



**Stanford – Vienna
Transatlantic Technology Law Forum**

A joint initiative of
Stanford Law School and the University of Vienna School of Law



European Union Law Working Papers

No. 65

**An Analysis of UEFA's Homegrown Players
Rule by Applying the Covert Discrimination
Principle**

Haley Chow

2022

European Union Law Working Papers

Editors: Siegfried Fina and Roland Vogl

About the European Union Law Working Papers

The European Union Law Working Paper Series presents research on the law and policy of the European Union. The objective of the European Union Law Working Paper Series is to share “works in progress”. The authors of the papers are solely responsible for the content of their contributions and may use the citation standards of their home country. The working papers can be found at <http://tlf.stanford.edu>.

The European Union Law Working Paper Series is a joint initiative of Stanford Law School and the University of Vienna School of Law’s LLM Program in European and International Business Law.

If you should have any questions regarding the European Union Law Working Paper Series, please contact Professor Dr. Siegfried Fina, Jean Monnet Professor of European Union Law, or Dr. Roland Vogl, Executive Director of the Stanford Program in Law, Science and Technology, at:

Stanford-Vienna Transatlantic Technology Law Forum
<http://tlf.stanford.edu>

Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610

University of Vienna School of Law
Department of Business Law
Schottenbastei 10-16
1010 Vienna, Austria

About the Author

Haley Chow is a J.D. Candidate at Stanford Law School. Haley is a Member Editor of Stanford Law and Technology Review and a Member of the Stanford Entertainment and Sports Law Association. In 2017, Haley graduated with a Bachelor of Science in Electrical Engineering from Princeton University.

General Note about the Content

The opinions expressed in this student paper are those of the author and not necessarily those of the Transatlantic Technology Law Forum, or any of TTLF's partner institutions, or the other sponsors of this research project.

Suggested Citation

This European Union Law Working Paper should be cited as:
Haley Chow, An Analysis of UEFA's Homegrown Players Rule by Applying the Covert Discrimination Principle, Stanford-Vienna European Union Law Working Paper No. 65, <http://tflf.stanford.edu>.

Copyright

© 2022 Haley Chow

Abstract

In the European club football landscape, there have been several attempts to cap the number of foreign players that play in domestic and continental competitions. Before 1992, organizations like the Union of European Football Associations (“UEFA”), the Fédération Internationale de Football Association (“FIFA”), and individual national football associations (“NFAs”) each developed their own rules to favor domestic players over foreign players for places on club football rosters. The ECJ’s decision in *Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman* proved to be a “watershed moment,” holding that nationality-based quotas, like UEFA’s “3+2” rule, were in violation of the right to freedom of movement of workers. Following that decision, UEFA developed homegrown rules which reserved roster places for players who played for the club or for another club in the same NFA for three full seasons between the ages of 15-21. This paper reexamines homegrown rules in the light of covert discrimination jurisprudence to follow up on work published in 2013 by the EU Commission. While there is demonstrable progress in the number of foreign players who can claim homegrown status—especially club homegrown status—this review suggests an official re-visiting of the effectiveness of homegrown rules should be in order.

Table of Contents

I.	INTRODUCTION.....	1
II.	DEVELOPMENT OF HOMEGROWN RULES	4
III.	COVERT DISCRIMINATION LEGAL HISTORY	9
IV.	“6+5” AND HOMEGROWN RULES ANALYSIS	12
A.	EFFECTS OF HOMEGROWN RULES	13
B.	LEGAL ARGUMENTS.....	16
V.	CONCLUSION AND RECOMMENDATIONS	23

I. Introduction

Association football, or football, is the most popular sport in Europe. After its formal origin in England in the 1863, individual European countries created National Football Associations (“NFAs”) which oversaw leagues where football clubs could compete for domestic titles.¹ Eventually, the Fédération Internationale de Football Association (“FIFA”) was formed by consensus among the first European NFAs to oversee international competition between national teams.² FIFA has grown to become the governing body of world football with 211 member nations and the chief organizer of the sport’s biggest tournament, the FIFA World Cup.³

The members of FIFA are divided into several continental confederations. In 1954, the Union of European Football Associations (“UEFA”) formed as the organizer and overseer of competition among European countries.⁴ UEFA organizes its own competitions including the UEFA European Championship, which allows national teams to compete for a continental title every four years, and the annual UEFA Champions League which crowns the best club football team in Europe.⁵

In the 1990s, large amounts of funding flooded into European club domestic leagues—starting with the English Premier League—through lucrative broadcasting deals

¹ See *The History of the FA*, THE FA, <http://thefa.com/about-football-association/what-we-do/history> (last visited Feb. 28, 2022).

² See *FIFA – Soccer’s World Governing Body*, US SOCCER, <https://www.ussoccer.com/history/organizational-structure/fifa> (last visited Mar. 30, 2022).

³ See *About Us*, FIFA, <https://www.fifa.com/about-fifa/associations> (last visited Mar. 30, 2022).

⁴ ANDRÉ VIELI, UEFA 60 YEARS AT THE HEART OF FOOTBALL 9 (2014), https://www.uefa.com/MultimediaFiles/Download/EuroExperience/uefaorg/General/02/22/46/45/2224645_DOWNLOAD.pdf.

⁵ *Id.*, at 89.

and the emerging trend of billionaire club ownership.⁶ Increased investment allowed clubs to seek additional ways to improve their squads, and many turned to finding and employing the world’s best foreign players—a shift that some feared would leave players unable to break into the first teams of their local clubs.⁷ In response, UEFA created “Homegrown rules” which, starting in the 2006/07 season, forced clubs to reserve a specific number of spots on their 25-man roster for players who had either played for the club or played for another domestic club belonging to the same NFA before age 21.⁸

Perhaps the most famous example of a successful homegrown rules “thesis” is the club team FC Barcelona during the 2008/09 season, which had eleven players on its roster who grew up playing in the club’s youth academy.⁹ The FC Barcelona team went on to win every club trophy they were eligible for in that season—six in total—while playing “tiki taka,” a very distinct style of football with roots in FC Barcelona’s academy system.¹⁰ A year later, most of those players formed the core of Spain’s 2010 World Cup winning team.¹¹

While every team might aspire to the heights of FC Barcelona, a closer look shows homegrown rules may instead be considered a violation of one of the European Union’s fundamental freedoms. Articles 45(1) and (2) of the Treaty on the Functioning of the European Union (“TFEU”) guarantee that the “[f]reedom of movement for workers shall

⁶ See JOSHUA ROBINSON & JONATHAN CLEGG, *THE CLUB: HOW THE ENGLISH PREMIER LEAGUE BECAME THE WILDEST, RICHEST, MOST DISRUPTIVE FORCE IN SPORTS* 81-153 (2018).

⁷ *Protection of Young Players*, UEFA, <https://www.uefa.com/insideuefa/protecting-the-game/protection-young-players/> (last visited Feb. 28, 2022).

⁸ *Id.* With the sole exception of the English and Welsh NFAs sharing homegrown players.

⁹ See Dúnia Martín, *The Greatest Teams of All Time: Barcelona 2008-2012*, UEFA, <https://www.uefa.com/uefachampionsleague/news/0253-0d7ff5460779-90f1672a7e36-1000--the-greatest-teams-of-all-time-barcelona-2008-12/> (last visited Feb. 28, 2022).

¹⁰ *See id.*

¹¹ See Jamie Fahey, *Eat, Sleep and Respect the Ball: Inside Barcelona’s Modern La Masia*, THE GUARDIAN, <https://www.theguardian.com/football/2018/aug/15/barcelona-la-masia-messi-xavi-iniesta> (last visited Mar. 1, 2022).

be secured within the Union,” and “such freedom of movement 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.”¹² EU regulations and European Court of Justice (“ECJ”) decisions have broadened and shaped these rights in a way that potentially come into conflict with homegrown rules. One of these avenues of potential conflict is the ECJ’s establishment of the covert discrimination principle, arising out of *Giovanni Maria Sotgiu v Deutsche Bundespost*, which ensures that “[t]he rules regarding equality of treatment forbid not only overt discrimination by reason of nationality but also *all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result.*”¹³ Therefore, a rule or practice does not have to be discriminatory on its face to be in violation of EU law. Rather, one needs to look at the effects such a rule might have to determine whether it should be prohibited. According to the Court, “a difference in treatment can be justified only if it is based on objective considerations distinct from the nationality of the persons concerned and is proportionate to the legitimate aim pursued under national law.”¹⁴

These principles apply to more than just public entities; they apply to all private enterprises within the EU. The ECJ has ruled that rights regarding the free movement of workers have vertical and horizontal direct effect on individuals, meaning they confer rights onto individuals who can then enforce those rights against Member States and other private parties before national courts.¹⁵ Besides narrow limitations that are justified on the

¹² Consolidated Version of the Treaty on the Functioning of the European Union art. 45, May 9, 2008, 2008 O.J. (C 115) 47 [hereinafter TFEU].

¹³ Case 152/73, *Giovanni Maria Sotgiu v Deutsche Bundespost*, 1974 E.C.R. 153 (emphasis added).

¹⁴ Case C-20/12, *Elodie Giersch and Others v État du Grand-Duché de Luxembourg*, ECLI:EU:C:2013:411, ¶ 45 (June 20, 2013).

¹⁵ See Case 48/75, *The State v Jean Noël Royer*, 1976 E.C.R. 497.

grounds of public policy, public security, or public health, the right to free movement of workers is only constrained by the classification of a “worker,” which the ECJ defined as anyone who “performs services for and under the direction of another person for which he [or she] receives remuneration.”¹⁶ Therefore, professional football players who are employees of club teams within the EU cannot be barred from playing for another EU club team on the basis of their nationality. Nor can they be barred from playing for another EU club team by a rule that effectively has the same result as a nationality requirement.

In this paper, I will demonstrate that homegrown rules, as currently implemented, are a violation of the covert discrimination principle, and should be reassessed to determine whether they are “proportionate to the aims” of training youth players and maintaining competitive balance in European football.

II. Development of Homegrown Rules

Although modern European club football has a blanket prohibition on overt EU nationality discrimination, this ban has not always been in place. Prior to 1976, nationality clauses were commonplace requirements that were written into the rules for many European NFAs, and they were used to prevent players from playing for clubs that were outside of their home country.¹⁷ Nationality clauses kept football in Europe insular and isolated, even as other industries became more cosmopolitan. EU member states and private organizations applied freedom of movement rights to most business sectors, but football was considered outside the scope of those workers’ protections.¹⁸ Football

¹⁶ See Case 66/85, Deborah Lawrie-Blum v Land Baden-Württemberg, 1986 E.C.R. 2121.

¹⁷ See Case C-415/93, Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman, Royal Club Liégeois SA v Jean-Marc Bosman and others and Union des Associations Européennes de Football (UEFA) v Jean-Marc Bosman, 1995 E.C.R. I-4921.

¹⁸ Case 13/76, Gaetano Donà v Mario Mantero, 1976 E.C.R. 1333.

associations argued that they were exempt because football was not “economic activity,” it merely held “sporting interest.”¹⁹ Eventually, in *Gaetano Donà v Mario Mantero*, the ECJ held that football clubs and NFAs were *not* exempt from nationality discrimination principles because football at the professional level was “economic activity.”²⁰ Thus, the Italian NFA’s rule which restricted membership solely to Italian nationals—and any other NFA’s analogous rule—was a violation of EU law.²¹

In the aftermath of *Donà*, the composition of NFAs started to change slowly, and it was only in the early 1990s when there was another formal attempt to restrict the number of foreign players in football clubs and leagues.²² In 1991, UEFA adopted a “3+2” rule, created with the EU Commission, which allowed each NFA to limit the number of foreign players who could start in a first-division match to three plus two “assimilated” foreigners who had played in the country for five years or more.²³ Since a regulation football game is played with eleven players on either side, this rule required more than half of the team on the field—the other six players—to have the same nationality as their league’s NFA.

Game time is an important aspect for any professional player to grow his or her career, so such a restriction placed a nationality-based hurdle in every foreign player’s path, including players from other EU member states. In addition, the rules of football allow for a very limited number of substitutes with no option for re-entry; most players that start a game will finish the game on the field.²⁴ Therefore, restrictions on the number of starting spots in football would be more detrimental than restrictions on other sports that

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See *Bosman*, 1995 E.C.R. I-4921.

²³ *Id.*

²⁴ See Taylor Rash, *FIFA World Cup: FIFA Considering Fourth Substitution in Extra Time*, GUARDIAN LIBERTY VOICE, <https://guardianlv.com/2014/07/fifa-world-cup-fifa-considering-fourth-substitution-in-extra-time/> (last visited Mar. 30, 2022).

rely much more heavily on rotation, like volleyball or basketball. Fewer opportunities to step onto the field lead to fewer opportunities for a player to demonstrate his or her worth to the coaches, fans, and team owners.

Thus, in 1995, the ECJ held in *Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman* that the “3+2” rule was a nationality-based quota in violation of the right to freedom of movement of workers.²⁵ On one side, UEFA and the Belgian NFA (Union Royale Belge des Sociétés de Football Association) claimed that the “3+2” rule allowed clubs to maintain the traditional link between club and country, create a sufficient pool of national players, and maintain competitive balance between clubs.²⁶ Each of these arguments were rejected as the ECJ ruled in favor of the player Jean-Marc Bosman.²⁷ The ECJ held that the link between club and country is no stronger than the link between club and city, national team pools can be made up of players from clubs within and outside of that country’s domestic league, and competitive imbalance was still possible if clubs attempted to hoard the nation’s best players rather than the world’s best.²⁸

Following the *Bosman* decision, which also reduced some of the financial obstacles imposed by clubs to prevent players from transferring from one club to another, and the exponential increase in monetary investment into the sport, domestic leagues started diversifying rapidly.²⁹ To attempt to maintain some of the status quo and address problems they saw in lack of opportunities for local players, FIFA and UEFA developed two alternative proposals.

²⁵ *Bosman*, 1995 E.C.R. I-4921.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ See JOSHUA ROBINSON & JONATHAN CLEGG, *supra* note 6.

In May 2008, FIFA endorsed a “6+5” rule that would require a club to field at least six players—at the start of each match—who would be eligible for the national team of the country in which the club was located.³⁰ Once the match had started, there were no other restrictions that clubs had to adhere to. In justifying the rule, FIFA claimed that “[t]he foundations of football are harmony and balance between national team football and club football” and the “6+5” rule would address “the clubs’ loss of national identity.”³¹

The rule was never adopted by countries within the EU because the same month that FIFA endorsed the “6+5” rule, the EU Parliament voted against it in favor of further expansion of homegrown rules.³² Ahead of the 2008/09 season, UEFA acted in accordance with the EU Parliament’s decision.³³ UEFA ultimately required that teams, within their 25-man roster, have at least four players who played for a given club between the ages of 15 to 21 (“club-trained players”) and an additional four who—if they did not play for the club between those ages—played for another club within the same NFA (“association-trained players”).³⁴ Players needed to be registered for a club or with an association for a full three, not necessarily consecutive, seasons to achieve homegrown status.³⁵ Matchday squads and eleven-man starting lineups did not have any restrictions.³⁶ A team could carry fewer homegrown players, but they would then have to reduce their maximum roster size from 25

³⁰ *FIFA Congress Supports Objectives of 6+5*, FIFA.COM – FÉDÉRATION INTERNATIONALE DE FOOTBALL, <https://web.archive.org/web/20090330104041/http://www.fifa.com/aboutfifa/federation/bodies/media/newsid%3D783657.html#fifa+congress+supports+objectives> (last visited Feb. 28, 2022).

³¹ *Id.*

³² *FIFA President Defends ‘6+5 Rule’ in Parliament*, EURACTIV, <https://www.euractiv.com/section/sports/news/fifa-president-defends-6-5-rule-in-parliament/> (last visited Feb. 28, 2022).

³³ *See* UEFA, *supra* note 7.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

to reflect their homegrown players deficit.³⁷ These rules were and continue to be enforced by UEFA for continental club competitions like the UEFA Champion’s League.³⁸ In addition, the individual NFAs of several countries, including Italy, Spain, and Germany—three of the top five football leagues in Europe—have adopted variations of UEFA’s homegrown rules for clubs that play in their first division.³⁹

In promoting homegrown rules, the European Commission made an explicit comparison to the “6+5” proposal in a press release which stated, “Compared with the ‘6+5’ plan proposed by FIFA, which is incompatible with EU law, the Commission considers that UEFA has opted for an approach which seems to comply with the principle of free movement of workers while promoting the training of young European players.”⁴⁰ The Commission left the door open to study the practical effects of the homegrown rules after several years of implementation.⁴¹ In the conclusion to their comprehensive study in 2013 (“2013 Report”), the Commission’s researchers stated,

UEFA’s [homegrown] player rule has resulted in improvements to competitive balance in [UEFA] Champions League ... but these improvements are very modest. Despite the increases in the number of [homegrown] players at EU clubs, there is little evidence to suggest that the [Homegrown] Rule has had an impact in improving the quality of youth

³⁷ *Id.*

³⁸ *Id.*

³⁹ For Italy, see Press Release, Federazione Italiana Giuoco Calcio, Comunicato Ufficiale N. 7/A (July 5, 2011). For Spain, see CARSTEN RICHTER, HOW THE NUMBER OF FOREIGN PLAYERS INFLUENCES THE PERFORMANCE OF NATIONAL CLUBS AND THE NATIONAL TEAM 9 (2015). For Germany, see *At Least 12 German Players and the Local Players Rule*, DFL DEUTSCHE FUßBALL LIGA, <https://www.dfl.de/en/topics/transfers/local-player-rule/#:~:text=Since%20the%202008%2F09%20season.club%20or%20association%20in%20Germany> (last visited Apr. 2, 2022).

⁴⁰ European Commission Press Release IP/08/807, UEFA Rule on ‘Home-grown players’: Compatibility with the Principle of Free Movement of Persons (May 28, 2008).

⁴¹ *Id.*

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.⁴²

Nine years after the 2013 Report was published, the rule is still in effect.

III. Covert Discrimination Legal History

Relevant case law on the application of the covert discrimination principle arises in ECJ jurisprudence for both freedom of movement of workers and freedom of establishment. Freedom of movement was one of the rights guaranteed in the original Treaty of Paris establishing the European Coal and Steel community in 1951.⁴³ In 1957, that right was again guaranteed in the Treaty of Rome which formalized the European Economic Community in provisions that would become Article 45 TFEU.⁴⁴ At their inception, the provisions establishing freedom of movement protected workers from explicit, or direct, employment discrimination based on nationality.

In *Württembergische Milchverwertung-Südmilch AG v Salvatore Ugliola*, one of the first cases analyzing indirect discrimination, the ECJ held that freedom of movement protections did not allow Member States to selectively apply laws in a way which indirectly introduces discrimination in favor of their own nationals.⁴⁵ The ECJ's holding in *Sotgui* solidified an effects-based review of the discrimination analysis. *Sotgui*, an Italian

⁴² PROF. MURRAY DALZIEL ET AL., STUDY ON THE ASSESSMENT OF UEFA'S 'HOME GROWN PLAYER RULE' 8 (2013) [hereinafter 2013 REPORT].

⁴³ Treaty Establishing the European Coal and Steel Community, April 18, 1951, 261 U.N.T.S. 140.

⁴⁴ Consolidated Version of the Treaty Establishing the European Community, March 25, 1957, 298 U.N.T.S. 11.

⁴⁵ Case 15/69, *Württembergische Milchverwertung-Südmilch AG v Salvatore Ugliola*, 1969 E.C.R. 363.

national with an Italian residence, argued he was owed the same “separation allowance” rate as his co-workers with German residences.⁴⁶ Duetsche Bundespost, the Federal Post Office of Germany, provided a payment for workers who were employed away from their homes and varied the payment based on country of residence.⁴⁷ Even though the ECJ found that freedom of movement provisions did not apply because the Federal Post Office of Germany was exempt under the public sector exception, the ECJ held that such practices in private companies would be a violation of EU law under the covert discrimination principle.⁴⁸ The residency requirement that controlled separation allowance rate was a proxy for nationality with “the exclusive or principle aim or effect...to keep nationals of other Member States away from employment offered.”⁴⁹

In *Elodie Giersch and Others v État du Grand-Duché de Luxembourg*, a modern application of the covert discrimination principle, the ECJ ruled in favor of several students who were challenging the State of Luxembourg’s decision to deny their financial aid requests for the sole reason that they were not residents of Luxembourg.⁵⁰ The Court found that the students had a right to Article 45 TFEU protections for workers, because they were all living at home as dependents of parents who were workers: any educational grant the student received would be a social advantage for the worker.⁵¹ In addition, the Court found that the State of Luxembourg’s defense of the policy—to bring the higher education rate of Luxembourg citizens closer to rates in other EU member states—could not independently

⁴⁶ See Case 152/73, Giovanni Maria Sotgiu v Deutsche Bundespost, 1974 E.C.R. 153.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Case C-20/12, Elodie Giersch and Others v État du Grand-Duché de Luxembourg, ECLI:EU:C:2013:411, ¶¶ 11-23 (June 20, 2013).

⁵¹ *Id.* ¶ 40.

justify the rule, because the policy went beyond what was necessary to achieve those aims.⁵²

Freedom of establishment, protected by Article 49 TFEU, ensures the right of self-employed individuals to move between member states temporarily or on a permanent basis.⁵³ One element essential to freedom of establishment is recognition of qualifications acquired in another member state. In *Jean Thieffry v Conseil de L'ordre des Avocats à la Cour de Paris*, the ECJ held that the Paris Bar Association's rejection of Thieffry, a Belgian lawyer with a Belgian degree, because he did not have a French diploma constituted a violation of freedom of establishment.⁵⁴ According to the Court, "[t]he demand for a French diploma consisted of a disguised [or covert] discrimination, in that, although it does not formally take nationality into account, it impedes mainly or exclusively nationals of the other Member states."⁵⁵ In *Irène Vlassopoulou v Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg*, a similar case regarding recognition of legal credentials, the ECJ's holding went further.⁵⁶ In overturning the Baden-Württemberg Ministry of Justice's requirement that foreign nationals have at least two years of instruction in German Universities to fully practice in their courts, the ECJ held that "even if applied without any discrimination on the basis of nationality, national requirements concerning qualifications may have the effect of hindering nationals of the other Member states in the exercise of their right of establishment."⁵⁷

⁵² *Id.* ¶¶ 82-83.

⁵³ TFEU art. 49.

⁵⁴ Case 71/76, *Jean Thieffry v Conseil de L'ordre des Avocats à la Cour de Paris*, 1977 E.C.R. 765.

⁵⁵ *Id.*

⁵⁶ Case C-340/89, *Irène Vlassopoulou v Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg*, 1991 E.C.R. I-2357.

⁵⁷ *Id.*

IV. “6+5” and Homegrown Rules Analysis

An analysis of EU case law reveals the reason UEFA officials were unable to endorse FIFA’s “6+5” rule. Severely limiting the number of starting spots on a club team to “players eligible to play for a national team” is essentially limiting these six starting spots solely to domestic players. Over the years, FIFA has transitioned from only allowing citizens of a country to play for that country’s national team, but the general rule is that citizenship or ancestry is required to be eligible to play for a given country.⁵⁸ Therefore, like the German residency requirements in *Sotgui* or French diploma requirement in *Thieffry*, FIFA’s “6+5” rule imposed a nationality-based requirement on any team or league adopting the rule in a clear violation of the covert discrimination principle. Imposing the rule would be an “application of other criteria of differentiation” to have essentially the same effects as a nationality requirement by blocking foreign players from key opportunities in their profession.

Homegrown rules are far more complex than “6+5.” First, their effects are much more removed than “6+5” since they are only applied in squad creation rather than interfering with the starting line-up or even determining the gameday roster. Second, the FIFA eligibility requirement is much more of a direct link to nationality than youth club or NFA membership. While those requirements are tied to location, since clubs have only one place of operation and NFAs are bound by country borders, UEFA has emphasized that anyone can be a homegrown player, not strictly nationals. Third, UEFA’s arguments for focusing on training of young players and increasing openness and fairness of European competitions, unlike FIFA’s generic reference to the “national identity of a club,” have

⁵⁸ FÉDÉRATION INTERNATIONALE DE FOOTBALL, COMMENTARY ON THE RULES GOVERNING ELIGIBILITY TO PLAY FOR REPRESENTATIVE TEAMS (2021), <https://digitalhub.fifa.com/m/ccab990abf45fcf6/original/ro8mje8vw98yp3rvfbmi-pdf.pdf>.

legal backing in Article 165 TFEU.⁵⁹ While these differences were stark enough to convince the EU Commission to endorse homegrown rules initially, they deserve a closer analysis after more than a decade of use.

A. *Effects of Homegrown Rules*

Homegrown players are divided into two categories: club-trained players and association-trained players, and UEFA requires teams to reserve roster spots for both types. To analyze the effects of the UEFA rule, I reviewed the rosters of the teams who formed the last sixteen of the Champions League in the 2021/22 season. These are widely considered the sixteen best club teams in Europe and come from eight different countries—seven of which are EU members. To determine which players would be considered homegrown, I used the website Transfermarkt to pull transfer history data for every professional player listed on each team’s Champions League roster.

At the start of each Champions League campaign, UEFA requires clubs to register players by submitting two “Article 45 Player Lists.”⁶⁰ List A contains the 25—or fewer—man squad, and the club must indicate to UEFA which of the homegrown players are club-trained or association-trained.⁶¹ List B has no size limit and contains players who are under 21 and have been playing for the club for an uninterrupted period of at least two years.⁶² List B generally consists of players who split time between the first and second teams of

⁵⁹ TFEU art. 165.

⁶⁰ UNION OF EUROPEAN FOOTBALL ASSOCIATION, REGULATIONS OF THE UEFA CHAMPIONS LEAGUE (2022), <https://documents.uefa.com/r/Regulations-of-the-UEFA-Champions-League-2021/22/Article-45-Player-lists-Online> [hereinafter *UEFA REGULATIONS*].

⁶¹ *Id.*

⁶² *Id.*

the club.⁶³ If a player appears in a Champions League game, the player must be on one of the two lists.

The existence of two lists emphasizes that the players who are most likely to be affected by homegrown rules are those who are over 21. There are a finite number of spots on a Champions League roster that can go to older players. Homegrown rules reduce the number of opportunities for these players by limiting the number of the spots for which they are eligible. If homegrown rules have a nationality-based effect, they will tie eligibility for those eight reserved spots on List A to nationality.

The following table indicates the size of the List A roster provided by each last sixteen club and the counts of homegrown players. These counts are divided into club-trained and association-trained. I also aggregated the number of homegrown players that are from countries outside of their club’s NFA to determine the effects of homegrown rules on foreign players. Thus, a player like Cristiano Ronaldo, the Portuguese national who played for the English club Manchester United for several seasons before the age of 21, counts as both a club-trained player and a foreign club-trained player for Manchester United in the 2021/22 season.⁶⁴ Even though all club-trained players are also, by definition, association-trained players, I separated the two groups to isolate the analysis for the two categories. Therefore, in the following table, players are *either* club-trained or association-trained.

Club Name	List A Total Players	Club Trained Total	Foreign Player, Club Trained	Association Trained Total	Foreign Player, Association Trained
Ajax Amsterdam	19	4	2	5	2

⁶³ Teams like AFC Ajax are known for having large rosters made up of youth academy players who split time between A and B teams. See *AFC Ajax | Squad*, UEFA, <https://www.uefa.com/uefachampionsleague/clubs/50143--ajax/squad/> (last visited Apr. 1, 2022) (indicating 14 players under the age of 21 on the Ajax AFC roster are in “List B” versus 19 players over 21 in “List A”).

⁶⁴ See *Cristiano Ronaldo – Player Profile 21/22*, TRANSFERMARKT, <https://www.transfermarkt.us/cristiano-ronaldo/profil/spieler/8198> (last visited Mar. 30, 2022).

Atlético de Madrid	21	2	1	3	1
Bayern Munich	25	5	1	7	1
Chelsea FC	25	5	1	3	1
Inter Milan	24	3	1	5	0
Juventus	23	2	0	10	1
Liverpool FC	23	3	1	4	0
LOSC Lille	20	0	0	5	1
Manchester City	19	1	0	5	1
Manchester United	24	4	3	4	0
Paris Saint-Germain	25	1	0	3	0
Real Madrid	24	4	2	5	1
Red Bull Salzburg	21	0	0	4	1
SL Benfica	21	1	0	4	0
Sporting CP	21	2	0	6	0
Villarreal CF	22	5	0	5	1

This table provides insight into how often homegrown players are from foreign countries. If the foreign club-trained or foreign association-trained column summed to zero, then UEFA's homegrown rule would, *in effect*, be a nationality requirement. While the data rejects a definite conclusion that homegrown rules are an exact proxy for nationality, the table does show that there is a strong correlation between homegrown player designation and nationality. For almost every club, fewer than half of the homegrown player spots are held by foreign players. The difference is even more stark in the association-trained category. On average, 15% of association-trained players are foreign nationals while 21% of club-trained players are foreign nationals. This data does demonstrate some improvement from the Champions League team data recorded in the 2013 Report. The report showed that in the 2011/12 season, 13% of club-trained homegrown players were foreign nationals and only 9% of association-trained homegrown

players were foreign nationals.⁶⁵ Despite the growth, these percentages illustrate how unlikely it is for a foreign player to take a homegrown player spot on a roster. The typical homegrown player is a national of the same country in which their club and NFA is located.

While the consequences of UEFA's homegrown rules are less severe than FIFA's "6+5" and the rejected "3+2" rule that created strict limitations on the starting line-ups of a team, List A and B form the entirety of the pool of players who are eligible to play for a club in the Champions League.⁶⁶ High-quality performances in the Champions League showcase a player's ability and can form a launching pad for a transfer to one of the world's biggest football clubs.⁶⁷ Players over 21 are only eligible for List A so any restriction on their ability to make that roster can have profound career consequences.

B. *Legal Arguments*

Therefore, UEFA's restriction of roster spots based on homegrown designation is a policy, somewhat related to a player's nationality, that is likely to influence a player's career. However, that effect is far more attenuated than similar practices rejected by the EU Parliament and ECJ. To evaluate the policy, we can view homegrown rules through the lens of covert discrimination case law.

Homegrown rules could be viewed as creating barriers to enter the football industry in a country or locality that is different from the one an individual earns their homegrown status, analogous to requirements for country-specific education or certification. This

⁶⁵ 2013 REPORT, *supra* note 42, at 48.

⁶⁶ UEFA REGULATIONS, *supra* note 60.

⁶⁷ See Kelvin Loyola, *USMNT: Brenden Aaronson's Value Soaring Amid Interest from Leeds United and AC Milan*, BOLAVIP US, <https://bolavip.com/en/soccer/usmnt-brenden-aaronsons-value-souring-amid-interest-from-leeds-united-and-ac-milan-20220221-0007.html> (last visited Apr. 1, 2022) (discussing the increased expected transfer value of RB Salzburg's Brenden Aaronson after two strong Champions League performances against Bayern Munich).

comparison is most apt for association-trained players, because NFAs have the same borders as European nations. Once a player decides to leave their youth club to play for a different professional club, they give up their club-trained status regardless of whether they play for another club within their home country or outside of the NFA. However, the association-trained homegrown player designation is intrinsically tied to working within a certain country, and generally that is the player's home country.

This situation is comparable to *Vlassoupoulou* and *Thieffry*, where workers who did not earn their degrees in certain countries were then barred from joining professional organizations.⁶⁸ In those cases, individuals were disadvantaged because they did not earn educational credentials or degrees from the country where they wanted to practice.⁶⁹ Similarly, due to homegrown rules, players are disadvantaged when they seek to play for clubs outside of the association where they spent several seasons in their youth. The three-season requirement in homegrown rules is similar to the implicit three or four-year span that would be necessary for an individual to earn an advanced degree.

However, the key difference between homegrown rules and the policies disputed in these freedom of establishment cases is that the "improper" certifications precluded Thieffry and Vlassoupoulou from joining the Paris bar⁷⁰ and from becoming a lawyer for the Ministry for Justice in Baden-Württemberg, respectively.⁷¹ Homegrown rules may provide an obstacle for players who do not have the designation, but they do not completely prevent players from entry into the footballing industry in another country. As

⁶⁸ See Case C-340/89, *Irène Vlassopoulou v Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg*, 1991 E.C.R. I-2357; Case 71/76, *Jean Thieffry v Conseil de L'ordre des Avocats à la Cour de Paris*, 1977 E.C.R. 765.

⁶⁹ See *Vlassopoulou*, 1991 E.C.R. I-2357; *Thieffry*, 1977 E.C.R. 765.

⁷⁰ *Thieffry*, 1977 E.C.R. 765.

⁷¹ *Vlassopoulou*, 1991 E.C.R. I-2357.

such, the freedom of establishment cases may not prove decisive in any determination on homegrown rules, they merely demonstrate that the framework of homegrown rules could be used to create a discriminatory policy if they had very severe effects.

Instead, homegrown rules could be seen as establishing soft “residency requirements” for players. For a player over 21, there are two important periods which will determine whether they will reap the full rewards of being a homegrown player. When viewed together, these periods can be seen as establishing a residency requirement that generally will reflect a player’s nationality.

First, a player earns their homegrown status between ages 15 to 21.⁷² Theoretically, since a player can play six seasons between the ages of 15 to 21, that player can qualify as a homegrown player for up to two different clubs or two different NFAs. The data shows that very few players earn this status, because the UEFA rule requires uninterrupted ownership through the full season.⁷³ It is much more common for young players to be “loaned out” to another club for half a season, a process that disqualifies them from aggregating the time for either club in that season to their homegrown status, or different clubs in multiple seasons which reduces the likelihood of them earning homegrown status for any club.⁷⁴ The most common scenario is that the player plays for the same club or stays within the same NFA for longer than three seasons, making them eligible for homegrown status with only one club and one NFA.⁷⁵

⁷² See UEFA, *supra* note 7.

⁷³ See UEFA REGULATIONS, *supra* note 60.

⁷⁴ See, e.g., Mohamed Salah – Player Profile 21/22, TRANSFERMARKT, <https://www.transfermarkt.com/mohamed-salah/profil/spieler/148455> (last visited Mar. 30, 2022); Romelu Lukaku – Player Profile 21/22, TRANSFERMARKT, <https://www.transfermarkt.com/romelu-lukaku/profil/spieler/96341> (last visited Mar. 30, 2022).

⁷⁵ See, e.g., Marcus Rashford – Player Profile 21/22, TRANSFERMARKT, <https://www.transfermarkt.com/marcus-rashford/profil/spieler/258923> (last visited Mar. 30, 2022); Davy

Therefore, most players have one region and one country in which they earn their status. While not explicitly linked to nationality, the data shows that region and country is most often the region in which they were raised and the country in which they have citizenship, because they earned homegrown status playing for their local club. FIFA's Article 19(2)(b), which provides an EU-specific exception to FIFA's blanket ban on international transfers for players under age 18, enables players "within the territory of the EU" to look outside their home country for playing opportunities.⁷⁶ If they decide to leave, the new club has "minimum obligations" to ensure the player "is looked after in the best possible way."⁷⁷ In spite these required accommodations, few youth players stay abroad long enough to earn homegrown status.

Once they turn 21, players are incentivized to live and work in the same country, or locality, as they earned their status to ensure they are unencumbered by homegrown roster designations. This incentive seems to place a "residency requirement" for a player to maximize their chances to make the roster for a UEFA Champions League team. A player that chooses to live and play in a different region within the country where they gained homegrown status cannot qualify as a club-trained player, and a player that chooses to leave the country to play for a club that is part of a different NFA cannot qualify as a club-trained or association-trained player.

In *Giersch*, the ECJ held that the residency requirement imposed by the State of Luxembourg, which prevented the children of migrant workers from receiving financial aid

Klassen – Player Profile 21/22, TRANSFERMARKT, <https://www.transfermarkt.com/davy-klassen/profil/spieler/182932> (last visited Mar. 30, 2022).

⁷⁶ FÉDÉRATION INTERNATIONALE DE FOOTBALL, REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS, at 29-30 (2021), <https://documents.uefa.com/t/Regulations-of-the-UEFA-Champions-League-2021/22/Article-45-Player-lists-Online>.

⁷⁷ *Id.*

payments, was a violation of the covert discrimination principle.⁷⁸ Based on the Court’s decision, the consequences of the discriminatory policy in *Giersch* are arguably closer to the consequences of lacking homegrown status than the complete bar posed by *Vlassoupoulou*, for example. Even though receiving—versus not receiving—funds for a child’s education has an attenuated link to an individual’s status as a worker, the ECJ held that the provision of financial aid to *Giersch* and other students was a legally recognized benefit to their parents under Article 7(2) of Regulation No. 1612/68.⁷⁹ Similarly, being eligible for all—versus a reduced number of—spots on a roster has an attenuated link to a player’s success in football. Therefore, taken with the data, the ECJ would likely find that homegrown rules are indirectly discriminatory under the covert discrimination principle.

UEFA’s argument could stem from an independent justification on public policy grounds, similar to the State of Luxembourg’s argument that their policy was necessary to raise the rates of university graduates among Luxembourg citizens.⁸⁰ In establishing homegrown rules, UEFA’s stated goals were to (1) encourage local training of young players, (2) maintain the local identity of clubs, and (3) increase openness and fairness of European competitions.⁸¹

UEFA might argue that each of their three goals should be recognized by the ECJ as a legal justification for homegrown rules, but Article 165 TFEU forms the sole legal basis for their argument. Article 165(1) TFEU notes the Union must take into account the “specific nature of sport” while 165(2) TFEU states that “action shall be aimed at . . . developing the European dimension in sport, by promoting fairness and openness in

⁷⁸ Case C-20/12, *Elodie Giersch and Others v État du Grand-Duché de Luxembourg*, ECLI:EU:C:2013:411, ¶ 83 (June 20, 2013).

⁷⁹ *Id.*

⁸⁰ *See* UEFA, *supra* note 7.

⁸¹ *Id.*

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.”⁸² These clauses demonstrate that the ECJ would likely see the development and protection of young players and competitive balance of competitions to be cognizable legal aims while the Court may be less convinced by UEFA’s argument promoting “local-identity.”

Not only does UEFA need to argue that homegrown rules have public policy aims, but the organization also needs to argue that “methods are proportionate to legitimate aims.”⁸³ However, this is likely where their argument will fall short. Arguments about locality, whether they refer to the strength of the “local” training of players or forming a “local” identity of a club seem to be appropriately covered using just club-trained player designations. In fact, the policy of giving club-trained players the ability to compete for a greater number of spots on a roster is like rewarding workers who have spent several years working at a company. However, there is no “local”-based argument for association-trained players. This designation harkens back to FIFA’s—and even the doomed Belgian NFA’s—argument that there should be a legally recognized link between a club and its country. The boundary for a given NFA is the same boundary as the country itself, and players who seek to leave the country where they earned their homegrown status for a new club are uniformly disadvantaged.

The 2013 Report understood the association-trained player designation as primarily for competitive balance within domestic leagues.⁸⁴ If club-trained player rules were

⁸² TFEU art. 165.

⁸³ *Giersch*, ECLI:EU:C:2013:411, ¶ 31 (June 20, 2013).

⁸⁴ 2013 REPORT, *supra* note 42, at 36.

unaccompanied by association-trained rules, then players, once having made the decision to leave their club, would be equally likely to leave their domestic league. While the 2013 Report concluded that homegrown rules led to modest improvements in competitive balance,⁸⁵ I would argue that other methods like the strengthening of Financial Fair Play Regulations—regulations created by UEFA to prevent football clubs from spending more than they earn on player salaries⁸⁶—or instituting salary caps—a policy utilized in Major League Soccer in the U.S. to similarly regulate club spending⁸⁷—are far more effective methods to ensure competitive balance without implicating freedom of movement. As it stands, however, giving players homegrown or analogous designations will likely have a much smaller influence on competitiveness of domestic and continental leagues than the continued trends of injecting greater wealth into the biggest European clubs and leagues.⁸⁸

The last question that may be evaluated in a proportionality analysis of homegrown rules is the number of spots on a roster that are designated for homegrown players. When UEFA first introduced the rule in the 2006/07 season, they started with a minimum of four homegrown players in each 25-man squad, which eventually grew to a minimum of eight.⁸⁹ There is an argument that reducing the number of spots reserved for homegrown players accomplishes the same goals with less influence on free movement. Or reducing the amount of time a player needs to be at a club to receive homegrown status would likely have a similar effect. Since the 2008/09 season, UEFA has not varied their method of

⁸⁵ *Id.*

⁸⁶ *UEFA Approves New Spending Plans*, BBC NEWS,

<http://news.bbc.co.uk/sport2/hi/football/europe/8256279.stm> (last visited Mar. 28, 2022).

⁸⁷ *Does the MLS Have a Salary Cap?*, AS USA LATINO – DIARIO ONLINE DE DEPORTES,

https://en.as.com/en/2022/02/22/soccer/1645531233_513423.html#:~:text=The%20most%20important%20number%20for,to%20%247%20million%20by%202027 (last visited Mar. 28, 2022).

⁸⁸ *Study Confirms Huge Wealth Gap in European Soccer Leagues*, SPORTS ILLUSTRATED,

<https://www.si.com/soccer/2019/09/04/uefa-european-wealth-gap-big-five-leagues> (last visited Mar. 31, 2022).

⁸⁹ *See* UEFA, *supra* note 7.

enforcing their homegrown player rules policy. Meanwhile, various NFAs have adopted the policy for their domestic leagues, assuming it was in accord with EU law.⁹⁰

V. Conclusion and Recommendations

Through my research and analysis, I believe that homegrown rules are a method of indirect discrimination based on nationality. In addition, I believe that the association-trained designation is much more nationality-focused than the club-trained designation. Further, the application of club-trained designations alone can accomplish legally recognized EU goals of ensuring young players receive adequate training in their sporting pursuits under Article 165 TFEU. In their next evaluation of homegrown rules, UEFA should consider methods of modifying homegrown rules in ways which are less correlated to an individual's nationality, whether that is reducing the timeframe a player needs to play for a club or for an association before they can be designated as "homegrown," reducing the number of spots on a roster that are reserved for homegrown players, or abolishing the association-trained players designation altogether. These are changes that would indicate UEFA is calibrating to find a "proportionate" solution "to their legitimate aims."

⁹⁰ Federazione Italiana Giuoco Calcio, *supra* note 39.