

European court finds that home grown football player rules may be contrary to EU law

Insights - 29/05/2024

The Union of European Football Associations (UEFA) rules require that a minimum number of 'home grown players' (HGP) are to be included in their squad (HGP Rules). Royal Antwerp, a Belgian football club, together with a professional player, recently challenged these rules before a Belgian court.

| What is a HGP?

A HGP is a player who, regardless of their nationality, has been trained by a club within the relevant national association for a period of at least 3 seasons or, 36 months, between the ages of 15 and 21. A minimum of 8 HGPs must be present in any given 25-man squad submitted for the purposes of playing in a UEFA competition. At least 4 of these 8 HGPs must have been trained for the mentioned period by the relevant club (club-trained players). It is sufficient for the remainder of these 8 players to be association-trained, meaning that they need only be trained by any club within that national association for the defined period.

| Background

The football player who challenged these rules is from a third country, as well as holding Belgian nationality. He brought the action before the Cour Belge d'Arbitrage pour la Sport (Belgian Court of Arbitration for Sport) seeking a declaration that the rules on HGPs adopted by UEFA and URBSFA were void on the grounds that they infringed on Article 45, which enshrines the principle of free movement of workers across the EU, and Article 101 TFEU, which prohibits restrictions on competition. Both he and the Royal Antwerp football club sought damages as a result of these rules.

A preliminary ruling was ultimately sought from the Court of Justice of the European Union

(CJEU) in respect of two principal questions:

1. Is Article 101 TFEU to be interpreted as precluding the plan relating to home-grown players; and
2. Are Articles 45 and 101 TFEU to be interpreted as precluding the application of the rules on the inclusion on the match sheet and the fielding of home-grown players?

Article 101 TFEU and competition law

The CJEU held that the HGP Rules could have as their object or effect the restriction of the possibility for clubs to compete with each other by recruiting talented players, regardless of where they were trained. Professional, high-level football is an area where talent and merit play an essential role. However, it will be for the national court to decide whether those rules restrict competition as a result of their very being, or because of their actual or potential effects. If it is the case that the rules restrict competition, it will nevertheless remain possible for UEFA and URBSFA to demonstrate that those rules may be justified.

Article 45 and the freedom of workers

The CJEU held that the HGP Rules *prima facie* give rise to indirect discrimination against players from other Member States in favour of native players who satisfy the abovementioned criteria. However, such measures deemed as indirectly discriminatory may be justified should the rule provide a legitimate objective which is in the public interest. For example, in this instance, UEFA submitted that the rule is justified as it promotes the training and development of youth players. In addition to this, the rule must also be proportionate in that it is: (a) suitable to achieve the aforementioned legitimate objective; and (b) is necessary to ensure achievement of that objective.

The CJEU has accepted that the HGP Rules must be considered a legitimate aim in the public interest. However, the question as to whether the rules are suitable and necessary to achieving this legitimate aim (i.e. proportionate) has been deferred to the referring Belgian court to determine.

The CJEU specifically referred to the social and educational function of sport which is recognised in Article 165 TFEU. Notably the CJEU indicated that *"local investment in the training of young players, in particular where it is carried out by small clubs... which contributes to fulfilling the social and educational function of sport"*. This may indicate the CJEU may treat rules that incentivise a minimum number of players from the *club* in question more favourably, in contrast to association/national level rules, which might otherwise permit larger clubs to buy their quota of association/national from smaller clubs, rather than develop their own.

Conclusion

The Brussels Court of First Instance will now hear the challenge from the player and Royal Antwerp against URBSFA and consider whether, on the evidence, the HGP Rules can be justified under Article 101 or 45 TFEU. A finding against URBSFA and UEFA would have substantial implications for clubs across the EU, which have in place academy structures which are based on the HGP Rules. For example, the extent to which bigger clubs rely who rely on buying players from smaller clubs within the same country to satisfy the association/national level rules, while smaller clubs rely on the revenue generated by those transfers would be significantly impacted.

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