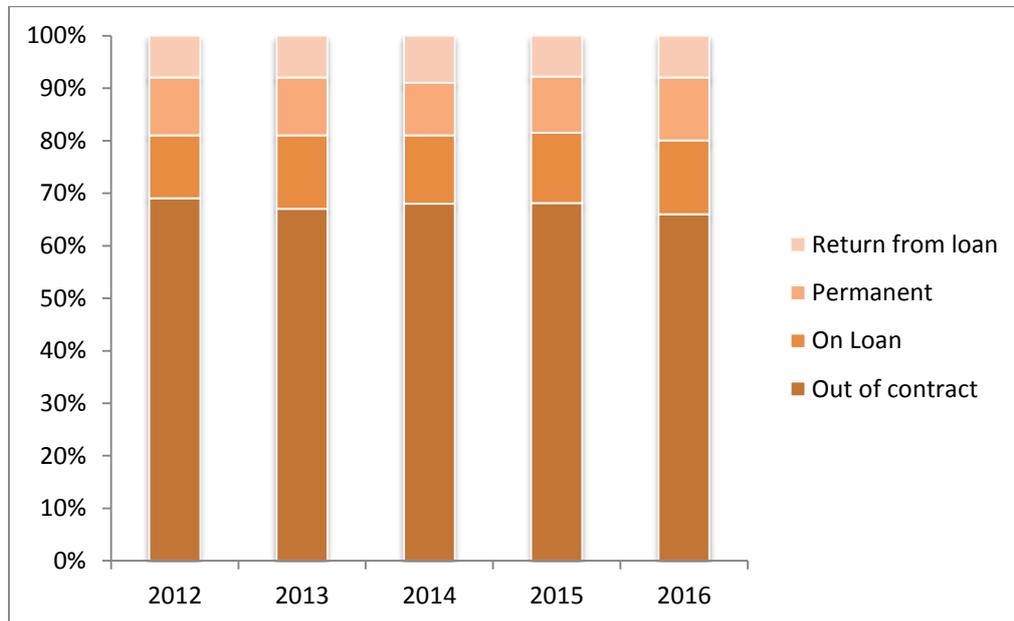


The repartition across types of transfers has not significantly evolved over the same time period, however, and out-of-contract players still represent the vast majority of transfers (around two thirds), while permanent transfers - the ones generally associated with higher transfer fees – have remained stable, accounting for around 11% of transfers over the whole time period covered.

²⁵ <https://www.fifatms.com/>

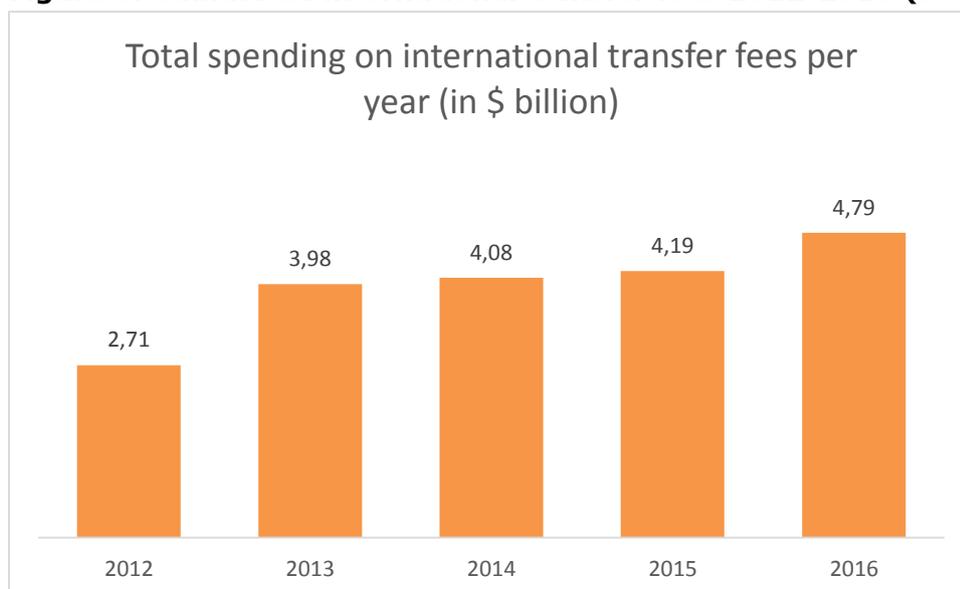
Data was extracted and compiled from FIFA TMS Global Transfer Market Reports from 2013 to 2017.

Figure 2: Type of transfers and repartition for 2012-2016 (Source: FIFA TMS)



When looking at total spend on transfer fees, there is an upward trend in the volume of transfers made. In 2016, a total of 2105 transfers involved a transfer fee (14.4% of all transfers). These transfers generated a total spending of USD4.79 billion, 14.3% more than in 2015. Here as well, every year marks a new record in terms of transfer fees spent. Over the period of reference, spending on transfer fees has increased by 76.7% and USD2.07 billion.

Figure 3: Cumulated international transfer fees 2012-2016 (source: FIFA TMS)



The increasing transactional approach on the transfer market, as well as some recent record transfers, should however not overshadow the fact that the vast majority of transfers involve much smaller amounts: the average transfer fees in 2016 – excluding transfers for out-of-contract players and loans – amounted to USD2.3 million.

2.2.2 Focused analysis on European clubs

European clubs are clearly the main actors of the transfer market. In 2016, clubs from UEFA dominated the market, accounting for 82.1% of all spending on international transfer fees during the year, with USD3.93 billion spent. The two following tables provide an overview of the evolution of the number of players released and hired by UEFA clubs, as well as the overall spending and receipts from the same clubs.

Figure 4: Number of transfers for European clubs 2012-2016 (source: FIFA TMS)

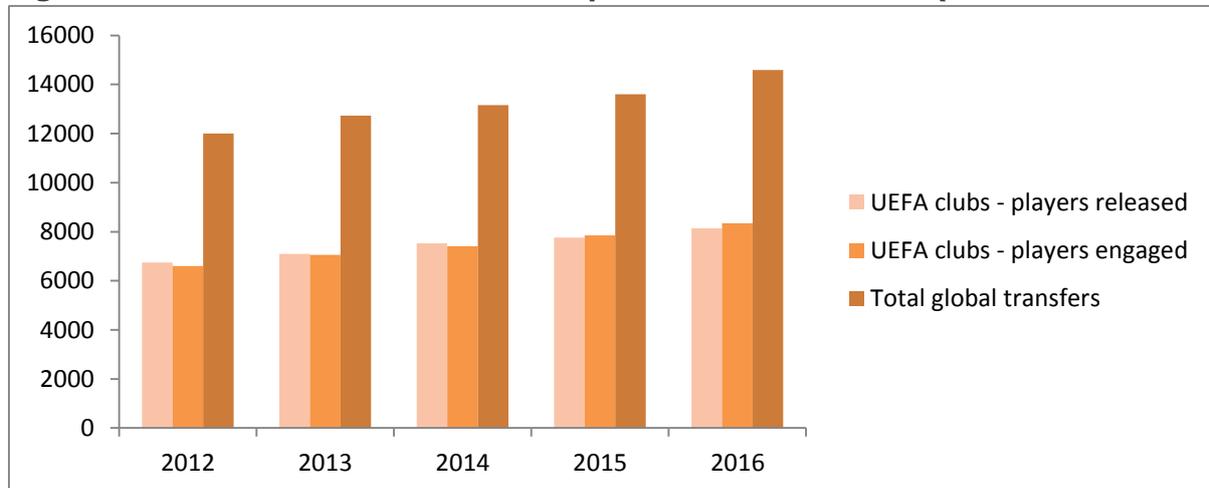
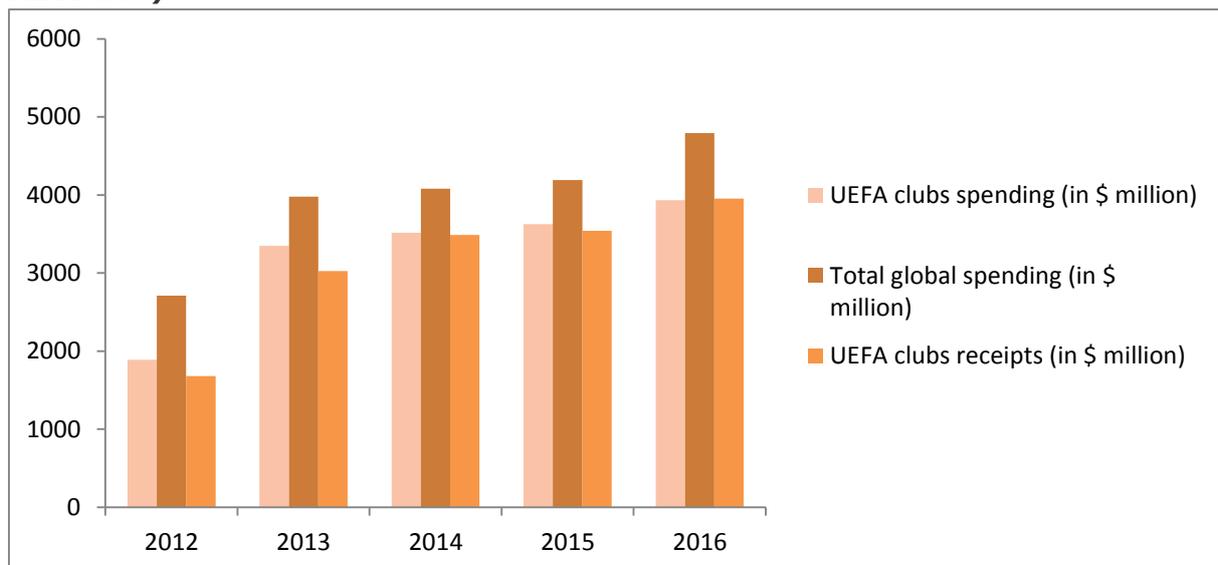


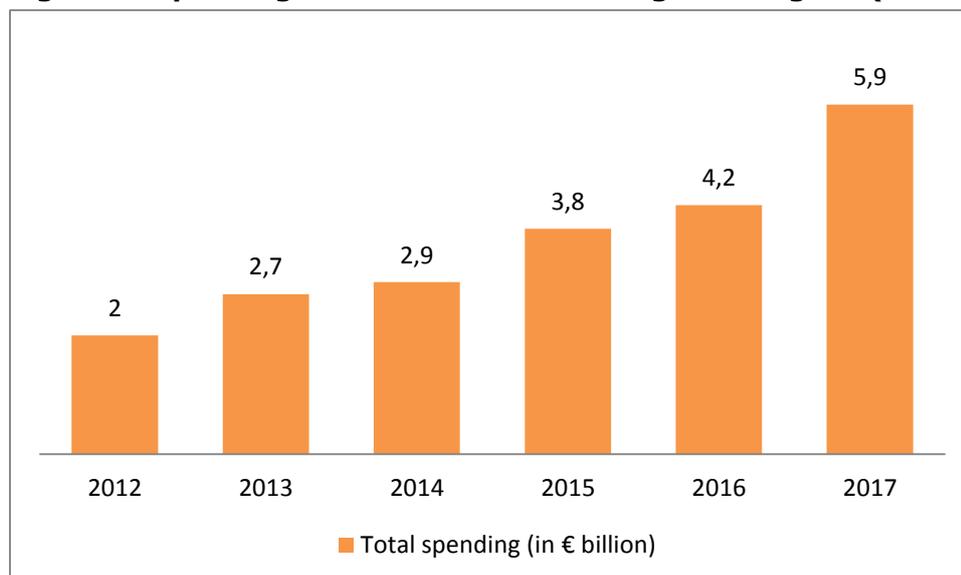
Figure 5: European clubs transfer spending and receipts 2012-2016 (source: FIFA TMS)



Those two tables confirm 1) the predominance of European clubs in terms of financial power on the transfer market and 2) in parallel, the high number of free or lower fee transfer taking place in non-European countries, since the European market represent a much smaller proportion in terms of number of transfers than in transfer fees.

Data concerning non-international transfers is neither as robust nor reliable as the data obtained through the FIFA transfer market system. However, research and analyses from the CIES provides additional insights into the 5 main European leagues (the “Big five”, composed of England, Germany, Spain, Italy and France).²⁶

Figure 6: Spending in transfer fees from big five leagues (source: CIES)



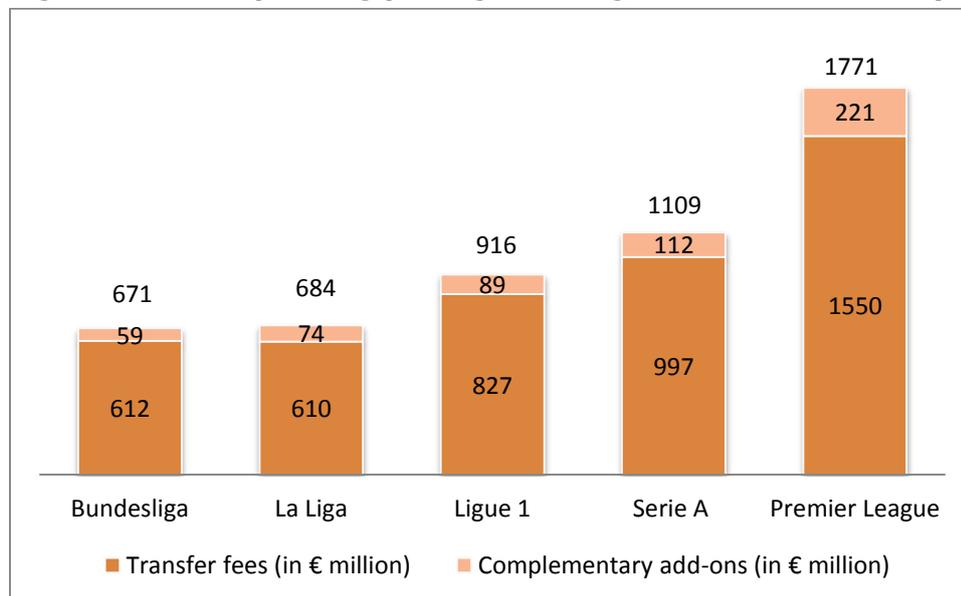
Data on the big five markets largely follow the upward trend identified in international transfers at global and UEFA levels, with a total of fees tripling between 2012 and 2017 (from €2 billion to €5.9 billion). Total spending from the big five leagues (including domestic transfers) also exceed the global amounts of spending for international transfers. While not particularly surprising, this further highlights the market concentration of transfer fees across big five leagues. Another key fact is the large increase (40.4% year-on-year) of spending in transfers for 2017, reaching a total of €5.9 billion (which is not yet covered in data provided by FIFA TMS reports).

The repartition across leagues shows the predominance of the Premier League over the transfer market, with a total spending over summer 2017 of €1771 million and accounting for almost 30% of the total transfer spending for the big five (and despite the

²⁶ The data presented in the following paragraphs is sourced from CIES and especially: Drs Raffaele Poli, Loïc Ravenel and Roger Besson (2017) Transfer market analysis: tracking the money (2010-2017). CIES Football Observatory Monthly Report n°27 - September 2017.

record spending in Ligue 1 with the signings of Neymar and Mbappé for more than €400 million for the two transfers²⁷).

Figure 7: Total spending per big five league in summer 2017 (source: CIES)



Finally, the flow of those transfer fees chiefly goes to other clubs from the big five, which accumulate 71% of the total transfer fees for summer 2017. The other main beneficiaries are other UEFA clubs (16%) and lower divisions of big five countries (7%).²⁸

2.2.3 Distribution of transfer revenues: intermediaries and redistributive mechanisms

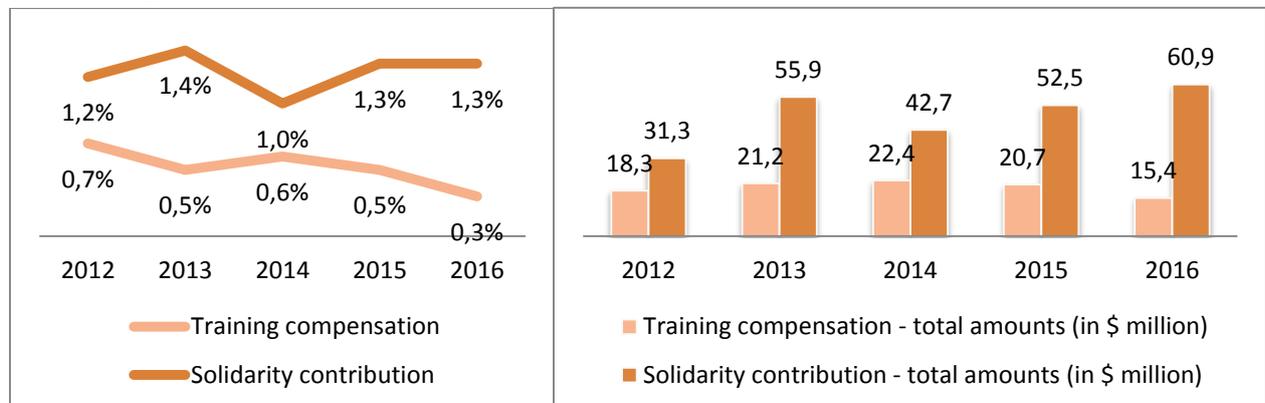
As noted in the above section, the increase in transfer fees is mostly distributed within UEFA clubs and especially clubs from the big five leagues. Besides the clubs directly involved in the transfer, articles 20 and 21 of FIFA RSTP also foresee training compensations and a solidarity mechanism with the clubs that have contributed to train the player (from 12 to 23 years old). However, the amounts received and the percentage on total transfer fees remain much below the threshold set in the latest version of the FIFA RSTP (5% for both mechanisms)²⁹, as shown by the data presented below:

²⁷ Those two transfers are estimated by various sources at respectively €222 million for Neymar and €180 million for Mbappé. No official data is available at time of writing

²⁸ Raffaele Poli, Loïc Ravenel and Roger Besson (2017) Transfer market analysis: tracking the money (2010-2017). CIES Football Observatory Monthly Report n°27 - September 2017.

²⁹ FIFA (2016). Regulation on the Status and Transfer of Players. Retrieved from: https://resources.fifa.com/mm/document/affederation/administration/02/70/95/52/regulationsonthestatusandtransferofplayersjune2016_e_neutral.pdf

Figure 8: Evolution of the training compensation and solidarity mechanism - in percentage of total transfers fees and in total amounts (source: FIFA TMS)



This means that the redistributive component of transfers is at best stagnating (or even decreasing) whereas the overall transfer market is growing fast. The 2013 study also previously noted the importance and relevance of such mechanisms, as they contribute to fair and balanced competition as they favour less wealthy clubs whose financial means directly affects their capacity to compete with larger clubs.³⁰

2.3 Analysis of key economic drivers behind the transfer market

The overall revenues and market sizes of clubs are steadily increasing across Europe. This upward trend has gone uninterrupted over the past ten years with an 80% increase between 2006/2007 and 2015/2016.

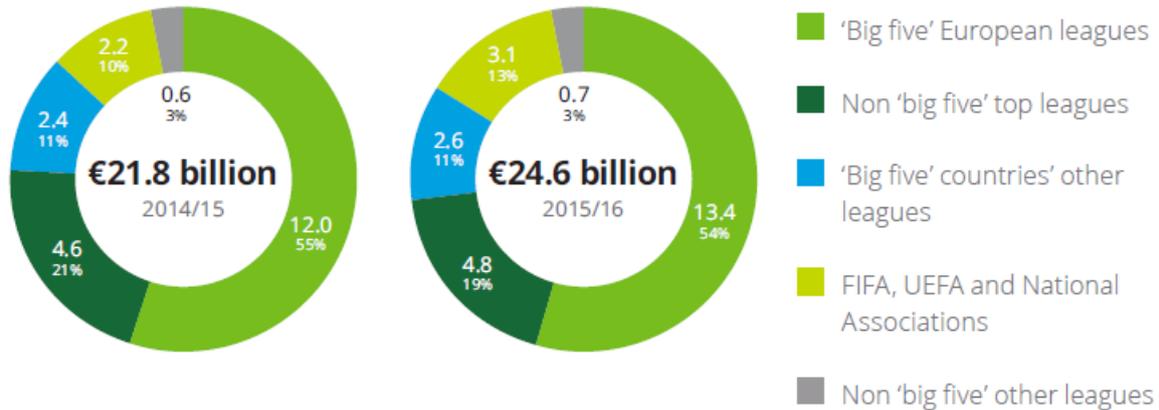
Figure 9: Size of the European football market (source: Deloitte)



³⁰ KEA & CDDES, *supra* note 1

This steady increase is chiefly driven by the big five leagues, as shown by the chart below:

Figure 10: European football market size - 2014/2015 and 2015/16. Source: Deloitte 2017 annual review of football finance (data from UEFA, FIFA, leagues and Deloitte).³¹



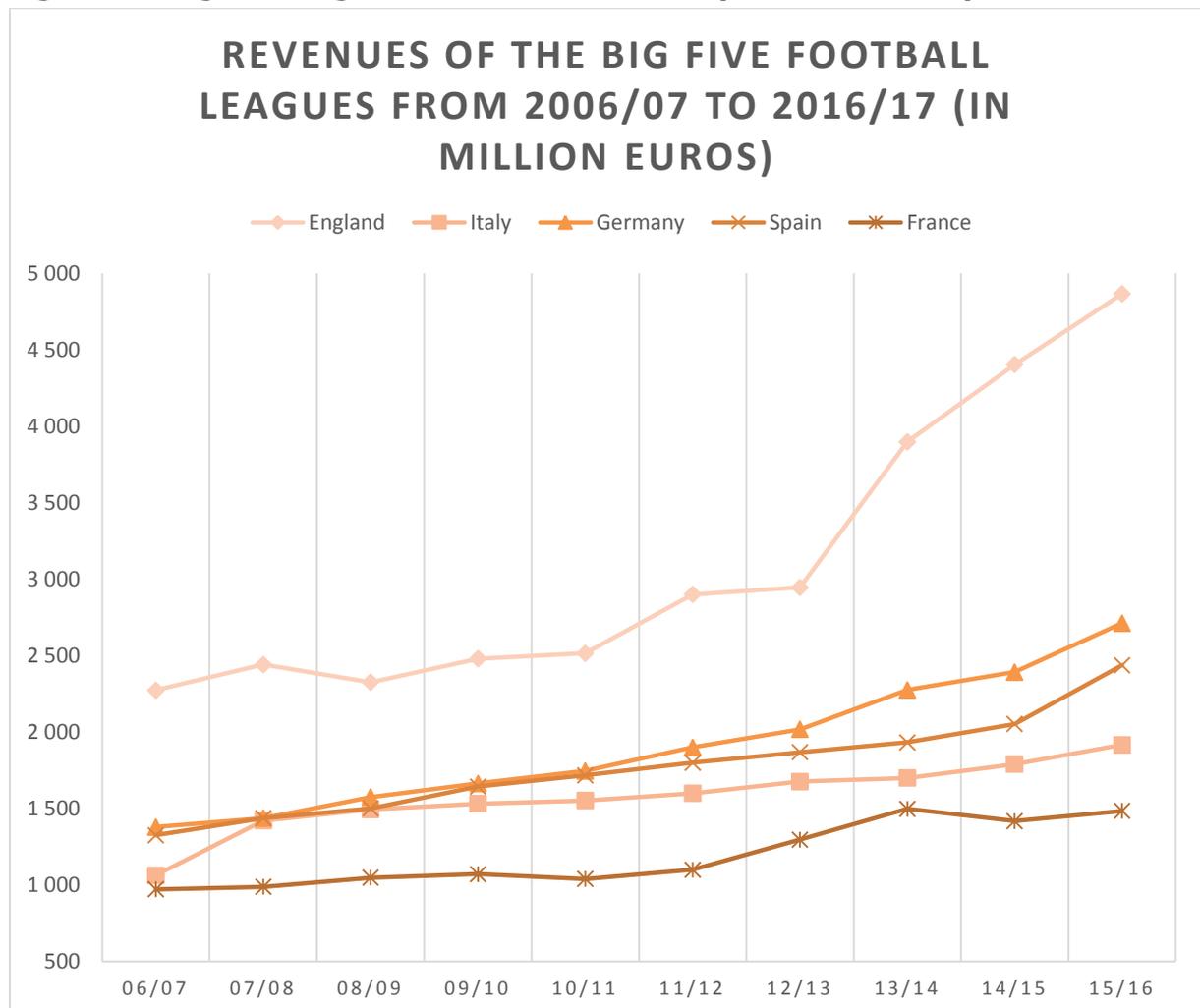
The big five leagues (including top division as well as lower ones) concentrate more than half of the European market size, and more than two third when including lower leagues from these five countries.

More importantly, these revenues have kept growing over the past five years, while the previous study already noted that football is one of the fastest-growing industries in Europe.

A closer look into revenue data from the big five leagues shows this growth is chiefly spurred by England, as the Premier League revenues have doubled over the past ten years, whereas the other four leagues grow at a slower pace.

³¹ Note: data for UEFA, FIFA and national association notably include international matches and competitions (e.g. UEFA European championships and FIFA world cup).

Figure 11: Big five league revenues 2006-2017 (source: Deloitte)



Altogether the big five leagues totalled €13,416 billion in revenues in 2016, a 91% growth.

The main drivers³² behind this growth are threefold:

- 1) Increase of broadcasting rights.
- 2) Private investment into football clubs.
- 3) Additional commercial and marketing revenues.

We will analyse each of these factors in the following subsections.

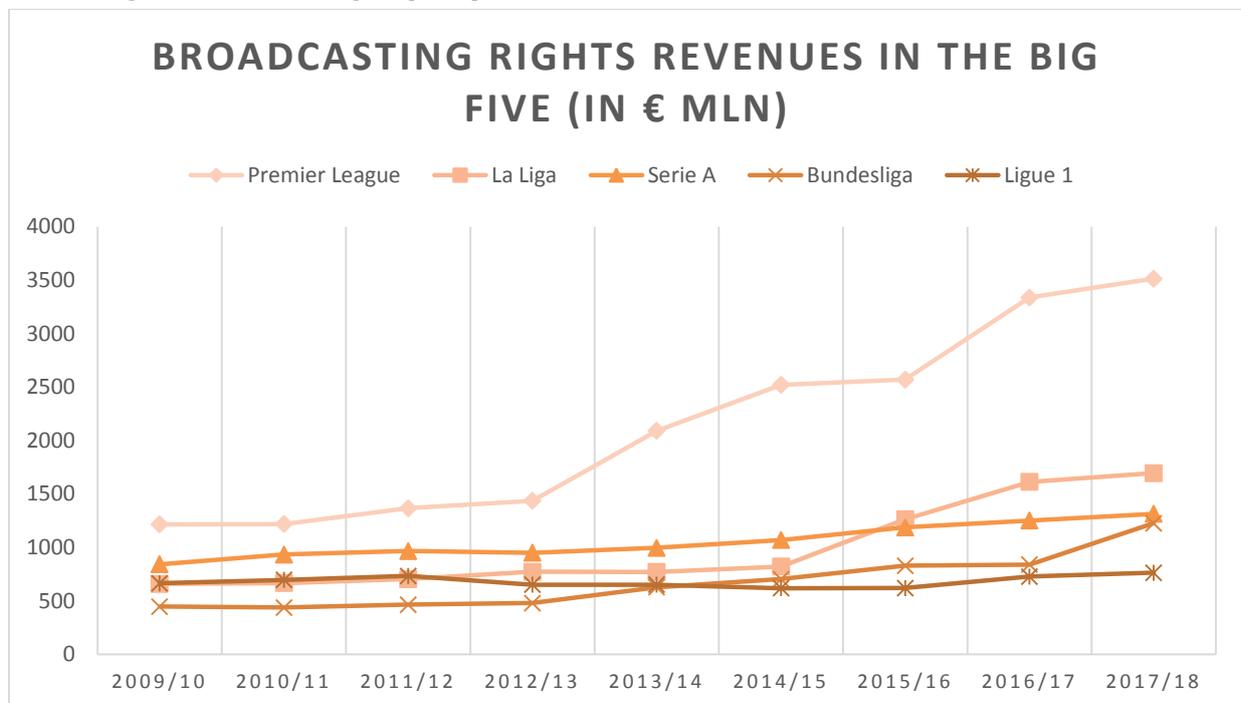
³² It should be noted that other revenues and especially gate (or match day) receipts also represent a significant source of income (according to UEFA Club Licensing Benchmarking Report Financial Year 2015, they represented €4 bn in 2015). However, they are much more stable year-on-year than the other drivers analysed in the following sub-sections.

2.3.1 Broadcasting rights on the rise

Overview of key data and evolution

The economic growth of the big five leagues is strongly correlated with the impressive increase of TV rights. Revenues stemming from broadcasting rights have more than doubled since the previous study, with a cumulated amount totalling €8.518 billion in 2017/2018 compared to €4.238 billion in 2011/2012. When comparing the latest data available in overall revenue growth for the big five leagues, the increased revenues stemming from broadcasting rights represent 54,3% of this total growth (€2.237 billion out of €4.116 billion between 2011/2012 and 2015/2016). The graph below shows the two waves of growth on the broadcasting rights markets, spurred by the renegotiations for Premier League retransmissions (2013-2016 then 2016-2019) and for La Liga for 2016-2019.

Figure 12: Big five broadcasting revenues 2009-2018 (Source: UEFA 2017 club licensing benchmarking report)



The well-known case of the Premier League boom in the broadcasting market is underpinned by 1) domestic competition between broadcasters (chiefly Sky and BT) and 2) international broadcasting revenues increasing significantly from €1.629 billion for 2010-2013 to €4.136 billion for 2016-2019.

Despite questions raised around the sustainability of such high selling prices, this upward trend is currently reflected across other big five leagues. Bundesliga recently renegotiated TV rights deals for a new period, with a significant increase. The Bundesliga

obtained an 85% increase for the period 2017-2021 compared to the previous period.³³ Similarly, la Liga has started the negotiation process for broadcasting rights covering the 2019-2023 period and a similar increase is anticipated. However, there are still uncertainties concerning the allocation of rights for 2018-2021 in Italy.

Comparable data for other leagues is much scarcer, but it confirms the predominance of the big five leagues on this revenue stream³⁴. The rest of top 20 leagues reported a total of €781 million in Financial Year 2015³⁵, while for other European leagues the amounts perceived are very low. The latest UEFA club licensing benchmarking report indeed notes that broadcasting rights contribute less than 5% of revenue to most European leagues (32 out of 54). Outside the top 20, broadcast revenues exceed this threshold for Czech clubs (10%) and Israeli clubs (9%).

Another driver for broadcasting rights revenue growth in the coming years may lie in increased appetite for sport content by tech giants, with Twitter and Facebook investing in retransmission rights for Sports in North America (American Basketball and Baseball, as well as Mexican football). Additionally, Facebook and Amazon have both expressed interests in Premier League retransmission rights.³⁶ While this interest has not led to any important deals yet, this may spur additional competition and thus higher bids in the coming years.

Broadcasting rights redistribution domestically

Another key aspect in terms of TV rights is the overall distribution of revenues across clubs. Such distribution is taking place through different channels:

- 1) Domestic distribution of TV rights revenues;
- 2) Redistribution from UEFA champions league and Europa League competitions.

In terms of domestic distribution, strong disparities exist from country to country, due to the variables used to allocate the overall sum received by the leagues, as well as the system in place to negotiate broadcasting deals:

- In most cases (England, France, Germany, Italy), broadcasting deals are managed through collective selling, i.e. the rights are bundled and negotiated at the league level and then redistributed to the different clubs.
- Until recently, Spain had an individual selling system. This meant that each club would negotiate itself the broadcasting deals and retain the sums received,

³³ See for example: <http://www.bundesliga.de/de/dfl/dfl-ueberspringt-erstmal-milliarden-marke-bei-nationalen-medien-rechten-pro-saison-durchschnittlich-1-16-milliarden-euro-ab-2017-18-agmdsp.jsp>

³⁴ One notable exception would be Turkey's Süper Lig, which yields revenues amounting to around half of French League 1 between 2014 and 2018.

³⁵ UEFA 2017 club licensing benchmarking report

³⁶ Several articles point to such interest by tech giants. See for example one on Northern American Leagues: <https://www.economist.com/news/business/21727094-tech-firms-are-splashing-out-new-series-facebook-twitter-and-apple-get-television> or one on European football (Premier League in this case):

<https://www.theguardian.com/football/2017/sep/21/amazon-facebook-premier-league-rights-manchester-united>

leading to strong disparities between clubs in la Liga depending on their attractiveness for broadcasters. The system was changed in April 2015 and a collective selling mechanism was also implemented.³⁷

Domestic distribution is then allocated according to a set of criteria applied to each team³⁸:

- Sporting results or 'merit payments' for the last season(s). This is the only criteria used in Germany for example (calculated over the last five seasons with lower weightings for previous seasons).
- Number of matches broadcasted (often with a distinction between prime time and other broadcasts).
- A 'fixed' amount divided equally between all clubs.
- Additional criteria (e.g. number of supporters in Spain and Italy or size of the city the club is established in – in Italy).

Depending on the weighing of these different criteria, the distribution across clubs is more or less balanced. A comparison of how the revenues are distributed across the big five leagues is provided below for the latest data available³⁹.

Table 2: redistribution of broadcasting revenues in big 5 leagues

	England (2016- 2017)	Spain (2016- 2017)	Germany (2016- 2017)	Italy (2015- 1016)	France (2016- 2017)
Largest amount received	£150.8 mln (Chelsea)	€152.5 mln (Barcelona)	€74.162 mln (Bayern Munich)	€103 mln (Juventus)	€57.855 mln (PSG)
Smallest amount received	£93.5 mln (Sunderland)	€40 mln (Las Palmas)	€23.061 mln (RB Leipzig)	€22 mln (Carpi; Frosinone)	€15.562 mln (Nancy)

³⁷ Real Decreto-ley 5/2015, de 30 de abril, de medidas urgentes en relación con la comercialización de los derechos de explotación de contenidos audiovisuales de las competiciones de fútbol profesional.

³⁸ Sénat Français (2017) Les droits audiovisuels du football : cession et répartition. Étude de législation comparée n° 275, January 2017.

³⁹ Note: data included here only include broadcasting rights for national competitions. the data was compiled on [this blogpost](#), though originally come from different sources:

- The Swiss ramble for Premier League;
- As for La Liga;
- Fussball-Geld for Bundesliga;
- L'équipe for Ligue 1;
- La Gazzetta dello Sport for Italy.

Differential between smallest and largest amount	1.6	3.8 (c.a. 9 under the individual selling system)	3.21	4.7	3.7
Average amount per club	£119.925 mln	€65.25 mln	€38.116 mln	€46.215 mln	€28.05 mln

Conversely other leagues have a much wider differential of revenues between the top and bottom clubs. In practice it means that while the overall club revenues have significantly grown in recent years (with broadcasting rights accounting for more than half of this growth), the polarisation between top clubs and smaller ones is also increasing.

2.3.2 Club ownership: new entrants and transfer fees spending

The 2017 UEFA club licensing report shows that private investment in club acquisition continues to rise.⁴⁰ 2016 was the most active year for foreign club takeovers, with ten new acquisitions by November, including eight new Chinese owners. Forty-four clubs in major European leagues are now under foreign ownership, by owners of 18 different nationalities, representing 19% of clubs in those leagues. Most of these clubs were acquired after 2008 (39 out of 44), with peak years of acquisition in 2015 and 2016.⁴¹ Private investment is also intensifying through the acquisition of minority shares in clubs. While we could not find consolidated data directly linking club ownership and financial injection in clubs at EU or big five level, English football club owners had injected £2.3 bn into their clubs back in 2011.⁴²

Additionally, the correlation between club ownership and transfer spending has been analysed by several researchers. This research has shown that the amounts invested in transfers are significantly higher for clubs owned by private majority investors, and especially foreign majority investors (where the nationality of owners can in fact be seen as a proxy for the owners' private wealth).⁴³

⁴⁰ Among others, Forbes publishes every year an overview of club ownership and revenues: <https://www.forbes.com/sites/mikeozanian/2017/06/06/the-worlds-most-valuable-soccer-teams-2017/#6dd73a8377ea>

⁴¹ UEFA (2017) The European Club Footballing Landscape. Club Licensing Benchmarking Report - Financial Year 2015. 8th edition. Nyon, Switzerland.

⁴² Conn, D. Record income but record losses for Premier League. The Guardian, 19 May 2011, and Rohde, M.; Breuer, C. (2016) The Financial Impact of (Foreign) Private Investors on Team Investments and Profits in Professional Football: Empirical Evidence from the Premier League. Appl. Econ. Finance 2016, 3, 243–256.

⁴³ Franck, E. Private Firm, Public Corporation or Member's Association Governance Structures in European Football. Int. J. Sport Finance 2010, 5, 108–127.

See also Rohde, M.; Breuer, C. (2016) Europe's Elite Football: Financial Growth, Sporting Success, Transfer Investment, and Private Majority Investors. International Journal of Financial Studies, June 2016.

This is also confirmed by some key examples of activity on the transfer market. 14 out of the 20 clubs which have spent the most on the transfer market between 2010 and 2016 are owned by majority private investors (including 12 non-EU owners).

Table 3: Ownership structure in top spending clubs

Big-5 league soccer clubs ranked by combined transfer fee spending from 2010 to 2016 ⁴⁴	Ownership	Transfer fee spending in million euros
Manchester City**	Abu Dhabi Group Investment (86.21%), CMC Football Holdings Limited (13.79%); Chairman: Khaldoon Al Mubarak (Emirates)	1.024
Chelsea FC**	Chelsea FC plc, subsidiary of Fordstam Limited, owned by Roman Abramovitch (Russia); Chairman: Bruce Buck	871
Manchester United**	Manchester United plc; Co-chairmen: Joel Glazer, Avram Glazer (USA)	841
Paris SG**	Oryx Qatar Sports Investments; Chairman: Nasser Al-Khelaifi (Qatar)	691
Barcelona	Multiple ownership; Chairman: Josep Maria Bartomeu	680
Liverpool**	Fenway Sports Group; Chairman: Tom Werner (USA)	663
Real Madrid	Multiple ownership; Chairman: Florentino Pérez (Spain)	644
Juventus*	Exor N.V. (63.8%); Chairman: Andrea Agnelli (IT)	618
Roma**	NEEP Roma Holding SpA (79.04%); Chairman: James Pallotta (USA)	535
Inter Milan**	Suning Holdings Group (68.55%), International Sports Capital (31.05%), Pirelli (0.37%); Chairman: Erick Thohir (Indonesia)	517
Atlético Madrid**	Miguel Angel Gil Marin and Enrique Cerezo (52%), Wanda Group (15%, China); Chairman: Enrique Cerezo (Spain)	517
Arsenal**	Arsenal Holdings plc; Chairman: Sir Chips Keswick (USA)	466
Tottenham*	ENIC International Ltd.; Chairman: Daniel Levy (UK)	457

⁴⁴ * clubs owned by private majority investors

** clubs belong to foreign majority investors.

Napoli	Filmauro S.r.l.; Chairman: Aurelio De Laurentis (Italy)	437
Bayern	FC Bayern München ev (75%), adidas AG (8.33%), Audi AG (8.33%), Allianz SE (8.33%); Chairman: Karl-Heinz Rummenigge (Germany)	435
Monaco**	Ekaterina Rybolovleva Trust (66.67%), House of Grimaldi (33.33%); Chairman: Dmitry Rybolovlev (Russia)	370
Wolfsburg	Wolkswagen; Chairman: Francisco Javier Garcia Sanz (Spain)	353
Valencia**	Peter Lim (Singapore); Chairman: Anil Murthy (Singapore)	341
Dortmund	Borussia Dortmund GmbH & Co. KGaA; Chairman: Hans-Joachim Watzke (Germany)	340
AC Milan**	Rossoneri Sport Investment Lux; Chairman: Li Yonghong (China)	337

Source: Centre International de l'économie du Sport (CIES), 2017.

Analysis of the relationship between the growth in private owners and transfer fees should be qualified however, since there are different strategies at play across these clubs. Some (e.g. Monaco or Arsenal) have a generally positive transfer balance⁴⁵ while other clubs were purchased too recently to have any impact on the transfer market (e.g. AC Milan). Conversely, clubs which grew significantly as a result of external investment (new entrants such as Paris or Manchester City) invested significant amounts in transfer fees to build up a competitive team from scratch.

2.3.3 Commercial revenues on the rise

Commercial revenues typically include sponsorship, merchandising, stadium tours and other commercial operations.⁴⁶ Importantly, commercial revenues are partly driven by the quality of the team and especially the presence of 'star' players who attract important commercial revenues. This means the ability to concentrate talents is paired with the prospects of higher financial returns for a small number of clubs. The latest data available show that altogether, commercial revenues and club sponsorship account for 33% of club revenues in 2015⁴⁷:

⁴⁵ Rohde, M.; Breuer, C. (2016) Europe's Elite Football: Financial Growth, Sporting Success, Transfer Investment, and Private Majority Investors. *International Journal of Financial Studies*, June 2016.

⁴⁶ Deloitte (2017) *Football Money League 2017*: Planet Football. January 2017, London, UK.

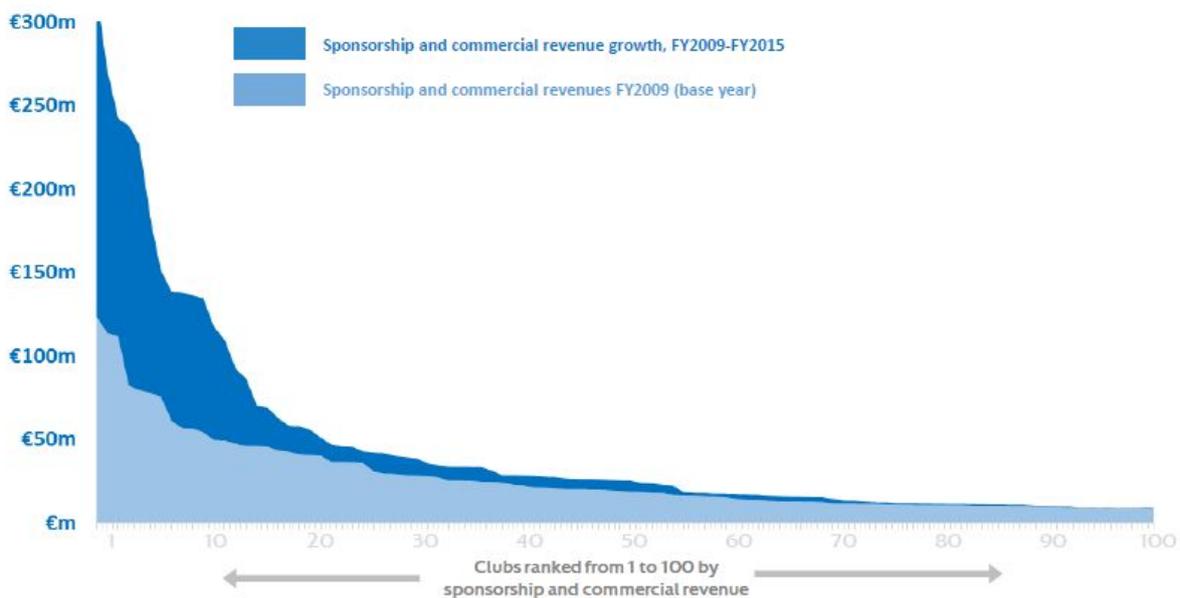
⁴⁷ Financial year 2015. Unless specified otherwise, all data in the section below comes from the UEFA 2017 club licensing report.

- Club sponsorship revenues totalled €4.1bn and increased by 5% in 2015, following a 6%. Once again, sponsorship growth in FY2015 was concentrated at the top, with more than 75% of increased revenues flowing to the 15 largest clubs.
- In 2015, commercial revenues totalled €2.6bn, with an 11% year-on-year increase, after an 8% increase in 2014. Commercial revenue growth is again concentrated among the largest 'global' clubs.

Commercial and sponsoring revenues represent a large revenue stream, but chiefly for top European clubs. The top 15 clubs in Europe have added a remarkable €1,514m in sponsorship and commercial revenues in the last six years (148% increase), compared with the €453m added by the rest of Europe's 700 or so top-division clubs (17% increase).

Compared to commercial and sponsoring revenues, revenue growth from all other sources, including broadcasting rights, revenue from UEFA, gate receipts and other income, has grown at a relatively similar rate for the top 15 clubs (45%) and the rest of Europe's top-division clubs (37%). In absolute terms however, this means disparities are fast growing between top 15 clubs and others:

Figure 13: Growth in sponsorship and commercial revenues for top 100 UEFA clubs (source: UEFA 2017 club licensing benchmarking report)



When looking at clubs from the big five leagues, growing disparities can also be observed: the English club average amounts to €64.8m in sponsorship and commercial revenues, which is 2.3 times the average of the Spanish and French clubs, and represents 3.4 times the Italian club average.

It should also be noted that in smaller leagues (outside the top 20), many clubs rely heavily on sponsorship and commercial deals (as broadcast rights do not exceed 5% of total revenues in most cases. For example, clubs in Czech Republic, FYR Macedonia,

Liechtenstein, Luxembourg and Slovakia averaged over half their revenues from sponsorship and commercial partnerships in FY2015.

2.3.4 Women's football

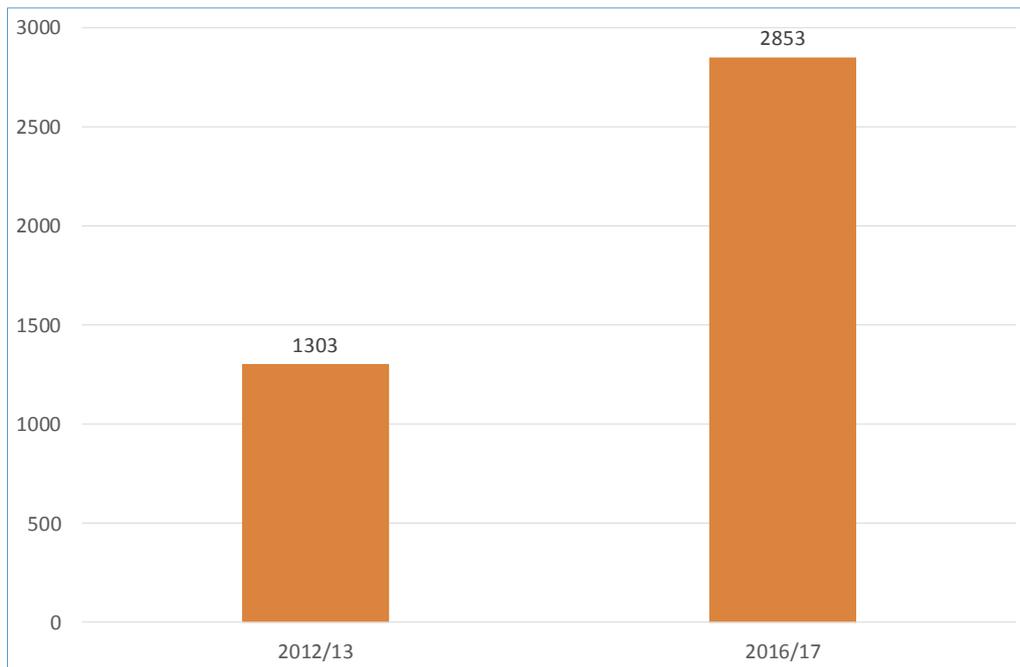
The recent growth and professionalisation of women's football means that there is potential for the particular issues associated with excessive transfer fees in men's football to emerge in the women's game. A lack of consistent data on trends in the numbers and values of domestic and international transfers however means that it is currently difficult to assess how recent developments in women's football are driving changes in transfer activity. The quality of data is likely to improve however as an amendment to the Regulations on the Status and Transfer, as of 1st January 2018, means it is now mandatory to use FIFA's ITMS to process the international transfers of female professional players within the scope of eleven-a-side football. Analysis by the CIES Football Observatory however shows an increased tendency for greater international movements between clubs. This trend is associated with the greater propensity for female players to be attracted by the financial pull of clubs which are based abroad. In June 2017, 274 footballers were playing outside of the association in which they started playing football in the 55 clubs analysed (5.1 per team).⁴⁸

The recent growth and development of the women's football in Europe has been captured in a series of annual reports by UEFA. As shown in Figure 15, data collected by UEFA shows that the number of professional and semi-professional players in Europe more than doubled from 1,303 in 2012/13 to 2,853 in 2016/17.⁴⁹

⁴⁸ Polj, R. Ravenel, L. and Besson, R (2017) Women's football analysis: a comparison of five major leagues, CIES Football Observatory Monthly Report n°26 - June 2017

⁴⁹ UEFA (2017) Women's Football Across the National Associations (2016/17)

Figure 15: Number of women professional and semi-professional players (source: UEFA)



UEFA data also shows the recent trend for significant increases in funding coming into the women's game through increases in national association budgets, sponsors, revenues from TV companies and attendances:⁵⁰

- The overall national association budgets of UEFA members increased from €50.4m in 2012/13 to €101.7m in 2016/17.
- The number of national associations with dedicated women's football sponsors increased from nine to 12 between 2013/14 and 2016/17.
- Between 2013 and 2016, global revenues in the participating UEFA Women's Champions League markets increased by more than 92%.
- Six countries (Belgium, England, France, Germany, Netherlands and Ukraine) increased their average attendance at national team matches by more than 2,000 between 2012 and 2017.

The professionalisation of the Women's game in many of the European national leagues relates in part to the growing trend for women's teams to be supported financially by the earnings of male teams. The Women's Super League in England, for example, is now dominated by female sections of successful male teams. In the Women's Champions League the four semi-finalists in 2016-17 were all linked to successful male teams from Europe's top five men's leagues. This trend appears to be spreading across Europe for example in 2017 Juventus started their inaugural campaign in the Women's Serie A (Italian) championship. Funding from the clubs has allowed women to train full-time

⁵⁰ *Id.*

which has improved playing standards. Women's football also benefits financially from the association with the club brand.

While most major nations in European women's football currently have only a few full-time teams, there are indications however that full-time women's football is likely to grow. From 2018-19, the top tier of English women's football (the Women's Super league) will be only for full-time clubs after proposed changes to league licences. To be granted full-time status and meet the eligibility criteria for the WSL, a minimum level of financial investment by each club will be required. An academy at each club will also be compulsory as part of the licence.⁵¹

2.3.5 Additional insights: basketball

As outlined in the objectives of the study, this research is mainly focused on the football transfer system. However, it is noteworthy and useful to mention some important developments in other sports, such as basketball. In fact, it could be argued that from a regulatory point of view, that there are potential good practices and rules implemented in other sports that might be applied to football, while acknowledging the differences in terms of sporting competitions and market volumes.

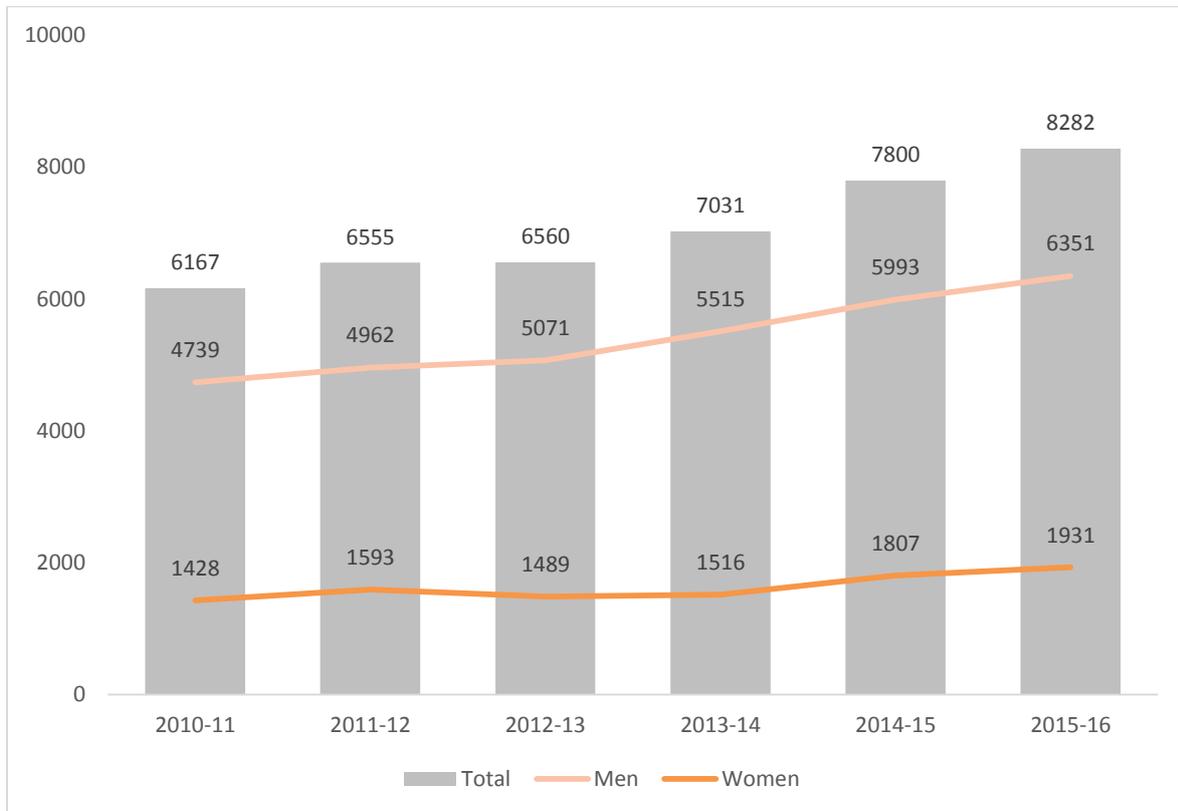
The increased volume of transfers observed in football can also be observed in basketball. While reliable figures and studies are hard to come by for this sport, the 2015 CIES International Basketball Migration Report shows this tendency: in the season 2014-2015 a new record was registered in terms of amount of international transfers (7800), with an increase registered for both men and women basketball.⁵² However the use of transfer fees is still not a widespread practice in basketball, as noted in the 2013 study.⁵³

⁵¹ <http://www.thefa.com/news/2017/sep/26/fa-restructure-womens-football-pyramid-wsl-wpl-270917>

⁵² CIES. (2015). International Basketball Migration Report

⁵³ KEA & CDES, *supra* note 1

Figure 14: Evolution of International Transfers in basketball (Source: FIBA)



3.0 Legal evolution and recent case law

3.1 Introduction

This section provides an analysis of the main legal developments taking place in the football market since the publication of the previous study in 2013. As briefly mentioned in the introduction, we identified four main changes within the legal framework of the football transfer market.

This legal analysis will not only focus on these four developments, but it will try to highlight those aspects of this market sector that have triggered vibrant debates among stakeholders or within the recent literature, as identified through the data collection process of this study. For this reason, the legal analysis will be divided into four parts:

- 1) The first section will highlight those developments aimed at addressing the perceived lack of competitive balance in football, such as the ban on Third Party Ownership and the legal evolution of the Financial Fair Play, but also an analysis of the reasons behind the widespread criticism towards the current loan transfer market.
- 2) The following section will analyse the role of intermediaries in football, by looking at the potential impact of the recently implemented regulation on football agents.
- 3) The third section will focus on those legal instruments aimed at supporting the youth protection and development.
- 4) The last section will take into consideration the perceived lack of transparency in the current football market, with the aim to understand whether the existing legal tools are actually making this market more transparent.

3.2 Competitive balance

As outlined by the economic and financial analysis of the football market in the previous chapter, the transfer system has a strong impact on the competitiveness of football clubs. It could be argued that the transfer system is part of a vicious circle in which wealthiest clubs are able to spend more money on transfers, increasing their chances to achieve sporting success which ultimately results in larger revenues that can be spent on the football market to buy top players. This section aims to outline those legal instruments that might affect the competitive balance in football, both negatively and positively.

3.2.1 Financial Fair Play

The UEFA Club Licensing and Financial Fair Play (henceforth: FFP) regulations have been approved in 2010 and came into force in the following year, with the objective to control club finances and to prevent unaccountable clubs to participate in UEFA competitions. Since 2011, clubs qualifying for UEFA competitions “have to prove they do not have

overdue payables towards other clubs, their players and social/tax authorities”.⁵⁴ The FFP is indirectly linked to the transfer market, as it rather seeks to enhance the financial sustainability of clubs. The paragraphs below discuss the changes brought about by the regulations and the potential impacts (if any) on the transfer market.

According to UEFA, FFP contributes in monitoring and implementing transfer rules, thus enhancing the fairness of the competition and the stability of the financial environment. In 2013, UEFA also introduced the break-even assessment, through which the Club Financial Control Body (henceforth: CFCB) analyses “each season three years’ worth of club financial figures, for all clubs in UEFA competitions”.⁵⁵ This means that clubs can spend up to €5 million more than what they have earned for the three-year time-span considered. This would entail that direct investments by the club owner needs to be limited, in accordance with its club losses. Many scholars and club representatives are discussing the impact of the break-even assessment on investment into smaller clubs (or clubs which are changing their ownership or that are willing to increase their influence and sporting results by directly investing in the club) and their ability to compete with more established clubs.⁵⁶

UEFA launched in 2015 an updated version of the FFP, in which the above issue was addressed, introducing changes to allow sustainable investments for those “clubs requiring business restructuring, clubs facing sudden economic shocks and clubs operating with severe market structural deficiencies in their operating region”⁵⁷. As stated by Gianni Infantino, General Secretary of UEFA at the time, “these new rules will encourage investors to invest in European football”⁵⁸, but also to support the sporting competition and to safeguard the financial stability of the clubs by limiting the losses to €30 million for assessment periods starting from the 2015-2016 season⁵⁹.

⁵⁴ UEFA. (2015). Financial Fair Play: all you need to know. Retrieved from: <http://www.uefa.com/community/news/newsid=2064391.html>

⁵⁵ UEFA. (2015). UEFA Club Licensing and Financial Fair Play Regulations.

⁵⁶ Preuss et al. (2014). UEFA financial fair play: the curse of regulation. EJSS-Journal;

Vöpel, H. (2011). Do we really need Financial Fair Play in European club football? An economic analysis. CESifo DICE Report 3/2011;

Moore, G. (2013). Independent. Financial Fair Play policy unfair on smaller clubs claim chairmen of Chelsea and Southampton. Retrieved from: <http://www.independent.co.uk/sport/football/news-and-comment/financial-fair-play-policy-unfair-on-smaller-clubs-claim-chairmen-of-chelsea-and-southampton-8872161.html> ;

Van Maren, O. (2017). Asser International Sports Law Blog. UEFA’s Financial Fair Play Regulations and the rise of football’s 1%. Retrieved from: <http://www.asser.nl/SportsLaw/Blog/post/uefa-s-financial-fair-play-regulations-and-the-rise-of-football-s-1> ;

ESPN. (2016). Financial Fair Play regulations limit investment in smaller clubs – study. Retrieved from: <http://www.espn.com/soccer/uefa-champions-league/story/2946083/financial-fair-play-regulations-limit-investments-in-smaller-clubs-study>.

⁵⁷ UEFA, *supra* note 55

⁵⁸ The Guardian. (2015). UEFA says Financial Fair Play has changed to attract new investors. Retrieved from: <https://www.theguardian.com/football/2015/jun/29/uefa-financial-fair-play-investors>

⁵⁹ UEFA, *supra* note 54

Moreover, UEFA decided also to provide the assessment services to all the clubs not participating to the European Competitions, but willing to anticipate the evaluation and thus the participation to such competitions in the future⁶⁰. In this sense, through a voluntary agreement with UEFA, such clubs might submit a long-term business plan which includes future break-even information and that demonstrates the ability and commitment of the club to meet the break-even requirements during the voluntary agreement period, as stated in the Annex XII of the FFP regulations⁶¹.

Furthermore, as suggested in the policy recommendations outlined in the previous study⁶², in order to distinguish between 'bad' and 'good' losses, from 2015 clubs are allowed to exclude from their break-even calculations the investments for the stadium or training facilities, the youth development and women's football⁶³.

Another important point here is related to the accounting procedure that was introduced in the amended Regulation, which allows clubs to distribute the cost of a transfer fee over the length of the player's contract⁶⁴, thus helping those clubs dealing with important transfers to comply with the FFP rules on the break-even assessment. The downside is that this accounting mechanism could certainly play an important role in maintaining the status quo, cancelling out to some extent the FFP Regulation's contribution to fixing the existing unbalances of the system and limiting the current excesses of the transfer market.

The European Union has welcomed the implementation of the FFP by signing a joint statement with UEFA in 2012⁶⁵. The statement sets out the positive objectives of the new regulations as follows: improve the financial and economic capability of clubs, increase transparency, encourage clubs to operate on the basis of their own revenues, protect the integrity of UEFA club competitions and protect the long-term sustainability of European football club. Moreover, the European Court of Justice in 2015 has judged as 'manifestly inadmissible'⁶⁶ the complaint lodged by a player's agent together with the supporters of PSG and Manchester City against the implementation of the FFP updated regulations⁶⁷, and in particular against the decision to reduce the permitted value of losses for clubs from €45 million to €30 million, as prescribed by the phase two of the FFP rules.

If a club is not in line with the FFP provisions, the CFCB will decide over the disciplinary measures and sanctions for clubs. Article 8 of the FFP Regulations defines the catalogue of sanctions to be undertaken in case of non-compliance with the provisions, according to

⁶⁰ UEFA, *supra* note 54

⁶¹ UEFA, *supra* note 55

⁶² KEA & CDES, *supra* note 1

⁶³ UEFA, *supra* note 54

⁶⁴ UEFA, *supra* note 55

⁶⁵ European Commission. (21.03.2012). Joint Statement by Vice-President Joaquin Almunia and President Michel Platini. Retrieved from: http://ec.europa.eu/competition/sectors/sports/joint_statement_en.pdf

⁶⁶ ECJ. 19 June 2015. Case C-299/15. Daniele Striani and Others v. UEFA, URBSFA.

⁶⁷ The Guardian. 2015. Court ruling blocks UEFA from implementing next stage of FFP rules. Retrieved from: <https://www.theguardian.com/football/2015/jun/23/court-ruling-uefa-ffp-rules>

the specificity of the cases.⁶⁸ The catalogue consists of a wide array of measures: from warnings and fines to the disqualification from ongoing or future competitions or even the withdrawal of titles or awards.

The application of these measures has strongly increased since the establishment of the UEFA club licensing system in the season 2003/2004: according to UEFA, 53 clubs, in 57 separate occasions, have been not admitted to the European competitions so far, because they did not fulfil licensing or financial fair play criteria⁶⁹. This system has then been implemented with the introduction of the financial fair play in 2011: since then, six clubs have been denied access to European competitions, due to failures to comply with the break-even requirement or because of unpaid salaries or fees to other clubs. For instance, in 2014, UEFA imposed sanctions to Manchester City and PSG because of exceeded losses within the seasons 2011-2012 and 2012-2013⁷⁰. In particular, Manchester City accepted the €60 million fine, a restriction on transfer spending and a reduction in the club's squad size for the Champions League tournament to only 21 players, instead of 25. Both clubs decided to collaborate with UEFA through the settlement agreement, and the economic sanctions were partly refunded⁷¹.

The decision to take actions against these two clubs is interesting to analyse as both clubs deemed their proposed break-even lawful due to the large revenues obtained through lucrative sponsorship agreements with companies closely linked to the clubs' owners, such as the Etihad Airlines and the Qatar Tourism Authority⁷². However, UEFA's evaluation of these sponsorship agreements was "significantly below that submitted by the clubs"⁷³, and for this reason the clubs have been sanctioned because their economic performances did not meet the break-even requirements.

The issue of sponsorships agreement with companies or institutions which are directly linked to clubs' owners might be particularly affected by the formal investigation of the Chamber of Inquiry of the UEFA Club Financial Inspectorate opened into PSG after last summer's transfer window.⁷⁴

⁶⁸ UEFA, *supra* note 55

⁶⁹ UEFA, *supra* note 54

⁷⁰ CNN. 2014. Financial Fair Play: Manchester City and PSG punished. Retrieved from: <http://edition.cnn.com/2014/05/16/sport/football/financial-fair-play-uefa-football/index.html>

⁷¹ Club Financial Control Body – Investigatory Chamber. 2014. Decision of the Chief Investigator of the CFCB Investigatory Chamber: Settlement Agreement with Paris Saint-Germain Football Club. Retrieved from: https://www.uefa.com/MultimediaFiles/Download/OfficialDocument/uefaorg/ClubFinancialControl/02/10/68/99/2106899_DOWNLOAD.pdf

⁷² Ogden, M. (2013). The Telegraph. Paris Saint-Germain sponsorship deal eclipses all rivals but opens questions about Financial Fair Play regulations. Retrieved from: <http://www.telegraph.co.uk/sport/football/european/10443730/Paris-Saint-Germain-sponsorship-deal-eclipses-all-rivals-but-opens-questions-about-Financial-Fair-Play-regulations.html>

⁷³ The Guardian, *supra* note 67

⁷⁴ Conn, D. (2017). The Guardian. UEFA opens formal FFP investigation into PSG's transfer activity. Retrieved from: <https://www.theguardian.com/football/2017/sep/01/psg-ffp-uefa-investigation-transfer-activity-neymar>

As also highlighted by UEFA, the FFP has had a positive impact on European football, particularly for what concerns the financial stability of the clubs and more in general of the overall financial environment.⁷⁵ These assumptions are justified by the rise of profits and by the fact that 'net debt as a percentage of revenue has fallen from 65% in 2009 to 40% in 2015'.⁷⁶ Despite the positive effects in terms of financial stability and economic performances for clubs, some critics⁷⁷ argue the current FFP system may increase the unbalances between global top clubs and the rest since a successful club is able to yield more revenues, acquire more talents and then widen the gap across clubs. In this sense, the introduction of the Annex XII on voluntary agreements for the break-even requirements shall be considered as a crucial step towards a more balanced system, but still not able to fix all imbalances in the short period (which, again, is not the main aim of the FFP which rather ensures better club governance and financial sustainability).

3.2.2 Third Party Ownership ban

On 1st May, 2015, after a short transitional period, article 18^{ter} of the FIFA Regulations on the Status and Transfer of Players (henceforth: RSTP) came into force, which bans the *third-party ownership* (henceforth: TPO) practices for football transfers. The article states that "no club or player shall enter in agreement with a third party whereby a third party is being entitled to participate, either in full or in part, in compensation payable from one club to another or is being assigned any right in future transfer or transfer compensation"⁷⁸.

FIFA's decision to ban the TPO practices relies on the idea that third-party ownership would seriously affect the integrity and fairness of the competitions because of potential conflict of interests between clubs and investors, but also in light of the decision of different federations (English, French and Polish Football Associations⁷⁹) to ban this practice, thus preventing potential unfair benefits for federations where the practice had not been formally banned.

On another level, the alleged assumption that this ban would be in breach of EU competition rules could be justified by the prominence given by the article 165⁸⁰ of the

⁷⁵ UEFA. (2017). European club football's financial turnaround. Retrieved from: <http://www.uefa.com/insideuefa/protecting-the-game/club-licensing-and-financial-fair-play/news/newsid=2435355.html?redirectFromOrg=true#/>

⁷⁶ Van Maren, O. (2017). Asser International Sports Law Blog. UEFA's Financial Fair Play Regulations and the rise of football's 1%. Retrieved from: <http://www.asser.nl/SportsLaw/Blog/post/uefa-s-financial-fair-play-regulations-and-the-rise-of-football-s-1>

⁷⁷ Preuss et al., *supra* note 56

⁷⁸ FIFA, *supra* note 29

⁷⁹ Halleux, V. (2016). European Parliament Research Service. Retrieved from: [http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/573940/EPRS_ATA\(2016\)573940_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/573940/EPRS_ATA(2016)573940_EN.pdf)

⁸⁰ European Union (2007). Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community. 2007/C 306/01. Retrieved from: <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-3-union-policies-and-internal-actions/title-xii-education-vocational-training-youth-and-sport/453-article-165.html>

Treaty of the European Union to the specificity of sport, particularly concerning its educational and social functions. However, the implementation of this measure has ignited a strongly contested debate between a fully-fledged ban or the implementation of a specific legal framework.

In this context, the Spanish and Portuguese football associations lodged an official complaint with the European Commission in 2015, suggesting that the measure would interfere with the EU competition rules and with the regulations on free movement of labour and capital.⁸¹ On the other hand, UEFA and FIFPRO have launched joint legal actions with the Commission, prompting an endorsement by the Commission to the ban promoted by the FIFA.⁸²

La Liga argues that a regulation of the TPO practice could have been more appropriate, especially if considering that the two studies commissioned by FIFA did not fully support the TPO prohibition, thus suggesting instead the inclusion of proportionality criteria, such as the limitation of the third-party ownership to a minimum percentage⁸³. The political and financial arguments suggested by *La Liga* are based on the premise that appropriate regulations might create greater legal certainty and enable smaller clubs to leverage external investment in order to build up competitive teams. The case of FC Porto is quite telling: the Portuguese team has frequently resorted to this practice, achieving considerable results both in the sporting and the economic fields,⁸⁴ using TPO to invest in (often young) players and perform well at both national and international levels while limiting the financial risk for the club. With these consistent performances, the club's activity on the transfer market has resulted in a positive net balance of €366 million over the last 10 seasons.⁸⁵

According to *La Liga*, an appropriate regulation would support small/medium-sized clubs to maintain or increase their competitiveness, by diversifying their funding sources and thus signing players who they otherwise would not be able to afford. However, this example also reveals the importance and the necessity of a normative harmonisation amongst different national federations in order to preserve the fairness of the competition. It is also arguable that TPO might enable the facilitation of sporting talents in those countries where systems of scouting and training of young players are not adequately developed.⁸⁶ This would explain the relevant number of TPO practices in

⁸¹ *La Liga* (2015). Las ligas española y portuguesa denuncian ante la Comisión Europea la prohibición de los TPO de la FIFA. Retrieved from: <http://www.laliga.es/noticias/las-ligas-espanola-y-portuguesa-denuncian-ante-la-comision-europea-la-prohibicion-de-los-tpo-de-la-fifa>

⁸² UEFA (2015). UEFA and FIFPRO launch complaint against third-party ownership. Retrieved from: <http://www.uefa.com/insideuefa/stakeholders/players-unions/news/newsid=2230203.html?redirectFromOrg=true>

⁸³ Asser International Sports Law (2016). Debating FIFA TPO ban. *Int. Sports Law Journal*; pp.233-252

⁸⁴ Alvarenga, D. (2013). Reuters. Porto thrive as revolving door for talent. Retrieved from: <https://in.reuters.com/article/soccer-portugal-porto/porto-thrive-as-revolving-door-for-talent-idINDEE94S09I20130529>

⁸⁵ Data from transfermarkt, own calculations.

⁸⁶ CDES-CIES (2014). Research on third-party ownership of players' economic rights (part II)

South American and Eastern European countries. For instance, in 2013 it has been estimated that almost 90% of players registered in the Brazilian First Division had “their economic rights shared between different stakeholders”.⁸⁷

Finally, a strict ban of TPO may encourage the creation of a sort of ‘black market’, in which some agents might search for loopholes to avoid the ban, as also suggested by the “Allardyce affair”, in which football agents claimed to have found ways around the regulations.⁸⁸ For instance, an example of a potential loophole to circumvent the ban can be represented by the increasing employment of the so-called ‘bridge transfers’. In 2014, FIFA has sanctioned for the first time five clubs that resorted to this type of transfers. According to FIFA, “bridge transfers involve clubs collaborating to transfer players through a ‘bridge’ club to a destination club where the player was never fielded by the bridge club”.⁸⁹ The reasons behind the employment of this type of transfer are related to the possibility to ‘anchor’ players economic rights to a club instead of a third-party owner, as a private company for instance.⁹⁰ This would entail a hidden form of third-party ownership, since the owning clubs *de facto* do not recur to the sporting performances of the player, but is instead transferred on loan or permanently according to his/her market value. For example, Deportivo Maldonado is a club in the Uruguayan Second League which has been particularly active on the transfer market by signing players that never played for the Deportivo Maldonado team, but they were instead firstly loaned to other clubs in South America, and once their market value had grown, they have been sold in Europe.⁹¹ In South America, this system is quite widespread, as also suggested by the investigation of the FIFA Dispute Resolution Chamber that found four other teams recurring to this system of transfer in Argentina.⁹² In Europe, a similar case took place with the Cypriot team of Apollon Limassol, which has literally acted as a bridge for transfer of players from Eastern to Western European clubs.⁹³ However, the case of Deportivo Maldonado poses some questions about the actual ownership of these bridge clubs, which seems far from being clear to the authorities. In particular, journalist investigations have shown how the bridge clubs might also represent a way to ease the tax burden on transfers of players.⁹⁴

⁸⁷ KPMG (2013). TPO Report. Retrieved from: <http://www.ecaeurope.com/Research/External%20Studies%20and%20Reports/KPMG%20TPO%20Report.pdf>

⁸⁸ Wilson, B. (2016). BBC. Football third-party ownership rule explained. Retrieved from: <http://www.bbc.com/news/business-37483203>

⁸⁹ FIFA. (2014). Argentinian and Uruguayan clubs sanctioned for bridge transfers. Retrieved from: <http://www.fifa.com/governance/news/y=2014/m=3/news=argentinian-and-uruguayan-clubs-sanctioned-for-bridge-transfers-2292724.html>

⁹⁰ Reck, A. (2014). LawInSport. What is a “bridge transfer” in football.

⁹¹ Aarons, E. (2016). The Guardian. Welcome to Deportivo Maldonado, where the big names never actually play. Retrieved from: <https://www.theguardian.com/football/2016/oct/10/deportivo-maldonado-stars-never-play-calleri-riulli-agents>

⁹² FIFA, *supra* note 89

⁹³ Cyprus Mail. (2016). Apollon named in report about questionable player ownership practices. Retrieved from: <http://cyprus-mail.com/2016/12/15/apollon-named-report-questionable-player-ownership-practice/>

⁹⁴ LawInSport and The Guardian, *supra* notes 90-91

On the other hand, the decision to ban TPO would be justified by the existence of a potential conflict of interests in case of investors owning stakes in different clubs, thus affecting not only the integrity of the competition,⁹⁵ but also the development of young players. Furthermore, article 18^{ter} of the RSTP would also promote the independence of clubs, since the third-party interests could interfere with the decision of a club over a specific transfer: the case of Carlos Tevez is particularly telling, where his club West Ham United had been deprived of any rights on the future transfer decisions for the player.⁹⁶ It is arguable that the interests of the third-party ownership might diverge from those of the clubs or the players, since investors would be primarily seeking short-term profits by speculating on transfers. This potential clash of interests between clubs and investors might also affect the stability of a squad, since clubs might be more interested in creating a solid and stable team for sporting reasons.

Finally, for what concerns the idea that the TPO would financially aid small/medium-sized clubs, the CDES-CIES report suggests that this practice would instead increase the dependence of a club with external investors, thus affecting the financial stability of the clubs, driving them toward “a vicious circle of debt and dependence”:⁹⁷ when a club sells its players’ economic rights to a third-party, the club’s assets value will decrease, making thus more complicated further financial options.

In conclusion, it could be argued that the TPO ban is addressing important issues such as the promotion of football clubs’ independence but also the games’ integrity, together with ethical issues concerning the development of young players. Furthermore, the decision to ban these forms of investments on players does not exclude other forms of external investments on clubs, which shall be considered as more appropriate to ensure the integrity of the game and clubs independence.⁹⁸

3.2.3 Loan transfers

Temporary transfers, more commonly known as loan transfers, are a widespread practice in modern football. Loans are predominantly adopted within two different circumstances: a) when a promising young player is not playing enough in his/her team and is transferred to another team (usually at a lower level or in a lower tier) – in order to improve and gain more experience; b) when an experienced player does not play in his/her team because of the large number of players in the squad or because of adaptation issues within the team, and then is transferred in order to reduce the wages bill of the team or in order to get a definitive transfer after the loan period.⁹⁹

⁹⁵ CIES (2012). Football Agents in the biggest five European Football Markets – An empirical research report. Retrieved from: http://www.football-observatory.com/IMG/pdf/report_agents_2012-2.pdf

⁹⁶ BBC, *supra* note 88

⁹⁷ CDES-CIES, *supra* note 86

⁹⁸ Asser International Law Sports, *supra* note 83

⁹⁹ KEA & CDES, *supra* note 1

Two of the policy recommendations included in the previous study were aimed at addressing and limiting the issue where teams heavily and extensively rely on these kind of transfer practices. The first one suggested to limit the number of players per squad to 25, while the second to take measures aimed at preventing potential competitive unbalances and unfairness of the competitions, due to abusive and excessive employment of loan practices. While the first measure has been addressed in all of the European 28 FAs¹⁰⁰ and also at the European competitions level by UEFA¹⁰¹, the suggested measures in the second policy proposal concerning limits to the number of loans per lending clubs and providing a legal framework over loan contracts has not been taken into account by FIFA and the Federations.

Extensive use of this temporary transfer practice by some teams has led to a debate over the necessity to better regulate these practices, as some argue that such practices might affect the integrity and fairness of competitions, but also the development of young talents. These two arguments are discussed below.

International transfer loans are regulated by article 10 of the FIFA RSTP and the related annex 3.4.¹⁰² The provisions set out the mandatory registration of the international loans within the Transfer Matching System that shall include all the loan instruction, with the potential clauses, such as the possibility to convert the temporary loan into a definitive transfer, the salary contributions and even the related information over the adoption of specific fees concerning the loan or the sporting performances of the player. The clauses that might be included are, however, not listed in the RSTP, thus leaving large and discretionary opportunities to the clubs. These opportunities have produced a situation in which many clubs – also wealthy ones – might decide to conclude different transfers through loans operations, which are, then, ultimately converted into definitive transfers, mainly for budgeting reasons, as for instance the chances to record a transfer payment within the next fiscal year.

In this sense, since the previous study, the main development within the loan practices issue considered by FIFA regards the ban over the so-called ‘emergency loan transfers’, a practice that was adopted in the English professional leagues.¹⁰³ According to this practice, players were allowed to move on loan from a club to another outside the regular transfer window periods, in cases of emergencies arising when the player of a team suffered from serious injuries or disciplinary sanctions.

However, one of the most controversial aspects relating the extensive employment of this transfer practice is related to its impact on the young players’ development. In particular, it has been noted how, between 2011 and 2013, the majority of incoming and

¹⁰⁰ UEFA (2017). The European Club Footballing landscape.

¹⁰¹ UEFA (2016). UEFA Champions League squads: how it works. Retrieved from: <http://www.uefa.com/uefachampionsleague/news/newsid=2400510.html#/>

¹⁰² FIFA, *supra* note 29

¹⁰³ Wilkinson, J. (2016). SkySports. Emergency Loan Window: System changes explained. Retrieved from: <http://www.skysports.com/football/news/11095/10509644/emergency-loan-window-system-changes-explained>

outgoing loans occurred amongst under-23 players.¹⁰⁴ A relevant example to be considered here is the case of Chelsea: in the 2014-2015 season the English team had 26 outgoing players, temporarily transferred in the English and international leagues,¹⁰⁵ while for the season 2016-2017 the number had raised to 38 players loaned out.¹⁰⁶ Whilst some positive cases of young players returning from the loan and accessing the first team exist, it could be argued that the majority of the 'loanees' will find it difficult to be included in the first team. An increasing number of players will potentially collect several loan transfers before being integrated in the first team, or in the case where the club's expectations for the growth of the young player are not met, they can be sold before the expiration of their contract.

In conclusion, the positive effects of loan practices are certainly observable for both the lending and beneficiary clubs, where the beneficiaries are most-likely those clubs with limited budgets and less opportunities to fast-track the development of their players within the academies, while the lending clubs might benefit from the experience gained by their players otherwise not eligible for their first team, or also from potential revenues in case the player is sold after gaining significant experience.

By considering this point, it appears clear that these practices might actually benefit the competitive balance between the different teams.¹⁰⁷ However on another level, the practice raises some ethical considerations over the fairness of such mechanisms for young players, who might never be able to get involved in first team football for their parent team. In some cases, this could potentially hinder the development of their talent. In this sense, a measure that might be adopted in order to prevent an abusive and discretionary employment of the loan practice could be a limitation of the number of loans per lending club, as already suggested in the previous study.

3.3 Intermediary Regulations

On April 1 2015, FIFA has introduced a new regulation on football intermediaries, the Regulations on Working Intermediaries¹⁰⁸ (henceforth: the RWI), which has substantially

¹⁰⁴ ECA. (2014). Study on the Transfer System in Europe. Retrieved from: http://www.ecaeurope.com/Research/Study%20on%20the%20Transfer%20System%20in%20Europe/ECA%20Study%20on%20Transfer%20System%20in%20Europe_WEB%20version.pdf

¹⁰⁵ Gibson, O. (2014). The Guardian. With Chelsea having 26 players out on loan, is it time to change the rules?. Retrieved from: <https://www.theguardian.com/football/blog/2014/sep/09/chelsea-loan-players-change-rules-wild-west-football>

¹⁰⁶ Ames, N. (2016). ESPN. How Premier League Clubs' 'endless loans' impact the transfer market. Retrieved from: <http://www.espnfc.com/english-premier-league/23/blog/post/2941416/how-premier-league-big-clubs-stockpiling-and-loans-impact-transfer-market>

¹⁰⁷ ECA (2014). Study on the Transfer System in Europe. Retrieved from: http://www.ecaeurope.com/Research/Study%20on%20the%20Transfer%20System%20in%20Europe/ECA%20Study%20on%20Transfer%20System%20in%20Europe_WEB%20version.pdf

¹⁰⁸ FIFA (2015). Regulation on Working with Intermediaries. Retrieved from: https://www.fifa.com/mm/Document/AFFederation/Administration/02/36/77/63/RegulationsonWorkingwithIntermediariesII_Neutral.pdf

changed the existing FIFA Players' Agents Regulation from 1991, already amended in 2001 and 2008. The 1991 Players' Agents Regulation represents the first official licensing system for agents within the FIFA, while the 2001 modification moved the agents' registration competence to the different football associations (henceforth: FAs).¹⁰⁹ The newly implemented RWI refers to football agents as an intermediary, defining them as "a natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiation with a view to conducting an employment contract or represents clubs in negotiations with a view to conducting transfer agreement".¹¹⁰

The decision to introduce a new regulation for football intermediaries is mainly based on the willingness to address three shortfalls identified by FIFA over the role of players' agents:¹¹¹

- a) according to a FIFA estimate approximately 70% of football international transfers occur without the use of licensed agents;
- b) lack of transparency also for those transfers concluded through a licensed agent;
- c) arising problems over the roles and financial obligations of club representatives and players' agents.

In this sense, the measures introduced by FIFA in the RWI are aimed at providing more transparency to the working conditions of intermediaries through a full disclosure and publication of the remuneration and payments of the intermediaries (art.6), but also a full disclosure of any existing conflict of interests between all the parties involved (art. 8). However, other important modifications have been introduced, such as the protection of minors through the ban of intermediary commissions for under 18 players.

The different FAs are entitled for the implementation of the minimum standards and requirements set out by the Regulations (art. 5), and thus they shall also enforce the RWI by imposing and publishing any sanction on intermediaries for domestic transfers, while the FIFA Disciplinary Committee is still deemed responsible for sanctions to clubs, intermediaries and FAs in case of international transfers (art.9).

Finally, three further modifications have particularly triggered debates over the role of the intermediaries:

- 1) Registration system: the RWI requires that each FA implements a registration system for intermediaries, where the latter, in order to operate, should sign a mandatory Intermediary Declaration that will represent their adherence to the statutes and regulations of FIFA (art. 3 and 4);
- 2) Fees: FIFA recommends the different FAs to include a voluntary cap on the intermediary fees. In particular, the fee should not exceed the 3% of the player basic gross income or of the transfer compensation (art. 7). In the former regulation a cap was based on the yearly income of players, while it now relates

¹⁰⁹ FIFA (2015). Working with Intermediaries – reform of the players' agents system. Retrieved from: <http://www.fifa.com/governance/news/y=2015/m=4/news=working-with-intermediaries-reform-of-fifa-s-players-agents-system-2583543.html>

¹¹⁰ FIFA, *supra* note 108

¹¹¹ FIFA, *supra* note 109

to the entire duration of a player contract. Moreover, this cap does not refer to the agents' fee, a clause which is commonly negotiated in many transfers, and thus being free from any cap;

- 3) Juridical entities: the RWI will now allow also companies or agencies to be registered as intermediaries, as stated in the preliminary definition.

As briefly mentioned above, some points of the RWI have been criticised by intermediaries, players, agent associations and scholars. Regarding point 1), while FIFA argues that the new registration system will prevent money laundering, some argue that the deregulation of the intermediary license at FIFA level, and leaving enforcement to national federations, could literally produce a 'far west',¹¹² in which the risk is that many individuals will abuse weaker registration mechanisms to deceive footballers, particularly young players and especially in those countries where corruption is widespread.¹¹³

Moreover, as stated by the agent David Seligman, the de-regulation of the licensing system will increase the number of players that will sign contract with intermediary without the necessary skills and qualifications for representing players, resulting in a potential exploitation of the youngest.¹¹⁴ Moreover, as emerged during the interview process with the relevant stakeholders, the current regulation could be applied, in practice, only at the moment of the contract signature, and thus at the transaction moment. However, it has been noted how important these professional figures are in the development of the career of a football player, thus having significant responsibilities towards the players along the whole duration of their contracts.

On another level, FIFA had estimated that only 25-30% of all the international transfers are conducted through a licensed agent, thus a reform was necessary in order to make the transfer market more transparent.

The latest data extracted from the Transfer Matching system however shows that from January 2013 to date, USD 1.59 billion was paid as commissions to club intermediaries. 97% of this amount comes from UEFA clubs, and only USD45 million from non-UEFA clubs.¹¹⁵ The changes introduced in 2015 are in any case correlated with a sharp increase in fees for intermediaries stemming from international transfers: from USD238 million in 2014, intermediaries' commissions reached USD446 million in 2017, which represents an 87% increase over four years.¹¹⁶

Another important source of discontent raised by the RWI is related to the recommended remuneration cap, as described in point 2). Mel Stein, chairman of the AFA (Agent

¹¹² Riach, J. (2015). The Guardian. Football agents fear 'wild west' as FIFA reform seek to cap fees. Retrieved from: <https://www.theguardian.com/football/2015/mar/31/football-agents-fifa-reforms>

¹¹³ Smith, L. (2015). LiamSmithLaw. The deregulation of football agents. Retrieved from: <https://liamsmithlaw.wordpress.com/2015/04/13/the-deregulation-of-football-agents/>

¹¹⁴ BBC. (2015). Football agent rule changes 'could leave young players exploited'. Retrieved from: <http://www.bbc.com/sport/football/32150263>

¹¹⁵ FIFA TMS (2017) Intermediaries in International transfers. 2017 Edition, January 2013-November 2017.

¹¹⁶ *Id.*

Football Association), states that the cap will destroy the business of approximately 50% of the AFA associates.¹¹⁷ Another potential implication could be the knock-on effect on players, since intermediaries will have now less incentives to negotiate the best deal for their clients.

From the intermediaries' perspective there is also a harmonisation issue arising from the recommended remuneration cap, which would enable the different FAs to choose whether to include or not the rule, and thus, creating potential unbalances within the intermediaries' working conditions in the European countries (e.g. the Spanish Federation has not capped the intermediaries' remuneration, while the English FA has adopted the RWI provision¹¹⁸).

According to FIFA, these recommendations will serve primarily to identify which entities (players or clubs) are entitled for the payment of these fees, thus furtherly addressing the lack of transparency issue. Another potential source of controversy on this issue is related to the potential inadmissibility of this cap with the art. 101 and 102 of the TFEU, as also suggested by the case lodged at the regional court of Frankfurt am Main by the intermediary company Firma Rogon Sportmanagement against the German Football federation.¹¹⁹

Another issue that needs to be highlighted refers to the opportunity for companies to be registered as intermediaries, as described by the preliminary definition of intermediary included in the Regulations. This opportunity might cause some problems in relation to how players get represented within the negotiation phases. In particular, the players will now be represented by the said company but without an indication over the specific individual that will follow them.

Finally, one of the most controversial issues is related to the measures in favour of minor protection, and particularly the application of article 7: the last paragraph of this article is stating that forms of payments to the intermediaries are prohibited if the player concerned is a minor. This measure has provoked large disdain amongst intermediaries, who are arguing that this will simply produce a situation in which the intermediaries will sign as many young players as possible in order to increase their opportunity to make a profit in case of future large transfer fees.¹²⁰ Moreover, the Regulation does not include provisions over the maximum duration of players' representation contracts. The outcome of this normative vacuum could be an increase of the disputes between players and intermediaries, in case players will realise that the lengthy contract is not beneficial to

¹¹⁷ The Guardian, *supra* note 112

¹¹⁸ Torres, L. (2015). Asser International Sports Law Blog. The Impact of the new FIFA Regulations for Intermediaries: a comparative analysis of Brazil, Spain and England. Retrieved from: <http://www.asser.nl/SportsLaw/Blog/post/the-impact-of-the-new-fifa-regulations-for-intermediaries-a-comparative-analysis-of-brazil-spain-and-the-uk-by-luis-torres>

¹¹⁹ Misic, T. (2015). Asser International Sports Law Blog. The new FIFA intermediaries regulations under EU law fire in Germany. Retrieved from: <http://www.asser.nl/SportsLaw/Blog/post/the-new-fifa-intermediaries-regulations-under-eu-law-fire-in-germany-by-tine-misic>

¹²⁰ BBC, *supra* note 114

their careers. It is noteworthy to mention here the decisions of the English and Spanish FAs to include a maximum length of 2 years for players' representation contracts.¹²¹

In conclusion, it could be argued that the current normative framework for the intermediaries needs to be re-assessed, in order to address important issues arising from the current and previous regulations for football agents. As suggested by various stakeholders contacted for this study, a new regulatory approach should proceed from the resolution of the existing conflict of interest for agents, since they currently profit from the transfer of players.

In fact, intermediaries are actually mediators between clubs and players, while they should be more focused on protecting the interests of players, whereas clubs usually have a legal service dealing with transfers (and generally speaking a higher bargaining power). In this sense, better linkages between players' interests and agents' could be helpful to avoid potential loopholes (e.g. by linking intermediaries remuneration to players' salaries and stability in a club). In any case, representatives of players (FIFpro) and agents (e.g. EFAA) should be involved in improving this regulation in the future.

Good practice - NBPA Regulations Governing Player Agents

The amendments included in the NBPA Regulations Governing Player Agents in February 2016 might represent a significant example of how a normative framework for player agents could be applied to different sporting activities. Given the specificity of the agents' role in transfers, both FIFA and NBPA regulations aims to establish a regulatory framework for the profession. It is therefore possible to detect potential shared practices and enforcement processes within the two sports. Moreover, as noted by the analysis of the FIFA Intermediary Regulations and by the different views collected during the interview process with the relevant stakeholders, it becomes clear that the newly implemented FIFA regulation is not particularly effective in addressing the lack of transparency and increased negotiation power of the agents.

The NBPA agents' regulation, as the FIFA Intermediaries regulation, aims at increasing the transparency within the role of the players' agents and at establishing "uniform standards of conduct and fiduciary responsibility applicable to all certified Player Agents". Despite the shared scope of these two regulations, it could be argued that the one implemented by the NBPA includes stricter requirements for granting the agents with the mandatory license, and thus being more effective in addressing the stated goals. In fact, differently from the FIFA Regulation, the NBPA one requires agents:

- to have completed a "four-year accredited university or college" or alternatively to substitute these years of educations with "relevant negotiating experience";
- an "authorization to perform a background investigation";
- to be approved by the NBPA.

This last point is particularly significant if we consider that the NBPA is the union of

¹²¹ FA (2017). FA Regulations on working with intermediaries. Retrieved from: <http://www.thefa.com/football-rules-governance/policies/intermediaries/regulation-and-forms>

professional basketball players, thus providing a more fair and balanced distribution of the competences between players and the other stakeholders. In addition to this, successful NBPA applicants must also complete a “written proctored examination”. Finally, agents can apply for official NBPA licenses only during a specific time window: from 1st of August to 1st of December.

The requirements introduced by the NBPA Regulation could certainly represent an important example of how to enhance the ‘professionalization’ within professional figures involved in the developments of players, and thus affecting the sporting fairness and competition but also the transparency within this sector. For this reason, football authorities might consider this regulation as a relevant ‘good practice’ that could relatively easily be implemented and that could potentially correct the existing lack of transparency and the problems highlighted in this study and also pointed out by the interviewed stakeholders.

3.4 Youth protection and development

The previous study has highlighted the importance of addressing the issue of youth development and protection in the football market. Among the different proposed measures, the study suggested that the current policy framework in terms of minors and young players should be regulated in accordance with European Law, and thus a process of reform and harmonisation shall be encouraged through the European Social Dialogue in the field of football.

The issue of minors in football transfers is currently regulated by the different Football Associations, according to the provisions of article 19 and 19*bis* of the FIFA RSTP.¹²² In article 19, it is stated that “international transfer of players is only permitted if the player is over the age of 18”; however, there are also three exceptions to this rule:

- a) the player’s parents move to the country of the new club for reasons not linked to football;
- b) if the transfer takes place within the EU or EEA and the player is aged between 16 and 18. In this case, the club shall provide adequate football education and training, academic and/or school and/or vocational education, and provide optimum living standards;
- c) “the player lives no further than 50km from the national border and the club with which the player wishes to be registered in the neighbouring association is also within 50km of that border”. Finally, the transfers shall be approved by the FIFA’s Players’ Status Committee.

Article 19*bis* sets out the provisions for the enforcement of the rules of article 19, stating that clubs shall report all minors that attend the academy to their belonging associations, and that the associations shall ensure that there is no legal, financial or de facto link between clubs and academies, and that they shall also keep a register with all the

¹²² FIFA, *supra* note 29

relevant information of the minor. Finally, in case of violations to these rules, the FIFA Disciplinary Committee is entitled to sanction the involved parties.

According to FIFA RSTP, the solidarity and training compensation shall play an important role in the protection and development of young players. These compensation mechanisms should, in fact, ensure a reward for those clubs investing on the training and education of young players, thus eventually incentivising clubs to put in practice the aforementioned provisions. However, even if the main goal of the solidarity and training compensations is to achieve a more balanced system in the football market, it could be argued that these measures have not had a significant impact on the protection and development of young players, because of the difficulties in tracing money flows within the transfer market and more in general because of the lack of transparency within this system.¹²³

As suggested by the interviews with the relevant stakeholders, it seems clear that the rules on minors, as conceived by FIFA, are important and adequate to address this important issue, but some concerns have been expressed in relation to the enforcement process. In this sense, there is a concern that the multi-layered enforcement process – which involves the cooperation of the different Football Associations with FIFA’s Players Status Committee – might provoke some discrepancies in the implementation process at both the national and European level, since some Football Associations might not be adequately prepared to investigate over potential violations of the rules on minors. Then, as also suggested in the previous study, it could be important to consider a revision of the rules’ enforcement process within the European framework, thus harmonising the system and making more effective the disciplinary measures for those clubs not addressing their education and training duties in relation to young players and prevent discrepancies and differences of treatments for young players in the different European football associations.

Another issue which is strictly related to the issue of minors in football is related to the rules for the entry of non-EU players in the different European football markets. In this sense, the different rules in the European Member States on the home-grown player quotas, the UEFA players eligibility rules but also the different practices for releasing residence permits by national authorities, might play an important role in the protection and development of young players. This last point could be considered as particularly delicate and thorny if we consider the current mass influxes of refugees in Europe and the existence of potential loopholes allowing some clubs to circumvent the provisions of article 19 of the FIFA RSTP. However, it is noteworthy to mention here that, football should not be considered as a vehicle for human trafficking, since the FIFA Players’ Status Committee has so far provided important safeguards against this kind of frauds. The Committee has instead tried to address the migration crisis issue, for instance by evaluating with more flexibility the eligibility and registration of minors under international protection statuses.¹²⁴

¹²³ Interviews

¹²⁴ Interviews

However, it is also relevant to mention here those cases in which the application of the rules on the transfer of non-EU minors might be circumvented by the football clubs. In particular, the rule under article 19 of the FIFA RSTP regarding the need for the parents to move to the country of the purchasing club for “reasons not linked to football”, might be circumvented by offering to one of the player’s parents a job within the club.¹²⁵ Moreover, another issue is related to the possibility for clubs to recruit players of a non-EU club if an exchange agreement is stipulated between the two clubs. These agreements must have the scope of a development programme for young players but resulting in European clubs owning training academies in Africa in order to profit from the transfer of young and inexpensive players.¹²⁶

Finally, buy-out clauses for football players might also have a significant impact on youth development and protection, particularly in relation to the preliminary contracts for minors. In particular, there have already been disputes in Spain over the issue, since buy-out clauses are predominantly used in country, because the player’s right to buy-out his contract is codified by the Spanish Law.¹²⁷ The problem here is mainly related to the fact that youth contracts or preliminary contracts might also include a buy-out clause which prevent the young player from interrupting the contract and move to another club. The cases of Merida¹²⁸ and Jurdado¹²⁹ reveal how the players might be entitled to pay a compensation to the club if they wish to move to another club. In this case, the buy-out clause works as a penalty clause. However, the decision of the court in the Baena case¹³⁰ introduced important changes in the ability of Spanish clubs to introduce such penalty clauses in specific cases. The court decided in this case to reject Barcelona’s request for compensation since it was stated that the clause violates the ‘free development of personality’ of a child,¹³¹ whose contract was signed by the parents on his behalf.

In conclusion, it could be argued that the current regulatory framework by the football authorities in terms of transfer of young players addresses the main problems affecting the protection and development of minors to some extent. Some issues still remain however: in particular the harmonisation of current rules amongst the different Member States (e.g. penalty clauses), and the enforcement process of the non-EU minors transfer rules by the football authorities.

¹²⁵ Lembo, C. (2011). FIFA Transfers Regulations and UEFA Players Eligibility Rules: major changes in European football and the negative effect on minors. *Emory Int’l L. Rev.*, 25, 539

¹²⁶ McDougall, D. (2008). The Guardian. The scandal of Africa’s trafficked players. Retrieved from: <https://www.theguardian.com/football/2008/jan/06/newsstory.sport4>

¹²⁷ Article 1,152 et seq. - Spanish Civil Code

¹²⁸ Bright, R. (2007). The Telegraph. Fran Merida hit for £2m by Barcelona. Retrieved from: <http://www.telegraph.co.uk/sport/football/european/2323112/Fran-Merida-hit-for-2m-by-Barcelona.html>

¹²⁹ Thomas, L. (2017). LawInSport. Young and in demand: the legality of buy-out clauses in Spanish football contracts. Retrieved from: <https://www.lawinsport.com/articles/item/young-and-in-demand-the-legality-of-buy-out-clauses-in-spanish-football-contracts>

¹³⁰ Sentencia Civil Nº 2/2009, Juzgado de Primera Instancia - Barcelona, Sección 29, Rec 33/2008 de 12 de Enero de 2009

¹³¹ *Id.*

3.5 Transparency and redistribution in football transfers

On 1st of October 2010, the FIFA Transfer Matching System (henceforth: TMS) came into force: the online platform is aimed at facilitating the transfer market procedures but, most importantly, at making the transfer market more transparent and at protecting minors¹³². Through the TMS system, the two clubs involved in a transfer operation will separately insert all the data relating the transfer of a player. Then, if the data are matching, the International Transfer Certificate is issued.

The development of this system represents an important achievement toward a more transparent transfer market, since it enables the creation of a database which includes also those details concerning the training compensations and solidarity contributions for every player.¹³³ In fact, as stated in article 20 of the RSTP, a training compensation of 5% of the purchase value is divided among the clubs in which the player was trained between its 12th and 23rd birthday seasons, according to the calculation method described in the RSTP.¹³⁴ For what concerns the solidarity contributions, article 21 states that "if a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a compensation paid to his former club". Moreover, annexes 4 and 5 of the RSTF set out the provisions and calculations concerning the payment of the training compensation and the solidarity contributions.¹³⁵

As suggested by the previous study, the decision to develop an electronic and centralised system for player registration within the TMS, - which also includes a procedure for claims against undue payments - will provide that the solidarity contributions and the training compensations will be issued at least for those players registered in the database since its establishment in 2010 and that have been internationally transferred. An adequate and proportionate reward mechanism for training and education has to be considered of great importance for the development of young players since it would represent a fundamental incentive for clubs to foster young talents' development but also to improve their training facilities. Moreover, as emerged from the European Court of Justice sentence in the case C-325/08¹³⁶ (*Olympique Lyonnais SASP v. Olivier Bernard and Newcastle United FC*), the European Union recognise the fundamental importance of encouraging clubs in recruiting and training young players, thus also reinforcing the idea that sporting activities play a considerable social and economic role in our societies.¹³⁷

An important development since the previous study relates to the effort set up by FIFA, in 2013, to include also the domestic transfers within the TMS platform, through the creation of the DTMS (*Domestic Transfer Matching System*), now differentiated from the

¹³² FIFA. (2010). The TMS explained. Retrieved from: <http://www.fifa.com/governance/news/y=2010/m=9/news=the-tms-explained-1310345.html>

¹³³ *Id.*

¹³⁴ FIFA, *supra* note 29

¹³⁵ *Id.*

¹³⁶ ECJ. 16 March 2010. C-325/08 *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC*

¹³⁷ Sports Law and Policy Centre. (2010). The Bernard Case – sports and training compensation. In *Sports and Law Bulletin I-2010*

ITMS (*International Transfer Matching System*).¹³⁸ However, although a significant number of football associations (211 Member Associations with more than 6,500 clubs) have adopted the ITMS¹³⁹, the domestic platform has been adopted by only five football associations: Dutch, Nigerian, Malawian, Iranian and Ecuadorian¹⁴⁰. This partial implementation of the domestic TMS platform might exclude from the harmonised database a relevant number of players transferred from a club to another of the same federation. Thus, it is arguable that the payment of the solidarity and training compensation might still not be secured by the TMS platform for the majority of players.

In conclusion, it could be argued that the development of TMS database for player transfers will gradually increase the awareness amongst clubs over the due compensations according to the solidarity and training scheme provided by the RSTP, but further steps for a more complete implementation of the TMS platform needs to be taken into account. Enticing all the FIFA Members Association to adopt this system not only for international transfers but also for domestic ones would greatly enhance transparency on the football market and also provide a uniform tool aimed at ensuring the training and solidarity contribution payments.

Training compensations in women's football

Our research has not revealed any legal developments that are specific to the transfer system in women's football. However, a recent decision by FIFA's Dispute Resolution Chamber has raised some specific questions regarding the application of the training compensation (TC) system to women's football. The purpose of the TC system is to reward and encourage academies for developing players. The decision by the Chamber suggested that the TC system was established to serve the reality of the professional men's football only:

'the participating members of the DRC unanimously concurred that the reality of women's football significantly differs from that of the men's game. The budgets, expenses and costs currently involved in each are certainly not comparable'.

With women's national leagues becoming financially stronger, the decision raises the question at what point in the financial development of the women's game should a system of TC be deemed appropriate. Gender equality and fairness issues also come into question as already some women's national leagues in Europe are financially stronger than man leagues in many less developed countries. In this sense, it may be desirable for a clearer stance on the issue by the FIFA and other stakeholders, in order also to support gender equality and fairness in training compensation.

¹³⁸ FIFA. (2013). FIFA TMS launches DTMS, the first Domestic Transfer Matching System. Retrieved from: <http://www.fifa.com/governance/news/y=2013/m=10/news=fifa-tms-launches-dtms-the-first-domestic-transfer-matching-system-2192738.html>

¹³⁹ ITMS. The International Transfer Matching System. Retrieved from: <https://www.fifatms.com/itms/>

¹⁴⁰ DMTS. The Domestic Transfer Matching System. Retrieved from: <https://www.fifatms.com/dtms/>

4.0 Conclusions and recommendations

4.1 Main conclusions

Data collection and analysis in chapter 2 show that the EU is still by far 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. The size of the European football market is growing sharply, reaching a total of €24.6 billion for 2015/2016.¹⁴¹

This growth is reflected across all aspects of the transfer market and its underlying economic and financial environment:

- International transfer fees have grown from USD2.71 billion in 2012 to USD4.79 billion in 2016.¹⁴²
- Transfer fees (including domestic transfers) in the big five leagues have skyrocketed from €2 billion in 2012 to €5.9 billion in 2017.¹⁴³
- Revenues stemming from broadcasting rights have more than doubled since the previous study for the big five leagues, with a cumulated amount totalling €8.518 billion 2017/2018 compared to €4.238 billion in 2011/2012.¹⁴⁴
- Club sponsorship and commercial revenues respectively totalled €4.1 billion and €2.6 billion in Financial Year 2015.¹⁴⁵

Our analysis of the measures undertaken by the football stakeholders since the previous study shows that they did not have a significant impact on the transfer market growth.¹⁴⁶ As it has been noted in chapter 3 of this study, the legal developments analysed were mainly aimed at increasing the transparency of this market, protecting youth development and enhancing clubs' stability, and thus not aimed at curbing spending growth. The deregulation of agents in 2015, together with the increase of transfer fees, in fact ensued a sharp increase in fees for intermediaries stemming from international transfers: from USD238 million in 2014, intermediaries' commissions reached USD446 million in 2017, which represents an 87% increase over four years.¹⁴⁷ Importantly, an increase in terms of volume of transactions involving intermediaries is also observed since the regulatory change.

¹⁴¹ Deloitte (2017) Annual Review of Football Finance: Ahead of the Curve. Sports Business Group, July 2017.

¹⁴² FIFA TMS (2017) Global Transfer Matchmaking Report 2017. Zurich, Switzerland.

¹⁴³ Raffaele Poli, Loïc Ravenel and Roger Besson (2017) Transfer market analysis: tracking the money (2010-2017). CIES Football Observatory Monthly Report n°27, September 2017.

¹⁴⁴ Deloitte (2017) Annual Review of Football Finance: Ahead of the Curve. Sports Business Group, July 2017.

¹⁴⁵ UEFA (2017) The European Club Footballing Landscape. Club Licensing Benchmarking Report - Financial Year 2015. 8th edition. Nyon, Switzerland.

¹⁴⁶ And as outlined in section 3 of this report, no legal development actually aimed to curb the spending growth in the transfer market.

¹⁴⁷ FIFA TMS (2017) Intermediaries in International transfers. 2017 Edition, January 2013-November 2017.

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 this into consideration as it makes the case for sporting activities to benefit from derogations to general public law, as part of the specificity of sport.

However, the solidarity payments and training compensation have stagnated or even decreased from 2012 to 2016.¹⁴⁸

Parallel to this overall growth, the market concentration towards the big five leagues is even higher than before. In 2015/2016, the big five leagues accounted for €13.42 billion in revenues or 55% of the total European football market, compared to €9.3 billion or 48% in 2011/2012.¹⁴⁹ The top 15 clubs in Europe have added a remarkable €1,514m in sponsorship and commercial revenues in the last six years (148% increase), compared with the €453m added by the rest of Europe's 700 or so top-division clubs (17% increase).

This market concentration is also reflected in the balance of competitions at European level, with fewer and fewer clubs from other leagues than the Big five accessing the final four of the Champions League (dropping to 0 for the past ten years):

Table 4: Distribution of clubs accessing the Champions League Semi-finals

	Big Five Leagues	Other Leagues	England	Spain	Italy	Germany	France
1985-1996	22	10	1	5	6	4	6
1997-2006	36	4	8	12	8	6	2
2006-2017	44	0	13	17	4	8	2

While financial and talent concentration is not the only explanatory factor here, the long-term competitiveness of other leagues compared to the big five has certainly shrunk over years, and the current concentration of resources does not indicate any inversion of this trend.

In chapter 3 of this study, we analysed how the transfer market legal framework has evolved in the last five years, with a particular attention to those main developments relating the efforts to balance the sporting competitions (par. 3.2), the role of intermediaries in football (par. 3.3) and finally the analysis also attempted to assess

¹⁴⁸ FIFA TMS (2017) Global Transfer Matchmaking Report 2017. Zurich, Switzerland.

¹⁴⁹ Data compiled on the basis of Deloitte annual football finance review (reports from 2012 to 2017)

some crucial issues in modern football, such as the youth protection and development (par. 3.4) and the increasing need of transparency for this market sector (par. 3.5).

As also highlighted by the financial evaluation of the transfer market, it could be argued that one of the main challenges for the football authorities would be to address the issue of the competitive balance within the transfer market and consequently in the sporting competitions. The analysis in chapter 2 has in fact highlighted and detected the relation between amount of money spent on transfers, sporting results and economical revenues, showing an increasing gap between top clubs within the top leagues, but also between the different leagues in terms of economic and sporting performances.

In this sense, the main attempt to address this tendency is represented by the further implementation of the Financial Fair Play. In particular, the break-even requirement mechanism has produced considerable results in terms of financial stability for clubs, as also suggested by the UEFA. However, FFP's effects in the short period have not directly addressed the competitive balance issue, and for this reason, a re-evaluation of the functioning processes of this regulatory development in the long period could be useful.

On another level, it has also been argued how the ban on TPO might actually worsen the current unbalances of the system, because of the difficulties for smaller clubs to receive external forms of investments. It has been however noted how the ban on TPO does not prevent external forms of investments which might be considered as ethically acceptable and most importantly not affecting the integrity of the game. Thus, the ban on TPO could be considered as a positive step toward a fair and more independent competition, even if it still requires some adjustments in order to prevent loopholes to the ban, such as the bridge transfers.

Subsequently, section 3.3 outlined the main changes for football intermediaries, where the analysis shows how the newly implemented regulation has not fixed the distortion of this football sector. The importance of a centralized licensing system – following the example of NBPA Regulations governing player agents in the US – and the necessity to include a mandatory cap for agent fees should both be highlighted.

The issues of the youth protection and development, as well as the transparency of the market highlighted in the paragraphs 3.4 and 3.5, are fields where a clear consensus emerged across all interviewed stakeholders, calling relevant football authorities to take proper action and deal with the issues identified. In particular, for both cases the intervention of public authorities could be necessary, both at the national and European levels. Firstly, in order to reach a consensus over practical and legal issues concerning the different harmonization problems in terms of minors protection or entry rules within the EU. Secondly, for the development of a Global Clearing House to increase transparency and make more effective the current measures for the redistribution of revenues, such as the solidarity and training compensations.

Finally, it shall be argued at this stage that during the interviewing process with the relevant stakeholders, all the relevant stakeholders have expressed their willingness to enter a process of reform on the issue of football transfers. This reform process should be closely monitored and this study could be subject to an update to take into account the measures decided. As briefly mentioned above, this process of reform could represent an important and interesting starting point for further research and analysis.

4.2 Policy recommendations

Rationale

The proposed recommendations take into account the following considerations:

- Sports governing bodies have a duty to ensure a fair and balanced competition.
- Rules aimed at implementing sports specificity derogating from normal labour or competition laws that apply to traditional industries, can only be justified if sport 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.
- Sport's function as a fundamental means of expression of social diversity, identity and cohesion needs to be promoted and upheld.
- 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.

Proposals

1. Better exploit the existing social dialogue process on professional football to address more explicitly issues linked to transfer of players

The various issues linked to the transfer market have a number of repercussions. However, a lot of those impacts are linked to competitive balance or to bargaining power between sport stakeholders (e.g. clubs, players and intermediaries). Those are chiefly managed at national or international federation levels. The social dialogue process

involving all stakeholders might ensure adequate solutions are reached, while taking into account the specificity of sports.

The (economic) development of women's football should also be monitored and studied as part of the discussions, with a view to assess the relevance of mechanisms developed in men's football for this emerging segment of the European football market. It should serve the purpose of addressing issues already identified at an earlier stage.

Main stakeholders: FIFA and stakeholders involved in the Sectorial Social Dialogue

2. Recast of the FIFA Regulations on Working with Intermediaries

As highlighted by the analysis, the current regulation has not resolved the potential conflict of interest in the working role of agents, resulting in the fact that more transfers mean higher revenues for intermediaries, and heavily affecting the contractual stability of players. The following suggestions could address this issue and support the protection of the professional role of intermediaries:

- Make the 3% voluntary cap on intermediary fees mandatory for all the transactions, or in case of potential non-compliance with the European Law, making the cap mandatory over a certain threshold. Such a cap should however be properly discussed with agents to reflect market practices.
- Dividing the payment of the intermediary fees into different instalments to be paid along the duration of the player contract, in order to incentivise the players' contractual stability, and thus avoid incentives for the intermediaries to multiply transfers for their players;
- Licensing system: consider the opportunity to have a centralized and harmonized mandatory licensing system, following the example of the NBPA system for agents in US basketball. The system should also include a uniform mechanism for the legal proceedings and sanctions.

Main stakeholders: FIFA, in cooperation with all relevant stakeholders (FIFpro, UEFA, EPFL, ECA, Agents' representatives (EFAA)).

3. Improve transparency in the football market

The lack of transparency in this market sector has important implications on a wide array of issues, arguably affecting the integrity, fairness and competitive balance of the overall football system. More transparency would thus entail better redistribution of revenues from solidarity and training contributions, but also youth protection and would prevent abusive practices and potential economical frauds. The following suggestions could all represent possible tools to increase transparency in the football market:

- TMS functioning system: making the Domestic Matching Transfer System as a standard platform for all the football associations. Then, in order to increase

transparency, it would be necessary to make the data available to the public, and thus providing more instruments to all the relevant stakeholders to evaluate and assess the working process of the football market;

- Make compulsory for all the Football Associations to publish the data regarding the football transfers, stating all the relevant information for each transfer and all the actors and parties involved;
- Establish a Global Clearing House within FIFA in order to provide to all the stakeholders the relevant data for an assessment of the transfer market.

Main stakeholders: FIFA, UEFA and national associations

4. Increase the solidarity mechanism percentage and strengthen its enforcement

The study shows that, overall, solidarity compensations directly linked to transfers (i.e. training compensation and solidarity mechanism), account for less than 2% of the total transfer international transfer fees. Even in terms of total amounts redistributed, revenues are stagnating whereas the transfer market keeps growing. As a result, the redistribution linked to transfers has no significant positive impact on addressing the issue of competitive balance. This also means the solidarity mechanism does not work sufficiently well for youth development, whereas it was an objective of the 2001 Agreement. Therefore, more efforts should be made in this direction. For example, FIFA could consider an increase in the percentage from 5% to 8% as part of the solidarity mechanism for every transfer.

Beyond raising the threshold of solidarity payments, ensuring their effective enforcement should be a priority. One way to achieve that would be to automate (digitally with regular checks) the process for all transfers filed in the TMS - and DTMS where implemented. Currently, training clubs have to request the payment for all relevant transfers, and most of them simply do not have sufficient human resources and/or knowledge of the existing mechanisms to do that.

Main stakeholders: FIFA in collaboration with the stakeholders involved in the Sectorial Social Dialogue

5. Address the issue of bridge transfers

As emerged from the analysis, it would be necessary to prevent and counter the growing employment of this fraudulent and unethical behaviour which could significantly affect the integrity and fairness of the game, and might also be used as a system to potentially circumvent the ban on Third Party Ownership. In this sense, it could be necessary to take into account the possibility to strengthen the investigative tools of the FIFA Disciplinary Committee or to establish *ad-hoc* collaborations with other investigative bodies at different levels (confederations, national federations or with public authorities, including national authorities and the European Union).

Main stakeholders: FIFA, in collaboration with the international federations and national associations. Additional cooperation with national authorities and the European Union should also be explored.

6. Regulate the loan transfers

Loans are still to be considered as an important tool to achieve more balance in the competition in the short period and most importantly for the development of young talents. However, abusive practices within the loan market are still quite recurrent, allowing top clubs to increase the gap with smaller clubs in the long period and sometimes preventing young players to fully develop their talent. In this sense, a regulation of this type of transfers should attempt to limit the number of loans per beneficiary and lending clubs. This would effectively limit the accumulation of talented players under contract in top clubs.

Main stakeholders: FIFA, in collaboration with national associations

7. Improve rules on minors and conditions of entry for young players

As noted in section 3 of this report, the rules on minors are quite complex and largely differ between Member States, especially when looking at conditions of entry for young players from outside Europe. It would be relevant to start a dialogue on this topic and further analyse the different rules applied across Europe. 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%, 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, living conditions and education;
- Terms of initial contracts for minors (extend from 3 to 5 years, etc.) to improve contractual stability.

The matter could be discussed as part of the European social dialogue in the field of football.

Main stakeholders: FIFA and the stakeholders involved in the Sectorial Social Dialogue in collaboration with the European Commission and the national authorities

8. Establish a “luxury tax” on transfer fees beyond a certain transfer fee amount.

The idea of such ‘luxury tax’ was already put forward in the previous study. This has also gained political momentum through UEFA president Aleksander Čeferin’s declaration on 20 September 2017 opening the door to reform proposals, including luxury taxes.

Similarly, a legislative proposal was put forward at the French National Assembly on 3 October 2017.

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 federations would collect the levy and distribute on a fair basis to clubs and/or to grassroots football in order to address the issue of competitive balance.

Main stakeholders concerned: FIFA, in cooperation with the other international federations.

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Annex II – List of stakeholders contacted for the interviews

- Academic and individual experts
- European Commission (representatives from DG EAC, DG EMPL and DG COMP).
- European Clubs Association (ECA)
- European Football Agents Association (EFAA)
- European Professional Football Leagues (EPFL)
- International Federation of Football Association (FIFA)
- International Federation of Professional Footballers (FIFPro)
- Union of European Football Associations (UEFA)

Annex III – Methodology note

This annex highlights the methodology used for the study, specifying the methods and strategies employed within the processes of desk research, literature review, data collection and analysis.

Considering the scope of the study and the timeframe adopted to finalize it, the assignment has covered different aspects of the football transfer market, from new regulations (e.g. Financial Fair Play and intermediaries) to minor's protection and transparency. For this reason, in order to conduct the study, it has been necessary to employ a wide array of different sources, such as the official documents from football stakeholders, relevant literature and reports, journal and newspaper articles. In this section it will be outlined how the combination of literature reviews, interviews and legal/financial analysis has contributed to the finalization of the study, by operating a triangulation of the data, ultimately resulting in a comprehensive analysis of the current transfer market.

Concerning the scope of the study, as it had been highlighted in the final offer proposed, the main focus it has been on the most recent and key developments since the 2012 study, particularly highlighting those area of interest for the European Union. Thus, the study is directly addressing those issues and developments affecting the European football market, but it also considers those aspects and potential 'good practices' experienced in other sports.

Literature review

In order to understand which developments have occurred in the last years within the football transfer market, it has been necessary to conduct a preliminary desk research, which has eventually driven the process of data collection and discussion with the experts. The desk research, and consequent literature review, outlined four main aspects that required further investigation: a) the functioning process of the Financial Fair Play; b) the ban on Third-Party Ownership; c) the FIFA newly implemented Intermediary Regulations; d) the growth of the transfer market in terms of volume, transactions and fees. Other issues have been detected at this stage, such as the impact of the European 'migration crisis' on the transfer market, the efforts aimed at increasing the transparency of the market and the harmonization efforts in terms of national federations rules. However, the analysis process has not fully covered this second group of issues, giving instead prominence to those four aspects which have seen a direct intervention of the stakeholders in terms of policy implementation and enforcement, and thus resulting in a legal and financial evaluation of the developments.

Interviews

In order to conduct the study, the contribution of high-level discussions with representatives of the football authorities and stakeholders, such as FIFA, UEFA, FIFpro and EPFL among the others has been of primary importance. In fact, the research process has certainly benefited from the insights and sources provided by the interviewees, whose expertise has consequently driven and facilitated the policy analysis, by identifying concerns, appreciations and points of discussions within those aspects that emerged from the literature review. Moreover, the interviews have played an important role in the definition of potential suggested measures and policy recommendations.

Legal and financial Analysis

The identification of the main developments within the football transfer market was done through the literature review and the interview process; the analysis and evaluation of these developments has been possible through the employment of different sources of data.

For what concerns the financial analysis, chapter 2 presents an evaluation of the growth of the transfer market in terms of volume, transactions and fees. It should be noted that detailed data on transfers is chiefly available for international transfers (FIFA TMS data), and for some selected leagues (big five). This section has also identified the main economic drivers behind the transfer market, by looking at the impact of redistribution mechanisms, broadcasting rights, international transfers and club ownerships' new entrants. In this case, the analysis has been mainly based on the study of relevant reports produced by ECA (ECA Study on the Transfer System in Europe, 2017), Deloitte (Football Money League, 2017 and Annual Review of Football Finance: Ahead of the Curve, 2017), UEFA (Club Licensing Benchmarking Report, 2017 and the European Club Footballing Landscape, 2017) and CIES (Transfer Market Analysis: tracking the money, 2017 and the Monthly Report n°27, 2017).

Regarding the legal evaluation in chapter 3, the main developments carried out by the newly implemented FIFA Regulations on the Status and Transfer of Players and on Working with Intermediaries, but also the UEFA Club Licensing and Financial Fair Play regulation have been highlighted. Moreover, the analysis of these official documents has been combined with the contributions of scholars and policy analysts from relevant research centers, institutes and companies, such as the Asser International Law Sports, LawInSports, CIES, CDES and KPMG. Moreover, in order to gain a more in-depth knowledge of the considered case studies, it has been necessary to conduct research through other sources, such as newspapers articles or op-eds from The Guardian, Independent, BBC among others.

Finally, chapter 4 summarises the main findings of the previous analysis sections, presenting in the end a discussion of the main developments of the transfer markets, and most importantly the impact of these changes on European football. Thus, the final discussion combines the initial assumptions emerged by the literature review with the insights provided by the qualitative interviews process and ultimately with the outcomes of the financial and legal evaluations. This research is then finally resulting in a set of policy recommendations which could potentially address the disfunctions of the current football market in terms of competitive balance, transparency, integrity and fairness of the game.

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