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Redesigning the transfer market: An analysis of the impact of the CJEU's Diarra ruling on professional football transfers

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List of abbreviations

Abbreviation	Meaning
Art.	Article
CAS	Court of Arbitration for Sport
cf.	confer (compare)
CJEU	Court of Justice of the European Union
e.g.	exempli gratia (for example)
ESL	European Super League
EU	European Union
FIFA	Fédération Internationale de Football Association (International Federation of Association Football)
i.e.	id est (that is)
ISU	International Skating Union
ITC	International Transfer Certificate
para	paragraph
RSTP	FIFA Regulations on the Status and Transfer of Players
TFEU	Treaty on the Functioning of the European Union
UEFA	Union of European Football Associations
URBSFA	Union Royale Belge des Sociétés de Football-Association (Royal Belgian Football Association)

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1. Introduction

International player transfers have become one of the most spectacular features of professional football today. The sums involved serve as a symbol of the sport's vast economic dimension and at the same time raise fundamental legal questions. At the heart of this issue lies the tension between the contractual obligations of players, the economic interests of clubs[1], and the fundamental freedoms guaranteed under EU law. Since the decision of the Court of Justice of the European Union (CJEU) in the Diarra case, it has become clear that the current transfer system is under scrutiny in light of European Union law. This thesis analyses to what extent legal adjustments are necessary and explores the practical and legal consequences arising from the judgment.

The following sections first present the relevance of the topic (1.1.), followed by the central research questions and the underlying hypothesis (1.2.), and finally outline the methodological approach of the study (1.3.).

1.1 Relevance of the Topic

Breaking news such as 'Harry Kane leaves Tottenham, joins Bayern Munich for 100 million euros'[2] or 'Barcelona accept €222 million fee for Neymar'[3] have become commonplace for anyone following football. Twice a year, during the summer and winter transfer windows, the international football world is dominated by reports of players changing clubs. Media outlets provide constant coverage, and the transfer fees reach new record highs on a regular basis.

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[1] The term 'club' is used for the sake of simplicity to refer to all professional football operating companies, regardless of their specific legal form.

[2] 'Harry Kane leaves Tottenham, joins Bayern Munich for 100 million pounds' (*Business Standard*, 12 August 2023) https://www.business-standard.com/sports/football-news/harry-kane-leaves-tottenham-joins-bayern-munich-for-100-million-pounds-123081200321_1.html accessed 8 May 2025

[3] 'Barcelona accept €222 million fee for Neymar' (*Irish Independent*, 3 August 2017) https://www.independent.ie/sport/soccer/barcelona-accept-222-million-fee-for-neymar/35998268.html accessed 8 May 2025.

The transfer market has evolved into a spectacle of its own, separate from the sporting competition and embedded in a global, multi-billion-euro industry.

What often goes unnoticed by the public is the complex legal structure behind this system. Contrary to public perception, a transfer is not a traditional purchase contract. A person cannot be the object of a legal transaction. Instead, a transfer involves a network of contractual arrangements governed by labour, civil, and sports law. A central regulatory basis is provided by the FIFA Regulations on the Status and Transfer of Players (RSTP), especially Article 17, which outlines the consequences of a contract termination 'without just cause', including compensation and sporting sanctions.

With the CJEU's decision in Diarra[4] on 4 October 2024, this article has come under increased legal scrutiny. The Court declared key provisions of Article 17 RSTP incompatible with European Union law. This not only raises questions about the future of the current transfer system but also about the appropriate balance between clubs' contractual autonomy, the economic structure of football, and players' fundamental freedoms. Much like the Bosman ruling in 1995, the Diarra judgment could represent a turning point with profound implications for the sport and its legal framework.

1.2 Central research questions

This study focuses on whether the current transfer system in professional football – particularly the regulation contained in Article 17 of the FIFA Regulations on the Status and Transfer of Players – is compatible with the fundamental principles of European Union law. Building on the Diarra judgment, the primary challenge is to evaluate the legal shortcomings identified by the CJEU and assess the practical consequences this may have for the transfer market.

Key issues include the legal reasoning behind the Court's ruling, particularly with respect to the freedom of movement for workers under Article 45 TFEU and competition law as set out in Articles 101 and 102 TFEU. It must be examined whether the compensation mechanisms

[4] Case C-650/22 Diarra [2024], ECLI:EU:C:2024:824

and sanctions provided for in Article 17 RSTP constitute an unjustified restriction of these freedoms. Furthermore, the judgment must be placed in the context of the CJEU's previous case law in the area of sport, including the landmark decisions in Bosman, Meca-Medina, Royal Antwerp, and the Super League case.

Additionally, the study addresses how deeply this ruling may affect the stakeholders of the football market. Can the existing system survive if the criticised norms are amended, or is a fundamental restructuring of the transfer framework necessary? The hypothesis of this thesis is as follows:

The current FIFA transfer system, particularly in its implementation through Article 17 RSTP, is incompatible with European Union law in key aspects and can only be maintained in a legally compliant form through substantial structural changes. The CJEU's Diarra decision marks a shift in the balance of power between clubs and players and will likely lead to a liberalisation of the transfer market. Lower and less frequent transfer fees, more frequent player moves, and stronger contractual autonomy for players are foreseeable developments.

1.3 Methodology

This thesis employs a legal-dogmatic and system-analytical approach. It begins with an in-depth presentation of the existing transfer system de lege lata, focusing on the relevant provisions of the FIFA RSTP, especially Article 17, and the contractual and institutional foundations of international player transfers.
The legal analysis then turns to the relevant provisions of European Union law, notably the freedom of movement for workers under Article 45 TFEU and the competition rules in Articles 101 and 102 TFEU. These are considered in light of the specific characteristics of professional sport, with Article 165 TFEU, which acknowledges the special role of sport in the EU, also taken into account.

To place the Diarra judgment in proper context, the thesis undertakes a systematic review of relevant CJEU case law. This includes not only the Bosman ruling but also the subsequent decisions in Meca-Medina, Royal Antwerp, International Skating Union, and most recently, the Super League case. The aim is to situate the ruling within an evolving jurisprudential framework and to identify both continuities and turning points in the Court's reasoning.

The core analysis of the Diarra decision is conducted on both normative and practical levels. The Court's reasoning is subjected to a critical legal assessment. In addition to doctrinal analysis, the thesis draws on current academic literature, official statements by sports organisations, and early reactions from legal practitioners. Finally, the study evaluates the probable consequences of the ruling for the current transfer system and considers reform options, both within the existing FIFA framework and through a broader, EU law-compliant redesign of the transfer regime in professional football.

2. The FIFA transfer system prior to Diarra

2.1 Main elements of the FIFA transfer system regulations

The FIFA transfer system is regulated by the Regulations on the Status and Transfer of Players (RSTP). In addition to the provisions on the status of players (Art. 2-4 RSTP),these regulations cover the registration of players (Art. 5-12 RSTP), special transfers such as the international transfer of minors (Art. 19 et seq. RSTP), in particular the core pillars of the global transfer market in Articles 13 to 18 RSTP. These articles fall under the heading 'Maintenance of contractual stability between professional clubs' and are intended to serve as a reliable instrument for handling player transfers during ongoing sports competitions.

Article 13 RSTP first clarifies that a contract between a player and a club is considered terminated when the contract either expires or is dissolved by mutual agreement. Article 16 RSTP supplements this provision by stating that a unilateral termination of the contract during the ongoing season is not permitted. Thus, the interaction of these two provisions establishes a fundamental principle of international contract law: *pacta sunt servanda* (agreements must be kept).[5]

The exceptions to this principle are set out in Articles 14, 15, and 17 of the RSTP. These articles stipulate the legal consequences of contract termination for just cause (Art. 14 RSTP), for sporting just cause (Art. 15 RSTP), and without just cause (Art. 17 RSTP).[6] A contract termination for just cause under Article 14 RSTP means that the termination does not result in any legal consequences such as compensation payments or other sporting sanctions. If there is a sporting just cause under Article 15 RSTP, only compensation payments may be imposed as a consequence, but no sporting sanctions. Such a sporting just cause typically exists when an 'established professional player' has played in 'less than 10% of the official matches' of their club during a season, 'taking into account the player's specific situation.'

However, particularly relevant for the current transfer system is the regulation on the consequences of terminating a contract without just cause under Article 17 RSTP. This article

[5] Ralf Reinhart Stenger, *Vertragstreue im Fußballsport* (PhD thesis, University of Vienna, 2017) 39.

[6] Ralf Reinhart Stenger, *Vertragstreue im Fußballsport* (PhD thesis, University of Vienna, 2017) 39.

begins with: 'The following provisions apply if a contract is terminated without just cause.' This introduction is followed by five sections that address in detail the obligations of the breaching party. What stands out, however, is that Article 17 RSTP, in contrast to Articles 14 and 15 RSTP, does not establish the grounds for termination but merely regulates the legal consequences. The regulation also does not provide a definition of a 'termination without just cause.'[7]

Paragraph 1 of the regulation first addresses the amount of financial compensation that must be paid by the breaching player in the event of a contract termination without just cause. Unless otherwise specified in the employment contract, such compensation is calculated based on various factors. These factors include, first, the law of the relevant country; second, the specificity of sport; and third, any other objective criteria. These objective criteria include the remuneration and other benefits the player is entitled to under the contract, the remaining duration of the contract, and whether the breach occurred within a 'protected period.' [8]

Paragraph 2 then states that the new club that signs the player after their breach of contract is jointly and severally liable for the compensation owed to the former club. In addition to the obligation to pay compensation, paragraph 3 also allows for the imposition of sporting sanctions on the player. Such sporting sanctions may also be imposed on the new club under paragraph 4 if it is presumed that the club induced the player to breach the contract. This rebuttable presumption always applies against the club if it signs a player who has breached their contract. If the new club fails to rebut this presumption, paragraph 4, sentence 3, provides that the club will be banned from registering any new players at both national and international level for two complete and consecutive registration periods. [9]

[7] Ralf Reinhart Stenger, *Vertragstreue im Fußballsport* (PhD thesis, University of Vienna, 2017) 42

[8] Richard Parrish, 'Article 17 of the FIFA Regulations on the Status and Transfer of Players – Compatibility with EU Law' (2015) 22 Maastricht Journal of European and Comparative Law 2, 256, 259

[9] Ralf Reinhart Stenger, *Vertragstreue im Fußballsport* (PhD thesis, University of Vienna, 2017) 48

2.2 The legality of FIFA's regulation in the football transfer market

The regulation relevant to the CJEU decision, namely Article 17 of the RSTP, is not a legal act issued at the national or European level. Rather, the RSTP is issued by FIFA (the Fédération Internationale de Football Association). This raises the question of whether a privately organized association can issue such regulations at all.

But what exactly is FIFA? According to Article 1(1) of the FIFA Statutes, FIFA is an 'association registered in the commercial register in accordance with Articles 60 et seq. of the Swiss Civil Code[10].' FIFA sees itself as the umbrella organisation for all national football associations.[11] According to its own statutes, its aim is to improve and promote football, which gives it a significant international responsibility that goes far beyond merely organising FIFA competitions.[12] FIFA was founded in 1904, is headquartered in Switzerland, and now counts 211 national associations among its members.[13]

FIFA has also established fundamental rules for world football in its statutes, which serve as the basis for all competition, doping, transfer, and other regulations. From a legal perspective, these statutes are considered the internal rules of an association, and the 'implementing regulations' based on them are decisions made by the association.[14] Furthermore, FIFA membership is based on the 'one place' principle. This principle, set out in Article 10(1) sentences 1 and 3 of the FIFA Statutes, states that only one national association per country may be a member of the international umbrella organization. Due to this 'one place' principle, FIFA has established a monopoly position in football, which—given the financial significance of FIFA's own competitions—places considerable pressure on national associations to comply with FIFA's requirements when organizing their own domestic competitions.[15]

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[10] Swiss Civil Code of 10 December 1907, as amended on 1 January 2017

[11] FIFA, 'Organisation' https://inside.fifa.com/de/organisation accessed 8 May 2025

[12] Ralf Reinhart Stenger, *Vertragstreue im Fußballsport* (PhD thesis, University of Vienna, 2017) 9

[13] FIFA, 'Organisation' https://inside.fifa.com/de/organisation accessed 8 May 2025; Ralf Reinhart Stenger, *Vertragstreue im Fußballsport* (PhD thesis, University of Vienna, 2017) 8

[14] Ralf Reinhart Stenger, *Vertragstreue im Fußballsport* (PhD thesis, University of Vienna, 2017) 10–11

[15] Ralf Reinhart Stenger, *Vertragstreue im Fußballsport* (PhD thesis, University of Vienna, 2017) 12

3. Legal foundations

The following section will outline the legal foundations on which the CJEU's judgment in the *Lassana Diarra* case is based. Particularly relevant in this context are labour law and competition law. In addition, Article 165 of the Treaty on the Functioning of the European Union (TFEU) will also be addressed, as it has recently been referenced by the CJEU in decisions relating to sports law.

3.1 European labour law

First, the legal foundations of labour law shall be presented.

3.1.1 Applicability of Art. 45 TFEU in the field of sports

In professional sports, Articles 45, 49, and 56 TFEU govern the status of individual athletes in their capacity as workers or service providers. These provisions therefore have significant implications for sport. [16]

However, the articles of the TFEU are not specifically tailored to the field of sports. This raises the question of when and to what extent these regulations are applicable in sports. In addressing this, the CJEU distinguishes between the economic aspects of sport and those that are purely sporting in nature. This is based on the principle that the specific rules of sport should be regulated autonomously by sports associations, without state interference. This holds true even despite the increasing professionalization of sport over recent decades. Associations must still be able to regulate, for example, the offside rule in football without being subject to review under EU law, even if such a rule might practically hinder a striker in exercising his profession.[17]

[16] Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag, 2018) ch. 9, para 18

[17] Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag, 2018) ch. 9, para 19

This distinction between purely sport-related 'rules of the game' and economically relevant regulations affecting the freedoms of workers and service providers has often been the subject of case law from European courts. In this context, the courts have ruled that association rules on team composition (such as 'foreign player quotas') fall within the scope of the EU fundamental freedoms[18], while decisions by associations regarding participation in competitions do not[19]. According to the CJEU, the latter are purely sporting decisions and therefore, by their nature, not subject to scrutiny under the fundamental freedoms. [20]

The question of whether the provisions of the TFEU are applicable to the rules of sports associations is also of relevance. As a general principle, the fundamental freedoms of the TFEU apply in vertical relationships, meaning that Member States, in particular, are bound by the requirements of the TFEU when enacting regulations. However, since employment relationships are predominantly governed by private actors, restrictions in this area often arise from private parties rather than from the state.[21]

In order to eliminate obstacles to the free movement of workers and to ensure its uniform application, the Court of Justice of the European Union has extended the scope of Article 45 TFEU to legal relationships between private parties. This results in what is referred to as direct horizontal effect.[22]

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[18] Case C-415/93 Bosman [1995] ECLI:EU:C:1995:463; Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag, 2018) ch. 9, para 20

[19] Case C-51/96 Deliege [2000] ECLI:EU:C:2000:199; Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag, 2018) ch. 9, para 20

[20] Case C-51/96 Deliege [2000] ECLI:EU:C:2000:199; Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag, 2018) ch. 9, para 20

[21] Eva Kocher, 'Die Arbeitnehmerfreizügigkeit', *Europäisches Arbeitsrecht*, 3rd edn (Nomos 2024), para 91-92; Christian Heinze, 'Europäisches Wettbewerbsrecht' in Karl-Nikolaus Peifer (ed), *Gesetz gegen den unlauteren Wettbewerb,* 3rd edn (De Gruyter 2020), para 11

[22] Case C-281/98 Angonese [2000] ECLI:EU:C:2000:296, para 33 ff; Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 110

3.1.2 Article 45 TFEU

The following section will examine the requirements of Article 45 TFEU in more detail, with a particular focus on the specific characteristics of the sports sector.

3.1.2.1 Personal scope of application

In the context of international professional football, the question arises as to who can actually invoke Article 45 TFEU. According to the wording of Article 45(2) TFEU, which refers to 'workers of the Member States', Article 45 TFEU applies exclusively to European Union citizens.[23] In addition to EU citizens, many players from non-EU countries are active in European leagues. It is therefore questionable whether these players can also rely on the rights conferred by Article 45 TFEU. The CJEU has already addressed this issue in its Kolpak ruling[24], linking the applicability of Article 45 to the existence of an association agreement between the third country and the EU. According to the CJEU, if such an agreement contains sufficiently specific guarantees regarding the free movement of persons, nationals of the respective third country may also benefit from the freedom of movement for workers under Article 45 TFEU.[25] A considerable number of such association agreements now exist with various third countries, meaning that a large portion of players in the EU can invoke Article 45 TFEU. However, players from other third countries without such agreements remain excluded from claiming the rights derived from European freedom of movement for workers.[26]

3.1.2.2 Material scope of application

The material scope of application must also be fulfilled. In the context of the freedom of movement for workers, the CJEU adopts a broad interpretation of the term 'worker.'

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[23] Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 85

[24] Case C-438/00 Kolpak [2003] ECLI:EU:C:2003:255, para 36

[25] Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 9, para 28

[26] Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 9, para 29

According to this interpretation, someone qualifies as a worker if they are required to perform services to another person, under that person's authority, for a certain period of time and in return receive remuneration.[27]

Licensed players who participate in a league competition are therefore to be classified as employees, as they receive instructions from coaches and other superiors. These instructions can be directly related to the sport itself, such as being assigned to the starting lineup or being directed on how to play. Additionally, they may occur off the pitch, for example in the context of charitable appearances or promotional activities organised by the club. In return, the players receive salary payments. It is irrelevant whether they are full-time or semi-professional athletes. Only amateurs – such as those who receive merely a reimbursement of expenses – do not fall under the definition of a worker within the meaning of Article 45 TFEU.[28]

3.1.2.3 Cross-border element

Moreover, like all fundamental freedoms, Article 45 TFEU requires the existence of a cross-border element.[29] Unlike Articles 49 and 56 TFEU, this requirement is not explicitly mentioned in the wording of Article 45 TFEU. However, it is well established that situations which are purely internal to a Member State do not fall within the scope of the freedom of movement for workers.[30] A cross-border element is present where a worker from one EU Member State pursues professional activity in another Member State or moves to another Member State in order to seek employment.[31]

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[27] Case 66/85 Lawrie-Blum [1986] ECLI:EU:C:1986:284, para 16 f; Case C-432/14 O [2015] ECLI:EU:C:2015:643 para 22; Case C-379/11 Caves Krier Frères [2013] ECLI:EU:C:2012:798 para 26; Case C-337/10 Neidel [2012] ECLI:EU:C:2012:263 para 23; Case C-232/09 Danosa [2010] ECLI:EU:C:2010:674 para 39; Mathias Henssler, Markus Willemsen and Niklas Kalb, Arbeitsrecht Kommentar, Art 45 para 14; Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 89

[28] Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 9, para 24

[29] Eva Kocher, 'Die Arbeitnehmerfreizügigkeit', *Europäisches Arbeitsrecht*, 3rd edn (Nomos 2024), para 24

[30] Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 99

[31] Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 100

In the field of professional sports, a cross-border element is regularly present, as players frequently transfer not only within their national associations but also to associations in other EU Member States.

3.1.2.4 Impairment of the freedom of movement for workers

In addition, the worker must be impaired in their freedom of movement as a worker. In this context, a distinction is made between directly and indirectly discriminatory measures, as well as measures having equivalent effect. [32]

3.1.2.4.1 Direct discrimination

Direct discrimination exists where a provision is based on the criterion of nationality and results in unequal treatment between domestic workers and workers from other Member States.[33]

A well-known example of such direct discrimination is the so-called 'foreign player clause.' Since the mid-1970s, football associations have sought to protect their national youth players from competition with foreign players by introducing rules that limited the number of foreign players eligible to play per team squad. The aim of these rules was to ensure that as many players as possible from the respective Member State would have the opportunity to participate in matches and thus to develop athletically.[34]

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[32] Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 104

[33] Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 105

[34] Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 9, para 23

However, in its Bosman ruling[35], the European Court of Justice held that such clauses are incompatible with the freedom of movement for workers as guaranteed under EU law.[36] These provisions are impermissible due to their directly discriminatory nature, as they restrict free access to the labour market.

3.1.2.4.2 Indirect discrimination

However, not only direct discrimination can impair the free movement of workers. Restrictions may also arise in the form of indirect discrimination. Such indirect discrimination exists where a measure is formally neutral, meaning that it does not make any explicit distinction based on nationality, but in practice places foreign workers at a disadvantage.[37] Examples of indirect discrimination include requirements to reside in the country of employment[38], language requirements[39], or the general imposition of fixed-term contracts in positions predominantly held by nationals of other Member States.[40]

3.1.2.4.3 Measures having equivalent effect

In addition to direct and indirect discrimination, measures having equivalent effect can also constitute a restriction on the free movement of workers. In such cases, the rule in question does not refer either directly or indirectly to the criterion of nationality. Rather, measures having equivalent effect are provisions that apply equally to domestic and foreign workers, but nevertheless have the potential to discourage a national of a Member State from

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[35] Case C-415/93 Bosman [1995] ECLI:EU:C:1995:463

[36] Marius Breucker and Christoph Wüterich, ‘Arbeitsrecht’ in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 9, para 24

[37] Michael Rafii, ‘Arbeitnehmerfreizügigkeit’ in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 106

[38] Case C-350/96 [1998] Clean Car Autoservice [1998] ECLI:EU:C:1998:205, para 30; Michael Rafii, ‘Arbeitnehmerfreizügigkeit’ in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 106

[39] Case C-281/98 [2000] Angonese [2000] ECLI:EU:C:2000:296, para 45; Michael Rafii, ‘Arbeitnehmerfreizügigkeit’ in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 106

[40] Case C-259/91 [1993] Allué [1993] ECLI:EU:C:1993:333, para 21; Michael Rafii, ‘Arbeitnehmerfreizügigkeit’ in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 106

exercising the rights conferred by the freedom of movement for workers.[41] According to the case law of the CJEU, the purpose of this freedom is to facilitate the pursuit of occupational activities of all kinds throughout the territory of the Union.[42]

With regard to professional football players, the CJEU recognised such a measure in the Bosman case, where the requirement to pay transfer fees even after the expiration of a player's contract constituted an excessive obstacle to the cross-border transfer of players.[43]

3.1.2.5 Justification

If a restriction on the free movement of workers exists, it may nonetheless be justified. For this to be the case, the measure must pursue a legitimate objective. If such an objective is identified, the measure must also be suitable for achieving that objective, necessary, and proportionate.[44]

The following section will examine in detail the individual requirements for justifying a restriction on the free movement of workers under Article 45 TFEU. Particular attention must also be paid to the specific characteristics of the sports sector in the context of justification.

3.1.2.5.1 Legitimate objective

In order to justify a restriction on the free movement of workers, the measure in question must pursue a legitimate objective. Such an objective may be based on grounds of public policy, public security or public health. According to the interpretation under EU law, the

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[41] Case C-415/93 Bosman [1995] ECLI:EU:C:1995:463, para 96

[42] Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 107

[43] Case C-415/93 Bosman [1995] ECR ECLI:EU:C:1995:463, para 100; Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 108

[44] Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 112

concept of public policy is to be understood broadly and includes not only legal but also economic, social and cultural interests. This also covers interests related to sport.[45]

In the past, FIFA has relied on a variety of objectives when its regulations were subject to legal scrutiny. These include promoting identification between fans and their local clubs[46], supporting the development of young players[47] and safeguarding the integrity and orderly conduct of sports competitions.[48]

Such objectives are generally regarded as legitimate within the meaning of a justification under Article 45 TFEU.

3.1.2.5.2 Suitability, necessity and proportionality

If a legitimate objective is established, the measure taken must also be suitable for achieving that objective. This requirement is met if the measure contributes to the attainment of the legitimate aim. In the Bosman case, for instance, the obligation to pay a transfer fee was deemed unsuitable for promoting equality of opportunity among football clubs. The Court found that such a rule did not prevent the wealthiest clubs from securing the services of the best players.[49]

In addition, the measure must also be necessary. This is the case if no less restrictive yet equally effective means of achieving the objective are available. The Court of Justice held, for example, that although the prospect of receiving a transfer fee may in principle encourage clubs to train young players, the necessity of such a measure was lacking. This was because only a limited number of young players actually succeed in reaching the professional level,

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[45] Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 9, para 26

[46] Case C-415/93 Bosman [1995] ECLI:EU:C:1995:463, para 123

[47] Case C-325/08 Olympique Lyonnais [2010] ECLI:EU:C:2010:143, para 22

[48] Case C-650/22 Diarra [2024] ECLI:EU:C:2024:824, para 43

[49] Case C-415/93 Bosman [1995] ECLI:EU:C:1995:463, para 107; Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 119

and the potential compensation, due to its highly contingent nature, could not be considered a decisive incentive. The Court noted that alternative, equally effective measures existed that would impose a milder restriction on the free movement of workers.[50]

Finally, the measure that is both suitable and necessary must also be proportionate. The proportionality assessment requires a balancing of the objective pursued against the severity of the restriction imposed on the free movement of workers. Even if a measure is suitable and necessary, it must not place an excessive burden on the worker concerned.[51]

3.1.2.6 Examples of the specific characteristics of sport

The following section outlines selected examples from the case law of the Court of Justice of the European Union that illustrate how the specific characteristics of sport are taken into account. Compared to the position of a 'regular' worker, professional athletes often face significant disadvantages in terms of their legal status.

In the general labour market, if an employee wishes to change employers, they usually encounter no substantial obstacles due to the option of giving ordinary notice. Even in cases where an employee fails to comply with the notice period, they rarely face significant claims for damages or other legal consequences. The situation is markedly different in professional football. Various rules exist that make it more difficult for athletes to change employers. One example is the widespread practice of requiring a transfer fee to be paid to the former club when a player moves to a new club. Due to the fixed-term nature of employment contracts, which are limited to a maximum of five years, players lose the option of terminating their contracts through ordinary notice.[52] These fixed-term contracts are intended to offer clubs a degree of planning certainty, given that professional players are central to both the sporting and financial success of the organisation.

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[50] Case C-415/93 Bosman [1995] ECLI:EU:C:1995:463, paras 108–109; Michael Rafii, 'Arbeitnehmerfreizügigkeit' in Burkhard Schöbener (ed), *Europarecht*, 1st edn (C.F. Müller 2019), para 120

[51] Andreas Haratsch, Christian Koenig, Matthias Pechstein, *Europarecht*, 13th edn (Mohr Siebeck 2023), para 801

[52] Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 9, para 30

In addition, the existence of transfer windows also constitutes a restriction on the free movement of workers. Unlike other employees, professional footballers cannot simply change their workplace at any time, even if both the releasing and the receiving clubs have agreed on a transfer. Instead, players must wait for the transfer windows established by FIFA, which occur once in winter and once in summer. Only during these periods may a player be registered with a new club. Although this rule amounts to a restriction, it is justified by the aim of initial equality of opportunity. This system prevents clubs from strengthening or weakening their squads during the ongoing season, thereby helping to avoid distortion of competition.[53]

With respect to nationality clauses, which are in principle not permitted, the Court of Justice allows a significant exception in cases involving national team eligibility. In such cases, restrictions based on nationality are deemed justified, since the focus is not on paid employment but rather on the non-economic purpose of fostering identification between spectators and their national teams. In competitions between national teams, it is logically consistent to limit participation to nationals of the respective countries, as these matches are, by their very nature, intended to be contests between players of different nationalities.[54]

These examples demonstrate the considerable impact that the specific characteristics of sport can have on the application of Article 45 TFEU and highlight the differences in treatment compared to ordinary workers.

3.2 Competition law

In addition to labour law provisions, the rules of competition law under Articles 101 and 102 TFEU are also regularly applied in sports law. The following section will therefore examine the elements of Articles 101 and 102 TFEU in more detail.

[53] Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 9, para 32

[54] Marius Breucker and Christoph Wüterich, 'Arbeitsrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 9, para 27

3.2.1 Applicability of Articles 101 and 102 TFEU in the field of sports

Competition law is, in principle, also applicable in the field of sports. However, there are certain particularities that must be taken into account. These stem from the fundamental difference between competition in economic life and competition in sports.

In normal economic competition, the goal of each market participant is to outperform the competition and gain market share. Competition law is intended to ensure that this competition is not conducted using unfair means and that a high level of market competition is preserved.

In sport, however, the idea of competition is of a different nature. The objective is not to eliminate as many competitors as possible from the market. A clear example: if FC Bayern Munich were to drive all other clubs out of the market, there would be no opponents left to play against. This would not only make the competition unappealing but would ultimately harm the remaining club itself, as spectator interest – and with it, revenue – would significantly decline.[55]

Considering these fundamental differences between economic and sporting competition, the application of competition law in sports can lead to complications. While the primary aim of competition law is to promote and preserve economic competition[56], the focus in sport is on creating as equal conditions as possible in order to ensure 'fair' sporting competition.[57] These particularities must be especially taken into account when applying competition law to FIFA regulations.

3.2.2 Article 101 TFEU

Article 101 TFEU provides for the possibility of prohibiting agreements between undertakings or associations of undertakings, decisions, or concerted practices that restrict interstate trade or are capable of doing so. The following section will examine the individual requirements for

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[55] Ralf Reinhart Stenger, *Vertragstreue im Fußballsport* (PhD thesis, University of Vienna, 2017) 13

[56] Manfred Heße, *Wirtschaftsrecht,* 2nd edn (Springer 2011) 16; Ralf Reinhart Stenger, *Vertragstreue im Fußballsport* (PhD thesis, University of Vienna, 2017) 13

[57] Ralf Reinhart Stenger, *Vertragstreue im Fußballsport* (PhD thesis, University of Vienna, 2017) 13; Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 1

such a prohibition on cartels and their respective significance in the context of professional football.

3.2.2.1 Undertakings and associations of undertakings

The concept of an undertaking must be interpreted functionally, according to the purpose of competition law (the so-called 'functional concept of an undertaking')[58]. Accordingly, it includes any entity engaged in economic activity, regardless of its legal form or the manner in which it is financed.[59] Professional football clubs therefore qualify as undertakings within the meaning of competition rules. [60]

In addition, there are also associations of undertakings. 'Such associations typically consist of companies from the same sector and are tasked with representing and defending their common interests vis-à-vis other economic actors, public authorities, and the general public [...].'[61] FIFA, as a sports association whose members are national football federations – which themselves can be classified as undertakings – is to be considered such an association of undertakings. Consequently, Article 101(1) TFEU also applies to FIFA.[62]

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[58] Helmuth Schröter, 'Vorbemerkungen zu den Artikeln 101 bis 105' in Helmuth Schröter, Thinam Jakob, Robert Klotz and Wolfgang Mederer (ed), *Europäisches Wettbewerbsrecht*, 2nd edn (Nomos 2014), para 43

[59] Case C-41/90 Höfner and Elser [1991] ECLI:EU:C:1991:161; Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 7

[60] Case C-333/21 European Superleague Company [2023] ECLI:EU:C:2023:1011 para 115; Case C-680/21 Royal Antwerp Football Club [2023] ECLI:EU:C:2023:1010 para 79

[61] Opinion of Advocate General Léger, Case C-309/99 Wouters, para 61

[62] Case C-333/21 [2023] *European Superleague Company* EU:C:2023:1011, para 115; Case C-680/21 [2023] *Royal Antwerp Football Club* EU:C:2023:1010, para 79

3.2.2.2 Agreement, decision, concerted Practice

Moreover, for a competition restriction to exist, there must also have been some form of communication. Therefore, the three terms – agreement, decision, or concerted practice – are collectively referred to as 'coordination of competitive behaviour'[63].

An agreement refers to understandings between two or more parties that obligate at least one of the parties to do or refrain from doing something. Such an agreement requires that the involved undertakings reach a mutual understanding regarding the regulation of their market behaviour.[64]

However, even less explicit and clear behavioural coordination can already be anticompetitive. For these cases, there is the concept of a 'concerted practice.' This can occur when the behaviour is legally non-binding, but still results in a market-restricting effect. Therefore, informal arrangements or association recommendations can also be classified as concerted practices. Compared to an agreement, however, in addition to the mere coordination of behaviour, a corresponding market behaviour from the involved parties must follow. If such market behaviour is present, the presumption of causality works against the undertakings.[65]

For the assumption that an agreement or a concerted practice exists, it is not relevant whether the competition restriction was intended or merely resulted from the behaviour. The prohibition of competition restrictions applies both when a behavioural coordination is intended to restrict competition, but no restrictive effect occurs, as well as when a coordination does not aim to restrict competition, but does so anyway.[66]

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[63] Helmut Schröter and Philipp Voet van Vormizeele, 'Art. 101 AEUV' in Helmuth Schröter, Thinam Jakob, Robert Klotz and Wolfgang Mederer (ed), *Europäisches Wettbewerbsrecht*, 2nd edn (Nomos 2014), para 38

[64] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 8

[65] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 8; Florian Hengst, in Langen and Bunte (eds), *Kartellrecht*, art 101, para 116 ff

[66] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 8

In the field of sports, such anticompetitive behavioural coordination often takes the form of decisions. These typically arise from statutes adopted within an organizational agreement. Such decisions therefore only have an effect for the members of the organizational agreement.[67] As an association of many national football federations, and due to the organisational agreement with these federations, FIFA can adopt decisions that legally bind all member associations. The adoption of the RSTP is therefore also classified as a decision of an association of undertakings.

3.2.2.3 Competition restriction

Furthermore, Article 101 TFEU lists as elements the prevention, restriction, or distortion of competition. These are collectively summarised under the term 'competition restriction.' [68] The European Court of Justice defines competition as effective competition, which generates its dynamics in such a way that any inefficiency or other irregularity in the relationship between supply and demand can trigger new competition (so-called imperfect competition).[69]

A restriction of competition exists when a behaviour creates a non-competitive dynamic. 'Non-competitive' in this context means that the established goal parameters of effective competition are disregarded,[70] thereby particularly affecting the competitive freedom of action for suppliers or demanders.[71]

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[67] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 9

[68] Rolf Hempel, 'Art 101 TFEU' in Fabian Schuster and Malte Grützmacher (eds), *IT-Recht* 1st edn (Otto Schmidt 2020), para 28

[69] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 10; Martin Stopper, *Instrumente Europäischer Wettbewerbspolitik*, 69

[70] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 11

[71] Rolf Hempel, 'Art 101 TFEU' in Fabian Schuster and Malte Grützmacher (eds), *IT-Recht* 1st edn (Otto Schmidt 2020), para 29

The conceptual distinction between the ‘distortion’, ‘restriction’, and ‘prevention’ of competition also suggests that any alteration of competition, contrary to its natural course, is undesirable. From this, it can be concluded that there are both natural and artificial barriers to competition. In contrast to artificial barriers, which arise through anti-competitive behaviour, natural barriers must be accepted. Such natural barriers are relevant when, in an exceptional area, competition cannot naturally exist.[72]

An example of a natural barrier to competition can be a railway track system, which represents a natural monopoly since the economic rationale for increasing the number of providers would not make sense. [73]

In professional football, this distinction between natural and artificial barriers to competition becomes particularly relevant when applying the cartel prohibition. In this area, many participants must contribute to creating a marketable product (i.e., the game itself and the competition among the teams). The natural contributions of the individuals then form a natural whole. In football, this particularly concerns the organisation of professional football and the necessary individual contributions from all involved. Above all the contributions from the individual clubs and national associations, FIFA plays the role of establishing the regulations, ensuring compliance, and creating various framework calendars.[74]

3.2.2.4 Relevant market

Whether a competition restriction exists is determined by the relevant market.[75] According to the European Commission’s notice on the definition of the relevant market in Community

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[72] Martin Stopper and Tobias Kempter, ‘Kartellrecht’ in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 12

[73] Martin Stopper and Tobias Kempter, ‘Kartellrecht’ in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 12; Erich Hoppmann, in Hans K. Schneider (ed), *Grundlagen der Wetttbewerbspolitik*, [Duncker & Humblot 1968] 9 ff

[74] Martin Stopper and Tobias Kempter, ‘Kartellrecht’ in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 12

[75] Sebastian Egger and Klaus Vieweg, ‘Ausgangspunkt: Der relevante Markt’ in Klaus Vieweg and Michael Fischer (eds), *Wirtschaftsrecht,* 1st edn (Nomos 2019) para 35

competition law[76], both the product and geographical dimensions of the market must be assessed in order to delineate the relevant market. This approach aims to determine which companies are actually capable of restricting competition and imposing barriers on other companies.[77]

The product market includes all goods and/or services that, from the perspective of consumers, are interchangeable or substitutable based on their characteristics, prices, and intended use.[78]

The relevant geographical market, in turn, encompasses the area in which the involved companies offer the relevant products or services, where the competitive conditions are sufficiently homogeneous, and which differs from neighbouring areas in terms of significantly different competitive conditions.[79]

In the field of professional football, a variety of different markets must be considered, so that when determining the relevant market, both horizontal and vertical relationships must be taken into account. In the horizontal relationship, particular attention should be paid to other sports organisers that may potentially compete with the federation. In the vertical relationship, determining upstream and downstream markets may be of particular importance for competition law assessment. Specifically, the relationship between a sports federation and its members, as well as their binding decisions, can affect various other areas, such as investor or equipment markets.[80]

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[76] Commission Notice on the Definition of the Relevant Market for the Purposes of Community Competition Law [1997] OJ C372/5

[77] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 15

[78] Commission Notice on the Definition of the Relevant Market for the Purposes of Community Competition Law [1997] OJ C372/5, para 7

[79] Commission Notice on the Definition of the Relevant Market for the Purposes of Community Competition Law [1997] OJ C372/5, para 8

[80] Peter W. Heermann, 'Missbrauch einer marktbeherrschenden Stellung im Verhältnis eines Sportverbandes gegenüber Nichtmitgliedern' (2016) WRP 147 ff; Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 16

3.2.2.5 Noticeability of the competition restriction

Once the relevant market has been determined, in addition to the previously mentioned criteria in European competition law, it is also recognised that the condition is supplemented by the unwritten criterion of the 'noticeability of the competition restriction.'[81] Competition is only affected if the behavioural coordination is also noticeable.[82]

If it is a restriction that is intended to limit competition, it is always considered noticeable[83], meaning that 'noticeability' does not need to be proven separately. A restriction is considered intended if, by its nature, it is capable of restricting competition.[84] Examples of intended restrictions include setting sale prices, allocating markets, or restricting production or sales. [85] In contrast, a restriction that is merely caused (i.e., a result of the agreement) is considered a competition restriction if the agreement actually or likely leads to a negative impact on at least one competition parameter. [86]

If the competition restriction is not intended but only caused, the actual noticeability of the behaviour in the market must be assessed. This is then determined based on the market shares of the companies involved in the agreement. It is assumed that no noticeable

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[81] Rolf Hempel, 'Art 101 TFEU' in Fabian Schuster and Malte Grützmacher (eds), *IT-Recht*, 1st edn (Otto Schmidt 2020), para 43; Daniel Zimmer, 'Art. 101 Abs. 1 AEUV' in Ernst-Joachim Mestmäcker and Ulrich Immenga (eds), *Wettbewerbsrecht*, Vol I , 7th edn (C.H. Beck 2025), para 152

[82] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 17

[83] Case C-226/11 [2012] *Expedia* EU:C:2012:795, para 27; Commission Notice on Agreements of Minor Importance (De minimis Notice), para 2

[84] Guidelines on the Applicability of Article 101 of the Treaty on the Functioning of the European Union to Horizontal Co-operation Agreements [2011] OJ C11/1, para 24; Rolf Hempel, 'Art 101 TFEU' in Fabian Schuster and Malte Grützmacher (eds), *IT-Recht* 1st edn (Otto Schmidt 2020), para 39

[85] Commission Notice on Agreements of Minor Importance under Article 101(1) of the Treaty on the Functioning of the European Union [2014] OJ C291/1, para 13

[86] Guidelines on the Applicability of Article 101 TFEU to Horizontal Co-operation Agreements [2011] OJ C11/1, para 24; Rolf Hempel, 'Art 101 TFEU' in Fabian Schuster and Malte Grützmacher (eds), *IT-Recht* 1st edn (Otto Schmidt 2020), para 41

competition restriction occurs if the market shares of the companies involved do not exceed 10% in the case of horizontal agreements, or 15% in the case of vertical agreements.[87]

3.2.2.6 Three-step test according to Meca-Medina

If these criteria are met, the three-step test according to Meca-Medina applies. This provides, in addition to the exemption possibilities under Art. 101 (3) TFEU, another option to refrain from applying Art. 101 (1) TFEU.

The three-step test is an evaluation standard developed through the case law of the European Court of Justice and is used for assessing behavioural coordination in competition law. This balancing test has its roots in the sport-related decision Meca-Medina[88], and thus it frequently comes into focus in sports law cases.[89] It serves to take non-competition-related objectives into account when assessing a potential competition violation, as the exemptions under Art. 101 (3) TFEU do not fully consider the specifics of professional sports.[90]

The three-step test is carried out in three stages. First, it must be determined whether the decision pursues a legitimate goal. If this is the case, the next step is to examine whether the competition-restricting effect of the decision is strictly necessary to achieve this goal. In the third and final step, the proportionality of the decision is assessed, i.e., whether the competition-restricting effect is both necessary and appropriate. If all three stages are fulfilled, there is no competition restriction.[91]

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[87] Rolf Hempel, 'Art 101 TFEU' in Fabian Schuster and Malte Grützmacher (eds), *IT-Recht* 1st edn (Otto Schmidt 2020), para 45

[88] See Section 4.2

[89] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 18a

[90] Hermann-Josef Bunte, 'Syst. IV Sport' in Eugen Langen and Hermann-Josef Bunte (eds), *Kartellrecht*, Vol 2, 12th edn (Luchterhand Verlag 2014) para 37; Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 18a

[91] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 18a

Furthermore, there has been some debate as to whether the balancing standard constitutes a restriction on the scope of the provision or a justification for conduct falling within it. Although this debate has predominantly been of a doctrinal nature[92], the Meca-Medina test is now largely regarded as a restriction inherent in the scope of the provision. This interpretation is supported by academic literature[93], which refers to a 'review inherent in the constituent elements of the provision'. [94]

The Court of Justice of the European Union (CJEU) also addressed Meca-Medina in its judgment in the Lassana Diarra case, under the heading 'Consideration of the possibility of finding certain specific conduct not to come within the scope of Article 101(1) TFEU.' This further supports the view that the CJEU likewise considers the test as reflecting the inherent limitations of the provision's scope. [95]

3.2.2.7 Exemption possibilities according to paragraph 3

If the Meca-Medina test does not lead to a restriction of the scope of Article 101(1) TFEU, there remains the possibility of an exemption from the prohibition on cartels pursuant to Article 101(3) TFEU. According to Article 101 (3) TFEU, the provisions of the cartel prohibition can be declared inapplicable to agreements between companies, decisions by associations of companies, and coordinated practices, provided that these contribute to the improvement of the production or distribution of goods, or the promotion of technical and economic progress, under reasonable consumer participation in the resulting profits, without (1) imposing restrictions on the companies involved that are not essential to the realization of these objectives, or (2) giving the possibility of eliminating competition for a substantial part of the relevant goods.

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[92] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 18c

[93] Daniel Zimmer, 'Art. 101 Abs. 1 AEUV' in Ernst-Joachim Mestmäcker and Ulrich Immenga (eds), *Wettbewerbsrecht*, Vol I , 7th edn (C.H. Beck 2025), para 182

[94] Martin Stopper, 'Der kartellrechtliche Prüfungsmaßstab im Sport' (2020) 5 SpuRt 216, 217

[95] Case C-650/22 Diarra [2024] ECLI:EU:C:2024:824, para 149

In the context of professional football, the exemption possibility under Article 101 (3) TFEU gained particular importance in the central marketing of television rights. For instance, in the Champions League decision[96], the European Commission found that the comprehensive agreements between professional clubs and UEFA led to a restriction of competition. However, the competitive advantages of central marketing outweighed the competitive disadvantages. This was justified by the fact that central marketing enables the establishment of effective solidarity mechanisms within leagues and a unified media representation. [97]

However, it is important to note that the competition restriction must also benefit the 'consumer', and this consumer must share in the profit. Since, in professionally organized football, there are often multiple levels of consumers, particularly in the example of central marketing, the concept of 'consumer' must be examined more carefully. In addition to spectators as end consumers, the entities buying club and league rights must also be considered. Within this multi-tiered distribution system, the direct buyers of TV rights are primarily regarded as consumers within the meaning of Article 101 (3) TFEU.[98] This is because a consumer is anyone who, in their capacity as a buyer, is in a business relationship with a company involved in the agreement being assessed. In principle, this can include both end consumers and rights buyers. However, since TV viewers are not the direct buyers of the leagues and are therefore not competitors, they are not considered consumers in the context of central marketing rights under Article 101 (3) TFEU.[99]

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[96] Commission Decision 2003/778/EC of 23 July 2003, COMP C-2/37.398 – *Champions League* [2003] OJ L291/25, para 124

[97] Commission Decision 2003/778/EC of 23 July 2003, COMP C-2/37.398 – *Champions League* [2003] OJ L291/25, para 124; Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, paras 21–22

[98] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, paras 23–24

[99] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 25

3.2.3 Article 102 TFEU

Beyond the scope of Article 101 TFEU, Article 102 TFEU also prohibits the abuse of a dominant market position. This abusive behaviour is typically seen in the enforcement of unfair prices and business conditions or in the limited production or sale to the detriment of consumers. The two competition law regulations under Articles 101 and 102 TFEU are in ideal competition with each other when both apply simultaneously, and therefore they are applicable together.[100] Regarding the concept of an 'enterprise' and the delineation of the relevant market, reference can be made to the explanations under Article 101 (1) TFEU.

The following will examine the elements that constitute a dominant market position and the potential abuse of such a position.

3.2.3.1 Dominant market position

For the fulfilment of the requirements of Article 102(1) TFEU, the existence of a dominant market position is required. This means that the company or companies must have the ability to prevent significant competition in the relevant market and act independently of competitors.[101] A company often attains such a dominant position when it is granted special or exclusive rights that enable it to decide whether, and under what conditions, other companies can access the affected market.[102]

Moreover, a dominant position can also be held by 'two or more legally independent economic entities, provided they act together on a particular market as a collective entity.'[103] For a collective dominant position to exist, three conditions must be met: first, each member of the oligopoly must be able to discern the market behaviour of the other members in order

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[100] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 26

[101] Case C-49/07 *MOTOE* [2008] ECLI:EU:C:2008:376, para 87; Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 30

[102] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 30

[103] Case T-193/02 *Piau [2005] ECLI:*EU:T:2005:22, para 110

to determine whether they are acting in concert. Additionally, this state of tacit coordination must be maintained over time, meaning there must be an incentive to adhere to the collective approach. Furthermore, the expected reaction of actual and potential competitors, as well as consumers, must not call into question the expected results of the collective action.[104]

Considering these conditions, it can be concluded that FIFA, as the world governing body, holds a dominant market position, as the national federations have transferred the rights to organize the football competition to it. Additionally, the national federations can monitor their collective actions, there is sufficient incentive to maintain the coordinated behaviour, and it is expected that FIFA's decisions would not be questioned by competitors or consumers.

3.2.3.2 Abuse of a dominant market position

However, a dominant market position alone is not sufficient for the application of the prohibition under Article 102(1) TFEU. Rather, this dominant position must also have been abused in a manner that is likely to affect trade between Member States. Paragraph 2 of Article 102 TFEU lists some examples, under letters a) to d), of conduct that may constitute an abuse. However, this list is not exhaustive. In European legal practice, the grounds for abuse are therefore applied on a case-by-case basis. As a result, there are several interpretations of the abuse concept that have been established in the case law. For example, in the MOTOE decision, an abuse was found based on the violation of the principle of equal opportunity. [105]

3.2.3.3 Justification of the abuse of dominance

Unlike Article 101(3) TFEU, Article 102 TFEU does not provide for any exemptions. However, these exemption possibilities can serve as a guiding framework and may be referenced at the

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[104] Case T-193/02 *Piau [2005] ECLI:*EU:T:2005:22, para 111

[105] Case C-49/07 *MOTOE [2008] ECLI:*EU:C:2008:376, para 87; Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 33

justification level of Article 102 TFEU.[106] Consequently, the activities of sports associations can be examined in terms of their proportionality.

3.3 Significance of Article 165 TFEU

Recently, the application of Article 165 TFEU has come into focus. This provision, introduced by the Lisbon Treaty, establishes in paragraph 1, second subparagraph, that the EU contributes to the promotion of the European dimension of sport, taking into account its specific characteristics. Furthermore, in paragraph 2, the objectives of the EU in this regard are specified, particularly emphasising the 'development of the European dimension through the promotion of fairness and openness in sports competitions and cooperation between the organisations responsible for sport.'[107] Notably, the Advocate General in the cases decided at the end of 2023 regarding the International Skating Union[108] and the Super League[109] referred to Article 165 TFEU in his opinion[110]. According to the Advocate General, this provision could allow an exemption from the prohibitions of competition law beyond the established three-stage test.[111]

However, the CJEU did not follow this interpretation by the Advocate General. It held that Article 165 TFEU is a specification of Article 6(e) TFEU, outlining only the Union's objectives and their pursuit in the fields of education, youth, and sport. While the Union may act within certain limits based on this provision, Article 165 TFEU does not constitute a general provision

[106] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 34; Case T-193/02 *Piau [2005] ECLI:*EU:T:2005:22, para 117

[107] Art. 165 (2) TFEU.

[108] Case C-124/21 P *International Skating Union* [2023] ECLI:EU:C:2023:1012

[109] Case C-333/21 *European Superleague Company* [2023] EU:C:2023:1011

[110] Opinion of Advocate General Rantos, Case C-333/21, delivered on 15 December 2022, paras 27 ff; Opinion of Advocate General Rantos, Case C-124/21 P *International Skating Union* ECLI:EU:C:2023:1012, para 38

[111] Opinion of Advocate General Rantos, Case C-333/21, delivered on 15 December 2022, paras 27 ff; Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 197

with a cross-cutting nature.[112] This is particularly evident in the systematic placement of the provision in Part III of the TFEU under the title 'Union Policies and Actions.' Therefore, Article 165 TFEU cannot be seen as a special rule requiring the sports sector to be treated differently when applying the provisions of primary law.[113]

Nevertheless, the CJEU acknowledges that Article 165 TFEU reflects the considerable social and educational significance of sport for the Union and its citizens. The specificities of sport can still only be taken into account when applying Articles 45 TFEU, 101 TFEU, and 102 TFEU, to the extent that they are relevant and considered within the framework of the respective legal requirements and application criteria.[114]

Consequently, Article 165 TFEU does not have independent significance alongside the regulations of Articles 45, 101, and 102 TFEU. Instead, it can be invoked as part of the justification process to determine the legitimacy of the pursued objectives.[115]

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[112] Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 197

[113] Case C-333/21 *European Superleague Company* [2023] ECLI:EU:C:2023:1011, para 101

[114] Case C-333/21 *European Superleague Company* [2023] ECLI:EU:C:2023:1011, paras 102 ff

[115] Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 198

4. Historical developments of the transfer system

The regulations regarding the international transfer system have undergone several developments since their inception, which continue to this day. Below, these developments will be outlined through several significant rulings, which are also relevant for the current decision of the CJEU in the case of Lassana Diarra.

4.1 Bosman (fundamental freedoms)

In relation to the free movement of workers, the Bosman ruling[116] holds particular relevance. The following will first present the facts of the case, and subsequently the legal assessment by the CJEU.

4.1.1 Facts

The first landmark decision in this context dates back to the 1990s. At the center of the case was Belgian professional footballer Jean-Marc Bosman. In 1988, he signed a contract with RC Liège as a professional player. When, shortly before the expiration of his contract, the two parties failed to agree on a new contract, Bosman's contract with RC Liège expired, making him a free agent. Initially, no new club showed interest in Bosman. However, he began searching for a new employer himself and found a contract with the French club US Dunkirk, which signed him on July 30, 1990.

However, this was not the end of the transfer saga surrounding Jean-Marc Bosman. At that time, the transfer regulations stipulated that a club wishing to sign a player had to pay a transfer fee to the player's previous club, known as a training or development fee.[117] This fee was intended to compensate the transferring club for granting the necessary release

[116] Case C-415/93 Bosman [1995] ECLI:EU:C:1995:463

[117] Richard Parrish, 'Article 17 of the FIFA Regulations on the Status and Transfer of Players – Compatibility with EU Law' (2015) 22 Maastricht Journal of European and Comparative Law 2, 256, 257

certificate for the new player's licence.[118] Due to this regulation, Dunkirk and Liège began negotiations over a transfer fee, despite Bosman's contract already having expired.

Although US Dunkirk and RC Liège had already agreed on the transfer conditions and the fee to be paid before finalising the new contract, RC Liège began to have doubts about Dunkirk's financial capacity. As a result, they refrained from applying to the Belgian Football Association for a player release. As a consequence, Bosman did not receive clearance to play in France, and the player's contract was rendered void. This left Bosman unable to participate in competitive football for a season.[119]

Bosman was not willing to accept this situation and filed a lawsuit against his employer, and later also against the European Football Association (UEFA), to examine whether it was consistent with European law to demand a transfer fee for players whose contracts had already expired.[120]

4.1.2 Legal assessment by the CJEU

The European Court of Justice had to address this issue. The central legal question was whether Articles 48, 85, and 86 of the EEC Treaty[121] should be interpreted in such a way that a football club, upon the expiration of a player's contract, could demand a monetary payment from another club in order to sign the player.[122]

The CJEU answered this question as follows: 'Article 48 EEC prohibits the application of rules established by sports organisations that require a professional player who is a national of a Member State of the EU, upon the expiry of the contract binding him to a club, to be employed

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[118] Fabian Granitzer, *Die europäische Superleague im Lichte des Europarechts* mit besonderer Rücksicht auf das Gutachten C-333/21 des EuGH (Diploma thesis, University of Graz, 2023) 38

[119] Stefan Jagschich, *Der europäische Fußball im Wandel* (Diploma thesis, University of Vienna, 2010) 38

[120] Stefan Jagschich, *Der europäische Fußball im Wandel* (Diploma thesis, University of Vienna, 2010) 39

[121] Now regulated in Art. 45 and Arts 101–102 TFEU

[122] Case C-415/93 Bosman [1995] ECLI:EU:C:1995:463; Stefan Jagschich, *Der europäische Fußball im Wandel* (Diploma thesis, University of Vienna, 2010) 41

by a club from another Member State only if the latter pays the previous club a transfer, training, or development compensation.'[123]

Thus, the practice of demanding transfer fees even after the expiration of a player's contract came to an end. All previous transfer regulations were deemed incompatible with European law.

4.2 Meca-Medina (competition law)

The *Meca-Medina* case was of considerable significance for competition law.[124] The following will first present the facts of the case, and subsequently the legal assessment by the CJEU.

4.2.1 Facts

In the case of Meca-Medina and Majcen v. Commission (C-519/04 P), the dispute concerned two Slovenian long-distance swimmers, Milorad Meca-Medina and Arne Majcen, who were suspended following a positive doping test. In 1999, both athletes tested positive for nandrolone at a World Cup race, after which the Fédération Internationale de Natation (FINA) imposed a four-year competition ban. After an appeal, the Court of Arbitration for Sport (CAS) reduced the sanction to two years. FINA's anti-doping rules stipulated that an athlete who exceeded a certain threshold level of nandrolone was automatically considered to have committed a doping offence and was suspended. Crucially, the rule applied strict liability, meaning that an athlete could be sanctioned even if they could not prove that the substance entered their body unintentionally. The athletes argued that the doping rules imposed by FINA and the International Olympic Committee (IOC) constituted an inadmissible restriction of their economic activity under competition law, as the suspension deprived them of the ability to practice their profession as professional swimmers and earn income. Consequently, they claimed that these rules violated Articles 101 and 102 TFEU. They therefore lodged a complaint with the European Commission, which was rejected. The Commission argued that doping rules were purely sporting in nature and thus did not fall under European competition

[123] Case C-415/93 Bosman [1995] ECLI:EU:C:1995:463

[124] Case C-519/04 P *Meca-Medina* [2006] ECLI:EU:C:2006:492

law. Meca-Medina and Majcen brought an action against this decision, which ultimately led to a ruling by the European Court of Justice.

4.2.2 Legal assessment by the CJEU

The CJEU dealt with the case based on the so-called Wouters doctrine[125] and developed a new legal method of assessment, particularly relevant for sports competition law and beyond, which would from then on have significant importance for the application of Articles 101 and 102 TFEU. In its judgment, the Court established a standard of review that allowed for objectives outside of pure competition concerns (such as fairness in sporting competition) to be considered within the scope of competition law under Articles 101 and 102 TFEU.[126] This approach does not compete with the existing exemption possibilities under Article 101(3) TFEU, but takes effect already at the level of the substantive element.[127] The CJEU's newly developed test proceeds in three steps: first, it must be examined whether a legitimate objective exists for the measure. If such a legitimate aim is present, the second step examines whether the restriction of competition is necessary to achieve the intended aim. If this too is affirmed, the third and final step is to assess the proportionality of the measure. [128]
Because of these three steps, this method of assessment is also referred to as the 'three-step test' alongside the 'Meca-Medina test'.[129] If all three steps are satisfied, Article 101(1) TFEU does not apply, and thus no violation of competition law is present.

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[125] Case C-309/99 *Wouters* [2002] ECLI:EU:C:2002:98, paras 97, 109

[126] Peter W. Heermann, 'Zum Anwendungsbereich des Meca-Medina-Tests auf wettbewerbsbeschränkende Statuten und Maßnahmen der Sportverbände' (2022) WuW 308, 309

[127] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 18a; Peter W. Heermann, 'Zum Anwendungsbereich des Meca-Medina-Tests auf wettbewerbsbeschränkende Statuten und Maßnahmen der Sportverbände' (2022) WuW 308, 309

[128] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, para 18a; Peter W. Heermann, 'Zum Anwendungsbereich des Meca-Medina-Tests auf wettbewerbsbeschränkende Statuten und Maßnahmen der Sportverbände' (2022) WuW 308, 309

[129] Martin Stopper and Tobias Kempter, 'Kartellrecht' in Martin Stopper and Gregor Lentze (eds), *Handbuch Fußball-Recht*, 2nd edn (Erich Schmidt Verlag 2018) ch. 8, 18a; Peter W. Heermann, 'Zum Anwendungsbereich

In the specific case, the CJEU began its assessment under the three-step test by assuming that the legitimate aim of the anti-doping rules and associated sanctions was the fight against doping, which generally contributes to the fairness of sporting competitions.[130] The existence of a legitimate aim was not disputed by the parties.

Moreover, the sanctions were also deemed necessary at the second level in order to ensure compliance with the anti-doping rules. The impact of the sanctions on the athletes' freedom of action was therefore intrinsically linked to the anti-doping measures. [131]

At the final stage—proportionality—the issue was whether the nandrolone threshold of 2 ng/ml of urine was set too low. The CJEU rejected this, citing the scientific consensus at the time which supported the threshold. As a result, the Court found that the case did not fall under the prohibition of Article 101(1) TFEU[132] and dismissed the complaint.[133]

Although the outcome was not favorable for the athletes, the Meca-Medina test has since become an established component in the application of Article 101(1) TFEU, especially in the context of sport.

4.3 Super League, International Skating Union and Royal Antwerp

In recent times, the CJEU has once again attracted attention with several rulings that address both the freedom of movement for workers and competition law. On December 21, 2023, legal developments reached a new high point: no fewer than three decisions concerning the regulation of sport were published – specifically regarding the founding of the Super League

des Meca-Medina-Tests auf wettbewerbsbeschränkende Statuten und Maßnahmen der Sportverbände' (2022) WuW 308, 308

[130] Eu Case C-519/04 P *Meca-Medina* [2006] ECLI:EU:C:2006:492, para 43

[131] Case C-519/04 P *Meca-Medina* [2006] ECLI:EU:C:2006:492, para 44

[132] Case C-519/04 P *Meca-Medina* [2006] ECLI:EU:C:2006:492, para 44 (note: reference was to former Article 81(1) EC)

[133] Case C-519/04 P *Meca-Medina* [2006] ECLI:EU:C:2006:492, paras 55–56

as well as regulations of the International Skating Union and UEFA.[134] The following will examine these three CJEU decisions in greater detail.

4.3.1 Super League

The following will first present the facts of the Super League case, and subsequently the legal assessment by the CJEU.

4.3.1.1 Facts

The founding of the 'European Superleague Company SL' attracted widespread media attention across Europe. In April 2021, twelve leading football clubs from England, Italy, and Spain announced their intention to launch a new competition outside the UEFA Champions League. This 'European Super League' (ESL) was to be organised and managed by a newly established entity, the European Superleague Company SL.[135]

The planned competition would consist of 12 to 15 permanent member clubs, supplemented by additional teams that could qualify for a single season. Matches were to take place during the week, allowing the participating clubs to continue playing in their national leagues, whose regular fixtures traditionally occur on weekends.[136]

The announcement provoked strong reactions: fans, players, national associations, as well as UEFA and FIFA, expressed fierce criticism. UEFA threatened the participating clubs with exclusion from both domestic leagues and international competitions. In addition, players representing Super League clubs were to be banned from playing for their national teams. [137]

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[134] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 108

[135] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 108

[136] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 108

[137] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 108

Due to growing opposition, several of the participating clubs withdrew, causing the original idea for the league to collapse. Despite this setback, the ESL initiated legal proceedings against UEFA and FIFA, seeking a preliminary judicial ruling on how to proceed. [138]

The Commercial Court in Madrid dealt with the lawsuit and ruled that it was admissible. Without hearing the opposing parties beforehand, the court issued several interim measures and referred the matter to the European Court of Justice for a preliminary ruling. The core issue examined was whether the UEFA and FIFA statutes were compatible with European competition law.[139] These statutes required clubs to obtain prior approval from UEFA and FIFA before participating in competitions outside the governing bodies' frameworks. [140]

4.3.1.2 Legal assessment by the CJEU

The European Superleague Company SL viewed the regulatory framework and the related actions by UEFA and FIFA as violations of European competition rules. The dual role assigned to UEFA and FIFA by their own regulations – as organisers of their own competitions and regulators of competing events – raised several antitrust concerns regarding the interpretation of Articles 101 and 102 TFEU. These concerns were submitted to the CJEU through multiple preliminary questions.

Once again, the CJEU did not follow the favourable opinion of Advocate General Rantos and ruled that the dual role of associations as both organisers and regulators of third-party competitions could, in principle, be permissible. This was based on the fundamental organisational needs of sport. However, the court held that the unrestricted discretionary power claimed by the associations over competing events could not be upheld. Due to the lack of both formal and substantive rules governing the requirements of such a dual role, the CJEU found that there was both a restriction of competition by object (Article 101 TFEU) and

[138] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 108

[139] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 108

[140] Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 191

an abuse of a dominant position (Article 102 TFEU). Because of the finding of a restriction by object, an exemption under the three-step test was ruled out. A possible individual exemption was also deemed inapplicable due to its particularly high requirements. [141]

4.3.2 International Skating Union

The following will first present the facts of the International Skating Union case, and subsequently the legal assessment by the CJEU.

4.3.2.1 Facts

A similar legal issue arose in the case of the International Skating Union (ISU), which is the global governing body for speed skating and figure skating. In addition to organising official competitions, the ISU also regulates athlete eligibility and event approvals.[142] The central question in this case was whether the ISU's sanctioning and competition rules violated European competition law.

The background of the case involved strict regulations imposed by the ISU on athletes and events. Skaters who participated in competitions not approved by the ISU could face lifetime bans. This particularly affected privately organised competitions held outside the ISU's control. These severe measures were considered potentially anti-competitive, as they hindered alternative organisers from establishing new events and effectively forced athletes to submit to the federation's authority.[143] As a result of this rule, in 2014, the ISU prohibited two Dutch speed skaters, Mark Tuitert and Niels Kerstholt, from participating in a non-approved rival competition, the so-called Dubai Icederby Grand Prix. This led to a complaint

[141] Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 192

[142] International Skating Union, 'About' https://isu.org/about/ accessed 20 March 2025

[143] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 109; Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 189

by the two athletes, and the European Commission subsequently opened proceedings against the ISU, finding a violation of competition law (Article 101 TFEU).[144]

An additional problematic rule of the ISU stipulated that all disputes concerning eligibility for competitions could be resolved exclusively before the Court of Arbitration for Sport (CAS) in Lausanne, thereby effectively excluding national courts and European legal bodies from handling such matters.[145]

4.3.2.2 Legal assessment by the CJEU

Despite the opinion of Advocate General Rantos, who viewed the ISU's dual role, the absence of formal and material criteria for granting approvals, and the mandatory arbitration procedure before CAS significantly less critically than the Commission, the CJEU largely followed the Commission's position.[146]

The CJEU thus reaffirmed the applicability of EU competition law in the field of sport, insofar as economically relevant matters are concerned. Furthermore, it ruled that the dual role granted to the ISU by its internal regulations constitutes a restriction of competition by object, due to the lack of formal and substantive limits. This restriction of competition is further reinforced in an inadmissible way by the arbitration clause, as decisions made under the ISU rulebook are thereby effectively shielded from scrutiny under EU competition law.[147] A potential exception under the so-called three-step test is also ruled out by the CJEU, since a restriction of competition by object cannot benefit from such an exception.[148]

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[144] Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 190

[145] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 109; Wirtz and Schulz (n 137) 189

[146] Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 190

[147] Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 190

[148] Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 190

4.3.3 Royal Antwerp

The following will first present the facts of the Royal Antwerp case, and subsequently the legal assessment by the CJEU.

4.3.3.1 Facts

The case involving Royal Antwerp Football Club concerned the so-called 'Homegrown Player Rule', a UEFA regulation aimed at promoting youth development. This rule requires clubs participating in UEFA competitions to include a certain number of 'homegrown players' – that is, players trained by the club itself – in their squad.[149]

According to the rule, players are considered 'homegrown' if they were trained for at least three years between the ages of 15 and 21 at a club affiliated with the same national football association. The aim is to strengthen youth development and encourage clubs to train their own talent rather than relying solely on buying fully developed players on the international transfer market.[150]

However, the Belgian top-tier club Royal Antwerp and an affected player viewed this rule as a restriction of the free movement of workers. They argued it could disadvantage young talents trained in other countries, reducing their chances of being selected for club squads, which in turn could have economic consequences for foreign players and hinder the mobility of professional footballers within the EU.[151]

After an unsuccessful appeal before the Belgian Court of Arbitration for Sport, the club and the player brought the case to a Brussels court, which referred the matter to the European

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[149] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 109

[150] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 109

[151] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 109

Court of Justice. The CJEU was asked to determine whether the rule violates Article 101 TFEU and Article 45 TFEU.[152]

4.3.3.2 Legal assessment by the CJEU

The CJEU considered competition law, which Advocate General Szpunar had entirely disregarded in his opinion, to be applicable. Based on this, the CJEU decided that the Home-grown Player Rule should be classified as a decision of an association of undertakings. In this context, it referred essentially to the considerations from the ESL and ISU rulings regarding the distinction between intended and actual competition restrictions, the scope of the three-step test, and the requirements for an individual exemption.[153]

4.3.4 Summary

The CJEU continues to shape the legal framework within which FIFA and UEFA are allowed to operate. But the trio of rulings has already gained relevance beyond sports. This is particularly evident in the decisions *Em akaunt BG* and *Lietuvis notarų rūmai* from January 2024. In these cases, the CJEU dealt with competition law issues in the context of professional self-regulation of notaries and lawyers, once again emphasising that intended competition restrictions in these areas cannot benefit from the exceptions under the three-step test.[154]

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[152] Stefan Korn, 'Die drei Sporturteile des EuGH vom 21.12.2023 Rechtssachen Superleague, International Skating Union und Royal Antwerp' (2024) MR-Int 108, 109

[153] Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 193

[154] Markus Wirtz and Max Schulz, 'Der sportkartellrechtliche Dreisprung des EuGH - European Superleague, International Skating Union und SA Royal Antwerp Football Club' (2024) ZweR 185, 193

5. Analysis of the Diarra ruling

On October 4, 2024, the CJEU issued another landmark ruling that sent shockwaves through the football world. It found that certain parts of FIFA's transfer regulations violated European law.[155] FIFA responded calmly to the ruling, emphasising that only specific parts, particularly Article 17 of the RSTP, were deemed incompatible with workers' rights and competition law, and therefore, the majority of the existing transfer system would remain in place.[156] Among the provisions mentioned as being unaffected were those regarding player registration rules, solidarity mechanisms, dispute resolution procedures, and the regulation of international transfers of minors.

Objectively speaking, FIFA is correct when it says that only Article 17 of the RSTP was found to be in violation of EU law, meaning that the remaining provisions of the RSTP will continue to exist. However, why does the ruling still cause such a stir in the world of sports law? Some are even suggesting that the judgment could lead to an entirely new transfer system[157] – with talk of a new Bosman ruling.[158]

But what are the realistic consequences of the CJEU's ruling? Is it much ado about nothing, or a victory for players and clubs? This question will be explored further below. First, the underlying facts and legal issues will be outlined. Then, the focus will shift to analysing the ruling from both the perspective of worker mobility (employee freedom) and competition law. Finally, the ruling will be placed in the context of the CJEU's previous case law.

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[155] Case C-650/22 Diarra [2024] ECLI:EU:C:2024:824

[156] FIFA, 'FIFA's Position on the Lassana Diarra Case', interview with Emilio García Silvero, https://digitalhub.fifa.com/m/713a2167b044d42e/original/Der-Standpunkt-der-FIFA-zum-Fall-Lassana-Diarra.pdf accessed 4 April 2025

[157] Mark James, 'The Diarra Case' (2024) International Sports Law Journal 205, 205

[158] Johannes Kirchmeier, 'Transfer-Fall Diarra: Kommt heute ein neues 'Bosman-Urteil'?' (*BR24,* 4 October 2024) https://www.br.de/nachrichten/sport/fussball-transfermarkt-fifa-vs-diarra-wird-der-fall-lassana-diarra-zum-zweiten-bosman-urteil,UPyBeLA accessed 4 April 2025

5.1 Facts and central questions of the judgment

The ruling of the CJEU on October 4 2024, traces its origins back to 2014. At that time, former French international player Lassana Diarra was under contract with the Russian football club Lokomotiv Moscow. However, internal disagreements arose between the player, the coach, and the club, leading Diarra to unilaterally terminate his contract without a valid reason, even though he still had four years remaining on his contract. As a result of the early termination, the FIFA Dispute Resolution Chamber (DRC) imposed a fine of ten million five hundred thousand euros on the footballer based on Article 17(1) of the RSTP. This penalty was also confirmed by the Court of Arbitration for Sport (CAS).[159]

Thus, Diarra was left searching for a new employer. However, this proved to be extremely difficult due to FIFA's regulations under Article 17(2) RSTP, which imposed joint and several liability on any club that signed a player who had breached their contract, even if the procedure was not yet concluded. The regulation in Article 17(2) RSTP was structured in such a way that the RSTP presumptively assumes that the new club incited the player's breach of contract with the former club. The new club could avoid liability only by proving that it had not incited the player's breach of contract. However, such proof is often difficult to provide, and as a result, signing a player with a breached contract entails significant financial risks for the new club.[160]

Beyond the joint and several liability, Article 17(4) RSTP threatens that signing a player who has breached their contract could also lead to a transfer ban for two consecutive registration periods. Such a registration ban could have significant sporting and financial consequences, as 1. FC Köln learned the hard way in March 2023.[161]

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[159] Antoine Duval, 'The Diarra Ruling of the Tribunal of Charleroi: The New Pechstein, Bosman or Mutu?' (*Asser International Sports Law Blog,* 20 January 2017) https://www.asser.nl/SportsLaw/Blog/post/the-diarra-ruling-of-the-tribunal-of-charleroi-the-new-pechstein-bosman-or-mutu accessed 26 May 2025

[160] Antoine Duval, 'The Diarra Ruling of the Tribunal of Charleroi: The New Pechstein, Bosman or Mutu?' (*Asser International Sports Law Blog,* 20 January 2017) https://www.asser.nl/SportsLaw/Blog/post/the-diarra-ruling-of-the-tribunal-of-charleroi-the-new-pechstein-bosman-or-mutu accessed 26 May 2025

[161] 'CAS Confirm Transfer Ban' (*1. FC Köln,* 21 December 2023) https://fc.de/en/news/all-news/cas-confirm-transfer-ban accessed 20 March 2025

The Belgian football club Sporting Charleroi was initially willing to sign Diarra. However, the commitment ultimately failed because Sporting Charleroi was not prepared to take on the financial risks arising from the RSTP. The club conditioned the signing on Diarra's eligibility to play (issue under Article 9(1) RSTP in conjunction with Article 8.2.7 of Annex 3).

Subsequently, Lassana Diarra took legal action in Belgium against both FIFA and the Belgian Football Association (URBSFA), demanding compensation of six million euros for the lost income. He argued that Article 17 RSTP clearly violated the freedom of movement for workers under Article 45 TFEU, as well as competition law under Articles 101 and 102 TFEU. As a result, the Belgian court referred the case to the CJEU. The CJEU was tasked with deciding whether Article 17 RSTP was compatible with European regulations. Specifically, the CJEU had to address the following questions for preliminary ruling:

'By its question for a preliminary ruling, the referring court asks, in essence, whether Articles 45 and 101 TFEU must be interpreted as precluding rules which were adopted by a private law association whose objectives include, inter alia, the regulation, organisation and control of football at world level and which provide:

- *first, that a professional player who is party to an employment contract and is deemed to have terminated that contract without just cause, and the new club which employs him or her following that termination, are to be jointly and severally liable for payment of compensation due to the former club for which the player worked, to be determined on the basis of the various criteria listed by those rules;*

- *second, that, where the employment of the professional player occurs during a protected period under the employment contract which has been terminated, the new club is to incur a sporting sanction consisting in a ban on registering new players during a specific period, unless it demonstrates that it did not induce the player to breach that contract; and*

- *third, that the existence of a dispute relating to that breach of contract is to prevent the national football association of which the former club is a member from issuing the*

ITC necessary for that player to be registered at the new club, with the consequence that the player cannot participate in football competitions for the new club.'[162]

Following this, the decision issued by the CJEU will be analysed under the aspects of workers' freedom of movement and competition law. For better understanding of the legal assessment, the relevant provisions of the RSTP are printed below, with the pertinent formulations highlighted.

Art. 17 (Consequences of terminating a contract without just cause)

The following provisions apply if a contract is terminated without just cause:

(1) In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due ***consideration for the law of the country concerned****, the* ***specificity of sport****, and* ***any other objective criteria****. These criteria shall include, in particular, 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.*

[…]

(2) Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional ***and his new club shall be jointly and severally liable for its payment.*** *The amount may be stipulated in the contract or agreed between the parties.*

(3) […]

(4) ***In addition*** *to the obligation to pay compensation,* ***sporting sanctions shall be imposed on any club*** *found to be in breach of contract or found to be inducing a breach of contract during the protected period.* ***It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach.*** *The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The*

[162] Case C-650/22 Diarra [2024] ECLI:EU:C:2024:824, para 74

club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exceptions stipulated in article 6 paragraph 3 of these regulations in order to register players at an earlier stage.

Art. 9 (International Transfer Certificate)

(1) ***Players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (hereinafter: ITC) from the former association.*** *The ITC shall be issued free of charge without any conditions or time limit. Any provisions to the contrary shall be null and void. The association issuing the ITC shall lodge a copy with FIFA. The* ***administrative procedures for issuing the ITC are contained in Annexe 3, article 8****, and Annexe 3a of these regulations.*

Art. 8.2.7 Annexe 3 (Creating an ITC for a professional player)

The former association shall not deliver an ITC if a contractual dispute on grounds of the circumstances stipulated in Annexe 3, article 8.2 paragraph 4 b) has arisen between the former club and the professional player. *In such a case, upon request of the new association, FIFA may take provisional measures in exceptional circumstances. If the competent body authorises the provisional registration (cf. article 23 paragraph 3), the new association shall complete the relevant player registration information in TMS (cf. Annexe 3, article 5.2 paragraph 6). Furthermore, the professional player, the former club and/or the new club are entitled to lodge a claim with FIFA in accordance with article 22. FIFA shall then decide on the issue of the ITC and on sporting sanctions within 60 days. In any case, the decision on sporting sanctions shall be taken before the delivery of the ITC. The delivery of the ITC shall be without prejudice to compensation for breach of contract.*[163]

5.2 Analysis regarding free movement of workers (Article 45 TFEU)

First, the judgment will be considered from the perspective of workers' free movement. To begin with, the Court addresses the applicability of workers' free movement in the field of

[163] FIFA, *Regulations on the Status and Transfer of Players* https://www.icsspe.org/system/files/FIFA%20-%20Regulations%20on%20the%20Status%20and%20Transfer%20of%20Players_0.pdf accessed 4 April 2025

sports for completeness. In this context, it notes that the regulations in question in the RSTP were not issued for non-economic reasons solely related to sport, meaning that there is no exception to the applicability of Art. 45 TFEU. The relevant rules of the RSTP clearly have a direct impact on the economic activity of the players.[164] Moreover, the specificities of sport could still be taken into account as significant factors in the application.[165]

Subsequently, the Court divides the examination of workers' free movement into two parts: first, the presence of an impairment of workers' free movement is assessed, followed by a discussion of a possible justification. As already outlined[166] the examination of the justification is further divided into the question of whether a legitimate reason exists and whether the principle of proportionality has been respected. This structure will also be followed in the analysis below.

5.2.1 Impairment of the free movement of workers

In the context of examining Article 45 TFEU, the Court first addresses the question of whether there is an impairment of workers' free movement. To do so, the Court begins with the fundamental definition of impairment. 'Article 45 TFEU [...] opposes any measure [...] that is capable of disadvantaging European Union citizens when they wish to pursue an economic activity in a Member State other than their Member State of origin, by preventing or dissuading them from leaving their Member State of origin.'[167] Possible acts of infringement include both the enactment of the relevant RSTP regulations and their application or the risk of their application.

On this basis, the Court examines the relevant provisions of the RSTP. In addition to the joint liability under Article 17(2) RSTP, the criteria for the amount of compensation under Article 17(1) RSTP and the possibility of additional sporting sanctions for new clubs are criticized.

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[164] Case C-650/22 Diarra [2024] ECLI:EU:C:2024:824, paras 79–80

[165] Case C-650/22 Diarra [2024] ECLI:EU:C:2024:824, para 84

[166] See Section 3.1.2.4

[167] Case C-650/22 Diarra [2024] ECLI:EU:C:2024:824, para 86; Case C-680/21 Royal Antwerp Football Club [2023] ECLI:EU:C:2023:1010, para 136

Moreover, the obstacle to the issuance of the International Transfer Certificate (ITC) arising from Article 9(1) RSTP in conjunction with Article 8.2.7 of Annex 3 is highlighted, in cases where a legal dispute related to a contract termination under Article 17 RSTP exists. The issuance of such an ITC is necessary for the registration of new players, so without its issuance, participation in sporting competitions becomes impossible.[168]

Subsequently, the Court addresses Article 17(4) RSTP, which imposes sporting sanctions on the new club if the player's signing occurs within the protection period. The sporting sanction for the club is a ban on registering new players for two transfer periods. This sporting sanction is intended to operate in addition to the joint liability.
All these rules are deemed capable of depriving any player faced with actual or potential contract termination without valid reason of the prospect of receiving binding and unconditional contract offers from clubs in other countries. Acceptance of such offers would induce the player to leave their home Member State and exercise their freedom of movement. Moreover, the existence of this regulation and its combination would lead clubs, due to the high financial and sporting risks, to regularly refrain from signing such players.[169] Therefore, according to the Court, there is at least an impairment of workers' free movement.

5.2.2 Justification of the impairment

Following determination of an impairment, the CJEU proceeds to examine whether this impairment could potentially be justified. Measures not originating from the state can be permissible even if freedom of movement under the TFEU is impaired. First, it must be established that the regulation in question pursues a goal that serves the public interest, which is compatible with the TFEU and not purely of an economic nature. Second, the principle of proportionality must also be respected. This means that the measures must be suitable to achieve the objective and must not go beyond what is necessary to achieve it.[170] The subsequent analysis of the justification is therefore divided into the points of ‘legitimate reason’ and ‘proportionality’.

[168] Case C-650/22 Diarra [2024] ECLI:EU:C:2024:824, para 88 ff

[169] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 92

[170] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 95

5.2.2.1 Legitimate reason for the measure

First, there must be a legitimate objective for the implementation of the measure. In this context, FIFA presents three different objectives that it believes justify the impairment. It is argued that the regulations aim 1. to achieve contractual stability as well as stability within the squads of professional clubs. A 2. to preserve the integrity, proper functioning, and smooth operation of club competitions, and 3. to protect professional football players in their capacity as employees.[171]

The CJEU then addresses the individual objectives cited by FIFA and discusses whether these can be considered 'legitimate' for the purpose of justification.

Regarding the alleged objective of protecting professional football players in their capacity as employees, the CJEU responds that, on the one hand, this is not covered by FIFA's own association objectives, and, furthermore, FIFA has not been tasked by state authorities with supporting such a viewpoint. Therefore, FIFA is not responsible for pursuing such goals. Regardless of FIFA's jurisdiction, the court also sees no clear connection between the regulations in question and the achievement of this objective.[172]

The CJEU then examines the goal of ensuring the proper functioning of sports competitions. This goal is embedded in FIFA's statutes and is considered as serving the public interest. [173] In this context, the Court also refers to previous judgments.[174]

Finally, the potential goal of contractual stability and squad stability is considered. According to the CJEU, however, this is not inherently a public interest goal. Instead, it could be a means to achieve the proper functioning of the competition.[175]

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[171] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 98

[172] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 99

[173] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 100

[174] Case C-176/96 *Lehtonen and Castors Braine* ECLI:EU:C:2000:201, paras 53–54

[175] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 102

Therefore, it can be concluded that the CJEU considers only one of the objectives put forward by FIFA to be legitimate within the context of justification. As a result, the proportionality test must always be viewed in light of the objective of 'achieving the proper and smooth operation of club competitions.'

5.2.2.2 Proportionality

Furthermore, the restriction must also be proportional. The first question that arises is the suitability of the measure. This is assumed if the regulations are generally capable of achieving the intended goal. The provisions of Article 17 RSTP and Article 9 RSTP in conjunction with Article 8.2.7 of Annex 3 allow for players to remain in contractual arrangements for longer periods. This, in turn, promotes the achievement of the goal of smooth competition, as the stability of team rosters is secured.
However, from the perspective of the Court of Justice, the proportionality of the regulations is problematic. They appear to the Court to go far beyond what is necessary to achieve the goal. Therefore, the following will provide a more detailed examination of the criticisms raised in the judgment.

5.2.2.2.1 Article 17 (1) RSTP

Article 17(1) of the RSTP, which regulates the entitlement to compensation payments in the event of a contract breach and determines the amount, is considered by the Court of Justice of the European Union to be too vague due to several aspects. The first problem is that the term 'without just cause' is not precisely defined. Furthermore, the Court specifically criticises that the individual criteria for determining the amount of compensation are not sufficiently clear. Many of the criteria either do not apply or are highly discretionary due to their vagueness, making them unpredictable.

The possibility in paragraph 1 to 'take national law into account' does not guarantee, from the perspective of the CJEU, that this actually happens, especially in practice. The commentary published by FIFA itself states that this criterion is practically never applied, and when it is, it is only considered supplementary to Swiss law.

Moreover, the CJEU takes issue with the term ‘peculiarities of the sport’. This is merely a general term without a clear definition that would allow understanding of how and under what conditions this criterion may influence the calculation of compensation. Although FIFA presents this criterion as ‘objective’, it is in reality discretionary. As a result, from a legal standpoint, it is neither foreseeable nor controllable.

While the other criteria used initially appear to be more objective and verifiable – for example, the criterion related to remuneration refers to the employment contract the player later concludes with a new club – this pertains to a contractual relationship that only exists after the contract termination. Therefore, it must be assumed that this criterion has nothing to do with the last employment relationship and, consequently, cannot be used in relation to a compensation payment that is connected to it.

The CJEU also considers it too far-reaching that the costs and expenses incurred by the former club in connection with the player's signing are included in the calculation. This would potentially allow the club to pass significant costs onto the player, even though the financial interests of the involved clubs and third parties play a predominant role in the structure of the player's transfer. Furthermore, such a criterion likely serves more to protect the financial interests of the clubs in player transfers rather than ensuring the smooth running of the sporting competition, as claimed.

5.2.2.2.2 Article 17 (2) RSTP

Regarding the joint liability in Article 17(2) RSTP, under which the new club is jointly liable for the compensation payment to the former club, the CJEU also reaffirms the overly broad scope of the regulation. In particular, the fact that the regulation intervenes generally and without taking into account the circumstances of the individual case leads to its incompatibility with EU law. While FIFA argued that the regulation would not apply if the new player's contract is signed only after the expiration of the previous contract, no such exception is found in Article 17(2) RSTP, meaning it cannot provide the required legal certainty.[176]

[176] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 108

5.2.2.2.3 Article 17 (4) RSTP

Furthermore, the presumption rule in Article 17(4) RSTP and the sporting sanctions are criticised. These also go beyond what is necessary to ensure the smooth running of club competitions. On the one hand, the sporting sanctions provided for in paragraph 4, in combination with the other legal disadvantages, appear obviously disproportionate to the misconduct alleged. Moreover, this misconduct is presumed to be committed by the new club under the rebuttable presumption rule in Article 14(4) RSTP. However, there is – especially considering the severity of the sanctions – no legal necessity for the new club to always prove that it did not induce the breach of contract when signing a player who has terminated his contract without just cause and is still within the protection period.

Although FIFA justifies the presumption rule by stating that the former club may face difficulties proving that the new club induced the player to breach the contract, this cannot justify the presumption in question. Because it applies automatically and without any restrictions. The former club does not even need a single indication of inducement, and no other circumstances of the individual case are taken into account. Therefore, Article 17(4) RSTP must also be regarded as unjustified.[177]

5.2.2.2.4 Article 9 RSTP in conjunction with Article 8.2.7 of annex 3 RSTP

Article 9 RSTP in conjunction with Article 8.2.7 of Annex 3 RSTP cannot be justified by the legitimate goal of ensuring the smooth running of club competitions. The regulation prohibits the former association from issuing an International Transfer Certificate (ITC), unless special circumstances exist, as long as there are contractual disputes between the former club and the player regarding the termination of the employment contract. As a result, the failure to issue the ITC means that the affected player is initially unable to continue their professional activity. It is sufficient that there may be no justifiable reason for the termination of the contract. Such a provision, which restricts the player so severely in his capacity as an employee, clearly does not meet the principle of proportionality.[178]

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[177] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 109 ff

[178] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 112

5.2.2.2.5 Conclusion

FIFA's attempt to justify its particularly restrictive transfer regulations by citing the goal of ensuring the smooth running of sports competitions is unsuccessful. The regulations in Article 17 RSTP, as well as Article 9 RSTP in conjunction with Article 8.2.7 of Annex 3 RSTP, are in their current form incompatible with European law regarding the freedom of movement for workers under Article 45 TFEU.

5.3 Analysis under competition law (Article 101 TFEU)

In addition to a violation of the freedom of movement for workers, a violation of European competition law must also be considered. Article 101 TFEU, relevant for the CJEU ruling, prohibits agreements between companies, decisions by associations of companies, and coordinated practices that are capable of affecting trade between Member States and aim to prevent, restrict, or distort competition within the internal market.[179]
The following will first address the presence of the prerequisites for the infringement and the possible justification of such a restriction.

5.3.1 Presence of the prerequisites for infringement

First, the CJEU addresses the question of whether Article 101 TFEU is applicable to the present case. Since the composition of teams is one of the essential parameters in competitions where professional football clubs compete, and these competitions lead to economic activity, the CJEU concludes that the regulations in Article 17 RSTP and Article 9 RSTP in conjunction with Article 8.2.7 of Annex 3 have a direct impact on the conditions for the exercise of this economic activity and on the competition among professional football clubs.[180] Therefore, the scope of Article 101 TFEU is also triggered.

[179] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 115

[180] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 81

5.3.1.1 Business association

FIFA is considered a business association within the meaning of Article 101 TFEU, as the member associations it belongs to can also be classified as businesses. Therefore, both the issuance of the regulations of the RSTP and the implementation of these regulations can be regarded as a 'decision of a business association', since these activities directly affect the economic activities of its members (national associations).[181]

5.3.1.2 Ability to substantially affect trade

Furthermore, such decisions must be capable of significantly affecting trade between Member States by directly or indirectly, actually or potentially influencing trade flows.[182] Due to the widespread geographical scope of FIFA's decisions and their consequently 'universal' nature, this condition is clearly met.[183]

5.3.1.3 Intended restriction of competition

Furthermore, it must be assumed that the behaviour is intended to prevent, restrict, or distort competition, or at least leads to such an effect. However, if there is an 'intended restriction of competition', it is not necessary to demonstrate a de facto anti-competitive effect. In order to determine such an 'intended restriction of competition', the content of the decision must first be examined. Following this, both the economic and legal context in which it stands, as well as the objectives it seeks to achieve, must be considered.[184]

Regarding the content, the CJEU once again raises the substantive criticisms of Art. 17 RSTP that were already addressed in the context of the free movement of workers. Even under Art. 101 TFEU, the criteria for compensation payments, the prohibition on issuing the ITC, the joint liability, the presumption rule against the new club, and the sporting sanctions all appear

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[181] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 119 ff

[182] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 122

[183] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 123

[184] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 130

capable of significantly and drastically restricting competition in material terms. The competition in question concerns the ability of clubs to recruit players who are under contract with a professional club in another Member State.[185]

In practice, these features create at least some degree of certainty for any club that it can retain players it has under contract until the expiration of their contracts or only has to part with them for a substantial transfer fee.[186] The risk of being jointly liable or facing sporting sanctions is usually too high for clubs, both financially and in sporting terms.

Given that sports competitions have been economically considered 'products' for decades, it is legitimate within the economic and legal context for FIFA, as the organiser of these competitions, to establish special rules for them. The CJEU emphasises that the specificities of sports can also lead to special legal restrictions.[187] In sporting competitions, it is essential that there is a certain level of fairness between the competing clubs. To achieve this, the CJEU acknowledges that it is fundamentally legitimate to want to create a degree of stability in team compositions[188] so that players do not switch clubs during ongoing competitions and thereby distort the competition.

However, the inherent need for regulation and the specificities of sport should not lead to the drastic and permanent restriction or even exclusion of club's ability to recruit players from other clubs in different Member States. The excessive financial and sporting risks associated with signing a player who has breached their contract effectively lead to a de facto non-compete agreement between clubs. As a result, national and local markets are artificially closed off in favour of all these clubs.[189]

Regarding the objective goals of the rules in question, it should be noted that they are intended to ensure that it is as difficult as possible for clubs to recruit players who have

[185] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 138

[186] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 141

[187] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 143

[188] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 144

[189] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 145

breached their contracts or are suspected of doing so. For determining these objective goals, it is not relevant which subjective intentions or possible legitimate objectives FIFA had when enacting or enforcing the regulations.[190]

In conclusion, the CJEU correctly summarises that the affected rules 'inherently possess a high degree of harmfulness to competition'[191] by aiming to make access to competition-critical resources, i.e., highly qualified players, more difficult. Therefore, the relevant provisions of Art. 17 RSTP and Art. 9 RSTP in conjunction with Art. 8.2.7 of Annex 3 are to be considered as an 'intended restriction of competition.'

5.3.2 Meca-Medina and exemption under Article 101(3) TFEU

Following the determination that the regulations in question constitute 'intended restrictions of competition,' the CJEU proceeds to address a possible justification under the Meca-Medina test. According to this test, decisions by associations of undertakings do not fall under the prohibition of Art. 101 TFEU if they pursue objectives serving the public interest outside of competition, the means used to achieve these objectives are necessary, and the anti-competitive effect inherent in the means does not go beyond what is required.[192]

However, the Court does not go further into these conditions because the Meca-Medina case law can only be applied if the behaviours in question do not specifically aim to restrict competition.[193]

Therefore, FIFA's only remaining option is the exemption under Art. 101(3) TFEU. For such an exemption to apply, all four conditions laid out in para. 3 must be cumulatively fulfilled. However, these conditions are stricter than the conditions under the Meca-Medina case law. In particular, the third condition regarding the necessity of the behaviour must be rejected

[190] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 147

[191] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 148

[192] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 149

[193] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 150

here due to the previous findings of disproportionality. As a result, an exemption under Art. 101(3) TFEU is no longer possible.

Consequently, the CJEU concludes that Art. 17 RSTP and Art. 9 RSTP in conjunction with Art. 8.2.7 of Annex 3 also violate Art. 101(1) TFEU.

5.4 Integration into the previous case law of the CJEU

The judgment of the CJEU in the Diarra case has caused quite a stir in the legal world and beyond due to its clarity of content. But how does it fit in with the CJEU's previous rulings in sports law? This will be discussed below.

First and foremost, it must be noted that the CJEU considered the relevant articles of the FIFA regulations to be incompatible with EU law. However, it reaffirmed the legitimacy of the FIFA institution and confirmed that FIFA has the right to establish binding rules for the conduct of its sporting competitions. Furthermore, the CJEU made it clear that sports-related issues also fall within the scope of EU law, and sports associations such as FIFA cannot exempt themselves from the application of EU law by referring to the independence of sports law, the non-economic nature of sports, or the difficulty of reconciling EU regulations with the global harmonisation of transfer systems.[194] In this respect, the judgment aligns with the CJEU's previous case law and highlights its intention to further regulate professional sports in order to fully apply the strict EU requirements of workers' freedom of movement and competition law in this field. As with earlier decisions, the specific nature of sport must always be taken into account when interpreting EU regulations.

The Diarra judgment, compared to the other cases discussed, addresses both workers' freedom of movement and competition law. As such, it can be viewed as a follow-up to the Bosman case, as it also strengthens the rights of players in relation to the transfer system. However, unlike in Bosman, the CJEU in the Diarra case places significant emphasis on competition law.[195]

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[194] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 75 ff

[195] Mark-E Orth, 'EU-Rechtswidrigkeit von Bestimmungen des FIFA-RSTS ('Diarra')', (2024) *SpuRt* 487, 498

Moreover, the CJEU's competition law regulatory approach, which has been evident in previous judgments such as Meca-Medina, Super League , and ISU, is also of great importance in the Diarra judgment. In this case, the CJEU continues to develop competition law in the context of sports and declares that the composition of professional teams and the recruitment of players are market-relevant factors.

In the broader view, the CJEU has refined its case law by incorporating new important factors and has established further guidelines that FIFA must consider when establishing transfer rules and other economically relevant regulations. The regulation of sports law is therefore becoming more clearly defined, further limiting the scope of action for sports associations. The major beneficiaries in this context are, above all, the players, who can expect more freedom in terms of transfers between clubs.

6. Significance of the ruling for professional football

In addition to the purely legal significance of the ruling, what is particularly interesting is the practical impact the ruling will have. A common question raised is whether this might be a *Bosman 2.0* ruling[196] that could fundamentally alter the nature of the transfer market. This question will be addressed below by first examining FIFA's reaction to the ruling, followed by the expected consequences for players and their contractual relationships, and then discussing the implications for fans and competition. Finally, the first visible effects of the ruling will be illustrated using the example of 1. FC Köln.

6.1 FIFA's reaction

Shortly after the European Court of Justice ruling, FIFA published its stance on the Lassana Diarra case in the form of a two-page interview with its Director of Legal and Compliance, Emilio García Silvero.[197] In this document, FIFA addresses the key questions raised by the ruling and its consequences. The FIFA statement reveals the organisation's efforts to downplay the significance of the ruling for the transfer market. It emphasizes that large parts of the FIFA Transfer Regulations, such as registration deadlines, the application of sporting sanctions, training compensation, and solidarity mechanisms, remain unaffected by the Diarra ruling. Furthermore, the statement highlights that the ruling reaffirms FIFA's legitimacy and responsibility in regulating professional football.

While it is true that the CJEU did not question FIFA's role as the responsible and legitimate institution for regulating professional football,[198] FIFA's presentation overlooks the fact that the determination of the unlawfulness of Art. 17 I, II, IV RSTP and Art. 9 RSTP in conjunction

196 'Bosman 2.0?' (*Frankfurter Rundschau*, 5 May 2025) https://www.fr.de/sport/bosman-93337438.html accessed 5 May 2025

197 FIFA, *FIFA's Position on the Lassana Diarra Case* (14 October 2024) https://digitalhub.fifa.com/m/713a2167b044d42e/original/Der-Standpunkt-der-FIFA-zum-Fall-Lassana-Diarra.pdf accessed 4 May 2025

198 Stephen Weatherill, 'Is this the end of football's transfer system? An immediate reaction to the Court's ruling in Diarra (C-650/22)', (*EU Law Analysis,* 7 October 2024) https://eulawanalysis.blogspot.com/2024/10/is-this-end-of-footballs-transfer.html accessed 5 May 2025

with Art. 8.2.7 of Annex 3 does not concern just any rule but rather the core of the existing transfer system.[199] Therefore, the reference to the preservation of the other FIFA regulations is insufficient.

Regarding the question of whether players or clubs can now unilaterally terminate their contracts and whether this would lead to the end of transfers or transfer fees, Emilio García Silvero briefly responds that the ruling confirms the inviolability of contracts and that there will still be legal consequences if parties wish to terminate an employment contract prematurely. According to the statement, FIFA is pleased to be able to further develop its transfer system in line with European requirements. For this purpose, FIFA has initiated a dialogue with the key stakeholders, so that 'a modern, solid, and valid regulatory framework for international football remains in place.'[200] However, the extent of FIFA's willingness to reform is yet to be seen. The invitation to a global stakeholder dialogue at least suggests that FIFA has recognised the potential impact of the decision.[201]

6.2 Significance for the players

From the players' perspective, the ruling has paved the way for fundamental changes and greater freedom in their transfer decisions. Consequently, the international players' union FIFPro has welcomed the ruling and emphasised in its statement that the core of the current transfer system is affected by the unlawfulness under European Union law.[202] The ruling has made it clear that the previous transfer system, given the short duration of professional careers, poses a danger to players. Moreover, the Court has precisely recognized the 'obstacles and difficulties that professional football players have faced in accessing the labour

[199] Antoine Duval, 'Football at a Crossroads' (*Verfassungsblog*, 25 October 2024) https://verfassungsblog.de/football-at-a-crossroads/ accessed 5 May 2025

[200] FIFA, *FIFA's Position on the Lassana Diarra Case* (14 October 2024) https://digitalhub.fifa.com/m/713a2167b044d42e/original/Der-Standpunkt-der-FIFA-zum-Fall-Lassana-Diarra.pdf accessed 4 May 2025

[201] Alexander Scheuch, 'Risse im Fundament – wohin gehört Diarra auf der Bosman-Skala?' (2024) *SpuRt* 433

[202] FIFPRO, 'Statement: Decision of European Court of Justice' (4 May 2025) https://fifpro.org/en/supporting-players/obtaining-justice/governance-and-representation/fifpro-statement-decision-of-european-court-of-justice accessed 4 May 2025

market since 2001 and has explicitly pointed to the harm caused by the anti-competitive status quo.'[203]

However, FIFPro has not specified exactly how these new freedoms for players will be legally implemented and states that it will continue to analyse the significance of the decision for players.

Nevertheless, it is now clear after the ruling that professional football players should face fewer barriers when changing employers in the future. How the legitimate goal of 'ensuring the proper and smooth functioning of club competitions' can still be effectively pursued must result from a balancing process of all relevant interests. The CJEU has, however, set the direction by strongly emphasising the importance of workers' free movement.

6.3 Significance for clubs

For clubs, the ruling can have both positive and negative consequences. This is due to the fact that they can be in both the role of seeking players as well as releasing players. On the one hand, the changes expected after the Diarra ruling will lead to clubs facing fewer challenges when attempting to recruit players involved in disputes over the termination of their employment contracts. Thus, clubs will no longer need to take on the significant financial and sporting risks previously inherent in the FIFA Transfer Regulations.

On the other hand, the unlawfulness of the previous transfer regulations under European Union law means that clubs will also have less leverage in preventing players and other clubs from pursuing transfers. In particular, the disproportionate joint liability for a player's compensation payment to their previous club and the risk of sporting sanctions in the form of registration bans will no longer be able to protect the position of releasing clubs as they have in the past.

From the club's perspective, it will also be interesting to see which interests will need to be relinquished in order to achieve the goal of 'ensuring the proper and smooth functioning of

[203] FIFPRO, 'Statement: Decision of European Court of Justice' (4 May 2025) https://fifpro.org/en/supporting-players/obtaining-justice/governance-and-representation/fifpro-statement-decision-of-european-court-of-justice accessed 4 May 2025

club competitions' while still implementing adequate protection for the stability of their professional squads.

6.4 Significance for fans

From the fans' perspective, it is expected that the transfer market will develop even more dynamically than before. Transfers that have previously been avoided due to the financial and sporting risks for both players and clubs will likely become more frequent. This means that transfers before the expiration of contracts can be expected to increase, and players will likely change clubs more often. This might initially disappoint the romantic notion of long-standing loyalty to a club, but it should be also underlined that the number of transfers will likely increase simply based on the relevant regulations being found to be unlawful. However, the long-term commitment of a player to a club will still be possible. If a player decides to remain loyal to a club, it will be less due to fear of the sporting and economic consequences of a potential move and more out of affection for the club and the opportunities it offers for the player's career.

6.5 Example of practical consequences: case of 1. FC Köln

Another significant consequence could arise from the judgment for 1. FC Köln. The club has felt the severe repercussions of the FIFA transfer system due to Article 17(4) RSTP. The following will first explain the case scenario and then address the effects of the CJEU ruling as well as the legal options available to 1. FC Köln.

6.5.1 Facts

1. FC Köln experienced the harshness of the sports sanctions embedded in Article 17(4) RSTP of the FIFA transfer system in March 2023. The club was handed a transfer ban due to the signing of Slovenian youth player Jaka Cuber Potocnik, who had previously been under contract with Olimpija Ljubljana. In January 2022, the then 16-year-old Potocnik unilaterally terminated his contract with the Slovenian club and moved to the youth department of 1. FC

Köln. Olimpija Ljubljana considered this act a breach of contract 'without valid reason' under Article 17 RSTP and accused 1. FC Köln of having instigated the player to do so.[204]

Subsequently, the Slovenian club filed a complaint with FIFA, which examined the case and concluded that 1. FC Köln had violated the transfer regulations. FIFA deemed the transfer unlawful and imposed a transfer ban on the club for two transfer periods. This ban meant that 1. FC Köln was not allowed to sign any new players in the summer of 2023 or winter of 2024. Additionally, Potocnik was handed a four-month playing ban and ordered to pay compensation of €52,000 to Olimpija Ljubljana, for which 1. FC Köln was jointly and severally liable under the provision of Article 17(2) RSTP.[205]

1. FC Köln subsequently appealed the decision to the Court of Arbitration for Sport (CAS) in an attempt to have the ban lifted. However, in December 2023, the CAS confirmed FIFA's decision and dismissed the club's appeal.[206] As a result, the transfer ban remained in place, which proved to be a significant disadvantage for the club, especially during the relegation battle of the 2023/24 season. 1. FC Köln was unable to replace departing players or sign targeted reinforcements, which was seen as one of the reasons for their relegation to the 2nd Bundesliga.

6.5.2 Impact of the Diarra ruling

The CJEU's ruling in the Lassana Diarra case also had consequences for 1. FC Köln. After the CJEU deemed the transfer regulations in Article 17 RSTP partially incompatible with EU law, FIFA lifted the transfer ban imposed on 1. FC Köln prematurely in December 2024, even though it would have expired at the end of the year. This early lifting of the ban allowed the

[204] 'CAS Confirm Transfer Ban' (*1. FC Köln,* 21 December 2023) https://fc.de/en/news/all-news/cas-confirm-transfer-ban accessed 20 March 2025

[205] 'CAS Confirm Transfer Ban' (*1. FC Köln,* 21 December 2023) https://fc.de/en/news/all-news/cas-confirm-transfer-ban accessed 20 March 2025

[206] Court of Arbitration for Sport (CAS), 'Media Release 9578–9579–9580' https://www.tas-cas.org/fileadmin/user_upload/CAS_Media_Release_9578-9579-9580.pdf accessed 20 March 2025

club to sign out-of-contract players and register them for the competition before the official start of the winter transfer window.[207]

From the club's perspective, however, the unlawful transfer ban still caused significant sporting and financial disadvantages. According to Christian Keller, the former sports managing director of 1. FC Köln, the early lifting of the transfer ban offers the club nothing in practical terms, as they would not sign any out-of-contract players before December 31.[208] As a result, the club's only remaining option is to consider potential compensation claims against FIFA.

6.5.3 Legal options

Given that the lifting of the transfer ban had little impact on 1. FC Köln's transfer behaviour due to its short remaining duration, the club's only option is to file a compensation claim against FIFA. However, pursuing such a claim is legally challenging.

The club could take its case to the Regional Court of Cologne, which has a competition law chamber and is thus the appropriate venue. However, there could be substantial legal difficulties in proving such a claim. In particular, calculating the exact amount of damages and establishing causality between the sanctions imposed on 1. FC Köln and the club's subsequent relegation stand out as potential issues.

Any damage could amount to up to 45 million euros due to relegation.[209] However, if the relegation in the summer of 2024 is considered the event that caused the damage, the problem lies in proving the causality between the wrongful action and the resulting

[207] Chaled Nahar, 'FIFA hebt Transfersperre gegen 1. FC Köln auf' (*Sportschau*, 5 December 2024) https://www.sportschau.de/fussball/bundesliga2/fifa-hebt-transfersperre-gegen-1-fc-koeln-auf%2Cfc-transfersperre-100.html accessed 21 March 2025

[208] Leon Potuzhek and Mirko Frank, 'Klagt Köln jetzt gegen die FIFA?' (*Bild*, 5 October 2024) https://m.bild.de/sport/fussball/1-fc-koeln-nach-transfer-urteil-klagt-koeln-jetzt-gegen-die-fifa-6701290ed8476a4127f4747d accessed 21 March 2025

[209] Jim Decker, 'Köln droht beim Abstieg ein Millionen-Loch' (Kicker, 19 April 2024) https://www.kicker.at/koeln-droht-beim-abstieg-ein-millionen-loch-1015518/artikel accessed 21 March 2025

damage.[210] In this case, the wrongful act could certainly be the imposition of a transfer ban for two transfer windows in violation of EU law. While fans may quickly draw the conclusion that there is an obvious connection between the registration ban for new players in the middle of a relegation battle and the actual relegation, this assumption is likely to be disputed legally.

To highlight the dilemma, one can compare the situation to an athlete who is wrongfully banned for doping. If this athlete were to claim damages against the governing body, they would certainly face difficulties in proving that, had they participated in the competition, they would have won first place and received the prize money.[211]

It remains to be seen whether 1. FC Köln will indeed take FIFA to court in a compensation case. The club's former sports managing director, Christian Keller, has remained tight-lipped on the matter: 'I wouldn't want to say too much about the topic of compensation. But it could very well be that a claim for damages will be made. We are considering what we will do.'[212]

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[210] Jim Decker, 'Köln droht beim Abstieg ein Millionen-Loch' (Kicker, 19 April 2024) https://www.kicker.at/koeln-droht-beim-abstieg-ein-millionen-loch-1015518/artikel accessed 21 March 2025

[211] Benni Hoffmann, 'Schadenersatz für Köln nach Diarra-Urteil – wo die Probleme liegen' (Kicker, 9 October 2024) https://www.kicker.at/schadenersatz-fuer-koeln-nach-diarra-urteil-wo-die-probleme-liegen-1057881/artikel accessed 14 March 2025

[212] Leon Potuzhek and Mirko Frank, 'Klagt Köln jetzt gegen die FIFA?' (*Bild*, 5 October 2024) https://m.bild.de/sport/fussball/1-fc-koeln-nach-transfer-urteil-klagt-koeln-jetzt-gegen-die-fifa-6701290ed8476a4127f4747d accessed 21 March 2025

7. Challenges for the modern transfer market

Due to the European Court of Justice ruling in the Lassana Diarra case, there is currently a lot of momentum in the discussion around a redesign of the transfer system. The current transfer system faces several significant challenges, which affect both the traditional understanding of a player's contractual relationship with their employing club and the economic consequences for professional clubs worldwide. Both issues will be examined in more detail below.

7.1 Relationship between player and club

One thing is clear from the Diarra ruling of the European Court of Justice: professional players are overly restricted by the current system, which prevents them from fully exercising their freedom of movement as workers. FIFA justified this by pursuing the legitimate goal of bringing stability to team rosters, thus ensuring the 'proper and smooth functioning of club competitions.' However, upon closer inspection, it becomes evident that the FIFA regulations go beyond just achieving this goal. The enormous financial and sporting risks for both players and clubs also aim to create a speculative system that allows clubs to treat players as assets, hoping to buy them cheaply and sell them at a higher price. Only through the integration of excessively deterrent consequences both for players who breach their contracts and their new clubs was it possible to treat players and their employment contracts as commodities.[213] However, the CJEU's decision has fundamentally upset the pre-eminence of this system and indeed the players' regard for the system.

It is therefore important that in creating future transfer regulations, a new understanding of the relationship between players and their clubs is established – shifting from seeing players as assets to recognising them as valued and exceptionally important employees of a club.

[213] Antoine Duval, 'Football at a Crossroads' (Verfassungsblog, 25 October 2024) https://verfassungsblog.de/football-at-a-crossroads/ accessed 5 May 2025

7.2 Economic impacts

Furthermore, significant economic impacts for clubs are to be expected, as the now more predictable financial risks of a contract breach will likely lead to more situations where players change clubs without the new club having to pay a transfer fee to the former club. However, this scenario may also have negative consequences for the solidarity mechanisms previously implemented by FIFA. The following will address both the expected development of transfer fees and the risks to the solidarity mechanisms of the former transfer system.

7.2.1 Development of transfer fees

The elimination of excessive compensation payments for players in breach of contract, the removal of the fault-independent presumption and joint liability, as well as the elimination of excessive sporting sanctions for players and clubs, creates a completely new situation for those involved in the transfer market. After all, why would a club still pay transfer fees to other clubs when a player can simply break their contract, and aside from a compensation payment, there are no significant consequences to expect? The payment of compensation that is an objectively justifiable amount could, for example, be factored into the new club's salary payments. Even if one assumes that financial and sporting sanctions against the new club may be still possible, say in the case of proven instigation of a contract breach, these should not carry much weight given the difficulties in proving such cases. Consequently, players and clubs will now only face a risk that is at least calculable, which they may be more willing to take on in the future.

In the extreme case, this could lead to transfer fees disappearing entirely from professional football. While this scenario is not necessarily the most likely, since not all players will be willing to initiate legal disputes over compensation payments with their employers, it is still expected that more and more players will be willing to accept a compensation payment in order to terminate their contract early and without paying a transfer fee. As a result, transfer payments are likely to become less frequent and also more modest in size.

7.2.2 Threat to solidarity mechanisms

However, it is not only the parties directly involved in a transfer transaction that need to prepare for some changes due to the Diarra ruling. The beneficiaries of the previous solidarity mechanisms in the transfer system, which were intended to ensure the redistribution of funds, will no longer function in the same way going forward.

The solidarity mechanisms were previously regulated in Articles 20 and 21 of the RSTP. Article 20 of the RSTP stipulated that a training compensation must be paid to the player's training club when they sign their first professional contract, and for every subsequent transfer of the player until the end of the season of their 23rd birthday. Additionally, Article 21 RSTP provided that a proportional compensation payment must be made to every previous club involved in the player's training, based on a percentage of the transfer fee.

These regulations were designed to ensure the financial redistribution from wealthier clubs and leagues to less financially strong clubs and development leagues. In recent years, significant sums have been paid from wealthier leagues, such as the Premier League or the Saudi Pro League, to less financially strong leagues and clubs. This system was intended to create an incentive for financially weaker clubs to invest in talent development, so they could generate new funds through participation in future transfer fees. This system is particularly important for clubs in countries like Belgium, Portugal, Argentina, or Brazil, as these clubs often act as 'development clubs', training young players and selling them profitably to wealthier leagues.[214] Through this de facto co-financing of the weaker leagues via participation in transfer fees, the financial stability of the affected clubs was ensured, and a contribution was made to international competitive diversity.

However, the system of redistribution is increasingly at risk if there is a significant reduction in transfer fee payments in the future. The solidarity payments and training compensation under Articles 20 and 21 RSTP would therefore be less applicable. This would result in the economic base of many smaller clubs being undermined, and in the long term, an

[214] CIES Football Observatory, *Monthly Report No 87* (September 2023) https://football-observatory.com/MonthlyReport87 accessed 5 May 2025

intensification of the already existing financial imbalances in international football.[215] Such a scenario must not be allowed as a side effect of the Diarra ruling. Therefore, it is of utmost importance that the design of the future transfer system also takes into account functioning solidarity mechanisms for developing and financially weaker clubs.

[215] Antoine Duval, 'Football at a Crossroads' (Verfassungsblog, 25 October 2024) https://verfassungsblog.de/football-at-a-crossroads/ accessed 5 May 2025

8. Proposals for reforming an EU-compliant transfer system

The following will attempt to develop reform proposals for a transfer system that complies with EU law. First, we will examine the proposal issued by FIFA itself as a transitional arrangement for the January 2025 transfer window. Additionally, the possibility of collective bargaining agreements as an alternative regulatory model will be discussed. Then, the points of criticism raised by the European Court of Justice regarding the existing regulations will be examined more closely, followed by a final proposal for a possible reorganisation of the transfer system.

8.1 FIFA's proposal for the winter transfer window

In order to prevent the legal vacuum that would arise from the illegality under EU law of key pillars of the transfer system, FIFA issued transitional regulations for the January 2025 transfer window in December 2024. These regulations already foresee changes to the provisions of Article 17 RSTP and the ITC, which had been challenged by the European Court of Justice. In addition, FIFA published explanatory notes to assist in the application of the law.[216]

Accordingly, Article 17(1) of the RSTP is amended as follows: 'In all cases, the party injured by a breach of contract by the other party shall be entitled to compensation. Subject to the provisions of Article 20 and Annex 4 on training compensation, and unless the contract provides otherwise, the compensation for the breach of contract will be calculated based on the damage suffered, in accordance with the principle of 'positive interest', considering the individual facts and circumstances of each case and giving due consideration to the law of the country concerned.' [217]

[216] FIFA, *Explanatory Notes on the Interim Regulatory Framework* https://digitalhub.fifa.com/m/74181ed7a6156d32/original/Explanatory-notes-on-the-interim-regulatory-framework.pdf accessed 5 May 2025

[217] FIFA, *Explanatory Notes on the Interim Regulatory Framework*, 7 https://digitalhub.fifa.com/m/74181ed7a6156d32/original/Explanatory-notes-on-the-interim-regulatory-framework.pdf accessed 5 May 2025

With this, FIFA responds to the CJEU's criticism that the criteria for compensation were not objective enough. The principle of 'positive interest' is therefore incorporated into the regulation, and by using the terms 'facts and circumstances', FIFA attempts to apply more objective criteria to the damage calculation.

Furthermore, FIFA eliminates a rebuttable presumption against the new club by using the following formulation: 'A player's new club shall be held jointly liable to pay compensation if, having regard to the individual facts and circumstances of each case, it can be established that the new club induced the player to breach their contract.'[218]
The same applies to the possibility of imposing sporting sanctions on the new club. From now on, this is only possible if the inducement to breach the contract is proven.

In addition, if a player changes clubs and the new association requests an ITC, the previous association must provide it within 72 hours. A refusal to provide the ITC request by the previous association is no longer permitted. If the former association does not respond within the deadline, the new association may register the player and enter the relevant data in the Transfer Matching System (TMS).[219]

However, the players' union FIFPro strongly opposed the changes, accusing FIFA of not reaching an agreement through a proper consensus process. The union's statement reads: 'Following Lassana Diarra's successful challenge against the legality of Article 17 of the FIFA Regulations on the Status and Transfer of Players, FIFPro informed FIFA of the conditions under which it could negotiate the amendments to the regulations to reflect the ruling. Until now, we have been unable to reach a consensus. We do not agree with the temporary measures announced by FIFA which have been introduced without a proper collective

218 FIFA, *Explanatory Notes on the Interim Regulatory Framework*, 8–9 https://digitalhub.fifa.com/m/74181ed7a6156d32/original/Explanatory-notes-on-the-interim-regulatory-framework.pdf accessed 5 May 2025

219 FIFA, *Explanatory Notes on the Interim Regulatory Framework*, 11 https://digitalhub.fifa.com/m/74181ed7a6156d32/original/Explanatory-notes-on-the-interim-regulatory-framework.pdf accessed 5 May 2025

bargaining process. The measures do not provide legal certainty to professional footballers and do not reflect the judgement by the European Court of Justice.'[220]
Therefore, further amendments to the transfer regulations are needed to adequately address the interests of all stakeholders.

8.2 Collective agreements as an alternative model

In addition to the changes to the RSTP, a path toward better conditions in the transfer market could also be achieved through the possibility of collective bargaining agreements. This would finally bring players to the negotiation table regarding the transfer system.[221] Moreover, the European Court of Justice has already ruled that collective agreements between organisations representing employers and employees, although they inevitably have anti-competitive effects, are necessary to improve working conditions in the long term. As a result, such agreements do not fall under Article 101 TFEU, meaning no violation of EU competition law is expected for FIFA.[222]

However, FIFA itself would not be considered a suitable contracting party in this context, as it cannot clearly represent only the employers' or employees' side. Therefore, a collective agreement would only be possible between a global employers' organization of clubs on one side and a players' union such as FIFPro on the other. Currently, however, a problem exists in that FIFPro does not represent relevant countries such as Germany or Brazil.[223]

Thus, while a solution through collective agreements is conceivable, clubs and players worldwide would need to come together in interest groups and unions to enable a globally uniform legal treatment of transfers. Due to the still insufficient organization of such

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[220] *FIFPRO: FIFA Temporary Transfer Changes After Diarra Ruling* (ESPN, 23 December 2024) https://www.espn.com/soccer/story/_/id/43130430/fifpro-fifa-temporary-transfer-changes-diarra-ruling accessed 5 May 2025

[221] Antoine Duval, 'Football at a Crossroads' (Verfassungsblog, 25 October 2024) https://verfassungsblog.de/football-at-a-crossroads/ accessed 5 May 2025

[222] Case C-318/07 *Persche* [2009] ECLI:EU:C:2009:33, para 50; Mark-E Orth, 'EU-Rechtswidrigkeit von Bestimmungen des FIFA-RSTS ('Diarra')' (2024) SpuRt 487, 499

[223] Mark-E Orth, 'EU-Rechtswidrigkeit von Bestimmungen des FIFA-RSTS ('Diarra')' (2024) SpuRt 487, 500

associations worldwide, while such a collective agreement solution is possible for the future, it does not offer much help in addressing the immediate regulatory needs.

8.3 Objectification of compensation payments

Regarding the criteria that should apply to compensation payments made to their former club by a player in breach of contract, the CJEU has expressed significant criticism. In particular, the criterion of the 'specifics of sport' is seen by the CJEU as 'unpredictable and difficult to control', making it unsuitable for ensuring the regularity of football competitions.[224] Furthermore, going forward, the player's salary at their future club can no longer be considered, as it is an external factor in relation to the contract between the player and their former club.[225] Additionally, the costs and expenses that the former club paid during the player's transfer cannot be passed on to the player through the compensation payment, as these sums were negotiated by other parties and in their own interests.[226]

As a result, the Diarra ruling raises the question of what can actually be a permissible criterion for calculating the amount of compensation. The CJEU's ruling does not provide clear statements on this matter. However, from the combination of the CJEU's criticism that 'actual compliance with the applicable national law' has not been ensured, and the contradictory legal situation in Belgium, where the amount of compensation corresponds only to the salary owed until the end of the terminated employment contract, a certain interpretation can be derived. The legal situation in Belgium appears to be accepted by the CJEU, as it points out that Belgian law 'does not include any elements [in the calculation of compensation] that have

[224] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 106; Philipp S Fischinger and Frank Rybak, 'Die Folgen des Diarra-Urteils des EuGH für die verbandsrechtliche Sanktionierung vertragsbrüchiger Fußballprofis' (2024) SpuRt 434, 438

[225] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 107; Philipp S Fischinger and Frank Rybak, 'Die Folgen des Diarra-Urteils des EuGH für die verbandsrechtliche Sanktionierung vertragsbrüchiger Fußballprofis' (2024) SpuRt 434, 438

[226] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 107; Philipp S Fischinger and Frank Rybak, 'Die Folgen des Diarra-Urteils des EuGH für die verbandsrechtliche Sanktionierung vertragsbrüchiger Fußballprofis' (2024) SpuRt 434, 438

nothing to do with the employment relationship resulting from the contract.'[227] If this were taken as the basis then, for example, if there were 12 months remaining on the contract and the monthly salary were €500,000, the compensation would amount to six million euros, with further questions arising about whether gross or net salary should be used and whether bonus payments can be included in the calculation.[228] Regardless of these subsequent questions, using the remaining term of the contract in combination with the salary stipulated in the contract seems appropriate for calculating compensation.

The CJEU's objection that of national law is not sufficiently reflected in the calculation of compensation could also be interpreted to mean that national law should set a ceiling for the respective compensation claims. However, this is not to be recommended, especially in light of the potential fragmentation of legal systems. If national differences existed for the upper limit of a compensation payment in each country, it would create a legal patchwork that would either benefit or disadvantage clubs, depending on the provisions of a given country's national law. That legal situation would not be desirable for the CJEU under the principle of equal competitive opportunity.[229]

Therefore, the contractually agreed salary, combined with the remaining contract term, is an appropriate objective criterion. Furthermore, investments that have been made in the player and have not yet been amortised by the time of the contract's termination could potentially be compensable. The market value of a player might also play a role in the compensation, provided that it can be determined objectively. Criteria such as the player's age, appearances, performance data, or international team appearances could be used in this regard. However, to prevent an unlimited increase based on other criteria aside from salary and the remaining contract term, a cap should be set for the compensation. This could be structured so that the amount of compensation cannot exceed the remaining salary demands by more than 100%.

[227] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 135; Philipp S Fischinger and Frank Rybak, 'Die Folgen des Diarra-Urteils des EuGH für die verbandsrechtliche Sanktionierung vertragsbrüchiger Fußballprofis' (2024) SpuRt 434, 438

[228] Philipp S Fischinger and Frank Rybak, 'Die Folgen des Diarra-Urteils des EuGH für die verbandsrechtliche Sanktionierung vertragsbrüchiger Fußballprofis' (2024) SpuRt 434, 438

[229] Philipp S Fischinger and Frank Rybak, 'Die Folgen des Diarra-Urteils des EuGH für die verbandsrechtliche Sanktionierung vertragsbrüchiger Fußballprofis' (2024) SpuRt 434, 439

This would fulfil the CJEU's demand for objective criteria for determining compensation, allow clubs to continue demanding significant compensation sums from players in breach of contract, and provide players with a benchmark for the financial risks they face in the event of contract termination.

8.4 Liability and sporting sanctions for clubs

From the perspective of clubs wishing to sign a player in breach of contract, the legal situation will relax significantly. Joint and several liability can no longer be implemented in accordance with EU law due to the Diarra ruling if it is based on a rebuttable presumption. New clubs will only be at risk of joint and several liability for the player's compensation payments to their former club if the former club manages to prove that the new club induced the player to breach their contract. However, such proof will often be difficult to provide, which means that clubs taking on players in breach of contract will face lower financial risks.

The same applies to clubs regarding the risk of being affected by sporting sanctions, such as transfer bans. While the CJEU has not generally declared such sanctions to be in violation of EU law, the presumed instigator role of the clubs had previously led to excessive burdens of risk. Consequently, such sporting sanctions are no longer possible unless it is proven that the new club induced the player to breach their contract with the former club.

8.5 Ensuring contract stability

As outlined in FIFA's argumentation, a certain level of contract stability is essential for a functioning transfer system. Without it, there would be a risk of distorting sporting competition, as team rosters could constantly be reshuffled, or players could play for competing clubs within a single season. The CJEU also acknowledges in its Diarra ruling that a certain degree of stability in team rosters and the integrity of the competition are legitimate objectives.[230] However, the CJEU limits these goals to the phases 'during the season or even a

[230] Martin Fröhlich and Jeremy Bister, 'Doppelpass zwischen Bosman und Diarra? Das FIFA-Urteil des Europäischen Gerichtshofs und die Folgen für das internationale Spielertransfersystem der FIFA' (2025) EuZA 35, 42

particular year'.[231] This suggests that the ruling should be understood to mean that competition within an ongoing season can be protected, but not beyond that. During an ongoing season, regulations can exist that prevent a player from being registered for a new club. However, at the start of a new season, such registration must always be possible.[232]

Furthermore, the CJEU states that 'the classical mechanisms of contract law, such as the club's right to compensation in the event of a contract breach by one of its players, which may occur due to instigation by another club and in disregard of the terms of the contract, are sufficient to ensure, on the one hand, the player's permanent stay with the original club in accordance with the contract and, on the other hand, the normal functioning of the market mechanisms between clubs, […].'[233] From this, one might conclude that the CJEU fundamentally believes that, besides paying compensation, no further leverage is needed for clubs.

However, the need for stability and consistency in professional rosters is still very understandable from the perspective of clubs. In the future, clubs will no longer be able to rely on strict sanctions and uncontrolled high compensation payments to bring stability to their professional rosters. Instead, a new perspective on the relationship between the player and the employing club is required. This should be more aligned with the normal structures of regular employment relationships. Because, in the 'normal' labour market, it holds true that only employers who create better offers for employees will have satisfied employees who are willing to stay with the same employer for the long term. These employees remain loyal to their employer because the employer offers the more attractive overall package, not because they are effectively forced to stay due to a system based on high compensation payments and harsh sanctions in case of termination. To achieve this goal, it is crucial that clubs begin to think about alternative concepts for employee retention.

[231] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 144

[232] Martin Fröhlich and Jeremy Bister, 'Doppelpass zwischen Bosman und Diarra? Das FIFA-Urteil des Europäischen Gerichtshofs und die Folgen für das internationale Spielertransfersystem der FIFA' (2025) EuZA 35, 43; Philipp S Fischinger and Frank Rybak, 'Die Folgen des Diarra-Urteils des EuGH für die verbandsrechtliche Sanktionierung vertragsbrüchiger Fußballprofis' (2024) SpuRt 434, 442

[233] Case C-650/22 *Diarra* [2024] ECLI:EU:C:2024:824, para 145

In this context, both financial incentives and other considerations can play a role. For example, clubs can integrate loyalty bonuses into player contracts, promising players a 20 percent bonus on their annual salary if they fulfil their contract. Additionally, such bonuses can, of course, be tied to other achievements, such as a certain number of European Cup matches.

In addition to these financial incentives, fostering social integration into the region or offering family support can serve as motivation for long-term retention. For some players, there is also the opportunity to offer a career within the club beyond their active playing career, thus creating additional binding effects.

These examples demonstrate that there are many ways to create longer term player allegiance to a club. However, clubs must use these options more effectively to compensate for the loss of pressure from compensation payments and sporting sanctions in the future. Through this approach, clubs will still be able to retain players long-term and achieve a certain level of stability in their team rosters.

8.6 Solidarity mechanisms

The payment of transfer fees is expected to decrease in the future. This leads to the problem that the previous solidarity mechanisms of the FIFA transfer system will no longer apply. As outlined above, these mechanisms involved the redistribution of funds to less financially strong clubs and leagues, which were linked to a percentage of the transfer fees paid. The associated goal of making international football financially sustainable across its breadth now requires new solutions. Support for smaller clubs and leagues through the percentage allocation of transfer fees will need to be maintained or supplemented in some way.

Several options can be considered for such a supplement. One possibility would be the introduction of a central compensation fund, financed by percentage contributions from salaries, sponsorship revenues, or national TV rights. This fund, managed by FIFA, would then be distributed on a solidarity basis among training clubs and smaller leagues.
National associations could also be more strongly obligated to ensure, through licensing requirements, that financially strong clubs reinvest in the training systems in their player's countries of origin.

Regardless of which approach is ultimately chosen to achieve the goal, it is clear that the solidarity mechanisms will need to be revised.

8.7 Proposal for the new FIFA regulations

The following section presents proposals for a new legal framework for a future FIFA transfer system, based on the expected changes. These draft provisions attempt to integrate the legal criticisms of the Diarra ruling and address the consequences for the solidarity mechanisms.

Art. 17 – Consequences of contract termination without just cause

(1) General provisions

If a contract is terminated without just cause, the party responsible for the breach may be obligated to pay compensation. The amount of compensation shall be determined solely based on objective and, foreseeable criteria as set out in paragraph 2.

(2) Determination of compensation

The compensation may take the following elements into account:

> *a. The portion of a player's fixed salary outstanding at the time of contract termination, up to a maximum of the original contract end date;*
>
> *b. Verifiable investments made by the club in the player;*
>
> *c. Any potential market value may only be considered if it can be determined using objective, verifiable parameters.*

The total compensation shall not exceed 100% of the player's outstanding net salary at the time of contract termination.

(3) Joint and several liability

The new club shall not be jointly and severally liable for the compensation with the player, unless there is evidence of intentional inducement to breach the contract.

(4) Sporting sanctions

Sporting sanctions against the new club may only be imposed if the club has been proven to have actively induced the player to breach the contract. The sanction may take the form of a registration ban for two transfer periods.

Art. 9 – International Transfer Certificate (ITC)

(1) Issuance of ITC in case of contract disputes

In the event of disputes regarding the legality of the contract termination, the former club may not unilaterally block the issuance of the ITC.

(2) Provisional release

If the ITC is not issued within 72 hours of the application, a provisional release will automatically occur through the Transfer Matching System, valid until the end of the season.

Art. 21 – Solidarity contribution on player salaries

(1) All clubs that sign players with international eligibility are required annually to pay an amount equal to 1% of the total gross salaries of their professional squad into a solidarity fund managed by FIFA.

(2) This fund is intended for the proportional distribution to training clubs worldwide, based on the number of years and the duration of training of registered international players in the age categories U12 to U21.

(3) The distribution will occur automatically based on electronic player passports (FIFA Clearing House) and independently of a transfer or a transfer fee.

(4) The fully transparent fund report must be published on an annual basis.

9. Conclusion

This master's thesis examined the question of whether FIFA's current transfer system, particularly as shaped by Article 17 of the 'Regulations on the Status and Transfer of Players', is compatible with the relevant provisions of European Union law. It also investigated whether this system can remain in place in a legally compliant manner and explore the far-reaching and structural adjustments necessary for such continuation. Additionally, the hypothesis was put forward that the Diarra judgment by the Court of Justice of the European Union represents a turning point that shifts the balance of power for players and clubs and will, in the long term, lead to a liberalisation of the transfer market. This development is expected to be reflected in declining transfer fees and more frequent player movements. This research question was examined through a legal-dogmatic and systems-analytical approach.

At the centre of the analysis was Article 17 of the RSTP, which provides for extensive financial and sporting sanctions in cases where a player breaches a contract and moves to another club. The legal analysis of the Diarra ruling clearly showed that this provision is incompatible with EU law in several respects. Both with regard to the free movement of workers under Article 45 TFEU and to European competition law under Article 101 TFEU, the current version of the RSTP violates fundamental principles of European Union law. Although the integrity of club competitions, understood as their proper and orderly functioning, constitutes a legitimate objective that may in principle justify special rules, the extensive sanctioning of contract terminations 'without just cause' constitutes a serious interference with the professional freedom of football players lacking in due proportionality. Furthermore, the threat of joint liability and sporting sanctions imposed on receiving clubs represents a measure capable of unlawfully restricting competition in the transfer market.

The CJEU judgment in the Diarra case confirms the hypothesis formulated at the outset in essential respects. The Court not only declared key elements of Article 17 RSTP incompatible with EU law but also once again sent a clear signal to sports associations that even internationally norm-setting organisations such as FIFA are subject to the control of European Union law. The Diarra judgment thus forms part of a series of landmark sports law decisions such as Bosman, Meca-Medina and Super League . Once again, the Court emphasised that the partial autonomy of sport and its associations ends where it conflicts with higher-ranking European law.

The analysis also confirms the anticipated shift in the balance of power between players and clubs. Players are gaining new options, their contractual autonomy is being strengthened and the likelihood of more frequent transfers without severe consequences is increasing. It also appears plausible that the current system of high transfer fees will come under pressure. As the disciplinary function of the current transfer rules has lost legal legitimacy, this is likely to lead to a structural liberalisation of the market. The beginning of this process is already apparent in FIFA's initial draft of transitional transfer rules for January 2025 and in the launch of a dialogue forum involving all stakeholders. FIFA itself appears to have recognised, in view of the Diarra judgment, that new mechanisms are required to ensure the proper and orderly functioning of club competitions.

At the same time, the thesis shows that this transformation is not without risk.
In the view of many clubs, the abolition or limitation of existing sanction mechanisms threatens the predictability of long-term contracts and the consistency of squad structures. Furthermore, training clubs and economically weaker leagues are at particular risk of incurring financial disadvantages in the face of shrinking transfer revenues if new and fair compensation mechanisms are not introduced. It will be FIFA's responsibility to address and prevent such adverse developments as part of the system's reform.

In summary, this thesis concludes that the present transfer system, specifically given its failure to comply with European Union law, cannot continue to exist in its current form. A fundamental revision of essential components of the system is therefore necessary, especially of Article 17 RSTP. A future FIFA transfer system must ensure both the protection of contractual obligations and the professional freedom of players. Clubs must also not be disproportionately restricted in their competitive freedom to recruit players. Reform of this sort will require structural changes such as the development of objective models for calculating compensation payments, the creation of clear and proportionate sanction mechanisms and the strengthening of solidarity-based redistribution systems in favour of economically weaker stakeholders. The promotion of collective bargaining regulations could also contribute to a more balanced and legally robust system.

The CJEU decision in the Diarra case therefore not only marks the end of the existing transfer system but also the beginning of necessary transformation. Although this transformation will require a significant effort from all parties involved, it also offers the opportunity to establish a fairer, more transparent and freer model for international professional football in which players are no longer perceived merely as investment assets for commercial enterprises.

In this context, the present master's thesis has not only identified the legal challenges and foreseeable consequences of the system's incompatibility with European Union law but has also outlined initial solution approaches that may serve as a point of reference in current reform discussions. In doing so, it contributes to the further legal development of a central and economically significant field within international sports.

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Abstract (English)

This master's thesis examines whether the current transfer system in professional football, in particular Article 17 of the FIFA Regulations on the Status and Transfer of Players (RSTP), complies with European Union law. The starting point is the ruling of the Court of Justice of the European Union in the Diarra case, which declared key provisions of Article 17 incompatible with European Union law. The focus lies on the compatibility with the free movement of workers under Article 45 TFEU as well as competition law under Article 101 TFEU. The thesis concludes that the current system can only be made legally compliant through profound structural reforms. The extensive sanctions imposed in cases of contract termination 'without just cause' in particular violate the principle of proportionality and unjustifiably restrict both the professional freedom of players and competition among clubs. The Court's decision marks a turning point and could, similarly to the Bosman ruling, initiate a liberalisation of the transfer market. At the same time, the analysis reveals the risks of such a systemic change, for example for training clubs or economically weaker leagues. Proposed solutions include legally secure compensation models, proportionate sanction mechanisms, and solidarity-based redistribution systems. Thus, this thesis contributes to the legal development of a regulatory area essential to international sport and provides impetus for the ongoing reform discussion.

Abstract (Deutsch)

Diese Masterarbeit untersucht, ob das derzeitige Transfersystem im professionellen Fußball, insbesondere Artikel 17 des FIFA-Reglements bezüglich des Status und Transfers von Spielern (RSTS), mit dem Unionsrecht vereinbar ist. Ausgangspunkt ist das Urteil des Europäischen Gerichtshofs im Fall Diarra, das zentrale Regelungen des Artikels 17 für unionsrechtswidrig erklärt. Im Fokus stehen die Vereinbarkeit mit der Arbeitnehmerfreizügigkeit gemäß Artikel 45 AEUV sowie mit dem Wettbewerbsrecht nach Artikel 101 AEUV. Die Arbeit gelangt zu dem Ergebnis, dass das aktuelle System nur durch tiefgreifende strukturelle Reformen rechtskonform ausgestaltet werden kann. Besonders die weitreichenden Sanktionen bei Vertragsbrüchen 'ohne triftigen Grund' verstoßen gegen den Grundsatz der Verhältnismäßigkeit und schränken sowohl die berufliche Freiheit der Spieler als auch den Wettbewerb zwischen den Vereinen unzulässig ein. Die Entscheidung des Gerichtshofs markiert einen Wendepunkt und könnte ähnlich wie das Bosman-Urteil eine Liberalisierung des Transfermarkts einleiten. Zugleich zeigt die Analyse die Risiken einer Systemumstellung auf, etwa für Ausbildungsvereine oder wirtschaftlich schwächere Ligen. Als Lösungsansätze werden unter anderem rechtssichere Kompensationsmodelle, verhältnismäßige Sanktionsmechanismen und solidarische Umverteilungssysteme diskutiert. Die Arbeit leistet somit einen Beitrag zur juristischen Aufarbeitung eines für den internationalen Sport essenziellen Regelungsbereichs und liefert Impulse für die derzeitige Reformdiskussion.