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FIFA TRANSFER REGULATIONS AND UEFA PLAYER ELIGIBILITY RULES: MAJOR CHANGES IN EUROPEAN FOOTBALL AND THE NEGATIVE EFFECT ON MINORS

Behind the European love affair with football¹—the packed stadiums, the rowdy fans, the time off from work to watch important matches—lies a significant dilemma: on one hand, fans want their teams to play at the highest competitive level, but on the other, they care about the backgrounds and nationality of the players on their locally-based teams.² This dilemma has led to the promulgation of various transfer regulations by the governing bodies of international football that control a player’s ability to transfer to a foreign team.³ The changing of these transfer regulations over time, however, has had a negative impact on many minors⁴ who play football. In particular, European football clubs have exploited various loopholes in the transfer regulations to recruit young foreign players and retain young local players.⁵ Some of these measures include creating jobs for the children’s parents so they can legally move to Europe,⁶ entering into contracts with minors at a young age,⁷ and using loopholes found in immigration laws throughout the European Union (“EU”).⁸ In the worst cases, unlicensed agents are trafficking minors from Africa to Europe.⁹ This Comment looks at the evolution of the regulations governing player mobility and its impact on minors.

The modern saga of who can play on which team began with the *Bosman* case,¹⁰ the seminal case that deals with transfer regulations in European football. The European Court of Justice (“ECJ”) decided the case in 1995.¹¹ *Bosman* created free transferability for players with expired contracts and

¹ In this Comment, the term “football” refers to American soccer.

² See Srikanth Iyer, *It’s All About Nationality*, ISPORT (Aug. 10, 2009, 11:43 PM), <http://www.isport.in/european-football/its-all-about-nationality-654>.

³ See *infra* Part III.

⁴ In this Comment, the term “minor” refers to persons under the age of eighteen.

⁵ See *infra* Part IV.

⁶ See *infra* Part IV.

⁷ See *infra* Part IV.

⁸ See *infra* Part V.A.

⁹ See *infra* Part V.B.

¹⁰ Case C-415/93, *Union Royale Belge des Sociétés de Football Ass’n ASBL v. Bosman*, 1995 E.C.R. I-5040.

¹¹ *Id.*

opened the door for the recruitment of foreign players¹²—including teenagers and even children. The ECJ based its decision on a fundamental right under the laws of the EU: the freedom of movement for workers between countries within the EU.¹³ After the *Bosman* case, Fédération Internationale de Football Association (“FIFA”),¹⁴ the organization governing world football, promulgated new transfer regulations, and the Union of European Football Associations (“UEFA”),¹⁵ the continental confederation that sits under FIFA and governs European football, promulgated new player eligibility restrictions.¹⁶ Unfortunately, these regulations did not resolve all the issues presented in *Bosman*, and in turn, created even greater issues in relation to minor football players. In an effort to create greater protection for minors, FIFA promulgated new regulations in October 2009.¹⁷ Although the effects of these regulations have yet to be seen, many strategies that clubs employ to obtain young players are outside the scope of FIFA’s control, and these problems need to be evaluated and fixed on a European and international scale. This Comment explores the problems and proposes solutions for FIFA and UEFA, the EU, and other international and independent organizations.

Part I gives a general overview of the organizations that govern international and European football and the EU institutions that play a role in European football. Part II discusses the history of football transfer regulations, with a particular focus on the ECJ’s ruling in the *Bosman* case. Part III explains the FIFA transfer regulations created after the *Bosman* case in 2001, FIFA’s amended transfer regulations of 2005, and UEFA’s player eligibility rules. Part IV discusses the football clubs’ reactions to these rules and their efforts to recruit and sign young talent. Part V analyzes the legal problems that result from the clubs’ actions within the framework of European and international law. Part VI discusses FIFA’s attempt to fix these problems with the 2009 transfer regulations, and points out potential problems. Finally, Part VII suggests solutions to the problems that should be implemented by FIFA and UEFA, the EU, and other international and independent organizations.

¹² See *infra* Part II.C.

¹³ *Bosman*, 1995 E.C.R. I-5068, I-5071.

¹⁴ For a more detailed description, see *infra* Part I.A.

¹⁵ *Id.*

¹⁶ See *infra* Part III.D.

¹⁷ FIFA, REGULATIONS FOR THE STATUS AND TRANSFER OF PLAYERS (2009) [hereinafter FIFA RSTP (2009)], available at http://www.fifa.com/mm/document/affederation/administration/66/98/97/regulationsstatusandtransfer_en_1210.pdf.

I. OVERVIEW OF THE INSTITUTIONS GOVERNING EUROPEAN FOOTBALL

This Part gives a general overview of the three main powers that influence the transfer regulations in European football: FIFA, UEFA, and the EU institutions. One main problem with the football transfer regulations results from the fact that the FIFA and UEFA regulations conflict with laws of the EU.¹⁸ Additionally, individual countries within the EU have different laws that FIFA and UEFA must take into account, which is discussed further in Part V.

A. *Governing Organizations of International and European Football: FIFA and UEFA*

The structure of international football is hierarchical.¹⁹ FIFA, the governing organization of international football, sits at the top of the hierarchy.²⁰ FIFA was created in 1904 under Swiss law to create an international structure for football.²¹ FIFA commits itself to constantly improving the sport.²² The FIFA Statutes form the overarching document guiding FIFA's governing system.²³ The governing system is divided into separate bodies that have the appropriate powers to create a system of checks and balances.²⁴ It consists of four general bodies:²⁵ the Congress,²⁶ the Executive Committee,²⁷ the general secretariat,²⁸ and standing and ad-hoc committees.²⁹ For the purposes of this Comment it is important to note that the Executive Committee "regulate[s] the status of [p]layers and the provisions for their transfer,"³⁰ and that the Players' Status

¹⁸ See *Bosman*, 1995 E.C.R. I-5040.

¹⁹ Lindsey J. Meân, *Making Masculinity and Framing Femininity: FIFA, Soccer, and World Cup Websites*, in EXAMINING IDENTITY IN SPORTS MEDIA 65, 66 (Heather L. Hundley & Andrew C. Billings eds., 2010).

²⁰ *Id.*

²¹ *The Federation*, FIFA.COM, <http://www.fifa.com/aboutfifa/federation/index.html> (last visited Jan. 28, 2011).

²² FRANS DE WEGER, *THE JURISPRUDENCE OF THE FIFA DISPUTE RESOLUTION CHAMBER 1* (2008).

²³ FIFA, *FIFA STATUTES: REGULATIONS GOVERNING THE APPLICATION OF THE STATUTES STANDING ORDERS OF THE CONGRESS* (2009) [hereinafter *FIFA STATUTES*], available at http://www.fifa.com/mm/document/affederation/federation/01/24/fifastatuten2009_e.pdf.

²⁴ *Id.* art. 21.

²⁵ *Id.*

²⁶ Under the FIFA Statutes, "Congress is the supreme and legislative body." *Id.* art. 21(1).

²⁷ The Executive Committee "is the executive body." *Id.* art. 21(2). It "consists of 24 members: 1 President elected by Congress, 8 vice-presidents, and 15 members, appointed by the Confederations and [National] Associations." *Id.* art. 30(1).

²⁸ The general secretariat acts as "the administrative body." *Id.* art. 21(3).

²⁹ The standing and ad hoc committees "advise and assist the Executive Committee in fulfilling its duties." *Id.* art. 21(4).

³⁰ *Id.* art. 5.

Committee is the standing committee that is responsible for monitoring compliance with the transfer regulations.³¹

Below FIFA sit six confederations that are divided roughly by continent, which create the next level of the hierarchy.³² Each continental confederation has a governing body similar to FIFA's and can create separate rules and regulations so long as they are not in conflict with FIFA's rules and regulations.³³ These continental confederations oversee the national associations, which are assigned to a confederation based on continent.³⁴ The national associations can also create separate rules and regulations so long as they are not in conflict with the corresponding confederation's rules or FIFA's rules.³⁵ As of the writing of this Comment, 208 national football associations are members of FIFA.³⁶ Each national association oversees all the individual clubs, which are separated into divisions based on their level of competition.³⁷ Finally, the individual players are divided among all the clubs.³⁸

UEFA is one of the six confederations under FIFA and one of the largest in terms of strength and wealth.³⁹ As of 2011, UEFA oversees fifty-three national football associations.⁴⁰ UEFA administers football games through the national associations and through its own competitions.⁴¹ UEFA has a governing structure similar to FIFA's that consists of four "organs" that UEFA may act through.⁴² These organs are the Congress,⁴³ the Executive Committee,⁴⁴ the

³¹ *Id.* art. 49.

³² These continental confederations include: Confederación Sudamericana de Fútbol ("CONMEBOL"), Asian Football Confederation ("AFC"), Union des Associations Européennes de Football ("UEFA"), Confédération Africaine de Football ("CAF"), Confederation of North, Central American and Caribbean Association Football ("CONCACAF"), and Oceania Football Confederation ("OFC"). *Id.* art. 20(1).

³³ *See id.* art. 20(3)–(5).

³⁴ FIFA may give confederations authority to grant membership to a national association that is not geographically located within its continent. *Id.* art. 20(2).

³⁵ *See id.* arts. 12–13 (explaining Members' rights and duties in relation to FIFA).

³⁶ *FIFA's Member Associations*, FIFA.COM, <http://www.fifa.com/aboutfifa/federation/associations.html> (last visited Jan. 28, 2011).

³⁷ *See, e.g.*, JOSÉ LUIS ARNAUT, *INDEPENDENT EUROPEAN SPORT REVIEW* 57 (2006).

³⁸ *Id.*

³⁹ *UEFA*, ECONOMICEXPERT.COM, <http://www.economicexpert.com/a/UEFA.html> (last visited Jan. 28, 2011); *UEFA*, SOLAR NAVIGATOR, <http://www.solarnavigator.net/sport/UEFA.htm> (last visited Jan. 28, 2011).

⁴⁰ *About UEFA*, UEFA.COM, <http://www.uefa.com/uefa/aboutuefa/index.html> (last visited Jan. 28, 2011).

⁴¹ *Id.*

⁴² *UEFA, UEFA STATUTES: RULES OF PROCEDURE OF CONGRESS REGULATIONS GOVERNING THE IMPLEMENTATION OF THE STATUTES 12 (2007)* [hereinafter *UEFA Statutes*], available at <http://www.uefa.com/newsfiles/19081.pdf>.

⁴³ The Congress is "the supreme controlling Organ of UEFA." *Id.*

President,⁴⁵ and the Organs for the Administration of Justice.⁴⁶ This separation of powers guarantees a system of checks and balances similar to FIFA's.⁴⁷

B. *European Union Institutions*

The European Union is the product of economic and political regional integration.⁴⁸ As of the writing of this Comment, the EU has twenty-seven member states.⁴⁹ This unionization results in the creation and implementation of laws and policies that sit above the national laws and policies of the member states.⁵⁰ The EU has five institutions responsible for governing the European Community.⁵¹ These institutions are the European Parliament, the European Council, the European Commission, the European Court of Justice, and the European Court of Auditors.⁵² The institutions most relevant in the discussion of European football are the European Commission (the "Commission"), the European Parliament, and the ECJ.

The Commission is "the executive-bureaucratic arm" of the EU.⁵³ It focuses on representing the interests of the EU in its entirety.⁵⁴ The Commission drafts and proposes laws and policies to the European Parliament and European Council⁵⁵—two institutions that often jointly pass EU

⁴⁴ The Executive Committee "consist[s] of the President and fifteen other members elected by a Congress." *Id.* at 16. It has "the power to make decisions on all matters which do not fall within the legal or statutory jurisdiction of the Congress or another Organ." *Id.*

⁴⁵ For the purposes of this Comment, it is important to note that the President is responsible for relations between UEFA and FIFA. *Id.* at 19. The President also serves as the chair at the Congress and meetings of the Executive Committee. *Id.* at 19

⁴⁶ The "Organs for the Administration of Justice are: the Control and Disciplinary Body; the Appeals Body; [and] the Disciplinary Inspector." *Id.* at 20.

⁴⁷ ARNAUT, *supra* note 37, at 58.

⁴⁸ See JOHN MCCORMICK, UNDERSTANDING THE EUROPEAN UNION 25 (Neill Nugent, William E. Patterson & Vincent Wright eds., 2005) (1999) (concluding that the EU is the world's most evolved example of regional integration).

⁴⁹ *The 27 Member Countries of the European Union*, EUROPA, http://europa.eu/about-eu/27-member-countries/index_en.htm (last visited Jan. 28, 2011).

⁵⁰ MCCORMICK, *supra* note 48, at 25.

⁵¹ *Institutions of the European Union*, EUROPA, http://europa.eu/institutions/inst/index_en.htm (last visited Jan. 28, 2011).

⁵² *Id.*

⁵³ MCCORMICK, *supra* note 48, at 82.

⁵⁴ *The European Commission*, EUROPA, http://europa.eu/institutions/inst/comm/index_en.htm (last visited Jan. 28, 2011).

⁵⁵ *Id.*

legislation.⁵⁶ Once these laws and policies are adopted, the Commission oversees their execution.⁵⁷

The ECJ is the highest judicial body of the EU.⁵⁸ Its goal is to ensure that the member states of the EU uniformly apply EU legislation.⁵⁹ The ECJ also ensures that national and European laws are consistent with EU treaties.⁶⁰ The ECJ has the power to settle legal disputes between member states, institutions, businesses, and individuals.⁶¹ The Court's decisions regarding European sport and the free movement of workers in the EU are of particular importance and are discussed further throughout this Comment.⁶²

II. HISTORY OF THE TRANSFER SYSTEM IN EUROPEAN FOOTBALL AND THE *BOSMAN* CASE

This Part first gives an overview of the early transfer regulations used by FIFA and UEFA and also describes the problems that the regulations posed for players. This Part then focuses on the case of a particular football player, Jean-Marc Bosman, who fought for his rights through the court systems until the ECJ ruled that the transfer regulations violated EU law.⁶³ Specifically, the ECJ held that requiring transfer fees for out-of-contract players and establishing quotas that limit the number of foreign players on a team violate the fundamental right of freedom of movement for EU workers.⁶⁴ Finally, this Part discusses the decision's immediate effects on the transfer of players in European football.

⁵⁶ *Welcome to the European Parliament*, EUR. PARLIAMENT, <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?jsessionid=A8C681059D7F888873A6DE9332C56FEF.node2?id=146&language=en> (last visited Jan. 28, 2011).

⁵⁷ MCCORMICK, *supra* note 48, at 82.

⁵⁸ Karen Yvonne Crabbs & Jack J. Coe, Jr., *The European Union: An Introduction to Supra-national Law in Europe*, in I LEGAL ASPECTS OF DOING BUSINESS IN EUROPE 37, 45 (Christian Campbell ed., 2007).

⁵⁹ *The Court of Justice*, EUROPA, http://europa.eu/institutions/inst/justice/index_en.htm (last visited Jan. 28, 2011).

⁶⁰ MCCORMICK, *supra* note 48, at 100.

⁶¹ *The Court of Justice*, EUROPA, *supra* note 59.

⁶² *See, e.g., infra* Part II.B.

⁶³ *See infra* Part II.B.

⁶⁴ Case C-415/93, *Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman*, 1995 E.C.R. I-5040, I-5073, I-5078.

A. *Transfer Regulations Before Bosman*

The original FIFA transfer regulations permitted each continental confederation to create its own transfer regulations under the broad FIFA transfer regulations.⁶⁵ UEFA took advantage of this right and enforced its own transfer regulations for its national associations.⁶⁶ Two of these regulations became topics of dispute. The first regulation gave each player a right to transfer to a foreign club when his contract with his then-current club expired,⁶⁷ but required the player's new club to pay the player's former club a transfer fee.⁶⁸ UEFA created the transfer fee to compensate the former club for the player's training and development costs.⁶⁹ In actuality, clubs generally required transfer fees that exceeded the cost of a player's training and development.⁷⁰ This was a great benefit and a source of revenue for the player's former club, and not surprisingly a burden for the new club.

The second UEFA regulation, colloquially called the "3+2 rule," required national associations to limit the number of foreign players on a club during a first division match to three foreign players plus two "assimilated" players.⁷¹ Assimilated players were foreign players who continuously played with a national association for five years.⁷² The assimilated players had to complete three of those five years on a junior team.⁷³

Just as the FIFA regulations permitted each continental confederation to establish transfer regulations, UEFA permitted its national associations to create their own transfer regulations.⁷⁴ In accordance with the hierarchy of international football, the national association's transfer regulations must not conflict with the FIFA and UEFA transfer regulations.⁷⁵ FIFA regulations also provided that an international transfer could only take place if "the former

⁶⁵ *Id.* at I-5047.

⁶⁶ Amikan Omer Kranz, *The Bosman Case: The Relationship Between European Union Law and the Transfer System in European Football*, 5 COLUM. J. EUR. L. 431, 435 (1999).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See STEFAAN VAN DEN BOGAERT, PRACTICAL REGULATION OF THE MOBILITY OF SPORTSMEN IN THE EU POST *BOSMAN* 210 (2005).

⁷¹ Case C-415/93, *Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman*, 1995 E.C.R. I-5040, I-5073, I-5078; Kranz, *supra* note 66, at 435.

⁷² Kranz, *supra* note 66, at 435.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See *supra* Part I.A.

national association issued a transfer certificate acknowledging that all financial commitments, including any transfer fee, had been settled.⁷⁶ Therefore, a player could not transfer if the national association governing the club withheld a transfer certificate. These transfer regulations limited players' career choices and gave the associations and clubs great power over the players.

B. *The Bosman Case*

Not surprisingly, players disliked these regulations. One such player, Jean-Marc Bosman, a Belgian national, took his complaints to the local and national courts, and the national court submitted it to the ECJ.⁷⁷ Bosman played for Royal Club Liégeois SA ("RC Liège"), a Belgian first division club that was subject to the Belgian national association's transfer regulations.⁷⁸ Bosman received an average monthly salary of 120,000 Belgian francs.⁷⁹ At the end of Bosman's original contract, RC Liège offered him a one-season contract.⁸⁰ The club, however, reduced his salary to the minimum permitted salary of 30,000 Belgian francs.⁸¹

Bosman refused RC Liège's offer and was placed on the compulsory transfer list,⁸² and then entered into the free transfer period.⁸³ During this period, US Dunkerque, a French second division club, contacted Bosman and offered him a significantly higher salary and a large signing bonus.⁸⁴ RC Liège doubted US Dunkerque's solvency and ability to pay the transfer fee, however, and refused to issue the transfer certificate required by FIFA regulations for international transfers.⁸⁵ Even though US Dunkerque wanted to sign Bosman,

⁷⁶ *Bosman*, 1995 E.C.R. at I-5047.

⁷⁷ *See generally id.*

⁷⁸ *Bosman*, 1995 E.C.R. at I-5050.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² If an out-of-contract player did not receive or accept a new contract from his former club, he was placed on the compulsory transfer list. *Id.* at I-5045. Other clubs could sign players on this list by paying the player's former club a pre-calculated transfer fee. *Id.*

⁸³ *Id.* at I-5050. If a player did not join a team by the end of the compulsory transfer period, then he entered into a free transfer period. *Id.* at I-5045. Despite the name, this period did not result in a "free" transfer. Rather, the player, his former club, and the new club had to settle on the transfer fee that the new club had to pay to the former club. *Id.*

⁸⁴ US Dunkerque offered Bosman a monthly salary of approximately 100,000 Belgian francs plus a signing bonus of approximately 900,000 Belgian francs. *Id.* at I-5050-51.

⁸⁵ *Id.* at I-5051.

he was ultimately left without a contract for the upcoming season.⁸⁶ To make matters worse, RC Liège suspended Bosman for the entire season.⁸⁷

After working its way through the court systems for five years, Bosman's case was heard by the ECJ.⁸⁸ The ECJ previously established jurisdiction over sports-related disputes in *Walrave v. Union Cycliste Internationale*.⁸⁹ In *Walrave*, the ECJ determined that sport is subject to European Community Law if it is considered "an economic activity within the meaning of Article 2 of the Treaty."⁹⁰ Although sport was not explicitly covered in European Community Law,⁹¹ the ECJ established jurisdiction over cases involving certain sports-related disputes by classifying them as an economic activity.⁹² Therefore, so long as the sport-related issue is considered an economic activity under European Community Law, the ECJ will have jurisdiction to hear the case.

In *Bosman*, the court upheld its jurisdiction over the case and determined that football constitutes an economic activity when the players are gainfully employed and receiving remuneration.⁹³ Two questions were presented to the ECJ regarding the applicability of particular transfer regulations under EU law.⁹⁴ Both questions were posed in light of the ECJ's interpretation of Articles

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Kranz, *supra* note 66, at 436.

⁸⁹ Case 36/74, *Walrave & Koch v. Association Union Cycliste Internationale*, 1974 E.C.R. 1405.

⁹⁰ *Id.* at 1417. In *Walrave* and in *Bosman*, the "Treaty" refers to the 1957 Treaty of Rome, which established the European Economic Community. This treaty was amended and renumbered in the Treaty of Amsterdam and was renamed the Treaty Establishing the European Community, which entered into force on May 1, 1999. As of December 1, 2009, however, the Treaty of Lisbon became the effective treaty, which renamed the Treaty Establishing the European Community to the Treaty on the Functioning of the European Union. See *Treaties and Law*, EUROPA, http://europa.eu/abc/treaties/index_en.htm (last visited Jan. 28, 2011). Therefore, the numbering of the articles that the ECJ used in *Bosman* has changed two times since the decision in 1995. This Comment refers to the articles as they are numbered in the Treaty on the Functioning of the European Union. See Consolidated Version of the Treaty on the Functioning of the European Union, Sept. 5, 2008, 2008 O.J. (C 115) 47 [hereinafter TFEU].

⁹¹ The Treaty of Rome and The Treaty of Amsterdam did not explicitly cover sports. See STEPHEN C. SIEBERSON, DIVIDING LINES BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES: THE IMPACT OF THE TREATY OF LISBON 235 (2008). Therefore, the ECJ had to gain jurisdiction over sports-related disputes through the economic provisions of the European Community Treaty. Under the Lisbon Treaty, however, sports are now mentioned. See TFEU art. 165(1).

⁹² *Walrave*, 1974 E.C.R. at 1417.

⁹³ Case C-415/93, *Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman*, 1995 E.C.R. I-5040, I-5063.

⁹⁴ *Id.* at I-5056.

45, 101, and 102 of the TFEU.⁹⁵ The ECJ first applied Article 45 to each question.⁹⁶ Article 45 requires the free movement of workers within the European Community.⁹⁷ Freedom of movement is a right granted to all nationals of member states. It permits them to move from their country of origin to another member state in pursuit of economic activity.⁹⁸ Article 45 also entails “the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.”⁹⁹

The ECJ first addressed whether the transfer regulations were an obstacle to free movement of players between clubs in that they permitted clubs to collect transfer fees for players who were no longer under contract.¹⁰⁰ Under Article 45, “[Freedom of movement for workers] shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: (a) to accept offers of employment actually made; (b) to move freely within the territory of Member States for this purpose”¹⁰¹ Supporters of the transfer fees argued that the regulations were necessary “to maintain a financial and competitive balance between clubs.”¹⁰² They also argued that the transfer fees support “the search for talent and the training of young

⁹⁵ *Id.*

⁹⁶ *Id.* at I-5062, I-5073–74.

⁹⁷ Article 45 of the TFEU reads as follows:

1. Freedom of movement for workers shall be secured within the Union.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
 - (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;
 - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.
4. The provisions of this Article shall not apply to employment in the public service.

TFEU art. 45.

⁹⁸ *Bosman*, 1995 E.C.R. at I-5068.

⁹⁹ TFEU art. 45.

¹⁰⁰ *Bosman*, 1995 E.C.R. at I-5062.

¹⁰¹ TFEU art. 45.

¹⁰² *Bosman*, 1995 E.C.R. at I-5057.

players.”¹⁰³ The court, however, agreed with Bosman who argued that the regulations did not create a financial or competitive balance between clubs.¹⁰⁴ The rich clubs were still able to obtain the most talented players and a club’s financial resources were still a factor in its level of competition.¹⁰⁵ Therefore, the ECJ concluded that Article 45 precludes sporting associations from requiring a transfer fee for a player who wants to transfer at the expiration of his contract,¹⁰⁶ that is, an “out-of-contract” transfer. The case did not address a player’s ability to move to another team when he is still under his current contract.¹⁰⁷

The second question focused on whether UEFA’s 3+2 rule obstructed the free movement of workers by limiting the number of non-national players allowed to play for a club in official matches.¹⁰⁸ The ECJ called these regulations nationality clauses.¹⁰⁹ Opponents of the nationality clauses relied on Article 45(2), which prohibits discrimination of workers in the European Union based on nationality because it obstructs the free movement for workers.¹¹⁰ Proponents of the nationality clauses argued that they were created on non-economic grounds to uphold the link between the players, the clubs, and their countries.¹¹¹ They claimed that the nationality clauses allowed clubs to properly represent their countries in international matches and helped the fans identify with the clubs.¹¹² These arguments failed, however, because these rules applied to all official matches, not just specialized international matches such as the World Cup, which require players to represent their national teams.¹¹³

The proponents of the nationality clauses also pointed out that the transfer rules were drafted in collaboration with the European Commission, which has the goal of proposing rules consistent with European law.¹¹⁴ In response to this argument, the ECJ pointed out that “the Commission may not give guarantees

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at I-5073.

¹⁰⁷ *See* DE WEGER, *supra* note 22, at 5.

¹⁰⁸ *Bosman*, 1995 E.C.R. at I-5073.

¹⁰⁹ *Id.* at I-5049.

¹¹⁰ *Id.* at I-5074; *see supra* note 97 and accompanying text.

¹¹¹ *Bosman*, 1995 E.C.R. at I-5075.

¹¹² *Id.*

¹¹³ *Id.* at I-5076.

¹¹⁴ *Id.*

concerning the compatibility of specific practices with the Treaty.”¹¹⁵ Additionally, the Commission never has the authority to support practices that contradict the Treaty.¹¹⁶ Therefore, the Court concluded that Article 45 precludes sporting associations from creating regulations that limit the number of players a club may field from outside its nation.¹¹⁷ The ECJ decided not to answer the two questions with respect to Articles 101 and 102 of the Treaty, which deal with competition law,¹¹⁸ because both of the regulations in question violated Article 45 of the Treaty.¹¹⁹

C. *Transfers After the Bosman Case*

The *Bosman* case was limited to “out-of-contract” players, that is, players whose contract had ended.¹²⁰ Because of the case’s limited application, FIFA and UEFA could still enforce transfer fees for players under contract.¹²¹ As a result, clubs began extending the terms of players’ contracts to prevent their players from moving to another team without being able to collect a transfer fee.¹²² Clubs even “forced players to sign a new contract before the old one expired.”¹²³ In an attempt to offset the revenue lost from out-of-contract transfer fees, clubs would charge huge transfer fees when players broke their contracts before the end of the term.¹²⁴ Although this replaced some of the lost income, it did not replace it all. The competitive imbalance began to increase. Small clubs that previously depended on transfer fees as a source of income were not receiving enough money to attract quality players.¹²⁵ The larger clubs could offer the best players better-paid contracts by diverting the money that

¹¹⁵ *Id.* at I-5078.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See TFEU arts. 101–02.

¹¹⁹ *Bosman*, 1995 E.C.R. at I-5078.

¹²⁰ DE WEGER, *supra* note 22, at 5.

¹²¹ *Id.*

¹²² *Id.*

¹²³ HANDBOOK ON THE ECONOMICS OF SPORT 640 (Wladimir Andreff & Stefan Szymański eds, 2006).

¹²⁴ DE WEGER, *supra* note 22, at 5; see also ROGER BLANPAIN, THE LEGAL STATUS OF SPORTSMEN AND SPORTSWOMEN UNDER INTERNATIONAL, EUROPEAN AND BELGIAN NATIONAL AND REGIONAL LAW 215 (2003).

¹²⁵ Simon Stone, *FIFA Fears for Small Clubs Over Transfer Abolition*, INDEPENDENT (Nov. 1, 2000), <http://www.independent.co.uk/sport/football/news-and-comment/fifa-fears-for-small-clubs-over-transfer-abolition-637523.html>.

was previously allocated to transfer fees to players' salaries.¹²⁶ Players' salaries also increased due to inflow of broadcasting revenues in the 1990s.¹²⁷

Additionally, the abolition of the 3+2 rule fostered an increase in international transfers.¹²⁸ There was "a 1,800 percent increase in foreign players in the [English] Premiership"¹²⁹ over the four years following the *Bosman* decision.¹³⁰ Clubs also began to enter into exchange agreements and form alliances with clubs from different national associations within Europe.¹³¹ Some European clubs exploited this opportunity by forming exchange agreements with other national associations within the EU that have more flexible nationality and work permit rules.¹³² This grants the clubs access to talented non-EU nationals who can achieve EU status more easily in a different EU country.¹³³ Clubs also began making deals with non-European clubs to expand their talent pools.¹³⁴ For example, Ajax of Amsterdam "entered into a franchise agreement in South Africa," giving them priority over new players who exhibit great potential.¹³⁵

The abolition of the 3+2 rule also led clubs to invest in foreign youth.¹³⁶ After the *Bosman* case, "clubs in countries such as Belgium, Denmark, France, Germany, the Netherlands, Sweden, and Switzerland, [saw] their young football talents 'stolen' by wealthier teams from England, Italy, and Spain who offer[ed] better-paid contracts."¹³⁷ Rather than spending more money on

¹²⁶ *Id.*

¹²⁷ Simon Gardiner & Roger Welch, 'Show Me the Money' Regulation of the Migration of Professional Sportsmen in Post-Bosman Europe, in PROFESSIONAL SPORT IN THE EU: REGULATION AND RE-REGULATION 107, 114 (Andrew Caiger & Simon Gardiner eds., 2000).

¹²⁸ *Id.*

¹²⁹ The Premiership, also known as the Premier League, is a division of twenty elite English football clubs. *About Us*, PREMIER LEAGUE, <http://www.premierleague.com/page/Contact> (last visited Jan. 28, 2011). The membership of these twenty clubs is dependent of their level of performance, and the clubs are technically shareholders of the Premier League. *Id.* The Premier League comes under the jurisdiction of the Football Association, the national football association for England, and UEFA. *See id.*

¹³⁰ Gardiner & Welch, *supra* note 127, at 117.

¹³¹ *Id.* at 114–15.

¹³² For example, the English club Manchester United likely entered into an agreement with Royal Antwerp, a Belgian club, because of their "more permissive nationality and work permits rules." *Id.*

¹³³ *Id.* at 115.

¹³⁴ *Id.*

¹³⁵ *Id.* This agreement is still in force, and the South African franchise Ajax Cape Town is still operating today. *See* AJAX CAPE TOWN, <http://www.ajaxct.com> (last visited Feb. 1, 2011).

¹³⁶ PAULO DAVID, HUMAN RIGHTS IN YOUTH SPORT: A CRITICAL REVIEW OF CHILDREN'S RIGHTS IN COMPETITIVE SPORTS 173–74 (2005).

¹³⁷ *Id.* at 174.

training academies¹³⁸ for their own players, clubs would scout foreign talent at the biggest youth competitions in Europe.¹³⁹ Clubs tended to favor this approach because of the greater certainty in recruiting young players who showed promise at these competitions.¹⁴⁰ Many clubs preferred investing in young foreign players rather than their own youth training academies.¹⁴¹ Investment in foreign youth, however, has led to harmful effects, particularly in creating an illegal market for fake agents to traffic minors from Africa to Europe.¹⁴²

III. FIFA AND UEFA TRANSFER REGULATIONS AFTER THE *BOSMAN* RULING

This Part discusses FIFA's initial defiance of the ruling in *Bosman* and its eventual compliance with the European Commission, which resulted in the creation of the FIFA Regulations for the Status and Transfer of Players in 2001.¹⁴³ These new regulations, however, did not sufficiently protect minors and resulted in some of the same negative effects, such as importing foreign youth discussed below in Part IV. FIFA revised the transfer rules again in 2005 and made significant changes to the transfer rules for minors.¹⁴⁴ These regulations were a step in the right direction, but significant problems remained. The regulations required clubs to ensure proper education and training for the minors in certain circumstances, but not all, and there were still enough loopholes in the system for clubs to continue to transfer minors internationally.¹⁴⁵ In 2005, UEFA created new player eligibility restrictions, which required clubs to reserve a certain number of spots on their roster for

¹³⁸ Most recently, FIFA has defined "training academy" as "an organisation or an independent legal entity whose primary, long-term objective is to provide players with long-term training through the provision of the necessary training facilities and infrastructure. This shall primarily include, but not be limited to, football training centres, football camps, football schools, etc." FIFA RSTP (2009), *supra* note 17, at 6.

¹³⁹ DAVID, *supra* note 136, at 173–74.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *See infra* notes 243–45 and accompanying text.

¹⁴³ DE WEGER, *supra* note 22, at 3.

¹⁴⁴ The FIFA Circular regarding the 2005 FIFA Regulations for the Status and Transfer of Players, however, did not mention that the rule changes were meant to protect minors. *See* Circular No. 959: FIFA Regulations for the Status and Transfer of Players, FIFA (Mar. 16, 2005), http://www.fifa.com/mm/document/affederation/administration/circular_959_en_92.pdf. *Cf.* Circular No. 1190: Revised Regulations on the Status of Transfers of Players—Protection of Minors, FIFA (May 20, 2009), <http://www.fifa.com/mm/document/affederation/administration/01/06/29/81/circularno.1190-revisedregulationsonthestatusandtransferofplayers-protectionofminors.pdf>. Rather, it focused more on jurisdictional issues regarding the Players' Status Committee and the Dispute Resolution Chamber. Circular No. 959: FIFA Regulations for the Status and Transfer of Players, *supra*.

¹⁴⁵ *See infra* note 186.

locally trained players, due to the influx of foreign players after the *Bosman* decision.

A. *FIFA's Regulations for the Status and Transfer of Players (2001)*

Despite all the problems resulting from the clubs' reactions to the *Bosman* decision, FIFA was reluctant to reform the transfer system, mainly because in-contract transfers constituted almost ninety percent of transfer revenues.¹⁴⁶ After many debates and negotiations between FIFA, UEFA, and the Commission, FIFA formalized new transfer regulations entitled the Regulations for the Status and Transfer of Players ("RSTP (2001)"), which entered into force in September 2001.¹⁴⁷ RSTP (2001) set forth five major provisions for the new transfer system.

First, the regulations required that the term of players' contracts be at least one year, but no more than five years.¹⁴⁸ This regulation was likely adopted to prevent clubs from creating overly long terms for players' contracts so that they would be more likely to get a transfer fee from a player who transferred before his contract expired. FIFA, however, also wanted to promote stability of players' contracts, which resulted in the creation of a protected period after a player signs his first professional contract during which he cannot unilaterally terminate the contract.¹⁴⁹ Depending on the player's age, this protected period would last two to three years.¹⁵⁰

Second, RSTP (2001) only permitted international transfers during two designated transfer windows per season. It created one short transfer window in the middle of each season and one longer transfer window before the start of each season.¹⁵¹ Each player could only transfer between national associations once during the season.¹⁵² Additionally, the shorter mid-season window was limited to transfers "for strictly sport-related reasons, such as technical adjustments to a team or the replacement of injured players, or in exceptional circumstances."¹⁵³

¹⁴⁶ James G. Irving, *Red Card: The Battle Over European Football's Transfer System*, 56 U. MIAMI L. REV. 667, 688–89 (2002).

¹⁴⁷ FIFA, REGULATIONS FOR THE STATUS AND TRANSFER OF PLAYERS (2001), reprinted in BLANPAIN, *supra* note 124, at 214 [hereinafter FIFA RSTP (2001)].

¹⁴⁸ *Id.* at 215.

¹⁴⁹ *Id.* at 219–24.

¹⁵⁰ *Id.* at 221.

¹⁵¹ *Id.* at 216.

¹⁵² *Id.*

¹⁵³ Irving, *supra* note 146, at 717.

Third, RSTP (2001) created a registration system that enabled FIFA and the national associations to keep track of the transfers.¹⁵⁴ The regulations required that each “player wishing to play . . . in any competition organized or recognized by a national association [be] registered with that association.”¹⁵⁵ A national association could only register a player from another association upon the receipt of an international registration transfer certificate from the player’s former association.¹⁵⁶ Unlike the transfer certificates that were held to violate the treaty in *Bosman*, issuance of an international registration transfer certificate “may not be made subject to any conditions” or fees.¹⁵⁷ A national association shall not issue the certificate, however, “if a contractual dispute has arisen in the context of the player changing clubs.”¹⁵⁸ In this situation, the association withholding the certificate must inform the requesting association of the contractual dispute with the player, and the requesting association may then request FIFA’s intervention.¹⁵⁹

Fourth, RSTP (2001) included a section dedicated to enhancing the protection of minors, defined as players under the age of eighteen.¹⁶⁰ The section had two parts. First, national associations within the EU or the European Economic Area (“EU/EEA”) were not permitted to register minors who were nationals of a country outside the EU/EEA.¹⁶¹ The only exception was for nationals outside of the EU/EEA who moved to a country within the EU/EEA for reasons unrelated to football.¹⁶² Second, players within the EU/EEA territory could be traded “between the minimum working age in the new training club’s country and the age of 18.”¹⁶³ Another provision also restricted clubs and minors from entering into a contract with a term longer than three years.¹⁶⁴ Therefore, a contract signed by a seventeen year-old player could last at its longest until the player reached the age of twenty.

Finally, RSTP (2001) created the FIFA Dispute Resolution Chamber (“DRC”) “to deal with disputes over compensation, sporting just cause, and

¹⁵⁴ FIFA RSTP (2001), *supra* note 147, at 216.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 218.

¹⁵⁸ *Id.* at 217.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 219–20.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 226.

mid-contract breaches.”¹⁶⁵ This arbitration system was created “[w]ithout prejudice to the right of any player or club to seek redress before a civil court in disputes between clubs and players.”¹⁶⁶ Additionally, “[t]he dispute resolution system and arbitration system [was to] take account of all relevant arrangements, laws and/or collective bargaining agreements, which exist at national levels, as well as the specificity of sport.”¹⁶⁷ RSTP (2001) also provided that parties were allowed to appeal the decisions of the DRC the Arbitration Tribunal for Football.¹⁶⁸

Since 2002, FIFA has recognized that the Court of Arbitration for Sport (“CAS”) exercises the jurisdiction of the Arbitration Tribunal for Football.¹⁶⁹ The International Olympic Committee created CAS in 1983 to serve as an international arbitration body for sports-related issues.¹⁷⁰ CAS’s main headquarters are in Lausanne, Switzerland, and additional courts are located in New York City and in Sydney.¹⁷¹ Although CAS does not generally act as a court of appeals, it agreed to do so for FIFA’s DRC. Under the August 2009 edition of the FIFA Statutes, FIFA empowers CAS “to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players’ agents.”¹⁷² A person must lodge an appeal with CAS within twenty-one days of notification of a final decision “passed by FIFA’s legal bodies . . . [or] Confederations, Members, or Leagues.”¹⁷³ The CAS Code of Sports-Related Arbitration provisions “shall apply to the proceedings [and] CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.”¹⁷⁴ Therefore, EU law does not play a significant role in CAS’s decisions.

¹⁶⁵ Irving, *supra* note 146, at 719.

¹⁶⁶ FIFA RSTP (2001), *supra* note 147, at 230.

¹⁶⁷ *Id.* at 231.

¹⁶⁸ *Id.*

¹⁶⁹ DE WEGER, *supra* note 22, at 40.

¹⁷⁰ Bruno Simma, *The Court of Arbitration for Sport*, in *THE COURT OF ARBITRATION FOR SPORT 1984–2004*, at 21, 21 (Jan S. Blackshaw et al. eds., 2006).

¹⁷¹ JEAN-LOUP CHAPPELET & BRENDA KÜBLER-MABBOT, *THE INTERNATIONAL OLYMPIC COMMITTEE AND THE OLYMPIC SYSTEM* 129 (2008).

¹⁷² FIFA STATUTES, *supra* note 23, at 44.

¹⁷³ *Id.* at 44.

¹⁷⁴ *Id.*

B. FIFA Regulations for the Status and Transfer of Players (2005)

In December 2004, FIFA revised RSTP (2001).¹⁷⁵ FIFA explained that the revisions were meant to clarify previous rules and create a more “user-friendly” structure.¹⁷⁶ These new regulations entered into force on July 1, 2005.¹⁷⁷ The new regulations were based on RSTP (2001), but made important changes with respect to the protection of minors.¹⁷⁸ This section focuses on those changes and gives a brief comparison with the RSTP (2001) provisions regarding minors. These new transfer regulations are referred to as RSTP (2005).¹⁷⁹

RSTP (2005) revised the regulations regarding the international transfer of minors that were set out in RSTP (2001).¹⁸⁰ Article 19(2) of RSTP (2005) prohibited international transfers for all players under the age of eighteen except for three enumerated circumstances:

- (a) The player’s parents move to the country in which the New Club is located for reasons not linked to football; or
- (b) The transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA) and the player is aged between 16 and 18 . . . ; or
- (c) The player lives no further than 50km from a national border, and the club for which the player wishes to be registered in the neighbouring Association is also within 50km of that border. The maximum distance between the player’s domicile and the club’s quarters shall be 100km. In such cases, the player must continue to live at home and the two Associations concerned must give their explicit consent.¹⁸¹

RSTP (2005) set an international standard of sixteen years old as the minimum age at which a player could transfer to another team within the

¹⁷⁵ DE WEGER, *supra* note 22, at 7.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Compare *supra* notes 160–64, with FIFA, REGULATIONS FOR THE STATUS AND TRANSFER OF PLAYERS (2005) [hereinafter FIFA RSTP (2005)], available at http://www.fifa.com/mm/document/affederation/administration/50/02/49/status_transfer_en_25.pdf.

¹⁷⁹ FIFA RSTP (2005), *supra* note 178, at 16–17.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 16. Under (b), the New Club must fulfill certain minimum obligations that involve a particular standard of football training, education, and living. See *infra* notes 187–88 and accompanying text.

EU/EEA.¹⁸² Under RSTP (2001), however, each country in the EU/EEA could establish its own minimum age according to its national laws.¹⁸³ RSTP (2005) also added a provision for minors who live within fifty to one hundred kilometers from another country's club.¹⁸⁴ Additionally, RSTP (2005) continued to prohibit minors from entering contracts with a term longer than three years.¹⁸⁵ According to FIFA, these regulations are intended "to safeguard the interests of young players and not hinder their progress through an excessive tie with a club."¹⁸⁶

The exception allowing players between the ages of sixteen and eighteen to transfer within the EU and the EEA is of particular importance to this Comment and is discussed further. For now, it is important to note that clubs that sign a player who falls into this category must meet four additional demands to ensure a legal transfer.¹⁸⁷ Most of these demands involve measures to protect the children. The new club must: (1) "provide the player with an adequate football education and/or training in line with the highest national standards;" (2) guarantee an education "which will allow the player to pursue a career other than football;" (3) ensure that the player "is looked after in the best possible way" by providing housing with optimal living standards, a club mentor, etcetera; and (4) provide its association with proof of compliance.¹⁸⁸ These requirements are definitely a step in the right direction toward stronger protection for minors, but is shown in Part IV that the rules are insufficient because they have too many loopholes that clubs can use to recruit international minors.¹⁸⁹

C. CAS Decision Expanding FIFA RSTP (2005)

In 2008, the CAS handed down a decision stating that the exceptions regarding the international transfer of minors under Article 19(2) of RSTP (2005) were not exhaustive, and FIFA could add two further exceptions

¹⁸² *Id.*

¹⁸³ FIFA RSTP (2001), *supra* note 147, at 220.

¹⁸⁴ FIFA RSTP (2005), *supra* note 178, at 16.

¹⁸⁵ *Id.* at 15.

¹⁸⁶ FIFA, COMMENTARY ON THE REGULATIONS FOR THE STATUS AND TRANSFER OF PLAYERS 53 (2006), available at http://www.fifa.com/mm/document/affederation/administration/51/56/07/transfer_commentary_06_en_1843.pdf.

¹⁸⁷ FIFA RSTP (2005), *supra* note 178, at 16.

¹⁸⁸ *Id.*

¹⁸⁹ *See infra* Part IV.

regarding students.¹⁹⁰ First, players can transfer internationally if they can prove “without any doubt” that their reason for relocation was academic and not athletic.¹⁹¹ Second, international transfers of minors are allowed if the player’s original association and new club have a signed agreement “within the scope of a development program for young players.”¹⁹² This second exception must meet “certain strict conditions.”¹⁹³ In a parenthetical following this requirement, the CAS mentions “agreement on the academic and/or school education [and] authorization granted for a limited time” as elements of the conditions that pertain to the second exception.¹⁹⁴ Therefore, if a club enters into an international player exchange agreement following the certain strict requirements, then the players may be transferred internationally without violating Article 19 of RSTP (2005). Additionally, the CAS held that Article 19 of RSTP (2005) “applies equally to amateur and professional minor players,”¹⁹⁵ closing a loophole used by clubs in the past.¹⁹⁶

D. UEFA Home-Grown Rule

In response to the influx of foreign players on European teams and the decrease in investment in youth training academies, UEFA created new player eligibility rules in 2005.¹⁹⁷ UEFA hoped that these rules would protect minors and re-nationalize and re-localize clubs.¹⁹⁸ These player eligibility rules are colloquially referred to as the “home-grown” rule.¹⁹⁹ UEFA enforced these rules in the 2006–2007 season and they are still in force as of the writing of

¹⁹⁰ FC Midtjylland A/S v. Fédération Internationale de Football Ass’n, CAS 2008/A/1485, ¶ 7.3.3. (Ct. Arb. Sport 2008).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* ¶ 7.2.4.

¹⁹⁶ *Id.* ¶ 7.2.3. Under the FIFA RSTP (2009), “a professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs.” FIFA RSTP (2009), *supra* note 17, at 9.

¹⁹⁷ UEFA CHAMPIONS LEAGUE, REGULATIONS OF THE UEFA CHAMPIONS LEAGUE 21 (2006/2007) [hereinafter UEFA REGULATIONS (2006/2007)], available at http://www.eurocup.ru/docs/cl-06_07-rules.pdf; Lindsay Valaine Briggs, *UEFA v. The European Community: Attempts of the Governing Body of European Soccer to Circumvent EU Freedom of Movement and Antidiscrimination Labor Law*, 6 CHI. J. INT’L L. 439, 441 (2005).

¹⁹⁸ Briggs, *supra* note 197, at 440–41.

¹⁹⁹ UNION OF EUR. FOOTBALL ASS’NS, THE EUROPEAN CLUB FOOTBALLING LANDSCAPE: CLUB LICENSING BENCHMARKING REPORT FINANCIAL YEAR 2009, at 29 (2009) [hereinafter CLUB LICENSING BENCHMARKING REPORT].

this Comment.²⁰⁰ The rules create registration regulations that require clubs to reserve space on the roster for “locally trained players.”²⁰¹ Specifically, of the twenty-five players that can be registered to “List A,”²⁰² four have to be locally trained.²⁰³ “Locally trained” players are divided into two subgroups “club-trained” players and “association-trained” players.²⁰⁴ A “club-trained” player is a player of any nationality who has been registered with the current club for three entire seasons between the ages of fifteen and twenty-one.²⁰⁵ An “association-trained” player is a player of any nationality who has been registered with a club or clubs associated with the same national association for three entire seasons between the ages of fifteen and twenty-one.²⁰⁶ The effect of this regulation is to establish a minimum quota of “home-grown” players—players with ties to a particular team or country.²⁰⁷

In the 2007–2008 season, the quota increased to six locally trained players with at least three players qualifying as “club-trained.”²⁰⁸ The quota increased again for the 2008–2009 season to eight “locally-trained” players with at least four “club-trained” players.²⁰⁹ The quota remained the same for the 2009–2010 season, but UEFA made slight changes regarding the age requirement.²¹⁰ As the quotas increased, the clubs’ ability to recruit foreign players diminished.

²⁰⁰ *Id.*

²⁰¹ UEFA REGULATIONS (2006/2007), *supra* note 197, at 22.

²⁰² *Id.*; UEFA CHAMPIONS LEAGUE, REGULATIONS OF THE UEFA CHAMPIONS LEAGUE 22–23 (2007/2008) [hereinafter UEFA REGULATIONS (2007/2008)], *available at* <http://www.uefa.com/newsfiles/19071.pdf>.

17.01 In order to be eligible to participate in the UEFA club competitions, players must be registered with UEFA within the requested deadlines to play for a club and fulfill all the conditions set out in the following provisions

17.02 Each club is responsible for submitting an A list of players (“List A”) and a B list of players (“List B”), duly signed, to its national association for verification, validation and forwarding to UEFA.

Id.

²⁰³ UEFA REGULATIONS (2006/2007), *supra* note 197, at 22.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ CLUB LICENSING BENCHMARKING REPORT, *supra* note 199, at 29.

²⁰⁸ UEFA REGULATIONS (2007/2008), *supra* note 202, at 23.

²⁰⁹ UEFA CHAMPIONS LEAGUE, REGULATIONS OF THE UEFA CHAMPIONS LEAGUE 22 (2008/2009), *available at* http://www.uefa.com/multimediafiles/download/regulations/uefa/others/70/22/60/702260_download.pdf.

²¹⁰ UEFA CHAMPIONS LEAGUE, REGULATIONS OF THE UEFA CHAMPIONS LEAGUE 25 (2009/2010), *available at* http://www.uefa.com/multimediafiles/download/competitions/UCL/88/61/44/886144_download.pdf.

Due to this difficulty of manning rosters with top players under the constraints of the home-grown rule, some teams could not compete at prior levels.²¹¹

Proponents of the home-grown rule believe that it will help decrease the financial disparity and competitive imbalance between football teams.²¹² Other supporters of the rule, such as Richard Scudamore, the chief executive of the Premier League,²¹³ believe that the rule will “give clubs an extra incentive to invest in youth.”²¹⁴ Scudamore denies that the rule will give clubs incentives to hoard young foreign players.²¹⁵ Proponents also believe that the rule will stop clubs from spending so much money on outside talent, encouraging investment in home-grown talent instead.²¹⁶ These arguments, however, are not persuasive and are flawed. First, clubs continue to have an incentive to recruit abroad. While the club’s home country *may* produce top players, a club cannot rely on what is only a possibility. Therefore, to be sure that they can meet the home-grown quota, clubs must recruit promising foreign players while they are still young enough to meet the registration requirement of three seasons between the ages of fifteen and twenty-one. Second, the rule may not re-nationalize teams. *Home-grown* does not mean *citizen*. In fact, under the home-grown rule, a club could meet the home-grown quota with a team comprised wholly of foreign players.

A more pressing issue, however, is whether the quotas accord with EU laws regarding the free movement of workers.²¹⁷ As discussed earlier, the *Bosman* case held that UEFA’s rule requiring quotas for national players was incompatible with European Community law.²¹⁸ As argued in the *Bosman* case, however, proponents of nationality restrictions believe that the court

²¹¹ For example, manager of the Liverpool club, Rafael Benítez, opposes the adoption of the eight home-grown player quota and believes that the league should focus on quality, not quantity. Andy Hunter, *Rafael Benítez Hits Out at Home-Grown Ruling for Missing the Point*, GUARDIAN (London), Sept. 16, 2009, <http://www.guardian.co.uk/football/2009/sep/16/liverpool-rafael-benitez-homegrown>.

²¹² ARNAUT, *supra* note 37, at 48–49.

²¹³ *See supra* note 129.

²¹⁴ *Premier League Announce Home-grown Quota*, FIFA.COM (Sept. 15, 2009), <http://www.fifa.com/worldfootball/clubfootball/news/newsid=1101646.html>.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *UEFA ‘Home-Grown Player’ Rule May End Up in Court, Says EU Law Professor*, EURACTIVE (June 3, 2005), <http://www.euractiv.com/en/sports/uefa-home-grown-player-rule-may-court-eu-law-professor/article-139418>.

²¹⁸ Case C-415/93, *Union Royale Belge des Sociétés de Football Ass’n ASBL v. Bosman*, 1995 E.C.R. I-5040, I-5078.

should allow exceptions for sporting associations.²¹⁹ Nevertheless, outside of specific competitions based on nationality,²²⁰ the ECJ has yet to make exceptions when applying free movement and anti-discrimination laws to sporting regulations.

IV. GETTING AROUND THE FIFA REGULATIONS: LOOPHOLES USED BY EUROPEAN CLUBS TO OBTAIN MINORS

Now that the UEFA home-grown player quota has increased to eight,²²¹ clubs have a greater incentive to seek out young international talent to enroll in their local training academies because these players can be counted in a club's home-grown quota. Clubs also seek out young talent because the younger players are generally less expensive, which allows clubs to profit significantly. Younger players and foreign players come at a lower purchase price,²²² which allows clubs to make a significant profit if the players go on to have a successful professional career.²²³ For example, in 2003, Arsenal picked up Cesc Fàbregas when he was sixteen on a free transfer from the Barcelona youth team.²²⁴ In 2009 he was valued at £25 million.²²⁵ Therefore, European clubs have an incentive to purchase players at a young age so they can meet their home-grown quotas and make a profit if the player decides to transfer when he is eligible to sign a professional contract. Even if just one or two of these young players succeed professionally, clubs will reap the benefits.²²⁶ This encourages clubs to find as many loopholes as possible in the FIFA regulations regarding the transfer of minors and to exploit those loopholes for commercial benefit. Investigative reporters have even found that the big clubs have spent large sums of money to find these loopholes and to see just how far

²¹⁹ Opinion of Advocate General Lenz, at I-4974, Case C-415/93, *Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman*, 1995 E.C.R. I-5040. For example, the UEFA argued that transfer rules were needed to "maintain financial and competitive equilibrium" in football, and to "support the cultivation of talent in youth and development schemes." P.E. Morris, S. Morrow & P.M. Spink, *EC Law and Professional Football: Bosman and Its Implications*, 59 MOD. L. REV. 893, 895 (1996).

²²⁰ *Bosman*, 1995 E.C.R. at I-5076.

²²¹ See *supra* note 209 and accompanying text.

²²² See, e.g., Mike Norrish, *Arsene Wenger's Top Five Arsenal Signings*, TELEGRAPH (Apr. 22, 2009), <http://www.telegraph.co.uk/sport/football/leagues/premierleague/arsenal/5200319/Arsene-Wengers-top-five-Arsenal-signings.html> (describing a number of bargain player acquisitions by Arsenal).

²²³ See *The Big Question: As the Football Transfer Window Closes, Is Spending Out of Control?*, INDEPENDENT (Sept. 2, 2008), <http://www.independent.co.uk/sport/football/news-and-comment/the-big-question-as-the-football-transfer-window-closes-is-spending-out-of-control-915623.html>.

²²⁴ Norrish, *supra* note 222.

²²⁵ *Id.*

²²⁶ See, e.g., *supra* notes 224–25 and accompanying text.

they can push the envelope.²²⁷ When it comes down to it, European football is a commercialized sport and clubs will seemingly do anything to make a higher profit, even if that means risking the well-being of children.²²⁸ This Part discusses three ways European clubs circumvent the transfer regulations to obtain these minors.

First, many clubs use the exception under Article 19(2)(a), which allows minors under the age of eighteen to transfer internationally if the child's parents move to the country for "reasons not linked to football."²²⁹ Clubs have resorted to creating local jobs for parents and even bribing them so that their children can register with the club in accordance with the FIFA regulations.²³⁰ Two Norwegian reporters, Madsen and Johansson, who conducted an investigation of the unspoken and often illegal practices of European clubs regarding the transfer of minors, found agents and clubs who admitted to offering parents jobs.²³¹ One father was given a position as a gardener in the stadium; another as the team bus driver.²³²

Second, clubs are obtaining young players through exchange agreements with clubs in Africa and countries in the EU with flexible visa and immigration policies.²³³ According to CAS's decision in 2009,²³⁴ minors can transfer internationally if their current club has an exchange agreement with the foreign club.²³⁵ The exchange agreement, however, must be "within the scope of a development program for young players" and meet certain requirements.²³⁶ For example, the exchange agreement must contain specific information regarding the minor's academic education.²³⁷ Dutch clubs Ajax and Feyenoord operate

²²⁷ See generally LARS BACKE MADSEN & JENS M. JOHANSSON, DEN FORSVUNNE DIAMANTEN [The Lost Diamond] (2008).

²²⁸ See, e.g., Kay Jay, *Talent Spotting or Child Trafficking?*, YOUTH.SG (Sept. 17, 2009), <http://app.youth.sg/Home/Articles/tabid/94/id/709/cid/0/Default.aspx>.

²²⁹ FIFA RSTP (2009), *supra* note 17, at 19–20.

²³⁰ For example, Manchester United allegedly offered Paul Pogba's parents €100,000 each and a house so that their son would transfer from France. *Manchester United Paid Paul Pogba's Parents, Le Havre President Alleges*, GUARDIAN (London), Sept. 7, 2009, <http://www.guardian.co.uk/football/2009/sep/07/paul-pogba-manchester-united>.

²³¹ See MADSEN & JOHANSSON, *supra* note 227.

²³² See *id.*

²³³ See *supra* notes 131–35 and accompanying text.

²³⁴ Midtjylland A/S v. Fédération Internationale de Football Ass'n, CAS 2008/A/1485, ¶ 7.3.3. (Ct. Arb. Sport 2008); see *supra* Part III.C.

²³⁵ CAS 2008/A/1485, FC Midtjylland A/S v. Fédération Internationale de Football Ass'n, ¶ 7.3.3.

²³⁶ *Id.*

²³⁷ *Id.*

training academies in Ghana,²³⁸ and “French clubs such as Paris Saint-Germain and Monaco . . . maintain scouting networks in the region.”²³⁹ European clubs are not only using these loopholes to secure players in Africa, but all over the world. Even a sixteen-year-old American-born player, whose grandfather lives in Italy, worked to obtain an EU passport so he could play with the English club, West Ham United.²⁴⁰

Unfortunately, the demand for inexpensive young players has also resulted in an influx of unregistered training academies²⁴¹ and unlicensed agents who take advantage of minors who play football, particularly in Africa.²⁴² Seeing the top African players, such as Dider Drogba and Samuel Etò, on European teams, gives young African players hopes and dreams of success in Europe,²⁴³ making it easy for these agents to lure them there with false hopes of becoming a star footballer.²⁴⁴ Parents pay these fake agents with what little money they have to send their children to Europe,²⁴⁵ but more often than not the young boys never register with an academy.²⁴⁶ If the boys do not register, many agents abandon them in Europe without a European passport or money to purchase a plane ticket back home.²⁴⁷ That these players are so inexpensive compared to European players means that the agents can recruit many players at once.²⁴⁸ Moussa N’diayè, a Senegalese football player, commented on the problem noting that “[i]t is always worth sending 100 [African players to Europe]—the agent can make money from the one or two who make it. The

²³⁸ DAVID GOLDBLATT, *THE BALL IS ROUND: A GLOBAL HISTORY OF SOCCER* 715 (2008); *see also* Dan McDougall, *The Scandal of Africa’s Trafficked Players*, *OBSERVER* (London), Jan. 6, 2008, <http://www.guardian.co.uk/football/2008/jan/06/newsstory.sport4>.

²³⁹ McDougall, *supra* note 238.

²⁴⁰ Noah Davis, *Davis’ Discussions: Sebastian Lletget Leaves*, *GOAL.COM* (May 29, 2009, 6:04:57 AM), <http://www.goal.com/en-us/news/66/united-states/2009/05/29/1292893/davis-discussions-sebastian-lletget-leaves>. The one benefit of these European operated training academies is that the boys who attend receive proper education and training. McDougall, *supra* note 238. Parents will pay money for their children to attend these “training academies,” even though they are not proper training facilities. *Id.*

²⁴¹ McDougall, *supra* note 238.

²⁴² GOLDBLATT, *supra* note 238, at 701.

²⁴³ Colin Brown, *Football Chiefs to Tackle Hidden Trade in Africa’s Children*, *INDEPENDENT* (July 5, 2008), <http://www.independent.co.uk/sport/football/news-and-comment/football-chiefs-to-tackle-hidden-trade-in-africas-children-860504.html>.

²⁴⁴ *Id.*; *see also*, GOLDBLATT, *supra* note 238, at 701.

²⁴⁵ McDougall, *supra* note 238 (“There is now a huge business to be made from football, says Mbvoumin, and it feeds on people’s dreams of a better life for their family. ‘In Africa, when an important man tells a family their son has talent, that family will do everything to raise the money to send that boy to the West, sell their house, their youngest sons, their life away.’”).

²⁴⁶ GOLDBLATT, *supra* note 238, at 701.

²⁴⁷ *Id.*

²⁴⁸ Brown, *supra* note 243.

other 98 are forgotten.”²⁴⁹ Belgian senator, Jean-Marie Dedecker, conducted an investigation and found “422 cases of illegal trade with Nigerian players in Belgium alone.”²⁵⁰

Finally, certain European clubs benefit due to differences in contract law throughout the EU and differences in the national associations’ rules regarding the age minors can sign professional contracts.²⁵¹ For example, the Italian Football Federation, Federazione Italiana Gioco Calcio, prohibits players from signing professional club contracts until they are 18.²⁵² In Britain, however, “[p]layers from European Union countries are able to move to Britain on academy or scholarship contracts at 16, and to sign full professional contracts at 17.”²⁵³ Due to these limitations, many sixteen-year-old Italian boys have joined English clubs.²⁵⁴ In 2009, sixteen-year-old Federico Macheda left the Italian club, SS Lazio, to play for Manchester United.²⁵⁵ The Lazio President tried everything he could to keep Macheda on the team, but it was impossible for him to compete with an offer for a professional contract.²⁵⁶

Clubs also try to sign young players to commitment contracts so that once they reach the professional age they have to play for that club.²⁵⁷ In 2008, when Jeremy Helan, a seventeen-year-old player for the French club, Rennes, joined the English club, Manchester City,²⁵⁸ FIFA began an investigation to determine whether there was a violation of the RSTP involving an inducement

²⁴⁹ *Id.*

²⁵⁰ Kasper Lindberg, *The Man Who Traced 422 Soccer Slaves*, PLAY GAME MAG. (2006) <http://www.playthegame.org/upload/Magazine%202005/themanwhotraced442slaves.pdf>.

²⁵¹ See Rob Draper, *Premier League’s Big Four Accused of Plundering Europe’s Finest Teenagers*, MAIL ONLINE (Sept. 5, 2009, 11:59 PM), <http://www.in.com/news/sports/fullstory-premier-leagues-big-four-accused-of-plundering-europes-finest-teenagers-10690489-473c0b4ef57f13eec5e462dc84e5af10cfbadfc0-1.html>.

²⁵² Raelin MacGrevy, *The Final Word on Federico Macheda*, SOCCERLENS (Apr. 16, 2009), <http://soccerlens.com/the-final-word-on-federico-macheda/26785>.

²⁵³ Nick Szczepanik, *Lazio President’s Frustration After Federico Macheda Gets Away*, TIMES ONLINE (Apr. 7, 2009), http://www.timesonline.co.uk/tol/sport/football/premier_league/manchester_united/article6047959.ece.

²⁵⁴ See Draper, *supra* note 251.

²⁵⁵ Inside World Soccer, *Lazio Rues Macheda Transfer*, INSIDE WORLD SOCCER (Apr. 6, 2009), <http://www.insideworldsoccer.com/2009/04/lazio-rues-macheda-transfer.html>.

²⁵⁶ *Id.*

²⁵⁷ See, e.g., Johnny Crossan, *The Transfer of Minors: A Euro Problem?*, VITAL CITY <http://www.manchestercity.vitalfootball.co.uk/article.asp?a=170202> (last visited Jan. 29, 2010) (discussing the French use of the Pre-Contract Agreement).

²⁵⁸ Rob Harris, *FIFA Investigates Man City’s Signing of Teen Helan*, AJC.COM (Sept. 8, 2009, 7:01 AM), <http://www.ajc.com/sports/fifa-investigates-man-citys-133454.html>.

to breach a contract.²⁵⁹ Helan signed a contract with Rennes at the age of thirteen, which stated that if he played for the French team while at the youth academy he would be obligated to sign a two-year professional contract with the team in the future.²⁶⁰ Helan has brought a case against the club in the French Labor Courts stating that the contract that he originally signed with Rennes is voidable under French law.²⁶¹ As of the writing of this Comment, Helan's action is pending.²⁶²

A similar contractual dispute occurred with player Gaël Kakuta. Kakuta, who was a French national under contract with the French club Lens left to play with the English club Chelsea in 2007.²⁶³ On August 27, 2009, the DRC issued a decision regarding the contractual dispute over the international transfer of the minor player.²⁶⁴ The DRC found that Kakuta breached his contract and that Chelsea induced the breach.²⁶⁵ According to the Lens chairman, Gervais Martel, the decision was not surprising.²⁶⁶ Chelsea started contacting Kakuta before he was sixteen, and the French club had nurtured him since he was eight-and-a-half.²⁶⁷ The DRC decided that Kakuta must pay compensation of €780,000 and that Chelsea is jointly and severally liable for that compensation.²⁶⁸ In addition, the DRC ordered Chelsea to pay Lens a training compensation of €130,000.²⁶⁹ The DRC also placed a four-month restriction on Kakuta's eligibility to play in official matches and placed a two-year transfer ban on Chelsea.²⁷⁰ Therefore, FIFA's decision on Kakuta implies that the DRC believes that contracts with minors are enforceable. As of the writing of this Comment, Chelsea has appealed the DRC's decision to CAS, and CAS has granted a stay of the sanctions until it decides the case.²⁷¹

²⁵⁹ *Id.*

²⁶⁰ *See id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ Owen Gibson, *Chelsea Banned by FIFA from Signing Players till 2011 Over Gaël Kakuta*, GUARDIAN.CO.UK (Sept. 3, 2009, 5:13 PM), <http://www.guardian.co.uk/football/2009/sep/03/chelsea-fifa-transfer-ban-gael-kakuta>.

²⁶⁴ *Kakuta: DCR Decision Reached*, FIFA.COM (Sept. 3, 2009), <http://www.fifa.com/aboutfifa/federation/administration/news/newsid=1097777.html>; Gibson, *supra* note 263.

²⁶⁵ *Kakuta: DCR Decision Reached*, FIFA.COM (Sept. 3, 2009), <http://www.fifa.com/aboutfifa/federation/administration/news/newsid=1097777.html>.

²⁶⁶ Gibson, *supra* note 263.

²⁶⁷ *Id.*

²⁶⁸ *Kakuta: DCR Decision Reached*, *supra* note 264.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ Richard Williams, *Player Contracts: Inducement to Breach Contract: Gael Kakuta Case*, WORLD SPORTS L. REP., Dec. 2009, http://www.e-comlaw.com/wslr/details_contents.asp?ID=1184.

V. PROBLEMS RESULTING FROM CLUBS' EFFORTS TO OBTAIN MINORS

Although European clubs' use of loopholes allows them to act within the FIFA regulations regarding the transfer of minors, many of the actions may violate international and European law. This Part first focuses on immigration law issues regarding third-country nationals²⁷² throughout the EU and the free movement of workers within the EU.²⁷³ It then discusses international and European organizations and treaties dedicated to protect minors and eliminate trafficking in human beings.²⁷⁴ Finally, this Part gives an overview of the enforceability of contracts with minors in several countries in the EU.²⁷⁵

A. Immigration and Migration Laws in the European Union

1. Immigration of Third-Country Nationals

As of the writing of this Comment, the EU does not have common immigration laws for third-country nationals, meaning persons who do not have citizenship within the EU.²⁷⁶ Accordingly, each member state has its own rules for granting visas, residence permits, and citizenship.²⁷⁷ All member states grant short-term visas, which are defined in EU legislation as visas that are for a duration of less than three months.²⁷⁸ The general regulation of the member states' short-term visas falls under the EU authority,²⁷⁹ with the exception of the United Kingdom, Ireland, and Denmark, which are exempt

²⁷² A third-country national is defined in this Comment as a person who is a citizen of a country outside of the EU.

²⁷³ See *infra* Part V.A.

²⁷⁴ See *infra* Part V.B.

²⁷⁵ See *infra* Part V.C.

²⁷⁶ Int'l Org. for Migration, *Comparative Study of the Laws in the 27 EU Member States for Legal Immigration*, at 45, EUR. PARL. DOC. PE 393.281 (Feb. 2008) [hereinafter *EU Immigration Study*]. The study was commissioned by the European Parliament. *Id.* at 9. *But see* TFEU art. 79(1) ("The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.").

²⁷⁷ See *EU Immigration Study*, *supra* note 276, at 28–29.

²⁷⁸ *Id.* at 30. More specifically, EU legislation defines a short-term visa as follows:

an authorization issued by a Member State or a decision taken by such State which is required with a view to: entry for an intended stay in that Member State or in several Member States of no more than three months in total; entry for transit through the territory of that Member State or several Member States, except for transit at an airport.

Id. (quoting Council Regulation 539/2001, art. 2, 2001 O.J. (L 81) 1, 5 (EC)).

²⁷⁹ *Id.*

from the EU visa regulations due to certain opt-out provisions.²⁸⁰ Long-term visas are for a duration over three months.²⁸¹ Only about one-third of the member states grant long-term visas,²⁸² and these visas are generally a condition to present in-country residence permit applications.²⁸³

When granting visas, the member states generally look to the third-country national's *purpose* for entry to determine what type of visa is needed and whether it should be granted.²⁸⁴ Therefore, the member states have different categories of immigration that correspond with the various reasons third-country immigrants move to host states.²⁸⁵ One category for admission listed by many member states is persons of a specific profession.²⁸⁶ Within this category, the member states often include specific provisions for athletes and coaches,²⁸⁷ which make certain states more attractive to third-country nationals wishing to play in Europe.

Some states have fewer requirements for athletes while others do not have a similar specialized category and require athletes to follow standard procedures for entry. In the United Kingdom, work permits are only given to internationally distinguished football players.²⁸⁸ Specifically, “[a] player must have played in 75 percent of his country’s competitive ‘A’ national team matches over the past two years and he has to be coming from a country that ranks in the top 70 of FIFA rankings.”²⁸⁹ If the permit is denied, the contracting club can file a petition and deposit a fee to have a six-person board review the case and issue a final decision.²⁹⁰ In Sweden, the Swedish Sports Federation reviews all professional athletes’ applications for work permits.²⁹¹ It “must approve the contract and certify that the employment of the applicant sports-person is of particular importance for the development of that particular

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² These member states include: Belgium, the Czech Republic, France, Germany, Greece, Italy, Portugal, Romania, and Slovenia. *Id.*

²⁸³ Accordingly these visas are sometimes called “immigration visas.” *Id.*

²⁸⁴ *Id.* at 28.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ Deanna Reiss, *The Immigration Puzzle: Understanding U.S. and European Athlete Immigration Rules*,

26 ENT. & SPORTS LAW 6, 7 (2008) (“The Home Office has made a special deal with the governing bodies of many professional sports, including the Football Association.”).

²⁸⁹ *Id.* at 7–8.

²⁹⁰ *Id.* at 8.

²⁹¹ *Id.*

branch of sport.”²⁹² The fact that each member state has its own application process and method to review visas and work permits for professional athletes makes it very hard to regulate the entry of foreign athletes in the EU.

2. *Free Movement of Workers*

The EU institutions have authority over the movement of workers within the EU.²⁹³ As discussed in Part III.B regarding the *Bosman* case, the member states cannot impose restrictions on free movement of workers. FIFA and UEFA have argued for a sporting exception to the rule, but the ECJ and other EU institutions have yet to yield and allow exceptions.²⁹⁴

In 2005, the ECJ confirmed and expanded the ruling in *Bosman* in *Simutenkov v. Ministerio de Educación y Cultura*.²⁹⁵ Simutenkov, a Russian national who played football for a Spanish club, had a Spanish residence and a legal work permit.²⁹⁶ The Spanish Federation had a licensing system in place where players either held a non-Community or a Community license based on whether they were nationals of the EU/EEA.²⁹⁷ Clubs limited the number of non-Community licensed players allowed to play in national matches.²⁹⁸ Simutenkov could not obtain a Community license and sued the team for violating an anti-discrimination provision of a partnership agreement between Russia and the EU.²⁹⁹ The ECJ held that anti-discrimination rules apply to foreign nationals who are legally employed in the EU through agreements with the EU.³⁰⁰ Therefore, any athlete who is a national of a country that has a partnership agreement with the EU and is legally employed in the EU is given the same rights as EU nationals, including the fundamental right of freedom of movement for workers.³⁰¹

²⁹² *Id.*

²⁹³ See TFEU art. 45.

²⁹⁴ See *supra* Parts II–III.

²⁹⁵ Case C-265/03, *Simutenkov v. Ministerio de Educación y Cultura*, 2005 E.C.R. I-2596.

²⁹⁶ *Id.* at I-2600.

²⁹⁷ *Id.* at I-2600–01.

²⁹⁸ *Id.* at I-2601.

²⁹⁹ *Id.*

³⁰⁰ *Id.* at I-2610–11.

³⁰¹ Steven Stewart, *The Development of Sports Law in the European Union, Its Globalisation, and the Competition Law Aspects of European Sports Broadcasting Rights*, 16 *SPORTS LAW. J.* 183, 196 (2009).

B. *Child Labor and Human Trafficking*

Not all players enter the EU legally. Unfortunately, many unnecessary unlicensed agents bring young African players to Europe through illegal means: some children are brought over in boats,³⁰² some children obtain limited visas for travel purposes, and sometimes embassy employees issue passports that raise the player's age for bribes.³⁰³ If these young boys are not selected for a European team, they are often left without legal papers and no way back home.³⁰⁴ Many boys end up working on the streets selling fake purses and souvenirs to tourists.³⁰⁵ Countries throughout the world acknowledge that child labor and trafficking of human beings are gross violations of human rights by signing treaties to prevent them.³⁰⁶ Accordingly, several international organizations are dedicated to solving these problems, including the International Labour Organization ("ILO"), the International Programme on the Elimination of Child Labor ("IPEC"), and the International Organization of Migration ("IOM"). This Part gives an overview of the international and European treaties and organizations dedicated to protecting human rights.

1. *Child Labor and Human Trafficking in an International Context*

The United Nations Convention on the Rights of the Child ("CRC") was the first United Nations ("UN") treaty to comprehensively address child labor.³⁰⁷ The CRC entered into force in 1990 with 140 signatories and 193 parties.³⁰⁸ The CRC defines a child as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained

³⁰² In May 2007, an abandoned fishing trawler was found washed up on the shore of the Canary Islands in Spain with a cargo of 130 young African men. Dan McDougall, *The Scandal of Africa's Trafficked Players*, OBSERVER (London), Jan. 6, 2008, <http://www.guardian.co.uk/football/2008/jan/06/newsstory.sport4>. There were fifteen teenagers on board who believed that they were going to play for Marseille or Real Madrid. *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ See Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, 2133 U.N.T.S. 161 [hereinafter ILO Convention No. 182]; United Nations Convention on the Rights of the Child, Nov. 15, 1989, 1577 U.N.T.S. 3 [hereinafter UN Convention on the Rights of the Child]; Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

³⁰⁷ Alessandro Fodella, *Freedom from Child Labour as a Human Right: The Role of the UN System in Implementing ILO Child Labour Standards*, in CHILD LABOUR IN A GLOBALIZED WORLD 203, 209 (Giuseppe Nesi et al. eds., 2008).

³⁰⁸ United Nations, *Status of Treaties*, U.N. TREATY COLLECTION (Jan. 29, 2011, 12:03 PM), http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

earlier.”³⁰⁹ The CRC provides for states parties to protect children from “economic exploitation” and “any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”³¹⁰

Certain UN agencies have a goal of ensuring these rights for children and developing further protections. The ILO is an agency of the UN that works to promote certain international labor standards.³¹¹ Each year members of the ILO meet in Geneva at the International Labour Conference to establish and adopt international labor standards.³¹² In 1992, the ILO formed the IPEC—currently the largest program in the ILO—to progressively eliminate child labor in accordance with the CRC.³¹³ A main priority for IPEC is to eliminate the worst forms of child labor, which are set out in the ILO Convention No. 182.³¹⁴ According to Convention No. 182, which has been ratified by 173 nations as of February 21, 2011,³¹⁵ the worst forms of child labor include, among other things: “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children.”³¹⁶ Unfortunately, ILO Convention No. 182 does not specifically define child trafficking,³¹⁷ which creates problems with implementation and regulation.

³⁰⁹ UN Convention on the Rights of the Child, *supra* note 306, at 46.

³¹⁰ *Id.* at 54.

³¹¹ *About the ILO*, INT’L LABOUR ORG., <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (last visited Feb. 27, 2011).

³¹² *About the ILC*, INT’L LABOUR ORG., <http://www.ilo.org/ilc/AbouttheILC/lang--en/index.htm> (last visited Feb. 27, 2011).

³¹³ JULIE A. MERTUS, UNITED NATIONS AND HUMAN RIGHTS: A GUIDE FOR A NEW ERA 159 (2005).

³¹⁴ *The Programme*, INT’L LABOUR ORG., <http://www.ilo.org/ipecc/programme/lang--en/index.htm> (last visited Jan. 30, 2011).

³¹⁵ *List of Ratifications of International Labour Conventions: Worst Forms of Child Labour Convention, 1999 (No. 182)*, INT’L LABOUR ORG. (Feb. 26, 2011), <http://webfusion.ilo.org/public/applis/appl-byconv.cfm?conv=C182&hdroff=1&lang=EN>.

³¹⁶ ILO Convention No. 182, *supra* note 306.

³¹⁷ ILO Convention No. 182 does, however, reference “practices similar to slavery,” which are defined in the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) as

“any institution or practice whereby a child or young person under the age of eighteen years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”

See Borderline Slavery, 15 HUM. RTS. WATCH 44 (2003), available at <http://www.hrw.org/sites/default/files/reports/togo0403.pdf> (quoting Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to the Slavery art. 1(d), Sept. 7, 1956, 226 U.N.T.S. 3).

Other organizations, such as the IOM, an intergovernmental organization developed to ensure and promote “humane and orderly migration” throughout the world,³¹⁸ have developed definitions of trafficking. According to a bulletin written by the IOM, “[h]uman trafficking . . . is a new form of slavery that involves three stages: recruitment, transportation, and exploitation.”³¹⁹ The IOM started its involvement in counter-trafficking in 1994.³²⁰ Since then, the IOM “has implemented almost 500 projects in 85 countries, and has provided assistance to approximately 15,000 trafficked persons.”³²¹ In 2007, the IOM assisted thirty-four young football players back to their homes in Abidjan from Mali.³²² The group of sixteen- to eighteen-year-old boys was apparently smuggled into Mali by an unscrupulous agent who collected \$600 from their parents and promised a European football career for the boys.³²³ Although these young boys’ dreams to become European football players were shattered, the IOM protected these boys from living alone in the streets of Europe and brought them back home to their families.³²⁴

2. *Child Labor and Human Trafficking in an EU Context*

The EU has also recognized the problems of illegal immigration, human trafficking, and child labor within the EU.³²⁵ In 2005, the Council of Europe addressed the need to implement a plan to fight human trafficking in the EU,³²⁶ in accordance with the Hague Programme.³²⁷ The Council noted that to

³¹⁸ *About IOM*, INT’L ORG. FOR MIGRATION, <http://www.iom.int/jahia/Jahia/about-iom/lang/en> (last visited Mar. 5, 2010) (“With 132 member states, a further seventeen states holding observer status and offices in over 100 countries, IOM is dedicated to promoting humane and orderly migration for the benefit of all. It does so by providing services and advice to governments and migrants.”).

³¹⁹ *Human Trafficking vs Human Smuggling*, 15 EYE ON HUM. TRAFFICKING 4, 4 (2007).

³²⁰ *Counter-Trafficking*, INT’L ORG. FOR MIGRATION, <http://www.iom.int/jahia/Jahia/pid/748> (last visited Feb. 27, 2011).

³²¹ *Id.*

³²² *Footballers’ Dreams of Fame in Europe Shattered*, INT’L ORG. FOR MIGRATION (Mar. 27, 2007), <http://www.iom.int/jahia/Jahia/pbnAF/cache/offonce?entryId=13514>; see also *Ivorian Adolescents Tricked by Football Agent*, AFROL NEWS, <http://www.afrol.com/articles/24863> (last visited Feb. 27, 2011).

³²³ *Footballers’ Dreams of Fame in Europe Shattered*, *supra* note 322.

³²⁴ *Id.*

³²⁵ See, e.g., EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings, 2005 O.J. (C 311) 1, 1 [hereinafter EU Plan on Best Practices].

³²⁶ *Id.*

³²⁷ Presidency Conclusions, Brussels European Council 1, 25 (Nov. 4–5, 2004). The Hague Programme lists ten priorities for the European Union in order to strengthen freedom, security, and justice in the five years following its passage. *The Hague Programme: 10 Priorities for the Next Five Years*, EUROPA (Nov. 13, 2009), http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/116002_en.htm.

effectively combat “human trafficking an integrated approach is needed, having as its basis the respect of human rights and taking into account its global nature.”³²⁸ Additionally, Article 79 of the Treaty on the Functioning of the European Union states: “The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in member states, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.”³²⁹ TFEU also states that “the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures . . . [to] combat[] trafficking in persons, in particular women and children.”³³⁰

The Charter of Fundamental Rights of the European Union (“Charter”),³³¹ which was given full legal effect in 2009,³³² also addresses the issue of human trafficking by simply stating that “[t]rafficking in human beings is prohibited.”³³³ The Charter is meant to ensure that EU regulations and directives do not contradict the European Convention of Human Rights.³³⁴ The Charter also covers several areas relating to children’s rights.³³⁵ Article 32 covers the “[p]rohibition of child labour and protection of young people at work.”³³⁶ Under this Article, “[t]he minimum age of admission to employment

³²⁸ EU Plan on Best Practices, *supra* note 325, at 1.

³²⁹ TFEU art 77.

³³⁰ *Id.*

³³¹ *Charter of Fundamental Rights of the European Union*, 2007 O.J. (C 301) 1, 1 [hereinafter *EU Rights Charter*].

³³² The Charter of Fundamental Rights was first drafted in 2000. *See id.* At that time, the Charter was only given declarative status, meaning a symbolic non-legally binding status, under the Nice Treaty in 2001. MAURICE ROCHE, *EXPLORING THE SOCIOLOGY OF EUROPE: AN ANALYSIS OF THE EUROPEAN SOCIAL COMPLEX* 202 (2010).

³³³ *EU Rights Charter*, *supra* note 331, at 3.

³³⁴ THEODÓROS D. SAKELLAROPOULOS ET AL., *CONNECTING WELFARE DIVERSITY WITHIN THE EUROPEAN SOCIAL MODEL* 206 (2004).

³³⁵ Holly Cullen, *Children’s Rights, in* THE EU CHARTER OF FUNDAMENTAL RIGHTS: POLITICS, LAW AND POLICY 323, 323 (Steve Peers & Angela Ward eds., 2004).

³³⁶ Article 32 of the Charter reads as follows:

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

EU Rights Charter, *supra* note 331, at 7.

may not be lower than the minimum school-leaving age.”³³⁷ Currently, member states in the EU do not have a uniform minimum school-leaving age.³³⁸ Furthermore, Article 24, which covers general children’s rights, states: “In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.”³³⁹ Under this Article, UEFA’s home-grown rule might be suspect. It does not seem that the children’s interests were a primary consideration in UEFA’s promulgation of the home-grown rule. As seen in Part IV, the rule has encouraged clubs to recruit young players from all across Europe. This might lead the player to change schools and location and negatively impact the child’s health and education.³⁴⁰

C. *Enforceability of Minors’ Contracts Under European Law*

The conflict of law between FIFA and member states of the EU is further complicated by the fact that no uniform legislation exists regarding substantive contract provisions in the EU.³⁴¹ This explains why Helan is currently fighting in the French courts to prove that the contract he signed with his former French team as a thirteen-year-old is not enforceable against him.³⁴² It is important to review the rules regarding the enforceability of minors’ contracts at a national level because the DRC must take into account the rules governing each dispute at a national level.³⁴³

The member states’ jurisdictional differences regarding the enforceability of contracts with minors can be divided into three general categories: some countries only enforce the contracts if they are made with parental consent; others enforce contracts if they are for the overall benefit of the minor; and a

³³⁷ *Id.*

³³⁸ ANNE SONNET, JOBS FOR YOUTH: FRANCE 89 (2009); *see also* *At What Age . . . ? Comparative Table, RIGHT TO EDUC.*, <http://www.right-to-education.org/node/279> (last visited Jan. 31, 2011).

³³⁹ *EU Rights Charter*, *supra* note 331, at 7.

³⁴⁰ *See* DAVID, *supra* note 136, at 33–35, 186–88.

³⁴¹ The only legislation is a default rule regarding choice-of-law rules. *See* Regulation 593/2008 of the European Parliament and of the Council of 17 June 2008 on the Law Applicable to Contractual Obligations, O.J. (L 177) (EC).

³⁴² *See supra* notes 257–62 and accompanying text.

³⁴³ FIFA RSTP (2009), *supra* note 17, at 26.

The Players’ Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall, when taking their decisions, apply these regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport.

Id.

few countries do not enforce contracts with minors at all. Regardless of the approach, the public policy of protecting children is the key underlying influence. This policy comes in conflict with the realities of the business world when the people contracting with minors want assurances that the contracts are enforceable. This Subpart gives a brief overview of these laws.

In Germany, minors have limited legal capacity from the ages of seven to eighteen.³⁴⁴ Minors can enter into binding contracts only with the consent of their parents.³⁴⁵ Very few exceptions to this rule exist.³⁴⁶ To determine the validity of a contract, judges focus only on whether the child had explicit or inferable consent from his parent or guardian to enter into the contract.³⁴⁷ The judges do not evaluate the utility of the contract or the benefits granted to the minor.³⁴⁸ Austrian code regarding the contractual capacity of minors³⁴⁹ is very similar to the German law.³⁵⁰

These laws tend to ignore the idea that minors should be able to pursue their own interests and create a complete constraint on minors who do not receive consent from their legal guardians.³⁵¹ The law also ignores the interests of third parties who would benefit by being able to rely on the enforceability of contracts with the minor.³⁵² In turn, this may decrease the protection of commerce.³⁵³ A person will probably not contract with a minor without the consent of his parents, which may leave certain markets in commerce unfulfilled. On the other hand, if the person contracting with the minor does obtain parental consent, he can rely on the enforceability of the contract.

In an attempt to promote commerce with minors and protect them from potential disadvantages, some countries enforce contracts that are beneficial for the minor. The common law rule in the United Kingdom is that contracts made with minors are binding if the contract benefits the minor overall.³⁵⁴ The

³⁴⁴ Bürgerliches Gesetzbuch [BGB] [Civil Code] § 105–07, *translated in* RAYMOND YOUNGS, SOURCEBOOK ON GERMAN LAW 235–38 (Cavendish Publ'g Ltd. 2d ed. 2002) (1994) (containing the English translation).

³⁴⁵ HEIN KÖTZ & AXEL FLESSNER, EUROPEAN CONTRACT LAW 101 (Oxford Univ. Press 2002) (1992).

³⁴⁶ *Id.*

³⁴⁷ *Id.* at 102.

³⁴⁸ *Id.*

³⁴⁹ *Id.* at 101.

³⁵⁰ *Id.*

³⁵¹ *Id.* at 102.

³⁵² *Id.*

³⁵³ *Id.* at 101.

³⁵⁴ G.H. TREITEL, AN OUTLINE OF THE LAW OF CONTRACT 215 (Butterworths 5th ed. 1995) (1962).

court decides whether the contract is beneficial and may look at surrounding circumstances.³⁵⁵ These principles have been used to determine the validity of professional contracts entered into by minors who are athletes and entertainers.³⁵⁶ The rule that binds beneficial contracts with minors, however, creates problems because enforceability of the contracts is determined on a case-by-case basis. In turn, this may make agents wary of contracting with minor athletes.

In 2006, the Chancery Division of Manchester heard a case regarding a young football player, Wayne Rooney, and his decision to rescind a representation agreement and enter into a new agreement.³⁵⁷ The court held that Rooney could break the contract with his original agent because it was not to his advantage taken as a whole.³⁵⁸ Rooney was already a “footballing phenomenon”³⁵⁹ and had contracted with a professional team, so he did not have a need for representation.³⁶⁰ Therefore, he could disaffirm his first representation contract and enter into a new one. The court implied, however, that Rooney could not disaffirm his contract with his current soccer team because it was for his benefit overall.³⁶¹

VI. FIFA’S SOLUTION: 2009 REGULATIONS

FIFA and UEFA are aware of the strategies that clubs use to circumvent the transfer regulations and recruit minors. UEFA President, Michel Platini, gave a speech to the European Parliament in which he raised the issue of exploiting child labor in football and stated that “[p]aying a child to kick a ball is not that different from paying a child to work on a production line.”³⁶² He also addressed the problem of child trafficking.³⁶³ Accordingly, FIFA made many amendments to RSTP (2005) in 2009 that focus on the protection of minors.³⁶⁴

³⁵⁵ G.H. TREITEL, *THE LAW OF CONTRACT* 503 (Sweet & Maxwell Ltd. 10th ed. 1999) (1962).

³⁵⁶ *Id.*

³⁵⁷ *Proform Sports Mgmt. Ltd. v. Proactive Sports Mgmt. Ltd. & Another*, [2006] EWHC 2903 (Ch), [2007] Bus. L.R. 93.

³⁵⁸ *Id.* at 106.

³⁵⁹ *Id.* at 94.

³⁶⁰ *Id.* at 105.

³⁶¹ *Id.*

³⁶² *UEFA President Urges Protection of Football’s Values*, UEFA.COM (Feb. 22, 2009, 7:10 AM), <http://www.uefa.com/uefa/aboutuefa/organisation/president/news/newsid=801478.html>.

³⁶³ *Id.*

³⁶⁴ Circular No. 1190: Revised Regulations on the Status of Transfers of Players–Protection of Minors, *supra* note 144.

This Part discusses these amendments and analyzes the potential problems of the new regulations.

A. *FIFA Regulations for the Status and Transfer of Players (2009)*

In October 2009, FIFA implemented the newest Regulations for the Status and Transfer of Players. According to FIFA Circular No. 1190, the vast majority of the amendments “relate to the protection of minors as well as of the clubs investing in the training and education of young players.”³⁶⁵ RSTP (2009) defines a minor as “a player who has not yet reached the age of 18.”³⁶⁶ Articles 19(1) and (2) of RSTP (2009) are the same as Articles 19(1) and (2) of RSTP (2005), generally prohibiting international transfers for players under the age of eighteen and including three exceptions.³⁶⁷ The regulations also now apply to “any player who has never been previously registered with a club and is not a national of the country in which he wishes to be registered for the first time.”³⁶⁸ More importantly, FIFA added Article 19(4), which requires the Players’ Status Committee³⁶⁹ to appoint a subcommittee to examine and approve or reject each international transfer of a minor player.³⁷⁰ The subcommittee also oversees every registration of a minor “who has never previously been registered with a club and is not a national of the country in which he wishes to be registered for the first time.”³⁷¹ This review is limited to players between the ages of twelve and eighteen, however, because under Article 9(2) “an [International Transfer Certificate] is not required for a player under the age of 12.”³⁷²

RSTP (2009) also added Article 19(bis), which covers the registration and reporting of minors at academies.³⁷³ Under this provision, “[c]lubs that operate

³⁶⁵ *Id.*

³⁶⁶ FIFA RSTP (2009), *supra* note 17, at 6.

³⁶⁷ *Id.* at 20; FIFA RSTP (2005), *supra* note 178, at 16.

³⁶⁸ FIFA RSTP (2009), *supra* note 17, at 20.

³⁶⁹ *FIFA Players’ Status Committee*, FRONTROW LEGAL, www.frontrowlegal.com/services/players-coaches-and-managers/fifa-players-status-committee (last visited Jan. 31, 2011) (“The FIFA Players’ Status Committee is a tribunal administrated from FIFA Headquarters in Zurich which, as the title suggests, adjudicates on the status of players. It follows a typical format similar to that of court proceedings where the parties have the right to be heard, the right to present evidence and the right to inspect evidence leading to a decision.”).

³⁷⁰ FIFA RSTP (2009), *supra* note 17, art. 19(4).

³⁷¹ *Id.* at 20.

³⁷² *Id.* at 19–20.

³⁷³ *Id.* at 21. Under RSTP (2009), academy means “an organisation or an independent legal entity whose primary, long-term objective is to provide players with long-term training through the provision of the

an academy with legal, financial or de facto links to the club are obliged to report all minors who attend the academy to the association upon whose territory the academy operates.”³⁷⁴ The national association must oversee all the academies that are not linked to a club and requires them to report all minors.³⁷⁵ Each association must also “keep a register comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies.”³⁷⁶

B. Problems with RSTP (2009)

As of the writing of this Comment, it has yet to be shown whether these changes have been effective in protecting minors. Ideally, the new provisions covering the registration of minors in academies will prevent the trafficking of minors by monitoring each association’s register.³⁷⁷ Unfortunately, however, it seems as though it will be difficult to keep these lists accurate in African countries in the midst of the child trafficking problem due to the large amounts of unaccredited academies. In Ghana, approximately 500 illegal academies are operating in the city of Accra alone, and thousands more are spread across the country.³⁷⁸ Therefore, it is seemingly impossible for Ghana’s national association to meet its responsibility of keeping track of all the minors enrolled in the many unaccredited training academies.

Another potential problem may evolve from the fact that the subcommittee is only responsible for overseeing the international movement of players between the age of twelve and eighteen.³⁷⁹ This creates a very real concern for children under the age of twelve. In September 2009, Barcelona utilized this loophole in the minor international transfer system when the club signed a seven-year-old French boy, enrolling him in its training academy.³⁸⁰ Additionally, these rules only pertain to international transfers. Therefore, the

necessary training facilities and infrastructure. This shall primarily include, but not be limited to, football training centres, football camps, football schools, etc.” *Id.* at 6.

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ *See id.*

³⁷⁸ Dan McDougall, *The Scandal of Africa’s Trafficked Players*, OBSERVER (London), Jan. 6, 2008, <http://www.guardian.co.uk/football/2008/jan/06/newsstory.sport4>.

³⁷⁹ *New Regulations for the International Transfer and First Registration of Players Under the Age of 18*, GLOUCESTERSHIRE COUNTY FA (Nov. 16, 2009, 4:13 PM), <http://www.gloucestershirefa.com/News/2009/11/NewRegulationsForTheInternationalTransferAndFirstRegistrationOfPlayersUnderTheAgeOf18.htm>.

³⁸⁰ Brian Lofrumento, *Barca Sign a 7 Year Old? You Must Be Joking*, PREMIERSHIP TALK (Sept. 17, 2009), <http://www.premiershiptalk.com/2009/09/17/barca-sign-a-7-year-old-you-must-be-joking>.

trading and movement of young players between clubs within the same national association could still pose problems. For example, seven-year-old Harry Yates's parents agreed to sign with Everton, an English club that had been competing with Manchester United and Liverpool to enroll the boy in its training academy.³⁸¹ Furthermore, some national associations oversee more than one country. The Football Association is the national association that oversees Britain, Scotland, and Ireland,³⁸² which means that players transferred between clubs in these three countries do not need an International Transfer Certificate, and therefore the new regulations do not apply to these transfers.³⁸³ This creates a significant loophole for these three countries.

VII. SUGGESTED ALTERNATIVE SOLUTIONS

FIFA's RSTP (2009) will hopefully help curb some of the European trading of minor football players, but there still seem to be enough loopholes for clubs to circumvent the rules. Furthermore, many of the problems fall outside of the scope of FIFA's authority. Therefore, other organizations such as the EU institutions need to step in. A report by the Committee on Culture and Education noted the problems with trafficking in football in its 2006 *Report on the Future of Professional Football*, and submitted a Motion for a European Parliament Resolution.³⁸⁴ Although the report provides support for the home-grown rule,³⁸⁵ the committee "is convinced that additional arrangements are necessary to ensure that the home-grown players initiative does not lead to child trafficking."³⁸⁶ The report further "insists that immigration law must always be respected in relation to the recruitment of young foreign talent."³⁸⁷ Unfortunately, the report does not offer specific steps that the governing bodies of football or the EU should take to prevent the abuse of immigration laws in football.³⁸⁸ This Part first suggests changes that FIFA and UEFA should implement.³⁸⁹ Next, it suggests changes that the EU

³⁸¹ Graham Fisher, *Everton Sign 7 Year-Old Harry Yates—Is This Too Young?*, SOCCERLENS (Mar. 26, 2008), <http://soccerlens.com/harry-yates-everton-sign-7-year-old-goalie/6792>.

³⁸² See *New Regulations for the International Transfer and First Registration of Players Under the Age of 18*, *supra* note 379.

³⁸³ *Id.*

³⁸⁴ See Report on the Future of Professional Football in Europe, EUR. PARL. DOC. (COM 2006/2130(INI)) (2007).

³⁸⁵ *Id.* at 9.

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ See *id.*

³⁸⁹ See *infra* Part VII.A.

institutions should enact.³⁹⁰ Finally, it discusses actions international organizations should take to help eliminate child trafficking in international football.³⁹¹

A. *Solutions for Implementation by the Governing Bodies of Football*

1. *Amendments to FIFA RSTP (2009)*

FIFA took a step in the right direction to help protect minors through the enactment of RSTP (2009). As of the writing of this Comment, however, it is still too early to know how great of an impact the new transfer regulations will have on minors. One potential problem is that these rules might unintentionally harm minors at an even younger age. For example, RSTP (2009) requires the Players' Status Committee to appoint a subcommittee to review each International Transfer Certificate for transfers involving minors.³⁹² Under Article 9(2) of RSTP (2009), however, players under the age of twelve do not need an International Transfer Certificate to transfer internationally.³⁹³ This leads to a fear that the clubs will start recruiting children who are eleven years old or younger because the subcommittee only reviews international transfer of minors between the age of twelve and eighteen.³⁹⁴ Reports suggest that two clubs have already enrolled seven-year-old boys in their youth training academies.³⁹⁵ Therefore, it would be in the best interest of the children if RSTP (2009) required the subcommittee to supervise all international transfers of minors regardless of whether the transfer requires an International Transfer Certificate. The subcommittee would then look at each case and ensure the transfer conforms to the FIFA regulations and is in the best interest of the child.

2. *Removal of the UEFA Home-Grown Rule and Allocation of Money to Youth Training Academies*

According to UEFA, the home-grown rule aims to encourage investment in youth training academies and re-nationalize and re-localize club teams.³⁹⁶

³⁹⁰ See *infra* Part VII.B.

³⁹¹ See *infra* Part VII.C.

³⁹² FIFA RSTP (2009), *supra* note 17, at 18.

³⁹³ *Id.* at 12.

³⁹⁴ See *supra* notes 371–72 and accompanying text.

³⁹⁵ *Id.*

³⁹⁶ ARNAUT, *supra* note 37, at 115.

These goals, however, have not necessarily been achieved, and the rule likely violates fundamental rights under EU law.³⁹⁷ Therefore, UEFA should remove the home-grown rule. A more effective way to attain this goal without violating the free movement of workers would be to require clubs to invest a certain percentage of their revenues in local youth training academies. This would ensure that clubs spend at least a certain percentage of their money on local academies rather than spending the money on foreign players. In turn, clubs might be able to support more players at their training academies, which would create a larger pool of local talent. This would assist UEFA in achieving the re-nationalization of club teams. The main problem with this solution is that it is not viable for the small clubs. This can be resolved, however, by implementing Advocate General Lenz's suggestion in *Bosman*: redistribution of wealth to poorer clubs from broadcasting money to prevent the wealthiest clubs from monopolizing the best players.³⁹⁸ Distributing a certain percentage of the broadcasting money to the poorer clubs' training facilities would help solve this problem.

In the United States, the National Football League ("NFL") implements a revenue sharing system for its franchise teams.³⁹⁹ Revenues from broadcasting and merchandise sales are divided among teams, which provides protection for small market teams.⁴⁰⁰ Sharing of broadcasting revenues would take place on a smaller scale in European Football. Rather than distributing the UEFA broadcasting revenues to all the clubs, the money would only be distributed to clubs that fall below a certain revenue level. Furthermore, these clubs could only use the money to invest in their local youth training academies. If these smaller clubs could develop larger facilities then more players could attend, which would create a greater pool of potentially talented players. This assertion also applies to the big clubs that would be required to allocate a certain percentage of revenues to their local youth training academies. If a big club were required to invest in its local training academy, then it might focus more on the local youth, which would enable it to discover more local talent.

FIFA also generates an exorbitant amount of money through the sale of broadcasting rights. FIFA received \$2.7 billion solely for the television

³⁹⁷ See *supra* notes 331–39 and accompanying text.

³⁹⁸ See Opinion of Advocate General Lenz at I-4921, Case C-415/93, *Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman*, 1995 E.C.R. I-5040.

³⁹⁹ MARK S. ROSENTRUB, *MAJOR LEAGUE WINNERS: USING SPORTS AND CULTURAL CENTERS AS TOOLS FOR ECONOMIC DEVELOPMENT* 90 (2009).

⁴⁰⁰ *Id.*

broadcast rights to the 2010 World Cup.⁴⁰¹ One would imagine that FIFA would distribute some of this money to support African youth training academies and raise awareness of trafficking in youth football. FIFA, however, dropped a potential campaign to raise awareness of the youth trafficking problem due to “budgetary constraints.”⁴⁰²

B. Solutions for Implementation by the EU Institutions

1. Control of Illegal Immigration and Standardized Athletic Visas for Third-Country Nationals

In general, “[v]isas and border controls are . . . aimed at preventing irregular or undesired entry into the territory of Member States or intercepting irregular entry at the border.”⁴⁰³ As of the writing of this Comment, however, there is no uniform visa or external border control system in the EU. Accordingly, third-country nationals who want to come to Europe to play football will go through the EU member state with the least restrictive visa or work permit application.⁴⁰⁴ Once these players obtain the appropriate visa, they can get residence permits and even obtain citizenship through naturalization in certain member states.⁴⁰⁵ At this point, the person will have EU citizenship and receive the free movement protections granted to workers in the EU under Article 45 of the Treaty on the Functioning of the European Union.⁴⁰⁶ Therefore, it seems that a unification of the visa application for athletes would be the best solution to regulate the entry of foreign players into Europe and help reduce illegal immigration of athletes.

In the United States, for example, different categories of visas exist for beneficiaries seeking employment as an athlete. For example, a P visa is a temporary nonimmigrant visa for athletes.⁴⁰⁷ Under this visa there are four categories (P-1 to P-4), and one must meet different criteria for each

⁴⁰¹ Alastair Barr, *A Star Abroad Burns Out at Home*, WALL ST. J. (Feb. 8, 2010, 7:59 PM), <http://online.wsj.com/article/SB10001424052748703630404575052744025057862.html>.

⁴⁰² Matt Scott, *FIFA “Abandons” Child Trafficking Campaign*, GUARDIAN.CO.UK (Feb. 4, 2010, 12:10 AM), <http://www.guardian.co.uk/sport/2010/feb/04/fifa-child-trafficking-sepp-blatter>.

⁴⁰³ STEVE PEERS, *EU JUSTICE AND HOME AFFAIRS LAW 94* (2d. ed. Oxford Univ. Press 2006) (2000).

⁴⁰⁴ See *supra* Part V.A.1.

⁴⁰⁵ *EU Immigration Study*, *supra* note 276, at 46.

⁴⁰⁶ TFEU art. 45.

⁴⁰⁷ Eileen F. Morrison, *Representing Athletes and Entertainment Groups: The P Visa*, in IMMIGRATION PRACTICE MANUAL § 9.2 (Supp. 2009).

category.⁴⁰⁸ The four categories include: an athlete who is a member of an entertainment group; an athlete who is part of an exchange program; an athlete participating in a culturally unique program; and a dependent or a spouse of an athlete.⁴⁰⁹ All applications for these permits are submitted to one office, the Vermont Service Center, which “has jurisdiction over all sports-related nonimmigrant visa applications in the United States.”⁴¹⁰

Adoption of a similar program in the EU would help solve many of the problems regarding the international transfer of athletes. Under this proposed solution, every third-country national seeking to play for a club within the EU would have to obtain an EU athletic visa. The EU should appoint one committee to receive and review all these applications under the same standards. Each member state, however, could still regulate its own visas and resident permits. Therefore, the EU athletic visa would not impede member states’ sovereignty. The EU athletic visa would simply be an additional entry requirement for every third-country national. UEFA would have to require each club to put a copy of every third-country national’s EU athletic visa on file with the governing national association if the club were located in a member state. This plan also is in accord with the EU’s desire to create a common immigration policy.⁴¹¹

2. *Standardization of Contract Law*

Another problem that has been presented for clubs within the EU is the lack of uniformity in contract law.⁴¹² No uniform contract law exists regarding the age of consent for a minor to enter into an enforceable contract. Accordingly, some national associations do not allow minors to sign professional contracts until the age of eighteen, while others allow minors to sign contracts at the age of sixteen.⁴¹³ One way to solve this problem is to create an EU law that allows all minors to enter into enforceable contracts at the age of sixteen.⁴¹⁴ Theoretically, this would be a great way to solve the differences in member states’ contract laws. It is very difficult, however, to harmonize national law in

⁴⁰⁸ *Id.* § 9.1.

⁴⁰⁹ *Id.*

⁴¹⁰ Reiss, *supra* note 288, at 7.

⁴¹¹ *EU Immigration Study*, *supra* note 276, at 19.

⁴¹² *See supra* note 251 and accompanying text.

⁴¹³ *See supra* notes 252–54 and accompanying text.

⁴¹⁴ The EU legislation could also include a provision allowing minors to void contracts that put them at a major disadvantage until they reach the age of eighteen.

the manner, and harmonization depends largely on the cooperation of member states.⁴¹⁵

FIFA and UEFA regulations do not restrict the age a minor can sign a professional contract. Therefore, the national associations decide the appropriate age that minors are allowed to enter into a professional contract with a club. If a club believes it is disadvantaged because it is losing players who transfer to teams that can offer professional contracts, then it must voice its complaints to the governing national association.

C. Solutions for Implementation by Independent and International Organizations

Individuals who are aware of the problems of child trafficking in international football have also formed non-governmental organizations and independent groups to help raise awareness and combat abuses faced by minors. For example, Jean-Claude Mbvoumin started a French non-governmental organization called Culture Foot Solidaire to help raise awareness and help young football players faced with trafficking and illegal agents.⁴¹⁶ Culture Foot Solidaire most recently wrote an open letter to FIFA President, Sepp Blatter, in 2010 regarding “Combating the Traffic of Young African Footballers.”⁴¹⁷ This letter discusses a prevention campaign to combat trafficking of young football players, which FIFA abandoned in 2009.⁴¹⁸ The letter points out that “[i]f this campaign is not instituted we fear that after the 2010 World Cup the traffic of young minors will not only be a long-term feature of the African sporting landscape but indeed it will become worse: it will be institutionalised.”⁴¹⁹

Others have worked to help abandoned players in Europe on a smaller scale. For example, individuals that have noticed young African players abandoned in the streets of Europe have started football teams to allow these children to play and hopefully give them a second chance to be seen by

⁴¹⁵ CHRISTIAN TWIGG-FLESNER, *THE EUROPEANISATION OF CONTRACT LAW* 42 (2008).

⁴¹⁶ *Culture Foot Solidaire Protecting Youth*, FIFA.COM (Oct. 21, 2008), <http://www.fifa.com/aboutfifa/worldwideprograms/news/newsid=920094.html>.

⁴¹⁷ Matt Scott, *FIFA “Abandons” Child Trafficking Campaign*, GUARDIAN.CO.UK (Feb. 4, 2010, 12:10 AM), <http://www.guardian.co.uk/sport/2010/feb/04/fifa-child-trafficking-sepp-blatter>.

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

European clubs.⁴²⁰ In Greece, two former football managers started an amateur team, the Black Diamonds, after they noticed stranded African players wandering in the streets.⁴²¹ The managers organize exhibition games with professional teams to help showcase the players to professional clubs.⁴²²

South Africa hosted the 2010 World Cup, which was a significant step to increasing recognition of African football. People all over the world watched, which opened a great opportunity to raise awareness of the unlicensed agents throughout Africa. Hopefully, awareness campaigns will make African families think twice about sending their children to Europe with these agents. On a more pessimistic note, however, the 2010 World Cup might have also given young African boys unrealistic dreams of becoming a star footballer, which would allow false agents more opportunities to swoop in and illegally bring them to Europe from Africa. Therefore, as Mbvoumin pointed out in his letter to FIFA, it is crucial to start awareness campaigns in Africa as soon as possible.⁴²³

CONCLUSION

The *Bosman* case, the subsequent FIFA transfer regulations, and the amendments made to the transfer regulations over time have played a major role in forming the sport of football as the world knows it today. These transfer regulations, however, have had many negative effects on minors and the problems have been difficult to fix due to certain conflicts of laws. Fortunately, FIFA, UEFA, the EU, and other international organizations have begun to acknowledge these problems and have started to take action. The best results will be achieved if these organizations can collaborate to enact the solutions discussed in Part IV. UEFA should take the first additional step towards protecting minors by removing the home-grown rule. In turn, this will hopefully eliminate the motivation behind clubs seeking young foreign players to fulfill the home-grown quota. Additionally, raising awareness regarding the trafficking of minors would decrease fake agents' ability to deceive young African boys and their families. The greater the collaboration between the relevant governing bodies and organizations involved with European football,

⁴²⁰ Christos Gavalas, *Anything to Score*, NYU LIVEWIRE (Mar. 7, 2007), http://journalism.nyu.edu/publishing/archives/livewire/sports/ghana_soccer/index.html.

⁴²¹ *Id.*

⁴²² *Id.*

⁴²³ See *supra* notes 417–19 and accompanying text.

the greater the chance that the problems relating to the transfer of minors in international football will be solved.

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