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# The Jurisprudence of the FIFA Dispute Resolution Chamber

*2nd Edition*



Frans de Weger



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Frans de Weger

# The Jurisprudence of the FIFA Dispute Resolution Chamber

Second Edition



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Springer

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ISSN 1874-6926 ISSN 2215-003X (electronic)  
ASSER International Sports Law Series  
ISBN 978-94-6265-125-8 ISBN 978-94-6265-126-5 (eBook)  
DOI 10.1007/978-94-6265-126-5

Library of Congress Control Number: 2016945136

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands [www.asserpress.nl](http://www.asserpress.nl)  
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

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## Advance Reviews

Frans de Weger's work on the jurisprudence of the DRC is a "must-have" for anybody dealing with sports law and, in particular, dealing with football issues under the *FIFA Regulations on the Status and Transfer of Players*. It is a comprehensive and well-organized book that I highly recommend.

*Massimo Coccia, Professor of International Law and Attorney-at-Law in Rome (Italy), CAS Arbitrator, Author of many publications on sports law issues*

Where to go when trying to understand the *FIFA Regulations on the Status and Transfer of Players*? Now Frans de Weger has the answer with his new version of the much-awaited and needed "Jurisprudence of the FIFA DRC". His first one of 2008 was and is still the only book in English which has reviewed the long and winding case law of FIFA DRC. This is not an easy task and the 2016 edition has not only improved on its predecessor but also opened a wider range of enlightenment for the football law practitioner. This is the book that we all called for and quoting Woody Allen, I would say that with it you will be aware of "Everything you wanted to know about FIFA DRC and you were afraid to ask". We must thank Frans for sparing us time with this clairvoyant and helpful book.

*Juan de Dios Crespo Pérez  
Sports lawyer*

By a systematic and analytical study of the most important decisions rendered by the FIFA Dispute Resolution Chamber, Frans de Weger has traced the context, purpose and evolution on how one should read and understand the *FIFA Regulations on the Status and Transfer of Players*. The Author has managed to explain in a pure and understandable way the issues specific to the industry of football and how these should be taken into account by clubs and players in their legal relationship and within organised football. The second edition of this book, which is systematic and practical at the same time, will surely be of great interest to both specialists active in the world of "football law" and aspiring individuals.

*Wouter Lambrecht, Attorney-at-law, Head of Legal  
at the European Club Association, FIFA Dispute Resolution  
Chamber Member and Mediator at the Court of Arbitration for Sport*

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# Abbreviations

BGH	German Bundesgerichtshof
CAS	Court of Arbitration for Sport
CAS Code	CAS Code of Sports-related Arbitration
CHF	Swiss Franc
CJEU	Court of Justice of the European Union
CO	Swiss Code of Obligations
DRC Judge	Single Judge of the DRC
DRC or Chamber	Dispute Resolution Chamber
EC	European Commission
EU	European Union
EURO	EUR
FA	Football Association
FBO	Dutch Federation of Professional Football Clubs
FIFA	Fédération Internationale de Football Association
FIFA Commentary	Commentary on the Regulations of the Status and Transfer of Players
FIFA Comparison	Comparison of the FIFA regulations version July 2001 and following Circulars with the new FIFA regulations version December 2004
GBP	British Pounds
ICAS	International Council of Arbitration for Sport
IRTC	International Registration Transfer Certificate
ITC	International Transfer Certificate
KNVB	Royal Netherlands Football Association
NDRC	National Dispute Resolution Chamber
NDRC Regulations	National Dispute Resolution Chamber Standard Regulations
PILA	Private International Law Act
Procedural Rules	Rules governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber
PSC	Players' Status Committee
RSTP	Regulations on the Status and Transfer of Players

SCC	Swiss Civil Code
SFT	Swiss Federal Tribunal
Single Judge	Single Judge of the PSC
TFEU	Treaty on the Functioning of the European Union
TMS	Transfer Matching System
TPO	Third-Party Ownership
UEFA	Union Européenne de Football Association



# Foreword

*Its competence and the applicable regulations having been established, the members of the Dispute Resolution Chamber went on to deal with the substance of the matter and started by acknowledging the facts of the case and the arguments of the parties as well as the documents contained in the file.*

These or very similar words are contained in hundreds of decisions of the FIFA judiciary bodies. What follows, in all those decisions, is the dealing with thousands of personal stories, raised claims, advanced objections, submitted allegations and, yes, also legal arguments made by the parties before FIFA.

Since their creation, the FIFA judiciary bodies and in particular the FIFA Players' Status Committee (PSC) and the FIFA Dispute Resolution Chamber (DRC), together with their Single Judges, have rendered several thousand decisions. And even though "nobody is perfect" and no adjudicatory body of this world can claim never to take a wrong decision, the work of the FIFA judiciary bodies has helped solving a huge number of disputes in quite an efficient manner, providing the parties with a judiciary, objective assistance that may still be considered to be sometimes too slow, but which is also rather inexpensive and pretty much well-fitted for an international environment like the one of international football.

It is praiseworthy that FIFA publishes a large number of decisions of the PSC and the DRC on its website on a regular basis. However, the handling and the analysis of such decisions is not easy. If one looks for instance at the more than 2000 decisions of the DRC currently available online, one will see that they are first very numerous and second divided in simply four categories: labor-related disputes, training compensation, solidarity matters and disputes relating to overdue payables.

Back in the years 529 to 534 p. Chr., the Eastern Roman Emperor Justinian ordered the collection of all sources of Roman jurisprudence, and so the admirable Corpus Iuris Civilis was put together, a fundamental work providing an overview on the quite chaotic Roman legal system existing at that time.

Today, almost identically, the present book, prepared under the wise guidance of my dear friend Frans de Weger, provides the reader—or even: the “user”—with a great access to the body of the jurisprudence of the FIFA DRC: DRC decisions are selected and commented, and a clear structure of topics is established, by attributing the DRC decisions to several classes of disputes.

The reading and the consultation of this excellent book, including the good introductory chapters, can only be strongly recommended to lawyers involved in football-related matters. Both the more unexperienced law student and the well-versed attorney will be able to draw very useful information from a rich pool of interesting materials.

The author and the editors of this book can only be thanked by all those who love football—those who have the chance to work on football-related matters.

Zurich  
August 2016

Michele Bernasconi  
Attorney-at-law in Zurich, Switzerland  
Arbitrator at CAS and President of the Swiss  
Sports Law Association

## Author's Note

In the first edition of this book reference is made to the relevant decisions issued by the FIFA Dispute Resolution Chamber (“the DRC”) from the date of its existence in 2001 until 2006. Now, in 2016, in this second edition, reference is made to the relevant decisions from 2001 until 2016. More than 15 years’ worth of DRC decisions.

During the years the jurisprudence of the DRC has become increasingly “well-established”. The decisions by the DRC are more and more extensive and Single Judges are getting more involved (to reduce the workload). Further, we also note a positive development with regard to the length of the DRC procedures, sharpening deadlines and limiting the exchange of correspondence in procedures, also considering that FIFA introduced the so-called fast track procedure of Article 12bis of the FIFA Regulations on the Status and Transfer of Players (“the RSTP”). Step by step, a swifter dispute resolution process has finally been created by FIFA.

However, it shouldn’t be left unmentioned that the length of the procedures before the DRC can still be shortened. In comparison to the procedures before the Court of Arbitration for Sport (“the CAS”), the DRC could also be stricter with regard to deadlines in procedures. Considering the well-established DRC jurisprudence that has been created over the years since 2001, the DRC must also remain open to new developments in international football law and cannot be immune under all circumstances from the impact and influence of European law, leading CAS jurisprudence and Swiss law. The existence and creation of “well-established jurisprudence” bears the risk of becoming less accessible for ‘outside’ developments.

Although by no means exhaustive, this book aims to provide an overview of the “well-established jurisprudence” of the DRC. However, as always, the devil is in the details. One must be aware that relying on an individual decision by the DRC can be quite risky since it happens that the DRC (especially in the past) deviated from its standard line but in later decisions reverts to its former “well-established jurisprudence”. Nowadays and as said before, the jurisprudence has become increasingly “well-established” and these kinds of divergent decisions are more and more exceptional. Furthermore, I make exact references and stay

close to the relevant considerations made in the decisions by the DRC to gain a broad(er) and more precise knowledge of the general view of the committee. Due to the increasing internationalization of the professional football world, the DRC decisions become more and more important within the international field of professional football, which will also have its impact, directly or indirectly, at national level (certainly in the long run), such as for national arbitration tribunals. By making exact references to the general considerations of the DRC in its decisions over the years, the flipside of the coin is that it is not a 'nice romantic novel' to read. It must therefore be considered as a work of reference.

Let me stress that the FIFA jurisprudence is of utmost importance. First of all, taking into consideration that the CAS is the appeal committee which makes these awards at least as interesting, FIFA, however, sometimes maintains its own line even if the CAS has a different point of view. In this regard, it must be mentioned that less than 5 % of the DRC decisions is annulled by the CAS which means that most of the DRC decisions can therefore be seen as final and binding. Moreover, not all parties have the financial means to appeal to the CAS or the (low) amount at stake does not make it worthwhile (taking into account the relatively high arbitration costs before the CAS) to appeal against the DRC decision before the CAS (on the understanding that also a dispute with a low amount at stake does not necessarily mean that it is not an interesting case from a legal point of view). In other words, in many DRC cases, the DRC is the last resort. Therefore, for legal advisors to operate quickly and adequately in the dynamic world of international professional football, secure and up-to-date knowledge of the DRC jurisprudence and its continuing and rapid developments, is obviously indispensable. It must finally be noted that the DRC jurisprudence is quite consistent (more consistent than the jurisprudence of the CAS in relation to certain subjects) and with its well-established jurisprudence, contributes to more legal uniformity, equality and certainty.

This edition is more practical due to my experience and activities over the last few years as a senior legal counsel at the Dutch Federation of Professional Football Clubs ("FBO") in procedures before the DRC, as well as (previously before I was appointed as a CAS Arbitrator) the CAS, the appeal committee of the DRC. This second edition addresses many issues on the understanding that experience teaches that there are many legal pitfalls with regard to several subjects which the DRC has to deal with. This edition has a scientific as well as a practical character and is useful for both the practitioner and the scientist. It goes without saying that this book is especially a useful and practical tool for those actually acting in legal procedures before the DRC, such as international football lawyers and clubs' legal counsels.

Having said that, this edition is not only provided with references to decisions by the DRC, but also, if necessary, to relevant decisions by the FIFA Players' Status Committee ("the PSC"), which are also published since 2011 on FIFA's website, in order to better understand certain considerations of the DRC. Furthermore, in order to place the DRC decisions in the right legal perspective, reference is also made to leading awards issued by the CAS. However, since the essence of this book is "the DRC", many references to the CAS and the PSC

cases are especially made in the footnotes in order to maintain focus on the DRC decisions. The reference to the CAS jurisprudence in the footnotes, which is by no means exhaustive, is mainly meant to better find one's way in the CAS jurisprudence and so to ease finding the relevant CAS jurisprudence. Also, attention will be brought to relevant *unpublished* decisions issued by the DRC, the PSC and CAS awards. As a side-note, it must be mentioned that during the writing of this second edition, it came to my knowledge that FIFA apparently decided, for unknown reasons, to remove certain earlier published decisions from the current list of decisions on its (new) website (which means that certain DRC decisions cannot be found on FIFA's current website anymore). Having decided to make reference to these removed decisions in this second edition anyway, in order to show all relevant legal thoughts of the Chamber, however, I felt forced to share this knowledge in this Author's Note.

In my point of view, this edition is improved and is more 'mature' in comparison to the first edition. But it is also far more extensive. And not forgetting, it is obviously up-to-date. Please forgive me if I am not exhaustive with regard to all the subjects and with regard to the DRC (and especially the CAS) jurisprudence. I tried to be as complete as possible (which is also difficult due to the existence of many—not less important—unpublished decisions). As the reader will notice for several subjects, a short conclusion has been included for ease of reference, where reference is made in a nutshell to the well-established DRC jurisprudence. In a manner of speaking, merely reading this part would be enough to gain general knowledge of the vision of the DRC. I sincerely hope you find this second edition worth reading and that it helps us all with our cases in the future.

**Part I**  
**Introduction**

# Chapter 1

## Background Dispute Resolution Chamber

**Abstract** As an introduction this chapter first considers the background of the FIFA Dispute Resolution Chamber (“the DRC”). Subsequently, FIFA’s Regulations on the Status and Transfer of Players (“the RSTP”), its history and its various editions as from 2001 will be given attention. When taking decisions, the DRC applies the RSTP as the main source of law when judging a dispute relating to the international transfer of players, their status and their eligibility to participate in organised football. The RSTP aims to regulate international transfer law when judging a dispute between member associations and to establish legal basic principles that guarantee uniform and equal treatment of all participants in the international professional football world.

**Keywords** Regulations on the Status and Transfer of Players • Players’ Status Committee • Bosman • FIFA Commentary • FIFA Comparison 2001 and 2005 • FIFA circulars

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## 1.1 Introduction

Needless to say, organised football can only attain uniformity, equality and certainty on a worldwide scale if certain fundamental principles and basic rules apply to all participants in professional football. As the organiser of international football, the Fédération Internationale de Football Association (“FIFA”) was established in 1904 to achieve these goals. According to its own statutes, FIFA exists to improve the game of football among other things, whereby improvement can be interpreted in the broadest sense of the word. Not only improvement with regard to rules on the field, but also with regard to rules off the field. During the transfer of a player between national associations, for example, the same rules must apply to all participants concerned. In its quest to establish uniformity, equality and certainty, FIFA had to create a single legal playing field within the international football world. Therefore, FIFA introduced the Players’ Status Committee (“the PSC”) to legally decide on international football disputes. This Standing Committee had to provide the international football world with legal certainty relating to players’ status matters.<sup>1</sup>

Continuing its search for further professionalism, in 2001 FIFA set up the Dispute Resolution Chamber (“the DRC” or “the Chamber”). This committee was established to take over certain disputes from the PSC and specifically to resolve legal disputes regarding the international status and transfer of players. As we will see later on, its competence not only extends to cases relating to labour disputes with an international dimension, but also to disputes concerning training compensation and solidarity contribution. In general, this committee decides on basic issues such as a breach of contract, with or without *just cause*, or *sporting just cause*. Today, the PSC still has an influence on the DRC (at least from a theoretical and regulatory point of view). From the FIFA Statutes it is derived that the PSC committee shall be responsible for the work of the DRC.<sup>2</sup>

<sup>1</sup>FIFA Statutes, 2016 edition, Article 39 under g.

<sup>2</sup>FIFA Statutes, 2016 edition, Article 46 para 2. A further indication that the PSC can be seen as the ‘umbrella organisation’ of the DRC is Article 23 para 3 of the RSTP, 2016 edition, which states that in case of uncertainty as to the jurisdiction of the PSC or the DRC, the chairman of the PSC shall decide which body has jurisdiction. Furthermore, in the first published decisions of the DRC, for example the DRC decision of 21 November 2003, no. 113291, the Chamber was described as ‘The Dispute Resolution Chamber of the Players’ Status Committee’, as the Chamber was also mentioned in the ‘Regulations for the Status and Transfer of Players, 2001 edition’.



The DRC is very important to FIFA's aim to achieve the aforementioned global uniformity, quality and certainty.<sup>3</sup> In that respect one should note that the DRC is *not* an arbitral tribunal, such as the Court of Arbitration for Sport ("the CAS"). The DRC only resolves and settles disputes. Decisions by the DRC do not have binding opinion enforcement and can only be enforced through the statutes and regulations of FIFA, as we will see later on. Nevertheless, the decisions of the DRC obviously have a huge impact since, through these decisions, FIFA has a major influence on international football and all its participants. Due to the increasing internationalisation and the huge influence that the DRC decisions have through its own channels on the participants in the international football world, it is justified that more public attention is given by FIFA and its member associations to the decisions of the DRC.

Although the main emphasis of this book is described in Part 2, in which all the relevant decisions of the DRC are discussed and classified into different categories, we will start by looking at the most relevant judicial aspects in relation to this Chamber in order to better understand the material part of the decisions and the well-established jurisprudence of the DRC. When taking decisions, the DRC applies the Regulations of the Status and Transfer of Players ("the RSTP") whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist on a national level, as well as the specificity of sport.<sup>4</sup> As we will see later on, the RSTP is the main source of law for the DRC when judging a dispute relating to the international transfer of players, their status and their eligibility to participate in organised football.<sup>5</sup> According to the official Commentary on the Regulations of the Status and Transfer of Players ("the FIFA Commentary"), these fundamental rules must be considered as compulsory and uniformly applicable in the same way all over the world.<sup>6</sup> They aim to regulate international transfer law when judging a dispute between member associations and establish basic principles that guarantee the uniform and equal treatment of all participants in the football world.<sup>7</sup> In this first chapter, the RSTP will be discussed in more detail. In that respect, the history of the RSTP will be discussed briefly, followed by a clearly structured survey of the subsequent editions of the RSTP issued by the FIFA since 2001.

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<sup>3</sup>The DRC is not a 'standing committee' of FIFA like the PSC (FIFA Statutes, 2016 edition, Article 21 para 4 in conjunction with Article 39 under g).

<sup>4</sup>RSTP, 2016 edition, Article 25 para 6.

<sup>5</sup>Furthermore, the RSTP also establishes rules regarding the release of players for association teams and the player's eligibility to play for such teams. FIFA Commentary, explanation Article 1 para 1, pp. 7–8.

<sup>6</sup>FIFA Commentary, explanation Article 1 para 1, p. 8.

<sup>7</sup>FIFA Commentary, explanation Article 1 para 2, p. 8.

## 1.2 Regulations on the Status and Transfer of Players

### 1.2.1 Introduction

The most important judicial ground for the judgments of the DRC is the ‘Regulations on the Status and Transfer of Players’, also known as the RSTP. As mentioned above, these regulations establish rules regarding the international transfer of players, the status of players, their eligibility to participate in organised football as well as the release of players for association teams and the players’ eligibility to play for such teams. In other words, through these rules FIFA provides the international football world with a normative basis regarding the legal status and transfer of players.

With regard to the most recent version, the 2016 edition, we must remember that these rules are based on many earlier editions and therefore have a long history. The first regulations were initially adopted in April 1991 and subsequently amended by the FIFA Executive Committee and came into force respectively in December 1993, December 1996, May 1997, September 1997, July 2001, July 2005,<sup>8</sup> January 2008, October 2009, October 2010, December 2012, August 2014 and 1 April and 1 October 2015. The current version of the RSTP, the edition of 2016, was officially approved by the FIFA Executive Committee on 17 March 2016, and these regulations came into force on 1 June 2016.<sup>9</sup>

### 1.2.2 History

In 1982, the first developments took place regarding international transfers for players in Europe. It was UEFA, the Union of European Football Associations, which produced the first regulations regarding the transfer of players in September 1982, also known as the “Principles of Cooperation between Clubs of different National Associations of the EEC Countries”. According to these regulations, football players were only free to conclude a contract with another foreign club after the expiry of their contract. Subsequently, the former and the new club could determine a transfer compensation. In the event that the clubs were unable to agree on a reasonable transfer sum, a committee appointed by UEFA would be competent to determine a reasonable transfer sum for the player. However, UEFA regulations also provided for a maximum transfer compensation for a player in the amount of CHF 5,000,000.<sup>10</sup>

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<sup>8</sup>As a side-note, since the 2008 edition, the regulations are called ‘FIFA Regulations on the Status and Transfer of Players’. The editions before 2008 were called: ‘FIFA Regulations of the Status and Transfer of Players’. In this context, it is therefore called ‘the FIFA Commentary on the Regulations of the Status and Transfer of Players’.

<sup>9</sup>RSTP, 2016 edition, Article 29.

<sup>10</sup>Van Staveren 2003, p. 226.

FIFA followed UEFA and its first transfer regulations were adopted in April 1991. In 1992, FIFA subsequently modified these first international regulations and as from 1 January 1994 the new FIFA regulations, which were called the “Regulations governing the Status and Transfer of Players 1994”, applied to all participants in international football. The same principle applied to amateurs and non-amateurs alike: compensation was compulsory in the case of a transfer of a player between clubs from different national associations. FIFA made a distinction between an amateur and a non-amateur. Pursuant to the first five Articles of the 1994 Regulations governing the Status and Transfer of Players, a non-amateur was defined as a player registered with a national association who has a written contract and is paid more than the expenses he incurs in return for his football activity. Further, FIFA emphasized for the first time in these regulations that a football player was only free to conclude an employment contract with another football club if the employment contract with his present club had expired or would expire within 6 months.

At this time, FIFA was the only international football organisation which was competent to establish rules and to give decisions in relation to the legal status and transfer of players. Up until then, FIFA did not have to take any other organisations into account. FIFA was the monopolist that made the rules and its members just had to comply with these rules. However, it was the European Commission that felt that the 1994 Regulations governing the Status and Transfer of Players could not be maintained because of crucial judicial shortcomings, and had to be amended.

### 1.2.3 *Bosman Case*

FIFA’s exclusive position of power finally came to an end with a judgment by the CJEU on 15 December 1995 in the famous *Bosman* case, which had a huge impact on the international football world.<sup>11</sup> This case can be considered as one of the most important sports cases to appear before the Belgian courts, and in relation to European sports law is possibly the most significant case.<sup>12</sup> *Bosman* is and always will be a landmark judgment in international sports law. By its decision in 1995, the Court of Justice of the European Union (“the CJEU”) stressed that sport, just like any other economic activity, is subject to ordinary rules of European law.<sup>13</sup> This decision by the CJEU found FIFA’s transfer system incompatible with EU law.

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<sup>11</sup>Case C-415/93 *Union Royale Belge des Sociétés de football association ASBL v. Jean-Marc Bosman Royal Club Liègeois SA v. Jean-Marc Bosman. SA d’Economic Mixte Sportive de l’Union Sportive du Littoral de Dunkerque, Union Royale Belge des Sociétés de Football Association ASBL, Union des Associations Européennes de Football Union des Association Européennes de Football v. Jean-Marc Bosman* [1995] ECR I-4837.

<sup>12</sup>Wise and Meyer 1997, pp. 1104–1105.

<sup>13</sup>Blanpain 2006, p. 116.

The Belgian professional football player Jean-Marc Bosman refused to sign a new contract offered by his club, the first division club RC Liège. In April 1990, the club offered him a new 1-year contract at BFR 120,000 per month, the minimum permitted by Belgian rules and a quarter of his previous salary.<sup>14</sup> In turn, Bosman refused the club's proposal and was subsequently placed on the transfer list. Several other clubs were interested in the player and eventually a deal was signed between Bosman, RC Liège and the French Second Division club Dunkerque. However, RC Liège had some concerns about Dunkerque's financial position and suddenly cancelled the negotiations. Bosman started proceedings against his club RC Liège with the competent Belgian Court in Liege. The Court of Appeal in Liège suspended the case and asked for a preliminary decision by the CJEU. The questions asked by the Court of Appeal were: *“Are Articles 48, 85 and 86 of the Treaty of Rome of 25 March 1957 to be interpreted as: (a) prohibiting 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 (b) prohibiting the national and international sporting associations or federations from including in their respective regulations provisions restricting access of foreign players from the European Community to the competitions which they organise?”*<sup>15</sup> The CJEU now had to determine in this case the legal status of the transfer regulations concerned.

The CJEU finally decided that professional football, insofar as it constitutes an economic activity, is subject to community law. The football associations are obliged to comply with basic legal principles, including the right of employees within Europe to freedom of movement. Aside from the fact that the decision banned restrictions on foreign EU players within national leagues (no limitation on foreign players for all member states in the EU), it was finally decided by the CJEU that an amount of transfer compensation to be paid by a club for a player who had ended his contractual relationship with his former club, was not permitted and was in violation of the fundamental principle of free movement of people within the European Union.<sup>16</sup>

### ***1.2.4 Post-Bosman Period***

After the decision of the CJEU, the football clubs were now forced to respond to the new situation. The clubs wanted to prevent players reaching the end of their employment contract and leaving for free. So they started negotiating contracts

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<sup>14</sup>Weatherill 2014, pp. 90–91.

<sup>15</sup>Weatherill 2014, pp. 91–92.

<sup>16</sup>Drolet 2006, p. 66.

for substantially longer periods. Clubs were tempted to draft appropriate clauses in the players' contracts which allowed the clubs to secure compensation for their loss.<sup>17</sup> Another method devised by the clubs was to insert clauses in the employment contracts whereby the clubs unilaterally reserved the right to extend the agreement, the so-called unilateral extension option. Later on in this book, the validity of the unilateral extension option and the DRC's (and the CAS') point of view will be discussed extensively. Hence, it was no longer efficient to train the players themselves. The clubs now asked extremely high transfer sums if a player wanted to leave his club before his contract expired. Ultimately this created a situation whereby the biggest clubs attracted all the good players and smaller clubs faced financial difficulties. Understandably, after the *Bosman* case these new circumstances eventually had a very negative impact on the international football world.

Since the *Bosman* case, a professional football player is free to move to any new football club of his choice at the end of his contract, and his new club is obliged to pay a transfer sum to his former club.<sup>18</sup> Therefore, as a result of the imbalance which had arisen in the international football world since the *Bosman* case in 1995, FIFA was forced to find a solution. FIFA's transfer rules were severely affected by this ruling.<sup>19</sup> FIFA had to react by revising its rules on international transfers in order to align them with the CJEU judgment in the *Bosman* case. FIFA realised that the civil courts were not going to help the international football world. It therefore had to look for a solution among its own rules for the instability that had arisen in the international professional football world. Finally, the European Commission started making objections against the transfer rules of FIFA and UEFA. FIFA started making new regulations to replace the 1994 Regulations governing the Status and Transfer of Players and which had to maintain contractual stability for players, their transfer status and the training facilities. A start was finally made with the creation of a new RSTP.

In 1997 a new version of the RSTP was sent to the European Commission for assessment. At first, the European Commission did not agree with the contents of these regulations, still feeling that these regulations did not comply with the European rules. For example, the European Commission had serious issues with the fact that the regulations allowed the transfers of players under the age of 18 years. Neither could it agree with the fact that FIFA excluded proceedings by the civil courts. Therefore, FIFA had to initiate a new plan for the RSTP that complied with the European rules.

As a result of the objections by the European Commission against the FIFA rules, FIFA started a dialogue with the European Commission in order to discuss

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<sup>17</sup>Weatherill 2014, p. 67.

<sup>18</sup>See also Blanpain 2003, p. 98.

<sup>19</sup>Weatherill 2005, p. 5.

a new concept for transfer rules. The European Commission was of the opinion that the new FIFA regulations were free to contain provisions with regard to the transfer of players, contractual stability and training compensation for players. However, the European Commission found it to be of utmost importance that the new FIFA regulations complied fully with European regulations. The European Commission again emphasized that the new FIFA regulations could not obstruct seeking redress from the civil courts and pointed out that the national laws of the countries concerned had to be obeyed at all times. Finally, as a result of the debate between FIFA and the European Commission, FIFA drew up the new FIFA regulations, the 2001 edition.

### ***1.2.5 2001 Edition***

In October 2000, FIFA and UEFA sent a joint suggestion for new rules to the European Commission. In 2001, this led to a gentleman's agreement between FIFA and the European Commission. It could be seen as a mixture of the strict requirements by the European Commission and the special requests of FIFA. After much negotiation, the new rules were finally adopted by the FIFA Executive Committee on 5 July 2001 and came into force on 1 September 2001. The new rules were the subject of negotiations with the European Commission. Mario Monti, the European Commissioner for competition at that time, was assumed to have been personally involved in drafting the new transfer rules of FIFA which also became known in the international football world as the so-called "Monti-rules".<sup>20</sup>

The new RSTP 2001 edition, guaranteed the contractual stability of the players' contracts and regulated the international transfer of players properly. More importantly, the new rules that now replaced the 1994 Regulations governing the Status and Transfer of Players complied with the demands of the European Commission. In this regard 3 important pillars were eventually inserted in the RSTP.

Contracts had to be concluded for a minimum of 1 year and a maximum of 5 years. This corresponded with the main objectives of FIFA, namely, to create more certainty. Furthermore, the new regulations introduced two transfer registration periods, i.e. a transfer period during the winter and a transfer period during the summer. Players were only allowed to transfer internationally during these two transfer periods. Finally, FIFA also introduced a protection system for the international transfer of minors. As mentioned earlier, generally minors aged under 18 from outside the confederation of Europe, were not obliged to transfer to another association.

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<sup>20</sup>Drolet 2006, p. 67.