



A Post-Brexit Impact: A Case Study on the English Premier League

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ABSTRACT

There has been significant debate on the impact of the United Kingdom's decision to leave the European Union on both the United Kingdom itself and the remaining 27 European Union countries. From economists and legal scholars, to industry experts and journalists, individuals from all over the world are speculating on what these changes will look like come March of 2019, as talks progress between the European Union and the United Kingdom. There is uncertainty over how Brexit will impact every industry within the United Kingdom, and this uncertainty extends to the world of sport in terms of player quality, league competitiveness, and ultimately league reputation. Brexit will impact players, coaches, clubs and fans within the United Kingdom. Key areas for the English Premier League which will be negatively impacted by Brexit include increased eligibility restrictions in obtaining European Union players, increased costs to obtain European Union players, and challenges in having minor players qualify as Home Grown. Key areas of the English Premier League which have the potential to be positively impacted by Brexit include an increased ability to protect game day blackout periods, and increased control over the broadcast industry.

I. OVERVIEW

Since June of 2016, when the majority of voters in the UK made their decision to leave the EU, individuals around the world have been speculat-

ing on what changes will occur. For sports scholars, a big question which arises is what impact the British exit (Brexit) will have on the sports industry in the UK. This paper will look to answer a portion of these question by proposing a number of impacts which Brexit will have on the players, coaches, teams, and fans within the English Premier League (EPL)¹ specifically, and UK football² generally. With talks between the UK and the EU ongoing, it considers the UK Government's policy and approach to Brexit. In addition, it considers the impact of EU laws and the regulations set out by the Fédération Internationale de Football Association (FIFA) on the operation of the EPL.

This paper examines a section of key questions that the EPL will face in the years following Brexit. Specifically, it considers:

1. The risk of increased costs in obtaining eligible EU players;
2. The increased restrictions in looking to have eligible EU players qualify for governing body endorsements;
3. Challenges in having EU minor players qualify as Home Grown under EPL rules;
4. The opportunity to protect game day blackout periods; and
5. The opportunity to increase control over the broadcast industry following Brexit.

The remainder of this paper has been broken down into eight sections. Section II sets out the process and timing of the UK's exit from the EU, and section III sets out the regulatory structures for both the EU and football generally. Section IV outlines the role of competition law in sport, and specifically outlines the legal framework through which EU law applies to sport.

The remainder of the paper considers the impacts of Brexit on stakeholders of the EPL. Section V proposes impacts of Brexit generally on UK and EU citizens and the EPL. Section VI outlines the impact of Brexit on player mobility and additional stakeholders within the EPL while section VII looks at the impact of Brexit on EPL clubs both in terms of Financial Fair Play and the development of Home Grown Players. Section VIII considers the impact of Brexit on the EPL's broadcast sector. Finally, section IX outlines our conclusions and recommendations for the EPL moving forward.

¹ See Appendix A – List of Abbreviated Terms.

² In this paper, the term "football" is synonymous with "soccer."

A. Methodology

This paper is comprised primarily of a survey of secondary sources, from which insights and predictions of academics and industry experts have been adapted to guide the research. In order to substantiate the claims made throughout this paper, extensive legal analysis of law in the EU and the UK, as well as the jurisprudence around *lex sportiva*, was conducted. As this is a current topic, with the subject matter developing as the exit approaches, all proposed impacts are based on these claims.

The rules and regulations of FIFA and its entities are also relied upon to accurately determine the extent to which Brexit will impact the EPL.

Primary data analysis has been conducted with regard to nationality statistics and FIFA rankings.³ In addition, interviews with industry experts and academics in the field were conducted to substantiate the claims in this paper. All information is based on the data available on the subject as of the end of December 2017.

II. THE BRITISH EXIT OF THE EUROPEAN UNION

A. *The Laws Surrounding the British Exit of the European Union*

As of June 2017, the population of the UK was estimated to be approximately 65 million people.⁴ Prime Minister Theresa May has indicated that Brexit will have a direct impact on approximately four million EU citizens living in the UK.⁵

1. The Process of Withdrawing from the European Union

Article 50 of the Treaty of Lisbon Amending the Treaty of the European Union and the Treaty Establishing the European Community (hereinafter *Treaty of Lisbon*) outlines the process by which a Member State of the

³ See Appendix B – Player Nationality Statistics.

⁴ Neil Park, *United Kingdom Population Mid-Year Estimate*, OFFICE FOR NATIONAL STATISTICS, (June 22, 2017), <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/timeseries/ukpop>, [https://perma.cc/E323-S75R].

⁵ Letter from Theresa May, Prime Minister of the U.K., to Eur. Union Citizens in the U.K., (Oct. 19, 2017), *available at* <https://www.gov.uk/government/news/pms-open-letter-to-eu-citizens-in-the-uk>, [https://perma.cc/NGV7-RRHL].

EU may withdraw its membership.⁶ The *Treaty of Lisbon* indicates under section 1 that any Member State of the EU may withdraw from the EU, “in accordance with its own constitutional requirements.”⁷

The UK does not have a constitution as a prevailing source of law.⁸ The ability to terminate a treaty in the UK falls under the treaty making prerogative,⁹ is exercisable without legislative authority, and is not reviewable by the courts.¹⁰ The referendum held by the UK in 2016 did not result in a change to the process by which the UK may withdraw from the EU.¹¹ Its effect was of a political nature until the decision was acted on by Parliament.¹²

Under Article 50, section 2 of the *Treaty of Lisbon* a Member State who has decided to withdraw from the EU must notify the European Council of its intention to do so.¹³ The UK’s Prime Minister, Theresa May, wrote a letter to Mr. Donald Tusk, the President of the European Council, on the 29th of March 2017. It provided clear written confirmation to the European Council, in accordance with Article 50(2), of the UK’s intention to withdraw from the EU.¹⁴

B. *The Timeline for Britain’s Exit from the European Union*

Section 3 of Article 49A of the *Treaty of Lisbon* sets out three different possible points in time upon which the *Treaty* may cease to apply to the withdrawing state. The first is based on the date of entry into force of the withdrawal agreement.¹⁵ Second, as a default, the withdrawing state is granted a period of two years following notification prior to the *Treaty* ceasing to apply.¹⁶ The UK provided the European Council with notice of their intention to withdraw on the 29th of March 2017. Based on a two-year period, the Treaties of the EU would cease to apply to the UK on the 29th

⁶ Treaty of Lisbon Amending the Treaty of the European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) [hereinafter *Treaty of Lisbon*].

⁷ *Id.*

⁸ *R (on the application of Miller and another) v. Secretary of State for Exiting the European Union*, [2017] UKSC 5 (appeal taken from 2016 EWHC 2768).

⁹ *Id.* at para. 54.

¹⁰ *Id.* at para. 55.

¹¹ *Id.* at para. 124.

¹² *Id.*

¹³ Treaty of Lisbon, *supra* note 6.

¹⁴ Letter from Theresa May, *supra* note 5.

¹⁵ Treaty of Lisbon, *supra* note 6.

¹⁶ *Id.*

of March 2019. Third, this two-year timeline may be extended by unanimous consent of both the EU and the exiting Member State.¹⁷

The UK remains a member of the EU until the exit process is commenced and completed.¹⁸ The agreement for a future relationship between the withdrawing state and the EU, as outlined in Article 49 of the *Treaty of Lisbon*, is to be based on Article 118 N(3) of the *Treaty on the Functioning of the European Union (TFEU)*.¹⁹

C. *The UK Withdrawal Bill*

Though Article 49 has been invoked, EU law will still apply until the UK actually leaves the EU. In this two-year period, ongoing negotiations between the UK and the EU are proceeding to attempt a “calm and orderly exit.”²⁰

In order to provide some certainty to the removal process, the UK Parliament is in the stages of drafting legislation for the withdrawal. Bill 2017-19, more commonly known as the EU Withdrawal Bill, as of September 2017, passed the first reading and is currently proceeding through the House of Commons.²¹ The Bill, as it stands, has three principle elements. First, it repeals the *European Communities Act* of 1972, which is the law that brought Britain into the EU. Second, it converts all EU law into UK law to prevent any gaps in the legal structure of the UK post Brexit.²² Section 4 subsection 1 exemplifies this by providing:

Saving for rights etc. under section 2(1) of the ECA

(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which, immediately before exit day—

(a) are recognised and available in domestic law by virtue of section 2(1) of the European Communities Act 1972, and

¹⁷ *Id.*

¹⁸ Trevor Watkins & Angelique Bret, *The Likely Legal Consequences of the UK's Brexit on Sport*, 14 WORLD SPORTS L. REP. (2016).

¹⁹ Treaty of Lisbon, *supra* note 6.

²⁰ *EU Withdrawal Bill: A Guide to Brexit Repeal Legislation*, BBC NEWS (Nov. 13, 2017), <http://www.bbc.com/news/uk-politics-39266723>, [https://perma.cc/V5JP-48DU].

²¹ PARLIAMENT OF UK (Nov. 3, 2017), <https://www.parliament.uk/about/how/laws/passage-bill/>, [https://perma.cc/F62Z-XZA7].

²² Laura Hughes, *What is the Great Repeal Bill*, THE TELEGRAPH (Dec. 12, 2017), <http://www.telegraph.co.uk/news/0/great-repeal-bill-explanation-need-read/>, [https://perma.cc/3JGS-JRPH].

(b) are enforced, allowed and followed accordingly, continue on and after exit day to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).²³

Third, it creates the necessary power for the Minister of the Crown to adapt and change these laws following the British exit.²⁴

D. *The Anticipated Type of Exit of the United Kingdom from the European Union*

The terms of the impending departure and its options have been continuously referred to as either a “soft” or a “hard” exit. There is no strict definition of these terms, but they are used to refer to the closeness of the UK’s relationship with the EU following the conclusion of Brexit.²⁵

1. A Hard Exit from the European Union

A “hard” Brexit would resemble the situation between the EU and any other third country outside of the EU trading regime. In this scenario, the UK would be excluded from the single market, and its trade relationship with the EU would revert to the default membership of the World Trade Organization.²⁶

Prime Minister Theresa May, upon re-election, remained adamant that “Brexit means Brexit.”²⁷ What this actually means remains to be determined. Preliminary visions from the UK government support a “hard” exit in which the UK surrenders its full access to the single market and customs of the EU and gains full control over its borders, trade deals and the applicable law within its territory.²⁸

²³ European Union (Withdrawal), Act 2018, 2017-8, HC Bill [19] (UK).

²⁴ Hughes, *supra* note 22.

²⁵ Alex Hunt & Brian Wheeler, *Brexit: All you need to know about the UK leaving the EU*, BBC NEWS (Dec. 12, 2016), available at <https://www.bbc.com/news/uk-politics-32810887>, [<https://perma.cc/V3RA-LL2M>].

²⁶ Helen Wallace, *Heading for the Exit: The United Kingdom’s Troubled Relationship with the European Union*, 12 CONTEMP. EUR. RES. 800, 809 (2016).

²⁷ *Id.* at 810.

²⁸ Alexandra Sims, *What is the difference between hard and soft Brexit? Everything you need to know*, INDEP. (Oct. 3, 2016), available at <https://www.independent.co.uk/news/uk/politics/brexit-hard-soft-what-is-the-difference-uk-eu-single-market-free-dom-movement-theresa-may-a7342591.html>, [<https://perma.cc/5Z9T-S3SL>].

2. Soft Exit from the European Union

A “soft” Brexit would model Norway’s relationship inside the European Economic Area (EEA).²⁹ This would allow the UK to retain access to the single market. The result of a soft exit would ensure the UK’s relationship with the EU remains similar to the existing model.³⁰

The current lack of an outright majority in Parliament supports more of a soft, rather than a hard, exit from the EU.³¹ The final result will dictate how sports law is applied in the UK. The biggest hurdle for sport in this regard will be the application of its inherited law from the Court of Justice of the European Union (CJEU).³²

III. TWO REGULATORY BODIES OF LAW: FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION AND THE EUROPEAN UNION

A. *The FIFA Football Governance Structure*

Football is governed in a hierarchy. FIFA is at the top of this hierarchical pyramid. It is an association founded in 1904, based in Zurich.³³ FIFA acts as the international governing body for football. Its regulations and policies for compliance are required by every league on an international scale,³⁴ and are followed by the national associations of the EU Member States.³⁵ Under FIFA exists the Union of European Football Associations (UEFA), one of six continental confederations. UEFA represents the national football associations in Europe and runs corresponding competitions. The Football Association (FA) falls below UEFA and controls games at a club level.³⁶ At the national level, the FA’s focus is on producing quality players

²⁹ Wallace, *supra* note 26.

³⁰ Sims, *supra* note 28.

³¹ Amit Kara, et al., *Prospects for the UK Economy*, 241 NAT’L INST. ECON. REV 1, 29 (2017).

³² See Steve Lawrence, *Sport in Case of ‘Brexit’: Part 5*, SPORTS THINK TANK (May 22, 2017), available at <http://www.sportsthinktank.com/blog/2017/05/sport-in-case-of-brexit-part-5>, [https://perma.cc/BDF7-466U].

³³ FIFA GOVERNANCE REGULATIONS (2016), <https://www.fifa.com/about-fifa/official-documents/law-regulations/index.html>, [https://perma.cc/NSK5-YW3Q] [hereinafter FIFA Regulations].

³⁴ FIFA Regulations, *supra* note 33.

³⁵ STEPHEN WEATHERILL, EUROPEAN SPORTS LAW: COLLECTED PAPERS 88, (2007).

³⁶ See Borja García, *UEFA and the European Union: From Confrontation to Co-operation?*, 3 J. CONTEMP. EUR. RES. 202, 204 (2007).

to perform well in an international arena. The EPL is the top league in the FA, and below it falls the Championship League and other domestic club teams.

The European Leagues are based on a system of promotion and relegation. With the degree of movement incorporated into the structure, results in one league will affect all club teams, regardless of their League. At the end of each season, the three teams from the EPL with the worst record drop to the Championship League. They are replaced by the top two Championship League teams, and the winner of the promotion playoff between the teams ranked in third to sixth place. In addition, up to seven English teams may be eligible to participate in UEFA Competitions. This includes the top three teams in the EPL, who qualify for the group stage and the fourth placed EPL team who qualifies for a play-off round in the UEFA Champions League.³⁷ The fifth place EPL team qualifies for the group stage of the UEFA Europa League.³⁸

This pyramid of governance for the laws of the game also interplays with domestic and national laws of the UK and the EU. While FIFA is governed under Swiss law, EU law applies to UEFA. The EPL abides by both Swiss and EU law, as well as domestic UK law. Following Brexit, UK domestic law will instruct the EPL.

Sport has its own governing bodies and regulations, and its own court. The Court of Arbitration for Sport (CAS) based out of Switzerland, acts as another means of adjudication for disputes arising in the EPL and UEFA. Parties can bring their claim to CAS instead of domestic courts for remedy.

1. The English Premier League

The EPL began in 1992 with 22 teams and was known as the FA Premier League.³⁹ After numerous name changes, it became the Premier League in the 2016-2017 season.⁴⁰ Since its inaugural year, the EPL has continued to grow in both size and popularity, with 49 different teams to date gaining a berth in the league.⁴¹ Within Europe, football leagues such as

³⁷ *A breakdown of how PL clubs can qualify for UEFA Champions League and Europa League next season*, PREMIER LEAGUE (2018), available at <https://www.premierleague.com/european-qualification-explained>, [<https://perma.cc/T8NU-SC8Q>].

³⁸ *Id.*

³⁹ *See History*, PREMIER LEAGUE, (2018), available at <https://www.premierleague.com/history>, [<https://perma.cc/U57M-8NWG>].

⁴⁰ *Id.*

⁴¹ *Id.*

the EPL have gained significantly from the commercialization of sport.⁴² The EPL specifically has benefited from this commercialization, with recorded revenues of £3.6 billion in the 2015-2016 cycle.⁴³

There is good reason for clubs in the Football League Championship to aspire to make it to the EPL. The three clubs promoted to the EPL in the 2016-2017 season generated a combined operating profit of £28 million, after having recorded a cumulative net operating deficit of £47 million only a year earlier.⁴⁴ The median and average salaries for players in the EPL also increased, with the median salary coming in at \$2.4 million in the EPL, while the next highest league wage, the Serie A, came in at \$902,000.⁴⁵

B. *The European Union Governance Structure*

European Union law is sourced from the *TFEU*. This treaty establishes all EU institutions, lists their powers and responsibilities, and outlines the areas governed by EU law. The European Commission (EC) is the legislative body of the EU and the European Court of Justice (ECJ) is the judicial body which interprets EU law.⁴⁶ Together they ensure all Member States adhere to the fundamental freedoms of the EU, which include: freedom of movement for workers, freedom of establishment, freedom to provide services, free movement of goods, and free movement of capital.⁴⁷ These freedoms create a single European market with the intention of contributing to economic prosperity in the region.⁴⁸ Within this system, EU rules are supreme and render any contrary national laws inapplicable.⁴⁹

⁴² Steven Stewart, *The Development of Sports Law in the European Union, Its Globalisation, and the Competition Law Aspects of European Sports Broadcasting Rights*, 16 *SPORTS L. J.* 183, 186 (2009).

⁴³ MICHAEL BARNARD ET AL., *ANNUAL REVIEW OF FOOTBALL FINANCE 2017 AHEAD OF THE CURVE*, 2 (Dan Jones et al. eds., 26th ed. 2017), available at <https://www2.deloitte.com/us/en/pages/about-deloitte/articles/annual-review-of-football-finance.html>, [<https://perma.cc/QLQ7-9XE5>].

⁴⁴ *Id.* at 3.

⁴⁵ Spencer Jackman, *La Liga Wins the Major Trophies but the EPL is Still the Best League in the World*, *THE 18*, (June 2017), available at <https://the18.com/soccer-news/best-league-europe-soccer-football-premier-league-la-liga-epl>, [<https://perma.cc/SU3J-CQ25>].

⁴⁶ KLAUS-DIETER BORCHARDT, *THE ABC OF EUROPEAN UNION LAW* 45 (2010).

⁴⁷ *See id.* at 24.

⁴⁸ Asser, *Professional Sport in the Internal Market*, (European Parliament DG Internal Policies of the Union-Directorate A – Economic and Scientific Policy Working Paper No. 11, 2005 [hereinafter Asser]).

⁴⁹ *See id.* at 12.

While conflicting laws of the UK are rendered inoperable, there are numerous instances in which EU legislation directly parallels the national laws of the UK. The competition rules outlined in Articles 101 (restriction of competition) and 102 (abuse of dominant position) of the EC are paralleled by Chapter's I and II of the *UK Competition Act 1988*.⁵⁰

The *TFEU* also sets out restrictions which prohibit a Member State from legislating discriminatory provisions, which would act to limit a citizen's access to the employment market.⁵¹ Article 2 provides for the coordination of economic and employment policies of Member States when an international agreement is made between their home state and the EU.⁵² This can provide benefit to non-EU nationals. For example, Norway, as a member of the EEA, has the benefits of the fundamental freedoms in the *TFEU*, though the country is not a member of the EU.⁵³

The role of the ECJ is to determine the applicability of these principles in the economic market. Sport has fallen under the jurisdiction of the ECJ as outlined in *Walrave and Koch v. Union Cycle Internationale*. The Court found, "having regard to the objectives of the Community, the practice of sport is subject to community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the *TFEU*."⁵⁴

The acceptance of sport as an economic activity has created an overlap in sports governance between international sporting bodies and EU law.

C. *The Intersection of Sport and European Union Law*

Sport has been regulated through EU law in two areas: free movement and competition.⁵⁵ With growth in the commercialization of professional sport, football has been scrutinized under EU law and broadened in the extent to which it has been subject to the jurisdiction of EU courts.⁵⁶ This

⁵⁰ Asser, *supra* note 48, at 16. See also Commission Regulation 1/2003 of Dec. 16, 2002, on the Implementing EU competition rules: application of Articles 101 and 102 of the *TFEU*, 2002 O.J. (L 1/4.1).

⁵¹ Asser, *supra* note 48, at 14.

⁵² Consolidated Version of the Treaty on the Functioning of the European Union, Oct. 26, 2012, Art 3, 2012 O.J. (L326/50).

⁵³ Asser, *supra* note 48, at 14.

⁵⁴ SIMON GARDINER ET AL., *SPORTS LAW* 158 (4th ed. 2010).

⁵⁵ Gianni Infantino, *Meca-Medina: a step backwards for the European Sports Model and the Specificity of Sport?*, UEFA, (Oct. 2, 2006), available at https://www.uefa.com/MultimediaFiles/Download/uefa/KeyTopics/480391_DOWNLOAD.pdf, [https://perma.cc/RYC6-RWTG].

⁵⁶ Ben Van Rompuy, *The Role of EU Competition Law in Tackling Abuse of Regulatory Power by Sports Associations*, 2 MCGILL L.J. 179, 183–84 (2015).

increased scrutiny has been welcomed by athletes who face a power imbalance as a result of the pyramidal structure of sports associations and the monopoly held by clubs.⁵⁷ The court's application of competition law has ensured that sports organizations and their governance mechanisms are in line with the fundamental freedoms of the EU.⁵⁸ The UEFA Champions League case has been used to create a formula for leagues wishing to comply with competition law within the EU.⁵⁹

As UEFA regulates football in Europe, its policies align with the EU and must be followed by national organizations. However, FIFA is based in Switzerland and has broader control; thus, some provisions that UEFA and all other governing bodies must comply with have come under scrutiny of the EC.⁶⁰ Independent from EU control, the EC has no recourse to enforce FIFA's compliance.

*Bosman*⁶¹ brought this intersection to the forefront of legal conflicts in the realm of sports law in the EU. Advocate General Lenz called attention to the function of EU competition law to control the private regulatory power of international sports associations.⁶² He indicated that there are other means of obtaining the objective of ensuring a balance between clubs, without affecting the freedom of movement of players within the leagues.⁶³ UEFA in particular was forced to accept the primacy of European law and its application to the activities of football organizations.⁶⁴

In order to enhance the legitimacy of football's governing structures, UEFA has engaged with the EC in policy co-operation.⁶⁵ The EPL has remained cautious of any EU involvement in its operations, other than court settlements and Commission investigations.⁶⁶

Bosman's ruling found that the 3+2 rule, which limited the number of foreign players who could be fielded by each team in a match, was contrary to freedom of movement and discriminatory in practice.⁶⁷ Consequently this nationality clause was abolished. Football governing bodies saw this as an

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ MARK JAMES, *SPORTS LAW* (3d ed. 2017).

⁶⁰ García, *supra* note 36, at 202.

⁶¹ Case C-415/93, *Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman*, 1995 E.C.R. I-5040.

⁶² *Id.* at I-5065.

⁶³ THE LEGACY OF BOSMAN. REVISITING THE RELATIONSHIP BETWEEN EU LAW AND SPORT (Antoine Duval & Ben Van Rompuy eds., 2016) [hereinafter Duval].

⁶⁴ García, *supra* note 36.

⁶⁵ *Id.*

⁶⁶ *Id.* at 202.

⁶⁷ GARDINER ET AL., *supra* note 54.

attack on the system in an area in which the courts lacked sports expertise.⁶⁸ This created a challenge for UEFA as it looked to comply with both the laws of the EU and FIFA regulations.

Following *Bosman*, FIFA's regulations were adapted to comply with EU competition law. UEFA and all its national football associations have accepted the duality of these two sources of regulation.⁶⁹ It has been accepted that a version of supervised autonomy is applied to sport in the economic context of sport as an undertaking.⁷⁰ Any restrictions on trade affecting Member States have the ability to be justified because of the "specificity of sport" which allows for self-regulation by sporting bodies.⁷¹

Though adapted, the law in the EU does not parallel the regulations in FIFA identically. The response to the removal of nationality clauses by both the EPL and UEFA was the implementation of rules for a minimum number of locally trained players per roster.⁷² This is discussed below under Section VII: The Impact of Brexit on Clubs Within the English Premier League.

IV. THE ROLE OF COMPETITION LAW IN SPORT: SPORT AS AN ECONOMIC ACTIVITY

Sport has been considered an area requiring regulation of the ECJ since 1974.⁷³ *Walrave and Koch v. Association Union Cycliste Internationale* established that a sport is subject to European Community law if it is considered "an economic activity within the meaning of Article 2 of the Treaty."⁷⁴ This was the first time that a sporting activity had been interpreted by the European Economic Community (EEC) law.

Currently, there exists a large body of case law that is reflective of the application of EU law in sport. *David Meca-Medina and Igor Majcen v. Commission of the European Communities* established the primacy of EU law over the regulations imposed by specific sports federations.⁷⁵ This set a precedent which required any limitation on competition to be justified through legitimate and proportionate objectives.

⁶⁸ García, *supra* note 36, at 209.

⁶⁹ JAMES, *supra* note 59.

⁷⁰ *Id.* at 304.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Stewart, *supra* note 42, at 230.

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

⁷⁵ Infantino, *supra* note 55, at 2.

This created the space for EU law to apply legal principles, in the regulation and governance of sport. Brexit will remove the UK from any future EU laws including those that affect sport. This will result in different avenues to bring legal disputes forward domestically for the UK. The foundational principles will still apply, but future decisions will not be required to follow EU law. CAS will still remain the predominant court for sports arbitrations, and it is likely athletes will take their disputes to CAS rather than face unpredictable judgements in UK courts.

V. PROPOSED IMPACTS OF BREXIT ON BRITAIN, EU CITIZENS AND THE ENGLISH PREMIER LEAGUE

A. *The Impact on the United Kingdom Generally*

Following the referendum, numerous changes occurred within the UK. First, the value of the British pound decreased. The British pound fell 7% against the euro following Brexit, and while it has seen some recovery, it has remained lower than its value prior to the referendum.⁷⁶ This decreased value is a positive for foreign investors, who will be able to invest more, and at a better exchange rate in sporting entities within the UK.⁷⁷ Second, the UK has seen net migration fall in the second half of 2016, driven by a decrease in immigration of 12% and an increase in emigration by EU citizens of 23%.⁷⁸ Moving forward, the UK can expect to see unemployment levels fall in the short-term, and correspondingly wage and salaries will face an upward pressure as businesses are left with a constricted talent pool from which to select employees.⁷⁹ As EU nationals comprised 7.3% of employees within the UK during the period of January to March of 2017, further declines in this percentage of workers may present a risk to both employment and output forecasts for the UK.⁸⁰

In particular, the UK will see changes to its immigration policy, affecting areas of freedom of movement of people and competition law. While currently bound by the EU Free Movement Directive, following the With-

⁷⁶ Lara J. Joy Dixon & Hoie Jo, *Brexit's Protectionist Policy and Implications for the British Pound*, 8 INT'L. J. FIN. 7, 8 (2017).

⁷⁷ Watkins, *supra* note 18.

⁷⁸ Kara, *supra* note 31, at 23.

⁷⁹ Dixon, *supra* note 76, at 10.

⁸⁰ Kara, *supra* note 31, at 23.

drawal Agreement, the UK will no longer be bound by this directive.⁸¹ The UK will be able to create and enforce law through its own legislative body.⁸²

In addition, the UK's decision to leave the EU will have a heightened inflationary pressure on the UK economy, and subsequently a depreciation of the British pound beyond what we have seen to date.⁸³ Current forecasts indicate a depreciation of 5.3% for 2017 and 2018, with subsequent increases in the exchange rate of approximately 0.5% per year for the period from 2019 to 2021.⁸⁴

B. *The Impact on European Union Citizens*

The UK has indicated that the referendum is about arrangements moving forward, not about disrupting previous commitments.⁸⁵ Prime Minister Theresa May has stated that "EU citizens living lawfully in the UK today will be able to stay."⁸⁶ However, an in-depth analysis of this indicates a less clear outcome for EU citizens. EU citizens who arrived in the UK prior to the referendum with a belief that they would be able to stay will have that expectation honored by the UK.⁸⁷ This broad statement is subject to numerous qualifications based on the point in time at which an EU national arrived in the UK. Upon the UK's exit of the EU, EU residents in the UK will be provided with a blanket grace period during which time they will be able to remain and work within the UK.⁸⁸ While unset currently, this period of time is expected to be up to two years in length, and will provide EU residents with time to apply for and secure "settled status".⁸⁹

Pursuant to the *Immigration Act* of 1971, individuals who qualify for settled status under UK law will be free to reside within the UK in any capacity and undertake any form of lawful activity.⁹⁰ In order to qualify for settled status, an EU citizen must have been a resident in the UK for a

⁸¹ Home Office, *The United Kingdom's Exit from the European Union, Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU*, 2017, Cm 9464, ¶ 22 [hereinafter UK's Exit].

⁸² *Id.* at 58.

⁸³ Dixon, *supra* note 76, at 9–10.

⁸⁴ Kara, *supra* note 31, at 29, 33.

⁸⁵ UK's Exit, *supra* note 81, ¶ 3.

⁸⁶ Letter October 2017, *supra* note 5.

⁸⁷ UK's Exit, *supra* note 81, ¶ 3.

⁸⁸ UK's Exit, *supra* note 81, ¶ 24.

⁸⁹ *Id.* at ¶ 26.

⁹⁰ *Id.* at ¶ 6.

period of five years prior to a specified date.⁹¹ Individuals who arrived before the specified date, but who have not accumulated an appropriate continuous residence at the time of UK's exit can apply for temporary status, accumulate the requisite five years, and then apply for settled status.⁹² Individuals who arrive after the specified date may be allowed to remain in the UK for a period of time, but should not anticipate a guarantee of settled status.⁹³

Individual athletes from the EU who qualify for settled status will be free to continue to reside in the UK and play for their respective teams. Players who arrive before the specified date but who have not acquired the requisite five years will be able to apply for temporary status. Challenges will arise when EU players are no longer able to obtain settled status. This will result in a detriment to UK clubs who will begin to face increased restrictions in obtaining and retaining EU players.

The UK immigration rules will apply to hundreds of EU players. Clubs who are looking to sign players from the EU will have to pay considerably more to bring those foreign players over.⁹⁴

C. *The Impact of Brexit on the Laws Which Govern the English Premier League*

Post-Brexit, the EPL will no longer be bound by the decisions of the ECJ. The direction that future disputes will take may be very different from other leagues still within the ambit of EU law. However, there will still be some indirect influence of EU law on the EPL, as the EC has a role in policymaking and a relationship with UEFA under which the EPL falls. These impacts are considered further under Section VII: The Impacts of Brexit on Clubs Within the English Premier League.

D. *The Impact of Currency Choice on the English Premier League Following Brexit*

As a result of new Financial Reporting Standards issued by the Financial Reporting Council, the Football Association Premier League Limited Company has, as of 2017, been required to record their foreign currency

⁹¹ “[S]pecified date” will be no earlier than the 29 March 2017, and no later than the date of the UK’s withdrawal from the EU.

⁹² UK’s Exit, *supra* note 81, ¶ 6.

⁹³ *Id.* at ¶ 6.

⁹⁴ Andrew Osborne, *What a Brexit would mean for football in the UK*, 14 WORLD SPORTS L. REP. 16 (2016).

forward contracts at the spot rate.⁹⁵ The impact of this requirement has been magnified by the decrease in the value of the pound following the announcement of Brexit, and has resulted in a statutory loss after tax of £252.3 million.⁹⁶ The company recognized a loss of £370.8 million during the year in forward foreign currency contracts.⁹⁷ The company also indicated an underlying profit after tax of £628 thousand after adjusting for the impact of the Currency Remeasurements.⁹⁸

The strategic report has indicated that the Company's revenue is substantially derived in US dollars and euros and paid out to EPL teams in pound sterling.⁹⁹ This correlative risk of foreign currency movements on cash flows available for EPL teams is mitigated through the use of foreign currency derivative contracts.¹⁰⁰

For teams and clubs who do not hedge, this devaluation means players paid in euros become more expensive to retain.

VI. BREXIT'S IMPACT ON PLAYER MOBILITY WITHIN THE ENGLISH PREMIER LEAGUE

Freedom of movement enhances team and national performance. Freedom of movement allows the game at a national level to be more competitive as international talent widens the pool of available skilled athletes. Restrictions in movement of these international players result in overall increases in cost to teams and clubs, decreased competition within the league and potential movement of skilled athletes to other EU countries to play.

A. Current Freedom of Movement

1. Free Movement Within the European Union Generally

Labor mobility is considered a fundamental right in EC law, and renders inapplicable any national laws which are contrary to EU free movement.¹⁰¹ Article 45 of the EEC requires Member States to allow workers to

⁹⁵ The Football Ass'n Premier League Ltd. Co. Registration No. 02719699, *Report and Financial Statements for the year ended 31 July 2016*, (2017), available at <https://beta.companieshouse.gov.uk/company/02719699/filing-history>, [<https://perma.cc/T3ZL-JRLP>] [hereinafter FAPL Financials].

⁹⁶ *Id.* at 8.

⁹⁷ *Id.* at 24.

⁹⁸ *Id.* at 2.

⁹⁹ *Id.* at 3.

¹⁰⁰ *Id.*

¹⁰¹ Asser, *supra* note 48, at 11.

move freely within the European Community.¹⁰² This enables EU citizens to move freely between their country of origin and other Member States to offer their services, to work, and to pursue economic activity.¹⁰³

2. Free Movement for Athletes Within the European Union

a. Nationality Restrictions

Player movement, and the restrictions imposed upon it are one of the most common sports disputes brought to the attention of EU law.¹⁰⁴ Player transfers and restrictions are regulated by FIFA's Regulation of the Status and Transfer of Players (RSTP). The EC has found restrictions on freedom of movement are compatible with Community law only if they are "justified by compelling reasons of the general interest and comply with the principle of proportionality."¹⁰⁵ Past transfer rules have been challenged on these grounds many times. For example, the ruling in *Bosman*, that the 3+2 rule restricted free movement of players contrary to EU law, resulted in the reformation of the transfer system to align with the principles of free movement of workers enshrined in Article 45.¹⁰⁶

b. Restrictions on Transfer Rules

Bosman also established that football constitutes an economic activity when the players are gainfully employed and receiving remunerations.¹⁰⁷ UEFA had created transfer fees to compensate the former club for the player's training and development costs.¹⁰⁸ The club "selling" the player would not release them until satisfied by the terms of the offer of the "buying" club.¹⁰⁹

At the time, *Bosman* was playing for RC Liège, a Belgian first division club and refused to sign a renewal contract. This resulted in his placement on the transfer list. Subsequently, he then transferred to US Dunkerque, a

¹⁰² Christina Lembo, *FIFA Transfer Regulations and UEFA Player Eligibility Rules: Major Changes in European Football and the Negative Effect on Minors*, 25 EMORY INT'L L. REV. 539, 548 (2001).

¹⁰³ Stewart, *supra* note 42, at 187.

¹⁰⁴ JAMES, *supra* note 59, at 286.

¹⁰⁵ GARDINER ET AL., *supra* note 54, at 157.

¹⁰⁶ Duval, *supra* note 63, at 52–53.

¹⁰⁷ Case C-415/93, Union Royale Belge des Sociétés de Football Ass'n and others v. *Bosman* and others, 1995 E.C.R. I-5040.

¹⁰⁸ *Id.* at I-5048.

¹⁰⁹ Weatherill, *supra* note 35, at 89.

club in the French second division. Under the rules in place at the time, in order to complete the transaction, a transfer certificate was required from the club to the association. RC Liège did not believe US Dunkerque could pay the transfer fees, withheld the certificate, and suspended Bosman from play. Bosman then legally challenged the transfer fee system.¹¹⁰

The ECJ ruled that such transfer fees and the requirements of a transfer certificate limited player's career choices and gave associations and clubs great power over players. By requiring transfer fees for out-of-contract players and establishing quotas that limited the number of foreign players per team, the regulations were in violation of the fundamental right of freedom of movement of EU workers. The ECJ stated, "provisions which preclude or deter a national of a Member State from leaving his country of origin, in order to exercise his right to freedom of movement, therefore constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned."¹¹¹

Transfer deadlines and transfer windows as a whole have been justified by the ECJ as necessary to secure a legitimate sporting objective, namely to regulate competition.¹¹² *Bosman* outlined the underlying basis for such a justification, stating "[Football] rules replace the normal system of supply and demand by a uniform machinery which leads to the existing competition situation being preserved and clubs being deprived of the possibility of making use of the chances, with respect to the engagement of players which would be available to them under normal competitive conditions."¹¹³ This ruling still applies today.

B. Increased Restrictions on Foreign Player Transfers Following Brexit

1. Increased Immigration Restrictions

The UK's protectionist policy acts to restrict the labor mobility of EU citizens, and is designed to protect domestic jobs and local workers from foreign competition.¹¹⁴ The origins of immigration law in the UK are derived from the desire to protect the labor market.¹¹⁵ In 1971, the *Immigration*

¹¹⁰ *Bosman*, *supra* note 61, at I-5051.

¹¹¹ *Id.* at I-5069.

¹¹² GARDINER ET AL., *supra* note 54, at 171.

¹¹³ Duval, *supra* note 63, at 82.

¹¹⁴ Dixon, *supra* note 76, at 9.

¹¹⁵ Kevin K. McCormick, *Extraordinary Ability and the English Premier League: The Immigration, Adjudication, and Place of Alien Athletes in American and English Society*, 39 VAL. L. REV. 541-42 (2004).

Act was enacted to fulfil this purpose.¹¹⁶ In 1973, the UK joined the EEC, which effectively created a second set of principles and redefined the role and scope of immigration regulation within the UK.¹¹⁷

In 2015 the United Kingdom Home Office amended its work visa requirements, making them more stringent. Work permits are considered for internationally established athletes “whose employment will make a significant contribution to the development of that particular sport in the UK at the highest level.”¹¹⁸ All players outside of the EU currently require a work visa to play in the EPL. To obtain a visa, a non-EU player needs to apply for a Governing Body Endorsement (GBE) with the FA before the Home Office will consider a permit application.¹¹⁹

The threshold for obtaining a GBE is based on a country’s FIFA rank and match time played. It becomes increasingly difficult for a player to obtain a GBE and subsequently obtain a visa once their country’s FIFA rank falls below the top 50. For players coming from a country in the top 50, since 2015, to meet these requirements, football players must have played between 30% and 75% of their country’s senior international matches over the previous two years, depending on their country’s FIFA ranking.¹²⁰ For players aged 21 and under, this period has been reduced to one year. Players who meets these criteria are automatically granted a GBE under either the Tier 2 (Sportsperson) or Tier 5 (Temporary Worker Creative and Sporting Category) work permit.¹²¹ The objective behind this exception is to make it easier for young, outstanding talent to grow and develop their game in the UK.¹²² The current procedure, with GBE players now dependent on their national team’s FIFA rank is illustrated in Table 1.¹²³

¹¹⁶ *Id.* at 571.

¹¹⁷ *Id.* at 541, 572–73.

¹¹⁸ *Id.* at 576 (internal citation omitted).

¹¹⁹ *What requirements are there for international footballers to have work permits?* IN BRIEF, <https://www.inbrief.co.uk/football-law/footballer-work-permits/>, [<https://perma.cc/XWV8-BJVT>].

¹²⁰ POINTS BASED SYSTEM, GOVERNING BODY ENDORSEMENT REQUIREMENTS FOR PLAYERS, . 2016/2017 THE FOOTBALL ASSOCIATION 2–4, 2018, *available at* (2016) <http://www.thefa.com/-/media/files/thefaportal/governance-docs/registrations/gbe-players-criteria-2018-2019.ashx>, [<https://perma.cc/7JU9-4SGC>] [hereinafter *Football Association*].

¹²¹ *Id.* at 6.

¹²² *See id.*

¹²³ *Id.* at 3.

OFFICIAL FIFA RANKING	REQUIRED % OF INTERNATIONAL MATCHES PLAYED IN THE PREVIOUS TWO YEARS
FIFA 1-10	30% and above
FIFA 11-20	45% and above
FIFA 21-30	60% and above
FIFA 31-50	75% and above

Table 1

Players who do not meet these criteria may still be able to secure a GBE through the Exceptions Panel based on their experience and value.¹²⁴ In making a determination, the Exceptions Panel begins by viewing a first set of objective criteria and if the player scores at least four points in this process, the Exceptions Panel moves on to a subjective review.¹²⁵ These objective criteria consider the Transfer Fee a player receives, awarding three points for players paid in the 75th percentile or two points for a player paid in the 50th to 75th percentile.¹²⁶ The same points are available for a player's wages. A player may secure a single point for playing in 30% or more of the Available Minutes provided their club is a Top League Club, or a single point if they have played 30% or more of the Available Minutes of their club games in Continental Competitions.¹²⁷ A player who fails to meet the first set of objective criteria, may still qualify under a second set of objective criteria provided they score cumulatively more than five points.¹²⁸ If a player meets this criteria, the Exceptions Panel may consider granting a GBE but does not need to. If a player fails to meet these thresholds the Exceptions Panel should refuse to grant a GBE.¹²⁹

Once a player has been granted a GBE, the Home Office will review their application and grant them either a Tier 2 or Tier 5 work permit.¹³⁰ The relevant tier is determined through an examination of the applicant's fluency in English through an approved English language test or via an academic qualification as outlined in the Home Office guidelines.

A Tier 2 visa is designed to allow skilled workers to come to the UK and to fill a gap in the UK labor market.¹³¹ This visa allows a player to stay

¹²⁴ *Id.* at 7.

¹²⁵ *Id.* at 14.

¹²⁶ *Id.* at 15.

¹²⁷ *Id.*

¹²⁸ *Id.* at 18.

¹²⁹ *Id.*

¹³⁰ *Id.*; *Tier 2 Work Permit for Skilled Workers*, UK VISA BUREAU, <http://www.visabureau.com/uk/skilled-work-permit.aspx>, [<https://perma.cc/NT84-RV8G>] (last visited Nov. 24, 2017) [hereinafter *UK Visa Bureau*].

¹³¹ *Id.*

in the UK for three years with the potential of an additional extension of up to three years and fourteen days. After this extension, an individual is required to leave the UK unless he can demonstrate he will be paid a gross annual salary of £159,600 or more.¹³² Above this threshold, the individual can continue to reapply for visas.¹³³ In addition, an applicant must have accumulated a minimum of 70 immigration points. The accumulation of immigration points includes:

- 50 points for an FA endorsement (Certificate of Sponsorship);
- 10 points for proving he has sufficient funding to stay in the UK; and
- 10 points in satisfaction of the English language requirements.¹³⁴

A Certificate of Sponsorship must include the original letter issued by a Governing Body indicating the player is internationally established at the highest level, his employment will make a significant contribution to the development of sport and that the post could not be filled by a suitable settled worker.¹³⁵ Sufficient funds under Tier 2 and Tier 5 migrants are set at £945, or by a rated Sponsor with an associated undertaking of £945.¹³⁶ A Tier 2 player can also obtain points for prospective earnings, with a maximum of 25 points awarded for earnings above £32,000 per year.¹³⁷

Alternatively, under Tier 5 a player can stay in the UK for a period of up to one year. While restricted to a single year, these individuals can sit an English language test and, with satisfactory results, may then apply for Tier 2 status.¹³⁸ If a player with a Tier 5 visa does not automatically qualify for a GBE, their club is required to submit an application for a new GBE, in which they summarize the player's domestic club appearances over the prior year.¹³⁹ The decision to grant a new GBE is then made at the sole discretion

¹³² *Tier 2 (Sportsperson) visa*, GOV.UK, <https://www.gov.uk/tier-2-sportsperson-worker-visa/extend-your-visa>, [<https://perma.cc/S2E6-F3JP>] (last visited Oct. 14, 2018).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Immigration Rules Appendix A: attributes*, GOV.UK (2016), ss. 93, 100(b)(i), (ii), (iii) <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-a-attributes>, [<https://perma.cc/UZ84-YQRF>].

¹³⁶ *Immigration Rules Appendix C: maintenance (funds)*, GOV.UK (2016), <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-c-maintenance-funds>, [<https://perma.cc/7Z6Y-YTLS>].

¹³⁷ *Immigration Points Test for Tier 2 Migration*, UK Visa Bureau, (last visited Oct. 14, 2018).

¹³⁸ *Id.*

¹³⁹ Football Association, *supra* note 119, at 3.3.

of the FA and the EPL representative.¹⁴⁰ A new GBE must also be obtained in the case of a player who changes clubs, or in the case of a temporary transfer of a player from a club outside of England to a club within England.¹⁴¹

If a player doesn't automatically qualify for a GBE through international participation, there is a review process, which is conducted on a points-based system.¹⁴² This system awards points based on the transfer fee paid for the player and the basic salary offered to the player relative to those of the other players in the league. Points are also awarded depending on the level at which the individual played for his previous club.

2. Decreased Player Eligibility

Current EU players make up approximately 34% of the EPL; international players make up another 25% of the league, and the remaining 41% of players are domestic.¹⁴³ If this player nationality breakdown in the EPL remains consistent following Brexit, EU nationals will merge into the international player category, and subsequently 59% of players in the league will require visas to continue to play.¹⁴⁴

Herein lies an issue for clubs: in attempting to ensure a player will be granted a GBE and then a visa, and knowing that more points are distributed if the transfer fee and wages of the player are higher, clubs are incentivized to spend more on international and EU players.¹⁴⁵ For players coming from a country which does not rank in the FIFA top 50, clubs will be encouraged to pay higher transfer fees and wages to have these players qualify through the Exceptions Panel. If these players are not from a current Top League Club and have not played in a Continental Competition in the prior year, clubs will need to pay these players a transfer fee and wages above the 50th percentile for players to qualify for GBEs. While this has not been

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 3.4 and 3.5.1.3.

¹⁴² Jake Cohen & Carol Couse, *Brexit Would Trigger a Battle Between the Premier League and the FA Over the Future of the Game*, INDEP. April 18, 2017, available at <http://www.independent.co.uk/sport/football/news-and-comment/brexit-negotiations-premier-league-fa-football-future-a7688786.html>, [https://perma.cc/28VY-X7HJ].

¹⁴³ See Appendix B.

¹⁴⁴ *Id.*

¹⁴⁵ Huw Davies, *What will Brexit mean for Football? Transfer Trouble, FA joy. . .and Chaos in Football Manager*, FOURFOURTWO, July 11, 2017, available at <https://www.fourfourtwo.com/features/what-will-brexit-mean-football-transfer-trouble-fa-joy-and-chaos-football-manager?page=0%2C1>, [https://perma.cc/XE5D-WF4G].

a concern for players in the League with EU citizenship, once the UK formally leaves the EU, players from the 27 EU countries will need to meet these objective criteria to qualify for a GBE and subsequently obtain a visa.

On average, only 33.2% of players starting games in the EPL are English.¹⁴⁶ Under this new framework of legal application, the freedom of movement for workers will be abolished. It is unlikely that the EPL will see this percentage of English starters increase. In addition, once the UK has left the EU, there is nothing to prevent the UK from reinstating a nationality clause.

For domestic players, this puts them at an advantage. By reducing the number of non-international players who are EU citizens, there will be a corresponding increase in the number of academy players in a team's squad.¹⁴⁷ Left to the mercy of the Home Office for a work visa, restrictions on players will be significant.¹⁴⁸ As demonstrated by the immigration points system, often the ability to obtain a visa is dependent on the availability of funds within a club, and the club's willingness to fund at sufficient levels. This is likely to be less of a concern for players in the EPL. The ability to fund higher wages for players will be of advantage to clubs with higher bottom line revenues, who will be better situated to pay premiums to obtain foreign players. At the lower levels, the changes to immigration will impact the composition of teams. UK players at this level will be more valuable, as they will have no restrictions on their ability to play for any given club or team.¹⁴⁹

C. Practical Application of Increased Restrictions on Football Players

1. Impact on UK Citizens Playing in the EU and EU Citizens Playing in the UK

UK players indicate they are closely following Brexit, as the final negotiations before the exit will indicate their future potential to make playing a sport a viable career and will directly impact their futures. At present, being

¹⁴⁶ *Premier League Home-Grown Percentage Not Bad, says FA*, BBC NEWS, Aug. 12, 2015, available at <https://www.bbc.com/sport/football/33892349>, [<https://perma.cc/4QPP-FYZC>].

¹⁴⁷ Daniel Geey, *What a Hard 'Red, White and Blue' Brexit may Mean for Domestic Football*, LAW IN SPORT, May 17, 2017, available at <https://www.lawinsport.com/blog/sheridans/item/what-a-hard-red-white-and-blue-brexit-may-mean-for-domestic-football?highlight=WYJicmV4aXQiLCInYnJleG10IiwYnJleG10JywiLCJicmV4aXQncyJd>, [<https://perma.cc/T7L9-5P83>].

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

a British passport holder playing football in the EU makes things simple.¹⁵⁰ Bank accounts remain the same, health insurance still applies, and transfers between teams can happen quickly.¹⁵¹

When the UK separates, these benefits will disappear, as playing outside of the UK becomes similar to playing overseas. As a British national, it may be harder to be signed outside of England as transfers will become too expensive.¹⁵² The benefits of EU membership will be withheld from UK players. Work permits are expensive for clubs to obtain, and smaller clubs may be less likely to take on a British player when an equally talented player from the EU can be acquired for less.¹⁵³ The reality is that it all comes down to the financial ability of clubs to attract and keep quality talent.

With a hard Brexit, players anticipate a rush of work permits for non-British players competing and vice-versa for those UK players abroad.¹⁵⁴ This will increase competition, as work permits are limited.

Mirrored issues will be seen for EU players in the UK. Some argue this will provide UK-born players greater opportunity with clubs in the UK following Brexit. UK players will become a valuable entity for leagues with fewer resources.¹⁵⁵

Shifting a focus to developing local talent has been an underlying rationale for Home Grown Player rules. An increase in opportunity for domestic players can increase skill and development, and create a larger local talent pool from which to draw for national competitions.¹⁵⁶ Players who agree with this expect such a shift would create a more competitive Britain on the pitch.¹⁵⁷

In contrast, the idea that benefits are derived as a product of human capital in all industries, including football, suggests stifled competition.¹⁵⁸ In support of this is the thought that the best clubs will always recruit the best national and international players. As a general rule, the richest clubs

¹⁵⁰ Laurie Bell, *Life in the Brexit Balance: A Footballer's Perspective on Leaving the EU*, VICE SPORTS, Dec. 21, 2016, available at https://sports.vice.com/en_ca/article/vw33d/life-in-the-brexite-balance-a-footballers-perspective-on-leaving-the-eu, [https://perma.cc/HWE4-9YFD].

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Geey, *supra* note 147.

¹⁵⁶ Davies, *supra* note 142.

¹⁵⁷ Bell, *supra* note 150.

¹⁵⁸ Nauro Campos, *Football and Brexit: How freedom of movement has affected England's chances of winning Euro 2016*, LONDON SCHOOL OF ECONOMICS (June 20, 2016), <http://blogs.lse.ac.uk/europpblog/2016/06>, [https://perma.cc/Y59J-HSPQ].

are still in a position to afford the best players, attract the most expensive foreign stars and engage the best local talent.¹⁵⁹ In addition, the importation of foreign international players into a domestic league may improve the skills of the domestic players.¹⁶⁰ Based on this line of reasoning, leagues in the UK can expect a decrease in talent as EU players are picked up by EU leagues.

2. Decreased Ability for European Union Players to Obtain a UK Visa

As well as being considered the best league in the world, the EPL is known for its player diversity. Players in the 2017 season come from 65 different nations. Of the 518 players in the League, for the 2017-2018 season, 67.4% are considered foreign.¹⁶¹ This means these individuals are not British passport holders. Approximately 58% of these foreign individuals are players from the EU. Therefore, the EU contributes approximately 39% of players in the League.¹⁶² These players will require work visas to continue to play with their current teams, and may or may not qualify for settled status depending on their arrival date within the UK. If they do not qualify for settled status and do not meet the visa requirements, they will need to leave the UK and their respective teams following Brexit.

For many of the EU players in the EPL, acquiring a work visa is expected to be a burden on the players and the League. In examining the largest five transfers of the 2017 summer transfer window, it is apparent that obtaining a work visa will constitute a more extensive process for EU nationals following Brexit. The concern for such qualified players is the limited number of work visas issued. Qualifications will not help a player when the Home Office implements a limit to visas issued. Only Manchester City's acquisition of Kyle Walker for £50 million would be exempt from such additional requirements.¹⁶³ Romelu Lukaku to Manchester United, Alvaro Morata to Chelsea, Benjamin Mendy to Manchester City and Alexandre Lacazette to Arsenal, would all require work visas under a hard Brexit.¹⁶⁴ Of

¹⁵⁹ Duval, *supra* note 63, at 60.

¹⁶⁰ *Id.* at 75.

¹⁶¹ *Foreign Players*, TRANSFER MARKET, Nov. 1, 2017, *available at* https://www.transfermarkt.co.uk/premier-league/gastarbeiterdetail/wettbewerb/GB1/saison_id/gesamt/land_id/26, [<https://perma.cc/22JT-4AE8>].

¹⁶² *Id.*

¹⁶³ Chris Newell & Patrick Scott, *Premier League Transfers 2017: Every Summer Deal in One Place*, THE TELEGRAPH Sept. 1, 2017, *available at* <http://www.telegraph.co.uk/football/0/premier-league-transfers-2017-every-summer-deal-one-place/>, [<https://perma.cc/GG3P-RG2V>].

¹⁶⁴ *Id.*

those four, Benjamin Mendy and players like him would not meet the FIFA prescribed percent of international games necessary to meet the requirements of a Tier 2 visa, in order to be eligible for a Tier 5 work permit.

This is an issue that will need to be addressed post-Brexit. For EU members, this currently is not an issue, but the future requirements to obtain visas for these players, as well as the limited supply of available visas in the two tiers, may inhibit the future success of transfers.

Consider Dimitri Payet's time as a player for West Ham. Under the strict restrictions to obtain a visa, Payet would not qualify. France is ranked seventh in FIFA's world ranking. As a French national on a top 10 ranked team, Payet would be required to have played at least 30% of international matches in the previous two seasons to apply for a GBE. Payet joined West Ham in 2015, however, having not played the required match time in his 2013 and 2014 seasons for the French national team, he would not qualify for a GBE and would not be able to proceed in applying for a visa. His only recourse would be to attempt to secure a GBE through the Exceptions Panel.

A similar situation would arise for N'Golo Kanté of Leicester City. Also a French national, Kanté would not have the required match time to qualify for a GBE. The list of players who would be ineligible and unable to obtain a visa is extensive and would impact players in numerous top teams within the EPL. Players impacted would include: Kurt Zouma and César Azpilicueta of Chelsea; Héctor Bellerín and Francis Coquelin of Arsenal; David de Gea, Juan Mata, Morgan Schneiderlin and Anthony Martial of Manchester United; Eliaquim Mangala, Jesús Navas and Samir Nasri of Manchester City; Simon Mignolet of Liverpool; and Tim Krul of Newcastle.

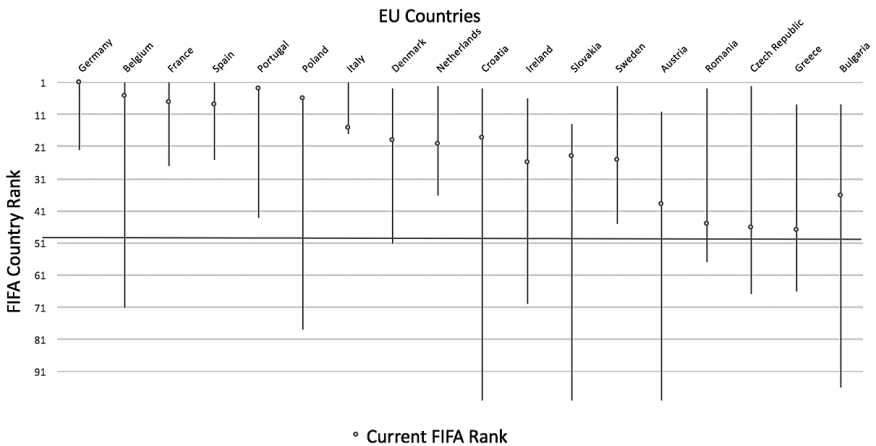
Limiting the talent in the EPL will change the game. The EPL has had some of the best players in the world play on its teams. Cristiano Ronaldo, for example, began his professional career at age eighteen when he joined Manchester United in 2003. As a Portuguese national, Ronaldo, to acquire a GBE and subsequently a visa would be required to have played in 30% of international matches for his national team based on Portugal's current rank of third. At the time of his transfer, Ronaldo would not have met this requirement. Post-Brexit, for a player like Ronaldo to play in the EPL, he would have to attempt to obtain a visa through the Exceptions Panel, or risk not playing in the League at all.

While major actors in the EPL actively support the idea of a creating an exemption for visas for athletes, this does not seem likely given the UK government's stance on immigration, and its firm position in regard to its regulation of borders. One solution to ensure that this large amount of talent is not lost from the League is to implement a tiered player immigration

system.¹⁶⁵ While visa requirements will depend on the deal negotiated, in the case of a hard Brexit, visas will be in high demand, and if the summer 2017 transfer window is any indication, the fees for signing an EU player will continue to increase.

3. Decreased Ability of Players to Obtain a Visa Based on Their Country’s FIFA Rank

In addition to the requirement for a player to meet the requisite number of international matches based on their respective FIFA rank, consideration should be given to the international status of individual countries. The current status of EU countries above 50 in the FIFA rank is illustrated in Graph 1 below. As indicated in this graph, there are eighteen EU countries currently in the FIFA top 50, and of those only seven have never fallen below the FIFA 50 threshold. There are another nine countries in the EU who currently fall below the FIFA 50 rank, and they are not displayed on the graph below. Of those nine, seven have been above 50 at some point in the last ten years.



Graph 1

It is more difficult for players to qualify for a GBE if their country’s rank falls below 50 and they are forced to go through the Exceptions Panel. Within the EU, ten countries fall below this rank.¹⁶⁶ Of these ten countries,

¹⁶⁵ Geey, *supra* note 147.

¹⁶⁶ Countries below this rank include: Bulgaria, Estonia, Finland, Cyprus, Hungary, Latvia, Lithuania, Luxembourg, Malta and Slovenia. FIFA WORLD RANKINGS, Nov. 25, 2017, available at <http://www.fifa.com/fifa-world-ranking/associations/association=hun/men/index.html>, [https://perma.cc/2PXE-M5G4].

four have current players in the EPL: Ragnar Klavan of Estonia, Niki Maenpaa of Finland, Adam Bogdan of Hungary, and Jon Gorenc Stankovic of Slovenia.¹⁶⁷ While this does not impact a significant number of current players, following Brexit, players from any one of these nine countries will only qualify for a GBE through the Exceptions Panel. Not all the best players are from the FIFA top 50 countries, with powerhouse countries including Italy ranked 7th, England ranked 15th and the Netherlands ranked 20th, failing to qualify for the 2018 FIFA World Cup.¹⁶⁸

In addition, country rankings in FIFA are volatile. Within the top tier of countries, ranked 1 to 10, two countries, Belgium and Poland have fallen below the FIFA 50 in the last ten years, Belgium to 71st spot in 2007 and Poland to 78th spot in 2013.¹⁶⁹ Within the EU, four countries fall within the bottom tier of countries, ranked 31 to 50, where players may still qualify for a GBE without going through the Exceptions Panel. Of these countries Austria, currently ranked 39th, has eight nationals playing in the EPL. They were ranked 105th in 2008 and they have decreased in their FIFA rank from 10th spot in 2015 to 39th spot as of 2017.¹⁷⁰ Should this trend continue, and Austria drop below 50, any Austrian players skilled enough to play in the EPL moving forward will only qualify for a GBE through the Exceptions Panel. The same can be said for the three countries in the EPL hovering right above the FIFA 50 threshold: Romania at 45th spot, the Czech Republic at 46th spot, and Greece at 47th spot.¹⁷¹ These three countries collectively have five players in the EPL. Should they drop below the FIFA 50 threshold, these players will only be able to obtain a GBE through the Exceptions Panel.

D. Additional Stakeholder Impacts

A number of additional stakeholders within the EPL will be impacted by increasingly stringent visa requirements following Brexit. In addition to players, a number of coaches and managers have the potential to be impacted by Brexit. The top five teams in the EPL (Manchester City, Manchester United, Chelsea, Tottenham Hotspur, and Liverpool) are managed by foreigners, and only nine out of twenty EPL team managers are

¹⁶⁷ Transfer Market, *supra* note 161.

¹⁶⁸ FIFA WORLD RANKINGS, *supra* note 166.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

British.¹⁷² These individuals will likewise face visa restrictions, and will no longer benefit from free movement principles following Brexit.

VII. THE IMPACT OF BREXIT ON CLUBS WITHIN THE ENGLISH PREMIER LEAGUE

Football clubs in the UK already frequently spend more than they generate in revenue and require external capital injections to continue to operate in their respective leagues. Since the British referendum, the devaluation of the pound has led transfer players to request payment in euros and has placed challenges on the ability of clubs who do not hedge to afford these new players. While the EPL will face increased costs to obtain EU talent, European leagues with the ability to pay players in euros will increase their capacity to obtain and retain talented EU athletes. In addition, as EU players stop qualifying for settled status and begin to be considered international players post Brexit, EPL clubs are going to need to pay more in both salaries and wages to successfully have these players obtain GBEs and subsequently UK visas. This will place additional pressure on the ability of EPL clubs to meet their financial regulations.

A. *Financial Fair Play*

1. Why we Need Financial Fair Play

Winning involves having better players than those who play for other clubs. To obtain these players, clubs frequently spend more than they generate.¹⁷³ This excess spending is apparent in both UEFA competitions and within the EPL. In 2007 the deficit of UEFA clubs was €0.6 billion.¹⁷⁴ Between 2007 and 2012 this deficit grew to €1.1 billion.¹⁷⁵ The EPL itself

¹⁷² Peter Berlin, *British Football Braces for Life After Brexit*, POLITICAL SPORT, Oct. 5, 2017, available at <https://www.politico.eu/article/british-football-braces-for-life-after-brexit-chelsea-ngolo-kante-english-premier-league/>, [https://perma.cc/6MB4-WYKD]. Only Bournemouth, Burnley, Crystal Palace, Everton, Swansea City, West Bromwich Albion, Stoke City, and West Ham United are managed by UK Nationals, see *Managers*, PREMIER LEAGUE, Nov. 15, 2017, available at <https://www.premierleague.com/managers>, [https://perma.cc/GQC2-NFAT].

¹⁷³ Stefano Bastianon, *The Striani Challenge to UEFA Financial Fair-Play. A New Era after Bosman or Just a Washout?*, 11 COMP. L. REV. 7 (2015).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

has a wage to revenue ratio which is too high.¹⁷⁶ Within the EPL, Manchester City recorded a loss of £197 million over the 2010-2011 accounting period.¹⁷⁷ Chelsea had a loss before tax at the year-end 2016 of £85 million.¹⁷⁸ These losses are not sustainable, and many clubs require external capital injections in order to continue to operate in their respective leagues.¹⁷⁹ Financial Fair Play (FFP) rules act to both stop large financial injections and limit a club's ability to spend at higher than sustainable levels.¹⁸⁰

2. Requirements Under Financial Fair Play and EPL Financial Regulations

UEFA competitions are governed by a different set of FFP regulations than the EPL. However, up to seven teams from the EPL will qualify for 2017-2018 UEFA competitions.¹⁸¹ While these clubs reach UEFA competitions based on sporting merit, they must abide by and observe *UEFA Club Licensing and Financial Fair Play Regulations* to continue to participate in UEFA sanctioned events.¹⁸² As such, both the EPL financial regulations and the UEFA FFP regulations have been outlined below.

a. UEFA Financial Fair Play

FFP regulations are set out in UEFA's 2015 Club Licensing and FFP Regulations. Their intent is to bring 'discipline and rationality' to the fi-

¹⁷⁶ Christopher A. Flanagan, *A Tricky European Fixture: An Assessment of UEFA's Financial Fair Play Regulations and their Compatibility with EU Law*, 13 INT'L. SPORTS L.J. 148,159 (2013).

¹⁷⁷ *Id.* at 149.

¹⁷⁸ David Conn, *Premier League finances: the full club-by-club breakdown and verdict*, THE GUARDIAN, June 1, 2017, available at <https://www.theguardian.com/football/2017/jun/01/premier-league-finances-club-by-club>, [https://perma.cc/8FYP-QEEV].

¹⁷⁹ Bastianon, *supra* note 173.

¹⁸⁰ Flanagan, *supra* note 176, at 159.

¹⁸¹ *A Breakdown of how PL Clubs Can Qualify for UEFA Champions League and Europa League Next Season*, PREMIER LEAGUE, Oct. 17, 2017, available at <https://www.premierleague.com/european-qualification-explained>, [https://perma.cc/L6RH-AN49].

¹⁸² See Union of the European Football Ass's, UEFA CLUB LICENSING AND FINANCIAL FAIR PLAY REGULATIONS 2012, available at https://www.uefa.com/MultimediaFiles/Download/Tech/uefaorg/General/01/80/54/10/1805410_DOWNLOAD.pdf, [https://perma.cc/H6WZ-PUND].

nances of football clubs throughout the EU.¹⁸³ They have been in effect since the 2013-2014 season, and teams wishing to obtain a UEFA license need to adhere to these regulations.¹⁸⁴ They apply to any club competition played under UEFA's umbrella.¹⁸⁵ This includes the top three EPL teams at the end of each season who qualify for the group stage, and the fourth place team who qualifies for a play-off round in the UEFA Champion's League.¹⁸⁶ It also includes the fifth place EPL team, who qualifies for the UEFA Europa League.¹⁸⁷ UEFA's objectives are to achieve FFP in UEFA club competitions.¹⁸⁸ UEFA provides a number of reasons for the implementation of these rules. In particular, FFP was developed to improve the economic and financial capacity of clubs, to increase club transparency, to protect creditors, to introduce more rationality in club football finances, and to encourage clubs to operate within their means so that they can remain viable business entities.¹⁸⁹

By the end of March 31 of each year, a license applicant must prove that they have no overdue payables to another football club as a result of the prior year's transfers.¹⁹⁰ In addition, all licensees who are qualified for UEFA club competitions must comply with the break-even requirement.¹⁹¹ The concept of break-even is that clubs cannot spend more than they earn in a given time frame.¹⁹² The implementation of this requirement acts to limit capital injections into a club by wealthy owners.¹⁹³ The break-even requirement sets an acceptable deviation of €5 million, with an exception of up to €30 million if the excess is covered entirely by contributions from equity participants.¹⁹⁴

In calculating break-even, under Annex X(1) relevant expenses may be decreased if an organization is funding under subsection (g) expenditures on youth development activities.¹⁹⁵ The aim of this deduction is to encourage

¹⁸³ Thomas Peeters & Stefan Szymanski, *Financial Fair Play in European Football*, 29 *ECON. POL'Y* 345, (2014).

¹⁸⁴ Flanagan, *supra* note 176, at 149-150.

¹⁸⁵ See Union of the European Football Ass'n, *supra* note 182, at 1.

¹⁸⁶ See PREMIER LEAGUE, *supra* note 181.

¹⁸⁷ See *id.*

¹⁸⁸ See Union of the European Football Ass'n, *supra* note 182, at 2.

¹⁸⁹ See *id.*

¹⁹⁰ *Id.* at 27.

¹⁹¹ *Id.* at 33.

¹⁹² See Flanagan, *supra* note 176, at 150.

¹⁹³ See *id.*

¹⁹⁴ Union of the European Football Ass'n, *supra* note 182, at 36.

¹⁹⁵ *Id.* at 72.

investment and expenditure on facilities and activities which will provide clubs with benefit in the long run.¹⁹⁶

UEFA clubs who fail to meet the requirements of FFP, including the break-even requirement, face numerous sanctions from simple warnings, to full exclusion from UEFA competitions.¹⁹⁷ One such team, who was sanctioned in 2014 for violating their FFP obligations was Paris Saint-Germain, who spent approximately €100 million more than they earned.¹⁹⁸ As a result of this violation, Paris Saint-Germain had salary freezes put in place, limits set to its next set of transfer spending, and a cap of 21 players instead of the regular 25 players placed on its Champions League roster.¹⁹⁹

As of the 2016-2017 season, only FC Porto was not in compliance with its break-even requirements, and of the five clubs under monitoring for the 2016-2017 season, four had complied with their targets.²⁰⁰

b. The English Premier League Financial Regulations

The EPL has its own regulations on the governance of each of its clubs' finances.²⁰¹ These are outlined in section E of the 2017-2018 Premier League Handbook. Similar to UEFA rules, Premier Clubs must ensure that they have no outstanding compensation fee or loan agreement. They must also ensure that they have no overdue employee fees payable submitted prior to December 31, outstanding as at March 31 of the following year.²⁰² From a profitability stance, the two threshold values which trigger review under

¹⁹⁶ See Flanagan, *supra* note 176, at 152.

¹⁹⁷ See *id.* at 150.

¹⁹⁸ *Could Neymar's record transfer to PSG be stopped by Financial Fair Play regulations?*, THE CONVERSATION, Aug. 3, 2017, available at <http://theconversation.com/could-neymars-record-transfer-to-psg-be-stopped-by-financial-fair-play-regulations-81982>, [https://perma.cc/XL8T-KFUB].

¹⁹⁹ *Id.*

²⁰⁰ *CFCB update on break-even monitoring for 2016/17*, Union of the European Football Ass'n, June 9, 2017, available at http://www.uefa.com/insideuefa/protecting-the-game/club-licensing-and-financial-fair-play/news/newsid=2476788.html#, [https://perma.cc/7ALL-XKAB].

²⁰¹ *What is Financial Fair Play?*, PREMIER LEAGUE, Aug. 16, 2017, available at <https://www.premierleague.com/news/102374>, [https://perma.cc/4AYN-G6WL].

²⁰² Football Ass'n Premier League Ltd., PREMIER LEAGUE HANDBOOK SEASON 2017/18, July 2017, 114, available at <https://www.pulse-static-files.s3.amazonaws.com/premierleague.com/publications>, [https://perma.cc/83NN-8MWL]/document/2018/09/19/ef4c62c9-6b19-4189-a064-d212cbf68ce7/PL_Handbook_2018-19_Digital.pdf, [hereinafter Premier League Handbook].

the Premier League Handbook are £15 million and £105 million respectively.²⁰³

A team who has an aggregated loss in adjusted earnings before tax of over £15 million over T-1 and T-2 must provide evidence of secure and sufficient funding.²⁰⁴ If this loss exceeds £105 million, the Board has the ability to exercise its powers,²⁰⁵ including requiring the Club to submit a budget, and refusing any application by the Club to register any player or new contract, in order to ensure that the Club in question complies with its fiscal obligations.²⁰⁶ The Board may also impose numerous sanctions on teams who fail to meet their financial obligations, including: reprimands, fixed penalties, and the exercise of summary jurisdiction.²⁰⁷

3. Post Brexit Challenges for Clubs to Meet Their Financial Obligations and Still Obtain the Most Talented Players

Following the referendum held on June 23, 2016, the value of the British pound decreased 7% against the euro.²⁰⁸ This resulting devaluation in the pound led some players during the summer transfer window to request funds in euros instead of pounds.²⁰⁹ While wealthier teams in the EPL hedge to decrease their risk when they need to pay in euros, the required funds to pay for big name players may be more than what teams have hedged.²¹⁰ The 2017 summer transfer window for EPL cost the clubs £105 million more than they would have paid prior to the referendum as a result of the decreased value in the pound.²¹¹

Another potential risk is that by paying inflated wages to retain the best talent, clubs will run into a conflict with their obligations under their respective FFP or financial regulations. This is a current concern in UEFA

²⁰³ *Id.* at 114.

²⁰⁴ *Id.* at 120.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 112.

²⁰⁷ *Id.* at 221.

²⁰⁸ Dixon, *supra* note 76, at 8.

²⁰⁹ Tyler Durden, *UK Soccer Players Abandon Pound, Demand Payment in Euros*, ZEROHEDGE, June 3, 2017, available at <http://www.zerohedge.com/news/2017-06-03/brexodus-builds-uk-soccer-players-abandon-pound-demand-payment-euros>, [<https://perma.cc/8RJX-K77G>].

²¹⁰ *Id.*

²¹¹ David Hellier & Scott SochnickSoshnick, *Smaller Premier League Clubs Told New Deal is Still the Best*, BLOOMBERG, Sept. 29, 2017, available at <https://www.bloomberg.com/news/articles/2017-09-29/smaller-premier-league-clubs-told-new-deal-is-still-the-best>, [<https://perma.cc/Q5YR-N3XT>].

regarding the transfer of Neymar from FC Barcelona to Paris Saint-Germain for €222 million. The Spanish governing body La Liga expressed concern that this payment from Paris Saint-Germain would violate their obligations under UEFA FFP rules.²¹²

B. Nationality Clauses: Homegrown Player Rules

1. Overview of Homegrown Player Rules

Following Bosman and the removal of the 3+2 player quota system, UEFA and the EPL introduced locally trained and Home Grown Player restrictions respectively.²¹³ These restrictions on team composition are not based on the nationality of an individual, but rather where they have trained. Owen Hargreaves, as a UK citizen, meets the requirements of nationality; however, he does not meet Home Grown Player requirements, having trained with Bayern Munchen.²¹⁴ These restrictions have not been challenged under EU law. However, FIFPro is currently looking for a player willing to challenge this system.²¹⁵ These requirements present an indirect discriminatory effect on EU youth, with nationals of the UK more likely to fulfill the requirements of Home Grown Players than youth from the EU.²¹⁶ The justification for Home Grown Player rules is that the restrictions are both proportionate and necessary for the proper administration of football.²¹⁷

a. The English Premier League

Within the EPL, a Home Grown Player is a player who has been registered with a club or affiliate for a period of three years prior to his 21st birthday.²¹⁸ An affiliate club is any club affiliated to the FA or the Football Association of Wales.²¹⁹ This means that youth players, irrespective of birth nationality, may qualify as Home Grown Players within the EPL, provided they play three years with an affiliate club prior to reaching the age of 21.²²⁰ In any given league match during a season game, a team within the EPL

²¹² Manoli, *supra* note 198.

²¹³ Lembo, *supra* note 102, at 552–53.

²¹⁴ Duval, *supra* note 63, at 75 fn. 95.

²¹⁵ *Id.* at 95, n. 82.

²¹⁶ GARDINER ET AL., *supra* note 54, at 495.

²¹⁷ JAMES, *supra* note 59.

²¹⁸ Premier League Handbook, *supra* note 202, at 87.

²¹⁹ *Id.*

²²⁰ *Id.*

may have up to 25 players on their roster.²²¹ This roster can comprise of a maximum of seventeen players whom are not Home Grown, which means that each EPL team, to reach their maximum roster limit, must sign at least eight Home Grown Players.²²² There is no restriction on the number of foreign players under the age of 21 who may play for teams.

b. UEFA Competitions

Similar rules are outlined for UEFA competitions under Article 43 of the UEFA Championship League for the 2015 to 2018 Cycle.²²³ UEFA requires teams to retain eight places on their 25 man roster for “locally trained players” and requires no club to have more than four “association-trained players.”²²⁴ Locally trained players are defined as either “club trained” or “association-trained.”²²⁵ Club trained players are individuals, between the age of 15 and 21 spent at least three years training with their current club,²²⁶ while association trained players must have played either with the registered club or an affiliate.²²⁷

2. FIFA Regulations on the Status and Transfer of Players

The RSTP entered into force in September 2001, formalized by FIFA in response to the *Bosman* ruling to regulate the transfer system.²²⁸ This has five main components for the new system:

1. Requirements for the term of players’ contracts;
2. Limitations on international transfers, only permitting them during two designated transfer windows per season;
3. Creation of a registration system to enable FIFA to track transfers;
4. Addition of a section to enhance the protection of minors; and
5. Creation of the FIFA Dispute Resolution Chamber to handle disputes.²²⁹

²²¹ *Id.* at A.1.158.

²²² *Id.*

²²³ See REGULATIONS OF THE UEFA CHAMPIONS LEAGUE 2015-2018 CYCLE (2016).

²²⁴ *Id.* at Article 43.02.

²²⁵ *Id.* at Article 43.03.

²²⁶ *Id.* at Article 43.04.

²²⁷ *Id.* at Article 43.05.

²²⁸ Lembo, *supra* note 102, at 553.

²²⁹ *Id.* at 553–55.

This fifth component is notable as it is referenced through the regulation as the avenue under which to process disputes and therefore bars parties from bringing a dispute to ordinary courts in domestic or international law.²³⁰ Despite the dispute resolution mechanisms, from a legal stance, the agreements setting out RSTPs are vague, would likely not bind the CJEU, and are challengeable in EU law.²³¹

RSTPs only apply to international transfers between national associations.²³² They bind national associations and clubs and as such are not directly applicable to players although the rules affect the employment relationship between the player and the club.²³³ The rationale behind transfer fees is to compensate the club that has provided the player with training to develop their skills as well as any remaining value on their contract.²³⁴ This compensation fee applies to youth players through the implementation of an age restriction of player movement and requires general compensation be paid to clubs for players under the age of 23 who are transferred.²³⁵

3. The Post Brexit Issue of Minor Player Eligibility

Article 19 of FIFA RSTP specifically addresses the protection of minor players.²³⁶ Section two outlines three exceptions to the general rule that international player transfers are not permitted for those under the age of 18:²³⁷

- a) The player's parents move to the country in which the new club is located for reasons unrelated to football;
- b) The transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA) and the player is aged between 16 and 18. In this case, the new club must fulfil the following minimum obligations:
 - i) It shall provide the player with an adequate football education and/or training in line with the highest national standards.
 - ii) It shall guarantee the player an academic and/or school and/or vocational education and/or training, in addition to his football educa-

²³⁰ Richard Parish, *Article 17 of the FIFA Regulations on the Status and Transfer of Players*, 22 M J. 256, (2015).

²³¹ Duval, *supra* note 63, at 94.

²³² GARDINER ET AL., *supra* note 54, at 451.

²³³ Parish *supra* note 230, at 258.

²³⁴ GARDINER ET AL., *supra* note 54, at 452.

²³⁵ Duval, *supra* note 63, at 74.

²³⁶ FIFA, REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS, Art 19 (2017).

²³⁷ *Id.* at Art 19(1).

tion and/or training, which will allow the player to pursue a career other than football should he cease playing professional football.

iii) It shall make all necessary arrangements to ensure that the player is looked after in the best possible way (optimum living standards with a host family or in club accommodation, appointment of a mentor at the club, etc.).

iv) It shall, on registration of such a player, provide the relevant association with proof that it is complying with the aforementioned obligations;

c) The player lives no further than 50km from a national border and the club with which the player wishes to be registered in the neighbouring association is also within 50km of that border.²³⁸

This exception has allowed many clubs to invest in foreign youth players from EU Member States rather than the local talent.²³⁹ This rule has allowed hundreds of young, talented players to join English academies and has created a loophole for clubs to get around the Home Grown Player rule, by recruiting foreign youth at an age young enough that they meet the requirements to qualify for Home Grown Player status.²⁴⁰ Cesc Fabregas and Francis Coquelin are both EU nationals who took advantage of this FIFA exemption and joined the EPL as minors. Consequently, they both qualified as Home Grown Players.²⁴¹

By leaving the EU, this exception will no longer apply to the UK.²⁴² Other European clubs with similar financial and scouting resources will have “an additional two-year window for which to scout, recruit, and sign the best young players in Europe, as well as those players from South America and elsewhere who have dual citizenship in an EU country.”²⁴³ EU clubs will be able to obtain players with EU nationality starting at the age of 16, while clubs in the UK will have to wait until those players turn 18, and will face transfer fees and visa restrictions to acquire those players.²⁴⁴ This will be a considerable detriment to the youth development and talent acquisition

²³⁸ *Id.* at Art 19(2).

²³⁹ See Geey, *supra* note 147.

²⁴⁰ See *What requirements are there for international footballers to have work permits?* IN BRIEF2017, available at <https://www.inbrief.co.uk/football-law/footballer-work-permits/>, [https://perma.cc/PL2M-66JU].

²⁴¹ Sean Dotson, *How Brexit Could Affect the Premier League and British Players*, THE SPORTS ESQUIRES, June 24, 2016, available at <http://thesportsesquires.com/how-brexit-could-affect-the-premier-league-and-british-players/>, [https://perma.cc/62U9-A4GJ].

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ Duval, *supra* note 63.

strategies of the majority of EPL clubs. Development will be restricted to local players only.

If clubs need a player to qualify as Home Grown, they will need to recruit them at the age of 18 in order from the player to train with the club the requisite three years before reaching the age of 21. Following Brexit, players qualifying for Home Grown status will likely be UK nationals, as their recruitment to these clubs will be easier. UK players in other European leagues will face similar consequences. For example, Gareth Bale, a UK national, would fill one of the three non-EU slots available on Real Madrid's roster.²⁴⁵

VIII. THE IMPACT OF BREXIT ON BROADCASTING FOR THE ENGLISH PREMIER LEAGUE

Broadcasting offers an opportunity for the EPL. The UK accounts for 19.8% of the EU broadcasting and cable television market value.²⁴⁶ This market value is defined as "the revenues generated by broadcasters through advertising, subscriptions or public funds."²⁴⁷

In 2016 the UK broadcasting and cable television market had total revenues of £20.2 billion.²⁴⁸ There is very little harmonization of the broadcasting market in the EU; however, post-Brexit, broadcast regulations may be altered to reflect the protectionist stance of the UK and support content producers such as the EPL. This will positively impact the EPL as territorial rights allow more control for the EPL.

A. *English Premier League Broadcast Rights*

Broadcasting represents a significant revenue source for EPL clubs, who recorded £1.6 billion of operating profit over the 2013-2016 broadcasting rights cycle, and who saw an average increase in broadcasting rights for 2016-2017 of £28 million per club.²⁴⁹ The EPL has seen significant TV revenue growth of over £2,000 million in the most recent three-year cycle,

²⁴⁵ Bobby McMahon, *11 Ways Brexit Will Impact the Premier League and Soccer Worldwide*, FORBES, June 24, 2016, available at <https://www.forbes.com/sites/bobby-mcmahon/2016/06/24/this-week-in-soccer-biz-special-11-ways-brexit-vote-will-impact-premier-league-and-soccer-worldwide/#4363e0c37d85>, [https://perma.cc/497B-VVF6].

²⁴⁶ *Broadcasting & Cable TV in the UK*, MARKETLINE 2017 10 (2017) [hereinafter MarketLine Industry Profile].

²⁴⁷ *Id.* at 7.

²⁴⁸ *Id.*

²⁴⁹ Barnard, *supra* note 43, at 3.

increasing from £3,018 million over the period of 2013-2016 to £5,136 million for the period 2016-2019.²⁵⁰

B. Jurisdiction of Broadcasting

1. Territorial Regulation of Broadcasting

Broadcasting is regulated by state territory. For reasons including linguistic borders, rights for programming are sold on this basis. Broadcasting was a national affair until the 1980s with many countries operating monopoly or duopoly organizations within their jurisdictions.²⁵¹ More recently, there has been work to create a European broadcasting regime. To date, the EU has not instituted a regime to include broadcasting in its single market framework. The EC does have the ability to regulate and implement several provisions in broadcasting for EU countries and has used this ability on multiple occasions.²⁵² The effect of this involvement has been to prevent the abuse of dominant positions and to regulate the monopoly that often occurs with broadcasting rights.²⁵³

2. Optional Directives from the European Commission

The framework for the regulation of broadcasting in the EU contains only optional directives which have been implemented with varying degrees of success. The EC has attempted to create a single digital market through the implementation of such directives. The most applicable is the *Audiovisual Media Services Directive (AVMSD)* [which replaced the *Television Without Frontiers Directive*].²⁵⁴ The AVMSD regulates broadcast content directly.²⁵⁵

²⁵⁰ *Premier League TV broadcasting rights revenue from 1992 to 2019 (in million GBP)*, STATISTA, February 2015, available at <https://www.statista.com/statistics/385002/premier-league-tv-rights-revenue/>, [https://perma.cc/56JU-3DJN].

²⁵¹ Evan Ruth, *Media Regulation in the UK*, Article 19 Global Campaign (2016).

²⁵² MarketLine Industry Profile *supra* note 246., at 15. See Case T-528/93, Eurovision I, 1996 E.C.R. II-649. See also Case T-185/00, Eurovision II, 2002 E.C.R. II-3805.

²⁵³ Stewart, *supra* note 42.

²⁵⁴ Council Directive 2007/65/EC, of the European Parliament and of the Council of 11 December 2007 Amending Council Directive 89/552/EC on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities, 2007 O.J. (L 332) (EC) [hereinafter AVMSD].

²⁵⁵ Council Directive 93/83/EEC, of 27 September 1993 on the Coordination of Certain Rules Concerning Copyright and Rights Related to Copyright Applicable to Satellite Broadcasting and Cable Retransmission, 1993 O.J. (L 248) (EC).

The AVMSD coordinates certain provisions laid down by law, regulation and administrative action in Member States concerning the provision of audiovisual media services.²⁵⁶ This is an expansion of the *Television Without Frontiers Directive* which only regulated cross-border television broadcasting and recognized the public interest factor in specific event broadcasts to establish fair competition.²⁵⁷

3. Broadcast Regulation in the United Kingdom: Ofcom

In the UK, broadcasting is regulated by the *Broadcasting Act 1996* which empowers the corporation Ofcom to provide industry regulation.²⁵⁸ Some aspects of the AVMSD have been legislated through the *Broadcasting Act* of 1990.²⁵⁹ As the communications regulator in the UK, Ofcom regulates TV, radio and video-on-demand sectors, as well as fixed-line telecoms and wireless networks. They act within their legislative power to ensure competition can thrive and consumers' interests are protected.²⁶⁰ This includes regulation over sports broadcasting rights.

C. Broadcasting Within the English Premier League

1. Overview and Territorial Licensing under the AVMSD

In a recent judgement of the ECJ, territorial exclusivity agreements were found in breach of competition law under Article 101 of the *TFEU*.²⁶¹ They effectively provided consumers access to a broader list of sports media providers in the EU.

²⁵⁶ *Id.* at recitals 1–3.

²⁵⁷ Council Directive 89/552/EEC of 3 October 1989 on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities, 1989 O.J. (L 298) (EC) at recital 3 [hereinafter *Television Without Frontiers*].

²⁵⁸ Ruth, *supra* note 251; MarketLine Industry Profile, *supra* note 246.

²⁵⁹ Lorna Woods, *What would be the impact of Brexit on UK media regulation?*, THE LONDON SCH. OF ECON.: MEDIA POL'Y PROJECT BLOG, Sept. 13, 2016, available at <http://blogs.lse.ac.uk/mediapolicyproject/2016/09/13/what-would-be-the-impact-of-brexit-on-uk-media-regulation/>, [<https://perma.cc/XP8Y-MDAP>].

²⁶⁰ Ofcom, *What is Ofcom?*, <https://www.ofcom.org.uk/about-ofcom/what-is-ofcom/>, [<https://perma.cc/9PR3-KRMW>] (last visited Oct. 15, 2018).

²⁶¹ C-403/08, *Football Ass'n Premier League Ltd. v. QC Leisure*, 2011 E.C.R. I-09083, ¶ 144.

2. Current Ability of UK Consumers to Circumvent EPL Game Day Blackout Periods

Due to increasingly prohibitive subscription based costs, some pubs and bars have opted to show games via satellite feeds from other countries.²⁶² As seen in the case of *Murphy v. Media Protection Services Ltd*, the EPL has been particularly vigilant, albeit unsuccessful in this case, in pursuing unauthorized screening of football rights to which it owns the underlying copyright.²⁶³

Ms. Murphy, a local pub owner, used an imported satellite decoder card to show a Greek television broadcast of EPL games, rather than paying a subscription to view EPL games through the official UK broadcaster, BSkyB, which abided by the blackout periods, and would not show the games live. The CJEU found that the legislation introduced by a Member State which prohibits the importation, sale or use of a decoding device designed for use in another Member State violated Article 56 of the *TFEU*.²⁶⁴ The court found:

The Satellite Broadcasting Directive provides only for minimum harmonisation of certain aspects of protection of copyright and related rights in the case of communication to the public by satellite or cable retransmission of broadcasts from other Member States. Unlike the Copyright Directive, this minimum harmonisation does not provide criteria to determine the lawfulness of the acts of reproduction performed within the memory of a satellite decoder and on a television screen.²⁶⁵

The court concluded that an exclusive licence agreement between the EPL and broadcasters would prohibit the broadcaster from supplying decoding devices outside of the territory covered by the licensing agreement.²⁶⁶ In addition, it was a restriction on competition and subsequently a violation of Article 101 of the *TFEU*.²⁶⁷ This absolute territorial protection failed to produce any corresponding benefit to the wider public.²⁶⁸

²⁶² JAMES, *supra* note 59, at 330–31.

²⁶³ *Id.* at 331.

²⁶⁴ *Id.* at 331–32.

²⁶⁵ *FAPL*, *supra* note 261.

²⁶⁶ JAMES, *supra* note 59 at 332.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

The result of this decision is to provide consumers in the UK with a broader list of sports media providers across the EU and essentially circumvent the EPL's game day blackout periods.²⁶⁹

3. Potential Opportunity for the EPL to Limit Game Day Viewing During Blackout Periods Following Brexit

Ofcom will become the sole regulator of broadcasting content in the UK. In 2016 it closed its investigation of the EPL rights after considering the League's decision to increase the number of matches available for live broadcast in the UK. Starting in the 2019-2020 season, this number will increase to at least 190 per season, which is a minimum of a 22 game increase from the current agreement.²⁷⁰

In its investigation, Ofcom also considered consumer research to understand the preference of both match going fans and those watching on television.²⁷¹ The current framework has created blackout periods in UK broadcasts of live matches. Consumers have successfully circumvented this restriction by obtaining foreign decoders to show foreign broadcasts of the games during game day blackout periods in the UK.²⁷²

Ofcom's research indicated one fifth of fans wanted more matches televised live.²⁷³ Those attending matches live indicated the day and time of the match was important and the weekend matches were ideal.²⁷⁴ At a national level under domestic competition law, Ofcom has recognized the need to strike a balance between the potential benefits of releasing more matches for live broadcast, and the potential disruption on match going fans due to these games being rescheduled and broadcast outside of the 'closed period'.²⁷⁵

²⁶⁹ Marine Montejo, *Brexit and EU law: Beyond the Premier League (Part 2)*, ASSER INTERNATIONAL SPORTS LAW BLOG, July 25, 2016, <http://www.asser.nl/SportsLaw/Blog/post/brexit-and-eu-law-beyond-the-premier-league-part-2-by-marine-montejo>, [<https://perma.cc/XEA4-JMGQ>] (on file with the Harvard Law School Library).

²⁷⁰ Media Release, OFCOM MEDIA OFFICE, *Ofcom closes investigation into Premier League Football Rights*, Aug. 2016, <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2016/premier-league-football-rights>, [<https://perma.cc/7TU2-VNX9>] (on file with the Harvard Law School Library) [hereinafter Ofcom Media Office].

²⁷¹ *Id.*

²⁷² C-403/08, *Football Association Premier League Ltd. and Others v. QC Leisure and Others*, 2011 E.C.R. I-09083.

²⁷³ Ofcom Media Office, *supra* note 270.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

While Ofcom's regulation will maintain the current broadcast structure, the area in which the lack of EU regulation will see change is in consumer viewing options. With technology increasing the ability of consumers to view games, the efforts of the EPL to create a blackout period have been unsuccessful. In 2013, the Football Association Premier League Ltd successfully obtained a blocking order that requires the UK's six main internet service providers to block or impede their customers from a website known to live stream television broadcasts hosted on unofficial or unlicensed user generated content.²⁷⁶ Enforcement of this order and control of broadcasting to ensure blackout periods are imposed will become easier to obtain for the EPL following Brexit.

a. Citizens and Pubs Will be Unable to Obtain Foreign Decoders

The current right of citizens of the UK to circumvent the blackout periods and purchase foreign decoders from other Member States may not be available following Brexit. Domestic law in the UK has not addressed importation of foreign decoders, and the UK does not seem prone to continue to allow for their importation. A football governance discussion in 2011 indicated that while the use of foreign decoders would be beneficial to the pubs showing the games, it would be at the expense of the EPL as the creative rights holders.²⁷⁷ It would also pose a grave risk to the sustainability of clubs throughout the football pyramid.²⁷⁸ The risk posed by the decision in *Murphy* has repercussions beyond the EPL to smaller football clubs such as Macclesfield and Notts County, who have to compete with pubs broadcasting EPL games.²⁷⁹ The prescribed blackout periods promote grassroots football, by encouraging fans to support their local team in a live game, rather than watch an EPL match on television at a pub.

The UK gives "considerable weight to the concerns of" the EPL, based on their interest in the sustainability of football.²⁸⁰ A Hansard report of the European Union Committee on Grass-roots Sport released in 2011, indicated that the decision in *Murphy* could have major implications for the EPL and lead to cheaper viewing arrangements for foreign broadcasters.²⁸¹ The

²⁷⁶ JAMES, *supra* note 59, at 332.

²⁷⁷ Culture, Media and Sport Committee, Football Governance, 2011, HC 792-I, at 101 (UK) [hereinafter HC Culture, Media and Sport].

²⁷⁸ *Id.*

²⁷⁹ *Id.* at 46.

²⁸⁰ *Id.* at 47.

²⁸¹ 732 Parl Deb HL (6th ser.) (2011) col. 421 (UK).

Government was urged “to use its influence within the EU to retain the territorial selling of overseas rights.”²⁸²

The EPL’s concern over the use of foreign decoders in *Murphy* was dismissed based on a violation of the *TFEU*. However, post Brexit, legislation introduced by the UK to prohibit the importation, sale or use of a foreign decoder will not need to comply with EU law. In addition, should the EPL bring a new claim like *Murphy* to the courts of the UK, they should be successful in prohibiting game broadcasts through foreign decoders.

b. Additional Concerns over the Future Value of Television Rights

There are additional concerns that England’s standing in football will diminish if their EU stars go on to play for other countries following Brexit, and that this could lead to a decreased value in future television rights.²⁸³ Cliff Baty, Chief Financial Officer of Manchester United, indicated that the acquisition of Swedish Zlatan Ibrahimovic for £220 thousand a week was worth approximately 10% less when viewed in light of the decreased value of the pound.²⁸⁴ Baty has indicated, as a result of this, concern over a decrease in the competitive balance of EPL teams.²⁸⁵ For teams paying inflated wages to obtain these players, there is concern that the wage expenses will be passed onto fans through increased ticket prices and increased television subscription costs.²⁸⁶

At this time, such claims are speculative. Brexit will allow for increased market control through broadcasting, which will benefit the EPL. Increased television revenues can be used to offset any inflated costs.

D. Broadcasting Rights across Member States

1. The Current Country of Origin Principle

The *AVMSD* provides for a country of origin principle, which means that a provider of audiovisual media services is subject to the law of its country of origin.²⁸⁷ In the preamble of the directive it states its purpose:

²⁸² HC Culture, Media, and Sport, *supra* note 277 at 47.

²⁸³ *Id.* at 11–13.

²⁸⁴ Durden, *supra* note 209.

²⁸⁵ *Id.*

²⁸⁶ Flanagan, *supra* note 176, at 159.

²⁸⁷ Ben Stevenson & Carolyn Pepper, *Brexit, the Legal Profession and the Media and Technology Sector*, 33 ENT. & SPORTS L. 5, 9 (2017).

The country of origin principle should be regarded as the core of this Directive, as it is essential for the creation of an internal market. This principle should be applied to all audiovisual media services in order to ensure legal certainty for media service providers as the necessary basis for new business models and the deployment of such services. It is also essential in order to ensure the free flow of information and audiovisual programmes in the internal market.²⁸⁸

This means another Member State cannot impose any of their own domestic regulations. In effect, this opens borders and promotes the ‘single digital market’. It prohibits Member States from imposing their own domestic regulations on any services it receives from another Member State. It allows for limitations on this principle in the 43rd recital, which states “Member States may still take measures that restrict freedom of movement of television broadcasting, but only under the conditions and following the procedure laid down in this Directive.”²⁸⁹

2. No Obligation to Offer National Treatment of Audiovisual Services Post Brexit

The AVMSD applies only to the relationship between Member States with regard to audiovisual services. This will have no force or effect in the UK going forward with future trade, post Brexit. The obligation to offer national treatment to audiovisual services will no longer exist. The UK has the opportunity to create regulations that are domestically beneficial, meaning international content could be harder to access. This could also be a problem for broadcasters in the UK engaged in cross-border activities as they may also face stricter regulations. This will impact not only sports broadcasters and rights owners but sports clubs and those who follow sport.²⁹⁰

E. Broadcasting Monopolies

1. Collective Selling

Collective selling occurs when all teams in a competition join together and sell rights typically through a national governing body.²⁹¹ Collective selling of broadcasting rights is a prominent fixture in European sports

²⁸⁸ AVMSD, *supra* note 254, at 27th Recital.

²⁸⁹ *Id.* at 34rd Recital.

²⁹⁰ Montejo, *supra* note 269.

²⁹¹ JAMES, *supra* note 59, at 328.

broadcasting.²⁹² The *TFEU* has allowed this to be dealt with through domestic property laws, and access to broadcasts are handled contractually.²⁹³ This is the selling structure used in the EPL. By using this format to sell broadcast rights the EPL has made access to its matches exclusive. “Exclusivity ensures a rarity to the supply chain, allowing primary rights holders to charge a premium to the broadcaster and to maximise its earning from the rights sale.”²⁹⁴

a. *The EU Response*

The EC was faced with this issue in the *UEFA Champions League*.²⁹⁵ UEFA had a centralized marketing scheme in place for the commercial rights for the Champions League.²⁹⁶ The revenues were then distributed to the participating clubs. The rights were initially sold exclusively to a free-to-air broadcaster from each of the Member States, with an option for the free-to-air broadcaster to sell the packages to pay-TV.²⁹⁷ These arrangements usually covered a number of years. UEFA argued this improved competition. The EC objected and as a result UEFA amended their selling process.²⁹⁸ A new process allowed for both public and private broadcasters, as well as internet providers, to cover the Champions League.²⁹⁹ The collective arrangements in the League were eventually recognized in 2003, as the organization of matches in the season schedule.³⁰⁰ The Commission found this qualified collective selling as a justifiable restraint on trade.

b. *The English Premier League’s Approach*

A similar agreement between the EC and the EPL was reached in *Joint Selling of the Media Rights to the FA Premier League*. This resulted in the effective end of the 15-year monopoly of broadcasting rights held by BSkyB. The EC accepted collective selling, on the condition the sale was completed through an open and transparent process and included a limit of the dura-

²⁹² Stewart, *supra* note 42, at 204.

²⁹³ *Id.*

²⁹⁴ JAMES, *supra* note 59, at 329.

²⁹⁵ Commission Decision 2003/778/EC, 2003 O.J. (L291/25) (EC).

²⁹⁶ Stewart, *supra* note 42, at 207.

²⁹⁷ *Id.*

²⁹⁸ Stewart, *supra* note 42, at 207.

²⁹⁹ *Id.* at 207–08.

³⁰⁰ *Id.*

tion of the rights being assigned.³⁰¹ The EPL then offered six packages available for tender with no single broadcaster obtaining all six.³⁰² BSkyB still managed to secure four of the six packages, with Setanta obtaining the other two.³⁰³

The commitments of the EPL to create a transparent process in the tender of rights, and the creation of various packages including a “no single buyer” clause, which limited a buyer from acquiring all rights, expired at the end of the 2012-2013 season. Since the end of this season, the commitments of the EPL have continued to be upheld.³⁰⁴

Broadcast rights for the 2016-2017 to 2018-2019 season have been agreed with BT Sport and Sky for £5.136 billion.³⁰⁵ This is in addition to the broad range of other packages already awarded, including domestic highlights to the BBC for £204 million and near live clip rights to News International.³⁰⁶

2. Exclusive Selling

The exclusive sale of broadcast rights allows the broadcaster to dominate the market for a particular sporting event. Broadcasters with exclusivity can then profit by attracting viewers and increasing subscriptions if required.³⁰⁷ Subscription channels have generated higher income from broadcasting for the seller but have made competition for free-to-air broadcasters challenging.³⁰⁸

a. EU Stance

Public access to sporting events is addressed in the *AVMSD*. Originally the *Television without Frontiers Directive* recognized the public interest factor in specific event broadcasts to establish fair competition.³⁰⁹ The second recital in the preamble outlines its objective:

³⁰¹ Luke Regan & Mark Balcar, *Brexit Beyond the Premier League: The Future of UK Sport*, SPORTS THINK TANK, Oct. 16, 2016), available at <http://www.sportsthinktank.com/blog/2016/10/brexit-beyond-the-premier-league—the-future-of-uk-sport>, [https://perma.cc/GH2E-K6TA].

³⁰² Stewart, *supra* note 42, at 209.

³⁰³ *Id.*

³⁰⁴ Ofcom Media Office, *supra* note 270.

³⁰⁵ Hellier, *supra* note 211.

³⁰⁶ Ofcom Media Office, *supra* note 270.

³⁰⁷ Stewart, *supra* note 42. at 210.

³⁰⁸ *Id.* at 210.

³⁰⁹ Television Without Frontiers, *supra* note 257, at 23.

Audiovisual media services provided across frontiers by means of various technologies are one of the ways of pursuing the objectives of the Union. Certain measures are necessary to permit and ensure the transition from national markets to a common programme production and distribution market, and to guarantee conditions of fair competition without prejudice to the public interest role to be discharged by the audiovisual media services.³¹⁰

The focus of this directive is to ensure the “prevention of any acts which may prove detrimental to freedom of movement and trade in television programmes or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole.”³¹¹ Under Articles 49 to 55 of the *TFEU*, which covers rights of establishment, it states the jurisdiction of the Member State where established applies in the case of dispute.³¹²

Article 2 provides that Member States shall ensure all audiovisual media service providers comply with the rules of the system of law. However, this scope is limited to the communications between Member States.³¹³ It specifically states: “This Directive does not apply to audiovisual media services intended exclusively for reception in third countries and which are not received with standard consumer equipment directly or indirectly by the public in one or more Member States.”³¹⁴ This is also provided for in Article 1: “Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.”³¹⁵

The *AVMSD* essentially ensures that any broadcaster that is established within, and conforms to an EU Member State’s national regulator, is able to freely broadcast content to the other 27 Member States.³¹⁶

“Because of the major part sport plays in the development of a broadcaster’s consumer base, exclusive sales agreements can curtail the establish-

³¹⁰ *See id.*

³¹¹ *Id.* at 24.

³¹² *AVMSD*, *supra* note 254.

³¹³ *Id.* at 38.

³¹⁴ *Id.*

³¹⁵ *Id.* at 38.

³¹⁶ CULTURE, MEDIA AND SPORT DEPARTMENT, DIGITAL SINGLE MARKET: AUDIOVISUAL MEDIA SERVICES DIRECTIVE, 2017, HC, (37812), 9479/16 + ADDs 1–4, Cm. (16) 287 (UK), *available at* <https://publications.parliament.uk/pa/cm201617/cm-select/cmeuleg/71-xxxi/7108.htm>, [<https://perma.cc/2667-JV48>].

ment of new broadcasters who are not parties to the exclusive rights contract.”³¹⁷ The AVMSD attempts to correct this.

b. UK Stance

The sale of broadcast rights for the EPL was first investigated by the Office of Fair Trading in 1999.³¹⁸ Their main concern with the agreement between the EPL and broadcasters was that it would stifle competition, make it too difficult for rival broadcasters to acquire the rights to show live EPL matches and force an artificially high sale price of the rights. This concern was referred to the Restrictive Practice Court, which determined that the benefits to the consumer and the clubs outweighed the anti-competitive disadvantages.³¹⁹

In an effort to provide more access for the consumer, the EPL structure has since changed, allowing for greater game coverage among multiple providers. This has resulted in more games being accessible to the public and has increased consumer choice.³²⁰

3. Post Brexit

Without EU law, when broadcasting rights are renegotiated, the EPL will have no obligation to offer packages to multiple buyers. While increased packages to offer more coverage will likely continue to exist as this is regulated through UK competition law, there is the potential for the EPL to return to a broadcast monopoly.

While options for games will be limited, fans will have full access to all content through one subscription, and the League will have an opportunity to generate increased control in the market.

IX. CONCLUSION AND RECOMMENDATIONS MOVING FORWARD

The details of Brexit are still unknown at this time. Its impacts can only be predicted. Based on primary data analysis and substantial research into secondary sources, this paper has identified a number of challenges and opportunities for the EPL, football players, and other EPL stakeholders moving forward. These are summarized below.

³¹⁷ Stewart, *supra* note 42, at 210.

³¹⁸ Office of Fair Trading v. Premier League (1999) EMLR 78 (UKCLR).

³¹⁹ JAMES, *supra* note 59, at 329.

³²⁰ Daniel Geey, *Collectivity v Exclusivity: Conflict in the Broadcasting Arena*, 11 ENT. L. REV. (2004).

A. Impact on the English Premier League

1. Challenges for the English Premier League

Overall, attaining and retaining EU talent will become difficult. Clubs can expect to face increased costs in both wages and transfer fees to obtain and retain the best talent. Clubs can expect to pay more to have EU players qualify for GBEs and subsequently UK visas. Clubs will face limitations on minor player recruitment and development as EU clubs take advantage of a two-year transfer window which will no longer be available to the EPL. This will provide EU clubs with a two-year advantage in which to obtain and develop youth talent. Subsequently, EPL teams will have a very tight timeline in which have foreign players qualify as Home Grown Players.

In addition to challenges in obtaining and developing players, a number of the top clubs in the EPL are managed by EU nationals. These individuals will likewise face visa restrictions and will no longer benefit from free movement following Brexit.

These challenges indicate the EPL will have increased costs in both wages and transfer fees to obtain the best talent. If they are unable to continue to obtain this talent, the EPL may face a subsequent deterioration in its league reputation following Brexit.

2. Opportunities for the English Premier League

While they will face challenges, the EPL will also have opportunities in the area of broadcasting following Brexit. First, the EPL should look to challenge UK citizens' use of foreign decoders to limit unauthorized viewing. This will force viewers to use UK broadcasts only for game day viewing and will protect the EPL's game day blackout period. Second, the EPL should look to recreate a broadcast monopoly. By continuing to offer multiple packages to a single broadcaster, the EPL will maintain better control of and access to the broadcast market.

B. Impact on Players

Increasingly stringent immigration requirements will apply to hundreds of EU players following Brexit. These players will need to obtain GBEs from their FA prior to the Home Office considering a permit application for a visa. With the ability to obtain a GBE tied to a player's country's FIFA rank, and with the volatility of these ranks, more players may need to go through the Exceptions Panel to obtain a GBE, secure a visa, and subse-

quently be eligible to play in the EPL. In addition, with the devaluation of the pound, these players may have the opportunity to make more by playing in a European League rather than the EPL and may choose to take their talent elsewhere.

UK players will have an advantage, with an opportunity to fill open spots on EPL rosters which would have otherwise been filled by EU players. UK players will become more valuable with no restrictions on their ability to play for UK clubs or teams. However, it may become more difficult for UK players to play in the EU following Brexit, as smaller EU clubs look to obtain equally talented EU players for less cost than they would pay for UK players.

C. Impact on Other EPL Stakeholders

Fans may face restrictions on their ability to watch EPL games live during the EPL's blackout period. For fans who attend local EPL games, there is an additional risk that teams who pay inflated wages to obtain EU players following Brexit will pass these increased costs on to fans through increased ticket prices. For fans who watch games on TV, they may also face these increased costs in the form of increased television subscription fees. For local UK leagues, outside of the EPL, the EPL's ability to enforce game day blackout periods may lead to an increase in viewership as individual consumers, no longer able to live stream during the blackout period, are encouraged to watch local games live. Local business owners who have historically obtained foreign decoders to live stream EPL games may face a decrease in revenues following Brexit.

X. APPENDIX A – LIST OF ABBREVIATED TERMS

Term	Abbreviation
<i>Audiovisual Media Services Directive</i>	AVMSD
British Exit	Brexit
Court of Arbitration for Sport	CAS
Court of Justice of the European Union	CJEU
English Premier League	EPL
European Commission	EC
European Court of Justice	ECJ
European Economic Area	EEA
European Economic Community	EEC
Fédération Internationale de Football Association	FIFA
Financial Fair Play	FFP
Football Association	FA
Governing Body Endorsement	GBE
Regulation of the Status and Transfer of Players	RSTP
<i>Treaty on the Functioning of the European Union</i>	<i>TFEU</i>
Union of European Football Associations	UEFA

XI. APPENDIX B – PLAYER NATIONALITY STATISTICS

Team	Total	UK Players	EU Players	Percentage of EU Players
Arsenal F.C.	26	9	12	46%
A.F.C. Bournemouth	27	17	5	19%
Brighton & Hove Albion F.C.	29	11	14	48%
Burnley F.C.	25	12	7	28%
Chelsea F.C.	25	3	16	64%
Crystal Palace F.C.	28	12	6	21%
Everton F.C.	30	13	8	27%
Huddersfield Town A.F.C.	26	10	9	35%
Leicester City F.C.	26	10	6	23%
Liverpool F.C.	29	18	7	24%
Manchester City F.C.	21	7	12	57%
Manchester United F.C.	25	10	12	48%
Newcastle United F.C.	26	13	9	35%
Southampton F.C.	27	13	10	37%
Stoke City F.C.	25	13	10	40%
Swansea City A.F.C.	26	12	10	38%
Tottenham Hotspur F.C.	24	8	9	38%
Watford F.C.	31	9	13	42%
West Bromwich Albion F.C.	22	17	3	14%
West Ham United F.C.	24	8	6	25%
	522	225	184	

