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# ATHLETE INVESTMENT CONTRACTS, UNCONSCIONABILITY, AND CONSUMER PROTECTION: AN EU-US COMPARATIVE ANALYSIS BETWEEN THE *ARCE* CASE AND *BIG LEAGUE ADVANCE* (*BLA*) MODEL

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*ABSTRACT: This article explores the legal and ethical implications of long-term commercial contracts involving young athletes, focusing on the recent Arce judgment of the Court of Justice of the European Union. The ruling significantly advances the application of EU Directive 93/13 on unfair terms in consumers contracts within the sports ecosystem, particularly regarding the classification of "raising star" athletes as consumers and the fairness of long-term remuneration clauses. Emphasising clarity, transparency, and good faith, the Court of Justice sets important criteria for assessing such agreements, especially when minors are involved. The analysis covers the U.S. context, assessing similar investment models and the so-called* Name, Image and Likeness (NIL)*-based deals, with attention to the Big League Advance business model and related litigation. These cases highlight regulatory gaps on both sides of the Atlantic concerning third-party control over athlete careers. The Authors advocate for harmonised safeguards and oversight to ensure that these contracts are appropriate to support the sports development of athletes, legally sound, and ethically justifiable.*

*Questo articolo analizza le implicazioni legali ed etiche dei contratti commerciali a lungo termine che coinvolgono giovani atleti, concentrandosi sulla recente sentenza* Arce *della Corte di Giustizia dell'Unione Europea. Tale pronuncia rappresenta un progresso significativo nell'applicazione, al contesto sportivo, della Direttiva 93/13 sulle clausole abusive nei contratti con i consumatori, in particolare per quanto riguarda la classificazione degli atleti "stelle emergenti" come consumatori e l'equità delle clausole retributive a lungo termine. Sottolineando la necessità di chiarezza, trasparenza e buona fede, la Corte stabilisce criteri importanti per valutare*

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*tali accordi, soprattutto quando sono coinvolti minorenni. L'analisi prende in esame anche il contesto statunitense, valutando modelli di investimento simili e gli accordi c.d.* "Name, Image and Likeness" ("NIL")*, con particolare attenzione al modello commerciale di* Big League Advance *e alle controversie legali connesse. Questi casi mettono in luce lacune normative da entrambe le sponde dell'Atlantico in merito al controllo da parte di terzi sulle carriere degli atleti. Gli autori auspicano l'introduzione di garanzie armonizzate e di un'adeguata supervisione per assicurare che tali contratti siano appropriati a sostenere lo sviluppo sportivo degli atleti, giuridicamente validi ed eticamente giustificabili.*

Keywords: *Sport – Minors – Consumer Protection – Career Development Scheme.*

*Sport – Minorenni – Protezione dei consumatori – Programmi di sviluppo della carriera.*

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## *1. Introduction*

In recent years, the commercialization of athlete careers has fostered the development of innovative – yet legally controversial – financing models, most notably athlete investments contracts on both sides of the ocean, offering "talent management," "career development," or "full-service representation" to promising athletes.

These agreements, increasingly used in the entertainment industry, typically involve parties providing young athletes with early-stage financial support in exchange for a percentage of future earnings.

Such models offer economic opportunities and risks-sharing, but they also raise significant legal and ethical questions, particularly concerning contractual fairness, vulnerability, and consumer protection.

A prominent example of this model is the Big League Advance (BLA) model in the United States. Functioning as a private equity-style investment, BLA provides mainly minor league baseball players with upfront payments in return for a pre-agreed share of their future Major League Baseball (MLB) earnings. Although positioned as a high-risk/high-reward mechanism, this business model has drawn criticism for exacerbating power imbalances and affecting the long-term financial gains/earnings of young athletes. These concerns have been at the heart of litigation in the United States (US), where some players have sought to challenge the enforceability of their contracts with BLA on the grounds of unconscionability and unfair bargaining conditions.

Parallel developments have occurred in the European Union (EU), where comparable financing models have also been introduced and subjected to judicial scrutiny. A landmark moment in this context is the recent *Arce* case,[1] where the Court of Justice of the European Union examined the legality of a contractual clause obliging a Latvian young sportsman to transfer part of his income to a company providing services in the field of sports development and career assistance if he becomes a professional athlete under Directive 93/13 on unfair terms in consumer contracts.[2]

The *Arce* judgment not only clarified the personal and material scope of the Directive but also broadened the interpretative framework by directly invoking Articles 17 and 24 of the Charter of Fundamental Rights of the European Union, which protect the right to property and the rights of the child, respectively. The ruling thus marks a pivotal step in reinforcing the legal safeguards available to young athletes, particularly during the formative stages of their careers, and invites broader reflection on the legitimacy and structure of other business models in the sports industry.

This comparative analysis covers the *Arce* case involving a long-term earnings-sharing clause imposed on a young athlete, on one side, and the BLA model in the United States, the private equity-style approach to investing in minor league baseball players, on the other one Together, these cases shed light on differing legal frameworks and highlight a growing need for transnational principles to govern athlete protection.

## *2. The Arce case*

The *Arce* case is a dispute between a Latvian company operating in the field of athlete development services, on one side, and a minor amateur basketball player represented by his parents, on the other. The dispute revolves around a claim for payment of the remuneration owed to the company for the services provided.

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[1] Judgment of 20 March 2025, *Arce*, Case C-365/23, ECLI:EU:C:2025:192. As outlined by the Court itself in its judgement, the name of the case is a fictitious one and it does not correspond to the real name of any party to the proceedings.

[2] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21 April 1993, 29-34; ELI: http://data.europa.eu/eli/dir/1993/13/oj.

Specifically, the relevance of this dispute in terms of EU law lies in whether such a contract falls under the scope of the EU Directive 93/13 on unfair terms in consumer contracts, particularly because the player started as a minor and amateur but became a professional while the contract was still active.

The contract, concluded for a duration of 15 years, provided that the company would offer the young athlete a comprehensive series of services related to training, sports medicine, career development, contract negotiation with clubs, and legal, accounting and marketing support.

In return, the athlete agreed to pay the company a fee amounting to 10% of all net income derived from basketball-related game events, advertising, marketing, and media activities earned during the contract's duration, provided that such income amounted to at least EUR 1,500 per month.

During the term of the contract, the athlete – who became a professional basketball player in the meantime – earned a total of EUR 16,637,779.90 from contracts signed with sports clubs. Consequently, he was expected to pay the company 10% of that amount, namely EUR 1,663,777.99.

For this reason, the company initiated legal proceedings against the athlete and his parents to recover the compensation provided for under the contested contract.

Both the court of first instance and, subsequently, the court of appeal dismissed the company's claim, finding that the contract did not comply with national consumer protection provisions and that the contested clause was unfair.

The company then appealed the decision before the Latvian Supreme Court, arguing that the consumer protection rules were not applicable since the contract in question was one intended for so-called "young talents", or "rising star" not yet professionally employed in sport, to whom those provisions do not apply.

The Latvian Supreme Court, considering that the Court of Justice had previously interpreted the concept of "consumer" without addressing whether consumer protection rules applied in the field of sport, decided to refer several preliminary questions to the latter, concerning *inter alia* whether:

a) a contract such as the one at stake falls within the scope of Directive 93/13 on unfair terms in consumer contracts;

b) a contractual clause stipulating that, in return for services supporting the development of the athlete's talent and career, the young athlete undertakes to pay a fee equivalent to 10% of income earned over the subsequent 15 years meets the requirement of being drafted in plain, intelligible language within the meaning of Article 5 of Directive 93/13;

c) such clause must be regarded as one that causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, given that it does not link the value of the service provided to its cost for the consumer.

## *3. The Judgment of the EU Court of Justice*

On 20 March 2025, the EU Court of Justice issued its judgment clarifying the scope of Directive 93/13 and the criteria to establish the fairness of contractual clauses.

### *3.1 The Status of Consumer and the Scope of Directive 93/13*

In line with the Advocate General's Opinion,[3] the Court gave a broad and functional interpretation of the term "consumer",[4] covering any natural person acting for purposes outside his trade, business or profession, even where the contract relates to the individual's future professional development.

It emphasized that the directive is applicable in cases where "*a contract has been concluded between, on the one hand, a supplier carrying on an activity in the field of sports development and, on the other hand, a 'rising star' of minor age, represented by his or her parents, who, when that contract was concluded, did not pursue the sporting activity concerned on a professional basis*".[5]

According to the Court, this conclusion cannot be undermined even if, as in this case, the consumer later became a professional athlete, and his/her status of "consumer"[4] must be assessed at the time the contract was concluded.[6]

Furthermore, the mere fact that the consumer was considered a "rising star" in the sport played as a professional does not alter their status at the time the contract was concluded, nor does the fact that the object of the contract was related to their potential future professional career.[7]

Furthermore, the mere fact that the consumer was considered a "rising star" in the sport played as a professional does not alter their status at the time the contract was concluded, nor does the fact that the object of the contract was related to their potential future professional career.[8]

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[3] Opinion of Advocate General Rantos, delivered on 4 October 2024, ECLI:EU:C:2024:865.

[4] G. Alpa, *The Making of Consumer Law and Policy in Europe and Italy*, in *Eur. Bus. L. Rev.*, 2018, 589. The Author observes that "*although the notion of "consumer" has had difficulty gaining credit in the Italian legal culture, it was not actually ignored outright before being accepted in studies by economists, sociologists, and law scholars. In particular. it was already well known from the studies of Vilfredo Pareto (in his Cours d 'Economic Politique, 1897) and of other early twentieth-century economists*". Cfr. H.W. Micklitz (ed.), *The Making of Consumer Law and Policy in Europe*, Bloomsbury Publishing, London, 2021.

[5] ECJ, *Arce*, Case C-365/23, paragraph 47.

[6] J. Calais-Auloy, F. Steinmetz, *Droit de la Consommation*, Dalloz, Paris, 2006, 195-213 and G. Alpa, *The armonisation of the EC law of financial markets in the perspective of consumer protection*, in *Ec. dir. terz.*, 2002, 7.

[7] *Ibid.,* paragraph 49.

[8] *Ibid.,* paragraph 51.

### *3.2 Unfairness of the 15-Year Remuneration Clause: Assessment Criteria*

The key issue in the *Arce* case was whether the 10% of his gross income worth fee the minor player had to pay to the service provider for 15 years – regardless of the provider's actual work – was enforceable or abusive.

#### *3.2.1 The Wording of the Clause: Plain and Intelligible Language*

The Court emphasized that under Article 4(2) of Directive 93/13,[9] the assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration for the services or goods supplies, in so far as these terms are in plain intelligible language.[10]

AIn fact, these clauses, while falling within the scope of Directive 93/13, are exempt from the evaluation of their abusive nature to the extent that the referring court considers that they were formulated clearly and understood by the professional.[11]

For the Court the clause falls within the scope of Directive 93/13, and in principle, a national judge may evaluate its abusive nature only if they conclude that it is not formulated clearly and understandably.[12]

However, the case at issue presented a peculiarity in that, at the time the contract was concluded with the young athlete (14 January 2009), certain provisions of Directive 93/13, particularly Article 4(2) on the assessment of the unfairness of a contractual clause had not yet been transposed into Latvian law. Nevertheless, the Court recalled that according to the same directive Member States may "*adopt or retain [more] stringent provisions compatible with the Treaty in the area covered by [that directive], to ensure a [greater] degree of protection for the consumer*" (Article 8).

Therefore, the Court concluded that, where national law so prescribes, a national judge can assess the abusive nature of a clause not individually negotiated, which specifically concerns the main object of the contract, even if the clause was drafted in advance by the professional in a clear and understandable manner.

#### *3.2.2 Obligation of Transparency as for the Assessment of the Financial Consequences*

As regards the concept of the "plain, intelligible language" of the clause, the EU judges stressed that the transparency requirement established in Directive 93/13

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[9] Cfr. N. Reich, *A European Contract Law, or an EU Contract Law Regulation for Consumers?*, in *JCP*, 2005, 383 and S. Grundmann, *The Optional European Code on the Basis of the Acquis*, in *ELRev.*, 2004, 698.

[10] *Ibid.,* paragraph 57.

[11] *Ibid.,* paragraph 58.

[12] *Ibid.,* paragraph 60.

"*cannot be reduced merely to their being formally and grammatically intelligible, but must be understood broadly, in view of the fact that the consumer is in a position of weakness vis-à-vis the seller or supplier as regards, in particular, his or her level of knowledge*".[13]

Accordingly, transparency "*requires not only that a term be formally and grammatically intelligible to the consumer concerned, but also that the contract should set out transparently the specific functioning of the mechanism to which the relevant term relates and, where appropriate, the relationship between that mechanism and the mechanism laid down by other terms, so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him or her which derive from it*".[14]

Therefore, while it remains for the referring court to verify whether this obligation is met, the Court emphasized that a clause that sets the service provider's remuneration based on a fixed percentage of the other party's future income for a specified period could, in itself, be considered suitable for allowing the consumer[15] to evaluate the economic consequences of the clause, provided it accurately describes the income in question.

Since, in this case, the controversial clause set the service provider's remuneration based on a fixed percentage of all net income derived from gaming events, advertising, marketing, and media activities related to the sport in question, the national judge must assess whether this description is sufficiently transparent and whether the nature of the services provided in exchange for the remuneration can be assessed by the minor and his parents as reasonable and worth the high amount of money requested for 15 years.

### *3.2.3 The Good Faith and the "Significant" Imbalance Criteria*

The Court also addressed the risk the clause in question might create a significant imbalance between the parties' rights and obligations to the detriment of the consumer because the clause does not establish a measurable connection between the value of the performance provided and its cost to the consumer.

In this regard, the European judges recalled that under Article 3(1) of Directive 93/13, a contractual term which has not been individually negotiated is to be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer.

In carrying out this assessment, the national judge must first examine whether the good faith requirement has been violated and, second, whether a significant imbalance exists to the consumer's detriment.[16]

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[13] *Ibid.,* paragraph 69 and case-law therein cited.

[14] *Ibid.,* paragraph 70, and the case-law cited.

[15] N. Reich, *Der Common Frame of Reference und Sonderprivatrechte im Europäischen Vertragsrecht*, in *ZEuP*, 2007, 177.

[16] *Ibid.,* paragraph 80.

Essentially, the national judge must assess whether the professional or agency, acting in good faith and fairness with the consumer, could reasonably expect the latter to agree to such a clause in an individual negotiation.[17]

Furthermore, in determining whether a clause creates a significant imbalance to the consumer's detriment, the referring judge must consider, in particular, the applicable provisions of national law in the absence of an agreement between the parties, to assess whether and to what extent the contract places the consumer in a legal position less favourable than the relevant national rules.

### *3.2.4 Fair Market Practices, Risk Factors for the Sports Agency, No Consequences*

In addition to the criteria listed above, the Court also highlighted the following other circumstances that the national judge should consider in their assessment:

(i) the fair and equitable market practices at the time the contract was concluded regarding remuneration in that sport;[18]

(ii) the fact that, by its very nature, the contract involved an element of risk for the sports agency, as it stipulated that the professional's remuneration would only be due if the consumer (athlete)'s income reached at least EUR1,500 per month;

(iii) the consumer could unilaterally withdraw from the contract without paying any compensation if they chose not to pursue a professional career.[19]

Finally, by referring to its Bernard case-law,[20] the Court pointed out that the national judge should take into account also whether

(iv) the services provided offered no guarantee that the young athlete would achieve the desired result of becoming a professional.

These criteria, taken together, reflect the Court's intention to encourage a fact-sensitive and proportionate assessment of the fairness of such contracts. The reference to prevailing market practices acknowledges the contextual nature of fairness, although it requires careful judicial scrutiny to ensure that dominant practices are not uncritically legitimised.

Furthermore, the recognition of risk-sharing is particularly noteworthy, as it reflects a more realistic understanding of the commercial dynamics in talent development agreements, where both parties accept uncertainty regarding the athlete's success. Moreover, the athlete's right of unilateral withdrawal can be seen as a meaningful safeguard, reinforcing the consumer's freedom of choice at a critical stage of personal and professional development.

Lastly, the analogy with the *Bernard* case underscores the importance of distinguishing between aspirational services and guaranteed outcomes, which is especially pertinent in youth sport where predictive accuracy is inherently limited.

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[17] *Ibid.,* paragraph 81.

[18] *Ibid.,* paragraph 84.

[19] *Ibid.,* paragraph 86.

[20] Judgment of 16 March 2010, *Olympique Lyonnais*, C 325/08, EU:C:2010:143, paragraph 42.

## *4. The Non-Binding Nature of an Unfair and Abusive Clause*

The *Arce* judgment also underscores a crucial impact flowing from the finding of unfairness under Directive 93/13: once a contractual clause is deemed abusive, the national court must consider it non-binding on the consumer - here, the young athlete - without altering or moderating its content. This applies under the conditions set by the national laws, while ensuring the contract remains valid and binding on the parties under the same terms, provided the contract can exist without the abusive clause.

Therefore, in the case of an abusive clause concerning the services company's remuneration, the national judge cannot simply reduce the amount owed by the consumer to cover only the actual expenses incurred by the service provider in performing the contract.

Such a revision would risk undermining the effectiveness of the directive, whose objective is not only to sanction unfair terms but also to prevent their use altogether through a strong dissuasive effect. In the context of sport, where asymmetries of power are particularly pronounced – especially in contracts involving minors or early-career athletes – this approach acquires heightened relevance.[21]

If national courts were allowed to simply revise disproportionate clauses rather than declare them null, financial operators in the athlete investment market might be incentivised to continue using unbalanced and opaque contractual structures, knowing that the legal risk could be mitigated through judicial adjustment.

The Court's strict stance in *A*rce thus reinforces the broader message that commercial business models in sport must respect fundamental principles of fairness and consumer protection, especially when the economic autonomy of young athletes is at stake.

## *5. From Formalism to Substantive Fairness: Article 24 of the Charter and the Best Interests of the Minor in Athlete Contracts*

The judgment also engages with the structural asymmetry of the athlete-agency relationship when the consumer is a minor. In fact, sports agencies – often operating transnationally and under minimal regulation – typically present their services as supportive and nurturing, while incorporating clauses with far-reaching economic implications.

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[21] *Ibid.,* paragraph 93. "*If it were open to the national court to revise the content of unfair terms included in such a contract, such a power would be liable to compromise attainment of the long-term objective of Article 7 of Directive 93/13. That power would contribute to eliminating the dissuasive effect on sellers or suppliers of the straightforward non-application with regard to the consumer of those unfair terms, in so far as those sellers or suppliers would still be tempted to use those terms in the knowledge that, even if they were declared invalid, the contract could nevertheless be modified, to the extent necessary, by the national court in such a way as to safeguard the interest of those sellers or suppliers.* Judgement of 26 March 2019, *Abanca Corporación Bancaria and Bankia*, Case C 70/17 and C 179/17, ECLI:EU:C:2019:250, paragraph 54.

The Court makes a significant explicit reference to Article 17 on the right of property and to Article 24 of the Charter of Fundamental Rights of the European Union providing that in all actions, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.[22] It situates the young athlete not only as a consumer, but as a child entitled to special protection, and requires national courts to scrutinise whether the contract genuinely serves the minor's best interests. Thus, rather than merely applying a checklist of formalities (e.g., legibility, clarity), the Court invites a substantive assessment of whether the contractual equilibrium respects the economic and personal development of the minor. This opens the door to a more rights-based scrutiny of standard contracts in the sports talent pipeline, especially where long-term obligations are front-loaded against young athletes with limited legal awareness or economic alternatives.

## 6. *From Investment to Influence: The Regulatory Gaps in Athlete Career Control*

Just as the regulatory response to TPO in football was driven not only by financial concerns but also by the recognition that external actors could unduly influence the professional trajectory of athletes, similar scrutiny should be applied to clauses in athlete investment contracts that affect the future career choices of young sportspeople. In the TPO context, FIFA's ban – upheld by the Court of Arbitration for Sport – reflected the principle that sporting autonomy and integrity must not be compromised by economic entanglements with third parties.

This logic is equally relevant in the context of athlete investment agreements, where certain clauses may not only concern future income, but also limit the athlete's freedom to negotiate future contracts, choose clubs or competitions, or even control the timing and terms of their professional engagement.

The *Arce* judgment invites deeper reflection on these dynamics, particularly when contractual obligations are imposed on minors or economically dependent athletes.

A comprehensive legal assessment of such agreements should therefore go beyond financial fairness and consider whether the structure or content of the contract interferes with the athlete's long-term professional autonomy. Just as TPOs were deemed incompatible with the principles of contractual stability and independence in football, modern career development schemes – if left unchecked – may replicate similar constraints under a different legal guise. Ensuring that young athletes retain genuine freedom over their future career decisions is not only a matter of contract law, but one of safeguarding dignity, personal development, minors' protection and the integrity of sport.

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[22] *Ibid.,* paragraphs 97-104.

## *7. Big League Advance: Business Model and Legal Issues*

As mentioned in the introduction, a particularly prominent and controversial example of athlete investment contracts is the business model developed by BLA, a private company offering minor league baseball players upfront cash – often ranging from $50,000 to $100,000 – during the early stages of their careers, in exchange for a fixed percentage (typically 5% to 10%) of their future Major League Baseball earnings, if and when they make it to the top level.

BLA does not place any restrictions on how the money is spent. Some players spend it on better food or a nicer apartment, while others elect to save it for the future in case injuries hamper their career.

The relationship between the up-front payment a player receives and the percentage of future earnings they agree to give BLA is inverse and risk-adjusted contractual partnership, i.e. the more money a player receives upfront, the higher the percentage of future earnings they usually owe. Such relationship varies from player to player and is based on several factors such as risk, probability, and expected future value.

In determining the percentage owed to BLA, the following main factors are crucial:

1. the amount of upfront payment given to the player;
2. risk assessment: BLA evaluates how likely the player is to play professionally;
3. projected future earnings: BLA carefully assess the projected future earnings of each player on the basis of a data driven approach;
4. negotiation leverage: not all young athletes have the same bargaining power: a more talented prospect player may demand better terms, whereas a less talented player might accept a higher percentage for less money.

Based on these factors, for each player BLA unilaterally determines the amount of the up-front payment for every 1% of his future professional earnings. For example, BLA may offer player A $50,000.00 for every 1% of his future professional earnings. Accordingly, player A knows that in order to receive $250.000,00 he must sign a contract for 5%. However, in respect of player B BLA may unilaterally establish that the relationship is not $50.000,00:1%, but, for example, $40,0000,00:1%.

This model purports to mitigate financial insecurity for underpaid minor leaguers while allowing investors to benefit from the success of high-performing athletes. However, the fairness and ethical implications of this model have come under increasing scrutiny. The most famous case is that of Fernando Tatís Jr., the San Diego Padres star who reportedly agreed to give up 10% of his future earnings to BLA in exchange for early financial support. When Tatís later signed a $340 million contract, BLA stood to earn tens of millions of dollars from the deal.

While legal challenges have not been publicly brought by Tatís, the case triggered widespread debate over whether young athletes fully understand the long-term consequences of such agreement.

## 8. *The* Mejía *and* Dexter *Lawsuits*

This broader perspective is echoed in high-profile disputes from the entertainment sector, such as the Mejía and Dexter lawsuits in the United States.

In 2016, in the Major League Baseball (MLB), the Cleveland Indians Francisco Mejía had received $360,000 from BLA agreeing to pay them 10% of his future MLB earnings. In 2018, he filed a suit against BLA, arguing that the contract the parties entered was predatory and unconscionable, alleging he was misled and pressured into signing under financial duress, particularly due to his mother's illness.[23]

BLA denied these allegations, stating that Mejía had legal representation during the contract process and that the terms were clearly explained to him. In August 2018, Mejía voluntarily dropped the lawsuit, issued a public apology to BLA, and agreed to honour the original agreement.[24]

Despite that, the *Mejia* case is important for assessing both the economic relevance of, and the potential legal concerns surrounding, BLA business model.

In particular, when Mejía filed the lawsuit against BLA, he was projected to earn more than $ 100 million from his baseball career. Accordingly, BLA would be entitled to receive more than $10 million against an up-front payment of (only) $360,000.00.

In 2023, the National Football League (NFL) player Gervon Dexter, a former University of Florida athlete, filed a lawsuit against BLA, challenging the so-called "Name, Image, and Likeness" (NIL) agreement he signed as a college athlete.[25] The contract, signed in May 2022, granted Dexter a one-time payment of $436,485 in exchange for 15% of his pre-tax NFL earnings for 25 years – a share far exceeding the 3% cap imposed on agents by the NFL. Given that Dexter's rookie contract was worth nearly $7 million, BLA stands to receive over $1 million, prompting concerns of unfairness and exploitation.

Dexter's lawsuit, filed in U.S. District Court in Florida, did not rely on traditional contract law defences (like unconscionability), but instead argued that the agreement was void under Florida law. First, he cited the Florida NIL statute in effect at the time, which prohibited NIL contracts from extending beyond a student-athlete's college career – something the agreement at stake did. Second, he invoked the Florida Athlete Agent statute, asserting that BLA acted as an unlicensed agent: the agreement lacked the required statutory disclosures, was not reported to the University, and no BLA representative held a valid agent license.

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[23] See Complaint at 4, Francisco Mejia v. Big League Advance Fund I, (D. Del. Feb. 21, 2018) (Case No. 1:18-cv-00296-UNA).

[24] J. Crasnick, *Padres catcher Francisco Mejia drops lawsuit over earnings cut*, in https://www.espn.com/mlb/story/_/id/24523401/padres-catcher-francisco-mejia-drops-lawsuit-disputed-payment.

[25] A. Ford, *Dexter v. Big League Advance Fund*: *An Early Test of State NIL Laws*, in https://arizonastatelawjournal.org/2023/09/28/dexter-v-big-league-advance-fund-an-early-test-of-state-nil-laws/.

On 14 November 2023, Dexter voluntarily discontinued the proceedings, and the Court formally closed the case the following day, on 15 November 2023.

Nevertheless, despite the closure of the proceedings, the case raises significant questions about the legal boundaries of NIL deals, particularly when private companies bypass traditional agent frameworks to sign student-athletes to long-term financial obligations.

At the same time, it also underscores the vulnerability of college athletes, many of whom may not fully understand the long-term impact of these deals.

These U.S. cases, though arising in different sport industries, reflect structural similarities with the Arce scenario in Europe: early-stage talents – be they athletes, musicians, or actors – often find themselves in asymmetrical relationships with more experienced, better-resourced entities that offer financial support, but on terms that may be difficult to challenge later on.

## *9. Comparative Analysis*

From a legal perspective, these cases challenge traditional notions of contractual autonomy and raise the question of how far freedom of contract and contractual obligations should extend when significant power imbalances are present. The above recalled case law has shown that Courts in both the European Union and the U.S. have looked beyond formal consent and assess whether the substantive content of the contract respects principles of fairness and proportionality.

The *Arce* ruling, by framing the athlete's agreement in light of EU consumer protection law and focusing on the vulnerability of young athletes, adds a valuable legal lens to the discussion. It suggests that similar contracts in other domains – especially those involving minors or young adults – could also be scrutinized under protective frameworks usually reserved for consumers.

In the US, by contrast, BLA business model has been mainly challenged on the basis of the "unconscionability" doctrine. i.e. a contract defense typically advanced in cases implying a combination of unfair contract terms and deficient bargaining.

If a contract is unfair or oppressive to one party in a way that suggests abuses during its formation, a court may find it unconscionable and refuse to enforce it.

Although different, the *Arce* case and BLA business model provide legal scholars and academics with valuable food for thought in a comparative perspective.

In the *Arce* case, the Court held that, in order to assess whether a clause causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer, the national judge has to consider, *inter alia*, whether the young athlete can unilaterally withdraw from the contract without paying any compensation if he/she chose not to pursue a professional career.

The athlete's ability to unilaterally withdraw from the contract is relevant in BLA's business model too. Although BLA publicly affirms that the up-front

payment is not a loan and the player does not need to repay BLA unless he/she reaches the Major Leagues, legal scholars have underlined that BLA's contracts provide that if the player retires within two years of the contract's effective date and retirement is due to anything other than injury, the player must repay BLA an amount equal to the up-front payment, minus all payments already made.[26]

Similarly, in the *Arce* case the Court stressed that a clause that sets the service provider's remuneration based on a fixed percentage of the other party's future income for a specified period could be considered suitable for allowing the consumer to evaluate the economic consequences of the clause, provided it accurately describes the income in question.

In this regard it is worthy to note that in BLA's business model one of the most controversial issues is represented by the definition of "Professional Baseball Earnings" as a parameter on which to calculate the percentage due to BLA. It has been underlined that, despite the wording used, "*Professional Baseball Earnings include the player's major league salary, minor league salary, and various bonuses, such as for making the playoffs or All-Star Game*".[27] Moreover, "*BLA defines Major League to include United States Major League Baseball, Japan's Nippon Professional Baseball and South Korea's BKO League*". Additionally, Professional Baseball Earnings are not only earnings that a player earns playing baseball, but encompass all earnings related to "*the sport of baseball (...) or personal services performed by the player which are of the type typically performed by individuals in baseball because of their status as professional athletes in that sport*", such as sports casting, sports hosting, coaching and participating in sports camps.[28]

Lastly, under Directive 93/13 the evaluation of whether a clause is abusive does not concern clauses related to the definition of the main object of the contract or those concerning the balance between price and remuneration on one side and the services or goods to be provided in return on the other, as long as such clauses are formulated clearly and understandably. By contrast, under the unconscionability defence, a significant cost-price disparity or excessive price represents one of the factors used by the courts to determine whether a contract is unconscionable and unenforceable. Therefore, it is not surprising that among the various criticisms levelled at BLA's business model there is also one relating to the disproportion between the sums owed to BLA and the up-front payment made to the athlete.

## *10. Conclusion*

The *Arce* and *BLA* cases, though emerging from different jurisdictions and sectors – European Basketball and American collegiate athletics – expose strikingly similar

[26] N.L. Salas, *Caught Looking! Using K Law to Ø£ Big League Advantage's Unconscionable Contracts*, Iowa Law Review, 2025, 1462.
[27] *Ibid.*, 1461.
[28] *Ibid.,* 1461.

structural dynamics. Both involve young talents bound by long-term agreements with entities offering early financial backing in exchange for future economic rights. These models reflect a broader trend in talent acquisition, where private actors seek to secure returns on investment through early contractual commitments with minors or young adults, often before full professional or personal maturity is reached.

It is important to recognize that such agreements are not inherently exploitative. On the contrary, they can represent essential instruments of opportunity and inclusion, especially for young athletes and performers who lack the financial resources to independently pursue high-level development. Early investment can offer access to training, aid, assistance and security for the minor sportsman and family that might otherwise be out of reach. Therefore, these contractual models should not be categorically demonized, but rather critically assessed and properly regulated.

What emerges from both EU and USA cases is a clear need for harmonized safeguards in youth talent contracts - whether through consumer protection, labour law, or agent regulations. These models show how early-stage talents, operating with limited bargaining power, no legal knowledge and often limited maturity of judgement can become economically bound in ways that constrain their future personal and professional choices. Therefore, the role of legislators and sports regulators, becomes critical in ensuring that such contracts are not only legally valid, but also ethically sound, appropriate, and with right impact on the long-term well-being of the individual.

The challenge, therefore, lies in revising these agreements' legislation to ensure they are structured in ways that are appropriate, legally sound, and ethically justifiable. To this end, several policy implications emerge from the comparative analysis.

First, it is essential to establish minimum contractual safeguards that reflect the specific vulnerabilities of minors and young adults. These could include limits on duration, mandatory review of the financial contractual clauses to repair manifest imbalances between the services company and the minors or athletes or termination clauses upon reaching adulthood or professional status, and the requirement that the contracting entity provide access to independent legal or financial advice. Such measures would help ensure that young talents are not indefinitely bound by decisions made at a stage in life when their capacity to understand long-term implications is limited or simply there is no skill to forecast those future developments.

Second, there is a clear need for enhanced transparency and consent mechanisms.

Contracts may include plain-language summaries of rights and obligations, involve legal guardians where appropriate, and require independent certification that the talent has understood the contract's terms and ways and means to safeguard the minor's interests from those of his parents. These mechanisms would increase the likelihood of genuinely informed consent and reduce the asymmetry of information and understanding that often defines such agreements.

Third, the role of private intermediaries and investors must be brought under closer scrutiny. As the *BLA* case illustrates, entities offering early financial backing in exchange for long-term economic rights often operate outside traditional regulatory frameworks. Extending licensing or registration requirements – similar to those applied to sports agents – could improve oversight. Disclosure obligations and limits on exclusivity or revenue-sharing clauses would help align private incentives with the long-term interests of the athlete.

Fourth, consumer protection law should play a more prominent role, particularly in cases like *Arce*, where the individual is not yet acting in a fully professional capacity. National and EU-level consumer protection regimes are well equipped to address contractual imbalance, lack of transparency, and unfair terms. Recognizing young talents as consumers in this context would provide them with an additional layer of legal protection, especially where labour law or sports-specific regulations fall short. Accordingly, the EU and national legislations should undergo an urgent and exhaustive reform of the consumer regulations to better protect the minor, young athletes when they enter such agreements.

In sum, the *Arce* and *BLA* cases reveal both the promise and the peril of early contractual engagements in the world of sport and entertainment. Rather than viewing these models through a binary lens of exploitation or opportunity, the law must evolve to balance innovation with protection, and investment with protection of the athletes. Only through such a nuanced approach can legal systems meet the dual imperative of enabling talents to flourish while safeguarding the young individuals.

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