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How to protect the employer's interests after the termination of employment contracts – aspects of labour law in general and sports law in particular

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INTRODUCTION

When signing employment contracts, employers and employees usually do not think about the problems that may arise at the end of such cooperations. However, it is our task as their advising lawyers to protect our client's interests after the termination of such contracts. Therefore we would like to draw your attention on means to protect these interests of employers in general, such as restrictive covenants and garden leave – before we will have a look into the world of sports and see how it deals with respective problems.

1. Employment Law

What are restrictive covenants?

Information is key for the success of every business.

Thus, restricting the use of this information by employees after their employment has ended has proved to be vital to protect the business and/or customer contacts. A former employee having insider-knowledge of the prices, technology, market strategy, customer- or client-base is often an attractive asset to a competitor seeking to enter the market and/or enhancing its existing business.

In order to provide for a certain level of protection for employers they may want to protect the use of the information vital to their business by post termination restrictive covenants.

A contractually agreed restrictive covenant is typically designed to prohibit an employee from competing with his former employer for a certain period after the employee has left the business. Furthermore, it aims to prevent a former employee from soliciting or dealing with customers and or other employees of the former employer by using knowledge of those customers and the business gained during the prior employment.

Standard types of restrictive covenants, which are often used by employers, are:

- non-competition covenant,
- non-solicitation covenant,
- non-dealing covenant
- and non-poaching covenant.

Garden leave

Another opportunity to increase the impact of a post termination restrictive covenant – if lawfully agreed upon - is to agree on a garden leave clause in the initial employment contract. Based on such clause an employer can require an employee to spend all or part of the notice period at home whilst the employee continues receiving the regular remuneration.

Thus, a garden leave clause prevents the employee from taking up other employment with a competitor whilst still being employed with the employer. However, it also enables the employee's successor to establish himself and develop relationships with the employee's (former) customers and contacts. A further advantage of such a clause is that whilst on garden leave, the employee is no longer privy to the business' confidential information. Additionally, it has to be noted that all information such employees do have will become out of date until the garden leave ends.

Finally, at the end of the garden leave period the restrictions resulting from the post termination restrictive covenant may step in and further deter the employee from competing with the business of the former employer.

However, from the employee's perspective such garden leave provision contained in the employment contract, if lawfully agreed upon, may prevent the employee from further practicing (and training) his specific occupation. This may be considered a huge disadvantage when it comes to profession, where actively pursuing your occupation is key (e.g. for professional athletes, surgeons, etc.).

2. The Impact of Employment Law on the World of Sports

In some kinds of sports, athletes and coaches are employed by clubs or associations, so the rules of employment law apply. However, the world of sports has always the tendency to set their own rules of law, claiming that the regular laws are not suitable for the relationships in sports. Therefore we are interested in learning if the above mentioned means of protection the employer's interests at the end of an employment contract are found in sports employment contracts and/or if there are any special provisions in athlete's employment contracts in your jurisdiction.

Transfer Fees

Once upon a time, (football) sports clubs and associations have invented the transfer fee system: If a player wanted to switch the club (the employer) after the termination of his contract, the new club had to pay a transfer fee to the former club. The reason for this was mainly that the former club wanted to be compensated for the education and the improvements of the player. This was similar to the situation of "normal" former employers who do not want their competitors to benefit from the know-how that a "normal" employee gathered during his employment.

This system had to be abolished in 1995 after the judgment of the European Court of Justice in the "Bosman" case, C-415/93. It was decided that the obligation for the new club to pay a transfer fee after the termination of a player's contract infringe the freedom of movement for workers.

Since then, transfer fees may only be claimed in the European Union, if a player wants to switch the club during the term of validity of his employment contract. Therefore the duration of the contract has become an important aspect of the player's contracts.

Now, how are these issues dealt with in your jurisdiction?

1.
In summary, the transfer system as it stands in major sports such as football is considered illegal by Belgian legal doctrine but, until now, it has not been challenged before a Belgian court.

This could change however in the near future. Indeed, in recent press releases, FIFPro has criticised FIFA for FIFA's Regulations on the Status and Transfer of Players alleged incompatibility with EU law and other legal sources protecting football players' fundamental rights. Lacking any changes to FIFA's RSTP in light of its alleged incompatibility with EU law, FIFPro has announced its intention to mount a legal challenge to FIFA's RSTP.

The current football transfer system is based on a 2001 compromise reached between the football authorities and the Commission. The 2001 agreement, brokered between UEFA, FIFA and the Commission, could be invoked to defend FIFA's RSTP. Such a defence would develop along the lines of a legitimate expectations-type argument: namely that the current football transfer rules reflect a deal with the Commission intended to balance the purely sporting interest with EU law.

Yet it should be noted that the 2001 agreement is nothing more than a – rather ambiguous – compromise. The 2001 agreement is not legally binding and the CJEU has not ruled on its legal validity.

The specific transfer rules likely to be challenged by FIFPro are the rules laid down in Part IV of FIFA's RSTP on the "Maintenance of Contractual Stability

between Professionals and Clubs" and the rules laid down in Part VII of FIFA's RSTP on "Training Compensation and Solidarity Mechanism" and its Annexes 4 and 5, as interpreted by FIFA's DRC and the CAS.

Should it wish to legally-challenge FIFA's RSTP, FIFPro has various procedural routes open.The two main procedural paths towards a legal ruling are a complaint to the European Commission and a national court making a preliminary ruling request to the CJEU. In addition, a claim with the Court of Human Rights in Strasbourg could be envisaged. Some combination of these options is possible as well.[1]

A <u>Belgian case may very well be chosen to challenge the transfer system</u>. Although procedural hurdles may be placed, there is a realistic chance that a national (Belgian) court would eventually request a CJEU preliminary ruling.

The likelihood of a tenacious[2] player initiating such litigation is considered remote. It is more likely that FIFPro would look for - and fund - a case where a player is breaking his[3] contract or even incite a player to breach his contract. There are strong indications that FIFPro has been looking for such a precedent over the last year. Mr. MISSON - one of the *Bosman* lawyers and close ally of FIFPro in the past - is known to seek a legal challenge of FIFA's RSTP[4].

2.
Legal arguments against a transfer system are threefold and are derived from EU internal market law, EU competition law and legal sources concerning fundamental human rights.

The main argument is drawn from EU internal market law. This legislation is essentially what the debate is about: the free movement of players. It is argued that the current restrictions on player mobility are not compatible with the free movement principles laid down in EU law. It considers that the current

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[1]Compare theapproach taken by J.-L. DUPONT against UEFA's FFP Regulations. A complaint to the Commission was combined with a case before the Brussels Court of First Instance with the intention of triggering a preliminary ruling request.

[2]Although Jean-Marc Bosman won his case, his career was ruined by boycotts resulting from the legal action he undertook. In the end, more than 8 years separated the initiation of litigation and the out-of-court payment made to him by the Belgian Football Association.

[3]For ease of drafting, the Study uses male pronouns, such as "he", to refer to both male and female football players. The Study's authors' note the development and increasing importance of professional women's football and stress the equal applicability of this Study's analysis and conclusions to both men and women's professional football.

[4]A former Standard Liège player, *Kanu*, terminated his contract without cause and Mr. Missonis known to have advised him. A claim was recently served against the Belgian club, Standard Liège, and the Belgian football association. Although the player's claim has not been granted in the framework of summary court proceedings before the judge in chambers of the Liège Employment Court, a decision on the merits of the case is still possible and may result in a CJEU preliminary ruling.

rules limit players' free movement and their right to engage in work, without there being legitimate justification for the restrictions that are compatible with EU law. It considers that there are certainly less restrictive and more suitable means available in light of the free movement of worker jurisprudence. Justifications forwarded by sports associations[5]are often deemed to be incorrect or, at the very least, disproportional to the restraint caused to a player's mobility.

Arguments relating to EU competition law are essentially that a transfer system restrict free competition (i) between players on the market for (the provision of) football (or, for that matter, other sports) playing services, (ii) between clubs on the market for (acquiring) football-playing services and (iii) between agents on the market for (the provision of) football-playing services. These restrictions amount to a horizontal agreement between employers (the clubs), involving also the sport's governing authorities (particularly FIFA). In addition (or in the alternative), the clubs (through FIFA), which hold a collective dominant position, impose restrictions that they abuse to limit competition on the market for the provision of football-playing services.

Finally, players' fundamental human rights, as enshrined in the EU CFR and the ECHR, are at stake. Fundamental rights likely to be invoked include the Freedom to Engage in Work, the Prohibition on Slavery and Forced Labour, the Non-Discrimination principle, the Right to Effective Remedy and to a Fair Trial and the Freedom of Association. Especially, Non-Discrimination arguments are rather compelling. Why would sportsman by any different from regular employees? Reference can be made in this respect to the Belgian *Dahmane* case[6]. In that case, a player successfully contested the compensation in lieu of notice payable under Belgian employment law in the event of a breach of contract by a professional sportsman. The player invoked the application of the severance rules applicable to regular employees, which were more beneficial. The Antwerp Appeal Court found the high compensation in lieu of notice payable by professional sportsmen in the event of breach unjustifiable under the constitutional obligation of equal treatment and non-discrimination.

3.

A legal challenge will result in an analysis of possible justifications, i.e. whether there are legitimate objectives for the restrictions in place and whether these are suitable, necessary and proportionate.

[5]FIFA justifies its current transfer rules on the basis of: protecting investments made on the transfer market; clubs' squad stability; sporting competitions' stability and integrity; the uncertainty of match results; the promotion of training; and the strengthening of solidarity between large and small football clubs.

[6] Antwerp Employment Appeal Court, 6 May 2014.

It is considered likely that the CJEU finds the present situation an overly restrictive solution to achieve a certain objective (regardless of how acceptable this objective may be). In some cases, one can even question whether the transfer system does what it is claimed to do. Even if the entire system were not overturned, it is likely that certain elements would be considered incompatible with EU law. More specifically, this outcome is in the context of players being "bought" and "sold" between football clubs and for ever-larger transfer fees (of which a large percentage goes to intermediaries, such as players' agents).

This being said, there is significant pressure to maintain the transfer system in sports more or less as it is. It is worth recalling that, in the wake of the *Bosman* ruling, that political pressure facilitated the agreement between the Commission and FIFA. The CJEU has until now often shown a degree of recognition for the "specificity of sport" and the need to not simply treat the right to free movement of sportspeople exactly the same as that of any other professional worker. In most, if not all, of its rulings, the CJEU has left open at least a certain amount of discretion for sports organising bodies to regulate their respective sports and implement certain restrictions, as long as they serve a legitimate objective and are proportionate.

Alternative rules to the current transfer system exist and could be explored, such as a more equal distribution of broadcasting rights and/or a "salary cap" regime. Even if FIFA and other relevant stakeholders would want to maintain the transfer system, a system in a 'lighter', less intrusive form could be envisaged (such as through transfer fees' being limited or having a "fair play" levy).

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BIBLIOGRAPHY

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1. Employment Law

1.1. Restrictive covenants

In Belgium, an employee is in principle never allowed to compete with his employer in the course of his employment. After the termination of his employment contract however, the employee regains his freedom to engage in a competing business or to enter into service of a competitor, but this freedom is limited by a statutory prohibition of unfair competition and statutory duty of confidentiality, foreseen by article 17 of the Law on Employment Contracts of July 3, 1978, which automatically applies (without the obligation to have a written clause). Besides these general legal restrictions, the freedom to compete can be limited/waived by a written non compete clause.

1.1.1. Is the principle of A POST TERMINATION RESTRICTIVE COVENANT known in your legal system? If yes, how can this principle be defined? Where does the principle have its origin? (Civil Code, case law, etc)

Yes, it is common practice for employment contracts to contain post termination restrictive covenants. However, only non-compete clauses are regulated under Belgian law (in addition to the general statutory prohibition of unfair competition and statutory duty of confidentiality). In practice, employment contracts often also contain other types of post termination restrictive covenants, such as non-poaching and non-solicitation clauses (which are as such not regulated under Belgian law).

1.1.2. At what stage in the employment relationship between employee and employer are post termination restrictive covenants agreed upon in your jurisdiction? Is there any relevant case law?

A non compete clause can be agreed upon in the course of the employment (i.e., before the termination of the employment contract), as well as after the termination.

A distinction should be made between both situations.

The validity of a non-compete clause agreed upon in the course of the employment is subject to a number of legal conditions, in order to protect the employee who is deemed not to be completely free at the moment when he signs the non-compete clause. The non-compete clause is void when it does not meet these legal conditions (see below).

Non-compete clauses signed after the termination of the employment contract are not subject to these legal conditions, as the employee is no longer in subordination of his employer and is deemed to have regained his freedom and therefore, the employee does no longer need specific protection.

1.1.3. Once the employment contract is signed, is there a general obligation of non-compete also in the absence of an express agreement after the termination of the employment? Are there specific statutory provisions or precedents referring to this? Could whistle blowing be regarded as a part of the employee's post termination restrictive covenant?

Irrespective of the existence of a written clause, the Law on Employment Contracts of July 3, 1978 (article 17) provides that an employee during his employment and after its termination, must refrain from revealing any trade or business secret, or any secret of a personal or confidential nature that has come to his knowledge during the performance of his employment contract. In addition, the employee must also abstain from engaging in unfair competition. This general obligation to abstain from engaging in unfair competition is however not a general obligation to not compete with his former employer.

1.1.4. Which obligations regarding post termination restrictive covenants exist on the employer's side in the absence of an express agreement? Are there specific statutory provisions or precedents governing employer's duties after the termination of the employment in your jurisdiction?

No.

1.1.5. What kind of different restrictive covenants that may be available and can be agreed between employer and employee in your jurisdiction? (see the examples in the introduction). Please describe how these can be defined and how they work in your jurisdiction.

Only non-compete clauses are regulated under Belgian law (in addition to the general statutory prohibition of unfair competition and statutory duty of confidentiality). In practice, employment contracts often also contain other types of post termination restrictive covenants, such as non-solicitation clauses (which are as such not regulated under Belgian law). The validity of these other post termination restrictive covenants are often questioned. If the non-solicitation clause aims at limiting the employee's right to compete, the employee may claim that this non-solicitation clause is actually a non-compete clause. A court could then declare this clause void, as the legal conditions and requirements are not complied with (see below).

1.1.6. What are the conditions for a valid post termination restrictive covenant in your jurisdiction? (e.g. prerequisites like minimum age, minimum salary, minimum employment period; way of termination of employment, etc.). Please describe the conditions applicable and how these work in your jurisdiction + 1.1.7. What is the potential scope of a post termination restrictive covenant in your jurisdiction? (e.g. taking into consideration time, geographical scope, content, interest, activities; etc.). Please describe how that works in your jurisdiction and what pitfalls have to be observed for both employers and employees.

In order to be valid, a non-compete clause must be fully in line with the applicable legislation. Any lack in compliance, renders the clause void.

Under Belgian law, there are two types of non-compete clauses for non-sales representatives (i.e., a standard/general non-compete clause and an extended/special non compete clause) and a non-compete clause for sales representatives:

(1) Standard/general non-compete clause for non-sales representatives

In order to be valid/enforceable, a standard non-compete clause must comply with the following requirements:

- The clause must be in writing;
- The employee's salary should amount to at least 66.406 EUR gross at the moment of the termination of the employment contract (amount for 2015 – indexed each year);
- The non-compete clause must relate to activities similar to those undertaken by the employee during his employment and the activities are performed for a competitor of the employer;
- The non-compete clause must be limited to the geographical area in which the employer can effectively compete with the employer and its territorial scope must not go beyond Belgium;
- The prohibition to compete applies for a maximum of 12 months after the termination of the employment; and
- The employer has to compensate the employee for the prohibition to compete and the non-compete clause must provide for the payment of

an indemnity equal to at least 50% of the gross remuneration corresponding to the duration of the non-compete clause. This indemnity must be paid by the employer to the employee, unless the employer waives the application of the non-compete clause within 15 days after the termination of the employment contract.

(2) <u>Extended/special non-compete clause for non-sales representatives</u>

An extended non-compete clause is less restrictive than a standard non-compete clause, but it may only be used for certain categories of companies and for employees with specific functions:

- The employer must have either (i) international activities or important economic, technical or financial interests on the international markets or (ii) its own internal research and development departments.
- The extended non-compete clause may only be used for employees whose duties allow them to obtain knowledge of practices specific to the organization whose use outside the organization could be harmful to it.

If the aforementioned conditions are met, it is possible to deviate from a general non-compete clause on the following points:

- no geographic limitation to the Belgian territory;
- no limitation to 12 months after the termination of the employment contract.

Moreover, in order to be valid the following conditions must be met:

- The non-compete clause must be in writing;
- The annual salary of the employee must be at least 66.406 EUR gross at the moment of the termination of the employment contract (amount for 2015 – indexed each year);
- The non-compete clause must relate to activities similar to those undertaken by the employee during his employment and the activities are performed for a competitor of the employer;
- The employer has to compensate the employee for the prohibition to compete and the non-compete clause must provide for the payment of an indemnity equal to at least 50% of the gross remuneration corresponding to the duration of the non-compete clause. This indemnity must be paid by the employer to the employee, unless the employer waives the application of the non-compete clause within 15 days after the termination of the employment contract.

(3) <u>Non-compete clause for sales representatives</u>

The non-compete clause for sales representatives is less restrictive than the non-compete clause for non-sales persons and is only valid upon fulfillment of the following conditions:

- The non-compete clause must be in writing;
- The annual salary of the sales representative must be at least 33.203 EUR gross at the moment of the termination of the employment contract (amount for 2015 – indexed each year);
- The non-compete clause must relate to activities similar to those undertaken by the employee during his employment;
- The non-compete clause is territorially limited to places where the sales representative works with the possibility to extend outside of Belgium; and
- The prohibition to compete applies for a maximum of 12 months after the termination of the employment.

There is no compensation to be paid by the employer to the sales representative for the prohibition to compete.

1.1.7. What are the possible sanctions against the employee in the event of a breach of a post termination restrictive covenant? Describe how that works in your jurisdiction and provide for practical information about the dos and don'ts.

If the employee does not comply with the non-compete clause, he will be obliged to compensate the employer for the damage he has caused. The compensation is fixed at twice the compensation the employee received from the employer for not competing. The court may however grant a higher indemnity to the employer provided that the employer can prove higher actual damage.

A sales representative who breaches his contractual prohibition to compete, must pay damages to the employer, equal to three months' remuneration. The employer may however claim a higher amount if he can prove a higher actual damage.

1.1.8. What are the possible sanctions against the new employer in the event of a breach of a post termination restrictive covenant by the employee of the former employer? Is it a matter of unfair competition in your jurisdiction?

In general, a new employer is not liable for damages by the mere fact that he has hired an employer who was restricted by a non-compete clause. Special circumstances can however implicate the new employer; provided that unfair trading practices can be proven against the new employer, such as complicity in the breach of the non-compete clause, the former employer can sue the new employer of the employee who is breaching his non-compete clause. For example, of the new employer knew the employee was bound by a non-compete clause and actively hired the employee in order to approach its competitor's customers by making use of the trade secrets that the employee gained in his former position. The burden of proof of these circumstances lies however with the former employer.

1.1.9. When an employer has invested money in an employee's training, is there any possibility for the employer to get a refund from the employee, in case of breach of the post termination restrictive covenant, and under which conditions?

Belgian employment law foresees a specific *education clause*, being the clause by which an employee, who followed during the employment contract a training or education paid by the employer, agrees to reimburse to the employer a part of the costs of such a training or education in case he would leave the company within a certain period of time. This education clause is subject to a number of legal conditions in order to be valid.

1.1.10. What are the possibilities of lawsuit for the employee in case of the employer's disadvantagous actions during a period covered by a restrictive covenant (e.g. the employer prevents the employee from finding a new job by spreading out rumours)?

The employee may start a procedure against the former employer to claim damages; however, the burden of proof of the disadvantageous actions, as well as the (amount of the) damages lies with the employee.

1.2. Garden Leave

1.2.1. Does the concept of "garden leave" exist in your jurisdiction? How does it work, what is the scope and what are the prerequisites?

No, the concept of "garden leave" does not exist under Belgian law. A clause allowing an employer to unilaterally decide to put the employee on garden leave during the notice period is void and unenforceable.

1.2.2. Talking about garden leave provisions: do employees – or certain types of employees – have a right to be "actively employed" in your jurisdiction, e.g. so that a garden leave provision would not – or not be fully – be enforceable for an employer and the employee would have a "right" to continue working until the end of the employment? What is the respective legal framework in your jurisdiction?

In case an employer liberates an employee from its obligation to work during the notice period (but continues to pay the salary) (*e.g.*, in order to prevent the employee to keep in contact with customers, etc.), the Belgian courts will qualify this decision from the employer as a unilateral breach of contract, because providing work is one of the essential obligations of an employer in an employment relationship.

In Belgium, it is only possible to send an employee on "garden leave" when the employee expressly agrees with it. This (written) agreement can moreover be given at the earliest after the notice is given.

1.3. Are there any other specific means to protect the employer's interest at the end of an employment contract in your jurisdiction? Please explain in detail and provide for practical guidance.

No.

2. The World of Sports and Employment Law

2.1. General questions

2.1.1. Does employment law apply to the relation between athlete's and sports clubs/Associations in your jurisdiction? Are there relevant differences between the kinds of sports and between professionals and amateurs?

Yes, (specific provisions of) Belgian employment law applies to the relation between athlete's and clubs/associations. In some sports, employment contracts are not common (tennis, motorized sports, etc) and employment law does not apply.

Specific legislation governs the status of amateurs. Provided the latter respect certain formalities and timeframes – which may be different from sport to sport – they are considered to be free agents at the end of each season.

2.1.2. Are there specific employment law provision (statutes, rules of sports associations) applicable for athletes in your jurisdiction? In particular regarding post termination restrictive covenants and/or garden leave provisions and/or the right to continue to work?

Different employment law provisions apply compared to regular employees, e.g. in the event of termination.However, the compensation in lieu of notice which must be paid under Belgian employment law in cases of breaches of employment contracts by professional sportsmen can be challenged. In practice, players have invoked the application of the severance rules applicable to regular employees, as these tend to require the payment of less compensation in lieu of notice (e.g. previously mentioned Dahmane case).

Restrictive covenant wise, Belgian law provides for transfers in breach of contract a ban on playing for another team in the same league during the current season.Formerly, a "gentleman's agreement" existed between the Belgian clubs not to hire players in breach of their contracts with other Belgian clubs. However, this is not always observed and is likely to be deemed in breach of Belgian competition law.

Specific rules are set forth for specific sports (e.g. cycling). Specific rules may also result from sports associations' bylaws and regulations. The latter should however be compliant with higher legal sources (e.g. employment laws) to be enforceable.

2.1.3. Is there a specific court or arbitration system for employment matters between athletes and clubs in your jurisdiction? Are those arbitration proceedings obligatory before going to court?

Sports Justice is predominantly rendered by the commissions and committees of the relevant sports federations whilst arbitration procedures complement those internal procedures.

However, disputes in relation to employment contracts cannot, in advance, be made subject to arbitration[8]. Therefore, litigation regarding the negotiation, execution and termination of employment contracts must, as a rule,be brought before the competent civil courts, i.e. the Employment Courts and the Employment Courts of Appeal.

Once a conflict has risen, parties can nevertheless decide to opt for arbitration. In practice, disputes are often brought by the sports federation arbitration instances (e.g. non-payment of salary). Players can however never be forced to 'undergo' (first) arbitration before going to court. It should be noted that disciplinary procedures, through which fines and sanctions may be imposed on players, do not equate to arbitration[9].

2.2. Transfer Fee System and termination of contracts

2.2.1. a) For the EU Member States: Describe how the Bosman case has changed the situation in your jurisdiction and if/how the sports associations and the legislator have responded to this judgement. b) For the NON-EU Members States: Was there a similar judgement or event that changed the system in your jurisdiction?

In Belgium, Bosman led to longer contracts and the widespread use of (illegal) option clauses. Players are pressured into signing new contracts, lest they are banned to the reserve squad. The legislator has adopted specific

[8] Art. 9 of the Professional Sports Men Act of 24 February 1978, which defines a paid sports player as "*someone who takes up the obligation to prepare himself or to participate in a sport competition or sport exhibition, under the authority of someone else and remunerated with a salary which exceeds a certain amount*." From 1 July 2012 to 30 June 2013, this annual amount is set at 9,027 euros. However, sports menwho are paid less than this can still be "employed" under Belgian law, i.e. if a sports player performs his activities under the authority of another individual/entity. In that case, general employment law likewise forbids preliminary agreements to submit to arbitration (Art. 15 of the Employment Contracts Act of 3 July 1978). Also, the Flemish Decree of 24 July 1996 regarding the status of non-professional athletes, stipulates that any arbitration agreement entered into prior to the emergence of the conflict, is null and void.

[9]Although the disciplinary powers of a club are in turn regulated under Belgian law. E.g. Belgian employment laws foresee that fines and sanctions must be provided for in the club's mandatory work regulations (Act of 8 April 1965 regarding the Work Regulations and Collective Labour Agreement of 13 June 2012 relating to the terms and conditions of employment of professional footballers).

contract termination laws making it harder for a sportsman to breach his contract compared to regular employees. This legislation is, by some, considered to be illegal (cf. Dahmane case).

2.2.2. Are there specific laws or regulations of sports associations (different from the general rules) dealing with the termination of athletes' employment contracts in your jurisdiction? Are such contracts usually open-ended or do they run for a fixed term? Are there any restrictions for fixed-term contracts in your jurisdiction?

Sports associations may set the terms and modalities for an athlete to resign if they are amateurs (i.e. not subject to employment law). Contracts are usually fixed-term and correspond with the sporting season. A fixed-term contract may not exceed 5 years.

2.2.3. Can a player switch the club during the term of the employment contract for a certain transfer fee without the consent of the former club in the absence of a respective clause? Is it obligatory in your jurisdiction to agree on such a clause and a certain transfer fee?

A player can breach his contract and join another club (to the extent permitted, e.g. during transfer window). No transfer fee will have to be paid. Yet, the employee will have to pay a severance indemnity (which may be paid for by his new club). In practice, few players dare doing so. For international transfers, there is also often international federation rules to consider (e.g. art. 17 FIFA RSTP).

Liquidated damages clauses are illegal under Belgian law. Transfer clauses or buy-out clauses are subject to debate (as the underlying transfer system may be considered illegal). In practice, more and more clubs nevertheless foresee such clauses. It is not obligatory to agree on such a clause and/or transfer fee.

2.2.4. What are the remedies for the former club in your jurisdiction, if a player switches the club during the term of the employment contract without the consent of the former club and without the payment of an agreed transfer fee?

The club can claim damages (= mandatory severance pay) from the player. In addition, he can ask to ban this player from a competitor in the same sporting league during the same season.

2.3. Are there any further conflicts between employment law and the employment practice of sports clubs and associations in your jurisdiction? Please describe relevant cases or judgements.

There may be a problem of forbidden state aid in that professional sportsman (and woman) enjoy a very specific and beneficial tax and social tax regime.