



6+5 = Discrimination? Why FIFA's Proposed Quota Rule Doesn't Add Up

David D'Orlando*

I. INTRODUCTION

Mladen Petric is a name that will likely be lost to the oft-forgotten annals of soccer history. However, in November of 2008, Petric was responsible for breaking the collective heart of a nation. With thirteen minutes remaining in a qualification match, Petric fired a left-footed laser shot into the corner of England's goal, handing the Three Lions a 3-2 defeat.¹ Coupled with Russia's victory over Andorra in another group match, Croatia and Petric prevented the English national soccer team from qualifying for the 2008 European Championship tournament.² To put this failure into perspective, the European Championship pits the top national teams of Europe against one another in tournament play, with the team left standing after the final match crowned champion of the continent.³ Held once every four years, the tournament is considered by many to be the most prestigious international competition in existence, one that even rivals the World Cup in the volume of world-class talent on display.⁴ England has never won this tournament, experiencing its best result in 1996 by losing in the semifinals to eventual champion

* J.D., 2011, The Dickinson School of Law of the Pennsylvania State University; B.S. Sport Management, 2005, University of Massachusetts Amherst. I would like to thank my parents, Edward and Linda D'Orlando, for their constant love, support, and the countless weekends they sacrificed allowing me to pursue my passion for soccer on the playing field.

1. See Jonathan Stevenson, *England 2-3 Croatia*, BBC SPORTS, Nov. 21, 2007, <http://news.bbc.co.uk/sport2/hi/football/internationals/7103110.stm> (last visited Aug. 1, 2011). Three Lions serves as the English National team's nickname due to the depiction of three lions on the team's crest. *Id.*

2. See *id.*

3. See UEFA Competitions, Euro 2012 History, <http://www.uefa.com/competitions/euro2012/history/index.html> (last visited Feb. 3, 2010).

4. See The Gaffer, *5 Reasons Why the European Football Championship is Better than the World Cup*, EPLTALK, June 24, 2008, available at <http://www.epltalk.com/5-reasons-why-the-european-football-championship-is-better-than-the-world-cup/2482>.

Germany.⁵ While it may be too much to expect a cup victory at every European Championship, surely qualification every four years is a given for the nation that birthed the modern game of soccer, right?⁶ Apparently, there are no sure things in the world of soccer. Nonetheless, after the tears and jeers had subsided, many English fans were left searching for an outlet to focus their anger and blame. To be sure, the players and coaching staff received their fair share of ribbing for the team's failure,⁷ but fans still required an outside influence upon which to place blame. As a result, many observers pointed to the recent influx of foreign players on teams in England's top-flight soccer league as the reason for their beloved national team's poor run of form.⁸

At first glance, the Brits appeared to be wallowing in a xenophobic puddle of self-pity by blaming their disappointment on the perceived invasion by hordes of foreign players. However, upon closer inspection, the characterization of this influx as a foreign invasion may not have been very far from the truth. In fact, the English Premier League (EPL) has gradually become a multi-cultural league, drawing on talent from across the globe.⁹ Specifically, the number of English players featured in starting line-ups on average across the entire EPL in the 2008-09 season fell to an all-time low of just thirty-four percent.¹⁰ In the past 2009-10 EPL season, just over fifty-seven percent of players in England are foreign nationals.¹¹ Further, the 2009-10 English Premier League champion, Chelsea FC, fielded a squad that was eighty percent foreign with only five Englishmen in its pool of first team players.¹² While these stats cannot directly account for England's failure to qualify for the 2008 European Championship, it does beg the question: are there too many foreign players in the EPL, and if so, can they be blamed for stunting the growth and success of the national team? The answer is unclear.

5. See SIMON KUPER & STEFAN SZYMANSKI, *SOCCERNOMICS* 39 (2009).

6. See generally DAVID GOLDBLATT, *THE BALL IS ROUND: A GLOBAL HISTORY OF FOOTBALL 19-84* (2006) for an in-depth discussion of the origins of the sport of soccer.

7. See generally Stevenson, *supra* note 1.

8. See Danny Sriskandarajah, *Scoring an Own Goal*, *GUARDIAN* (London), June 7, 2008, available at <http://www.guardian.co.uk/commentisfree/2008/jun/07/immigration-policy.euro2008>.

9. See Ollie Williams, Tom Pearson and Lenny Hanniford, *Where the Premier League's Players Come From*, *BBC SPORTS*, Aug. 17, 2009, available at http://news.bbc.co.uk/sport2/hi/football/eng_prem/8182090.stm.

10. See John Haydon, *Limit Worth Pondering*, *WASH. TIMES*, May 31, 2008, available at <http://www.washingtontimes.com/news/2008/may/31/limit-worth-pondering/>.

11. See Andrew McNair, *The Greatest English Premier League Myth Unraveled*, *BLEACHER REPORT*, Feb. 7, 2009, available at <http://bleacherreport.com/articles/120811-the-greatest-english-premier-league-myth-unravelling>.

12. See *id.*

However, England is not alone in its multi-national composition. In both top-tier Italian and Spanish leagues, the Serie A and La Liga respectively, roughly half of the players are from foreign nations.¹³ However, unlike England, Italy and Spain do not seem to suffer any negative effects from this foreign invasion at the national team level.¹⁴ Regardless of the true effect foreigners are having on the failure or success of national teams, the Fédération Internationale de Football Association (FIFA) has taken notice and believes that the influx of foreign players across all European leagues threatens the future of the sport.¹⁵

FIFA is the supreme governing body for the sport of soccer on a global scale.¹⁶ Founded in 1904, it currently has 208 member associations and defines its overarching organizational goal as “the constant improvement of [soccer].”¹⁷ The organization’s current president is Joseph S. Blatter, a resident and national of Switzerland who was voted into office in 1998.¹⁸ FIFA exerts considerable influence around the globe, and Blatter is considered by many to be the most influential man in sports.¹⁹ Blatter is now attempting to exercise his considerable influence to implement a quota system for professional soccer that would place a limit on the number of foreign players allowed on professional club teams.²⁰ Blatter faces a host of obstacles in opposition to the proposed rule. In particular, the European Union, the European Community Treaty, thirty years of European jurisprudence, and the legacy of a man named Bosman all stand in the way of FIFA’s foreign player quota rule.

13. *See id.*

14. *See id.* (explaining that Italy is the reigning World Cup champion and Spain is the reigning European Championship winner).

15. *See infra* Part II.A.

16. FIFA, The Federation, <http://www.fifa.com/aboutfifa/federation/index.html> (last visited Oct. 15, 2009).

17. *Id.*

18. FIFA President’s Biography, <http://www.fifa.com/aboutfifa/federation/president/biography.html> (last visited Oct. 11, 2009).

19. *See Top 20 Most Influential Sports Administrators*, SPORTS BUS. INT’L, Mar. 2009, available at <http://www.sportbusiness.com/products/sbi/archive/2009-03/worlds-most-influential-sports-administrators-171343>.

20. *See infra* Part II.A.

II. BACKGROUND

A. *The “6+5 Rule” Explained*

In May, 2008, at the 58th Congress in Sydney, Australia, FIFA’s governing members passed a resolution on the proposed “6+5 Rule.”²¹ One hundred fifty-five out of the two hundred possible votes were cast in favor of adopting the rule.²² However, despite this overwhelming support, few of FIFA’s European delegates expect the rule to be employed without a fight.²³ Why would a rule with seemingly so much support within FIFA have any trouble being implemented? The answer is that the proposed rule has the potential of crumbling in the face of European Union (EU) law.

The proposed 6+5 Rule would require that at the start of every European professional soccer match, six of the players filling the eleven starting roster spots must be eligible to play for the national team of the particular club team’s parent nation, and a maximum of five players may be non-eligible, foreign players.²⁴ For example, a team like Manchester United, based in Manchester, England, and playing in the English Premier League, would need to start every game in European competitions with six players who are either British-nationals or eligible to play for the English national soccer team. The remaining five players in the starting line-up could then be nationals of any country. The situation would be identical for club teams in other European nations. The key is that the majority of players in the starting line-up, six out of the possible eleven starters for each side, must be of the same national origin as their team’s host nation, or they must have been deemed eligible to play for the host country’s national soccer team.²⁵

21. See *6+5: FIFA President’s Statement*, FIFA, Apr. 21, 2009, available at <http://www.fifa.com/aboutfifa/federation/releases/newsid=1049931.html> [hereinafter 6+5: FIFA President’s Statement].

22. See *Soccer: FIFA Set for Legal Battle as Foreign-Player Restrictions Approved*, N.Z. HERALD, May 31, 2008, at Sport General.

23. See *id.*

24. See *6+5: FIFA President’s Statement*, *supra* note 21.

25. See *Blatter: ‘6+5’ Rule is Crucial*, FIFA, May 7, 2008, available at <http://www.fifa.com/aboutfifa/federation/president/news/newsid=762500.html> [hereinafter *Blatter: ‘6+5’ Rule is Crucial*]. See also *Regulations Governing the Application of the FIFA Statutes, Articles 15-18*, available at http://www.fifa.com/mm/document/affederation/administration/01/09/75/14/fifa_statutes_072008_en.pdf (discussing player eligibility rules).

FIFA's president, Joseph S. Blatter, is championing the new rule in the hope that it will take full effect by the 2012-13 season.²⁶ Blatter asserts that the purpose for the proposed 6+5 Rule is to "encourage the development of young players, protect national teams and maintain competitiveness and the unpredictability of results."²⁷ Currently, the ideal timetable for implementation of the rule is as follows: for the 2010-11 season, there may be a maximum of seven foreign players in the starting eleven (4+7); for the 2011-12 season, a maximum of six foreign players in the starting eleven (5+6); and for the 2012-13 season, full implementation with a limit of only five foreign players in the starting eleven (6+5).²⁸

Critics of the 6+5 Rule assert that, if implemented, the rule would directly violate existing EU law.²⁹ In particular, the rule would go against regulations that prohibit the discrimination of workers based on national origin.³⁰ Further, critics highlight that FIFA's proposal would not comply with the principles of free movement that currently allow professional soccer players to travel across EU Member Nations to ply their trade.³¹ Blatter, for his part, remains adamant that the 6+5 Rule is of paramount importance to maintaining the health of professional soccer and necessary to bolster the sport's continued popularity as the "world's game" in the future.³² According to Blatter, in "signing more and more foreign players, [soccer] clubs have gradually lost their identit[ies] . . . as in some cases all players hail from abroad or from a different continent."³³ Blatter sees a widening gulf between the haves and the have-nots in professional soccer, with the rich "SuperClubs" continually buying up the best talent and furthering the disparity in competition.³⁴ However, to understand how FIFA plans to impose such drastic change

26. See Stuart Bathgate, *FIFA Backs '6+5' Rule to Restrict Foreign Influence But Blatter's Proposal Faces Stiff Opposition from Euro Officials*, SCOTSMAN (Edinburgh), Sports Edition, May 31, 2008, at 6.

27. According to Legal Experts, *6+5 is Compatible with European Law*, FIFA, Feb. 26, 2009, available at <http://www.fifa.com/aboutfifa/federation/releases/newsid=1032676.html>.

28. See Nick Harris, *Blatter's 6+5 Plan Leaves Premier League in Fear of Fudged Quotas*, SUNDAY TRIB. (South Africa), June 1, 2008, at 24.

29. See *Nigeria; Blatter's 6+5 Rule*, DAILY CHAMPION (Africa), June 5, 2008, available at <http://allafrica.com/stories/200806050744.html>.

30. See *id.*

31. See *id.*

32. See *Yes in Principle to 6+5 Rule*, FIFA, Feb. 5, 2008, available at <http://www.fifa.com/aboutfifa/federation/bodies/media/newsid=684707.html>.

33. *Id.*

34. See *id.*

through the 6+5 Rule, it is important to examine the unique position that sport occupies within European culture and governance.

B. The Structure of European Soccer

The European sports model is, in theory, an inclusionary democratic system that tries to ensure that access to sport remains open to the masses.³⁵ In particular, the structure of soccer is often compared to that of a pyramid. The pyramid analogy is derived from a structure featuring local clubs that form the base, regional associations and leagues at the second level, followed at the third level by national federations, with the European federation as the capstone.³⁶ All levels of the pyramid have varying areas and levels of regulatory and organizational power, but their uniform principles are financial solidarity and the promotion of competitive balance.³⁷ The capstone of the structural pyramid in European soccer is the Union of European Football Associations (UEFA). Founded on June 15, 1954,³⁸ UEFA is one of FIFA's six continental soccer federations and represents the fifty-three national soccer associations of Europe.³⁹ With the vision of "a united European football family working together to improve enjoyment of the game," UEFA governs the majority of top national and club teams in world soccer, and manages the top club team competition, the Champions League, and the second biggest national team competition, the European Championship.⁴⁰ Specifically, UEFA is charged with promoting soccer, optimizing revenue, managing national federation members, and, most importantly, governing and regulating the game within Member Nations.⁴¹ UEFA operates largely in an autonomous fashion, acquiescing only to soccer's international federation, FIFA, in applying competition rules and regulations.⁴² However, UEFA is under the jurisdiction of the European Community, specifically in cases where

35. JOSÉ LUIS ARNAUT, INDEP. EUR. SPORT REVIEW, UK PRESIDENCY OF THE EU ¶ 1.1 (Oct. 2006), *available at* http://www.independentsportreview.com/doc/Full_Report_EN.pdf.

36. *See id.*

37. *See id.* ¶ 1.2.

38. UEFA 1954-1962: Birth of UEFA, <http://www.uefa.com/uefa/aboutuefa/newsid=2476.html> (last visited Dec. 22, 2009).

39. UEFA Organisation Overview, <http://www.uefa.com/uefa/aboutuefa/index.html> (last visited Dec. 22, 2009).

40. *Id.*

41. *See id.*

42. *See* James A.R. Nafzinger, *A Comparison of the European and North American Models of Sports Organisation*, INT'L SPORTS LAW J., Jul. 1, 2008 (discussing the pyramid structure in European sport).

stakeholders challenge the legality of UEFA rules and regulations. In fact, much of the conflict between UEFA and the EU centers on the dichotomy between pure sporting activity and sporting-related activity subject to economic regulation.⁴³

C. *European Union*

1. Overview

The European Union was recognized with the signing of the Treaty Establishing the European Economic Community on March 25, 1957.⁴⁴ Commonly known as the EC Treaty, it establishes four freedoms: the right to free movement of goods, the right to free movement of persons, the right to free movement of services, and the right to free movement of capital.⁴⁵ The EC Treaty lays a foundation for a closer union among European citizens by ensuring economic progress through the elimination of barriers that divide Europe and the abolition of restrictions on international trade.⁴⁶ The EC Treaty's objectives are to be achieved via the establishment of a common market with certain common policies or activities, such as: the prohibition of customs duties and restrictions on the import of goods, a common commercial policy, an internal market characterized by the elimination of obstacles to free movement, and a system for ensuring that competition is not distorted.⁴⁷ The EC Treaty states that every person possessing the nationality of a Member State becomes a citizen of the Union and is thus subject to its rules and regulations and entitled to its protection.⁴⁸

2. Labor & Employment

The free movement of workers in the European Union is a right codified in Article 39 of the EC Treaty.⁴⁹ Freedom of movement entails the "abolition of any discrimination based on nationality between workers of the Member States as regards employment" that serves to bar EU workers from free movement between Member Nations.⁵⁰ This right to free movement afforded EU citizens has existed as one of the most

43. *See id.* (discussing "The Great Legal Tournament in Europe").

44. DAVID MEDHURST, *A PRACTICAL GUIDE TO EU LAW* 5 (3d ed. 2001).

45. *See id.* at 6.

46. *See id.*

47. *See id.*

48. *See id.* at 7.

49. Treaty Establishing the European Cmty, Dec. 12, 2002, 2002 O.J. (C 325) 51.

50. *Id.*

important elements of European citizenship since the foundation of the European Community.⁵¹ Under the EU construct, a worker is defined as a person who “undertakes genuine and effective work under the direction of someone else for which he is paid” and includes professional sportsmen.⁵² However, the scope of Article 39 does not extend to workers migrating from countries outside EU borders.⁵³ In fact, workers from non-EU countries or territories pursuing employment in the territory of a Member State may not invoke the benefit of the free movement of workers within the EU.⁵⁴

3. The European Union Approach to Sports

The European Union, through the European Commission, asserts its respect for the “autonomy and diversity” of sports and posits that it should be the job of the governing bodies of sport to regulate their respective teams, leagues, and competitions.⁵⁵ However, the main caveat to their support for this self-regulatory scheme is the requirement that EU law is respected, most notably in the areas of free movement and non-discrimination.⁵⁶ There is no legal provision within the EU that explicitly applies free movement regulations to sport.⁵⁷ However, sport is generally viewed by the European Commission as important for the social integration of its citizens, thereby justifying sport’s inclusion within the scope of the fundamental principles of free movement.⁵⁸ The European Court of Justice (ECJ) has furthered the application of free movement to sport in ruling that an “EU national who legally resides in another Member State has the right to equal treatment in terms of social advantages.”⁵⁹ However, narrow exceptions to the principle of free movement, in line with Treaty provisions, have been carved out by ECJ rulings with respect to the right to select national athletes for national team competitions, the need to limit a number of participants in a competition, and the setting of deadlines for transfers of players in team

51. See European Commission: Employment, Social Affairs, and Equal Opportunities, Free Movement of Workers, <http://ec.europa.eu/social/main.jsp?catId=458&langId=en> (last visited Oct. 14, 2009).

52. *Id.*

53. See Ina Dimireva, *Mobility: Free Movement of Workers in the EU*, EU BUS., Aug. 31, 2009, available at <http://www.eubusiness.com/employment/mobility>.

54. *See id.*

55. See *European Commission White Paper on Sport*, § 4.1 (2009) (last updated Jan. 9, 2009), available at http://ec.europa.eu/sport/white-paper/whitepaper108_en.htm.

56. *See id.*

57. *Id.* § 4.2.1.

58. *Id.*

59. *Id.*

sports.⁶⁰ Overall, the European Commission asserts that to maintain the autonomy of sport organizations, “self-regulation should be encouraged, provided that EU law is respected in areas such as free movement, non-discrimination and competition.”⁶¹

III. PAST SPORT & LABOR ISSUES

To date, European institutions have been more “reactive” than “proactive” when dealing with legal issues arising in sport, treating each issue on a case-by-case basis.⁶² While the European Commission does not have direct control over sport, it has had to intervene when necessary to enforce applicable EU law. As sport became more popular and commercially sophisticated, disenfranchised groups and individuals used the EC Treaty’s free movement and competition provisions to challenge the regulatory choices made by sport’s governing bodies.⁶³ To date, one of the most notable challenges ever raised to the rulemaking autonomy of sporting federations came through an obscure soccer player’s challenge to the institutionally entrenched discriminatory employment practices rampant at the professional level of the sport.⁶⁴ Indeed, the court’s ruling in *Union Royale Belge des Sociétés de Football Ass’n ASBL v. Bosman*, 1995 E.C.R. I-04921, sent shockwaves across the European sports landscape that are still being felt to this day.

A. *Pre-Bosman*

Roughly twenty years prior to the ECJ’s ruling in *Bosman*, two Dutch men brought a case against the International Cycling Union for discrimination.⁶⁵ Walrave and Koch served as motorcycle riding pacemakers for professional bicycle races.⁶⁶ They challenged a provision in the International Cycling Union’s rules that required motorcycle pacemakers to be of the same nationality as their cyclist racers.⁶⁷ This rule conflicted with the desires of Walrave and Koch to work for a non-Dutch cycling team, prompting them to bring legal action

60. *Id.*

61. *Id.* § 4.1.

62. See ARNAUT, *supra* note 35, ¶ 3.10.

63. See Borja García, *Sport Governance After the White Paper: The Demise of the European Model?*, 1 INT’L J. SPORT POL’Y 267, 269-70 (2009).

64. See *infra* Part III.B.

65. See Case C-36/74, *Walrave v. Ass’n Union Cycliste Int’l*, 1974 E.C.R. I-01405 ¶ 8, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61974J0036:EN:HTML>.

66. See *id.* ¶ 3.

67. See *id.* ¶ 2 (“L’entraîneur doit être de la nationalité de coureur” translates to, “The pacemaker must be of the same nationality as the stayer”).

charging that the rule was in direct violation of European Union law.⁶⁸ In particular, their case dealt with alleged violations of the EC Treaty's mandate against discrimination based on national origin and the right to free movement of workers.⁶⁹ The court held that sport is subject to Community law when it constitutes economic activity, activity with the character of gainful employment or remunerated service.⁷⁰ The court went on to create an exemption for sport, stating that the prohibition of discrimination based upon national origin did not apply to the composition of sport teams, which is an issue that should be seen as purely a sporting interest having nothing to do with economic activity.⁷¹ Additionally, the ECJ further defined the scope and application of the non-discrimination policy within the EC Treaty. The court stated that the prohibition of discrimination under EU law not only applies to the action of public authorities, but also to private entities, as long as they are deemed to engage in economic activity.⁷² The court included that the rule on non-discrimination applies to all legal relationships that are entered into or are to take effect within the Community.⁷³ This broad application of the prohibition of discrimination was thus established as an important individual right that national courts are charged with protecting.⁷⁴

After *Walrave*, the next case to consider the application of the EC Treaty in a sporting context was *Donà v. Mantero*, 1976 E.C.R. I-01333.⁷⁵ This case involved a dispute arising over the compatibility of the anti-discrimination rules outlined in the EC Treaty with certain provisions of the Italian Football Federation.⁷⁶ The Italian Football Federation's rules only permitted players who were affiliated with the federation to take part in matches as professional or semi-professional players; however, this affiliation was only open to players of Italian nationality.⁷⁷ In its ruling, the court continued to apply the sport exemption to the anti-discrimination rules and provided a more narrow interpretation for what is to be considered sport under the EC Treaty.⁷⁸

68. *See id.* ¶¶ 2-3.

69. *See id.* ¶ 16.

70. *See id.* ¶¶ 4-5.

71. *See id.* ¶ 8.

72. *See id.* ¶ 17.

73. *See id.* ¶ 28.

74. *See id.* ¶ 34.

75. Case C-13/76, *Donà v. Mantero*, 1976 E.C.R. I-01333, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61976J0013:EN:HTML>.

76. *See id.* ¶ 5.

77. *See id.*

78. *See id.* ¶ 14.

The court stated that limiting a player's ability to participate in professional or semi-professional soccer matches based on nationality is illegal unless the exclusion is due to reasons that relate to the particular nature and context of such matches.⁷⁹

The court essentially allowed the discrimination of foreign players in matches played by the national soccer teams of Member States.⁸⁰ In that regard, soccer matches played between national teams from different countries were deemed to be "pure sport" because they were not defined as economic in nature and thus were immune from the application of the prohibition of discrimination based on nationality.⁸¹

Both *Walrave* and *Donà* focused the argument about the application of the EC Treaty to sport squarely on whether sporting regulations were of a purely sporting interest, as opposed to being related to any general form of economic activity.⁸² Based on these two decisions, the ECJ appeared to favor a sport exemption when applying EU law to disputes with sporting rules and regulations. However, that would all change when a journeyman professional soccer player decided to challenge the Belgian Football Association.⁸³

B. *The Bosman Case*

Jean-Marc Bosman was a soccer player who will forever be remembered not for his skill or achievements on the soccer pitch, but for his impact on the jurisprudence of the European Union as related to sport.⁸⁴ Prior to *Bosman*, the ECJ specified that sport was subject to European Community law so far as it constituted economic activity.⁸⁵ The court further explained this interpretation by stating that EU law also applied to sporting organizations.⁸⁶ In the years preceding *Bosman*, many national soccer associations, particularly in Europe, had entrenched restrictions on player movement.⁸⁷ For example, in 1978, UEFA negotiated with the Commission of the European Communities and

79. *See id.* ¶ 19.

80. *See id.* ¶¶ 14, 19.

81. *See id.* ¶ 14.

82. *See id.* ¶¶ 8, 14.

83. *See infra* Part III.B.

84. See ROGER BLANPAIN & RITA INSTON, *THE BOSMAN CASE: THE END OF THE TRANSFER SYSTEM?* (1996) for an in-depth discussion of the *Bosman* case and its ramifications.

85. *See Walrave*, 1974 E.C.R. I-01405, ¶¶ 4-5.

86. *See discussion supra* pp. 20-21.

87. *See Case C-415/93, Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman*, 1995 E.C.R. I-04921, ¶ 25, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61993J0415:EN:HTML>.

agreed to remove restrictions on the number of contracts allowed between teams and players from other Member States within the Community, but UEFA would still be allowed to limit the participation of foreign players in any one match.⁸⁸ In 1991, UEFA went a step further in restricting player eligibility by implementing a “3+2” player quota provision.⁸⁹ It was under the constraints of these rules that Jean-Marc Bosman would bring his action against the Belgian FA.

Jean-Marc Bosman was a professional soccer player from Belgium.⁹⁰ In 1988, he was employed as a member of RC Liege, a soccer club in Belgium’s first division.⁹¹ Bosman’s contract with the club expired on June 30, 1990, and the club offered him a new deal, but at a significantly reduced rate of pay.⁹² Bosman refused the deal and sought employment elsewhere, eventually securing a contract with US Dunkerque, a French club in the second division.⁹³ RC Liege and US Dunkerque negotiated a transfer fee, as was customary under UEFA rules, in order to compensate RC Liege for training and development.⁹⁴ However, the deal soured and Bosman was ultimately left unemployed.⁹⁵ Bosman sought contracts with other teams, but once secured, the contracts were terminated because the respective teams learned of, and refused to pay, the transfer fee required to secure Bosman’s services.⁹⁶ The general effect was a boycott against Bosman by all of the European clubs that might have engaged him.⁹⁷

Bosman’s lawsuit centered on the interpretation of the free movement of workers and competition provisions of the EC Treaty as related to the transfer system and the nationality clause.⁹⁸ The main arguments posited against Bosman were as follows: (1) transfer rules are justified by the need to maintain financial and competitive balance

88. *See id.* ¶ 26 (explaining that the limit was set at a maximum of two players from a state other than the Member State in question; however, the rule was not applicable to players established for over five years in the Member State in question).

89. *See id.* ¶ 27 (explaining that UEFA adopted the “3 + 2” rule permitting each national association to limit to three the number of foreign players whom a club may field in any first division match in their national championships, plus two players who have played in the country of the relevant national association for an uninterrupted period of five years, including three years as a junior).

90. *Id.* ¶ 28.

91. *See id.*

92. *See id.* ¶ 29.

93. *See id.* ¶ 30.

94. *See id.* ¶¶ 31-33.

95. *See id.*

96. *See id.* ¶ 36.

97. *See id.* ¶ 37.

98. *See id.* ¶¶ 1, 49.

between clubs and to support the search and training of young players;⁹⁹ (2) nationality clauses serve to maintain the traditional link between each club and its country;¹⁰⁰ (3) nationality clauses are necessary to create a sufficient pool of players for national teams to draw from, with top players available in all positions;¹⁰¹ and, (4) nationality clauses help maintain a competitive balance between clubs by preventing the richest clubs from appropriating the services of the best players.¹⁰² In its decision, the ECJ noted its past jurisprudence, stating that sport is subject to Community law only when it constitutes economic activity and where the players are gainfully employed or are provided remuneration for their services.¹⁰³

The court rejected the arguments against Bosman's claim. First, while the court found that maintaining a competitive balance and supporting the training of young players were legitimate aims, it did not see the transfer system as an adequate and singularly necessary means of furthering those aims.¹⁰⁴ In justifying its position, the court stated that the current structure of the transfer system did nothing to promote competitive balance because the richest soccer clubs were not precluded from buying up the best players, nor did the transfer system prevent financial resources from being a decisive factor in altering the balance in competitive sport.¹⁰⁵

Next, the court failed to find any justification for the argument that the current discriminatory system helped maintain the traditional link between club and country.¹⁰⁶ The court disagreed with the argument that the link established between a soccer club and its Member State was more inherent in sporting activity than in other endeavors, so as to justify an exemption from EU law.¹⁰⁷

Third, the ECJ was not persuaded by the argument justifying discrimination based on the need to field a sufficient pool of players for a Member State's national team.¹⁰⁸ The court found no reason that, even if failing to secure a spot on a domestic club team, a player could not just as easily find a place in the club team of another Member State to

99. *See id.* ¶ 105.

100. *See id.* ¶ 123.

101. *See id.* ¶ 124.

102. *See id.* ¶ 125.

103. *See id.* ¶ 73.

104. *See id.* ¶¶ 106-07.

105. *See id.* ¶ 107.

106. *See id.* ¶ 131.

107. *See id.*

108. *See id.* ¶ 133.

continue his development for the benefit of his own national squad.¹⁰⁹ The court reasoned that through the free movement of workers, some opportunities for employment domestically might be limited, but the natural result was that new prospects for employment would then open in other Member States.¹¹⁰

Finally, the court did not give any weight to the argument that an exemption, by way of a nationality clause, to the application of free movement of workers was necessary in order to maintain a competitive balance by limiting the ability of the richest clubs to engage the best foreign players.¹¹¹ The court reasoned that nationality clauses still failed to limit the ability of rich clubs to poach the best domestic talent available, thus perpetuating the competitive imbalance.¹¹² Ultimately, the court sided with *Bosman* and stated that the free movement of workers, as outlined in EC Treaty Article 39, “precludes the application of rules laid down by sporting associations under which, in matches in competitions which they organize, [soccer] clubs may only field a limited number of professional players who are nationals of other Member States.”¹¹³

The *Bosman* decision was a significant evolutionary moment in the interpretation of the EC Treaty as applied to sport. The ECJ’s decision affected the transfer fee system by eliminating the payment required to obtain the services of certain players.¹¹⁴ However, this limitation was narrow in scope and applied only to players who were out-of-contract with their current team.¹¹⁵ Further, under the *Bosman* ruling, the protection afforded by the articles of the EC Treaty were conditioned as only applying protection to professional players who were nationals of EU Member States.¹¹⁶ Nowhere in its decision did the ECJ state that its ruling should apply more broadly to affect all levels of athletic competition or all foreign players.¹¹⁷ Regardless of its narrow scope, the *Bosman* decision cemented the application of the EC Treaty’s prohibition of discrimination based on national origin and the prohibition of limitations on the free movement of workers in European professional sports.

109. *See id.* ¶ 134.

110. *See id.*

111. *See id.* ¶ 135.

112. *See id.*

113. *Id.* ¶ 137.

114. *See id.* ¶ 114.

115. *See id.*

116. *See id.* ¶¶ 114, 137.

117. *See generally id.*

C. *Post-Bosman to Present*

The issues adjudicated in *Bosman* would not be broached again for roughly five years when a female Judo athlete challenged her federation's qualification rules that prevented her from competing in the 1996 Summer Olympic Games in Atlanta.¹¹⁸ In *Deliège v. Ligue de Judo*, 2000 E.C.R. I-02549, the court broadened the scope of protection detailed in the *Bosman* ruling to include not only professional athletes, but also semi-professional athletes or athletes aspiring to take part in professional or semi-professional activity.¹¹⁹ Further, the ECJ, along with re-iterating the prohibition on the limitations to free movement, banned restrictions on the freedom to provide services.¹²⁰ The freedom to provide services, espoused in EC Treaty Article 49, enables an economic actor providing services in one Member State to offer services on a temporary basis in another Member State, without having to be a citizen.¹²¹ Finally, the court provided that any restriction derived from a need "inherent in the organization of [such a] competition" was exempt from the application of EU law.¹²² This language served to broaden the previous "sporting interest" exemption to include any need inherent in the organization of competition, whether it is deemed a sporting interest or not.¹²³

Other ECJ rulings followed and further developed the application of EU law to issues raised in sport. In 2000, the court provided yet another exception to the application of the free movement of workers provision in the EC Treaty, holding that free movement can be infringed upon if there exist "objective reasons" that justify such disparate treatment.¹²⁴ In 2003, the ECJ extended protection from discrimination based on national origin to professional athletes of non-Member nations whose countries held association agreements with the EU containing similar anti-

118. See Joined cases C-51/96 and C-191/97, *Deliège v. Ligue Francophone de Judo et Disciplines Associées ASBL*, 2000 E.C.R. I-02549, ¶¶ 1-9, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996J0051:EN:HTML>.

119. See *id.* ¶ 69.

120. See *id.* ¶¶ 55-56.

121. See European Commission, *The EU Single Market, General Principles: Freedom to Provide Services/Freedom of Establishment*, http://ec.europa.eu/internal_market/services/principles_en.htm (last visited Dec. 23, 2009).

122. See *Deliège*, 2000 E.C.R. I-02549, ¶ 69.

123. Oscar N. Pinkas, *The Wisdom of Major League Baseball: Why Free Agency Does Not Spell Doom for European Football*, 16 SETON HALL J. SPORTS & ENT. L. 257, 270-71 (2006).

124. See Case 176/96, *Lehtonen v. Fédération Royale Belge des Sociétés de Basketball ASBL*, 2000 E.C.R. I-02681, ¶ 60, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996J0176:EN:HTML>.

discrimination clauses.¹²⁵ In 2005, the ECJ upheld its own ruling and again extended anti-discrimination protection under the EC Treaty to a non-Member national whose country of origin held an association agreement with the EU.¹²⁶ In 2006, the ECJ considered a challenge to anti-doping rules of the International Olympic Committee and held that even though the enforcement of doping control regulations constitutes a restriction on competition incompatible with the common market, such rules are justified by a legitimate objective.¹²⁷ The court saw the enforcement of anti-doping rules as “inherent in the organization and proper conduct of competitive sport,” thus echoing the *Delière* ruling.¹²⁸

Over the past three decades, the ECJ has defined the sphere of influence exerted by the EU’s governing institutions over sport. The *Bosman* decision marked a significant turning point in relations between the EU and the governing bodies presiding over European sports, as the court defined the boundaries and intersection between sporting rules and EC Treaty law.¹²⁹ Post *Bosman*, the court continued to hone the juridical principles relevant to the application of sporting issues.¹³⁰ Clearly, now, European Union law, specifically the EC Treaty, applies to specific issues in sport.¹³¹ However, it remains to be seen how the ECJ will further shape and refine the application of EU law as sport continues to evolve and new issues arise that push the limits of sport’s autonomy.

IV. ANALYSIS

It is apparent that FIFA intends to test the limits of European Union law through the proposed 6+5 Rule. The principles recorded within the EC Treaty, as well as the past thirty years of ECJ jurisprudence, point to a likely conflict between FIFA’s proposed regulation and the prohibition of discrimination and the free movement of workers. Compelling arguments are made on both sides of the issue. However, the decision regarding the legality of the 6+5 Rule may ultimately rest on how the

125. See generally Case C-438/00, *Deutscher Handballbund eV v. Kolpak*, 2003 E.C.R. I-04135, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62000J0438:EN:HTML>.

126. See generally Case C-265/03, *Simutenkov v. Ministerio de Educación y Cultura*, 2005 E.C.R. I-02579, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003J0265:EN:HTML>.

127. See Case C-519/04 P, *Meca-Medina v. Comm’n*, 2006 E.C.R. I-06991, ¶ 45, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004J0519:EN:HTML>.

128. See *id.* ¶ 45.

129. See *supra* Part III.B.

130. See discussion *supra* Part III.C.

131. See discussion *supra* Part III.A-C.

EJC applies the principles arising out of the *Bosman* case to the modern game of soccer.

A. *Arguments In Favor of the 6+5 Rule*

The debate over the proposed 6+5 Rule turns on its compliance with European Union law. FIFA argues that the analysis should not focus on compliance, but whether the EU laws even apply to the proposed rule.¹³² FIFA claims that, at its core, the 6+5 Rule is purely motivated by the unique requirements of sport.¹³³ European law has acknowledged that, in light of the social functions of sport, the regulatory autonomy of sporting associations are recognized and supported.¹³⁴ Further, “FIFA’s autonomy as an association, derived from the fundamental freedom to form an association, justifies the limitation on market freedom.”¹³⁵ However, even if this market restriction is justified, FIFA argues that the 6+5 Rule, as it defines and interprets the rule, has no limiting effect.¹³⁶ FIFA insists that the nuances of its proposed rule would place limits only on the use of players in starting line-ups.¹³⁷ After the game kicks-off, teams are free to substitute and alter the team’s composition of non-eligible players present on the field.¹³⁸ Further, there are to be no limits on the number of non-eligible players maintained on a club’s roster, so teams may actively recruit and sign as many foreign players as they desire.¹³⁹

An expert panel study commissioned by FIFA found that at most, the 6+5 Rule could constitute indirect discrimination.¹⁴⁰ The study argues that because the rule is focused not on a player’s nationality, but rather on a player’s eligibility to play for a country’s national soccer team, any possible indirect discrimination can be defended if there exists a compelling general interest applicable to protection under public policy, public security, or public health concerns.¹⁴¹ The study asserts

132. See *Why 6+5 Does Add Up*, FIFA, May 8, 2009, available at <http://www.fifa.com/aboutfifa/federation/news/newsid=1055471> [hereinafter *Why 6+5 Does Add Up*].

133. See *id.*

134. See Institute for European Affairs [INEA], *Expert Opinion Regarding the Compatibility of the “6+5 Rule” with European Community Law 62* (Oct. 24, 2008), available at http://inea-online.com/download/regel/lang_eng.pdf [hereinafter INEA].

135. *Id.* at 140.

136. See *Why 6+5 Does Add Up*, *supra* note 132.

137. See *id.*

138. See *id.*

139. See INEA, *supra* note 134, at 22.

140. See *id.* at 135-37.

141. See *id.* at 137 (explaining the European Court of Justice’s “Cassis-de-Dijon formula” that states secondary, indirect or even concealed forms of discrimination must

that the proposed 6+5 Rule is merely a “rule of the game declared in the general interests of sport in order to improve the sporting balance . . . and so ensure appropriate sporting competition between clubs and associations.”¹⁴²

According to President Blatter, the current modus operandi of professional soccer teams in Europe leaves few playing opportunities at the big clubs and impedes the development of young players.¹⁴³ These young players have little motivation to perform up to their full potential because their chances of cracking a team’s starting line-up are limited.¹⁴⁴ The effect is to have teams at all levels neglecting their academy and youth development programs. These clubs have no incentive to pump money and resources into developing their own young players and must forfeit large sums of money to lure top foreign stars that will allow the teams to stay competitive.¹⁴⁵ The 6+5 Rule seeks to halt this trend and improve the national identity of domestic club teams.¹⁴⁶ Specifically, Blatter asserts that his rule would succeed in improving three core areas. First, the rule would reduce costs.¹⁴⁷ By preventing teams from filling the majority of their starting roster spots with foreign players, teams will be required to look inward at local and domestic talent.¹⁴⁸ This, in effect, will force clubs away from the practice of buying up foreign players and spending a large portion of their capital in the transfer market; teams would be encouraged to further develop their domestic youth players and programs.¹⁴⁹ Second, the quality of national teams would be improved.¹⁵⁰ With a greater focus on improving domestic talent, each team would, by default, create a stronger feeder system into international soccer competitions and produce a deeper pool of talent with top-flight experience.¹⁵¹ Finally, fans would be better able to identify with their

be considered on the basis of whether “compelling reasons in the general interest” exist to take any measures).

142. *See id.* at 188.

143. *See Blatter Discusses Premiership Plan*, FIFA, Feb. 15, 2008, available at <http://www.fifa.com/aboutfifa/federation/president/news/newsid=691919.html> [hereinafter *Blatter Discusses Premiership Plan*].

144. *See Blatter: Football Needs Autonomy*, FIFA, Oct. 5, 2007, available at <http://www.fifa.com/aboutfifa/federation/president/news/newsid=611299.html> [hereinafter *Blatter: Football Needs Autonomy*].

145. *See Blatter Discusses Premiership Plan*, *supra* note 143.

146. *See* Morris Dalla Costa, *6+5 Rule Best in the Long Run*, LONDON FREE PRESS (Ontario), Apr. 4, 2009, at D4.

147. *See Blatter Discusses Premiership Plan*, *supra* note 143.

148. *See Blatter: ‘6+5’ Rule is Crucial*, FIFA, May 7, 2008, available at <http://www.fifa.com/aboutfifa/federation/president/news/newsid=762500.html>.

149. *See Blatter: Football Needs Autonomy*, *supra* note 144.

150. *See Blatter Discusses Premiership Plan*, *supra* note 143.

151. *See Blatter: Football Needs Autonomy*, *supra* note 144.

domestic club teams.¹⁵² In this regard, a greater focus on local talent could provide a greater sense of patriotism and boost support.¹⁵³ Young fans would be able to emulate and aspire to be like their own countrymen, not just other superstars from across the continent, thus increasing the support for the game at the local level.¹⁵⁴ In short, Blatter wants to “protect national teams and prevent leagues having only a small number of clubs with any chance of winning a title.”¹⁵⁵ All three objectives combine to make the game more balanced, both competitively and financially.¹⁵⁶

B. Arguments Against the 6+5 Rule

When considering a plain reading of the ECJ’s application of the EC Treaty to sport, one may be hard pressed to envision the proposed 6+5 Rule complying with EU law. However, FIFA and its commissioned panel of independent experts make a compelling argument in an effort to exploit the special status sport maintains within the European Union. FIFA is wise to assert that the validity of the 6+5 Rule should be rooted in the exemption for sport carved out by the European Commission. Sport in Europe plays a vital role in forging identity and bringing people together, so much so that the governing institutions of the EU are compelled to work in concert with sport associations when important questions affecting sport are at issue.¹⁵⁷ However, as exemplified most notably with the *Bosman* case, European courts are willing to trump the autonomy of sporting bodies through the imposition of EU law.¹⁵⁸ The ECJ has established that sport is subject to EU law insofar as it constitutes economic activity.¹⁵⁹ Today, the business of sport, including soccer, has become a tremendously complex economic engine that generates considerable wealth.¹⁶⁰ There is no doubt that based on the ECJ’s classification of economic activity, the 6+5 Rule, as it

152. See *Blatter Discusses Premiership Plan*, *supra* note 143.

153. See *Windtner: We Want to Revive the Passion*, FIFA, Apr. 27, 2009, available at <http://www.fifa.com/aboutfifa/federation/insidefifa/news/newsid=1052551.html>.

154. See *id.*

155. See *Blatter: Negotiation Key to 6+5*, May 27, 2008, available at <http://www.fifa.com/aboutfifa/federation/bodies/news/newsid=779204.html>.

156. See *Blatter Discusses Premiership Plan*, *supra* note 143.

157. Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts, Declaration 29, Oct. 2, 1997, 1997 O.J. (C340) 1, available at <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf>.

158. See discussion *supra* Part III.B.

159. See discussion *supra* Parts III.A-C.

160. See generally GOLDBLATT, *supra* note 6.

relates to the European professional soccer leagues, is subject to EU law. Therefore, the debate centers on how the court will apply the language previously advanced as justification for discriminatory rules in certain instances.

FIFA posits that the 6+5 Rule is motivated by the “unique requirements” of soccer.¹⁶¹ The proposed rule is positioned as furthering the “general interest” of soccer.¹⁶² In past rulings, the ECJ has allowed an exemption for sport regarding issues relating to “purely sporting interests.”¹⁶³ The court has also allowed an exemption when discrimination in violation of the EC Treaty was necessitated by reasons related to the “nature,” “context,” and “organization” of sport competitions.¹⁶⁴ More recently, the ECJ further specified that infringement upon EU law is allowed if “objective reasons” justify the disparate treatment.¹⁶⁵ Regardless of the language used, it is unclear whether the ECJ will interpret their prior exemption language to include FIFA’s posited “unique requirement” reasoning, create a new exemption, or reject FIFA’s argument altogether.

Ironically, if not fortuitously, the arguments in favor of the 6+5 Rule espoused by Blatter align almost perfectly with the arguments posited by the Belgian FA in the *Bosman* case. First, Blatter states that the 6+5 Rule will reduce costs, thus promoting fiscal responsibility and parity.¹⁶⁶ In *Bosman*, the argument was also made that discrimination was necessary to promote financial and competitive balance among teams.¹⁶⁷ However, although the court in *Bosman* agreed that maintaining financial and competitive balance were noble goals, the means did not justify the ends.¹⁶⁸ In fact, the *Bosman* court saw little connection between the restrictive rules at issue and their ability to ensure financial stability and competitive balance.¹⁶⁹ As it pertains to the 6+5 Rule, it is not clear whether a quota system will reduce costs or promote parity. In fact, by FIFA’s own assertion, the 6+5 Rule will have no restrictive effect on the overall composition of team rosters,

161. See *supra* note 132.

162. See *supra* note 134, at 188.

163. See discussion *supra* Part III.A-C.

164. See *Donà*, 1976 E.C.R. I-01333, ¶ 19; *Delière*, 2000 E.C.R. I-02549, ¶ 69.

165. See *Lehtonen*, 2000 E.C.R. I-02681, ¶ 60.

166. See *supra* note 143.

167. See Case C-415/93, *Union Royale Belge des Sociétés de Football Ass’n ASBL v. Bosman*, 1995 E.C.R. I-04921, ¶¶ 25, 105, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61993J0415:EN:HTML>.

168. See *id.* ¶¶ 106-07.

169. See *id.* ¶¶ 107.

claiming that only starting line-ups need adhere to the 6+5 formula.¹⁷⁰ Therefore, it stands to reason that teams still will not be discouraged from chasing high-priced foreign talent to fill roster spots. At most, teams will find ways around the 6+5 Rule as they adjust starting line-ups and substitute players more creatively after kick-off. Therefore, it is unclear whether the proposed 6+5 Rule will have any positive effect on reducing costs and creating greater financial parity among European club teams and leagues.

Next, Blatter asserts that the 6+5 Rule will have the net effect of improving the overall quality of national soccer teams by forcing greater investment and development at the grass roots level.¹⁷¹ A similar argument was presented in *Bosman*.¹⁷² The *Bosman* court saw no reason that a player, if failing to gain employment with a club team within his own country, could not find employment with a club team in another Member Nation so as to develop his skills for the benefit of his own country's national team.¹⁷³ The logic used by the *Bosman* court still applies. Theoretically, if a player leaves his own country, "Country A," to play for a club team situated in another country, "Country B," a spot that might otherwise have been filled by a homegrown player in Country A will now be open to a player from Country B. In essence, what occurs is a free exchange of players among nations, enabling the players to ply their trade and further develop their soccer skills. By improving their skills abroad, these players will benefit their own countries by expanding the pool of qualified players available for national team selection. In fact, it would seem to be in the best interests of most national teams to have their players go abroad to play with the best talent in the best leagues, especially in cases where their own country's leagues are inferior. By restricting a player's freedom to play in any country and any league in which he is deemed good enough to secure employment, the FIFA 6+5 Rule will likely have the effect of stunting player growth and development, an effect in direct contrast to FIFA's stated goals of promoting better quality at the national team level.

Finally, Blatter argues that the 6+5 Rule will promote national pride and a greater association between fans and players.¹⁷⁴ A similar argument was posited in the *Bosman* case and then soundly rebuffed by the presiding court.¹⁷⁵ In short, the *Bosman* court did not find the link

170. See *supra* note 134, at 22.

171. See *supra* notes 143-44.

172. See *Bosman*, 1995 E.C.R. I-04921, ¶ 123.

173. See *Bosman*, 1995 E.C.R. I-04921, ¶ 134.

174. See *supra* notes 152-54.

175. See *Bosman*, 1995 E.C.R. I-04921, ¶ 131.

between a club and its Member State as important or unique to sports, so as to justify an exemption.¹⁷⁶ Regarding the proposed 6+5 Rule, it does not appear necessary or even likely to succeed in promoting greater fan affinity. Through the shrinking and flattening of the world in recent years, globalization has shortened the gap between countries and cultures. Now, more than ever, many individuals think of themselves as global citizens or citizens of the world.¹⁷⁷ It is typical for soccer fans to support club teams from various countries, while still remaining ardent and faithful followers of their own national teams.¹⁷⁸ In fact, it is through international competition that fans search for and find their national sporting identities. There is no danger from dilution of national teams through the import of foreign players because rules restricting eligibility regarding participation in national team competitions have been upheld by the ECJ.¹⁷⁹ Further, soccer fans may in fact *want* to see foreign players fill the rosters of their favorite teams. Despite steadily rising ticket prices,¹⁸⁰ the capacity crowds filling stadiums in the English Premier League¹⁸¹ may mean that soccer fans are either happy with the ratio of foreign players competing in the league, or simply do not care. For example, Arsenal FC of the English Premier League, England's top-flight league, currently draws over 60,000 fans per game, the highest average attendance of any London-based squad in the league's recorded history, despite fielding a nearly all-foreign team.¹⁸² In this sense, soccer fans are no different than typical consumers in the fact that they prefer a quality product, here a successful soccer team, above all else. If the influx of foreign players in the top European leagues continues to breed success and raise the overall level of competition, there may be little reason for FIFA to argue that fans are losing touch with their local teams or lagging in their overall support of the game. Therefore, it is not likely

176. *See id.*

177. WorldPublicOpinion.org, People Who Know Foreigners or Travel More Likely to See Themselves as Global Citizens: Global Survey (May 18, 2009), *available at* http://www.worldpublicopinion.org/pipa/articles/views_on_countriesregions_bt/608.php.

178. *See* KUPER & SZYMANSKI, *supra* note 5, at 139.

179. *See generally* Case C-13/76, *Donà v. Mantero*, 1976 E.C.R. I-01333, *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61976J0013:EN:HTML>.

180. *See EPL Dismisses Results Of Fan Survey On Rising Ticket Prices*, SPORTS BUS. DAILY, Mar. 4, 2008, *available at* <http://www.sportsbusinessdaily.com/article/118995>.

181. *See* Barclays Premier League 2009-2010 Season Domestic Stats to Jan. 31, 2010 Inclusive Attendance Table, <http://itv.stats.football365.com/dom/ENG/PR/attend.html> (last visited Aug. 1, 2011); *see also* Barclays Premier League Average Attendance Statistics, <http://www.premierleague.com/page/Statistics/0,,12306,00.html> (last visited Aug. 1, 2011).

182. *See* KUPER & SZYMANSKI, *supra* note 178, at 17.

that FIFA's 6+5 Rule is justified by its attempt at bolstering nationalism by way of restricting and discriminating against foreign players.

Overall, through the 6+5 Rule, FIFA endeavors to ensure both financial and competitive balance in soccer. Unfortunately, the 6+5 Rule falls short of reaching its stated goals. A direct application of the *Bosman* ruling to the reasons asserted in favor of the 6+5 Rule requires the ECJ to side with FIFA's detractors.

V. CONCLUSION

Currently, the sport of soccer is evolving on a global scale. This evolution is a natural outgrowth of the modern age, but it seems that FIFA is struggling to keep up. By proposing an inadequate and unnecessary rule for the modern game of soccer, FIFA has decided to pick a fight with the European Union that it simply cannot win. It remains to be seen how the European courts will continue to apply EU law to the arena of sport, as legal issues continue to develop at the amateur and professional level. However, when the basic tenants of free movement and anti-discrimination are challenged by sporting federations, these inherent rights, bestowed upon all nationals of Member Nations, will triumph. Sport holds a very unique place within the European Union, and European courts have seen fit to allow special exemptions for sport in particular cases. However, FIFA's proposed 6+5 Rule is not a case that qualifies under *Bosman* and subsequent case law. A quota system flies in the face of the basic rights and protections that the European Union is charged with upholding. To enact its rule, FIFA would need to see over thirty years of jurisprudence overturned. As *Bosman* clearly states, the law precludes the application of rules laid down by sporting associations under which soccer clubs may only field a limited number of professional players who are nationals of other Member States.¹⁸³ Put simply, FIFA's 6+5 Rule does not add up.

VI. POSTSCRIPT

A. *FIFA Abandons 6+5 Rule*

In the summer of 2010, FIFA president Sepp Blatter announced that the so-called "6+5 Rule" that was expected to be implemented by 2012,

183. See Case C-415/93, *Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman*, 1995 E.C.R. I-04921, ¶¶ 25, 105, available at <http://eur-lex.europa.edu/LexUriServ/LexUriServ.do?uri=CELEX:61993J0415:EN:HTML>.

has now been abandoned.¹⁸⁴ At its congress in South Africa ahead of the 2010 World Cup, FIFA said it would now look at “other eligibility” options.¹⁸⁵ This decision comes in the wake of what many believe was a futile effort on behalf of Blatter and FIFA to bypass the laws of the European Union.¹⁸⁶ The European Commission had stated that the proposed “6+5” rule would contravene EU labor laws.¹⁸⁷

It remains to be seen how FIFA will proceed with its proposed player quota system in the wake of this defeat. FIFA president Sepp Blatter said he would seek another term of office when his reign as president expires in 2011, extending the post he has held since 1998.¹⁸⁸ Blatter may very well remount a campaign to gain favor for the 6+5 Rule with the European Commission and add his rule change to his other accomplishments to cement his legacy as FIFA president. However, with such clear opposition and public denunciation of the proposed rule within the European government, Blatter may well have to back down or alter the dimensions of his rule to safely skirt the line between discrimination and sport specific necessity. If they choose to move forward with a player quota rule, Blatter and FIFA would be wise to look to UEFA and the English Premier League for examples of successful implementation of player quota systems.

B. *UEFA Homegrown Player Rule*

One of the biggest challenges facing European soccer after the *Bosman* ruling was the ability of the richest soccer clubs to stockpile the best players from around the world, making it easier for them to dominate both at national and European club level competitions.¹⁸⁹ Smaller soccer clubs had fewer incentives to train their own players or give genuine opportunities to young players from their region for fear

184. See *FIFA scraps plans for ‘home-grown’ player rule*, BBC SPORTS, June 10, 2010, <http://news.bbc.co.uk/sport2/hi/football/8733164.stm> [hereinafter *FIFA scraps plans*].

185. See *id.*

186. See Nick Harris, *UEFA: FIFA’s 6+5 quotas will never happen in Europe*, INDEPENDENT (London), June 10, 2009, available at <http://www.independent.co.uk/sport/football/news-and-comment/uefa-fifas-65-quotas-will-never-happen-in-europe-1701844.html>.

187. See Media Release, Europa.eu, UEFA Rule on ‘Home-grown Players’: Compatibility with the Principle of Free Movement of Persons (May 25, 2008), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/807>.

188. See *FIFA scraps plans*, *supra* note 184.

189. See Protection of Young Players, UEFA, <http://www.uefa.com/uefa/footballfirst/protectingthegame/youngplayers/index.html> (last visited December 14, 2010).

that they would be snatched up by wealthier clubs or fail to blossom and net out as losing investments.¹⁹⁰

To help combat this problem, UEFA enacted a rule in 2006 aimed at encouraging the local training of young players, increasing the openness and fairness of European competitions, and the re-establishment of a local identity at the club team level.¹⁹¹

UEFA's homegrown player rule includes a twenty-five-player limit for clubs in UEFA sanctioned competitions.¹⁹² The squad's twenty-five players must include at least four players that the club has trained for at least three years between the ages of sixteen and twenty-one, plus at least four more players trained by another club in the same country.¹⁹³ UEFA defines locally trained or homegrown players as those who, regardless of their nationality, have been trained by their club, or by another club in the same national association, for at least three years between the ages of fifteen and twenty-one.¹⁹⁴ Up to half of the locally trained players must hail from the club itself, with the other players required to be from the club itself or from other clubs within the same association.¹⁹⁵

The UEFA rule does not contain any nationality conditions.¹⁹⁶ The rule also applies in the same way to all players and all teams participating in competitions organized by UEFA.¹⁹⁷ Clubs have no obligation to put a certain number of homegrown players on the field of play or on the match squad list, as they are entirely unrestricted in their team and game day squad selection.¹⁹⁸ Therefore, the objectives underlying UEFA's homegrown player rule, namely promoting training for young players and consolidating the balance of competition, seem to be legitimate objectives of general interest, as they are inherent to sporting activity.¹⁹⁹

Initial arguments against UEFA's homegrown player rule were that the requirement would weaken teams by restricting unqualified talent and clubs would be encouraged to poach more young players from

190. *See id.*

191. *See id.*

192. *See* David Conn, *Premier League's Homegrown Rule Will Give English Youngsters A Chance*, *GUARDIAN* (London), Sept. 1, 2010, available at <http://www.guardian.co.uk/football/david-conn-inside-sport-blog/2010/sep/01/25-man-squads-premier-league>.

193. *See* Harris, *supra* note 186.

194. *See* Protection of Young Players, *supra* note 189.

195. *See id.*

196. *See id.*

197. *See* Media Release, Europa.eu, *supra* note 187.

198. *See* Protection of Young Players, *supra* note 189.

199. *See* Media Release, Europa.eu, *supra* note 187.

around the world.²⁰⁰ Many also thought that the rule would ultimately fail to achieve its stated goals because homegrown players would not actually feature in first team line-ups and simply act as filler for rule compliance.²⁰¹

The European Commission published an independent study on the homegrown player rule adopted by UEFA. Compared with the “6+5” plan proposed by FIFA, the Commission determined that UEFA’s approach complies with the principle of free movement of workers.²⁰² Ultimately, the European Commission came to the conclusion that UEFA’s rules on homegrown players promote objectives of general interest such as the training of young players and the rebalancing of sports competitions.²⁰³ Therefore, even though the homegrown player rule might lead to indirect discrimination on the basis of nationality, the Commission has endorsed the UEFA homegrown player rule.²⁰⁴

FIFA has said it is opposed to UEFA’s rule arguing that it encourages the recruitment of soccer players at a young age, a practice that contravenes the rule’s intended benefits.²⁰⁵

C. *English Premier League Homegrown Player Rule*

In the summer of 2010, the twenty clubs of the English Premier League agreed to the introduction of a homegrown player rule, which took effect at the start of the 2010/11 Premier League season.²⁰⁶ Created before England’s disappointing World Cup 2010 performance, the rule is now considered a solution to the controversial issue of dwindling opportunities for young English soccer players.²⁰⁷

Under the Premier League rule, member soccer clubs must include eight homegrown players out of a total squad of twenty-five.²⁰⁸ Under

200. See Conn, *supra* note 192.

201. See *id.*

202. See Media Release, Europa.eu, *supra* note 187.

203. See Media Release, European Sport Commission, UEFA’s Rules on Homegrown Players Receive Green Light from the Commission (May 28, 2008), available at http://ec.europa.eu/sport/news/news270_en.htm.

204. See *id.*

205. Darren Ennis, *EU Backs UEFA Homegrown in Bid to Avert FIFA Quotas Vote*, REUTERS, May 28, 2008, available at <http://www.reuters.com/article/idUSSP10318120080528?pageNumber=1>.

206. Premier League, *Home-grown Quota for Premier League*, Sept. 15, 2009, <http://www.premierleague.com/page/Headlines/0,,12306~1797582,00.html> (last visited Aug. 1, 2011).

207. Tobias Robinson, *Premiership Squads and the Home Grown Rule*, July 24, 2010, <http://www.suite101.com/content/premiership-players-and-the-home-grown-rule-a265282#ixzz186rjFv9P> (last visited Aug. 1, 2011).

208. See Premier League, *supra* note 205.

the Premier League rule, a homegrown player does not necessarily mean an English player or even a player that is eligible to play for the English national soccer team.²⁰⁹ A homegrown player is defined as one who, irrespective of his nationality or age, has been registered with any club affiliated to the Football Association of England or the Football Association of Wales for a period, continuous or not, of three entire seasons or thirty-six months prior to his twenty-first birthday, or the end of the season during which he turns twenty-one.²¹⁰ The rule's other important aspect is that players aged twenty-one or under do not count towards the twenty-five player limit.²¹¹ So, although teams must name a squad of twenty-five players, they are free to field players not in that twenty-five man squad provided that they are aged twenty-one and under.²¹²

The Premier League's definition of homegrown is looser than that of UEFA, which requires all eight players to have been in a club's own academy for at least three years between the ages of sixteen and twenty-one.²¹³ The Premier League has the same age and time requirement, but the homegrown players can have spent their required time in any English club's academy.²¹⁴ The Premier League Academies have 320 scholars aged between sixteen and eighteen and a further 2,486 students under sixteen years of age.²¹⁵ Over 85% of Academy scholars are British, a proportion that rises to around 95% for students under sixteen years of age.²¹⁶

The Premier League chief executive, Richard Scudamore, believes that the English national soccer team will ultimately reap the benefits of the new homegrown player rule.²¹⁷ Scudamore believes that the rule is unlikely to encourage clubs to hoard young overseas players and that the rule will make buying homegrown talent more attractive.²¹⁸ Scudamore also asserts that the Premier League is not implementing a nationality test, but hopes that the rule will limit the ability of rich clubs to buy a team from abroad.²¹⁹ The rule seeks to provide clubs an extra incentive

209. Daryl Grove, *Premier League Homegrown Rule and Squad Limits Explained*, OFFSIDE, Aug. 31, 2010, available at <http://www.theoffside.com/leagues/england/english-premiership/premier-league-homegrown-rule-and-squad-limits-explained.html>.

210. See Premier League, *supra* note 205.

211. See Grove, *supra* note 208.

212. See *id.*

213. See Conn, *supra* note 192.

214. See *id.*

215. See Premier League, *supra* note 205.

216. See *id.*

217. See *id.*

218. See *id.*

219. See *id.*

to invest in their nation's youth and consequently benefit the English national team through a deeper pool of eligible players who have top-flight playing experience.²²⁰

The Premier League also recognizes that their homegrown player rule supports cost-control.²²¹ If Premier League clubs see that their future financial viability rests with producing young players, they will be encouraged to invest more heavily in their youth academies.²²² Conventional thought dictates that because Premier League teams are allowed to register an unlimited number of players under the age of twenty-one, as injuries mount during the season, more and more Premier League teams will have substitute benches composed of homegrown youth players.²²³

It is unclear how effective this player quota provision will be in creating success for the English national soccer team in international competition. In 1992, the Premier League was home to only eleven foreign players.²²⁴ Despite the league consisting of mainly English players, the national side failed to progress from the group stages of the 1992 European Championship in Sweden, and the team failed to even qualify for the 1994 World Cup in the United States.²²⁵

According to a recent poll from the Professional Football Players' Observatory, English clubs employ the highest proportion of expatriate players, with 59.2% coming from abroad.²²⁶ The Premier League leadership understands that clubs will always go abroad and look for talented players. But, the hope is that the new homegrown player rule will reduce squad sizes and stop the warehousing of players.²²⁷

D. Conclusion

It seems, for now at least, that FIFA and Sepp Blatter have admitted defeat as to their proposed quota rule. However, based on the effective

220. *See id.*

221. *See Conn, supra* note 192.

222. *See id.*

223. *See* Paul Carbray, *New Rules May Mean More Homegrown Soccer Talent in England*, NATIONAL POST, August 1, 2010, available at <http://sports.nationalpost.com/2010/08/01/new-rules-may-mean-more-homegrown-soccer-talent-in-england/#ixzz186wyMPnm>.

224. *See* Craig Farrell, *English Premier League: Home-Grown Rule Will Change Nothing*, BLEACHER REPORT, Sept. 3, 2010, available at <http://bleacherreport.com/articles/449759-english-premier-league-home-grown-rule-will-change-nothing>.

225. *See id.*

226. *See* James Munroe, *Clubs Agree to Home-grown Quota*, BBC SPORTS, Sept. 15, 2009, http://news.bbc.co.uk/sport2/hi/football/eng_prem/8255784.stm (last visited Aug. 1, 2011).

227. *See id.*

implementation of quota systems in UEFA competitions and the English Premier League, the European Commission does seem open to other permutations of player restriction formulas. FIFA and Blatter can take solace in the fact that with the proper re-configuration, they too might one day successfully champion the idea of a blanket quota rule on the professional club level.

Regardless of how their new math may add up, FIFA would be wise to work with the European Commission in crafting a quota system that is not rooted in discrimination based on national origin and has merely indirect effects, if any, on the free movement of professional soccer players and their ability to ply their trade as they see fit. For now, FIFA's 6+5 Rule will fade into the background, shelved until the time is right to revisit the issue of foreign player limits. It seems that even in retirement, Jean-Marc Bosman continues to influence the sport of soccer, this time securing a victory over FIFA. However, I am confident that FIFA will eventually re-mount a campaign in support of a player quota rule in the future. Maybe next time, their math will add up.