

**The University of Liverpool and Edge Hill University**

**Study on the Assessment of UEFA's  
'Home Grown Player Rule'  
Negotiated procedure EAC/07/2012**

Prof. Murray Dalziel,

Dr Paul Downward

Prof. Richard Parrish

Dr Geoff Pearson

Dr Anna Semens

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UNIVERSITY OF  
LIVERPOOL

**Edge Hill  
University**

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# Executive Summary

*The UEFA home grown player rule was adopted by UEFA's Executive Committee on February 2<sup>nd</sup>, 2005 and accepted on April 21<sup>st</sup> 2005 when presented to UEFA's 52 national member associations during its congress in Tallinn. Introduced for the 2006/07 season, the Rule currently requires every team entering European competitions to name eight home grown players in their 25 man squad. Four of these players must be 'club-trained' and four must be 'association-trained'. A club-trained player is defined as a player who, irrespective of his nationality and age, has been registered with his current club for a period, continuous or non-continuous, of three entire seasons or of 36 months whilst between the ages of 15 and 21. An association-trained player fulfils the same criteria but with another club in the same association. In the event that a club fails to meet the new conditions for registration, the maximum number of players on the 'A' list will be reduced accordingly. Should a club list an ineligible player in the places reserved for home grown players, those players will not be eligible to participate for the club in the UEFA club competition in question and the club will be unable to replace that player on list 'A'. This study provides an assessment of the practical implementation of UEFA's home grown player rule and of its effects, in particular in the field of free movement of workers.*

1. Having regard to the objectives of the European Union, sport is subject to EU law in so far as it constitutes an economic activity. Where a sporting activity takes the form of gainful employment or the provision of services for remuneration, which is true of the activities of semi-professional or professional sportspeople, it falls within the scope of Article 45 of the Treaty on the Functioning of the European Union (TFEU). EU footballers are workers and can seek the protections afforded to them by EU free movement law.
2. It is settled case-law that Article 45 TFEU extends not only to the actions of public authorities but also to rules of any other nature aimed at regulating gainful employment in a collective manner. UEFA is a collective regulator and therefore the applicable free movement rules can be invoked against them by a private party.
3. EU law applies to 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, can be located within the territory of the EU. Therefore despite being based in Switzerland, UEFA's actions are subject to EU law.

4. Rules of purely sporting interest are not subject to the Treaty rules governing freedom of movement. The home grown player rule cannot be categorised as such a rule. Rules ‘inherent’ to a sport fall within the scope of the Treaty but are incapable of being defined as a restriction as long as the restrictive effects of the measure are inherent in the pursuit of a legitimate objective and remain proportionate. The home grown player rule cannot be categorised as an inherent rule because it does not derive from a need inherent in the organisation of the UEFA competitions.
5. Article 165 TFEU does not remove sport from the scope of the Treaty’s prohibitions but its provisions do inform the question of what constitutes a legitimate sporting objective and (taking into account the specific nature of sport and questions of fairness and openness) what is considered *suitable* and *necessary* for the attainment of these objectives.
6. The home grown player rule constitutes a restriction on a worker’s free movement. It amounts to a provision which precludes or deters a national of a Member State from leaving his country of origin in order to engage in employment in a different Member State. However, in EU law a distinction is drawn between restrictions on a worker’s freedom of movement that are (a) directly discriminatory, (b) indirectly discriminatory, and (c) non-discriminatory. The home grown player rule amounts to an indirectly discriminatory rule because even though the Rule is neutral in terms of nationality, national workers are placed at an advantage over migrant workers.
7. An indirectly discriminatory measure that restricts a worker’s free movement can be accepted in law only if it pursues a legitimate aim compatible with the Treaty and is justified by overriding reasons in the public interest. The justifications presented by UEFA in support of the rule, namely that it *promotes competitive balance* and *encourages the training and development of young players*, must be accepted as legitimate. There is some evidence of declining competitive balance in European competitions but far less to suggest that clubs are failing to invest in youth development. Even though the Rule pursues these two legitimate aims, it still needs to satisfy the twin proportionality tests of *suitability* and *necessity*.
8. There has been a significant increase in the number of home grown players in first team squads and starting XIs in both UEFA and domestic competitions since the Rule was introduced. There is no data to prove to any certainty that this is a direct result of the Rule. Moreover, an increase in the number of home grown players cannot in itself be considered a legitimate objective for restricting free movement.

9. The statistics measuring competitive balance suggest that the impact of the rule has been to rebalance the performance of teams across both the Champions League and Europa League 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. However, this impact on competitive balance is very modest. There is very little evidence to suggest that the Rule affects the final stages in either competition. There is insufficient data at the current time to make an accurate scientific assessment of whether, with time, the Rule's impact on competitive balance will increase, diminish or remain static.
10. From the quantitative and qualitative data gathered, the UEFA Rule appears to have had a very limited impact on youth player training and development throughout the European Union. The number of young players in first team squads has increased slightly during the time the Rule has been in place (particularly at clubs participating in UEFA competitions) but this trend was more evident in the years leading up to the introduction of the Rule. Club policy in this area appears to be more influenced by factors other than the Rule. Our data reveals no evidence of 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.
11. The neutrality or very limited positive effect of the Rule in terms of improving competitive balance and the training and development of young European Union players must be balanced against the impact the Rule has on restricting a player's freedom of movement. There is very limited evidence to suggest that this restriction is currently manifestly restrictive, but it remains *intrinsically liable* to restrict free movement.
12. The proportionality of the Rule could be established on the grounds that, in its current form, 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. In order to establish this, an additional future study into the Rule would be required. Second, alternative measures could potentially achieve a more uniform and substantial impact in terms of competitive balance and youth 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.
13. Amending the Rule to lower the home grown quota or to remove the association-trained criterion will reduce the suitability of the measure and make it less likely to satisfy EU free movement law.

Removing the ‘association-trained’ aspect of the Rule and instead classifying home grown players only as those trained by the club for which they are registered will remove the competitive balance improvements identified, potentially provide disincentives for smaller clubs to develop young players and could encourage larger clubs to recruit players from competitors at an earlier age.

14. Given that our data supports the view that a modest increase in the quota could result in a modest improvement in competitive balance, a case could be made that a slightly strengthened rule satisfies proportionality control on these grounds. This proposition is conditioned on the assumption that less restrictive alternative measures do not exist.
15. 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 (such as free movement rights) 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.
16. It does not follow that simply because labour market interventions are historically rooted in sport, or that some professional athletes are now well remunerated, that labour market interventions are an appropriate default position for a governing body seeking to remedy a perceived weakness in the sports market. There are strong legal reasons why labour market restrictions should be considered the *last* resort and it is recommended that the institutions of the EU adopt this approach as their foundation principle when assessing measures that may conflict with the freedoms of athletes. Consequently, before the Rule can categorically be described as compatible with EU free movement law, less restrictive alternatives should first be examined, particularly those that do not carry discriminatory effects and are not located within the labour market.
17. It cannot be categorically established at this stage that the restrictive effects of the Rule on the free movement of workers are proportionate to the very limited benefits of the Rule in terms of competitive balance and the training and development of young players. It is the view of the research team that the very modest benefits of the Rule are likely to be achieved in a more substantial manner by the adoption of alternative, less restrictive, means, particularly those not carrying discriminatory effects. UEFA, in conjunction with the key football stakeholders, hold the necessary experience and expertise to explore these alternatives and should be afforded reasonable time to do so (a period of

three years). This period should also allow UEFA to assess whether existing regulatory measures (such as Club Licensing and Financial Fair Play) are delivering such improvements to competitive balance and the quality of youth development to render discriminatory labour market restrictions unnecessary. In particular, the stakeholders are encouraged to make use of the social dialogue committee established for professional football in 2008.

18. If UEFA can demonstrate that less restrictive alternative measures are not suitable to achieve the stated objectives of the Rule, and that existing measures have not delivered necessary improvements, then the Rule is to be considered compatible with EU law, complementary to existing measures (such as club licensing), and an incremental increase in the quota could be contemplated. This assessment is conditioned on the existing benefits of the Rule being maintained over the next three years.
19. If less restrictive alternatives are able to achieve more substantial improvements in competitive balance and the quality of youth development, the proportionality of the Rule will not have been made out and the Rule should be removed from the UEFA Regulations.
20. It is recommended that a further study should be conducted in three years in order to assess: (1) whether the competitive balance improvements identified have been maintained, improved further or have declined, (2) whether a closer connection between the Rule and improvements in youth development can be identified, and (3) whether less restrictive alternatives can deliver more substantial improvements to competitive balance and the quality of youth development.

**UEFA's home grown player rule has resulted in improvements to competitive balance in Champions League and Europa League competitions but these improvements are very modest. Despite the increases in the number of home grown players at EU clubs, there is little evidence to suggest that the Rule has had an impact in improving the quality of youth development in European football. Although there is little evidence to suggest that the Rule has manifestly restricted the freedom of movement of professional footballers, it is intrinsically liable to do so and it is not possible, at this stage, to state that the benefits of the Rule outweigh the restrictive effects. The proportionality of the Rule cannot be categorically established until UEFA demonstrates that less restrictive alternative measures are ill equipped at securing the objectives of the Rule. It is recommended that, rather than adopting a negative position on the Rule, the European Commission should extend an invitation to UEFA to consult with key stakeholders on whether alternative measures, that do not carry discriminatory effects, can deliver more substantial benefits for European football. A further study in three years should assess the outcome of these discussions and report on whether the proportionality of the Rule has been made out.**

# Chapter 1

## The UEFA Home Grown Player Rule

The UEFA home grown player rule was adopted by UEFA's Executive Committee on February 2<sup>nd</sup>, 2005 and accepted on April 21<sup>st</sup> 2005 when presented to UEFA's 52 national member associations during its congress in Tallinn. The initial proposal was made after UEFA identified a number of perceived negative trends in European football, including:

- a lack of incentive in training players,
- lack of identity in local/regional teams,
- “hoarding” of players, and
- related problems for national teams.

UEFA had also commissioned an economic study that identified a tendency towards:

- less competitive balance in UEFA club competitions and domestic leagues,
- an increased link between money and sporting success, and
- fewer opportunities for local-trained players to play.

As a result, it was claimed that clubs were re-evaluating whether it was worthwhile developing young talent when the best young players would gravitate to the richest clubs without necessarily providing a good return on the training club's investment.

The basis of the solution to these problems was to introduce a rule which encouraged clubs participating in UEFA club competitions to include a minimum number of locally trained players in their squad (commonly referred to as home grown players). The implementation of the rule was staggered to afford clubs a transition period with minimum numbers of home grown players to be implemented gradually as follows:

- Season 2006/7: four locally trained players
- Season 2007/8: six locally trained players
- Season 2008/9 onwards: eight locally trained players

Clubs must submit an ‘A’ List of players (List A) and a ‘B’ List of players (List B) duly signed by the national association for verification, validation and then forwarded to UEFA. No club may have more than 25 players on List A during the season<sup>1</sup>.

Locally trained players can be either club-trained or association-trained as set out in Article 18 of the UEFA Regulations:

*18.10 A “club-trained player” is a player who, between the age of 15 (or the start of the season during which he turns 15) and 21 (or the end of the season during which he turns 21), and irrespective of his nationality and age, has been registered with his current club for a period, continuous or not, of three entire seasons (i.e. a period starting with the first official match of the relevant national championship and ending with the last official match of that relevant national championship) or of 36 months.*

*18.11 An “association-trained player” is a player who, between the age of 15 (or the start of the season during which the player turns 15) and 21 (or the end of the season during which the player turns 21), and irrespective of his nationality and age, has been registered with a club or with other clubs affiliated to the same association as that of his current club for a period, continuous or not, of three entire seasons or of 36 months.*

In all cases the nationality of the player is of no importance but at least half of the locally trained players must be club-trained. The rule is the same in both Champions League and Europa League competitions and is set out fully in Appendix A.

According to UEFA, the home grown player rule was therefore intended, in conjunction with their club licensing system, to provide more incentive for clubs to train their own players, as well as for the restoration of a competitive balance, first at UEFA club competition level, and then at national level if associations accept and implement UEFA’s recommendations<sup>2</sup>. We now move on to discuss the literature written from a legal perspective on both the reasons for the devising and implementation of the Rule, and the potential legal problems under EU law that have led to the construction of this report.

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<sup>1</sup> Players may be transferred into the club but under those circumstances another player must be removed from the list so there are never more than 25 on the List A at one time.

<sup>2</sup> UEFA statement available at <http://www.uefa.com/uefa/footballfirst/protectingthegame/youngplayers/news/newsid=276829.html>

# Chapter 2

## Review of Legal Literature

### 2.1 Introduction

The following section will provide a legal literature review on the home grown player rule (hereafter ‘the Rule’) as applied by UEFA. The review of this literature (primarily articles in peer-reviewed academic journals or respected practitioner journals) provided the basis for our own initial interpretation of the Rule’s status under EU Law and what tests are to be applied. However it should be noted that the identification of the arguments below should not be taken to mean that the research team necessarily agree with them. Much of the work completed prior to the current study was speculative and did not have the benefit of the data assembled for this study (set out in chapters 4-7) against which the relevant legal tests can be applied to assess the legality of the Rule under EU law. While much of the previous literature was supported by our data, our findings have run contrary to some of the arguments set out in the following sections.

### 2.2 The Rationale for Introduction of the Rule

The current study will focus on the twin stated aims of the Rule: (a) improving the training of, and opportunity for, young players, and (b) improving competitive balance. However, it should be recognised that although these were the primary stated aims at the UEFA 2005 Congress in Tallinn when the Declaration of local training of players was introduced,<sup>3</sup> they are only two of several that were given to justify the Rule and these should also be acknowledged in the event that they indicate a discriminatory objective behind the Rule.

All studies into the legality of the Rule identified that improving the training and development of young players was a fundamental aim of the Rule. Following the *Bosman* and *Kolpak* cases, “major deficits”<sup>4</sup> in the current operation of club training regimes was leading to a perceived lack of opportunity for domestic

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<sup>3</sup> Smokvina, V. (2012), The UEFA “Home-grown Players” Rule: Does it Fulfil its Aim? Paper presented to the Sport and Society Conference, University of Cambridge, 22-25 July 2012.

<sup>4</sup> Conzelmann, R. (2008), Models for the Promotion of Home Grown players for the protection of National Representative Teams, *International Sports Law Journal*, 3-4: 26.

young players<sup>5</sup> in the big five leagues in particular.<sup>6</sup> It was therefore hoped that the Rule would, “promote and protect the quality training of young footballers within the EU”<sup>7</sup> and “ensure a steady supply of young academy players for the first team”.<sup>8</sup> This would be achieved through the Rule’s insistence on a minimum number of club and association-trained players in playing squads and also the limitation on squad sizes, which was intended to prevent “hoarding” of good young players by the wealthiest clubs, in turn giving them opportunity of more playing time.<sup>9</sup> This, it was felt, might also have the effect of reducing the amount of money spent on transfer fees (which have also been identified as legally problematic) and enabling financially weaker clubs to afford better quality players in the transfer system, in turn increasing competitive balance in line with second fundamental objective detailed below.<sup>10</sup> Following the ruling in *Bosman*, and statements by the Council on the EU (most notably the Nice Declaration), the Commission,<sup>11</sup> and the European Parliament, it is clear that the training and development of young players is seen as a legitimate aim under European Union law.<sup>12</sup>

The second fundamental stated aim of the Rule was to protect, “consolidate”<sup>13</sup> or increase competitive balance within domestic competitions.<sup>14</sup> The concern was that as a result of increased player migration following *Bosman*, the wealthier clubs and leagues were able to ‘buy-up’ the best talent throughout the EU, which in addition to restricting the opportunities for young domestic players,<sup>15</sup> was also reducing

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<sup>5</sup> Gardiner, S., and Welch, R. (2011a), ‘Bosman - There and Back Again: the Legitimacy of Playing Quotas under European Union Sports Policy’, *European Law Journal* Vol. 17, No. 6: 828-49: 840

<sup>6</sup> Conzelmann (2008).

<sup>7</sup> Majani, F. (2009), ‘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’, *International Sports Law Journal* Vol. 1-2: 20; see also Miettinen, S. and Parrish, R. (2007), ‘Nationality Discrimination in Community Law: An Assessment of UEFA Regulations Governing Player Eligibility for European Club Competitions (The Home-Grown Player Rule)’, *Entertainment and Sports Law Journal*, Vol. 5, No. 2; McDermott, J. (2010), ‘Direct v. Indirect Discrimination in European Football: The Legal Differences Between UEFA’s Homegrown Player Rule and FIFA’s ‘6+5’ Proposal’, *Texas Review of Entertainment & Sports Law*, Vol. 11: 285, and Hart S. (2004), ‘Call to “Create Level Playing Field”’, UEFA.com 4/10/04.

<sup>8</sup> Geey, D and Ward, J, (2009), ‘FAPL Rules: new ownership and “home grown” Premier League Rules’, *World Sports Law Review*, 7(11): 4.

<sup>9</sup> Lynam, I. (2006), ‘UEFA’s Homegrown Player Rule – does it Breach Article 39 of the EC Treaty?’ *Sport and the Law Journal*, Vol. 14, No. 2: 33; Miettinen and Parrish (2007): para 2.

<sup>10</sup> Chaplin, M. (2005) ‘UEFA “Out to Get Balance Right”’ UEFA.com 3/2/05; McDermott (2010): 284-5.

<sup>11</sup> “Rules requiring that teams include a certain quota of locally trained players could be accepted as being compatible with the Treaty provisions on free movement of persons if (...) possible indirect discrimination effects pursued, such as to enhance and protect the training and development of talented young players” (Commission White Paper on Sport 2007, at 2.3(9)).

<sup>12</sup> Conzelmann (2008): 27-9; Lynam (2006); Smokvina (2012). Although Vermeersch and Van den Bogaert challenge this popular assumption: “It can... rightly be questioned whether the training and development of young players really constitutes a legitimate aim which is sufficiently specific to the sports sector so as to justify restrictions to the freedom of movement of athletes” (Vermeersch, A. and Van den Bogaert, S. (2006), ‘Sport and the EC Treaty: a tale of uneasy bedfellows?’, *European Law Review*, Vol. 31 No. 6: 821-40).

<sup>13</sup> Majani (2009): 20.

<sup>14</sup> Lynam (2006); McDermott (2010): 285.

<sup>15</sup> This belief should be contrasted with Advocate-General Lenz’s view in *Bosman* that the migration of foreign players was unlikely to lead to fewer chances for young domestic payers (para 145).

competitive balance.<sup>16</sup> Therefore by limiting squad sizes and providing incentives for clubs to train their own players it was hoped that the Rule would enable financially weaker clubs and leagues to compete more capably.

Two other objectives and underlying reasons for the introduction of the Rule were revealed at the time of its conception, of varying veracity and legality in terms of being seen as legitimate objectives under EU law. Neither appear to be central to the current justifications put forward for the Rule, possibly due to their weak or uncertain standing in terms of objective justification under EU free movement law. The Rule was brought in following the victory by un-fancied Greece in the 2004 UEFA European Championship and it was suggested by UEFA Chief Executive Officer Lars-Christer Olsson that the poor performance by the traditionally strong nations at Euro 2004 was the result of a lack of training and opportunity for (indigenous) young players (in contrast to Greece, where the domestic league was dominated by home grown players).<sup>17</sup> Therefore the perceived weakening of national teams, in particular England,<sup>18</sup> was a key stated reason for the introduction of the Rule at the time.<sup>19</sup> This does, however, appear to contradict the claims noted above that the Rule will protect or increase competitive balance.<sup>20</sup> The protection of international sport is seen as a potential objective justification for restrictions on fundamental freedoms, although the success of particular nations in winning competitions is not.<sup>21</sup> It should also be noted at this stage that there does not appear to be any peer-reviewed evidence to suggest that there has been a decline in the standard of national teams, or that of the traditionally stronger nations. It has also been suggested that post *Bosman*, the performance of the England national team has *improved* compared with the equivalent time prior to the ruling.<sup>22</sup>

Finally, statements prior to the introduction of the Rule (in particular by UEFA CEO Lars-Christer Olsson), suggested that it was necessary to prevent what was perceived to be an erosion of clubs' regional and national identity and a severing of links between clubs and their communities and fan bases.<sup>23</sup> In

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<sup>16</sup> Gardiner, S., and Welch, R. (2011a), 'Bosman - There and Back Again: the Legitimacy of Playing Quotas under European Union Sports Policy', *European Law Journal* Vol. 17, No. 6: 828-49: 840.

<sup>17</sup> Lynam (2006): 33. It should be noted that Greece's surprise victory was not the first in the European Championships. In 1992 (prior to *Bosman*), Denmark had pulled off an arguably more surprising tournament win. Miettinen and Parrish also note that the Greek and French winners of the 2000 and 2004 Euros had "significant numbers of leading players" playing in foreign leagues (2009).

<sup>18</sup> Majani (2009): 20.

<sup>19</sup> Miettinen and Parrish (2007): para 2.

<sup>20</sup> Lynam (2006).

<sup>21</sup> Henderson, T. (2011), 'The English Premier League's Home Grown Player Rule Under the Law of the European Union', *Brooklyn Journal of International Law*, Vol. 37 Issue 1: 259-90: 287, applying *Lehtonen*.

<sup>22</sup> Huxtable, F. (2008), 'The Good, the Bad and the Illegal', *Soccer Investor*; Gardiner and Welch (2011a): 840.

<sup>23</sup> Majani (2009): 20; Miettinen and Parrish (2007): para 2. Freeburn L, (2009), 'Labor and Employment Law Issues in Sports: European Football's Home-Grown Players Rule and Nationality Discrimination Under the European Community Treaty', *Marquette Sports Law Review*, Vol.: 20: 177 and Parrish and Miettinen (2007) point out that there is no evidence to support the claim that fan allegiances to their teams weaken due to foreign players and free agency, and considerable evidence from Europe and the US to the contrary. Indeed, in all of the major leagues bar Italy, attendances have increased post-*Bosman* (Miettinen and Parrish (2007): para 21).

*Bosman*, this justification was expressly dismissed as being capable of legitimising restrictions on the rights of EU workers.<sup>24</sup> It appears, therefore, that several justifications that were given at the time of the Rule's introduction have been sidelined, possibly due to the fact that they are not seen as capable of objective justification for legitimising the Rule under EU law. However, the justifications on record around 2005 may cast doubt on whether it is purely the aims of competitive balance and training of young players that should be taken into account when assessing the legality of the Rule, or whether there is a more directly discriminatory motive underpinning it; "The rationale for requiring 'home grown players' as per UEFA's regulations is to enable markets in commercial sport to maintain a geographic character and reinforce partitions within the Community by discriminating against Community workers".<sup>25</sup> Freeburn notes that, "there is the prospect for the inference to be drawn that the Rules are, at least in part, motivated by a discriminatory objective",<sup>26</sup> especially due to the fact that non club-trained players, but who are trained in the same nation/association, are given preferential treatment. This does not incentivise club training schemes, but does have an indirectly discriminatory effect.<sup>27</sup>

### 2.3 Is the Rule Exempt from EU Law?

Legal and socio-legal comment in peer-reviewed and established practitioner journals on the Rule is clear that it is not 'purely sporting' or 'inherent' in a way that might enable it to be removed from the rigours of EU law.<sup>28</sup> Majani argues that following the *Walrave* test, the Rule is economic and not "purely sporting" as it concerns the establishment of (expensive) academies and the education of minors.<sup>29</sup> Manville specifically discounts the possibility that the Rule could be an "indispensible condition" due to the success of the UEFA Champions League in the ten years prior to the Rule's introduction.<sup>30</sup> All of the work reviewed identified that the Rule is a *potential* breach of EU law, but that under certain circumstances this potential breach could be justified. Indeed, much of the work identified the current European Commission-funded study as being key to identifying whether the potential breaches could be justified under EU law.<sup>31</sup> The primary legal problems with the Rule identified in the work reviewed was: (a) that it is a potential breach of the fundamental rights of workers to move freely between, and work without impediment within, EU members states,<sup>32</sup> and (b) that it is a potential breach of competition law<sup>33</sup>

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<sup>24</sup> Lynam (2006): 34.

<sup>25</sup> Miettinen and Parrish (2009): para 36. Henderson goes as far as to claim that the aim of the EPL version of the Rule was to increase number of English players, not home-grown ones and limit number of foreigners (2011: 282).

<sup>26</sup> (2009): 211.

<sup>27</sup> *Ibid*: 213.

<sup>28</sup> Manville, A. (2009), 'UEFA, the 'Home-Grown Player Rule' and the Meca-Medina Judgement of the European Court of Justice', *International Sports Law Journal*, Vol. 1-2: 25: 26; McDermott (2009): 286; Miettinen and Parrish (2009): para 9.

<sup>29</sup> Majani also notes that as minors are not classed as workers under EU law, they could not challenge the Rule (2009: 22).

<sup>30</sup> (2009): 27.

<sup>31</sup> Gardiner, S., and Welch, R. (2011b), 'Nationality and protectionism in football: why are FIFA's "6+5 Rule" and UEFA's "home-grown player Rule" on the agenda?' *Soccer and Society* Vol.12, No 6: 774-87: 781; McDermott (2010): 288; Miettinen and Parrish (2009): para 17; Williams, R. and Haffner, A. (2008), 'FIFA Quotas Ruled Offside?' *New Law Journal*, 158: 7330.

<sup>32</sup> Article 45 TFEU.

in that it restricts the freedom of undertakings (i.e. clubs) to compete in the market for quality players. It has also been suggested that the Rule has the potential to be classed as Age Discrimination<sup>34</sup> primarily because it places players who become professional later in their career at a disadvantage.<sup>35</sup> We do not discuss this issue in this literature review beyond noting the potential problem. It should also be noted that this current study is purely focussed on the legality of the Rule under free movement laws and that we will not be assessing it against the rigours of EU competition law (although initial work in this area is noted below).

It should be recognised at this stage that the vast majority of work carried out assessing the legality of the Rule is of the opinion that it breaches EU law in an unjustifiable way and that legal action challenging it is likely. McDermott suggests that the only reason that the Rule has “not met with significant opposition either in the press or among most football insiders” is because in reality it has had “very little impact on most clubs”.<sup>36</sup> Freeburn argues that “the current ambivalence of the EC to the UEFA Home Grown rule appears inappropriately deferential to the objectives of UEFA... it may reasonably be expected that the European Court of Justice would be far less accommodating if a challenge to the home grown player rules was litigated”.<sup>37</sup> Furthermore, he claims that, “the Commission’s inaction in the 4+4 rule, pending further evidence and information on its operation, is also open to be criticised as being plainly inconsistent with European Court of Justice decisions regarding indirect discrimination.”<sup>38</sup> Majani agrees with the first point, identifying the Rule as “legally weak and vulnerable”<sup>39</sup> and contrary to EU law if there are loopholes in the operation of the regulations, if the regulations discriminate on the grounds of nationality, if they infringe on the right to engage in sport, or if they infringe freedom of competition. His conclusion was that a challenge in CAS and the ECJ is “inevitable”.<sup>40</sup> Miettinen and Parrish note that, “UEFA’s justifications may be attacked on the grounds that they are disproportionate, unfit for the purposes they are relied upon or pursue economic as well as legitimate and justifiable non-economic objectives”.<sup>41</sup>

The impact of Article 165 TEFU on the situation receives little attention from the work reviewed. In terms of its impact more generally, academic experts such as Weatherill<sup>42</sup> are of the view that the first signs are that it will change little in terms of the EU’s relation to sport. Conzelmann alone argues that the Lisbon Treaty, “strengthens the legal position of the sporting associations by way of putting the basic

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<sup>33</sup> Articles 101 and 102 TFEU.

<sup>34</sup> Council Directive 2000/78/EC.

<sup>35</sup> Lynam (2006): 30.

<sup>36</sup> (2010): 284.

<sup>37</sup> (2009): 221.

<sup>38</sup> Ibid: 186.

<sup>39</sup> (2009): 21.

<sup>40</sup> Ibid: 25.

<sup>41</sup> (2009): para 37.

<sup>42</sup> (2010).

right of freedom of associations on the same level as the freedom of movement”.<sup>43</sup> He suggests that freedom of association<sup>44</sup> should provide a level of autonomy for sporting institutions and should be balanced against other fundamental rights.<sup>45</sup> As a result it is claimed that this means that the European Court of Justice must now “balance these positions in a convincing way” in the event of conflict.<sup>46</sup>

## 2.4 Freedom of Movement

The majority of work in this area focuses on the impact of the Rule upon the free movement of workers within the EU under what is now Article 45 TFEU. Work in this area is clear that (in contrast to FIFA’s “6+5” proposal or the previous “3+2” UEFA Quota system), the UEFA Rule does *not* constitute direct discrimination.<sup>47</sup> The authors of previous work are also in agreement that because any discrimination that occurs as a result of the Rule is indirect, “categories of objective justification beyond the normal Treaty grounds may be available... consequently, the Rule will be tested against the strengths and proportionality of the objective justifications presented by UEFA.”<sup>48</sup> The Rule’s indirectly discriminatory effect is identified by all the authors writing on the Rule’s impact on free movement of workers; while the Rule is drafted in such a way that it allows young foreign players who transfer at the age of 18 to be classified as “home grown” after staying at that club until they are 21, the likely effect is that fewer foreign players (in contrast with indigenous players) will be able to meet to classification as home grown in a particular league by the age of 21.<sup>49</sup>

Lynam,<sup>50</sup> puts forward the most comprehensive assessment of the relevant EU case law in this area, focussing on *Wurtembergische Milchverwertung-Sudmilch-AG v Salvatore Ugliola* [1969] 363, *Scholz v Universitaria di Cagliari* [1994] ECR I-505, *O’Flynn v Adjudication Officer* [1996] ECR I-2617, *Sotgiu v Deutsche Bundespost* [1974] ECR 153 and *Schumacker* [1995] ECR I-225. Importantly, the jurisprudence in this area makes it clear that it is not necessary to prove the Rule has a discriminatory effect, only that it is “intrinsicly liable” to have that effect.<sup>51</sup>

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<sup>43</sup> (2008): 30.

<sup>44</sup> Article 12 of the Charter of Fundamental Rights and Article 11 of the European Convention on Human Rights.

<sup>45</sup> (2008): 28 (e.g. Article 45).

<sup>46</sup> *Ibid*: 30.

<sup>47</sup> Lynam (2006): 31; Miettinen and Parrish (2009); Williams and Haffner (2008).

<sup>48</sup> Miettinen and Parrish (2009): para 17; see also Manville (2009): 34; Majani (2009): 22-3; Williams and Haffner (2008); Vermeersch and Van den Bogaert (2006).

<sup>49</sup> Henderson argues that the Rule as applied by the FA English Premier League “grants preferential status to Englishmen” (2011: 261), pointing out that based on EPL stats, 85% of players who qualified as home grown were English. He contends that as a result, the Rule would lead to those players being overpaid in comparison with foreign players (*Ibid*: 267).

<sup>50</sup> (2006).

<sup>51</sup> See also Freeburn (2009): 186.

However, non- (directly) discriminatory restrictions or “indistinctly applicable” restrictions can be justified by “mandatory requirements”<sup>52</sup> and Article 36 of the Treaty exempts quantitative restrictions which are justified on grounds of “public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property”. Lynam notes that the restrictions must not, “constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States” and that following this, “it is at best unclear that *Cassis de Dijon*-type ‘mandatory requirements’ are legitimate restrictions for restrictions of this type”.<sup>53</sup> However, even if ‘mandatory requirements’ are available, the Rule would still be illegal if it was a disproportionate means of attaining UEFA’s aims.<sup>54</sup>

In order to test whether the Rule’s indirectly discriminatory effects can be justified against legitimate objectives, the test from *Gebhard v Consiglio dell’Ordine degli Avvocati e Procuratori di Milano* [1995] ECR I-4165 should be applied.<sup>55</sup> This test applies to “national measures liable to hinder or make less attractive the exercise of fundamental freedoms”<sup>56</sup> and states that an indirectly discriminatory Rule may be objectively justified if and where:

- (1) measures must be applied in a non-discriminatory way,
- (2) they must be justified by imperative requirements in the public interest,
- (3) they must be suitable to accomplish their stated goal, and
- (4) they must be narrowly tailored to meet that goal.

Miettinen and Parrish observe that the European Court in particular would not simply accept any measures put forward as an objective justification and would instead consider if they were consistent in their effect with the stated objectives.<sup>57</sup> McDermott also highlights that following *Bosman*, it is clear that with regard to parts (3) and (4) of the *Gebhard* test in particular, the Court would “require an actual showing of fit and proportionality for Rules to be upheld via objective justification”.<sup>58</sup>

The work reviewed raises considerable questions about the extent to which the Rule achieves UEFA’s stated objectives. McDermott notes that it is “not a given” that the Rule would satisfy the first part of the

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<sup>52</sup> *Cassis de Dijon* [1978] ECR 649.

<sup>53</sup> (2006): 35.

<sup>54</sup> *Ibid.*

<sup>55</sup> McDermott (2010): 280, 286; Miettinen and Parrish (2009): para 16.

<sup>56</sup> Miettinen and Parrish (2009): para 16.

<sup>57</sup> (2009): para 16.

<sup>58</sup> (2010).

*Gebhard* test, although the second part of the Rule appears to be accepted as proven.<sup>59</sup> For parts (3) and (4) of the test, however, the work in this area is almost unanimous in challenging UEFA's stated objectives in terms of both the Rule's "fit" with its objectives in practical terms (this is largely speculative) and also in terms of whether it is the "least restrictive alternative" to achieve those aims.

With regard to the training of young players, Lynam argues that, "In order for a restriction to be proportionate, it must meet an existing need. There is no evidence to suggest that clubs are neglecting the training of young players."<sup>60</sup> In fact clubs are spending ever increasing amounts of money on youth development".<sup>61</sup> He notes that in the FA Premier League, the average annual cost of running an academy when the Rules were introduced was £500k-£1.5m, and that UEFA had already introduced a licensing scheme that required any club wishing to participate in UEFA competitions to have an approved youth development scheme.<sup>62</sup> Lynam also argues that there was no evidence that clubs were "hoarding players"<sup>63</sup> and that FIFA Rules brought in following negotiations with the European Commission in 2001, introduced Rules on "sporting just cause" that prevented players who were not being played for more than 10% of playing time during a season from being retained by that club.<sup>64</sup>

Furthermore, even if it could be established that there was a pressing need for the Rule, the consensus is that "the Rule is a clumsy method of achieving the objective".<sup>65</sup> There is considerable doubt expressed about whether the Rule will achieve this objective of increasing the number of club-trained players (particularly indigenous ones) by a number of commentators. For example, Littlewood *et al.*<sup>66</sup> note the increasing propensity for clubs in the 'big five' leagues to bring in talent from abroad at a young age in order for them to qualify as being home grown. In the years 2004-06, the researchers noted a reduction in indigenous home grown players and also an increase in the number of players from South America and Africa. Further questions about the short-term effectiveness of the Rule are raised by Smokvina's statistical analysis of the number of club-trained players in these leagues.<sup>67</sup> This study noted that after a small initial rise, between 2009 and 2011 there was an overall *reduction* across the big five leagues in the number of club-trained players.

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<sup>59</sup> (2009): 287.

<sup>60</sup> Littlewood *et al.* also note that contrary to UEFA concerns, four of the "big five" leagues are indigenously dominant (Germany is the exception) (Littlewood, M., Mullen, C. and Richardson, D. (2011), 'Football labour migration: an examination of the player recruitment strategies of the 'big five' European football leagues 2004-5 to 2008-9', *Soccer and Society*, Vol. 12 Issue 6: 788-805).

<sup>61</sup> (2006): 34.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*: 35.

<sup>64</sup> See also Miettinen and Parrish (2009): para 18.

<sup>65</sup> Lynam (2006): 34.

<sup>66</sup> (2011).

<sup>67</sup> (2012).

The consensus on whether the other justifications given for the introduction of the Rule are achieved is even more damning. In terms of whether the Rule protects or increases competitive balance, the view was that, “There is no evidence that the local training of young players will improve the competitive balance of club competitions”.<sup>68</sup> It was felt that as a result of the ‘association-trained’ aspect of the Rule, the wealthier clubs would still sign the best home grown players, pay the highest salaries and would have the best scouting systems to identify association-trained talent.<sup>69</sup> Even without the association-trained Rule, the richest clubs would still be able to invest most in academies.<sup>70</sup> McDermott notes that the European Court has already ruled that regulations of this type would not increase competitive balance<sup>71</sup> because rich clubs could still purchase the best indigenous talent, in turn driving up the prices of home grown players.<sup>72</sup> It is also suggested that the Rule would upset competitive balance in international tournaments by allowing nations with the strongest and wealthiest domestic competitions a monopoly of success.<sup>73</sup> Certainly it would seem that the Rule is advantageous for bigger member states as they would have more players to select from.<sup>74</sup> It appears therefore that there is a tension between the justifications of improving the training of young players and competitive balance,<sup>75</sup> and that if the Rule does achieve an improvement in the training of young players, the effect of this would be to protect the dominance of the biggest teams, rather than encourage competitive balance.<sup>76</sup> As is set out in Chapter 6, we have found evidence to contest this consensus.

There is also some criticism of the justification of protecting the international game. McDermott argues that the Rule will not increase talent pools for national teams, drawing on statements in *Bosman* that stated that migration increased the prospects of achieving an international level of performance for players willing to move abroad.<sup>77</sup> It was considered that there was no evidence that the Rule would achieve the aim of increasing the quality of international sides<sup>78</sup> and that in any case, this argument would only work if only players performing in the domestic league were permitted to play for the national teams connected with it.<sup>79</sup>

However, according to the literature reviewed it was part (4) of the *Gebhard* test that provided the biggest hurdle for the Rule being declared compatible with EU laws on free movement. All the literature that addressed the test of proportionality that needed to be applied to the Rule stated that this included the

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<sup>68</sup> Lynam (2006): 34.

<sup>69</sup> Lynam (2006); McDermott (2010); Miettinen and Parrish (2007): para 18.

<sup>70</sup> Lynam (2006).

<sup>71</sup> *Bosman*, para 135.

<sup>72</sup> McDermott (2010): 287-8.

<sup>73</sup> Lynam (2006).

<sup>74</sup> Manville (2009): 28.

<sup>75</sup> McDermott (2010): 288.

<sup>76</sup> Freeburn even challenges the idea that competitive balance is needed to maintain fan interest in the sport (2009: 215).

<sup>77</sup> (2010): 288; see also Miettinen and Parrish (2007): para 25; *Bosman*: para 133-4.

<sup>78</sup> Henderson (2011): 288.

<sup>79</sup> Freeburn (2009): 213.

question of whether the Rule was the *least restrictive alternative* of achieving the stated aims.<sup>80</sup> In other words, “the objectives secured by [the] Rule must not be outweighed by the discriminatory impact of it, and there must be no other means by which these objectives can be met just as effectively”.<sup>81</sup>

This, according to the consensus, provided the biggest obstacle for UEFA in proving that the restrictions of Article 45 TFEU were proportionate and therefore justifiable. A number of similar and overlapping ‘least restrictive alternatives’ were proposed, including greater income redistribution (mainly of TV money).<sup>82</sup> Other suggestions included salary caps,<sup>83</sup> a cap on transfer fees,<sup>84</sup> greater compensation for training players (or financial inducements for international success)<sup>85</sup> and stricter club licensing and luxury taxes for those failing to comply with minimum training standards.<sup>86</sup> In terms of improving the standard (and status) of international football, it was suggested that more time should be allowed for this in the football calendar.<sup>87</sup> All of these measures, it was felt, would have a greater chance of achieving UEFA’s stated aims, but with fewer restrictions on the fundamental freedoms of EU workers.

In summary, the reviewed literature on whether the home grown player rule could be justified under article 45 was firmly of the opinion that the Rule *could not* be seen as a legitimate restriction. McDermott summarises the position taken by almost all of those commentators assessing the Rule under Article 45: “As it stands right now, the home grown player Rule would have a difficult time surviving a legal challenge based on the principles of *Bosman* and *Gerhard*”.<sup>88</sup>

## 2.5 Competition Law

In addition to the potential of the Rule to breach Article 45 by limiting the right to freedom of movement of players based on their nationality, academics and practitioners have also identified a potential legal problem with regard to EU competition law. There is less work in this area than on free movement, but what work has been done has identified that in placing restraints on the freedom of clubs (as undertakings) in the purchase and sale of players, the Rule is *prima facie* a breach of Article 101 (in that it

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<sup>80</sup> Freeburn (2009): 195; Henderson (2011): 283; Lynam (2006); McDermott (2010): 292, Miettinen and Parrish (2009).

<sup>81</sup> Gardiner and Welch (2011a): 845.

<sup>82</sup> Gardiner and Welch (2011a): 846; Gardiner and Welch (2011b): 783; Henderson (2011): 286; Lynam (2006): 34-5; McDermott (2010): 291; Miettinen and Parrish (2009): para 33.

<sup>83</sup> Henderson (2011): 286; McDermott (2010): 292; Miettinen and Parrish (2009): para 33; Lynam (2006): 34-5. Although it was noted that these also contained serious problems in terms of compliance with EU Competition Law.

<sup>84</sup> Gardiner and Welch (2011a): 847.

<sup>85</sup> Freeburn (2010): 195; Miettinen and Parrish (2009): para 33. Miettinen and Parrish give the example of English cricket, which rewards counties for the caps won by their players. Following the *Charleroi* case, FIFA and UEFA now compensate clubs when their players participate in major international tournaments (€100 was distributed to 580 clubs releasing players for the UEFA Euro 2012 qualifiers and final tournament), but an alternative would be to compensate clubs who were responsible for the training and development between 15-21 of players who went on to represent their nation at senior level.

<sup>86</sup> Miettinen and Parrish (2009): para 33.

<sup>87</sup> Lynam (2006).

<sup>88</sup> (2010): 293.

may be an anti-competitive agreement between clubs) and Article 102 (in that it may indicate the abuse of a dominant market position by governing bodies insisting on adherence to the Rule as a condition of entry to their competitions). There is unfortunately little analysis of the Rule's legality under Article 102, although Manville argues that through its imposition of the Rule, UEFA is abusing a dominant market position in an unjustifiable way.<sup>89</sup>

Majani claims that home grown player Rule will, "restrain the abilities of clubs to engage in the market competition for both players and 'trophy' under Article 81 EC (now 101 TFEU).<sup>90</sup> Manville agrees, citing the *MOTOE* case to argue that the Rule must comply with what is now Article 101.<sup>91</sup> According to Manville's analysis, the Rule is not a unilateral imposition by UEFA because it is the co-owner of their competitions with clubs and national associations and as these clubs and associations have agreed to the restrictions, this makes it an agreement between associations in line with article 101 that restricts and distorts access to the market of professional football players:

"The Rule restricts the possibilities for the individual clubs to compete with each other by engaging players. Consequently the normal system of supply and demand does not apply to clubs and the clubs are deprived of the possibility of making use of the chances, with respect to the engagement of players, which would be available to them under normal competitive conditions. That is a restriction of competition between those clubs... a trans-frontier competition for those 8 seats is completely foreclosed. This view cannot be changed by the fact that a player can, in principle, play everywhere... Whereas this constitutes trans-frontier trading, however, it does not constitute an unrestricted competition. A club may search for a new player in other member states; but the club may 'acquire' only 'domestic products'... Consequently the club may have to decline opportunities of better quality but not fulfilling the criteria for the 8 seats. Eventually, this means protectionism of domestic products".<sup>92</sup>

That there is a prima facie breach of competition law is the clear consensus, but this does not mean that the Rule is unlawful. The Arnaut Report,<sup>93</sup> for example, states that the measure could qualify for an exemption under EU competition law.<sup>94</sup> Manville<sup>95</sup> embarks upon the most rigorous attempt to apply EU competition law principles to the Rule that we have so far encountered, considering the potential defences

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<sup>89</sup> (2009): 34.

<sup>90</sup> (2009): 23.

<sup>91</sup> Ibid: 26.

<sup>92</sup> Ibid: 27.

<sup>93</sup> (2006): para 6.59.

<sup>94</sup> See Gardiner and Welch (2011a): 845-6. It should be noted that the report itself has received some criticism (e.g. Garcia, B., (2007), 'The Independent European Sport Review: Half Full or Half Empty?' *Entertainment and Sports Law Journal*, Vol. 4, No. 3), particularly concerning the level of input made by UEFA and its claims of independence.

<sup>95</sup> (2009).

and justifications for prima facie anti-competitive restrictions provided by *Wouters* and Article 81(3) EC.<sup>96</sup>

Regarding the *Wouters* test, although Manville agrees that the objectives of improving the quality of, and investment in, player training “are legitimate in UEFA’s sport promotion and development efforts in football”, he claims that “there is no obvious inherent connection between the restrictions and the objectives as there are alternatives given to also pursue the legitimate objectives effectively (...) In any case, the Rule will eventually fail the test of proportionality in light of the objectives pursued”.<sup>97</sup> In particular, Manville argues that the Rule will not have an impact upon the smaller clubs that do not qualify for European competition, but will have most effect on the larger clubs that are typically already investing in player training.<sup>98</sup> As with the arguments noted above regarding Article 45, the most serious legal problem for the Rule appears to be the existence of many *less restrictive alternatives* – e.g. bonuses for playing home grown players and financial support to assist smaller clubs in training.<sup>99</sup> His conclusion is that, “‘The Home-Grown player Rule’ may just be suitable to achieve its objectives pursued but it is not the least restrictive measure which is equally appropriate to achieve the objectives pursued. There are alternative measures which are more appropriate and less restrictive to the competition in the pursuit of the objectives.”<sup>100</sup> Consequently, “the ‘home grown player Rule’ fails the *Wouters* test being not proportionate”.<sup>101</sup>

Manville is similarly unconvinced about the ability of Article 81(3)<sup>102</sup> to provide a defence. He considers it questionable whether the Rule satisfies the first condition (i.e. whether players are “goods” and whether the Rule leads to improved production or distribution) and argues that the “efficiency gains are vague and uncertain”.<sup>103</sup> In particular, Manville asks what television viewers and spectators actually receive as a result of the Rule: “It is rather an illusion that the Rule will lead to an increase in the quality and this to an increase of the entertainment of football matches”. Consequently, “The conditions of Article 81(3) are not met and the ‘home-grown player Rule’ cannot be exempted”.<sup>104</sup>

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<sup>96</sup> Now 101(3) TFEU.

<sup>97</sup> (2009): 29.

<sup>98</sup> *Ibid*: 30.

<sup>99</sup> *Ibid*: 31.

<sup>100</sup> *Ibid*.

<sup>101</sup> *Ibid*: 32.

<sup>102</sup> Now 101(3) TFEU.

<sup>103</sup> (2009): 33.

<sup>104</sup> *Ibid*.

## 2.6 Conclusions

There is a clear consensus (in English-language literature) amongst legal commentators, both academic and practitioner, that there are considerable problems under EU law with the existing UEFA (and domestic) home grown player rules. These problems arise under laws protecting freedom of movement<sup>105</sup> and competition law.<sup>106</sup> There may also be questions to be answered with regard to protection against Age Discrimination (although at first blush the Rule looks like it could be justified under paragraph 25 of the Directive). A number of the stated objectives for the UEFA Rule are not recognised by EU law (e.g. the protection of ties of locality in club football) but the commentators are broadly in agreement that the Rule could be potentially defended under the grounds of:

1. Increasing the quality of training and development of young players,
2. The protection of competitive balance, and
3. The protection of international competition.

However, it is clear from the literature that the Rule's achievement of these objectives should not be accepted at face value and that there needs to be a rigorous and independent analysis of whether:

1. The Rule achieves one or more of these aims, and
2. Whether any less restrictive alternatives exist that could achieve the same aims but without restricting the rights of employees and undertakings under EU law to the same extent.

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<sup>105</sup> Article 45 TFEU.

<sup>106</sup> Articles 101 and 102 TFEU.

# Chapter 3

## Review of Competitive Balance Literature<sup>107</sup>

### 3.1 Introduction

Competitive balance refers to the relevant sporting capabilities of teams in a competition. The more evenly balanced the competitive strengths of the teams involved, the more uncertain the outcome of each match and by extension the more uncertain the outcome of the competition overall. In a perfectly balanced match each team would have an equal probability of winning; this reasoning also extends to championship level.

Competitive balance and uncertainty of outcome are key issues in the development and survival of sports leagues, without which the nature of the competition is undermined. Low levels of uncertainty of outcome at the match or championship level can lead to predictable leagues. These are often unpopular with supporters in the long term, and potentially lead to financial difficulties for all but the top clubs, resulting in large income gaps within and between leagues as well as the threat of the establishment of rival leagues.<sup>108</sup> *Ceteris paribus*, demand for the football product is maximised with the greatest degree of uncertainty of outcome. Maintaining and promoting competitive balance is therefore considered to be important and can be a justification for sports leagues adopting regulatory rules to redistribute income and promote competitive balance. However the degree to which competitive balance matters is open to debate with its quantitative impact not well established.

### 3.2 Measures of Competitive Balance

Cairns et al. distinguished four temporal forms of uncertainty of outcome (UO).<sup>109</sup> First, short-run UO where the emphasis is upon the outcome of a particular game; second, medium-term UO where the identity of the season's winners is unknown; third, within-season UO where several teams are 'in contention'. Finally they recognised long-term UO (competitive balance), which is concerned with persistent domination that may damage the whole league.

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<sup>107</sup> Large elements of this chapter have been taken with permission from chapter 8 of Downward, Dawson and Dejonghe, 2009, 'Sports Economics: Theory, Evidence and Policy, Elsevier, UK; Uncertainty of Outcome, Competitive Balance and Bias in Sports Leagues': 205–31.

<sup>108</sup> Michie, J. and Oughton, C. (2004) *Competitive Balance in Football: Trends and Effects*, Football Governance Research Centre, London.

<sup>109</sup> Cairns, J., Jennett, N., and Sloane, P., (1986) 'The Economics of Professional Team Sports: A Survey of Theory and Evidence'. *Journal of Economic Studies* 13, 1: 3-80.

### 3.2.1 Short-Run (Match) Uncertainty of Outcome

Match UO is the notion that spectators prefer close contests and are more likely to attend the next game if the competing teams are of much the same level of ability. There have been three broad approaches adopted to measure this form of UO; Relative league standings, implied prior probabilities ( $p$ ) of a home win through the use of betting odds, and direct estimates of the probabilities of home wins. In general, one would expect teams in league positions immediately beside each other to be of a similar quality, and ignoring both home advantage and the probability of a draw suggests that both have an equal chance of winning. Likewise this might be measured by betting odds of ‘evens’. This suggests that the closer  $p$  is to 0.5 the more attractive the match should be and the greater the attendance. In the presence of home advantage and ignoring draws the most attractive game would be where  $p$  is less than 0.5. This is to allow home advantage to offset the visitors’ greater quality, and research can be designed to estimate the value of  $p$  that maximises attractiveness in the presence of home advantage. However a mixed set of results are apparent although on balance league standings, rather than their differences, and betting odds appear to be significant determinants of attendance. There is also some indication that this is more likely to be discovered with more recent studies. The different approaches are summarised in the table below:

**Table 3.1: Match Uncertainty Findings**

Author/Date	Sport/Period	Dependent Variable	Indicator(s)	Comment
Hart, Hutton and Sharot 1975	English soccer 4 teams 3 seasons starting 1969/70	Log of match attendance	Log home standing Log away standing Log of absolute difference	Insignificant Significant Insignificant
Borland and Lye 1992	Australian Rules Football 1981/86	Log of match attendance	Difference of league standings	Insignificant
Peel and Thomas 1988	Football League all teams 1981/2	Log of match attendance	Home standing Away standing Probability of home win	Significant Significant *Significant *Not a test of home advantage
Dobson and Goddard 1992	Football League 24 teams 2 seasons starting 1989/9	Log of match attendance	Log home standing Log away standing	Significant Significant
Wilson and Sim 1995	Malaysian semi-pro soccer 1989/91	Log of match attendance	Absolute difference of league points Square of above	Insignificant  *Insignificant *Not a test of home advantage
Baimbridge, Cameron and Dawson 1996	Premier League football 1993/94	Log of match attendance	Absolute difference of standings Square of above	Insignificant  *Insignificant *Not a test of home advantage
Peel and Thomas 1997	English rugby league 1994/95	Match attendance	Absolute value of the handicap betting spread	Significant

Dawson, Dobson, Goddard and Wilson 2005	English Premier League football 1996-2003	Log of disciplinary points $y=1$ , $r=2$ issued per match	Home team uncertainty Away team uncertainty	Significant Significant
Kuypers 1996	English Premier League football 1993/94	Match attendance  Proportion of Sky subscribers watching live football	Estimated odds on a home win As above	Insignificant Insignificant
Carmichael, Millington and Simmons 1999	English rugby league, season 1994/95	Log of match attendance	Pre-match odds	Significant
Falter and Perignon 2000	French soccer 1997-98	Log of match attendance	Home standing  Away standing  Goal Difference  Absolute Difference	Significant Insignificant Significant Insignificant
Price and Sen 2003	NCAA Div 1-A Football	Match Attendance	Home wins in last 11 games  Away ditto  Squared difference of above	Significant Significant Insignificant
Forrest, Simmons and Buraimo 2005	BskyB live Premier League football 1993/4 – 2001/2	Log of TV audience (millions)  Probit of decision to broadcast	Composite index involving league form and home advantage*  As above*  Pre-Boxing Day difference in relative wages* *See F S & B	Significant Significant Significant
Garcia and Rodriguez 2002	Spanish League football 1992/93 to 5/96	Log of match attendance	Difference of league positions  Square of above	Significant Significant, wrongly signed
Forrest, Beaumont, Goddard and Simmons 2005	The Football League 1997/8	Log of match attendance	PROBRAT (ratio of the probability of a home win relative to that of an away win) $PROBRAT^2$  HOMEPPG (home team prematch points per game) AWAYPPG (away team prematch points per game)	Both probability ratios were correctly signed and significant  Significant correctly signed  Insignificant  FBG&S regard the PPG's as indexes of absolute team quality rather than

				of u/o per se
Meehan et al 2007	MLB 2000-03	Match attendance	<p>WINDIFF (Abs) (absolute difference in teams' win percents)</p> <p>WINDIFFP (+ home team difference in win percent)</p> <p>WINDIFFN (- home team difference in win percent)</p> <p>Games Left</p>	<p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant* *Interacted with WINDIFFP and WINDIFFN.</p>
Owen and Weatherston 2004	Super 12s Rugby Union, New Zealand 1999-2001	Log of Match Attendance	<p>SUMPLACE (sum of the places each team lies behind fourth in the table)</p> <p>PROBH (probability of home win)</p> <p>PROBH<sup>4</sup></p>	<p>Insignificant</p> <p>Insignificant</p> <p>Insignificant</p>
Alavy, Gaskell, Leach and Szymanski 2006	Premier League Football, 248 games broadcast on Sky 2002-5	The (minute by minute) rate of change of TV ratings	<p>SQDIFF (squared difference of probability of home/away win)</p> <p>PSDRAW (probability of score draw)</p> <p>PNDRAW (probability of no-score draw)</p> <p>SUMSQ (sum of squared deviations of probabilities)</p>	<p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant</p>

### 3.2.2 Within-Season Uncertainty of Outcome

Within-season UO concerns which team will take the championship title. There is also limited agreement on how to measure this facet of UO. Borland<sup>110</sup> used four measures of UO in an analysis of annual attendance at Australian Rules football. In each of the four measures an average of observations was made at four points during the season. The intention was to obtain measures of UO as the season develops rather than to compute a single measure for the whole season, with the latter parts of the season more heavily weighted. The first of the four measures considers the spread between the top and bottom teams in the league. The second is the sum of the coefficients of variation of the numbers of games won by all teams, which incorporates information about the performances of all teams. Calculated by dividing the standard deviation of the data by its mean value, the coefficient of variation is a standardised measure of dispersion. The third measure is the average number of games a team is behind the leader. *Ceteris paribus*, the fewer the number of games in hand, the lower the probability that the lead will change. The

<sup>110</sup> Borland, J. (1987), 'The demand for Australian rules football', *The Economic Record*, 63, 182: 220 – 30.

final measure is the number of teams that have been in, or at most two games out of, the leading four (at that time) teams that are eligible for the (play-off) finals, at each of the four measurement points. As with earlier studies that used similar variables, for example, Demmert<sup>111</sup> and Noll<sup>112</sup>, there is inevitably some arbitrariness in how one defines ‘close to’ championship success. Table 3.2 presents some studies and also measures of UO. As with match UO, within season UO research produces some mixed results, though here there is less agreement that the UO hypothesis receives support.

**Table 3.2: Key Studies Related to Uncertainty of Outcome**

Author/Date	Sport/Period	Dependent Variable	Indicator/s	Comment
Jennett 1984	Scottish Premier League football 1975/76 to 1980/81	Match attendance	Home significance Away significance Relegation (H&A) significance	Significant Significant Insignificant
Borland 1987	Australian Rules football 1950/86	Log of attendance per round* per capita *See Borland	Average number of games in hand over leader Three other indexes	Insignificant All insignificant
Borland and Lye 1992	Australian Rules football 1981/86	Log of match attendance	Sum of the number of games required for both teams to reach the finals Games where both are in the top 5	Significant Significant
Dobson and Goddard 1992	Football League 24 teams 2 seasons starting 1989/9	Log of match attendance	Log of home significance Log of away significance	Significant Insignificant
Baimbridge, Cameron and Dawson 1996	Premier League football 1993/94	Log of match attendance	Both in top 4 Both in bottom 4 Team has won title	Insignificant Insignificant Insignificant
Kuypers 1996	English Premier League football 1993/94  Live Sky football matches 1993/94	Match attendance  Proportion of Sky subscribers watching live football	Home champ sig, games left times points behind Home relegation sig index  Home champ. sig. Home rel sig.	Significant Significant Significant Significant
Falter and Perignon 2003	French soccer 1997-98	Log of match attendance	Season dummies for each match	Significant.

<sup>111</sup> Demmert, H. (1973) *The Economics of Professional Team Sports*. Heath, D.C.

<sup>112</sup> Noll, R. (1974) *Government and the Sports Business*. Brookings Institution, Washington, D.C..

Dawson, Dobson, Goddard and Wilson 2005	English Premier League football 1996-2003	Log of disciplinary points $y=1$ , $r=2$ issued per match	Home team champ sig* Away team champ sig* *See D & G above	Insignificant Significant
Carmichael, Millington and Simmons 1999	English rugby league, season 1994/95	Log of match attendance	Pre-season odds on the division title	Significant
Garcia and Rodriguez 2002	Spanish League football 1992/93 to 1995/96	Log of match attendance	Product of points behind and games left	Significant
Owen and Weatherston 2004	Super 12s RU	Log of Match Attendance	SEASON, numbers matches 1 – 11.	Significant

### 3.2.3 Long Run Uncertainty of Outcome - Competitive Balance

The desire to promote long run UO, also known as competitive balance, in sporting leagues is due to the fear that domination by a few teams may result in a loss of spectator interest, revenue and profit, as discussed above.

Borland's<sup>113</sup> seminal piece of work investigating medium-term UO also attempted to capture the effects of long-term UO on Australian Rules football match attendance by measuring the number of teams that have reached the previous three years' play-offs, divided by the number of places available. A larger value of the variable is consistent with a lower level of long run concentration. No significant results were identified but it could be that three years does not constitute a sufficient indication of the long run. In turn Borland and Lye<sup>114</sup> employed a related index that consisted of the sum of the number of times both contestants had made it to the final stages in the previous three years. The significance of this variable was uncertain.

Most research focussing upon competitive balance has examined the evolution of the dispersion of seasonal rankings of teams over time. Many researchers focussing on US professional team sports have used the standard deviation of win percent (a measure of dispersion of success) as an indicator of within-season UO. For example, Fort and Quirk<sup>115</sup> inquire whether the sample standard deviation of win per cent is significantly greater than the level that would characterise a perfectly balanced league.

<sup>113</sup> Borland, J. (1987) 'The demand for Australian rules football'. *The Economic Record* 63, 182: 220 – 30.

<sup>114</sup> Borland, J., and Lye, J. (1992) 'Attendance at Australian Rules Football: A panel study' *Applied Economics* 24, 9: 1053 – 58.

<sup>115</sup> Fort, R., & Quirk, J. (1995) 'Cross subsidization, incentives, and outcomes in professional team sports leagues'. *Journal of Economic Literature* 33, 3: 1265 – 99.

In a long-run study of English soccer Dobson and Goddard<sup>116</sup> used the logs of the teams' mean final league positions and the season prior to that in which the match took place as indexes of historical success and found them to be significant and correctly signed determinants of attendance. Schmidt and Berri<sup>117</sup> examined how well balanced major league baseball has been since 1901 using the Gini Coefficient. Their analysis suggests that concentration is not a serious problem and has if anything declined since 1901. However, their procedure was criticised by Utt and Fort<sup>118</sup> on the basis that the Gini coefficient is useful in measuring horizontal industrial concentration as its values range from '1' where the industry is a pure monopoly to around '0' where it comprises lots of very small firms, but no team can monopolise a season's wins in baseball. They adjust the Gini coefficient by comparing the actual distribution of win percents against the most unequal case where the champions win all their games, the runners-up win all but those lost to the champions, and so on down to the bottom team which loses every game. Not surprisingly their adjusted Gini coefficients exceed those of Schmidt and Berri, suggesting the leagues are in fact rather less competitively balanced than the latter authors had concluded.

Utt and Fort's criticism applies equally to Michie and Oughton<sup>119</sup> who estimate Lorenz Curves of team shares of total points earned in English soccer for the seasons 1950/1, 1993/4 and 2004/5. The calculations are based on point shares to allow for the fact that in football games can be won, drawn or lost, and consequently win percents are misleading. Michie and Oughton find that competitive balance in English soccer has (apparently) declined sharply since 1993/4<sup>120</sup>. Significantly Utt and Fort suggest that as nobody knows how to adjust for these departures from the ideal, researchers should stick to standard deviations of win percents as indexes of competitive balance.

The problem with this recommendation, however, is that standard deviations measured over several seasons do not permit reliable distinction between cases where the overall spread of results is more or less identical year-on-year but the distribution of success is more highly concentrated in one instance than another. This question is addressed by Eckard<sup>121</sup> and Humphreys<sup>122</sup>. Using essentially the same approach they partition the total league win percent variability, into a component that captures the variation of teams' annual win percents about their own mean win percent or 'time variance' and 'cumulative

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<sup>116</sup> Dobson, S. and Goddard, J. (1992) 'The demand for standing and seated viewing in English non-league football'. *Applied Economics* 24, 10: 1155 – 64.

<sup>117</sup> Schmidt, M. & Berri, D. (2001) 'Competitive balance and attendance: The case of Major League Baseball'. *Journal of Sports Economics* 2: 145 – 67.

<sup>118</sup> Utt, J. & Fort, R. (2002) 'Pitfalls to measuring competitive balance with gini coefficients'. *Journal of Sports Economics* 3, 4: 367 –73.

<sup>119</sup> (2004).

<sup>120</sup> See also Szymanski, S. and Kuypers, T. (1999) *Winners and losers: The business strategy of football*. Penguin Books, London.

<sup>121</sup> Eckard, W. (2001) 'Baseball's blue ribbon report: Solutions in search of a problem'. *Journal of Sports Economics* 2, 3: 213 – 27.

<sup>122</sup> Humphreys, B. (2002) 'Alternative measures of competitive balance in sports leagues'. *Journal of Sports Economics* 3, 2: 133 – 48.

variance' that captures the variation in teams' cumulative win percents across all teams.<sup>123</sup> Other things equal an increase in the first element implies an increase in competitive balance whereas an increase in the latter element a decrease in competitive balance. The ratio of the first element to the total variation of win percents defines a competitive balance ratio (CBR). Applying this approach to European sports may be more problematic because promotion and relegation changes leagues' memberships annually, and draws are commonplace.

Eckard also examines the degree of concentration among the top four and (separately) the bottom four placed teams in both the NL and AL in all sub-periods; with five years in each there are 20 slots available in each sub-period. Herfindahl Indexes (HI) of team shares in those leading positions are then calculated. The Herfindahl Index is the sum of squares of team shares (win percents in Eckard's study) in the 20 positions available in each five-year period. For example, if the same four teams feature every year (the highest concentration by this definition) each obtains 25% of all the places so the HI takes the value  $HI = 25^2 + 25^2 + 25^2 + 25^2 = 2500$ . If genuine shares of wins were used in the analysis then the HI would emerge as 0.25. In this regard the index reveals the 'representative' number of teams that dominate the championship; in this respect 0.25 implying four teams.

Eckard finds that the HI for the AL is highest in 1995-99, which is also the five-year period in which the number of teams securing places in the top four is at its lowest, that is six. This is consistent with the findings based on his decomposition of win percents. In every sub-period more NL (than AL) teams made it into the top four while the HI tended downwards consistent with his findings that competitive balance in the National League improved over the period.

Humphreys<sup>124</sup> computes decade-by-decade CBRs and HIs of first place finishes, again only for teams that played each year in the decade. The CBRs trend slightly upward and the HIs downward over the period suggesting improved balance in both the NL and the AL. Humphreys examines if CBR, HI and the standard deviation of win percent affects attendances and finds that only the CBR is statistically significant and positively signed suggesting that other things equal more competitive balance drew more spectators to MLB.

As we have seen there is great variation between the measures used to determine competitive balance and the findings of those studies. Table 3.3 presents an overview of the main methods of studies employed as well as strengths and weaknesses of each approach.

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<sup>123</sup> Humphreys uses standard deviations.

<sup>124</sup> (2002).

**Table 3.3 Main Approaches to Measuring Uncertainty of Outcome<sup>3</sup>**

Method	Measure	Properties	Advantages	Disadvantages
Standard deviation of win percent	Within season	Ratio of standard deviation of actual win percentages and ideal standard deviation of win percentages in a perfect league. (Standard deviation of actual win percentages/ standard deviation of win percentages in an ideal league where the denominator is $0.5/\sqrt{N}$ and N is the number of matches played by each team. The higher the measure, the lower the degree of competitive balance in the league.	Simple to understand	Derived based on US sport so doesn't take account of draws. Does not take account of dominance or the balance of competitive power of leading clubs compared to the rest. Measure is not dynamic - can be the same value when comparing leagues with different outcomes over time
Five Club Concentration Ratio (C5) and Index of Competitive Balance	Inequality between the top five clubs and the rest of the league. Concentration of points among the top 5 teams.	C5 Ratio = Total points won by the top 5 clubs/ Total points won by all clubs	Easy to understand - higher concentration of points equates to greater imbalance	No indication of inequality within top 5 teams or amongst teams below the top five
Herfindahl - Hershman Index	Inequality across all teams in a league	Looks at each clubs share of points in a season and aggregates them into an index using each club's share of points as weights	Insight into league domination over time (across seasons). Controls for variation in league size	No indication of whether any team or teams dominates year after year. Sensitive to changes in the number of teams.
Persistence	Frequency a team has occupied a given position or positions over a given period of time	Counts the number of times the same team has appeared	Gives insight into dominance	No indication about closeness of the league. Vulnerable to structural changes
Gini coefficient and Lorenz curves	Calculates points share for each team compared to an ideal distribution. Extent of inequality is measured by the gap between ideal and actual	Lorenz curve measures the actual distribution of the points and the area between it and the ideal 45 degree line measures the inequality. The Gini coefficient measures the share of the area between the Lorenz curve and the 45 degree line.	Gives an indication of dominance within a league	In reality no team could take 100% of the points. Not appropriate for measuring within-season competitive balance.

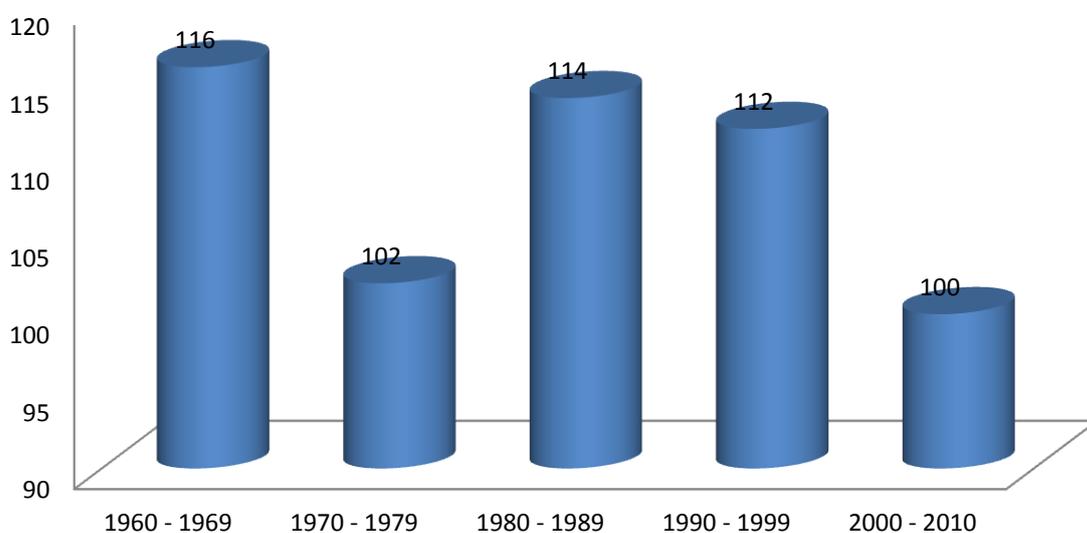
### 3.3 Balance in European Football

An initial consideration of outcomes of European Competitions may suggest a lack of competitive balance. As outlined in the 'persistence' measure above, at a very simple level it is possible to compare the winners of a competition overall. From 1956 – 1960 Real Madrid was absolutely dominant, followed by Ajax from 1971 – 1973, Bayern Munich from 1974 – 1976 or eight English winners between 1977 and

1984 which suggests a historic problem in uncertainty of outcome<sup>125</sup>. While this is less evident in terms of win dominance today, Hill suggests that “a new form of dominance has taken shape in recent years, driven by a growing inequality of financial means and diversity of national regulation which leaves the European playing field increasingly uneven”.<sup>126</sup>

A decrease in competitive balance over the last five decades at the domestic league level is suggested in Figure 3.1.

**Figure 3.1: Total Number of Different Champions across Five Decades for 25 Top Divisions**



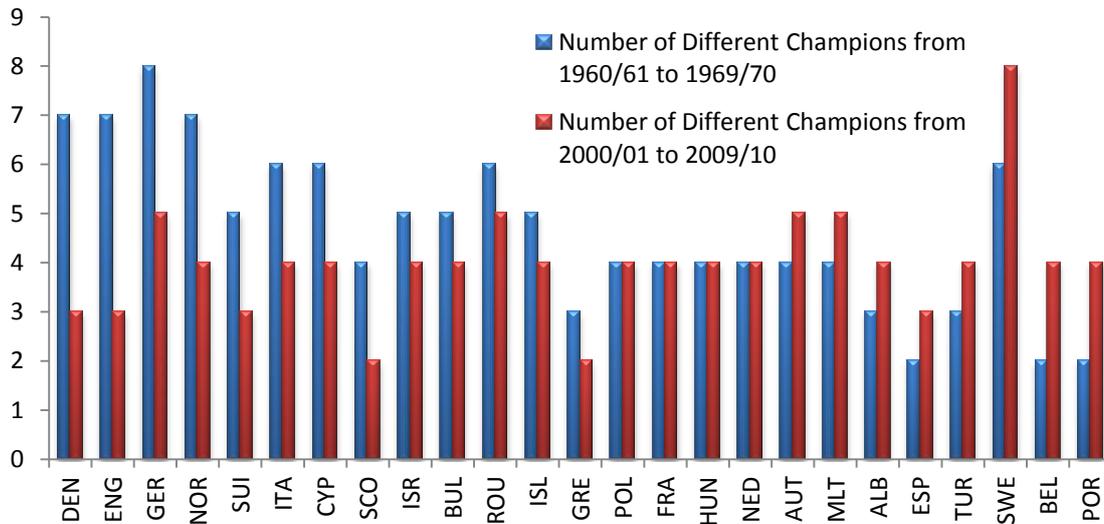
(Reproduced from UEFA 2010: 40).

The graph shows that in the decade from 2001 – 2010 there were 100 domestic Champions across Europe, an average of four per country. This is at the lowest level it has been in the last fifty years (though similar figures to the 1970s) and a clear drop from the average of 4.5 winners per country in the 1960s. However, when this data is disaggregated it becomes evident that some countries have in fact seen an increase in competitive balance as measured by the number of different title winners, with eight countries having more winners in the most recent decade (Figure 3.2).

<sup>125</sup> Hill, J. (2011), ‘UEFA and the European Union: the green shoots of a new European public space?’ in *The Transformation of European Football: Towards the Europeanisation of the National Game*, Niemann A., Garcia B., and Grant W., (eds.), Manchester University Press: 40 – 56.

<sup>126</sup> Ibid: 44.

**Figure 3.2: Two Decade Comparison in the Total Number of Different Domestic Champions**



(Reproduced from UEFA 2011: 40).

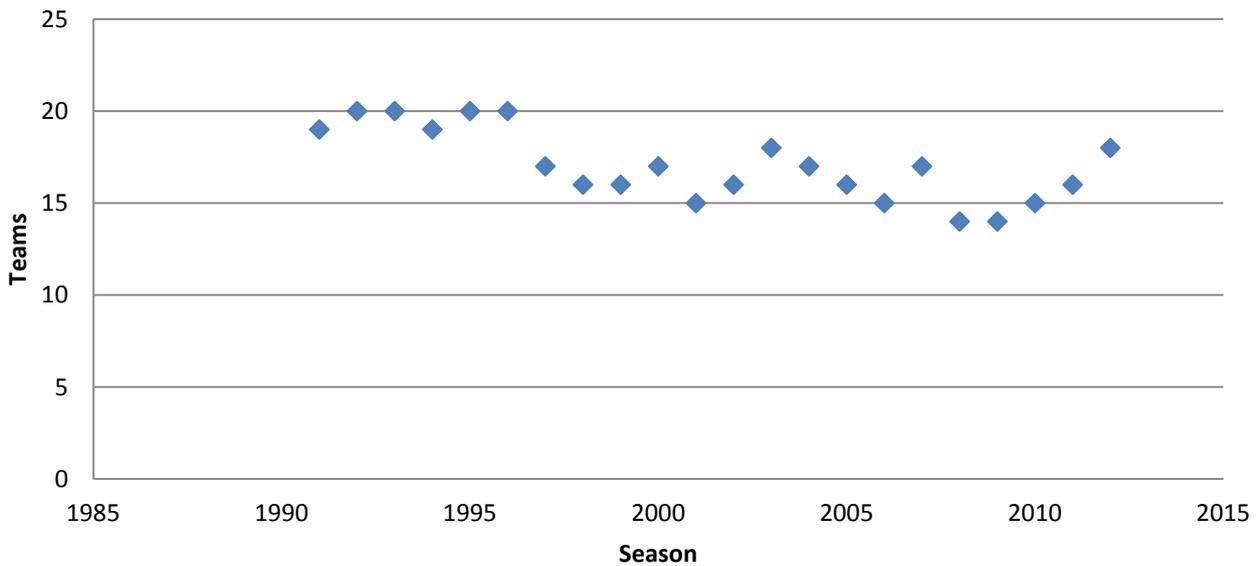
Professional sports leagues have an inherent tendency towards imbalance – particularly as big market, richer clubs get richer and smaller clubs get poorer, with this trend exacerbated when increased commercial revenues are available. The nature of UEFA competitions in which not only a higher proportion of clubs qualify from bigger leagues but also a greater proportion of the prize money is distributed to clubs in bigger leagues by virtue of the size of their television markets, may contribute to the dominance of a relatively small number of clubs. Unregulated leagues tend to widen the gap between clubs and in an effort to stop this happening governing bodies tend to intervene in sports competitions; particularly to redistribute resources and enforce regulations, such as club licensing and player restrictions which may help to balance leagues.

From a cursory examination of the descriptive statistics on UEFA competitions in the 2011 and 2012 seasons, of the 20 richest clubs according to the Deloitte Money League, only eight reached the final 16 of the Champions League in 2012. Of those final 16 in 2011 only two clubs were not from the big five leagues (FC Copenhagen and Shakhtar Donetsk). However, this number increased to four in 2012 (Apol, Basel, CSKA Moskva, Zenit)<sup>127</sup>.

The Champions League has been won by 13 different teams in the last 20 years, with no team winning in consecutive years. However FC Barcelona has won four times, with Real Madrid and AC Milan both winning three times. There does also appear to have been a decline in the number of teams reaching the latter stages of the competition between 1992 and 2009. Figure 3.3 shows the number of different teams reaching the quarter finals of the Champions League during three year periods over the last two decades.

<sup>127</sup> Deloitte Money League 2012 available at <http://www.deloitte.com/assets/Dcom-UnitedKingdom/Local%20Assets/Documents/Industries/Sports%20Business%20Group/uk-sbg-dfml-2012-final.pdf>.

**Figure 3.3: Number of teams reaching the Quarter Finals in the Previous Three Years**



In 1992, 20 teams may have expected to reach the quarter finals 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. However from 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. Though of course this is not a conducive measure and may be unrelated to the home grown player rule, it is certainly an indication of a movement towards a more balanced competition. However there are still concerns that a small number of wealthy clubs tend to dominate the later stages of European competition, particularly those from the top leagues. Table 3.4 highlights this trend, showing the proportion of clubs reaching the semi-finals of the UEFA Champions League from 2006 -12. All clubs reaching this stage have been from the top five European leagues.

**Table 3.4<sup>128</sup>: Origin of Clubs Reaching the Semi-Finals of European Competitions from 2006 - 2012**

	Germany	England	Spain	France	Italy	Other
2006 – 12	3	11	7	1	2	0
Proportion	12.50%	46%	29%	4%	8%	0%

<sup>128</sup> Zylberstein, J., (2012) La Regle de l'UEFA sur les Joueurs Formes Localement: Un Instrument au Service de la Formation, Jurisport 124 – Octobre 2012.

### **3.4 Conclusions**

Various methods have been employed to consider competitive balance and its impact mainly on attendances in both US and European sports. While competitive balance is thought to be an essential part of maintaining a healthy competition, the level of competitive balance necessary has not been determined with any agreement in the literature. Nor has the most appropriate method to calculate it.

A variety of studies have been reviewed above with an assessment of the methods used presented in Table 3.3. However, it has been decided that while each of the methods listed has advantages and disadvantages for measuring specific issues, none of the methods set out in previous studies are appropriate to measure competitive balance across European competitions at an adequate level. This is for a number of reasons relating to the limitations set out in the table above and also due to the nature of the competition where qualification takes place in a separate group stage format which is then unrelated to the end knock-out phase of the competition. While some rudimentary analysis of the persistence measure has been presented above, Chapter 6 sets out an innovative approach using regression analysis to consider the isolated impact of the home grown players rule on the dispersion of teams in the Champions League and Europa League.

# Chapter 4

## Domestic Rule Audit

### 4.1 Introduction

This Chapter provides a comprehensive audit of domestic foreign player quotas and home grown player regulations in existence in the European Union. With the exception of Italy, where the regulations are from the 2011/12 season, these regulations were all in existence in the form outlined in Table 4.1 (below) for the season 2012/13.

### 4.2 Summary of Table 4.1

When the UEFA home grown player rule was first mooted, UEFA announced that they hoped that it would also be adopted by domestic governing bodies, so that it would impact upon domestic competitions and clubs who typically did not qualify for European competition. As Table 4.1 demonstrates, a number of domestic federations and event organisers have incorporated the UEFA Rule or similar versions of it into their regulations in recent years. However this is not a uniform development and some domestic competitions currently have no such rules in place. Other domestic competitions have regulations that provide more stringent restrictions on how many non-locally trained players or foreign players can be selected in a squad, or even play in a particular match. Furthermore, some domestic federations imposing more restrictive rules than UEFA may well be infringing European Union laws on free movement where these regulations have the effect of reducing the ability of EU players from other member states to participate in squads or matches.

Finally, the plethora of domestic rules currently in operation makes it very difficult to isolate the impact of the UEFA Rule on the improvements to competitive balance and, in particular, the training and development of young players. The impact of domestic rules and incentives governing the training and playing of home grown players was noted by a number of clubs interviewed in Chapter 7 as a more significant reason for increases in the number of both home grown and under-21 players being selected for first team squads.

An audit of the domestic rules in place is outlined in Table 4.1 below.

**Table 4.1**

<b>Country; Organiser; Competition</b>	<b>Nationality-based regulation on players</b>	<b>Home-grown player regulation</b>	<b>Additional information</b>
Austria  Austrian Football League  tipp 3- Bundesliga powered by T- Mobile	None	None	No HGP rule. Instead a solidarity fund (“Funding Pot for Austrian Players”). To receive money from this pot, in the top division 12 out of 18 players must be Austrian citizens or no bonus for the quarterly season in which condition was not fulfilled. Financial advancement is calculated quarterly according to the minutes Austrian players played (see §11 of the competition regulations: Durchführungsbestimmungen).
Belgium  Pro League  Jupiler Pro League	None	At least 8 home-grown players (trained at a Belgian club) have to be on the squad list of a club. At least six players formed by a Belgian club have to figure on the score sheet.	Players who are classed as Belgian according to Belgian law and who spend at least three full years at a club in Belgium - EEA nationals who have spent at least 3 years before their 23rd birthday at a Belgian club - non EEA nationals, who have spent at least 3 years before their 23rd birthday at a Belgian club
Czech Rep.  Football Association  Gambrinus liga	Max. 3 players from non EU countries	Squad list of 25 from which 4 must be HGP	“Home Grown Player” means a player who, irrespective of his nationality or age, has been registered with any club (or clubs) affiliated to the Football Association of the Czech Republic for a period, continuous or not, of three seasons or 36 months between ages 15 -21.
Denmark  Dansk Boldspil-Union  Superliga	None	HGP Rule introduced in the Danish Football League in season 2009/10. Each club’s ‘Player List A’ has a maximum 25 players. At least 8 of these must be home grown players. 4 out of the 8 Home Grown players must be club-trained (the other 4 trained at other Danish clubs). If a club cannot meet the requirements of 8 Home Grown players in the list of	The definition of a ‘Home Grown Player’ is a player who has been eligible to play in a certain club for a minimum of 36 months (totally) between the age of 15 and 21.

		players, the number of players on 'Player List A' is reduced by the number of missing home grown players. Besides the 'Player List A' each club has the opportunity to submit a 'Player List B' with an unlimited number of players under the age of 21, registered and eligible to play at least for 2 years since his 15th birthday. Players at the age of 16 can be registered if they have been a member of the same club for the past 2 years.	
England Premier League Barclays Premier League	No regulation, but players from outside the EU will need a work permit	The HGP rule was introduced from the start of 2010/11. Clubs cannot name more than 17 non home grown players aged over 21 in their squad. Some clubs will have a squad list of 23, for example, because they may have 17 over 21 non home grown players. A maximum of 25 players can be named in the squad list	"Home Grown Player" means a player who, irrespective of his nationality or age, has been registered with any club (or club) affiliated to the Football Association or the Football Association of Wales for a period, continuous or not, of three seasons or 36 months prior to his 21st birthday (or the end of the season during which he turns 21) and for the purposes of this definition of "Home Grown Player" a Season will be deemed to commence on the date on which the first transfer window closes and expire on the date of the final League match of the season;
Finland Jalkapalloliiga ry Veikkausliiga	Maximum number of three 'foreign players' in a squad for an official match. A foreign player is a player from a country which isn't a member of UEFA or from a country which doesn't have an agreement with the EU about the free movement of workers. A player who has been registered in a team which is a member in the Finnish FA for at least five seasons is not regarded a foreign player.	At least half of the players who are named in the team squad in an official match have to be home-grown players. At least four of these home-grown players in the squad have to play in the match.	The teams in the high divisions of Finnish football (Veikkausliiga, the 2nd and the 3rd division for men, Women's League and the 2nd division for women) have had to comply with the home-grown player rules of the Finnish FA since 2012 (season ending in October was the first one with these rules).  A player is regarded a home-grown player, if he/she has been registered to a Finnish team for a period of three years (minimum) between the age of 12 and 21.
France Ligue de Football Professionnel Ligue 1 and Ligue 2	Ligue 1 and 2 clubs cannot have in their squad more than 4 players that are not citizens of an EU country, a country of the European Economic Area (EEA) or a country that has an association or cooperation agreement with the EU. The total number of players, which are not citizens of an EU country, a country of the European Economic Area (EEA) or a country that has an association or cooperation agreement with the EU, cannot exceed four in	None	

	Ligue 1 and two in Ligue 2.		
Germany DFL Deutsche Fussball Liga GmbH Bundesliga	None	Local player rule was implemented in 2006/07. Clubs must have at least 4 club-trained players and 4 association-trained players on their squad lists. There is no limitation of the number of players on that list. This rule is mandatory in Bundesliga and Bundesliga 2.	see source § 5a LOS
Greece Super League Greece Super League OPAP	In youth competitions (U17 and U20) at least 13 out of the 18 players must be eligible to participate in the Greek National Team.	“Home Grown Player” means a Player who, irrespective of his nationality or age, has been registered with any Club (or club) affiliated to Super League Greece for a period, continuous or not, of three seasons or 36 months prior to his 21st birthday and for the purposes of this definition of “Home Grown Player” a season will be deemed to commence on the date on which the first Transfer Window closes and expire on the date of the final league match of the season; Clubs which have not been licensed according to UEFA's licensing programme, have two restrictions: They can sign up to three players over the age of 24 (Greek, non-EU and EU) and they can sign an unlimited number of players under the age of 24 who are eligible to play for the Greek national team or they are home grown players.”	
Ireland The FA of Ireland Airtricity League	None	None	
Italy Lega Nazionale Professionisti Serie A	1) Clubs holding a 2011/12 Serie A license, on 30/6/11 with more than two players who are non-EU/EAA citizens, can acquire a maximum of two non-EU/EEA players, coming from abroad, provided that:	None	

<p>Liga Serie A (NB. Rule relates to 2011/12 season)</p>	<p>a) One player replaces another non-EU/EEA player that (i) is transferred abroad by signing a contract with a foreign club, or (ii) has a contract expiring by 30.06.2011, or (iii) has acquired, for whatever reason, the nationality of a EU/EEA country;</p> <p>b) One player replaces another non-EU/EEA player who (i) is transferred abroad by signing a contract with a foreign club, or (ii) has acquired, for whatever reason, the nationality of a EU/EEA country;</p> <p>Players referred to in paragraphs a(i), a(ii) and b(i) will not register in the same season for the latter sports. Former young players that have obtained the first professional contract after 30/6/09 cannot be used as replacement.</p> <p>2) Clubs holding a 2011/12 Serie A license on 30/6/11, which owned no or just one non-EU/EAA player can register, without obligation to replace their other football players, up to 3 players who are non-EU/EAA citizens.</p> <p>Clubs holding a 2011/12 Serie A license on 30/6/11, with 2 non-EU/EAA players, can sign, without obligation to replace their other football players, a non EU/EAA player from abroad provided that this player replaces another non-EU/EEA player that (i) is transferred abroad by signing a contract with a foreign club, or (ii) has a contract expiring by 30.06.2011, or (iii) has acquired, for whatever reason, the nationality of a EU/EEA country.</p> <p>The player being replaced must be clearly indicated by the company and, if in the case (i) or (ii), the player will not register in the same season. Former young players that have obtained the first professional contract after 30</p>		
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	June 2009 cannot be used as replacement.		
Latvia Latvijas futbola Virsīga Virslīga		No limit on squad list or number of non 'home-grown' (in effect non-Latvian) players on that list.  Only 5 non 'home-grown' players can be on the field during the game	A non home-grown player is the player with non-Latvian Republic issued passport.
Malta Malta Football Association BOV Premier League	None	Only 4 players who did not form part of the Youth Sector of the Association can be on the pitch at any one time. These limitations shall not apply to those players who although they did not form part of the Youth Sector of the Association, are players who in accordance with the FIFA rules and regulations, are qualified to represent the Association in a FIFA or UEFA Competition for national teams. Not applicable to those players who on 1/2/04 were qualified to play for the Association in a FIFA or UEFA competition for national teams or who had the legal right to freedom of movement and the legal right to work within the Republic of Malta.	'Forming part of the Youth Sector of the Association', means a player has been registered with the Association and duly registered with any member club and/or club affiliated with the Gozo Football Association for at least 4 seasons, including the season during which the first registration with a member club or club affiliated to the Gozo Football Association was made, and who during each of such 4 seasons was eligible to take part with his club in the youth and/or junior competitions organised by the Association and/or The Youth Football Association and/or the Gozo Football Association and/or the Gozo Youth Football Association.
Northern Ireland Irish Football Association Danske Bank Premiership	No regulation, but players from outside the EU will need a work permit.	None	
Poland Ekstraklasa SA T-Mobile Ekstraklasa	None	HGP rule introduced from 2007/08. Clubs cannot name more than 17 non home-grown players aged over 21 in their squad and limit is 25. 5 must be home grown players and 3 club-trained players Some clubs will have a squad list less than 25, for example, because they may have 17 over 21 non home grown players.  A maximum of 25 players can be named in the squad list.	"Home Grown Player" means a player who, irrespective of his nationality or age, has been registered with any Club (or club) affiliated to the Polish Football Association for a period, continuous or not, of three seasons or 36 months prior to his 21st birthday (or the end of the season during which he turns 21) and for the purposes of this definition of "Home Grown Player" a season will be deemed to commence on the date on which the first Transfer Window closes and expire on the date of the final League Match of the Season; "Club-trained players" - as above but referring

			to respective clubs.
Romania  Romanian Professional Football League  Liga I	<p>Non-EU player restrictions and HGP rule (introduced for 2009/10):</p> <p>Foreign players originating in member states of the European Union (EU players) or foreign players originating in countries that do not belong to the EU (non-EU players) can be registered with or transferred to Romanian clubs in accordance with the relevant regulations of FIFA/FRF [Romanian Football Federation] and may participate in official matches within any of the competitions organized by FRF/LPF [Romanian Professional Football League]/CFA [County Football Association], provided that the following conditions for each category are met.</p> <p>46.7.1.1. First League teams:  a) for the 2012/13 and 2013/14, these teams can field 5 non-EU players at one time and have the obligation to include in the referee's report at least 5 locally-trained players for each official match;  b) for 2014/15, teams can field 3 non-EU players at a time and have the obligation to include in the referee's report at least 6 locally-trained players for each official match;  c) for 2015/16 competition year, teams can field 2 non-EU players at a time and have the obligation to include in the referee's report at least 8 locally-trained players for each official match;</p> <p>46.7.1.2. Second League teams:  a) for 2012/13 and 2013/14, teams can field up to 3 non-EU players at a time and have the obligation to include in the referee's report at least 10 locally-trained players for each official match;  b) for 2014/15, teams can field up to 2 non-EU players at a time and have the obligation to include in the referee's report at least 11 locally-trained players for each official match;  c) From 2015/16, teams can field up to one non-EU player and have the obligation to include in the referee's report at least 12 locally-trained players for each official match;</p> <p>46.7.1.3. Third League teams and women's football teams:  a) for 2012/13, teams can field up to one non-EU player and have the obligation to include in the referee's report at least 14 locally-trained players for each official match;  b) for 2013/14, teams cannot field any non-EU players and have the obligation to include in the referee's report at least 15 locally-trained players for each official match;</p> <p>46.7.1.4. Futsal teams:  a) for 2012/13, teams can include in the referee's report up to 5 non-EU players and have the obligation to include in the referee's report at least 5 locally-trained players;  b) for 2013/14, teams can include in the referee's report up to 3 non-EU players and have the obligation to include in the referee's report at least 7 locally-trained players;</p>	<p>"Home Grown Player" means a player who, irrespective of his nationality or age, has been registered with any club (or clubs) affiliated to the Romanian Football Federation for a period, continuous or not, of three Seasons or 36 months prior to his 21st birthday (or the end of the Season during which he turns 21).</p> <p>'Locally-trained' players are players that, irrespective of their citizenship, have been registered with and have participated in competitions for a Romanian club for at least 3 years (either consecutive or non-consecutive years) between the ages of 15 and 21. The three-year period shall be reduced accordingly for players under 18.</p>	

	46.7.1.5. Teams from other senior and junior categories: a) for 2012/13 competition year, these teams have the right to field up to 2 non-EU players at a time and have the obligation to include in the referee's report at least 15 locally-trained players for each official match; b) starting with the 2013/2014 competition year, these teams do not have the right to field any non-EU players and have the obligation to include in the referee's report at least 16 locally-trained players for each official match.		
Scotland Scottish Premier League Scottish Premier League	None	None	In each match-day squad of 18, there must be at least 3 outfield players who qualify as under-21 players (no nationality and HGP restrictions attached to this)
Slovakia League Clubs Union Corgon Liga	Maximum of 5 Players from non-EU nations can be placed on a club roster (Player's List) for one particular match of the competition.	None	
Spain Liga de Fútbol Profesional Liga BBVA/ Liga Adelante	Squad size limit of 25 players per team. Out of these 25 players, there can only be 3 non-European or players coming from countries with no bilateral agreements with Spain nor EU.	None.	
Swedish FA Allsvenskan	None	Half of the name at the squad-list for every league match has to be made up of "home grown players"	
Wales Welsh Premier League	None	None	

# Chapter 5

## Overview of Descriptive Statistics

### 5.1 Introduction

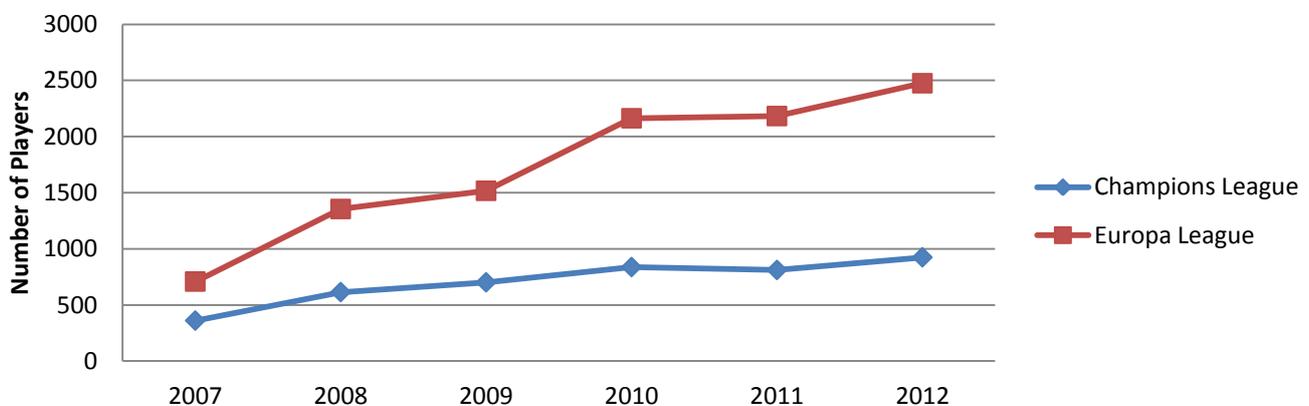
By considering some trends that have been observed in the data we have collected we are able to analyse in more detail the impact of the home grown player rule. Specifically this section identifies whether or not home grown players are actually featuring in matches as opposed to simply on squad sheets. This helps to determine whether or not the rule is having the effect of offering more possibilities for young and locally trained players to play.

Further, we consider the issue of nationality and how many of the home grown players are national or non-nationals. This helps to assess the impact of the Rule on the free movement of players. Finally the differences between the two types of home grown players – club and association-trained - are evaluated.

### 5.2 How many home grown players do the clubs have on their squad lists?

According to the UEFA rule, the minimum number for home grown players is eight, but do some clubs have more than eight?<sup>129</sup> The number of home grown players on the squad lists of clubs competing in UEFA competitions has increased steadily since the introduction of the rule. Figure 5.1 charts this progression.

**Figure 5.1: Numbers of Home Grown Players in Squad Lists for Europa League and Champions League**



<sup>129</sup> A full list of squad numbers is provided in Appendix B.

While this is in part due to the staggered introduction of the rule, there has clearly been an increase in these numbers while the rule has been constant. The growth has been more pronounced for the Champions League.<sup>130</sup>

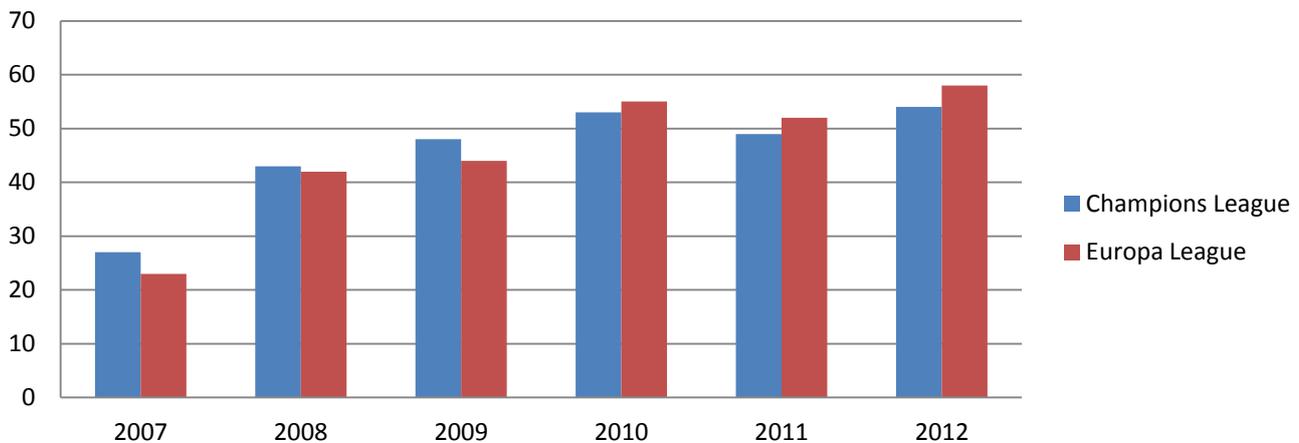
Based on data from UEFA, Table 5.1 presents the average numbers of home grown players in the squads of clubs competing in UEFA competitions since 2007. This is further broken down into club-trained players (CTP) and association-trained players (ATP).

**Table 5.1: Average Number of Home Grown Players per Squad**

Season	Champions League			Europa League		
	HGP	CTP	ATP	HGP	CTP	ATP
2007	7	3	4	6	3	3
2008	9	3	6	9	3	6
2009	9	4	5	10	3	7
2010	12	5	6	12	5	8
2011	12	5	7	12	4	8
2012	12	5	7	15	6	9

The numbers of home grown players registered on average across both competitions are far in excess of the minimum standards imposed, with clubs tending to comply with the more stringent necessity of having eight home grown players in a squad, comprising at least four club-trained players, in advance of its full implementation. The data indicates that on average greater adherence to the rule is met through the use of association-trained players.<sup>131</sup> Figure 5.2 shows that on average the proportion of squads made up of home grown players has increased dramatically over the last six seasons from under 30% in 2007 to over 50% in 2012 in both the Champions league and Europa League competitions.

**Figure 5.2: Proportion of Home Grown Players in Squad Lists for UEFA Competitions**



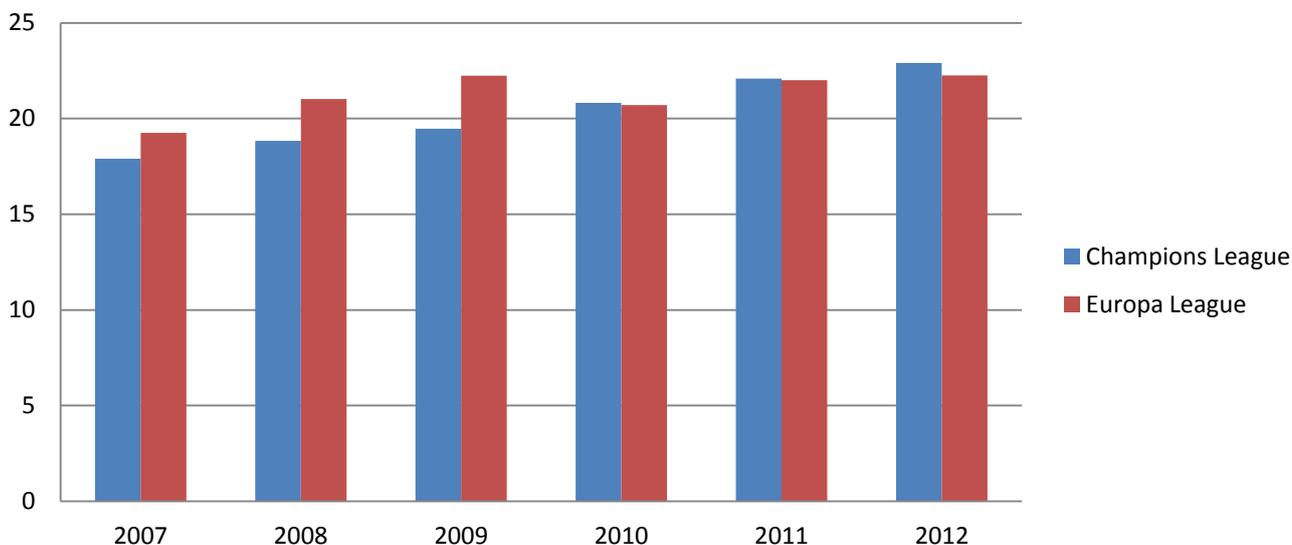
<sup>130</sup> This is consistent with the greater effects of the rule for the Champions League in the statistical analysis, suggesting greater reallocation of talent.

<sup>131</sup> See the statistical analysis, which identifies the importance of these players.

It is interesting to note that when the rule was originally introduced the Champions League teams comprised, on average, a greater proportion of home grown players than clubs in the Europa League. However, this trend had shifted by 2010, coinciding with the full implementation of the Rule and for the last three seasons there was a higher proportion of home grown players in Europa League squads.

The differences between the impacts in Europa League and Champions League can possibly be explained by comparing squad sizes. Figure 5.3 charts the development in the numbers of players registered with UEFA to compete in the Champions League and Europa Leagues.

**Figure 5.3: Average Squad Size for Teams in UEFA Competitions**



While for the period 2007–09 Champions League squad sizes on average tended to be smaller than in the Europa League, the trend over the last six seasons has been for the size of Champions League squads to increase and they are now, on average, larger than Europa League squads. This may be a reflection of the economic climate where clubs need to reduce the size of their squad. This data may suggest that as the rule has been fully implemented, the Champions League clubs have increased the size of their squad in order to accommodate the rule. There would be a concern that some of these players are simply ‘making up the numbers’. It is necessary to look at some further data on clubs individually across this time period to further understand the impact.

Disaggregating this data to consider the impacts on individual countries it is clear that there has not been a uniform impact of the rule on home grown player numbers. On average since the introduction of the Rule in 2006/07 teams from Cyprus competing in European competition have the largest amount of non-home players (16) in their squads. Clubs from Greece, England and the Republic of Ireland are next with an average of 15 non-home grown players in their squads in recent UEFA competition. In the case of the Republic of Ireland, this may be linked to the number of players that migrate to the UK aged 16 in search

of a professional contract. At the other end of the spectrum, the huge media revenues from the domestic game in England means that clubs can afford to buy in the best talent from overseas. Spain and Portugal feature next with an average of 14 non-home grown players along with five other nations.

Estonia, Iceland and Georgia have the highest number of home grown players since the rule was introduced with an average of 13. Eleven nations including Italy, Montenegro and Sweden have 12. Seven nations including the Netherlands have an average of 11 home grown players. Appendix B presents a full list of countries and their corresponding numbers of home grown players.

### 5.3 How many of the home grown players are nationals and how many are non-nationals? How many of the non-nationals are EU-nationals and how many are third country nationals?

The Rule does not make any reference to the nationality of players, simply to where they were trained and as such we find that a proportion of the players that qualify as home grown are not nationals of the country in which they play football. Table 5.2 shows the proportion of players registered with teams in the Champions League who are classed as home grown but are not nationals of the domestic league in which they play.

**Table 5.2: Nationality of Home Grown Players in the Champions League**

Season	Club-trained			Association-trained			HGP		
	Total	Foreign	EU	Total	Foreign	EU	Total	Foreign	EU
2007	8.27%	8.60%	93.55%	4.36%	4.08%	100.00%	12.62%	7.04%	95.77%
2008	24.27%	11.41%	91.61%	25.49%	2.88%	99.04%	49.76%	7.04%	95.42%
2009	11.16%	6.82%	98.48%	25.95%	5.54%	95.44%	37.11%	5.92%	96.36%
2010	17.89%	9.09%	94.74%	26.28%	6.51%	94.79%	44.18%	7.56%	94.77%
2011	15.01%	13.61%	94.67%	29.22%	7.29%	94.53%	44.23%	9.44%	94.58%
2012	20.77%	12.81%	93.80%	29.10%	8.26%	93.81%	49.87%	10.15%	93.80%

As we can see, the number of foreign home grown players has increased as a proportion of home grown players overall since the rule was fully implemented from 7% in 2007 to over 10% in 2012. The same trend is true for non EU players. It is interesting to note that a larger proportion of club-trained players than association-trained players are not nationals of the country in which they play. However, while there has been a large increase in non EU players that are association-trained, this has not been the case for non EU club-trained players, though there are fluctuations from year to year. Similar data for the Europa League is presented in Table 5.3.

**Table 5.3: Nationality of Home Grown Players in the Europa League**

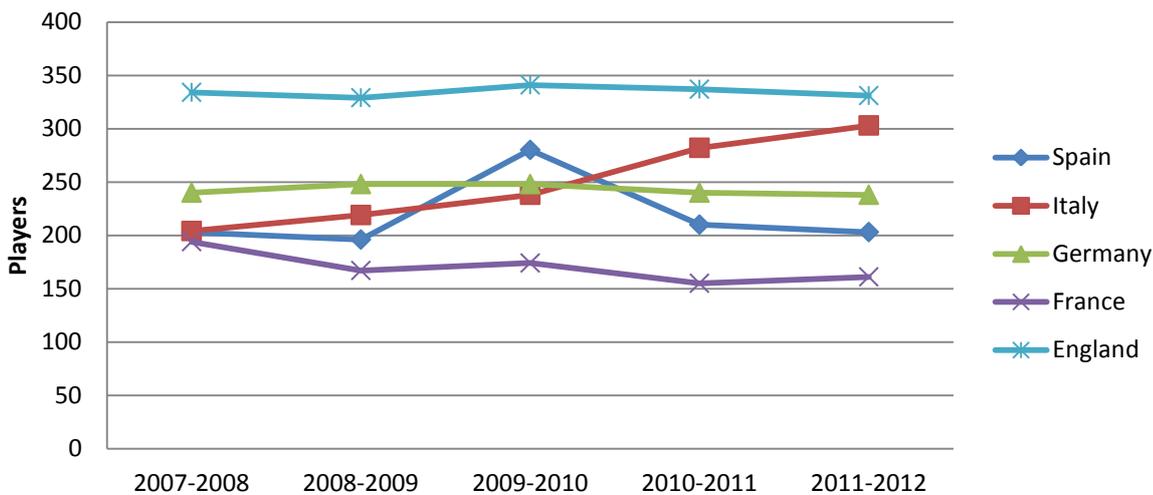
Season	Club-trained			Association-trained			HGP		
	Total	Foreign	EU	Total	Foreign	EU	Total	Foreign	EU
2007	7.69%	7.78%	95.21%	4.19%	3.30%	96.70%	11.88%	6.20%	95.74%
2008	10.30%	4.24%	96.61%	28.28%	1.08%	99.38%	38.59%	1.92%	98.64%
2009	10.76%	7.14%	95.24%	30.76%	5.69%	96.94%	41.52%	6.07%	96.50%
2010	17.89%	5.20%	96.80%	34.99%	5.32%	95.91%	52.88%	5.28%	96.21%
2011	14.18%	6.05%	96.84%	32.89%	4.77%	97.28%	47.07%	5.15%	97.15%
2012	21.83%	8.97%	95.35%	34.59%	7.65%	96.12%	56.42%	8.16%	95.82%

As we can see, the same trend as the Champions League clubs is apparent - that the numbers of foreign home grown players have increased over the time that the Rule has been in place. However, it is difficult to give an overall trend as the figures are heavily influenced by the composition of the clubs taking part. It is however clear that the proportion of foreign home grown players (both club and association-trained) for Europa League teams is significantly lower than Champions League teams. This reinforces the view that Champions League teams are able to compete for the best players at all age groups – even academy level, irrespective of the nationality of those players. However, there may be some indication that Europa League teams are seeing the rewards of investments made in club-trained players as in 2012 Europa League teams had one more club-trained players on average than Champions League teams. This is also supported by the qualitative evidence presented in Chapter 6. The data suggests that the Rule is not in general terms restricting the free movement of football players across borders, but there may be an issue of players transferring at younger ages.

It is also important to consider whether there has been any impact on teams in their domestic league. From data produced by CIES we are able to determine the proportion of national and non national players in domestic leagues and also cross check this against their training status (i.e. their being club-trained or not). This is particularly pertinent given the comparison we can make between clubs which are in the top five positions domestically, who would qualify for European competitions and the rest of the clubs in the league.

We begin by considering the number of expatriate players in the top five leagues overall. It is important to consider any changes in the numbers of foreign players in order to estimate whether the Rule has limited the free movement of players. As can be seen from Figure 5.4 there does not appear to have been any particular uniform change in the numbers of foreign players in the top five leagues since the introduction of the rule. If it was having a negative effect, one would expect to see persistent falling numbers of expatriate players who would not have their contract renewed when it came to an end. But this does not seem to be the case and actually in Italy there appears to have been a substantial increase.

**Figure 5.4: Number of Expatriate Players in the Big Five Leagues**



Similarly across the other European Leagues there are different trends. According to CIES, in the Polish and Hungarian Leagues for example, the numbers of foreign players have increased considerably since 2009/10 (from 18.3 to 34.4% in Poland and 23.5 to 33.4% in Hungary). Cyprus (70.3%) have the highest number of foreign players, though this is likely to be caused by domestic regulations (see Chapter 4). High numbers of foreign players are also present in other leagues such as Portugal (55.1%)<sup>132</sup>.

Focussing on the top 5 leagues in Europe, 3.88% of expatriate players are club-trained, compared to 23.42% of nationals. This is broken down further in table 5.4 below

**Table 5.4 Percentage of Expatriate Players in the Big Five Leagues that are Club-Trained**

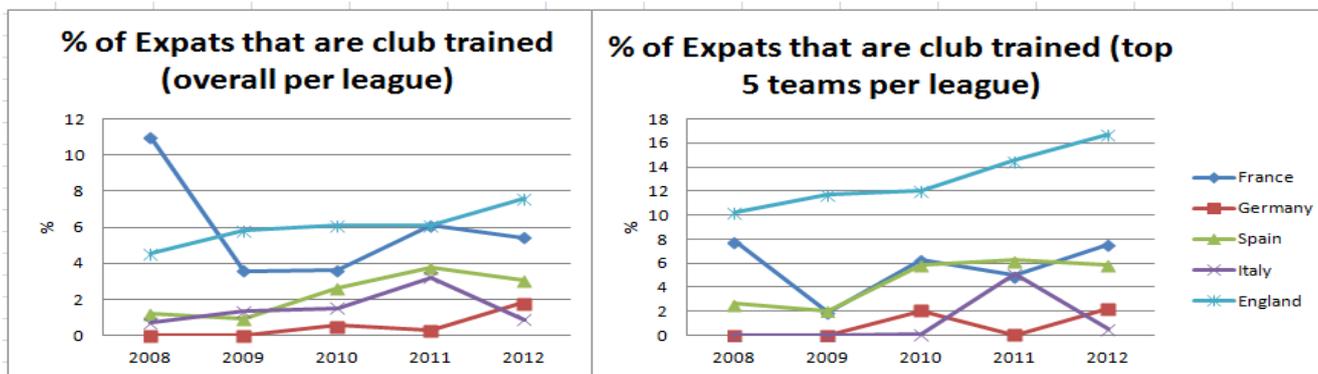
	France		Germany		Spain		Italy		England	
	All	Top	All	Top	All	Top	All	Top	All	Top
2008	11.02	7.88	0.03	0	1.22	2.63	0.72	0	4.53	10.22
2009	3.58	1.96	0	0	0.92	2.07	1.34	0	5.84	11.71
2010	3.59	6.32	0.56	2.07	2.6	5.88	1.53	0.09	6.09	12.08
2011	6.08	5	0.29	0.03	3.8	6.27	3.23	5.07	6.14	14.55
2012	5.42	7.59	1.84	2.25	3.04	5.86	0.89	0.57	7.58	16.72
Average	5.94	5.75	0.54	0.87	2.32	4.54	1.54	1.15	6.04	13.06

It is clear to see that there are vast differences between the recruitment of club-trained players between countries with the data suggesting that in England across the last five seasons, 6.04% of expatriate players have qualified as club-trained. This is in stark contrast to Germany where less than 1% of expatriate players are club-trained. This highlights the variety of ways in which international recruitment takes

<sup>132</sup> CIES Football Observatory (2012), Demographic Study.

place. The differences are also marked within leagues between clubs at different levels. For example on average 13.06% of the expatriate players in England’s top five teams are club-trained, whereas the average for the league is 6.04%. These differences are highlighted in Figure 5.5 below, which shows that the top clubs in the Premier League behave differently to the majority of clubs.

**Figure 5.5: Proportion of Expatriate Players that are Club-trained**



There has been a dramatic reduction in the numbers of expatriate club-trained players in France, however this trend is not observed in the other top five leagues and France appears to have been increasing this figure since 2009. In leagues such as Germany almost all of the club-trained players are from the domestic market, however figures from ECA and interview data suggest that this is not a consequence of the home grown player rule, but instead may be owing to the domestic rules which were introduced in 2001.

The origin of club-trained players is explored in more detail in Table 5.5 which looks at the proportion of players from each region that are club-trained. These figures are for the big five leagues in Europe.

**Table 5.5: Origin of Club Trained Players**

	Western Europe	Eastern Europe	Africa	Latin America	Other	All
2008	19.51	0	11.18	1.02	0.13	14.82
2009	20.09	0.19	4.12	1.07	2.01	14.84
2010	19.86	0.06	3.27	2.85	4.26	14.93
2011	21.43	1.26	5.92	3.11	3.75	16.41
2012	19.37	2.94	4.5	1.56	8.95	15.12

As we can see, the number of Western European players which qualify as club-trained in the big five leagues are much higher than players from elsewhere, which is to be expected. There appears to have been a sharp decrease in the proportion of African players who qualify as club-trained since 2008. When examined more closely there are again marked differences in where players are recruited from in different countries and consequently whether or not they qualify as club-trained. Looking in more detail at Africa

as an example, Table 5.6 shows that there are only significant numbers of African club-trained players in France and Italy. This is probably due to domestic rules, historic recruitment sources and not the home grown player rule.

**Table 5.6: African Players in the Big Five Leagues**

	2008	2009	2010	2011	2012
<b>France</b>	23.65	8.35	6.65	10.57	8.53
<b>Germany</b>	0.44	0	0.52	0	0
<b>Spain</b>	2.08	0	0	0	0
<b>Italy</b>	0	12.35	3.22	6.65	0.15
<b>England</b>	0	0	0	0	0

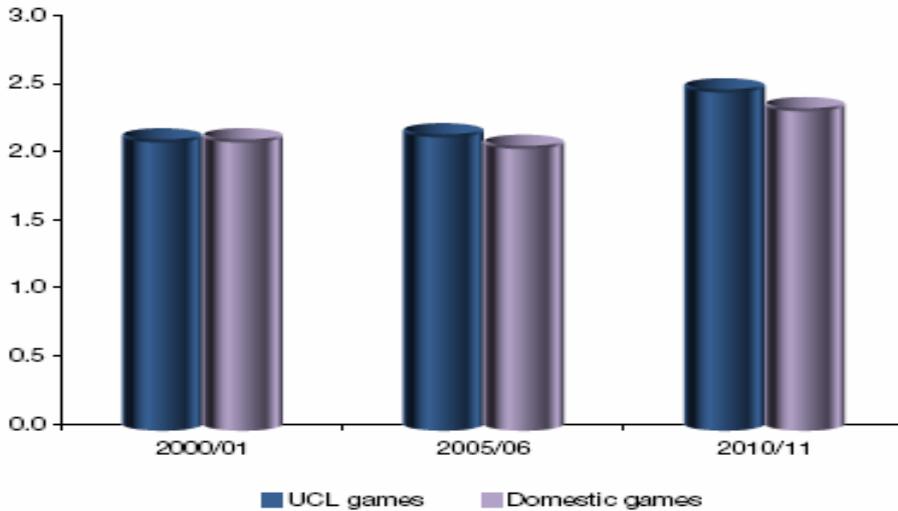
Similar country specific effects are found with analysis of the other individual regions of origin.

CIES 2012 states that since 2009/10, Austrian teams have seen the biggest relative increase in presence of club-trained footballers (from 17.3 to 25%). The opposite is true in Bulgaria, where the proportion of club-trained players decreased from 23.2 to 14.1%. Club-trained players represent at least 50% of squad members only in 33 clubs out of 500 that CIES surveyed. The Croatian team NK Osijek recorded the greatest percentage of club-trained footballers (77.8%). At a league level, while the Iceland Championship has 43.4% club-trained players overall, this is in sharp contrast to Italy with only 7.4% club-trained. This suggests that Italian clubs are more likely to buy in talent than produce their own players for the first team.

#### **5.4 How many home grown players are actually playing on the field (i.e. out of 11 players on the field, how many are home-grown)?**

According to UEFA, the average number of club-trained players on the pitch at any one time, in UEFA Champions League group stage matches, has increased from 2.16 before the rules to 2.50 in the 2011 season. Indeed looking back further, we see that the current representation is above the level of a decade ago. This is demonstrated in Figure 5.6 below.

**Figure 5.6: Average Number of Club-trained Players on the Pitch for UCL Group Stage Clubs**



(Reproduced from UEFA, 2012: 48).

Furthermore, it seems that there has also been a secondary knock-on effect in the domestic league competitions, where the same clubs competing in the UEFA Champions League have also increased the usage of their club-trained players.<sup>133</sup>

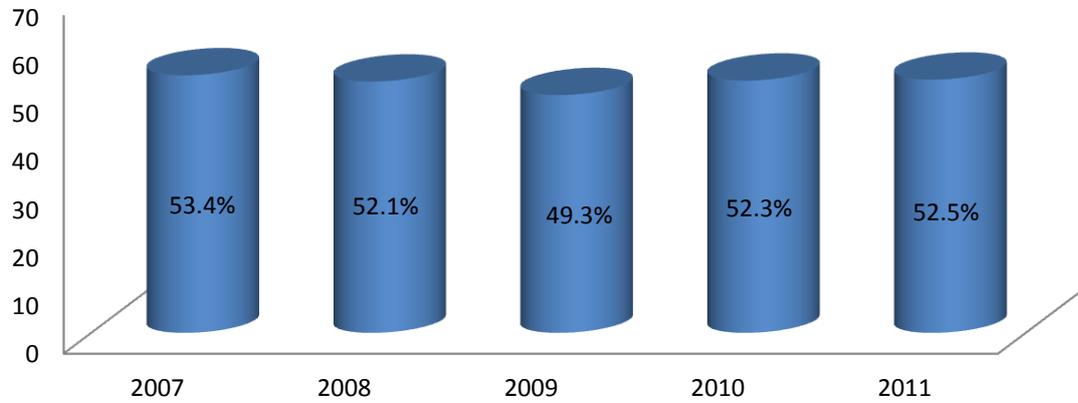
### **5.5 How many minutes have the home grown players played in UEFA matches, in comparison to players not home-grown? (Data refers to clubs from EU Member states unless otherwise stated)**

While Figure 5.2 charts the increase in the number of home grown players being named in squads for UEFA competitions, this increase has not translated to minutes on the pitch as readily. UEFA 2012 states that the proportion of locally trained players playing has been relatively consistent at just over 50%, all the way through the five years of implementation of the locally trained player rule. This is shown in Figure 5.7.

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<sup>133</sup> UEFA 2012: 48

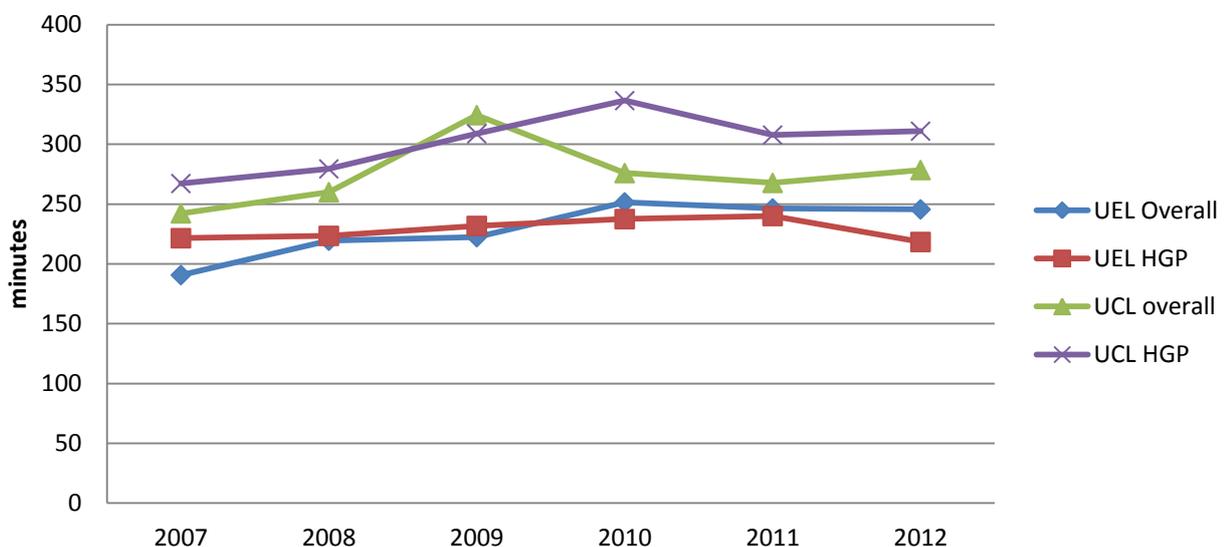
**Figure 5.7: Proportion of Minutes Played by Home Grown Players in Group Stages of UEFA Competitions**



(Reproduced from UEFA 2012: 48).

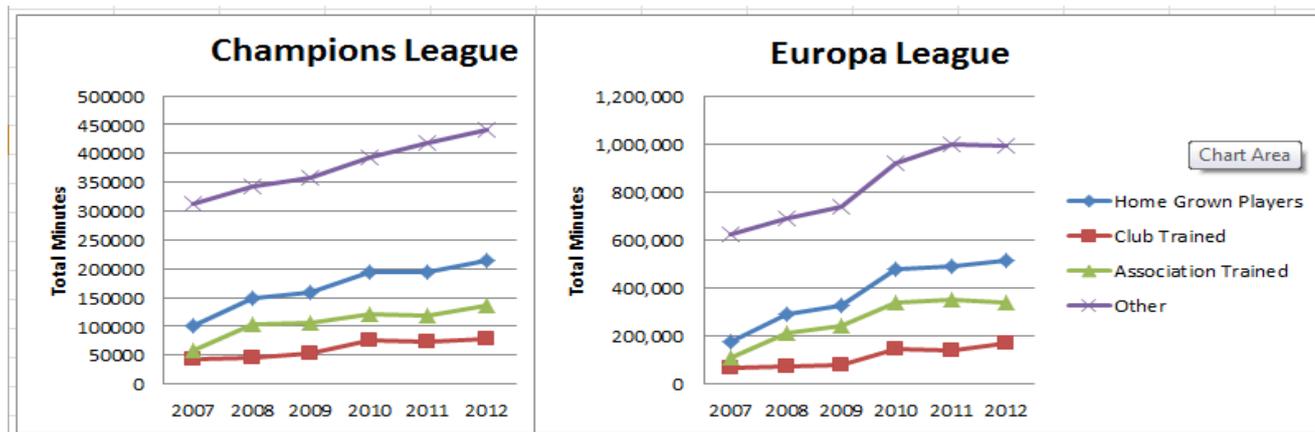
It is similarly difficult to highlight any particular trends in the average number of minutes played by home grown players compared to the average number of minutes played by players overall as shown in Figure 5.8. It seems that in the last three seasons the average number of minutes played by home grown players in the Champions League has been higher than the average minutes played by players in the Champions League overall. This may be an indication of clubs beginning to produce a higher quality of home grown player, although to make a firm conclusion with respect to this it would be necessary to continue to measure this over a longer time period.

**Figure 5.8: Average Minutes Played in UEFA Competitions**



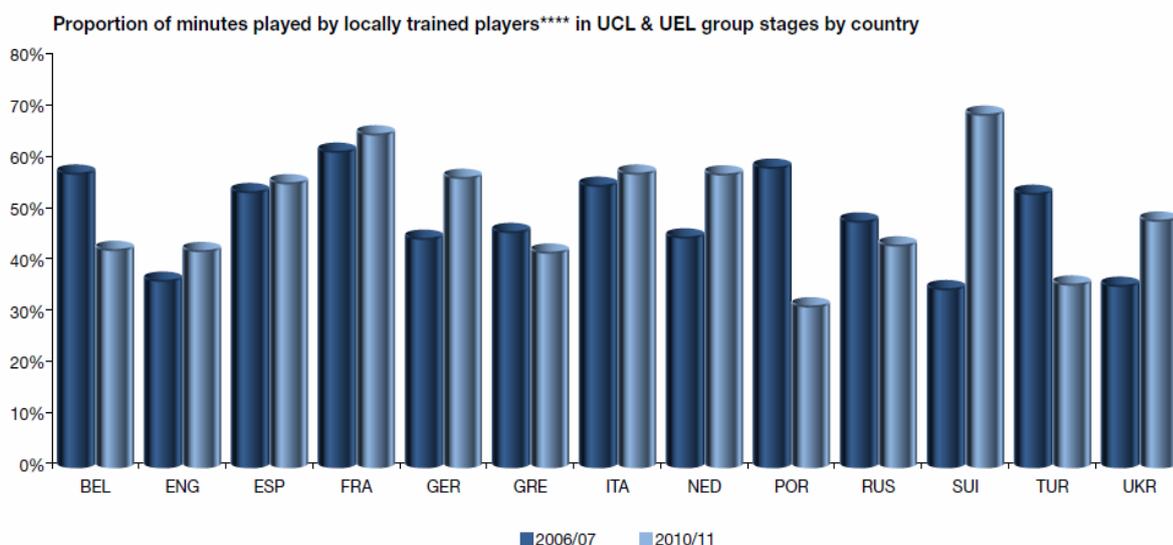
When considering the number of minutes played overall by home grown players compared to other players, Figure 5.9 demonstrates that the rate of change has been similar between the types. However, more recently, the gap between minutes played by association-trained and club-trained players in the Europa League appears to be closing.

**Figure 5.9**



However it is again difficult to identify the same trends on a country by country basis. Comparing the proportion of minutes played by locally trained players in 2006/07 and 2010/11, German, Dutch, Swiss and Ukrainian clubs in the UEFA Champions League and UEFA Europa League group stages have significantly increased the playing time of locally trained players. This is contrast to the trend in Belgium, Portuguese and Turkish clubs. Locally trained players were most used by the Swiss and French clubs in 2010/11 with more than two thirds of playing time coming from locally trained players.

**Figure 5.10**



(Reproduced from UEFA, 2012)

There also appear to be differences in the number of minutes that players in different positions play according to their training status as demonstrated in Table 5.7. Across the period that the Rule has been in force, home grown players in every outfield position consistently play less minutes of football than their counterparts on average. This trend is most pronounced with respect to forward players who play on average 349 minutes compared to an average of 551 minutes for non-home grown players. However this is not true with goalkeepers who on average play slightly more minutes if they are home grown.

**Table 5.7: Playing minutes by position**

Forward Average Total Minutes		Midfielder Average Total Minutes		Defender Average Total Minutes		Goalkeeper Average Total Minutes	
HGP	Non-HGP	HGP	Non-HGP	HGP	Non-HGP	HGP	Non-HGP
349	551	800	927	808	940	234	216

### **5.6 How many of the current home grown players were trained by the club itself (“club-trained”) and how many were trained by another club affiliated to the same national association (“association-trained”)?**

The UEFA Rule stipulates that of the eight home grown players in each squad, players may be either club or association-trained, with at least four club-trained. While it has been identified above that many clubs exceed this minimum standard it is interesting to note that there are significantly more association-trained players in squad lists than club-trained players. A summary of the 2012 squads for the Champions League and Europa League are presented below.

**Table 5.8: 2012 squads for the Champions League and Europa League**

	Home Grown	Club-trained	Association-trained
Champions League	924	392	532
Europa League	2474	958	1516

This suggests that the proportion of home grown players that are club-trained is slightly higher in the Champions League (42.4%) than in the Europa League (38.7%). In some ways this is unsurprising since the stronger teams are more likely to have good academies and therefore promote players from there to the first team whereas Europa League teams may have to recruit players from the domestic market to meet their quotas for home grown players.<sup>134</sup> This is explored further in Table 5.9 which outlines the

<sup>134</sup> This might also explain why it is association based players that affect the statistical results, as most adjustment takes place in this context.

numbers of players currently in the academy systems of selected teams throughout the European Union and their origin. There is a clear relationship between the success of teams and their recruitment policies.

**Table 5.9: Academy Players and Investment**

Club	Number of players (approx)	Origin of Players	Costs per year (euro)
Arsenal	180	95% London, 5% abroad	3m
Barcelona	250	70% local Spanish 20% Spanish, 10% foreign	10m (excluding U19 and Barcelona B)
FC Bayern Munich	185	90% Bavarian, 5% national, 5% foreign	3m
FC Internazionale Milano	230	95% Italian, 5% foreign	6m
FC Levadia Tallin	over 300 (including girls)	75% Estonia, 25% Russia (all local)	120,000
NK Dinamo Zagreb	200	97% Croatian	1.3m
RC Lens	182	85% Northern France, 10% France, 5% foreign	6m
R. Standard de Liege	250	98% Belgian nationality	1.5m
Sporting Clube de Portugal	340	90% Portuguese, 10% Brazil, Cape Verde, Angola	5m
Besiktas JK	200	Mainly Turkish	750,000
FC Basel	220	91% from the region	3m
FC Honka Espoo	250 (184 in the elite academy squad)	90% Uusimaa region	500,000
FC Gelsenkirchen Schalke 04	190	83% Gelsenkirchen and region	3m
FC Shakhtar Donetsk	180	50% Donetsk Oblast, 50% Ukraine	2.5m
FK Teplice	284	87% Teplice	500,000
Glentoran	140	93% Belfast and region	250,000
Heart of Midlothian FC	109	Edinburgh and region	750,000
Helsingborg IF	334	99% Southern Sweden	750,000
Panathinaikos FC	142	84% Athens, 15% Greece, 1% other	1m

Data from the ECA suggests that the origin of academy players (aged 16–23) differs according to the level of the club. 60% of clubs have players from abroad in their over-16 age group squad, with 3% of academy players being from abroad. Based on the FIFA categorisation, a median of five foreign players are playing in a category one club academy. This figure reduces to 2.5 players for category two clubs and 1.5 players for category three clubs.

## **5.6 Are there any clubs that do not adhere to the home grown player rule (i.e. clubs that have less than eight home-grown players amongst the 25 List A players)?**

A complete list of squad numbers is given in Appendix C. The clubs who do not have eight home grown players in their current squad are highlighted, however these clubs are still able to comply with the UEFA rule by reducing the size of their squad accordingly. In reality a club could contain no home grown players, but it would only be able to register 17 players in the squad.

## **5.7 Conclusions**

It is clear from the descriptive statistics presented that many clubs exceed the minimum requirement for numbers of home grown players in their squad lists. The number of home grown players actively taking part in both Champions League and Europa League matches has increased dramatically since 2007 from 30% to over 50% in 2012. While it was a concern that home grown players were simply ‘making up the numbers’ and not actually participating in starting XIs this has been found not to be the case. Overall the number of minutes played by home grown players has remained relatively stable over the period that the Rule has been in place, although this figure fluctuates depending on which teams reach the UEFA competitions. Although most clubs in both competitions have more association-trained players than club-trained players, there is some evidence that there may in future be more equality. The data suggests that the Rule is not restricting the free movement of players across borders; in fact there has been an increase in the number of foreign players that qualify as home grown. This may be an issue which is in need of further research with relation to the migration of young people. Although there are some clear positive trends in the data, it is not possible to state that the Rule is the only contributing factor.

# Chapter 6

## Analysis of the Rule's Impact on Competitive Balance

### 6.1 Introduction

While Chapter 5 presents an overview of the trends in the numbers of home grown players, their origin, and the frequency with which they play in comparison to other players, it is not possible from that data alone to infer causation in relation to the impact of the home grown players rule. In order to examine the impact of the home grown player rule on the performance of teams, and hence indirectly examine competitive balance, regression analysis was performed. This was undertaken separately for the Champions League and Europa League, and for the performance of teams in the group stages, and then their progression through to the various final stages of the competition. The next sections outline the dependent and independent variables in each case, the methods of analysis undertaken, as well as presenting and discussing the results. Statistical outputs are presented in Appendix D.

### 6.2 The Model

In examining the effects of the Rule we are primarily concerned with the success of teams in the UEFA competitions. Both UEFA competitions have a group qualifying stage based on a round-robin tournament format and then a set of knockout stages leading to the final. In the group stage, each season, teams are ranked from 1<sup>st</sup> to 4<sup>th</sup> in the Champions League, and 1<sup>st</sup> to 5<sup>th</sup> in the Europa League. This naturally defines an ordered dependent variable scored between 1 and 4, and 1 and 5 respectively to indicate the relative success of the team. In the finals stage in both competitions, clubs either make it through to the quarter-finals, semi-finals, or final or can become champion. Achieving each of these outcomes or not defines a binary dependent variable in each case.

In order to examine the effect of the Rule on these dependent variables, an 'event-study' design is adopted. This requires identifying the independent variables that capture the 'event' under study, as well as variables that control for the influence of other factors on the dependent variable. In the former case the 'event' or 'intervention' of the Rule was measured in two ways. The first was a set of binary variables that captured the seasons 2004-06, 2007-09 and 2010-12. The first period preceded the Rule and therefore provides a control where there was no intervention of this sort. The second captured transition towards the

Rule.<sup>135</sup> The final period relates to after the implementation of the rule having given the clubs chance to adapt to it. The impact of the Rule was also captured by examining the total number of home grown players in the team, with the numbers of club and association-trained players also being identified.<sup>136</sup>

In order to control for the impact of other factors that might affect team performance, the UEFA ranking of the team for that season was identified as the most relevant independent variable.<sup>137</sup> The logic for the use of this variable is that it captures all other factors that can contribute to the team's success.

## 6.3 Results

Statistical models based on a pooled sample comprising the teams who made it into the group stages and for the seasons 2004 to 2012 (as described in Appendix D) have been estimated in order to measure the impact of the policy intervention on the outcomes of UEFA competitions.<sup>138</sup>

### 6.3.1 *Champions League*

The results connected with the Rule indicate that by the time the policy had been fully implemented, there is evidence that there is a reduction in the performance of teams, and that this is affected by primarily association-trained players. The implication is that having to retain players from within a more localised national market, as defined by the association, team performance falls. This could be from not being able to make use of better players that could be purchased on broader international markets. This result appears to concur with the descriptive statistics presented in Chapter 5. In contrast, however, there is no discernible effect of the Rule on success in reaching the finals' stages of the Champions League, or becoming Champion.

### 6.3.2 *Europa League*

Again, the impact of the UEFA ranking variable is consistent with the Champions League, in that higher ranked teams perform better in the group stages. However, the results of the impact of Rule are less strong statistically, though a similar pattern of results are observed. All measures of the Rule suggest that a reduction in teams' success follows the introduction of the Rule; however, the impact is only statistically significant for association-trained players at the usual p value of 0.05 or less. In the case of the finals' stages of the Europa League, as with the Champions League, the results are broadly

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<sup>135</sup> As explained in Chapter 1, the introduction of the rule was staggered in order to give clubs enough opportunity to alter their playing squads in order to comply.

<sup>136</sup> The proportion in the squad could also have been employed, but as the rule focuses on the absolute number of players, though squad sizes can vary, actual numbers are discussed here.

<sup>137</sup> The club coefficient rankings are based on the results of clubs competing in the five previous seasons. The rankings determine the seeding of each club in all UEFA competition draws. Club coefficients are determined by the sum of all points won in the previous five years, plus 20% of the association coefficient over the same period.

<sup>138</sup> It was decided not to treat the data as a panel dataset because of the variability of teams included in each stage and the fact that the properties of panel-data estimators with discrete dependent variables are less well understood.

insignificant. However there is some evidence of a positive effect on quarter final and semi-final achievement if the Rule is measured by the transition of seasons.

There is also some evidence of a positive effect on the semi-final achievement of teams if the Rule is measured by the number of club-trained players. This suggests that there is some limited evidence of contrary effects of the clubs of the Rule in the Europa League compared to the Champions League. Moreover it suggests that more home grown players, that are perhaps more likely to be club-trained, can improve the success of such teams. This is perhaps correspondent to such teams having less access to the relevant players to achieve international success than typical Champions League teams, which get constrained further by the Rule. The results are sketchy but seem to suggest some rebalancing of the performance of teams across the competitions.

## **6.4 Conclusions**

The above analysis has suggested that the main impact of the Rule appears to be located in the Champions League group stages, particularly through the accumulation of association-trained players. There is some evidence that there are similar effects for the Europa League group stage, although the effects are much smaller and less likely to be statistically significant. In general the effects are modest, but nonetheless it does appear that some limitation of the players' labour market through encouraging the recruitment and retention of players from a home association can constrain the success of higher ranked teams. In this respect, there has been a small improvement in competitive balance in the early stages of UEFA competitions as a direct result of the Rule.

In contrast there is very little evidence that the Rule affects the finals' stages, particularly in the Champions League. Intuitively, this suggests that once teams have qualified from the group stage then they are more likely to be of equal competitive ability. Under such circumstances player redistributions are unlikely to affect performance. This analysis, particularly of the transition phase, combined with the descriptive statistics in Chapter 5, suggest that the Rule may take time to be fully effective as clubs alter their training and development of young players. However, there is little evidence in support of this in Chapter 7. In the latter stages of the Europa League, there is some suggestion of an impact of improving competitive balance between the quarter-final to semi-final stages.

This analysis, combined with the descriptive statistics presented in Chapter 5 suggest that the more minutes association-trained players play in UEFA competitions, the greater the effect on competitive balance, particularly in the Champions League. On average, teams playing in both competitions have more association-trained players than club-trained players but the gap is narrowing. The immediate impact of the Rule seemed to be for clubs to register association-trained players. However now that the

rule has bedded in the numbers of association-trained players are fairly static, while numbers of club-trained players seem to be increasing slightly. This is assisted by an increased number of foreign club-trained players, suggesting that perhaps the clubs are beginning to produce players through their youth development systems.

While the above analysis has shown that the Rule has had an effect in improving competitive balance in certain areas, and the transition period in particular suggests that increasing the numbers of both club-trained and association-trained players does impact competitive balance, there is insufficient data at the current time to make an accurate scientific assessment of trajectory in the long run. Experience from regulation of player markets in other sports shows that it is possible we have already seen the impact of association-trained players and that this will not increase, and may even reduce, in future.<sup>139</sup> It is equally possible, however, that there will be an additional gradual increase in competitive balance as club-trained players start to have an impact on the first team squad. Therefore in our view it would 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 legal analysis, future trajectory should be viewed as neutral until further data is available to measure the effect over the longer term.

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<sup>139</sup> Downward, P. Dawson, A. and Dejonghe, T. (2009) *Sports Economics: Theory, Evidence and Policy*, Elsevier.

# Chapter 7

## Analysis of the Rule's Impact on Youth Training and Development

### 7.1 Methodology

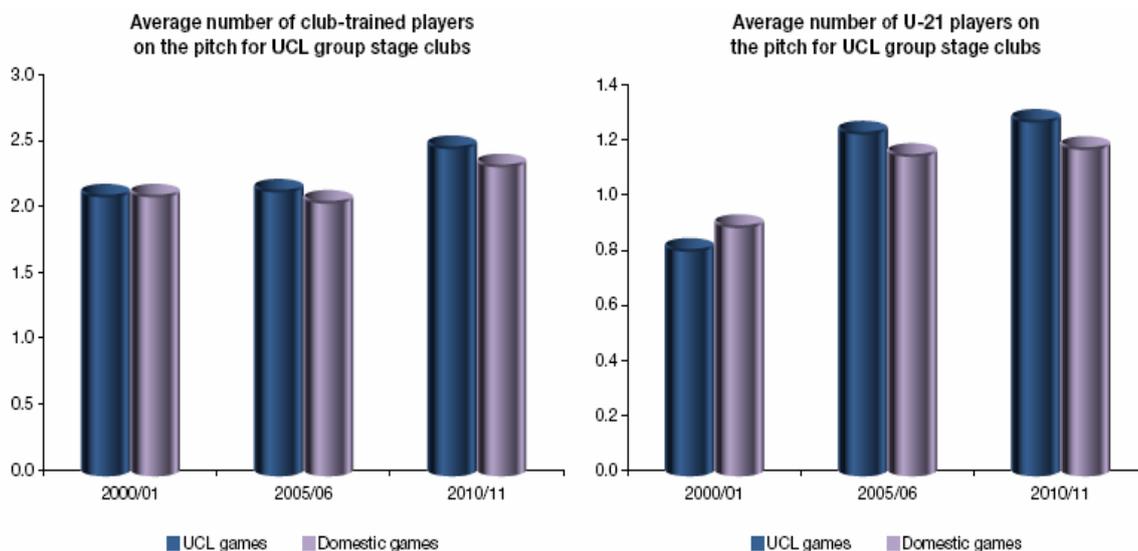
In order to assess the impact of the home grown player rule on the training and development of young players in the European Union, we have adopted a mixed methodology. Comprehensive statistical data on the number of home grown players utilised in European and Domestic competition was gathered and is analysed in Chapter 5. However it is important to note that this data in and of itself cannot not prove that the Rule is having an impact in terms of increasing home grown player numbers and that even if it could, this would not necessarily demonstrate that the Rule is achieving the legitimate objective under EU law of improving the training and development of young EU players. Therefore we also carried out a series of qualitative interviews with stakeholders and governing bodies to gain an understanding of whether they thought the Rule was having an impact on the training and development of young players. These views were then compared with data gathered from a sample of clubs throughout the European Union who regularly qualify for European competition. The qualitative data demonstrated a largely consistent viewpoint amongst clubs and stakeholders as to the past and current impact of the Rule, as well as a likely trajectory in terms of future impact.

#### 7.1.1 Statistical Analysis

The UEFA Rule has as one of its main objectives to increase the number of players that are trained locally in order to encourage clubs to invest in youth development and also to retain a local identity. Although the former objective is essential to achieving the latter, it is only the latter objective that can be considered when determining if the Rule is compliant with EU law (see Chapter 8). Therefore it is essential to measure the impact of the Rule not only in terms of whether it increased the number of *home grown* players participating in UEFA competitions, but more importantly if it has increased the number of *young* EU players competing in matches. Even an increase in the number of young players competing would not prove that the Rule was achieving its aims as there may be other factors behind an increase, but it would be a strong correlative indicator to support qualitative findings on training and development. Therefore in this section we analyse the statistical data on the numbers, origin and age of players competing in UEFA

competitions as well as looking at whether they were qualified as club or association-trained and their nationality. The source of the following quantitative data was directly from UEFA unless otherwise stated.

**Figure 7.1**



As was detailed in Chapter 5, it is clear that there has been an increase in the number of home grown players appearing in first team squads. The above analysis demonstrates that there has also been a substantial increase in the number of home grown players participating in UEFA Champions League matches following the introduction of the home grown player rule. The average number of club-trained players on the pitch at any one time in UEFA Champions League group stage matches, has increased from 2.16 before the Rule, to 2.50 in the 2010/11 season. While a similar trend can be seen for domestic competitions, the absolute number of home grown players is lower. This suggests that while there may have been a secondary effect in the domestic league competitions, where the same clubs competing in the UEFA Champions League have also increased the usage of their club-trained players, the increases in locally trained players in domestic leagues are likely related to changes in domestic rules. Some domestic competitions have seen a significant increase in the number of home grown players (most notably the Bundesliga), but this is most likely to be the result of domestic rules and resultant trends.

However, more significant for this report is whether there is a significant increase in the number of under-21 players fielded in Champions League matches following the introduction of the rule. Such an increase may be an indicator that the Rule is having an impact on the quality of training and development of young players (although it would remain possible that other factors were equally or more influential). The number of under-21 players playing in UEFA matches has increased by 50% over the last decade. However, while Figure 7.1 shows a slight increase in the number of under-21 players fielded following

the introduction of the Rule at the start of the 2006/07 season, the significant increase had taken place in the seasons *before* the introduction of the Rule. It could be argued that this increase was a result of clubs preparing for the Rule's introduction, but we have found little corroborating evidence for this assertion. While still increasing, the table shows that the upward trajectory in the number of under-21 players fielded in the UEFA Champions League group stages slowed once the Rule was brought in.

This can be contrasted with figures from some domestic competitions, which show more recent increases in the number of under-21 players participating in matches. For example in the 2010/11 English Premier League season there was a 28% increase on the previous year in the number of on-pitch appearances by English players under-21. While the overall number of players under-21 went down slightly, from 59 to 55, the number of appearances they made increased from 483 to 616, potentially indicating an increase in quality that is disconnected to the UEFA Rule.

Nevertheless, in terms of an overall improvement in the quality of training and development of young players throughout the EU, with the available statistics it is difficult to demonstrate whether or not the home grown player rule has had a significant impact, and the correlation above shows a dropping off in terms of the growth in the number of under-21 players participating in the UEFA Champions League. It is therefore necessary to consider qualitative data on whether stakeholders and clubs consider that the Rule has had a positive impact in this respect.

### ***7.1.2 Qualitative Interviews with Stakeholders and Clubs***

Qualitative interviews were carried out with UEFA, FIFPro, ECA, EPFL, and a number of domestic federations and leagues. These canvassed opinions on the impact of the Rule on the training and development of young players at clubs in the European Union. The ECA (European Club's Association) were particularly useful in this regard, representing 207 clubs from 53 associations;<sup>140</sup> typically those with the most regular participation in UEFA's competitions.

To supplement this and corroborate opinions canvassed from the stakeholders, qualitative interviews were also carried out in person, via telephone and *Skype* and in a few cases by e-mail correspondence with qualified personnel at a selection of clubs throughout the European Union. We targeted individuals who had direct knowledge of how the training and development of players operated at their club (e.g. Academy Managers and Sporting Directors) but where this was not possible we identified other executives (e.g. CEOs and Directors) who were able to canvass opinions of the relevant personnel prior to the interview. Clubs were selected to meet the following criteria:

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<sup>140</sup> <http://www.ecaeurope.com/> Accessed 19.12.12.

- Clubs that were based in the European Union.
- Clubs that regularly qualified for senior UEFA competitions.
- A selection of clubs from different member states.
- A balance between larger and smaller clubs in terms of income.
- A balance between clubs with a reputation for developing young players and those with a reputation for 'buying in' proven talent.

Between November 2012 and March 2013, qualitative interviews were conducted with 20 clubs based in the following EU-based associations:

- Denmark
- England
- France
- Germany
- Greece
- Ireland
- Italy
- Latvia
- Netherlands
- Poland
- Scotland
- Spain

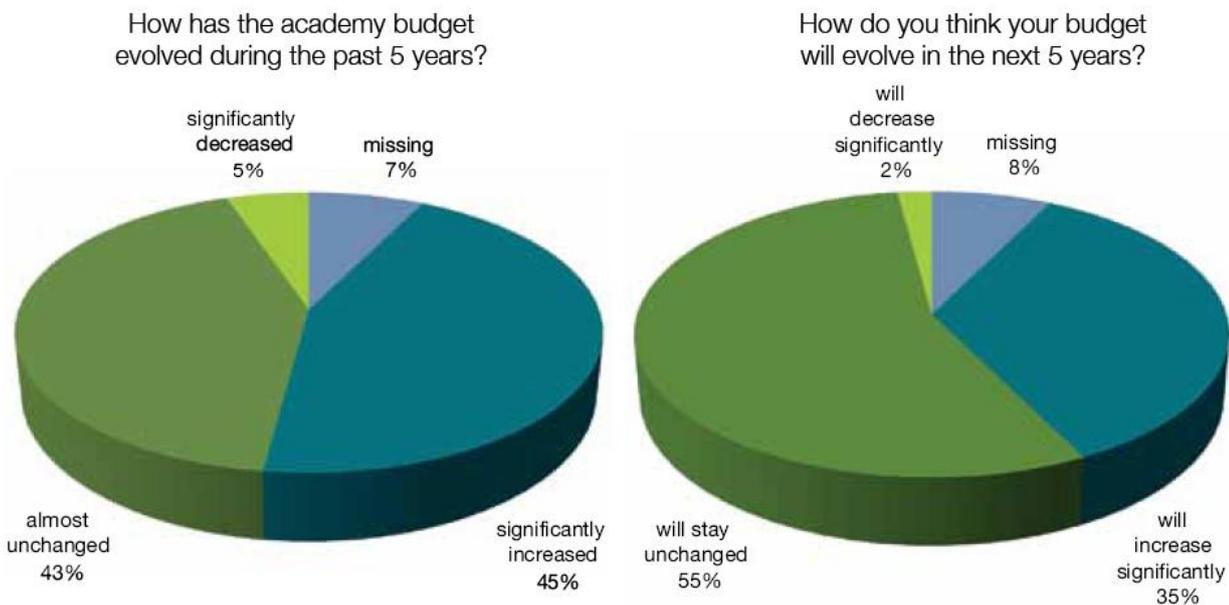
The majority of clubs approached agreed to participate in the study. For reasons of promised anonymity we cannot publish the names of the clubs or personnel who provided data (or who refused to assist), although a full list of those who assisted has been made available to the European Commission. Questions focussed on how 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.

We also asked clubs about future trajectory in terms of increasing investment in youth training and development in relation to the impact of the Rule. Finally, we contacted each of the football leagues based in EU member states to clarify their domestic rules on foreign and locally-trained players.

## 7.2 Club Investment in Youth Training and Development

The spending of clubs on the training and development of players is highlighted above in Chapter 5 Table 5.1. According to the European Clubs Association, “In almost half of the youth academies, the budget increased significantly in the last five years”.<sup>141</sup> However the majority of clubs questioned about future investment (55%) suggested it would remain unchanged.<sup>142</sup> These results are presented in the pie charts in Figure 7.2.

**Figure 7.2**



(Reproduced from ECA, 2012: 102).

This was verified by qualitative interviews we carried out with clubs that revealed that spending on youth development was not consistently increasing. At some clubs, spending on youth development had increased significantly season by season, whereas other clubs reported no additional spending. Significantly in terms of this study, no interviewed clubs suggested their spending would significantly increase in the future as a result of the Rule.

Furthermore, with only four exceptions, interviews with clubs where recent increases in spending were noted told us that this was *not* a result of the UEFA Rule. Instead clubs suggested that the increase would have occurred regardless of the Rule; one frequently cited reason for this, particularly at clubs with lower turnovers, was the local economic climate that made expenditure on transfer fees difficult. Clubs with higher turnovers and stronger UEFA pedigrees were more likely to indicate that they had significantly

<sup>141</sup> ECA (2012): 105.

<sup>142</sup> Ibid: 102.

increased their budget for the development of young players, but that this was a result of domestic rule changes as opposed to the UEFA Rule.

Clubs were asked if they had invested in infrastructure (e.g. a training centre) or staffing as a result of the Rule. With only four exceptions, all clubs who responded indicated that they had not invested in this way as a direct result of the Rule, although some increases in both areas were identified during the same time period. One club suggested that it had increased the number of qualified coaches at the academy as a result of the Rule; however, this increase in staffing was not reflected in an increase in overall financial investment in youth training and development. Another club suggested that it had “scaled back its international scouting network to focus on the [domestic] market and resource areas strategically”, demonstrating an impact of the UEFA Rule but not one that resulted in an increase in investment.

Nearly all clubs interviewed suggested that the Rule had between “no impact” and “little impact” upon their strategies for training and development of players. Some clubs suggested that this was because the minimum number of home grown players was too small for the rule to have any “bite”. This view was particularly prevalent at clubs with smaller turnovers and/or based in smaller member states, who stated that they already had more locally-trained players in their first team squads than the minimum UEFA requirement. Across Europe, the CIES report states that club-trained footballers account for 22.2% of squad members, with 19% of the eleven most fielded players per club being trained at that club.<sup>143</sup> This is obviously greater than the mandatory minimum of 16% from the squad of 25 being club-trained set out in the UEFA Rule.

A minority of clubs suggested that the UEFA rule had no impact because domestic rules on player eligibility were more stringent or provided better incentives to train home grown talent. Several respondents suggested that for the UEFA Rule to have a greater impact on the training of home grown players, financial incentives needed to be offered to clubs who train young players. This view was also supported by the European Clubs Association.

A significant number of respondent clubs (mainly, but not exclusively, those with smaller budgets) thought they had identified a negative impact of the rule because they believed it interfered with their existing strategies for recruiting young players by encouraging clubs with bigger budgets to ‘poach’ or ‘hoard’ young home grown talent. However, none of these bigger-budget clubs told us that they were recruiting more young players in this way as a direct result of the Rule. On the balance of the evidence, we believe that the Rule is likely to lead to an increase in the practice of bigger teams poaching younger talent. There is some evidence of this from transfer figures: a 2012 report by CIES states that on average

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<sup>143</sup> Ibid.

teams across Europe in 2011 recruited ten players from other senior clubs (an increase of 7.7% on 2010 figures and up 16.6% since 2009). When this measure is expanded to include youth academy players, the average number of transfers in to a club is eleven (which equates to just under 45% of the average squad).<sup>144</sup>

The trend of recruiting younger and domestic players is also evident when we consider individual leagues. In the English Premier League, for example, transfer spending appears to have been affected by the domestic and UEFA rules on home grown players; although the total outlay by English clubs remains large, the overall net spend has reduced as a result of a shift towards domestic transfers. In 2010 Premier League clubs spent £356m on players, of which £99m (28%) went to other English league clubs. In 2011 well over half of total expenditure was on players from other English clubs. Similarly, in the summer 2011 transfer window, Premier League clubs spent more than £130m on players under the age of 21 compared to £60m in 2010 and £21m in 2009.

Clubs were asked whether the number of young players in their academies had increased after the introduction of the UEFA Rule in 2006/07. While some clubs identified that numbers had increased, none said that this was as a direct result of the UEFA Rule (even the club claiming to be investing in coaching staff had not increased the number of young players being trained). Several clubs noted that the number of young players in their academies had started increasing prior to, and disconnected with, the introduction of the Rule. This is supported by the data set out in Figure 7.1 above. ECA statistics suggest that on average 7.4 players in a club's first team squad spend at least three years in their academy (this equates to 28.2% of the first team squad on average), while at least half of the clubs have 20% of their first team squad that have been in the academy for five years or more. Furthermore, it is estimated that on average six academy players (almost one quarter of the senior team) effectively play for the first team.<sup>145</sup> However there are wide variations across clubs.

Club respondents told us that strategies and policies on developing home grown talent were affected not by the UEFA Rule, but by other factors. These included:

- Changes in managerial structure and personnel.
- A club's "ethos" or "tradition".
- Local economic conditions and/or the global financial situation.
- A club's financial success or failure.
- UEFA Financial Fair Play regulations.

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<sup>144</sup> CIES (2012b): 4.  
<sup>145</sup> ECA (2012): 137.

- Domestic rules (e.g. the Premier League’s EPPP, Bundesliga Licensing System).

The influence of domestic rules in particular was noticeable in the English Premier League and Bundesliga. English Premier League clubs with a tradition of developing young players told us that they had increased investment in youth player training in order to qualify for Category 1 status of the new Elite Player Performance Plan (EPPP). This is particularly interesting for this study as it may have implications for assessing whether the home grown player rule is the ‘least restrictive alternative’ for increasing club investment in young EU players in line with the test of proportionality under EU free movement law.

Only four clubs we interviewed suggested that the UEFA Rule had a significant (positive) impact on their strategy and investment with regard to the training and development of young players. It was notable that three of these clubs were what we might call ‘big fish in small ponds’; they dominated small leagues (in terms of income and recent European accomplishments) due to their domestic on-pitch success and disproportionately high income and nationwide support. The sample size of these ‘big fish small pond’ clubs was too small to be able to reach any definitive conclusion, but it is possible that for this handful of clubs, the home grown player rule does have a significant effect on player recruitment policies.

A few clubs also suggested that it was too early to assess whether the Rule was having an impact on player training and development policies, although none suggested there were plans to change theirs in the foreseeable future as a result of the UEFA Rule. The most positive outcome of the club interviews for the UEFA Rule was that no clubs indicated that it had resulted in a negative impact on the development of quality young players, as was a possible explanation for Figure 7.1 above.

### **7.3 Conclusions**

The number of club-trained and association-trained players in the squads of EU clubs has increased overall during the period the Rule has been in place when clubs are participating in UEFA competitions. The number of club and association-trained players who start competitive matches has also increased along with the number of minutes they play on average. The general number of club-trained players participating in domestic competitions has remained relatively stable since the Rule was introduced. There is, however, a slight increase in the number of club-trained players participating in domestic competitions at the top five clubs in the top five leagues. We cannot say with any certainty that the increases identified in the number of club or association-trained players in first team squads and starting XIs is a result of the UEFA Rule.

More significantly for the purposes of this study is whether the Rule has led to an increase in the quality of, or investment in, the training and development of young EU players. It is difficult to isolate the impact of the Rule in this area because other European and domestic regulations encouraging investment in training and development have been introduced during the same period and have been noted by a number of clubs and stakeholders as being more significant. Once we took these factors into account, we found little evidence that the Rule has had any significant impact on the quality of, or investment in, the training and development of young EU players. Only four clubs interviewed identified any real impact, with most dismissing the Rule as irrelevant to their longer-term strategies.

The Rule has of course only been in place for five years and it is possible that there will be an increase in investment in training and development the longer it remains in place. However this is speculation which we found little evidence in support of. Clubs and stakeholders interviewed did not identify planned future investment that would result from the Rule in its current form. Moreover, statistics on the number of young players participating in UEFA Champions League matches indicate that the real increase in the number and/or quality of young players occurred in the seasons prior to the introduction of the Rule. Indeed, the trajectory, in terms of the increasing number of young players competing in these matches, slows dramatically from the season when the Rule is first introduced, although this may be because most clubs had already exceeded their quota of home grown players (see Chapter 5).

# Chapter 8

## Free Movement of Workers: General Framework

### 8.1 Introduction, Scope and Limitations

The Court of Justice of the European Union (CJEU) has established that the general principle of equality “is one of the fundamental principles of Community law”.<sup>146</sup> This principle requires that similar situations are not treated differently unless this differentiation is objectively justified. The fundamental principle of equal treatment finds specific expression in the general prohibition of any discrimination on grounds of nationality, as laid down in Article 18 of the Treaty on the Functioning of the European Union (hereafter TFEU) and further specified in Articles 45, 49 and 56 TFEU. For this study, the authors have been requested to focus on whether the home grown player rule (‘the Rule’) breaches Article 45, which prohibits nationality discrimination that restricts the free movement of workers. This assessment will not consider whether the Rule breaches EU Competition Law under Articles 101 or 102.

### 8.2 Establishing the Legal Test

#### 8.2.1 Article 18 TFEU

Article 18 TFEU provides that “within the scope of application of this Treaty and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited”. The logic underpinning this provision reflects the EU’s desire to ensure that national governments are prevented from protecting domestic producers and workers from foreign competition, and to transmit to the peoples of Europe that the European project is not merely a commercial arrangement between states but a project from which they derive benefit.<sup>147</sup> In practical terms, Article 18 forms part of a series of provisions designed to prevent the unjustified unequal treatment between nationals of the host Member State and nationals of other Member States. This differential treatment can derive from the actions of the state itself. For example, in *Cowan* a British tourist in France was denied access to a state compensation scheme for victims of violent crime.<sup>148</sup> In referring to Article 18, the Court concluded that when EU law guaranteed a natural person the freedom to go to another Member State, that person should be accorded the same treatment as nationals residing there.

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<sup>146</sup> Cases 117/76 and 16/77 *Ruckdeschel* [1977] ECR 1753: 1769.

<sup>147</sup> Craig, P. (2012), *EU Administrative Law*, Oxford: Oxford University Press: 508-9.

<sup>148</sup> Case 186/87, *Cowan v Le Trésor Public* [1989] ECR 195.

The prohibition of discrimination on the grounds of nationality is not however solely directed at the actions of Member States. In *Angonese* the Court concluded that “the prohibition of discrimination on grounds of nationality laid down in Article 48 [now 45] of the Treaty must be regarded as applying to private persons as well”.<sup>149</sup> The general principle of non-discrimination contained in Article 18 TFEU can only be invoked independently of the other Treaty provisions where the activity is not covered by a more specific Treaty prohibition of discrimination, such as a worker’s right to free movement contained in Article 45 TFEU. These more specific Treaty prohibitions of nationality discrimination are however to be interpreted in the light of the general prohibition provided by Article 18 TFEU.

## **8.2.2 Free Movement of Workers**

### **8.2.2.1 Article 45**

Article 45 prohibits nationality discrimination that restricts the free movement of workers. Article 45(2) TFEU stipulates that freedom of movement of workers “shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment”. Article 45(3) further provides that:

[I]t shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

- (a) to accept offers of employment actually made;
- (b) to move freely within the territory of Member States for this purpose;
- (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
- (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.

### **8.2.2.2 Citizens’ Rights**

In addition to Article 45, workers enjoy rights under the Directive 2004/38 (the Citizens’ Rights Directive) and Regulation 492/2011 of 05/04/2011 on the freedom of movement for workers within the

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<sup>149</sup> Case 281/98 *Roman Angonese v Cassa di Risparmio di Bolanza SpA*, [2000] ECR I-4139, paragraph 36.

EU, codifying Regulation 1612/68 and its successive modifications (Council Regulations No 312/76 and No 2434/92, and Article 38(1) of Directive 2004/38/EC). These rights grant a worker the right of access to the labour market on non-discriminatory terms and also the right to equal treatment whilst in post. Three conditions must be met for the provisions on the free movement of workers to apply:<sup>150</sup>

#### 8.2.2.2.1 Personal Scope

Free movement rights only apply to nationals of one of the Member States.<sup>151</sup> Individuals and companies need to be engaged in economic activity. Workers benefit from free movement rights. The term ‘worker’ is an EU concept independent of definitions to be found in national laws.<sup>152</sup> If this were not the case, national law could adopt a narrow definition of the term thus preventing those carrying out genuine economic activity from benefitting from the rights contained in Article 45 and rendering that provision ineffective. For this reason the Court has consistently favoured a broad interpretation of the term. According to the Court in *Lawrie Blum* “[t]he essential feature of an employment relationship... is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration”.<sup>153</sup> As long as the work constitutes an “effective and genuine” activity and it is not “purely marginal and ancillary” it will benefit from the protections offered by Article 45.<sup>154</sup> For the sake of completeness it should also be noted that those who are not carrying out economic activity can still take advantage of free movement and non-discrimination rights as a consequence of developments in the EU’s citizenship provisions. The legal basis for the EU’s citizenship provisions resides in Article 9 of the Treaty on European Union (TEU) and in Articles 20 and 21 TFEU. Article 21 TFEU grants each EU citizen “the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect”. The ‘Citizenship Directive’ has further strengthened the EU’s citizenship provisions<sup>155</sup> as has the European Court’s desire to link citizenship rights with the principle of equal treatment and non-discrimination on the grounds of nationality found in Article 18 TFEU. The effect of these provisions is to remove the economic activity requirement thus bringing within the scope of the Treaty non-economic activities previously excluded.

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<sup>150</sup> For extended discussion see Bernard, C. (2010), *The Substantive Law of the EU*, Oxford: Oxford University Press: 226 - 35.

<sup>151</sup> Article 20(1) TFEU.

<sup>152</sup> Case 75/63 *Hoekstra* [1964] ECR 177.

<sup>153</sup> Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraph 17.

<sup>154</sup> Case 53/81 *Levin* [1982] ECR 1035, paragraph 17.

<sup>155</sup> Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L 158/77.

#### 8.2.2.2.2 Material and Territorial Scope

There must be a cross border element for the free movement provisions to apply – for example an individual moving their residence to another Member State for the purpose of employment. This requirement prevents situations wholly internal to a Member State from engaging the Treaty. The purely hypothetical prospect of exercising the right to free movement is also insufficient to engage the Treaty.<sup>156</sup>

#### 8.2.2.2.3 Invocation of the Rules

If the above two criteria are satisfied, the remaining question concerns whether the free movement rules can be invoked against the party imposing the alleged restriction. Article 45 is both vertically and horizontally directly effective. Therefore, it is not solely directed at the actions of Member States (vertical) but also applies to the actions of private bodies, the rules of which are aimed at collectively regulating gainful employment and services (horizontal).<sup>157</sup> This applies not only to bodies carrying out quasi-state functions but also applies to purely private persons.<sup>158</sup> Furthermore, “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, can be located within the territory of the EU”.<sup>159</sup>

### 8.2.3 Direct Discrimination

The Court does not treat all restrictions under Article 45 in the same way. In particular, the Court draws a distinction between directly and indirectly discriminatory measures that restrict a worker’s free movement and other restrictions that are non-discriminatory in nature. Direct discrimination is an overt form of differential treatment to be found in circumstances in which the migrant worker is treated less favourably than the national worker. Such differential treatment is prohibited by Article 45 and related secondary legislation. This prohibition applies not only to circumstances in which migrant workers are totally excluded from a particular activity<sup>160</sup> but also to situations in which a quota on the number of migrant workers is adopted. So in *Bosman*, nationality quotas in professional club football were condemned<sup>161</sup> and in *Commission v France* the Court struck down a French rule requiring a ratio of three French seamen to one non-French seaman on a merchant ship.<sup>162</sup> Similarly, Article 4(2) of Regulation 492/2011 provides

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<sup>156</sup> Case C-299/95 *Friedrich Kremzow v Republik Österreich* [1997] ECR I-2629.

<sup>157</sup> Case 36/74 *Walrave v Union Cycliste Internationale* [1974] ECR 1405, paragraph 17.

<sup>158</sup> Case 281/98 *Roman Angonese v Cassa di Risparmio di Bolzanza SpA*, [2000] ECR I-4139, paragraph 36.

<sup>159</sup> Case 36/74 *Walrave*, paragraph 28.

<sup>160</sup> Case C-283/99 *Commission v Italy* [2001] ECR I-4363.

<sup>161</sup> Case C-415/93 *Bosman* [1995] ECR I-4921, hereafter referred to as *Bosman*.

<sup>162</sup> Case 167/73 *Commission v France (French merchant seamen)* [1974] ECR 359.

that if there is a requirement that an undertaking has to employ a minimum percentage of national workers, then migrant workers should count as national workers. Direct discrimination can only be justified with reference to one of the express Treaty derogations, namely public policy, public security or public health.<sup>163</sup> It should also be recognised that free movement of rights of workers does not apply to “employment in the public service” (Article 45(4)). This exception applies only to those posts that involve “...participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State...”<sup>164</sup> and enables exclusion from employment but not differential conditions once employed.<sup>165</sup>

#### **8.2.4 Indirect Discrimination**

Indirect discrimination is a less overt form of differential treatment and is also prohibited by Article 45 and related secondary legislation. In *O’Flynn*, the Court of Justice stated that conditions imposed by national law must be regarded as indirectly discriminatory where, although applicable irrespective of nationality, they only affect migrant workers, or the great majority of those affected are migrant workers, where they are indistinctly applicable but can more easily be satisfied by national workers than by migrant workers, or where there is a risk that they may operate to the particular detriment of migrant workers.<sup>166</sup> Article 3(1) of Regulation 492/2011 specifies that even though the national measure is applied without reference to nationality, it will still be prohibited if the “principal aim or effect is to keep nationals of other Member States away from employment offered”. Classic examples of indirectly discriminatory measures include residency requirements.<sup>167</sup> 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 migrant workers at a particular disadvantage.<sup>168</sup> As with directly discriminatory measures, indirect discrimination can be saved by one of the express Treaty derogations. In addition, indirect discrimination can also be justified with reference to an open-ended set of justifications discussed below.

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<sup>163</sup> Case C-388/01 *Commission v Italy* [2003] ECR I-721 paragraph 19.

<sup>164</sup> Case 149/79 *Commission v Belgium* [1980] ECR 3881 paragraph 10.

<sup>165</sup> Case 152/73 *Sotgiu* [1974] ECR 153 paragraph 4.

<sup>166</sup> Case C-237/94 *O’Flynn v Adjudication Officer* [1996] ECR 2631, paragraph 18. See TMC Asser Institute, Edge Hill University and Leiden University (2010), *Study on the Equal Treatment of Non-Nationals in Individual Sports Competitions*, Report for the European Commission: 16.

<sup>167</sup> Case C-138/02 *Collins* [2004] ECR I-2703.

<sup>168</sup> Bernard (2010): 241.

### 8.2.5 Non-Discriminatory Measures

From the above it would appear that only discriminatory measures fall foul of EU free movement law. However, the Court has moved beyond the non-discrimination model to a market access model which focuses on removing discriminatory and non-discriminatory *obstacles* or *restrictions* to free movement.<sup>169</sup> Therefore, Article 45 prohibits not only direct or indirect nationality discrimination, but also any restriction applied without reference to the nationality of the worker concerned but which is liable to prohibit or otherwise impede their freedom of movement.<sup>170</sup> So in *Bosman* the Court concluded that “[p]rovisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement... constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned”.<sup>171</sup> In *Kraus*, the Court stated that even though a measure was neutral in terms of nationality, the question was whether it was “liable to hamper or to render less attractive” the exercise of the fundamental freedoms.<sup>172</sup> If the effect of the national measure is “too uncertain and indirect... to be capable of being regarded as liable to hinder free movement for workers”, then the measure is not prohibited by Article 45 and the applicable secondary legislation. The same justificatory regime as is presented under indirectly discriminatory measures applies.

### 8.2.6 Justifications

As stated above, directly discriminatory measures can only be saved with reference to one of the express Treaty derogations of public policy, public security or public health. Indirectly and non-discriminatory restrictions are subject to a wider justificatory regime. Beyond the Treaty derogations, such restrictions can be potentially justified with reference to an open-ended set of ‘objective justifications’ which, according to Bernard, are the functional equivalent of “public” or “general interest” or “imperative requirements” found in establishment and services law.<sup>173</sup> In essence, by adopting this approach, the Court is recognising that certain objectives and interests are sufficiently important to trump the rights enshrined in free movement law. In *Gebhard*, the Court of Justice confirmed the test of objective justification applicable to the free movement of workers, services and establishment. It stated that:

“...national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be

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<sup>169</sup> Case C-76/90 *Säger* [1991] ECR I-4221. For discussion see Bernard (2010), Chapters 8-9.

<sup>170</sup> Case C-464/02 *Commission v Denmark (Danish Company Cars)* [2002] ECR I-7929, paragraph 45.

<sup>171</sup> Case 415/93 *Bosman*, paragraph 96.

<sup>172</sup> Case C-19/92 *Kraus* [1993] ECR I-1663, paragraph 32.

<sup>173</sup> Bernard (2010): 511.

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”.<sup>174</sup>

One such category of justifications recognised by the Court relates to the protection of certain ‘socio-cultural’ practices and it is here that the categories of justifications most relevant to sport exist.<sup>175</sup> It should be noted that the Court has rejected economic aims as justification for placing restrictions on the free movement of workers even though it is in practice difficult to distinguish economic from non-economic aims. The Court has also made clear that the burden of demonstrating the strength and proportionality of the justifications relied on rests with the party that has imposed the measures.

### **8.2.7 Proportionality: The Tests of Suitability and Necessity**

Even if the Court has accepted that the indirectly or non-discriminatory measure pursues a legitimate objective, the third and fourth strands of the *Gebhard* test must still be satisfied. This involves demonstrating the suitability of the measure for securing the attainment of the objective which they pursue and persuading the Court that the measure does not go beyond what is necessary in order to attain it. This is often referred to as the *suitability* and *necessity* test. The first is essentially a ‘means and end test’ whilst the second involves balancing competing interests. Again, the burden of proof lies with the party imposing the measure. According to Harbo, “[h]ow the court decides to interpret the proportionality principle depends... on how strictly or not it reviews the regulatory authorities’ assessment of the suitability of the measures and how creative it is when proposing the less restrictive alternatives”.<sup>176</sup>

In this regard Tridimas claims that when assessing the proportionality of a measure, the CJEU adopts a less intensive level of scrutiny when reviewing EU measures as opposed to national measures.<sup>177</sup> This is because the underlying interests which proportionality seeks to protect are different in each case. According to Tridimas, in relation to EU measures the Court seeks to balance private interest with a public interest and will generally defer to the expertise of the legislature. Therefore, the Court will only strike down an EU measure if it is “manifestly inappropriate” to achieve its objectives. In contrast, the Court adopts a much stricter approach in relation to assessing the compatibility of national measures with EU law, the later approach reflecting “a very strong substantial bias, namely that of promoting European integration”.<sup>178</sup> Therefore, it can be concluded that in relation to measures that restrict free movement in the EU, the Court will generally adopt less intensive scrutiny of EU measures than national measures.

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<sup>174</sup> Case C-55/94 *Gebhard* [1991] ECR I-4165, paragraph 37.

<sup>175</sup> For the categories of justification see: Chalmers, D. *et al*, (2006), *EU Law*, Cambridge: Cambridge University Press: 833-4.

<sup>176</sup> Harbo, T., (2010), The Function of the Proportionality Principle in EU Law, *European Law Journal*, 16(2), March: 172.

<sup>177</sup> Tridimas, T., (2006), *The General Principles of EU Law*, Oxford: Oxford University Press: 137.

<sup>178</sup> Harbo (2010): 172.

### **8.3 Conclusions**

Article 45 and related secondary legislation prohibits nationality discrimination that restricts the free movement of workers. The Court does not treat all restrictions under Article 45 in the same way. In particular, the Court draws a distinction between directly and indirectly discriminatory measures that restrict a worker's free movement and other restrictions that are non-discriminatory in nature. Direct discrimination can only be justified with reference to one of the express Treaty derogations, namely public policy, public security or public health. Indirectly and non-discriminatory restrictions are subject to a wider open-ended justificatory regime ('objective justifications'). Under this framework, in order to escape condemnation under Article 45 and related secondary legislation, the indirectly or non-discriminatory contested measure must pursue a legitimate objective and must be suitable for securing the attainment of that objective, and the measure must not go beyond what is necessary in order to attain it.

# Chapter 9

## Legal Analysis of the Rule and Conclusions

### 9.1 The Test to be Applied

As presented in Chapter 8, in *Gebhard* the Court established a four-pronged test for assessing whether national measures are liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty:

1. they must be applied in a non-discriminatory manner;
2. they must be justified by imperative requirements in the general interest;
3. they must be suitable for securing the attainment of the objective which they pursue;
4. and they must not go beyond what is necessary in order to attain it'.<sup>179</sup>

Each stage of the test will be applied in turn to the UEFA home grown player rule (the Rule) based on the data introduced and analysed in the preceding Chapters.

### 9.2 Stage 1: Applied in a Non-Discriminatory Manner

#### 9.2.1 Who are the likely complainants?

Before an assessment is made concerning whether the home grown player rule amounts to a restriction, and of what nature, it must first be established who the complainant might be. This study does not assess the causes of action in EU competition law for clubs<sup>180</sup> and neither does it examine the limits of the European Commission's enforcement powers against private parties.<sup>181</sup> The focus of this current assessment lies, therefore, within the terrain of free movement law. A professional footballer could object to the home grown player rule on the grounds that it amounts to a provision which precludes or deters him from leaving his country of origin in order to exercise his right of freedom of movement. This is because

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<sup>179</sup> Case C-55/94 *Gebhard* [1991] ECR I-4165, paragraph 37.

<sup>180</sup> For brief comment see 2.5 above.

<sup>181</sup> For a sports specific example see Case T-341/10 *F91 Diddeleng v Commission*, Order of 16<sup>th</sup> April 2012.

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 that player does not 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. As the Court of Justice has already held in *Bosman*, “a rule which restricts that participation obviously also restricts the chances of employment of the player concerned”.<sup>182</sup>

### **9.2.2 Can professional footballers invoke free movement rights?**

Article 45 prohibits nationality discrimination that restricts the free movement of workers. It is clear that professional sportspersons are workers since, for the period of their contract of employment, they perform services for and under the direction of the club in return for which they receive remuneration. The work of a professional footballer is an ‘effective and genuine’ activity and it is not ‘purely marginal and ancillary’ as per the *Levin* test.<sup>183</sup> In *Bernard*, the Court established that “where a sporting activity takes the form of gainful employment or the provision of services for remuneration, which is true of the activities of semi-professional or professional sportsmen, it falls, more specifically, within the scope of Article 45 TFEU”.<sup>184</sup> It went on to find that a professional footballer’s, “gainful employment falls within the scope of Article 45 TFEU”.<sup>185</sup> Economically active minors, such as young footballers, also possess free movement rights within the EU. Placing restrictions on their movement may engage EU provisions on free movement of workers, notwithstanding the EU’s acceptance of the need to protect minors.<sup>186</sup> Free movement rights are limited to those holding the nationality of one of the Member States. However, in *Kolpak*, *Simutenkov* and *Kahveci*, the Court of Justice held that non-EU sportsmen and women covered by non-discrimination provisions contained within association agreements concluded between the EU and non-EU states cannot be discriminated against in terms of working conditions, remuneration or dismissal when they are legally employed in the territory of the Member State.<sup>187</sup>

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<sup>182</sup> Case 415/93 *Bosman*, paragraph 120.

<sup>183</sup> Case 53/81 *Levin* [1982] ECR 1035, paragraph 17.

<sup>184</sup> Case 325/08 *Bernard*, paragraph 28.

<sup>185</sup> Case 325/08 *Bernard*, paragraph 29.

<sup>186</sup> See Council Directive 94/33/EC of 22 June 1994 on the Protection of Young People at Work.

<sup>187</sup> Case C-438/00 *Kolpak* [2003] ECR I-4135. Case C-265/03 *Simutenkov* [2005] ECR I-2579. Case C-152/08 *Kahveci*.

### 9.2.3 *Can free movement rights be invoked against UEFA?*

The Court of Justice has established that Article 45 TFEU extends not only to the actions of public authorities, but also to rules of any other nature aimed at regulating gainful employment in a collective manner.<sup>188</sup> As the Court has consistently argued,

“[s]ince working conditions in the different Member States are governed sometimes by provisions laid down by law or regulation and sometimes by collective agreements and other acts concluded or adopted by private persons, a limitation of the application of the prohibitions laid down by Article 45 TFEU to acts of a public authority would risk creating inequality in its application”.<sup>189</sup>

Whereas in *Bernard* the contested measure derived from a national collective agreement, the home grown player rule is an act laid down by a private association – UEFA. In this regard, UEFA is to be considered a private collective regulator in so far as its rules determine the terms on which professional sportsmen can engage in gainful employment.<sup>190</sup> These rules, and in particular the rules governing home grown players, have the potential to affect access to the labour market and economic activity once in post.

As to the territorial scope of the free movement test, the Court has established that EU law applies to 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*, can be located within the territory of the EU.<sup>191</sup> This renders irrelevant any suggestion that as UEFA is located in non-EU Switzerland, its actions escape the reach of EU law.

### 9.2.4 *Does the home grown player rule relate to a wholly internal situation?*

Free movement provisions cannot be applied to situations that are wholly internal to a Member State. The enactment by UEFA of the home grown player rule cannot be described as a wholly internal situation. Whilst it is true that some leagues in Europe have adopted home grown player rules specific to their leagues, the UEFA rule is applicable to pan-European competitions. Furthermore, regardless of whether the rule derives from a national league or the European governing body, “[p]rovisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement therefore constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned”.<sup>192</sup>

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<sup>188</sup> Case 36/74 *Walrave and Koch* [1974] ECR 1405, paragraph 17. See also Case C-415/93 *Union Royale Belge Sociétés de Football Association and others v Bosman and others* [1995] ECR I-4921, paragraph 82.

<sup>189</sup> Case 325/08 *Bernard*, paragraph 31.

<sup>190</sup> Case 415/93 *Bosman*, paragraph 87.

<sup>191</sup> Case 36/74 *Walrave*, paragraph 28. See also Case C-281/98 *Angonese* ECR [2000] I-4139 paragraph 36.

<sup>192</sup> Case 415/93 *Bosman*, paragraph 96.

### 9.2.5 *Is the home grown player rule covered by a sporting exception?*

In *Walrave* the Court of Justice declared that sport is subject to European law “only in so far as it constitutes an economic activity” and that the prohibition on nationality discrimination “does not affect the composition of sport teams, in particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity”.<sup>193</sup> A combined reading of paragraphs 4 and 8 gave rise to the so called ‘sporting exception’ in European law 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.<sup>194</sup>

In the slightly later case of *Donà*, the Court considered the legality of nationality discrimination in Italian professional club football as opposed to national team competitions. In his Opinion, AG Trabucchi argued that considerations of purely sporting interest could justify the imposition of restrictions on the signing, or at least on the participation in official championship matches, of foreign players so as to ensure that the winning team would be representative of the state of which it is the champion team. Trabucchi considered this reasonable given that the team which wins the national championship is often chosen to represent its own state in international competitions.<sup>195</sup> The Court declined this invitation and instead argued that although players enjoy protection under EU law, those provisions do not preclude the adoption of rules “excluding foreign players from participation in certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only such as, for example, matches between national teams from different countries”.<sup>196</sup> These rules must remain limited to its proper objective.<sup>197</sup>

In *Bosman*, the Court considered, *inter alia*, a UEFA rule amounting to a quota system in which clubs wishing to enter European competitions could only field three overseas players and two assimilated players (the ‘3+2 rule’). Attempts to rely on the sporting exception were rejected by the Court. Citing paragraphs 14 and 15 of *Donà*, the Court 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”.<sup>198</sup> The Court 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

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<sup>193</sup> Case 36/74 *Walrave and Koch* [1974] ECR 1405, paragraphs 4 and 8.

<sup>194</sup> For comprehensive treatment see Parrish, R. and Miettinen, S (2008), *The Sporting Exception in European Union Law*, The Hague: TMC Asser Press.

<sup>195</sup> Opinion of Advocate-General Trabucchi in Case 13/76 *Donà v Mantero* [1976] ECR 1333, 1344.

<sup>196</sup> Case 13/76 *Donà v Mantero* [1976] ECR 1333, paragraph 14.

<sup>197</sup> Case 13/76 *Donà v Mantero* [1976] ECR 1333, paragraph 15.

<sup>198</sup> Case 415/93 *Bosman*, paragraph 76.

essence of the activity of professional players”.<sup>199</sup> Similarly, in *Kolpak*, the Court considered the level of protection from nationality discrimination afforded to non-EU nationals who were protected by association agreements containing non-discrimination clauses. The Court rejected the location of such differential treatment within the ‘sporting exception’ by employing the same language found in *Bosman*.<sup>200</sup>

It is clear that the home grown player rule is not covered by the purely sporting rule exception. For financial and prestige reasons, participation in European competitions has become a key objective of clubs and a club’s participation in European competition 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 home grown player rule therefore affects the essence of the activity of a professional player.

Furthermore, the ability of UEFA to rely on the ‘purely sporting interest’ exception to remove the Rule from the scope of the Treaty has been undermined by the Court’s approach to the sporting exception in *Meca-Medina* in which it stated that, “... it is apparent 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”.<sup>201</sup> The Court went on to say that,

“[i]f the sporting activity in question falls within the scope of the Treaty, the conditions for engaging in it are then subject to all the obligations which result from the various provisions of the Treaty. It follows that the rules which govern that activity must satisfy the requirements of those provisions, which, in particular, seek to ensure freedom of movement for workers, freedom of establishment, freedom to provide services, or competition”.<sup>202</sup>

The home grown player rule cannot therefore be automatically removed from the scope of the Treaty without systematic analysis to establish whether the contested measure amounts to a restriction or not. 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.

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<sup>199</sup> Case 415/93 *Bosman*, paragraph 128.

<sup>200</sup> Case C-438/00 *Kolpak* [2003] ECR I-4135, paragraph 54.

<sup>201</sup> Case C-519/04 P *David Meca-Medina and Igor Macjzen v Commission* [2006] ECR I-6991, paragraph 27.

<sup>202</sup> Case C-519/04 *Meca-Medina*, paragraph 28.

### 9.2.6 Does the home grown player rule amount to an ‘inherent’ rule?

Not all contested rules falling within the scope of the Treaty will be condemned. In *Meca-Medina*, the Court established that while the contested anti-doping rules could not be categorised as rules 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”.<sup>203</sup> Such restraints cease to be necessary when they are disproportionate.<sup>204</sup> In applying the inherency test, the Court stated that account must first of all be taken of the overall context in which the decision of the association of undertakings was taken, or produces its effects, 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.<sup>205</sup> This approach, although developed in the context of the EU’s competition provisions, is appropriate for transposition into a free movement context.<sup>206</sup>

Indeed, the logic of ‘inherent rules’ had already found expression in a free movement case. In *Deliège*, the referring Belgian court asked the CJEU to consider whether it is contrary to Articles 56, 101 and 102 TFEU to require professional or semi-professional athletes, or those wishing to become so, to be authorized by their federation in order to be able to compete against each other in an international competition which does not involve national teams.<sup>207</sup> The Court argued that the selection rules for high-profile international tournaments did not restrict access to the labour market.<sup>208</sup> Part of the Court’s reasoning was that 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”.<sup>209</sup> The Court acknowledged that the choice of criteria is based on a large number of considerations unconnected with the personal situation of any athlete, such as the nature, the organisation and the financing of the sport concerned.<sup>210</sup> It continued that “it naturally falls to the bodies concerned... to lay down appropriate rules and to make their selections in accordance with them”.<sup>211</sup> This is because the governing bodies, in this case the Belgian Judo Federation, possess “the necessary knowledge and experience” to exercise such judgement and that this “is the arrangement normally adopted in most

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<sup>203</sup> Case C-519/04 *Meca-Medina* paragraph 45.

<sup>204</sup> Case C-519/04 *Meca-Medina* paragraph 47.

<sup>205</sup> Case C-519/04 *Meca-Medina*, paragraph 45.

<sup>206</sup> See TMC Asser Institute, Edge Hill University & Leiden University (2010), *Study on the Equal Treatment of Non-Nationals in Individual Sports Competitions*, Report for the European Commission: 225. See also, Weatherill, S. (2006), *Anti-Doping Revisited – the Demise of the Rule of ‘Purely Sporting Interest’*, *European Competition Law Review*, 27(12): 645.

<sup>207</sup> Joined Cases C-51/96 and C-191/97, *Deliège v Ligue francophone de Judo et disciplines Associées Asb* [2000] ECR I-2549, hereafter referred to as *Deliège*.

<sup>208</sup> Joined Cases C-51/96 and C-191/97 *Deliège*, paragraph 61.

<sup>209</sup> Joined Cases C-51/96 and C-191/97 *Deliège*, paragraph 64.

<sup>210</sup> Joined Cases C-51/96 and C-191/97 *Deliège*, paragraph 65.

<sup>211</sup> Joined Cases C-51/96 and C-191/97 *Deliège*, paragraph 67.

sporting disciplines”.<sup>212</sup> A limit on the number of competitors that could be selected did not “in itself, as long as it derives from a need inherent in the organisation of such a competition, restrict the freedom to provide services”.<sup>213</sup>

However, the inherency rule does not apply to UEFA’s home grown player rule because the rule does not derive from a need inherent in the organisation of the UEFA competitions in question. The organisation of the UEFA Champions League and the UEFA Europa League is not inherently linked to a regulation that has the effect of favouring nationals over non-nationals. It is clear that UEFA competitions (most strikingly the Champions League) had thrived in terms of both popular interest and commercial income prior to the introduction of this rule 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 Court limited its acceptance of rules ‘inherent’ to the proper organisation of sport to non-discriminatory rules that bore no relationship to nationality. The home grown player rule does not fall into this nationality category as it amounts to indirect discrimination (as is discussed below). To illustrate, in *Deliège* the Court found that,

“[i]t must be pointed out that, in contrast to the rules applicable to the Bosman case, the selection rules at issue in the main proceedings do not determine the conditions governing access to the labour market by professional sportsmen and do not contain nationality clauses limiting the number of nationals of other Member States who may participate in a competition”.<sup>214</sup>

It should also be recalled that even those rules categorised as ‘inherent’ must also still satisfy the requirements of proportionality control.

### ***9.2.7 Does Article 165 TFEU offer additional protection?***

Article 6 TFEU establishes sport as a third tier supporting competence of the Union. Unlike in areas in which the EU has exclusive competence, or shares this competence with the Member States, supporting competences are limited to actions to support, coordinate or supplement the actions of the Member States. Sport is located in subsection (e): education, vocational training, youth and sport.

Article 165(1) TFEU provides that “The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function”. The wording of 165(1) does not unequivocally establish that, “taking

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<sup>212</sup> Joined Cases C-51/96 and C-191/97 *Deliège*, paragraph 68.

<sup>213</sup> Joined Cases C-51/96 and C-191/97 *Deliège*, paragraph 69.

<sup>214</sup> Joined Cases C-51/96 and C-191/97 *Deliège*, paragraph 61.

account of the specific nature of sport” is 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. Article 11 TFEU states that “[e]nvironmental protection requirements *must* be integrated into the definition and implementation of the Union’s policies and activities...”

This means that it cannot automatically be assumed that “taking account of the specific nature of sport” offers the home grown player rule any additional protection from EU law. The jurisprudence of the Court on Article 165 is not, currently, sufficiently developed to allow for definitive statements on this question. In *Bernard*, the Court found that:

“...in considering whether a system which restricts the freedom of movement of such players is suitable to ensure that the said objective is attained and does not go beyond what is necessary to attain it, account must be taken ...of the specific characteristics of sport in general, and football in particular, and of their social and educational function. The relevance of those factors is also corroborated by their being mentioned in the second subparagraph of Article 165(1) TFEU”.<sup>215</sup>

From this statement, it appears that the Court prefers the well-trodden path of objective justification albeit acknowledging that Article 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 by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen”. Regardless of the horizontal question, Article 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, Article 165 is likely to be cited by both those who may wish to support and attack the rule on the “fairness and openness” question.<sup>216</sup> Similarly, the home grown player rule requires assessment in relation to the Treaty objective of protecting minors in sport.

It has been assumed in some quarters that the existence of Article 165 TFEU adjusts the proposition that sport is subject to EU law. This assumption must be rejected – sporting activity is still subject to European law. However, Article 165 might adjust the sensitivity to which EU law is applied to sport,

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<sup>215</sup> Case C-325/08 *Bernard*, paragraph 40.

<sup>216</sup> See for example, Weatherill, S. (2010), Fairness, Openness and the Specific Nature of Sport: Does the Lisbon Treaty Change EU Sports Law, *The International Sports Law Journal*, 2010/3-4: 11-17. Indeed UEFA has already articulated such a plea: UEFA’s Position on Article 165 of the Lisbon Treaty, accessed at: [http://www.uefa.com/MultimediaFiles/Download/uefaorg/EuropeanUnion/01/57/91/67/1579167\\_DOWNLOAD.pdf](http://www.uefa.com/MultimediaFiles/Download/uefaorg/EuropeanUnion/01/57/91/67/1579167_DOWNLOAD.pdf). See also, Parrish, R., García, B., Miettinen, S., & Siekmann, R., (2010), *The Lisbon Treaty and EU Sports Policy*, Report for the European Parliament Committee on Culture and Education, Brussels: European Parliament: chapter 3.

although in this regard it is difficult to discern from the existing jurisprudence of the European Court and the decisional practice of the Commission, a pattern of insensitive application of EU law to sport. The relevance of Article 165 lies not only in shaping what is to be considered a legitimate objective, but 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. Whilst in these contexts the impact of Article 165 might be significant, categorically it can be stated that Article 165 does not grant sport, and specifically the home grown player rule, immunity from the application of EU law.

### **9.2.8 What is the nature of the restriction?**

From the foregoing it is suggested that the home grown player rule is incapable of being defined as either a ‘purely sporting’ rule which falls outside the scope of the Treaty or an ‘inherent’ rule which avoids classification as a restriction under Article 45. The existence of Article 165 TFEU does not adjust this proposition. The Rule therefore amounts to a restriction and in order to escape condemnation under Article 45 must satisfy the final three stages of the *Gebhard* test. Before these stages receive attention, it is first necessary to establish the precise nature of the restriction.

It is clear from *Bosman* that rules which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question are prohibited by Article 45 of the Treaty and relevant secondary legislation. This amounts to direct nationality discrimination, the nature of which is addressed above. The home grown player rule places no such direct restraint on non-nationals and so cannot be considered directly discriminatory. Any non-national can qualify as a home grown player if they meet the relevant criteria, namely if they have 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.

Due to the specific focus of this study it also not relevant to comprehensively consider the now defunct ‘6+5’ proposal of FIFA.<sup>217</sup> The proposal was that a football club must begin a game with at least six players entitled to play for the national team of the country where the club concerned is located. As with UEFA’s rule, FIFA’s stated aim was to promote fairness in European competitions by guaranteeing equality in sporting and financial terms between clubs, promoting junior players, improving the quality of national teams, and strengthening the regional and national identification of clubs and a corresponding link with the public.<sup>218</sup> This measure would be incompatible with EU free movement law as it gives rise

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<sup>217</sup> The 60<sup>th</sup> FIFA Congress meeting in Johannesburg in June 2010 decided to withdraw the 6+5 proposal.

<sup>218</sup> As stated in Institute of European Affairs (2008), *Expert Opinion Regarding the Compatibility of the 6+5 Rule with European Community Law*, 24/10/08.

to direct nationality discrimination which cannot find shelter within the express Treaty derogations of public policy, public security and public health. The suggestion, raised in an expert opinion on the 6+5 rule, that the measure does not constitute direct discrimination because it relates to eligibility to play for the national side and not to nationality, must be rejected.<sup>219</sup> Nationality is the essence of the eligibility criteria meaning that all non-nationals are excluded. This is a form of overt discrimination.

It must be stressed that the European labour market for professional players is already very open. There can be few professions characterised by such fluidity between Member States, with an average of 42.47% of football players in the top five European league being expatriates.<sup>220</sup> It may even be possible that the home grown player rule promotes free movement for some young players by further incentivising the cross border movement of those between the ages of 15 and 21; it is rational for clubs to attract the best players to their academies regardless of the player's nationality (for more discussion on whether the Rule restricts free movement see section 9.4.3 below on 'The Necessity Test Applied to the Rule'). However, as the Commission has acknowledged,

“[a]lthough 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”.<sup>221</sup>

This could amount to a form of covert discrimination because even though the rule 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 has already been outlined above, proof of indirect discrimination does not require the applicant to demonstrate that the national measure in practice affected a higher proportion of foreign workers, but merely that the measure was intrinsically liable to affect migrant workers more than nationals and that there was a risk that it will place migrant workers at a particular disadvantage. Nevertheless, data presented in Chapter 5 demonstrates that considerably more nationals meet the home grown criteria than non-nationals thus confirming the indirectly discriminatory effect.

It is our conclusion that the UEFA Rule does not amount to direct discrimination but that it does constitute indirect discrimination against EU workers on the grounds of their nationality. As a result, it

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<sup>219</sup> Institute of European Affairs (2008), *Expert Opinion Regarding the Compatibility of the 6+5 Rule with European Community Law*, 24/10/08.

<sup>220</sup> This figure has remained relatively constant over the last five years. CIES Professional Player Observatory, 2012

<sup>221</sup> Commission Press Release IP/08/807, *UEFA rule on home-grown players: compatibility with the principles of free movement of persons*, 28/05/08.

must be justified, suitable and necessary in order to be considered defensible under EU laws on freedom of movement. The legal assessment will now proceed to consider these tests.

### 9.3 Stage 2: Justified by Imperative Requirements in the General Interest

Determining that the home grown player 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 Article 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 European Court jurisprudence that guides our assessment as the Court has established a set of imperative requirements specific to sport. In *Bosman* the Court found that,

“[i]n view of the considerable social importance of sporting activities and in particular football in the Community, the aims of 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 must be accepted as legitimate”.<sup>222</sup>

In *Lehtonen*, the Court determined that late transfers could substantially alter the sporting strength of teams in the course of the championship thus calling into question the proper functioning of sporting competition.<sup>223</sup> In *Meca-Medina* the Court 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”.<sup>224</sup> In *Bernard* it was decided that a system of training compensation in sport which restricts the freedom of movement of players could be justified with reference to the need to ensure that the objective of educating and training young players is secured.<sup>225</sup>

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 it is for the Court to develop this list through its jurisprudence. Nonetheless, according to existing jurisprudence, the twin stated objectives of the home grown player rule - preserving a competitive balance between clubs and encouraging the education and training of young players - are therefore to be considered legitimate.

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<sup>222</sup> Case 415/93 *Bosman*, paragraph 106.

<sup>223</sup> Case C-176/96 *Lehtonen and Castors Braine* [2000] ECR I-2681, paragraph 54, hereafter referred to as *Lehtonen*.

<sup>224</sup> Case C-519/04 P *David Meca-Medina and Igor Macjen v Commission* [2006] ECR I-6991.

<sup>225</sup> Case C-325/08 *Olympic Lyonnais v Bernard & Newcastle United*.

In this connection, it must be acknowledged that the objectives of the home grown player rule have received support from some of the institutions of the EU. For example, in its Resolution on the European Dimension on Sport, the European Parliament:

“[r]eaffirms its commitment to the home-grown player rule, and considers that could be a model for other professional leagues in Europe; supports further efforts of sports governing bodies that stimulate the training of local young players within the limits of EU law thus strengthening the competitive balance within competitions and the healthy development of the European sports model”.<sup>226</sup>

It added that it “[c]onsiders that the development of new talent is one of the core activities of a sports club, and that an over-dependence on the transfer of players can undermine sporting values”.<sup>227</sup> The Commission has also stated that “the objectives underlying UEFA’s ‘home-grown players’ rule, namely promoting training for young players and consolidating the balance of competitions, seem to be legitimate objectives of general interest, as they are inherent to sporting activity”.<sup>228</sup>

There is particular concern that the attrition rate for young footballers is high meaning that those not signing professional contracts with clubs face the prospect of having to find alternative employment. The risk is that during that player’s sporting development, his general educational needs are side-lined thus harming his non-footballing employment prospects. As a player’s career is relatively short, and susceptible to early curtailment through injury, even those players with employment contracts with clubs should consider the quality of their educational development during the period of their sporting development. An early focus on dual careers could assist with the reintegration of the player at the end of his career.<sup>229</sup> Article 165 TFEU emphasised the importance of protecting the physical and moral integrity young sportsmen and women and this was confirmed as official policy of the EU in December 2008 at which point the European Council issued a Declaration on Sport which called for “the strengthening of... dialogue with the International Olympic Committee and representatives of the world of sport, in particular on the question of combined sports training and education for young people”.<sup>230</sup> In the subsequent Communication on Sport, the Commission emphasised,

“the importance of ensuring that young high-level athletes are offered quality education in parallel to their sport training. Young athletes, in particular those coming from third countries to train and compete in Europe, face multiple risks linked to their vulnerability. The quality of sport training

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<sup>226</sup> European Parliament Resolution of 2 February 2011 on the European Dimension in Sport, (2011/2087(INI), paragraph 72.

<sup>227</sup> European Parliament Resolution of 2 February 2011 on the European Dimension in Sport, (2011/2087(INI), paragraph 73.

<sup>228</sup> Commission Press Release IP/08/807, *UEFA rule on home-grown players: compatibility with the principles of free movement of persons*, 28/05/08.

<sup>229</sup> See COM(2007) 391 final, *White Paper on Sport*, Brussels, 11/07/07, s2.3.

<sup>230</sup> European Council Declaration on Sport, Brussels, 12<sup>th</sup> December 2008, 17271/08, Annex 5.:21.

centres and their staff should be sufficiently high in order to safeguard the athletes' moral and educational development and professional interests".<sup>231</sup>

According to the Commission's 2008 study on training of young sportsmen/women in Europe 2008, the home grown player rule "may allow young football players to stay as long as possible in their local environment, which is important for their personal stability and provide them with the chance to benefit from a dual career".<sup>232</sup> It is suggested that proximity to the home environment and familiarity with the native language benefits a young person's educational and sporting development. Of course, this benefit needs to be weighed against the risk that the Rule creates and sustains a trade in young players thus facilitating their movement away from the home environment. Our statistical analysis in Chapter 5 suggests that the introduction of the home grown player rule has coincided with an increase in the cross-border migration of young players, although data gathered from clubs and discussed in Chapter 7 provided little evidence that this was as a direct result of the UEFA rule.

Based upon the European Court's decisions in *Bosman*, *Lehtonen* and *Bernard* it is our assessment that the UEFA Rule can potentially be justified by an imperative requirement in the general interest, namely:

- a) The need to improve player training, education and development, and
- b) The need to protect competitive balance.

As a result, we will be assessing the home grown player rule against these criteria. It should, however, be noted that we do not consider that some of the other objectives of the rule that were stated at the time of its inception would be viewed by the Court as being imperative requirements in the general interest (and indeed some were directly excluded from this category in *Bosman*). These excluded objectives include strengthening national teams<sup>233</sup> and protecting links between club sides and their national identities.<sup>234</sup>

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<sup>231</sup> COM(2011), *Developing the European Dimension in Sport (the Communication on Sport)*, final, Brussels, 18/01/11: 5.

<sup>232</sup> Ineum Consulting (2008), *Study on training of young sportsmen/women in Europe*, Extension – Part II (Home grown players rule): 44.

<sup>233</sup> Lynam, I. (2006) 'UEFA's Homegrown Player Rule – does it Breach Article 39 of the EC Treaty?', *Sport and the Law Journal*, Vol. 14, No. 2: 30: 33; Majani, F. (2009) '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' *International Sports Law Journal* Vol. 1-2: 20.

<sup>234</sup> Majani (2009): 20; Miettinen, S. and Parrish, R. (2007) 'Nationality Discrimination in Community Law: An Assessment of UEFA Regulations Governing Player Eligibility for European Club Competitions (The Home-Grown Player Rule)' *Entertainment and Sports Law Journal*, Vol. 5, No. 2: paragraph 2.

## 9.4 Stages 3 & 4: Proportionality - The Tests of Suitability and Necessity

### 9.4.1 The Court's position on suitability and necessity

In addition to the EU's objective justification process detailed above, stages three and four of the *Gebhard* test require that the measure remains proportionate. This general principle of EU law requires that the measure must be *suitable* for securing the attainment of the objectives which they pursue and must not go beyond what is *necessary* in order to attain it. The necessity test has been interpreted as also meaning 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.<sup>235</sup> The importance of proportionality control in the context of sport has been forthrightly reaffirmed by the Court in *Meca-Medina*. With regard to proportionality control, much will depend on the intensity with which the Court subjects the rule. As is discussed in Chapter 8, some academic authority considers that the Court will only strike down an EU measure if it is manifestly inappropriate to achieve its objectives whereas a national measure touching upon the fundamental freedoms, such as the home grown players rule, will be subject to much stricter proportionality control. However, within the sporting context other commentators take the view that:

“[t]aking 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”.<sup>236</sup>

A review of the jurisprudence of the Court reveals varying practice on the intensity with which sporting rules and practices are subject to proportionality control. In *Bosman*, UEFA and other parties submitted justifications in support of retaining the transfer system in which a professional 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 had paid to the former a transfer, training or development fee. UEFA submitted that the transfer rules were justified by the need to maintain a financial and competitive balance between clubs and to support the search for talent and the training of young players. Although these objectives were accepted as legitimate,<sup>237</sup> the Court considered that the application of the transfer rules was “not an adequate means of maintaining financial and competitive balance in the world of football” because, “[t]hose rules neither preclude the richest clubs from securing the services of the

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<sup>235</sup> TMC Asser Institute, Edge Hill University & Leiden University (2010), *Study on the Equal Treatment of Non-Nationals in Individual Sports Competitions*, Report for the European Commission: 19-20.

<sup>236</sup> *Ibid*: 227.

<sup>237</sup> Case 415/93 *Bosman*, paragraph 106.

best players nor prevent the availability of financial resources from being a decisive factor in competitive sport, thus considerably altering the balance between clubs”.<sup>238</sup>

On the question of encouraging the training of players, the Court stated that transfer fees are by nature contingent and uncertain and are in any event unrelated to the actual cost borne by clubs of training both future professional players and those who will never play professionally. The prospect of receiving such fees cannot, therefore, be either a decisive factor in encouraging recruitment and training of young players or an adequate means of financing such activities, particularly in the case of smaller clubs.<sup>239</sup> The Court was also dismissive of claims that the transfer rules were necessary to safeguard the worldwide organization of football<sup>240</sup> and that the rules in question were necessary to compensate clubs for the expenses which they have had to incur in paying fees on recruiting their players.<sup>241</sup>

Most significantly for this assessment, the Court in *Bosman* subjected the justifications presented in support of the nationality quotas to critical scrutiny. First, UEFA argued that the 3+2 rule served to maintain the traditional link between each club and its country. Although the home grown player rule has been defended on the grounds of the connection with the locality, as opposed to the country, the logic is the same as it enables the public to identify with its favourite team and ensures that clubs taking part in international competitions effectively represent their countries.<sup>242</sup> The Court rejected this logic by arguing that,

“a football club's links with the Member State in which it is established cannot be regarded as any more inherent in its sporting activity than its links with its locality, town, region or, in the case of the United Kingdom, the territory covered by each of the four associations. Even though national championships are played between clubs from different regions, towns or localities, there is no rule restricting the right of clubs to field players from other regions, towns or localities in such matches”.<sup>243</sup>

On the second justification regarding the nationality requirement creating a sufficient pool of nationally eligible players, the Court pointed out that while national teams must be comprised of players having the nationality of the relevant country, those players need not necessarily be registered to play for clubs in that country and that allowing footballers to benefit from free movement rules opened up opportunities to play in leagues other than the one in which they are eligible to represent the national team.<sup>244</sup>

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<sup>238</sup> Case 415/93 *Bosman*, paragraph 107.

<sup>239</sup> Case 415/93 *Bosman*, paragraph 109.

<sup>240</sup> Case 415/93 *Bosman*, paragraph 111.

<sup>241</sup> Case 415/93 *Bosman*, paragraph 113.

<sup>242</sup> Case 415/93 *Bosman*, paragraph 123.

<sup>243</sup> Case 415/93 *Bosman*, paragraph 131.

<sup>244</sup> Case 415/93 *Bosman*, paragraphs 133-34.

The third proposed justification was that the nationality rules help to maintain a competitive balance between clubs by preventing the richest clubs from appropriating the services of the best players. While this objective was accepted as legitimate, the Court subjected the rules to a suitability test and declared that, “those clauses are not sufficient to achieve the aim of maintaining a competitive balance, since there are no rules limiting the possibility for such clubs to recruit the best national players, thus undermining that balance to just the same extent”.<sup>245</sup> Cost control measures in European football have now been adopted by UEFA as a means of addressing competitive balance in the game meaning that UEFA measures on home grown players and Financial Fair Play might be considered complementary.<sup>246</sup>

Finally, in defence of the 3+2 rule, UEFA pointed out that it was drawn up in collaboration with the European Commission. Rejecting this argument, the Court stated that the Commission is not in a position to provide guarantees concerning the compatibility of specific practices with the Treaty or authorize practices which are contrary to the Treaty.<sup>247</sup> Following the entry into force of Article 165 and the publication of the Communication on Sport,<sup>248</sup> the Commission has a policy of facilitating dialogue with the sports movement and this dialogue occasionally takes the form of discussing with stakeholders the legality of measures under European law. However, it is clear that the Commission cannot give legal guarantees concerning the compatibility of measures with the Treaty. The Commission’s preliminary assessment of the home grown player rule,<sup>249</sup> and any position taken following its consideration of this study, in no way binds the Court of Justice.

From the foregoing, it can be seen that in *Bosman* the Court subjected both the transfer and the nationality rules to a stringent test of *suitability* by dismissing the expertise and regulatory autonomy claimed by the party imposing the measure. Furthermore, the Court went on to state that the same aims that the transfer system sought to achieve could be achieved at least as efficiently by other means which do not impede freedom of movement for workers, thus demonstrating a similar stringency towards the test of *necessity*.<sup>250</sup>

In *Deliège* the Court appeared more sympathetic to claims that sports governing bodies possessed “the necessary knowledge and experience”<sup>251</sup> required in order “to lay down appropriate rules and to make

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<sup>245</sup> Case 415/93 *Bosman*, paragraphs 135. A similar conclusion with regard to the payment of transfer fees for players under contract was recently reached in KEA (2013), *Study into The Economic and Legal Aspects of Transfer of Players* (<http://ec.europa.eu/sport/library/documents/f-studies/cons-study-transfers-final-rpt.pdf>).

<sup>246</sup> UEFA Licensing and Financial Fair Play Regulations, 2012 Edition.

<sup>247</sup> Case 415/93 *Bosman*, paragraph 136.

<sup>248</sup> COM(2011), *Developing the European Dimension in Sport (the Communication on Sport)*, final, Brussels, 18/01/11.

<sup>249</sup> Commission Press Release IP/08/807, *UEFA rule on home-grown players: compatibility with the principles of free movement of persons*, 28/05/08.

<sup>250</sup> Case 415/93 *Bosman*, paragraph 110.

<sup>251</sup> Joined Cases C-51/96 and C-191/97 *Deliège*, paragraph 68.

their selections in accordance with them”.<sup>252</sup> In *Meca-Medina*, the Court was similarly unwilling to subject the contested doping thresholds to thorough scrutiny.<sup>253</sup>

In *Lehtonen*, the Court was asked to consider whether transfer windows in basketball amounted to a restriction on a worker’s freedom of movement. Having established the existence of a restriction, the Court accepted the legitimacy of the objective of the measure which was to ensure the regularity of sporting competitions.<sup>254</sup> The Court considered that,

“[l]ate transfers might be liable to change substantially the sporting strength of one or other team in the course of the championship, thus calling into question the comparability of results between the teams taking part in that championship, and consequently the proper functioning of the championship as a whole”.<sup>255</sup>

However, the transfer window in question did not survive proportionality control because international transfer windows were longer than those within the European zone and the difference in treatment had not been justified.<sup>256</sup> Interestingly, the Advocate General in the case expressed the view that, “the organisational authority of sporting associations is in itself a public interest deserving of protection, and that any rule of the sporting associations is in principle suitable for implementing the exercise of that organisational authority to precisely the extent provided for”.<sup>257</sup> However, AG Alber went on to argue that, “[o]vert or covert barriers to access... interfere so radically with fundamental freedoms that they require a more weighty justification than the sporting associations’ necessary organisational authority.”<sup>258</sup>

In *Bernard*, the Court accepted as legitimate schemes that provide for compensation payments for training where a young player, at the end of his training, signs a professional contract with a club other than the one which trained him. This, it argued, could be justified, “by the objective of encouraging the recruitment and training of young players”.<sup>259</sup> However, it went on to condemn the contested scheme in question on the grounds that it amounted not to a system of compensation but to one of payment of damages. These damages were not calculated in relation to the training costs incurred by the club providing that training but in relation to the total loss suffered by the club and the amount of that loss was established on the basis of criteria which were not determined in advance.<sup>260</sup> Consequently the contested

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<sup>252</sup> Joined Cases C-51/96 and C-191/97 *Deliège*, paragraph 67.

<sup>253</sup> Case C-519/04 *Meca-Medina*, paragraphs 49-55.

<sup>254</sup> Case C-176/96 *Lehtonen*, paragraph 53.

<sup>255</sup> Case C-176/96 *Lehtonen*, paragraph 54.

<sup>256</sup> Case C-176/96 *Lehtonen*, paragraph 58-59.

<sup>257</sup> Case C-176/96 *Lehtonen*, opinion of Advocate General Alber, point 70.

<sup>258</sup> Case C-176/96 *Lehtonen*, opinion of Advocate General Alber, point 70.

<sup>259</sup> Case C-325/08 *Bernard*, paragraph 45.

<sup>260</sup> Case C-325/08 *Bernard*, paragraph 47.

scheme “went beyond what was necessary to encourage recruitment and training of young players and to fund those activities”.<sup>261</sup>

#### ***9.4.2 The Suitability Test Applied to the Rule***

The suitability test in EU law requires that the contested measure under scrutiny is suitable or appropriate to achieve the desired end. In the case of the home grown player rule, the desired end relates to promoting competitive balance and encouraging youth development. Each is assessed in turn.

##### ***9.4.2.1 Competitive Balance***

Evidence presented in Chapter 3 suggests that between 1992 and 2008 competitive balance has declined in European competitions. In order to examine the impact of the Rule on the performance of teams, and hence indirectly examine competitive balance, regression analysis was performed. This was undertaken separately for each of 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. A full discussion of the methodology and results of this exercise can be found in Chapter 6 and Appendix D. In summary, the results of this exercise are as follows:

Overall the statistics measuring competitive balance suggest that the impact of the rule has been to rebalance the performance of teams across both the Champions League and Europa League 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.

*Champions League:* In the group stages of the Champions League the Rule has constrained the performance of the bigger clubs who would previously have been most likely to have employed more players from outside their home association, recruiting from a greater international market. This has the effect of making the outcome of the group stages of the competition less certain. 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, as defined by the association, team performance falls. Statistically the results show that the effect is relatively small at this stage and typically less than 0.5%, although this could increase to 1.5% 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% chance that a team could fall from being second in the group stages, therefore missing out

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<sup>261</sup> Case C-325/08 *Bernard*, paragraph 48.

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%. The statistics for club-trained players do not support a negative impact. While the Rule has a small but statistically significant impact on the group stages of the Champions League, it has no impact on the knock out stages. The implication is that the best teams generally have gravitated towards this level of competition regardless of constraints on squads.

*Europa League:* In the group stages of the Europa League although a similar pattern of results is observed as outlined for the Champions League, the impact of the Rule is less statistically significant. While the same reduction in performance is observed, the only statistically significant impact relates to association-trained players, with the same implication as above. In the case of the finals' stage of the Europa League there is some limited evidence of a contrary effect to the Champions League results. There is 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 show that more home grown players, particularly club-trained players, can improve the success of teams at this level, with the implication that clubs with more club-trained players are more likely to progress at this stage. This suggests that the rule has had the effect of making such teams potentially more competitive *vis a 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 is insufficient data at the current time 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 (see Chapter 6). 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. Therefore our view is that it would 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.

#### *9.4.2.2 Youth Development*

The home grown player rule potentially complements an existing UEFA measure 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”.<sup>262</sup> Clubs entering UEFA club competitions must be in possession of a UEFA license issued by the relevant national association or league. In order to receive a license, the licensee must satisfy a number of criteria, including sporting criteria relating to the quality of the youth development programme.<sup>263</sup> In the White Paper on Sport, the European Commission acknowledged the “usefulness of robust licensing systems for professional clubs at European and national levels as a tool for promoting good governance in sport”.<sup>264</sup> The home grown player rule represents a regulatory extension of this licensing system in so far as clubs must tangibly demonstrate that their youth development programmes are producing young professionals. A handful of clubs interviewed suggested that the Rule was having a positive impact in this manner by encouraging them to invest more in youth training and development (see Chapter 7).

However, it is a matter for debate whether the issuance of the license 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 could achieve the desired outcomes without the need to adopt labour market measures tainted by discriminatory effects (see 9.4.3 *Existence of Less Restrictive Alternatives*).

Moreover, from the data gathered and the analysis set out in Chapter 7, the UEFA 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 that under-21 players participated in UEFA competitions (which should reflect the quality of and investment in the training and development of young players) indicates that while there has been a significant increase in the number of young players competing in UEFA club competitions in the last twelve years, this increase was largely in the period 2001-06, 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. 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. However it is also possible that some of this increase in the latter stages of the 2001-06 period was connected with UEFA’s announcement of its intention to introduce this rule.

The first of these explanations for the pre-2006 increase in the number of U21 players participating in European competitions is supported by the qualitative data gathered from stakeholders and EU clubs (Chapter 7); 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 was not considered to have sufficient ‘bite’ to increase the number of club or

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<sup>262</sup> UEFA Club Licensing and Financial Fair Play Regulations, 2012 Edition, Article 2(1)(a).

<sup>263</sup> UEFA Club Licensing and Financial Fair Play Regulations, 2012 Edition, Article 17.

<sup>264</sup> See COM(2007) 391 final, *White Paper on Sport*, Brussels, 11/07/07, s4.7

association-trained players included in the vast majority of first team squads and because it only has an impact on a small minority of clubs (i.e. those regularly qualifying for UEFA Competitions).

These findings contrast with the statistical analysis set out in Chapter 5 showing that the number of home grown players participating in UEFA Competitions has increased since the introduction of the Rule, but our data suggests 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 to participate in competitions.
- Domestic incentivised player development schemes.
- A club's financial situation (both chronic and acute).
- Local or global economic pressures.
- 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 home grown player 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 hard 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. In any event, the trajectory analysis will remain problematic in the future given the difficulty in isolating the effect of the Rule from the influence of other factors, including other UEFA regulations such as Financial Fair Play. Moreover, the remit of the study was to assess whether the Rule achieves its outcomes in improving the training and development of young European Union players at the current time. Our conclusion is that the Rule's effect has been minimal, discordant, and not as significant as 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 effect of the Rule, namely that they believed it incentivised 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 the child's home life. Relocating a child for the purpose of pursuing a career in professional football can be destabilising. Second, the poaching of players can provide disincentives to particularly small and medium sized clubs to

develop young talent. Third, if larger clubs are able to poach young players, the ‘feeder’ clubs are placed at a competitive disadvantage, raising concerns about competitive balance. Of course, a combination of the UEFA Rule with other UEFA regulatory measures could address these negative consequences (see below).

### ***9.4.3 The Necessity Test Applied to the Rule***

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. As discussed above, the test has been interpreted as also meaning that where no less restrictive alternatives exist, the contested measure must not have an excessive or disproportionate effect: the disadvantage caused by the measure must be proportionate to the benefit of the aims pursued. This means that a court could consider a measure as being suitable and necessary but it could still fail proportionality control because the burden placed on the complainant by the measure is disproportionate to the benefits secured.<sup>265</sup>

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 European Union players must be balanced against the potentially negative effects of the Rule in terms of restricting the free movement of EU workers through its potentially 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 European Union players also appears to be very limited. The descriptive statistics presented in Chapter 5 show that since the introduction of the Rule, the number of foreign home grown players has increased in both Champions League and Europa League squads. There does also not appear to have been any particular uniform change in the numbers of foreign players in the top five leagues since the introduction of the Rule and in some instances national leagues have witnessed significant increases in the number of foreign players. It seems that in comparison to other sectors, the football labour market is very fluid and the Rule has not resulted in a discernible trend suggesting that, as a category of worker, non-national footballers are having their freedom of movement restricted. Indeed, to date we have not identified any formal legal challenge to the UEFA Rule in domestic or European courts. A number of factors might account for this:

1. A complaint raised by a player would be heard, at first instance, by a domestic court with the potential for a reference to the CJEU. This process can take many years and it is understandable why a player may be reluctant to seek to enforce his free movement rights through this route.

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<sup>265</sup> Craig, P. (2012), *EU Administrative Law*, Oxford: Oxford University Press: 602.

2. The manner in which the Rule was introduced by UEFA - through consultation with stakeholders and negotiations with the European Commission - suggests that those affected by the Rule might have accepted the legitimacy of the measure regardless of its objective legal status under EU law, although it must be stressed that FIFPro retains concerns as to the discriminatory effects of the Rule.
  
3. Of course, it is conceivable that the primary and 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 the maximum restriction is currently only eight out of 25, the restriction does not apply to the fielding of players, and clubs can still submit squad lists containing no home grown players if they are prepared to accept a limit of 17 in the squad (25 minus the eight home grown player quota).<sup>266</sup> The 2008 researchers attach particular significance to the fact that UEFA's rule does not apply to all competitions, only those organised by UEFA. It should be noted that UEFA only made a recommendation that national associations adopt rules applicable to national competitions. The study cites *Bosman* as authority for the proposition that rules applied to *all* official matches between clubs necessarily entail a restriction on the whole professional activity of players.<sup>267</sup> This is not the case with the home grown player rule. The 2008 assessment appears to suggest that the effect of the rule is "very limited" on players and does not go beyond what is necessary for the attainment of the objectives.<sup>268</sup> Data gathered from clubs suggesting that their policies regarding youth training and development have typically not changed as a result of the Rule, would support this contention.

From the above one can make the case that although the gains achieved by the Rule are very modest, the restrictive effects on players are not so great as to call into question the proportionality of the Rule. Before this proposition can be accepted a number of further issues require discussion:

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<sup>266</sup> Ineum Consulting (2008), *Study on training of young sportsmen/women in Europe*, Extension – Part II (Home grown players rule): 38.

<sup>267</sup> *Ibid*: 40.

<sup>268</sup> *Ibid*.

1. In *Bosman*, the Court recognised the “fact that those clauses [the 3+2 rule] concern not the employment of such players, on which there is no restriction, but the extent to which their clubs may field them in official matches is irrelevant. In so far as participation in such matches is the essential purpose of a professional player’s activity, a rule which restricts that participation obviously also restricts the chances of employment of the player concerned”.<sup>269</sup> Being a member of a club squad is obviously a prerequisite to being named in the starting XI. This means that any restriction on a player’s participation in the squad obviously restricts his employment chances with that club thus rendering impossible his participation on the pitch. However, this fact alone only establishes the existence of a restriction and not whether that restriction satisfies proportionality control.
2. As is set out above, proof of indirect discrimination does not require the applicant to prove that the national 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. Our findings suggest that, notwithstanding the fluidity of the European labour market for professional footballers, the UEFA Rule in its current form is intrinsically liable to have a restrictive 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. Again, this assessment assists in establishing whether a restriction can be identified. It does not necessarily undermine the conclusion that the Rule in its current form is proportionate, although the Rule still needs to satisfy the less restrictive alternative test (see below).
3. On the issue of the UEFA Rule not applying to all competitions but only those organised by UEFA, it must be recalled that this was also the case with the 3+2 rule. In fact, the breadth of matches affected by the home grown player rule is larger than those affected by the 3+2 rule. This is because UEFA competitions have been re-configured largely on a league basis which entails a greater number of matches being played. Furthermore, many national leagues have adopted home grown player rules following UEFA’s recommendation that national associations adopt equivalent measures (see Chapter 4). Therefore, in some leagues the home grown player rule applies to most, if not all, official matches in which a player can participate. Proportionality arguments based on this contention are rendered irrelevant due to the wide range of games affected by the Rule. Nevertheless, proportionality can still be demonstrated with reference to the limited effect on players.

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<sup>269</sup> Case 415/93 *Bosman*, paragraph 120.

From the above, a case can be made that the Rule, in its current form, is proportionate in so far 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. In order to establish this, an additional future study into the Rule would be required. Second, alternative measures 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. It is to the question of less restrictive alternatives that the study now turns.

#### *9.4.3.1 Existence of Less Restrictive Alternatives*

Proportionality control in EU law requires consideration of whether the legitimate objectives of the contested measure can be achieved through less restrictive means. In assessing this issue, the research team have posed three questions:

1. Can the Rule be amended to satisfy proportionality control?
2. Can alternative and less restrictive regulatory measures better achieve the stated objectives?
3. What forum is best suited to amending the Rule or agreeing alternative measures?

#### *9.4.3.2 Amending the Rule*

The most intuitive way to soften the restrictive effects of the UEFA Rule would be to reduce the number of home grown players that a club needed to register in its UEFA squad. The number of players potentially affected would therefore be reduced. However, the potential effect on some players would still remain – there would still be the intrinsic liability that the rule will have an indirectly discriminatory effect on the grounds of a player’s nationality. 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 by it. 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. Reducing the home grown player quota is, therefore, not recommended.

We also considered whether the discriminatory effect of the Rule would be reduced by removing the ‘association-trained’ aspect of the Rule 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 UEFA Rule that has led many commentators to take the view that it has a discriminatory *objective* rather than merely an indirect discriminatory *effect* (although in practice the difference between the two is irrelevant under EU law). 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 plays the major role in reducing the success of the higher ranked teams in the Champions League group stages. It appears to do so by limiting the recruitment choices of these teams. Second, 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. This served to incentivise youth development.<sup>270</sup> Third, removing the association-trained player rule could encourage larger clubs to recruit players from competitors at an earlier age. For these reasons we do not recommend removing the association-trained player aspect of the Rule.

A less intuitive method of looking to satisfy proportionality is to *increase* the restrictions on the number of home grown players that have to be listed in a club’s 25 man squad. This would increase the bite of the Rule in so far 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 recruitment choices). Currently the Rule places no requirement on a club to field a home grown player in the starting XI and clubs are not obliged to list any home grown players on the substitutes bench if they are prepared to accept a limit of 17 in the match day squad, instead of the permitted 18 (starting XI plus 7 substitutes).<sup>271</sup> As is discussed above, it does not appear that the current 4+4 rule has resulted in significant problems with respect to a worker’s circulation in the internal market. An increase in the quota from the current 4+4 to 5+5 would only affect 40% of the squad size and would still not require a club to field a home grown player in the starting XI or replace field players with home

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<sup>270</sup> This assertion is however questioned in the recent European Commission report on the impact and legality of the transfer system (K.E.A. European Affairs and the Centre for the Law and Economics of Sport (2013), *The Economic and Legal Aspects of Transfer of Players*).

<sup>271</sup> See Article 15, Regulations of the UEFA Champions League, 2012-2015 Cycle, 2012/13 Season & Article 15, Regulations of the UEFA Europa League, 2012-2015 Cycle, 2012/13 Season.

grown substitutes throughout the course of the match. 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 satisfies proportionality control on these grounds. Any such increase would need to be subject to a future study looking at the impact of the change. However, taking this action should only be considered if less restrictive alternative measures do not exist. It is the view of the research team that no expansion of the quota should take place until less restrictive alternative measures have been discounted.

#### *9.4.3.3 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 is beyond the scope of this study to assess the extent to which these alternative measures represent ‘least restrictive alternatives’ to the home grown player rule or the extent to which these measures are more 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 are likely to interfere with the fundamental freedoms in a *more* restrictive manner than the home grown player rule. In this connection, the research team has not conducted 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 be invited to 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 (such as free movement rights) 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 home grown 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; imposing squad size limits.<sup>272</sup>

The preference of governing bodies to regulate the labour market appears to be historically rooted. For example, following the establishment of the English Football League in 1891, the League's favoured approach to securing a competitive balance between clubs was to establish a retain-and-transfer system and a maximum wage – both measures impinging significantly on the economic activity of the professional player. The progressive liberalisation of the professional football labour market throughout Europe, prompted by litigation, has necessitated a re-evaluation of this approach. It does not follow that simply because labour market interventions are historically rooted, or that some (but by no means all) professional athletes are now well remunerated, that labour market interventions are an appropriate default position for a governing body seeking to remedy a perceived weakness in the sports market. Indeed, there are strong legal reasons why labour market restrictions should be considered the *last* resort and the authors of this study recommend that the institutions of the EU adopt this approach as their foundation principle when assessing measures that allegedly conflict with the freedoms of athletes. In this regard, the research team would not consider it desirable for sports 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, particular those located out-with the labour market, are not suitable. Consequently, before the Rule can categorically be described as compatible with EU free movement law, less restrictive alternatives should first be examined, particularly those that do not carry discriminatory effects and are not located within the labour market.

## **9.5 The forum for amending the Rule or agreeing alternative measures**

In the White Paper on Sport, the European Commission suggested that governance issues in sport should fall within a territory of autonomy and that most challenges can be addressed through self-regulation

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<sup>272</sup> A recent report on the transfer system commissioned by the European Commission recommends a re-structuring of the international transfer system in order to address perceived competitive imbalances within the professional football sector. (K.E.A. European Affairs and the Centre for the Law and Economics of Sport, 2013).

which must however be “respectful of good governance principles”.<sup>273</sup> 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, namely 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”.<sup>274</sup> 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/additional regulatory measures could be discussed, although the research team is aware that 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 is encouraged to make use of the social dialogue committee established for professional football in 2008 and the EU is encouraged to offer sports bodies a wide margin of appreciation when assessing rules that have been openly and democratically debated and agreed by representative sports stakeholders.

## 9.6 Final Conclusions

From the foregoing, the following conclusions can be drawn:

Having regard to the objectives of the European Union, sport is subject to EU law in so far as it constitutes an economic activity. Where a sporting activity takes the form of gainful employment or the provision of services for remuneration, which is true of the activities of semi-professional or professional sportspeople, it falls within the scope of Article 45 of the Treaty on the Functioning of the European Union (TFEU). EU footballers are workers and can seek the protections afforded to them by EU free movement law.

It is settled case-law that Article 45 TFEU extends not only to the actions of public authorities but also to rules of any other nature aimed at regulating gainful employment in a collective manner. UEFA is a collective regulator and therefore the applicable free movement rules can be invoked against them by a private party.

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<sup>273</sup> Commission of the European Communities (2007), *White Paper on Sport*, COM(2007) 391 final, s.4.

<sup>274</sup> Commission of the European Communities (2007), *White Paper on Sport*, COM(2007) 391 final, s.5.3.

EU law applies to 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, can be located within the territory of the EU. Therefore despite being based in Switzerland, UEFA's actions are subject to EU law.

Rules of purely sporting interest are not subject to the Treaty rules governing freedom of movement. The home grown player rule cannot be categorised as such a rule. Rules 'inherent' to a sport fall within the scope of the Treaty but are incapable of being defined as a restriction as long as the restrictive effects of the measure are inherent in the pursuit of a legitimate objective and remain proportionate. The home grown player rule cannot be categorised as an inherent rule because it does not derive from a need inherent in the organisation of the UEFA competitions.

Article 165 TFEU does not remove sport from the scope of the Treaty's prohibitions but its provisions do inform the question of what constitutes a legitimate sporting objective and (taking into account the specific nature of sport and questions of fairness and openness) what is considered *suitable* and *necessary* for the attainment of these objectives.

The home grown player rule constitutes a restriction on a worker's free movement. It amounts to a provision which precludes or deters a national of a Member State from leaving his country of origin in order to engage in employment in a different Member State. However, in EU law a distinction is drawn between restrictions on a worker's freedom of movement that are (a) directly discriminatory, (b) indirectly discriminatory, and (c) non-discriminatory. The home grown player rule amounts to an indirectly discriminatory rule because even though the Rule is neutral in terms of nationality, national workers are placed at an advantage over migrant workers.

An indirectly discriminatory measure that restricts a worker's free movement can be accepted in law only if it pursues a legitimate aim compatible with the Treaty and is justified by overriding reasons in the public interest. The justifications presented by UEFA in support of the rule, namely that it *promotes competitive balance* and *encourages the training and development of young players*, must be accepted as legitimate. There is some evidence of declining competitive balance in European competitions but far less to suggest that clubs are failing to invest in youth development. Even though the Rule pursues these two legitimate aims, it still needs to satisfy the twin proportionality tests of *suitability* and *necessity*.

There has been a significant increase in the number of home grown players in first team squads and starting XIs in both UEFA and domestic competitions since the Rule was introduced. There is no data to prove to any certainty that this is a direct result of the Rule. Moreover, an increase in the number of home grown players cannot in itself be considered a legitimate objective for restricting free movement.

The statistics measuring competitive balance suggest that the impact of the rule has been to rebalance the performance of teams across both the Champions League and Europa League 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. However, this impact on competitive balance is very modest. There is very little evidence to suggest that the Rule affects the final stages in either competition. There is insufficient data at the current time to make an accurate scientific assessment of whether, with time, the Rule's impact on competitive balance will increase, diminish or remain static.

From the quantitative and qualitative data gathered, the UEFA Rule appears to have had a very limited impact on youth player training and development throughout the European Union. The number of young players in first team squads has increased slightly during the time the Rule has been in place (particularly at clubs participating in UEFA competitions) but this trend was more evident in the years leading up to the introduction of the Rule. Club policy in this area appears to be more influenced by factors other than the Rule. Our data reveals no evidence of 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.

The neutrality or very limited positive effect of the Rule in terms of improving competitive balance and the training and development of young European Union players must be balanced against the impact the Rule has on restricting a player's freedom of movement. There is very limited evidence to suggest that this restriction is currently manifestly restrictive, but it remains *intrinsically liable* to restrict free movement.

The proportionality of the Rule could be established on the grounds that, in its current form, 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. In order to establish this, an additional future study into the Rule would be required. Second, alternative measures could potentially achieve a more uniform and substantial impact in terms of competitive balance and youth 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.

Amending the Rule to lower the home grown quota or to remove the association-trained criterion will reduce the suitability of the measure and make it less likely to satisfy EU free movement law. Removing the 'association-trained' aspect of the Rule and instead classifying home grown players only as those trained by the club for which they are registered will remove the competitive balance improvements identified, potentially provide disincentives for smaller clubs to develop young players and could encourage larger clubs to recruit players from competitors at an earlier age.

Given that our data supports the view that a modest increase in the quota could result in a modest improvement in competitive balance, a case could be made that a slightly strengthened rule satisfies proportionality control on these grounds. This proposition is conditioned on the assumption that less restrictive alternative measures do not exist.

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 (such as free movement rights) 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.

It does not follow that simply because labour market interventions are historically rooted in sport, or that some professional athletes are now well remunerated, that labour market interventions are an appropriate default position for a governing body seeking to remedy a perceived weakness in the sports market. There are strong legal reasons why labour market restrictions should be considered the *last* resort and it is recommended that the institutions of the EU adopt this approach as their foundation principle when assessing measures that may conflict with the freedoms of athletes. Consequently, before the Rule can categorically be described as compatible with EU free movement law, less restrictive alternatives should first be examined, particularly those that do not carry discriminatory effects and are not located within the labour market.

It cannot be categorically established at this stage that the restrictive effects of the Rule on the free movement of workers are proportionate to the very limited benefits of the Rule in terms of competitive balance and the training and development of young players. It is the view of the research team that the very modest benefits of the Rule are likely to be achieved in a more substantial manner by the adoption of alternative, less restrictive, means, particularly those not carrying discriminatory effects. UEFA, in conjunction with the key football stakeholders, hold the necessary experience and expertise to explore these alternatives and should be afforded reasonable time to do so (a period of three years). This period should also allow UEFA to assess whether existing regulatory measures (such as Club Licensing and Financial Fair Play) are delivering such improvements to competitive balance and the quality of youth development to render discriminatory labour market restrictions unnecessary. In particular, the stakeholders are encouraged to make use of the social dialogue committee established for professional football in 2008.

If UEFA can demonstrate that less restrictive alternative measures are not suitable to achieve the stated objectives of the Rule, and that existing measures have not delivered necessary improvements, then the

Rule is to be considered compatible with EU law, complementary to existing measures (such as club licensing), and an incremental increase in the quota could be contemplated. This assessment is conditioned on the existing benefits of the Rule being maintained over the next three years.

If less restrictive alternatives are able to achieve more substantial improvements in competitive balance and the quality of youth development, the proportionality of the Rule will not have been made out and the Rule should be removed from the UEFA Regulations.

It is recommended that a further study should be conducted in three years in order to assess: (1) whether the competitive balance improvements identified have been maintained, improved further or have declined, (2) whether a closer connection between the Rule and improvements in youth development can be identified, and (3) whether less restrictive alternatives can deliver more substantial improvements to competitive balance and the quality of youth development.

**UEFA's home grown player rule has resulted in improvements to competitive balance in Champions League and Europa League competitions but these improvements are very modest. Despite the increases in the number of home grown players at EU clubs, there is little evidence to suggest that the Rule has had an impact in improving the quality of youth development in European football. Although there is little evidence to suggest that the Rule has manifestly restricted the freedom of movement of professional footballers, it is intrinsically liable to do so and it is not possible, at this stage, to state that the benefits of the Rule outweigh the restrictive effects. The proportionality of the Rule cannot be categorically established until UEFA demonstrates that less restrictive alternative measures are ill equipped at securing the objectives of the Rule. It is recommended that, rather than adopting a negative position on the Rule, the European Commission should extend an invitation to UEFA to consult with key stakeholders on whether alternative measures, that do not carry discriminatory effects, can deliver more substantial benefits for European football. A further study in three years should assess the outcome of these discussions and report on whether the proportionality of the Rule has been made out.**

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# Appendix A

## UEFA's Home Grown Player Regulations

Article 18 of the UEFA Regulations.

The rule states:

*18.08 No club may have more than 25 players on List A during the season, two of whom must be goalkeepers. As a minimum, eight places are reserved exclusively for “locally trained players” and no club may have more than four “association-trained players” listed on these eight places on List A. List A must specify the players who qualify as being “locally trained”, as well as whether they are “club-trained” or “association-trained”. The possible combinations that enable clubs to comply with the List A requirements are set out in Annex VIII.*

*18.09 A “locally trained player” is either a “club-trained player” or an “association-trained player”.*

*18.10 A “club-trained player” is a player who, between the age of 15 (or the start of the season during which he turns 15) and 21 (or the end of the season during which he turns 21), and irrespective of his nationality and age, has been registered with his current club for a period, continuous or not, of three entire seasons (i.e. a period starting with the first official match of the relevant national championship and ending with the last official match of that relevant national championship) or of 36 months.*

*18.11 An “association-trained player” is a player who, between the age of 15 (or the start of the season during which the player turns 15) and 21 (or the end of the season during which the player turns 21), and irrespective of his nationality and age, has been registered with a club or with other clubs affiliated to the same association as that of his current club for a period, continuous or not, of three entire seasons or of 36 months.*

*18.12 If a club has fewer than eight locally trained players in its squad, then the maximum number of players on List A is reduced accordingly.*

In addition,

### **Conditions for registration: List B**

*18.16 Each club is entitled to register an unlimited number of players on List B during the season. The list must be submitted by no later than 24.00 CET on the day before the match in question.*

*18.17 A player may be registered on List B if he is born on or after 1 January 1991 and has been eligible to play for the club concerned for any uninterrupted period of two years since his 15th birthday by the time he is registered with UEFA. Players aged 16 may be registered on List B if they have been registered with the participating club for the previous two years without interruption.*

*Options available to the club to respond to the home grown players rule in 2012-13 are set out below:*

	Total A List (Potential)	Free' Players	Club- trained	Association -trained	Total A List (effective)
1	25	17	8	0	25
2	25	17	7	1	25
3	25	17	7	0	24
4	25	17	6	2	25
5	25	17	6	1	24
6	25	17	6	0	23
7	25	17	5	3	25
8	25	17	5	2	24
9	25	17	5	1	23
10	25	17	5	0	22
11	25	17	4	4	25
12	25	17	4	3	24
13	25	17	4	2	23
14	25	17	4	1	22
15	25	17	4	0	21
16	25	17	3	4	24
17	25	17	3	3	23
18	25	17	3	2	22
19	25	17	3	1	21
20	25	17	3	0	20
21	25	17	2	4	23
22	25	17	2	3	22
23	25	17	2	2	21
24	25	17	2	1	20
25	25	17	2	0	19
26	25	17	1	4	22
27	25	17	1	3	21
28	25	17	1	2	20
29	25	17	1	1	19
30	25	17	1	0	18
31	25	17	0	4	21
32	25	17	0	3	20
33	25	17	0	2	19
34	25	17	0	1	18
35	25	17	0	0	17

## Appendix B

# Descriptive Statistics on Number of Home Grown Players per Country

Country	Average Number - Post Rule			
	HGP	CTP	ATP	Non-HGP
Albania	10	3	6	8
Andorra	9	4	6	10
Armenia	10	4	5	9
Austria	9	1	4	13
Azerbaijan	5	4	8	13
Belarus	12	3	5	9
Belgium	8	3	9	14
Bosnia & Herzegovina	12	3	4	9
Bulgaria	8	5	5	14
Croatia	10	3	3	11
Cyprus	6	3	3	16
Czech Republic	6	4	6	13
Denmark	10	5	5	11
England	10	3	10	15
Estonia	13	6	5	6
Faroe Islands	12	4	7	7
Finland	11	4	8	8
France	12	4	9	10
Georgia	13	4	7	6
Germany	10	2	5	13
Greece	7	3	9	15
Hungary	12	7	6	9
Iceland	13	4	7	7
Israel	12	3	9	9
Italy	12	2	10	12
Kazakhstan	12	6	6	7
Latvia	11	1	10	8
Liechtenstein	11	5	7	9
Lithuania	12	2	6	8
Luxembourg	8	4	7	12
Malta	11	3	3	7

Moldova	6	5	6	14
Montenegro	12	4	6	7
Netherlands	11	4	7	11
Norway	11	3	6	9
Nothern Ireland	9	2	7	10
Poland	9	2	5	11
Portugal	7	1	3	14
Republic of Ireland	4	2	6	15
Republic of Macedonia	8	2	10	11
Romania	12	2	5	9
Russia	8	3	6	14
San Marino	9	4	5	11
Scotland	10	3	7	12
Serbia	10	3	7	11
Slovakia	9	4	5	11
Slovenia	9	5	4	11
Spain	9	4	8	14
Sweden	12	4	7	9
Switzerland	11	3	7	11
Turkey	9	4	5	14
Ukraine	9	1	7	13
Wales	8	3	6	10

# Appendix C

## Descriptive Statistics on Squad Size

	2007	2008	2009	2010	2011	2012
Aalborg BK		18	14	17		
Aberdeen FC		25		13		
AC Chievo Verona	21					
AC Chievo Verona						19
AC Milan	27	24	23		25	26
AC Omonia	18	24	25	21	19	22
AC Sparta Praha	19	24	18	22		22
AC Sparta Praha			17	21	19	
ACF Fiorentina		26	19	23		
ADO Den Haag						18
AEK Athens FC	21	25	19	27	25	25
AEK Athens FC					18	24
AEK Larnaca FC						22
AFC Ajax	24	24	26	22	20	17
AIK		24			19	
AJ Auxerre	22	22				
Anorthosis Famagusta FC		23		24	23	20
APOEL FC	19		24		19	
Apollon Limassol FC						19
APOP/Kinyras Peyias FC				18		
Aris Thessaloniki FC		24	20		26	
Arsenal FC	26	18	23	22	24	21
AS Jeunesse Esch	14	18				
AS Livorno Calcio	24					
AS Nancy-Lorraine	23		20			
AS Roma		25			24	20
AS Saint-Étienne			23			
Aston Villa			23	18	24	
Athletic Club				23		23
Atromitos FC	23					
Åtvidabergs FF	18					
AZ	24	21	22		27	23
Bangor City			19	16	18	
Bangor City FC	18					
Bayer 04 Leverkusen	22	24			27	
Birkirkara FC		18	18	11		18
Birmingham City						25
BK Häcken		24				20

Blackburn Rovers FC	27	23				
Bohemian FC		19	19			21
Bolton Wanderers FC		28				
Borussia Dortmund	24		22		25	
Brøndby IF	15		24	22	23	19
Budapest Honvéd FC		26		20		
CA Osasuna	24					18
Carmarthen Town AFC		22				
CD Nacional	21			23		25
Celtic FC		19	20	24	24	23
Cercle Brugge KSV					22	
CF Os Belenenses		21				
CFR 1907 Cluj		21		23		
Chelsea FC	25	21	22	22	25	23
Cliftonville			21		19	21
Club Atlético de Madrid		25	22	25	20	
Club Brugge KV	20	18	18	25	24	23
Cork City			20			19
Crusaders FC				19		18
CS Fola Esch						20
CS Gaz Metan Mediaş						23
CS Grevenmacher			21	18	20	
CS Marítimo			20		21	
Debreceni VSC		22	25		26	19
Derry City FC	18			21	18	
Djurgårdens IF			24			19
Drogheda United FC	20	24		22		
Dukla Banská Bystrica					19	
Dundalk FC					22	
Dundee United FC					20	15
Dunfermline Athletic FC		21				
Dungannon Swifts FC		21				
EA Guingamp				19		
Eintracht Frankfurt	18					
Empoli FC		21				
Ethnikos Achnas FC	21					
Everton FC		26	17	24		
F.C. Internazionale Milano	26	28	26	26	27	23
F91 Dudelange	22		20	22	21	19
Falkirk FC				19		
FBK Kaunas	14		18	23	21	
FC Baník Ostrava			18		21	
FC Barcelona	25	21	19	24	23	22
FC Bayern München	18	24	24	21		25

FC Daugava Daugavpils						19
FC Differdange 03				16	18	24
FC Dinaburg				21		
FC Dinamo București	24	17	20	23	22	20
FC Etzella Ettelbruck	20	21				
FC Flora Tallinn	19	21	20	20	22	
FC Girondins de Bordeaux	17	22	20	18		21
FC Groningen	18	21				
FC Honka Espoo			24	19	19	14
FC Inter Turku					21	
FC København		22	26	22		21
FC København	22	24	23		20	21
FC Koper	19	20	21			18
FC Lahti				18		
FC Levadia Tallinn	19	18	20	20	21	15
FC Lusitans					19	
FC Midtjylland		18	23			15
FC Nitra					21	
FC Nordsjælland			22		21	17
FC Nürnberg		21				
FC Oțelul Galați	24	21				
FC Paços de Ferreira		22		18		
FC Porto	21		24	26	24	23
FC Rapid București	21	21	23			24
FC Salzburg	20	25	25	23	22	18
FC Schalke 04	18	26	23	19	25	27
FC Šiauliai					18	
FC Slovan Liberec	22		15	20		18
FC Sochaux-Montbéliard		20				18
FC Spartak Trnava	19		14	19		25
FC Steaua București	18			28	25	27
FC Timișoara			20	21	22	
FC TVMK Tallinn			17			21
FC Twente	20	21	25	23	22	23
FC Unirea Urziceni		20	21	19	18	
FC Utrecht					27	
FC Viktoria Plzeň	24				19	18
FC ViOn Zlaté Moravce		20				
Fenerbahçe SK				28		
Ferencvárosi TC						20
Feyenoord	19		19		20	
FK Austria Wien	24	23	21	25	22	26
FK Banga						15
FK Ekranas	20	21	16			20

FK Jablonec		19			19	21
FK Jelgava					20	
FK Mladá Boleslav	21	20				19
FK Senica						20
FK Sūduva	19	19	18	15	20	16
FK Tauras					22	18
FK Teplice				19		
FK Ventspils	19		25	21	25	21
FK Vētra			18	21		
Floriana FC						15
FSV Mainz 05						21
Fulham FC				26		
Gefle IF	18				23	
Genoa CFC				23		
Getafe CF		25			25	
GKS Bełchatów		28				
Glentoran FC	25	21	20		19	22
Gretna FC	20					
Groclin Grodzisk Wielkopolski		23				
Győri ETO FC			21		25	
Hamburger SV		23	25	26		25
Hannover 96						23
Heart of Midlothian FC	18			19		21
Helsingborgs IF		28		24		22
Hertha BSC Berlin	17		23	24		
Hibernians FC	13	15	12		20	
HJK Helsinki	14	16		16	18	16
IF Elfsborg		18	18	20	25	17
IFK Göteborg	14			18	18	
Iraklis FC	21					
Jagiellonia Białystok					22	19
JFK Olimps/RFS			20			
JK Nõmme Kalju				19		18
JK Sillamäe Kalev					21	
JK Trans Narva		19		17	17	17
Juventus			24	26		
KAAs Gent		20	20	20	27	
Kalmar FF			19		25	
KKS Lech Poznań		20	20	23	25	
KRC Genk	27			19	24	
KS Skënderbeu	18					
KSP Polonia Warszawa				22		
KSV Roeselare	17					
KuPS Kuopio						14

KVC Westerlo						20
Larissa FC		22		17		
Legia Warszawa	20			21		25
Linfield FC	19	18		18	18	26
Lisburn Distillery				17		
Liverpool FC			22		25	28
Llanelli AFC	17			20	19	23
LOSC Lille	20			23	25	21
Malmö FF	20					19
Manchester City	21				25	21
Manchester United FC	22	25	25	25	24	24
Marsaxlokk FC			19		16	
MFK Košice				14		
MFK Petržalka	19	25	17	19		
MFK Ružomberok	20					16
Montpellier Hérault SC					19	
Motherwell FC			18	24	20	
MŠK Žilina		27	19	25	20	19
MTK Budapest		15		19		
Myllykosken Pallo-47		22			19	
NAC Breda				24		
ND Gorica		16		13	11	15
Neath						18
NEC Nijmegen			21			
Newcastle United FC	25					
NK Domžale	18			19	22	19
NK IB Ljubljana			22	20		
NK Maribor	22		19	19	20	24
NK Olimpija Ljubljana					16	23
NK Rudar Velenje				18		
Odense BK	22	26		22	25	22
Olympiacos FC	20		27	20	26	22
Olympiacos Volou FC						22
Olympique de Marseille	22	21	20	23	22	
Olympique Lyonnais	28	21	24	23	23	25
Örebro SK						19
Paksi SE						22
Panathinaikos FC	25	25	23	24		20
Panionios GSS		23				
PAOK FC		21		23	23	
Paris Saint-Germain	22		24		21	
Parma FC	24					
PFC Beroe Stara Zagora					19	
PFC Chernomorec Varna			22	23		

PFC CSKA Sofia	17			27	27	
PFC Levski Sofia			24	21	26	19
PFC Litex Lovech	22	21	19	17	17	19
PFC Lokomotiv Sofia	21		19			23
Port Talbot Town FC					19	
Portadown FC	17				14	
Portsmouth FC			22			
PSV Eindhoven		21		23	22	27
Queen of the South FC			24			
R. Standard de Liège	20	22	24	19		20
Racing FC Union Lëtzebuerg			21			
Randers FC	20			22	17	
Rangers FC	16	19	18	18	24	20
RC Celta de Vigo	21					
RC Deportivo La Coruña			25			
RC Lens	26	23				
RCD Espanyol	26					
Real Madrid CF	25	25	24	24	25	25
Real Racing Club			19			
Real Zaragoza		21				
Rhyl FC	20	20	15			
RSC Anderlecht		26	20	22	24	25
Ruch Chorzów					23	
S.S. Lazio				19	25	28
Saint Patrick's Athletic FC		22	25	22		21
SC Braga	28	25	26	19	19	28
sc Heerenveen	21	20	24	24		
Sevilla FC	25		24		25	19
Shamrock Rovers FC	21				20	22
SK Austria Kärnten	21					
SK Liepājas Metalurgs		22	22	17		19
SK Rapid Wien		23		25	23	
SK Sigma Olomouc				22		
SK Slavia Praha	15	18	23	25	23	
ŠK Slovan Bratislava	21		22	22	20	24
SK Sturm Graz	24		19	26	20	23
Skonto FC	19	21		18	18	
SL Benfica	25	23	24	26	24	22
Sliema Wanderers FC	17	19		13	13	
Sligo Rovers FC				18		18
Sporting Club Vaslui	22		20	23	25	26
Sporting Clube de Portugal		22	19	23	21	22
Sporting Fingal FC					21	27
SSC Napoli	22		26		26	

Stade Rennais FC		24	22			21
SV Mattersburg	19	22				
SV Ried	19	21				22
SV Werder Bremen	19	24	22	23	27	21
SV Zulte Waregem	25					
Szombathelyi Haladás				24		
Tampere United		19		19	23	
The New Saints FC		19	18	18	18	20
Tottenham Hotspur FC	27	26	25			25
Toulouse FC		21		23	18	
TPS Turku					17	16
UC Sampdoria		24	25		24	
UD Leiria		25				
Udinese Calcio	19		25			25
Újpest FC	15			19		
UN Käerjéng 97		27		19		20
US Città di Palermo	25	22			22	19
Valencia CF	24	25	27	25	26	25
Valkeakosken Haka	16					
Valkeakosken Haka		20	21			
Valletta FC	20			17	16	
VfB Stuttgart			23		20	
VfL Wolfsburg			24	22		
Videoton FC	20				20	
Villarreal CF	23	23		25	26	
Vitória FC	20		20			
Vitória SC			20	20		25
West Ham United FC	18					
Wisła Kraków	22		18	19	22	22
Wisła Plock	18					
WKS Śląsk Wrocław						20
Xanthi FC	21					
Zagłębie Lubin	18				18	
Zalaegerszegi TE					18	

Please note that some clubs register over 25 players in a season when players are transferred, but they may not register any more than 25 on list A at any one time.

# Appendix D

## Inferential Statistics and Competitive Balance Analysis

The table below describes each of the variables

<u>Concept</u>	<u>Variable</u>	<u>Type and Description</u>	
Success	<i>Group:</i>	<i>Ordered</i>	
	Groupstage	1 <sup>st</sup> = 4 or 5, 2 <sup>nd</sup> =3 or 4 etc. <sup>275</sup>	
	1st to 4th or 1st to 5th		
	<i>Finals:</i>	<i>Binary</i>	
	Quarterfinal	1= reached the stage or 0=not	
	Semifinal	1= reached the stage or 0=not	
	Final	1= reached the stage or 0=not	
	Champion	1=won competition or 0=not	
	HGP	Season2004to6: '1' or '0'	<i>Binary</i> 1=Seasons 2004 to 2006  0= Other Season
		Season2007to9: '1' or '0'	1=Seasons 2007 to 2009  0= Other Season
Season20010to12: '1' or '0'		1=Seasons 2010 to 2012  0=Other Season	
Tothomegrown		<i>Continuous</i> Number of home grown players	
Totclubtrain		Number of club trained players	
Totasstrain		Number of Association trained players	
Control		UEFArank	1, 2, .....z Rank of team

<sup>275</sup> Note that the rank order in the group 1<sup>st</sup> to 4<sup>th</sup> or 5<sup>th</sup> is reversed numerically for the analysis in order that the highest number corresponds to the highest level of sports performance.

## Estimator

The above discussion suggests that the following conceptual model is relevant for the analysis of the Rule.

$$(1) \quad \text{Success}_{it} = \text{Success}_{it}(\text{HGP}_{it}, \text{UEFA ranking}_{it})$$

Equation 1 indicates that the success of team ‘i’ in season ‘t’ depends on the impact of the Rule allowing for past performance as captured by the UEFA ranking.

Because success is measured differently in the group and final stages different estimators are required to analyse the data. For the group stages an ordered-probit estimator is applied to examine the teams rank order performance. Equations 2 to 4 present these models based on the different ways in which the Rule was assessed.<sup>276</sup> In these models dependent variables are functions of the Rule variables as well as UEFA rank. The coefficients to be estimated are presented in the symbols before each equation and the last term in each equation corresponds to the other random influences that might affect performance.

$$(2) \quad \text{Groupstage}_{it} = \alpha_1 \text{Season2007to9}_{it} + \alpha_2 \text{Season2010to12}_{it} + \alpha_3 \text{UEFArank}_{it} + \varepsilon_{it}$$

$$(3) \quad \text{Groupstage}_{it} = \beta_1 \text{Tothomegrown}_{it} + \beta_2 \text{UEFArank}_{it} + \lambda_{it}$$

$$(4) \quad \text{Groupstage}_{it} = \delta_1 \text{Totclubtrain}_{it} + \delta_2 \text{Totassttrain}_{it} + \delta_3 \text{UEFArank}_{it} + \omega_{it}$$

In each of these models Groupstage, as an ordered dependent variable, is subject to the following behaviour.

$$\begin{aligned} \text{Groupstage} &= 1 \text{ if } 0 < \text{Groupstage}^* \leq \mu_1 \\ &= 2 \text{ if } \mu_1 < \text{Groupstage}^* \leq \mu_2 \\ &\dots && \dots \\ &\dots && \dots \\ &= r \text{ if } \mu_{r-1} < \text{Groupstage}^* \end{aligned}$$

Consequently, equation 1 has no intercept. Instead discrete thresholds for the values of the dependent variable are defined from 1, 2, to 4 or 5 (i.e. r) as observed values of an underlying ‘latent’ value representing greater team performance as defined by Groupstage\*. In other words all of the continuous behaviour that contributes towards sporting performance gets captured in discrete and ordered form by the allocation of points for results and consequently group table ranked position. For the purposes of analysis the table ranks that indicated that ‘1’ was highest and ‘4’ or ‘5’ lowest, were reversed such that the highest number corresponds to the underlying increasing scale for sporting success. This provides a more natural interpretation, where higher numbers correspond to higher performance.

<sup>276</sup> In the case of the Europa League it was only possible to examine the transition period of 2007 to 9 and the 2010 to 12 seasons.

In the case of the finals' stages of the competitions, success is measured in a binary form, consequently equations of the type 5 to 7 apply in which Finalstage can be any of the dependent variables identified in Table 1. These can be estimated as probit equations.

$$(5) \quad \text{Finalstage}_{it} = \phi_1 + \phi_2 \text{Season2007to9}_{it} + \phi_3 \text{Season2010to12}_{it} + \phi_4 \text{UEFArank}_{it} + u_{it}$$

$$(6) \quad \text{Finalstage}_{it} = \gamma_1 + \gamma_2 \text{Tothomegrown}_{it} + \gamma_3 \text{UEFArank}_{it} + \xi_{it}$$

$$(7) \quad \text{Finalstage}_{it} = \eta_1 + \eta_2 \text{Totclubtrain}_{it} + \eta_3 \text{Totasstrain}_{it} + \eta_4 \text{UEFArank}_{it} + \pi_{it}$$

Here, once again success is measured in a discrete form that captures the outcome of an underlying continuous sports performance, Finalstage\* such that:

$$\begin{aligned} \text{Finalstage} &= 1 \text{ if } \text{Finalstage}^* > 0 \\ &= 0 \text{ Otherwise} \end{aligned}$$

These models are inherently nonlinear and unlike linear regression models. Consequently, there is no natural conditional mean function for the ordered case, and estimated coefficients depend on the values of all other variables and coefficients. Whilst the overall statistical significance and sign of the effect of the independent variables on the dependent variable can be easily established from the initial regression results, therefore, the scale of the impacts are more difficult to assess, as are the distribution of effects over the values of the dependent variable. Under such circumstances the partial effects of the impact of the independent variables on the dependent variable in either the ordered or binary probit models are useful aids to interpretation.

In the ordered probit case these are:

$$(8) \quad \Pr(\text{Groupstage}^* = r \mid x) = [\theta(\mu_{r-1} - \beta'x) - \theta(\mu_r - \beta'x)]\beta$$

Where r refers to a particular discrete outcome or rank of the team.  $\beta$  are the estimated coefficients, and x is the vector of independent variables, which are measurements of the Rule and UEFA ranking. Equation 8 suggests that the probability that the group stage ranked position corresponds to a particular value, for given values of the independent variables, is given by differences in the underlying probability density function  $\theta(\cdot)$  that helps to describe success, evaluated for given values of the variables and estimated threshold and slope parameters, and weighted by the latter.

In the probit case the partial effects are given by

$$(9) \quad \frac{\text{ME}}{\Pr(\text{Finalstage}=1)} = \frac{\partial \Pr(\text{Finalstage} = 1)}{\partial w} \phi(\alpha'w)\alpha$$

Where  $\alpha$  represent the estimated coefficients and w the vector of independent variables. Equation 9 shows that coefficients only indicate probabilities for given values of the independent variables, that is the Rule measurements and the UEFA ranking of teams.

In this section results are presented for each of UEFA's competitions. In each table, the first column indicates the independent variable in the analysis, and the headings for subsequent columns the name of the dependent variable. Reported in each column subsequently are the estimated coefficient values with an indication of their significance. Sample sizes and goodness of fit (pseudo- $R^2$ ) statistics are also presented at the bottom of each column. In each table statistical significance is based on the calculation of robust standard errors to control for any heteroscedasticity problems that might affect the results. This could be because of the broadly cross-sectional nature of the data, with teams of varying sizes, abilities and past success being analysed together, as well as because of the nature of the dependent variables.

## Results

### Champions League

Table 1 provides the results for the Group stages of the Champions League. The equations correspond to the variations in the way in which the Rule has been measured.

**Table 1. Ordered Probit Estimates Champions League Group Stage<sup>277</sup>**

	Groupstage	Groupstage	Groupstage
seasons2007to9	-0.176 (-0.92)		
seasons2010to12	-0.484** (-2.76)		
Tothomegrown		-0.0244* (-2.27)	
Totclubtrain			0.0231 (1.09)
Totasstrain			-0.0571*** (-3.33)
UEFArank	-0.0851*** (-14.00)	-0.0841*** (-14.79)	-0.0830*** (-14.57)
<i>N</i>	288	320	320
pseudo $R^2$	0.400	0.404	0.409

*t* statistics in parentheses  
\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

The results suggest that higher ranked teams by UEFA, rated 1,2 to n are more likely to succeed in reaching higher levels in the group stages, remembering that for analysis purposes this is ranked in the order that the number 4 or 5 implies winning the group in the Champions League or Europa League respectively, with 1 implying that the team came last. This suggests that the variable functions as expected as a control variable.

Tables 2 and 3 report the results for the impact of the Rule on success in reaching the finals' stages of the Champions League, or becoming Champion. Whilst the UEFA rank results are consistent with the group stages, the Probit estimates in contrast to the Ordered-probit estimates show that the Rule has no impact on these stages of performance of clubs.

<sup>277</sup> The threshold estimates are omitted for brevity.

**Table 2. Probit Estimates Champions League Final Stages**

	Quarterfinal	Semifinal	Final	Champion	Quarterfinal	Semifinal	Final	Champion
seasons2007to9	0.0449 (0.14)	-0.0482 (-0.11)	-0.0985 (-0.20)	0.0510 (0.09)				
seasons2010to12	-0.277 (-1.00)	-0.240 (-0.60)	-0.277 (-0.54)	-0.126 (-0.23)				
Tothomegrown					0.00609 (0.34)	0.0142 (0.55)	-0.00209 (-0.07)	0.00203 (0.07)
UEFArank	-0.141 <sup>***</sup> (-8.86)	-0.331 <sup>***</sup> (-6.00)	-0.484 <sup>***</sup> (-4.67)	-0.391 <sup>**</sup> (-3.27)	-0.143 <sup>***</sup> (-9.22)	-0.322 <sup>***</sup> (-6.33)	-0.491 <sup>***</sup> (-4.75)	-0.422 <sup>**</sup> (-3.10)
Constant	1.677 <sup>***</sup> (5.16)	1.970 <sup>***</sup> (4.03)	1.539 <sup>**</sup> (3.12)	0.405 (0.70)	1.538 <sup>***</sup> (5.93)	1.652 <sup>***</sup> (4.29)	1.407 <sup>**</sup> (3.03)	0.421 (0.80)
<i>N</i>	670	670	670	670	742	742	742	742
pseudo <i>R</i> <sup>2</sup>	0.678	0.754	0.726	0.610	0.676	0.743	0.723	0.619

*t* statistics in parentheses

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

**Table 3. Probit Estimates Champions League Final Stages**

	Quarterfinal	Semifinal	Final	Champion
Totclubtrain	0.0275 (0.88)	0.0202 (0.43)	-0.0700 (-1.15)	-0.107 (-1.44)
Totasstrain	-0.0127 (-0.37)	0.00551 (0.10)	0.113 (1.11)	0.192 (1.48)
UEFArank	-0.140 <sup>***</sup> (-8.93)	-0.321 <sup>***</sup> (-6.23)	-0.540 <sup>***</sup> (-4.10)	-0.570 <sup>**</sup> (-3.20)
Constant	1.512 <sup>***</sup> (5.82)	1.653 <sup>***</sup> (4.33)	1.474 <sup>**</sup> (2.95)	0.618 (1.07)
<i>N</i>	742	742	742	742
pseudo <i>R</i> <sup>2</sup>	0.677	0.744	0.734	0.655

*t* statistics in parentheses

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

## Europa League

Table 4 provides the results for the Group stages of the Europa League. As with the Champions League the alternative equations correspond to the variations in the way in which the Rule has been measured.

**Table 6.4 Ordered Probit Estimates Europa League Group Stage**

	Groupstage	Groupstage	Groupstage
seasons2010to12	-0.278 (-1.91)		
Tothomegrown		-0.0226 (-1.78)	
Totclubtrain			-0.00409 (-0.21)
Totasstrain			-0.0315* (-2.16)
UEFArank	-0.0192*** (-5.13)	-0.0200*** (-5.63)	-0.0201*** (-5.64)
<i>N</i>	264	264	264
pseudo <i>R</i> <sup>2</sup>	0.072	0.070	0.071

*t* statistics in parentheses

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

The impact of the UEFA ranking variable is consistent with the Champions League, in that higher ranked teams perform better in the group stages. However, the results of the impact of Rule are less strong statistically, though a similar pattern of results are observed. All measures of the Rule suggest that a reduction in teams' success follows the introduction of the Rule, however, the impact is only statistically significant for association trained players at the usual  $p$  value of 0.05 or less. In the case of seasons2010to12 the  $p$  value is 0.056, whilst, for the total number of home grown players the  $p$  value is 0.075.

**Table 4. Probit Estimates Europa League Final Stages**

	Quarterfinal	Semifinal	Final	Champion	Quarterfinal	Semifinal	Final	Champion
seasons2010to12	0.843*	73.06***	0.871	0.906				
	(2.06)	(56.38)	(1.51)	(1.72)				
Tothomegrown					0.0547	0.0928	0.0797	0.0598
					(1.83)	(1.57)	(1.49)	(1.00)
UEFArank	-0.165***	-11.31***	-0.356***	-0.327**	-0.152***	-0.469***	-0.327***	-0.293**
	(-6.45)	(-135.88)	(-4.07)	(-2.71)	(-8.13)	(-3.57)	(-4.28)	(-2.58)
Constant	2.777***	102.2	1.973**	0.835	2.345***	4.182**	1.341*	0.422
	(6.01)	.	(3.28)	(1.06)	(4.70)	(3.10)	(2.17)	(0.43)
<i>N</i>	1048	1048	1048	1048	1048	1048	1048	1048
pseudo <i>R</i> <sup>2</sup>	0.808	0.983	0.800	0.733	0.799	0.909	0.793	0.721

*t* statistics in parentheses

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

**Table 5. Probit Estimates Europa League Final Stages**

	Quarterfinal	Semifinal	Final	Champion
Totclubtrain	0.0322	0.374*	0.0457	0.0304
	(0.62)	(2.00)	(0.75)	(0.42)
Totasstrain	0.0677	-0.00892	0.110	0.107
	(1.39)	(-0.14)	(1.48)	(1.54)
UEFArank	-0.151***	-0.544***	-0.338***	-0.321**
	(-8.18)	(-3.52)	(-4.22)	(-2.69)
Constant	2.326***	4.796***	1.354*	0.420
	(4.75)	(3.40)	(2.29)	(0.44)
<i>N</i>	1048	1048	1048	1048
pseudo <i>R</i> <sup>2</sup>	0.800	0.924	0.796	0.726

*t* statistics in parentheses

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

## Size of effects

Tables 6 and 7 report the partial effects for the Champions League and Europa League group stages. Results are provided for the significant (near significant) coefficients as discussed above. Three main impacts can be discerned from the tables. The first is that the impacts of the Rule are redistributive in that they reduce the success of teams for those finishing towards the top of the tables (First or second in the Champions League and First to Third in the Europa League) in favour of those towards the bottom.<sup>278</sup> The second is that the effects are relatively small and typically less than 0.5%, though could increase up to approximately 1.5% for example for the total of association trained players in the Champions League. In the latter case this would imply that as the number of association trained players increases by 1, there is almost a 1.5% chance that a team could fall from being second in the group stages. The final characteristic is that measuring the impact of the Rule by seasonal variables tends to produce larger effects. In fact measuring the impact of the Rule by the seasonal variables suggests that the impact of the change towards a season in which the Rule applies could reduce the chances of a team falling from second place by approximately 12%. The difference in these magnitudes could plausibly be associated with the relatively discrete nature of the seasonal effect which captures the change in labour market regimes of three seasons at a time.

Finally, examining the impact of the Rule of the Europa Leagues finals' stages suggested that moving into a season in which the Rule applied could increase the probability of a team reaching the semi-finals by 0.076, whilst increasing the total number of club-trained players by 0.002.<sup>279</sup> Once again this suggests relatively small effects.

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<sup>278</sup> In ordered probit models the 'single-crossing' feature implies that probabilities are redistributed across the categories such that there can only be one sign change along the ordered scale.

<sup>279</sup> The statistical analysis suggested that the marginal effects of the former impact were fragile and probably results from the small number of cases in which teams achieved this status.

**Table 6. Partial Effects Champions League Group Stage**

	Fourth	Third	Second	First	Fourth	Third	Second	First	Fourth	Third	Second	First
seasons2007to9												
seasons2010to12	0.082	0.094	-0.119	-0.056								
Tothomegrown					0.004	0.005	-0.006	-0.003				
Totclubtrain												
Totasstrain									0.008	0.013	-0.015	-0.007
UEFArank	0.013	0.019	-0.021	-0.011	0.013	0.019	-0.021	-0.011	0.012	0.019	-0.021	-0.010
N	288				320				320			

**Table 7. Partial Effects Europa League Group Stage**

	Fifth	Fourth	Third	Second	First	Fifth	Fourth	Third	Second	First	Fifth	Fourth	Third	Second	First
seasons2010to12	0.076	0.034	0.018	0.054	0.038										
Tothomegrown						0.006	0.003	0.002	0.004	0.003					
Totclubtrain															
Totasstrain											0.009	0.004	0.002	0.006	0.004
UEFArank	0.005	0.002	0.001	0.004	0.003	0.006	0.002	0.001	0.004	0.003	0.006	0.002	0.001	0.004	0.003
N	264					264					264				

# Contacts

**Professor Murray Dalziel**

**Team Leader**

**Management School, University of Liverpool**

**mdalziel@liverpool.ac.uk**

**Professor Richard Parrish**

**High-Level Legal Expert**

**Centre for Sports Law Research, Edge Hill University**

**parrishr@edgehill.ac.uk**

**Dr Geoff Pearson**

**High-Level Legal Expert**

**Management School, University of Liverpool**

**pearsong@liverpool.ac.uk**

**Dr Anna Semens**

**High-Level Economic Expert and Data Analyst**

**Management School, University of Liverpool (now Havas Sports)**

**anna.semens@havas-se.com**

**Dr Paul Downward**

**Independent Economic Advisor**

**School of Sport, Exercise and Health Sciences, Loughborough University**

**P.Downward@lboro.ac.uk**