

One Size Fits All? Challenging the Notion of a Uniform EC Sports Law

by Simon Boyes*

"*Bosman* should not be seen as a bible."¹

The name of one journeyman Belgian footballer, Jean-Marc Bosman, has become considered synonymous with the revolution that has taken place in association football. During each summer, between the end of one football season and the start of the next, the media is full of Bosman's name. This is not because of great sporting achievements or of field heroism, but because of the implications of the case that Bosman brought against football's regulations and governing bodies. What might otherwise have been referred to as a 'free' or 'out of contract' transfer has indelibly become the '*Bosman*'. This case - and the modifications imposed upon the football transfer system subsequently² - have had implications not confined to that particular sport. In fact any professional sport operating in the European Union will almost certainly have had to review its practices in the light of the judgment.

The details of the case are well known, and will not be considered in great depth. Nevertheless, it is worthwhile briefly outlining the two main issues in the case.

Bosman and its impact

In *Union Royale Belge des Sociétés de Football Association ASBL v. Jean-Marc Bosman* (*Bosman*) the European Court of Justice (ECJ) outlawed the imposition of transfer fees upon the expiry of a footballer's playing contract. The second element of the *Bosman* judgment was the prohibition of player quotas based on nationality, having the effect of preventing EU nationals from obtaining employment with professional teams abroad.

One immediate consequence of the judgment in *Bosman* was that the significance of holding the passport of an EU Member State grew immensely for professional sportsmen as this represents the key to freedom of movement within the European Union. This came about because of the relatively simplistic response of many sports governing bodies to the judgment; where sports had previously placed quantitative limitations on non-domestic nationals there were now limits placed on non-EU or EEA nationals participating in professional sport. Acquisition of this status effectively allows a third state national to sidestep the nationality requirements imposed by sporting federations, as well as any onerous immigration or work permit requirements which states may impose on incoming workers. Indeed some players and agents were driven to deception and forgery in order to secure access to the freedoms afforded under the Treaty of Rome.³ A recent example of the importance of obtaining EU 'citizenship' is provided by Brazilian striker Julio Baptista, a transfer target for Arsenal, who declined the opportunity to move to the English club in favour of staying in Spain with Real Madrid. His choice was partly premised on the basis that he would then satisfy the qualifying period for Spanish citizenship and the corresponding capacity to freely obtain employment within the Community.

Extending *Bosman*

Access to Community law rights of free movement has been extended by the decision of the ECJ in the case of *Deutscher Handballbund v Maros Kolpak*.⁴ Kolpak, a Slovakian handball player, was employed as a professional by a German team. As a Slovak, a national of a State not then a member of the EU, Kolpak was not considered subject to the non-discrimination provisions emanating from *Bosman*. The *Handballbund* limited the number of non-EEA nationals teams could field in professional fixtures. Kolpak considered that an association agreement between Slovakia and the European Union

entitled him to be treated in the same way as an EEA national in relation to treatment once in employment. The European Court of Justice agreed that the relevant part of the association agreement was capable of direct effect, that is being applied by a EEA Member State court, and thus sporting bodies could not discriminate against Kolpak once in legal employment within an EEA Member State.⁵ The EU has a small number of association agreements with other European nations, many of which have since joined the EU. However, the 'Cotonou Agreement' has given the ruling the potential for a significantly greater impact. The Cotonou Agreement is an international agreement signed between the EU and nations from the ACP (Africa, Caribbean, Pacific) Group, which now includes more than 70 nations. Article 13(3) of the Cotonou Agreement includes similar provisions to those applied in *Kolpak*, potentially expanding the reach of the *Kolpak* decision to 100 states.⁶ Although concerning handball, the decision has been of particular significance to other sports, not least cricket and the rugby codes in the UK context. In respect of cricket, the Cotonou Agreement extends the non-discrimination obligation to Test playing nations: South Africa and the states making up the West Indies. The inclusion of South Africa and the South Sea Islands have provoked most concern amongst the rugby codes.⁸

It is significant that the *Kolpak* ruling applies only to the treatment of players once in lawful employment in an EU member State, it does not extend to a right of entry or access to employment or free movement between EU Member States.⁹ However, the judgment has effected a shift in regulatory responsibility away from sporting federations to State authorities, which have control of work permit provision. This represents the key to the *Kolpak* approach, as the capacity to enter into lawful employment is a prerequisite to engaging the rights coming from the judgment.

The UK government has recently taken action to limit access to work permits by sports professionals. Sports federations in the UK face particular problems because of the overlap between *Kolpak* coun-

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Pass(port): Football and Nationality in the EU' (2001) 4(2) *SLB* 4.

5 C-438/00 [2003] *ECR* I-4135.

6 Boyes, S. 'In the Shadow of *Bosman*: The Regulatory Penumbra of Sport in the EU' (2003) 12(2) *Note LJ* 72; van den Bogart, S. 'And Another Uppercut from the European Court of Justice to Nationality Requirements in Sports Regulations' (2004) 29(2) *EuLR* 267.

7 Branco Martins, R. 'The *Kolpak* case: *Bosman* times 10?' (2004) 1-2 *ISLJ* 26; 'EU says foreign quotas are illegal' (2003) *The Guardian*, 5 August. This position has been confirmed by the ECJ in Case C-265/03 *Simutenkov v Ministerio de Educación y Cultura*, [2005] 2 *CMLR* 11, relating to the treatment of a Russian national in respect of his status as a 'foreign' player in Spanish professional football.

8 See e.g. 'Red tape forces Guttenbeil home' (2005) *BBC*, 2 February, http://212.58.226.30/sport/hil/rugby_league/super_league/widnes/4228931.stm

9 Simutenkov at para. 58; Branco Martins, *supra* n.18 at 27; cf Gardiner, S 'Support for quotas in EU professional sport' (2000) 3(2) *SLB* 1.

1 Jean-Louis Dupont, quoted in Caiger, A. and Gardiner, S. *Professional Sport in the European Union: Regulation and Re-regulation* (2001) TMC Asser Press: The Hague, p. 14.

2 FIFA, *Regulations for the Status and Transfer of Players* (2005) http://fifa.com/documents/static/regulations/Status_Transfer_EN.pdf

3 Case C-415/93 [1996] 1 *CMLR* 645

4 Boyes, S. 'The Boy Can Pick a

tries and those making up the Commonwealth. Citizens of Commonwealth nations are given preferential treatment by the UK government, allowing them to undertake employment as part of a 'working holiday' for up to two years. It was feared that such easy access to work permits, combined with the *Kolpak* freedoms, would effectively open up the market for professional sports persons in the UK, leading to an influx of 'foreign' players. The government has responded to this by amending the conditions of the Commonwealth citizens working-holiday work permit scheme to expressly disqualify such workers from engaging in employment as sports professionals.¹⁰ More specifically, the Home Office works with sports governing bodies to construct specific arrangements for professionals within individual sports. As the *Kolpak* position only applies to workers once they are in employment,¹¹ these filtration systems are of great importance to sports governing bodies.¹²

The *Kolpak* judgment is of such significance primarily because of the response of sports federations to the ECJ's rulings in *Bosman*. The typical reaction was the relatively simple amendment of qualification rules such that where previously there had been restrictive measures imposed in respect of 'foreign' players these were simply amended to refer to non-EEA players. After *Kolpak* the approach seems to have been much the same; a simple change, dumbly accepting that players qualified in this way should be treated in the same way as *Bosman* players.

The significant numbers of *Kolpak* and *Bosman* qualified 'foreign' players participating in English County Cricket suggest that such an approach has not been entirely successful, at least from the perspective of those who see such developments as undesirable. Surveys suggest that County teams are fielding as many as two *Bosman-Kolpak* qualified players, in addition to their two 'official' foreign players.¹³ Similarly, it seems that the rugby codes have encountered similar problems.¹⁴

A Retreat from *Bosman*?

English cricket's regulatory body, the England and Wales Cricket Board (ECB), has sought to counter this trend by rewarding County sides financially for each England qualified player fielded in competitive fixtures.¹⁵ This measure is aimed at bypassing the equal treatment requirements imposed by the *Bosman* and *Kolpak* cases. The ECJ might well take the view that these measures constitute discrimination based on nationality, placing UK nationals in an advantageous position, and thus amount to a potential breach of Article 39 EC and related *Kolpak* type agreements. It is arguable that this measure could be considered not to be directly discriminatory, but this would still mean that the ECB have failed to take account of the approach to indirect discrimination adopted by the European Court of Justice, that a migrant worker must not be treated:

"differently from national workers in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or reemployment."¹⁶

Similarly, any measure which is "likely to constitute an obstacle to the free movement of workers"¹⁷ would be a *prima facie* breach of the free movement principle. It seems likely that increasing numbers of sporting bodies will seek to protect 'domestic' players. Indeed, the governing body of European football (UEFA) has introduced proposals recently which are aimed at ensuring that professional clubs include a significant proportion of 'home grown' players in their squads.¹⁸ It seemed initially that the adoption of this measure would be the subject of legal challenge emanating from the English and Italian leagues, though this has not, as yet, been forthcoming. Such litigation, whatever its source, appears inevitable at some stage however. Nevertheless, such an approach appears popular with both rugby codes contemplating regulatory action to counter the influx of 'foreign' players under these cases.

In Support of Discrimination

The homogenous approach adopted by many team sports in the wake of the judgments in *Bosman* and *Kolpak* makes the assumption that

any discrimination based on nationality put in place by sports regulators will be considered illegal under Community law. However, this fails to appreciate that sports differ in their essential characteristics, whether that be in respect of market structure or geographical coverage, and that such contextual factors have the potential to result in different outcomes when Community law is applied.

Sporting rules

To make the assumption that restrictions and regulations that disadvantage 'foreigners' are per se unlawful is a mistake. As with many aspects of legal regulation it is rare that rules are absolute - and where a compelling competing value can be evidenced then exceptions can be made. In particular, it is valuable to consider the approach of the ECJ in the *Bosman* case. Breaches of Art 39 EC can usually only be justified by reference to the requirements of public policy, public health and public security. Account should also be taken of the restrictive jurisprudence in these respects. Nevertheless the Court was prepared to consider the view that arrangements of a purely sporting nature might fall without the compass of the Treaty of Rome. In the early case of *Dona v Mantero*¹⁹ the ECJ accepted the proposition that proportionate rules aimed at genuinely sporting objectives could exempt sport from consideration under the Treaty. Such an approach has been followed more recently, culminating in the judgment in *Meca-Medina and Majcen v Commission*.²⁰ The approach of the Community Courts in such cases has been that such rules are not economic though, as discussed by Weatherill, this approach has little merit.²¹

Maintaining National Links

It was argued in *Bosman* that the restriction on 'foreign' players was put in place to maintain the link between teams and the country in which they play.

The ECJ responded unsympathetically, perceiving the link between State and team as being no more necessary than an allegiance with the team's locality or region. Given a lack of similar protection in this regard restrictions on nationality could certainly not be justified in this manner.²² Nevertheless, such an approach does suggest a way forward for sports federations. Were competition to be centered around a geographically oriented approach, rather than a 'club' system then the potential arises for free movement provisions to be circumvented to some degree. Sports well disposed to a regionally structured 'state of origin' type competition may well find that they are better able to achieve this. Rugby Union provides a good example, particularly in Scotland, Wales and Ireland, where top-level competition is already structured on a regional basis.

Examples exist in cricket also, most notably Yorkshire CCC which only relatively recently abandoned its "Yorkshiremen only" policy. This approach is not, however, without its drawbacks; such a scheme

10 See <http://www.workingintheuk.gov.uk>

11 *Per* A-G Stix-Hackl, *Simutenkov* at para. 58.

12 Though cf Advocate General Stix-Hackl's consideration of Article 48 of the *Partnership and Cooperation Agreement between the EC and the Russian Federation*, which states: "For the purpose of this Title, nothing in the Agreement shall prevent the Parties from applying their laws and regulations regarding entry and stay, work, labour conditions and establishment of natural persons and supply of services, provided that, in so doing, they do not apply them in a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific provision of the Agreement", noted in *Simutenkov* at para. 49.

13 'Regulations on Overseas Players must be Tightened' (2004) *The Times*, 25 August.

14 'Kolpak case threatens RFU: bid to stop influx of imports' (2004) *The Times*, 4 January; 'Kear calls for help in Noble cause' (2005) *The Daily Telegraph*, 3 May.

15 'ECB aims to slow foreign invasion' (2004) *BBCi*, 21 October, <http://news.bbc.co.uk/1/go/ptl/sport/hi/cricket/counties/3763140.stm>

16 Article 7(1) of Regulation 1612/68

17 Case C-224/01 *Köbler v Austria*, judgment (2004) QB at para 77.

18 'Homegrown player plan revealed' (2005) *uefa.com*, 3 February, <http://213.130.44.134/uefa/Keytopics/kin-d=65536/newsId=276829.html>

19 Case 13/76 [1976] 2 CMLR 578.

20 Case T-313/02 [2004] 3 CMLR 60

21 Weatherill, S 'Anti-doping rules and EC law' [2005] 26(7) *ECLR* 436-421

22 At para 131.

must be total if it is to sustain a claim of geographic allegiance. Thus, this excludes the possibility of employing foreign 'stars' as a means of making the sport attractive to spectators and commercial partners.

Domestic Competition and National Teams

It was also argued in *Bosman* that restrictions were required in order to ensure that a sufficient throughput of players eligible to represent the national team was secured. The Court gave little credence to this approach; players did not necessarily have to play for a club in a particular nation in order to represent it at international level and while acknowledging that the abolition of quotas would diminish opportunities to develop as a player in domestic competition, there would be an increase in opportunities available in other Member States.²³ It is arguable that such an approach need not be considered universal because of the differing structure of other sports. Cricket provides a prime example with the English county game offering the only significant prospect of participation in a professional capacity. Reciprocal opportunities are not necessarily available, as in many cases 'incoming' players rely on a second EU nationality to provide access to free movement rights; inevitably this is of an EU nation where no opportunity to play professional cricket exists. Similarly *Kolpak* countries may owe a general obligation to open their own markets up to EU nationals; however they are not subject to the jurisdiction of the ECJ in this respect, so a consistency of access cannot be guaranteed. This approach is equally applicable in respect of the rugby codes: Rugby League is limited geographically even within the United Kingdom, outside of which limited professional opportunities exist only in France. The market in respect of rugby Union is less restricted, but still narrow, with the professional game confined to the UK, Ireland, France and, to a lesser extent, Italy.

On this basis, it is possible to argue that restrictions might be acceptable where they seek to ensure an appropriate quality and quantity of players for the national team and limited reciprocal opportunities for development exist.

However, this approach can only be sustained where the provision of players for national teams is acknowledged as a genuine and legitimate objective. That it is genuine can be inferred from a variety of other measures put in place by sports regulators. In English cricket, the professional game at a domestic level is almost wholly dependent upon income generated by international cricket, as is the grass roots of the sport.

This is emphasised by the controversy over the ECB's award of Test cricket broadcasting rights between 2006 and 2008 to BSkyB; effectively removing home Test matches from free to air terrestrial television. The ECB decision was motivated by the premium which BSkyB was able to offer for the rights.²⁴ The significance of this income for cricket has been recognised by the English High Court, which also noted that restrictive rules could be legitimately imposed in order to protect the game.²⁵ The judicially perceived importance of television revenues to sport more generally is also demonstrated by the relatively liberal approach to the application of competition law to the acquisition and sale of rights to sporting events and the relatively few events which are protected as being of particular national importance.²⁶ The importance of international competition is further evidenced by the extent to which governing bodies exercise control over players with a view to this. In cricket the ECB operates a system of 'central contracts' where the governing body takes over the employment and control of key players, ensuring that they are prepared to the best advantage of the national side. Rugby Union has a less rigid structure, but agreements between the Rugby Football Union (RFU) and the professional clubs in England limits the amount of rugby that can be played by international players. Indeed, the degree of control exercised over players by the RFU has been a matter of concern for the clubs.²⁷ Even a club-oriented sport such as association football puts in place protections for national teams - putting in place regulations, albeit relatively weak, requiring the release of national team players from their club sides for international fixtures. Even so, this protection is under attack from the clubs.²⁸ By way of contrast, a sport such as Rugby League, is very much focused on the professional game at a domestic level, in

particular "SuperLeague", with the international game rather marginalized. As such it may be more difficult to make out a strong case that the international game needs protection. Indeed, Rugby League has welcomed 'foreign' imports with significantly fewer reservations than other sports. Nevertheless, Community law does recognise the inherent value of international competition and that it can justify the proportionate imposition of free movement restrictions:

"The pursuit of a national team's interests constitutes an overriding need in the public interest which, by its very nature, is capable of justifying restrictions on the freedom to provide services. In order to meet that overriding need, it is possible to grant certain powers to the sports teams or to the national sports federations, which are also exclusively responsible for selecting national teams."²⁹

The Importance of Competitive Balance

Such judicial emphasis placed upon international competition can further justify potentially discriminatory practice that is aimed at ensuring adequate development of players for international competition. Sport is premised on, amongst other things, the principle of uncertainty of outcome. Sporting competition which is overly predictable ceases to be exciting and does not attract spectators to events or encourage participation.³⁰ Much domestic sport is organised with a view to developing players' skills. In cricket domestic competition in England has been restructured with a view to creating enhanced levels of competition and thus support the development of international players, whilst in Rugby League moves are being considered towards a franchise-style restructuring of *SuperLeague* in order to provide a secure and stable basis upon which clubs can develop their playing talent. In *Bosman* the ECJ took the view that the number of opportunities available to players would not be diminished by the outlawing of nationality rules and thus, that opportunities for development would not be lost. However it is in any case arguable that the Court's analysis was incorrect and that what has, in fact, occurred has been an influx of 'foreign' players from 'strong' markets, such as Italy and Spain, into weaker markets, with a negative impact on development and consequentially, the capacity of the national team.³¹ Scottish football is a prime example of this. The aftermath of the judgment in *Bosman* and amendments to the transfer system resulted in large numbers of *Bosman* qualified players being recruited by top Scottish clubs, often at the expense of young Scottish players. The on-field performance of the Scottish national team has declined markedly over this period.

In *Bosman* the ECJ recognised both youth development and competitive balance as legitimate objectives to be pursued by sporting bodies:

"In view of the considerable social importance of sporting activities ... in the Community, the aims of maintaining a balance ... by preserving a certain degree of equality and uncertainty as to results and

²³ At paras 132-134.

²⁴ 'Sport England's £11m Threat to ECB' (2005) *The Daily Telegraph*, 20th February.

²⁵ *Greig v Insole* [1978] 1 WLR 302.

²⁶ See generally, Fraser, D. and McMahon, K. 'When too much sport is barely enough: broadcasting regulation and national identity' (2002) 1(3) *Ent L J*; Boyes, S. 'Protecting sports events for free-to-air broadcast' (2001) 10(2) *Nott LJ* 41.

²⁷ 'RFU set for further club showdown' (2005) *BBCi*, 6 December, http://news.bbc.co.uk/sport1/hi/rugby_union/english/4502248.stm

²⁸ 'A case that could transform international football' (2005) *The Financial Times*, 12 September.

²⁹ Case C-51/96-191/97 *Christelle Delège v Ligue Francophone de Judo et Disciplines Associées ASBL* [2000] ECR I-2549, opinion of A-G Cosmas at para. 84. NB

the reservations expressed as to the legitimacy of such an objective in, McCutcheon, J-P. 'National Eligibility Rules After *Bosman*' in Caiger, A. and Gardiner, S. *Professional Sport in the EU: Regulation and Re-regulation* (2001) The Hague: Asser Institute Press, p. 127.

³⁰ See generally, Weatherill, S. "'Fair play please!': Recent developments in the application of EC law to sport' (2003) 40 *CMLRev* 51, 55; Michie, J and Oughton, C. *Competitive Balance in Football: Trends and Effects* (2004) Sportsnexus: London.

³¹ See generally, Welch, R. and Gardiner, S. "'Show Me the Money': Regulation of the Migration of Professional Sportsmen in Post-*Bosman* Europe' in Caiger, A. and Gardiner, S (eds) *Professional Sport in the EU: Regulation and Re-regulation* (2001) TMC Asser Press: The Hague, p. 107.

³² *Bosman* at para. 106.

of encouraging the recruitment and training of young players must be accepted as legitimate."³²

Competitive balance has also been acknowledged as a legitimate objective by the Court, albeit in the context of 'transfer windows' and expressly outlawing the variable application of the provisions contingent upon nationality.³³ Nevertheless, the Court has consistently recognised the need for sport to be able to put in place constitutive, structural rules, as long as they satisfy the requirements of proportionality.³⁴

Nationality or Affiliation?

One potential approach that might be adopted by sports governing bodies in order to circumvent Community law would be a shift in approach requiring 'affiliation' to a particular national team, rather than strict rules based on 'nationality proper'. In many sports it is possible to acquire 'nationality' for the purposes of representative sport, indeed, to represent more than one international team during a career. Such an approach is hinted at by the England and Wales Cricket Board's (ECB) recently introduced incentive scheme, which rewards county sides financially for playing English *qualified* players - their nationality is not necessarily in issue. Though, as noted, UK nationals are more likely, because of the construction of the eligibility rules, to be able to satisfy this requirement.³⁵

However, this situation was considered to be a potentially acceptable solution by the ECJ in *Deliège*. However, such an approach risks conflicting with another legitimate sporting objective. Community law has long recognised the importance of taking into account the social significance of sporting activity. Advocate-General Cosmas noted in *Deliège* that the Member States had expressly identified this in the declaration attached to the Treaty of Amsterdam:

"It should again be noted that highlighting that dimension of sport appears to have been one of the concerns of the Community's constitutional legislature during the discussions leading to the conclusion of the Treaty of Amsterdam. In Declaration No 29 on sport, the Conference 'emphasises the social significance of sport, in particular its role in forging identity and bringing people together.' Nor is it a coincidence that the same declaration recognises the need to listen to sports associations when important questions affecting sport are at issue".³⁶

A similar expression of the social significance of sport was made by the intergovernmental conference at the signing of the Nice Treaty. Any weakening of the required link between international players and the national team they represent could undermine Community law's conception of sport's important role in the promotion of social solidarity.

Playing for Europe?

However, certain sports may be able to transcend this position if it is possible to demonstrate that regulations which appear *prima facie* restrictive or discriminatory might be justifiable in that they are perceived as promoting the development of sport at an intra-Community level. Indeed, Community institutions have long seen sport as a vehicle for the development of social solidarity and cohesion at a European, rather than national, level.³⁷

Cricket and the rugby codes could legitimately argue that by ensuring that players were genuinely 'European' - that is eligible and willing to represent an EU Member State at international level - then restrictions on *Kolpak* players might be justified on the grounds that the restrictions promote the development of European sport. A parallel approach to *Bosman* and *Kolpak* players could act as an inhibition to the growth of European sport, with the influx of dual-citizenship players effectively blocking the path of genuine European talent domestically, without providing mutual opportunities to develop in *Kolpak* nations. An approach of this kind could be acceptable under Community law as being the genuine protection of a legitimate interest, rather than bald discrimination.

Cricket has made moves in this direction with the inclusion of a Scottish team in the one-day league and Ireland and the Netherlands in the main one-day cup competition. Rugby Union has taken significant strides down this road with the development of the European Cup club competition and the expansion of the main international tournament from five to six nations to include the fledgling Italian national side. Similarly, Rugby League opens up its cup competitions to French sides and *Les Catalans* will feature in *SuperLeague* during the 2006 season.

The legitimacy of such approach has already been supported by Advocate-General Cosmas in *Deliège*:

"In other words, the idea of representativeness also includes the need for balanced development of the sport at pan-European level; that need is directly linked to the ideal of noble competition which is, or at least should be, espoused in sport. Accordingly, the restrictions on access ... which are imposed ... in the interest of the balanced development of the sport at pan-European level, are justified, even if they may be equivalent to restrictions on the freedom to provide services."³⁸

Conclusions: A need for an imaginative response?

So it is conceivable that Community law could accommodate restrictions of the nature discussed on the basis of the existence of limited opportunities to play a particular sport professionally, alongside the social significance of a particular sport at a Member State level. Indeed, the ECB should be lauded for developing a less restrictive, incentive oriented approach, which stops short of an openly discriminatory imposition of a ban or quota on 'foreign' players. In doing this it may have achieved a happy balance between the need to limit economic restrictions and a genuine interest in the protection of legitimate sporting concerns. Cricket may well wish to consider other ways of negating the externalities of the judgments in *Bosman* and *Kolpak*. Other sports with a similar market structure to cricket, such as the rugby codes, would do well to consider this innovative scheme and reflect on the possibilities open to them to deal with Community law's attendant problems. UEFA's new approach to the development of youth players also suggests that a more ubiquitous sport may be able to provide a legitimate rationale for the relaxation of the free movement provisions.

None of the solutions offered in this article necessarily offer sport a 'watertight' way around the restrictions of EC law, nor are they exhaustive. Nevertheless, they clearly illustrate that sporting interests can legitimately be shielded against the adverse impact of decisions such as *Bosman* and *Kolpak*, provided that such measures are proportionate and genuine. The Post-*Bosman* era has undoubtedly seen a less aggressive approach towards sport on the part of the Community and offered regulators the possibility of wholly or partially escaping the influence of Community law. Such an escape will undoubtedly require a degree of ingenuity and a willingness to transcend established sporting structures. Nonetheless, such opportunities clearly exist and the notion of a 'one size fits all', rigidly applied EC 'sports law' is undoubtedly a myth. As Professor Weatherill points out: "The lesson of *Bosman* is that the game can cope - but only if it responds imaginatively."³⁹

33 Case C-176/96 *Jyri Lehtonen & Castors Canada Dry Namur-Braine ASBL v Fédération Royale des Sociétés de Basketball* [2000] ECR I-2681.

34 As in *Deliège*.

35 At para. 44.

36 *Deliège*, opinion of A-G Cosmas at para. 75.

37 European Parliament Committee on Culture, Youth and the Media. *Report on the Role of the European Union in the*

Field of Sport (1997) 28 May, A4-0197/97; European Parliament Committee on Culture Youth and the Media, *Report on the European Community and Sport* (1994) 27 and 29 April, A3-0326/94.

38 At para. 85.

39 'A case that could transform international football' (2005) *Financial Times*, 12 September.