THE FFAR'S SERVICE FEE CAPS AS A RESTRICTION OF COMPETITION BY OBJECT. IS THERE A WAY TO SAVE THEM?

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Abstract: *This article addresses the legal challenges surrounding the compatibility of Article 15(2) of the FIFA Football Agent Regulations (FFAR) with Article 101 of the Treaty on the Functioning of the European Union (TFEU). In particular, it examines whether the "Service Fee Caps" contained in Article 15(2) FFAR constitute a restriction of competition "by object". The methodology employed combines a systematic examination of legal doctrine with a comparative evaluation of the relevant case law.*

The research findings indicate that Article 15(2) FFAR constitutes a restriction of competition "by object", given that it has the effect of substantially harming competition. The "Service Fee Caps", set at an unreasonably low level, have the effect of distorting competition in the relevant market for football agent services by disproportionately restricting the ability of agents to negotiate fees freely. This is further compounded by FIFA's dominant regulatory and control position and agents' inability to avoid applying the FFAR.

The principal conclusion is that although FIFA's regulatory intervention is justified, the "Service Fee Caps", as currently structured, are incompatible with EU competition law. The analysis highlights the need for FIFA to reformulate its regulations in accordance with EU legal standards, ensuring proportionality and safeguarding competition while fulfilling its governance role. This article contributes to the broader discussion on the intersection of sports governance and EU law, offering insights into the delicate balance between regulatory autonomy and compliance with legal principles.

Keywords: *football, agents, FFAR, competition law, the "Service Fee Caps", restriction of competition "by object"*

INTRODUCTION[1]

When Carmine "Mino" Raiola moved from Italy to the Netherlands as a child in the late 1960s, no one could have guessed that he would become one of the most powerful, controversial, and highest-paid football agents of the 21st century.[2] Still, this tenacious Italian native has succeeded. Having represented players such as Pavel Nedvěd and Paul Pogba, he has been generously rewarded for his services.[3] Some might even say that the fees for his services were exorbitant.

The Fédération Internationale de Football Association (FIFA) held such a view and attempted to regulate fees for football agents' services by introducing the 2022 FIFA Football Agents Regulations (FFAR). The issuance of the FFAR rules initiated a legally intriguing series of events that ultimately led to the referral of a preliminary question to

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[1] The artificial intelligence tools DeepL and ChatGPT were used for stylistic editing of this article.

[2] RICE-COATES, C. Mino Raiola: the super-agent who changed the face of modern football. In: *These Football Times.* [online]. 31. 7. 2017 [2024-11-26]. Available at: https://thesefootballtimes.co/2017/07/31/21785mino-raiola-the-super-agent-who-changed-the-face-of-modern-football/.

[3] HYTNER, D. Mino Raiola: a fearless negotiator who got his revenge with Paul Pogba deal. In: *The Guardian* [online]. 9. 8. 2016 [2024-11-12]. Available at: https://www.theguardian.com/football/2016/aug/09/mino-raiola-agent-manchester-united.

the European Court of Justice (ECJ)[4] and the subsequent worldwide suspension of their problematic provisions.[5] However, let me start from the beginning.

The connection between EU law and sports may seem distant at first glance. However, the days when sport was mere entertainment are long gone. Today's sport is connected to business, marketing, politics, and law. Indeed, as the ECJ has stated several times in its settled decision-making practice, "In so far as it constitutes an economic activity, the practice of sport is subject to the provisions of EU law applicable to such activity."[6] In this respect, football is no exception. The main body responsible for the proper conduct and organisation of the football game and also for the governance of the football industry is FIFA. It is because, within the pyramid structure on which football is based, FIFA stands at the very top.[7] To meet its objectives such as to "improve the game of football constantly and promote it globally(…)", FIFA is competent to "draw up regulations and provisions governing the game of football and related matters."[8] One of these regulations is the FFAR, which "govern the occupation of football agents within the international transfer system."[9]

FIFA's decision to regulate football agents by adopting the FFAR can be seen as a reaction to the lack of regulation of football agents by public authorities but primarily to the failure of FIFA member associations to implement adequate regulations independently. The latter were obliged by FIFA's decision to regulate the activities of football agents in accordance with their own internal regulations between 2015 and 2023.[10] In doing so, the member associations were required to comply with FIFA's minimum standards as set out in the 2015 FIFA Regulations on Working with Intermediaries (FRWI).[11]

However, it has become evident that FIFA's member associations are not fulfilling their responsibilities. As salaries for players and the general circulation of money in the international football industry have increased, so has the prevalence of fraud and money laundering involving football agents.[12] Additionally, FIFA has observed a notable increase in agent fees, particularly at the lower end of the salary scale and, in general, found

[4] Request for a preliminary ruling from the Landgericht Mainz (Germany) lodged on 31 March 2023, RRC Sports, C-209/23.10,8]]}}}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}.

[5] FIFA Circular no. 1873 (2023, December 30).

[6] Judgment of 21 December 2023, European Superleague Company, C-333/21, ECLI:EU:C:2023:1011, para. 83.

[7] PODSZUN, R. – KIRK, A. FIFA's Football Agent Regulations and European Competition Law. *Journal of Antitrust Enforcement.* 2024, Vol. 13, No. 2, pp. 3–4.

[8] FIFA Statutes (2024), art. 2, let. (a) and (c).

[9] FIFA Football Agent Regulations (2022), art. 2, para. 1.

[10] SETHNA, R. The FIFA Football Agent Regulations: Are We There Yet? In: *Football Legal* [online]. 31. 5. 2024 [2024-09-29]. Available at: https://www.football-legal.com/content/the-fifa-football-agent-regulations-are-we-there-yet-by-rustam-sethna.

[11] FIFA Regulations on Working with Intermediaries (2015).

[12] Spain: Football Agents Suspected of Fraud and Money Laundering OCCRP - Organized Crime and Corruption Reporting Project. In: *OCCRP* [online]. 27. 2. 2020 [2024-10-14]. Available at: https://www.occrp.org/en/news/spain-football-agents-suspected-of-fraud-and-money-laundering; BUSCHMANN, R. – WULZINGER, M. Wie der Berater von Stars wie Luka Jovic Spieler in den Westen schleust. In: *Der Spiegel* [online]. 17. 9. 2019 [2026-07-18]. Available at: https://www.spiegel.de/sport/fussball/football-leaks-wie-fali-ramadani-berater-von-stars-wie-luka-jovic-geschaefte-macht-a-1287026.html.

the fees charged by certain agents as excessive.[13] Considering these developments, FIFA has decided to intervene and re-regulate the occupation of football agents on a global scale by issuing the FFAR.

Given the FFAR's scope and content, it is unsurprising that they concern several aspects of EU law. What is surprising is that the regulations allegedly adopted following a comprehensive consultation process that lasted over 4 years,[14] are being challenged as incompatible with EU law from the moment they were published. The primary basis for this criticism has been, and continues to be, the alleged incompatibility with the pertinent provisions of EU competition law, particularly Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). Thus, it follows that the FFAR's compliance with EU competition law is crucial for their future existence.

Given the above, several expert publications have already addressed the FFAR's compliance with EU competition law. These include publications from Stephen Weatherill,[15] Rupprecht Podszun and Alexander Kirk,[16] or Peter W. Heermann.[17] Even Advocate General Emiliou issued his opinion on the FFAR.[18] Nevertheless, to my knowledge, no one has yet undertaken a comprehensive analysis of what I consider to be a pivotal issue, namely whether the "Service Fee Caps" on agents' fees contained in Article 15(2) FFAR represent a restriction of competition "by object" under Article 101 TFEU. Indeed, the existing publications have primarily assessed the FFAR's compatibility under the Meca-Medina test.[19]

Nevertheless, given the limitations of the Meca-Medina test applicability following the recent ECJ case law,[20] it seems unlikely that this doctrine will apply to the controversial

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[13] CAS 2023/O/9370 Professional Football Agents Association (PROFAA) v. FIFA. 2023, paras 301–303.

[14] FIFA Circular no. 1827 (2023, January 6).

[15] WEATHERILL, S. *Football Agents. Research Handbook on the Law of Professional Football Clubs.* Cheltenham: Edward Elgar Publishing, 2023."plainCitation":"Weatherill, S. Football Agents. In: Research Handbook on the Law of Professional Football Clubs. Edward Elgar Publishing, 2023. https://papers.ssrn.com/abstract=4336209","noteIndex":16},"citationItems":[{"id":100,"uris":["http://zotero.org/users/local/7hU-4K9oq/items/F4BB4BAT"],"itemData":{"id":100,"type":"chapter","abstract":"Regulation of the market for supply of services by agents to players and clubs is commonly criticised as an interference with private autonomy. Within the EU it is vulnerable to legal challenge on the basis that it violates the internal market rules on free movement of services and competition. This Chapter draws on the Court of Justice's case law and on analogies with legislative practice in other areas to develop the argument that regulating agents may be treated as compatible with EU law, provided it is targeted at demonstrated market failures and/ or inequities and provided it meets the demands of the principle of proportionality. The Chapter is of importance in itself for those interested in agents, but it also serves as a case study into the incremental character of EU sports law in general and the pattern of the control it claims over private regulators in particular.","container-title":"Research Handbook on the Law of Professional Football Clubs","ISBN":"978-1-80220-696-8","language":"en","publisher":"Edward Elgar Publishing","source":"Social Science Research Network","title":"Football Agents","URL":"https://papers.ssrn.com/abstract=4336209","author":[{"family":"Weatherill","given":"Stephen"}],"accessed":{"date-parts":[["2024",10,12]]},"issued":{"date-parts":[["2023",1,24]]}}}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

[16] PODSZUN, K. *FIFA's Football Agent Regulations and European Competition Law.*

[17] HEERMANN, P. W. Will the football agents' service fee cap survive the current legal attacks? Regulation of football agents between the poles of autonomy of sports organisations and EU antitrust law. *The International Sports Law Journal.* 2024, Vol. 24.

[18] Opinion of the Advocate General Emiliou delivered on 15 May 2025, RRC Sports, C-209/23, ECLI:EU:C:2025:362.

[19] Judgment of 18 July 2006, Meca-Medina and Majcen v Commission, C-519/04 P, ECLI:EU:C:2006:492, para. 42.

[20] HEERMANN, P. W. *Will the football agents' service fee cap survive the current legal attacks? Regulation of football agents between the poles of autonomy of sports organisations and EU antitrust law.*

"Service Fee Caps". This is because I believe that their current setting at 3–10% of the player's remuneration or 10% of the transfer fee, depending on the client (a player, coach, or club), substantially harms competition by constituting a prohibited demand-side price cartel. Therefore, the main objective of this article is to examine the compatibility of Article 15(2) FFAR with Article 101 TFEU. More specifically, the main research question is whether the FFAR's "Service Fee Caps" can be classified as a restriction of competition "by object".

I. FIFA'S REGULATORY POWER VS. PUBLIC AUTHORITY

Prior to examining whether Article 15(2) FFAR constitutes a restriction of competition "by object", it is beneficial to delineate the various ways in which FIFA's regulatory power and consequently the FFAR can be perceived as emphasised by the parties involved (FIFA and football agents). This is definitely worth considering, as a general view of the FFAR in relation to FIFA's regulatory competence could be ultimately key to assessing the FFAR. In principle, two main approaches can be identified, both of which have the support of legal experts on EU competition law.

Firstly, the FFAR can be regarded as a cartel agreement between FIFA, its member associations, and the clubs. Such a cartel would likely qualify as a restriction of competition "by object". Consequently, in view of the ECJ's judgments of 21 December 2023 (*European Superleague Company, Royal Antwerp,* and *International Skating Union v Commission)*, the FFAR could not be evaluated under the Meca-Medina test. Unsurprisingly, this method of legal assessment is advocated by counsellors of a law firm representing a football agent in proceedings against FIFA, such as Podszun and Kirk.[21] This is because the justification of the FFAR under Article 101(3) TFEU is more complicated than the justification through the Meca-Medina test, as rightly pointed out by Weatherill.[22]

FIFA's view of the FFAR as a private vertical regulation provides a second perspective. FIFA argues that the FFAR do not represent a cartel agreement but rather a vertical regulation of the market by a private entity to which the Meca-Medina test can be applied. FIFA declares that it has no economic interest in the football agents' services market. Its claimed objective is, on the other hand, to address deficiencies that have a direct and substantial impact on the integrity of football, such as the incentive for agents to promote player transfers at the expense of contract stability.[23] This approach is advocated by legal experts such as Weatherill, who testified at the oral hearing before the Court of Arbitration for Sport (CAS) and whose expert opinion was of significant benefit to FIFA.[24]

Both approaches initially seem well-founded and supported by judicial decisions. This is because the Dortmund Regional Court (DRC) approached the FFAR as an anti-competitive decision of an association of undertakings,[25] confirming the first "cartel" approach,

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[21] PODSZUN, K. *FIFA's Football Agent Regulations and European Competition Law,* p. 26.
[22] WEATHERILL, S. *Football Agents. Research Handbook on the Law of Professional Football Clubs,* p. 413.
[23] Ibid.
[24] CAS 2023/O/9370 Professional Football Agents Association (PROFAA) v. FIFA, 2023, paras 41, point ii.
[25] Judgment of the Dortmund Regional Court (Landgericht Dortmund) of 24 May 2023, 8 O 1/23 (Kart), paras 144–161.

and the CAS assessed the FFAR more as a private vertical regulation,[26] confirming the second "vertical regulation" approach. Nevertheless, I concur with Heermann that although the "vertical regulation" approach advocated by Weatherill is thought-provoking, it is ultimately erroneous and must be dismissed.[27] I offer the following reasons.

The interests of FIFA or UEFA and the EU member states or the EU itself are significantly different. This is because the interests of FIFA or UEFA are primarily focused on the overall interests of their member associations and members of these member associations (clubs), as outlined in the UEFA Statutes.[28] This is confirmed by one of the FFAR's objectives, which is to ensure that football agents provide their services for fair and reasonable service fees,[29] which is further specified by "Service Fee Caps" contained in Article 15(2) FFAR. Furthermore, the related Article 14(2) FFAR introduces the "Client Pays Rule", which mandates that the agent's fee must be paid solely by the agent's client (e.g., player, coach, or club). This naturally gives rise to the question of who would benefit from this.

The primary beneficiaries of the "Service Fee Caps" and the "Client Pays Rule" are the clubs. This is because it is currently standard practice within the international football market for the service fees of football agents to be paid by the club to which the player is transferring rather than by the player himself.[30] However, this would not be permitted under the "Client Pays Rule" as, in this scenario, the club is not an agent's client. In addition, the amounts currently paid by clubs to agents are significantly higher than the "Service Fee Caps".[31] Therefore, I argue that the issuance of the FFAR would result in a reduction of the expenses incurred by clubs for the services of football agents.

It is in FIFA's financial interest to ensure that the clubs are profiting as much as possible. In 2023, FIFA's second-largest source of revenue was from television broadcasting rights.[32] If clubs are relieved of the financial burden of paying high fees to football agents, they will likely reinvest the savings into improving various aspects of their operations, including the squad, facilities, and player academies. As a consequence, the clubs are more inclined to attract and develop higher-quality players who can play at a higher level of football, thereby increasing the appeal and visibility of the sport on a global scale.

The enhanced quality of play and the presence of star players elevate the commercial value of broadcasting rights for matches and tournaments involving these clubs. Similarly, when FIFA organises international competitions and matches featuring these players, the increased interest allows FIFA to negotiate more lucrative broadcasting deals. Considering the above, I conclude that the issuance of the FFAR would be beneficial not only to the clubs but also to FIFA's financial interests.

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[26] CAS 2023/O/9370 Professional Football Agents Association (PROFAA) v. FIFA, 2023, paras 298–306.

[27] HEERMANN, P. W. *Will the football agents' service fee cap survive the current legal attacks? Regulation of football agents between the poles of autonomy of sports organisations and EU antitrust law.*

[28] UEFA Statutes (2020), art. 2, let. j).

[29] FIFA Football Agent Regulations (2022), art. 1, para. 2, let. b).

[30] FIFA. Agent service fees reach all-time high in 2023. 2023. In: *FIFA* [online]. 14. 12. 2023 [2026-07-18]. Available at: https://inside.fifa.com/legal/football-regulatory/agents/media-releases/origin1904-p.cxm.fifa.com/agent-service-fees-reach-all-time-high-in-2023.

[31] FIFA. Football Agents in International Transfers (annual report on football agents). FIFA, 2023, p. 10.

[32] FIFA. 2023 revenue. In: *FIFA* [online]. [2024-11-23]. Available at: https://inside.fifa.com.

To sum up the above, the hypothesis proposed by Weatherill, which asserted that FIFA acts as a private regulator addressing market failures by issuing the FFAR, is implausible.[33] This is because FIFA's role in the football agent's service market cannot be purely regulatory in a situation where it has an obvious conflict of interest. As explained above, FIFA wants to increase its own profits, and the FFAR rules are designed to help it do so at the expense of football agents. Given this and other arguments presented above, I agree with Heermann's assertion that FIFA's approach concerning the FFAR cannot be regarded as exclusively regulatory and that the FFAR should be regarded as a cartel.

II. ARTICLE 15(2) FFAR AND ITS COMPLIANCE WITH EU COMPETITION LAW

To confirm that Article 15(2) FFAR constitutes a restriction of competition "by object", it is necessary to review it in accordance with the principles set out in the ECJ case law. According to the ECJ, the concept of a restriction of competition "by object" should be interpreted strictly (see *European Superleague Company,*[34] *Royal Antwerp*[35] and *International Skating Union v Commission).*[36] Therefore, as stated by Weatherill, one should be slow to find a restriction of competition "by object".[37] In addition, the ECJ's recent decision in *Diarra* provides detailed three-step guidelines on how to identify a restriction of competition "by object".

To determine whether a decision of an association of undertakings (FFAR) inherently harms competition, it is essential to assess its content (1.), economic and legal context (2.), and objectives (3.).[38] This includes examining the nature of the services involved, the structure and operation of the relevant market, and the intended goals from a competition perspective. Importantly, even if the association of undertakings (FIFA) lacked an intent to harm competition or pursue legitimate aims, these factors are not decisive under Article 101(1) TFEU. Ultimately, the analysis must demonstrate specific reasons why the conduct substantially harms competition to be classified as a "restriction by object".[39] I consider all these principles and guidelines in my assessment of Article 15(2) FFAR below.

a. THE CONTENT OF ARTICLE 15 FFAR AND THE ROLE OF FOOTBALL AGENTS

In accordance with the above, it is first necessary to examine the content of Article 15(2) FFAR. The FFAR rules provide the regulatory framework for agents' occupation in a cross-border context. This means that the FFAR cover football agent services related to all representation agreements with an international dimension or any conduct

[33] WEATHERILL, S. *The impact of the rulings of 21 December 2023 on the structure of EU sports law,* p. 413.
[34] Ibid., paras 161–162.
[35] Judgment of 21 December 2023, Royal Antwerp Football Club, C-680/21, ECLI:EU:C:2023:1010, paras 88–89.
[36] Judgment of 21 December 2023, International Skating Union v Commission, C-124/21 P, ECLI:EU:C:2023:1012, paras 101–102.
[37] WEATHERILL, S. *The impact of the rulings of 21 December 2023 on the structure of EU sports law,* p. 413.
[38] Judgment of 4 October 2024, Fédération internationale de football association (FIFA) v BZ, C-650/22, ECLI:EU:C:2024:824, para. 130.
[39] Ibid., paras 131–133.

connected to an international transfer or international transaction.[40] In light of this scope, the FFAR rules would then be applicable, for instance, in the event of a player transferring from an Italian league club (AC Milan) to a French league club (PSG), with the player's agent involved in the transaction.

In general terms, Article 15(2) FFAR establishes caps on service fees that football agents can charge for their "football agent services". In accordance with the FFAR, such services are defined as "any activities related to football, performed for or on behalf of a client (typically a player, coach or club), including any negotiations, communications, or other preparatory activities, with the objective of concluding an international transaction."[41] In short, everything that a football agent normally does when a client (e.g. player) wants to make an international transfer.

Article 15(2) FFAR caps football agent's fees at 3–10% of the player's remuneration or 10% of the transfer fee, depending on the client (player, coach, or club) and the player's annual remuneration. For a representation of an individual (player or coach) or engaging entity (typically a club) in the international transaction, the fee of the agent is capped at 5% of the individual's remuneration for those individuals earning up to $200,000 annually and 3% for amounts above $200,000 annually. For dual representation (representing both the engaging entity and the individual), the cap for the agent is 10% of the individual's remuneration for those earning up to $200,000 annually and 6% for those earning above that amount. When representing the releasing entity (typically a club), the cap is set at 10% of the transfer fee.

For purposes of better clarity, I am enclosing the table that is contained directly in the FFAR.[42]

Client	Service fee cap	
	Individual's annual Remuneration less than or equal to USD 200,000 (or equivalent)	Individual's annual Remuneration above USD 200,000 (or equivalent)
Individual	5% of the Individual's Remuneration	3% of the Individual's Remuneration
Engaging Entity	5% of the Individual's Remuneration	3% of the Individual's Remuneration
Engaging Entity and Individual (permitted dual representation)	10% of the Individual's Remuneration	6% of the Individual's Remuneration
Releasing Entity (transfer compensation)	10% of the transfer compensation	

[40] FIFA Football Agent Regulations (2022), art. 2.
[41] Ibid., pt. Definitions.
[42] Ibid., art. 15, para. 2.

In addition, Article 15 (3) and (4) FFAR establishes a presumption that any "other services" rendered by the agent within a 24-month period preceding and following an international transaction are subject to the above-mentioned fee caps. The FFAR define the term "other services" as any services performed by an agent for or on behalf of a client (in particular club, player, coach) other than football agent services, including but not limited to providing legal advice, financial planning, scouting, consultancy, management of image rights and negotiating commercial contracts. In essence, this encompasses all remaining activities that a football agent may undertake on behalf of his or her client.

In order to demonstrate the practical application of the aforementioned rules, I will use the transfer of French footballer Paul Pogba as a case study. According to press claims, Pogba's agent, Mino Raiola, made €27 million[43] from Pogba's transfer from Juventus to Manchester United on 9 August 2016.[44] Manchester United (MU) then paid Raiola's fee for arranging the transfer.[45] This is essential because, except for the above-mentioned fee caps, the FFAR also introduced the "Client Pays Rule". This means that the agent's fee must be borne almost[46] exclusively by the client (typically a player, coach, or club), whereas a client is also prohibited from entering into an agreement with or authorising a third party (typically a club) to make such a payment.[47]

Consequently, were the rules outlined in Article 15(2) FFAR to be applied to Pogba's transfer, Raiola would receive a remuneration of only £2,262,000. This is because Pogba was purportedly receiving approximately £290,000 per week,[48] amounting to £15,080,000 annually. This figure would then be multiplied by 0.03 (3%), given that Pogba's annual remuneration exceeded $200,000, and finally multiplied by 5 since Pogba concluded a contract for 5 years. Also, Raiola's fee would have to be paid directly by the client – Paul Pogba. In this context, it is less surprising that the introduction of the FFAR has caused so much controversy.

To avoid focusing solely on the high-profile transfers, I believe it is equally appropriate to present a case study of the other side of the spectrum. Indeed, it is the transfers of players from lower leagues that dominate the football market. One such lower league is the second

[43] THOMAS, L. Paul Pogba's agent Mino Raiola made £24m from transfer to Manchester United, say Juventus. In: *Sky Sports* [online]. 25. 10. 2016 [2024-10-08]. Available at: https://www.skysports.com/football/news/11667/10632115/paul-pogbas-agent-mino-raiola-made-gbp24m-from-transfer-to-manchester-united-say-juventus.

[44] Paul Pogba – Transfer history. In: *transfermarkt.com* [online]. [2024-10-08]. Available at: https://www.transfermarkt.com/paul-pogba/transfers/spieler/122153/transfer_id/741112.

[45] DAWSON, A. A secret clause in one player's contract could end up costing Manchester United $53 million. In: *Business Insider* [online]. 9. 5. 2017 [2024-11-13]. Available at: https://www.businessinsider.com/manchester-united-pay-paul-pogba-agent-2017-5.

[46] The only exception to the "Client Pays Rules" is contained in Article 14(3) FFAR that provides that an engaging entity (mostly clubs) may pay a football agent's service fee on behalf of an individual earning under USD 200,000 annually, provided this arrangement neither compromises the agent's fiduciary duty nor creates dependency, does not exceed the agreed fee, and excludes deductions from the individual's remuneration.

[47] FIFA Football Agent Regulations (2022), art. 14, para. 2.

[48] TERRY, D. Juventus re-sign Pogba on free transfer from Man Utd for SECOND time. In: *The Sun* [online]. 11. 7. 2022 [2024-10-09]. Available at: https://www.thesun.co.uk/sport/football/19158562/juventus-paul-pogba-transfer-man-utd-wages/.

Czech league, where players earn on average CZK 25,000 / € 1000 per month.[49] Therefore, in case a player transfers from, for example, a lower German league to the second Czech league and concludes a 3-year contract, the agent's remuneration for this transfer would be around € 1,800 (12,000 multiplied by 0.05 and 3) under Article 15(2) FFAR.

At first glance, this may seem like a reasonable amount. Particularly when one considers that agents' remuneration in lower leagues amounted to 192.5% of the player's fixed remuneration, according to FIFA.[50] On the other hand, we must remember that players do not usually transfer every year, and negotiating international transfers involves considerably higher costs on the agent's side. Therefore, I believe that Article 15(2) FFAR would probably lead to almost no one being interested in representing lower-league players.

b. ECONOMIC AND LEGAL CONTEXT OF ARTICLE 15 FFAR. WHY IS THE AGENTS' REGULATION NECESSARY?

The market for football agents' services is crucial to the broader football market. The relevant market is the market for the provision of football agents' services, in which clubs, players and coaches are active as recipients.[51] This market has grown considerably in recent years, and with the advancing commercialisation and globalisation of football,[52] more and more money is moving into it. As confirmed by the data collected by FIFA, the total expenditure on club agent service fees (agents who represent clubs in international transactions) reached an unprecedented level in 2023, with a total outlay of $888.1 million.[53] In short, the stakes are high. But why is the regulation of agents necessary? I offer the following reasons.

A limited number of influential agents or agencies dominate a considerable proportion of high-value transactions. An analysis conducted in the CIES Report on football agent activity before 2012 revealed that 50% of the entire representation market in the big five leagues (England, Italy, Spain, Germany, and France) was managed by 83 individual agents or agencies. The responses received in this study indicated that one-fifth of individual agents or agencies represent 50% of the representation market. This suggests the existence of a dual market structure, characterised by a high degree of fragmentation at the lower end and a concentration of influence at the upper end.[54] This is a market failure. There is a significant information asymmetry in the market, especially between players and agents. One of the important functions of agents is to balance the power between clubs and players. Nevertheless, the same imbalance is evident in the connected end of this market concerning agents and players. Similarly, information asymmetries emerge

[49] HOVORKA, J. Ligová výplatnice: Hráči si běžně vydělávají sto tisíc měsíčně, prozradil funkcionář. In: *Football Club* [online]. 17. 5. 2024 [2024-12-18]. Available at: https://www.footballclub.cz/doma/ligova-vyplatnice-hraci-si-bezne-vydelavaji-sto-tisic-mesicne-prozradil-funkcionar.

[50] CAS 2023/O/9370 Professional Football Agents Association (PROFAA) v. FIFA, 2023, paras 301–303.

[51] PODSZUN, K. *FIFA's Football Agent Regulations and European Competition Law,* p. 8.

[52] O'NEILL, M. The History of the Football Transfer System. In: *sportlawmusings.com* [online]. [2026-07-18]. Available at: https://www.sportlawmusings.com/post/the-history-of-the-football-transfer-system.

[53] FIFA. Football Agents in International Transfers (annual report on football agents), p. 5.

[54] POLI, R. – ROSSI, G. Football agents in the biggest five European football markets – an empirical research report. 2012, p. 76. In: *CIES* [online]. [2026-07-18]. Available at: https://www.cies-uni.org/en/international/news/cies-football-observatory-exclusive-report-football-agent-activity.

for a similar set of reasons. In particular, younger or less experienced players frequently lack the requisite knowledge regarding the intricacies of transfer negotiations, employment conditions, and market trends. Agents, being professionals in the field, typically possess superior information and negotiation skills, which players rely on to secure favourable contracts.[55]

An information asymmetry can result in adverse selection,[56] whereby players may unknowingly engage with incompetent or unethical agents, which ultimately reduces the overall quality of services in the market. Furthermore, moral hazard[57] represents another significant concern, as agents may prioritise their own financial interests over those of their clients, exploiting the player's lack of oversight to pursue suboptimal or self-serving deals.[58] It is a regrettable reality that such conduct on the part of agents is not uncommon as confirmed by the European Commission.[59]

The economic significance of the football agent services market within the global football market, the limited number of influential agents or agencies operating in it, information asymmetries, adverse selection or moral hazard should all be considered as economic arguments in favour of the regulation of agents. Nevertheless, in addition to the aforementioned economic arguments, there are also sporting ones to consider. These cannot be put on the second track, because protecting the game itself – football is no less important.

The malfunctioning market diverts funds from clubs and players to private parties (agents), which may ultimately result in a reduction of resources available for social, educational, and solidarity initiatives within the game.[60] From a sporting perspective,

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[55] BULL, W. – FAURE, M. G. *Regulation of Football Agents in Europe: A Comparative Law and Economics Analysis*. Rochester, NY: Social Science Research Network, 2022, pp. 6–7. "plainCitation":"Bull, W., Faure, M. G. Regulation of Football Agents in Europe: A Comparative Law and Economics Analysis. Rochester, NY: Social Science Research Network, 2022, pp. 6–7. https://papers.ssrn.com/abstract=4479500","noteIndex":242},"citationItems":[{"id":185,"uris":["http://zotero.org/users/local/7hU4K9oq/items/ZSTV2RP5"],"itemData":{"id":185,"-type":"article","abstract":"This paper focuses on the regulation of football agents in Europe by providing a comparative law and economics analysis. The paper starts by laying out a theoretical framework where the question is posed as to what reasons could support the need to regulate the activities of football agents. After having established that both information asymmetries and negative externalities could be a serious problem that merit regulation of some kind, the paper asks which type of regulation might be advanced by distinguishing between licensing, certification and conduct regulation. The difference between public and private regulation is equally discussed from an economic perspective. On the back of this theoretical framework, the paper turns to the (private

[56] Adverse selection describes a situation in which one party in a deal has more accurate information than the other. The party with less information is at a disadvantage to the party with more information. This asymmetry causes a lack of efficiency in the price and the number of goods and services provided.(TUMAY, M. Asymmetric Information and Adverse Selection in Insurance Markets: The Problem of Moral Hazard. *Yönetim ve ekonomi*. 2009, p. 1.

[57] Moral hazard is when an individual takes more risks because he knows that he is protected due to another individual bearing the cost of those risks.(Ibid., pp. 1–2.)

[58] BULL, F. *Regulation of Football Agents in Europe: A Comparative Law and Economics Analysis*, pp. 8–10.the paper asks which type of regulation might be advanced by distinguishing between licensing, certification and conduct regulation. The difference between public and private regulation is equally discussed from an economic perspective.On the back of this theoretical framework, the paper turns to the (private

[59] Commission of the European communities. White Paper on Sport COM(2007) 391. 2007. In: *EUR-Lex* [online]. [2026-07-18]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52007DC0391

[60] WEATHERILL, S. *Football Agents. Research Handbook on the Law of Professional Football Clubs.*

agents are independent third parties who are not required to reinvest the money they earn back into football. In most cases they have simply no incentive to do so. This is what distinguishes them from the players or the clubs. I therefore fully agree with this sporting argument for regulating agents originally presented by Weatherill.

Only the best clubs can afford the best and most expensive agents, who have contacts with the best players, which promotes the emergence of a two-level competition structure. The growing disparity between extremely wealthy and comparatively lesser-resourced clubs may ultimately harm sporting merit and cause inequality of opportunity across the football competition landscape.[61] The ever-increasing fees of football agents exacerbate this problem, as only a handful of the truly richest clubs can afford the services of the best and highest-paid agents in terms of player transfers. The best agents usually have contacts with the best players and clubs, creating a two-level competition structure that is detrimental to football.

In light of the aforementioned arguments, it can be concluded that the regulation of football agents is, in general, in the economic (public) and sporting interests. Nevertheless, it is important to note that any regulation introduced by FIFA in this context must be proportionate and appropriate in addressing the identified market deficiencies. Further, it must not substantially harm competition in the relevant market for football agents' services and must be no more restrictive than necessary to achieve the stated objectives.

c. OBJECTIVES FOR THE IMPLEMENTATION OF "SERVICE FEE CAPS"

i. The objectives presented by FIFA before the CAS

In the proceedings before the CAS, FIFA has indicated that the "Service Fee Caps" were introduced with the objective of addressing the issue of excessive agent fees, particularly at the lower end of the salary scale. According to FIFA, a review of historical data revealed that agent fees could be disproportionate, with percentages reaching up to 192.5% of the player's fixed remuneration for those earning less than €50,000 annually, and still significant–ranging from 11.8% to 20.3%–for those with higher incomes.[62]

To align football agent fees with global and European standards, FIFA drew on comparisons with fee caps in other sports, such as the NFL (3%) and NBA (4%), as well as similar regulations in countries like Portugal (10% of the player's remuneration), France (10% of the value of the contract), Greece (8% of the player's remuneration), or Switzerland (5% of the first gross annual salary of the player). Input from the consultations, particularly from the Professional Football Agents Association (PROFAA), also influenced the structure of the "Service Fee Caps", resulting in the current framework, which is intended to achieve a balance between fairness and industry sustainability.[63]

Moreover, the $200,000 cap was established as a threshold to ensure proportionality and fairness while addressing the realities of the football agent market. The data provided

[61] MARCOTTI, G. Gap between superclubs like Man United, Real Madrid and rivals must be addressed. In: *ESPN.com* [online]. 17. 1. 2018 [2024-11-20]. Available at: https://www.espn.com/soccer/story/_/id/37489964/uefa-report-shows-gap-growing-superclubs-rest.

[62] CAS 2023/O/9370 Professional Football Agents Association (PROFAA) v. FIFA, 2023, para. 301.

[63] CAS 2023/O/9370 Professional Football Agents Association (PROFAA) v. FIFA, 2023, paras 301–303.

by FIFA indicated that approximately 60% of transfers involving agent representation fall below this threshold. This ensures that the majority of agents will benefit from the higher caps of 5-10%. Further analysis indicated that increasing the threshold to $500,000 or $1,000,000 would not result in a notable shift in the total fees earned, as the remuneration of players at higher salary levels was generally more aligned with the proposed "Service Fee Caps". FIFA's objective was to provide support to smaller agents while maintaining the reasonable alignment of fee structures across all salary levels.[64]

The above clearly shows what FIFA's primary economic objectives were in drafting the "Service Fee Caps". However, when assessing the FFAR's objectives, it is necessary to examine whether they are legitimate and whether the "Service Fee Caps" can achieve them at all. A comprehensive overview of the FFAR objectives can be found in its Article 1. Nevertheless, I agree with Heermann that not all of these are related to the "Service Fee Caps".[65] Consequently, my analysis focuses on a limited number of those, which I have identified as closely related.

ii. The objectives contained in the FFAR

The FFAR objectives related to the "Service Fee Caps"	
Article 1(e) and (f) FFAR	*Maintaining competitive balance and ensuring the regularity of sporting competitions.*
Article 1(2)(b) FFAR	*Ensuring the quality of the service provided by agents to clients at fair and reasonable service fees that are uniformly applicable.*
Article 2(2)(d) FFAR	*Improving financial and administrative transparency.*
Article 1(2)(e)	*Protecting players who lack experience or information relating to the football transfer system.*

I concur with the CAS that the "overarching" objective of the FFAR is the proper functioning of the transfer system[66] and, subsequently, "maintaining competitive balance and ensuring the regularity of sporting competitions".[67] In other words, these objectives aim to promote sporting merit and ensure equal opportunity across the football competition landscape. Such objectives are then well recognised by the ECJ as legitimate.[68] However, the question remains whether these objectives can be achieved through the "Service Fee Caps", and if so, how. In light of the following considerations, I believe that they can.

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[64] Ibid., para. 305.

[65] HEERMANN, P. W. *Will the football agents' service fee cap survive the current legal attacks? Regulation of football agents between the poles of autonomy of sports organisations and EU antitrust law.*

[66] CAS 2023/O/9370 Professional Football Agents Association (PROFAA) v. FIFA, 2023, para. 284.

[67] FIFA Football Agent Regulations (2022), art. 1 (e) and (f).

[68] Judgment of 21 December 2023, European Superleague Company, C-333/21, ECLI:EU:C:2023:1011, paras 143–145.

The implementation of the "Service Fee Caps" is intended to achieve a reduction in financial disparities among clubs, thereby promoting sporting merit and ensuring equal opportunities. It is because unlimited service fees that clubs must pay to agents in relation to transfers of players can be particularly burdensome for smaller clubs with limited financial resources. This is well illustrated by Pogba's case. Only a small number of the wealthiest clubs in the world had the financial capability to afford both the transfer fees and the agent fees associated with his transfer. This effectively eliminated competition because, although some other clubs with smaller budgets would have been willing to pay the transfer fee, they lacked the financial resources to pay €27 million to his agent.[69]

The capping of fees thus allows smaller clubs a greater opportunity to engage competitively in the transfer market, facilitating the recruitment and retention of talent that might otherwise be beyond their reach due to the exorbitant costs associated with agents. In conclusion, it can be argued that the "Service Fee Caps" have the potential to contribute to the levelling of the financial playing field and the promotion of a more balanced competition landscape, where success is determined more by sporting performance than by financial might. This, in turn, has the capacity to benefit the game itself.

The first subsidiary objective linked to the "Service Fee Caps" is "ensuring the quality of the service provided by agents to clients at fair and reasonable service fees that are uniformly applicable."[70] The "Service Fee Caps" would undoubtedly have led to an effective uniform reduction in agents' fees, as demonstrated above. Whether this would result in fair and reasonable service fees is open to debate. FIFA has allegedly based the design of the "Service Fee Caps" on similar regulations in countries such as Portugal,[71] where the legislator has certainly tried to set the threshold at a reasonable level. However, this is not, in my view, a sufficient argument to say that such design will result in fair and reasonable service fees.

The "Service Fee Caps" would not result in ensuring the quality of service provided by football agents to their clients. On the contrary, it is more likely that the caps on service fees would do the exact opposite. This is because the incentive for agents to provide high-quality services would be significantly reduced. Similarly, this would result in agents having fewer resources to invest in other essential services such as scouting or legal support for their clients. Lastly, a decrease in the quality of football agents' services could also be expected due to the outflow of agents from the market.[72] In conclusion, it is certainly more likely that the "Service Fee Caps" would lead to a reduction in the quality of services provided by agents.

"Improving financial and administrative transparency"[73] presents, in my view, another related objective. The implementation of a consistent remuneration mechanism for football agents (the "Service Fee Caps"), would undoubtedly enhance the transparency

[69] THOMAS, L. *Paul Pogba's agent Mino Raiola made £24m from transfer to Manchester United, say Juventus.*
[70] FIFA Football Agent Regulations (2022), art. 1, para. 2 (b).
[71] CAS 2023/O/9370 Professional Football Agents Association (PROFAA) v. FIFA, 2023, paras 301–303.
[72] EFAA (European Football Agent Association). Key Disadvantages of the FFAR. 2023. In: *linkedin.com* [online]. [2026-07-18]. Available at: https://www.linkedin.com/posts/european-football-agents-association-efaa-_key-disadvantages-of-the-ffar-activity-7060210644993593345-Hb73/.
[73] FIFA Football Agent Regulations (2022), art. 2, para. 2 (d).

of how football agents are remunerated. Notwithstanding the preceding obligation outlined in the FRWI[74] for football agents to disclose to their member associations the full details of any remunerations or payments made or to be made to an agent, the implementation of a globally applied mechanism for calculating the agent's fees would undoubtedly serve to increase financial and administrative transparency even further.

Moreover, the implementation of the "Service Fee Caps" would contribute to the fostering of trust between players, agents, and clubs. The provision of transparent information to all relevant parties serves to reduce the occurrence of misunderstandings and disputes, thereby facilitating more efficient transactions and collaborations on the transfer market. Therefore, the objective of "improving financial and administrative transparency" could directly contribute to the promotion of sporting merit and the assurance of equal opportunity across the football competition landscape. Consequently, it can be considered a legitimate objective, as Heermann also rightly points out.[75]

Finally, the partially relevant objective is also "protecting players who lack experience or information relating to the football transfer system".[76] As evidenced by the aforementioned characterisation of the market for football agent services, players are, in fact, the weaker party in the football market. It is, therefore, in the public interest, as well as the sporting interest, to protect them. In this regard, it seems inevitable that the imposition of the "Service Fee Caps" would result in a reduction in the remuneration of football agents.

Nevertheless, it is uncertain whether the players themselves would genuinely benefit and that such a mechanism would "protect" them. They may be required to remunerate their agents with smaller sums, contingent on their annual remuneration. However, in light of the implementation of the "Client Pays Rule", they would be unable to have these amounts paid by the clubs, as has been the case in numerous instances.[77] Consequently, it can be argued that one of the underlying, unstated objectives of the "Service Fee Caps" was to safeguard the economic interests of the clubs rather than protect the players.

The preceding analysis has demonstrated that the majority of the objectives identified in the FFAR cannot be pursued through the implementation of the "Service Fee Caps" outlined in Article 15(2) FFAR. This is because they fail to meet the coherence criterion.[78] However, two objectives exhibit exceptions to this result. These are the objective to "maintain competitive balance and ensure the regularity of sporting competitions"[79] and the objective to "improve financial and administrative transparency".[80]

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[74] FIFA Regulations on Working with Intermediaries (2015), art. 6.

[75] HEERMANN, P. W. *Will the football agents' service fee cap survive the current legal attacks? Regulation of football agents between the poles of autonomy of sports organisations and EU antitrust law.*

[76] FIFA Football Agent Regulations (2022), art. 1, para. 2 (e).

[77] Ibid., art. 14, para. 2.

[78] HEERMANN, P. W. *Will the football agents' service fee cap survive the current legal attacks? Regulation of football agents between the poles of autonomy of sports organisations and EU antitrust law.*

[79] *FIFA Football Agent Regulations (2022)*, art. 1, para. 1 (e), (f).

[80] Ibid., art. 2, para. 2 (d).

III. ARTICLE 15(2) FFAR AS A RESTRICTION OF COMPETITION "BY OBJECT"

In light of the aforementioned analysis of Article 15(2) FFAR, I believe that it is a cartel agreement between FIFA, its member associations, and the clubs. Therefore, I concur with Heermann that the current form of the "Service Fee Caps" substantially harms competition and should be classified as a horizontal restriction of competition. More specifically, it should be regarded as a price cartel on the demand side and, thus, a restriction of competition "by object".[81] My conclusions are based on the following arguments.

Article 15(2) FFAR substantially harms competition in the market for football agents' services by establishing a disproportionate mechanism for the agent's remuneration. Under Article 101(1)(a) TFEU, associations of undertakings (such as FIFA) are prohibited from directly or indirectly fixing purchase or selling prices or any other trading conditions on the relevant market. Although the "Service Fee Caps" do not directly fix the prices for the agent's services, they introduce a mechanism that caps agents' fees at inappropriately low levels, prohibiting them from negotiating higher fees.

The fact that the fee caps on the thresholds of 3% and 5% of the player's remuneration are disproportionate is evident from the data presented by FIFA in the CAS proceedings, including the comparison of national regulations. Indeed, countries such as Portugal and Greece cap the fee of agents at around 10% of the player's remuneration.[82] Furthermore, as presented in the case study on players in lower leagues above, it is most likely that due to the very low remuneration, agents would not provide their services to such players at all. Thus, it is likely that the "Service Fee Caps" would lead not only to a reduction in the quality of services provided by agents but also to some agents leaving the market entirely,[83] ultimately harming competition.

The disproportionate "Service Fee Caps" are particularly harmful due to FIFA's regulatory dominance in the market for football agents' services. Football agents cannot offer their services internationally without having to submit to the FFAR. This regulatory pressure prevents agents from offering competitive services that could otherwise justify higher fees. The resulting market distortion hinders competition by limiting the ability of agents to differentiate themselves and similarly discourages market entry. Despite FIFA's and CAS's justifications,[84] the disproportionate "Service Fee Caps" create barriers that harm agents and reduce the overall competitiveness of the market. Therefore, I conclude that Article 15(2) FFAR imposes a disproportionate remuneration mechanism that substantially harms competition and thus violates Article 101(1)(a) TFEU by effectively fixing trading conditions in a way that undermines market dynamics and competitive fairness.

Articles 14(2) and 15(2) FFAR represent a cartel agreement between FIFA, its member associations, and the clubs. Under the ECJ's conclusions in *Diarra,* "(…) collusive behaviour by undertakings may consist, in the use of their collective market power to fix

[81] HEERMANN, P. W. *Will the football agents' service fee cap survive the current legal attacks? Regulation of football agents between the poles of autonomy of sports organisations and EU antitrust law.*
[82] EFAA (European Football Agent Association). Key Disadvantages of the FFAR.
[83] Ibid.
[84] CAS 2023/O/9370 Professional Football Agents Association (PROFAA) v. FIFA, 2023, para. 238.

prices (…)."[85] Furthermore, as confirmed by the General Court (GC), "(…) coordination of purchase prices, with the aim of reducing and, ultimately, increasing the cartel participants' profit margins, reveals a sufficient degree of harm to competition (…)".[86] FIFA is an international sports federation consisting of member associations that affiliate clubs, coaches, and players.

It is, therefore, an association of entities that demand the services of football agents. In formulating Article 15(2) FFAR, FIFA thus logically acted primarily in the best interests of its members (primarily clubs) as well as in its own financial interests. Thus, by introducing the "Client Pays Rule"[87] and the mandatory "Service Fee Caps",[88] FIFA tried to significantly reduce the agent's remuneration. The objective of reducing agents' fees to a fair and reasonable price is even explicitly stated in Article 1 FFAR.[89] Consequently, FIFA and the clubs can be seen as a cartel agreement, with a principal objective of increasing their profits. Given this, I conclude that Article 15(2) FFAR is a price cartel on the demand side.

Articles 14(2) and 15(2) FFAR represent the restriction of competition "by object". As stated by the ECJ, "(…) certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101(1) TFEU, to prove that it has actual effects on the market. (…)".[90] The remuneration mechanism at the disproportionately low level, established by the cartel with the intention of increasing its members' profits, will most likely lead to a reduction in the supply of football agents' services and, consequently, substantially harm competition. Therefore, such conduct, as being very restrictive to the football agents' market, needs to be considered as a restriction of competition "by object".

The fact that FIFA has allegedly acted without having a subjective intention to prevent, restrict or distort competition and that it pursued legitimate objectives is not decisive to determine that Articles 14(2) and 15(2) of the FFAR represent a restriction of competition "by object". It is well established by the ECJ that "(…) the fact that the undertakings involved acted without having a subjective intention to prevent, restrict or distort competition and the fact that they pursued certain legitimate objectives are not decisive for the application of Article 101(1) TFEU."[91]

It is evident that Article 15(2) FFAR pursues several legitimate objectives. These include maintaining competitive balance and regularity of sporting competitions,[92] as well

[85] Judgment of 4 October 2024, Fédération internationale de football association (FIFA) v BZ, C-650/22, ECLI:EU:C:2024:824, para. 129.
[86] Judgment of 7 November 2019, Campine NV and Campine Recycling NV v European Commission, T-240/17, ECLI:EU:T:2019:778, para. 297.
[87] FIFA Football Agent Regulations (2022), art. 14.2.
[88] Ibid., art. 15, para. 2.
[89] Ibid., art. 1, para. 2, let. b).
[90] Judgment of 2 April 2020, Gazdasági Versenyhivatal v Budapest Bank Nyrt and Others, C-228/18, ECLI:EU:C:2020:265, para. 36.
[91] Judgment of 4 October 2024, Fédération internationale de football association (FIFA) v BZ, C-650/22, ECLI:EU:C:2024:824, paras 131–133.
[92] FIFA Football Agent Regulations (2022), art. 1, para. 1 (e), (f).

as improving financial and administrative transparency.[93] I believe that these objectives ultimately contribute to the promotion of sporting merit and the ensuring of equal opportunity across the football competition landscape, which is a legitimate objective recognised by the ECJ.[94] However, Articles 14(2) and 15(2) FFAR similarly represent a price cartel on the demand side, which substantially harms competition. The legitimate objectives pursued by Article 15(2) FFAR cannot outweigh the harmfulness of such a cartel. Similarly, they also cannot alter the assessment of Article 15(2) FFAR as a restriction of competition "by object".

Given the factual similarity of the circumstances with other cases previously decided by the ECJ, Articles 14(2) and 15(2) FFAR must be regarded as a restriction of competition "by object". In terms of the factual context, the FFAR case is not substantially different from that of the *European Superleague Company*, in which the ECJ referred to FIFA's gatekeeping rules as a restriction of competition "by object". Similarly to *European Superleague Company*, FIFA also faces a conflict of interest regarding the FFAR.

It is because it is economically beneficial for FIFA and its members to restrict fees charged for football agent services as described above. Furthermore, as Weatherill correctly observes, the ECJ did not restrict the concept of a restriction of competition "by object" to "gatekeeping".[95] Conversely, in *Royal Antwerp,* the ECJ acknowledged that even "homegrown" rules might restrict competition "by object".[96] Similarly, in *Diarra,* the ECJ determined that the 2014 RSTP rules constituted a restriction of competition "by object".[97] In light of the factual similarity of the ECJ's recent decisions, I conclude that Article 15(2) FFAR must be regarded as a restriction of competition "by object".

Although the "Service Fee Caps", in general, do not violate the independence requirement under competition law, Articles 14(2) and 15(2) substantially harm competition. The ECJ defines the fundamental independence requirement as "each economic operator must determine independently the policy which he intends to adopt on the common market."[98] However, such freedom is not absolute and can be lawfully restricted by sports bodies for legitimate purposes. As explained by the ECJ in *European Superleague Company,* "not every decision of an association of undertakings which restricts the freedom of action of the undertakings party to that agreement or subject to compliance with that decision necessarily falls within the prohibition laid down in Article 101(1) TFEU."[99]

Given that the two legitimate objectives meet the coherence criterion to Article 15(2) FFAR as explained above, I believe that FIFA is empowered to introduce the "Service Fee Caps". However, the problem with those contained in Article 15(2) FFAR is that they substantially harm competition. Therefore, I present my considerations

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[93] Ibid., art. 2, para. 2 (d).

[94] Judgment of 21 December 2023, European Superleague Company, C-333/21, ECLI:EU:C:2023:1011, paras 143–145.

[95] WEATHERILL, S. *The impact of the rulings of 21 December 2023 on the structure of EU sports law,* p. 413.

[96] Judgment of 21 December 2023, Royal Antwerp Football Club, C-680/21, ECLI:EU:C:2023:1010, paras 108–111. control and sanctioning powers – Rules requiring professional football clubs to use a minimum number of 'home-grown' players – Article 101(1

[97] Judgment of 4 October 2024, Fédération internationale de football association (FIFA) v BZ, C-650/22, ECLI:EU:C:2024:824, para. 148.

[98] Judgment of 14 January 2021, Kilpailu- ja Kuluttajavirasto, C-450/19, ECLI:EU:C:2021:10, para. 23.

[99] Judgment of 21 December 2023, European Superleague Company, C-333/21, ECLI:EU:C:2023:1011, para. 183.

as to what adjustments would need to be made to the FFAR to not substantially harm competition below.

If the fee caps were set on the threshold of around 10% of the player's remuneration and were thus more proportionate and the "Client Pays Rule" disappeared from the FFAR, Articles 14(2) and 15(2) FFAR would not constitute a restriction of competition "by object". I believe that Article 15(2) FFAR constitutes a restriction of competition "by object" for two main reasons. Firstly, it is because the thresholds of 3% and 5% of the player's remuneration are disproportionately low. Secondly, it is problematic that FIFA is effectively using the FFAR to increase profits for clubs and itself at the expense of players and agents.

However, if Article 15(2) FFAR contained a more proportionate threshold of around 10% of the player's remuneration, which more closely matches other national regulations, addresses the problem of exorbitant fees described by FIFA, but at the same time does not cause a massive drop in the quality of agent services or even a complete exit of agents from the market, it could withstand review under EU competition law. However, this would only be possible provided that the "Client Pays Rule" in Article 14(2) FFAR disappears. Indeed, it is the combination of Articles 14(2) and 15(2) FFAR that is constituting the demand-side cartel.

IV. CAN ARTICLE 15(2) FFAR BE SAVED UNDER ARTICLE 101(3) TFEU?

It should be noted at the outset that while the CAS assessed the FFAR through the lens of the Meca-Medina test, that route is, as explained above,[100] no longer available for restrictions of competition "by object" following the ECJ's rulings of 21 December 2023. The only remaining framework for justification is therefore Article 101(3) TFEU. Thus, having established that Article 15(2) FFAR restricts competition "by object", it remains to be examined whether it can nevertheless be justified under that provision. The reason is that meeting its cumulative conditions for an exemption is the only "safe harbour" that would prevent the combination of Article 14(2) and Article 15(2) FFAR – a demand-side cartel agreement – from being regarded as contrary to EU competition law. Thus, does this cartel meet these conditions? I believe not and offer the following arguments.

Under Article 101(3) TFEU, an exemption can be granted when four cumulative conditions are met. First, the agreement must lead to efficiency gains. That is to say, it must contribute to improving the production or distribution of products (services)[101] or contribute to promoting technical or economic progress. Second, the restrictions imposed must be indispensable to attaining those objectives (efficiency gains). Third, consumers must receive a fair share of the resulting benefits. Fourth, the agreement must not afford

[100] Chapter I.

[101] As can be seen from an earlier version of the EC's Guidelines on the applicability of Article 101 TFEU (European Commission. Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements. 2011, para. 8.) "products" is an aggregated term for goods and services. As this assessment concerns football agent services, I therefore continue to use the term "services".

the parties the possibility of eliminating competition concerning a substantial part of the services in question.[102]

The current demand-side cartel agreement, established by Articles 14(2) and 15(2) FFAR, does not lead to efficiency gains but has the potential to eliminate competition in a substantial part of the football agent services market. As explained above,[103] the fee caps may potentially reduce the quality and availability of football agent services as they have high potential to force a significant part of agents to leave the market entirely. Not only would this fail to lead to efficiency gains, but it would also result in a significant restriction of competition with respect to a substantial part of the football agents' services market. Consequently, at least two of the four conditions set forth in Article 101(3) TFEU would certainly not be met.

The fact that clubs may benefit from efficiency gains resulting from a cartel with FIFA is irrelevant. It is well established by the ECJ that "(…) the improvement, within the meaning of the first condition laid down in Article 81(3) EC,[104] cannot be identified with all the advantages which the parties obtain from the agreement in their production or distribution activities (…)."[105] The primary beneficiaries of the aforementioned cartel agreement are the clubs. However, the potential economic advantages for them must be disregarded, as the clubs are part of FIFA's organisational structure.

Article 15(2) FFAR does not meet the conditions for an exemption under Article 101(3) TFEU and thus represents an unjustifiable restriction of competition "by object". The conditions for granting an exemption under Article 101(3) TFEU are cumulative, and as Articles 14(2) and 15(2) FFAR do not fulfil at least two of the four conditions set forth in Article 101(3) TFEU, the exemption does not apply. Further, as stated in an earlier version of the EC's Guidelines on the application of Article 81(3) TEC, "Article 81(3)[106] does not a priori exclude certain types of agreements from its scope. (...) However, severe restrictions of competition are unlikely to fulfil the conditions of Article 81(3)."[107] As described above,[108] Articles 14(2) and 15(2) FFAR constitute a demand-side cartel that creates a disproportionate remuneration mechanism for agents and as such, substantially harms competition. Thus, I conclude that Articles 14(2) and 15(2) FFAR represent a restriction of competition "by object" that is not justifiable under Article 101(3) TFEU.

CONCLUSION

The main objective of this article was to ascertain whether Article 15(2) FFAR constitutes a restriction of competition "by object". To do so, I firstly conducted a critical evaluation of the conflicting perspectives on FIFA's regulatory power. I discovered that those repre-

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[102] European Commission. Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements. 2023, para. 248.
[103] Chapter III.
[104] Article 81(3) EC is the predecessor of today's Article 101(3) TFEU.
[105] Judgment of 11 September 2014, MasterCard Inc. and Others v European Commission, C-382/12 P, ECLI:EU:C:2014:2201, para. 234.
[106] Article 81(3) EC is the predecessor of today's Article 101(3) TFEU.
[107] European Commission. Guidelines on the application of Article 81(3) of the Treaty. 2004, para. 46.
[108] Chapter III.

senting the interests of football agents contend that the FFAR represents a cartel agreement between FIFA and clubs. FIFA, however, asserts that the FFAR address market inefficiencies through vertical regulation, with no economic interest in the agents' market.

My analysis demonstrated that FIFA's approach is faulty. This is because of FIFA's financial alignment with club interests, which resulted, when drafting the FFAR, in provisions like the "Client Pays Rule" and the "Service Fee Caps" – Article 15(2) FFAR. This finding undermined the view of a neutral "private regulator". Therefore, I preliminarily concluded that the FFAR represent a horizontal restriction of competition benefiting both clubs and FIFA and, therefore, more likely constituting a restriction of competition "by object".

The consequent analysis of Article 15(2) FFAR confirmed this preliminary conclusion. Due to FIFA's regulatory and control dominant position in the market for football agent services, football agents are not able to offer their services internationally without having to submit to the FFAR. The mandatory "Service Fee Caps" containing the thresholds of 3% and 5% of the player's remuneration are disproportionately low when compared with several national regulations such as Portugal or Greece.

Thus, the application of Article 15(2) FFAR would likely lead not only to a reduction in the quality of services provided by agents but also to some agents leaving the market entirely, ultimately harming competition. Similarly, the combination of the "Service Fee Caps" and the "Client Pays Rule" indeed constitutes a price cartel on the demand side. It is because FIFA is effectively using the FFAR to increase profits for clubs and itself at the expense of players and agents. Given the above, Article 15(2) FFAR also does not meet the criteria for an exemption under Article 101(3) TFEU. Thus, I concluded that the "Service Fee Caps" constitute an unjustifiable restriction of competition "by object" under Article 101 TFEU.

Similarly, I have considered the possible compatibility of the "Service Fee Caps" in general and have concluded that they might be compatible with EU competition law under certain circumstances. Indeed, they do not, in general, violate the fundamental independence requirement. This is because such freedom is not absolute and can be lawfully restricted by sports bodies for legitimate purposes as established by the ECJ. Given that the two legitimate objectives – "to maintain competitive balance and ensure the regularity of sporting competitions" and "to improve financial and administrative transparency" meet the coherence criterion to Article 15(2) FFAR, I believe that FIFA is empowered to introduce certain forms of the "Service Fee Caps".

More specifically, I argue that if the fee caps were set on the threshold of around 10% of the player's remuneration and were thus more proportionate and the "Client Pays Rule" disappeared from the FFAR, Articles 14(2) and 15(2) FFAR would not constitute a demand-side cartel and thus a restriction of competition "by object". This is because a more proportionate threshold of around 10% of the player's remuneration would more closely match other national regulations. Similarly, it would still address the problem of exorbitant fees described by FIFA and would not cause a massive drop in the quality or the quantity of agent services.

Similarly, if the "Client Pays Rule" Article 14(2) FFAR were deleted, a price cartel on the demand side between FIFA and the clubs could no longer be considered. Indeed, the scope of potential payers would extend to all persons willing to pay for the services of agents. Therefore, if both of my proposed modifications are implemented, I believe that such service fee caps could withstand review under EU competition law. However, how exactly should the "Service Fee Caps" be set to pass the EU competition law review deserves further research. Exploring this issue is crucial. This is because it is very likely that FIFA will want to return to some form of the "Service Fee Caps" in the future.

In conclusion, I do not believe that the current form of Article 15(2) FFAR – the "Service Fee Caps" stands a chance of withstanding an EU competition law assessment. At least, that is what my conclusions unambiguously imply. Such a conclusion would surely make super-agent Raiola very happy. Indeed, even before his death, he was planning to passionately defend himself against all such measures. Given the current worldwide suspension of the problematic FFAR rules, he can now rest in peace. At least until the ECJ finally rules on the FFAR.