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An assessment of the compatibility of UEFA's home grown player rule with article 45 TFEU

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*E.L. Rev. 493 Abstract

This article provides the results of a European Commission study into the compatibility of UEFA's "home grown player rule" (the Rule) with EU laws on free movement of workers. The Rule was introduced to increase competitive balance, and improve the training and development of young players in European football, but gives rise to indirect nationality discrimination and has the potential to restrict the ability of EU footballers to be employed by clubs in other Member States. Our analysis indicates that, although UEFA's aims are legitimate under EU law, the Rule has resulted in only a modest impact and it cannot at this stage be deemed to have satisfied proportionality control. The existence of potentially less restrictive alternatives means that UEFA should engage in social dialogue with its stakeholders to determine if other methods could be employed to achieve these aims without recourse to regulations that are intrinsically liable to infringe rules governing the free movement of EU workers.

Introduction

The Union of European Football Associations (UEFA) is recognised as a confederation of 54 national associations responsible for governing football in Europe,¹ with the right to adopt rules specific to that continent. The focus of this article is UEFA's "home grown player rule" (the Rule) which was introduced at the start of the 2006/07 season and requires every football team entering European club competitions to name eight "home grown" players in their 25-man squad.² Four of these players must be "club-trained", defined as a player who, irrespective of his nationality and age, has been registered with his current club for a period

of three entire seasons or of 36 months while between the age of 15 and 21. Four of these*E.L. Rev. 494 players must be "association-trained"; these fulfil the same criteria but with another club in the same national association. If a club fails to meet these quotas the maximum number of players on the squad list for the competition is reduced accordingly.

The introduction of the Rule forms part of a series of regulatory measures (including a Club Licensing System and "Financial Fair Play" regulations) adopted by UEFA in response to the perceived deleterious consequences of the *Bosman* judgment of the Court of Justice of the European Union (CJEU).³ *Bosman*, and the relationship between sport and EU law, has been debated in length elsewhere,⁴ but in brief the ruling liberalised the European labour market in professional football by rendering unlawful two established rules. First, the CJEU held that rules limiting the right to participate in professional or semi-professional football matches to nationals of the State in question were prohibited by what is now art.45 of the Treaty on the Functioning of the European Union (TFEU). Secondly, the Court struck down a rule stating that a footballer who is a national of one Member State could not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club paid a transfer, training or development fee to the former.

UEFA believe that *Bosman*, in conjunction with the commercialisation of football generated by developments in the European media sector, has contributed to a number of negative trends in European football.⁵ They contend that there has been a reduction in "competitive balance" across European football as the best players gravitate to the richest clubs, thus calling into question the unpredictability of match and championship outcomes. This has been exacerbated by the practice of clubs "hoarding players", and has exposed clubs to financial risk as they develop business models based on recruitment via the transfer system and the paying of unsustainable player remuneration as opposed to investing in the development of young local talent. Not only does this pose a risk in terms of the throughput of playing talent, it also severs the link between clubs and their localities and weakens national teams by narrowing the pool of talent available to a national association to select from. From UEFA's perspective, the Rule, in conjunction with its club licensing system, which sets minimum youth training infrastructure standards and incentivises youth training at clubs, serves to restore a measure of competitive balance at European club competition level (and at domestic level where national associations implement the Rule).

As with the quota system outlawed in *Bosman*, the operation of the Rule raises a potential conflict with EU laws on free movement of workers. In the 2007 White Paper on Sport, the European Commission stated that the Rule could be accepted as being compatible with Treaty provisions on free movement of persons if it did not lead to any direct discrimination based on nationality and if possible indirect discriminatory effects could be justified as being proportionate to a legitimate objective pursued, such as to enhance and protect the training and development of talented young players.⁶ A Commission-funded study in 2008 concluded that the Rule responded in a proportionate manner to a legitimate objective and should be considered compatible with EU law.⁷ In contrast, academic comment on the Rule's legality has been sceptical from the outset, although the works have been largely speculative owing to the lack of data*E.L. Rev. 495 on the effectiveness of the Rule.⁸ The tentative support for the Rule provided by a joint press release issued in 2008 by the European Commissioners responsible for free movement of workers and for sport⁹ was subject to a further analysis of the consequences of the Rule to be undertaken by 2012.¹⁰ In the 2011 Communication on Sport, the Commission formally committed itself to this new Study¹¹ and the contract to undertake it was awarded to the authors of this article. The Study required the authors to

assess the Rule in light of art.45 and art.165 TFEU. The authors were not requested to examine the compatibility of the Rule with other Treaty provisions, such as art.101 and art.102 TFEU, or other potential causes of action such as age discrimination. This article presents the findings of this Study¹² and does not necessarily represent the official position of the European Commission.

Methodology

In assessing the compatibility of the Rule under art.45 TFEU, the research team adopted an orthodox legal approach to the question of whether the Rule was liable to hinder or render less attractive the exercise of fundamental freedoms guaranteed by the Treaty. This approach was based on the CJEU's reasoning in *Gebhard* that in order to be compatible with EU free movement law, measures liable to restrict free movement must be,

"applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it." ¹³

An assessment of this four-stage test forms the structural basis of this article.

In considering the suitability of the Rule in securing the stated objectives, the research team were instructed to focus on the two strongest submissions by UEFA: that the Rule promotes competitive balance and incentivises youth training. The team looked to establish whether the Rule could be directly connected to improvements in either of these objectives. In doing so it compiled a set of descriptive statistics which presented an overview of the trends in the numbers of home grown players, their origin, and the frequency with which they play in comparison with other players. However, it was not possible from that data alone*E.L. Rev. 496 to help to infer causation in relation to the impact of the Rule on competitive balance and youth training, so additional methods were employed.

To statistically infer the impact of the Rule on competitive balance, regression analysis was performed for the Champions League and Europa League competitions, and for the performance of teams in the group stages, and then their progression to the various final stages. Semi- and unstructured interviews with football stakeholders were also undertaken. To assess the impact on youth training and development at EU clubs—in support of the descriptive statistics—the team carried out a series of qualitative interviews with UEFA, the European Professional Football Leagues (EPFL), the European Club Association (ECA), the English Premier League and the Fédération Internationale des Associations de Footballeurs Professionnels (FIFPro).

To supplement this, and corroborate opinions canvassed from the stakeholders, qualitative semi-structured interviews were also carried out with qualified personnel at a sample of professional clubs across the European Union.¹⁴ The interviewers asked questions concerning whether investment in the training and development of young players at EU clubs had changed since the introduction of the Rule and what factors were responsible for any notable changes. Investment was defined to include finance, infrastructure and staffing. Clubs were also asked about future trajectory in terms of increasing investment in youth training and development in relation to the impact of the Rule.

Stage 1—the nature of the restriction

Article 45 TFEU prohibits nationality discrimination that restricts free movement of workers across EU borders for Member State nationals¹⁵ engaged in economic activity, and in *Bernard* the CJEU confirmed that a professional footballer's gainful employment fell within the scope of art.45.¹⁶ The cross-border element necessary for art.45 to apply is also satisfied as the Rule applies to the composition of club squads entering UEFA pan-European competitions, and cross-border movement of footballers could be impeded if a club's recruitment policy is informed by whether players satisfy the eligibility criteria.

It is also clear that free movement rules can be invoked against UEFA; art.45 is both vertically and horizontally directly effective so it applies to the actions of private bodies, the rules of which are aimed at collectively regulating gainful employment and services.¹⁷ This applies not only to bodies carrying out quasi-state functions but also to purely private persons.¹⁸ UEFA is a private collective regulator insofar as its rules determine the terms on which professional sportsmen can engage in gainful employment¹⁹ and its geographical location in Switzerland is also irrelevant as,

"the rule on non-discrimination applies in judging all legal relationships in so far as these relationships, by reason either of the place where they are entered into *or the place where they take effect* [emphasis added], can be located within the territory of the EU."²⁰

Having established that these conditions apply, it is necessary to determine whether the Rule amounts to a restriction under art.45, and of what nature. A professional footballer could object to the Rule on the *E.L. Rev. 497 grounds that it amounts to a provision which precludes or deters him²¹ from leaving his country of origin in order to exercise his right of freedom of movement because a number of places in a club squad are reserved exclusively for "locally trained" players. That limitation, and a system of penalties built into the regulations, is inherently liable to deter clubs from recruiting a non-national if they fail to meet the home grown criteria. This proposition remains unaltered by the fact that the rule does not place restrictions on the employment of players or on the composition of the starting XI. The essential purpose of a professional player's activity is to be recruited to a team in order to play professional football and, as was held in *Bosman*, "a rule which restricts that participation obviously also restricts the chances of employment of the player concerned".²² It can be concluded that the Rule is intrinsically liable to restrict freedom of movement.

However, the restrictive effect on workers does not appear to be manifest. There has been no uniform change in the number of foreign players in the "top five" leagues since the introduction of the Rule (see Figure 1). If it was having a negative effect on free movement, one would expect to see persistent falling numbers of expatriate players who would not have their contract renewed when it ended.

Figure 1: Number of expatriate players in the big five leagues

Outside the top five leagues, the labour market appears to be even more fluid, with the number of non-national players increasing considerably.²³ It is therefore an interesting, although ultimately academic, debate as to whether the Rule restricts or promotes free movement *generally*. This is because the Rule still has the potential to restrict the cross-

border employment options of *individuals* and the data analysis may not fully identify causal effects.

In terms of art.45 restrictions, the CJEU draws a distinction between directly and indirectly discriminatory measures that restrict free movement and other restrictions that are non-discriminatory in nature. Direct discrimination is an overt form of differential treatment arising where a migrant worker is treated less*E.L. Rev. 498 favourably than a national worker, and is prohibited by art.45 and related secondary legislation. This prohibition applies not only to circumstances in which migrant workers are totally excluded from a particular activity²⁴ but also to situations in which migrant workers quotas are adopted.²⁵ The Rule places no such direct restraint on non-nationals; any non-national can qualify as a home grown player if he meets the relevant criteria, namely if he has been trained for three years by the club or (to qualify as "association-trained") a club in the same national association between the ages of 15 and 21. It is therefore not relevant to consider the Treaty derogations outlining the circumstances in which direct nationality discrimination is acceptable under EU law.²⁶

By contrast, indirect discrimination is a less overt form of differential treatment, but is still prohibited by art.45 and secondary legislation insofar as migrant workers are placed at a disadvantage in relation to national workers despite the contested measure being indistinctly applicable.²⁷ Classic examples of indirectly discriminatory measures include residency requirements.²⁸ The applicant does not need to prove that the measure in practice affected a higher proportion of foreign workers, but merely that the measure is *intrinsically liable* to affect migrant workers more than nationals and that there is a risk that it will place migrant workers at a particular disadvantage.²⁹ Unlike directly discriminatory measures, indirect discrimination can be justified with reference to an open-ended set of justifications discussed below, in addition to one of the express Treaty derogations.

The UEFA Rule is an indirectly discriminatory measure because even though it is apparently neutral in terms of nationality, national workers are potentially placed at an advantage over migrant workers. It stands to reason that nationals are more likely to meet the "locally trained" criteria than foreign workers simply as a consequence of their geographical location. As the Commission has acknowledged:

"Although it is difficult at the moment to state with any certainty that the 'home-grown players' rule will lead to indirect discrimination on the basis of nationality, the potential risk of this cannot be discounted, as young players attending a training centre at a club in a Member State tend to be from that Member State rather than from other EU countries." ³⁰

The "sporting exception"

The above analysis is rendered academic if it can be demonstrated that the Rule is covered by the "sporting exception" and falls outside the reach of the Treaty.³¹ A combined reading of [4] and [8] of [Walrave](#) gave rise to the so-called sporting exception in which the non-economic aspects of sport, or those aspects carrying economic effects but motivated by purely sporting interest, fell outside the reach of the Treaty prohibitions unless the rules were disproportionate and therefore not limited to their proper objectives.³² In [Bosman](#) the CJEU rejected, inter alia, UEFA's claim that a rule amounting to a quota system in which clubs could only field three overseas players and two assimilated players (the "3+2 rule") in European*E.L. Rev. 499 competition fell within the sporting exception. Citing [14] and [15]

of [Donà v Mantero](#),³³ it argued that although EU law does not preclude rules justified on non-economic grounds which relate to the particular nature and context of certain matches when limited to its proper objective, it cannot "be relied upon to exclude the whole of a sporting activity from the scope of the Treaty".³⁴ The CJEU found that the contested nationality clauses did not "concern specific matches between teams representing their countries but apply to all official matches between clubs and thus to the essence of the activity of professional players".³⁵

It is clear that the Rule is not covered by the purely sporting rule exception. For financial and prestige reasons, participation in European competitions has become a fundamental objective of clubs, and a club's participation in them has become a key consideration for players selecting a new employer. Even in the absence of home grown player rules in domestic leagues, the existence of such a rule for participation in European competitions is likely to inform the recruitment choices of clubs who aspire to compete at this level. The Rule therefore affects the essence of the activity of a professional player.

Moreover, the ability of UEFA to rely on the "purely sporting interest" exception has been undermined by the CJEU's more recent approach to the sporting exception in [Meca-Medina](#) in which it stated that,

"the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down."³⁶

It went on to find that where the activity fell within the scope of the Treaty, the rules governing it must satisfy the Treaty's provisions, including ensuring free movement of workers.³⁷ In other words, the purely sporting interest defence no longer applies to sport except in relation to the composition of national teams and, arguably, to a narrow set of "rules of the game" which carry no or very marginal economic effects. The home grown player rule cannot therefore be automatically removed from the scope of the TFEU without systematic analysis to establish whether the contested measure amounts to a restriction or not.

Nevertheless, not all contested rules falling within the scope of the Treaty will be condemned. In [Meca-Medina](#), the CJEU established that while the contested anti-doping rules were not of purely sporting interest, they still did not infringe the Treaty's competition prohibitions because they were "inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes".³⁸ However, such restraints cease to be necessary when they are disproportionate.³⁹ In applying the inherency test, the CJEU stated that account must be taken of the overall context in which the decision of the association of undertakings was taken and, more specifically, of its objectives. It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives and are proportionate to them.⁴⁰

This approach, although developed in the context of the European Union's competition provisions, is appropriate for transposition in art.45 disputes⁴¹ and has already found expression in the free movement*E.L. Rev. 500 case of [Deliège](#). Here, the CJEU argued that selection rules for high profile international tournaments did not restrict access to the labour market⁴² because, inter alia, rules,

"inherent in the conduct of an international high-level sports event might not in law constitute restrictions on free movement even if they in fact involved some restrictive criteria being adopted." ⁴³

The CJEU ruled that "it naturally falls to the bodies concerned ... to lay down appropriate rules and to make their selections in accordance with them", ⁴⁴ because governing bodies possess, "the necessary knowledge and experience; to exercise such judgement and that this is the arrangement normally adopted in most sporting disciplines". ⁴⁵ Provided that it derived from a need inherent in the competition's organisation, a limit on the number of competitors that could be selected did not restrict the freedom to provide services. ⁴⁶

However, UEFA's home grown player rule does not derive from a need inherent in the organisation of the competitions. UEFA competitions (most strikingly the Champions League) thrived in terms of sporting integrity, public interest and commercial income prior to the Rule's introduction and no evidence has been put forward that they could not continue to do so in its absence. Furthermore, in *Deliège* and *Meca-Medina*, the CJEU limited its acceptance of rules "inherent" to the organisation of sport to non-discriminatory rules that bore no relationship to nationality, whereas the home grown player rule amounts to indirect discrimination. It should also be recalled that even rules categorised as "inherent" must still satisfy the requirements of proportionality control.

Articles 6 and 165 TFEU

The proposition that the Rule cannot be saved with reference to the "purely sporting" or "inherent rule" defence is not adjusted by the existence of art.6 and art.165 TFEU. Article 6 establishes sport as a third tier supporting competence of the European Union. Sport is located in subs.(e): education, vocational training, youth and sport, and art.165(1) specifically provides that the Union shall take "account of the specific nature of sport", although this does not unequivocally establish this provision as a horizontal obligation which applies to the exercise of other EU powers such as free movement and competition law. This contrasts with other areas of the Treaty in which horizontal obligations can be identified such as in the areas of environmental protection. ⁴⁷ This means that it cannot be assumed that art.165 offers the Rule any additional protection from EU law. The CJEU jurisprudence on art.165 is not currently sufficiently developed to allow for definitive statements on this question; in *Bernard*, the CJEU employed art.165 to "corroborate" its view that the specific characteristics of sport should be taken into account in the application of EU law. ⁴⁸ From this statement, it appears that the CJEU prefers the well-trodden path of objective justification albeit acknowledging that art.165 informs that assessment.

Article 165(2) establishes that:

"Union action shall be aimed at: developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and*E.L. Rev. 501 by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen."

Regardless of the horizontal question, art.165(2) is likely to carry persuasive authority within the context of the exercise of other Treaty competences relevant to sport. In relation to the home grown player debate, it is likely to be cited by both those wishing to support and attack

the rule on the "fairness and openness" question.⁴⁹ Similarly, the Rule requires assessment in relation to the Treaty objective of protecting minors in sport.

The relevance of art.165 lies not only in shaping what is to be considered a legitimate objective, but in considering which measures, taking into account the specific nature of sport and questions of fairness and openness, are considered *suitable* and *necessary* for the attainment of these objectives. It has been assumed in some quarters that the existence of art.165 adjusts the proposition that sport is subject to EU law. This assumption must be rejected—sporting activity, including the home grown player rule, is still subject to European law. It is possible that art.165 might adjust the sensitivity to which EU law is applied to sport but in this regard it is difficult to discern from the existing jurisprudence of the CJEU and the decisional practice of the Commission a pattern of insensitive application of EU law to sport.

Stage 2—justified by imperative requirements in the general interest

Determining that the Rule amounts to indirect nationality discrimination and a restriction on a worker's free movement does not, in itself, lead to a finding of incompatibility with art.45. Indirectly discriminatory restrictions are compatible with freedom of movement if they can be justified by imperative requirements in the general interest. There is significant CJEU jurisprudence (albeit primarily pre-art.165) on the question of what amounts to a set of imperative requirements specific to sport. For example, in *Bosman* the Court referred to the legitimacy of rules designed at "maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players".⁵⁰ In *Lehtonen*, the CJEU established that transfer windows could, subject to proportionality control, be compatible with EU law because late transfers could call into question the proper functioning of sporting competition.⁵¹ In *Meca-Medina* it recognised as legitimate the need to "combat doping in order for competitive sport to be conducted fairly", safeguard "equal chances for athletes, athletes' health", ensure "the integrity and objectivity of competitive sport" and protect "ethical values in sport".⁵² In *Bernard* it held that a system of training compensation in sport which restricts the freedom of movement of players could be justified with reference to the objective of educating and training young players.⁵³

From this jurisprudence can be synthesised the following legitimate objectives applicable to sport: preserving competitive balance; encouraging the recruitment and training of young players; maintaining the proper functioning of competitions; maintaining the integrity, objectivity and ethical values of sport. It must be stressed that this is not a closed list of justifications and others can be developed by the CJEU. Nonetheless, according to existing jurisprudence, the twin stated objectives of the Rule—preserving a

502 competitive balance between clubs and encouraging the training and development of young players—are legitimate. This view is supported by the European Parliament and the European Commission,⁵⁴ although concern has been expressed about the high attrition rate for young footballers, combined with the side-lining of a young player's general educational needs.⁵⁵

Stage 3—the suitability test

Even where the CJEU accepts that an indirectly or non-discriminatory measure pursues a legitimate objective, the third and fourth strands of the *Gebhard* test must still be satisfied. The suitability of the measure for securing the attainment of its objective and that the

measure does not go beyond what is necessary in order to attain it must both be demonstrated. This is often referred to as the *suitability* and *necessity* test. The first is essentially a "means and end test" while the second involves balancing competing interests. Again, the burden of proof lies with the party imposing the measure. Tridimas claims that when assessing the proportionality of a measure the CJEU adopts a more intensive level of scrutiny when reviewing national measures than EU ones.⁵⁶ However, within the sporting context some commentators take the view that:

"Taking into consideration the Court's awareness about the EU's limited competence in sporting affairs and the corresponding conditional regulatory autonomy of the sporting federations, and also the societal relevance of sport, it is possible that the Court's review of the tests of suitability and necessity in a sporting context will be merely marginal." ⁵⁷

A review of CJEU jurisprudence reveals varying practice on the intensity with which sporting rules and practices are subject to proportionality control. In *Bosman* the CJEU subjected both transfer and nationality rules to a stringent test of suitability by dismissing the expertise and regulatory autonomy claimed by the party imposing the measure. It went on to state that the stated objectives of the transfer system could be achieved at least as efficiently by other means which did not impede freedom of movement for workers, thus demonstrating a similar stringency towards the test of *necessity*.⁵⁸ In *Deliège* it was more receptive to claims that sports governing bodies possessed "the necessary knowledge and experience"⁵⁹ required in order "to lay down appropriate rules" for competition.⁶⁰ In *Meca-Medina*, the CJEU was similarly unwilling to subject the contested doping thresholds to thorough scrutiny.⁶¹ In *Lehtonen*, a failure to satisfy proportionality control led to the transfer window system in international basketball being condemned, but the Court accepted that transfer windows could, in principle, be compatible with EU law.⁶² In *Bernard*, the CJEU accepted as legitimate schemes providing for compensation payments where a young player signed a professional contract with a club other than the one which trained him; such a payment was justified, "by the objective of encouraging the recruitment and training of young players".⁶³ However, it went on to rule that the contested scheme went beyond what was necessary to encourage and fund those*E.L. Rev. 503 activities⁶⁴ because damages were not calculated in relation to the actual training costs incurred by the club.⁶⁵

The suitability test and competitive balance

The extent of fluctuation in competitive imbalance in European competitions is revealed in Figure 2. In 1992, 20 teams may have expected to reach the quarter-finals of the European Cup and UEFA Cup at least once in a three-year time period, but this number declined from the mid-1990s to 15 or 16 clubs at the beginning of the 2000s. Since 2008 there appears to have been a reversal in this trend, with consecutive increases in the number of teams qualifying for the quarter-final stage since. This is not a conducive measure and it is doubtful that it indicates an effect of the Rule.

Figure 2: Number of teams reaching the quarter-finals in the previous three years

There are still concerns that a small number of wealthy clubs tend to dominate the later stages of European competition, particularly those from the commercially dominant leagues. Figure

3 highlights this trend, showing the proportion of clubs reaching the semi-finals of the UEFA Champions League from 2006 to 2012. All clubs reaching this stage have been from the big five European leagues.

*Figure 3: Origin of clubs reaching the semi-finals of European competitions 2006–2012*E.L. Rev. 504*

In order to examine the impact of the Rule on the performance of teams, and hence indirectly examine the effects on competitive balance controlling for other factors, regression analysis was performed. This was undertaken separately for the UEFA Champions League and Europa League tournaments, and for the performance of teams in the group stages, and then their progression through to the various final stages of the competition. Overall the statistics measuring competitive balance suggested that the impact of the Rule has been to rebalance the performance of teams across both competitions by reducing the success of teams finishing in the top two places of the Champions League group stage or the top three places of the Europa League group stage in favour of those towards the bottom. There is very little evidence to suggest that the Rule affects the final stages in either competition.

In the group stages of the Champions League the evidence is consistent with the Rule constraining the performance of the commercially bigger clubs who would previously have been most likely to have employed more players from outside their home association. This has the effect of making the outcome of the group stages of the competition more uncertain. The largest impact has been through association-trained players, with those teams naming relatively more home grown players in their squad experiencing a reduction in performance. The implication of this is that for clubs having to retain players from within a more localised (i.e. national) market, team performance falls. Statistically the results showed that the effect was relatively small at this stage and typically less than 0.5 per cent, although this could increase to 1.5 per cent for the total of association-trained players in the Champions League. This would imply that as the number of association-trained players increases by one, there is a 1.5 per cent chance that a team could fall from finishing second in the group stages, therefore missing out on qualification for the knockout stages. When the Rule is measured on a seasonal basis (as opposed to averages across intervention periods) the impact is more marked, with the results suggesting that the Rule could increase the chances of a team falling from second place by approximately 12 per cent. The statistics for club-trained players did not support a negative impact. While the Rule had a small but statistically significant impact on the group stages of the Champions League, it had no impact on the knockout stages. The implication is that the best teams generally have gravitated towards this level of competition regardless of constraints on squads.

In the group stages of the Europa League a similar pattern of results was observed, but the impact of the Rule was less statistically significant. While the same reduction in performance was seen, the only statistically significant impact related to association-trained players, with the same implication as above. In the case of the finals' stage of the Europa League there was some limited evidence of a contrary effect to the Champions League results. There was evidence of a positive effect on the quarter-final and semi-final achievement of teams if measured on a season-by-season basis. The findings also showed that more home grown players, particularly club-trained players, improved the success of teams at this level, with the

implication that clubs with more club-trained players were more likely to progress at this stage. This suggested that the rule has had the effect of making such teams potentially more competitive vis-à-vis Champions League teams, in the sense that they can gain access to this competition. Within the Europa League, this probably means that the better nationally trained players tend to be located at the relatively successful clubs, and cannot then get easily switched to Champions League clubs.

There was insufficient data to make an accurate scientific assessment of trajectory. Experience from the regulation of player markets in other sports shows that it is possible we have already seen the full impact on competitive balance of association-trained players and that this will not increase, and may even reduce, in future.⁶⁶ It is equally possible that there will be an additional gradual increase in competitive balance as club-trained players start to have a greater impact on the composition of first team squads. It would therefore be unwise to speculate on either a future increase or decrease in competitive balance as a result of the Rule; for the purposes of the application of the suitability rule, future trajectory should be viewed as neutral.

The suitability test and youth development

The home grown player rule potentially complements existing UEFA measures designed to promote youth development. The UEFA club licensing system aims to "further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club".⁶⁷ Clubs entering UEFA club competitions must possess a licence issued by the relevant national association or league, having met a number of criteria including a satisfactory youth development programme.⁶⁸ The home grown player rule represents a regulatory extension of this licensing system insofar as clubs must tangibly demonstrate that their youth development programmes are producing players of sufficient quality. However, it is a matter for debate whether the issuance of the licence is in itself a sufficient guarantee of youth development standards or whether the home grown player rule is a justifiable additional requirement. In other words, a robustly enforced licensing system (which the Commission supports)⁶⁹ could achieve the desired outcomes without the need to adopt labour market measures tainted by discriminatory effects.

Moreover, our data indicated that the Rule has so far had a very limited impact on youth player training and development throughout the European Union. Statistical analysis of the number of minutes played by under-21 players in UEFA competitions (which should reflect the quality of youth training and development schemes) indicated that while there has been a significant increase in the number of young players competing in the 12 years post-2001, this increase was largely in the period 2001–2006, before the Rule was introduced. In comparison, the period following the introduction of the rule (and its extension in 2008) showed a significant reduction in the rate of this increase (see Figure 4). It is possible that this indicates both a lack of suitability for the Rule to achieve its aims in this respect and may also question the need for the Rule's introduction in the first place in terms of improving youth training and development. One could also speculate that some of this increase in the latter stages of the 2001–2006 period was connected with UEFA's announcement of its intention to introduce this Rule.*E.L. Rev. 506

Figure 4: Average number of club trained and under-21 players on the pitch for UCL Group Stage clubs

Qualitative data gathered suggested that the 2001–2006 increases in under-21 participants were unconnected with the Rule; the vast majority of clubs interviewed indicated that they believed the Rule had little or no impact on their youth training and development strategies or investment. Primarily clubs believed this to be the case because the Rule did not have sufficient "bite" to increase the number of club- or association-trained players included in the vast majority of first team squads and because it only had an impact on a small minority of clubs (i.e. those regularly qualifying for UEFA competitions).

These findings contrasted with the statistical analysis showing that the number of home grown players participating in UEFA competitions has increased since the introduction of the Rule. However, our data suggested that this is predominantly due to factors other than the introduction and extension of the Rule. The major factors identified by clubs and stakeholders were: domestic player eligibility rules which are often more restrictive; domestic or European licensing requirements; domestic incentivised player development schemes; a club's financial situation (both chronic and acute); local or global economic pressures; and a club's "ethos" or "tradition".

Some of these factors are more transient than others, meaning that over time non-regulatory forces, such as economic conditions and club philosophy, may encourage or discourage investment in youth development. It is possible that a regulatory measure, such as the Rule, may offer a more permanent incentivising effect to invest in youth and rely less on the market to fill club squads, meaning that the potential benefits of the Rule may be presented in the longer term. However, we did not find any evidence for the potential for an upward (or downward) future trajectory in terms of investment in, or quality of, youth development as a result of the Rule remaining in existence in its current form. Furthermore, the trajectory analysis will remain problematic in the future given the difficulty in isolating the Rule's effect from the influence of other factors, including other UEFA regulations.⁷⁰ Moreover, the remit of the Study was to assess whether the Rule achieved its outcomes in improving the training and development of young EU players at the current time. Our conclusion is that the Rule's effect has been minimal, discordant, and less significant than other concurrent regulatory and economic factors. Therefore in terms of our legal assessment under this objective, the Rule is neutral or at best only marginally positive.

It should also be noted that a number of stakeholders identified a negative impact of the Rule because it incentivises the "poaching" of young players from competitor club academies. While "poaching" has the effect of promoting the cross-border movement of players, it potentially has three negative effects. First, most stakeholders agree that a child's education and training is generally best served when that education and training takes place in such a way as not to disturb their home life; relocating a child for the purpose of pursuing a career in professional football can be destabilising. Secondly, the poaching of players can provide disincentives to particularly small and medium-sized clubs to develop young talent. Thirdly, if larger clubs are able to poach young players, the "feeder" clubs are placed at a disadvantage, raising concerns about competitive balance.

Stage 4—the necessity test

The test of necessity in EU law requires that the contested measure under scrutiny does not go beyond what is necessary in order to secure the stated legitimate objectives and that where no less restrictive alternatives exist, the contested measure must not have an excessive or disproportionate effect, or the disadvantage caused by the measure is proportionate to the benefit of the aims pursued. This means that a court could consider a measure as being suitable and necessary but that it could still fail proportionality control because the burden placed on the complainant by the measure is disproportionate to the benefits secured.⁷¹

The neutral or very limited positive effect of the Rule in terms of the legitimate objectives of improving competitive balance and the training and development of young EU players must be balanced against the potentially negative effects of the Rule in restricting the free movement of EU workers through its potential indirectly discriminatory effect. As we have set out above, although there is some identifiable progress in terms of meeting the objectively legitimate aims (particularly with regard to competitive balance in the Champions League group stage) these gains are very limited.

However, the identifiable negative impact upon the free movement of EU players also appears to be very limited. It should be remembered that proof of indirect discrimination does not require the applicant to prove that the national measure in practice affects a higher proportion of foreign workers, but merely that the measure is intrinsically liable to affect migrant workers more than nationals and that there is a risk that it will place the former at a particular disadvantage. Our findings suggest that the Rule in its current form is intrinsically liable to have this effect because it has an impact (albeit a very limited one) on whether home grown players are selected for first team squads ahead of non-home grown (usually non-national) players. However, while this assessment assists in establishing whether a restriction can be identified, it does not necessarily mean that the Rule is disproportionate. The actual impact on the free movement of players is important here, and to date we have not identified any formal legal challenge to the Rule in domestic or European courts. This may be because players—with very short career lifespans—may be reluctant to challenge the dominant authorities, particularly bearing in mind the time it takes for the CJEU to hear a case.⁷² However, it is also conceivable that the main reason for the lack of complaints is that the Rule has adversely affected very few players. As the authors of the Commission's 2008 study on training of young sportsmen/women in Europe argue, "a professional football player may exercise its [sic] activity very easily in Europe without having the status of home-grown player" because "E.L. Rev. 508 the maximum restriction is currently only 8 out of 25 and the restriction does not apply to the fielding of players."⁷³

From the above, a case can be made that the Rule, in its current form, is proportionate insofar as its apparently limited restrictive effects do not appear to be disproportionate to the modest benefits generated thus far. This proposition can, however, be undermined by two considerations. First, should the benefits of the Rule diminish over time, the cost/benefit balance would shift, thus rendering current proportionality arguments less persuasive. More significant at the current time is the existence of alternative measures that could potentially achieve a more uniform and substantive effect in terms of competitive balance and youth training and development and be less restrictive on the fundamental freedoms of EU workers. If this were the case, the proportionality of the measure could not be made out even in light of the apparently insignificant effect on EU players.

Amending the Rule

The most intuitive way to soften the restrictive effects of the Rule would be to reduce the number of home grown players that a club needs to register in its UEFA squad. The number of players potentially affected would therefore be reduced, although the potential effect on some players on the grounds of their nationality would still remain. However, proportionality control in EU law does not require that *all* restrictions are eliminated—the issue is whether the restrictive effects of the measure go beyond what is necessary to secure the stated legitimate objectives and whether the restrictive effects are disproportionate to the gains secured. In this regard, our data suggests that a reduction in the number of home grown players would reduce the already limited positive impact on competitive balance. Reducing the "bite" of the Rule will therefore reduce its chance of being considered *suitable* under freedom of movement laws because it would be achieving its objectives to a lesser effect.

Our Study also considered whether the discriminatory effect of the Rule would be reduced by removing the "association-trained" aspect and instead classifying home grown players only as those trained by the club for which they are registered. It is the "association-trained" aspect of the Rule that has led many commentators to take the view that it has a discriminatory *objective* rather than merely an indirect discriminatory *effect* (although under EU law the difference between the two is irrelevant). Three considerations point to a rejection of this approach. First, our analysis of the competitive balance data suggests that the use of association-trained players played the major role in reducing the success of the higher ranked teams in the Champions League group stages. Secondly, some clubs with smaller incomes suggested that the association-trained part of the rule enabled them to draw income from larger clubs belonging to their association through transfer fees and training compensation, incentivising youth development.⁷⁴ Thirdly, removing the association-trained aspect could encourage larger clubs to recruit players from competitors at an earlier age.

A less intuitive method to satisfy proportionality is to *increase* the restrictions on the number of home grown players that have to be listed in a club's squad. This would increase the bite of the Rule insofar as our data suggests it would be likely to increase competitive balance in UEFA competitions (in the group stages at least). It is also possible that it may have a more identifiable impact upon investment in training and development of young players, particularly at clubs with the greater incomes and those based in the "big five" leagues. These potential gains must, however, be weighed against the impact a strengthening of the Rule would have on a worker's circulation within the internal market (and indeed on a club's*E.L. Rev. 509 recruitment choices). Given that our data supports the view that a modest increase in the quota could result in a similar increase in competitive balance, a case could be made that a slightly strengthened rule may satisfy proportionality control on these grounds. Any such increase would need to be subject to future investigation looking at the impact of the change. However, expanding the quota should only be considered if less restrictive alternative measures do not exist.

Alternative regulatory measures

There are a number of alternative sporting regulatory measures that have the potential to secure the objectives of promoting competitive balance and youth training and development within the European professional football sector. It was beyond the scope of the Study to assess the extent to which these alternative measures represented "least restrictive alternatives" to the Rule, or the extent to which these measures were likely to achieve more significant and uniform improvements to competitive balance and investment in young player development. Indeed, on first appearance and without the benefit of additional research, some

of the alternative measures listed below appear likely to interfere with fundamental freedoms in a more restrictive manner than the current Rule. In this connection, the research team did not conduct an assessment of the legality of the measures under either EU free movement or competition laws. Nevertheless, and with this caveat in mind, UEFA should consider, following discussions with stakeholders, whether the adoption of one or more of the following alternatives would achieve its legitimate aims more successfully, and provide fewer restrictions on the fundamental freedoms of professional players. In particular, UEFA should consider the benefits of measures that do not give rise to discriminatory effects.

In discussing alternative regulatory measures, a general observation can be made that regulatory interventions within the professional football sector can take two forms: those affecting the product market (measures affecting clubs) and those affecting the labour market (measures affecting players). It stands to reason that interventions in the labour market are more likely to affect the rights of workers whereas product market interventions are more likely to affect the rights of clubs (thus potentially engaging EU competition law). Product market interventions are, therefore, less likely to offend EU free movement of workers principles.

Product market interventions include: club licensing schemes requiring clubs to provide high quality youth development programmes; cost control measures such as "Financial Fair Play" and salary caps; financial inducements to develop young players; revenue sharing schemes; product market liberalisation, thus allowing clubs to benefit from free movement rights enjoyed by players. Labour market interventions include: requiring a player to sign his first professional contract with the club that trained him; the introduction of international contracts for players under the age of 18 which would allow for a uniform means for training clubs to contract their academy players throughout the world; lengthening the maximum term of contracts for players under the age of 18; reforming the training compensation scheme to provide greater club incentives for youth development; restricting the transfer of minors, and imposing squad size limits.⁷⁵

It is not desirable for governing bodies, faced with objections to their current player eligibility rules, to simply reconfigure directly discriminatory restrictions so that they gain the appearance of apparently more benign indirectly discriminatory measures without having first systematically established why non-discriminatory alternatives, particularly those located outwith the labour market, are not suitable. Consequently, before the Rule can categorically be described as compatible with EU free movement law,^{*E.L. Rev. 510} less restrictive alternatives should first be examined, particularly those that do not carry discriminatory effects and are not located within the labour market.

Conclusions

UEFA's home grown player rule has resulted in improvements to competitive balance in European club competitions, but these improvements are very modest. Despite increases in the number of home grown players at EU clubs, there is little evidence to suggest that the Rule has improved the quality of youth development in European football. It is intrinsically liable to restrict the free movement of professional footballers and it is not possible, at this stage, to state that its benefits outweigh its restrictive effects. The proportionality of the Rule cannot be categorically established until UEFA demonstrates that less restrictive alternative measures are ill equipped at securing its objectives. However, rather than adopting a negative position on the Rule, the European Commission should extend an invitation to UEFA to

consult with key stakeholders on how alternative measures that do not carry discriminatory effects can deliver more substantial benefits for European football. Only when the outcome of these discussions and viability studies are known can it be established whether the proportionality of the Rule has been made out.

In the White Paper on Sport, the Commission suggested that governance issues in sport should fall within a territory of autonomy and that most challenges can be addressed through self-regulation which must, however, be "respectful of good governance principles".⁷⁶ While the experience and expertise of the governing body seeking to introduce new regulatory measures should be acknowledged, the exercise of its regulatory discretion should take into account the views of stakeholders who are subject to new rules, particularly those representing the two sides of the sports industry, the clubs and the players. One important governance standard recommended in the White Paper was the use of social dialogue in the sports sector which,

"can contribute to addressing common concerns of employers and athletes, including agreements on employment relations and working conditions in the sector in accordance with EC Treaty provisions."⁷⁷

The social dialogue committee in European professional football established in 2008 could be one such forum through which the home grown player rule and alternative or additional regulatory measures could be discussed, although the committee's existing rules of procedure dictate that items for discussion within the social dialogue committee are first discussed within UEFA's Professional Football Strategy Council. Consequently, UEFA should make use of the professional football social dialogue committee and the European Union should offer sports bodies a wide margin of appreciation when assessing rules that have been openly and democratically debated and agreed by representative sports stakeholders.

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^{1.} *FIFA Statutes, July 2013 Edition, art.20* (FIFA is the world governing body for football).

^{2.}

The UEFA Champions League and the UEFA Europa League. The Rule is located in art.18 of the Regulations of the UEFA Champions League 2014/15 Season and art.18 of the Regulations of the UEFA Europa League 2014/15 Season.

3.

[Union Royale Belge Sociétés de Football Association v Bosman \(C-415/93\) \[1995\] E.C.R. I-4921; \[1996\] 1 C.M.L.R. 64 5.](#)

4.

R. Parrish, *Sports Law and Policy in the European Union* (Manchester: Manchester University Press, 2003); R. Parrish and S. Miettinen, *The Sporting Exception in European Union Law* (The Hague: TMC Asser Press, 2008); S. Weatherill, *European Sports Law Collected Papers* (The Hague: TMC Asser Press, 2014).

5.

See S. Miettinen and R. Parrish, "Nationality Discrimination in Community Law: An Assessment of UEFA Regulations Governing Player Eligibility for European Club Competitions (The Home-Grown Player Rule)" (2007) 5 Entertainment and Sports Law Journal 13.

6.

"White Paper on Sport" COM(2007) 391 final (Brussels, July 11, 2007), p.6.

7.

Ineum Consulting, *Study on Training of Young Sportsmen/women in Europe, Extension—Part II (Home grown players rule)* (2008).

8.

See for example, S. Gardiner and R. Welch, "Bosman—There and Back Again: the Legitimacy of Playing Quotas under European Union Sports Policy" (2011) 17 E.L.J. 828; L. Freeburn, "Labor and Employment Law Issues in Sports: European Football's Home-Grown Players Rule and Nationality Discrimination Under the European Community Treaty" (2009) 20 Marquette Sports Law Review 177; I. Lynam, "UEFA's Homegrown Player Rule—does it Breach Article 39 of the EC Treaty?" (2006) 14 Sport and the Law Journal 30; F. Majani, "One Step Forward, Two Hops Backwards: Quotas—The Return. An Excavation into the Legal Deficiencies of the FIFA 6+5 Rule and the UEFA Home-Grown Players Rule in the Eyes of European Union Law" (2009) 1 I.S.L.R. 19; A. Manville, "UEFA, the 'Home-Grown Player Rule' and the Meca-Medina Judgement of the European Court of Justice" (2009) 1 I.S.L.R. 25; S. Miettinen and R. Parrish, "Nationality Discrimination in Community Law: An Assessment of UEFA Regulations Governing Player Eligibility for European Club Competitions (The Home-Grown Player Rule)" (2007) 5 Entertainment and Sports Law Journal, online, available at http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume5/number2/miettinen_parrish [Accessed July 28, 2014].

9.

"UEFA's Rules on Home-grown Players Receive Green Light from the Commission" (August 14, 2008), http://ec.europa.eu/sport/news/news270_en.htm [Accessed November, 2012].

10.

Commission Press Release IP/08/807, "UEFA Rule on Home-grown Players: Compatibility with the Principles of Free Movement of Persons" (May 28, 2008).

11.

"Developing the European Dimension in Sport (the Communication on Sport)" COM(2011) final (Brussels, January 18, 2011), p.13.

12.

M. Dalziel, P. Downward, R. Parrish, G. Pearson and A. Semens, "An Assessment of the Compatibility of UEFA's Home Grown Player Rule with Article 45 TFEU" (European Commission, April 30, 2013).

13.

[Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano \(C-55/94\) \[1991\] E.C.R. I-4165; \[1996\] 1 C.M.L.R. 603](#) at [37].

14.

Between November 2012 and March 2013 20 clubs from 12 countries were interviewed.

15.

Article 20(1) TFEU.

16.

[Olympique Lyonnais v Olivier Bernard and Newcastle United \(C-325/08\) \[2010\] 3 C.M.L.R. 14](#) at [29].

17.

[Walrave v Union Cycliste Internationale \(36/74\) \[1974\] E.C.R. 1405; \[1975\] 1 C.M.L.R. 320](#) at [17].

18.

[Roman Angonese v Cassa di Risparmio di Bolanza SpA \(C-281/98\) \[2000\] E.C.R. I-4139; \[2000\] 2 C.M.L.R. 1120](#) at [36].

19.

[Bosman \(C-415/93\) \[1995\] E.C.R. I-4921](#) at [87].

20.

[Walrave \(36/74\) \[1974\] E.C.R. 1405](#) at [28].

21.

Currently all professional footballers in European are male owing to FIFA and UEFA regulations preventing women participating alongside or against men.

22.

[Bosman \(C-415/93\) \[1995\] E.C.R. I-4921](#) at [120].

23.

E.g. The numbers of foreign players have increased since 2009/10 from 18.3 to 34.4 per cent in Poland and from 23.5 to 33.4 per cent in Hungary (*CIES Football Observatory (2012), Demographic Study*).

24.

[Commission v Italy \(C-283/99\) \[2001\] E.C.R. I-4363](#).

25.

For example, see [Commission v France \(French merchant seamen\) \(167/73\) \[1974\] E.C.R. 359; \[1974\] 2 C.M.L.R. 216](#); and [Bosman \(C-415/93\) \[1995\] E.C.R. I-4921](#).

26.

The UEFA Rule can be contrasted with the FIFA proposal for a "6+5 rule" requiring clubs to field six nationals in the starting XI which would amount to direct nationality discrimination. The proposal was withdrawn in 2010.

27.

See [O'Flynn v Adjudication Officer \(C-237/94\) \[1996\] E.C.R. 2631; \[1996\] 3 C.M.L.R. 103](#) at [18]. See also Regulation 492/2011.

28.

[Collins v Secretary of State for Work and Pensions \(C-138/02\) \[2004\] E.C.R. I-2703; \[2004\] 2 C.M.L.R. 8](#).

29.

C. Barnard, *The Substantive Law of the EU* (Oxford: Oxford University Press, 2013), p.248.

30.

Commission Press Release IP/08/807, "UEFA Rule on Home-grown Players" (May 28, 2008).
31.

For comprehensive treatment see *Parrish and Miettinen, The Sporting Exception in European Union Law (2008).*

32.

Walrave (36/74) [1974] E.C.R. 1405 at [4] and [8].

33.

Donà v Mantero (C-13/76) [1976] E.C.R. 1333 at 1344.

34.

Bosman (C-415/93) [1995] E.C.R. I-4921 at [76].

35.

Bosman (C-415/93) [1995] E.C.R. I-4921 at [128].

36.

Meca-Medina and Macjen v Commission (C-519/04 P) [2006] E.C.R. I-6991; [2006] 5 C.M.L.R. 18 at [27].

37.

Meca-Medina (C-519/04 P) at [28].

38.

Meca-Medina (C-519/04 P) at [45].

39.

Meca-Medina (C-519/04 P) at [47].

40.

Meca-Medina (C-519/04 P) at [45].

41.

See *TMC Asser Institute, Edge Hill University and Leiden University, Study on the Equal Treatment of Non-Nationals in Individual Sports Competitions: Report for the European Commission (2010)*, p.225. See also S. Weatherill, "Anti-Doping Revisited—the Demise of the Rule of 'Purely Sporting Interest'" (2006) 27 *E.C.L.R.* 645.

42.

Deliège v Ligue Francophone de Judo et Disciplines Associees ASBL (C-51/96 and C-191/97) [2000] E.C.R. I-2549; [2002] 2 C.M.L.R. 65 at [61].

43.

Deliège (C-51/96 and C-191/97) at [64].

44.

Deliège (C-51/96 and C-191/97) at [67].

45.

Deliège (C-51/96 and C-191/97) at [68].

46.

Deliège (C-51/96 and C-191/97) at [69].

47.

Article 11 TFEU states that "environmental protection requirements *must* be integrated into the definition and implementation of the Union's policies and activities ...".

48.

Bernard (C-325/08) [2010] 3 C.M.L.R. 14 at [40].

49.

See for example, S. Weatherill, "Fairness, Openness and the Specific Nature of Sport: Does the Lisbon Treaty Change EU Sports Law?" (2010) 3 *I.S.L.R.* 11. Indeed UEFA has already articulated such a plea: "*UEFA's Position on Article 165 of the Lisbon Treaty*", http://www.uefa.com/MultimediaFiles/Download/uefaorg/EuropeanUnion/01/57/91/67/1579167_DOWNLOAD.pdf [Accessed July 2, 2014]. See also *R. Parrish, B. García, S. Miettinen*

and R. Siekmann, *The Lisbon Treaty and EU Sports Policy: Report for the European Parliament Committee on Culture and Education* (European Parliament, 2010), Ch.3.

50.

[Bosman \(C-415/93\) \[1995\] E.C.R. I-4921](#) at [106].

51.

[Lehtonen v Fédération Royale Belge des Sociétés de Basket-Ball ASBL \(C-176/96\) \[2000\] E.C.R. I-2681; \[2000\] 3 C.M.L.R. 409](#) at [54].

52.

[Meca-Medina \(C-519/04 P\) \[2006\] E.C.R. I-6991](#).

53.

[Bernard \(C-325/08\) \[2010\] 3 C.M.L.R. 14](#).

54.

See for instance *European Parliament Resolution of February 2, 2011 on the European Dimension in Sport*, (2011/2087(INI)), para.72, and *European Commission Press Release IP/08/807, "UEFA Rule on Home-grown Players"* (May 28, 2008).

55.

See "*White Paper on Sport*" COM(2007) 391 final, s.2.3.

56.

R. Tridimas, *The General Principles of EU Law* (Oxford: Oxford University Press, 2006), p.137.

57.

TMC Asser Institute, Edge Hill University and Leiden University, "*Study on the Equal Treatment of Non-Nationals in Individual Sports Competitions*" (2010).

58.

[Bosman \(C-415/93\) \[1995\] E.C.R. I-4921](#) at [110].

59.

[Deliège \(C-51/96 and C-191/97\) \[2000\] E.C.R. I-254](#) at [68].

60.

[Deliège \(C-51/96 and C-191/97\) \[2000\] E.C.R. I-254](#) at [67].

61.

[Meca-Medina \(C-519/04 P\) \[2006\] E.C.R. I-6991](#) at [49–[55].

62.

[Lehtonen \(C-176/96\) \[2000\] E.C.R. I-2681](#) at [54].

63.

[Bernard \(C-325/08\) \[2010\] 3 C.M.L.R. 14](#) at [45].

64.

[Bernard \(C-325/08\) \[2010\] 3 C.M.L.R. 14](#) at [48].

65.

[Bernard \(C-325/08\) \[2010\] 3 C.M.L.R. 14](#) at [47].

66.

P. Downward, A. Dawson and T. Dejonghe, *Sports Economics: Theory, Evidence and Policy* (Amsterdam: Elsevier, 2009).

67.

UEFA Club Licensing and Financial Fair Play Regulations 2012 art.2(1)(a).

68.

UEFA Club Licensing and Financial Fair Play Regulations 2012 art.17.

69.

"*White Paper on Sport*" COM(2007) 391 final, s.4.7.

70.

E.g. "Financial Fair Play" licensing requirements.

[71.](#)

P. Craig, EU Administrative Law (Oxford: Oxford University Press, 2012), p.602.

[72.](#)

See S. Weatherill, "'Fair Play Please!' Recent Developments in the application of EC Law to Sport" (2003) 40 C.M.L. Rev. 51, 71–72.

[73.](#)

Ineum Consulting, Study on Training of Young Sportsmen/women in Europe (2008), p.38.

[74.](#)

This assertion is however questioned in the recent European Commission report on the impact and legality of the transfer system: *KEA European Affairs and the Centre for the Law and Economics of Sport: The Economic and Legal Aspects of Transfer of Players (European Commission, 2013).*

[75.](#)

KEA European Affairs and the Centre for the Law and Economics of Sport: The Economic and Legal Aspects of Transfer of Players (2013) recommends a restructuring of the international transfer system in order to address perceived competitive imbalances within the professional football sector.

[76.](#)

"White Paper on Sport" COM(2007) 391 final, s.4.

[77.](#)

"White Paper on Sport" COM(2007) 391 final, s.5.3.