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# THE ENGLISH PREMIER LEAGUE'S HOME GROWN PLAYER RULE UNDER THE LAW OF THE EUROPEAN UNION

## INTRODUCTION

Football,<sup>1</sup> known to many North Americans as soccer, is the world's most popular sport.<sup>2</sup> Football is global both in its draw and its resources: the best players come from several distinct regions of the world and the rules of the game are identical all over the world.<sup>3</sup> As the game has grown globally, so too has England's top football league, the English

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1. The term "soccer" originated in England as a slang term for "Association Football." *The Yanks are Coming: A U.S. World Cup Preview* (June 5, 2006), [http://www.usembassy.org.uk/rss/transcripts/amembassy\\_london\\_podcasts.xml](http://www.usembassy.org.uk/rss/transcripts/amembassy_london_podcasts.xml), transcript available at <http://www.usembassy.org.uk/rss/transcripts/worldcup2006a.html> (Partha Mazumdar, Economic Officer at the U.S. Embassy in London, talks about the past and present of football in America). Association Football is the type of football played in England's Football Association. *Id.* Similarly, the game of Rugby Union is called Rugby football. PHILIP TREVOR, RUGBY UNION FOOTBALL 7–11 (1903). Strangely, the founders of the term "soccer," the British, no longer use it, unlike English speaking North Americans. Mazumdar, *supra*. This is most likely because in America, by the time "soccer" gained popularity, American football, like that played in the NFL, was already well established. Prof'l Football Researchers Ass'n, *Camp and his Followers: American Football 1876–1889*, in BOB BRAUNWART & BOB CARROLL, THE JOURNEY TO CAMP: THE ORIGINS OF AMERICAN FOOTBALL TO 1889 (1997). Because "football" is the term used in the majority of the world, and more importantly in the context of this Note, in England and much of the European Union ("EU"), it will be the term used in this Note.

2. *USA out to Boost Football's Profile in their Homeland against Algeria*, EDINBURGH EVENING NEWS, June 23, 2010, available at 2010 WL 12690388.

3. See generally FÉDÉRATION INTERNATIONALE DE FOOTBALL ASS'N [FIFA], LAWS OF THE GAME 2010/2011 (June 2010) (Switz.) [hereinafter LAWS OF THE GAME], available at

[http://www.fifa.com/mm/document/affederation/generic/81/42/36/lawsofthegame\\_2010\\_11\\_e.pdf](http://www.fifa.com/mm/document/affederation/generic/81/42/36/lawsofthegame_2010_11_e.pdf). More great players hail from Europe than any other continent, but South America and Africa are also hotbeds of talent. *Thirty-five Stars Make Zurich Shortlist*, FIFA.COM (Oct. 6, 2004), <http://www.fifa.com/classicfootball/awards/gala/news/newsid=94386.html>. Although Europe is arguably the most talented region, the nation that produces the most top players is Brazil and numerous superstars come from Africa. *Id.* Football also has vast popularity in Central America and Asia. *Id.*; *Soccer: AFC President Bin Hammam says FIFA Presidency is his 'Ambition'*, ASIAN POL. NEWS, Jan. 24, 2011, available at 2011 WL 14779933. The global acceptance of the game is due in large part to its simple and consistent rules. See generally LAWS OF THE GAME, *supra*. No matter where it is being played, all football is governed by FIFA and its rules are the official Laws of the Game. *Id.* Whether it is the World Cup Final, or an amateur match between teenagers in Iceland, the rules of the game are the same. See *id.* These standardized rules put the entire world on the most level playing field possible, enabling true talent to rise to the top no matter where in the world the player is from.

Premier League (“EPL”). The EPL pays more in player salaries and generates more revenue than any other football league in the world.<sup>4</sup> As recently as the 2009–2010 season, clubs in the EPL could recruit any player from anywhere in the world.<sup>5</sup> However, a recent rule change severely limited that freedom. Beginning with the 2010–2011 season, the EPL enacted the “Home Grown Player” rule, restricting each club’s roster to seventeen foreign players.<sup>6</sup> The rule hurts many people: the players that are unable to earn the Premier League’s high salaries and level of notoriety; the clubs that are unable to employ the best possible teams of players; and the fans that are unable to witness the greatest possible football. While in an ideal world professional football players would be judged solely on their abilities and not their nationality, the law of the European Union (“EU”) is the only law currently governing the EPL’s player nationality discrimination.<sup>7</sup> EU law prohibits discrimination by its Member States and all employers therein on the basis of the nationality of individuals who hail from EU Member States and requires that European workers move freely throughout the Union.<sup>8</sup> The Home Grown Player

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4. *Deloitte Report: Figures for 2006–07*, GUARDIAN (May 29, 2008), <http://image.guardian.co.uk/sys-files/Football/documents/2008/05/29/deloitte.pdf> (Eng.). For the 2006–2007 season, a Deloitte report reveals that the EPL generated 2,273,000,000 Euros in revenue, while the next closest league was Germany’s Bundesliga, which generated 1,379,000,000 Euros. *Id.* The other big European leagues each earned figures slightly lower than Germany’s—Spain earned 1,326,000,000 and Italy earned 1,163,000,000. *Id.* For more information on the big four European domestic leagues see *infra* note 18.

5. Ollie Williams, *Where the Premier League’s Players Come From*, BBC SPORT (Aug. 17, 2009), [http://news.bbc.co.uk/sport2/hi/football/eng\\_prem/8182090.stm](http://news.bbc.co.uk/sport2/hi/football/eng_prem/8182090.stm).

6. FOOTBALL ASS’N PREMIER LEAGUE LTD., PREMIER LEAGUE HANDBOOK SEASON 2010/11, at 71, 75 (July 2010) [hereinafter EPL HANDBOOK], available at <http://www.premierleague.com/staticFiles/4f/53/0,,12306~152399,00.pdf>.

7. No matter the means, the Home Grown Player Rule should be struck down as it offends the very nature of football. EU law provides a strong opportunity to do so.

8. Consolidated Version of the Treaty on the Functioning of the European Union arts. 18, 20, 26, 34, 45, Mar. 30, 2010, 2010 O.J. (C 83) 56–57, 59, 61, 65–66 [hereinafter TFEU]. Two recent cases in the area of player restrictions in sport, *Deutscher Handballbund v. Kolpak* and *Simutenkov v. Ministerio de Educacion y Cultura*, proved seminal. Case C-438/00, *Deutscher Handballbund v. Kolpak*, 2003 E.C.R. I-4135; Case C-265/03, *Simutenkov v. Ministerio de Educacion y Cultura*, 2005 E.C.R. I-2579. In *Kolpak*, the ECJ struck down a German handball rule forcing a Slovak national to be registered with a special foreign designation and limiting the number of such designated players who could play in a match to two because of Slovakia’s membership in an EU fair trade agreement. Slovakia committed to regard both EU and Slovakian citizens in the same manner for employment. *Kolpak*, 2003 E.C.R. I-4135. The *Kolpak* case was decided in 2003 and was based on events that took place in 2002 and 2003. *Id.* Slovakia became an EU Member State in 2004, but at the time it was only a third-party nation that

rule does not accord equal status to all EU citizens, instead it grants preferential status to Englishmen and throws other EU citizens into the same class as non-EU citizens.<sup>9</sup> Instead of treating the entire EU as one contiguous zone, the rule creates an internal boundary around England, restricting the free movement of foreign football players.<sup>10</sup> Accordingly, the Home Grown Player rule is in clear violation of EU law and must be repealed.

This Note will explore the EPL's Home Grown Player rule under EU law, the arguments for and against it, and its similarities to other sporting rules that the European Court of Justice has invalidated. Part I of this Note will provide an extensive breakdown of the Home Grown Player rule and its impact on English football. Part II will describe the EU and elucidate the laws relevant to player restrictions based on nationality in sport. Part III will analyze the past rulings of the European Court of Jus-

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had signed a fair trade agreement with the EU. *See* Treaty Concerning the Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic to the European Union, Sept. 23, 2003, 2003 O.J. (L 236) 983. The *Kolpak* ruling was applied to football two years later in *Simutenkov*. *Simutenkov* held that a Russian football player was entitled to the same status as an EU citizen because of a trade agreement between Russia and the EU. *Simutenkov*, 2005 E.C.R. I-2579. The Court invalidated a Spanish rule limiting playing licenses for non-EU nationals each year. *Id.* ¶ 2. That number began at five non-EU nationals for 2000–2001 season, was reduced to four for the three seasons from 2001–2002 to 2003–2004, and further limited to three foreign players for 2004–2005 and all years after. *Id.* ¶ 12. The rule also capped the number of non-EU nationals who could play in a match concurrently to three. *Id.* The *Simutenkov* court ruled that Russian nationals deserved equal status to EU citizens and that the Spanish rule limiting the number of non-EU nationals who could be employed by a club and play in a given match was invalid because it was too broad. *Id.* ¶ 42. The court explained the rule was too broad as it swept nationals from nations with EU trading agreements into the same category as nationals of countries with no EU affiliation. *Id.* According to the principles established in *Kolpak* and *Simutenkov*, the EPL's Home Grown Player rule would need to allow a player from any EU Member State or qualified third-party nation to count as "Home Grown" in order to conform to EU law. These cases as well as the Treaty on the Functioning of the EU establish that citizens of third-nations with trading agreements with the EU are also to be accorded equal status and may not be discriminated against based on their nationality. *Kolpak*, 2003 E.C.R. I-4135; *Simutenkov*, 2005 E.C.R. I-2579; TFEU arts. 216, 217. For this reason, citizens of these third-party nations hold equal status to EU citizens and are just as wronged by the EPL's "Home Grown Player" rule. For the remainder of this Note, whenever a right of EU citizens is mentioned that right also applies to citizens of these qualified third-party nations. For a complete list of EU Trade agreements and their details see Eur. Comm'n [EC], *Overview of Regional Trade Agreements*, EU TRADE (Sept. 10, 2010), <http://trade.ec.europa.eu/doclib/html/111588.htm>.

9. *See* TFEU arts. 18, 20; EPL HANDBOOK, *supra* note 6, at 71.

10. *See* TFEU art. 26.

tice regarding player nationality restrictions in sport and contrast them with the EPL's arguments for the Home Grown Player rule. This Note will conclude by illustrating how the Home Grown Player rule is contrary to the very purpose of the EU and give guidance as to what actions the EPL is permitted to take in compliance with EU law to further its purpose of improving English football.

## I. ENGLISH FOOTBALL AND THE HOME GROWN PLAYER RULE

### A. English Football

The English Football Association ("the FA") first codified the game of football in 1863.<sup>11</sup> The sport quickly spread to mainland Europe and the rest of the world.<sup>12</sup> Since 1904's founding of the Fédération Internationale de Football Association ("FIFA"),<sup>13</sup> football evolved into a truly international game.<sup>14</sup> England's Football Association divides its top ninety-two clubs into four divisions based on the clubs' historical triumphs.<sup>15</sup>

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11. C.W. ALCOCK, FOOTBALL: THE ASSOCIATION GAME 2 (George Bell & Sons 1906). Although variants of the game were played in other parts of Europe, the FA was the first body to officially codify the game and it is out of those original FA laws that the current laws of the game are based. *Id.*

12. ERIC DUNNING, SPORT MATTERS: SOCIOLOGICAL STUDIES OF SPORT, VIOLENCE, AND CIVILIZATION 103–04 (1999).

13. FIFA is the global governing body for the sport of football. FIFA, FIFA STATUTES 6 (Aug. 2010 ed.) [hereinafter FIFA STATUTES], available at [http://www.fifa.com/mm/document/affederation/generic/01/29/85/71/fifastatuten2010\\_e.pdf](http://www.fifa.com/mm/document/affederation/generic/01/29/85/71/fifastatuten2010_e.pdf). It maintains the laws of the game and organizes tournaments such as the FIFA World Cup. *Id.* at 34–37. Each nation that plays football has a national football association. *Id.* at 4. Two Hundred and Eight of such football associations are members of FIFA. Danny Fullbrook, *Movie's a Real Hit for FA's Star Cast Seriously Football World Cup 2018 Decision Day 3 Days to Go*, DAILY STAR (UK), Nov. 29, 2010, available at 2010 WL 23693739. England's FA is one such FIFA member association. FIFA STATUTES, *supra* at 4. In addition, FIFA is divided into six regional Confederations. *Id.* at 17. England is a member of Europe's confederation, the Union of European Football Associations ("UEFA"). UNION DES ASSOCIATIONS EUROPEENES DE FOOTBALL [UEFA], STATUTES 33 (June 2007) (Switz.) [hereinafter UEFA STATUTES], available at <http://www.uefa.com/newsfiles/19081.pdf>.

14. ALAN TOMLINSON, SPORT AND LEISURE CULTURES 53–54 (2005).

15. Philippa Moreton, *Soccer-Football League Clubs Left on the Brink*, REUTERS NEWS, Mar. 25, 2002, available at 3/25/02 REUTERS NEWS 18:26:36; EPL HANDBOOK, *supra* note 6, at 453. The different divisions are superficially similar to American baseball's system of major and minor leagues as teams are distributed into divisions based on size and strength. David Leonhardt, *The National Pastime Falls behind in the Count*, N.Y. TIMES, Aug. 12, 2001, at 31, available at 2001 WL 3396258. While many American baseball minor league clubs are affiliated with a major league club as part of its farm system, developing players for the major league club, each of the English football clubs

The Premier League<sup>16</sup> is the superior of these four divisions and consists of England's top twenty clubs.<sup>17</sup> The Premier League—along with Germany's Bundesliga, Italy's Serie A, and Spain's La Liga<sup>18</sup>—is one of the four most highly regarded and lucrative football leagues in Europe and the world.<sup>19</sup> The four leagues are in a class of their own globally, and the

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in all of the divisions are independent and aspire to be strong enough to join the EPL. *Id.* In English football, it is possible for clubs to be relegated between the different divisions. STEPHEN DOBSON & JOHN A. GODDARD, *THE ECONOMICS OF FOOTBALL* 39–40 (2001). Depending on how each club performs each year, it is possible for a club to be either promoted to a higher division, relegated to a lower division, or remain in its current division. *Id.* Standings in the EPL are determined by a point system. EPL HANDBOOK, *supra* note 6, at 453. For each EPL match that a club wins it receives three points and for each tie it receives one point. *Id.* No points are awarded for a loss. *Id.* Teams may be penalized points for violating league rules regarding a variety of matters. *Id.* Under current FA rules, the three clubs in the EPL with the lowest points total at the end of each season are relegated to England's second division, known as the Football League Championship. *Id.* at 84. Likewise, each year the top two clubs and the winner of the playoffs in the Football League Championship are promoted to the EPL. *Application for Membership to the Football League*, FOOTBALL LEAGUE 5 (Aug. 11, 2010), <http://www.football-league.co.uk/staticFiles/92/8c/0,,10794~167058,00.pdf>. This promotion is a huge financial boon for the clubs promoted and is the equivalent of a Triple-A minor-league American baseball club being promoted to the major leagues, although that promotion is not possible under Major League Baseball rules. Leonhardt, *supra*.

16. Today known as the “Barclay's Premier League” or “English Premier League,” and commonly abbreviated in this Note and otherwise as the “EPL.” EPL HANDBOOK, *supra* note 6, at 45.

17. *Id.* at 1–41.

18. Germany's Bundesliga, Italy's Serie A, and Spain's La Liga are all respectively the highest divisions of their nations' domestic club football leagues. ANDREW S. ZIMBALIST, *THE BOTTOM LINE: OBSERVATIONS AND ARGUMENTS ON THE SPORTS BUSINESS* 97 (2006). Players from all over the world play in all four leagues. *Id.* There is no equivalent in American sport because the leagues for the four major American sports (American football, basketball, baseball, and ice hockey) all are seen as the single premier league in their respective sports globally. *Id.* at 130. In football, the top European leagues are all in the same class and all vie for the same top players. *Id.* at 97. Additionally, having the four European leagues on basically the same level benefits players. Frank Dell'Apa, *Henry Getting Premier Education*, BOS. GLOBE, Nov. 9, 2010, at 2, *available at* 2010 WL 22362653. Instead of just one American league having a monopoly on his talents, a potential star football player has four suitors competing to sign him. *Id.* Because the EPL generates the most revenue, it also pays the highest overall salaries and has the most room for the players of the absolute highest echelon, but that room is severely jeopardized by the quota imposed by the Home Grown Player rule. *See* Taylor, *supra* note 4.

19. Braham Dabscheck, *Labour Hoarding in English Football*, 19 SPORTING TRADITIONS 33, 34 (2002). UEFA currently ranks England, Spain, Italy, and Germany as its top four member associations. UEFA, *REGULATIONS OF THE UEFA CHAMPIONS LEAGUE 2010/11*, at 43 (2010) [hereinafter CHAMPIONS LEAGUE REGS].

EPL clearly surpasses its three peers.<sup>20</sup> It currently generates more revenue and has more global television viewers than any other football league worldwide and is the most lucrative sports league outside of the United States.<sup>21</sup> Additionally, UEFA ranks the EPL as the strongest European domestic league based on its performance in inter-European Club Competitions.<sup>22</sup>

The EPL's level of relevance and revenue has been due in large part to the influx of foreign players. In 1980, 156 foreign players worked in England's top division.<sup>23</sup> By 2000, that number climbed to 306.<sup>24</sup> By 2008, 1980's figure nearly doubled as 368 foreign players now worked in the EPL, with over eighteen foreign players per club.<sup>25</sup> Over a similar period, domestic television rights increased from £2.6 million for the top two English divisions<sup>26</sup> to the EPL alone currently earning £1.9 billion.<sup>27</sup> In addition to the vast domestic television rights fees, the EPL currently earns over £1.4 billion in international television rights.<sup>28</sup>

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20. For the exact revenue figures see Taylor, *supra* note 4.

21. Trevor Phillips, *Why Immigration Works for Football*, W. DAILY PRESS, at 12, available at 2008 WL 7686100.

22. CHAMPIONS LEAGUE REGS, *supra* note 19, at 43. For a detailed explanation of the UEFA coefficient system see *infra* note 137.

23. Then known as the "Football League First Division." DOBSON & GODDARD, *supra* note 15, at 82.

24. Dabscheck, *supra* note 19, at 40.

25. INST. FOR EUR. AFFAIRS [INEA], EXPERT OPINION ON THE COMPATIBILITY OF THE "6+5 RULE" WITH EUROPEAN COMMUNITY LAW 16 (2008) [hereinafter THE 6+5 RULE], available at [http://inea-online.com/download/regel/lang\\_eng.pdf](http://inea-online.com/download/regel/lang_eng.pdf).

26. Dabscheck, *supra* note 19, at 36. In 1983, the top two English divisions were known as the Football League "First Division" and "Second Division." DOBSON & GODDARD, *supra* note 15, at 82. In 2001, they were known as the FA "Premier League" and Football League "Division One." *Id.* Today, they are known as the FA "Premier League" and the "Football League Championship." EPL HANDBOOK, *supra* note 6, at 45, 84. Regardless of name, they have historically included the top forty-four clubs in the English FA. DOBSON & GODDARD, *supra* note 15, at 82.

27. *EPL Clubs See Modest TV Contract Rise*, AFP GLOB. ED. (Feb. 6, 2009) [hereinafter *EPL TV Contracts*], available at <http://www.thefreelibrary.com/EPL+clubs+see+modest+TV+contract+rise-a01611788963>; John Ley, *The Magnificent 7*, DAILY TELEGRAPH (UK), Sept. 11, 2010, available at 2010 WL 18052806.

28. Nick Harris, *Premier League Foreign Rights Soar Above £1bn*, SPORTING INTELLIGENCE (Mar. 22, 2010), <http://www.sportingintelligence.com/2010/03/22/premier-league-foreign-rights-soar-above-1bn-with-just-albania-and-russia-left-220301>. The 1.4 billion pound figure does not include Russia and Albania, which had not completed contract agreements with the EPL at the time of the source's writing but were expected to also sign lucrative television deals. *Id.*

Upon founding, the EPL possessed just one international television contract; today that number has grown to seventy-eight.<sup>29</sup> Each weekend, EPL matches can be seen in over 200 countries and are watched by over 500 million people.<sup>30</sup> In the United States, ESPN and Fox Soccer Channel bring every single EPL match to viewers through their respective channels and online subscription services.<sup>31</sup> As the United States and England have a shorter time difference than the United States and mainland Europe,<sup>32</sup> and the United States and England share a language and heritage, mainstream American audiences are growing to accept Premier League football as a common weekend morning pastime.<sup>33</sup> Another key reason why the EPL is able to secure lucrative broadcast contracts all over the world is because it carries the contemporary reputation of the league where the best players from all over the world come to compete.<sup>34</sup> Before the Home Grown Player rule went into effect on September 1, 2010, the popularity and success of the English Premier League were at an all-time high, and an unlimited number of players from all across the EU, and the world, were able to compete in the EPL.<sup>35</sup>

#### *B. The Home Grown Player Rule*

Even though the improved level of play, due to the importation of players and the global expansion of the game, nurtured English football's growth, the EPL recently instituted a rule capping the number of foreign (or non-“Home Grown”) players each club may register on its roster.<sup>36</sup>

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29. Ley, *supra* note 27.

30. Phillips, *supra* note 21; Simon Hattenstone, *Players Ran the Distance But Banked on Bigger Returns*, GUARDIAN (London), Apr. 2, 2008, available at 2008 WL 27823245.

31. Nick Green, *America's Choice: Overseas Contests*, DAILY NEWS (L.A.), Aug. 17, 2010, at C2, available at 2010 WL 16408020. ESPN broadcasts EPL matches on its flagship station as well as ESPN 2 and ESPN Deportes, its Spanish-language network, additional matches are broadcast on ESPN 3, its online service. *Id.* Fox Soccer Channel brings EPL matches to American viewers on its flagship, as well as its second network, Fox Soccer Plus. Ronald Blum, *AP NewsBreak: Fox to Launch 2nd Soccer Network*, AP DATASTREAM, Jan. 12, 2010, available at 1/12/10 APDATASTREAM 03:34:05. In addition to live matches, Fox Soccer Channel broadcasts many less prominent EPL matches on tape delay. Green, *supra*. Fox Soccer Channel also has an online subscription service, Foxsoccer.tv, which allows American viewers to watch football from all levels of the English FA. FOX SOCCER TV, <http://www.foxsoccer.tv> (last visited Oct. 22, 2011).

32. The time difference from America's Eastern Time Zone to England is but five hours. GMT: GREENWICH MEAN TIME, <http://www.greenwichmeantime.com> (last visited Oct. 22, 2011). The time difference to Spain, Italy and Germany is six hours. *Id.*

33. Green, *supra* note 31.

34. Phillips, *supra* note 21.

35. EPL HANDBOOK, *supra* note 6, at 71, 75.

36. *Id.*



Beginning with the 2010–2011 season,<sup>37</sup> the EPL instituted two new provisions comprising the Home Grown Player rule.<sup>38</sup> The first provision states that each club must file a “squad list” of the twenty-five players over the age of twenty-one that the club has under contract for the current season with the league office by September 1.<sup>39</sup> The second provision requires that no more than seventeen of these twenty-five players may be non-“Home Grown,” thus reserving eight spots on each squad list for “Home Grown” players.<sup>40</sup> A Home Grown Player is defined as “a player who, irrespective of his nationality or age, has been registered with any Club affiliated to the Football Association [of England] or the Football Association of Wales for a period, continuous or not, of three Seasons or [thirty-six] months prior to his [twenty-first] birthday.”<sup>41</sup> Despite the fact that the Home Grown requirement does not absolutely require a player to possess English nationality, it leaves few other options. In order for a non-English player to be Home Grown, he must leave his native country before his eighteenth birthday, move to England, and train with a club in England for three years before his twenty-first birthday.<sup>42</sup> The current pools of youth players training with EPL clubs who will one

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37. The 2010–2011 EPL season started on August 14, 2010 and ended on May 22, 2011. *Id.* at 45–58.

38. *Id.* at 71, 75.

39. Clubs are permitted to employ as many players under the age of twenty-one as they desire. *Id.* at 71. These players are not required to be included on the Squad List, and may be of any nationality. *Id.* For an in-depth analysis of the stock-piling of young talent by clubs in the EPL see Dabscheck, *supra* note 19, at 37.

40. EPL HANDBOOK, *supra* note 6, at 75.

41. *Id.* at 71.

42. *Id.* This talent poaching may also be a backdoor way of allowing these young men to gain English citizenship. According to the UK Border Agency, anyone over eighteen years of age who has been living in England for over five years, of good character and sound mind, is entitled to apply for naturalization as a British citizen. *Who Can Apply for British Citizenship and Other Forms of British Nationality?*, UK BORDER AGENCY, <http://www.ukba.homeoffice.gov.uk/britishcitizenship/eligibility> (last visited Nov. 11, 2010). Since any foreigner who could possibly qualify as a Home Grown Player has already been living in England for at least three of those five required years, he may very well be able to apply for English citizenship. *See id.* And if a player holds English citizenship, he is able to play for the English national team in international competition. FIFA STATUTES, *supra* note 13, at 67. If this turned out to be a backdoor purpose of the Home Grown Player rule it would also violate the principles of the EU by putting England before the other EU Member States and attempting to poach their citizens. *See Consolidated Version of the Treaty on European Union* pmbl., Mar. 30, 2010, 2010 O.J. (C 83) 15, 16 [hereinafter TEU].

day qualify as Home Grown are 85 percent English.<sup>43</sup> While the Home Grown Player rule may constitute direct discrimination on the basis of nationality, it is clearly discriminatory in effect.

The rule also has the effect of restricting the movement of top foreign players into the EPL. While in years prior Premier League clubs could aim to improve and compete on a higher level by bringing in as many highly talented foreign players as fiscally possible, the new seventeen foreign player ceiling greatly limits that ability.<sup>44</sup> If a club already satisfies its full allotment of foreign players,<sup>45</sup> further selections are severely limited. A club seeking to improve is either simply stuck in its inferior position or must overpay English players who now will have increased bargaining power due to their near monopoly. The club may even be forced to pay more for Home Grown Players that are less talented than their foreign counterparts, hurting the club's performance even further. Reserving eight roster spots for Home Grown Players hurts the overall quality of the play, quality of employment, and level of employment.

The Home Grown Player rule went into effect on September 1, 2010.<sup>46</sup> While no club violated the Home Grown Player rule during its first peri-

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43. *More Opportunities for Home Grown Players*, PREMIER LEAGUE, <http://www.premierleague.com/page/Headlines/0,,12306~2094331,00.html> (last visited Oct. 22, 2011) [hereinafter *Opportunities for Home Grown Players*].

44. Dabscheck, *supra* note 19, at 37. For the 2000–2001 season, EPL squads averaged over forty-seven players, an unlimited number of whom could be foreign. *Id.* Now, the Home Grown Player rule limits the total Squad List to twenty-five players and the number of non-Home Grown Players to seventeen. EPL HANDBOOK, *supra* note 6, at 71, 75.

45. This is the very position of the Chelsea Football Club on its February 1, 2011 and September 1, 2011 Squad Lists. For more on Chelsea's position see *infra* text accompanying notes 61–64.

46. EPL HANDBOOK, *supra* note 6, at 158. The September 1 Squad Lists are locked-in until January 1. *Id.* Each season there are two periods during which clubs are permitted to transfer players into and out of their Squad Lists. *Id.* These periods are called transfer windows. *Id.* The first transfer window begins immediately after the end of the previous season—the 2010–2011 season ended on May 22, 2011—and runs until September 1. *Id.* The second transfer window begins on January 1 and ends on January 31. *Id.* The only periods when clubs are permitted to trade, transfer, or purchase players from one another are during these transfer windows. *Id.* The transfer windows concern transfers both between domestic English clubs and between English clubs and foreign clubs. *Id.* In American sporting competition “transfers” are called “trades.” See *NBA Trade Machine*, ESPN, <http://games.espn.go.com/nba/tradeMachine> (last visited Oct. 22, 2011). American trades usually are exchanges of players between two or more clubs, while European transfers are the sale of a player's contract and/or the rights to sign a contract with that player to another club in exchange for cash. See *id.*; EPL HANDBOOK, *supra* note 6, at 163–64. Sometimes American trades also include money, and occasionally European “transfers” involve the exchange of players or rights to players as well as money. *NBA Trade Ma-*

od of effect, several clubs were forced to edit their rosters for compliance.<sup>47</sup> As a result of these necessary roster changes, the rule forced several talented players out of the EPL. The club that came the closest to violating the rule on the first squad list deadline was Chelsea.<sup>48</sup> Given that eight roster spots are reserved for Home Grown Players,<sup>49</sup> clubs that have fewer than eight desirable Home Grown Players are left with two unfortunate options with regard to the remaining spots. The clubs may 1) fill the spots with Home Grown Players who are placeholders and will never actually play except in emergency situations, or 2) not fill them at all. On its September 1, 2010, squad list, Chelsea applied both strategies.<sup>50</sup> While three of Chelsea's Home Grown Players see regular playing time, the fourth Home Grown Player is third-string goalkeeper Ross

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*chine, supra*; EPL HANDBOOK *supra* note 6, at 163–64. Time restrictions, or “transfer windows,” on trades are called “Trading Deadlines” in America. *See* Woody Paige, *Nuggets on 3 First-round Picks: All Ears*, DENVER POST, Dec. 17, 2010, at C01, available at 2010 WL 24959743. Each major American sport has a trading deadline that occurs before the end of the season, to prevent clubs from bringing in new advantageous players late in the season. *See id.* During the transfer windows, rosters are considered to be in flux and EPL clubs are permitted to temporarily employ more than seventeen “Foreign Grown Players.” *Opportunities for Home Grown Players, supra* note 43. At the close of each transfer window—September 1 and January 31, respectively—the Squad Lists are locked in until the beginning of the next transfer window. EPL HANDBOOK, *supra* note 6, at 158. The closing dates of the transfer windows are when the Home Grown Player rule comes into effect. *Id.* It is during these locked-in periods that the majority of the EPL season is played. *Id.* at 45–48, 158. The only exceptions to the lock-in are unforeseen emergencies, such as injuries to multiple goalkeepers and the signing of free agents by clubs with less than twenty-five players and seventeen non-Home Grown Players on their Squad Lists, and these exceptions must be approved by the EPL. *Id.* at 152–55.

47. *Complete Roll Call of Premier League Squads until January*, INDEP. (U.K.), Sept. 3, 2010, at 54, available at 2010 WL 17528438 [hereinafter *Premier League Squads*].

48. *Premier League Clubs Submit Squad Lists*, PREMIER LEAGUE (Sept. 1, 2010), <http://www.premierleague.com/page/Headlines/0,,12306~2142220,00.html> [hereinafter *Squad Lists*]. The Chelsea Football Club is an EPL club playing in west London. *Team History*, CHELSEA FC, <http://www.chelseafc.com/page/TeamHistory/0,,10268~1800276,00.html> (last visited Oct. 22, 2011). It was founded in 1905, and won the EPL championship for the 2009–2010 season. *Id.* Chelsea is one of the EPL's “Big Four” clubs, along with Arsenal, Manchester United, and Liverpool. *See id.* Over the past fifteen seasons, those four clubs have regularly finished at the top of the EPL and qualified for the UEFA Champions League. *Id.* These four clubs are well known for their widespread use of foreign players and their prolonged dominance may be the actual reason for the EPL's institution of the Home Grown Player rule. Jeff Rusnak, *New Roster Rules to Test Premiership*, SUN SENTINEL (Fla.), Aug. 15, 2010, at 11C, available at 2010 WL 16380421. For more on the EPL's Big Four see *infra* note 133.

49. EPL HANDBOOK, *supra* note 6, at 75.

50. *Squad Lists, supra* note 48.

Turnbull. Turnbull only plays if Chelsea's two other goaltenders suffer injuries.<sup>51</sup> Chelsea opted not to fill its other four Home Grown Player spots, and only registered nineteen of its possible twenty-five players overall.<sup>52</sup> Several other clubs opted to under-employ their clubs in the first season of the Home Grown Player rule.<sup>53</sup> This is a stark contrast to the over forty players that each club employed before the Home Grown Player rule.<sup>54</sup> Chelsea also took drastic action with regard to its newly ineligible foreign players in the days leading up to the Home Grown Player rule's first squad list deadline.

Immediately preceding the imposition of the Home Grown Player rule, Chelsea employed twenty-three players over the age of twenty-one, eighteen of whom were "Foreign Grown," one over the limit of seventeen imposed by the rule.<sup>55</sup> In order to comply with the new rule, Chelsea reduced its number of "Foreign Grown Players" by three for the 2010–2011 season, shedding five international players while adding two.<sup>56</sup> The players no longer on Chelsea's squad list for the 2010–2011 season were German national Michael Ballack, Portuguese national Ricardo Carvalho, dual Serbian and Slovak citizen Nemanja Matic, and Brazilian nationals Deco and Juliano Belletti.<sup>57</sup> All five of these players were di-

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51. *Id.*; Ross Turnbull, CHELSEA FC, <http://www.chelseafc.com/page/PlayerProfileDetail/0,,10268~28985,00.html> (last visited Oct. 22, 2011). Since joining Chelsea before the 2009–2010 season, Turnbull has participated in just two Premier League matches. *Ross Turnbull, supra*. He did not appear in a Premier League match in the 2010–2011 season. *Id.*

52. *Premier League Squads, supra* note 47, at 54; *Squad Lists, supra* note 48.

53. *Premier League Squads, supra* note 47, at 54. Twelve of the twenty EPL clubs, including all four of the Big Four (Arsenal, Chelsea, Liverpool, and Manchester United) elected to under-employ their clubs. *Id.*

54. Dabscheck, *supra* note 19, at 37. In 2001, EPL clubs used an average of twenty-eight players, and the average size of the playing squads was 47.8 players. *Id.* Now, however, that Squad List figure is capped at twenty-five under the Home Grown Player rule with eight of those spots exclusively for Home Grown Players. EPL HANDBOOK, *supra* note 6, at 75.

55. *Chelsea FC 2009/2010 Squad and Numbers*, SOMETHING LIKE FOOTBALL (Aug. 20, 2009, 3:21 PM), <http://somethinglikefootball.blogspot.com/2009/08/chelsea-fc-2009-2010-squad-and-numbers.html> [hereinafter *Chelsea Squad*].

56. Israeli national Yossi Benayoun and Brazilian national Ramires were the two players added. *Premier League Squads, supra* note 47, at 54; *Ramires*, CHELSEA FC, <http://www.chelseafc.com/page/PlayerProfileDetail/0,,10268~48734,00.html> (last visited Oct. 21, 2011); *Yossi Benayoun*, CHELSEA FC, <http://www.chelseafc.com/page/PlayerProfileDetail/0,,10268~33816,00.html> (last visited Oct. 21, 2011).

57. *Chelsea Squad, supra* note 55; *Football: Squads List: Who's in, Who's Home-grown? Squad lists for the First Half of the Season: Chelsea*, GUARDIAN (London), Sept. 2, 2010, at 4 [hereinafter *Who's In: Chelsea*], available at 2010 WL 17413443.

rectly affected by the Home Grown Player rule. Ballack, Carvalho, and Matic hail from EU Member States Germany, Portugal, and Slovakia, respectively, and thus are EU citizens who no longer had a spot on the Chelsea squad because of the quota imposed by the rule.<sup>58</sup> Due to the Home Grown Player rule, Chelsea was forced to transfer each player to another club.<sup>59</sup> Instead of playing for Chelsea, a top club in the world's top league with a global following, these citizens of the EU were forced to move to less prominent clubs where they will garner far less worldwide exposure and play against inferior competition.<sup>60</sup>

During the first half of the 2010–2011 season, Chelsea was plagued by injuries among its top players and the loss of several key players due to the Home Grown Player rule.<sup>61</sup> Chelsea suffered its longest period of underperformance in fifteen years.<sup>62</sup> To try to turn the tide, just before the close of the January transfer window and the February first re-submission of the squad lists—putting the Home Grown Player rule back into effect—Chelsea acquired Spanish national Fernando Torres from Liverpool and Brazilian national David Luiz from the Portuguese club Benfica, filling the club's squad list with seventeen "Foreign Grown Players," the most it could possibly have under the Home Grown Player

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58. Although the reason for the transfer of these players has not been directly attributed to the imposition of the Home Grown Player rule, it was very likely a contributing factor. *Who's In: Chelsea*, *supra* note 57, at 4. Furthermore, it contributed to the overall attitude that clubs must trim their number of foreign players to clear the newly imposed quota of seventeen. *Id.*

59. Ballack considered transferring to a club in Dubai before electing to transfer back to a club in his native Germany, Bayer Leverkusen. *Arab Ambition May See More Follow Martin*, BELFAST TELEGRAPH, Oct. 29, 2010, at 86, available at 2010 WL 21615687. Bayer Leverkusen is a club in the German Bundesliga, the highest division in Germany, and it paid £4.9 million to Chelsea for Ballack's transfer. *Football: Transfer Deadline Day: Window Shopping: How Did Your Club Do?: Chelsea*, GUARDIAN (London), Sept. 1, 2010, at 6, available at 2010 WL 17338330. Matic was loaned to the Dutch club Vitesse just before the end of the transfer window. *Id.* Carvalho was given a free transfer to Real Madrid. *Id.* Brazilians Deco and Belletti returned to their native country and the Fluminense Football Club located in Rio de Janeiro. *Id.*

60. The EPL is currently the strongest domestic competition in the world. For a more detailed explanation of the EPL world ranking see *infra* notes 137 and 139.

61. Carl Askew, *Axing Old Guard Has Hurt Blues*, DAILY RECORD (Scot.), Jan. 20, 2011, at 67, available at 2011 WL 1171893. Chelsea's star striker, Didier Drogba, hailing from the Ivory Coast, blamed the club's two-months of poor performance on the loss of many key players including Ballack, Carvalho, Deco and Belletti. *Id.* Several of these players were key parts of the Chelsea Squad in years passed and were removed from the Squad in large part because of the Home Grown Player rule. *Id.*

62. *Id.*

rule.<sup>63</sup> The Home Grown Player rule officially prohibited Chelsea from hiring any more foreign players during the upcoming Summer 2011 transfer window unless it also dropped an equal number of foreign players.<sup>64</sup> At the conclusion of that transfer window, in August 2011, Chelsea was forced to shed two of its key foreign players, Russian Yuriy Zhirkov and Israeli Yossi Benayoun, in order to make room for two new foreign players, Spaniard Juan Mata and Portuguese Raul Meireles.<sup>65</sup>

Players hailing from EU Member States who are squeezed out, such as Ballack, Matic, and Carvalho,<sup>66</sup> are entitled to status equal to Englishmen with regard to employment thanks to EU law.<sup>67</sup> But under the Home Grown Player rule, if they were Englishmen they would have been welcome to play with Chelsea, but since they were not Englishmen they were forced to leave.<sup>68</sup> Not only did the Home Grown Player rule hurt Chelsea and deprive these foreign players the opportunity to play in the top football league in the world, earn the world's most lucrative football

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63. Andy Hunter & Dominic Fifield, *Transfer Record Smashed by Spree on Torres and Carroll: Liverpool and Chelsea Deals May Hit a Combined Pounds 150m*, GUARDIAN (London), Feb. 1, 2011, at 1, available at 2011 WL 1951179.

64. EPL HANDBOOK, *supra* note 6, at 71, 75.

65. *Premier League Clubs Submit Squad Lists*, PREMIER LEAGUE (Sept. 10, 2011), <http://www.premierleague.com/page/Headlines/0,,12306~2440123,00.html>. Zhirkov returned to his native Russia and the club Anzhi Makhachkala. *Zhirkov Departs*, CHELSEA FC (Aug. 6, 2011), <http://www.chelseafc.com/page/LatestNews/0,,10268~2412397,00.html>. Benayoun is merely being loaned for the season to rival London EPL club Arsenal. *Benayoun Completes Arsenal Loan*, CHELSEA FC, Aug. 31, 2011, <http://www.chelseafc.com/page/LatestNews/0,,10268~2437938,00.html>. Chelsea signed Mata and Meireles just before the close of the Summer 2011 transfer window to put the club back at the limit of seventeen Foreign Grown Players. *Juan Mata Deal Completed*, CHELSEA FC, Aug. 24, 2011, <http://www.chelseafc.com/page/LatestNews/0,,10268~2430847,00.html>; *Raul Meireles Joins Chelsea*, CHELSEA FC, Aug. 31, 2011, <http://www.chelseafc.com/page/LatestNews/0,,10268~2438063,00.html>. Both Benayoun and Zhirkov are citizens of nations that have signed free trade agreements with the EU and are to be afforded equal status with regard to employment as EU citizens according to the ECJ's ruling in *Kolpak* and *Simutenkov*. Case C-438/00, *Deutscher Handballbund v. Kolpak*, 2003 E.C.R. I-4135; Case C-265/03, *Simutenkov v. Ministerio de Educacion y Cultura*, 2005 E.C.R. I-2579. For a more detailed description of these ECJ decisions see *supra* note 8.

66. As well as citizens of nations with free trade agreements with the EU such as Benayoun from Israel and Zhirkov from Russia. *Zhirkov Departs*, *supra* note 65; *Benayoun Completes Arsenal Loan*, *supra* note 65.

67. See TFEU arts. 18, 20.

68. EPL HANDBOOK, *supra* note 6, at 71, 75.

salaries, and play in front of the world's largest television audience, it also violated the law of the EU.<sup>69</sup>

## II. EU LAW

While the players who were forced to transfer away from Chelsea by the Home Grown Player rule are all citizens of foreign nations and not of the United Kingdom, they are not completely foreign. Ballack, Carvalho, and Matic are citizens of nations that are Member States of the EU, a unified group of nations dating back to 1951.<sup>70</sup> The United Kingdom was loosely affiliated with the European Communities from their inception and formally joined in 1973.<sup>71</sup> In 1993, the European Communities became the EU, which presently has twenty-seven Member States.<sup>72</sup>

Much like the federal government of the United States, the government of the EU has three branches.<sup>73</sup> The executive branch is called the European Council.<sup>74</sup> The legislative branch is called the European Commis-

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69. See TFEU arts. 18, 20, 26, 34, 45.

70. RALPH H. FOLSOM, EUROPEAN UNION LAW IN A NUTSHELL 1-4 (4th ed. 2004). In the aftermath of the Second World War, many war torn European nations desired to establish a unified Europe. THE HISTORY OF THE EUROPEAN UNION: ORIGINS OF A TRANS-AND SUPRANATIONAL POLITY 1950-72, at 1 (Wolfram Kaiser et al. eds., 2009) [hereinafter EU HISTORY]. In 1946, British Prime Minister Winston Churchill called for the creation of "a kind of United States of Europe." Winston Churchill, Prime Minister, U.K., Speech to the Academic Youth (Sept. 19, 1946), *transcript available at* [http://www.unizar.es/union\\_europea/files/documen/Winston\\_Churchill-\\_Discurso\\_en\\_.pdf](http://www.unizar.es/union_europea/files/documen/Winston_Churchill-_Discurso_en_.pdf). The first form of a united Europe was founded in 1951 with the European Coal and Steel Community, a supranational organization regulating the steel and coal industries for much of Europe. FOLSOM, *supra*. In 1957, Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany, the six nations from the European Coal and Steel Community, entered into the Treaty of Rome, establishing the European Economic Community. *Id.* Ten years later the two communities merged to form the European Communities. *Timeline*, EUR. COMM'N, [http://ec.europa.eu/sport/information-center/information-center141\\_en.htm](http://ec.europa.eu/sport/information-center/information-center141_en.htm) (last updated Oct. 12, 2011).

71. England along with Northern Ireland, Scotland, and Wales comprise the United Kingdom, which entered the European Communities upon the signing of the Treaty of Accession of the Kingdom of Denmark, Ireland, and the United Kingdom of Great Britain and Northern Ireland to the European Communities. EU HISTORY, *supra* note 70, at 1; see FOLSOM, *supra* note 70, at 16-17.

72. FOLSOM, *supra* note 70, at 26-29. For a complete list of the twenty-seven Member States see *Member States*, EUROPA, [http://europa.eu/abc/european\\_countries/eu\\_members/index\\_en.htm](http://europa.eu/abc/european_countries/eu_members/index_en.htm) (last visited Oct. 22, 2011).

73. FOLSOM, *supra* note 70, at 61-63.

74. *Id.* at 49-50. The European Council is made up of representatives of the Heads of State of the EU Member States. *Id.* The Council only meets once or twice a year to ensure that the Union is still following the core principles on which it was founded. *Id.*

sion (“EC”).<sup>75</sup> The EC makes the laws of the EU and has the power to prosecute those who do not follow the laws it enacts.<sup>76</sup> The judicial branch is made up of the European Court of Justice (“ECJ”) and other lower courts.<sup>77</sup> Rulings on EU law by the EU courts are binding on the courts of all EU Member States.<sup>78</sup> Additionally, the Member States may ask the EU courts for advisory opinions or refer questions of EU law to the EU courts.<sup>79</sup> The EU courts are primarily based in civil law with the Treaty on European Union and the Treaty on the Functioning of the European Union (“EU treaties”)<sup>80</sup> as the statutory basis.<sup>81</sup>

Free trade between all Member States is a primary principle of the EU treaties.<sup>82</sup> Various articles of the EU treaties establish the core concepts of EU citizenship, the internal free market, and the abolition of discrimination on the basis of nationality.<sup>83</sup> Because the EPL is an economic entity within a nation that is a part of the EU, it is bound by the terms of the EU treaties.<sup>84</sup> The first key provision of the Treaty on the Functioning of the EU is Article 18, which broadly prohibits “any discrimination on grounds of nationality.”<sup>85</sup> While Article 18 is a blanket prohibition, several other Articles aim more specifically to prevent labor restrictions akin to the EPL’s Home Grown Player rule.<sup>86</sup> Article 34 prohibits “quantita-

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75. *Id.* at 61–62.

76. *Id.*

77. *See generally id.* at 67–77.

78. *Presentation: Court of Justice of the European Union*, CVRIA, [http://curia.europa.eu/jcms/jcms/Jo2\\_7024](http://curia.europa.eu/jcms/jcms/Jo2_7024) (last visited Oct. 22, 2011) [hereinafter CVRIA].

79. *See FOLSOM, supra* note 70, at 92–97.

80. The Treaty on European Union and the Treaty on the Functioning of the European Union form the primary constitutional basis of the EU. *See generally* FOLSOM, *supra* note 70. Following their original version in the 1951’s Treaty of Paris, they have been updated by each subsequent EU treaty. *Id.* The Official Journal of the EU has released a Consolidated Version of the Treaties after each revision. *The History of the European Union*, EUROPA, [http://europa.eu/about-eu/eu-history/index\\_en.htm](http://europa.eu/about-eu/eu-history/index_en.htm) (last visited Oct. 28, 2011). The most recent Consolidated Version was published on March 30, 2010, and takes into account the changes made in the most recent EU Treaty, 2009’s Lisbon Treaty. *EU Treaties*, EUROPA, [http://europa.eu/about-eu/basic-information/decision-making/treaties/index\\_en.htm](http://europa.eu/about-eu/basic-information/decision-making/treaties/index_en.htm) (last visited Oct. 28, 2011). In this Note, the current Consolidated Versions of the Treaty on European Union and Treaty on the Functioning of the European Union will be referred to as the “EU Treaties,” and as “TEU” and “TFEU,” respectively, in citations. TEU pmbl.; TFEU arts. 18, 20, 26, 34, 45.

81. CVRIA, *supra* note 78.

82. TEU art. 3.

83. *See* TFEU arts. 18, 20, 26, 34, 45.

84. *See generally* TEU pmbl.; TFEU arts. 18, 20, 26, 34, 45.

85. TFEU art. 18.

86. *See id.* arts. 18, 20, 26, 34, 45.



tive restrictions on imports and all measures having equivalent effect” between Member States.<sup>87</sup> Additionally, Article 45 states that “freedom of movement for workers shall be secured within the Union” and that “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.”<sup>88</sup> The EU treaties also include a Charter of Fundamental Rights of the European Union.<sup>89</sup> The Charter establishes the freedom of employment and declares that, “[e]very citizen of the Union has the freedom to seek employment, to work.”<sup>90</sup> It also reaffirms that “any discrimination on grounds of nationality shall be prohibited.”<sup>91</sup> These essential freedoms established in the EU treaties have been used to ensure equality in sport for all EU citizens since the birth of a unified Europe.<sup>92</sup>

While these provisions have for the most part prevented European domestic sporting competitions from instituting player restrictions that are in clear violation of the EU treaties, some leagues have attempted to test the limits of the EU Treaties and instituted rules restricting players based on nationality.<sup>93</sup> The ECJ has taken a consistent stance that any re-

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87. *Id.* art. 34.

88. *Id.* art. 45.

89. Charter of Fundamental Rights of the European Union, Mar. 30, 2010, 2010 O.J. (C 83) 391–405 [hereinafter EU Charter of Fundamental Rights].

90. *Id.* art. 15.

91. *Id.* art. 21.

92. Case 36/74, *Walrave v. Union Cycliste Internationale*, 1974 E.C.R. 1405.

93. The earliest sporting rule struck down by the ECJ was in 1974, when the Court voided a rule imposed by cycling’s international governing body, the Union Cycliste Internationale (International Cycling Union), requiring that “the pacemaker must be of the same nationality as the stayer” in cycling races. *Id.* ¶ 2. The pacemaker is a motorcyclist who rides ahead of the stayer. RICHARD PARRISH, SPORTS LAW AND POLICY IN THE EUROPEAN UNION 85–86 (2003). The stayer is the cyclist who is racing. *Id.* Together the two form a team. *Id.* In *Walrave v. Union Cycliste Internationale*, the Court held that sport is subject to European Community law as long as it constitutes an economic activity. *Walrave*, 1974 E.C.R. 1405. The *Walrave* opinion was also the first time that the Court mentioned the exception of national teams in competitions such as the Olympics and the World Cup, stating that those interests are of a purely sporting nature and are the exception to the rule against discrimination based on nationality. *Id.* ¶ 2. The Court further explained that the “prohibition on discrimination does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at regulating in a collective manner gainful employment,” and that “the rule on non-discrimination applies to all legal relationships which can be located within the territory of the Community by reason either of the place where they are entered into or of the place where they take effect,” effectively establishing that no one in the EU is permitted to discriminate on the basis of nationality with regard to employment or participation in sport. *Id.* ¶¶ 1–5. Although the *Walrave* decision predates the EU, it is based on nearly identical European

striction based on the nationality of EU citizens is not permitted and invalidated the rules.<sup>94</sup>

### III. PLAYER NATIONALITY RESTRICTIONS IN SPORTS UNDER EU LAW

The EPL's Home Grown Player rule is not the first rule implemented by a sporting organization in the EU attempting to limit the employment of foreign athletes. Dating back to 1974, the ECJ has taken the consistent stance that any restriction of players based on their nationality is prohibited and that "the rule on non-discrimination applies to all legal relationships which can be located within the territory of the Community by reason either of the place where they are entered into or of the place where they take effect."<sup>95</sup> This statement effectively prohibits discrimination on the basis of nationality with regard to employment or participation in sport within the EU.<sup>96</sup>

The most pertinent case to the EPL rule is *Donà v. Mantero*,<sup>97</sup> which invalidated an Italian Football Federation rule allowing only players of Italian nationality to play in its domestic football leagues.<sup>98</sup> While the Italian rule was far more restrictive and blatantly discriminatory than the EPL rule, both are rooted in the same basic desire.<sup>99</sup> Both the rule in *Donà* and the current English rule purposefully limit the number of Foreign Grown Players in each respective domestic football league.<sup>100</sup> The

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Community treaty language and principles. *Timeline*, *supra* note 70. Additionally, the case has been cited as precedent in all of the cases decided under EU law regarding player nationality restrictions in sport. *See* Case 13/76, *Donà v. Mantero*, 1976 E.C.R. 1333; Case C-415/93, *Union Royale Belge des Societes de Football Ass'n v. Bosman*, 1996 E.C.R. I-4921; Case C-438/00, *Deutscher Handballbund v. Kolpak*, 2003 E.C.R. I-4135; Case C-265/03, *Simutenkov v. Ministerio de Educacion y Cultura*, 2005 E.C.R. I-2579.

94. *See Walrave*, 1974 E.C.R. 1405; *Donà*, 1976 E.C.R. 1333; *Bosman*, 1996 E.C.R. I-4921; Case C-438/00, *Deutscher Handballbund v. Kolpak*, 2003 E.C.R. I-4135; Case C-265/03, *Simutenkov v. Ministerio de Educacion y Cultura*, 2005 E.C.R. I-2579.

95. *Walrave*, 1974 E.C.R. 1405.

96. *Id.*; *see also supra* note 93.

97. *Donà*, 1976 E.C.R. 1333.

98. *Id.* The *Donà* case originated as a dispute between Donà, a scout for the Italian football club Rovigo, and the club's chairman, Mantero. *Id.* ¶¶ 1–7. Mantero sent Donà to recruit players. *Id.* Donà placed ads in Belgium looking for football players and found several prospects. *Id.* Upon his return, Donà asked for reimbursement of expenses. *Id.* Mantero refused to pay and refused to look at the players that Donà had recruited because they were prohibited from playing in Italy due to their foreign nationality. *Id.* Mantero claimed that he would not look at the players or compensate Donà until Italy's "blocking of the frontiers" was abandoned. *Id.* Consequently, the case challenging those blockages was brought before the ECJ. *Id.*

99. *Id.*

100. *Id.*; *Opportunities for Home Grown Players*, *supra* note 43.

ECJ held in *Donà* that this type of a sports rule was discrimination on the basis of nationality and not valid under the EU treaties.<sup>101</sup> The Court explained that “rules or a national practice, even adopted by a sporting organization, which limit the right to take part in football matches as professional or semi-professional players solely to nationals of the State in question, are incompatible with [the EU treaties].”<sup>102</sup>

The EPL rule is merely a modernized equivalent of the Italian rule. The Italian Football Federation and the English FA are both the national football bodies for their nations, and their actions are national practices.<sup>103</sup> For eight spots on each twenty-five-man squad list, the EPL’s rule limits the right to take part in football matches to a group of individuals, Home Grown Players, who are predominantly English nationals.<sup>104</sup> Under the law of the EU, those national practices cannot discriminate on the basis of nationality of EU citizens.<sup>105</sup> Based on the precedent of *Donà*, the EPL clearly cannot impose a rule saving eight spots on each squad list for English players, so it did the next best thing by imposing a rule with a very similar effect using less restrictive language.<sup>106</sup>

While this softer reiteration of *Donà*’s sentiment does not completely bar non-English EU citizens from qualifying as Home Grown, a substantial majority will always be English. The EPL’s press release promoting the rule celebrated the fact that 85 percent of all players currently training to become Home Grown are English nationals.<sup>107</sup> An English citizen simply has to play football for three years before his twenty-first birthday and he will be Home Grown.<sup>108</sup> If a player is skilled enough to play in the EPL it is undoubtedly because he grew up playing football and played it in his formative years. Since the FA is the governing body for all of England, a native English player will automatically play football in his formative years for the FA and will be registered to one of its clubs.<sup>109</sup> Thus,

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101. *Donà*, 1976 E.C.R. 1333. When *Donà* was decided, the ECJ was the highest court of the European Communities, which evolved into the EU and retained all previous case law. See *supra* note 70. Additionally, the current consolidated versions of the EU Treaties have incorporated the law of the European Communities. FOLSOM, *supra* note 70, at 26–29.

102. *Donà*, 1976 E.C.R. 1333.

103. *Id.*

104. *Opportunities for Home Grown Players*, *supra* note 43.

105. *Donà*, 1976 E.C.R. 1333.

106. *Id.*

107. *Opportunities for Home Grown Players*, *supra* note 43.

108. *Id.*

109. A Home Grown Player does not have to play three years as a junior while registered to an EPL club; any club in the English FA or the Football Association of Wales will suffice. *Id.* He can be registered to a club from any division and still qualify. *Id.*

any English player remotely eligible for an EPL club would qualify to be a Home Grown Player. English players are essentially born Home Grown.

Foreign players, however, must complete a difficult journey to achieve status equaling that which the British are afforded by birth. To qualify as “Home Grown,” a hypothetical foreign fifteen-year-old football star must be noticeably talented enough to be noticed by an English scout. That scout would have to make him an offer that is better than any offer from his native country and enticing enough that the fifteen-year-old would willingly move away from his family to a foreign country. Then the hypothetical player would need to qualify for a youth working visa under the UK Border Agency’s Youth Mobility Scheme.<sup>110</sup> If the player was able to receive a working visa before he turned eighteen, he would then need to train with the club for three years before qualifying as Home Grown.<sup>111</sup>

The EPL’s system of player inequality is obvious and, according to legal precedent, that inequality violates EU law. While English players have eight spots reserved for them on each EPL roster as a birthright and could even comprise all twenty-five of a given club’s players, non-English EU citizens have no such guarantee.<sup>112</sup> Instead, non-English EU citizens face a quota limiting how many of them may be on any one club’s roster.<sup>113</sup> The EPL system provides for one category of preferred players, into which English players are basically born and foreign players struggle to obtain admittance, and a second category of lesser players, restricted by a quota of seventeen per club.<sup>114</sup> The Italian rule invalidated in *Donà* also divided players into two categories: Italians, who were permitted to play in the Italian Football Federation, and foreigners, who were not.<sup>115</sup> The EPL rule is not as cut and dry as the Italian rule, but it embodies the same principle of keeping foreign players out and reserving spots for native players. Like in *Donà*, the EPL rule amounts to an unequivocal discrimination on the basis of nationality. This system of ine-

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110. *Tier 5 (Youth Mobility Scheme)*, UK BORDER AGENCY, <http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier5/youthmobilityscheme/workingandconditions> (last visited Oct. 22, 2011).

111. EPL HANDBOOK, *supra* note 6, at 71. This poaching of young talent may also be a backdoor way of allowing these young men to gain English citizenship and eligibility to play for the English national team. For more on this theory of poaching see *supra* note 42.

112. *Id.*

113. *Id.*

114. EPL HANDBOOK, *supra* note 6, at 71, 75.

115. Case 13/76, *Donà v. Mantero*, 1976 E.C.R. 1333.

quality is far from harmonious with what the drafters of the Maastricht Treaty envisioned.<sup>116</sup>

Despite its negative international impact, the EPL's stated goal for the rule is to improve English football by providing more opportunities for Home Grown Players, forcing clubs to invest more time and money in youth training, improving league parity, and most importantly, improving the performance of the English national team<sup>117</sup> in international competitions such as the Euro Championship and the World Cup.<sup>118</sup> Although the English national team is currently ranked fourth in the FIFA World Rankings, it has a history of underperforming in international competitions.<sup>119</sup> The English national team has not won the World Cup since 1966 and has never won a Euro Championship.<sup>120</sup> The Home Grown Player rule was enacted to change England's fortunes, but EU

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116. See TFEU art. 20.

117. The *Donà* decision explicitly stated that national teams are the lone exception to the EU's ban on nationality discrimination in sport. *Donà*, 1976 E.C.R. 1333. They are excepted because their nationality discrimination is purely for sporting and completely non-economic reasons. *Id.* ¶ 14. International competitions such as the Olympics, the Euro Championship, and the World Cup would be nothing without nationality discrimination. Athletes are only allowed to be on national teams in international competitions because they have citizenship of the nation whose team they are on. FIFA STATUTES, *supra* note 13, at 67. The competitions are established as a peaceful way to determine which nation is stronger on the battlefield of sport. *Id.* The players' primary motivator is national pride. *Id.* However, domestic professional competitions, such as the EPL, are of a completely different class. *Donà*, 1976 E.C.R. 1333. Nationality discrimination in these domestic leagues is of an economic nature and is therefore not permitted under the EU Treaties. *Id.* It may also be possible that England is attempting to poach youth talent from other countries for the purpose of making them eligible to play on the English national team in international competition. See *supra* note 42.

118. CLEMENTE ANGELO LISI, A HISTORY OF THE WORLD CUP 1930–2006, at 111 (2007). UEFA's regional confederation international competition is called the "Euro" championship. UEFA EURO 2012, <http://www.uefa.com/uefaeuro2012/index.html> (last visited Oct. 22, 2011). For Olympic competition in general, the United Kingdom, and not England, is entered as a country. Jacquelin Magnay, *All-English 2012 Team Could Invite Legal Action*, DAILY TELEGRAPH (UK), Dec. 16, 2010, available at 2010 WL 24827917. Football is the lone sport that has four separate national teams for the four nations of the United Kingdom (England, Scotland, Wales, and Northern Ireland). *Id.* In order to preserve this special position of football for the four separate nations in FIFA, the United Kingdom has not entered a football team in the Olympics since 1972. *Id.* This was recently in controversy because London is hosting the 2012 Olympics. *Id.* For the 2012 Olympics, a compromise has been reached where the United Kingdom squad will be made up entirely on English players so as not to interfere with the special status of the four nations. *Id.*

119. *FIFA/Coca-Cola World Ranking*, FIFA.COM, <http://www.fifa.com/worldfootball/ranking/index.html> (last updated Oct. 19, 2011).

120. LISI, *supra* note 118, at 111.

law does not permit rules enacted to improve one Member State's fortune in competitions between Member States.<sup>121</sup>

The EPL's rule appears to be in clear violation of the EU treaties and thus must offer a strong objective justification.<sup>122</sup> The EPL cannot guarantee that its rule will accomplish the goal of improving the English national team's international fortunes.<sup>123</sup> No matter what measures England takes to attempt to improve its national team, winning a sport as low scoring and closely contested as football requires a great deal of luck.<sup>124</sup> This unachievable goal does not meld with the goals of the EU.<sup>125</sup> Instead of furthering the economic and social prowess of the EU as a whole, the rule attempts to further the sporting prowess of one Member State while breaching the core principle of EU citizenship rights.<sup>126</sup> All EU citizens should have completely equal opportunities for employment in the EPL but lack the opportunity under the Home Grown Player rule.

The EPL was motivated to limit employment opportunities for foreign players because of the recent increase in the number of foreign players on the league's top clubs.<sup>127</sup> In the 2008–2009 season, there were an average of over eighteen foreign players per EPL club.<sup>128</sup> Since the laws of football only allow for eleven players to play at once and three substitutions per match, entire EPL matches could go by without the involvement of any English players.<sup>129</sup> Additionally, in order for a club to transfer in new foreign talent, it has to pay a transfer fee to the player's former club.<sup>130</sup> While the clubs do not officially disclose the exact value of transfer fees, studies have determined that the transfer fee for a player is

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121. TEU pmb1.

122. Case C-176/96, *Lehtonen v. Federation Royale Belge de Societes de Basketball*, 2000 E.C.R. I-2681.

123. Chris Arnot, *Education: A League of Their Own: Should Football Managers' Performance be Assessed in a More, Well, Rigorous Way? One Academic Thinks So*, *GUARDIAN* (London), Sept. 7, 2010, at 13, available at 2010 WL 17721900.

124. *Id.*

125. TEU pmb1.

126. See TFEU arts. 18, 20.

127. See *Opportunities for Home Grown Players*, *supra* note 43.

128. THE 6+5 RULE, *supra* note 25, at 16.

129. LAWS OF THE GAME, *supra* note 3, at 15. Chelsea was the first EPL club to field a starting line-up without an English player on December 26, 1999. Sean Ingle & Scott Murray, *Phil Neal: King of Europe?*, *GUARDIAN*, Apr. 18, 2001, <http://www.guardian.co.uk/football/2001/apr/18/theknowledge.sport>. Likewise, on February 14, 2005, Arsenal was the first club to play a match with a squad comprised entirely of foreign players. *Wenger Backs Non-English Line-up*, *BBC SPORT* (Feb. 15, 2005), <http://news.bbc.co.uk/sport2/hi/football/teams/a/arsenal/4266443.stm>.

130. EPL HANDBOOK, *supra* note 6, at 163–64.

approximately 90 percent of his salary.<sup>131</sup> Therefore, in order for a club to bring in foreign talent, it almost has to pay double for that player.<sup>132</sup> Coincidentally, the Big Four EPL clubs—Arsenal, Chelsea, Liverpool, and Manchester United—generate approximately twice the yearly profit of clubs in middle of the league standings and are able to use that more money to lure additional talented foreign players.<sup>133</sup> This competitive disadvantage was one of the major driving factors behind the Home Grown Player rule.<sup>134</sup> Now that all EPL clubs are limited to the same number of foreign players on their squad lists, the rule will effectively limit the number of players held by the Big Four clubs that are prohibitively expensive for the less prominent clubs and possibly increase parity in the league.<sup>135</sup>

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131. Stefan Szymanski, *Totting up True Price of Success on the Field*, EVENING STANDARD (London), Dec. 17, 2010, available at 2010 WL 24961004.

132. *Id.* Clubs have to pay approximately pay 190% of the player's salary to acquire the player. *Id.*

133. The Big Four net over £200 million in profits, while the next closest clubs earn less than £100 million. *Football Clubs & Finance 2009—Market Report Plus*, M2 PRESSWIRE, Dec. 8, 2010, available at 12/18/10 M2 Presswire 00:00:00 (on Westlaw Newswires). Dating back to the 1994–1995 season, three of the Big Four clubs are the only clubs to win the Premier League Championship—Arsenal, Chelsea, and Manchester United. Andrew McKenzie, *Has the Premier League's Big Four become a Big Two?*, BBC SPORT (Aug. 13, 2010), [http://news.bbc.co.uk/sport2/hi/football/eng\\_prem/8888167.stm](http://news.bbc.co.uk/sport2/hi/football/eng_prem/8888167.stm). Manchester United has never finished lower than third place in the Premier League. *Id.* Each year that the Big Four finish at the top of the Premier League they also qualify for the UEFA Champions League. *Id.* For more information on the UEFA Champions League, see *infra* note 136. Participation in the Champions League gives the clubs international exposure in the Europe-wide competition and additionally large financial rewards from the competition. *Id.* Recently, Chelsea and Manchester United have performed exceedingly well and created a gap between themselves and the over two Big Four. *Id.* Dating back to the 2004–2005 season, only Chelsea and Manchester have won the Premier League Championship—each club has won three. *Id.* They have created a rivalry that in many ways parallels the Yankees and Red Sox of American Major League Baseball, with both clubs spending more money than their peers, garnering larger television ratings and an international following. See Jorge L. Ortiz, *Yankees vs. Red Sox: Long-Running Drama*, USA TODAY (May 7, 2010), [http://www.usatoday.com/SPORTS/usaedition/2010-05-07-yanksox07\\_cv\\_U.htm?csp=34](http://www.usatoday.com/SPORTS/usaedition/2010-05-07-yanksox07_cv_U.htm?csp=34).

134. *Opportunities for Home Grown Players*, *supra* note 43.

135. Rusnak, *supra* note 48, at 11C. The EPL based its argument on increased parity in the league on the EC's provisional acceptance of a similar Home Grown Player rule instituted by UEFA governing matches in its international club competitions. Press Release, EUROPA, UEFA Rule on 'Home-Grown Players': Compatibility with the Principle of Free Movement of Persons (May 28, 2008) [hereinafter UEFA Rule Compatibility], available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/807>; CHAMPIONS LEAGUE REGS, *supra* note 19, at 26. A key difference between the EPL rule

Although increased parity may seem like a good idea for clubs that are near the bottom of the standings, the rule is not beneficial for the EPL overall. Each year the top clubs from the EPL qualify for inter-European club competitions.<sup>136</sup> When these top EPL clubs excel against the top clubs from the other European domestic leagues, that success improves the global standing of the entire EPL.<sup>137</sup> By restricting the strength of its top clubs via the Home Grown Player rule, the EPL is hurting its stand-

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and the UEFA rule is that the UEFA competitions contain a distinct international element, while EPL is a purely domestic competition. For more on the UEFA rule, see *infra* notes 155–58 and accompanying text.

136. The Champions League and Europa League are club competitions encompassing the top teams from all the European football associations. *Football's Premier Club Competition*, UEFA.COM, <http://www.uefa.com/uefachampionsleague/history/index.html> (last visited Oct. 22, 2011) [hereinafter *Club Competition History*]; *New Format Provides Fresh Impetus*, UEFA.COM <http://www.uefa.com/uefaeuropaleague/history/index.html> (last visited Oct. 22, 2011) [hereinafter *New Format*]; *Format*, UEFA.COM, <http://www.uefa.com/uefaeuropaleague/competitionformat/index.html> (last visited Oct. 22, 2011). The winner of the Champions League is the Champion of all of Europe. CHAMPIONS LEAGUE REGS, *supra* note 19, at 11. The number of clubs from each UEFA member football association that qualify is based on the strength of the nation's football association. *Club Competition History, supra*; *New Format, supra*. Currently, England is ranked atop the UEFA rankings and the top four clubs in the EPL each season qualify for the UEFA Champions League, while three additional clubs qualify for the UEFA Europa League. CHAMPIONS LEAGUE REGS, *supra* note 19, at 43. The Champions League is the more prestigious of the two UEFA club competitions. *Club Competition History, supra*. The Europa League is a secondary competition; some clubs that are eliminated in the early stages of the Champions League are placed into the Europa League. CHAMPIONS LEAGUE REGS, *supra* note 19, at 11; *Club Competition History, supra*; *New Format, supra*; *Format, supra*. These competitions are comprised primarily of matches between club teams of different nations and are not domestic club competitions. CHAMPIONS LEAGUE REGS, *supra* note 19, at 11. The structure of the UEFA Champions League specifically prohibits clubs from the same football association from meeting until the Quarterfinal Stage. *Id.* This aspect of the Europe-wide club competitions gives the competition an international element, giving rise to the EC's justification that nationality restrictions may be permissible because they only govern a quasi-international competition. UEFA Rule Compatibility, *supra* note 135, at 1–2.

137. Following each season, UEFA compiles a coefficient for each member football association. CHAMPIONS LEAGUE REGS, *supra* note 19, at 46–48. The football associations are awarded points for how far their clubs advanced in the UEFA Champions and Europa Leagues in the preceding five years. *Id.* England ranked first during the 2010–2011 season. *Id.* at 43. In recent years, EPL clubs have done very well in the UEFA Champions League. In the 2008–2009 competition, three of the four semi-finalists were EPL clubs—Arsenal, Chelsea, and Manchester United. *Football's Premier Club Competition, supra* note 136. In 2007–2008, three of the final four clubs were also from the EPL—Chelsea, Liverpool, and Manchester United—with the final pitting two bitter EPL rivals—Chelsea and Manchester United—against one another. *Id.* The Big Four EPL clubs regularly all advance to at least the quarter-final stage of the UEFA Champions League. *Id.*



ing in the world. For the 2009–2010 season—the last before the Home Grown Player rule—UEFA ranked the EPL as the top league in all of Europe.<sup>138</sup> Since FIFA ranked Europe the top regional confederation in the world, the EPL was the top league in the world.<sup>139</sup> Because each year's coefficient rankings take into account a nation's performance in the last five years of inter-European competition, the EPL was still ranked first for the 2011–2012 season, but if the Home Grown Player rule remains in effect it will eventually weaken the league and likely lower its ranking.<sup>140</sup> Thus the rule fails to directly accomplish its goal of league parity, fails to strengthen the EPL as a whole, and contradicts EU law.

The Home Grown Player rule's discrimination directly violates Article 18 of the Treaty on the Functioning of the EU.<sup>141</sup> The Treaty prohibits "any discrimination on grounds of nationality."<sup>142</sup> Even though the drafters of the Home Grown Player rule attempted to make the rule as discriminatory as possible without constituting discrimination on the basis of nationality, the rule undoubtedly still does.<sup>143</sup> Upon instituting the rule, the EPL gloated that it would increase opportunities for Home Grown Players, and since it did nothing to change the laws of football to allow more than eleven men on the field at a time, those increased opportunities for Home Grown Players would have to decrease opportunities for Foreign Grown Players.<sup>144</sup> The purpose of the rule was to limit foreigners and the EPL invented the Home Grown language to try to get

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138. CHAMPIONS LEAGUE REGS, *supra* note 19, at 46–48.

139. As explained *supra* note 137, based on the past five seasons, England is currently ranked the strongest football association in UEFA. CHAMPIONS LEAGUE REGS, *supra* note 19, at 43. For the 2010 World Cup, FIFA awarded spots in the thirty-two team World Cup based on regional confederation strength. FIFA, REGULATIONS: 2010 FIFA WORLD CUP SOUTH AFRICA, at 37 (2010), available at [http://www.uefa.com/MultimediaFiles/Download/competitions/WorldCup/67/17/65/671765\\_DOWNLOAD.pdf](http://www.uefa.com/MultimediaFiles/Download/competitions/WorldCup/67/17/65/671765_DOWNLOAD.pdf). UEFA was far and away ranked the strongest, receiving thirteen of the thirty-two spots in the World Cup, with the other nineteen spots divided between the other five regional confederations. *Id.*

140. *Member Associations—UEFA Rankings—Country Coefficients 2011/12*, UEFA.COM, <http://www.uefa.com/memberassociations/uefarankings/country/index.html> (last updated Oct. 21, 2011, 4:42 PM).

141. See TFEU art. 18.

142. *Id.*

143. The EPL used the term Home Grown Player instead of "English player" when the true goal was to bring more English players into the league. *Opportunities for Home Grown Players*, *supra* note 43. Also, because there are a limited number of spots on each club and in each match, those additional English players directly take opportunities away from foreign players. See LAWS OF THE GAME, *supra* note 3, at 15.

144. *Opportunities for Home Grown Players*, *supra* note 43.

around EU law preventing such a limit. Because the Home Grown Player rule follows a strict rubric that it is significantly more favorable to English players than it is to any other EU citizen and the EPL drafted the rule knowing the resultant Home Grown Players would be overwhelmingly English, the rule is blatantly discriminatory on the basis of nationality.<sup>145</sup> When looking at the name abstractly, a layman with no knowledge of the actual rule would likely guess that a Home Grown Player is simply a player born and raised in England,<sup>146</sup> and when broken down, 85 percent of Home Grown Players amount to just that.<sup>147</sup>

The rule also violates EU law by placing a quantitative restriction on imported players, limiting each club to only seventeen.<sup>148</sup> Under the EU treaties, the EU is one free internal market and any product or person from any Member State must have equal standing.<sup>149</sup> No Member State is permitted to quantitatively restrict the import of players from any other Member State and the EPL blatantly limits players hailing from all Member States that are not England.<sup>150</sup> Instead of allowing as many non-English EU citizens to exercise their fundamental right to seek employment in the EPL, the EPL implemented a limit of seventeen. This restrictive quota is primarily in place for the purpose of parity, but it is unclear if it will even accomplish that goal.<sup>151</sup> It is certainly not the best, least restrictive, or least offensive to EU law out of the possible ways to increase league parity. For instance, a salary cap constraining each club's player salary would be both a nationality and club neutral restriction.<sup>152</sup>

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145. *Id.*

146. The dictionary definitions of "homegrown" are "grown or produced at home or in a particular region for local consumption" as in "homegrown tomatoes," and "native or indigenous to or characteristic of a region" as in "homegrown musicians." *Homegrown*, DICTIONARY.COM, <http://dictionary.reference.com/browse/homegrown> (last visited Oct. 22, 2011). The second definition applies to people and is exactly what the EPL is hoping its Home Grown Players will be—native players. *Id.*

147. *Opportunities for Home Grown Players*, *supra* note 43.

148. *See* TFEU art. 34.

149. TEU art. 3; *see* TFEU arts. 20, 26, 34, 45, 46.

150. *See* TFEU arts. 45, 46; EPL HANDBOOK, *supra* note 6, at 75.

151. *Opportunities for Home Grown Players*, *supra* note 43.

152. Case C-176/96, *Lehtonen v. Federation Royale Belge de Societes de Basketball*, 2000 E.C.R. I-2681; Case C-415/93, *Union Royale Belge des Societes de Football Ass'n v. Bosman*, 1996 E.C.R. I-4921. Although difficult, it is possible for a discriminatory restriction to be objectively justified. *Lehtonen*, 2000 E.C.R. I-2681. For instance, the ECJ ruled that a transfer deadline in a Belgian basketball league was a valid obstacle to the free movement of workers. *Id.* ¶¶ 1–9. The Court ruled that the deadline met the objective justification of "ensuring regularity of sporting competitions." *Id.* ¶ 1. It would be fundamentally unfair for a club in any sport to transfer in a heap of fresh players at the end of a season, just as it is about to compete for a championship. The transfer deadline

The notion of a level playing field is the primary difference between sport and other economic industries in the EU. While in any sporting competition each team and its owner wants to win as much as possible, when teams join a league a level playing field enables the entire league to be successful. This is in contrast to other private industries where competing companies do not rely on the relative success of their competitors to remain viable. The ECJ has held that sporting organizations can impose restrictions on trade such as a trading deadline or a salary cap, so long as they treat all EU citizens equally in their restriction and do not discriminate on the basis of nationality in any way.<sup>153</sup>

The EC recognizes that sports have a special place under EU law.<sup>154</sup> In 2006, the EC provisionally approved UEFA's Home Grown Player rule.<sup>155</sup> UEFA is FIFA's European confederation, it governs all football

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that the ECJ upheld is the same exact concept as the transfer windows that are present in football, and football's transfer system has not come under fire since it was amended in the *Bosman* ruling. *Bosman*, 1996 E.C.R. I-4921. The *Bosman* ruling was a key ruling in the area of player restrictions in sport. *Id.* It focused on the current transfer system that was in place, greatly limiting the ability of players to transfer between football associations. *Id.* It set up the concept that any player was able to transfer from any club to any other club if the two clubs could come to an agreement. *Id.* ¶¶ 1–3. It also established that if a player's contract had expired, he was entitled as a free-agent to play in any football association that sought his services. *Id.* ¶ 1. The *Bosman* ruling also struck down UEFA's "three plus two" rule, which restricted players in all UEFA member football associations based on nationality. *Id.* ¶ 27. It limited how many foreign players could start a match for a club in its domestic football competitions. *Id.* Because of the *Bosman* ruling, the current UEFA player restriction only governs UEFA Champions and Europa League matches that have a distinct international element and does not govern matches in domestic football competitions. CHAMPIONS LEAGUE REGS, *supra* note 19, at 11, 26. Additionally, the trading deadline in Belgian basketball and the EPL's transfer windows both limit free movement, but do so primarily to ensure the regularity of their respective sporting competitions. EPL HANDBOOK, *supra* note 6, at 158; *Lehtonen*, 2000 E.C.R. I-2681. A salary cap would be a similar type of nationality neutral restriction and would be presumptively permissible based on the precedent of *Lehtonen*.

153. *Lehtonen*, 2000 E.C.R. I-2681.

154. *Commission Working Paper on Professional Sport in the Internal Market*, at 13, COM (2005) 004 final (Sept. 2005).

155. UEFA's Home Grown Player rule only governs matches in its Champions League and Europa League competitions. UEFA Rule Compatibility, *supra* note 135, at 1–2. These competitions feature clubs from all of the European football associations, and actually prohibit clubs from the same football association playing against one another until the Quarterfinal round. CHAMPIONS LEAGUE REGS, *supra* note 19, at 11, 26. For this reason, the UEFA competitions have a distinct international element, which was a contributing factor in the UEFA rule's conditional EC approval. UEFA Rule Compatibility, *supra* note 135, at 1–2. Additionally, the opinion of the EC is by no means indicative of the opinion of the ECJ. FOLSOM, *supra* note 70, at 61–63, 92–97. While the EC has the power to make and enforce laws, and give guidance to agencies such as UEFA on wheth-

in the European region, hosts several international competitions, and hosts two inter-European club competitions.<sup>156</sup> Although the UEFA rule also applies to football players, it governs a completely different set of matches from the EPL rule—a set of matches with a prominent international element.<sup>157</sup>

The EPL tried its best to closely conform to the standard provisionally approved by the EC in the UEFA rule.<sup>158</sup> First, the EPL focused the rule

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er their actions are permitted under EU law, the ECJ is the ultimate judge of whether an action, such as a discriminatory sporting rule, is valid. *See id.* The ECJ precedent clearly establishes that it would not be as generous as the EC and it would not grant UEFA's Home Grown Player rule provisional acceptance. UEFA Rule Compatibility, *supra* note 135, at 1–2. The ECJ would strike the rule down because, although the clubs participating in the Champions and Europa Leagues come from various nations, they are in no way national teams. Case 13/76, *Donà v. Mantero*, 1976 E.C.R. 1333. For an in-depth analysis of the validity of the UEFA rule, see Lloyd Freeburn, *European Football's Home-Grown Players Rules and Nationality Discrimination under the European Community Treaty*, 20 MARQ. SPORTS L. REV. 177 (2009).

156. *Overview*, UEFA.COM, <http://www.uefa.com/uefa/aboutuefa/organisation/history/index.html> (last visited Oct. 22, 2011).

157. *See supra* note 136.

158. UEFA Rule Compatibility, *supra* note 135, at 1–2. The EPL and UEFA rules are similar but by no means identical. The UEFA rule reserved four spots on each club's Squad List during the 2006–2007 and 2007–2008 seasons for Home Grown Players, with that number increasing to eight Home Grown Players beginning in 2008–2009, and continuing for all seasons thereafter. *Id.* The UEFA definition of a Home Grown Player is similar to that used by the EPL. *Id.* It requires that a player be “trained by [his] club or another in the same national football association for at least three years between the ages of 15 and 21.” *Id.* The primary difference present in the UEFA rule is that it requires the three-year qualifying period to take place between the ages of fifteen and twenty-one, while under the EPL rule that period may begin at an earlier age. CHAMPIONS LEAGUE REGS, *supra* note 19, at 26. The UEFA rule has another more restrictive caveat within its Home Grown Player allotment. *Id.* The UEFA rule requires that at least four of the Home Grown Players be trained by their current club (“club-trained”) for the three-year qualifying period, and for this reason is often referred to as the “four plus four” rule. *Id.* The other four Home Grown Players may be trained anywhere within the local football association, and are referred to as “locally-trained.” *Id.* Since the club is within the football association, a club-trained player would also be locally-trained. *Id.* To sum up, the UEFA rule requires a Squad List of twenty-five players, of which only seventeen can be trained outside the local association and only twenty-one can be trained by a club other than the club itself. *Id.* Also, for the 2006–2007 and 2007–2008 seasons the rule required each club to reserve two spots for “club-trained” players and was often referred to as the “two plus two” rule. UEFA Rule Compatibility, *supra* note 135, at 1–2. The UEFA rule and the EPL rule each govern a completely different set of matches. The UEFA rule only governs matches played in the UEFA Champions and Europa Leagues between clubs from all over Europe, while the EPL rule governs all of a club's regular matches within

on being Home Grown and not about possessing home nationality.<sup>159</sup> Additionally, by enabling anyone born anywhere in the world to one day grow up to be Home Grown, the EPL has taken steps to ensure its rule was not seen as nationality discrimination.<sup>160</sup> Although the EPL's rule constitutes an impediment to the free movement of workers, the EPL was hopeful that its goal of league parity will make the rule objectively justified, like transfer windows, which are acceptable in football and other sports because they serve the purpose of ensuring regularity.

The Home Grown Player rule does not serve the primary purpose of ensuring regularity.<sup>161</sup> While supporters of clubs near the bottom of the table support the rule because it may add parity to the EPL, the rule was not established solely for that purpose.<sup>162</sup> Another of the Home Grown Player rule's stated goals is to "encourage more home grown players and to give more opportunities to Academy graduates."<sup>163</sup> If England truly wanted to accomplish its goal of improving its youths' football training, it should simply provide more resources towards that goal.<sup>164</sup> The EPL can very easily pass an alternative rule stating that a portion of all television revenue—which is disbursed to the entire league in equal portions—is to be paid to each club's youth training fund.<sup>165</sup> Another rule that would serve the goal of improved youth training is to require each EPL player to instruct youth players a certain number of hours each season.

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its home league, the EPL. CHAMPIONS LEAGUE REGS, *supra* note 19, at 11, 26; EPL HANDBOOK, *supra* note 6, at 71, 75.

159. Rules requiring home nationality have been consistently struck down by the ECJ dating back to 1974. *See* Case 36/74, *Walrave v. Union Cycliste Internationale*, 1974 E.C.R. 1405; Case 13/76, *Donà v. Mantero*, 1976 E.C.R. 1333; Case C-415/93, *Union Royale Belge des Societes de Football Ass'n v. Bosman*, 1996 E.C.R. I-4921; Case C-438/00, *Deutscher Handballbund v. Kolpak*, 2003 E.C.R. I-4135; Case C-265/03, *Simutenkov v. Ministerio de Educacion y Cultura*, 2005 E.C.R. I-2579.

160. EPL HANDBOOK, *supra* note 6, at 71, 75; *see Opportunities for Home Grown Players*, *supra* note 43.

161. Case C-176/96, *Lehtonen v. Federation Royale Belge de Societes de Basketball*, 2000 E.C.R. I-2681.

162. *Rusnak*, *supra* note 48, at 11C. As the Big Four clubs have many exceptional foreign players that the other clubs may not be able to afford, the Home Grown Player rule is seen some by some as a move for parity in the EPL. *Id.* Prior to the Home Grown Player rule's imposition of twenty-five man Squad Lists, many clubs would have well-over twenty-five players, so the rule is a cap on the number of all players, Home Grown or not. This could lead to a less lopsided EPL. *Dabscheck*, *supra* note 19, at 37. The twenty-five-man Squad List portion of the rule is likely permissible under EU law because it is completely neutral and provides for fairness in sport. *Lehtonen*, E.C.R. I-2681.

163. *Opportunities for Home Grown Players*, *supra* note 43.

164. *Id.*

165. *EPL TV Contracts*, *supra* note 27.

This would not only lead to EPL players sharing their vast football knowledge with the nation's youth, but it would inspire countless additional young football players to participate in the youth programs because they would now be able to meet, learn from, and interact with their idols.<sup>166</sup> Another bonus to a program requiring professional players to dedicate a certain number of hours towards training local youth is that it would greatly benefit club and league public relations.<sup>167</sup> The English youth would have the opportunity to meet football's elite at a young age and follow their dreams of one day joining them. Nothing in the EU treaties says that England cannot attempt to strengthen its youth training programs. In fact, improving the quality of football training in England would benefit the EU as a whole because the improved players would improve the level of football anywhere in the Union. Ultimately, the best way to improve youth training is to institute rules directly regulating it, not rules restricting the number of foreign players in the highest level adult football league.<sup>168</sup>

Eventually, the English FA hopes that these graduates will improve England's national team, a team that has not won a World Cup since 1966.<sup>169</sup> However, winning a World Cup is not a goal that is objectively justified or proportionate to a goal that is appropriate under EU law.<sup>170</sup> The aim of improving Home Grown English players does not improve the EU; it solely benefits England. Additionally, there is no evidence that limiting Foreign Grown Players encourages more Home Grown Players or actually provides for more opportunities for English football academy graduates in the EPL. In the example of Chelsea during the Home Grown Rule's first year, Chelsea did not seek more Home Grown Players. Instead Chelsea dropped some of its Foreign Grown Players.<sup>171</sup> League-wide, the rule hurt player employment by forcing twelve of the twenty clubs to hire less than the full twenty-five-player allotment because these clubs lacked eight Home Grown Players.<sup>172</sup>

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166. Ley, *supra* note 27. In the article, former Arsenal physiotherapist Gary Lewin, describes the rise of football player popularity by saying, "Back in those [early days of the EPL] everyone wanted to be a pop star, then a film star and a footballer. Now the kids' number one occupation seems to be a footballer." *Id.*

167. Because football players are such a large part of popular culture, their personal life errors become national news. Paul Byrne, *Soccer Ace Butted His Girlfriend*, MIRROR (UK), Dec. 22, 2010, at 27, available at 2010 WL 25193188. Perhaps positive actions, like training youth players, may also make national news.

168. UEFA Rule Compatibility, *supra* note 133, at 1–2.

169. Lisi, *supra* note 118, at 111.

170. Lehtonen, E.C.R. I-2681.

171. *Premier League Squads*, *supra* note 47, at 54.

172. *Id.*

While the rule does limit the number of Foreign Grown Players in the EPL, there is no definite proof that the rule will accomplish its desired goal of improving the soccer prowess of Home Grown Englishmen.<sup>173</sup> Having a spot reserved on a club does not make a player more talented.<sup>174</sup> If an English player is talented enough to play in the EPL, he will be on a roster regardless of whether a spot has been reserved for him via the Home Grown Player rule. Even if all EPL rosters are full or the EPL owners do not view his talent in the same light as foreign owners, the player will still have the opportunity to play at the highest level abroad in domestic leagues that do not employ a Home Grown Player rule and be adequately trained to help the English national team. Under the EU Treaties, all European football players ought to be equally free to seek employment from any club in any league in the EU. The EU is supposed to be one contiguous economic zone and improved European football will improve the EU as a whole. Furthermore, the primary purpose of the EU is to promote the EU as a whole, and Member States are not to act in ways putting themselves above the Union. The improvement of one Member State's national team is far from an objective justification for obstructing the free movement of workers and discriminating on the basis of nationality.<sup>175</sup>

#### CONCLUSION

The Member States established the EU to “deepen the solidarity between their peoples,” and to “create an even closer union among the peoples of Europe.”<sup>176</sup> The Home Grown Player rule was enacted to benefit English football players by restricting the number of foreign players in the EPL.<sup>177</sup> This concept of a home nation benefiting above all other Member States contradicts the purpose of the EU.<sup>178</sup> Instead of ending discrimination on the basis of nationality to “promote economic and social progress for their peoples,” the English Football Association is discriminating in order to benefit its people.<sup>179</sup> Instead of creating “an area

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173. The fact that England has not won a World Cup since 1966 and the players on the English national team have a history of being upset by less qualified nations does not mean that England is not a dominant football nation as far as historical strength. LISI, *supra* note 118, at 111. Additionally, since England is a relatively strong football nation, there is no just purpose in imposing rules to hurt the rest of the EU. *Id.*

174. *See supra* note 51.

175. TEU pmbl.

176. *Id.*

177. *Opportunities for Home Grown Players, supra* note 43.

178. TEU pmbl.

179. *Id.*

of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured," the EPL is erecting a wall around England and only allowing a select few foreign players to climb over it.<sup>180</sup> Instead of continuing the tradition of a unified Europe that began in 1951, the EPL is returning to the type of discrimination that started World War II.<sup>181</sup> Based on nothing but prejudice, the Home Grown Player rule puts English players into a superior class to all other players and forces foreign players who do not fit into their restrictive quota to leave the country in order to practice their trade at the highest level.<sup>182</sup> Just as clearly as the EU was formed to encourage the free flow of people, goods, services, money, and ideas within the Union, the Home Grown Player rule was established to restrict these things.<sup>183</sup> Not only does the Home Grown Player rule violate the EU treaties' ban on discrimination on the basis of nationality, free movement of workers, freedoms of establishment, employment, occupation, and right to work on internal frontiers as well as almost forty years of case law, it directly contradicts the very purpose of the Union.<sup>184</sup>

For the foregoing reasons, the Home Grown Player rule should be stricken from the EPL Handbook. Any player from any EU Member State is legally entitled to be eligible to play for any EPL club. The only type of a Home Grown Player rule that could be valid under EU law is a rule saving eight roster spots for EU citizens.<sup>185</sup> If the EPL enacted that rule, it would satisfy EU law.

England is currently ranked fourth in the world and will enter the 2014 World Cup competition as one of the favorites.<sup>186</sup> Instead of focusing on the number of foreign players in its domestic league, England should focus on the quality of the players on its national team.<sup>187</sup> England must

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180. TEU art. 3.

181. Churchill, Speech to the Academic Youth, *supra* note 70.

182. EPL HANDBOOK, *supra* note 6, at 75.

183. TEU pmbl.; EPL HANDBOOK, *supra* note 6, at 71, 75.

184. TEU pmbl.

185. Citizens of qualified third nations also must have equal status to Englishmen under an acceptable rule as explained *supra* note 8.

186. FIFA/Coca-Cola World Ranking, *supra* note 119.

187. England's national team for the 2008 FIFA World Cup was the country's oldest ever. *English XI v. Foreigners XI*, STRAITS TIME (Sing.), Aug. 14, 2010, available at 2010 WL 1617969. The next incarnation of the team should be considerably younger and consist of several players who have helped England have considerable success in youth international tournaments in recent years. *Id.* The team will also feature Joe Hart, who was voted the EPL's top goaltender for the 2009–2010 season, and seventeen-year-old Josh McEachran, who has already made several appearances for Chelsea in the EPL and Champions League. *Id.*



directly work to produce more Home Grown talent. England should provide additional resources to train its youth players, and once those players are adequately trained, allow them and all players to play freely anywhere in the EU as the Union's founders envisioned.<sup>188</sup> England is undoubtedly disappointed that it has not won a World Cup since 1966, but England's forty-five years of bad luck do not entitle the nation to disregard sixty years of EU precedent.

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188. TEU pmb1.

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