



# End of cash-for-player transfers in football?

Johan Lindholm<sup>1</sup>

Published online: 14 September 2018  
© T.M.C. Asser Instituut 2018

After the 2018 FIFA World Cup ended, the football world turned to the “silly season” during which summer transfer windows are open. It does not appear that the record for the most expensive player transfer, which was set last year when Paris Saint-Germain paid Barcelona €222 million for Neymar, will be broken this year. But that is not an indication of a cooling transfer market. On the contrary, football clubs’ spending on transfer fees so far this year is 17% higher compared to the same period last year,<sup>1</sup> extending the trend of total transfer fees increasing significantly each year.<sup>2</sup> If the rate of increase continues throughout the year, the total amount paid in international transfer fees in 2018 is expected to exceed €6.5 billion.<sup>3</sup>

It is difficult to find anyone who thinks that football’s transfer system is well-functioning and sustainable. Even Neymar himself does not think he is worth his transfer fee.<sup>4</sup> The very practice of cash transfers has been controversial for some time. Already eighteen years ago, when football players were traded for amounts that now seem almost modest,<sup>5</sup> EU Commissioner Viviane Reding explained that she found “it scandalous that players... are being used as objects of speculation.”<sup>6</sup>

One important factor behind the transfer-fee trend is the breathtaking revenue growth in football. Technological development in the 1990s greatly increased the ability of people around the world to follow football clubs from afar, and for the major football clubs this increase in potential audience translated into greater revenue, particularly in the form of television licensing agreements.<sup>7</sup> This was particularly true for Europe’s top football clubs. In the 1996–1997 season, a yearly revenue of €36 million was sufficient for a football club to qualify among the twenty highest earning in the world. The equivalent number for the 2016–2017 season was €199 million, a total increase of 553% over nine seasons.<sup>8</sup> Top-earning clubs pay a large portion of all transfer fees and significantly contribute to their increase. While multi-million-euro transfer fees receive most of the media attention, they are not the norm. About 85% of all international football player transfers do not involve any transfer fee and less than 5% involve the payment of a transfer fee in excess of €880,000.<sup>9</sup>

Football’s governing bodies have in recent years taken multiple actions that can be viewed as a consequence of the

<sup>1</sup> FIFA TMS, International Transfer Matching System Monthly Insights: July 2018. [https://www.fifatms.com/wp-content/uploads/dlm\\_uploads/2018/08/Monthly-insights\\_July-2018.pdf](https://www.fifatms.com/wp-content/uploads/dlm_uploads/2018/08/Monthly-insights_July-2018.pdf). Accessed 10 August 2018.

<sup>2</sup> FIFA TMS, Global Transfer Market Report 2018, p. 7, fig. 4. [https://www.fifatms.com/wp-content/uploads/dlm\\_uploads/2018/01/GTM\\_2018.pdf](https://www.fifatms.com/wp-content/uploads/dlm_uploads/2018/01/GTM_2018.pdf). Accessed 10 August 2018.

<sup>3</sup> USD 7.5 billion.

<sup>4</sup> Sky Sports, Neymar says he is not worth the £200 m Paris Saint-Germain paid for him, 14 June 2018. <http://www.skysports.com/football/news/11820/11404680/neymar-says-he-is-not-worth-the-200m-paris-saint-germain-paid-for-him>. Accessed 10 August 2018.

<sup>5</sup> Real Madrid paid a then-record £37 million to Barcelona to acquire Luis Figo in 2000. By comparison, midway through 2018 there already have been ten transfers with higher fees, including two for more than £100 million.

<sup>6</sup> Financial Times, FIFA to end transfer fee system, 31 August 2000.

✉ Johan Lindholm  
johan.lindholm@umu.se

<sup>1</sup> Department of Law, Umeå University, 901 87 Umeå, Sweden

<sup>7</sup> See Forbes, Why The Bosman Ruling Never Brought The Chaos So Many Predicted, 15 December 2015; Economist, Play Fair, 4 September 2013.

<sup>8</sup> Deloitte, Football Money League 2018, p. 3. <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/consumer-business/us-cb-deloitte-football-money-league-2018.pdf>. Accessed 10 August 2018.

<sup>9</sup> FIFA TMS, Global Transfer Market Report 2018, p. 17 (USD 1 million).

rapid development of the football transfer market. In 2010, FIFA observed that many football clubs were spending well beyond their means and that transfer fees were a significant factor behind that development. To curb this, FIFA adopted the Financial Fair Play (FFP) regulations, the primary element of which is that clubs that fail to break even financially are penalized. In 2014, FIFA modified its regulations on the status and transfer of players to include a complete ban on third-party ownership (TPO), a situation where a third party acquires an interest in a player's future transfer fees.<sup>10</sup> Both clubs' interest in TPO and third parties' interest in investing in players were largely driven by significant and growing transfer fees, and one of the reasons why TPO was viewed as problematic was that it meant money leaving the football system and ending up in the pockets of external actors.<sup>11</sup> In this regard, there are clear similarities between FIFA's TPO ban and UEFA's current review of football agent remuneration. Earlier in 2018, UEFA's president Gianni Infantino declared his displeasure with the commissions that football intermediaries are earning and that he was "very concerned about the huge amount of money flowing out of the football industry."<sup>12</sup> According to FIFA, football intermediaries earned a total of €1.37 billion<sup>13</sup> in commissions between 2013 and 2017. One of the actions reportedly contemplated by UEFA in response is to cap agent fees.<sup>14</sup>

Financial fair play, the TPO ban, and an agent fee cap can be viewed as three examples of regulations that seek to fight problems related to football transfers and the development of the transfer market. Such actions are susceptible to legal challenge. The Financial Fair Play regulations and the TPO ban have already been the object of legal challenge,<sup>15</sup> and an agent fee cap would almost certainly be challenged in courts.<sup>16</sup> Football's governing bodies in this regard face

difficult processes with uncertain outcomes as they work to argue that their measures are compatible with the law.

Considering the costs involved in implementing, policing, and defending such actions and the seemingly both unstoppable and unsustainable development of the football transfer market, will the governing bodies eventually turn their attention to the transfer system itself rather than its symptoms? A ban on cash transfers in football would no doubt also face legal challenges, but the governing bodies may find it easier to defend than some of its current regulations. Unrestricted cash-for-player transfer is neither an indispensable element of team sports nor do sports clubs have a legal right to trade employment contracts for cash. It may then be interesting to consider the similar restrictions that exist, for example, in North America, where the National Hockey League (NHL) has generally banned cash trades<sup>17</sup> and the National Basketball Association (NBA) caps the total transfer fees that a team may pay each year at €4.5 million.<sup>18</sup>

## References

- Flanagan C (2018) The corridor of uncertainty: part one, case studies on the legal challenges to the financial regulation of football. *Int Sports Law J* 17(3–4):139–159
- Lindholm J (2016) Can I please have a slice of Ronaldo? The legality of FIFA's ban on third-party ownership under European Union law. *Int Sports Law J* 15(3–4):137–148

<sup>10</sup> A third party in this context is essentially anyone other than a football club involved in a player transfer.

<sup>11</sup> See further Lindholm 2016.

<sup>12</sup> Guardian, Agents' runaway gravy train set to be derailed in bid to curb excessive fees, 1 February 2018.

<sup>13</sup> FIFA TMS, Intermediaries in International Transfers—2017 Edition, p. 5 (USD 1.59 billion). [https://www.fifatms.com/wp-content/uploads/dlm\\_uploads/2017/12/Intermediaries-2017.pdf](https://www.fifatms.com/wp-content/uploads/dlm_uploads/2017/12/Intermediaries-2017.pdf). 31 August 2018.

<sup>14</sup> ESPN, UEFA considering cap on fees that clubs pay to agents, 23 January 2018. <http://www.espn.co.uk/football/blog-uefa/story/3358033/uefa-considering-cap-on-fees-that-clubs-pay-to-agents>. Accessed 31 August 2018.

<sup>15</sup> For an excellent overview and discussion of these matters, see Flanagan 2018.

<sup>16</sup> The Telegraph, Association of Football Agents claims "livelihoods will be flushed down the drain" if governing bodies cap agent fees, 18 April 2018 ("the [Association of Football Agents] is seeking legal help, suggesting that the association may attempt to challenge any regulation changes that could be imposed.").

<sup>17</sup> NHL–NHLPA Collective Bargaining Agreement 2012, art. 50.8(b) (ii).

<sup>18</sup> NBA Collective Bargaining Agreement 2017, art. VII, sec. 8(a) (USD 5.1 million).