



Markets and Competition (CNMC) rendered on 2 July 2015 a report regarding the TPO ban, using the documents sent by the CSD, the Spanish Football Federation (RFEF) and the Professional Football League (LFP). According to the CNMC the TPO ban appears to violate the rules of the free market policy, protected by the Spanish Constitution in Article 38, the Treaty on the Functioning of the European Union, (TFUE) in Article 63 on free movement of capital and the European competition law. Moreover, the CNMC claims that none of the arguments used by FIFA to justify the TPO ban can sustain such a restrictive measure. On the picture, the president of Liga de Fútbol Profesional, Javier Tebas was speaking during a seminar co-organised on 9 April 2015 by the Spanish and Portuguese Leagues on third-party investment.

Report of the Spanish National Commission of Markets and Competitions regarding the Third-party ownership (TPO) ban

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→ FIFA Regulations - TPO - Economic rights agreement - National law - European Law - Competition law - Freedom of movement of capital

Spanish National Commission of Markets and Competitions, Report about the TPO ban, 2 July 2015

Madrid (Spain) - Following the request of the President of the Sports National Council (CSD), the Council of the Spanish National Commission of

Protecting the competitions' integrity

One of the main arguments used to defend the TPO ban is the real risk that a "third party" could own decisive shares on the economic rights of players competing in different teams in the same competition and that this could cause conflicts of interest and possible manipulations and then reduce the uncertainty that should be inherent to a sport competition.

Notwithstanding that, the TPO ban does not put an end to other undue influences on the competition, like the intermediaries which have represented players in different teams or financial institutions (which may be the main creditors of rival clubs). Therefore, the need of the aforementioned restrictive measure and the potential effects that it could achieve, are questionable.

From the standpoint of proportionality, there are less distorting alternatives to the prohibition of TPO in avoiding potential conflicts of interest that could adulterate the competition. An example would be to introduce more transparency obligations, in order to have all the information regarding the ultimate ownership of the economic rights of each player.

If fraudulent or contrary to the smooth running of the competition behavior is detected, a predictable and transparent disciplinary system that provides adequate guarantees of legal certainty could enter (unlike the current regime where an extreme high degree of discretion exists).

In fact, clubs are prohibited from signing contracts that could allow "third parties" or rivals clubs to have a decisive influence on the policy of the club, meaning that any tampering with the competition by "third parties" is already pursued (FIFA RSTP, Art. 18 bis) and, in addition, specific legislation exists in Spain concerning the limitation of the purchase of shares in corporations sports above certain percentages (Law 10/1990 on Sports, 15 October 1990, Art. 22.2).

Football clubs' protection

Another reason used to justify the TPO ban is that the benefits obtained by the football activity should remain necessarily within football. This is a line of reasoning that finds its replica in the argument related to the conflict of interest between a club and a third party, but as the CNMC report highlights, those arguments are contrary to any logic within a market economy and involve a clear

discrimination against alternative financing sources.

The remuneration of the traditional financing sources (as banks) also involves a deviation of resources to activities unrelated to football. Therefore, the prohibition of TPO represents the discrimination of a type of financing for the benefit of another (the traditional bank debt).

In this sense, the TPO granted an alternative to traditional financing sources without generating more debt to clubs, hence the ban could lead the clubs to the abuse of banking credit if they do not have their own resources. Essentially, the use of external financing is logical in a market economy and should not be limited unreasonably.

The approach that the prohibition of TPO will be beneficial for minor clubs cannot be held either, as it is precisely those clubs that resort to this practice the most. If the clubs themselves (acting in a decentralized manner) have embraced this option it is because they believed that it maximized their profit (or minimized their losses). Therefore, the prohibition of TPO hurts modest clubs and tournaments more, thus altering the competition beyond the national level and affecting European and global markets.



Directed by Juan de Dios CRESPO PÉREZ

Players' Protection

Another argument for the prohibition of TPO is the protection of professionals, which *a priori* can be affected by contractual instability or increased vulnerability to abuse. However, if any such abuses of labor type (such as imposing the athlete-worker unfavorable conditions) ever exist, there are already enough legal and judicial tools to prevent and prosecute them.

It may even be noted that the fact that a club does not know a player's talent could conduce the club not to hire him, which could in turn slow (sometimes indefinitely) the emergence of talent. The appearance of a "TPO" specialized in sports talent detection and risk management (diversifying its decisions by their relationships with various players) can solve these information problems and lead to more transactions being completed. This facilitates a more rapid detection of talent, which will then be brought to the best clubs sooner and enable them to be better paid, according to their ability.

Conclusion

As a conclusion, the TPO ban will be harmful for the football sector, both for the competition and for the clubs and the professionals. The lower remuneration and generation of talent will involve lower competitiveness and quality of the sector, which ultimately will end up harming the consumer welfare.

The expiration of contractual relationship under RD 1006/85, the Spanish Labour Code and the right to compensation for athletes derived therefrom

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→ National law - Labour law - Player contract

Labour Division of the Supreme Court, 26 March 2014,
no. 61/2013
Labour Court of Bilbao, 14 January 2015, no. 14/2015.



A case before Spanish courts concerning the application of Spanish labour law to a cycling contract could be transposed to football.

Over thirty years ago in Spain a national labour legislation was approved in order to govern sportspersons labour relationships. As the law was passed decades ago, some could assume that the jurisprudence and the doctrine had time enough to settle any eventual controversy and therefore, nowadays, there would be no legal issues derived from the application of the RD 1006/1985.

However this is far from being the case. The facts at the origin of the controversy arose when the Spanish Association of Cyclist Clubs filed a claim before the Spanish courts asking for the correct interpretation of the respective Collective Bargaining Agreement. As the Spanish legislation was interpreted until then, whenever the employment contract of a cyclist expired, the latter was not entitled to be remunerated with a compensation that any other "common worker" is entitled to as per the general Spanish labour law provisions - specifically, the right to 12 days of salary for each year the contract was in force.

The Spanish Supreme Court said yes (Judgement of 26 March 2014), despite the numerous differences which may exist in between the contractual relationship of an athlete and an "ordinary" employee. First of all, it has to be recalled that when it comes to Labour

law applicable to any and all Spanish employees, the spirit of the regulations is enhancing stable contracts, *i.e.* permanent/long-term contractual relationships for employees. This is mainly due to the fact that in the Spanish labour market as per our type of economy too many short-term contracts tend to be signed, which are only renewed on a temporary basis. In order to promote stable labour contracts, legislators introduced 16 days' worth of salary as compensation. However, when it comes to athletes, the above does not make sense regarding the very nature of their activity deprives the above of its sense, as their sporting careers are rather short, and it is frankly rare that they enter into long-term contractual relationships. That is why part of the doctrine understood that athletes could not benefit from the aforementioned type of compensation, aimed at "common" employees.

As stated above, the Spanish Supreme Court understood however, that they were entitled to compensation as long as their intention to renew their employment contract was clear and certain even if there was no termination, *i.e.* even if their contractual relationship had reached its natural term of expiration.

A similar scenario arose this year. After an outstanding start to the sporting season, one of the top youth cyclists in the world, of Spanish nationality, who was part of one of the top cycling teams, *Movistar*, was seeking to be transferred somewhere his talent would be better developed. All he had to do was wait until his contractual relationship expired and then sign for a foreign cycling team, *Sky* in the case at stake. This is commonly known in the world of football as a "free transfer". In light of the aforementioned judgment rendered by the Spanish Supreme Court it could be construed that the cyclist would still be entitled to the 12-day salary per year of contract compensation.

However, the TSJ País Vasco ruled that this was not a standard scenario where a contractual relationship came to an end, further to its expiration. This was because the cyclist, as the Court found out, has voiced all over the press his desire to move abroad, and the ongoing negotiations with other foreign cycling teams. Furthermore, he also informed that he had successfully entered into an agreement with the *Sky* team. Accordingly, the Court judged that his contractual relationship had not been renewed because it was his intention not to do so, and therefore, the causation of



no prejudice could be attributed to his Spanish employer. Consequently, there was no need to compensate the athlete since the expiration of his contract had not incurred him any harm. After all, he had forced the sequence of events himself.

FIFA's decision shakes "La Masia" Academy

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→ FIFA Regulations - Minors

FIFA Disciplinary Committee, 2 April 2014, no. 130350
TMS ESP ZH
FIFA Appeals Committee, 19 August 2014, no. 130350
APC ESP ZH
CAS 2014/A/3793 Fútbol Club Barcelona v FIFA



Barcelona youth players stand ready to play a match on one of the pitches at the Joan CAMPER training ground.

Whether clubs like the FIFA rules referring to minors or not, it is clear that the interest of these rules is to ensure the safety and proper development of children. Or not? The truth is harder to believe. FIFA has now decided to not even allow younger boys who came to Barcelona to train irregularly or live in "La Masia", a measure that would result in the situation being even more disproportionate than it already was.

The club has yet no arguments on this issue. What is the reason for which FIFA banned children and therefore deprived them from playing official games, training and residing at the club?

FIFA's prohibition, as reflected in the unpublished award of the Court of Arbitration for Sport (CAS), is a measure designed to prevent evil to proliferate in European football: to stop the supposed academies to train players who then are abandoned and end being victims of child trafficking.

FIFA interprets Article 19bis 6) of the Regulations on the Status and Transfer of Players regarding the transfer rules and understands that hundreds of African

children could come to Europe to train but only very few would stay; the rest could be abandoned, without resources or opportunities to return. Although the FIFA knows that this is not *Barça's* case, affirming that the rule is the same for everyone and that the possibility of training in schools without being registered could lead to a way of circumventing the regulations.

Consequently, any minor who a club or an academy wants to register must previously comply with FIFA rules. However, this may conflict with the rights of minors, whose will has to be a priority.

The Patrice SOUSSIA case

We are referring in particular to 16-year-old striker, *Patrice SOUSSIA*. He lives in "La Masia", so the FIFA decision leaves him homeless and without employment in Barcelona. So far he could not play, but at least he trained and lived together with the rest of his teammates. However, this player is so beloved that FIFA's decision led to a lot of solidarity coming his way. *Alex COLLADO* a teammate of his - together with his mother - has welcomed him into his house. *Jonathan*, *Alex's* brother, has achieved that *Patrice* can train with his team, the *Prat*. Moreover, *Barcelona* will continue to pay for his studies with the aim that he can return to the *blaugrana* discipline when he reaches the age of 18. Of course, he continues exercising far from *Sant Joan DESPI*.

Inexplicable decisions

The FIFA news come just a few days after the father of one of the affected children, *Ben LEDERMAN*, released a statement in the *New York Times*. He claimed "that FIFA was killing [his] son by denying him the right to play football, which is what he loves most in the world." Now he cannot even train with his teammates, which is the straw that breaks the camel's back. Only 4 of the 9 children who suffered the penalty remain. It is yet to be seen how many children can withstand this last blow from the world football's governing body.

FC Barcelona asked for the possibility to register Arda TURAN

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→ FIFA Regulations - National Regulations - Transfer ban



Barcelona (Spain) - On 16 October 2015, Arda TURAN during the training of FC Barcelona.

The Catalan club asked both the Royal Spanish Football Federation (RFEF) and FIFA to register *Arda TURAN* in the team. The reason for it was that *RAFINHA* suffered a knee injury in the Champions League game against *Roma* and, following his operation, was out of the squad for approximately 6 months. *Barcelona* was relying on its own reading of the transfer ban sanction, imposed on the club earlier by the FIFA and was considering that the punishment was over since two transfer windows had passed without *Barcelona* registering new players.

Besides, Article 124.3 of the RFEF Regulations enumerates two exceptions allowing registration outside the usual times. The case at stake is falling under the required conditions. First one is that the player is free to be registered and the other is the replacement of a player who is out for more than five months, with the condition that the injury occurred after the closing of the registration period and the registration of this replacement does not require the issue of an International Transfer Certificate.

Unfortunately *Arda TURAN* will nevertheless have to wait until January 2016 to finally make his first appearance in an official match for *FC Barcelona*. The world football governing body refused the request for the registration of the player. According to FIFA, the sanction is still in force and will only be lifted with the opening of the next registration period, starting in January, thus making it impossible for *Barça* to register the Turkish midfielder.



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The ghost transfer of David DE GEA

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→ Player transfer- FIFA TMS

Despite the three-month long speculation linking him to Real Madrid, the Spanish goalkeeper David DE GEA remained a Manchester United player. It is difficult to provide guidance in the sea of uncertainties and contradictory explanations that followed such a commented fiasco. Both Manchester United and Real Madrid are pointing fingers. According to Real Madrid, Manchester United were late to send the keeper's documents to the Spanish Football Federation but the Red Devils insist that the documents were sent before the end of deadline and that the fault was at Madrid's end...

It could be interesting to compare both public versions; although we will never know the whole truth (all the references to "yesterday" shall be interpreted - as is obvious - as 31 August 2015).

The start of negotiations

Real Madrid states that "Manchester United did not make way for negotiations regarding David DE GEA until yesterday morning." Nevertheless, according to the Manchester United report, "Manchester United did not seek contact from Real Madrid for the sale of David. David is a key member of our squad and the Club's preference was not to sell" and "no offer was received for David until yesterday. At lunchtime yesterday, Real Madrid made its first offer to buy David."

Therefore, there is substantial contradiction in respect of the party which took the initiative, although it seems more logical that the club that seeks to hire the player should be expected to take the first step.

The agreement's conclusion

According to Real Madrid, "when Manchester United entered into the negotiations yesterday morning, it did so under the condition of reaching an agreement with Real Madrid player, Keylor NAVAS, that he would be incorporated into the British club as of this season. The club informs that it is in contact with the representatives of said player."

Manchester admits that the agreement "included NAVAS being transferred to Old Trafford. The deals were dependent on each other." The English club does not deny that they imposed the condition.

The documents' exchange

Following the Spanish club's version, "Real Madrid and Manchester United are reaching a fast agreement regarding the transfers of both players. Following the writing up of the necessary corresponding contractual documents - and at the end of processing the FIFA Transfer Matching System (TMS) in good time as its inscription into the National Professional Football League - Real Madrid sent the contracts to Manchester United at 13:39 hours, Spanish time."

According to Manchester United, it "sent transfer documents for both players to Real Madrid at 2042 BST. David's documentation was returned by Real Madrid to Manchester United without the signatory page at 2232 BST."

At this point, both versions match, because Real Madrid states that "having obtained signatures from DE GEA and Keylor NAVAS, sent the above-mentioned signed contracts to the English club at 23:32 hours, Spanish time. They then awaited the final documents signed by Manchester United."

However, the controversy rises again when Manchester states that "at 2240 BST, minutes before the deadline, major changes to the documentation came through to Manchester United which immediately put the deals at risk."

There is no mention of this in Real's statement.

Finally, Real Madrid states that "Manchester United reached the final agreement with Keylor NAVAS' representative at 23:53 hours, Spanish time, and it was at this time that all of the contracts were sent to the player to be signed."

On the other hand, Manchester states that "Only at 2255 BST were the documents that are needed to cancel David's contract received by Manchester United from Real Madrid."

The TMS process

According to Real Madrid's version, "Manchester United introduced the data from the David DE GEA deal to the TMS but not that of Keylor NAVAS at 00:00 hours, Spanish time, simultaneously sending the signed transfer contracts to Real Madrid. Real Madrid received these completed documents at 00:02, and attempted to access the TMS, which was closed at this time."

Quite on the contrary, Manchester assures that "at 2258 BST, the transfer agreement was sent back by Manchester United, uploaded onto TMS and accepted - all before the deadline. Real Madrid didn't upload David's documents onto TMS in time (Manchester United did)."



Last stop: the Spanish League

According to *Real Madrid* report, "at 00:26 hours, Spanish time, the FIFA TMS information system invited *Real Madrid* to complete the data for the player David DE GEA, given that the registration period remained open until today. *Real Madrid*, facing the possible eventuality of a contentious withdrawal of the player's transfer, decided to send the contracts to the National Professional Football League, in spite of knowing that the registration periods had come to an end."

Conclusion?

It seems that NAVAS' contract, the surprise special guest, was not duly concluded on time and, due to the essential condition agreed in the bilateral transfer, *Real Madrid* preferred to forget the matter. According to United, NAVAS' agent acted incredibly slow and was unresponsive, but in all honesty, such a complicated negotiation should not have begun just hours before the transfer deadline.