



II-8.3 : The FIFA has implemented an online system for the regulation of international player transfers

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MAIN INFORMATION

The implementation of the Transfer Matching System (TMS) on October 1, 2010 was announced by the *Fédération Internationale de Football Association* (FIFA) as a first step to regulate international player transfers through an increased transparency of these human and financial flows.

CONTEXT AND SUMMARY

The TMS¹ consists of the registration of 30 data in an electronic form. Each of the two clubs involved in the transfer have to enter the same information on the online system.

The new mechanism will be mandatorily adopted by 3,000 to 4,000 professional clubs throughout the world. According to Joseph S. Blatter, the President of the FIFA, the TMS is an opportunity to fight against tax fraud, bribery and corruption². The information concerning the total amount paid for the transfer with payment details, the name of the player's agents and the player himself has to be entered on the online form.

Documents relative to the player's identity and citizenship, along with a proof of payment, a copy of the transfer contract and of the player contract must be downloaded on the online database in order to validate the transfer. The legal obligation for the clubs to connect online was designed as a way to help protecting underage players, especially those coming from Africa or South-America, a phenomenon which is a core issue for the global football organization.

Following the forwarding of this information, and if the data provided by each club match up, the transfer is authorized and the International Transfer Certificate is issued. Otherwise electronic alerts are sent to a compliance and monitoring team assigned to the TMS.

For the clubs and/or associations that do not comply with the new system, a range of sanctions can be used by the FIFA's disciplinary committee. The penalties are the following: an official warning, a fine, exclusion from a competition, the withholding of a trophy or award, the annulment of match results, match forfeiture, the deduction of points, demotion to a lower division, and a transfer ban³.

¹<http://www.fifa.com/aboutfifa/federation/administration/releases/newsid=1309827.html#revolutionary+moment+football+transfer+matching+system+becomes+mandatory>

² For a study of money laundering in football see : <http://www.fatf-gafi.org/dataoecd/7/41/43216572.pdf>

³ For detailed explanations:

<http://www.fifa.com/aboutfifa/federation/administration/news/newsid=1310345.html#the+tms+explained>

BRIEF COMMENTARY

As an international non-regulated market, the player transfer system benefited from the lack of supervision and coordination of various States and became an ideal way for money laundering, tax fraud and traffic of underage players. The world of transfers was systematically described by scholars as a jungle. Since there is no prospect of a world public regulator in charge of sports, the FIFA has decided to turn towards self-regulation.

Thanks to world football's pyramidal organizational structure, in which the FIFA holds the highest position, the international football organization has the legitimacy to impose the adoption of new regulations on its member associations. Without FIFA affiliation, a national football association cannot organize an official match or competition. Umbrella bodies coordinate the work between the FIFA and its member associations for each continent⁴. The 208 associations are supported by the FIFA both financially and technically. Therefore, their participation in international football events such as the FIFA World Cup or the UEFA Euro depends closely on their observance of the FIFA's or a continental association's regulations and statutes. Participating in such competitions is not only a question of sports results, because they often represent significant earnings for national federations—sums that can be used in promoting football in their country and *in fine* strengthening its position as the most popular sport in the world. Moreover football, and sports in general, has always been seen and used as a means for obtaining political prestige⁵.

The FIFA is aware of football's potential use for political reasons, and adopts a very strict policy against political interference⁶. Following the French national football team's poor performance in the last World Cup, the French Minister in charge of sports, Roselyne Bachelot, stated that she was in favor of the resignation of Jean-Pierre Escalettes, the President of the *Fédération Française de Football* (The French Football Federation). Jérôme Valcke, the FIFA's General Secretary, replied by warning the French Government against any political interference, which could lead to suspension from international competitions. Another example of the FIFA's refusal of political interference is the multiple decisions taken to ban the Iraqi Football Association (IFA).

Affiliated associations are thus closely supervised by FIFA, and it is to their own interest (their potential participation in an international competition) that States do not get involved in the management of football associations. By maintaining a persistent threat of expulsion for reluctant member associations, the FIFA can decide to implement new regulation for transfers and be confident that it will be respected. It comes as a surprise that the FIFA did not use its power at the top of the pyramid to impose this new regulation on domestic transfers, since they face the same problems. If the FIFA has such power over member associations, why did it choose to only regulate international transfers,

⁴These bodies are respectively the Asian Football Confederation (AFC), the *Confédération Africaine de Football* (CAF) in Africa, the Confederation of North, Central American and Caribbean Association Football (CONCACAF), the *Confederación Sudamericana de Fútbol* (CONMEBOL) in South-America, the Oceania Football Confederation (OFC) and the most powerful and influential confederation the Union of European Football Associations (UEFA).

⁵For a story of a football team used as a political instrument : <http://www.rsssf.com/tables/alg-fln-intres.html>
Football also reflects the frame of mind of an epoch, see for instance the 1938 World Cup poster : <http://expertfootball.com/history/posters/1938.jpg>

⁶See recent decision concerning Iraqi Football Association : <http://www.cbc.ca/sports/soccer/story/2010/08/02/sp-iraq.html>

Or the warning issues to French government during the 2010 FIFA World Cup : <http://www.bloomberg.com/news/2010-06-29/fifa-says-france-risk-ban-from-competitions-for-government-interference.html>

whereas domestic transfers are subject to the same issues (money laundering, protecting minors, and human dignity) as international ones?

If domestic transfer markets are non-transparent, it will certainly take more time to tackle these issues. At the same time that regulation for international transfers was implemented, the FIFA should have implemented regulation for domestic transfers. If transparency in international transfers is desired, this goal would be greatly facilitated by greater transparency in domestic transfers. The FIFA decided not to impose such rules, and by doing so indirectly weakened its regulation of international transfers.

By using tax havens or lying about the players' identity, some clubs, agents and players have contributed towards creating a shady system where players, agents and clubs are alternatively victims and culprits. However the football transfer market is a place where agents have a central role and consequently they can be designated as one of the core targets of the regulation adopted by FIFA.

The TMS was almost literally described as a tool to regulate the repeated infringements committed during the transfer period. Despite the fact that the agents' profession is regulated⁷, they are often held up as a scapegoat for this situation. The TMS may be interpreted as an answer to the inadequacy of prior regulations on players' agents. The role of an agent is to help a player through his career to find the best clubs for him, from both an economic and athletic point of view. On the one hand, a player can accept a lower salary if the athletic situation of the club is more exciting for him. On the other hand, a player can choose a club simply for financial reasons. The economic incentive is an objective one, but the athletic challenge is a more subjective or complex issue. The attractiveness of a club depends on its history, its championships, its fans and its athletic creed. Agents help players to make decisions according to all these criteria, and also by evaluating the player's potential, the period of his career, his potential athletic compatibility with a new team. Agents are also in permanent contact with clubs and coaches in case they need a player⁸. A club can contact a player's agent when it wants to offer him a new contract during the coming transfer period.

This kind of contact with agents is the first step in a transfer process even though forbidden by official statutes, which require that the contact be made at the club-level only.⁹ This requirement contained in FIFA's regulations goes unheeded *de facto* since all players have agents who are inevitable intermediaries. This situation is even more complicated in international transfers, especially those involving young and/or underage players coming from Africa or South-America. Some agents do not hesitate falsifying official documents such as passports or birth certificates in order to transfer underage players to Europe¹⁰. We can observe a regulation's effectiveness—even if it is supposed to be different from "hard law", autonomous, and implicitly make reference to self-regulation—is inexistent

⁷Article 3-1 of Players' Agents Regulations: "Players' agents activity may only be carried out by natural persons who are licensed by the relevant association to carry out such activity."

⁸On the ambiguous situation of players' agents and the way they charge fees see :

<http://www.guardian.co.uk/sport/blog/2009/feb/04/david-conn-transfer-window-player-agent-fees> . The new regulation implemented by FIFA intends to clearly identify the financial flows in transfers.

⁹Article 18-3 of the Regulations on the Status and Transfers of Players. Full document available at :

<http://www.fifa.com/aboutfifa/documentlibrary/doclists/laws.html#transfers>

¹⁰See for instance BBC Sport Online's report on European football's passports scandal:

<http://news.bbc.co.uk/sport2/hi/football/1318931.stm> . In this case, the falsification is made in order to infringe rules regarding the number of non-EU players.

without a well-established and properly functioning legal system to support it, such as, in this case, the proper keeping of public records, which would make the manipulation of players' ages impossible.

It is all the more difficult to regulate and protect, especially where minors are concerned, when such minors do not want to be protected, but rather, want to enter the market of professional football: players cooperate with the fraud, since professional football represents the only hope for a better life for them and their family, whilst clubs turn a blind eye in the context of strong competition for the best players at the best cost (i.e. without significant transfer payments). The TMS can be considered as a means to regulate agents by giving them the role they were initially supposed to have: facilitating player mobility, and counseling them.

Faced with this worrying situation, the FIFA implemented electronic self-regulation in order to make the transfer system more virtuous. By analogy this regulation works like the American model of anti-corruption legislation, wherein computers and software are the control agents of the online platform. This model raises the issue of at what level will the compliance and monitoring team consider a transfer to be suspect? Setting appropriate warning levels is crucial, because they will define the amount of information that the team in charge of compliance will have to deal with, and consequently, the efficiency of the entire system.

The transparency of the TMS actually remains a challenging question. As an electronic system, the TMS is *de facto* a target for hackers and can be technically sidestepped. This creates a higher risk of regulatory failure. Another way to regulate players' transfers could have been to put in place a regulation based on suspicion, just as Directive 2005/60 EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing did. On the basis of the Directive, reporting suspicion of money laundering or terrorist financing is credit and/or financial institutions, and legal professionals' responsibility. These same institutions and professionals are highly implicated in player transfer practices. It is thus fairly reasonable to imagine that instead of creating a whole new online system, the FIFA could have taken inspiration from the EU's experience.

Disciplinary measures provided for in case of infringement of the TMS can be taken against clubs or Associations that fail to implement the system. However as it is stated above, member associations are overly dependent on the FIFA's support to not apply its regulations. So the main target of the sanctions seems to be the clubs. As these sanctions are "athletic" (7 on 9) rather than financial, and based on institutions rather than individuals (no sanction for players, agents or managers), the FIFA seems to want to force clubs to develop good practice, while neglecting the personal responsibility of those involved.

Now the question is whether clubs will accept such a modification of their usual way of doing business in order to make the FIFA's regulation effective. Moreover, the FIFA in its range of sanctions and in its attitude towards clubs create a distinction in the transfer market. The distinction is between (A) reliable players i.e. member associations, (B) unreliable players that are threatened with disciplinary measures and (C) unreliable players that are ignored. (B) must be supervised by (A) which is acting as a secondary regulator under FIFA's general supervision.

Our opinion is that FIFA should widen the scope of sanctions to players but especially to agents, as well as implementing the TMS for domestic transfers in order to

make its self-regulation more efficient, more transparent and more credible.