



EUROPEAN MASTER
IN LAW & ECONOMICS



SGH

Freedom to Roam: EU Football Players in the Regulatory Arena of Efficient Breach

A law and economic analysis of the transfer system of football
players within the European Union

by Martijn Segers

Warsaw School of Economics

European Master in Law and Economics

Supervised by Prof. Dr. Jakub Karnowski and Prof. Dr. Jarosław
Beldowski

Keywords: Efficient Breach, Transfers, Football

JEL Codes: D01, D61, K12

Date of submission: 16th of August 2023

EMLE ID: 22266

Word count: 10.531

TABLE OF CONTENT

AUTHORSHIP DECLARATION	II
ABSTRACT	1
A. INTRODUCTION	2
B. CURRENT LEGAL FRAMEWORK.....	4
I. HISTORY OF THE TRANSFER OF FOOTBALL PLAYERS WITHIN THE EU	4
I. ORIGIN	4
II. BOSMAN CASE	5
II. NATIONAL LAW	7
III. SPORT BODIES.....	8
I. RULES THAT ENSURE FAIR AND BALANCED COMPETITION BETWEEN CLUBS.....	9
A. CONTRACTUAL STABILITY	9
B. REGISTRATION PERIOD.....	10
C. REDISTRIBUTION AND FINANCIAL SOLIDARITY MECHANISMS	11
D. MONITORING OF TRANSFER TRANSACTIONS AND FINANCIAL ACCOUNTS OF CLUBS.....	11
II. RULES THAT PROTECT MINORS AND ENCOURAGE YOUTH DEVELOPMENT	13
A. RULES TO BAN TRANSFERS OF MINORS	14
B. RULES ON YOUTH DEVELOPMENT	15
III. RULES THAT ESTABLISH AND ENFORCE DISPUTE SETTLEMENT MECHANISMS	15
IV. RULES THAT RELATE TO THIRD-PARTY OWNERSHIP.....	16
C. EFFICIENT BREACH	16
I. THEORY: CLASSICAL MODEL.....	16
II. FOOTBALL CLUB TRANSFERRING	18
III. EFFICIENT BREACH APPLIED ON TERMINATION WITHOUT JUST CAUSE.....	21
I. PLAYER.....	22
A. THE VALUE OF PERFORMANCE OF THE CURRENT CONTRACT	22
B. VALUE OF PERFORMANCE OF HIS NEW CONTRACT	23
C. EXPECTATION DAMAGES: COMPENSATION FEE & LOSS OF PLAYING TIME.....	24
II. NEW CLUB	28
A. COSTS	28
B. BENEFITS	29
C. CONTRIBUTION	30
IV. EXERCISE	32
D. CONCLUSION & RECOMMENDATIONS	37
E. ANNEX.....	44

ABSTRACT

The European Union houses world-renowned football clubs, attracting talent from around the globe to compete in its highly competitive leagues. The governing rules for football player transfers, shaped by institutions like the Fédération Internationale de Football Association (FIFA), diverge from traditional employment practices by limiting the players' ability to change employers (clubs) during their contract periods. The FIFA Regulations on the Status and Transfer of Players specify contract termination rules and exceptions, including unilateral termination with and without just cause.

This thesis, therefore, aims to answer the research question: Does the unilateral termination of the contract without just cause by the player lead to efficiency in football transfers? Players undertake an *ex ante* cost-benefit analysis to assess whether the advantages gained from breaching their contract and joining a new club surpass the costs associated with it. This evaluation is similarly applied by the new club. Only if the value of performance under their new contract outweighs the compensation fee and loss of playing time, the unilateral contract termination without just cause is deemed efficient *ex post*.

However, the possibility of unilateral contract termination without just cause, regardless of its efficiency, contradicts FIFA's objective of contractual stability, which is fundamental for ensuring fair and balanced competition among clubs. Contractual stability not only supports a level playing field but also enables clubs to plan strategically and make investments, fostering a balanced and harmonious football ecosystem.

A. INTRODUCTION

At the moment, the European Union is the home of the most world-renowned football clubs in the world, therefore drawing the best players in the world to compete in national leagues in Europe. This is particularly the case for the Big Five: The Premier League (England), the Bundesliga (Germany), La Liga (Spain), Serie A (Italy), and Ligue 1 (France). Consequently, it comes as no surprise that the European transfer market dominates the footballing world.

The transfer of football players within the European Union is regulated by a set of rules established by certain (international) institutions, such as the Fédération Internationale de Football Association (hereafter: FIFA). These rules, while effective in governing player transfers, deviate from (national) employment practices, as they constrain the possibility for players to move from one employer (*i.e.* a football club) to another. This raises the question of whether this divergence from regular employment rules can be justified.

According to Article 13 of the FIFA Regulations on the Status and Transfer of Players, “*a contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement*”. However, there are exceptions to this. Following Articles 14 to 15 of the FIFA Regulations on the Status and Transfer of Players, a contract can be terminated by either party without consequences of any kind where there is just cause. Moreover, Article 17 foresees the possibility of a unilateral breach of contract without just cause. The efficiency and economic implications of this legal framework require therefore additional research.

Not only due to corrupt agents in the news lately¹, but also due to the tremendous amount of transfer fees nowadays, it is relevant to revisit the transfer policy of football players, especially from a law and economics perspective, as the subject lends itself to being scrutinized in an interdisciplinary manner. This different approach to the topic would therefore contribute to the existing literature by giving new insights regarding the matter.

This study aims to address the following research question through a combination of a descriptive and normative method, incorporating both legal and economic theories: *Does the unilateral termination of the contract without just cause by the player lead to efficiency in football transfers?* By exploring and delving deeper into this research question, this research hopes to shed light on the effectiveness and normative implications of the existing transfer rules.

In order to answer this research question comprehensively, the current legal framework will be discussed, offering an overview of the subject. After a brief historical excursion, a distinction will be made between both national law and sporting bodies responsible for governing the regulations related to the transfer of football players. Subsequently, the transfer practices of football players will be subjected to a law and economic analysis, focusing on the application of the theory of efficient breach. Before coming to the conclusions and recommendations, in the last step, the aforementioned theoretical framework will be applied to a real-life example.

¹ For example: Operatie Propere Handen (see *infra*)

B. CURRENT LEGAL FRAMEWORK

The current legal framework concerning the transfer of football players consists of both national law (depending on the Member State) and sport governing bodies. Nevertheless, it is already worth noting that the EU legal framework grants in this context a lot of discretionary power in terms of self-regulation to the latter. Therefore, in what follows, both regulatory mechanisms will be discussed.

I. HISTORY OF THE TRANSFER OF FOOTBALL PLAYERS WITHIN THE EU

i. ORIGIN

In order to fully understand the functioning of the football transfer market within the EU *anno 2023*, a historical excursion needs to be made. The concept of a transfer of football players was born in 1885 when the Football Association of England implemented requirements for the registration of football players with the Association. From that point onwards, players who were signed for a club were hindered from moving to another club without the consent of the Association and the contractual club. Since 1925, a similar system can be found in France as well. This rule aimed to prevent players from changing clubs in the middle of the season, often to the advantage of bigger clubs. However, the requirement missed its purpose as it led to the establishment of a primitive form of a transfer market. Players could be bought and sold, given that the original club was entitled to compensation from the acquiring club for losing the player.²

The original contracts of football players were however limited to one year and often contained certain minimum and maximum salary conditions. After one year, when the

² KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 28-29.

contract was fulfilled and thus subsequently terminated automatically, there were three options: the club could decide to offer the player involved a new (one-year) contract; cancel his registration which would allow the player to become a so-called 'free agent'; or transfer him to another club in exchange for a fee. The latter enabled the original club to claim a compensation fee, despite the automatic termination of the one-year contract. This, however, restricted the contractual freedom of football players. Consequently, for this reason, a judicial change can be observed within Europe as England (1963), France (1969) and Germany (1979) decided to abolish the rule.³

ii. BOSMAN CASE

This accumulated in 1995 to the Bosman Case⁴, where the European Court of Justice had for the first time the opportunity to discuss the relationship between professional sports activities and EU law. The Bosman Case, officially known as *Union Royale Belge des Sociétés de Football Association ASBL v. Jean-Marc Bosman*, was a landmark case in European football that had a significant impact on the players. The case referred to Belgian footballer Jean-Marc Bosman, who played in 1990 for RFC Liège in the Belgian First Division and wanted to transfer to French club Dunkerque. However, the transfer fee that was asked by Liège was deemed to be too high by Dunkerque, therefore making it impossible for Bosman to move to the club. Moreover, Bosman's contract with Liège had expired, but the club retained his registration and refused to release him. Consequently, this prevented him from signing with any other club. Given that his freedom of movement was being restricted, Bosman filed a legal case with the European Court of Justice in 1995. Most importantly, the case challenged the legality

³ A. DUVAL and B. VAN ROMPUY, *The Legacy of Bosman, Revisiting the Relationship Between EU law and Sport*, The Hague, T.M.C. Asser Press, 2016, 15-16; KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 28-29.

⁴ ECJ, C-415/93, 15/12/1995, *Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman*.

of transfer fees, quotas on foreign players, and the "three plus two" rule. The latter limits the number of foreign players that a club may field to three, plus two players who have played in the country of the relevant national association for an uninterrupted period of five years, including three years as a junior.⁵

Subsequently, in 1995, the European Court of Justice ruled in favour of Bosman, fundamentally altering the landscape of European football. The key outcomes of the Bosman ruling were the following:

1. The ruling abolished the so-called "three plus two" rule. Since the ruling, restrictions on the number of foreign players that clubs could field in European competitions were no longer applicable. Not only did this lead to an increase in the number of international players in the European leagues, but logically also increased the number of transfers throughout Europe.
2. Players from the European Union became entitled to move freely to clubs in other EU Member States once their contracts expired. This meant that clubs could no longer demand transfer fees for out-of-contract players within the EU.⁶

As a result of this judgment, the rules concerning the transfer of football players were harmonised within many parts of the EU. Additionally, it was very beneficial for players as it increased both their bargaining power vis-à-vis the football clubs as well as their mobility.

⁵ ECJ, C-415/93, 15/12/1995, Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman, 14-15 KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 5050.

⁶ ECJ, C-415/93, 15/12/1995, Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman, 14-15 KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 5081.

II. NATIONAL LAW

Table no. 1 (see annex) demonstrates the EU Member States that regulate the transfer of football players. Although this table shows that the majority of rules are set by sport bodies, it is still important to discuss the legal provisions on transfers set by countries for the sake of completeness. Moreover, Table no. 2 (see annex) demonstrates that the power of the Member States should not be underestimated, given that many do have state control over the regulatory power of the sport governing bodies.

The legislative landscape on the transfer of football players within the European Union is quite diverse. On the one hand, Member States like Bulgaria, Greece⁷, Hungary⁸ and Lithuania⁹ adopted rules on transfers and incorporated them in their respective Sports Acts. On the other hand, Belgium¹⁰, Italy¹¹, Portugal¹² and Spain¹³ used a different approach. Instead of Sports Acts, these countries regulated the transfer through various other laws, such as employment law.¹⁴

According to Belgian law, which is one of the most detailed within Europe when it comes to the transfer of football players, the law of 24 February 1978 relating to the contract of employment for sports professionals stipulates that both athletes and employers can breach the contract upon payment of a compensation fee.¹⁵

⁷ Law 2725/99, (FEK* 121/A/17-06-1999).

⁸ Law on Sport (Act I of 2004) Hungary.

⁹ Article 37 of the Law on Physical Education and Sport of Lithuania.

¹⁰ Flemish Parliament Act of 24 July 1996; French Community Parliament Act of 8 December 2006; Act of 24 February 1978 relating to contract of employment for sports professionals.

¹¹ Law No. 91 of 23 March 1984.

¹² Lei n.º 28/98, 26 of June 1998.

¹³ Royal Decree 1006/1985, 26 of June.

¹⁴ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 36.

¹⁵ Article 5, Law of 24 February 1978.

Furthermore, Greece¹⁶, Hungary¹⁷, Italy¹⁸, Lithuania¹⁹, Portugal and Spain²⁰ also incorporated legal provisions on labour contracts in sports. Additionally, besides Belgium, Portugal²¹ and Spain²² also possess legal provisions on the early termination of the contract without just cause.²³

Nevertheless, despite national law taking a minority position within the total legal framework on transfers, public law does take a predominant role in relation to non-EU players. These players are subject to the immigration policies of the respective Member States.²⁴

III. SPORT BODIES

Historically speaking, these bodies played a tremendous role in the creation and enforcement of rules on the transfer of football players (see *supra*). Therefore, in what follows, an overview will be provided of the rules that are the result of the self-regulatory power of (inter)national sport governing bodies. In particular, there will be a focus on the FIFA Regulations on the Status and Transfer of Players. A distinction can be made between four different types of rules, with possible subsections²⁵:

- i. Rules that ensure fair and balanced competition between clubs;
 - a. Contractual stability between clubs and players
 - b. Registration periods of players for transfers

¹⁶ Article 90 of the Law 2725/99.

¹⁷ Articles 8-10 and 35 of the Law on Sport.

¹⁸ Articles 3-6 of Law No. 91 of 23 March 1984.

¹⁹ Article 35 of the Law on Physical Education and Sport.

²⁰ Royal Decree 1006/1985, 26 of June.

²¹ Article 27, Lei n.º 28/98, 26 of June 1998.

²² Articles 15 and 16, Royal Decree 1006/1985, 26 of June.

²³ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 38.

²⁴ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 39-40.

²⁵ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 42.

- c. Redistribution of revenues between clubs as part of solidarity mechanism and youth development
- d. Monitoring of transfer transactions and clubs' financial accounts to prevent fraud and abuses
- ii. Rules that protect minors and encourage youth development;
 - a. Rules to ban transfers of minors
 - b. Rules on youth development
- iii. Rules that establish and enforce dispute settlement mechanisms;
- iv. Rules that relate to third-party ownership.

i. RULES THAT ENSURE FAIR AND BALANCED COMPETITION BETWEEN CLUBS

First of all, a fair and balanced competition is understood as a competition in which everyone who participates has an equal chance of winning and is treated in the same way without discrimination.²⁶

a. CONTRACTUAL STABILITY

The principle of contractual stability refers to the idea whereby fixed-term contracts are due to be respected by both employers and employees. In other words, players are expected to play for the club they are contractually bound to until the termination date of their contract. However, the financial instability and the possible case of bankruptcy of a football club are potential threats to contractual stability from the players' point of view.²⁷

²⁶ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 43.

²⁷ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 42-43.

Articles 13 to 18 of the FIFA Regulations on the Status and Transfer of Players discuss the maintenance of contractual stability between professionals and clubs. Article 13 refers to respecting the contract (*pacta sunt servanda*) and stipulates that “*a contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement*”.²⁸ Articles 14, 14bis, 15 and 17 govern the situation whereby the contract is terminated, either with or without just cause. *In casu*, the most important one is Article 17 which refers to the termination of the contract without just cause. According to this article, the party in breach has to pay compensation to the other party due to the unilateral breach of contract. Additionally, so-called sporting sanctions can be imposed, as well as joint liability for the signing club.

b. REGISTRATION PERIOD

According to Article 6 of the FIFA Regulations on the Status and Transfer of Players, “*players may only be registered during one of the two annual registration periods fixed by the relevant association*”.²⁹ This Article continues by determining the period itself: “*The first registration period shall begin on the first day of the season. This period may not exceed 12 weeks. The second registration period shall normally occur in the middle of the season and may not exceed four weeks.*”³⁰ For the most prestigious competitions in Europe, the first registration period starts on the 1st of July until the 31st of August, whereas the second registration period starts on the 1st of January until the 31st of January.³¹

²⁸ Article 13 FIFA Regulations on the Status and Transfer of Players.

²⁹ Article 6 FIFA Regulations on the Status and Transfer of Players.

³⁰ Article 6 FIFA Regulations on the Status and Transfer of Players.

³¹ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 46.

c. REDISTRIBUTION AND FINANCIAL SOLIDARITY MECHANISMS

FIFA and national regulations establish mechanisms for the redistribution of funds to clubs, aiming to implement a system of solidarity. These mechanisms are designed to compensate clubs for their role in the transfer market and the development of talented players. The purpose of this solidarity system is to promote fair and balanced competition, particularly benefiting clubs with limited financial resources that may struggle to perform well in competitions. FIFA introduced the solidarity mechanism in Article 21 and Annex 5 of the FIFA Regulations on the Status and Transfer of Players, following an agreement with the European Commission in 2001.³²

d. MONITORING OF TRANSFER TRANSACTIONS AND FINANCIAL ACCOUNTS OF CLUBS

Recently, international and European football organisations have implemented measures to address abusive, fraudulent, and financially detrimental practices that pose a threat to fair and competitive sports. These measures aim to increase transparency in financial transactions, prevent unjustified enrichment in transfer deals and limit clubs from gaining an unfair advantage by unrestricted spending on players. Currently, the instability of clubs' finances is the primary risk to contractual stability. Therefore, in order to ensure control and legality in transfer operations, monitor systems like the Transfer Matching System³³ and The Financial Fair Play³⁴ were created to gather data and oversee the validity of transactions.³⁵

The significance of the topic should not be underestimated, as it continues to hold substantial implications. This is especially evident when considering the potential for

³² Communication CE 5 March 2001 IP/01/824; KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 47.

³³ Annex 3 and §a of the FIFA Regulations on the Status and Transfer of Players.

³⁴ The UEFA Financial Fair Play Regulations.

³⁵ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 48.

national authorities to introduce supplementary measurements. A pertinent illustration of such a case can be observed through the instance of "Operation Zero". Operation Zero, also known as "Operatie Propere Handen", is a large-scale investigative initiative conducted by the federal prosecutor's office in Belgium to address issues of money laundering, bribery, and match-fixing within the Belgian Jupiler Pro League. The operation can be divided into two different facets: on the one hand there is match-fixing and on the other hand there is financial fraud.³⁶ Of notable significance was the disclosure of the financial accounts of player agent Dejan Veljkovic's, placing many individuals under suspicion of money laundering activities. Prominent figures in this operation included referee Sébastien Delferière, player agent Mogi Bayat and former Club Brugge coach Ivan Leko, all of whom engaged in activities aimed at receiving portions of their salaries through dubious arrangements.³⁷ In the aftermath of Operation Zero, a push for more transparency and clarity in the domain of player transfers had emerged. Consequently, the Belgian Jupiler Pro League established the "clearing house" in 2019, serving as a mechanism to expose all financial transactions between football clubs and intermediaries, aiming to enhance oversight.³⁸ As part of this initiative, clubs are required to pay an annual fee of EUR 5,000, while player agents are subject to a fee of EUR 500 when conducting business in Belgium. Furthermore, the "clearing house" imposes a 0,5 percent tax on player agent fees

³⁶ J. DE CONINCK., A. VANRENTERGHEM, G. KOHN, "Van het ene voetbalschandaal naar het andere: welke dossiers lopen er nu? En wie zijn de verdachten?", vrtnews.be, <https://www.vrt.be/vrtnews/nl/2019/09/12/financiele-fraude-in-het-voetbal-wedstrijdvervalsing-kan/>, 2019; A. GEENENS, "De Financiële Situatie en Toekomst van de Voetbalploegen in de Jupiler Pro League en 1B Pro League", Faculteit Economie en Bedrijfskunde Ugent, 2022, 7.

³⁷ J. DE CONINCK., A. VANRENTERGHEM, G. KOHN, "Van het ene voetbalschandaal naar het andere: welke dossiers lopen er nu? En wie zijn de verdachten?", vrtnews.be, <https://www.vrt.be/vrtnews/nl/2019/09/12/financiele-fraude-in-het-voetbal-wedstrijdvervalsing-kan/>

³⁸ S. KESENNE., "Het clearing house is een slag in het water, de transfermarkt moet gewoon weg", Sportmagazine-NL, https://sportmagazine.knack.be/sport/voetbal-nationaal/het-clearing-house-is-een-slag-in-het-water-de-transfermarkt-moet-gewoon-weg/article-opinion-1558667.html?cookie_check=1658598999, 2020.

processed through its channels.³⁹ Moreover, player agents are obligated to submit detailed documentation, which includes their criminal record, along with the requisite signing of a charter. Additional requirements involve securing professional liability insurance, possessing a registered company number, and presenting evidence of tax and parafiscal debt clearance.⁴⁰ Simultaneous with the establishment of the “clearing house”, the Belgian Jupiler Pro League is introducing a series of far-reaching transparency measures. These initiatives entail adhering to proactive anti-money laundering legislation, implementing wide-ranging fiscal supervision, establishing cooperative agreements with the banking sector to ensure compliance, and incorporating an ethical charter that addresses concerns related to gambling.⁴¹

ii. RULES THAT PROTECT MINORS AND ENCOURAGE YOUTH DEVELOPMENT

In addition, FIFA's transfer rules also focus on safeguarding minors and promoting youth development policies within football clubs. These rules are designed to prevent young and talented players from becoming victims of shady trafficking schemes that exploit their potential for future financial gains. To overcome this issue, international governing bodies have implemented measures to prevent player transfers before the age of 18. This is aimed at ensuring the well-being and protection of young players, while also maintaining a level playing field in the transfer market.⁴²

³⁹ Sporza, “De ins en outs van het clearinghouse: financiering, regels, sancties”, sporza.be. <https://sporza.be/nl/2019/12/19/clearinghouse-reglement/>, 2019.

⁴⁰ Sporza, “De ins en outs van het clearinghouse: financiering, regels, sancties”, sporza.be. <https://sporza.be/nl/2019/12/19/clearinghouse-reglement/>, 2019.

⁴¹ A. GEENENS, “De Financiële Situatie en Toekomst van de Voetbalploegen in de Jupiler Pro League en 1B Pro League”, Faculteit Economie en Bedrijfskunde Ugent, 2022, 7-8.

⁴² KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 54.

a. RULES TO BAN TRANSFERS OF MINORS

The rules concerning the bans of transfers of minors are governed by Articles 19 and 19bis of the FIFA Regulations on the Status and Transfer of Players. Although the general rule stipulates that international transfers of players are only permitted if the player is over the age of 18, there are several exceptions to this. In practice, it happened more than once that a player under the age of 18 makes a transfer or makes his debut for a professional football club.

Article 19 outlines the exceptions to the prohibition, encompassing the following scenarios. Firstly, if the player's parents move to the country in which the new club is located for reasons not related to football. Secondly, if the player is between 16 and 18 years old, additional conditions apply. In that case, the transfer is permitted if it occurs within the borders of the European Union (EU) or the European Economic Area (EEA), or if the transfer takes place between two associations within the same country. Thirdly, when the player resides within a distance of 50km from a national border, and the club that the player intends to register in the neighbouring association is also situated within 50km of that border. Additionally, if the player flees his country of origin due to humanitarian reasons, such a circumstance is also recognized as an exception to the prohibition. Lastly, when the player is a student and relocates independently to another country on a temporary basis for academic purposes, with the aim of participating in an exchange program.⁴³

⁴³ Article 19 FIFA Regulations on the Status and Transfer of Players.

b. RULES ON YOUTH DEVELOPMENT

Additionally, there exists a compensation mechanism for clubs due to their efforts in terms of training and educating youngsters. This matter is governed by both Article 20 and Annex 4 of the FIFA Regulations on the Status and Transfer of Players and is the result of the aforementioned 2001 agreement with the European Commission. Its importance should not be underestimated, as it is considered to be one of the key rationales behind the implementation of transfer rules: aiming to enhance equal opportunities and recognizing outstanding performance regardless of social background.⁴⁴

iii. RULES THAT ESTABLISH AND ENFORCE DISPUTE SETTLEMENT MECHANISMS

The legislative framework for the transfer of football players is quite excessive. However, this framework would become redundant without the existence of an enforcement mechanism. Therefore, a dispute settlement mechanism was put into place, that gives two judicial bodies - established by FIFA - the competence to rule on disputes concerning the (international) transfer of football players. The judicial bodies in question are the Players' Status Committee on the one hand and the Dispute Resolution Chamber on the other hand. Moreover, the Court of Arbitration of Sport in Lausanne (Switzerland) functions as a court of appeal.⁴⁵ The competence of the FIFA in terms of dispute settlement mechanisms is determined in Article 22 of the FIFA Regulations on the Status and Transfer of Players.

Besides FIFA, national bodies also have the power to act as dispute settlement bodies. Currently, only Portugal, the Republic of Ireland, Italy, the Netherlands, France and

⁴⁴ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 55.

⁴⁵ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 62-63.

England have been recognized by FIFA. Besides dispute settlement mechanisms, other countries⁴⁶ have chosen a system that prioritizes mediation and conciliation instead. Nonetheless, they have not been formally recognized by the FIFA.⁴⁷

iv. RULES THAT RELATE TO THIRD-PARTY OWNERSHIP

Third-party ownership, commonly used in Latin America, allows a third party (*i.e.* not affiliated with the player's club), to acquire rights to the player's future transfer value. Simply put, the players become a speculative investment. Although opinions on this practice are diverse given the possible risks attached to it, Article 18bis of the FIFA Regulations on the Status and Transfer of Players stipulates that “*no club shall enter into a contract which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams*”.⁴⁸ Additionally, third-party ownership practices are prohibited in England⁴⁹, France⁵⁰ and Poland^{51,52}

C. EFFICIENT BREACH

I. THEORY: CLASSICAL MODEL

In general, parties conclude sales contracts between them with the aim of providing a certain good or service in exchange for an agreed price. However, there is always the possibility that one party breaches the contract. This chapter will therefore focus on the situation where there is a so-called ‘efficient breach’ of contract. This is the case

⁴⁶ E.g. Germany, Austria, Spain, Belgium, Denmark, Sweden.

⁴⁷ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 63-64.

⁴⁸ Article 18bis FIFA Regulations on the Status and Transfer of Players.

⁴⁹ Premier League Handbook, season 2011-2012, Page 156-157.

⁵⁰ Article 221, Charte du Football Professionnel (Charter of Professional Football), Title III: the Players, 2011-2012.

⁵¹ Article 33.4 of the Status and Players Regulation.

⁵² KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 64-65.

when, after the contract was already concluded between the parties, one party's costs to perform the contract increase due to various events. For example, it can become more expensive for the seller to deliver the good or service as a result of the rise in costs. This scenario is also known as "loss-avoiding". It is also possible that the seller's opportunity costs increase, as there might be other sellers who are willing to pay a higher price for the same good or service. The latter scenario refers to "gain-seeking".⁵³

At the moment the contract between the parties is finalised, the seller anticipates incurring certain performance costs (c^0). The buyer places a value of performance (v) on the contract. Both parties agree on the price (P) that lies between the seller's costs and the buyer's valuation, which allows both parties to benefit from the trade.⁵⁴ This is the result of a surplus being created by the contract, which will be allocated based on the relative bargaining power of the parties concerned.

$$c^0 \leq P \leq v$$

Nonetheless, it is possible that the performance costs of the seller increase, whilst the buyer's value of performance remains untouched. This could result in c^0 being higher than the price. If this is the case, the seller should only execute the contract if his performance costs are lower than v . If not, taking into account overall efficiency, the parties should terminate the contract and the seller should pay expectation damages to the buyer.⁵⁵ Additionally, this would contribute to the overall efficiency, as various scholars argued that expectation damages not only function as an optimal incentive,

⁵³ O. HOFMANN, *Breach of Contract: An Economic Analysis of the Efficient Breach Scenario*, Springer, Hamburg, 2021, 3.

⁵⁴ D. MARKOVITS, and A. SCHWARTZ, "(in)efficient breach of contract", *The Oxford handbook of law and economics*, Oxford University Press, Oxford, New York, 2017, 10.

⁵⁵ O. HOFMANN, *Breach of Contract: An Economic Analysis of the Efficient Breach Scenario*, Springer, Hamburg, 2021, 15-16.

but also as a guarantee as the seller will only breach the contract if it is efficient, *i.e.* $c^0 \geq v$.⁵⁶

However, increased costs (c) exceeding the prize (P) does not always equal an efficient breach. For example, when the buyer places the value of performance (v) higher than the costs for the seller, in which performance is still efficient. Moreover, under the assumption that there is full compensation for the buyer, the remedy of expectation damages (d) adds another variable in the cost-benefit analysis for the seller, as he will perform if the expectation damages exceed the performance costs (c). Therefore, instead of breaching the contract, he will only perform if $P - c < P - d$. In other words, he will breach if and only if $c > d$.⁵⁷

II. FOOTBALL CLUB TRANSFERRING

Although players normally only sign a contract with a new club once their former contract has expired, in reality, under-contract players sometimes leave their current clubs in search of new endeavours. This is proven by a recent report by FIFA, that analysed all the transfers from the 1st of June until the 1st of September 2022. This study showed that 58,5% of all transfers involved out-of-contract players whereas 16,8% of all transfers are characterised as permanent club-to-club transfers. The former refers to the situation in which the player is no longer under contract, while the latter refers to transfers that have been made while the player concerned was still under contract

⁵⁶ S. SHAVELL., Damage measures for breach of contract, *Bell Journal of Economics*, 11(2), 1980 466–490; S. SHAVELL., “The Design of Contracts and Remedies for breach”, *Quarterly Journal of Economics*, 99(1), 1984, 121–148; D. FRIEDMAN., “The efficient breach fallacy”, *The Journal of Legal Studies*, 18(1), 1989, 1–24.

⁵⁷ O. HOFMANN, *Breach of Contract: An Economic Analysis of the Efficient Breach Scenario*, Springer, Hamburg, 2021, 17.

with their previous club.⁵⁸ This constitutes a breach of contract and gives rise to various consequences (see *infra*). The reasons for such a breach of contract are numerous, such as the interest from other (bigger) clubs, the conduct of the players both on and off the pitch, etc. Regarding the latter, after his televised interview with Piers Morgan, former Manchester United star player Cristiano Ronaldo terminated his contract with Manchester United by ‘mutual agreement’. In the aforementioned interview, he expressed his dissatisfaction with the current situation at the club. This is, however, in breach of article 3.2.5. of the standard Premier League employment contract which is signed by all Premier League players. This article stipulates that “*the player agrees that he shall not knowingly or recklessly do write or say anything or omit to do anything which is likely to bring the Club or the game of football into disrepute cause the Player or the Club to be in breach of the Rules or cause damage to the Club or its officers or employees or any match official (...)*.”⁵⁹ Through his participation in the interview, during which Cristiano Ronaldo voiced his discontent with Manchester United in a manner that was conscious or negligent, resulting in statements that cast a negative light upon the Club, he contravened the provisions outlined in Article 3.2.5.

How does the aforesaid concept of under-contract players leaving their clubs rhyme with one of the main goals of the FIFA Regulations on the Status and Transfer of Players, *i.e.* to ensure a fair and balanced competition between clubs? Articles 13 to 18 of the FIFA Regulations on the Status and Transfer of Players aim to maintain the contractual stability between professionals and clubs. Nevertheless, Article 13 states that in principle the contract between the player and the club may only be terminated upon the expiry of the term of the contract or by mutual agreement. Hence, the latter

⁵⁸ International Transfer Snapshot 1 June – 1 September 2022, FIFA, 7.

⁵⁹ The Football Association Premier League Limited, *Handbook Season 2022/23*, 300.

provision was subsequently used by Cristiano Ronaldo and Manchester United when terminating the contract by mutual agreement.

Additionally, according to Article 16, the ground rule is that a contract cannot be unilaterally terminated during the course of a season. However, there are numerous 'exceptions' to this provision. First of all, both the players and the club can terminate the contract concluded between them based on just cause, without being held liable for consequences of any kind (such as compensation fees or sporting sanctions). The termination of the contract by the club based on just cause often refers to the players' behaviour off-the-pitch which does not align with the values of the club concerned. On the other hand, players have two options to terminate their contract legally based on Articles 14bis and 15 with just cause. Primarily, according to Article 14bis, players can invoke just cause if the club fails unlawfully to pay a player at least two months of salary. Secondly, players have the possibility to terminate their contract with the so-called sporting just cause. Football players can trigger this provision when they appear in fewer than 10% of the official matches.

Furthermore, Article 17 enables players to terminate their contract with the club without just cause. This is, however, accompanied by sporting sanctions imposed on the player which include at least a four-month restriction on playing in official matches, sporting sanctions for the new club in terms of being prohibited from registering any new players for two consecutive registration periods, and a significant compensation fee that needs to be paid by the breaching party, *i.e.* the player.⁶⁰ In short, players are unable to depart the club at will and immediately join a new club.

⁶⁰ Articles 13-17 FIFA Regulations on the Status and Transfer of Players, 19-22.

Nevertheless, players can still terminate their contract if they seek to leave, and the new club is prepared to bear the financial burden and accept the loss of playing time.

III. EFFICIENT BREACH APPLIED ON TERMINATION WITHOUT JUST CAUSE

In this analysis, the situation in which football players breach the contracts with their former clubs will be discussed, contrary to the situation in which the club terminates the contract without just cause.

Hence, the termination of the contract without just cause is followed by a compensation fee and a loss of playing time. Both players and clubs therefore have to make a cost-benefit analysis of whether the benefits from breaching the contract and signing for the new club outweigh the costs. This calculation can be summarised in the subsequent formula:

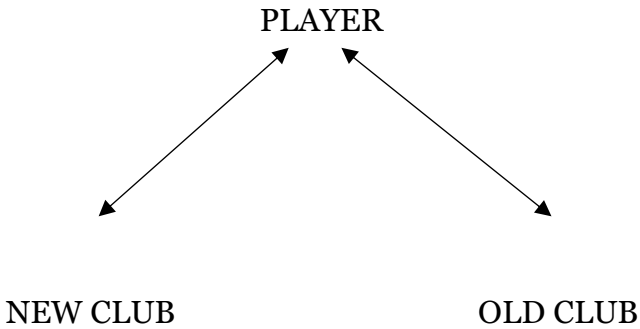
$$c^o \leq P \leq v$$

In order to examine the efficiency of contractual termination, the aforementioned theory will be applied to the scenario of a contractual breach without just cause. The player has to estimate the value of his performance under his old contract (c_1) and compare it with the potential value of performance under his new contract (c_2). In the next step, he will compare this to the compensation fee and loss of playing time (d). Similar to the general theoretical framework, the latter substitutes the expectation damages. Hence, the following formula depicts the situation in which it is considered to be efficient for the football player to breach his current contract without just cause:

$$(c_1 \leq c_2) \geq d$$

V on the other hand represents the buyer's valuation of performance of the contract, as the new club will estimate the value and contribution of the player both in terms of talent and economically. However, there are also certain costs associated with the potential signing of a new football player because of the termination of the contract without just cause. Therefore, the club must conduct a thorough cost-benefit analysis to assess the economic and competitive viability of signing the player.

Consequently, the football player and the club will agree on the price (P) that lies between the player's costs and the club's valuation. Therefore, as it is important to determine what precisely falls within the scope of both analyses, in what follows, a distinction will be made between the player's and the club's analysis.



i. PLAYER

a. THE VALUE OF PERFORMANCE OF THE CURRENT CONTRACT

In line with the standard Premier League Contract, the value of performance of the current contract of a football player is translated into his remuneration. The remuneration is the sum of the basic wage, bonuses and incentives, any other payments, insurances and other benefits to be provided to the player during the

duration of his contract.⁶¹ As can be expected, this remuneration can vary immensely between football players within the EU. For example, the best-earning player in the Premier League is currently Belgian midfielder Kevin de Bruyne, who earns a gross salary of 400.000 pounds per week, without being dependent on any bonuses. On the other hand, one of the worst-earning players in the Premier League is Jordan Smith, whose remuneration consists of 2.500 pounds per week with no additional bonuses.⁶² Therefore, given the discrepancy in remunerations, the aforementioned analysis needs to be made for each player on an individual basis.

b. VALUE OF PERFORMANCE OF HIS NEW CONTRACT

Similar to the value of performance of his current contract, the value of every new contract needs to be assessed independently. The value is the result of negotiations between the player and his representatives on the one hand and the club on the other hand. However, in light of the efficient breach analysis, it is important to highlight that the value of his new contract in comparison with the contracts of other players is not of any importance. The crucial factor is comparing the performance value of the new contract to the value of performance of his old contract. Consequently, if and only if the value of his new contract surpasses his old contract, the former will be compared to the expectation damages. If the performance value of his old contract outweighs the potential value of performance of the new contract, there would be no incentive for the player to breach their current contract in the first place.

⁶¹ The Football Association Premier League Limited, *Handbook Season 2022/23*, 339-340.

⁶² <https://www.capology.com/uk/premier-league/salaries/>

c. EXPECTATION DAMAGES: COMPENSATION FEE & LOSS OF PLAYING TIME

Loss of Playing Time

As mentioned, the expectation damages for the football player for breaching his current contract is the sum of the compensation fee and the loss of playing time. Contrary to the calculation of the compensation fee, it is rather complex to translate the loss of playing time into numerical values. Yet, one could assume that the loss of playing time for an athlete plays a big factor in his decision whether or not to terminate the contract without just cause.

However, it is worth mentioning that since *FC Pyunik Yerevan v. E., AFC Rapid Bucuresti & FIFA*, the Court of Arbitration for Sport (hereafter: CAS) decided that there was no reason to impose any sporting sanctions on the player concerned. *In casu*, the Panel was asked to decide whether sporting sanctions should be imposed on the player according to Article 17.3 of the FIFA Regulations on the Status and Transfer of Players. In particular, it took the specific circumstances of the case into account, such as the young age of the player at the time he signed the employment contract and the controversy surrounding his registration. Nonetheless, the Panel deviated from the literal reading of the text as it considered that the provision gives the Panel discretionary, instead of obligatory, power to impose sporting sanctions.⁶³ This decision paved the way for a practice where imposing sporting sanctions has rather become an exception.⁶⁴

⁶³ CAS 2007/A/1359/, *FC Pyunik Yerevan v. E., AFC Rapid Bucuresti & FIFA*, 26 May 2008, 53-55.

⁶⁴ CAS 2007/A/1359/, *FC Pyunik Yerevan v. E., AFC Rapid Bucuresti & FIFA*, 26 May 2008, 73-74.

Compensation Fee

Contrary to the loss of playing time, the compensation fee is the result of a mathematical calculation. It can be subject to an agreement between the parties concerned, or in the absence of the latter⁶⁵, determined on a case-by-case basis by the Dispute Resolution Chamber (hereafter: DRC) or the CAS in line with the following principles. According to Article 17.1 of the FIFA Regulation on the Status and Transfer of Players, the compensation fee “*shall be calculation with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria*”⁶⁶. The latter refers to the “*remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period*”.⁶⁷

In short, the decision rests with the parties whether they prefer to determine the ‘price’ for the unilateral termination of the football player or rely on the decision from the DRC or the CAS based on the criteria outlined in Article 17.1 of the FIFA Regulation on the Status and Transfer of Players which implies uncertainty. Therefore, in what follows, the caselaw of both the CAS and the DRC will be analysed to evaluate the method used in order to calculate the compensation fee.

⁶⁵ See for example: CAS 2012/A/2910 *Club Eskisehirspor v. Kris Boyd*, par. 73; CAS 2009/A/1880 & 1881 *FC Sion v. FIFA & Al-Ahly Sporting Club*, par. 73; CAS 2008/A/1519 & 1520 *FC Shakhtar Donetsk v Matuzalem Francelino da Silva & Real Zaragoza SAD & FIFA*, par. 66; A. SOTIR, “Article 17 of FIFA Regulations on the Status and Transfer of Players and Civil Responsibility of Players”, 1.

⁶⁶ Article 17.1 FIFA Regulation on the Status and Transfer of Players.

⁶⁷ Article 17 FIFA Regulations on the Status and Transfer of Players.

In January 2008 the CAS was confronted with the unilateral breach of contract of football player Andrew Weber in the case of *Wigan Athletic FC v/Heart of Midlothian*. The Court considered the three aforementioned categories of Article 17.1 (*i.e.* law of the country concerned, the specificity of sport and any other objective criteria), and decided that the compensation fee for unilateral termination without just cause is not intended to be punitive or lead to enrichment. Moreover, the Court decided that it should be calculated with the aim of putting players and clubs on equal footing in terms of the compensation they claim. Therefore, the CAS ruling determined that due to the unilateral termination, player Webster was (only) obligated to compensate his former club Heart of Midlothian by paying the remaining value of his contract. According to the Court, similar to how the player would be entitled to receive the outstanding remuneration until the contract's expiration in the event of unilateral termination by the club, the club should also have the right to receive a corresponding amount if the player terminates the contract.⁶⁸

This decision led, however, to the question of whether every player was simply able to terminate the contract with his current club by only paying the remaining value of the contract.

In a subsequent case, the so-called Matuzalem-case (see *infra*), the CAS decided that calculating the compensation fee solely on the remaining value of the contract was insufficient and should therefore also be based on the principle of 'positive interest' (or "expectation interest"). Positive interest refers to the goal of determining an amount that puts the injured party in the position he would have been in if the contract had

⁶⁸ CAS 2007/A/1298 *Wigan Athletic FC v/ Heart of Midlothian*, 125-151.

been performed properly.⁶⁹ Additionally, the value of a player's services is not solely determined by the remuneration owed to him. To accurately assess the complete value of the lost services, it is essential to consider not only the outstanding remuneration but also the expenses a club would typically need to make on the transfer market to secure similar services from another player.⁷⁰

Despite these two cases, as both were decided upon by two different CAS panels, there was still uncertainty about future decisions by the Court in terms of the amount of the compensation fee. This was clarified in the De Sanctis-case.

In the De Sanctis-case, the Italian player Morgan de Sanctis, who played for the Italian club Udinese terminated his contract, similar to previous cases involving Webster and Matuzalem. Udinese argued that De Sanctis and his new club Sevilla were not only obligated to pay the remaining value of the contract but also claimed damages based on the principle of 'positive interest', as the CAS had granted in the Matuzalem case. On the other hand, De Sanctis relied on the Webster case, asserting that he only had to pay the remaining value. The DRC and the CAS in appeal were tasked with deciding the matter. Both institutions ruled that additional damages could be claimed. Consequently, it became evident that the remaining value of the contract was not the sole factor in determining the amount of compensation. By doing so, the CAS seemed to align itself with the approach taken in the Matuzalem-case. However, without

⁶⁹ CAS 2008/A/1519 FC Shakhtar Donetsk v. Matuzalem Francelino da Silva & Real Zaragoza SAD & Fédération Internationale de Football Association (FIFA); CAS 2008/A/1520 Matuzalem Francelino da Silva & Real Zaragoza SAD v. FC Shakhtar Donetsk & Fédération Internationale de Football Association (FIFA), 3.

⁷⁰ CAS 2008/A/1519 FC Shakhtar Donetsk v. Matuzalem Francelino da Silva & Real Zaragoza SAD & Fédération Internationale de Football Association (FIFA); CAS 2008/A/1520 Matuzalem Francelino da Silva & Real Zaragoza SAD v. FC Shakhtar Donetsk & Fédération Internationale de Football Association (FIFA), 4.

delving deeper into the technical calculations, it is remarkable that the CAS used a different calculation method to determine the amount of compensation, compared to the Matuzalem-case.⁷¹

ii. NEW CLUB

As mentioned, the new club needs to make a cost-benefit analysis in order to determine whether it is feasible and efficient to sign a player who terminated his contract unilaterally without just cause. Therefore, in what follows, a distinction will be made between the different costs resulting from the signing, as well as the potential benefits that might occur.

a. COSTS

When the player breaches the contract with his former club, Article 17 of the FIFA Regulation on the Status and Transfer of Players states that sporting sanctions shall be imposed on the player. The precedent set by *FC Pyunik Yerevan v. E., AFC Rapid Bucuresti & FIFA* has made this practice more of an exception.⁷² Nonetheless, a risk-averse club may still consider this factor when evaluating the potential signing of the player concerned.

Furthermore, the primary “cost” for the club would be the sporting sanctions imposed on it if it is proven that the club influenced the breach of contract. In such a scenario, the club would face a ban on registering any new players for two consecutive

⁷¹ CAS 2010/A/2145 Sevilla FC SAD v. Udinese Calcio S.p.A.; CAS 2010/A/2146 Morgan De Sanctis v. Udinese Calcio S.p.A.; CAS 2010/A/2147 Udinese Calcio S.p.A. v. Morgan De Sanctis & Sevilla FC SAD, 5-6; F. DE WEGER, “M.Webster, Matuzalem, De Sanctis. ... and the future”, *The International Sports Law Journal*, 2011.

⁷² CAS 2007/A/1359/, *FC Pyunik Yerevan v. E., AFC Rapid Bucuresti & FIFA*, 26 May 2008, 73-74.

registration periods. Additionally, the club bears the burden of proof to demonstrate that it did not induce the player to terminate their contract without just cause.⁷³

b. BENEFITS

There are, on the other hand, numerous benefits that might occur from signing the player. However, this is not an easy assessment to be made by the club as it requires a valuation of human capital which is often done arbitrarily.⁷⁴

Earlier research on this subject was done by Dobson and Gerrard (1999). In line with their work, signing a new player (k) from a selling club (m) to a buying club (n) is expected to enhance team performance, as well as increase the buying club's revenue. The expected increase in team performance refers to the quality of a skilled player and his potential contribution in relation to the current quality of the team. The change in revenue, on the other hand, is the result of performance-related revenues (such as gate revenue), as well as non-performance-related revenue gains. In short, the buying club's valuation function ($V_{n,k}^B$) is therefore a combination of a monetary variable resulting from the increase in utility from the expected change in team performance ($\Delta_k^e Q_n$) and club revenue ($\Delta_k^e R_n$). This leads to the following formula:

$$V_{n,k}^B = V_{n,k}^B(\Delta_k^e Q_n, \Delta_k^e R_n)$$

Furthermore, building on this formula, there are other factors to take into account as well, such as the potential wage costs of the player ($W_{n,k}$), the signing fee to the player ($S_{n,k}$) and the anticipated proceeds from the potential sale of the player in the future

⁷³ Article 17,4 FIFA Regulations on the Status and Transfer of Players.

⁷⁴ "The Valuation of Human Capital in the Football Player Transfer Market An investigation of transfer fees paid and received in the English Premier League", Erasmus School of economics - July 2011, 27.

($eT_{n,k}$). Consequently, the maximum price the club is willing to pay for the signing of a player ($T_{n,k}^B$) can be derived from the buying club's valuation function ($V_{n,k}^B$) in combination with the aforementioned variables.⁷⁵ In summary, this can be presented as follows:

$$T_{n,k}^B = V_{n,k}^B - W_{n,k} - S_{n,k} + eT_{n,k}$$

c. CONTRIBUTION

The contribution of this sub-section to the literature is twofold. On the one hand, this thesis will add more exemplary elements to the potential increase in team performance and the increase in revenue. This will not have, however, any influence on the formulas as stated above as it is merely done by means of completeness. On the other hand, variables will be added to the formula as well. By analysing this current situation from a law and economics perspective, the aforesaid costs derived from regulation and caselaw therefore need to be taken into account.

Firstly, and besides the addition of a skilled player to the team which will have as a logical consequence an improvement in team performance, the competitive advantage over rivals should also be considered. The latter could attract other skilled players to join the team and increase the level of competition within the team.

Secondly, the enhanced revenue growth for the buying club can be attributed to various additional factors. The following list provides a non-exhaustive enumeration of some of these reasons: increased fan engagement, improved brand image, commercial opportunities, player development and resale value.

⁷⁵ S. DOBSON, J. GODDARD, *The Economics of Football*, Cambridge University Press, Cambridge, 2001, 229.

First of all, the signing of famous players can generate excitement among fans. Consequently, this could result in, for example, an increase in performance-related revenues (as the aforesaid gate revenue), but also higher merchandise sales and heightened fan engagement. Secondly, acquiring skilled and well-known players can significantly enhance a club's reputation and result in an improved brand image. This could lead to a boost in terms of the club's prestige and attractiveness in relation to potential sponsors and commercial partners. Furthermore, high-profile players can open up lucrative commercial opportunities for clubs. This may influence the overall finances of the buying club positively. Lastly, concerning player development and resale value, investing in young or promising players can create long-term advantages for a club. The club, which aims to provide a supportive environment, has the potential to transform these players into valuable assets. If these players subsequently perform well, the opportunity for the club arises to sell them for a significant profit in the future.

The costs for the buying club, *i.e.* the potential sporting sanctions imposed on the player and the ban on registering any new players for two consecutive registration periods, can be implemented in the formula. This results in a more complete buying club's valuation function. Hence, this function can be used by the buying clubs when making their cost-benefit analysis in order to determine whether or not to sign a football player who terminated his contract unilaterally without just cause. In this formula, the sporting sanctions imposed on the player are represented by L and the ban on registering any new players for the club is represented by B.

$$V_{n,k}^B = V_{n,k}^B(\Delta_k^e Q_n, \Delta_k^e R_n) - L - B$$

IV. EXERCISE

With the aim of giving more weight to the importance and relevance of this theory, an excursus will be made in order to determine whether the unilateral breach of contract by the player was efficient in hindsight at the moment of termination. Due to its influence and the information available, the Matuzalem-case lends itself to be the subject of this analysis. Without explaining the facts of this case in full, as it would fall out of the scope of this particular analysis, this study will single out the useful information necessary to conduct this research.

On the 20th of June 2004, central midfielder Mr. Matuzalem Francelino da Silva (hereafter: Matuzalem or ‘the player’) was transferred from Italian football club Brescia Calcio Spa to Shakhtar Donetsk for an amount of EUR 8,000,000. According to the employment contract between the player and the club, the latter commits itself to providing the player (and his family) with the following benefits:

- Accommodation and coverage of all municipal charges (excluding phone expenses);
- Social insurance and mandatory health and life insurance;
- A car with a value ranging from 23,000 to 26,000 US Dollars, including all expenses related to its servicing and maintenance (except for fuel charges);
- Three round-trip air tickets annually to travel between Donetsk and Natal (Brazil);
- Potential bonuses;
- Monthly remuneration (including taxes and other obligatory payments) of EUR 96,925.00.⁷⁶

⁷⁶ CAS 2008/A/1519 FC Shakhtar Donetsk v. Matuzalem Francelino da Silva & Real Zaragoza SAD & Fédération Internationale de Football Association (FIFA); CAS 2008/A/1520 Matuzalem Francelino da

Additionally, the contract stipulated as well that if Shakhtar Donetsk received a transfer offer of EUR 25,000,000 or above, the club commits itself to letting the player go.

However, after terminating his contract unilaterally without just cause on the 2nd of July 2007, Matuzalem Francelino da Silva signed on the 19th of July a contract with his new club Real Zaragoza. Under his new three-year contract, the player was entitled to the following benefits:

- Remuneration of EUR 10,000 fourteen times a year;
- A sign-on fee of EUR 860,000 per season;
- Unspecified match bonuses.⁷⁷

As a result of this situation, Shakhtar Donetsk communicated to Real Zaragoza that if the latter paid the buyout fee of EUR 25,000,000, the player would be permitted to join his new club. However, this did not happen. Therefore, on the 25th of July 2007, Shakhtar Donetsk initiated proceedings with the DRC.⁷⁸ On the 2nd of November 2007, DRC reviewed Matuzalem's case and ruled that both Matuzalem and Real Zaragoza were jointly and severally liable to pay EUR 6,800,000 to Shakhtar as compensation.⁷⁹ However, on the 19th of March 2008, Shakhtar filed a statement of appeal with the CAS

Silva & Real Zaragoza SAD v. FC Shakhtar Donetsk & Fédération Internationale de Football Association (FIFA), 4-5.

⁷⁷ CAS 2008/A/1519 FC Shakhtar Donetsk v. Matuzalem Francelino da Silva & Real Zaragoza SAD & Fédération Internationale de Football Association (FIFA); CAS 2008/A/1520 Matuzalem Francelino da Silva & Real Zaragoza SAD v. FC Shakhtar Donetsk & Fédération Internationale de Football Association (FIFA), 6.

⁷⁸ CAS 2008/A/1519 FC Shakhtar Donetsk v. Matuzalem Francelino da Silva & Real Zaragoza SAD & Fédération Internationale de Football Association (FIFA); CAS 2008/A/1520 Matuzalem Francelino da Silva & Real Zaragoza SAD v. FC Shakhtar Donetsk & Fédération Internationale de Football Association (FIFA), 4-6.

⁷⁹ CAS 2008/A/1519 FC Shakhtar Donetsk v. Matuzalem Francelino da Silva & Real Zaragoza SAD & Fédération Internationale de Football Association (FIFA); CAS 2008/A/1520 Matuzalem Francelino da Silva & Real Zaragoza SAD v. FC Shakhtar Donetsk & Fédération Internationale de Football Association (FIFA), 8-9.

as they considered the fee set by the DRC to be too low.⁸⁰ In their decision on the 19th of May 2009, the CAS ruled that Matuzalem was obliged to pay a compensation fee of EUR 11,858,934 to Shakhtar Donetsk. Additionally, Real Zaragoza was held jointly and severally liable for this fee.⁸¹

$$(c_1 \leq c_2) \geq d$$

Instead of comparing the annual value of the contract, which might lead to inaccurate conclusions, the remaining value of the contract with Shakhtar Donetsk will be compared to the new contract with Real Zaragoza. This approach enables us to better understand the player's perspective at the moment he chose to terminate the contract.

Given that the contract with Shakhtar Donetsk was concluded for a period of five years (1st of July 2004 until the 1st of July 2009), and consequently terminated on the 2nd of July 2007, the remaining duration of the contract is two years. Therefore, on the one hand, the value of performance of his remaining two-year contract with Shakhtar Donetsk (c_1) is the sum of:

$$c_1 = \text{EUR } 2,326,200^{82} \text{ (remuneration)} + x \text{ (bonuses)} + 2x^{83} \text{ (air tickets)} + \text{EUR } 23,000 \text{ to } 26,000 \text{ (car)} + x \text{ (insurances)} + x \text{ (accommodation and coverage of all municipal charges)}$$

⁸⁰ CAS 2008/A/1519 FC Shakhtar Donetsk v. Matuzalem Francelino da Silva & Real Zaragoza SAD & Fédération Internationale de Football Association (FIFA); CAS 2008/A/1520 Matuzalem Francelino da Silva & Real Zaragoza SAD v. FC Shakhtar Donetsk & Fédération Internationale de Football Association (FIFA), 9.

⁸¹ CAS 2008/A/1519 FC Shakhtar Donetsk v. Matuzalem Francelino da Silva & Real Zaragoza SAD & Fédération Internationale de Football Association (FIFA); CAS 2008/A/1520 Matuzalem Francelino da Silva & Real Zaragoza SAD v. FC Shakhtar Donetsk & Fédération Internationale de Football Association (FIFA), 40.

⁸² EUR 96,925.00 (monthly) x 24 (two years remaining)

⁸³ Contract stipulates three round-trip air tickets annually. Therefore, given the remaining duration of the contract, this needs to be multiplied.

On the other hand, the value of performance of his new three-year contract with Real Zaragoza (c_2) is the cumulation of:

$$c_2 = \text{EUR } 420,000^{84} \text{ (remuneration)} + \text{EUR } 2,580,000^{85} \text{ (sign-on fee)} + x \text{ (bonuses)}$$

Assuming that the additional benefits of c_1 (*i.e.* bonuses, air tickets, insurances, accommodation and coverage of the municipal charges) do not outweigh the value of performance under his new contract with Real Zaragoza, Matuzalem made the correct decision from an efficiency perspective:

$$\text{EUR } 2,349,200 \text{ to } 2,352,200 \text{ (remuneration + flexible value of the car)} + x \text{ (bonuses)} + 2x \text{ (air tickets)} + x \text{ (insurances)} + x \text{ (accommodation and coverage of all municipal charges)} \leq \text{EUR } 3,000,000 \text{ (remuneration + sign-on fee)} + x \text{ (bonuses)}$$

Nonetheless, when the player decided to unilaterally terminate the contract, he faced uncertainty regarding the compensation fee (and potential sporting sanctions) since the exact amount of the fee was unknown at that time. Despite the CAS not imposing any sporting sanctions, it did however order Matuzalem to pay a compensation fee to Shakhtar Donetsk. In retrospect, the expectation damages (d) amounting to EUR 11,858,934 therefore far outweigh the value of performance under his new contract with Real Zaragoza.

⁸⁴ EUR 10,000 fourteen times a year x 3 (three-year contract)

⁸⁵ EUR 860,000 x 3

This cost-benefit analysis from the perspective of the player led to the conclusion that, in hindsight at least, the termination of his contract is not efficient. Although the value of performance under his new contract (c2) outweighs the value under his old contract (c1), the expectation damages exceed the value of his new contract. By way of conclusion, the unilateral termination by Matuzalem cannot be considered as an efficient breach of contract.

(EUR 2,349,200 to 2,352, 200 (remuneration + flexible value of the car)) + x (bonuses) + 2x (air tickets) + x (insurances) + x (accommodation and coverage of all municipal charges) ≤ EUR 3,000,000 (remuneration + sign-on fee) + x (bonuses) ≤ 11,858,934 (compensation fee)

D. CONCLUSION & RECOMMENDATIONS

The current legal and regulatory framework surrounding the transfer of football players within the European Union is the result of historical developments and legal precedents originating from European jurisprudence. This study places significance on the discretionary and regulatory authority of sport governing bodies due to the limited involvement of national legislation in this domain. In particular, the FIFA Regulations on the Status and Transfer of Players is discussed extensively.

One of the primary objectives pursued by FIFA is the assurance of a fair and balanced competition between clubs. To attain this objective, it becomes imperative to uphold and enforce stability in contractual relationships between clubs. Hence, Article 13 of the FIFA Regulations on the Status and Transfer of Players states that “*a contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement*”. Yet, the FIFA Regulation on the Status and Transfer of Players foresees situations wherein contract termination, with or without just cause, is feasible.

Of particular interest is the situation wherein the player unilaterally terminates the contract without just cause, leading to punitive consequences associated with the breach of contract. In this context, the player is expected to pay a compensation fee to his former club and is subjected to a loss of playing time. However, the unilateral termination could also yield certain advantages for the player. Therefore, players engage in an *ex-ante* cost-benefit analysis to ascertain whether the benefits resulting from the breach of contract and the signing for a new club outweigh the regulatory and

economic costs potentially imposed on them. The same rationale applies to the new club.

The theory of efficient breach provides insights and guidance in determining the efficiency of such breaches *ex-post*. From the player's perspective, an estimation can be made contrasting the value of performance under his old contract (c_1) to the potential value of performance under his new contract (c_2). Consequently, if the latter (c_2) outweighs the value of performance under his old contract (c_1), a comparison is then made with the compensation fee and loss of playing time (d). The unilateral termination of the contract by the player without just cause can only be considered efficient if the potential value of performance under his new contract (c_2) exceeds the compensation fee and loss of playing time (d).

$$(c_2 \geq c_1) \geq d$$

Nevertheless, regardless of its efficiency, the FIFA Regulations on the Status and Transfer of Players provide the possibility for players to unilaterally terminate their contracts. This contradicts a fundamental objective of FIFA centred around contractual stability, a prerequisite for maintaining fair and balanced competition between clubs.

Contractual stability serves as one of the fundamental pillars underpinning the integrity of football competitions, as it facilitates a level playing field. Additionally, it allows clubs to accurately plan their strategies and investments. This stability aims to mitigate the disruptions that abrupt contract terminations might cause, ensuring that the balance of power among clubs remains maintained.

The allowance of FIFA for unilateral termination by players (and clubs) introduces a potential threat to this principle of stability. Such a provision can potentially empower players to terminate the contract abruptly which can significantly impact the club's strategic planning and the team's performance. Moreover, this provision may indirectly lead to a situation where clubs with more financial resources are better equipped to bear the potential burden of signing new players after a unilateral breach of contract, thereby increasing the already existing inequalities within football.

To genuinely uphold contractual stability, and therefore the integrity of football competitions, the inclusion of this provision in FIFA's regulatory framework should be reconsidered. By abstaining from incorporating the possibility of unilateral breach of contract without just cause, FIFA would signal a stronger commitment to the creation of an environment of fair play, where clubs can engage in competitions based on established agreements.

E. Bibliography

LAWS and REGULATIONS

Act of 24 February 1978 relating to contract of employment for sports professionals.

Charte du Football Professionnel (Charter of Professional Football), Title III: the Players, 2011-2012.

Communication CE 5 March 2001 IP/01/824.

FIFA Regulations on the Status and Transfer of Players.

Flemish Parliament Act of 24 July 1996.

French Community Parliament Act of 8 December 2006.

Law 2725/99, (FEK* 121/A/17-06-1999).

Law No. 91 of 23 March 1984.

Law of 24 February 1978.

Law on Physical Education and Sport of Lithuania.

Law on Sport (Act I of 2004) Hungary.

Lei n.º 28/98, 26 of June 1998.

Premier League Handbook.

Royal Decree 1006/1985, 26 of June.

The Football Association Premier League Limited, Handbook Season 2022/23.

The Status and Players Regulation.

The UEFA Financial Fair Play Regulations.

CASELAW

ECJ, C-415/93, 15/12/1995, Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman.

CAS 2007/A/1298 Wigan Athletic FC v/ Heart of Midlothian.

CAS 2007/A/1359/ FC Pyunik Yerevan v. E., AFC Rapid Bucuresti & FIFA.

CAS 2008/A/1519 FC Shakhtar Donetsk v. Matuzalem Francelino da Silva & Real Zaragoza SAD & Fédération Internationale de Football Association (FIFA).

CAS 2008/A/1520 Matuzalem Francelino da Silva & Real Zaragoza SAD v. FC Shakhtar Donetsk & Fédération Internationale de Football Association (FIFA).

CAS 2009/A/1880 & 1881 FC Sion v. FIFA & Al-Ahly Sporting Club.

CAS 2010/A/2145 Sevilla FC SAD v. Udinese Calcio S.p.A.

CAS 2010/A/2146 Morgan De Sanctis v. Udinese Calcio S.p.A.

CAS 2010/A/2147 Udinese Calcio S.p.A. v. Morgan De Sanctis & Sevilla FC SAD.

CAS 2012/A/2910 Club Eskisehirspor v. Kris Boyd.

LITERATURE

“The Valuation of Human Capital in the Football Player Transfer Market An investigation of transfer fees paid and received in the English Premier League”, Erasmus School of Economics - July 2011.

DE CONINCK, J., VANRENTERGHEM, A., KOHN, G., “Van het ene voetbalschandaal naar het andere: welke dossiers lopen er nu? En wie zijn de verdachten?”, vrtnews.be, <https://www.vrt.be/vrtnews/nl/2019/09/12/financiele-fraude-in-het-voetbal-wedstrijdvervalsing-kan/>, 2019.

DE WEGER, F., “M.Webster, Matuzalem, De Sanctis. ... and the future”, *The International Sports Law Journal*, 2011.

DOBSON, S., and GODDARD, J., *The Economics of Football*, Cambridge University Press, Cambridge, 2001, 458 p.

DUVAL, A., and VAN ROMPUY, B., *The Legacy of Bosman, Revisiting the Relationship Between EU law and Sport*, The Hague, T.M.C. Asser Press, 2016, 250 p.

FRIEDMAN, D., “The efficient breach fallacy”, *The Journal of Legal Studies*, 18(1), 1989, 1–24.

GEENENS, A., “De Financiële Situatie en Toekomst van de Voetbalploegen in de Jupiler Pro League en 1B Pro League”, Faculteit Economie en Bedrijfskunde Ugent, 2022, 50 p.

HOFMANN, O., *Breach of Contract: An Economic Analysis of the Efficient Breach Scenario*, Springer, Hamburg, 2021, 268 p.

International Transfer Snapshot 1 June – 1 September 2022, FIFA, 19 p.

KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013.

KESENNE, S., “Het clearing house is een slag in het water, de transfermarkt moet gewoon weg”. Site-Sportmagazine-NL. https://sportmagazine.knack.be/sport/voetbal-nationaal/het-clearing-house-is-een-slag-in-het-water-de-transfermarkt-moet-gewoon-weg/article-opinion1558667.html?cookie_check=1658598999, 2020.

MARKOVITS, D., and SCHWARTZ, A., “(in)efficient breach of contract”, *The Oxford handbook of law and economics*, Oxford University Press, Oxford, New York, 2017.

SHAVELL, S., “Damage measures for breach of contract”, *Bell Journal of Economics*, 11(2), 1980, 466–490.

SHAVELL, S., “The Design of Contracts and Remedies for breach”, *Quarterly Journal of Economics*, 99(1), 1984, 121–148.

SOTIR, A., “Article 17 of FIFA Regulations on the Status and Transfer of Players and Civil Responsibility of Players”, 5 p.

Sporza, “De ins en outs van het clearinghouse: financiering, regels, sancties”, sporza.be. <https://sporza.be/nl/2019/12/19/clearinghouse-reglement/>, 2019.

VARIA

<https://www.capology.com/uk/premierleague/salaries/>

E. ANNEX

Table no. 1: Countries with legal provisions on transfers⁸⁶

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

⁸⁶ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 35.

Table no. 2: Level of autonomy granted to sport governing bodies⁸⁷

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

⁸⁷ KEA and CDES, *The Economic and Legal Aspects of Transfers of Players*, 2013, 35.