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## "When we buy a young boy ...": Migrant Footballers, Children's Rights and the Case for EU Intervention

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Ingi Iusmen  
Helen Stalford (eds.)

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# “When we buy a young boy …”: Migrant Footballers, Children’s Rights and the Case for EU Intervention

*Eleanor Drywood*

## 1. Introduction

The title of this chapter is drawn from a quotation by the long-standing manager of Arsenal FC, Arsène Wenger, in which he rigorously defends the football industry against accusations that the recruitment of talented children from abroad to play in Europe’s professional football leagues is a form of modern slavery:

...I'll show them what we do and how we treat the boys ... In some places in Brazil some boys do not have the same conditions or treatment that we have. Medically, psychologically, and 'footballistically'. It is ridiculous [to call it child slavery] ... When we buy a young boy we train him and give him a chance to play. We promote, we educate and we integrate. That's why we have success.

Arsène Wenger, Manager, Arsenal FC<sup>1</sup>

What is striking about this quotation is that hidden amongst the impressive list of benefits offered by professional football clubs to young recruits is the phrase ‘when we buy a young boy’. The casualness of its use suggests a normality to the idea that a football club can ‘own’ a child. Wenger is also selective in focusing only on success stories at a handful of elite clubs and ignoring the murky underworld that is fuelled by a market in young foreign players. This is a phenomenon associated with unscrupulous agents, manipulative practices and high levels of exploitation in developing regions of the world. It is also one in which many young children are promised a lucrative career in football leagues across Europe, yet very few go on to succeed in the professional game. In 2001, and in response to concerns surrounding these practices, football’s global governing body, the Federation of International Football Associations (FIFA), banned the international signing or transfer of players under the age of 18 (Article 19 FIFA’s Regulations on the Status and Transfer of Players (RSTP)). This made it (theoretically, at least) impossible for clubs to sign players from abroad until they became adults (subject to limited exceptions). There is much evidence, however, that this prohibition remains ineffective and that a buoyant trade in child footballers from abroad contin-

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<sup>1</sup> As cited in Jones 2009.

ues to thrive. As a 2014 exposé in the UK's Telegraph newspaper explains: '[t]he intensity of the quest for fresh recruits is such that some clubs knowingly take risks by bringing in underage players or by acquiring them via murky means' (Brown 2014). The purpose of this chapter – the first analysis of this area in academic literature – is twofold. First, it will establish the phenomenon surrounding the recruitment of young foreign footballers to Europe's professional game as an important area of scrutiny in children's rights studies. Second, through an analysis of the European Union's (EU) expanding activities in relation to both sport and children's rights, it will argue that the supranational body can, and should, be more proactive in addressing the failure of football's governing bodies to address the injurious children's rights consequences of the current football transfer system.

The chapter begins with an overview of the social phenomenon surrounding the recruitment of young players from abroad to Europe's football leagues. Through the discussion, reference is made to practices that represent a threat to the well-being and rights of the children involved, as understood with reference to the United Nations Convention on the Rights of the Child (CRC). The aim of this section is to establish that, for all the very positive potential effects that participation in elite football may have for some children, the operation of the football transfer system raises some serious questions surrounding the rights and welfare of young foreign players.

It is then argued that the current European football transfer system was born of the Court of Justice of the European Union's (CJEU) decision to apply free movement law to the football profession in the seminal case of *Bosman* (Case 145-93, [1995] ECR I-4921), and that the supranational organisation therefore bears some responsibility to mitigate the ill effects of the buoyant trade in young footballers from abroad that has thrived under this set up. Whilst it is acknowledged that the precise impact of the *Bosman* ruling remains debated, this decision, at the very least, brought the football transfer system within the scope of EU law, such that – read in conjunction with its growing children's rights agenda – it is unconscionable for the supranational body to ignore the issue of young migrant footballers.

A crucial part of this paper is to scrutinise attempts by football's governing bodies to stem this practice through a prohibition on the international transfer of minors. There is a prominent rhetoric from football's global regulator, FIFA, and sport's highest judicial body, the Court of Arbitration for Sport (CAS), espousing the importance of protecting minors and the need for the aforementioned outright ban to be applied effectively. Yet, the evidence is that clubs continue to recruit minor players from abroad in significant numbers. As the Wenger quotation above demonstrates, there are many within football who are strongly opposed to the current prohibition on the international transfer of minors. The possibility of discovering the next global superstar, for relatively little financial outlay, ensures that clubs will reluctantly

cede to a ban on this type of recruitment. The argument ventured here, therefore, does not posit any single legal solution; instead, it suggests that the EU has the political leverage, the legal competence and the range of policy tools at its disposal to spearhead activities aimed at exploring more effective responses to the negative impact of the football transfer and recruitment system on the rights of migrant child players.

## 2. Children’s Rights and Young Migrant Footballers

Current recruitment and transfer practices within the football industry, particularly in relation to young foreign players, raise a number of pertinent children’s rights and welfare questions. At one end of the spectrum are the deeply worrying, headline grabbing stories of rogue agents operating in developing countries, duping vulnerable young players out of large sums of money on the promise of a career in football that never materialises (Meneses 2013; BBC World Service 2014; BBC News 2014; Brown 2014). These practices, often likened to child trafficking, or described as a modern form of slavery,<sup>2</sup> certainly encompass numerous rights violations and leave a question mark over the extent of complicity on the part of a multi-million pound sporting industry that benefits so lucratively from the discovery of the next African, South American or Asian superstar. On the other hand, there are success stories: young migrant players who secure a contract with a European club, fulfilling their dreams of a career in professional football – perhaps most famously, Lionel Messi who, recruited by FC Barcelona at the age of 13 from his native Argentina, has enjoyed a prolific career in Europe and is now one of the most decorated players in global football. These success stories nonetheless pose important children’s rights questions, albeit subtler (but ultimately thornier) ones, around the ethics of the football industry: is removing a child from his home and family and transporting him across the world for the sporting and commercial gain of a football club ever justifiable? Understanding and conceptualising the complex range of children’s rights issues at play here is a challenge. What follows is the first mapping out of this social phenomenon from the perspective of children’s rights studies. Whilst there is only limited research on this topic, recent years have seen growing

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2 Whilst these practices are often referred to as trafficking and slavery in the colloquial sense, it is not clear that they would fall within either definition in the strict legal sense: see Article 1(1) of the Slavery Convention 1926, Article 2.1 of the ILO Convention (No. 29) concerning Forced or Compulsory Labour and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime.

media interest in the practices surrounding the recruitment of young players from abroad, the resulting journalistic investigations offer valuable insights for the social phenomenon at the heart of this analysis. The available evidence is presented with reference to the CRC, the accepted global touchstone for children's rights values, to highlight where current recruitment practices present children's rights issues.

## 2.1 The experiences of migrant child footballers

In recent years, the phenomenon of rogue football agents operating in developing regions of the world, and in particular Africa, has attracted media attention. These individuals are shown to be targeting young players, luring them to Europe with the promise of a trial at an elite European club, often using a process similar to people traffickers. Emboldened and inspired by superstars such as Cameroonian Samuel Eto'o and Ivorian Didier Drogba, who have enjoyed highly lucrative careers at top European clubs, young players and their families can be highly vulnerable to approaches by rogue agents. This is addressed in the 2012 documentary *Slaves to Football*:

In Africa, millions of young boys dream of escaping poverty by becoming professional footballers. But where there are dreams, there are people willing to exploit the dreamers. All over Africa, scammers posing as football agents are duping the families of young men out of their savings for the promise of professional football careers in Europe and elsewhere. (Von Einsiedel 2010)

A study commissioned by the European Commission in 2009 looked at available evidence to chart this phenomenon (KEA/CDES/EOSE 2009: 121). According to their findings, the process begins when an intermediary spots a player and promises to facilitate his recruitment to a European Club. These players frequently receive coaching at informal 'academies', which provide the most basic facilities and rudimentary training, whilst often working in conjunction with rogue agents (Von Einsiedel 2010). The prevalence of these academies is astonishing: as an example, there are an estimated 500 in Accra alone and 'thousands more spread across Ghana' (McDougall 2008). According to the European Commission report, the next step is that the intermediary pressures the player's family for money, the result often being that they sell their possessions or take out a loan having been convinced of a quick return on their investment (KEA/CDES/EOSE, 2009: 121). *Slaves to Football* suggests that many of these players never make it to Europe, the promised trial materialising at clubs offering less lucrative careers in places such as the Cape Verde Islands (Von Einsiedel 2010). Those that do travel to Europe, following illegal and dangerous journeys, are 'put to the test' by several clubs

... until the intermediary is satisfied or gives up the process' (KEA/CDES/EOSE 2009: 121).

Those young players who fail to secure a contract with a club are often abandoned by the agent, with reports of a growing homeless population of young footballing hopefuls across Europe (McDougall 2008), particularly in cities with a former colonial link to regions of Africa such as Paris and Brussels. An ex-Cameroon youth international, Jean-Claude Mboumin, has set up a charity, Culture Foot Solidaire, based in Paris, supporting these young players. He outlines the situation these children face when they fall prey to an unscrupulous agent:

So few make it, but they all come, more and more each year, and they are getting younger all the time. Thousands of kids to France. Everything is fluid in Africa – borders and passports. An increasing number of boys are coming by plane, not just the boats through the Canary Islands. One-month visas are easy to get with bribes in Africa, but after they fail their trials they stay on. They have nothing to go back to. These kids are as young as 14, they end up on the streets, worse off and in more danger than they could ever be at home. (Cited in McDougall 2008)

Given that, on the whole, these young men have travelled illegally to Europe using false documents they then become irregular migrants with no right to work and no income source. Furthermore, many are embarrassed by the prospect of returning home because of the sacrifices their families have made for a career that has failed to materialise (KEA/CDES/EOSE 2009: 121). They find themselves, as depicted in the documentary *Slaves to Football*, with “no passport, no permit and destroyed psychologically” (Von Einsiedel 2010). Jean-Claude Mboumin is keen to add that whilst most of the available information focuses on Africa, this is not a problem limited to this region, stating that it affects South America and eastern Europe as well (as cited by Aarons 2011). Indeed, in 2013 Juan Pablo Meneses published a book exposing the exploitation of young footballers in South America, highlighting the highly aggressive recruitment tactics utilised by European leagues in this region (Meneses 2013).

At the other end of the spectrum, there are huge success stories surrounding migrant players who are taken on by European clubs. In 2013, rival Spanish teams FC Barcelona and CF Real Madrid both signed prodigious talents from Japan aged just ten years, prompting a flurry of YouTube clips proclaiming the two players as the next stars of European football (South 2013). Players recruited to the top teams in Europe are placed in elite football academies, offering state of the art training facilities and bespoke educational programmes (Longman 2011). The potentially huge benefits to children who are able to access these cannot be ignored: the opportunity to play the game they love, with the accompanying benefits to health and well-being, alongside the possibility of a lucrative career. Indeed, as Arsène Wenger argues in

the quotation that began this chapter, the experiences of many of these young players fly in the face of accusations of trafficking and slavery.

On the other hand, it cannot be presumed that all young migrant players who secure a professional contract are safeguarded from exploitative practices and situations that threaten their security and well-being. Even if they are amongst the privileged few who are taken on by a clubs, feelings of isolation and loneliness can be more common amongst migrant players who are often living apart from their families, in culturally and linguistically unfamiliar environments. This is something that Jean-Claude Mboumin of Foot Solidaire argues ought to be addressed by the industry:

When you're discovering a new country, when you're injured, when you're at the end of your tether, you're alone because you're far away from your family. You're left to fend for yourself. (FIFA 2008)

Furthermore, whilst players dream of a career at a top European team, many end up in the lower leagues of less prestigious footballing nations. Here, the training and conditions offered are vastly different from the elite academies of the richest clubs. Often players are pressured into short-term contracts with precarious conditions that disadvantage them (KEA/CDES/EOSE 2009: 121).

## 2.2 The children's rights issues at play

The experiences of young migrant footballers outlined above vary considerably. At one extreme, there is growing evidence of a set of practices that – in addition to being criminal, with their slavery and trafficking-like characteristics – entail egregious violations of principles found in the United Nations Convention on the Rights of the Child. For example, the obligation on states parties to combat the sale and trafficking of children (Articles 11 and 35) and the range of provisions to protect children from various forms of exploitation, including economic (Articles 32 and 36). Furthermore, without appropriate support in place, uprooting a child from their home to move abroad at a young age can adversely impact their right to maintain contact with their parents (Article 9) and quite possibly interrupt their schooling in a way that is inconsistent with their right to education (Article 28). The failure of the football industry to engage with these practices is, of course, highly problematic and points to the need for intervention from outside the game.

Furthermore, as important as addressing these striking violations of the rights of the child is, they should not allow us to ignore the more controversial questions raised by the success stories: that is, those young people who succeed in securing a professional career with an elite club following migra-

tion to Europe. Is the very fact of allowing minors to play professional football incompatible with children's rights principles? This question goes to the heart of debates on child labour (see further: Ferreira in this book) and whether commercial and, in this case, sporting gain for adults on the back of work carried out by children is justifiable. These arguments engage the principles found in Article 33(1) CRC which protect children from 'work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development'. There has been quite limited debate on the application of child labour legislation to sport (see, as an exception: Donnelly 1997). Broadly speaking, where young players register with a football academy, the vocational and educational nature of the programme they are offered allows the activities to fall outside the scope of employment. However, a residual question mark hangs over the impact of the clear sporting and commercial gain (current or future) for clubs when they invest in young players on debates around exploitation and abuses of power in the context of children's rights. Interestingly, Michel Platini, the President of UEFA, European football's governing body, views the participation of migrant children in professional football as unjustifiably exploitative:

Paying a child to kick a ball is not that different from paying a child to work on a production line. Both amount to exploiting child labour. And when you pay a child or their parents to travel overseas, when you uproot them from their home environment, when you make them emotionally disorientated, I call that child trafficking ... Some people talk about the free movement of workers. I am talking about the protection of children. Some talk about competition law. I am talking about the right to respect human integrity; a child's right to grow up surrounded by their friends and family. (Michel Platini, UEFA President, Speech to European Parliament, February 2009)

Furthermore, although players who register with elite football academies largely escape the egregious children's rights violations that can occur as part of the football recruitment process, their successes nonetheless fuel these more insidious practices. As long as elite clubs continue to recruit young foreign players from overseas and these players enjoy high profile careers, a market will exist for unscrupulous agents and abusive practices.

Of course, whilst considering these questions, the fact that FIFA has had a prohibition on the international signing and transfer of players under the age of 18 in place since 2001 should not be forgotten. The fact that this sort of recruitment continues to take place – and is fuelling a set of practices that raise important and significant children's rights questions – underlines the need for a more effective interrogation of the phenomenon and its regulation. In light of this, the attention of this analysis now turns to the role that the EU – working alongside the football industry – can play in spearheading and facilitating this process. The essence of the argument that follows is that the EU, through its landmark ruling in the *Bosman* case, brought the football

transfer system within the scope of EU law. The result is a set of consequences for young migrant players that, whilst almost certainly unintentional, have fuelled the children's rights issues outlined above. The EU has, in recent years, affirmed its commitment to an increasingly ambitious children's rights agenda across the range of its activities – this, it is argued, compels a response to the issue of young migrant footballers from the supranational body.

### 3. Football's Transfer and Recruitment System: Creating a Market For Young Migrant Footballers

To understand the current – highly liberalised and highly commercialised – football transfer system, brief consideration must be given to its roots as part of a restrictive employment agreement which ‘shackled’ players to clubs ‘like a ball and chain’ (Maguire 1999: 102). Following the decision of the FA to professionalise the sport in 1885, a system of player registration was introduced to prevent individuals from appearing for several different clubs in the same season (see further: Magee 2006-7). This situation operated heavily in favour of clubs, however: once a player was registered, he was unable to move employers without the consent of the club who held his registration, even following the expiry of his contract. Clubs soon realised the potential to sell registrations, receiving a monetary sum as consideration for releasing the player – what is known as a transfer fee (see further: McArdle 2000: 19). As Monroe states: the system “was designed to protect smaller clubs by preventing players from club hopping, instead [it] resulted in the registration becoming something to be bought and sold” (Monroe 1999: 31). Pearson observes that, in some instances, this not only restricted the freedom of players to choose their employer, but, at its extremes, also prevented footballers from playing professional football completely (Pearson 2015). This situation was played out elsewhere in Europe: whilst the discussion here has considered the jurisdiction of the English FA, developments in France and Germany followed a similar trend (KEA/CDES/EOSE 2009: 29). Indeed, the international transfer system became irreversibly ‘Europeanised’ with the CJEU’s landmark ruling in the case of *Bosman* (1995). This decision laid the groundwork for a professional game that now – intentionally or otherwise – effectively incentivises clubs to recruit talented players from abroad at as young an age as possible.

Jean-Marc Bosman was an out of contract player with RC Liège in Belgium who wanted a transfer to French side FC Dunkerque. Liège would not allow Bosman to leave unless Dunkerque paid them a transfer fee; however,

the two clubs were unable to reach an agreement. A reference was made to the CJEU in respect of Bosman’s case, with the player arguing that his freedom of movement rights as a Community worker (ex-Article 48 EEC, now Article 45 Treaty on the Functioning of the European Union (TFEU)) were breached by a transfer system that effectively prevented him from taking up work in another EU Member State. The Court accepted Bosman’s argument and ruled that, once a player’s contract had expired, his original club could not demand the payment of a transfer fee, the latter only being permissible where the player moved clubs during their contracted period (*Bosman* decision: paras. 92-104). In effect, in one fell swoop, the Court had put an end to the payment of transfer fees across Europe.<sup>3</sup> The precise impact of *Bosman* on the football transfer system is complex and continues to be debated to this day; however, some effects of this decision are clear. First, it put players very much in the driving seat when it came to negotiating a transfer. Not only were they able, when out of contract, to move clubs without the need for their former and prospective employer to agree on a transfer fee, they were also in a stronger bargaining position in relation to salaries and signing on fees as their new club had not had to pay anything to secure their services. It is, therefore, often observed that the market liberalising effect of *Bosman* ushered in an era in which players are able to demand vast sums of money in return for their footballing services (KEA/CDES/EOSE 2009: 26).<sup>4</sup>

The CJEU made a second important ruling in *Bosman* (1995), namely that nationality based quota systems – which had previously existed in some domestic leagues and European football competitions, limiting the number of ‘foreign players’ that could be fielded by a team – also constituted an obstacle to freedom of movement of workers (*Bosman* decision: paras. 116-120). A number of arguments had been raised to support nationality based quotas including, interestingly for this discussion, that they safeguarded against an influx of foreign (both European and non-European) players and the risk that this may stifle youth development at a local level. The Court rejected this argument; instead pointing out that by opening up the job market in other EU

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3 For accuracy, it should be noted that, as a free movement of workers case under EU law (ex-Article 48 EEC, now Article 45 TFEU), this ruling initially applied only to transfers between clubs in different Member States. Further changes in 2001 applied the Bosman principles to players moving between two clubs in the same country (see FIFA’s RSTP). This is not to say that payments are no longer made to former clubs upon the transfer of a player, and these are often informally referred to as transfer fees. Following Bosman the football industry agreed upon a new system with the following features: compensation is paid to the club that trained the player each time he transferred up until the age of 23 (Article 20 RSTP); where a player breaches their contract without just cause a compensation fee will be paid to the original employing club (Article 17 RSTP).

4 This is not to suggest that *Bosman* is the only factor that has contributed to the increased earning power of footballers in over the past 20 years, merely that it was a key development in this trend. See further: KEA/CDES/EOSE 2009 KEA 2013.

Member States the abolition of quotas increased future employment opportunities (*Bosman* decision, para. 134). A further justification for the quotas was that they would prevent the richest clubs from signing the best players from abroad, thus threatening the competitive balance of the sport. It was accepted that the preservation of competitive balance in sport was a legitimate objective; however, the Court was of the view that the existing quotas did not achieve that aim as there are no rules limiting the possibility for clubs to recruit the best national players, thus undermining its achievement (*Bosman* decision: para. 135).

The most obvious impact of this aspect of the ruling in *Bosman* is the striking internationalisation of the football profession. Whilst the *Bosman* ruling itself initially applied only to transfers within the EU, it stimulated a shift in the culture surrounding football recruitment whereby clubs began to think globally when recruiting players. A recent analysis of the players in the first team squads of clubs in top division leagues in Europe revealed that the percentage classed as ‘expatriate’ has risen steadily over recent years and now stands at 37% (Poli/Besson/Ravenel 2014: 6). Similarly, the proportion of players who have experienced some sort of international migration during their career is 49%. Indeed, in the English Premier League, a team has not named a squad made up entirely of English players since February 1999 (Taylor 2011). Put quite simply, the migrant footballer has become a very common – and growing – phenomenon, with most players accepting that a move abroad will probably be required at some point in their career.

Furthermore, football’s governing bodies’ attempts to mitigate the effects of *Bosman*’s removal of nationality-based quotas have arguably created a situation which encourages clubs to ensure that, where they do recruit players from abroad, they do so at as young an age as possible. In 2005, UEFA introduced its ‘homegrown players’ rule, requiring each club to have four club-trained players and four players trained by a club in the same national football association in its 25-man squad. A player is ‘homegrown’ if, regardless of their nationality, they have been trained by their club (or by another club in the same national association) for at least three years between the ages of 15 and 21 (Freeburn 2009). Since the 2006-7 season, this rule has applied to all European club level competitions and, latterly, in many domestic leagues. The purpose of this rule is, according to UEFA, to encourage the local training of young players and to prevent richer clubs from ‘hoarding’ the best international talent (UEFA 2014). Ironically, however, if the protection of young players is UEFA’s priority, what the rule effectively does is incentivise clubs to recruit players from abroad at as young an age as possible: if a player joins a club before the age of 15, he will satisfy the homegrown player rule by his 18<sup>th</sup> birthday. This concern was raised by the European Parliament’s *Resolution on the Future of Professional Football in Europe*, in which it stated that “additional arrangements are necessary to ensure that the

home-grown players initiative does not lead to child trafficking, with some clubs giving contracts to very young children (below 16 years of age)” (European Parliament 2007: para. 35).<sup>5</sup>

Two key points have emerged from this discussion of the football transfer system. The first is that, following the *Bosman* decision in 1995, various factors have combined to create an environment in which a market in young footballers from abroad is likely to thrive. There is a relatively low financial outlay in recruiting players from overseas, particularly those who, at a young age, have none of the high costs associated with more established players. Furthermore, if the footballing services of that child can be secured before they turn 15, they are an even greater asset to their club, effectively becoming a ‘local’ player on turning adult. The second point to observe is that EU intervention contributed to this trend. In a general sense, this decision linked EU law and the structure of the football transfer system inextricably and indefinitely. More specifically, whilst a potentially problematic impact on the rights and welfare of young aspiring footballers overseas was almost certainly not an intended consequence of the *Bosman* ruling, it appears to be its by-product.

The next section will go on to discuss attempts by football’s governing bodies to allay fears surrounding aggressive recruitment of young players from abroad in the post-*Bosman* era and highlight the current weaknesses of these regulations, before the final section argues that the EU has a role to play in addressing these shortcomings.

#### 4. Attempts by Football’s Governing Bodies to Regulate the Trade in Young Migrant Footballers

Following *Bosman*, football’s governing bodies and representatives of both the international players’ union (FIFPRO) and the domestic leagues, worked with the EU to establish a new set of rules governing transfers. Central to these negotiations was the status of young migrant footballers. The result was FIFA’s Regulations for the Status and Transfer of Players (RSTP), introduced in 2001, which prohibit the international transfer of players under the age of 18 (Article 19), subject to certain exceptions. These regulations apply globally and, therefore, bind all players and clubs registered with any national football association who take part in official competitions. The provision applies not only to players moving between clubs, but also to initial regis-

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5 It should be noted that there is limited empirical evidence of the actual impact of the rule on clubs' recruitment strategies (Dalziel et al 2013: 63).

tions (Article 19(3) RSTP). Therefore, the regulations (in theory at least) prevent any registration of non-national minors from abroad, a significant limitation on the capacity of clubs to recruit talent on a global scale. Furthermore, FIFA have gradually introduced a series of further checks in an attempt to identify unscrupulous practices on the part of clubs and agents and ensure compliance with Article 19. Since 2009, all international transfers and first registrations of minors are considered by a sub-committee of FIFA's Players' Status Committee.<sup>6</sup> This is facilitated by a computer based transfer matching system, which requires clubs to input information on all non-national players who are the subject of a transfer or first registration. This information relates to proof of residence for the player and players' parents, as well as the academic education and football training that will be offered by the receiving club. Without the approval of the sub-committee the transfer cannot go ahead.

Evidently, however, there remains a buoyant trade in young international footballers, and as long as clubs continue to sign these players the exploitative practices surrounding this market are likely to remain. It is not always clear how clubs manage to circumvent the prohibition on transfers of minors: most reports of this practice in the news media simply state that a signing has taken place, with FIFA's ban (and its ineffectiveness) rarely mentioned. Of course, the possibility exists that forged documents are used, or that administrative errors occur (some, presumably, less accidental than others).<sup>7</sup> Equally, however, some attention should be given to a number of exceptions to the general prohibition on the international transfer of minors that are enumerated in Article 19 RSTP. Whilst each of these exceptions serves an important purpose by allowing young players to pursue a career in professional football in fairly uncontroversial circumstances, they nonetheless open up possibilities for manipulation by clubs desperate to sign young overseas players. This section will begin by discussing each of these exceptions and (where applicable) pointing to the ways in which they weaken the overall prohibition. Following that, cases in which FIFA have taken action against clubs for breaching Article 19 RSTP will be outlined. Here it is noted that the Court of Arbitration for Sport (the final court in disputes relating to FIFA Regulations) has interpreted Article 19 RSTP strictly, giving a high priority to the aim of the provision in protecting minors. This section will demonstrate that a promi-

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6 Details on how these procedures protect minors is found on FIFA's website (2011): [http://www.fifa.com/aboutfifa/organisation/footballgovernance/news/newsid=1493936/\(2014-13-10\)](http://www.fifa.com/aboutfifa/organisation/footballgovernance/news/newsid=1493936/(2014-13-10)).

7 Indeed, in some places it is suggested that when they were recently sanctioned for a breach of Article 19 RSTP, Barcelona FC took advantage of the possibility of registering their players with either the Spanish FA or the Catalan FA for the purposes of the transfer matching system. See further: [http://www.asser.nl/Default.aspx?textid=40903&site\\_id=11&level1=&level2=13914](http://www.asser.nl/Default.aspx?textid=40903&site_id=11&level1=&level2=13914) (2014-13-10).

nent rhetoric espousing the importance of protecting minors through an uncompromising stance in relation to foreign recruitment is evident at the highest echelons of football governance and from sport’s judicial bodies, yet there is a significant mismatch with the effectiveness of this stance in reality. This is the basis for the argument that a form of legal or policy intervention is required to stimulate work towards a more effective regulatory response.

#### 4.1 The Article 19 RSTP exceptions

The first exception to Article 19 RTSP is that, within the EU/EEA, a lower threshold is set and players may move between countries from the younger age of 16 (Article 19(2)(b) RSTP). This allows intra-European migration of footballers at a younger age than the wider prohibition. Furthermore, it should be noted that this exception is not restricted to EU citizens (that is nationals of one of the Member States (Article 20(1) Treaty on the Functioning of the European Union)), instead extending to the transfer of a player of any nationality between two clubs within the EU/EEA. Anecdotally, there are suggestions that agents of young players from outside Europe make use of countries within this area who have more relaxed nationality laws, or ones where there is a ready trade in false passports, to gain access to the territory.<sup>8</sup> Once a player is legally resident in an EU/EEA country, or they have signed with a club within that area, they can then access the remainder of the territory whilst under the age of 18.

Second, an exception exists in relation to players who live near a national border and intend to register with a club in a neighbouring country, a group that will be termed ‘frontier players’.<sup>9</sup> This provision applies anywhere in the world, but is obviously particularly relevant within Europe where the EU’s free movement laws have made travel between Member States for work especially commonplace. The relevant provision states that both the player’s home and the registering club must be within 50km of the border, and that the distance between these two locations must not exceed 100km (Article 19(2)(c) RSTP). This is a fairly unremarkable exception to the wider prohibi-

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8 It is not appropriate to cite an authority on this point, given the evidence is anecdotal. However, the suggestion has been made that Bulgarian passports can be obtained by young aspiring players with relative ease, thus granting them access to all clubs in Europe.

9 This term evokes the concept of a frontier worker in EU law. Broadly conceived, this refers to someone who works on one side of a border but lives on the other, and returns home at least once a week and is, therefore, entitled to special provisions in relation to access to social security benefits (Article 1(b) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 149, 05/07/1971, 0002-0050)

tion: it envisages a scenario in which there is technically an international dimension, but in reality any such registration would not require a player to be uprooted from their family and home. Indeed, at elite level, it is far from unusual for a young sportsperson to travel a distance of 100km within one country; this provision simply ensures that players living near a border are not denied the opportunity to access local clubs, for the mere reason that travel just happens to involve crossing a border.

The final exception found in Article 19 RSTP applies when the player's parents move to the country in which the new club is located for reasons not linked to football (Article 19(2)(a) RSTP). On the one hand, it is an appropriate exception: it would be problematic if FIFA's ban on international transfers and registrations of minors created barriers to the opportunities offered to the children of recently arrived migrant families. On the other hand, this provision seems to provide a way of circumventing FIFA's regulations. As happened in the case of *Cádiz* (CAS 2005/A/955), discussed below, the 'reasons not linked to football' can be created after the club has expressed an interest in the player and – if these are believed by the Players' Status Committee – the transfer of a minor will proceed as an exception to Article 19 RSTP. Clearly, where facts that contradict the contention that the decision to migrate preceded the club's interest in the player come to light, the club and player risk contravening Article 19 RSTP and the transfer will be banned, as happened in *Cádiz*. However, although there is little research on this point, anecdotally it is suggested that this provision provides the most common route around FIFA's prohibition on the international transfer of minors. For a fuller understanding of how FIFA's prohibition on the international transfer of minors operates and how Article 19 RSTP has been interpreted by sport's highest judicial body, the Court of Arbitration for Sport, the principle cases in the area will now be discussed.

## 4.2 A children's rights rhetoric from FIFA and CAS?

In February 2005, Carlos Javier Acuña Caballero, a 16 year old Paraguayan player with Club Olympia de Paraguay, signed a contract with the Spanish club Cádiz CF. He had been scouted by an agent at an under-20s international tournament in Colombia the previous month. The Paraguayan FA blocked Acuña's transfer on the basis of non-compliance with FIFA's Regulations on the Status and Transfer of Players, including Article 19 RSTP: at 16 years of age, Acuña was a minor and fell within the prohibition on international transfers (here from Paraguay to Spain). At the club's request, the Spanish FA appealed to the FIFA's Players' Status Committee. The evidence put to the Committee was that the Cabellero family were in financial difficulty and so

intended to move to Spain for Mrs Cabellero, Carlos’s mother, to take up a job in a restaurant. In other words, the club argued that the family’s move to Spain was for reasons unrelated to football, thus bringing the player’s situation within one of the exceptions permitted by the RSTP.

The Players’ Status Committee was not satisfied with the explanation of the family and Cádiz CF, ruling that the transfer would breach FIFA regulations, a decision that the Club subsequently appealed to CAS. Before the Court, the appellants first attempted to have FIFA rules on the protection of minors declared void, arguing that they conflict with mandatory provisions of public policy, relying in particular on several provisions of international law, Swiss law and Spanish law.<sup>10</sup> CAS rejected this argument, ruling that limiting the international transfer of minors is a legitimate objective and, given that the regulations provide for ‘some reasonable exceptions’, they are proportionate to that aim (*Cádiz* decision: Para. 7.2.2.). In its ruling on this point, CAS endorsed the importance of ‘protect[ing] young players from international transfers which could disrupt their lives, particularly if, as often happens the football career fails, or, anyway, is not as successful as expected’ (*Cádiz* decision: Para. 7.2.2.). Furthermore, the Court, having heard evidence afresh, was of the view that that the accounts of the player, his mother and Cádiz FC were not credible – the ruling on the facts being that the mother was offered her job a week after the contract between her son and the club was agreed. The transfer, therefore, did not fall within the exception, the Court ruling that the family had in fact moved to Cádiz exactly because of the player’s football career.

Overall, the *Cádiz* case represented a robust defence of the purpose behind Article 19 RSTP: no one reading the case would be in any doubt as to the importance placed by CAS on the protection of minors as a legitimate objective, justifying restriction on players’ international movement. This was lent further force by the subsequent decision in *Midtjylland* (CAS 2008/1/1485). FC Midtjylland, a Danish Premier League Club, has an established cooperation with FC Ebedei, a Nigerian club based in Lagos. This agreement gives Midtjylland the purchase option on talented players from the Nigerian club. Over the course of the 2006-7 season, six Nigerian players aged 16 and 17 were registered with the Danish club. The issue in this case was that the players were granted licences by the Danish FA as *amateur* players and the club argued that as non-professionals they fell outside the scope of Article 19 RSTP. There was no dispute that the players fell within the Danish FA’s definition of amateur players: they had been issued with student visas by the Danish Immigration Service and were studying at public schools (albeit part-

10 The Court gives short shrift to this argument so the reported decision is not particularly expansive on its substance. However, the club and player seem to have argued that the players’ right to pursue his profession is not upheld and the principle of non-discrimination on the grounds of sex, nationality and race is contravened (see Para. 3).

time to allow for their football training) and received only a modest contribution towards board, lodgings and pocket money. In deciding that Article 19 RSTP did apply to the amateur players in question, the Court advocated a purposive reading of the provision, in light of its clear intention to protect young people:

Any other construction would be contrary to the clearly intended objective and spirit of the regulation ... to apply Art 19 of the RSTP restrictively ... could result in obviating protection of young amateur players from the risk of abuse and ill treatment which was clearly not within the anticipation of the scope of the regulation. (*Midtjylland* decision: Para. 7.2.5)

A further outcome of the *Midtjylland* case was that CAS confirmed FIFA's Players' Status Committee will accept two further exceptions to Article 19, limited to the situation of students who are signed from abroad. This is the case where: relocation is for the purposes of studies, not football related activity; or relocation is in the context of an agreement between the football association of origin and the new club, within the scope of a development programme subject to strict conditions (e.g. the provision of education, for a limited duration etc.). In relation to the facts before them, CAS ruled that the Nigerian players did not fit into either of these categories, so their transfers were not permitted.

In April 2014, FIFA's Disciplinary Committee sanctioned FC Barcelona and the Spanish Football Federation (RFEF) for breaches relating to the international transfer and registration of players under the age of 18.<sup>11</sup> The sanctions arose from investigations through FIFA's Transfer Matching System and related to activities during the period 2009 to 2013 concerning ten minor players. The most high profile of these was Seung-Woo Lee, signed by Barcelona in summer 2011 at the age of 13 and touted as the 'Korean Messi'. Now 16, Lee is a star of Barcelona's youth team and has signed a contract to remain at the club until 2019, reportedly turning down a number of lucrative offers to play elsewhere in Europe.<sup>12</sup> The punishment imposed on FC Barcelona was a transfer ban at both national and international level for one year and a fine of 450 000 Swiss francs (approximately €370 000). The club was also given a period of 90 days to regularise the situation of the relevant minor

11 At the time of writing, the full decision of the Disciplinary Committee has not been made public, with the fullest account offered by a press release on FIFA's website: <http://www.fifa.com/aboutfifa/organisation/news/newsid=2313003/> (2014-23-10). Further information is provided in the official response from Barcelona FC, published on their website: <http://www.fcbarcelona.com/club/detail/article/official-statement-from-fc-barcelona-on-the-sanctions-imposed-by-fifa-s-disciplinary-commission> (2014-23-10). A useful analysis is provided by van Maren and Marino 2014.

12 As an aside, it is interesting to note that, regardless of how he came to sign for Barcelona at the age of 13, the option to move elsewhere in Europe club became available to him when he turned 16 as transfers within the EU/EEA are permitted under Article 19 RSTP from this age upwards..

players. The Spanish Football Federation was fined 500 000 Swiss Francs (approximately €410 000) and given one year in which to reform its regulatory system for the international transfer of minors. In the press release published on FIFA’s website, the governing body noted the ‘serious’ nature of the infringements as justification for the heavy penalty imposed. Furthermore, FIFA stated that that ‘the protection of minors in the context of international transfers is an important social and legal issue that concerns all stakeholders in football’.<sup>13</sup>

The sanction imposed on FC Barcelona appeared, at first sight, to be significant on a number of fronts. First, whilst few had any doubts that, with a reported annual turnover of more than €400 million, FC Barcelona would have little problem meeting the financial penalty, the imposition of a transfer freeze had the potential to place a significant burden on the club. At the end of the 2013-14 season, the first team squad was widely considered to be in need of strengthening in certain key positions and the club had been linked with a number of high profile transfer targets (van Maren and Marino 2014). At the time the sanction was announced, the possibility that the club would not be able to make these reinforcements was significant enough to be seen as a threat to its likely success in domestic and European competitions for the following season, no trifling matter for a club of Barcelona’s reputation and stature. Secondly, this is the first high-profile case brought under Article 19 RSTP against a leading European club, such as FC Barcelona. The cases against Cádiz FC and FC Midtjylland concerned teams that do not enjoy the same global sporting profile as Barcelona. In the Midtjylland case, before CAS, the Danish club argued that they were unfairly discriminated against by FIFA who, it was alleged, was targeting smaller clubs whilst ignoring infringements of Article 19 RSTP by large European teams, citing FC Bayern München as an example. This argument was rejected by the Court, who referred to the legal principle that ‘no one can claim for equal treatment by referring to someone else who had adopted illegal conduct without sanction’ (Midtjylland decision: Paras. 7.5.1-7.5.6).

However, the argument illustrates that there is a belief that larger clubs are immune from sanctions for violation of Article 19 RSTP, a perception that is significantly challenged by the case against FC Barcelona. Thirdly, La Masia is a highly respected football academy, with a reputation for nurturing young players in a holistic manner which places high value on educational opportunity and personal development, as well as elite football training (Longman, 2011). As such, the message sent out by the sanctioning of this club is that transfer of minor players from abroad will not be tolerated regardless of the level of opportunity offered – and regard for individual welfare – when the player arrives in Europe. This case was not about targeting just the more

<sup>13</sup> See the FIFA website: <http://www.fifa.com/aboutfifa/organisation/news/newsid=2313003/> (2014-02-02).

exploitative practices associated with the recruitment of young players from abroad; instead the decision to sanction Barcelona suggests that FIFA, consistent with the wording of Article 19 RSTP, views any transfer of a minor from outside Europe as problematic. Indeed, FIFA's press release emphasises the level of importance attached to the protection of minors by the Disciplinary Committee:

... the protection of minors in the context of international transfers is an important social and legal issue that concerns all stakeholders in football. Above all, the committee highlighted that while international transfers might, in specific cases, be favourable to a young player's sporting career, they are very likely to be contrary to the best interests of the player as a minor. On the basis of this analysis, the committee concluded that "the interest in protecting the appropriate and healthy development of a minor as a whole must prevail over purely sporting interests". (FIFA 2014)

Accordingly, it seems that FIFA, in imposing such a significant and high profile sanction in the interests of upholding the protection of minors, has sent out a clear message in relation to the recruitment of young players from abroad. FC Barcelona, however, vehemently defended their actions, stating that: 'FCB [FC Barcelona] creates people before they create athletes, a fact that has not been considered by FIFA, which has applied a penalty ignoring the educational function of our training programme'.<sup>14</sup> The club appealed FIFA's decision and – crucially – the transfer ban was suspended until the appeal could be heard. This decision significantly reduced the force of the initial sanction. It allowed the club to make a number of signings during the summer of 2014, such that the squad could be reinforced in a way that built capacity for any future reinstatement of the ban. Whilst FIFA rejected the appeal, the potency of the initial sanction was lost: the transfer ban with immediate effect would have hurt FC Barcelona on the field far more than one that can be planned for. Barcelona subsequently appealed the case to CAS who, in late December 2014, days before the first transfer window of 2015 opened, announced that the appeal had been rejected and that the ban would enter into force immediately. The result is that FC Barcelona will be unable to sign any players for the duration of 2015. In order to ensure that the ban was in place for the start of the transfer window, CAS released the decision without its reasoning, which at the time of writing remains unpublished, so further comment on the case is not possible.

One thing that appears to be certain is that, in spite of a clear stance from FIFA and CAS that the wording and spirit of Article 19 RSTP must be upheld, the current market in young footballers from abroad continues to thrive. There is ample evidence that current recruitment strategies are well embedded in a number of regions across the world and that clubs will search out legal loopholes to ensure they can continue to tap these markets. In spite of

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14 As cited by Riach 2014.

this prominent rhetoric from both FIFA and CAS in support of a provision that claims to protect minors, it is clear that systemic issues within the football industry are fuelling practices that run counter to both the content and spirit of Article 19 RSTP. Aside from these cases, brought by FIFA and upheld by CAS, there appears to be little work to challenge a culture which both accepts and nurtures a high level of recruitment from abroad by clubs at every level of European football. In light of the football industry’s failure, then, to tackle on its own this phenomenon, the argument now turns to the role of the EU, as both a legal and political body, in mobilising a response that meets the children’s rights challenges presented by this phenomenon.

## 5. Making the Case for EU Intervention

Previous sections have demonstrated that a prohibition on transfers of footballers under the age of 18 from outside the EU (and under 16 within the EU) has not curbed a buoyant trade in young people from abroad who dream of playing in Europe’s football leagues, but who experience extremely varied degrees of success. This final section argues that the EU has a role to play in exploring, highlighting and combating the more damaging consequences of this phenomenon. To begin, it is important to underline that this argument does not suggest the football industry itself does not have a fundamental role to play in addressing this issue – indeed, any changes to the regulation of the transfer system or other measures to promote the rights of children in this scenario would require the full support and cooperation of relevant governing bodies. However, in light of the limited progress made thus far by FIFA’s attempts to regulate the international transfer of minors – and given the EU’s increased activities in recent years in relation to both children’s rights and sport – it is argued that the supranational body, working alongside stakeholders from within the industry, has a role to play in spearheading a more effective response. The discussion that follows is necessarily sensitive to the limited legal competences enjoyed by the EU in relation to both children’s rights and sport, and considers the range of legal and policy options open to the EU, including those which move beyond a traditional legally binding regulatory approach. Crucially, this allows suggestions to be made for a role for the EU which has at its heart the need to work with the football industry to address this issue.

## 5.1 The rationale for EU intervention from a children's rights perspective

Whilst the EU has historically played a very hands-off role, recent years have seen an increase in activities targeting young people in a wide range of legal and policy areas and the emergence of an explicit agenda in relation to children's rights (Commission 2011). Justification for supranational intervention in this arena clusters around two central arguments, both of which support the contention ventured here that the EU has a role to play in addressing the impact of the transfer system on the rights of young migrant footballers. First, there is a case for EU action in relation to children's rights where supranational intervention has added-value: that is, where the EU is able to achieve a more effective result through a single response, than each Member State would act alone (Stalford 2012: 7). Often this occurs in relation to issues that have a cross-border or cross-jurisdictional element, such as divorce and parental responsibility disputes arising from international family breakdown (Stalford 2012: 89). This argument is certainly relevant here: football is heavily regulated at international level by both FIFA and UEFA and the transfer system operates, certainly since *Bosman*, in an inherently cross-national manner. Here, however, the added-value of EU intervention lies equally potently in the coherence of a coordinated approach and the efficiency of working together to confront a problem that manifests itself across a number of Member States, with all of Europe's professional football leagues boasting players recruited from abroad.

Secondly, the EU, in acting within established areas of competence, can create policy 'spill-overs' which operate to the detriment of young people, such that where this happens there is clear justification for supranational intervention in the children's rights arena (Stalford and Drywood 2009: 146). Broadly speaking, protection of fundamental rights by the EU is constitutionised in Article 6 Treaty on the European Union (TEU). This protection manifests itself in a number of ways, but at its heart lies the basic proposition that the EU must ensure its powers are exercised in a way that respects the rights recognised in a number of instruments, most explicitly the Charter of Fundamental Rights of the European Union and the ECHR (Article 6 TEU). This is supplemented by a reference to the Union's role in contributing to protection of the rights of the child found in Article 3 TEU, a provision which, rather than creating additional legislative powers, instead outlines a set of values and principles which inform the exercise of existing EU competences. The Court has ruled that the United Nations Convention on the Rights of the Child informs general principles of EU law and can, therefore, be used to review the legality of the acts of the institutions, as well as the implementation of Union law, or indeed any activities that fall within the scope of

Union law (Case C-540/03 *Parliament v Council* [2006] E.C.R. I-5769). As an example, in *Dynamic Medien* (Case C-244/06 [2008] ECR I-505), the Court found that protection of the child was a legitimate interest justifying a breach of free movement of goods principles. Equally, the Court recognised in its decision in *Bernard* (Case C-325/08 [2010] ECR I-02177) that the post-*Bosman* system of replacing transfer fees with the payment of compensation to a footballer’s former club to reflect their investment in the player’s training in principle constituted a breach of free movement provisions, but could be justified on the basis that it encourages the recruitment and training of young players. In other words: the Court has made it clear that protection of the rights of the child informs the exercise of free movement law and, indeed, can act as a brake on the pursuit of this objective. Given the current football transfer system has been significantly shaped by the *Bosman* ruling – and the decision to apply free movement law to this aspect of sporting regulation – a link is formed between its impact on the status of individual players and the constitutionalised obligation to respect fundamental rights. It has been shown that, through its liberalising effect on the transfer system, the *Bosman* ruling contributed to an environment in which the recruitment of young players from abroad has thrived. Indeed, trends such as the internationalisation of professional football and the emphasis on recruiting players at a young age in order to acquire cheap talent, or as a response to the homegrown players rule, are arguably – directly or indirectly – linked to the CJEU’s decision in *Bosman* to apply free movement provisions to the football transfer system. It can, therefore, be argued that the EU’s role in aggravating a children’s rights issue creates an obligation to pursue activities that mitigate these ill effects.

That said, it should not be assumed that an argument which ‘constitutionalises’ the need for EU action in this area also suggests that this ought to take the form of judicial intervention or binding legislation, something that would be legally difficult given the EU enjoys no standalone legislative competence in relation to children’s rights. A central characteristic of EU children’s rights activities, as they have developed over recent years, is the deployment of a number of alternative ‘soft’ modes of governance that offer effective tools to address the detrimental impact that ‘hard’ law can have on the status of young people (Stalford and Drywood 2009; Drywood 2010). So, whilst it is the connection to free movement law that provides the ‘hook’ for EU intervention – since respecting free movement seems to have increased the likelihood of young players being recruited from abroad – the impact of this does not have to be mitigated through the hard law approaches traditionally associated with the internal market. Furthermore, as will be argued in the following section, the most appropriate legal basis for EU activity to address the impact of the transfer system on young migrant footballers is Article 165 TFEU; a competence which grants powers to act in support of, to coordinate and to supplement Member State actions in the field of sport. This type of

competence is typically associated with the adoption of broad guidelines or incentive measures, or facilitating the exchange of information about best practice (Dashwood et al 2011: 104) and, therefore, primarily provides a legal basis for soft law activities. Furthermore, it has been observed that the range of soft law tools at the Union's disposal is well suited to politically or culturally sensitive areas that require a more participatory and consensual-based form of supranational governance (Trubek/Trubek 2005; Beveridge/Velluti 2008), suggesting that this approach is well suited to an issue that requires the delicate balancing of a number of competing agendas and respect for the deeply engrained principle of sports' governing bodies' autonomy.

## 5.2 The rationale for EU intervention from a sports perspective

The EU's competence to support, coordinate and supplement activities in relation to sport was introduced by the Lisbon Treaty. Crucially, this provision includes the direction that 'Union action shall be aimed at ... protecting the physical and moral integrity of sportsmen and sportswomen, *especially the youngest sportsmen and sportswomen*' (Article 165(2) TFEU; emphasis added). Read in conjunction with supranational obligations in relation to children's rights, outlined above, it is argued that there is a clear basis for EU intervention in relation to the impact on young people of a trade in migrant footballers where there is a political desire to push an agenda forward. Further, it is argued that this political desire is, indeed, present for two principal reasons: first, that sports policy at EU level has, in recent years, been shaped by a move towards the promotion of social, and not solely economic, objectives; second, that there is strong evidence of a desire to address the specific situation of young migrant footballers from within both the Commission and the European Parliament.

Whilst the EU initially entered the arena of sports law in the early 1970s as a by-product of its competences in other areas, particularly free movement and competition law (Case 36/74 *Walrave*[1974] ECR 1405; Case 13/76 *Donà* [1976] ECR 1333; Case 222/86 *Heylens*[1987] ECR 4097; *Bosman*), more recent years have seen the emergence of a genuine supranational sports policy, that is a more holistic and coherent agenda that addresses sport as a policy area in its own right (rather than merely as an accidental subject of EU law). Crucially, the institutions have made efforts to move away from an engagement with sport in a purely economic context and to emphasise its social value. A critical reason for this was that the *Bosman* decision – and particularly the effect it had upon the earning powers of footballers – gave a sense that the EU's impact in the sporting arena was not necessarily a posi-

tive one, and quite possibly inconsistent with its emerging social and citizenship based objectives:

The EU was seen as a venue through which the full commercial potential of sport could be exploited at the expense of the real values of the game. As such, the EU was not reconnecting itself with its citizens, it was taking the people's game further away from them. A body of opinion emerged within the EU seeking to give the socio-cultural and integrationist qualities of sport a higher priority and for sport to be afforded a higher level of protection from EU law. (Parrish 2003: 14)

When the Treaty of Amsterdam was signed in 1997 a short Declaration was annexed to the document emphasising ‘the social significance of sport’ and calling on EU bodies ‘to listen to sports associations when important questions affecting sport are at issue’ (OJ C 340/136 10.11.1997). The most explicit articulation of the scope and content of EU sports policy is now found in the Commission’s *White Paper on Sport* (Commission 2007), a document which addresses the economic dimension of sport and its organisation, but places the most significance on its societal role. Indeed, a strong feature of the White Paper is the prominence given to the protection of minors and the need to combat exploitation of young people in professional sport. The Commission highlights bad practices by some agents, including the exploitation of young players, as damaging the sport and raising questions about its governance, going on to state that the health and security of minor players must be protected (Commission 2007: 15). Furthermore, the potentially fraught status of young migrant footballers who are unsuccessful in securing a professional career is acknowledged and identified as a concern:

The most serious problem concerns children who are not selected for competitions and abandoned in a foreign country, often falling in this way in an irregular position which fosters their further exploitation. Although in most cases this phenomenon does not fall into the legal definition of trafficking in human beings, it is unacceptable given the fundamental values recognised by the EU and its Member States. It is also contrary to the values of sport. (Commission 2007: 16)

The European Parliament has also drawn attention to the practices referred to above, itself preferring to categorise them as trafficking (European Parliament 2007). The Parliament makes a direct link between the recruitment of very young players and the introduction of the homegrown players rule and raises concerns over the status of ‘trafficked’ players from the point of discovery, through to recruitment and reception and their welfare in the event that they are not selected by a European team (European Parliament 2007: Paras. 35-38). It also highlights the importance of educational provision for young players (European Parliament 2007: Para. 39). The level of awareness shown by the institutions in relation to the children’s rights issues relating to the status of young migrant footballers, and the prominence given to these concerns in key policy documents, establishes a clear political desire to address this question at EU level.

### **5.3 Softly, softly: The use of alternative modes of EU governance in the context of children's rights and sport**

This, of course, leads on to the question of what form EU intervention on this issue would take. As has been suggested, the relevant legal bases in relation to both children's rights and sport support the use of 'soft' modes of governance and, indeed, these are activities which the supranational body has deployed effectively in both areas in the past. Whilst an in-depth outline of potential EU activities to promote the rights of young migrant players in the football industry is beyond the scope of this chapter, some brief elaboration is merited in order to further bolster the central argument that the EU has a role to play in addressing this issue.

First, as has been argued above, it would be neither legally possible, nor politically appropriate, for the EU to target a children's rights agenda in the context of the football transfer system through binding legal measures. Indeed, Garcia observes that in the post-*Bosman* era, much progress was made by the Commission in terms of the EU's role in regulating the football industry, not through the imposition of formal sanctions, but rather as a result of negotiations with the relevant governing bodies (Garcia 2007a). He further argues that football's European governing body, UEFA, now sees the EU as a 'long term strategic partner' and cites one reason for this being that the two bodies enjoy a shared set of social values and a belief in their contribution to sport (Garcia 2007b: 216). The idea of the EU as an agenda-setter in the context of the football industry very much accords with the approach taken in relation to a number of children's rights questions. In this context, the powerful political status enjoyed by the supranational body has provided a focal point for discussions and negotiations surrounding any coordinated activity where a complex range of stakeholders are involved. Stalford has observed that:

The EU offers a unique forum and source of funding to bring together a range of actors at international, European and domestic level to share experience and best practice on such issues, set mutually-agreed benchmarks, and stimulate wide dissemination, awareness-raising and policy exchange. (Stalford 2012: 7)

The task of bringing together governing bodies, football clubs and players' representatives, alongside experts on children's rights on the issue of recruitment of young players from abroad is a challenge, particularly, given the lack of consensus from within the football industry in relation to the appropriateness and efficacy of the current prohibition on international transfers of minors. A supranational body such as the EU enjoys a status which can achieve this and, crucially, possesses the funding to explore a range of options to improve the children's rights situation for young migrant players.

Second, as was highlighted in an earlier section, evidence in relation to the children’s rights consequences of recruitment of young foreign players to European football is limited. This remains a chronically under-researched area with much of the evidence that policy-makers have to work with resulting from small scale investigations by journalists (for example: Brown 2014) or ones with a narrow regional focus (for example: Menses 2013). If effective responses to this situation are to be agreed upon, a solid – and fuller – evidence-base is needed. Crucially, this would need to be commissioned by a body with the political leverage to ensure the cooperation of relevant stakeholders. The Commission and European Parliament have previously overseen large-scale pan-European research into aspects of sports regulation, such as a 2009 study on sports agents in the European Union (KEA/CDES/EOSE 2009). Furthermore, the EU’s Fundamental Rights Agency provides expert advice to the institutions and has produced reports on the status of groups of migrant children to assist policy-makers.<sup>15</sup> Alongside assisting policy-makers working with stakeholders within the football industry on this issue, any such research would have a further awareness-raising function, thus increasing pressure on the football industry to address it.

Thirdly, as the EU continues to engage with the football industry, primarily through economic aspects of its regulation, the rights of children impacted by these legal and policy developments must be mainstreamed into its activities. Children’s rights mainstreaming has been defined as ‘[t]he incorporation of children’s rights, needs and welfare, according to the principles of the UNCRC, at all stages and at all levels of EU law and policy-making’ (Stalford and Drywood 2009: 163). So, for example, if any future legal developments in relation to the free movement of persons or competition law were to impact on the football transfer system (in the way that *Bosman* and subsequent rulings did), the mainstreaming principle requires all institutions, legislative and judicial, to uphold children’s rights principles through these activities. Increased awareness at institutional level of the impact of EU activities on the status of young migrant players, through the research activities suggested above, would facilitate the mainstreaming of children’s rights when the supranational body exercises its competence in relation to the football industry. Crucially, therefore, EU actions suggested here in relation to the rights of young migrant players in the European football industry must be viewed holistically – as a package of tools at the EU’s disposal which can be used to increase awareness of the problem and identify ways of improving it – but which require the participation and cooperation of the football industry itself if they are to yield any practical effects.

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15 See <http://fra.europa.eu/en/publications-and-resources> for a list of FRA publications (2014-13-10).

## 6. Conclusion

This chapter had two aims. The first, broader, priority was to establish the phenomenon surrounding the recruitment of young foreign players to European football clubs as an important area of analysis within children's rights studies. This was done by weaving together evidence relating to the treatment and experiences of children with relevant provisions of the CRC. This demonstrated that a set of egregious children's rights violations occur in the name of recruiting children to European football clubs. Surprisingly, with the exception of a few newspaper pieces, this phenomenon has received very little attention from either the NGO/charitable sector or policy-makers at any level. Equally, the football industry itself has failed to engage with the failure of its 2001 ban on the recruitment of young foreign players and the insidious consequences of a continued trade in migrant footballers. To fully confront this problem a difficult question needs to be tackled: that is, the extent to which it is acceptable for football clubs to profit in sporting and commercial terms from their current reliance on young, foreign players. There is conflict within the industry on this point and a failure from those outside of it to provide a platform for its discussion. Certainly, this complex question requires further unpacking in academic terms; subjecting the full gamut of experiences of young migrant footballers to a children's rights-based analysis is a priority for future research. Fascinating questions await surrounding the relationship between child labour and elite sport; the suggestion that the aggressive recruitment of young foreign players is a form of modern slavery; and the appropriateness of an outright ban on minor footballers from abroad participating in Europe's leagues. This chapter – as the first significant analysis of this phenomenon – has laid down a challenge to both academic commentators and policy-makers to grapple with these questions.

But if we are to criticise the failure of those outside the football industry to confront this problem, where should we target our efforts? The second central argument of this chapter is that the EU is – both legally and politically – the appropriate body to stimulate a more effective response to the children's rights issues arising from current practices around the recruitment of young foreign players. However, rather than suggesting merely that an inherently cross-border phenomenon such as this would be more *effectively* dealt with via European-level intervention, the argument is rather that the supranational body ought to be *compelled* to spearhead activities to confront this problem because of its growing agendas in relation to both sport and children's rights. Following the CJEU's decision in *Bosman* two decades ago, the football transfer system has operated at a European level and has submitted to the scrutiny of EU law, the latter having a significant impact on its current operation. This is the environment in which a trade in child footballers from

abroad operates – often in a duplicitous and exploitative manner that has significant and devastating consequences for children’s enjoyment of their rights under the CRC. Can the EU, then, really ignore this situation given the constitutional status of its commitment to protecting the rights of the child (Article 3 TEU) and to promoting the principles enshrined in the CRC (Commission 2007: 4)? Of course, this would mean going into battle with those in the football industry who vehemently defend their treatment of young migrant footballers – and who show little willingness to submit to the ban on underage transfers of foreign players. This is a significant challenge; the football industry is not famed for welcoming external scrutiny of its rules and regulations. However, the EU has held its nerve in asserting its competence to subject the economic aspects of football regulation to free movement of persons and competition laws – decisions which, at the time, were phenomenally unpopular within the industry. We might, therefore, question the promises and rhetoric of the ever expanding children’s rights agenda if the EU turns a blind eye to this issue.

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