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# Red Card: The Battle Over European Football's Transfer System

## I. INTRODUCTION

Beginning with legislation in the 1870s that restricted the number of hours in a workweek, British workers gained significantly more leisure time with which to pursue recreational activities.<sup>1</sup> With this increased, yet still limited "free" time, many turned to the ancient sport of football.<sup>2</sup> This renewed interest in the sport resulted in more concrete rules for the game, such as limiting the number of players on the field during a match as well as the size of the field, previously allowed to stretch over a mile.<sup>3</sup> With the limitation on the number of players per team, the concept of spectators arose quickly as more people were forced to sit on the sidelines.<sup>4</sup> When crowds watching these friendly matches began to grow in size and enthusiasm, some business-first entrepreneurs thought to charge admission to these matches.<sup>5</sup> Thus began the professionalization of football in England, a movement paralleled in many other countries throughout Europe.

But with the rise of professional football came labor troubles, some of which are still being debated in the halls of the European Union (EU) in Brussels today. Foremost among these troubles has been the transfer system. Under this system dating back to the 1890s, clubs purchased and sold players who lacked the ability to freely choose where they wished to ply their trade. A player could only change clubs through a transfer in which one club purchased the player's contract from his current club.<sup>6</sup> While a player could decline a transfer, he could not change clubs without one. Thus, player owned no right to negotiate the best possible deal for himself.<sup>7</sup> For much of the twentieth century, the transfer system hid behind the defense that it was simply the way that professional football had always done business. Because of the wealth and strength of club owners, few players were willing to stand up and defend their rights.

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1. STEVEN TISCHLER, FOOTBALLERS AND BUSINESSMEN: THE ORIGINS OF PROFESSIONAL SOCCER IN ENGLAND 35 (1981).

2. *Id.* at 38.

3. *Id.*

4. *Id.*

5. *Id.* at 40.

6. *Id.* at 61.

7. *Id.*

This Comment will identify some of those players who dared to risk their careers and reputations by confronting the football establishment. From George Eastham in England to Jean-Marc Bosman in Belgium, a few brave souls brought their battles to the courts in an attempt to obtain greater rights for football players. Despite these sacrifices for today's players, their actions have also led to the current transfer controversy threatening to destroy the modern game. Therefore, as one admires the bravery of Eastham, Bosman, and others, one must also question whether today's turmoil is the next logical step in the battle for players' rights or whether it is the death knell for European football. As the future of the sport hangs in the balance, all parties involved must recognize the possible effects of their actions and that a compromise might be necessary to ensure the sport's survival. Although clubs trampled on players' rights for most of the twentieth century, the players' representatives must realize that too much power and freedom in the hands of the players could have ruinous effects on the game.

Part II of this Comment will provide a historical and legal analysis of the transfer system, from its creation in the 1890s, through the *Eastham* trial in the 1960s. Part III will describe the role of the European Union and its reach into the realm of sports. Part IV will detail the *Bosman* case and its establishment of free agency for European footballers. Part V will provide an in-depth look at the present transfer conflict and the agreement that has apparently brought the transfer system in compliance with EU law. Finally, Part VI will analyze why a compromise has been so difficult to obtain and will discuss future problems for the new transfer regulations.

## II. HISTORICAL AND LEGAL ANALYSIS OF THE TRANSFER SYSTEM

### A. *Creation of the Transfer and Retention System in British Football and the Player's Union*

A journalist, commenting on the game of football and the call by many for free movement of players, felt that it was:

all very well for people to chatter about buying and selling players. As a matter of principle perhaps it may be wrong, but experience in managing football clubs shows the absolute necessity for it, and it will be a bad day for the League, the clubs, and the players when freedom all round is given. Teams must be comparatively level to sustain the interest—if they are not, receipts fall off, and without receipts players cannot be paid wages.<sup>8</sup>

While this comment may strike a nerve with followers of today's

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8. *Id.* at 62.

transfer controversy, it was made in 1895. And sentiment such as this led English football, and ultimately European football, to implement the transfer system in the late nineteenth century.<sup>9</sup> This system required clubs to produce a list at the end of each season declaring which players they intended to retain for the following season and which players were available for transfer to another club.<sup>10</sup> A player designated on the "retention list" had no right to demand a transfer. His only possible recourse was an appeal to the Football League in order to persuade it to order a transfer.<sup>11</sup> Furthermore, a player who was placed on the transfer list was not assured of being able to switch clubs.<sup>12</sup> The selling club placed a purchase price, or "transfer fee," on each listed player that the purchasing club would have to pay in order for a transfer to be completed.<sup>13</sup>

The club owners understood that the transfer system violated players' rights and freedom of contract. They decided, however, that the system was a necessary evil in order to control player mobility and to prevent wealthier clubs from buying up all of the best players without compensating the original club.<sup>14</sup> Additionally, in an effort to further control the players, club owners agreed on a maximum wage rule.<sup>15</sup>

Although displeased with the system, the players did not immediately unite and stand up to the owners.<sup>16</sup> Initial individual efforts at protest included "playing for one's papers," where a player would deliberately under-perform in matches in hopes of forcing his club into a transfer.<sup>17</sup> Yet, this and other methods were only marginally successful, and by 1899 there were rumblings throughout British football for the creation of a players' union.<sup>18</sup> The threat of release and replacement, however, chilled this early unionization movement.<sup>19</sup>

Finally, in 1907 a leader emerged, and the Players' Union and Benefit Society was formed.<sup>20</sup> Billy Meredith, a winger for Manchester City, had been forced to become a professional by his club owners.<sup>21</sup> Meredith, known as the "Wizard" because of his playing abilities,

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9. *See id.* at 63.

10. Peter N. Katz, Comment; *A History of Free Agency in the United States and Great Britain: Who's Leading the Charge?*, 15 *COMP. LAB. L.J.* 371, 402 (1994).

11. *Id.*

12. *Id.*

13. *Id.*

14. TISCHLER, *supra* note 1, at 62.

15. *Id.* at 64.

16. *See id.* at 106.

17. *Id.*

18. *See id.* at 107.

19. *Id.*

20. *Id.* at 108.

21. Eamon Dunphy, *For the Good of the Game; A Court Decision Has Changed Football for*

trained rigorously in order to perform at a high level in each match before huge crowds.<sup>22</sup> Yet, he became concerned that, despite his great efforts and abilities, his wages were on par with lesser men. As a result of these concerns and the failure of the football establishment to react to them, Meredith led the first meeting of the players' union on December 2, 1907.<sup>23</sup> The union quickly issued a manifesto setting forth three principal demands: (1) an end to wage restraint; (2) freedom of contract; and (3) access to the laws of the land rather than the corrupt rules of professional soccer.<sup>24</sup>

While a main goal of the union was the dismantling of the transfer and retention system, the battle would not prove easy.<sup>25</sup> In 1912, the union brought a test case before the King's Bench when the directors of Aston Villa withheld the registration papers of a "troublemaker" and overpriced his transfer fee.<sup>26</sup> By refusing to transfer the player's papers to another club, Aston Villa prevented him from playing for any club willing to match the overpriced transfer fee and effectively ended his career.<sup>27</sup> Despite what appeared to be strong evidence of malicious conduct on the part of Aston Villa, the judge ruled for the football league.<sup>28</sup>

#### B. Eastham v. Newcastle United Football Club: A *Harbinger* of Bosman

In 1960, Newcastle United Football Club notified George Eastham, who was approaching the end of his one-year contract with the club, that they would retain him for the following season at the same salary.<sup>29</sup> Under British football's transfer and retention system in place at the time, a club could effectively hold a player for life by withholding his playing registration and refusing any and all transfer requests by both the player and other clubs.<sup>30</sup> The British players' union, the Professional Footballers' Association (PFA), described the players who performed under this archaic system as "soccer slaves."<sup>31</sup>

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Ever, THE INDEPENDENT (London), Sept. 24, 1995, Comment at 21, LEXIS, News Library, Non-US News File.

22. *Id.*

23. *Id.*

24. *Id.*

25. Katz, *supra* note 10, at 403.

26. *Id.*

27. Frank Keating, *Proud Pioneers of the Union's Militant Tendency*, THE GUARDIAN (London), Apr. 1, 1992, at 18, LEXIS, News Library, Non-US News File.

28. *Id.*

29. Eastham v. Newcastle United Football Club, Ltd., 1964 Ch. 413, 419.

30. *Tackling Footballers' Pay*, DAILY MAIL (London), Nov. 26, 1999, at 76, LEXIS, News Library, Non-US News File.

31. Gordon Taylor, *Football Must Take Up the Bosman Challenge*, THE INDEPENDENT (London), June 1, 1995, at 38, LEXIS, News Library, Non-US News File.

Eastham wanted to sign with rival Arsenal, but, by withholding his registration from Arsenal, Newcastle prevented a signing.<sup>32</sup> He then appealed to the Football Association (FA) only to be told that this was a problem between him and Newcastle. The case attracted the attention of the PFA, and the union filed a writ charging that Newcastle had acted in restraint of trade.<sup>33</sup> Eastham claimed that the transfer and retention rules restricted his freedom of movement as he had been unable to pursue his livelihood for over three months despite having gone through every possible procedure to obtain the transfer and making it perfectly clear to Newcastle that he would no longer play for the club.<sup>34</sup> The Chancery Division found that the club owners used the retention system in order to obtain transfer fees for players that they no longer planned to retain.<sup>35</sup> Therefore, the court reasoned, in a situation where a player has made it very clear that he no longer intends to play for his club, the club "substantially" interferes with the player's right to seek other employment by placing him on the retention list.<sup>36</sup>

The court ultimately found the combined transfer and retention system objectionable. It prevented a player from leaving his club or the league, even though no longer under contract, unless his transfer fee could be reduced.<sup>37</sup> Additionally, the court provided an interesting commentary on the argument of the club owners and the league that the system had always been used and was generally found in all professional leagues throughout the world:

The system is an employers' system, set up in an industry where the employers have succeeded in establishing a united monolithic front all over the world, and where it is clear that for the purpose of negotiation the employers are vastly more strongly organized than the employees. No doubt the employers all over the world consider the system a good system, but this does not prevent the court from considering whether it goes further than is reasonably necessary to protect their legitimate interests.<sup>38</sup>

Because the Chancery Court declared that the transfer and retention system was a restraint of trade, a new system was created that allowed a

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32. David Lacey, *Soccer: Modern Legacy of Eastham's Stand*, THE GUARDIAN (London), Sept. 1, 1990, at Talking Point, LEXIS, News Library, Non-US News File.

33. Tom Humphries, *Evils That Soccer Can Do Without*, THE IRISH TIMES, July 26, 1999, at 57, LEXIS, News Library, Non-US News File.

34. *Eastham*, 1964 Ch. at 429. Eastham was quoted as having said, "No matter what they say, no matter what they do, I've played my last match for Newcastle." Ken Jones, *Football: The Death of Loyalty and Respect in Football*, THE INDEPENDENT (London), Aug. 6, 1998, at 22, LEXIS, News Library, Non-US News File.

35. *Eastham*, 1964 Ch. at 430.

36. *Id.* at 430-31.

37. *Id.* at 438.

38. *Id.*

player to move without a transfer fee if the club failed to offer him a contract that at least equaled his previous contract.<sup>39</sup>

In 1978, British football further amended the "English transfer system" to allow a player to decline his club's offer and to move on to the team of his choice.<sup>40</sup> If his new club and former club could not agree on a transfer fee, a four-person transfer tribunal determined the fee.<sup>41</sup> Even though it was not until 1978 that players finally secured free agency,<sup>42</sup> George Eastham is still considered a legendary figure in British football because of his earlier efforts.

Despite the changes to the English system, the *Eastham* case hardly impacted the transfer system throughout Europe. Many countries, such as Belgium, continued to use the pre-*Eastham* system.<sup>43</sup> The continued use of this system fueled the transfer battle dominating European football for the past decade; perhaps an unnecessary battle had more European football associations paid heed to the *Eastham* decision.

### III. THE REACH OF THE EUROPEAN UNION INTO THE AFFAIRS OF FOOTBALL

#### A. *The European Commission and the European Court of Justice*

Understanding the transfer controversies of the last decade within the European Union requires a basic understanding of the EU and some of its organizational bodies. In 1957, six nations signed the Treaty of Rome (the EU Treaty) forming the European Economic Community. The EU Treaty established the four governing bodies of the EU, including the European Commission (EC or the Commission) and the European Court of Justice (ECJ).<sup>44</sup> The EC, comprised today of seventeen commissioners with at least one from each Member State, proposes legislation, enforces treaty provisions, and, most importantly, possesses absolute enforcement power and control over competition law.<sup>45</sup>

The ECJ, comprised of fifteen judges, one from each Member State, ensures universal application of the laws of the EU.<sup>46</sup> The ECJ rules on the legality of actions of the other EU governing bodies, as well as preliminary rulings on national courts' requests for interpretations of

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39. Taylor, *supra* note 31.

40. *Id.*

41. *Id.*

42. Lacey, *supra* note 32.

43. *Tackling Footballers' Pay*, *supra* note 30, at 76.

44. Rachel B. Arnedt, Comment, *European Union Law and Football Nationality Restrictions: The Economics and Politics of the Bosman Decision*, 12 EMORY INT'L L. REV. 1091, 1092-94 (1998).

45. *Id.*

46. *Id.* at 1095.

EU law.<sup>47</sup> Also part of the ECJ structure are the Advocate Generals who provide detailed recommendations, or "advisory opinions," before the ECJ rules on a question.<sup>48</sup> While these advisory opinions are not binding on the parties involved,<sup>49</sup> as will be seen in the analysis of the Advocate General's opinion in *Bosman* and the following reactions, the recommendations are considered by many as final.

### B. Articles 48, 85, and 86 of the EU Treaty

Generally, in the course of the transfer battles, three provisions of the EU Treaty are cited: Articles 48, 85, and 86. Article 48 guarantees freedom of movement for workers within the Community and calls for abolition of any employment discrimination based on nationality.<sup>50</sup> Article 48 does not apply, however, to employment situations completely internal to a Member State.<sup>51</sup> To illustrate, George Eastham would have to show evidence that he desired a transfer to a club outside of Great Britain if he wished to argue his case before the ECJ today. Without such evidence, the provisions of Article 48 would not apply because it would be a situation completely internal and not affecting the common market.

Articles 85 and 86 apply to competition, which is considered vital to a market-based economy.<sup>52</sup> Article 85(1) prohibits agreements

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47. *Id.*

48. *Id.* at 1095-96.

49. *Id.*

50. Article 48 states:

(1) Freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest. (2) Such freedom of movement shall entail the abolition of any discrimination based on the nationality between workers of the Member States as regards employment, remuneration and other conditions of works 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 implementing regulations to be drawn up by the Commission. (4) The provisions of this Article shall not apply to employment in the public service.

Treaty Establishing the European Economic Community, art. 48, Mar. 25, 1957, 298 U.N.T.S. 11, available at <http://europa.eu.int/abc/obj/treaties/en/entr6d03.htm> [hereinafter EEC Treaty].

The article, however, does allow for certain exceptions to free movement if justified on the grounds of public policy, public security, or public health.

51. Andrew L. Lee, Comment, *The Bosman Case: Protecting Freedom of Movement in European Football*, 19 *FORDHAM INT'L L.J.* 1255, 1265 (1996).

52. *Id.* at 1266-67.



between “undertakings”<sup>53</sup> or associations of undertakings that may affect trade between Member States and that may result in the “prevention, restriction, or distortion” of competition.<sup>54</sup> Article 85(2) declares that any agreements violating the provisions of subsection (1) are automatically void.<sup>55</sup> Article 86 prohibits undertakings from abusing a dominant position within the market negatively affecting trade between Member States.<sup>56</sup>

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53. The case law of the EU has found “undertaking” to cover all entities involved in economic activity despite its legal status or its financing. Case C-415/93, *Union Royale Belge des Societes de Football (Association) v. Jean-Marc Bosman*, 1995 E.C.R. I-4921, I-5026-27, [1996] 1 C.M.L.R. 645, 742-43 (1996).

54. Article 85 states:

(1) The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which: (a) directly or indirectly fix purchase or selling prices or any other trading conditions; (b) limit or control production, markets, technical development, or investment; (c) share markets or sources of supply; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts. (2) Any agreements or decisions prohibited pursuant to this Article shall be automatically void. (3) The provisions of paragraph 1 may, however, be declared inapplicable in the case of: any agreement or category of agreements between undertakings; any decision or category of decisions by associations of undertakings; any concerted practice or category of concerted practices; — which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not: (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

EEC Treaty, *supra* note 50, at art. 85, available at <http://europa.eu.int/abc/obj/treaties/en/entr6d05.htm>.

55. *Id.*

56. Article 86 states:

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between the Member States. Such abuse may, in particular, consist in: (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development to the prejudice of consumers; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

EEC Treaty, *supra* note 50, at art. 86, available at <http://europa.eu.int/abc/obj/treaties/en/entr6d05.htm>.

### C. *The Impact of the Walrave and Dona Decisions*

Prior to the explosion of the transfer battles of the 1990s, two lesser known decisions by the ECJ helped to establish the lines, albeit fuzzy ones, between areas where sporting associations could and could not create regulations free from EC interference. In 1974, a national court referred a question to the ECJ asking whether certain rules of a national cycling association, which required the pacemaker to be the same nationality as the rider, would be incompatible with EU principles of free movement of labor.<sup>57</sup> The ECJ held that sport practices were subject to the rules of the EU insofar as they constituted an economic activity.<sup>58</sup> Activities hindering the freedom of movement would be acceptable, however, if they were of a “purely sporting interest.”<sup>59</sup> The cycling association argued that its rules were the legal act of an association that did not fall under public law.<sup>60</sup> The ECJ rejected this argument, stating that freedom of movement was a fundamental right of the EU and would be greatly weakened if barriers to free movement could be defended as being the work of an association or organization not subject to public law.<sup>61</sup> The opinion acknowledged for the first time that Article 48 applied not only to the rules of public employment, but also to those of private employment, such as a cycling or even professional football.<sup>62</sup>

Two years later, the nationality restrictions of a football association were questioned before the ECJ.<sup>63</sup> Reaffirming the *Walrave* ruling, the ECJ again held that sporting activities were subject to EU regulations so long as they were sporting in nature.<sup>64</sup> The court provided the football associations with an example of a sporting regulation that was purely sporting in nature — prohibiting the use of foreign players in matches played by the national team of that Member State.<sup>65</sup> But the court also warned that such a provision must “remain limited to its proper objective.”<sup>66</sup>

These two decisions would impact transfer debates over twenty years later as opposing sides battled over whether the transfer rules of

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57. Case 36/74, *B.N.O. Walrave and L.J.N. Koch v. Association Union Cycliste Internationale*, 1974 E.C.R. 1405, 1417, [1975] 1 C.M.L.R. 320, 331 (1975).

58. *Id.*

59. *Id.* at 1418, [1975] 1 C.M.L.R. at 332.

60. *Id.*

61. *Id.* at 1418-19, [1975] 1 C.M.L.R. at 332-33.

62. Arnedt, *supra* note 44, at 1101.

63. Case 13/76, *Dona v. Mantero*, 1976 E.C.R. 1333, 1338 [1976] 2 C.M.L.R. 578, 585 (1976).

64. *Id.* at 1340, [1976] 2 C.M.L.R. at 586.

65. *Id.* at 1340, [1976] 2 C.M.L.R. at 587.

66. *Id.*

the football associations were of a purely sporting interest or whether they constituted an economic activity, and, ultimately, whether such a distinction was even possible in the world of the modern professional sports.

#### IV. *BOSMAN*

In 1995, a bomb was dropped on European football altering its landscape for years to come. A little known Belgian football player named Jean-Marc Bosman challenged the legal basis of the transfer system battling his way to the ECJ. But before analyzing this groundbreaking decision, one must delve into the background of the case.

##### A. *The Football Family – FIFA, UEFA, and the National Associations*

In order to understand European football, one must understand the international hierarchy of football. The *Federation Internationale de Football Association* (FIFA), headquartered in Switzerland, is the sport's world governing body.<sup>67</sup> As the leader of what at times appears to be football's dysfunctional family, FIFA is divided into several regional federations whom it permits to adopt their own transfer rules.<sup>68</sup> The *Union des Associations Europeennes de Football* (UEFA), one such federation,<sup>69</sup> governs football in Europe.<sup>70</sup> Each European country has a national association that is a member of UEFA.<sup>71</sup> The Belgian association, *Union Royale Belge des Societes de Football Association ASNL* (URBSFA), is therefore a member of UEFA and, as such, can adhere to UEFA rules or may adopt its own rules.<sup>72</sup>

##### B. *The Belgian Transfer Rules*

The transfer rules that applied to Jean-Marc Bosman were those of the URBSFA. While the rules of FIFA and UEFA could have been included in each national association's rules, national associates retained discretion to enforce them more or less stringently.<sup>73</sup> Under the Belgian transfer rules in place at the time, a player nearing the end of his playing contract, all of which uniformly ended on June 30, was entitled to a new

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67. Lee, *supra* note 51, at 1284.

68. Amikam 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).

69. *Id.*

70. Arnedt, *supra* note 44, at 1103.

71. *Id.*

72. *Id.*

73. Case C-415/93, *Union Royale Belge des Societes de Football Association v. Jean-Marc Bosman*, 1995 E.C.R. I-4921, I-5046, [1996] 1 C.M.L.R. 645, 756 (1996).

contract offered by his club by April 26. Otherwise, he would become an amateur.<sup>74</sup> If the player refused an offered contract, his club could place him on a "compulsory" transfer list active through May. An interested club could purchase the player from this list for a compensation fee for training, which was calculated by multiplying the player's gross annual income by a varying factor depending upon his age.<sup>75</sup> If the original club failed to obtain a transfer for the player by May 31, then a period of "free transfers" opened on June 1, during which clubs could set a mutually agreeable transfer fee.<sup>76</sup>

If there was still no transfer at the end of this period, then the club was obligated to repeat the April 26 offer to the player.<sup>77</sup> If the player refused the offer again, the club had until August 1 to suspend him.<sup>78</sup> Once suspended, the player had to either accept whatever offer his club might still make or sit out for two seasons, after which he could obtain a transfer without the club's consent.<sup>79</sup>

Additionally, pre-*Bosman* FIFA regulations prohibited a player who was bound by either contract or club or national rules from leaving his national association to play in another country.<sup>80</sup> After the incidents described *infra*, UEFA adopted a supplement to its regulations, which declared that no economic disagreement between clubs over a transfer fee was to affect the playing status of the player.<sup>81</sup> With this amendment, UEFA clearly intended to demonstrate that the failure of two clubs to immediately agree on a transfer fee would not prevent a player from playing for his new club.

### C. *The Case of Jean-Marc Bosman*

Jean-Marc Bosman was a footballer for RC Liege, a Belgian first division club, earning approximately 120,000 Belgian francs (Bfr)<sup>82</sup> per month, including bonuses.<sup>83</sup> In 1990, as Bosman's contract neared its end, RC Liege made a pre-April 26 contract offer for 30,000 Bfr per month, markedly less than his previous contract.<sup>84</sup> When he refused to accept the offer, RC Liege placed Bosman on the compulsory transfer

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74. *Id.* at I-5045, [1996] 1 C.M.L.R. at 755-56.

75. *Id.* at I-5045, [1996] 1 C.M.L.R. at 756.

76. *Id.* at I-5046, [1996] 1 C.M.L.R. at 756.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at I-5047, [1996] 1 C.M.L.R. at 757.

81. *Id.* at 757-58.

82. On January 15, 2001, one hundred BFR was worth approximately \$2.35 in the United States as Bosman's monthly salary would have been \$2,820.

83. *Bosman*, at I-5050, [1996] 1 C.M.L.R. at 759.

84. *Id.*

list with a compensation fee of 11,743,000 Bfr as determined by the set standards. This fee was approximately four times what RC Liege had paid him in obtaining him.<sup>85</sup> Not surprisingly, no club made an offer for this staggering fee during the compulsory period.<sup>86</sup> Subsequently, during the free transfer period, Bosman arranged a contract with US Dunkerque, a second division French club, for 100,000 Bfr per month and a signing bonus of 900,000 Bfr.<sup>87</sup> RC Liege and US Dunkerque agreed on a temporary transfer of Bosman for one year for a fee of 1,200,000 Bfr to be paid to RC Liege upon US Dunkerque's receipt of Bosman's playing certificate.<sup>88</sup>

But RC Liege, concerned that US Dunkerque would not be able to make the required payments, never had the registration sent to the *Federation Francaise de Football* (FFF).<sup>89</sup> Ultimately, the transfer never materialized, and, before the mandatory August 1 deadline, RC Liege suspended Bosman.<sup>90</sup> Therefore, in a manner reminiscent of the transfer and retention system that George Eastham battled in England in the 1960s, the Belgian transfer system effectively blocked Bosman from playing any professional football for the 1990-91 season.<sup>91</sup>

What followed for Bosman was a tortuous four-year ride through national courts, which ended with two questions being referred by the Belgian national court to the ECJ. One question dealt with the regulations of the football associations concerning foreign players and whether they violated Article 48.<sup>92</sup> The other question, more important here, focused on whether Articles 48, 85, and 86 prohibited a "football club from requiring and receiving payment of a sum of money upon the engagement of one of its players who has come to the end of his contract by a new employing club."<sup>93</sup>

#### D. *Reaction Throughout European Football Leading Up to the Bosman Hearing Before the ECJ*

As Bosman worked his way through the Belgian and European

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85. *Id.*

86. *Id.*

87. *Id.* at I-5050-51, [1996] 1 C.M.L.R. at 759.

88. *Id.* at I-5051, [1996] 1 C.M.L.R. at 759.

89. *Id.*

90. *Id.*

91. Interestingly, Bosman could have obtained a transfer without a fee under the English system that arose out of the *Eastham* decision, where a player could walk without a transfer fee at the end of his contract if his club failed to offer him a salary at least equal to his previous contract. Martin Thorpe, *Soccer: Bosman Case Could End Transfers; Football under Threat*, THE GUARDIAN (London), Apr. 4, 1995, at 18, LEXIS, News Library, Non-US News File.

92. *See Bosman*, 1995 E.C.R. at I-5056, [1996] 1 C.M.L.R. at 762.

93. *Id.*

courts, UEFA and the national associations were slow to realize that his case posed an actual threat to something so fundamental to European football as the transfer system.<sup>94</sup> Traditionally, UEFA had been able to keep the EC from attacking the transfer rules on free movement of labor grounds.<sup>95</sup> But once the above-mentioned questions were referred to the ECJ, UEFA was forced to take the threat more seriously. In fact, most legal experts predicted a ruling favorable to Bosman even before the hearing in front of the ECJ.<sup>96</sup> UEFA began to voice concerns that a ruling in favor of Bosman would give players too much control, allowing them to constantly change clubs. Such a scenario would leave fans in a state of confusion as to who played for their favorite side.<sup>97</sup> UEFA also complained that a Bosman victory would bankrupt smaller clubs that relied heavily financially on transfer fees from larger clubs.<sup>98</sup>

The players' association for all of professional football, International Federation of Professional Footballers (FIFPro), as well as national players' unions, such as the PFA in England and Scotland, shared this sentiment.<sup>99</sup> Although a favorable decision for Bosman might allow for freer movement and higher salaries for players, Gordon Taylor, the head of both FIFPro and the British PFA, could not fully support them. He believed that a Bosman victory could lead to the destruction of the highly successful English player development system under which approximately 1,250 players between the ages of sixteen and eighteen were trained annually.<sup>100</sup> Taylor felt as though the blame for Bosman's situation should lie exclusively with the Belgian football association.<sup>101</sup>

In the months leading up to the June 1995 ECJ hearing, many in the football community expected Bosman to take some kind of "payoff" and disappear forever.<sup>102</sup> In fact, on the eve of the June hearing, it was rumored that UEFA had offered Bosman \$1 million "to buy his

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94. Colin Malam, *Soccer: Trade Union Fights UEFA over Soccer "Slave Trade,"* SUNDAY TELEGRAPH, Jan. 10, 1993, at 24, LEXIS, News Library, Non-US News File.

95. *Id.*

96. See Joe Melling, *He May Just Be an Unknown Belgian but His Court Case Could Change the Shape of Our Football Forever,* MAIL ON SUNDAY (London), Feb. 5, 1995, at 84, LEXIS, News Library, Non-US News File.

97. See *id.*

98. *Id.*

99. See Hugh Keevins, *Price of Freedom Runs High,* THE SCOTSMAN, June 20, 1995, at 34, LEXIS, News Library, Non-US News File.

100. Taylor, *supra* note 31, at 38.

101. *Id.* See also Ken Gallacher, *Tackling the Question of Transfers,* THE HERALD (Glasgow), June 20, 1995, at 32, LEXIS, News Library, Non-US News File.

102. See Rob Hughes, *A Sport Courting Disaster,* INTERNATIONAL HERALD TRIBUNE (Neuilly-sur-Seine, France), Mar. 8, 1995, LEXIS, News Library, Non-US News File.

silence."<sup>103</sup> For Bosman, however, the crusade had developed into something more than just compensation.<sup>104</sup> Only days before the hearing, he declared, "My career is almost finished but this has become a matter of principle."<sup>105</sup>

The inability of the football authorities to avoid the June hearing simply highlighted the poor organization of UEFA. Although the case had been on-going for almost five years, UEFA did not publicly show much concern until the six months leading up to the ECJ hearing.<sup>106</sup> Even in its arguments before the ECJ, UEFA appeared to believe that it did not belong in the litigation. UEFA argued that it was not involved in Bosman's transfer, despite its role as the governing body for European football.<sup>107</sup> Further, UEFA, as it had for years, essentially ignored the existence of FIFPro, relying instead on its historical influence over the EC to keep the transfer system free from scrutiny.<sup>108</sup> Although the first meetings ever between UEFA and FIFPro took place that spring, UEFA did not move quickly enough, perhaps pinning its hopes on Bosman taking a money payment.<sup>109</sup> FIFPro's Taylor, however, counseled against such action, warning that a settlement would merely postpone the problem until the next Bosman arrived.<sup>110</sup>

#### E. *The Recommendations of the Advocate-General*

On September 20, 1995, the Advocate-General for the ECJ, Carr Otto Lenz, released his recommendations to the court and the public.<sup>111</sup> Lenz first advised that the transfer rules violated Article 48, since a player could not move from a club in one Member State to a club in another without payment of a transfer fee and release of the player's registration to the new association.<sup>112</sup> Lenz was not swayed by FIFA and UEFA rules that prohibited a dispute between two clubs over the transfer fee from affecting a player's status with his new club. Realisti-

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103. Keevins, *supra* note 99, at 34.

104. Archie MacGregor, *Bosman's Case Set to Shock Football*, SUNDAY TIMES, June 18, 1995, LEXIS, News Library, Non-US News File.

105. *Id.*

106. This is a familiar theme with UEFA and FIFA that has repeated itself with potentially disastrous consequences in the current transfer strife.

107. See Bruce McHenry, *Bosman Hailed for Challenging Goliath*, THE SCOTSMAN, June 21, 1995, at 31, LEXIS, News Library, Non-US News File.

108. Brian Wilson, *Innocent Abroad in Pursuit of Justice: Bosman Poised to Make Football History*, THE HERALD (Glasgow), Apr. 13, 1995, at 24, LEXIS, News Library, Non-US News File.

109. See Taylor, *supra* note 31, at 38.

110. *Id.*

111. See Ian Paul, *Only the Rich May Survive Ruling*, THE HERALD (Glasgow), Sept. 21, 1995, at 7, LEXIS, News Library, Non-US News File.

112. Case C-415/93, *Union Royale Belge des Societes de Football Association v. Jean-Marc Bosman*, 1995 E.C.R. I-4921, I-5010-11, [1996] 1 C.M.L.R. 645, 727 (1996).

cally, neither team would allow the transfer to go through without the possibility of an agreement over the transfer fee.<sup>113</sup>

Second, Lenz advised that the transfer rules restricted competition within the meaning of Article 85(1).<sup>114</sup> The rules replaced traditional market ideals of supply and demand by attempting to “preserve” the current competition situation.<sup>115</sup> Without the transfer rules in place, players would move freely at the end of their contracts, allowing low-end clubs the opportunity to engage these players and improve their standing in the sport.<sup>116</sup> Thus, the current rules restricted competition in the manner intended by the larger clubs and national associations.<sup>117</sup> While Lenz acknowledged that the transfer rules could be exempted under article 85(3), only the Commission could grant such an exemption and only by formal decision.<sup>118</sup>

Finally, Lenz found that the transfer rules did not violate Article 86, which required abuse of a dominant market position.<sup>119</sup> He reasoned that it was the clubs, not the associations, UEFA, nor FIFA, who were at fault because the rules concerned the “engagement of players.”<sup>120</sup> Therefore, because an agreement between clubs could hardly be classified as a “dominant position within the common market,” an Article 86 violation could not be found.<sup>121</sup>

#### F. *Reaction of the Football World to the Recommendation of the Advocate General and Anticipation of the ECJ Ruling*

Many within the European football community quickly declared Lenz's opinion the “death knell” of football, describing it as a “recipe for disaster.”<sup>122</sup> Two central arguments were put forward against the opinion of the Advocate General: (1) small clubs faced bankruptcy without transfer fees and would disappear; and (2) larger clubs stood to lose their largest assets off their balance sheets.<sup>123</sup> Many believed that smaller clubs, who relied on transfer fees in order to stay financially

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113. *See id.*

114. *Id.* at I-5029-30, [1996] 1 C.M.L.R. at 745-46.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* at I-5036, [1996] 1 C.M.L.R. at 751.

119. *Id.* at I-5037, [1996] 1 C.M.L.R. at 752-53.

120. *Id.*

121. *Id.* at I-5038-39, [1996] 1 C.M.L.R. at 754.

122. Stephen Bates, *Bosman Ruling Signals Chaos*, THE GUARDIAN (London), Sept. 15, 1995, at 26, LEXIS, News Library, Non-US News File. *See also* Jimmy Hill, *Recipe for Disaster*, THE OBSERVER, Sept. 24, 1995, at 10, LEXIS, News Library, Non-US News File; Trevor Haylett, *UEFA Unites to Defend Transfers*, THE INDEPENDENT (London), Nov. 4, 1995, at 28, LEXIS, News Library, Non-US News File.

123. Robert Rice, *Business and the Law: Ball Put in Europe's Court — Football's Transfer*



afloat and to continue to develop young talent, would be driven into bankruptcy by an ECJ decision outlawing all transfer fees.<sup>124</sup> Some of these clubs, it was argued, relied on the periodic sale of its players in order to finance complex development systems.<sup>125</sup>

Another chief UEFA complaint was that abolition of the transfer fees would immediately threaten the financial strength of larger clubs.<sup>126</sup> Traditionally, larger clubs included players in the club's assets because the clubs could retain their value at the end of the contracts.<sup>127</sup> Many of these larger clubs feared that an ECJ decision affirming Lenz's recommendations would instantly wipe millions off clubs' balance sheets.<sup>128</sup> In the case of a negative decision, these clubs hoped, at a minimum, for a grace period that would allow the clubs, associations, and players an opportunity to adjust to the new rules.<sup>129</sup>

In addition to protesting the grounds of Lenz's opinion, UEFA immediately began lobbying the EC for a special exemption from the labor laws of the EU.<sup>130</sup> Such an exemption, UEFA argued, would acknowledge that the transfer rules were necessary to prevent a cartel of super-rich clubs from completely dominating the sport.<sup>131</sup> This effort was a long shot for UEFA because, earlier in the year, the EC had rejected these arguments, stating that the transfer system was essential neither for the organization of the sport, for the survival of smaller clubs, nor for maintaining a balance between small and large clubs.<sup>132</sup>

From the player's perspective, the potential outcome created enthusiasm, surely due in large part to the possibility of larger financial rewards.<sup>133</sup> One of Bosman's attorneys, a former head of a players' association, stated, "We have waited 25 years for a player with sufficient courage, prepared to accept penalties, to challenge the transfer system."<sup>134</sup> This excitement was shared by football agents salivating over

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*System for Players Could Be in Doubt*, FINANCIAL TIMES (London), Sept. 19, 1995, at 30, LEXIS, News Library, Non-US News File.

124. See Bates, *supra* note 122, at 10.

125. Paul, *supra* note 111, at 7.

126. See Bates, *supra* note 122, at 10.

127. *Id.*

128. Rice, *supra* note 123, at 30.

129. Murray Ritchie, THE HERALD (Glasgow), Sept. 18, 1995, at 13, LEXIS, News Library, Non-US News File.

130. Robert Rice and Patrick Harverson, *Football Transfers Threatened by Court Judgment*, FINANCIAL TIMES (London), Sept. 21, 1995, at 1, LEXIS, News Library, Non-US News File.

131. *Court Hearing Set to Signal End of Football Transfer System*, AGENCE FRANCE PRESSE, Sept. 19, 2001, at Sports, LEXIS, News Library, Non-US News File.

132. Rice, *supra* note 123, at 30.

133. Henry Winter and John Ley, *Football: The Bosman Case*, THE DAILY TELEGRAPH, Sept. 21, 1995, at 32, LEXIS, News Library, Non-US News File.

134. Bates, *supra* note 122, at 10.

the prospect of larger salaries providing larger commissions.<sup>135</sup> One agent revealed that the decision would force club owners to step into the "real world" where someone could rent a television set and walk away from it at the end of the contract.<sup>136</sup> The forecasts of impending death for small clubs was characterized as "rubbish." A small club would simply sign a young player to a seven or eight-year deal. The club would then have plenty of time to develop the young talent and sell him to a large club for a huge profit.<sup>137</sup>

The players' associations, however remained unsure of the proper stance to take on the transfer issue. Nevertheless, both the British PFA and the Scottish PFA concurred that this outcome had been evident from a long way off.<sup>138</sup> Tony Higgins, a leader in the Scottish PFA, claimed to have warned the leaders of European football for some time, but his advice was not heeded until it was too late.<sup>139</sup> According to Higgins, UEFA had always conveyed a nonchalant attitude about the transfer system.<sup>140</sup>

The potential ruling caused far less panic in Britain. The feeling was that British football already had in place a system after which the ECJ, EC, or UEFA could model a new system.<sup>141</sup> The leadership of the Premier League, the top division in British football, believed that the UK used a workable system that had developed out of the *Eastham* case. They argued that if UEFA attempted to set up a similar system, the whole controversy would go away.<sup>142</sup>

Finally, critics questioned whether the abolition of the transfer system was the relief that Bosman had sought when he started the legal process five years earlier.<sup>143</sup> With the possibility of a ruling in favor of Bosman that could preserve the often rigid hierarchy of top football clubs throughout Europe, there was some doubt as to whether this was

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135. *Fears for Small Clubs over Bosman Case*, AGENCY FRANCE PRESSE, Sept. 20, 1995, LEXIS, News Library, Non-US News File.

136. *Id.*

137. *See id.*

138. *See Winter and Ley, supra note 133, at 32. See also Paul, supra note 111, at 7.*

139. Paul, *supra note 111, at 7.*

140. Mike Wilson, *Clubs Pay High Price for the Continental Drift*, SUNDAY TIMES, July 21, 1996, LEXIS, News Library, Non-US News File. "For more than 10 years, we have been warning that the transfer system could not last, but UEFA refused to negotiate. When compromise was available, nobody sought it." Kevin McCarra, *Bosman Case is not Proven*, SUNDAY TIMES, Dec. 15, 1996, LEXIS, News Library, Non-US News File.

141. Rob King, *Soccer Clubs May Lose Fortunes in Transfer Shake-up*, PRESS ASSOCIATION NEWSFILE, Sept. 20, 1995, LEXIS, News Library, Non-US News File.

142. Ian Hawkey, *Bosman Leaves Game in Limbo*, SUNDAY TIMES, Sept. 24, 1995, LEXIS, News Library, Non-US News File.

143. *See Paul, supra note 111, at 7; Hawkey, supra note 142.*

the goal that Bosman had envisioned.<sup>144</sup> One critic compared Bosman's case with that of Curt Flood, the American baseball player who, in the 1970s, single-handedly challenged the "reserve clause" of baseball. Flood had also likened the reserve clause to "slavery," with team owners moving players "from one plantation to another" even at the end of a player's contract.<sup>145</sup> Similar to Bosman, Flood risked his career in order to challenge the sport's traditional practices.<sup>146</sup> What was characterized at the time as a necessary action for the good of the game of baseball had led, however, by the mid-1990s, to a players' strike when the owners attempted to implement a salary cap to keep salaries from skyrocketing out of control.<sup>147</sup> The potential for skyrocketing football salaries begged the question of whether Bosman had envisioned or desired such change, in the same manner that Flood had likely not envisioned for baseball.<sup>148</sup>

#### F. *The Decision of the ECJ in Bosman*

On Friday, December 14, 1995, the ECJ handed down its opinion in Bosman's lawsuit.<sup>149</sup> The ECJ first ruled that Article 48 applied to the rules of sporting associations so long as the rules defined the terms under which "sportsmen" can be employed.<sup>150</sup> The Court held that the transfer rules served as an obstacle to freedom of movement because the rules effectively precluded a player from seeking to play in another Member State if his transfer fee was not paid.<sup>151</sup> The ECJ pointed out that the UEFA rules adopted in 1990 allowing a transfer to go through even if there was dispute between the clubs over the fee were useless. The potential penalties on a club for not paying the fee essentially served as an obstacle.<sup>152</sup> As a result of these findings, the court reasoned, the transfer rules could only survive if there was a legitimate aim consistent with the Treaty. Further, a pressing public interest had to justify the rules, which could go no further than necessary to achieve their purpose.<sup>153</sup>

The ECJ then examined the major justifications for the transfer

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144. *Id.*

145. Hawkey, *supra* note 142. See also Flood v. Kuhn, 407 U.S. 258 (1972).

146. Hawkey, *supra* note 142.

147. *Id.*

148. See *id.*

149. *Urgent*, AGENCY FRANCE PRESSE, Dec. 15, 1995, LEXIS, News Library, Non-US News File.

150. Case C-415/93, Union Royale Begle des Societes de Football Association v. Jean-Marc Bosman, 1995 E.C.R. I-4921, I-5062, [1996] 1 C.M.L.R. 645, 769 (1996).

151. *Id.* at I-5069, [1996] 1 C.M.L.R. at 770.

152. *Id.* at I-5070, [1996] 1 C.M.L.R. at 771.

153. *Id.* at I-5071, [1996] 1 C.M.L.R. at 772.

rules: that the transfer rules were necessary (1) to “maintain a financial and competitive balance between clubs”; and (2) to promote the continuation of development programs for young footballers.<sup>154</sup> The ECJ rejected the first justification because the transfer rules prevented neither the rich clubs from obtaining the best players nor monetary resources from being the decisive factor in competition between clubs.<sup>155</sup> The court also dismissed the second justification, citing the difficulty in predicting whether a young player would be a future star and therefore a future profit as a transfer.<sup>156</sup> Additionally, the court found that the exorbitant transfer fees paid to the small clubs were hardly related to the cost of training and developing such players.<sup>157</sup>

Further, the ECJ pointed out the alternatives set out in Lenz’s advisory opinion as less restrictive means of accomplishing the same goals.<sup>158</sup> These alternatives included instituting a salary cap and establishing revenue sharing agreements between clubs that would redistribute income, such as ticket sales and television profits, to other clubs.<sup>159</sup> UEFA’s then current use of a redistribution system to share receipts from certain competitions and international matches supported the argument that UEFA and its supporters desired to promote football through an income redistribution system.<sup>160</sup> Finally, the ECJ, contrary to the hopes of the football authorities, held that the transfer system for out-of-contract players was to immediately cease, although transfer fees that had been paid prior to the Court’s decision were to be allowed.<sup>161</sup>

### G. *Reaction to the Bosman Decision*

Immediately following the decision, UEFA’s primary goal was to keep the transfer system alive and well for players under contract.<sup>162</sup> Additionally, UEFA interpreted *Bosman* as dealing only with cross-border transfers; therefore it considered fees for end-of-contract transfers between clubs within a single Member State as still permitted.<sup>163</sup> UEFA

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154. *Id.*

155. *Id.* at I-5071-72, [1996] 1 C.M.L.R. at 772.

156. *Id.* at I-5072, [1996] 1 C.M.L.R. at 772.

157. *Id.*

158. *Id.* at I-5072, [1996] 1 C.M.L.R. at 773.

159. *Id.* at I-5017, [1996] 1 C.M.L.R. at 733.

160. *Id.* at I-5019, [1996] 1 C.M.L.R. at 735-36. As for the interpretation of Articles 85 and 86 with respect to the transfer system, the Court ruled that a decision on this issue was unnecessary because the system was already in violation of Article 48. *Id.* at I-5078, [1996] 1 C.M.L.R. at 776.

161. *Id.* at I-5080, [1996] 1 C.M.L.R. at 777.

162. William Gray, *Soccer: Transfers Ruling Clarified*, THE DAILY TELEGRAPH, Dec. 18, 1995, at 3, LEXIS, News Library, Non-US News File.

163. *Id.*

also still believed that a solution to cross-border transfer fees could be worked out with the EC.<sup>164</sup>

British football sought to minimize the damage by arguing that, because Scotland was not recognized as an independent EU Member State, "internal" transfers between England and Scotland should be unaffected by the *Bosman* decision.<sup>165</sup> This argument was complicated because UEFA recognized England and Scotland as separate members.<sup>166</sup> Many commentators questioned whether such an argument would even matter once the transfers between Member States began to take place without a fee.<sup>167</sup> With the ability to freely obtain out-of-contract players from other Member States, some doubted whether an English club would pay a fee for a Scottish player, or vice versa.<sup>168</sup>

A little over a month after the *Bosman* decision, the Commission entered the fray by giving FIFA and UEFA six weeks to accept the total abolition of cross-border transfer fees and threatening court action for failure to do so.<sup>169</sup> The EC once again rejected the call for a sporting exception. Comparing the grant of such an exception to the opening of Pandora's Box, the EC feared it would invite the call for similar exceptions from other socio-political categories, thus weakening the fundamental right of free movement.<sup>170</sup> Characterizing the sporting exception request as "blocking tactics," the EC believed that UEFA's time would be better spent formulating a plan for the future, rather than attempting to maintain an outlawed system.<sup>171</sup>

One of the positive outcomes for European football arising out of the *Bosman* decision was UEFA's ultimate recognition of FIFPro and the other national players' associations.<sup>172</sup> The players' associations agreed that a plan had to be created whereby certain clubs would retain a financial incentive to continue their youth development programs while adhering to the *Bosman* ruling and allowing players to move freely at the

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164. Angus MacKinnon, *UEFA "Ignoring the Law" Over Transfer Rules*, AGENCY FRANCE PRESSE, Dec. 19, 1995, LEXIS, News Library, Non-US News File.

165. See Mike Aitken, *UK Transfers Still Threatened*, THE SCOTSMAN, Dec. 23, 1995, at 25, LEXIS, News Library, Non-US News File.

166. *Id.*

167. Brian Wilson, *Bosman Ruling Won't Go Offside*, THE HERALD (Glasgow), July 1, 1996, at 11, LEXIS, News Library Non-US News File.

168. *Id.*

169. Murray Ritchie, *Threat to UEFA over EU Rules*, THE HERALD (Glasgow), Jan. 20, 1996, at 32, LEXIS, News Library, Non-US News File. There has been some discussion over whether the EC overextended itself in its involvement since the ECJ decision was based exclusively on free movement grounds. See generally Kranz, *supra* note 68.

170. Ritchie, *supra* note 169, at 32.

171. *Id.*

172. See Tony Higgins, *Legal Challenge Could End UK Transfer Fees*, THE SCOTSMAN, Mar. 25, 1996, at 22, LEXIS, News Library, Non-US News File.

end of their contracts.<sup>173</sup> Joint discussions between FIFPro and UEFA led to various proposals, such as training compensation reviewed by an independent tribunal or the creation of a "pool of money" to compensate teams committed to training young talent.<sup>174</sup>

Unfortunately, the process of change was not a quick one. Actual changes to the internal transfer system in Britain did not take place until almost two and a half years after the *Bosman* decision.<sup>175</sup> The massive migration of foreign players into British football as a result of the new rule on free movement at the end of a contract (and the abolition of rules restricting the number of foreign players per team) provided motivation for the ultimate change.<sup>176</sup> As many predicted following the *Bosman* decision, British clubs consistently looked abroad to bring in foreign talent for no fee.<sup>177</sup> The British football authorities feared that, if the internal system was not fixed, the future development of young British footballers would be in jeopardy.<sup>178</sup>

Finally, in June 1997, the British Premier League announced that, beginning the following June, all players aged twenty-four and above would become free agents at the end of their contracts allowing them to move freely among clubs within Britain.<sup>179</sup> All players under twenty-four with terminating contracts could be transferred subject to "compensatory" fees.<sup>180</sup> This new system sought to provide British clubs with a larger talent pool of home-grown players and to prevent clubs from looking too quickly across the borders.<sup>181</sup> While England and Scotland could have legally maintained the internal transfer system, the widespread belief throughout football was that the current system would easily fall if challenged in a court of law by another *Bosman*.<sup>182</sup> More importantly, most believed change was necessary to ensure the "future stability" of the game and to unite players, clubs, and associations behind a common front.<sup>183</sup>

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173. *Id.*

174. Wilson, *supra* note 167, at 11.

175. Neil McLeman, *Transfer Fees to Be Scrapped for Older Players*, THE SCOTSMAN, Mar. 2, 1998, at 25, LEXIS, News Library, Non-US News File.

176. See Steve McManaman, *Cut-price Imports Threaten Disaster for Domestic Game*, THE TIMES, Sept. 23, 1996, LEXIS, News Library, Non-US News File.

177. *Id.*

178. *Id.*

179. Louise Taylor, *Crunch Meeting on Transfer Free Reform*, SUNDAY TIMES, June 8, 1997, LEXIS, News Library, Non-US News File.

180. *Id.*

181. *Id.*

182. Ian Paul, *Bosman Ruling to Affect British Transfers*, THE HERALD (Glasgow), Sept. 24, 1997, at 35, LEXIS, News Library, Non-US News File. See also Talyor, *supra* note 179.

183. *League's Bosman Pledge to Clubs*, BRISTOL EVENING POST, Oct. 24, 1997, at 66, LEXIS, News Library, Non-US News File.

The change was welcomed by the players' associations and by agents who recognized that the new system shifted some of the balance of power in the sport from the clubs towards the players.<sup>184</sup> Players could see that if they merely sat tight until their contracts ran out, then they would be able to sign with the highest bidder. Moreover, much of the money that was previously paid to the selling club in the form of a transfer fee could now be obtained by the player as a large "signing-on" fee.<sup>185</sup>

The new system, however, did not eliminate the obvious threat of extinction for clubs that relied heavily on the transfer fees for survival.<sup>186</sup> These clubs argued that the compensation fee to be paid for under-twenty-four transfers would be a mere pittance of what it cost a club to develop a player.<sup>187</sup> In August 1988, accounting experts, Deloitte & Touche, predicted that approximately half of the lower level clubs would be forced to merge or become part-time clubs because of lack of funds.<sup>188</sup> One suggested remedy was for some of the smaller clubs to become feeder clubs to larger clubs, similar to minor league affiliates in Major League Baseball.<sup>189</sup> The feeder club alternative would be problematic in Britain, however, because it would destroy much of the excitement created during the "FA Cup" and "Worthington Cup" in which all clubs, from all divisions large and small, play in the same tournament. Much of the excitement of this competition has been built on past upsets by small clubs over the larger, wealthier clubs. Turning much of the lower divisions into feeder leagues would alter the nature of these competitions.

## V. THE TRANSFER TURMOIL OF THE PRESENT

### A. *Signs of Trouble*

As FIFA, UEFA, and the various national associations and clubs throughout Europe came to grips with the *Bosman* judgment's impact on the transfer system, the fact that *Bosman* only prohibited transfer fees for players after their contracts had expired provided solace.<sup>190</sup> Clubs could

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184. See McLeman, *supra* note 175, at 25.

185. *Whole New Ball Game . . . The Bosman Ruling: What It Means*, EVENING HERALD (Plymouth), Mar. 20, 1998, at 45, LEXIS, News Library, Non-US News File.

186. See Martin Wood, *They Think It's All Over — It May Well Be; Report Finds Small Clubs Under Threat as Millions Dribble Past*, BIRMINGHAM POST, Aug. 7, 1998, at 22, LEXIS, News Library, Non-US News File.

187. *Benchmark Yet To Be Set*, EVENING NEWS (Edinburgh), July 4, 1998, at 26, LEXIS, News Library, Non-US News File.

188. Wood, *supra* note 186, at 22.

189. *Id.*

190. See Gray, *supra* note 162, at 3.

still receive transfer fees for the sale of players still under contract.<sup>191</sup> Because close to ninety percent of transfer revenue came from in-contract transfers, the football authorities preferred to preserve this branch of the transfer system.<sup>192</sup>

But now the football authorities had a new problem. Prior to *Bosman*, the EC had largely stayed out of the realm of sport. Now, however, the EC was much more aware of what was going on in European football.<sup>193</sup> By 1997, the EC began to question the entire transfer system, and, most notably, the exorbitant fees that clubs charged for mid-contract transfers.<sup>194</sup>

One event that brought the system under EC scrutiny was the transfer of Ronaldo, a Brazilian striker considered at the time to be the best player in the world, from Barcelona of Spain to Inter Milan of Italy.<sup>195</sup> Inter Milan had already paid twenty-six million dollars to allow Ronaldo to buy out the remaining term of his contract. But Barcelona demanded an additional transfer fee to complete the transfer.<sup>196</sup> Citing a FIFA rule prohibiting a player from buying out his contract to obtain a "free transfer," Barcelona and the Spanish football association demanded that FIFA withhold Ronaldo's international transfer certificate until Inter Milan agreed to pay the transfer fee.<sup>197</sup>

Before FIFA responded, the EC sent a letter warning Sepp Blatter, secretary-general of FIFA, that the EC might view an additional transfer fee as a violation of Article 48 of the Treaty.<sup>198</sup> Although the letter clearly stated that the EC position was merely a "preliminary" one, FIFA should have noticed that there might be trouble ahead. Instead, two months later, FIFA ordered Inter Milan to pay an additional \$1.8 million in order to complete the transfer.<sup>199</sup> Subsequently, in April 1998, the EC officially ordered FIFA to amend its transfer rules or face official action.<sup>200</sup> This warning, which would be the first of several attempts by the EC to give the football world proper notice and opportunity to change, apparently fell upon deaf ears as the transfer system moved on.

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191. *Id.*

192. See Talyor, *supra* note 179.

193. Hilary Clarke, *EU to Define Frontiers of Sport and Business*, THE INDEPENDENT (London), Feb. 21, 1999, at 1, LEXIS, News Library, Non-US News File.

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195. See Burns, *Brussels Blows the Whistle over Ronaldo*, FINANCIAL TIMES, July 5, 1997, at 2, LEXIS, News Library, Non-US News File.

196. *EU Warning to Fifa on Rules of Transfer*, THE STATESMAN (India), Apr. 3, 1998, LEXIS, News Library, Non-US News File.

197. See Burns, *supra* note 195, at 2.

198. *Id.*

199. *EU Warning to Fifa on Rules of Transfer*, *supra* note 196.

200. *Id.*



As time went on and court cases challenging the transfer system mounted, the EC saw the need to abolish transfer fees altogether.<sup>201</sup>

The magnitude of the issue was not lost on the British football authorities.<sup>202</sup> They particularly feared the ability of players to leave their respective clubs on short notice (a few weeks or a month) and the ability of clubs to release players at any point during their contracts.<sup>203</sup> A player's ability to simply leave a small club in the middle of his contract club to sign for the bright lights and higher salaries of the larger, upper division clubs posed an even greater risk to player development than did the *Bosman* decision.<sup>204</sup>

Threat became reality for the British football world in the summer of 1999. Nicolas Anelka, a Frenchman playing for Arsenal, threatened the club with court action for refusing to transfer him to the Italian club Lazio in exchange for the remaining value of his contract.<sup>205</sup> Some legal experts predicted the destruction of the mid-contract transfer system, likening it to slavery and arguing that it still existed merely because no one had challenged it.<sup>206</sup>

The opposing view was that the EU and England both legally recognized fixed-contracts.<sup>207</sup> Moreover, English law required that damages for breach of contract put the injured party where it would have been if the contract had been fully performed.<sup>208</sup> Therefore, since Anelka was one of the top young strikers in the game, damages would be measured by the amount it would cost to obtain a player of similar ability. This was estimated to be close to twenty-two million pounds; much more than the 900,000 pounds offered by Anelka for the buy-out.<sup>209</sup> Finally, pro-contract supporters suggested that, if a player wanted to have the option to break the contract in mid-stream, he was free to insist on a buy-out clause in his contract, setting in advance a specific mutually agreeable fee for a future transfer.

Significantly, Gordon Taylor of the players' association was con-

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201. David Barnes, *Sports Focus: The End of Transfer: Bosman 2: The Man Who Started It All*, THE OBSERVER, Sept. 3, 2000, at 8, LEXIS, News Library, Non-US News File.

202. *See Bosman Changed Our Game This Could Finish It Off*, DAILY RECORD, Feb. 12, 1999, at 71, LEXIS, News Library, Non-US News File.

203. *Id.*

204. *See id.*

205. Nick Harris and Robert Verkaik, *Football: Transfer System Under Threat*, THE INDEPENDENT (London), July 22, 1999, at 23, LEXIS, News Library, Non-US News File.

206. Graham Hunter, *He's on a Winner; Transfer System Could Not Be Defended if Anelka Went to Court, Says Top Lawyer*, DAILY MAIL (London), July 22, 1999, at 85, LEXIS, News Library, Non-US News File.

207. Harris and Verkaik, *supra* note 205, at 23.

208. Nick Tsatas, *Anelka's Costly Walk-out Case Has a Hole in it*, THE GUARDIAN (London), July 23, 1999, at 31, LEXIS, News Library, Non-US News File.

209. *Id.*

cerned with the EC view that football players should be treated like other workers within the EU.<sup>210</sup> He believed that this view ignored football's unique need to have a "long-term planning policy with young players and stability to stop supporters getting disenchanted."<sup>211</sup> Taylor also shared the fear of others that a transfer fee-free-market could backfire on players, allowing clubs to drop a player if he was injured, out of shape, or not performing up to a satisfactory level.<sup>212</sup> Taylor suggested instead the establishment of a single, month-long transfer window when transfers of players under contract could occur.<sup>213</sup> This limited transfer ability, Taylor argued, would give the sport the necessary stability needed for development and desired by the clubs and the fans.<sup>214</sup>

Ultimately, Arsenal found a buyer for Anelka at their asking price and transferred him to Real Madrid for twenty-three million pounds.<sup>215</sup> Anelka, meanwhile, signed a contract with Real that paid him 50,000 pounds per week.<sup>216</sup> Judging by the numbers, neither Arsenal nor Anelka lost out. The losers were the fans and the sport itself as the ordeal demonstrated how both sides were controlled by the power of money.

### B. FIFA's Initial Reaction

In October 1999, FIFA unilaterally proposed changes to the transfer system, which would determine a player's transfer fee by multiplying the number of years left on his contract by his yearly salary.<sup>217</sup> Additionally, FIFA considered implementing a wage or salary cap limiting the amount of money clubs could spend.<sup>218</sup> The response from the European football community was immediate and negative.<sup>219</sup> Once again, many complaints focused on the potential hardship, or even extinction, of smaller clubs, that would not even have the opportunity to reap the benefit of developing a player by selling him to a larger club in

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210. Harris and Verkaik, *supra* note 205, at 23.

211. *Id.*

212. *Id.*

213. Paul Hetherington, *Football: Window Cleaner*, SUNDAY MIRROR, Aug. 8, 1999, at 67, LEXIS, News Library, Non-US News File.

214. *Id.*

215. Simon Kuper, *Big Soccer Transfers to Be Axed*, THE OBSERVER, Oct. 3, 1999, at 2, LEXIS, News Library, Non-US News File.

216. Richard Williams, *Football: A New Ball Game with Loyalty Just a Transferable Commodity*, THE INDEPENDENT (London), Aug. 7, 1999, at 30, LEXIS, News Library, Non-US News File.

217. See Kuper, *supra* note 215, at 2.

218. Paul Sinclair, *Football: We're Not Sold on FIFA Transfer Plan; Clubs Vow to Fight Change*, DAILY RECORD, Oct. 4, 1999, at 45, LEXIS, News Library, Non-US News File.

219. Bill Bradshaw, *Clubs "Will Die" if Fees are Banned*, THE OBSERVER, Oct. 3, 1999, at 1, LEXIS, News Library, Non-US News File.

the middle of his contract.<sup>220</sup> Because the initial contract for a young, developing player was never too high, the compensation fees would do little to maintain the developmental system. Players who had been valued by the British transfer tribunal at over one million pounds would now be subject to low, proposed compensation payments—30,000 pounds for each year a developmental club had spent on a player.<sup>221</sup>

The players' associations believed that, while the free movement of players had to be respected, there also had to be a way of shifting economic resources to the smaller, developmental clubs to keep them in business.<sup>222</sup> For example, creating a common pool of money to distribute to these clubs would soften the blow to the youth developmental system.<sup>223</sup> Otherwise, if a club, could not count on receiving adequate compensation for developing a player from a young age until his talent and skill level had reached a point at which he could jump to a higher division club, why would any club bother to do so?<sup>224</sup>

### C. *The Commission Applies Some Pressure*

By May 2000, the EC, apparently displeased with FIFA's progress, or lack thereof, in transfer system reform, announced plans to enact a law that, if passed, would allow players to break their contracts upon one month's notice to their clubs.<sup>225</sup> After giving the proper notice, a player would be free to sign with any other club by paying off the remaining value of his contract.<sup>226</sup> The EC gave FIFA and UEFA until September to come up with an alternative to this plan.<sup>227</sup> The EC was also willing to work out an arrangement for compensation to be paid to a club, based on factors such as a player's age, his salary, and the amount of training received from the club. It was not convinced, however, by pleas that transfer fees were a form of compensation for training, remarking that they "bear no relation to training costs of a player."<sup>228</sup> FIFA and UEFA had to allow players to move freely without arbitrary figures preventing

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220. See Kuper, *supra* note 215, at 2.

221. *Id.*

222. Grant Robbins, *Higgins Retains Belief in Bosman Ruling*, THE SUNDAY HERALD, Nov. 28, 1999, at 8, LEXIS, News Library, Non-US News File.

223. See *id.*

224. Jim Black, *Higgins Hopes Long-term Benefit Will Emerge from Present Pain*, DAILY MAIL (London), Jan. 21, 2000, at 86, LEXIS, News Library, Non-US News File.

225. See Charlie Allan, *Transfer Bombshell Won't Kill Us*, ABERDEEN EVENING PRESS, May 13, 2000, at 10, LEXIS, News Library, Non-US News File.

226. *Id.*

227. *Id.*

228. Leyla Linton, *Big Shake-Up in Football's Transfer Fees*, THE EXPRESS, May 20, 2000, LEXIS, News Library, Non-US News File.

them from doing so.<sup>229</sup>

#### D. FIFA and UEFA: A "United" Front?

As the football world sought to avoid the EC's proposed chaos-inducing plan, FIFA and UEFA announced that the two governing organizations were "100 per cent united" against the EC's proposals.<sup>230</sup> FIFA brazenly declared that it was unwilling to make concessions on certain key issues, such as minimum duration of contracts and compensation to clubs for training and developing young players.<sup>231</sup> Meanwhile, UEFA continued to push for an exemption based on the specificity of sport, arguing that transfer fees were necessary in order to keep the smaller clubs in existence.<sup>232</sup> UEFA implored the EC not to look merely at the million-dollar players. For every Ronaldo or Anelka, there were hundreds of players toiling away for little money with lower division teams, and dreaming of making it to the top.<sup>233</sup> Even FIFPro expressed concern over the EC's proposals, arguing that they would dismantle the foundation of the most popular sport in the world.<sup>234</sup>

On August 31, 2000, FIFA president Sepp Blatter proposed scrapping transfer fees for players under the age of eighteen and over the age of twenty-four.<sup>235</sup> In order to avoid a "guillotine decision" by the EC ending the entire transfer system, FIFA proposed that a "compensation fee" be paid for the transfer of a player between the ages of eighteen and twenty-four to protect the club that has developed and trained the player.<sup>236</sup> FIFA also called for a minimum one-year stay with a team to prevent players from team-hopping throughout the season in search of an ever increasing salary.<sup>237</sup> Further, FIFA suggested a narrow transfer window during the season so that roster shifts would occur only once

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229. *Id.*

230. *Football: EU Soccer Transfer Proposals "Will Lead to Chaos,"* SUNDAY MERCURY, Aug. 27, 2000, at 98, LEXIS, News Library, Non-US News File.

231. *Soccer Federations, Clubs Meet on EU Transfer Row,* CHANNEL NEWS ASIA, Aug. 25, 2000, Sports News, LEXIS, News Library, Non-US News File.

232. Rob Hughes, *He's a Poor Little Rich Boy - If the EU Would Just Stay Out of It,* INTERNATIONAL HERALD TRIBUNE (Neuilly-sur-Seine, France), Aug. 30, 2000, at 18, LEXIS, News Library, Non-US News File.

233. *Id.*

234. *Id.*

235. Chris Borg, *UEFA/FIFA Propose Transfer Concessions,* ESPN.com, Aug. 31, 2000, at <http://www.soccernet.com/england/news/2000/0831/20000831fifatransfers.html> (on file with the University of Miami Law Review).

236. Erica Bulman, *Soccer Chiefs Says Sports Ready to Accept the End of Transfer Fees,* CANADIAN PRESS, Aug. 31, 2000, 2000 WL 26023183.

237. *Id.*

during a season.<sup>238</sup>

With this unilateral proposal, football's "united" front quickly crumbled. UEFA immediately questioned the proposal and declared that total agreement was lacking between the two organizations.<sup>239</sup> UEFA's chief executive, Gerhard Aigner, publicly declared that FIFA had jumped the gun and had announced its proposal without discussing it with the European football community.<sup>240</sup> Aigner's sentiments were echoed by clubs throughout Europe as they asked why, without consulting them, such an important decision was made by Blatter, a man far removed from the people who actually took the economic risks involved with signing players.<sup>241</sup>

In Britain, officials of second-division clubs believed the proposals to be the "death knell" of their existence. They doubted that the "vague" training compensation would approach the amount previously received from transfer fees or even be enough to keep their clubs above water.<sup>242</sup> Even the manager of Britain's wealthiest club, Manchester United, warned that the sport would hang itself with FIFA's proposals. The sport would lose not only the smaller clubs, but also millions of fans as club supporters would have difficulty following a team with a constantly changing roster.<sup>243</sup>

Many critics accused FIFA of waving the white flag and admitting that they were unable to control the economics of football.<sup>244</sup> Others questioned what these proposals would do to the stability and integrity of the sport.<sup>245</sup> For instance, a team with sufficient financial backing could, after a poor season, ignore its player-development system and avoid years of rebuilding by simply replacing the entire team with a new one.<sup>246</sup>

The EC, on the other hand, viewed this long-awaited response as a

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238. Steve Keating, *Football: Transfer 'Window' Offers Clubs Hope*, THE INDEPENDENT (London), Sept. 1, 2000, at 28, LEXIS, News Library, Non-US News File.

239. Mike Collett, *Aigner Signals UEFA/FIFA Split over Transfers*, ESPN.com, Sept. 1, 2000, at <http://www.soccer.net/europe/news/2000/0901/20000901aigner.html> (on file with the University of Miami Law Review).

240. *Id.*

241. *Id.*

242. See Vivek Chaudhary, *Football: Blatter Proposal Mortifies Oldham*, THE GUARDIAN (London), Sept. 1, 2000, at 29, LEXIS, News Library, Non-US News File.

243. Matt Driscoll, *You'll Wreck My United!*, THE NEWS OF THE WORLD, Sept. 3, 2000, LEXIS, News Library, Non-US News File.

244. Martin Lipton, *We Surrender; FIFA Will Bow to Europe and Give Transfer Rules Red Card*, DAILY MAIL (London), Sept. 1, 2000, at 88, LEXIS, News Library, Non-US News File.

245. Gabriele Marcotti, *Soccer's Battle with the EU Could Get Very Ugly*, CNN.com, Sept. 5, 2000, at [http://sportsillustrated.cnn.com/inside\\_game/gabriele\\_marcotti/news/2000/0.../marcotti\\_insider](http://sportsillustrated.cnn.com/inside_game/gabriele_marcotti/news/2000/0.../marcotti_insider) (on file with the University of Miami Law Review).

246. *Id.*

step in the right direction in that it demonstrated a willingness by FIFA to negotiate.<sup>247</sup> The EC also sought to pacify those in the football community who feared the total destruction of the transfer system. Viviane Reding, the EU Commissioner for Education and Culture, stated that the EC only wanted to ensure that the transfer rules respected both the laws of the European Community and the specificity of sport. She also pointed out that the EC fully supported the maintenance of some form of compensation for training and a limited transfer period so that the free movement of players would not disrupt the outcome of ongoing championships.<sup>248</sup> Underlying Reding's statement was the sentiment that the EC's threats were made to awaken FIFA to the fact that it must be ready to negotiate changes to its transfer system or else its future would be left in the hands of the commissioners.<sup>249</sup> The EC subsequently gave the football authorities until the end of October to propose a system that included specific models of compensation, prompting representatives of FIFA, UEFA, FIFPro, and other national associations, to form a transfer task force.<sup>250</sup>

#### E. UEFA Takes Charge

Following FIFA's bizarre surrender, the football world held its collective breath. Transfers in Europe came to a standstill as players and clubs awaited the outcome of the controversy.<sup>251</sup> Top coaches considered leaving the European game for the international level to avoid the predicted chaos.<sup>252</sup> In an effort to achieve a resolution, UEFA appealed to the leaders of the fifteen EU Member States for a sporting exemption. Meanwhile, the transfer task force continued its work on the proposals for the end of October.<sup>253</sup>

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247. *European Soccer Chiefs Give Ground on Transfers*, CHANNEL NEWS ASIA, Sept. 1, 2000, LEXIS, News Library, Non-US News File.

248. Viviane Reding, Member of the European Commission responsible for Education and Culture Commission's investigation into FIFA's transfer rules, Statement to European Parliament at Strasbourg, Sept. 7, 2000, at [http://europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.gettxt=gt&doc/290-0-RAPID&lg=e](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc/290-0-RAPID&lg=e).

249. *See id.*

250. Martin Thorpe and Ian Black, *Football: Hopes Rise over Transfer Chaos Threat: Upbeat Mood as Attention Shifts to New System of Compensation*, THE GUARDIAN (London), Sept. 8, 2000, at 36, LEXIS, News Library, Non-US News File.

251. *See* Alan Nixon, *Football: Ugo Decides: No Go*, THE MIRROR, Sept. 26, 2000, at 43, LEXIS, News Library, Non-US News File.

252. *See* Ian Ladyman, *Stop or I'll Walk: On Eve of Arsenal's Crucial Champions League Match, Manager Wenger Has Announced He Will Quit Highbury if the Looming Fiasco over Transfers is Realised*, DAILY MAIL (London), Oct. 25, 2000, at 91, LEXIS, News Library, Non-US News File.

253. *See* Alasdair Lawrie, *Task Force Fails To Agree New Transfer System*, THE SCOTSMAN, Oct. 7, 2000, at 24, LEXIS, News Library, Non-US News File.

British Prime Minister Tony Blair and German Chancellor Gerhard Schroder gave football a ringing endorsement. They expressed their concern that, while the existing form of the transfer system was not perfect, any radical changes made without the input of the players, clubs, and associations could be devastating to the sport.<sup>254</sup> Blair and Schroder concluded:

The associations need planning and security for the promotion of young soccer talent and the development of their teams. They need a system that will ensure a healthy balance and fair opportunities for everyone concerned. We hope that in the search for an arrangement on the transfer system the Commission will take into account the special situation that exists in professional soccer.<sup>255</sup>

UEFA hoped that the European Council's December Meeting in Nice would lead to a proposal acknowledging the unique status of the sport, and ensure its future stability.<sup>256</sup> Special legal status within the EU for sporting bodies, like UEFA and the national associations, would force EU legislators to recognize their importance and their need to establish rules to protect the stability and integrity of the sport.<sup>257</sup> UEFA leaders believed this exemption would protect football, and sport in general, from future legal challenges.<sup>258</sup>

Meanwhile, the transfer task force continued drafting proposals that could salvage the system that was a "vital part of the glue that holds the game together."<sup>259</sup> Supporters continued to argue that the transfer system had benefitted football in several ways, including the protection and encouragement of development, solidarity in terms of financial redistribution, and contract stability.<sup>260</sup>

In drafting the proposals, the task force encountered the recurring

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254. See Press Release, Joint Statement by Chancellor Gerhard Schroder and Prime Minister Tony Blair (No. 425/00), available at [http://eng.bundesregierung.de/dokumente/Pressmitteilung/ix\\_17866.htm](http://eng.bundesregierung.de/dokumente/Pressmitteilung/ix_17866.htm).

255. *Id.*

256. See UEFA Executive Committee Spells Out Transfer Approach, UEFA.com, Oct. 4, 2000, at <http://www.uefa.com/newsdata/uefa/News/indexp.asp?News=7667> (on file with the University of Miami Law Review).

257. See Alan Nixon, *Football: EC Sticks To Its Hard Line On Transfer System*, THE INDEPENDENT (London), Oct. 6, 2000, at 28, LEXIS, News Library, Non-US News File.

258. See Erica Bulman, *UEFA Focuses on Gaining Support from Heads of State in Transfer Issue*, ASSOCIATE PRESS NEWSWIRES, Oct. 20, 2000 (on file with the University of Miami Law Review). UEFA received additional powerful support in its push for a sporting exemption from the International Olympic Committee (IOC), who was also seeking special legal status for sport that would recognize its "special characteristics, benefits, and organizational structures." Nixon, *supra* note 257, at 28.

259. Matt Dickinson, *FA Calls on Supporters to Sign Up in Fight over Transfers*, THE TIMES (London), Sept. 22, 2000, LEXIS, News Library, Non-US News File.

260. *Football: FA Issues New Plea To Save Transfer System*, THE INDEPENDENT (London), Oct. 12, 2000, at 26, LEXIS, News Library, Non-US News File.

problems of harmonizing proposed changes with the laws of each Member State and achieving unanimity. A proposal to adopt a transfer system similar to one used in Spain exemplified the problems with the national laws.<sup>261</sup> Under the Spanish transfer system, upon signing the initial contract, the player and club agreed on a compensatory transfer fee to be paid by a purchasing club.<sup>262</sup> As a result, there were fewer disputes over astronomical transfer fees, and because the player had freely agreed to the terms of the contract, a club avoided accusations of restricting player movement.<sup>263</sup> When the task force looked at this system, however, the British representatives argued that such a system could not survive under English contract law, which prohibits penalty clauses in contracts. An English court would likely view the compensation clause in the contract as a penalty clause and not as an actual forecast of damages.<sup>264</sup>

In October, as it tried to finalize its proposals for the EC, divisive cracks appeared within the task force when FIFPro's Gordon Taylor openly expressed his disappointment with the progress toward a compromise.<sup>265</sup> The disagreement focused on the compensation of players over the age of twenty-three.<sup>266</sup> FIFPro argued that compensation should be based merely on the wages of the player and the value of the remaining term of the contract (exactly what FIFA had proposed in October 1999).<sup>267</sup> The task force, led by UEFA and FIFA, believed that other factors such as the cost of replacing the player and the loss of merchandising, should be included as well.<sup>268</sup> Taylor accused the task force of attempting to maintain the status quo of the transfer system under the guise of "compensation," rather than fulfilling its mandate.<sup>269</sup>

Feeling that the task force had failed to consider the players' demands, Taylor vowed to go to Brussels, where he would meet with the EC solely on behalf of the players, armed with the assurance that the EC

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261. See Thorpe and Black, *supra* note 250, at 36.

262. *Id.*

263. See *id.*

264. Mihir Bose, *Leaver Fears Transfer Talks are Doomed*, THE DAILY TELEGRAPH (London), Oct. 12, 2000, at 45, LEXIS, News Library, Non-US News File.

265. See *Players Meet EU on Soccer Transfer Rules*, ASSOCIATE PRESS NEWSWIRE, Oct. 13, 2000 LEXIS, News Library, Non-US News File.

266. See Simon Stone, *FIFA Boss in Shouting Match on Football Transfer Shambles – Angry Words from Players' Spokesman*, THE JOURNAL (Newcastle, UK), Oct. 28, 2000, at 95, LEXIS, News Library, Non-US News File.

267. *Id.*

268. Mihir Bose, *Players' Rift with FIFA Threatens Transfer Talks Inside Sport*, THE DAILY TELEGRAPH (London), Oct. 28, 2000, at 6, LEXIS, News Library, Non-US News File.

269. *Soccer Family Rifts Intensify as EU Transfer Deadline Looms*, CNN/SPORTS, Oct. 27, 2000, at [http://sportsillustrated.cnn.com/soccer/news/2000/10/27/fifa\\_transfers\\_ap/](http://sportsillustrated.cnn.com/soccer/news/2000/10/27/fifa_transfers_ap/) (on file with the University of Miami Law Review).



supported the involvement of the players' association in the task force.<sup>270</sup> Meanwhile, the football authorities continued with their plan to present the task force proposals to the EC, although Blatter acknowledged that doing so without the support of FIFPro was "like having your body decapitated."<sup>271</sup>

#### F. *The Transfer Task Force Proposals*

Under the cloud of controversy surrounding the quarrel between FIFPro and FIFA, the transfer task force presented its proposals to the EC on October 31, 2000.<sup>272</sup> The proposals were based on five major points.<sup>273</sup> First, in an effort to protect vulnerable young players from economic exploitation, the document proposed to prohibit international transfers of players under the age of eighteen.<sup>274</sup> Second, the proposals called for the assessment of a "training compensation" on the transfer of every player up to the completion of his training at the age of twenty-three.<sup>275</sup> This compensation would apply to the transfer of players both in-contract and out-of-contract.<sup>276</sup>

Third, the document emphasized the importance of a respect for contracts in the relationship between the player, the club, and the public.<sup>277</sup> In an effort to promote this stability of contract, the task force proposed that any contract lasting up to three years must be respected by both the player and the club.<sup>278</sup> Under this same justification, the document suggested the introduction of contracts with a maximum duration of five years.<sup>279</sup> In other words, the task force proposed that five-year contracts be issued—a player and his club would be forced to respect the contract for the first three years, after which there could be unilateral termination at any time.

Fourth, the document suggested limiting transfer periods to two transfer windows during the year.<sup>280</sup> Additionally, in order to quell the fears that players would be constantly changing teams as they chased the

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270. Bose, *supra* note 268, at 6.

271. Matt Dickinson, *United Front on Transfers Disintegrates*, THE TIMES (London), Oct. 28, 2000, LEXIS, News Library, Non-US News File.

272. See Tim Rich, *Football: FIFA Submits Transfer Plans To Commission*, THE INDEPENDENT (London), Oct. 31, 2000, at 26, LEXIS, News Library, Non-US News File.

273. See UEFA Task Force Negotiation Document (on file with author).

274. *Id.* at 1.

275. *Id.*

276. *Id.* This provision would limit the scope of *Bosman* in that it would permit compensation for the training of players, even when the transfer takes place at the end of a player's contract.

277. *Id.* at 2.

278. *Id.* at 3.

279. *Id.*

280. *Id.*

highest salary, the proposal demanded the limitation of one transfer per player each season.<sup>281</sup>

Finally, the document called for the institution of an arbitration system for cases where there was a breach of contract, no matter what the age of the player.<sup>282</sup> The arbitration system would use objective criteria and take into account relevant principles of national labor law, to determine the amount of compensation to be paid in a given case.<sup>283</sup> The arbitration panel would also have the power to enforce disciplinary sanctions in order to deter unethical behavior, such as a club causing the breach of a player's contract with another club before the end of the initial three-year period.<sup>284</sup> Additionally, hidden towards the end of the arbitration section, is an opening for all parties involved, both clubs and players, to agree to forego the arbitration panel and come up with their own transfer fee. Essentially, it would allow transfer fees to remain high in cases of "voluntary transfer."<sup>285</sup>

FIFPro vehemently disagreed with the establishment of the three-year period during which players could not obtain transfers; they argued that players should be free to break their contracts after two years, at the most, in order to allow for more freedom of movement.<sup>286</sup> Additionally, FIFPro objected to the vague reference to objective criteria that would be used to calculate a compensation fee. It urged that the fee should be based solely on the remaining value of the contract which would allow a purchasing club to know in advance the cost of the transfer of a certain player.<sup>287</sup> The task force, on the other hand, believed that a readily calculable transfer value for each player would only encourage a purchasing club to induce a breach of a player's contract with his original club, and therefore supported the use of objective criteria.<sup>288</sup>

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281. *Id.*

282. *Id.*

283. *Id.* While the objective criteria was not included in the Negotiation Document, FIFA considered the following twelve criteria to be important to the arbitration panel: (1) Status of the new club and old club; (2) Circumstances surrounding breach of contract causing economic loss; (3) Age of player; (4) Amount of any compensation or "training" paid by old club, including signing fee and player's agent; (5) Length of time player has been under contract to old club; (6) Length of time remaining on contract; (7) Terms of old contract; (8) Terms of new contract; (9) Playing record for club and national team; (10) Substantial interest shown by other clubs; (11) Cost of replacing player; (12) Training costs if player is under twenty-three. Stone, *supra* note 266, at 95.

284. UEFA Task Force Negotiation Document at 3.

285. *Id.* at 3-4.

286. See Dickinson, *supra* note 271.

287. *Id.*

288. See FIFA's 12 objective criteria, *supra* note 283.

### G. Reaction to the Proposals

The EC's initial reactions to the task force proposals were not encouraging for football's hopes of a quick resolution.<sup>289</sup> First, the Commission believed that the ban on transfers for players under eighteen was an obstacle to free movement. The Commission urged the football authorities to come up with a "code of conduct" for clubs to follow with respect to juniors, rather than an outright ban, in order to protect against abuses.<sup>290</sup> The EC also expressed some doubts as to whether a uniform compensation system for training would be possible under the laws of the different Member States.<sup>291</sup> Nevertheless, the EC did support some kind of compensation for training,<sup>292</sup> but wanted a more detailed proposal on how this compensation system was to work.<sup>293</sup>

At the same time, the EC continued to be very concerned with the split within the task force and warned FIFA that a deal on the transfer situation was very unlikely without the FIFPro's consent.<sup>294</sup> As a result, the burden shifted to FIFA and UEFA to compromise with FIFPro in an effort to bring about at least a façade of unity for the negotiations with the EC.

The EC was not the only group to criticize the transfer proposals.<sup>295</sup> Smaller clubs argued that the proposed design dramatically favored larger clubs, pointing out that for the transfer of players under twenty-three, which was the kind of transfer most likely made by smaller, developmental clubs, compensation was to be based merely on the "costs of training."<sup>296</sup> For transfers of players over twenty-three, on the other hand, FIFA called for a complex formula that would help what was likely to be a larger club get fully compensated for its loss, including loss of merchandising.<sup>297</sup>

The EC responded to these concerns by assuring the smaller clubs that it was not interested in dismantling the transfer system completely

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289. See Mihir Bose, *FIFA's Transfer Blueprint Has Cool Welcome*, THE DAILY TELEGRAPH, Nov. 1, 2000, at 44, LEXIS, News Library, Non-US News File.

290. *Id.*

291. *Id.*

292. Stephen Castle, *Football: 'Smaller Clubs Face Bankruptcy'*, THE INDEPENDENT (London), Nov. 8, 2000, at 31, LEXIS, News Library, Non-US News File.

293. See *Officials Slated to Meet, Talk Next Week*, ESPN.com, Nov. 27, 2000, at <http://espn.go.com/soccer/news/2000/1127/906372.html> (on file with author).

294. See *European Transfer Deal Faces Obstacle*, CBSSportsline.com, Nov. 6, 2000, at [http://cbs.sportsline.com/u/wire/stories/0,1169,2987240\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,2987240_5,00.html) (on file with author).

295. See David Conn, *Inside Football: Big Stick Ready as 'the Football Family' Squabbles*, THE INDEPENDENT (London), Nov. 2, 2000, at 28, LEXIS, News Library, Non-US News File.

296. *Id.*

297. *Id.*

within a single Member State, since the EC believed that most of the transfers from smaller clubs took place intrastate.<sup>298</sup> The problems of national transfers, the EC declared, were between the national government and the national football association.<sup>299</sup> While this declaration was intended to calm the nerves of many small clubs' chairmen, its effect missed the mark. Angry lower division clubs pointed out that the exclusion of domestic transfers from the reforms would do little to save the smaller clubs for two reasons.<sup>300</sup> First, a player who desired to move from one club to another within the same league would be able to bypass the domestic transfer system by signing a short-term contract with a club outside the Member State and then subsequently transferring to the desired club in the original Member State for no fee at all.<sup>301</sup> Second, larger clubs might decide to save money and obtain transfers from other Member States where a player could be obtained by simply paying the remainder of his contract.<sup>302</sup> As a result, smaller British clubs faced extinction, even though the domestic transfer system and its larger fees might still be technically available. Perhaps this was one reason why the national associations were expected to implement whatever rules were ultimately agreed upon between the EC and FIFA for domestic transfers as well.<sup>303</sup>

#### G. *Declaration from the European Council Meeting in Nice*

As negotiations continued between the EC and the transfer task force, FIFA and UEFA carried on their efforts to obtain a declaration from the leaders of the Member States on the distinct status of sport within the laws of the EU.<sup>304</sup> FIFA proposed a declaration that, at a minimum, called for an agreement between the sporting federations and EU legislators that sporting employment contracts had to be regulated "in line with the specific needs of sport and respecting national and EU law."<sup>305</sup> FIFA claimed it was not seeking an exemption that would enable football to live outside the rules of the EU. It argued that it only

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298. Castle, *supra* note 292, at 31.

299. Mihir Bose, *EU Will Not Outlaw British Transfer System*, THE DAILY TELEGRAPH (London), Dec. 2, 2000, at 1, LEXIS, News Library, Non-US News File.

300. *Football: Transfers: 'Young Stars Will Be Lost'*, BIRMINGHAM EVENING MAIL, Dec. 5, 2000, at 47, LEXIS, News Library, Non-US News File.

301. *See id.*

302. *Id.*

303. Matt Dickinson, *Task Force Secures Concessions in Transfer Discussions*, THE TIMES, (London) Dec. 18, 2000, LEXIS, News Library, Non-US News File.

304. *See* Michael Mann, *EU States Close to Agreements on Sports Declaration*, FIFA.com, Nov. 7, 2000, at [http://www.fifa.com/reuters/00-11/2000-11-07\\_18578\\_E.html](http://www.fifa.com/reuters/00-11/2000-11-07_18578_E.html) (on file with author).

305. *Id.*

wanted an acknowledgement that FIFA need not blindly adhere to the laws of the EU no matter the consequences to the sport.<sup>306</sup>

At the European Council meeting in Nice in December 2000, largely through the efforts of Tony Blair, the Council issued a declaration supporting the right of sporting federations to independent self-organization while still respecting national and EU law.<sup>307</sup> The declaration emphasized that the federations were best able to take note of developments in the sporting world and thereby alter regulations in an effort to guarantee “sporting cohesion and participatory democracy.”<sup>308</sup> Finally, the Council mentioned the transfer situation specifically and urged the groups to continue to work towards an agreement that had “due regard for the specific requirements of sport.”<sup>309</sup>

While the Council declaration did not take sides on the transfer issue, football supporters viewed it as a “step forward” in the campaign to protect some remnant of the transfer system.<sup>310</sup> The actual effect of the declaration was to put more pressure on both the EC and the football authorities to come to an agreement.<sup>311</sup> For the EC, the declaration was an irritation since it had been calling for negotiations with the football authorities for over two years and had taken its hard-line approach only after FIFA continually failed to propose any viable changes.<sup>312</sup>

### I. *Negotiations*

As negotiations between the football authorities and the EC stretched into December 2000, progress was apparent and points on which both sides were finally able to agree began to appear.<sup>313</sup> The Commission agreed that a compensation fee for training would be acceptable if it was based on the amount of time spent training with the club, the market value of the player, and the remainder of the contract.<sup>314</sup> The EC also supported the use of an independent arbitration

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306. See *FIFA Reiterates Call for Special Status for Sport*, FIFA.com, Dec. 6, 2000, at <http://www.fifa2.com/scripts/runisa.dll?M2:gp::67173rel/Display+19643+E> (on file with the author).

307. See *EU Council Declaration on the Specific Characteristics of Sport and its Social Function in Europe, of Which Account Should Be Taken in Implementing Common Policies*, (Dec. 2000) at 1, at [http://europa.eu.int/comm/sport/doc/ecouncil/a\\_doc\\_en.html](http://europa.eu.int/comm/sport/doc/ecouncil/a_doc_en.html) (on file with author).

308. *Id.* at 2.

309. *Id.* at 3.

310. See Andrew Grice, *Nice Summit: Britain and Germany Block Football Reform; Transfer Deals*, THE INDEPENDENT (London), Dec. 9, 2000, at 4, LEXIS, News Library, Non-US News File.

311. Catherine MacLeod and William Tinning, *Football Transfer Fees Win Reprieve from EU*, THE HERALD (Glasgow), Dec. 9, 2000, at 4, LEXIS, News Library, Non-US News File.

312. See *id.*

313. See Vivek Chaudhary, *Football: EU Gives All-Clear to British Transfers*, THE GUARDIAN (London), Dec. 2, 2000, at 2, LEXIS, News Library, Non-US News File.

314. *Id.*

panel in cases where there was a dispute as to a player's value.<sup>315</sup> Additionally, the EC indicated that it was prepared to accept the notion of limited transfer windows in order to preserve equality among the clubs during the course of a season or championship.<sup>316</sup> One of the EC's primary concerns was the compensation system proposed by FIFA for costs other than training.<sup>317</sup> The EC declared that if such fees were established between club and player according to national law (and did not involve FIFA at all), then the EC's enforcement powers could not reach these fees.<sup>318</sup> If FIFA continued to govern the transfer system, however, then FIFA would have to clarify the objective criteria that it planned to use to calculate the fee and make sure it conformed to EU law.<sup>319</sup>

In the wake of the Council's declaration on sport, further negotiations in December produced several more important compromises.<sup>320</sup> First, the EC indicated that it was willing to accept the ban on transfers of players aged sixteen and below since minors at that age could not be considered "workers."<sup>321</sup> It was also agreed that players should not be able to change clubs more than once a year.<sup>322</sup> Additionally, a FIFA proposal that each club involved in the training of a player would be compensated, thereby recognizing the efforts of all clubs with whom a developing player had spent time, was accepted.<sup>323</sup> Under the agreed-upon proposal, the original club would be able to obtain a percentage of any transfer fee for a player throughout his career, giving that club a reward for its work and an incentive to continue to develop young talent.<sup>324</sup>

Surprisingly, the EC also showed a willingness to reverse *Bosman* for players under twenty-three.<sup>325</sup> Under the preliminary agreement, a club would receive compensation for training upon the transfer of a player under the age of twenty-three, no matter whether the player was

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315. *Id.*

316. See Martin Lipton, *Premier League Scoffs as Eurocrat Promises an End to the Transfer Row*, DAILY MAIL (London), Dec. 2, 2000, at 92, LEXIS, News Library, Non-US News File.

317. See *Football Transfers: Commission Underlines the Prospect of Further Progress*, COMMISSION OF THE EUROPEAN COMMUNITIES RAPID, Dec. 6, 2000, LEXIS, News Library, Non-US News File.

318. *Id.*

319. *Id.*

320. See *EU, FIFA Make 'Substantial Progress' on International Football Transfers*, AFX EUROPEAN FOCUS, Dec. 13, 2000, LEXIS, News Library, Non-US News File.

321. *Id.*

322. *Id.*

323. See *id.*

324. Colin Stewart, *EU to Alter Bosman Ruling for Players up to Age 23*, THE SCOTSMAN, Dec. 18, 2000, at 1, LEXIS, News Library, Non-US News File.

325. See *id.* See also Dickinson, *supra* note 303.

under contract or out-of-contract.<sup>326</sup> The EC's concession on *Bosman* did have limitations. The selling club had the burden of demonstrating that it had been "substantially involved" in the development of the player.<sup>327</sup> In addition, the amount paid to a club that was able to satisfy this burden of proof would be determined by objective criteria, such as the length of time the player had spent with the club.<sup>328</sup>

While constant bickering between UEFA and FIFA hampered progress, there was a larger obstacle in the way of any agreement between the EC and football — the lack of assent by FIFPro to many of the compromises.<sup>329</sup> The players' union continued to dispute the calculation of compensation for transfers of players over twenty-three based on objective criteria,<sup>330</sup> instead calling for compensation based purely on a player's salary.<sup>331</sup> FIFPro also began to push the EC to enforce the standard three-month notice period used by other EU workers for ending a contract.<sup>332</sup> The on-going feud between FIFPro and the rest of the football hierarchy was a thorn in the side of the EC, as well, because FIFPro's complaints made it difficult for the Commission to ignore that the FIFA/UEFA proposals would continue to restrict the players' freedom of movement.<sup>333</sup> FIFPro and the EC agreed that the mandatory three-year term was too restrictive.<sup>334</sup> The EC believed that such a term would be a "blatant" violation of the freedom of movement and would be impossible to defend if a player brought a court action challenging the system.<sup>335</sup> As negotiations stretched into January 2001, UEFA and FIFA vowed to continue to fight for the concept of a mandatory three-year contract period, despite the united EC/FIFPro front on this issue.<sup>336</sup>

#### J. 2001: A Year for Compromise?

Heading into 2001, there was some feeling among the football authorities that much of the danger to the transfer system had been

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326. See Stewart, *supra* note 324, at 1.

327. Dickinson, *supra* note 303.

328. *Id.*

329. See *FIFA and EU Ready to Iron Out Transfer Contretemps*, AGENCY FRANCE PRESSE, Dec. 19, 2000, LEXIS, News Library, Non-US News File.

330. *Players' Body Reject FIFA Plan on Transfer Restrictions*, CBSSportsline.com, Dec. 20, 2000, at [http://cbs.sportsline.com/u/wire/stories/0,1169,3230701\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,3230701_5,00.html) (on file with author).

331. *Soccer-FIFA Consider New EU Proposals on Transfers*, CBSSportsline.com, Dec. 20, 2000, at [http://cbs.sportsline.com/u/wire/stories/0,1169,3230852\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,3230852_5,00.html) (on file with author).

332. Andrew Warshaw, *Transfer System Heading Towards Meltdown*, SUNDAY TELEGRAPH (London), Dec. 24, 2000, at 5, LEXIS, News Library, Non-US News File.

333. *FIFA and EU Ready to Iron Out Transfer Contretemps*, *supra* note 329.

334. David Moore, *Football: Transfer Deadlock*, THE MIRROR, Dec. 21, 2000, at 55, LEXIS, News Library, Non-US News File.

335. Warshaw, *supra* note 332, at 5.

336. *Id.*

averted and that the system would be preserved in some form.<sup>337</sup> On January 10, 2001, FIFA announced that it had sent new proposals to UEFA, FIFPro, and the EC in advance of the negotiation session scheduled for two days later.<sup>338</sup> The delivery of these proposals to UEFA crushed the high spirits from the December negotiations, and division within the ranks of the football family returned.<sup>339</sup>

The most controversial aspect of FIFA's proposals was a "just sporting cause" provision. Under this provision, a player could break his contract with his club with three months notice if he disagreed with the coaching tactics of his manager.<sup>340</sup> For example, Nicolas Anelka could have avoided his campaign for a transfer by merely giving Arsenal three month's notice of his departure and stating he disagreed with his manager's strategy. Additionally, the proposals allowed for a player to walk out on his contract if his club was "relegated" to a lower division because of a poor record the prior season, despite the fact that the team's record and the player's performance were inherently linked.<sup>341</sup>

In submitting these proposals, FIFA claimed that they were based on the transfer task force's proposals from the previous October, but also took into account all of the subsequent negotiation meetings.<sup>342</sup> FIFA proclaimed that it continued in its efforts to "salvage" the transfer system by suggesting a "different strategy" for accomplishing the agreed-upon goals of the football family.<sup>343</sup>

The proposal stunned UEFA and its members.<sup>344</sup> Initial reactions from UEFA, similar to those from the previous autumn, accused FIFA of caving to the combined pressure of the EC and FIFPro.<sup>345</sup> One incredulous British football official stated that FIFA was suffering from "a severe dose of mad cow disease" if it really believed that it could make such proposals "without the consent of its most powerful confed-

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337. See *Transfer System Talks on Hold*, CNN.com, Jan. 10, 2001, at [http://sportsillustrated.cnn.com/soccer/news/2001/01/10/fifa\\_transfers/index.html](http://sportsillustrated.cnn.com/soccer/news/2001/01/10/fifa_transfers/index.html) (on file with author).

338. *Meeting with European Commission Postponed until Later in January*, FIFA.com, Jan. 10, 2001, at <http://www.fifa2.com/scripts/runisa/dll?M2:gp::67173rel/Display+20282+E> (on file with author).

339. See Nick Harris, *Football: Transfer Talks Hit Deadlock as Time Runs Out*, THE INDEPENDENT (London), Jan. 12, 2001, at 28, LEXIS, News Library, Non-US News File.

340. Martin Ziegler, *Football: Dispute Undermines Transfer Talks*, THE INDEPENDENT (London), Jan. 14, 2001, LEXIS, News Library, Non-US News File.

341. Matthew Garrahan, *International Economy: Europeans Seek to Cut FIFA from Transfer Talks*, FINANCIAL TIMES (London), Jan. 16, 2001, LEXIS, News Library, Non-US News File.

342. *Meeting with European Commission Postponed*, *supra* note 338.

343. Harris, *supra* note 339, at 28.

344. See Vivek Chaudhary, *Transfer System Remains In Limbo*, THE GUARDIAN (London), Jan. 11, 2001, at 34, LEXIS, News Library, Non-US News File.

345. Harris, *supra* note 339, at 28.



eration [UEFA].”<sup>346</sup> Others were amazed that the same organization that had wasted over a year in responding to the threats of the EC was now arrogantly going over the head of its most senior member in submitting the “flawed” proposals.<sup>347</sup>

UEFA immediately demanded that FIFA withdraw the proposals, notify the EC that the proposals were unofficial, and consult UEFA on all future proposals.<sup>348</sup> At the same time, UEFA prepared to take its own arguments to the Commission.<sup>349</sup> Because the EC dealt officially only with FIFA during transfer negotiations, in order to meet separately with the Commission, UEFA would have to make a formal intervention and register itself as an interested party.<sup>350</sup> In doing so, UEFA believed that it would represent the best interests of “the whole of European football,” rather than the separate interests of factions within the sport.<sup>351</sup> In UEFA’s view the transfer battle with the EC was of greater concern to the European clubs and leagues than to the rest of the football world, and as the representative of the interested parties, it should take the lead in these negotiations.<sup>352</sup> Finally, UEFA officials also threatened to “press the ‘nuclear button’” by breaking away from FIFA.<sup>353</sup> This threat was a serious one for FIFA because of the political and financial power of UEFA.<sup>354</sup> Such a breakaway would result in the absence of any European teams in the FIFA-sponsored World Cup, something that would hurt both FIFA’s popularity and the integrity of the competition.

To some, this latest problem represented the “final straw” in a tumultuous, unhappy relationship because of UEFA’s decreasing power within a globally expanding FIFA.<sup>355</sup> Also resurfacing during this public conflict was the “mutual loathing” between FIFA President Sepp Blatter and UEFA President Lennart Johansson.<sup>356</sup> The personal feud

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346. Andrew Warshaw, *FIFA Told: Back Down or Face All-out War Football Is on the Brink of a Damaging Split as the Transfer Saga Degenerates into Chaos*, SUNDAY TELEGRAPH (London), Jan. 14, 2001, at 1, LEXIS, News Library, Non-US News File.

347. Jonathan Coates, *SPL Blasts FIFA’s Transfer Request*, THE SCOTSMAN, Jan. 16, 2001, at 22, LEXIS, News Library, Non-US News File.

348. *See id.*

349. Ben Clissitt and Vivek Chaudhary, *UEFA Looks to Legal Move Over Transfers*, THE GUARDIAN (London), Jan. 15, 2001, at 1, LEXIS, News Library, Non-US News File.

350. *Id.*

351. *See* Steve Keating, *UEFA Executive Holds Emergency Meeting*, ESPN.com, Jan. 16, 2001, at <http://www.soccer.net/europe/news/2001/0116/20010116transferowlatest.html> (on file with author).

352. Mihir Bose, *FIFA Back Down in Row Over Transfers*, THE DAILY TELEGRAPH (London), Jan. 16, 2001, at 40, LEXIS, News Library, Non-US News File.

353. Warshaw, *supra* note 346, at 1.

354. Ian McGarry, *World Cup at Risk as Transfer Rift Lurches Nearer to Crisis Point*, DAILY MAIL (London), Jan. 16, 2001, LEXIS, News Library, Non-US News File.

355. *See id.*

356. *See* Matthew Garrahan, *Beautiful Game Shows its Ugly Side: Football Political Squabble:*

between the two men started in 1998 when Blatter defeated Johansson in the election for FIFA President, using the scheduling of a future World Cup in Africa as one of his campaign promises.<sup>357</sup> In 2000, however, Johansson was able to garner enough votes among FIFA members to allow Germany to win the bid to host the 2006 World Cup.<sup>358</sup> Because of this devastating defeat for Blatter and his candidate to host the tournament, South Africa, many viewed FIFA's submission of its own proposals as Blatter's personal revenge and an attempt to remind UEFA that it was merely a part of the whole.<sup>359</sup> UEFA's threats of secession, however, forced FIFA to realize that a FIFA without UEFA was "like the Roman Empire without Rome."<sup>360</sup>

According to UEFA, the FIFA proposals weakened two key principles: (1) contract stability; and (2) establishment of a feasible compensation system.<sup>361</sup> With players' possessing the ability to leave clubs and clubs able to terminate player's with little notice, any notion of stability of contracts would be tossed aside under FIFA's proposals.<sup>362</sup> UEFA believed that FIFA was only considering the players' point of view and was largely ignoring the clubs who provided the stage and the fans who packed the theatre to see the players perform.<sup>363</sup> The only clubs that benefited from FIFA's proposals were the wealthier clubs who would draw players away from smaller clubs with the promise of riches. These large, wealthy clubs would only be forced to wait for three months after a player gave his notice.<sup>364</sup> UEFA firmly believed that fixed-term contracts and an arbitration panel to assess damages were the appropriate solution to this problem. This solution would allow respect of contracts as well as permit free movement.<sup>365</sup> FIFA's proposals were difficult to comprehend for adherents to the principle of contract stability because players entered into these contracts willingly for a mutually-agreed

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*Deep-seated Problems Between FIFA and UEFA Are at the Root of the Transfer System Dispute*, FINANCIAL TIMES (London), Jan. 19, 2001, at 15, LEXIS, News Library, Non-US News. See also Jim Lawton, *Terminal Case of Greed and Politics*, THE INDEPENDENT (London), Jan. 19, 2001, at 28, LEXIS, News Library, Non-US News File.

357. Garrahan, *supra* note 356, at 15.

358. *Id.*

359. See *id.*

360. See David Lacey, *Going in Over the Top in Transfer Battle*, THE GUARDIAN (London), Jan. 20, 2001, at 2, LEXIS, News Library, Non-US News File.

361. *UEFA Executive Committee Resolution on Transfers*, UEFA.com, Jan. 17, 2001, at <http://www.uefa.com/NewsData/UEFA/News/indexp.asp?News=8884> (on file with author).

362. See Nick Harris, *UEFA Widens Rift with FIFA Over Transfers*, THE INDEPENDENT (London), Jan. 16, 2001, at 26, LEXIS, News Library, Non-US News File.

363. See *id.*

364. See *Behaving like Squabbling Children, Both Organizations are now Running the Risk of Alienating the European Commission, Which will Decide on the Future Shape of the Transfer System*, DAILY MAIL (London), Jan. 18, 2001, LEXIS, News Library, Non-US News File.

365. See Harris, *supra* note 362, at 26.

term.<sup>366</sup> Yet, the “just sporting cause” provision would allow players to breach these same contracts merely because there was disagreement with the manager’s coaching style.<sup>367</sup>

Ultimately, FIFA backed down. It agreed to withdraw the proposals<sup>368</sup> and to accept certain principles, most significantly, fixed-term contracts and an arbitration panel for determining payments.<sup>369</sup> Therefore, the dyke had once again been plugged, at least for the time being.

While UEFA and FIFA settled their family squabble, the EC patiently waited, though insiders hinted that an agreement maintaining much of the appearance of the present system was available to football.<sup>370</sup> As it became more aware of the views of grass-roots campaigns throughout Europe, the Commission became more inclined to listen to the views of UEFA since they were more representative of local interests.<sup>371</sup> Sources within the EC hinted that the Commission might accept the Spanish system of stipulating to transfer fees when negotiating a contract.<sup>372</sup> With respect to the problem of dealing with different national laws on this issue, EC sources pointed to the possibility of an agreement among all football authorities (including the players) that such a system would not be challenged.<sup>373</sup> It was rumored the EC would look more favorably on this system because it would allow a player to have an opportunity to decide when he could move, rather than leaving this power solely with the club.<sup>374</sup>

For FIFA and UEFA (and, for that matter, Blatter and Johansson), time was running out and differences had to be put aside.<sup>375</sup> Both sides vowed to work together, “hand-in-hand,” and called for the reinstatement of the transfer task force in order to create mutually agreeable proposals for the EC.<sup>376</sup> Significantly, there was no representative of FIFPro included in the revived task force.<sup>377</sup> The quick healing process

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366. *Leeds Chairman Blasts UEFA and FIFA Spat Over Transfers*, AGENCY FRANCE PRESSE, Jan. 15, 2001, LEXIS, News Library, Non-US News File.

367. *See id.*

368. *See Bose, supra* note 352, at 40.

369. Harris, *supra* note 362, at 26.

370. *See Nick Harris, FIFA and UEFA Urged to End War Over Transfers*, THE INDEPENDENT (London), Jan. 18, 2001, at 28, LEXIS, News Library, Non-US News File.

371. Ian McGarry, *Brussels Is Coming Around To UEFA View in Transfer Stalemate*, DAILY MAIL (London), Jan. 19, 2001, LEXIS, News Library, Non-US News.

372. *Id.*

373. *Id.*

374. *Id.*

375. *See Vivek Chaudhary, Blatter Says Sorry and Concedes to UEFA*, THE GUARDIAN (London), Jan. 20, 2001, at 2, LEXIS, News Library, Non-US News File.

376. *See Nick Harris, Blatter Backs Down on Transfer Negotiations*, THE INDEPENDENT (London), Jan. 20, 2001, at 30, LEXIS, News Library, Non-US News File.

377. *See id.*

and the absence of FIFPro from the task force caused one critic to call the FIFA withdrawal of its proposals "simply papering over the cracks."<sup>378</sup>

Nevertheless, as the united FIFA/UEFA front and the EC prepared to meet in late January, there was a feeling on both sides that a deal was imminent.<sup>379</sup> The largest remaining obstacle was agreement on contract duration—the football authorities continued to call for mandatory three-year contracts while the EC found this to be an excessive restriction on a player's movement.<sup>380</sup> Additionally, the two sides remained deadlocked on the issues of how much notice a player was required to give his club before terminating his contract and what compensation system would govern these terminations.<sup>381</sup> The EC continued, however, to urge FIFA and UEFA to seek a compromise with FIFPro, a deal considered by most to be absolutely necessary to any final agreement with the EC.<sup>382</sup>

Numerous legal challenges to the transfer system presently working their way through the national courts loomed ahead for the football authorities.<sup>383</sup> One case pending before the ECJ involved a Hungarian player, Tibor Balog, who questioned the legal implications of the transfer system on players from nations with special trade links with the EU.<sup>384</sup> Because this case involved both a freedom of movement claim as well as a competition claim, FIFA and UEFA feared an ECJ decision on competition grounds that would invoke the enforcement powers of the EC, completing what *Bosman* left unfinished.<sup>385</sup>

In addition, the growing power of sports agents under a new system with greater player movement concerned football authorities. There was a strong fear that agents, eager to garner greater commissions, would encourage players to break their contracts.<sup>386</sup> In an effort to prevent this threat, the British Football Association (FA) proposed to establish itself

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378. Graham Kelly, *Today's Players Should Thank Old-fashioned Union Power*, THE INDEPENDENT (London), Jan. 22, 2001, at 2, LEXIS, News Library, Non-US News File.

379. See *FIFA and UEFA Return for More EU Transfer Talks*, CBSSportsline.com, Jan. 23, 2001, at [http://cbs.sportsline.com/u/wire/stories/0,1169,3402611\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,3402611_5,00.html) (on file with author).

380. *Id.*

381. Vivek Chaudhary, *Double Trouble Delays Transfer Solution*, THE GUARDIAN (London), Jan. 25, 2001, at 32, LEXIS, News Library, Non-US News File.

382. See Mark Pierson, *Players Hold Key to Transfer Deal*, THE INDEPENDENT (London), Jan. 25, 2001, at 28, LEXIS, News Library, Non-US News File.

383. See Vivek Chaudhary, *New Limits on British Transfers*, THE GUARDIAN (London), Jan. 31, 2001, at 32, LEXIS, News Library, Non-US News File.

384. *Id.*

385. See Mihir Bose, *FA Plans Put Pressure on Agents to Clean Up Their Act*, THE DAILY TELEGRAPH (London), Jan. 31, 2001, at 44, LEXIS, News Library, Non-US News File.

386. Vivek Chaudhary, *Football Acts to Cut Power of Agents; FA Sets Up Clearing House to Stop Transfer Bungs and Illegal Deals*, THE GUARDIAN (London), Jan. 31, 2001, at 34, LEXIS, News Library, Non-US News File.

as a “clearing house” for domestic transfer monies that would investigate whether the deal was done properly before passing on the transfer money.<sup>387</sup> In the case of international transfers, the FA encouraged UEFA or FIFA to set up a similar system.<sup>388</sup>

Eventually, the EC’s patience began to wear thin with the progress of the negotiations, and the Commission became concerned that there was a certain amount of stonewalling on the part of the task force.<sup>389</sup> In an effort to regain the momentum from talks before the New Year, the EC proposed to meet with Blatter and Johansson as part of an informal transfer summit during which the two sides could discuss proposals with an eye towards finalizing a deal at a meeting to be held February 16 2001.<sup>390</sup> The EC viewed the summit as the “last chance” for football to settle the transfer issue, and it urged the task force to find a common ground with FIFPro, reminding the football authorities of the upcoming litigation concerning the transfer system.<sup>391</sup>

As the task force prepared for the summit, a new controversial proposal emerged — certain “sporting” sanctions on both the breaching player and the purchasing club — when a player broke his contract to sign with another club without permission of his current club.<sup>392</sup> A player who breached could be suspended for six to twelve months, depending on the severity of the breach and the remaining term of his playing contract.<sup>393</sup> A club found to have induced a breach could be prevented from transferring any more players for six to twelve months.<sup>394</sup> UEFA stressed that a player, club, or third-party (such as an agent) causing the breach of a playing contract was committing a disloyal and unsporting act that should result in “strong disciplinary sanctions.”<sup>395</sup> Additionally, UEFA urged that, when possible, player movement should be the result of “amicable agreement between all

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387. *Id.*

388. *Id.*

389. *EU Commission “Concerned Over Stonewalling” in FIFA, UEFA Talks on Transfers*, AFX EUROPEAN FOCUS, Feb. 1, 2001, LEXIS, News Library, Non-US News File.

390. *Soccer-EC Invites FIFA, UEFA to Transfer “Summit”*, CBSSportsline.com, Feb. 1, 2001, at [http://cbs.sportsline.com/u/wire/stories/0,1169,345103\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,345103_5,00.html) (on file with author).

391. Christian Bohmer, “Time Is Up,” *E.U. Commission Wants Football Agreement*, DEUTSCHE PRESSE-AGENTUR, Feb. 2, 2001, LEXIS, News Library, Non-US News File.

392. See Ian McGarry, *Players to be Banned in Transfer Revolution*, DAILY MAIL (London), Feb. 5, 2001, LEXIS, News Library, Non-US News File. See also Mihir Bose, *Hopes Rise for End to Transfer Saga*, THE DAILY TELEGRAPH (London), Feb. 10, 2001, at 6, LEXIS, News Library, Non-US News File.

393. Richard Copeman, *Wayward Players Facing Harsher Penalties*, SUNDAY TELEGRAPH (London), Feb. 11, 2001, at 2, LEXIS, News Library, Non-US News File.

394. *Id.*

395. See *UEFA Committee Outline Key Principles for International Transfer System*, UEFA.com, Feb. 5, 2001, at <http://www.uefa.com/newsdata/uefa/news/index.asp?news=9011> (on file with author).

parties.”<sup>396</sup>

When FIFPro accepted that stability of contract was essential for the survival of the sport, and backed down on its demand for a three-month notice period,<sup>397</sup> the remaining points of contention between the two sides were the length of the protected period of a contract and the severity of the sporting sanctions.<sup>398</sup> With the gap significantly narrowed between FIFA/UEFA and FIFPro, officials were optimistic that an agreement on the proposals would be reached between the two sides before submitting them to the EC at the February 16, 2001 meeting.<sup>399</sup>

Any air of compromise and optimism collapsed once again, however, at an official meeting between FIFA, UEFA, and FIFPro, just two days before a Valentine's Day summit with the EC.<sup>400</sup> After a lengthy argument with football officials, FIFPro Vice President Phillipe Piat walked out of the meeting, claiming that FIFA and UEFA demanded that a player honor the length of his contract, while preserving the right of a club to sell the player at any time.<sup>401</sup> Despite another breakdown within the dysfunctional football family, the Commission met with the leaders of FIFA and UEFA on February 14, 2001, with the hope that face-to-face discussions would help to create an atmosphere more conducive to compromise.<sup>402</sup>

Following the Valentine's Day summit, the Commissioners and the football officials released a joint statement indicating that the two sides had “cemented an agreement on significant number of issues.”<sup>403</sup> The joint statement declared that the two sides had agreed on: (1) establishment of fixed transfer periods; (2) minimum and maximum terms of contracts of one and five years; (3) creation of a solidarity mechanism that would distribute funds to smaller clubs; (4) establishment of an

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396. *Id.*

397. Steve Curry, *Transfers: Taylor Talks of United Front*, ESPN.com, Feb. 7, 2001, at <http://www.soccernet.com/europe/new/2001/0207/20010207eufifataylor.html> (on file with author).

398. See Peter Starck, *FIFA Repeats Call for Maximum of One Move a Year*, ESPN.com, Feb. 6, 2001, at <http://www.soccernet.com/europe/news/2001/0206/20010206transferfifa.html> (on file with author); Copeman, *supra* note 393, at 2.

399. *Soccer Heads Are Optimistic About Agreement on Transfer Dispute*, CBSSportsline.com, Feb. 6, 2001, at [http://cbs.sportsline.com/u/wire/stories/0,1169,3475345\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,3475345_5,00.html) (on file with author).

400. See *Players' Representatives Walk Out of Transfers Meetings*, CBSSportsline.com, Feb. 12, 2001, at [http://cbs.sportsline.com/u/wires/stories/o,1169,3502958\\_5,00.html](http://cbs.sportsline.com/u/wires/stories/o,1169,3502958_5,00.html) (on file with author).

401. *Union in Transfer Talks Walk-Out*, ESPN.com, Feb. 12, 2001, at <http://www.soccernet.com/europe/news/2001/0212/20010212uniontransfers.html> (on file with author).

402. See *EU Soccer Chiefs Set for 'Summit'*, ESPN.com, Feb. 13, 2001, at <http://www.soccernet.com/europe/news/2001/0213/20010213eurotransfers.html> (on file with author).

403. Martyn Ziegler, *Football's Big Two Reach 'Historic' Transfer Agreement*, ESPN.com, Feb. 14, 2001, available at <http://www.soccernet.com/england/news/2001/0214/20010214transferhistoric.html>.

independent arbitration panel with recourse to the national courts; and (5) compensation for training and development.<sup>404</sup>

Three issues remained for the two sides to work out: (a) protecting young players; (b) dealing with unilateral termination of contracts; and (c) calculating the training fees.<sup>405</sup> The EC agreed with the concept of “proportionate” sporting sanctions in the case of an unilateral breach, but found the one-year sanctions to be excessive.<sup>406</sup> Additionally, the Commission stressed that the training fees had to reflect actual training costs in order to avoid “disproportionate” fees that would serve as an obstacle to the movement of young players.<sup>407</sup>

In contrast to the high spirits of those who attended the Valentine’s Day summit, FIFPro remained critical of the results of this allegedly “historic” day.<sup>408</sup> Gordon Taylor alleged that all of the points of agreement between the two sides were mere “rubber stamp[ing]” of previous agreements.<sup>409</sup> He pointed to the scheduling of further talks as evidence of lingering discord.

While certain sources within football called FIFPro’s criticism of the agreement “sour grapes” because of the organization’s exclusion from the summit,<sup>410</sup> there was genuine concern among football officials that an agreement without FIFPro would lead to legal challenges by players in the national courts.<sup>411</sup> Others feared that the EC, with the absence of FIFPro, would lose confidence in the negotiations and decide to implement its own solution without any outside input.<sup>412</sup>

FIFPro refused to agree with the task force’s proposals and, instead, submitted its own proposals to the Commission.<sup>413</sup> Gordon Taylor forecast a return to the “Dark Ages” under the FIFA/UEFA proposals and publicly threatened to take the governing bodies to court in every coun-

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404. *Joint Statement by Commissioners Monti, Reding and Diamantopoulou and Presidents of FIFA Blatter and of UEFA Johansson*, UEFA.com, Feb. 14, 2001, at <http://uefa.com/UEFA/news/index.asp?News=9142> (on file with author).

405. *Id.*

406. *Id.*

407. *Id.*

408. See Harry Harris, *Rescued; Risdale: All our Dreams Would Have Been Destroyed Without this Transfer Peace Deal*, THE MIRROR, Feb. 15, 2001, at 65, LEXIS, News Library, Non-US News File.

409. *Id.*

410. Martin Lipton, *Taylor: No Transfer Peace – Yet*, ESPN.com, Feb. 15, 2001, at <http://www.soccernet.com/england/news/2001/0215/20010215transferstaylor.html> (on file with author).

411. See David Bond, *Transfer Rulings Hit Further Snags*, ESPN.com, Feb. 15, 2001, at <http://www.soccernet.com/england/news/2001/0215/20010215transfersnag.html> (on file with author).

412. See Nick Harris, *Players ‘Not Told’ of EC Essentials on Transfers*, THE INDEPENDENT (London), Feb. 14, 2001, at 26, LEXIS, News Library, Non-US News File.

413. *No Compromise: Soccer Officials Try to Reconcile Contracts Issue*, CNN.com, Feb. 16, 2001, at [http://sportsillustrated.cnn.com/soccer/news/2001/02/16/fifa\\_eu\\_transfer/index.html](http://sportsillustrated.cnn.com/soccer/news/2001/02/16/fifa_eu_transfer/index.html) (on file with author).

try if they refused to change their stance.<sup>414</sup> FIFPro's proposals, among other things, called for at least ten percent of transfer fees to go to solidarity pool systems, arbitration with equal representation for players and clubs, mandatory three-year terms up to age twenty-three and two-year terms thereafter, and no sanctions in cases of unilateral breach.<sup>415</sup>

Viewing FIFA/UEFA as the party most willing to compromise, the EC appeared willing to accept the notion of an agreement without the presence of FIFPro.<sup>416</sup> UEFA accused FIFPro of trying to disrupt the negotiations with the EC, but vowed that the disruptions and threats would not prevent a final resolution.<sup>417</sup> Additionally, UEFA questioned whether FIFPro was truly representing the best interests of players throughout Europe.<sup>418</sup> Other league and club executives quickly followed suit, accusing Taylor of constantly shifting his views and having lost touch with the players.<sup>419</sup> Some British officials went so far as to say that few players in England had ever heard of FIFPro or Gordon Taylor.<sup>420</sup> This accusation was strengthened by a letter from a rival players' union, ProProf, that declared that FIFPro was not the universal representative of all players.<sup>421</sup>

Heading into March 2001 meetings with FIFA/UEFA, EC representatives were cautiously optimistic,<sup>422</sup> while FIFA and UEFA warned that no further compromise was available on the remaining issues of length of sporting sanctions and amount of compensation for training players aged twenty-three and under.<sup>423</sup> UEFA went as far as to send a letter to Goran Persson, the prime minister of Sweden and current holder of the rotating EU presidency, complaining that Commission officials were "almost impossible to deal with," in part because of a "total lack of understanding of how the development of players takes place."<sup>424</sup> Addi-

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414. *Soccer – World Soccer Faces Total Chaos Warns FIFPro*, CBSSportsline.com, Feb. 16, 2001, at [http://cbs.sportsline.com/u/wires/stories/0,1169,3524461\\_5,00.html](http://cbs.sportsline.com/u/wires/stories/0,1169,3524461_5,00.html) (on file with author).

415. *Id.*

416. *No Compromise*, *supra* note 413.

417. *UEFA Defends Transfer Negotiation Process*, UEFA.com, Feb. 17, 2001, at <http://www.uefa.com/uefa/nes/index.asp?news=9174> (on file with author).

418. *Id.*

419. Simon Hart and Andrew Warshaw, *Soccer Chiefs Declare War on Taylor the Players' Union Boss Is Branded a 'Hypocrite' as the Transfer Row Escalates*, SUNDAY TELEGRAPH (London), Feb. 18, 2001, at 1, LEXIS, News Library, Non-US News File.

420. *Id.*

421. *Id.*

422. *See EC Commissioners Hopes to Strike New Transfer Deal*, CBSSportsline.com, Feb. 26, 2001, at [http://cbs.sportsline.com/u/wire/stories/0,1169,3571809\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,3571809_5,00.html) (on file with author).

423. Vivek Chaudhary and Jon Brodtkin, *Transfer Talks in Deadlock*, THE GUARDIAN (London), Mar. 3, 2001, at 2, LEXIS, News Library, Non-US News File.

424. Matthew Garrahan, Deborah Hargreaves, and David Owen, *Brussels Warned on Football Transfers*, FINANCIAL TIMES (London), Mar. 3, 2001, at 6, LEXIS, News Library, Non-US News File.



tionally, UEFA believed that the Commission officials were “out of touch and out of sympathy with the expressed wishes of governments of their own member states and the recent Declaration on Sport from the Nice Summit.”<sup>425</sup> Persson’s responded by urging both sides to “go the extra mile” in order to “arrive at a mutually acceptable solution.”<sup>426</sup>

The subsequent meeting finally resulted in an agreement on a new transfer system that satisfied the EC’s demands.<sup>427</sup> FIFA and UEFA agreed to implement the changes for the following season after acceptance by FIFA’s executive at a July 5, 2001 congress.<sup>428</sup> As for the two contentious issues, under the new system: (1) in the case of a transfer of a player under the age of twenty-three, compensation for training would be provided, even if the player was at the end of his contract with that club; and (2) in the case of a unilateral breach by a player, the player would not be able to play for another club during that season (if the breach was made in the middle of a season) or for the first four months of the next season.<sup>429</sup> Also significant was the fact that “amicable transfers,” where the two clubs and player agreed on terms, would not be affected by the new transfer system.<sup>430</sup>

Football’s representatives proclaimed that the new system would set a solid foundation for the sport’s future.<sup>431</sup> Additionally, FIFA/UEFA promised more talks with the players, acknowledging that they were a key ingredient for the future.<sup>432</sup> The EC proclaimed that this was the sort of agreement that it had sought from the beginning, stressing that it never intended to treat footballers and clubs like the traditional

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425. Martyn Ziegler, *UEFA Fears for Future as Transfer Talks Hit Impasse*, THE INDEPENDENT (London), Mar. 3, 2001, at 26, LEXIS, News Library, Non-US News File.

426. *Soccer – Swedish PM Urges Big Push for Transfer Deal*, CBSSportsline.com, Mar. 5, 2001, at [http://cbs.sportsline.com/u/wire/stories/0,1169,3606485\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,3606485_5,00.html) (on file with author).

427. *Done Deal: EU, Soccer Bodies Agree on New Transfer System*, CNNSI.com, Mar. 5, 2001, at [http://sportsillustrated.cnn.com/soccer/news/2001/03/05/transfer\\_agreement](http://sportsillustrated.cnn.com/soccer/news/2001/03/05/transfer_agreement) (on file with author).

428. *Transfer Negotiations Finished – The Key Elements*, UEFA.com, (Mar. 5, 2001), at <http://www.uefa.com/uefa/news/print.asp?News=9396> (on file with author).

429. *Transfers: How the New System Works*, ESPN.com, Mar. 6, 2001, at <http://www.soccernet.com/europe/news/2001/0306/20010306trasnfersystem.html> (on file with author).

430. David Owen, *Football Bodies Seek Sports Protocol; Club Management Call for Special Needs to Be Recognized and for Protection from EU Treaties*, FINANCIAL TIMES (London), Mar. 12, 2001, at 10, LEXIS, News Library, Non-US News File.

431. *Done Deal*, *supra* note 427. Additionally, immediately following the agreement, the ECJ dismissed the Tibor Balog case due to the language of the preamble of the transfer agreement which stated that all players could move throughout the world at the end of a playing contract, subject only to training compensation. *Agreement Reached Between FIFA and Tibor Balog on 28 March 2001*, FIFA.com, (Mar. 28, 2001), at [http://www.fifa.com/Service/MR\\_A/23432\\_E.html](http://www.fifa.com/Service/MR_A/23432_E.html) (on file with author).

432. *See id.*

employee-employer relationship.<sup>433</sup> To do so, the EC stated, would have destroyed the sport and ignored the “specific characteristics of sport.”<sup>434</sup> The president of the EC characterized the agreement as a proper balance between the needs of sport and community law.<sup>435</sup>

FIFPro immediately voiced its protest of the agreement, calling it a “very black day for European sport and footballers” and immediately began planning legal actions.<sup>436</sup> Representatives were quick to point out that the agreement put footballers in a different category from other EU workers and, thus, stripped them of equal social protection.<sup>437</sup> Arguing that any sporting sanctions (i.e. suspensions) were excessive because of the already average short span of a football career, FIFPro believed that there was no other answer but to pursue legal action in the fall once the new rules were implemented against the EC.<sup>438</sup>

As the details of the agreement spread, differing reactions from the football world emerged. In Britain, some club executives worried that the new system would allow players to leave “at the drop of a wallet.”<sup>439</sup> Clubs could not see the utility of a system that allowed a player to leave in the middle of a contract and that forced a club to re-negotiate at the whim of the player.<sup>440</sup> Many foresaw the use of “golden handcuff” payments by clubs in order to purchase the loyalty of a player.<sup>441</sup> There was also a fear that, without such payments, the “four month rule” would become the transfer rule as players would be aware that they could change clubs simply by giving notice at the end of one season and sitting

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433. *Transfer Deal Cements Sport's Special Status Within EU*, CBSSportsline.com, Mar. 6, 2001, at [http://cbs.sportsline.com/u/wire/stories/0,1169,3611791\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,3611791_5,00.html) (on file with author).

434. *Id.*

435. *EU Chief Congratulates on Soccer Transfer Deal*, XINHUA GENERAL NEWS SERVICE, Mar. 7, 2001, LEXIS, News Library, Non-US News File.

436. Ian Geoghegan, *Players Unhappy as Transfer Deal is Agreed*, ESPN.com, Mar. 5, 2001, at <http://www.soccernet.com/europe/news/2001/0305/20010305transfersagasolved.html> (on file with author).

437. David Bond, *Players Will Move 'At the Drop of a Wallet'*, ESPN.com, Mar. 6, 2001, at <http://www.soccernet.com/europe/news/2001.0306/20010306transferdein.html> (on file with author).

438. *FIFPro Set to Take EU to Court over Transfer Deal*, CBSSportsline.com, Mar. 7, 2001, at [http://cbs.sportsline.com/u/wire/stories/0,1169,3616187\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,3616187_5,00.html) (on file with author); Paul Goulding and Brian Kennelly, *Players' Union Aims for an Injury-Time Equaliser*, THE TIMES (London), Mar. 13, 2001, LEXIS, News Library, Non-US News File.

439. Nick Harris, *New Transfer System 'Threatens Stability' of Game; Arsenal Vice-Chairman David Dein Warns that Clubs Will Be Held to Ransom as International Players' Union Considers Taking Legal Action*, THE INDEPENDENT (London), Mar. 7, 2001, at 28, LEXIS, News Library, Non-US News File.

440. *See id.*

441. Matt Dickinson, *Disgruntled Players Pose Threat to Transfer Accord*, THE TIMES (London), Mar. 7, 2001, LEXIS, News Library, Non-US News File.

out the first four months of the next season.<sup>442</sup> Additionally, British clubs were extremely concerned with the imposition of the transfer windows — a concept foreign to the freewheeling style of transfers in British football.<sup>443</sup> With transfers only limited to two windows each year, smaller clubs voiced concerns that they might be unable to field enough players during the season in case of injuries or suspensions.<sup>444</sup> In order to avoid these damaging effects, it was hoped that the new transfer system would only affect cross-border transfers and not domestic transfers.<sup>445</sup>

Some even wondered whether the players' lot had been improved under the new agreement, since clubs now would certainly not be offering long-term deals beyond two or three years to its players.<sup>446</sup> While top players might benefit from the ability to increase their salary more often, the average player would now have less contractual stability and would face greater pressure to succeed.<sup>447</sup> Even top clubs such as Manchester United admitted that, under this new system, players under the age of twenty-eight would be in more demand because of the longer period of contract protection.<sup>448</sup> In general, an air of uncertainty hung over the transfer agreement and its future. As a result, many clubs refrained from active participation in the transfer market.<sup>449</sup>

As FIFA prepared to present the new transfer regulations to its members on July 5, 2001, FIFPro began its legal challenges against the new system. It started with an attempt to seek an injunction from the Court of First Instance in Brussels to enjoin FIFA from implementing the changes.<sup>450</sup> With arguments before the court set for late July, FIFPro

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442. *Wenger Fears for Football Following New Transfer Deal*, CBSSportsline.com, Mar. 6, 2001, at [http://cbs.sportsline.com/u/wire/stories/0,1169,3612702\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,3612702_5,00.html) (on file with author).

443. Mihir Bose, *Muted Acceptance Among Clubs to Transfer Changes*, THE DAILY TELEGRAPH (London), Mar. 7, 2001, at 43, LEXIS, News Library, Non-US News File.

444. John Richardson, *As Big Clubs Take Action to Protect Themselves Against Changes in the Transfer System, the Minnows Fear They Will Be Left High and Dry; Moving the Goal Posts*, SUNDAY EXPRESS, Mar. 11, 2001, at 96, LEXIS, News Library, Non-US News File.

445. Simon Hart, *Battle Looms over Transfer Windows*, SUNDAY TELEGRAPH (London), Mar. 11, 2001, at 10, LEXIS, News Library, Non-US News File.

446. Charlie Nicholas, *The Wrong Move, UEFA: Celtic Legend Says Euro Plan for New Transfer Deal Could Mean the Rich Players Getting Richer and the Rest Left to Struggle*, EVENING TIMES (Glasgow), Mar. 9, 2001, at 76, LEXIS, News Library, Non-US News File.

447. *See id.*

448. Steve Bates, *Rivaldo's Too Old for United*, THE PEOPLE, Apr. 22, 2001, at 56-57, LEXIS, News Library, Non-US News File.

449. *Soccer – Newcastle Rule out Transfer Plunge*, CBSSportsline.com, Apr. 5, 2001, at [http://cbs.sportsline.com/u/wire/stories/0,1169,3743640\\_5,00.html](http://cbs.sportsline.com/u/wire/stories/0,1169,3743640_5,00.html) (on file with author). *See also* Darryl Broadfoot, *Summer Signing Slow Down; With the Expected Old Firm Transfer Boom Still to Take Place*, THE HERALD (Glasgow), June 19, 2001, at 31, LEXIS, News Library, Non-US News File.

450. Ian Blackshaw, *FIFA Moves the Goalposts Again*, THE TIMES (London), June 19, 2001, LEXIS, News Library, Non-US News File.

hoped that FIFA would not finalize the new regulations until after the hearing.<sup>451</sup> At the July 5, 2001 Congress, however, FIFA adopted the new transfer regulations and announced that the changes would be implemented by September.<sup>452</sup>

### K. *The New Transfer Regulations*

The following is a summary of the key points of the new transfer regulations.

- Contracts will have a minimum duration of one year and a maximum duration of five years.<sup>453</sup>

- Transfers will be limited to two transfer windows during the year set by the national association, and a player may only be transferred once in a single season.<sup>454</sup> The longer transfer window is to take place in the summer, before the start of the new season; the shorter window will be at an appointed time mid-season and will be 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.”<sup>455</sup>

- In an effort to protect players under the age of eighteen, transfers of such players will only be permitted if the player’s family moves to the country where the new club is located “for reasons that are not linked to football.”<sup>456</sup> Additionally, FIFA and UEFA will adopt a “code of conduct” that governs the sports training and academic education of these players in the case of a transfer within the EU.<sup>457</sup>

- For training compensation, a club will be compensated for the training and education of a player each time a player is transferred until his training is complete or he turns twenty-three, whichever is first.<sup>458</sup> Calculation of the compensation is computed according to the category of the club, which is determined by the quality of the training center and

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451. *See id.*

452. *New Transfer System Set for September*, CNNSI.com, July 5, 2001, at [http://sportsillustrated.cnn.com/soccer/news/2001/07/05/fifa\\_transfers](http://sportsillustrated.cnn.com/soccer/news/2001/07/05/fifa_transfers) (on file with author). Additionally, the regulations would be subject to review after two years. *FIFA Executive Committee Formally Approves New International Transfer Regulations*, FIFA.com, at [http://www.fifa.com/Service/MR\\_A/27416\\_E.html](http://www.fifa.com/Service/MR_A/27416_E.html) (on file with author).

453. FIFA, *FIFA Regulations for the Status and Transfer of Players* Ch. 1, art. 4(2) (July 5, 2001) (on file with author) [hereinafter *FIFA Regulations*].

454. *FIFA Regulations*, *supra* note 453, Ch. 3, art. 5(2).

455. *Regulations Governing the Application of the Regulations for the Status and Transfer of Players*, Ch. 1, art. 2 [hereinafter *Application of Regulations*].

456. *FIFA Regulations*, *supra* note 453, Ch. 6, art. 12(1)(a).

457. *Application of Regulations*, *supra* note 455, Ch. 2, art. 3(1).

458. *FIFA Regulations*, *supra* note 453, Ch. 7, art. 15.

the level of the training club.<sup>459</sup> In an effort to protect the smaller clubs, compensation will be higher for a lower level club transferring a player to a higher level club than vice versa.<sup>460</sup> As for clubs previously involved in a player's education and training, if a player is transferred from a third or fourth category club to a top club, once the transferring club has been paid, a larger percentage will be paid to previous clubs than would be if the transfer is from clubs in the same category.<sup>461</sup> Finally, no training compensation will be available when a player over the age of twenty-three is transferred.<sup>462</sup>

■ As further protection for the developmental clubs, a solidarity mechanism provides that every mid-contract transfer or movement will result in five percent of the subsequent compensation being paid to the clubs involved in the training and education of that player.<sup>463</sup> This five percent will then be divided between all of the involved clubs according to a formula depending on the age of the player when he was with the club.<sup>464</sup>

■ In an effort to maintain contractual stability, players under the age of twenty-eight will be subject to sporting sanctions in the case of a unilateral breach during the first three years of the contract.<sup>465</sup> For players over the age of twenty-eight, the same rules apply for a breach during the first two years of the contract.<sup>466</sup> For breaches outside of these protected periods, compensation will be required, and only the clubs and/or the player's agent may be subject to sporting sanctions.<sup>467</sup>

■ The sporting sanctions will result in a player being suspended for the first four months of the beginning of the next season (assuming that the breach takes place at the end of a season).<sup>468</sup> If there are "aggravating circumstances," such as failing to give notice or breaching multiple times, the sanctions may reach six months.<sup>469</sup> For the new club, in the case of a breach during the protected period, there is a presumption that the club has induced the breach and it may be subjected to fines, deduction of points, or exclusion from competitions.<sup>470</sup>

■ A player may be permitted to unilaterally breach during the pro-

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459. See Application of Regulations, *supra* note 455, Ch. 3, art. 6.

460. *Id.* at Ch. 3, art. 7.

461. *Id.* at Ch. 3, art. 8.

462. FIFA Regulations, *supra* note 453, Ch. 7, art. 19.

463. Application of Regulations, *supra* note 455, Ch. 4, art. 10.

464. *Id.*

465. FIFA Regulations, *supra* note 453, Ch. 8, art. 21(1)(a).

466. *Id.* at Ch. 8, art. 21(1)(b).

467. *Id.* at Ch. 8, art. 21(2)(a).

468. *Id.* at Ch. 8, art. 23(1)(a).

469. *Id.* at Ch. 8, art. 23(1)(c).

470. *Id.* at Ch. 8, art. 23(2)(c) - (d).

tected period, however, for “sporting just cause.”<sup>471</sup> The Application of Regulations document provides one specific example of this exception — if a player can demonstrate at the end of the season that he played in “less than ten percent of the official matches played by his club.”<sup>472</sup> Other possible exceptions, to be determined on a case-by-case basis, include “injury, suspension, player’s field position, position in the team (e.g. reserve goalkeeper), player’s age, [and] reasonable expectations on the basis of past career . . . .”<sup>473</sup>

■ In addition to sporting sanctions, compensation for the breach is also potentially available.<sup>474</sup> The compensation will be calculated “with due respect to the national law applicable” and the “specificity of sport,” and will take into account such objective criteria as: the value of the contract (including non-contractual benefits); the remaining term of the contract; the amount of fees or expenses already spent by a club under the contract; and whether the breach takes place during the protected period.<sup>475</sup>

■ In order to deal with disputes over compensation, sporting just cause, and mid-contract breaches, a Dispute Resolution Chamber was created, composed of an equal number of player and club representatives.<sup>476</sup> Alternatively, the clubs and players may, in their collective bargaining agreement, agree to create a “national sports arbitration tribunal” that is composed of an equal number of player and club representatives.<sup>477</sup> Finally, the Regulations also indicate that a player or club may still seek resolution of their disputes before the national courts.<sup>478</sup>

Following the release of the regulations to be implemented in September 2001, FIFPro vowed to continue with its litigation against FIFA, but also wanted some time to review the new regulations.<sup>479</sup> After reviewing the documents, FIFPro sought an injunction against the implementation of the regulations. FIFPro questioned whether the EC was “competent to allow a private body of law like FIFA to establish rules that deviate from European law.”<sup>480</sup>

As September drew closer, much speculation existed as to whether

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471. *Id.* at Ch. 8, art. 24.

472. Application of Regulations, *supra* note 455, Ch. 5, art. 12.

473. *Id.*

474. FIFA Regulations, *supra* note 453, Ch. 7, art. 22.

475. *Id.*

476. Application of Regulations, *supra* note 455, Ch. 7, art. 15.

477. FIFA Regulations, *supra* note 453, Ch. 14, art. 42(1)(b)(i).

478. *Id.* at Ch. 14, art. 42(1).

479. *See Session Against Legality of New Transfer System Postponed*, FIFProNet International, at <http://www.fifpro.net/index.php?mod=one&id=2927> (on file with author).

480. *Court Case Against New Transfer System Adjudged Against the Will of FIFA*, FIFProNet International, at <http://www.fifpro.net/index.php?mod=one&id=2983> (on file with author).

the new regulations would change anything and whether they would work at all. Legal experts believed that transfer fees would continue to rise along with player wages.<sup>481</sup> Additionally, some believed that certain clubs might avoid transfers altogether because of the uncertain nature of player contracts and the ease with which these contracts could now be broken.<sup>482</sup> Finally, many clubs anxiously waited for an explanation from FIFA as to how the whole system was to work.<sup>483</sup>

The much anticipated clarifications from FIFA arrived in a twenty-page circular dated August 24, 2001.<sup>484</sup> Stealing the spotlight, however, was the announcement that FIFA had brokered a settlement with FIFPro under which FIFPro agreed to drop its legal challenges.<sup>485</sup> Under the agreement between the two sides, FIFPro would now provide representatives for the Dispute Resolution Chamber and would nominate representatives for the Arbitration Tribunal for Football.<sup>486</sup> These appointments were significant since they meant that FIFPro would be well represented in hearings in which the sporting sanctions may be assessed.

Lost in the happiness of the settlement was FIFA's failure to clarify the new system to the national associations throughout Europe.<sup>487</sup> As a result, the EC considered taking legal action against FIFA, calling the situation a "complete mess."<sup>488</sup> Because of the confusion, UEFA had already told the national associations to continue under the old system until FIFA got around to explaining things.<sup>489</sup>

Additionally, UEFA remained in the dark as to the specifics of the compromise agreement between FIFA and FIFPro.<sup>490</sup> It was soon revealed, however, that FIFA had "moved the goalposts" by changing

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481. Nick Harris, *Football: Who Said It Was Goodbye to the Big Buys? Summer Boom Hints that the New System Will Not Herald a Slump in Transfer Fees*, THE INDEPENDENT (London), Aug. 7, 2001, at 18, LEXIS, News Library, Non-US News File.

482. See *id.*

483. *Ebbe's Race Against Time: Nine Days to Strike it Right*, ABERDEEN EVENING EXPRESS, Aug. 23, 2001, at 56, LEXIS, News Library, Non-US News File.

484. See FIFA Circular No. 769 (Aug. 24, 2001) (on file with author).

485. *Players' Group Settles with FIFA over Transfer Plan*, ESPN.com., Aug. 31, 2001, at <http://www.soccer.net/europe/news/2001/0831/20010831fifpro.html> (on file with author).

486. *Agreement at Last: FIFA, FIFPro Strike Deal over Player Transfers*, CNN.com, Aug. 31, 2001, at [http://sportsillustrated.cnn.com/soccer/news/2001/08/31.transfers\\_fifa\\_ap](http://sportsillustrated.cnn.com/soccer/news/2001/08/31.transfers_fifa_ap) (on file with author).

487. See Vivek Chaudhary, *Vivek Chaudhary Uncovers the Stories Behind the News*, THE GUARDIAN (London), Sept. 1, 2001, at 11, LEXIS, News Library, Non-US News File.

488. *Id.*

489. *Id.*

490. Mihir Bose, *UEFA Warn of Transfer Chaos*, THE DAILY TELEGRAPH (London), Sept. 8, 2001, at 12, LEXIS, News Library, Non-US News File.

the transfer regulations from those ratified in July.<sup>491</sup> Significantly, in an effort to appease FIFPro, the new regulations would not allow training compensation to a club when the under twenty-three player's contract expires.<sup>492</sup> In addition, in the case of a breach of a contract by a player under twenty-eight, sporting sanctions would only be applied if the breach occurred within the first two years of the contract.<sup>493</sup> The "new" rules stated that a suspension could only be for a maximum of four months unless there were aggravating circumstances that could extend the suspension to six months.<sup>494</sup> As a result, a player could now break his contract with his club in August and could be playing for a new club by December; but, under the previously ratified regulations, that same player could not play for another club during the rest of the season and up to four months of the following season. Finally, there was some evidence that FIFPro was to be given greater representation on the Dispute Resolution Panel than the clubs, thus further diminishing the power of the sporting sanctions.<sup>495</sup>

As if the regulations had not been confusing enough, UEFA and European clubs were in a state of shock and disbelief following these revelations.<sup>496</sup> Without proper drafting, most clubs believed that the regulations were a "recipe for chaos" and would ultimately hurt the players that FIFPro allegedly represented.<sup>497</sup> At least one insider predicted that some form of litigation might be necessary in order to sort out the mess.<sup>498</sup>

FIFA reassured UEFA and the European clubs, however, that there was no separate agreement with FIFPro and that the circular had not replaced the ratified regulations.<sup>499</sup> Consistent with the recurring tug-of-war between the different sides, this reassurance heightened FIFPro's scrutiny of the operation of the new transfer system and led, again, to

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491. Vivek Chaudhary, *Vivek Chaudhary Uncovers the Stories Behind the News*, THE GUARDIAN (London), Sept. 22, 2001, at 11, LEXIS, News Library, Non-US News File.

492. FIFA Circular No. 769 (Aug. 24, 2001), at 4 (on file with author).

493. *Id.* at 10. For a player over twenty-eight, the sporting sanctions would only be applied if the breach occurred in the first year of the contract. *Id.*

494. *Id.* at 10-11.

495. Andrew Warshaw, *Fury over Secret Football Deal: Andrew Warshaw Says Clubs Fear More Transfer Turmoil Following an Agreement Between FIFA and the Players' Union*, SUNDAY TELEGRAPH (London), Sept. 30, 2001, at 1, LEXIS, News Library, Non-US News File.

496. *See id.*

497. *Id.* *See also* Mihir Bose, *Inside Sport: Stories Behind the Headlines: Confusion as Taylor Wins Shock U-turn for Players' Union on New Transfer Rules*, THE DAILY TELEGRAPH (London), Sept. 28, 2001, at 4, LEXIS, News Library, Non-US News File.

498. *See* Mihir Bose, *ITV and BBC Closer to Solving Stand-off over the Pounds 171 Million Demand for Rights to the World Cup Finals*, THE DAILY TELEGRAPH (London), Oct. 12, 2001, at 4, LEXIS, News Library, Non-US News File.

499. *Id.*



hints of possible legal action.<sup>500</sup>

## VI. CONCLUSIONS

### A. *Why the delays? Who is to blame?*

For the past twelve months, FIFPro has been a thorn in the side of the negotiations with the EC over the transfer system. The players' union has repeatedly called for footballers to be treated as normal workers within the EU so they can leave their employers with proper notice. To begin, this view is flawed because it shows an absolute disregard for the integrity of the sport and its competitions. While a players' union should be looking out for the best interests of its members, it should also take into account the needs of the sport, because without the sport, there is no need for the players. This is a lesson that must be learned by players' unions on both sides of the Atlantic.

Second, FIFPro's interference with the negotiations have been frustrating for those involved because of its shifting views over the course of the transfer controversy. As mentioned above, in the mid-1990s, FIFPro refused to stand beside Jean-Marc Bosman because of concerns over the long-term effects of the "free agency" that the *Bosman* decision ultimately created. Subsequently, as the current transfer crisis picked up steam in 1999, FIFPro's Gordon Taylor criticized the EC's view on mid-contract transfers, believing that the system in place was important to "long-term planning" and "stability."<sup>501</sup> Additionally, as the EC threatened to dismantle the transfer system in the fall of 2000, Taylor argued that these changes could damage the foundation of the sport.<sup>502</sup> As the transfer task force prepared its proposals for submission to the EC, however, FIFPro's attitude became increasingly belligerent towards the task force and FIFA/UEFA officials.

So what changed FIFPro's stance on the transfer system to the point where it felt confident enough to seek legal action to force its will upon the other parties to the negotiations? One source of this confidence may have come from EC warnings that FIFPro's input was necessary for a compromise. Following the public quarrel between Taylor and FIFA's Blatter in October 2000, FIFPro appears to have recognized the power it potentially held over the negotiations.

As the negotiations stretched into 2001, FIFPro began to exercise this power excessively, to the point where even the EC recognized that a deal had to be made with the football authorities with or without FIFPro.

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500. *See id.*

501. Harris & Verkaik, *supra* note 205, at 23.

502. *See* Hughes, *supra* note 232, at 18.

With the support of the EC lost, FIFPro could do nothing but threaten legal action against the enforcement of the new transfer regulations. But FIFPro must have realized that its chances of success in court were poor before it agreed to a compromise with FIFA. With the uncertain nature of this compromise, however, it is difficult to safely predict that no further troubles will come from the players' union.

A weakness that FIFPro must address following this conflict is the accusation that it does not truly represent the ideas and desires of the players. Throughout the controversy, many — some players, some coaches, and others — have voiced concerns that the players were unaware of what was happening. Not all of the player voices have come from the smaller clubs, although they stand to be hurt more than the larger clubs by the transfer changes. Top players from the Premier League have also questioned FIFPro's tactics. If these statements are any indication as to the opinion of the majority of players, perhaps Gordon Taylor and the rest of the FIFPro officials should take a step back and look at the direction in which they have threatened to take their organization, their players, and their sport.

But FIFPro is not the only one to blame for the transfer difficulties. As the leader of international football, FIFA took control of the transfer negotiations from the beginning and has bumbled along ever since. Since the summer of 2000, FIFA has shown a remarkable capacity for saying one thing to its members, namely UEFA, and doing the complete opposite. Nowhere was this more apparent than with the recent backroom compromise with FIFPro in which FIFA may have altered the already-ratified transfer regulations. While UEFA, had it been duly informed, might have supported such a compromise, it was a difficult pill to swallow since FIFA allegedly changed the regulations without any consultation. FIFA's "double-speak" problem may only worsen now that it denies altering the regulations since FIFPro is under the impression that these changes have been made.

As the leader of what it calls the "football family," FIFA should act more as the strong leader of this family and should do more to unite the differing groups rather than keep them apart. Under the Blatter administration, FIFA has mishandled the transfer negotiations from the start and has kept UEFA and FIFPro at odds with one another. While these two parties admittedly represent divergent viewpoints, they can, and must, be brought together for the future health of the sport. However, making side-deals with one side while privately reassuring the other side that nothing has changed is not the way to protect the future health of football. Therefore, FIFA and its members must look back at how the trans-

fer problems were handled and must decide whether it is a question of leadership that can be mended.

B. *The New Transfer System – Will it Work?*

The fate of the new transfer system as the new regulations are implemented within the EU lies largely in the hands of UEFA, FIFPro, and the national associations. FIFA's failure to clarify the regulations will force others to interpret the regulations and will lead to differing views. An example of the difficulties may be found with the instituting of the two transfer windows during a season. The regulations leave the exact dates of these windows to the discretion of each national association. Therefore, a problem could arise for cross-border transfers if, for example, Italy chooses a different mid-season transfer window from that of England.

There is also the question of the effectiveness of the new transfer regulations. First, the regulations do not cover amicable transfers. Therefore, transfers of astronomical values will continue where the clubs and the player all agree on the transfer. Second, the regulations permit a player to unilaterally breach his contract and join another club (who is willing to buy out his previous contract) after only a four-month suspension. Some have voiced a concern that rather than the "sporting sanction" it was intended to be, the "four month rule" will become the default transfer rule. Additionally, with the "sporting just cause" exception, the regulations provide an escape for a player from the sporting sanctions. This vague exception is an attorney's dream as the regulations call for it to be judged on a case-by-case basis, according to the specifics of that player's case. The dispute tribunal must be careful to narrowly interpret this exception in order to ensure that the sporting sanctions do not become a toothless tiger. Otherwise, the day may yet be seen where a player is allowed to unilaterally breach his contract because his coach is too hard on him. Finally, one has to wonder how long it will take a club or player who is unsatisfied with the result under the transfer regulations to turn to the national courts for relief since the regulations specifically allow players and clubs to seek redress in the courts. Once this precedent is set, chaos may ensue.

The future is very uncertain for smaller clubs under the new regulations. Many worry that the transfer windows will prevent them from fielding competitive teams. Even more important, until the training compensation and solidarity provisions have been seen in practice, developmental clubs will hold their collective breath as they wait to see whether the funds will enable them to continue with their training academies under the new system. If these clubs falter under the new system,

there will likely be public outrage; the likes of which these transfer negotiations have not seen. At the same time, larger clubs will take over the training duties of the sport's future stars (a result that would only add fuel to the public's fire).

It also remains to be seen whether the players will be better off under a system where they can unilaterally breach a contract after a specific amount of service. This will undoubtedly lead to shorter-term contracts and constant renegotiation. While this may prove very profitable for the David Beckhams and Luis Figos of the world, it will put much more pressure on average players to stand out and will result in far less contractual security for these players. But the players should be pleased that FIFPro's contractual stability provisions were not adopted since this would have allowed breach after only one year and would have made player contracts even more unstable.

The simplest answer to the question asked by the title of this section is, Who knows? Two months from now, or even two weeks from now, FIFPro may again seek to enjoin the implementation of the regulations. FIFA and UEFA may fail to correctly implement the regulations; or the regulations may be implemented and prove to be a colossal failure, forcing the parties to return to the previous system for the time being. One thing is for sure, with the "football family," nothing is certain and, more significantly, nothing is easy. Only time will tell whether this cycle may be finally broken and peace may reign over football.

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