



Limits can be placed on the number of players not eligible for the national team

Legal opinion upholds 6+5 rule

Experts perceive no conflict with European law

BRUSSELS – The fielding of players not eligible for the national team can be regulated and limited, as the 6+5 rule is compatible with European law. This was the conclusion reached by leading European legal experts in a report by the Institute for European Affairs (INEA).

Last autumn, INEA, a Europe-wide political think tank chaired by Prof. Jürgen Gramke, was requested by FIFA to conduct a full independent review of the legal situation as regards the 6+5 rule. Four legal experts from EU member states Germany, Greece, Italy and Spain and one from Switzerland were unanimous in the verdict reached in their report. "There is no conflict with European law," said Gramke and Prof. Ulrich Battis, the experts' spokesman, at an international press conference in Brussels.

In May 2008, the FIFA Congress in Sydney passed a resolution on the 6+5 rule. Under 6+5, at the beginning of each match, each club must field at least six players who are eligible to play for the national team of the country of the club. There is no limit on substitutes, however. Coaches therefore have a free hand during matches. There is also no limit on the number of ineligible players that a club may sign.

While the public is overwhelmingly in favour of the 6+5 rule, legal opinion has been divided up to now with regard to whether the European Court of Justice's Bosman ruling would continue to have the same effect. However, the report by Professors Battis (Berlin), Fleiner (Fribourg), López Pina (Madrid), Ridola (Rome) and Tsatsos (Athens) shows that the 6+5 rule does not breach European law.

The Bosman ruling led to a process of sporting and financial concentration which continues to this day. At the highest level, up to 65% of national league players are now not eligible to play for the national team of the country's football association, while up to 50% of the members of this group are not eligible for the national team of any European country. The

professors found that these changes have altered the competitive balance of sport dramatically. The vast majority of clubs cannot hold their own at the top, with the result that performance differentials and dominance in competitions will continue to increase. This trend leads to reduced promotion of junior players, as clubs can recruit fully trained players from abroad – mostly at lower cost. The experts spoke of “the socially alarming growth of what amounts to trafficking of junior players from Africa or South America to play for European clubs”. This process has consequences for the quality and substance of the national teams, which depend on the promotion of native junior players within the clubs.

In the experts’ view, in the light of the social functions of sport, the “regulatory autonomy of sporting associations are recognised and supported” under European law. In addition, the report states that the Lisbon Treaty reflects the autonomy of sport compared to the purely economic orientations of the fundamental freedoms and the competitive order.

The key aim of the 6+5 rule in the view of the experts is the creation and assurance of sporting competition. Its principal intention can be pithily summed up as “sport must remain sport”. Sporting inequalities would be countered, it would be ensured that competition is primarily sporting and “effective stimuli for the promotion of junior players” would be put in place. Furthermore, the 6+5 rule serves to protect national identities, thus underlining football’s place as a part of national cultures.

The 6+5 rule does not impinge on the core area of the right to freedom of movement. The rule is merely a rule of the game “declared in the general interests of sport in order to improve the sporting balance between clubs and associations and so ensure appropriate sporting competition between clubs and associations”. As far as the Bosman ruling is applicable at all, the report finds that the arguments that were relevant at the time no longer apply, “because the situation has not developed in the way the Court of Justice [...] expected”. The same applies to players who are not eligible for the national team of any European country.

The 6+5 rule could at most constitute “indirect discrimination” in the view of the experts because unlike earlier nationality clauses, it is not directly based on the nationality of professional football players. The 6+5 rule merely considers entitlement to play for the national team concerned and any possible indirect discrimination can be defended on the basis of compelling reasons of general interest. The European Court of Justice has made this clear in its case law (the so-called “Cassis formula”).

Furthermore, the professors of law found that FIFA’s autonomy as an association derived from the fundamental freedom to form an association justifies the limitation of market freedoms. “ ... the 6+5 rule appears to be justified. In particular, it is drawn up in a commensurate manner. [It]

serves to combat restrictions on balanced sporting competition, to promote junior players and to protect the national identity of football and the national teams," concluded the five academics.

The report also proves in detail that the 6+5 rule is compatible with the stipulations of competition and anti-trust law. The INEA chairman also pointed out that in the view of the experts, the considerations that justify the compatibility of the 6+5 rule with European law are also applicable to other team sports such as basketball, handball and ice hockey. "It has an important protective function for the whole of international sport, so that sport can remain sport," said Gramke.

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