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The 2001 informal agreement on the international transfer system

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Introduction
The control structures of football have traditionally positioned players at the bottom of the football pyramid (Tomlinson 1983: 173). Clubs must register their players with their respective national FA or league to participate in national championships. They have to follow similar procedures with UEFA if they participate in European competitions. These governing bodies regulate and decide which players can be registered to play in the competitions they organise, thus having a certain amount of power over the players that any given club can hire. Football governing bodies have traditionally adopted two sets of norms to regulate the employment and registration of footballers: transfer systems and nationality quotas (Lanfranchi and Taylor 2001: 218). From the players’ point of view, the most contentious issue of a transfer system is any rule that can be used to prevent a player from moving from one club to another at the end of the contract, for instance if agreement cannot be reached between the buying and selling club about an appropriate ‘transfer fee’. The football transfer system used to favour clubs rather than players, for it allowed clubs to retain a player at the end of the contract when there was no agreement over compensation for a transfer.

Whilst nationality quotas for EU players were lifted relatively quickly after the Bosman ruling, the situation of international transfers remained unclear. The European Commission was of the opinion that the football governing bodies had to amend their rules on international transfers if they wanted to avoid any further legal action. However, it was only in 2001 (almost six years after the CJEU handed down its judgement in the Bosman case) that a new international transfer system was adopted. The European Commission was forced to open legal proceedings against FIFA to obtain some movement from the governing bodies. The proceedings, however, were settled informally and no formal decision was adopted by the Commission. This contribution seeks to explain how the European Commission and football governing bodies bridged the gap to reach an agreement on the international transfer
system, when they started the negotiations really far apart. Moreover, it seeks to explain why the European Commission accepted an informal (i.e. non legally binding) settlement to a procedure under competition policy, where the European executive is a powerful actor. This paper, however, does not intend to analyse the content of the informal agreement. This is done to a considerable extent elsewhere in this volume. Thus, our aim is not to judge the extent to which the 2001 agreement can be considered lawful, nor to adjudicate on which side (employers or employees) benefited most from the settlement. We rather set to explain how and why the Commission decided to settle this dossier informally with FIFA and UEFA, and which actors participated in that decision. In that respect, this chapter highlights especially the intervention of the Member States and the relatively weak position of FIFPro, the footballers trade union.

This chapter proceeds in three steps. First, the Commission objections to the FIFA transfer system are explained, and the negotiations between the EU executive, FIFA, UEFA and FIFPro are described in detail. Second, the chapter considers the reaction of football organisations to the 2001 informal settlement. Finally, the chapter seeks to explain the outcome of those negotiations with especial reference to the political pressure that national governments, especially leaders such as Tony Blair and Gerhard Schroeder, put on the European Commission.

**The Commission challenges FIFA and UEFA**

Since 1979, international transfers in Europe had been regulated by a mixture of UEFA and FIFA rules (UEFA 2005: 16). Following the Bosman case, FIFA decided to withdraw UEFA’s competences over transfers, assuming for itself the regulation and implementation of international transfers within Europe in 1995 (UEFA 2005: 16). For that reason the Commission’s investigation of the international transfer system was addressed to FIFA, which was formally responsible for their regulation.

In the aftermath of the Bosman ruling, FIFA and UEFA informed the Commission at that point that the international transfer system would no longer apply to players who changed clubs at the end of their contracts to play in a different country within the EEA, although the rules were not officially revoked (European Commission 1996: 3). This decision was taken in February 1996. Unhappy with this informal arrangement, the Commission wrote to FIFA and
UEFA on 27 June 1996 informing them that two particular issues, where the Court had not ruled in *Bosman*, posed extra problems in the light of article 101 TFEU.\(^1\)

In reply, FIFA and UEFA informed the Commission that they did not plan to take into account aspects that were not covered by the Bosman judgment. The Commission notified the governing bodies that in that case it would have no other option but to start formal infringement proceedings (European Commission 1996: 4). On 14 December 1998 the Commission finally started an infringement procedure following the reception of three formal complaints against the international transfer system (Reding 2000: 2; European Commission 2002: 1).

Towards a compromise solution in the transfer system

On reception of the Commission’s statement of objections, FIFA decided that it should conduct negotiations with the Commission on its own, without any assistance from UEFA. FIFA took on its own the task of reforming the international transfer system. During 1999 and 2000 FIFA held talks with FIFPro but it did not present any formal alternative to the international transfer system challenged by the Commission (Reding 2000: 2). The Commission’s response to the governing bodies’ perceived inaction came in the summer of 2000. The Commission gave FIFA a firm deadline of 31 October 2000 to come up with formal proposals to amend the international transfer system, threatening FIFA with a formal decision to both enforce changes and, if necessary, impose fines (Parrish 2003a: 141).

The new threat from the Commission provoked a reaction from UEFA, which considered that FIFA was on the brink of agreeing to an unacceptable liberalisation of the players’ market in Europe. Thus, UEFA decided it should take more of a leading role in the negotiations with the Commission:

> We believe that a constructive and positive dialogue with the EC is both possible and necessary. We accept that change is inevitable but the form and pace of that change must be subject to a much wider dialogue than that conducted so far by FIFA with the world of professional football (UEFA 2000b).

\(^1\) The Commission considered problematic the payment of fees for international transfers within the EEA of players from third countries at the end of their contracts and the obligation imposed by FIFA and UEFA on national FAs to set up national transfer systems mirroring the one outlawed by the Court in Bosman (for more on that see European Commission 1996: 3-4; Parrish 2003a: 140-142).
The Commission’s pressure obliged the governing bodies to come up with solutions for a reform of the international transfer system. A Transfer Task Force with the participation of FIFA, UEFA, the players unions, and European professional leagues was set up under the chairmanship of Per Omdal, UEFA vice-president in charge of the relations with the EU (UEFA 2000a). FIFA, UEFA and the leagues represented in the Task Force agreed on a first set of proposals on 27 October 2000, which were then sent to the Commission (Bose 2000).

The Commission had a positive but cautious reaction to the proposals, which were considered ‘a significant development after nearly two years of discussions’ (European Commission 2000: 1). The Commission moderated its previously aggressive position. It conceded that it was ready to accept rules limiting transfers to a certain period during the season (the so-called transfer windows). It also recognised that ‘stability of contracts is very important in this sector’ (European Commission 2000: 1), starting to side with the governing bodies on this issue rather than with FIFPro. Finally, the Commission was prepared to consider the concept of ‘training compensation fees’ designed to protect and encourage the training of young players (European Commission 2000: 1). The Commission encouraged FIFA and UEFA to hold further discussions with FIFPro with a view to finding a negotiated compromise that could be subscribed to by all the parties (European Commission 2000: 2).

In 2001 the negotiations towards a final settlement gathered more pace. The Commission proposed a meeting at the highest level between the commissioners responsible for the negotiations and the presidents of FIFA and UEFA (L'Equipe 2001). That meeting, held in Brussels on 14 February 2001, paved the way for a final settlement. The two sides realised that there was agreement, in principle, on important issues such as transfer windows, minimum and maximum duration of contracts and the principle of compensation for training costs (European Commission 2001b: 1). The Commission let it be known that there were still some issues to be ironed out, but it was firmly committed to and optimistic of finding a final compromise before the end of February (European Commission 2001b: 1). Two further

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2 Training compensation fees would replace the old transfer fees. Whereas the latter applied to the transfer of every player, the former would be restricted to the transfer of players under 23 years and would be set up following transparent criteria. Training compensation fees are supposed to be less restrictive and proportionate to the objective of protecting the training of young players. The training of youth players was recognised as a legitimate objective by the ECJ in Bosman: ‘In view of the considerable social importance of sporting activities and in particular football in the community the aims of maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate’ (Bosman: paragraph 106).
meetings between the Commission and FIFA and UEFA were held in February 2001 to clarify the technicalities of the remaining issues (European Commission 2001c, d). The agreement was finalised on 5 March 2001 in another meeting between the Commissioners and the presidents of FIFA and UEFA (European Commission 2001e). Following the deal, the European Commission formally closed the investigation into the rules governing international transfers in June 2002 (European Commission 2002).

The settlement with the Commission required FIFA to amend its transfer regulations on the basis of the following points:\(^3\)

- Training compensation fees to be allowed in the case of transfers of players under 23 years.
- The creation of one transfer period per season and a further limited mid-season window.
- Minimum and maximum contract duration would be 1 and 5 years respectively, except where national legislation provides otherwise.
- Creation of solidarity mechanisms that would redistribute income to clubs involved in the training and education of football players.

The settlement falls short of a total liberalisation of the transfer market. It has been interpreted as a compromise between the initial positions of FIFA and the Commission, although it has been considered as beneficial for the governing bodies (Parrish 2003a: 147). The agreement between the Commission and FIFA-UEFA was closed with an exchange of letters between Commissioner Mario Monti and FIFA President Joseph Blatter (European Commission 2001e), which is an informal settlement. Although the Commission was happy to consider the proposals of FIFA, this does not mean that the new transfer system is legal under EU law. Neither the Commission, nor the CJEU have ruled on that matter, and it has been suggested that the new FIFA transfer system is still an obstacle to the free movement of players, hence illegal under EU law (see especially Drolet 2006). The Commission’s informal endorsement (i.e. not legally binding) of the FIFA transfer system creates, thus, some legal

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\(^3\) The FIFA Executive Committee adopted the new international transfer system in July 2001 (for more details on the agreement between FIFA and the Commission on the structure of the new transfer system see European Commission 2001e; Parrish 2003a: 147-149; for an extensive analysis of the implementation of the new transfer system, see especially Drolet 2006).
uncertainty. On the one hand, it is clear that the new concept of training fees could be seen as an obstacle to a total freedom of movement. However, on the other hand it could be argued that the training fees pursue a legitimate objective and the restriction on the freedom of movement is proportionate to the objective. Logically, this debate can only be settled with a judgment of the CJEU, but for the moment this has not been possible.

Despite possible doubts about the legality of the 2001 agreement, the Commission seemed to be pleased with the outcome of this case. Its president, Romano Prodi welcomed the result of the negotiations as a ‘satisfactory solution that respected both the needs of football and also Community law’ (European Commission 2001a: 1). The Commission was especially happy to point out that they were able to engage ‘in open and constructive dialogue leading to mutually satisfying solutions’ with the football authorities (Reding 2001: 2).

**Positive reactions from football organisations**
The football governing bodies were equally satisfied with the agreement. FIFA considered the settlement, ‘very positive for football’ (FIFA 2001: 1). FIFA President, Joseph Blatter expressed his satisfaction with the resolution of the negotiations:

*I am very happy about the finalisation of an agreement of principles between the European Commission and the football family (...) These amendments will provide for a very solid foundation for the future of the international game* (FIFA 2001: 1).

UEFA was equally satisfied with the negotiations with the Commission:

*It was a very good agreement, we are very happy with the outcome, but also with the way in which the negotiations ended, because I think we built some trust in both sides and this was important for the future* (Interview, UEFA senior official, February 2007).

In contrast with FIFA and UEFA, the footballers’ union, FIFPro, was initially outraged with the agreement. FIFPro considered the outcome as a capitulation of the Commission before the governing bodies. FIFPro’s strategy was initially to go to court in every EU country challenging the agreement between the Commission and FIFA (Parrish 2003a: 148). FIFPro
hired a familiar figure to orchestrate its legal response to the agreement: Luc Misson (FIFPro 2001a: 1).

However, FIFPro then entered into negotiations with FIFA and it agreed to withdraw the legal challenge in exchange for participating in the implementation of the new transfer system:

_FIFA and FIFPro are pleased to announce that they have reached agreement about FIFPro’s participation in the implementation of FIFA’s new regulations on international transfers of football players. As part of the overall agreement, the international union of football players will cease the legal challenges it had initiated against these new rules (FIFPro 2001b: 1)._ 

Some have argued that FIFPro was wrong to accept FIFA’s offer because they had a very strong case to legally challenge the new transfer system, but for FIFPro’s president Gordon Taylor it was more important to be on board the system:

_It is important for the game that FIFPro and FIFA work together. The world of football is changing, and we should make sure that commercial interests are given their proper place. Through closer cooperation we can achieve a better future for football. The negotiations on international transfers have not been easy, but we appreciate FIFA’s determination to keep the players on board (FIFPro 2001b: 2)._ 

Therefore, despite some problems, the actors involved in the dossier seemed to be satisfied with the outcome. There is a point that deserves further clarification though. Which factors contributed to the speedy resolution of the dossier in just six months after years of problems between the Commission and the governing bodies?

**A mediating political force: the intervention of Member States**

Although the reform of the transfer system was a negotiation between FIFA and UEFA and the Commission, a great deal of responsibility for the speed in which the negotiations moved after October 2000 can be attributed to the Member State governments. In the hope of putting political pressure on the Commission, UEFA and FIFA skilfully lobbied national governments after the Bosman ruling to send a message about the risks that the Commission’s liberalising efforts could have for football. The so-called sporting movement managed to introduce the issue of sport onto the agenda of the European Council but the only concrete results they achieved were two non-binding declarations attached to the Treaties of
Amsterdam (1997) and Nice (2000). The Amsterdam Declaration on Sport was very short, just one paragraph. It seems a deference of the political leaders to the sporting organisations, but it nevertheless demonstrates that the issue of sport had arrived high in the EU political agenda:

The Conference emphasises the social significance of sport, in particular its role in forging identity and bringing people together. The Conference therefore calls on the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue. In this connection, special consideration should be given to the particular characteristics of amateur sport (European Council 1997).

The Nice Declaration on Sport was longer than its Amsterdam precedent. It is of importance for our analysis here the timing of the declaration. In December 2000, it could not have been timed any better for FIFA and UEFA. As explained above, during the last months of 2000 and the beginning of 2001 the European Commission, FIFA and UEFA met several times to find an agreement on the reformed transfer system. The Nice Declaration is a three page document where the EU political leaders stressed the social and cultural role that sport has to play in European society; the European Council also invited the institutions to take into account the specific characteristics of sport and collaborate with sports governing bodies when designing and applying their policies (European Council 2000). The Nice Declaration on Sport was sending a message to the Commission: the European Council expected, at the very least, the executive to be receptive to the positions of FIFA and UEFA.

But some EU political leaders did more than signing to the Nice Declaration, which at the end of the day is a relatively vague document, although interpreted in the context of the time it contained a clear message to the Commission. There were a few heads of state that showed special attention to the particular issue at hand in this paper: the future of football’s transfer system. On 9 September 2000, the British Prime Minister Tony Blair and the German Chancellor Gerhard Schroeder published a joint statement that diplomatically supported UEFA and FIFA:

The British and German Governments are concerned at the potential impact of proposed changes to the football transfer system. (...) The European Union has criticised the present system of transfer fees (...) We acknowledge the current system is not perfect. We fear however that a radical reform could have a negative impact on the structures of football in Europe. (...) We believe that any solution has to balance carefully the justified interests of both the players, the clubs and the associations. (⋯)
We offer our help in seeking to resolve the issue. (...) We look to the Commission to be sympathetic to the special needs of professional football in seeking a solution (Prime Minister's Office 2000a: 1).

Both leaders met again at an informal dinner in Berlin in January 2001, where they talked about ‘continuing to work together to solve the problem surrounding the football transfer system’ (Prime Minister's Office 2001a: 1). Blair and Schroeder issued a second joint statement in which they encouraged all the parties involved to work together towards a solution and they hoped for a quick settlement with the European Commission (Prime Minister's Office 2001b). With this statement both leaders intended to send ‘a strong signal of support that they regarded this an important matter which needed to be resolved’ (Prime Minister's Office 2001c: 1). The British Prime Minister was quite active on the matter throughout the negotiations. He worked not only with Gerhard Schroeder, but also with the governments of Spain, the Netherlands and Italy to demonstrate their disagreement with the Commission’s initial plans of a thorough liberalisation of the football market (Prime Minister's Office 2000b: 1).

The involvement of Tony Blair and Gerhard Schroeder was the result of the lobbying efforts of UEFA and FIFA and the English and German FAs. When the negotiations with the Commission reached a critical point in 2000, UEFA intensified its lobbying strategy. UEFA requested its national associations to contact national leaders and it even sent the FAs sample letters that could be used for that purpose. Tony Blair, who was the most active of the national leaders, showed special concern for the effects that a liberalisation of the players market could have for smaller clubs in the Football League. One can only speculate about this, but it might be safe to assume that Blair could have seen in that a good political battle to fight. Certainly, football clubs in the lower leagues represent a major number of constituencies and Blair’s siding with the governing bodies might pay political dividends.

The British Prime Minister also shared his concerns on the outcome of the negotiations with the Commission President, Romano Prodi, when they met on 15 February 2001 (Prime Minister's Office 2001d). Once the news of the settlement broke, Tony Blair was pleased with the outcome:

This is very encouraging news. The agreement appears to meet all the concerns Chancellor Schroeder and I had to maintain stability and ensure the needs of all in
The elements of the high level of activism on the part of significant EU Member States in this issue are out in the public, especially with the statements from Tony Blair and Gerhard Schroeder. It might be safe to assume that also some form of soft persuasion might have been going behind the scenes between the European Council and the relevant Commissioners, if not the Commission President of the time, Romano Prodi. It is of course debatable the extent to which the political pressure of the national governments contributed to the speedy resolution of the transfer system investigation. This is especially the case when the institutional setting of Competition policy clearly puts the Commission in control of the dossiers. On the other hand, academics have long recognised that competition law cases can be easily politicised (Cini and McGowan 1998). One cannot empirically claim that the Member States forced the Commission to be receptive to FIFA and UEFA’s arguments, but it not possible to deny their influence either. We find here another instance of a regular occurrence in social sciences research, especially when dealing with policy-making processes. As John Kingdom (1995) correctly pointed out, it is almost impossible to identify a single source of origin in policy-making, but one can identify the dynamics that made a decision possible.

In that respect, it is quite safe to affirm that the intervention of the Member States contributed heavily in favour of FIFA and UEFA to reach the informal settlement with the Commission in 2001. It was easier to demonstrate the effect that the Bosman ruling had on the Commission’s initial behaviour in 1996, since the executive is bound to respect and protect Court’s rulings. However, it is plausible to say that the political intervention of the national leaders influenced the Commission’s new approach to football. The Commission, however, was adamant in its defence of its independence in the transfer system settlement:

*Despite considerable pressure from some senior government members, the Commission has held its ground in strict observance of its jurisdiction. As a result of this outcome, my colleague Mario Monti will not need to propose that the Commission adopt a negative decision concerning FIFA transfer rules (Reding 2001: 3).*

Without disputing the Commission’s independence, this remark by Viviane Reding in a statement to the European Parliament is indicative of the possible influence of the Member.
States in the Commission’s strategy towards football. The transfer system dossier, however, was only the beginning of a long journey for football and the EU.

**Conclusion**

The story of the 2001 Gentleman’s agreement between the European Commission and FIFA is a very good example of the complex political dynamics at stake in the European Union. Even within the relatively stable context of competition policy, there is room for political manoeuvre, venue shifting and influence of other political actors. Richard Parrish (2003b, a) pointed out that this is specially possible because of the scarce resources of the Commission, which will value reaching informal settlements without having to commit to further lengthy procedural stages. The negative consequence of this, of course is a degree of legal uncertainty, as there is no formal endorsement of the international transfer system. Indeed, many legal scholars and practitioners have long argues against the legality of the system sanctioned by the Commission in 2001, this is clearly explained elsewhere in this volume.

The 2001 agreement came six years after the Bosman ruling, and only when the European Commission opened formal proceedings against FIFA. The inaction of the governing bodies in this issue was in stark contrast with their quick reaction to lift nationality discrimination for EU/EEA players.

There were moments during the the negotiations, especially in the first months of 2000, when FIFA seemed eager to reach an agreement with FIFPro that would have liberalised to a large extent the players market. The intervention of the clubs and UEFA forced a change in FIFA’s strategy. It has been argued that FIFA is naturally less inclined to consider professional clubs’ preferences, for it is mostly interested in the organisation of national team competitions, whereas UEFA needs to keep the clubs onside to ensure the successful development of European Club Competitions (García and Meier 2012). But from September 2000 until the final agreement in March 2001 the negotiations moved progressively away from a real liberalisation of the system. Indeed, it was FIFPro probably the most dissatisfied actor with the final settlement, despite achieving some of its objectives. The footballers trade union was divided between those who wanted to push for greater liberalisation and a more pragmatic group that accepted minor concessions but some involvement in managing the new system (García and Meier 2012).
For those who seek to understand why the Commission agreed to the proposals by FIFA when it could have pushed for further reform, one of the explanations lies in the multi-level and multi-institutional nature of the European Union. The European Union is, by its own institutional nature, a multi-faceted creature, whose multiple points of entry difficult coherent policy-making whilst, on the other hand, it facilitates access to a large number of actors (Hooghe and Marks 2003; Marks and Hooghe 2004). Yet, access does not necessarily mean influence, as Greenwood (2003) has correctly pointed out. In football issues, however, FIFA and UEFA are especially well suited to match the multi-level nature of the EU, because the governing bodies can draw on the resources of national FAs, whilst at the same time they can effectively build contacts in Brussels (García 2007). This combination of clever political manoeuvring and also an irresistible message set against the background of the social values of sport, was enough to convince powerful political leaders to set some pressure on the Commission for an agreement that could accommodate FIFA’s demands to a large extent.

Thus, the story of the 2001 Gentleman’s agreement is one where the art of politics and persuasion is as important as the hard facts of legal reasoning. This is not the first time, and probably it will not be the last, that politics and law meet in a sensitive dossier. The lessons from this case reinforce the argument that the European Commission struggles to dominate issues when they become high politics (Princen and Rhinard 2006; García et al. 2011). The political pressure of the Member States changed the direction of the negotiations and had an important effect on the final content of the agreement. Now, the European Commission has decided to review the international transfer system in view of the new reality of football and the development of EU sports law and policy. The Commission is now more at ease with the nuances of professional sport, but surely governing bodies will want to avoid another formal investigation. The future of the 2001 agreement is uncertain, mainly because it was, as explained, a political agreement rather than a legally sound solution to the problem.
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