

CRISIS AT FOOTBALL MARKET
AFTER THE “BOSMAN”:
ARE COMPETITION
EXEMPTIONS ADMISSIBLE
FOR FOOTBALL?

Cengiz Kağan ŞAHİN

Promoter: Prof. Frank HOFFMEISTER

Readers: Prof. Frank HOFFMEISTER,
Prof. Marc MARESCEAU,
Prof. Dirk ARTS

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1. INTRODUCTION

Sports has been a prominent issue in European Union agenda and within this field football has been the most interesting and attractive branch of sports. This study will examine the legal conformity of making competition exemption to enhance competition in the field of football. Following such a context; firstly the applicability of EU Law to the field of sport will be elaborated. Within this issue, the evolving relationship between sport and European Union, the sports connection to the community law is essential. The Helsinki report constitutes a basic document in which general problems linking the sport and the Competition Policy were deliberated. Thus, it will be presented before the related articles of the EC Treaty. Then, the actors of football and their legal positions will be introduced. The various markets will be distinguished in order to reveal the affects of restrictions on an upstream market on the downstream markets. After that; the main actors of football market including the footballers, the FIFA and the UEFA will be explained. The changing situation of footballers and transfer system will be elaborated. The conditions for competition exemption in the area of football will be expressed in addition to the expectations of the EU from the market. Mentioning this issue, the paper will deal with relevant legislations about the competition exemptions. Since the Bosman case constitutes a turning point as it caused many unexpected results and circumstances in the football market; it will be analyzed as a main issue in this thesis. The history of Bosman, the interpretation of the ECJ of the case and the results that affect the European football market will be given. Covering these issues, the main aim of the thesis is to find an answer to whether competition exemptions are admissible for football or not.

2. RELATIONSHIP BETWEEN SPORT AND THE EUROPEAN UNION

The original Treaty of Rome establishing the European Economic Community was primarily an economically inspired and economically oriented treaty. At the time of drafting of this Treaty at 1950's, professional sport was still very much in its infancy and the economic dimension of sport was still insignificant. Sport was almost exclusively exercised on a purely amateur basis. Unsurprisingly therefore, no explicit reference to sport was included in the EEC Treaty. Several decades later, sport still did not expressly appear within the Community Treaty.^[1] However, the existence of sports and its relation with the European market was an undeniable fact. The distinctive features of the sports and its

[1] S. Van den Bogaert, 'Practical Regulation of the Mobility of Sportsmen in the EU Post Bosman' (Kluwer Law International, 2005) p. 4.

relation with various issues drew up the agenda for sports to be regarded as a subject for consideration. First of all, the developing relationship of sports with economics and professionalism have been influential in this context. They have made a remarkable and irresistible entry within the field of sport. Additionally, sporting events often also generate enormous amounts of revenue for organizers, sponsors, advertisers, television broadcasters, etc. The principle of solidarity is an important element in sports that links the various levels of sporting practice, from recreational to top-level professional sport.^[2] This character reinforces the sports to be a professional field beside a field of recreation.

Recently, sports have become a vast industry and since the management and labor structures in the field have become more complex with the development of the professional sport. While tension between management and labor may exist in every industry, it started to dominate the professional sports industry in the 1990's. The unique characteristics of the sports industry, such as highly specialized job functions and varying levels of skills, affect the nature of agreements between employers and employees by making it difficult to characterize their respective rights.^[3] Once the Court's rulings had made it absolutely clear that sporting activities were at least partly subject to Community law, the European institutions, especially the European Parliament and the European Commission, gradually started to demonstrate a greater interest in the subject. In the first place, they voiced serious concerns about the lawfulness under Community law of sporting rules such as the nationality restrictions and the transfer systems which were applicable in different sporting disciplines. Their interventions in relation to sport did not remain strictly limited to issues which could be situated in an economic context. This had everything to do with the second relevant development since the entry into force of the EEC Treaty. With the adoption of the Single European Act and the Treaties of Maastricht, Amsterdam and Nice, the original European Economic Community has been transformed in the European Community and subsequently the European Union, and has been attributed powers which far exceed the economic sphere.

The increasing importance of sport even in the legal world and in particular in Community law has become evident within the European Union. For many years there have been disputes, often made in public, between sports associations and the Commission concerning different sports, in particular Formula 1 and football, and divergent opinions in several aspects, such as the sale of tickets or of broadcasting rights for championships.^[4] In addition to questions concerning

[2] D.-G. Dimitrakopoulos, 'More Than a Market? The Regulation of Sport in the European Union' (2006) 41 *Government and Opposition*, p. 574

[3] A.-L. Lee, 'The Bosman Case: Protecting Freedom Of Movement in European Football' (1996) 19 *FILJ*, p.1255

[4] A. Egger & C.-S. Hackl, 'Sports and Competition Law: A Never-ending Story?' (2002) 23 *ECLRev*, p. 81.

single cases, there have been on-going general discussions about the monopoly of federations or the ownership of clubs. Some specific legal problems were settled by decisions adopted by the Commissioner for Competition Policy and some more general problems were addressed in the so-called Helsinki Report presented by the Commission.^[5]

3. RELEVANT MARKET AND ITS ACTORS

A. Relevant Market

Even if the determination of the relevant market in the context of Article 81 does not have the same importance as in the context of Article 82, the examination of possible interferences with competition requests the definition of the market. As to the geographically relevant market of transfer rules, it need only be said that it covers the territory of all the associations in which the transfer regulations are applied.^[6] As regards to the relevant product market, the fact has to be underlined that in professional sport certain particular features prevail which distinguish it from other economic branches. But that alone does not denote that there cannot be a market, or even several markets, in this sector too.

There exist different several markets; however they are interconnected. The fact that restrictions on an upstream market affect the downstream markets reveals this explicitly. It is first necessary to distinguish the different markets as the exploitation market, the contest market and the supply market.

1. Exploitation market

The first market is the exploitation market in which both individual clubs and national and-international associations act as undertakings and exploit their performances. It is therefore a market of secondary goods, including things such as the exploitation of broadcasting rights for matches.

2. Contest market

Upstream of the exploitation market forms another market, that is contest market, in which the performances which are exploited are produced. This is the market in which the typical product of professional sport is produced: the sporting contest. The contest is essentially a joint production of the clubs. Production takes place complementarily by two clubs playing against each other, with the intervention of external factors such as spectators and sponsors also intervening. This market has certain particular features. Thus it lives very much on the standard of the teams and the uncertainty of the result. That presumes

[5] Report from the Commission to the European Council, COM(1999)

[6] A. Egger & C.-S. Hackl, 'Sports and Competition Law: A Never-ending Story?' (2002) 23 ECLRev, p. 86.

certain, balance of the teams, but not perfect and constant; as otherwise every match would end in a draw. Equally unsatisfactory, of course, would be an extreme difference in the standard of play of the two opposing teams.

3. Supply market

The third market is the supply market where the clubs "sell" and "buy" players. The circumstance that the production factor "professional footballer" consists of human beings is moreover not a particularity of professional sport but a characteristic of many branches of the economy in the service sector, and merely shows the high rank of "human resources". As the European Court of Justice (ECJ) has already recognized, human labor too can be the subject of economic activity.

On the supply market, the clubs, similar to the contest market, have opposing interests which are expressed in the fight for the best players. The importance of the acquisition of good players for a club may in practice even lead to several clubs using transfers as an instrument of control, by considering which player could be "sold" to which club without the other club thereby becoming a danger to the selling club.

In favor of the substitutability of players one can mention the fact that the transfer system provides for schematic formulae for calculating the amount of transfer fees. Further, the potential functional exchangeability of players should be seen in connection with what actually happens in the market. Thus practice shows that what matters is the "sporting value" of the players. Here, the criterion is primarily the price level, that is, the transfer sum, the footballer's playing performances, his age and previous success (perhaps objectivised according to the standard of his previous club) probably also being taken into account, and the intended purpose, generally the function of the player (for example, attacker). Differentiations are thus altogether appropriate. That demand is not so narrowly restricted is shown by the circumstance that a club which is unable to engage a particular player then, after the failure of this transfer, engages another player, possibly a less expensive one. It follows from the considerations above that the three markets are actually closely connected, but must be distinguished precisely for the correct definition of the relevant market. The relevant market for the transfer regulations is therefore the market which is formed by the supply of and the demand for players, hence the acquisition market. However, that does not exclude the possibility of possible interferences with competition having an effect on the downstream markets.

Having mentioned the characteristics of the football market and its evolving relationship with the European Union, the actors of the football market mainly including the footballers, and the two prominent football institutions, related to the issue, FIFA and UEFA, will be mentioned.

B. Footballers

The employment conditions of professional players are among the most important issues in sports.^[7] Players' wages and the restrictions, on which clubs apply on players they employ, determine the distribution of the players between the clubs. Consequently, employment conditions substantially determine the level of inequality between clubs in any league. In line with this, the transfer regulations constitute an important topic within the issue of employment conditions for footballers.

In order to examine the transfer regulations in the light of competition law, what matters most is not the contractual relations between a player and his club, but the relationship between the former and new clubs. Nonetheless, certain clauses concerning transfers, such as a right to give notice, might also be found in the contract between a player and his club. Furthermore, it has to be kept in mind that professional footballers are employees and not self-employed providers of services.^[8]

The most contentious area of the transfer system revolves around out-of-contract players. Before Bosman era, FIFA regulations specified that even these players could be prevented from moving clubs unless, and until, a transfer fee was paid. The obvious deficiency this presents lies in the restriction it places upon the free movement of footballers between Member States. It is precisely this legal irregularity that first aroused the curiosity of the European Commission and instigated the wrangling that would continue unabated for most of the next decade.^[9]

The organisation of professional football has long attracted the criticism of the European Parliament. In 1989, the Janssen Van Raay Report condemned the transfer fee system as "a latter-day version of the slave trade, a violation of the freedom of contract and the freedom of movement guaranteed by the Treaties." Also criticisms made by media against the old transfer system: "just think, there are tens of thousands of footballers in the world who, because of the rules, are trapped in one club against their will or transferred to another club they don't want to go to".^[10] Article 48 is the fundamental Treaty right guaranteeing freedom of movement for EC workers and providing for the abolition of discrimination based on nationality.^[11]

[7] A. King, 'The European Ritual: Football in the New Europe' (Ashgate, 2003) p. 69.

[8] A. Egger & C.-S. Hackl, 'Sports and Competition Law: A Never-ending Story?' (2002) 23 ECLRev, p. 86

[9] D. McAuley, 'They Think It's All Over' (2002) 7 ECLRev, p. 331

[10] See De Standaard (Belgian newspaper), August 22, 1992.

[11] P.-E. Morris, S. Morrow & P.-M. Spink, 'EC Law and Professional Football: Bosman and its Implications' (1996) 59 MLRev, p. 894

C.UEFA FIFA

Organized football in the European Union is played by clubs joined together in national associations. ^[12]Each national association belongs to the Fédération Internationale de Football Association (“FIFA”), which organizes football internationally from its headquarters in Switzerland. FIFA is further divided into confederations for each continent, such as the Union of European Football Associations (“UEFA”), which is comprised of European national associations, including those from Member States. Football matches are played within national associations by club belonging to that association or an affiliate. Every professional player must be registered with his national association in order to play for a club. These organizations govern both professional and amateur football.^[13]

Football bodies have believed their transfer rules were immune from E.U. law.^[14]But at *Bosman*, ECJ reaffirmed the view that sporting activities were multifaceted and that EU law applied to the economic facet of those activities. Second, it dealt a heavy blow to a key component of the regulations governing the transfer of professional footballers, the edifice that had hitherto exemplified the ‘specificity’ of sport. It obliged UEFA and FIFA—the game’s governing bodies that were previously immune to external pressures—to reconsider this structure in its entirety. In that sense, the ruling opened a path that the Commission (in its capacity as guardian of the Treaties) and the game’s governing bodies had to follow.^[15]

4. APPLICABILITY OF COMMUNITY LAW

As the European Commission specified in its working paper relating to sport, there are three major areas of Community activity which have a direct influence on sporting affairs: first, the free movement rules; secondly, the competition rules; and thirdly, the different provisions concerning Community policies such as health, education, culture, etc.^[16]According to what has been settled in the case law of the court, the practice of sport comes under competition law, in so far as it constitutes an economic activity within the meaning of Article 2

[12] Opinion of Advocate General Lenz, *Union Royale Belge des Sociétés de Football v. Bosman*, Case C-415/93, slip op. at 4, \ 4 (Eur. Ct. J. Sept. 20, 1995). One national association exists in each Member State, except the United Kingdom where, for historical reasons, there are four.

[13] A. Egger & C.-S. Hackl, ‘Sports and Competition Law: A Never-ending Story?’ (2002) 23 ECLRev, p. 81

[14] D. Mcauley, ‘They Think It’s All Over’ (2002) 7 ECLRev, p. 334

[15] D.-G. Dimitrakopoulos, ‘More Than a Market? The Regulation of Sport in the European Union’ (2006) 41 *Government and Opposition*, p. 569

[16] S. Van den Bogaert, ‘Practical Regulation of the Mobility of Sportsmen in the EU Post *Bosman*’ (Kluwer Law International, 2005) p.8.

E.C. [17] It follows that, in addition to sporting activities, the rules laid down by sports associations are also not outside the scope of the E.C. Treaty. Only activities which are purely social, artistic or sporting do not come under E.C. competition law.^[18]

Arguments were also submitted on the question of the application of Community law to rules laid down by sporting associations. The Court reiterated earlier rulings in *Walrave*^[19] and *Dona v Mantero*,^[20] finding Community law applicable to professional sport in general, in so far as it constitutes an economic activity, to the rules of private sporting associations, and to professional footballers specifically, as workers and citizens of the Community.^[21]

Contrary to common expectations, judgments in *Dona v Mantero* did not lead to a stream of challenges against the compatibility with Community law of certain sports rules and practices before national courts and tribunals. The ranks were closed in sporting circles. The sporting federations involved in the different disputes tried to minimize the impact of the decisions as much as possible.^[22] The influence of E.C. law on European football has come to most people's attention through the 1995 *Bosman* judgment of the ECJ. UEFA's transfer rules and nationality clauses were found to violate the free movement of workers (Article 39 E.C). The nationality clauses involved restrictions on the number of foreign players (those who are not nationals of the country where the domestic league is located) that can be fielded in a match. As a result of the abolition of the transfer fee, European clubs were no longer permitted to demand financial compensation from the club that acquires one of their former players, whose contract has run out. This decision had a vast impact on the whole European football scene.^[23]

Bosman ruling of the ECJ highlighted the incompatibility of the previous regime with key provisions of the Treaty and rendered change unavoidable, but it did not resolve a key issue: 'How far should change go and how should the Commission -the 'guardian of the Treaty', apply the principles of the free movement of workers and the free provision of services to the area of professional sport where there was no sport-specific Treaty provision and no secondary

[17] Case 36/74 *Walrave and Koch v. Association Union Cycliste Internationale* [1974] E.C.R. 1405; [1975] 3 C.M.L.R. 120, para. 4, and Case CM15/93 n. 3 above, para. 73.

[18] A. Egger & C.-S. Hackl, 'Sports and Competition Law: A Never-ending Story?' (2002) 23 ECLRev, p.82

[19] Case 36/74, [1974] ECR 1405.

[20] Case 13/76, [1976] ECR 1333.

[21] P.-E. Morris, S. Morrow & P.-M. Spink, 'EC Law and Professional Football: *Bosman* and its Implications' (1996) 59 MLRev, p. 894

[22] S. Van den Bogaert, 'Practical Regulation of the Mobility of Sportsmen in the EU Post *Bosman*' (Kluwer Law International, 2005) p. 5

[23] J.-P. Van den Brink, 'E. C. Competition Law and the Regulation of Football: Part I' (2000) 21 ECLRev, p. 359

EU legislation (directive, regulation, decision)?^[24]

Even if Community law is in principle applicable to sport, it does not cover all aspects of it. In particular Community law does not avert regulations which are exclusively of sporting interest as sport can in practice function only within fixed rules. These include sporting rules in the strict sense, in particular rules of play, such as the length of a match or the number of players in a team. However, transfer rules go beyond such sporting rules in the strict sense.

5. COMPETITION AT FOOTBALL MARKET

One of the primary goals of EC Treaty's is the establishment of a common market, designed to promote economic development and performance, high levels of employment and social protection, high standards and quality of life, economic and social unity among Member States and sustainable, non-inflationary economic growth.^[25] The internal market represents a limited objective within the broad concept of a common market comprised of several community activities. The EC Treaty describes the internal market as an area in which goods, persons, services, and capital move freely across Member State boundaries.^[26] Furthermore, the EC Treaty protects competition from distortion to facilitate the establishment of the common market. Pursuit of these objectives is indispensable to the achievement and existence of the common market.^[27]

A. Relevant Legislation

When challenging football transfer and nationality rules, the Commission has sought to reach for a number of Articles in their armory.^[28] First of these, Article 39, guarantees the fundamental freedom of movement for workers within the European Union. Article 39(2) in addition state s:

‘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 worker employment.’

Importantly, because Article 39 is specifically related to establishing a common market, it can have no effect on situations wholly internal to a Member State.

[24] D.-G. Dimitrakopoulos, 'More Than a Market? The Regulation of Sport in the European Union' (2006) 41 *Government and Opposition*, p. 565

[25] See EC Treaty, *supra* note 11, art. 2, [1992] 1 C.M.L.R. at 588. The establishment of a common market is one of the Community's principal means for achieving its tasks.

[26] See EC Treaty, *supra* note 11, art. 7a, 1 2, [1992] 1 C.M.L.R. at 592 ("The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty."); see also *supra* notes 53, 73 and accompanying text (discussing internal market).

[27] A.-L. Lee, 'The Bosman Case: Protecting Freedom Of Movement in European Football' (1996) 19 *FILJ*, p. 1263

[28] D. Mcauley, 'They Think It's All Over' (2002) 7 *ECLRev*, p. 331

The other relevant E.C. “weaponry” is Article 81 and Article 82, establishing E.C. competition policy. Article 81 prohibits:

‘All agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition within the common market.’

Article 82 holds that:

‘Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between member states.’

Unlike Article 39 however, the competition rules do not suffer from being inoperative to domestic transfers.

The four fundamental freedoms of the European Union include the free movement of goods, persons, services, and capital.^[29] In the context of the free movement of persons, Article 48 specifically protects freedom of movement for workers. Freedom of movement for workers includes the right to move between Member States for purposes of seeking, accepting, and maintaining employment.

Discrimination on grounds of nationality is prohibited within the EC Treaty’s scope of application.^[30] Article 48 expressly extends this prohibition of discrimination to employment relationships.^[31] Consequently, Member State nationals have the right to be employed in other Member States under the same terms and conditions as nationals of that state.

The free movement of workers is intended to contribute to the goal of establishing a common market by ensuring that labor, one of the main factors of production, flows freely between Member States. Nevertheless, the transfer system has traditionally limited the bargaining positions of players by putting control of player movement in the hands of club management. Article 48’s provisions are subject to limitations justified by considerations of public policy, public security, or public health, and do not apply to public service employment.

Unimpeded economic competition is vital to an effective, market-based economic system.^[32] Most economists encourage competition for its ability to allocate resources according to consumer choice, to avoid waste in acquiring

[29] EC Treaty, art. 3(c), [1992] 1 C.M.L.R. at 588.

[30] EC Treaty, art. 6, [1992] 1 C.M.L.R. at 591. “Within the scope of application of this Treaty . . . any discrimination on grounds of nationality shall be prohibited.” Id.

[31] art. 48(2), [1992] 1 C.M.L.R. at 612. “[Freedom of movement for workers] shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.” Id.; see also *Dona v. Mantero*, Case 13/76, [1976] E.C.R. 1333,

[32] A.-L. Lee, “The Bosman Case: Protecting Freedom Of Movement in European Football” (1996) 19 *FILJ*, p. 1266

market power, and to stimulate efficiency in the marketplace, and consequently to promote opportunities for job creation. Accordingly, EC competition rules, articulated in Articles 85 and 86, address activities, both of Member States and of private persons and firms, that are likely to restrict competition within the merits once they have been implemented. Article 85(1) prohibits agreements between undertakings and associations of undertakings that distort competition within the common market.

B. Competition exemptions

The Structure of Article 48 recognizes Specific Exceptions Based on Principles Not Relevant to the Practice of Sport. EC Treaty Article 3 provides for the abolition of obstacles to fundamental freedoms, including freedom of movement for persons, as a means of promoting development of economic activities. Subsequent articles, such as Article 48, provide additional, specific protection for these freedoms. In this regard, the deliberate structure of the EC Treaty illustrates the EC Treaty's intended application to all economic activities between Member States, except as specifically provided for.

The only exceptions recognized by Article 48 deal with protecting the general interests of a Member State or other public health, safety, or policy concerns specifically relevant to the individual whose freedom of movement is affected.

The ECJ's deferential treatment of Article 48 and the restrictive approach taken toward application of Article 48's exceptions strongly counsel against creating a wholesale exemption from the application of Article 48 for rules laid down by sporting associations. The ECJ, as the final authority on interpretation of TEU provisions, ruled that because the terms of Article 48 define a fundamental freedom, they must be interpreted broadly. Conversely, because the exceptions contained in Article 48(3) impose limitations on a fundamental freedom, the Court interprets them narrowly. The ECJ's rigid protection of freedom of movement for workers, particularly in the context of sport, illustrates Article 48's significance to the European Union, suggesting that an amendment to circumvent Article 48 is improper.

Andrew L. Lee states that IGC should reject proposals to exempt sports associations from Community law, because freedom of movement for workers is a strictly protected right of fundamental importance to the European Union and because the public's interest in sport and the sporting associations' interest in maintaining financial and competitive balance between clubs are better served by alternatives to the transfer system that do not impede freedom of movement.

6. THE BOSMAN

A. Bosman case

As mentioned before, in the 1970s, the Commission had ruled on two significant sports cases, *Dona vs Mantero* and *Walrave*. Both cases addressed the question of discrimination against professional sportsmen on the grounds of their nationality. Followingly, these cases set important legal decisions for the European Community, they were specialist rulings with little immediate economic effect.^[33] However, the Commission also became interested in football at the same time expressing concern about the foreign player restrictions. Beginning in the 1960's, football associations, including UEFA introduced rules limiting the number of players of foreign nationality any club could field in a match. These foreign player rules use the term "nationality" to refer to whether a player is qualified to play for a country's national team, as opposed to a literal reference to a player's country of origin.

In 1978, the Commission issued a press release describing a gentleman's agreement between UEFA and the Commission. UEFA agreed to amend its rules to allow clubs to field not more than three players who are nationals of other Member States, plus two players counted as assimilated based on how long they have played in the host Member State. Following further discussions with the Commission, the national football federations in Europe promised to lift this two-player limit but, in the event, the Commission did not enforce this ruling. The Commission was easily deterred by the football authorities at the time.^[34]

After that at the 1985 Milan conference when the Single European Act was initiated, the Addonino report recognised sport as a serious concern to the European Union for the first time; sport provided "a unique opportunity for promoting a sense of belonging to the single Community". Recognizing the cultural significance of sport, the Commission now began to focus on foreign player restrictions more seriously. The Commission attempted to set a deadline for the abolition of all restrictions on European Union players for the start of the 1986-87 season.

In June 1985, UEFA proposed a compromise. Instead of an open European transfer market, restrictions should be eased so that any player who had played in a league for more than five seasons was 'naturalized', that is, he was counted as a native player. But even this measure was not implemented immediately and there was extensive debate in the course of the late 1980s between the Commission and UEFA about this liberalization. UEFA finally agreed to expand the foreigner restrictions so that from 1992, three foreigners and two naturalized

[33] A. King, 'The European Ritual: Football in the New Europe' (Ashgate, 2003) p. 70

[34] A. King, 'The European Ritual: Football in the New Europe' (Ashgate, 2003) p. 70

players were eligible to play for any European club.

Although the Commission accepted this agreement in 1992, it was clear that the Commission fundamentally opposed the transfer system and the foreigner rulings since they were incompatible with the Treaty of Rome. That opposition became stronger during the early 1990s as the financial position of European football improved dramatically as a result of the influx of new television money. The growing economic and cultural significance of European football impelled the Commission to consider it more seriously. Consequently, during the early 1990s, the Commission urgently wanted to impose European legislation on football and the most effective way of achieving this end was by means of a court ruling. The foreigner restrictions could be most decisively challenged at the European Court of Justice. Yet, in order to challenge the restrictions legally the Commission required an appropriate test-case and for that, they had to wait until a legal challenge appeared. In the event, the disputed transfer of Jean-Marc Bosman from Standard Liege to Dunkerque in 1990 provided the ideal opportunity for the Commission to achieve its objectives of applying Union laws to European football.

Jean-Marc Bosman is a Belgian national who was formerly a professional football player in the Belgian club RC Liege under a contract which ran until 30 June 1990. Prior to expiry of his contract, Liege offered Bosman a new contract which included a massive reduction (almost 75 per cent) of total salary which would have placed him on the minimum salary permitted by the URBSFA, the Belgian football governing body. Bosman, however, eventually attracted attention from the French club Dunkerque, and a transfer fee was agreed between Liege and Dunkerque. Unfortunately, the proposed transfer eventually collapsed due to the failure of a clearance certificate from the URBSFA to arrive at the French Football Federation in time and doubts as to Dunkerque's ability to pay the transfer fee.

Subsequently, Bosman was only able to obtain employment with a Belgian Third Division club amid suspicion, following his decision to make a challenge to the lawfulness in EC law of football transfer fees for out of contract players and restrictions on the number of foreign players which can be selected in a team,¹ that he was 'boycotted by all European clubs who could have taken him in.'² Bosman's case underwent a protracted journey through the Belgian legal system, eventually reaching the Appeal Court in Liege where he sought financial compensation from Liege, URBSFA and UEFA, together with a declaration that URBSFA and UEFA rules on transfer of players and participation of foreign players were inapplicable to him. The Appeal Court opted to exercise its power under Article 177 of the EC Treaty to refer the matter to the European Court for a preliminary ruling. The terms of its reference were as follows:

(Articles 48, 85 and 86 of the [EC Treaty] to be interpreted as)

- (i) prohibiting a football club from requiring and receiving payment of a sum of money upon the engagement of one of its players who has come to the end of his contract by a new employing club;
- (ii) prohibiting the national and international sporting associations or federations from including in their respective regulations provisions restricting access of foreign players from the European Community to the competitions which they organize?

The ECJ held that the transfer system and the rules on foreign players offended the principle of freedom of movement for workers^[35] guaranteed by Article 48. The Court answered both of the referred questions in the affirmative, but limited its judgment and analysis to Article 48.^[36] The Opinion of Advocate General Carl Otto Lenz, however, did examine the transfer rules and the rules on foreign players under EC competition rules, finding a restriction of competition^[37] in violation of Article 85(1),^[38] but no infringement of Article 86.^[39]

1. Jurisdiction and Applicability of Article 48

After finding jurisdiction under Article 177 to rule on the referred questions, the Court restated the applicability of Article 48 to rules laid down by sporting associations. According to the Court, sport constitutes an economic activity subject to Community law if an employment relationship, or the intention to create one, exists. Bosman satisfied the criteria of Article 48 by accepting an offer of employment actually made in another Member State. By virtue of Article 48's direct effect, Bosman could seek to have his right to move freely between Member States for purposes of employment judicially enforced.

2. The ECJ's Interpretation of Article 48 with Respect to the Transfer Rules

The Court considered the transfer rules an obstruction to the fundamental Community principle of freedom of movement for workers guaranteed by Article 48. The Court noted that obstacles to freedom of movement are only justified by pressing concerns of public interest in pursuit of a legitimate aim compatible with the EC Treaty.^[40]

The ECJ found no adequate justification for the obstacles to freedom of

[35] Bosman, slip op. at 22, 25, ff 113, 137.

[36] Bosman, slip op. at 25, f 138.

[37] Opinion of Advocate General Lenz, Bosman, slip op. at 103-04, f 262.

[38] See supra notes 112-14 and accompanying text (discussing Article 85(1)'s prohibition of agreements restricting competition).

[39] Opinion of Advocate General Lenz, Bosman, slip op. at 113, f 286.

[40] Bosman, slip op. at 20-21, f 104; see also supra note 231 and accompanying text (discussing general principle of proportionality). According to Advocate General Lenz, only an interest of the association of “paramount importance” can justify a restriction on freedom of movement. Opinion of Advocate General Lenz, Bosman, slip op. at 87, f 216.

movement imposed by the transfer rules.^[41] However, The Court accepted UEFA's goal of maintaining the financial and competitive balance^[42] as legitimate in light of the social importance of sporting activity in the European Union.^[43] The Court found that the transfer rules did not advance financial or competitive balance because those rules failed to preserve the degree of equality and uncertainty of results necessary to maintain the sporting equilibrium. The rules did nothing to prevent the richest clubs from securing the best players or to prevent financial resources from being a decisive factor in competition. The Court also accepted UEFA's goal of encouraging the recruitment and training of young talent as legitimate, but found no relationship between the transfer system and the achievement of that goal. The Court found that the transfer system was not justified by either of these goals, because less restrictive means of achieving them existed, such as a collective wage agreement^[44] or a profit sharing plan.^[45]

3. The ECJ's Interpretation of Article 48 with Respect to the Rules on Foreign Players

The Court also found that the rules on foreign players obstructed freedom of movement for workers in Member States. Article 48's prohibition on nationality-based discrimination regarding employment, as implemented by Council Regulation 1612/68, precludes the application of rules restricting access of Member State nationals to participation in competitions organized by those associations.^[46] The Court found that by restricting a player's opportunity to

[41] Bosman, slip op. at 21-22, ff 105-14

[42] Opinion of Advocate General Lenz, Bosman, slip op. at 88, \ 219. A professional league will flourish only if the competitive balance between clubs is maintained. Id. If the league is clearly and consistently dominated by any one team, the necessary tension is absent and the fans will lose interest. Id. AAA

[43] Bosman, slip op. at 21, f 106. "In view of the considerable social importance of sporting activity and in particular football in the Community, the aims of maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate." Id.

[44] See Opinion of Advocate General Lenz, Bosman, , f 226 (discussing possibility of collective wage agreement).

[45] Advocate General Lenz described the wisdom of a profit sharing plan, observing that the competitive nature of sport differs from that existing in other markets in that sports leagues are characterized by mutual economic dependence between clubs. Id. at 91, \ 227. Redistributing a proportion of income would make it possible for clubs to promote their own interests and those of football in general. Id. at 92, f 228. If limited to a small part of income, profit sharing measures appropriately ensure competitive balance between clubs, thereby preserving the incentive for a club to perform well. Id. at 92,

[46] Bosman, , I 137. It is irrelevant that the rules do not expressly limit the number of foreign players that may be employed. Id. By limiting participation in matches, the essential element of a professional player's activity, the rules obviously also restrict a player's chances of employment. Id.

participate in matches based on his nationality, the rules on foreign players limited that player's choices of employment in violation of Article 48.

No sufficient justification existed for the obstacle imposed on freedom of movement by the rules on foreign players, therefore, the Court declared those rules incompatible with Article 48. The rules on foreign players did not adequately maintain the sporting equilibrium between clubs, because those rules did nothing to prevent affluent clubs from acquiring the best national players, which would undermine the competitive balance despite the foreign player rules.^[47]

4. Interpretation of Article 85 with Regard to the Transfer Rules and the Rules on Foreign Players

The ECJ did not address the transfer rules and the rules on foreign players under Articles 85^[48] and 86^[49] once it found those rules illegal^[50] under Article 48.^[51] Advocate General Lenz's opinion did present a clear analysis of the rules in that context.^[52] The Advocate General found no abuse of a dominant position in violation of Article 86, because the rules affected only the relationship between clubs and players, as opposed to the power on the market exercised by the clubs in relation to competitors, customers, or consumers.

It was logical for Lenz to advocate new forms of redistribution given his recognition of the importance of competitive balance. Each club keeps its home gate receipts in the competition, while UEFA, which markets the tournament centrally, then distributes the television money to competing clubs according to their performance. The reason that the clubs involved accept this situation is that this central marketing method has increased the value of the competition and therefore the revenue which clubs earn. Moreover, the entire structure of that competition is elitist, favouring the biggest clubs in each nation. Lenz's untenable assumption that clubs would voluntarily give up portions of their revenue has not been lost on those within football:

'Of course, you could dream up all sorts of theoretical bases for clubs redistributing wealth but get real. Do you imagine that somehow the big clubs are

[47] Bosman, , 135. The Court rejected the proposition that maintaining the public perception of a link between clubs and their countries justifies the obstruction of freedom of movement. *Id.* at 24, ¶ 131-32. The Court found this argument unconvincing in light of the lack of measures to maintain a link between a club and its locality within a Member State, and because international competitions are organized based on team performance, rather than player nationality. *Id.* Finally, the court felt that maintaining a pool of national players for national teams was an inadequate goal, because association rules permitted players to play for their national team regardless of where they are registered to play.

[48] EC Treaty, , art. 85, [1991] 1 C.M.L.R. at 626-27.

[49] *Id.* art. 86, [1991] 1 C.M.L.R. at 627-28.

[50] Bosman, , 138.

[51] EC Treaty, , art 48, [1991] 1 C.M.L.R. at 612.

[52] Opinion of Advocate General Lenz, Bosman, 99-113, ft 253-86.

voluntarily going to give money away to their smaller brethren? Nonsense. It isn't going to happen. What the transfer system did was to provide a market mechanism that redistributed wealth. There is no way you are going to do it voluntarily' [Personal interview, Rick Parry 9 February 2000].

Operating in a competitive economic environment, football clubs will give up revenue only if they receive something in return. The transfer system was a way of exploiting this economic reality for the good of disadvantaged clubs. The transfer system operated in line with economic realities rather than in the face of them.

Consequently, Advocate General Lenz ruled against the transfer system: 'it thus follows in my opinion that transfer fees ... are not justified by a reason in the general interest' (ibid.: 255, para. 247).

UEFA argued that the consideration of the foreigner restrictions were artificially attached to the Bosman case since these restrictions had nothing to do with his contractual difficulties. UEFA were surely correct here but since foreigner restrictions breached EU law so obviously and since the Bosman case presented such a good opportunity to consider them legally, the Commission was unlikely to allow these restrictions to remain unchallenged. Predictably, Advocate General Lenz opposed restrictions on foreign players; 'No deep cogitation is required to reach the conclusion that the rules on foreign players are of a discriminatory nature'. They represent an absolutely classic case of discrimination on the grounds of nationality. Those rules limit the number of players from other Member States whom a club in a particular Member State can play in a match' (Blanpain and Instow 1996: 210, para. 135). Given that free labour movement had been accepted as one of the pillars of European integration since the 1980s, it was self-evident that the foreigner ruling was unsustainable. Nevertheless, Lenz went to some lengths to demonstrate that its loss would not have the effects which the football authorities had predicted and that their position on this matter was illogical, if not hypocritical. The foreigner restrictions were defended on the grounds that national sovereignty was an important part of football since fans identified more closely with players from their own member states. Lenz rebutted this argument decisively:

'The vast majority of clubs in the top divisions in Member States play foreign players. The greater majority of supporters are much more interested in success of their club than in composition of the team. If nationals who come from other parts of the relevant State are accepted without question, one cannot see why that should not also be the case for nationals of other Member States,' [ibid.: 214-15]

Indeed, confirming Lenz's point, not only were players from other parts of a Member State regarded as legitimate, but fans rarely objected to foreign players.

The Bosman decision raised the—often painful—awareness in sporting circles

that sporting rules are in principle subject to a test of compliance with Community law. Contemporaneously, the decision also caused a change in the mindset of the Community institutions about sport.^[53] It led to both an intensification and a deepening of Community intervention in sports matters.^[54] Sport even started figuring regularly on the agenda of the European Council during the various intergovernmental conferences.

In *Bosman*,^[55] the Court of Justice, in true 'procession of Echternach' style, first appeared to retreat one step from its previous findings before finally moving some steps forward again. The Court ruled that even though the transfer rules in question did not discriminate on grounds of nationality, they still directly affected players' access to the employment market of other Member States and were thus capable of obstructing the freedom of movement of workers.^[56] And the Court did not leave it like that. When the UEFA objected that the Court's interpretation made Article 39 EC 'more restrictive in relation to individuals than in relation to Member States, which are alone in being able to rely on limitations justified on grounds of public policy, public security or public health',^[57] the Court rejected this argument for being based on a false premise, and ruled in an unequivocal way that 'there is nothing to preclude individuals from relying on justifications on grounds of public policy, public security or public health. Neither the scope nor the content of those grounds of justification is in any way affected by the public or private nature of the rules in question'.¹⁹ This statement was wider than it strictly had to be, for at the time, only measures regulating employment or the provision of services in a collective manner were caught by the free movement provisions.²⁰

[53] S. Van den Bogaert, 'Practical Regulation of the Mobility of Sportsmen in the EU Post *Bosman*' (Kluwer Law International, 2005) p.7

[54] Since the *Bosman* ruling, above n. 1, several disputes involving sports matters have reached the stadium of the Court of Justice: see Joined Cases C-51/96 and C-191/97 *Christelle Deliège v Ligue Francophone de Judo et Disciplines ASBL and Others* [2000] ECR I-2549; Case C-176/96 *Jyri Lehtonen and Castors Canada Dry Namur-Braine v Fédération Royale Belge des Sociétés de Basketball* [2000] ECR I-2681; Case C-264/98 *Tibor Balog v Royal Charleroi Sporting Club ASBL*, removed from the register; Case C-438/00 *Deutscher Handballbund v Maros Kolpak* [2003] ECR I-4135. See also, e.g., European Parliament, Resolution on the broadcasting of sporting events of 22 May 1996, [1996] OJ C 166/109; European Parliament.

[55] Case C-415/93 *Union Royale Belge des Sociétés de Football Association ASLB v Jean-Marc Bosman* [1995] ECR I-4921.

[56] *Bosman*, above n. 15, para. 103.

[57] *Bosman*, above n. 15, para. 85.

B. Results of Bosman

Most obviously, the Bosman ruling has increased the financial pressure on the clubs by inflating wages. Following the ruling, player wages have increased because in order to protect themselves from losing the transfer fee of players after the expiry of their contracts, clubs had to sign players on longer contracts. Players have accepted these longer contracts only if they were a substantial improvement on what they had previously received.^[58]

With the ending of nationality restrictions, the big clubs have been able to create large playing squads which have become essential if the clubs are to remain successful in domestic and European competition. The liberalization of the international market for players has allowed these clubs to recruit talent. The Bosman ruling has effectively redressed the decline in playing standards in the late 1970s and early 1980s where the biggest clubs could not accumulate talent while smaller teams, like Nottingham Forest or Malmo, could thrive. The biggest clubs are conscious that this deregulation has benefited them:

"In the Spanish league, any poor player from the second division can cost us £5-£10 million. The presidents of club boards sees that a player is being widely recognized and he raises the players' wages by 10 per cent, while adding a club fee of £5 to £10 million. As the latter occurs throughout Europe it helps to close the market down." [Jaume Sobriques, FC Barcelona, personal interview, 22 May 2000]

For Sobriques, the restriction on foreign players put a false market value on national talent and effectively allowed smaller teams to exploit their oligopolistic position within national markets. They put a false market value on their players when selling them to the big clubs. For Barcelona, the Bosman ruling has opened access to a Europe-wide transfer market.

"What do the people want in any country and all the supporters of any club want? They want good players and results and in the professional world that means you have to spend money. You have to get the best players. And then you have competition and the competition is the other big clubs. Of course. You have to look to the other important clubs in Europe, instead of looking at the other clubs in your country, because the normal competitor is the big clubs." [Juan Onieva, personal interview, 19 April 2000]

In the Bosman case the ECJ expressly recognized certain aims connected with the transfer system. These include "maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results" and "encouraging the recruitment and training of young players". As regards the maintenance of a balance, the ECJ concluded in that judgment, however, that "the application of the transfer rules is not an adequate means of maintaining

[58] A. King, 'The European Ritual: Football in the New Europe' (Ashgate, 2003) p. 7

financial and competitive balance in the world of football. Those rules neither preclude the richest clubs from securing the services of the best players nor prevent the availability of financial resources from being a decisive factor in competitive sport, thus considerably altering the balance between clubs." As regards promoting young players, the ECJ found that the specific form taken by the transfer system neither encourages recruitment and training of young players nor is it an adequate means of financing such activities. Finally, the ECJ pointed out that the aims purportedly pursued could "be achieved at least as efficiently by other means"

But also some other big clubs complain from "biggest" clubs behaviors. Arsenal manager Arsene Wenger himself has been accused of snatching players without due compensation being paid, with the likes of Cesc Fabregas and AC Milan newboy Mathieu Flamini all moving to north London before their clubs were eligible for a prior agreed transfer fee:

"There is a game going on in Europe where the big clubs tap up our players. They let us do the work and develop the players and then they think they can just come in and offer him big wages, but after they cannot come up with the transfer request. It should be the other way round. We were destabilised by some clubs who did not respect the fair play rule in tapping up players. I think we suffered from that at the end of the season. We haven't done that, but that has been done to us."^[59]

In football, an environment is taking shape in which the bigger clubs usurp the power that previously resided with the national football associations, thereby increasing the gap with their smaller counterparts. Inequality of wealth between clubs will be one of the major issues facing the future of football.

For instance, Gordon Taylor, while supporting the Bosman case as president of FIFPro, has emphasised the problems which the ruling posed for the development of native English players in his role as the chairman of the English Professional Footballers' Association:

"We were very much aware of the Bosman judgment and we supported him, both financially and morally, though we knew in England, it could disrupt our system -and was probably bound to. We thought we had a pretty fair system. We also had built into the system a 5 percent levy on every fee that goes to a player's pension scheme that gives them a tax-free sum on retirement at age 35; that is for all players. In a strange way, those who are loyal do better than those who move. FIFPro knew that the problem it could create was freeing up the movement of labour. There should be no restrictions. Also the challenge was, of course—which Bosman's lawyers threw in—the limit on the number of foreign players. This was almost as a side issue but it was that side issue that we

[59] <http://www.goal.com/en/Articolo.aspx?ContenutoId=801195>

would worry about because we knew it would free up labour, but particularly cross-border, and that they would look at the restrictions because we had a maximum of three foreign players. All the players’ associations were uneasy about that because, particularly countries like ourselves, Italy, Spain and Germany, knew that there would be a gravitation to their countries because they are high-economy football countries. That is a fair description. That is exactly what happened. It made it a lot easier. You suddenly had players like your Zolas coming over etc. ... It really increased a flow that had started as a bit of a trickle with non-EU players in 1978 with Villa and Ardiles, coming into a stream now ... You’ve got a situation where Chelsea play a side without one United Kingdom player which would have been unheard of in the past. There is a feeling from the players’ body that we should try and stop this movement of youngsters. “football clubs will become like Euston station, with different arriving, staying for a short while and leaving again almost non-stop”. [Gordon Taylor, personal interview, 10 February 2000]

It was no understatement to say that “football was getting like the wild west”^[60] and with all parties refusing to placate each other, the “whole thing sounded as confusing as the EU’s fishing policy”.^[61]

C) Recent System 2001

After several years of discussions and some months of negotiations the representatives of the World of Football and the European Commission reached agreement on “Principles for the amendment of FIFA rules regarding international transfers (new basic rules)” on March 5, 2001. These negotiations were followed by a more formal ceremony at the margins of the European Council at Stockholm on March 24, 2001, where this agreement was signed by the Swedish Prime Minister for the Presidency, the President of the Commission and by FIFA’s and UEFA’s Presidents. The amendments in the Regulations for Status and Transfers of Players were made by the Executive Committee at the occasion of the World Youth Championship in Argentina in July 2001. Apart from the new basic rules the following were adopted, “Regulations governing the Application of the Regulation for the Status and Transfer of Players”. On August 24, 2001, FIFA sent Circular No. 769 summarizing and explaining the two sets of rules.

The main points were:

- For players under 23, a system of training compensation would be introduced to encourage and reward the training effort of clubs, in particular small clubs.
- Conditional international transfers for players under 18 years.

[60] Matthew Garrahan, “England targets transfer abuse”, *Financial Times*, January 31, 2001

[61] Robert Philip, “The Whole Thing Sounds As Confusing As the EU’s Fishing Policy”, *Daily Telegraph*, February 14, 2001.

- One transfer period per season, with a limit of one transfer per player per season.
- Minimum/maximum contract length of one/five years.
- Contracts to be protected for a period of three years up to 28 years; two years thereafter.
- Financial compensation to be paid whether contract is breached unilaterally by player or club.
- Proportionate sanctions to be imposed for those contracts breached unilaterally without "sporting just cause" during the protected period.
- Creation of an International Court for Football Arbitration (ICFA).

For, as one MEP admitted, "the fact that everyone is more confused now, after months of deliberations, has just proved to me that politicians and bureaucrats, especially European ones, should not get involved in subjects they simply do not understand".^[62]

7. CONCLUSIONS

The main object of this paper is to find the answer of a competition exemption admissible for football market. Through this point: the relationship between sport and the European Union, football market and its actors, applicability of Community law to this issue, rules for competition exemptions, the "Bosman case" and the recent transfer rules mentioned. As clearly understood from ECJ's ruling at Bosman, Court dismissed the claims for a competition exemption for football market. It was a totally understandable decision at the time of events because no one, even Marc Bosman himself could estimate the results of the ruling. Football market changed dramatically from lots of aspects after Bosman.

First of all; the economic dimension of sport has become much more bigger and trend continues. The quality of stadium accommodation has been improved, clubs have developed their merchandising arms, and the value of broadcasting rights has increased dramatically.^[63] UEFA says the estimated gross income for the 2006/07 UEFA Champions League is €750m eclipsing last season's revenue of approximately €610m.^[64] Also, in 1986 the combined annual turnover of the 22 First Division clubs in England was only £50 million. At 2007 only Manchester United's annual turnover reached £245 million.^[65]

Strong financial status is very essential to be successful at football market. Teams involved in league competitions effectively operate as collections of talent.

[62] Chris Heaton-Harris, "Transfer Changes" (2002), www.argyletrust.org.uk/youth.html

[63] T. Hoehn & S. Szymanski, 'The Americanization of European Football' (1999) 28 *Economic Policy*, p. 205

[64] <http://www.uefa.com/competitions/UCL/news/Kind=1/newsId=454148.html>

[65] <http://www.guardian.co.uk/football/2008/jan/07/newsstory.manchesterunited>

A description of league structures is based on two fundamental hypotheses:

For each team, increased wage expenditure leads to better performance on the pitch.

For each team, improved performance on the pitch leads to increased revenues.

Teams consisting of better players generally perform better than their rivals. The dominant factor in explaining performance is wage expenditure. Improved performance on the pitch generates increased revenue because at the margin fans are attracted by success, and advertising, television and sponsorship income tends to be highly sensitive to success.^[66]

After Bosman financially strong teams had the chance to buy best players all around the world and this situation causes some serious problems at football market. First of all competition started to die at European football, Champions League becomes the hermetic league of big clubs. Maybe small clubs have the chance to join the competition but the rules of group draws and distribution of Champions League always on the side of big clubs. For example if a small clubs wins the Champions League it can earn 20 million Euros but if Manchester United wins the cup it will earn approximately 40 million euros just because of its former achievements. Also statistics shows being successful at Champions league at the monopoly of same clubs. At last 4 years there was 32 quarter finalists (8 teams for every year), 28 of them from three big football countries (England, Spain, Italy) plus 3 big teams (Bayern Munchen, Olympique Lyonnais and PSV). At 2008 before the quarter final draws at Nyon 12 out of 16 teams was there last year. There was 2 additions to this "classic" 12 which are Sevilla F.C. from Spain and Schalke 04 from Germany. So nowadays at European football market there is no room for surprises. Alan Shearer, the England captain from 1996 to 1998, reiterated the criticism: "The uncertainty of how the season unfolds is the great thing about football:

'Romance and glory referred to the sporting uncertainty of the European Cup when smaller clubs could defeat larger ones because economic considerations were putatively secondary to sporting values. In the Champions League, the romance of uncertain outcome has been stifled by a growing emphasis on financial power.'

Not only the football world members who are unhappy with the situation. Also members of the Commission started to questioning the issue. In the words of Commissioner Van Miert (1997):

"Special features of the sporting world place restrictions on the production and organization of sporting events which would be inadmissible in other sectors of the economy ...if the spectator is to enjoy an interesting and high-quality event, the outcome of the competition must be uncertain. For this

[66] T. Hoehn & S. Szymanski, 'The Americanization of European Football' (1999) 28 *Economic Policy*, p. 218.

reason there must be a balance of strength between the opponents... since the interests of the various clubs are intertwined, the market is intrinsically unstable whenever there is a financial imbalance between the clubs. This imbalance must therefore be corrected...I have always argued for solutions based on a solidarity fund between clubs (a percentage of earnings should be shared)... the league would then function as a body responsible for the redistribution of income... the question which still has to be solved in this connection is how far the establishment of such a fund would enable joint sales of broadcasting rights to qualify for exemption."

Also these statistics give rise to a new wave for the football clubs try to be the new Chelsea. More investors all around the world started to buy clubs from big leagues and inject unrealistic moneys to transfer market. These investors want short term success and have nothing to do with the national team of the country which they invest. So they bought more foreign players and there is no chance to play for youth players. Steve McClaren former England National football team coach questioning the rise of the foreign players :

"Eventually the Premier League could be all foreign and do we want that? I don't think we do. I always talked at Middlesbrough of having more home-grown players because there is then more soul in the club and the more home-grown players you have, the bigger the soul is. But we are in danger of losing our soul if we have too many foreign influences in our football."^[67]

So as mentioned with facts and statistics, financial gap between clubs getting bigger at European-wide. Being successful is on the hands of a monopoly and try to train up youth players almost becomes non-sense. Mike Bateson, then chairman of Torquay United, a minor English club, expressed a common viewpoint:

"I am damned if I'm going to put my money into a youth system just to let the bigger clubs snaffle up the product. The fat cats may get fatter, but the scrawny ones down this end will die of starvation. A lot more players are going to be out of work."

The facts at European football are not promising and situation going worse. But the main question is there enough "public interest" for exempt football from competition rules in some extent. It is necessary to look general principles of proportionality.

The general principle of proportionality provides that legitimate objectives may not be accomplished through excessive means. According to the ECJ, limitations on the free movement of persons are permissible only to the extent that they are necessary for the public interest. Initially, an appropriate relationship between the means used and the end sought must exist. Stated differently, the means must be capable of achieving the proposed goal. When a choice

[67] <http://www.goal.com/en/Articolo.aspx?ContenutoId=717873>

exists between several measures to achieve a legitimate goal, the measure least restrictive of individual freedom is the only permissible alternative. So it is possible to apply exemptions to football market but the means employed must be proportionate; the disadvantages caused, such as restriction of a fundamental freedom, must not be disproportionate to the aims pursued.

The "6+5" proposal of FIFA chairman Sepp Blatter is already rejected by European Parliament and it seems it is too restrictive in the means free movement of workers and it is impossible to implement. But there is still hope. UEFA has received EU an alternative proposal to insist on eight of a squad's 25 players being "home-grown" regardless of nationality—ie, trained by any club in the country for at least three years between the ages of 15 and 21. Europe's commissioner for equal opportunities Vladimir Spidla said:

"Compared with the intentions of Fifa to impose the 'six-plus-five rule', which is incompatible with EU law, the "homegrown players" rule proposed by Uefa seems to comply with the principle of freemovement of workers."

This new approach from UEFA seems workable for the market and and acceptable for the European Union. This solution will be the best for supporters, players, clubs and national teams.

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