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## **Brexit, EU and UEFA.**

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### Brexit, EU and UEFA

The UK triggered Article 50 of the TFEU<sup>1</sup> in March 2017<sup>2019</sup> after it voted to leave the EU in what is now popularly known as Brexit.<sup>2</sup> The decision of the UK to initiate Brexit has generated the most interesting topic in the United Kingdom and Europe.<sup>3</sup> The vote to leave the EU has raised many fundamental questions about the manner of the exit and the strategies to be engaged by the stakeholders.<sup>4</sup>

European football is practically the industry which most exemplifies the regional integration principles and practice of the EU. It has largely thrived on the economic freedom principles of the EU; the free movement of goods, services, labour and capital.<sup>5</sup> Football in the UK is also highly characterised by high trans-border mobility which is evidenced by the diverse nationalities of players and staff employed by football clubs.<sup>6</sup> Because of the reliance of UK and European football on the EU economic freedom principles, it is fundamental to pre-empt the issues posed to UK and UEFA football by Brexit.

Foremost, there are concerns about whether Brexit will prevent UK national and club football teams from partaking in the UEFA regulated competitions. It must be noted that UEFA is the continental sport governing body in Europe with extensive economic and regulatory power over European Football.<sup>7</sup> It oversees four main tournaments; the Champions League, the Europa League, the European Championship and the newly introduced UEFA League of Nations;<sup>8</sup> and both national and club football teams in the UK have participated in these tournaments for a long

<sup>1</sup> Article 50 of the Treaty on the Functioning of the European Union is an exit clause introduced by the Lisbon Treaty, which allows EU members to voluntarily leave the Union.

<sup>2</sup> Bongardt, A & Torres, F. 2017. A Qualitative Change in the Process of European Integration. *After Brexit Consequences for the European Union*. Eds. N. C. Cabral et al. Palgrave Macmillian. Chapter 6:102- 127.

<sup>3</sup> McGowan L. 2018. 'Preparing for Brexit, actors, negotiations and consequences.' Palgrave Macmillian. 14.

<sup>4</sup> *ibid*

<sup>5</sup> See Articles 21, 45 and 56 of TFEU for free movement of citizens, persons workers and services within EU member states.

<sup>6</sup> Richard W. et al. March 2017. Will there be a 'Sporting Exception' to Brexit. Retrieved April 18 2019, from [www.arthurcox.com/wp-content/uploads/2017/03/Will-there-be-a-Sporting-Exception-to-Brexit.pdf](http://www.arthurcox.com/wp-content/uploads/2017/03/Will-there-be-a-Sporting-Exception-to-Brexit.pdf)

<sup>7</sup> Geeraert A.2016. 'The EU in international sports governance: A principal-agent perspective on EU control of FIFA and UEFA'. London: Palgrave Macmillian. 14.

<sup>8</sup> *Ibid*.



time. Regarding these concerns, an appraisal of the existing arrangements reveal that Brexit will not preclude UK teams from taking part in UEFA competitions;<sup>9</sup> and this is so because membership of the EU is distinct from that of UEFA.<sup>10</sup>

Therefore, the most controversial point of Brexit on the UK and European football lies in the free movement of persons rendering or enjoying football services (football players, staff and fans) in and out of the United Kingdom.<sup>11</sup> EU footballers in the UK currently enjoy the ability to work and live freely in the UK as provided for in the TFEU.<sup>12</sup> This will no longer be the case once Brexit has been concluded.<sup>13</sup> It noteworthy that agreements were reached on December 8 2017, and March 19 2018, that EU nationals who are in the UK before the Brexit date will enjoy the same rights that they do now and that athletes will also qualify for 'settled status' in five years, if they can show they resided in the UK before December 2020.<sup>14</sup> There is hope for continuous enjoyment of these rights by future football professionals is if a 'soft Brexit' is achieved; whereby reciprocal agreements or exemptions guaranteeing the preservation of these rights are reached between the EU and the UK during the exit negotiations.<sup>15</sup>

In the face of a 'hard Brexit', EU professionals in the UK will be subjected to the same strict criterion which currently applies to non-EU players.<sup>16</sup> The UK will also be handicapped in

<sup>9</sup> Foster A. June 22 2016. Brexit: What would happen to UEFA if Britain leaves the EU. Retrieved on April 18, 2019, from <https://www.express.co.uk/sport/football/673203/Brexit-what-happens-to-UEFA-if-Britain-leaves-EU-referendum-2016>.

<sup>10</sup> For example, Russia and Switzerland are non-EU members, but their national teams and clubs take part in UEFA competitions. The headquarters of UEFA is also situated in Switzerland, a non-EU country.

<sup>11</sup> Richard, *op cit.* note 6.

<sup>12</sup> Pennington Manches. Brexit and its impact on the sports industry. Retrieved on April 18, 2016 from <https://www.penningtons.co.uk/media/141579/brexit-and-its-impact-on-the-sports-industry.pdf>

<sup>13</sup> *ibid*

<sup>14</sup> Joint Report on progress during phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU. Retrieved on April 18, 2019 from [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/665869/Joint\\_report\\_on\\_progress\\_during\\_phase\\_1\\_of\\_negotiations\\_under\\_Article\\_50\\_TEU\\_on\\_the\\_United\\_Kingdom\\_s\\_orderly\\_withdrawal\\_from\\_the\\_European\\_Union.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/665869/Joint_report_on_progress_during_phase_1_of_negotiations_under_Article_50_TEU_on_the_United_Kingdom_s_orderly_withdrawal_from_the_European_Union.pdf)

<sup>15</sup> Ioanna N. 2017. Post-Brexit models and migration policies: possible citizenship and welfare implications for EU nationals in the UK. *After Brexit Consequences for the European Union*. Eds. N. C. Cabral *et al.* Palgrave Macmillian. Chapter 12: 245-270.

<sup>16</sup> For non-EU players to obtain work permits in the UK, they must have played a required percentage of international matches (dependent on FIFA rankings) in two years preceding the applications. On the other hand, the club may have to show that it is ready to pay the player annual wages above the league average. Other strict criteria are applied upon appeal against a failed application. See Premier League Handbook Season 2018/19. p.551. Retrieved on April 18, 2019 from <https://pulse-static-files.s3.amazonaws.com/premierleague/document/2018/09/19/ef4c62c9-6b19-4189-a064->



recruiting professionals under the age of 18 because it will then cease to enjoy the exceptive privilege granted to EU countries under FIFA regulations.<sup>17</sup> This may create a competitive disadvantage for UK football clubs against their European counterparts in recruiting u-18 players; as UK clubs will no longer enjoy the freedom to transfer u-18 players within the EU territory. UK players will also be subject to quota restrictions for non-EU citizens in EU countries, thereby reducing the chances of playing outside the UK. However, there may be a positive side to the above. It has been argued that Brexit may lead to the development of local content of UK football. This is because the competition of foreign players with homegrown professionals will be reduced and it may lead to the growth and success of UK football particularly in its national teams.<sup>18</sup>

Another controversial question is of which legal regime will be applicable to regulate the relationship between UK football, UEFA and the EU after Brexit. Theresa May has suggested that the UK will not submit itself to EU laws after Brexit as she proposed a future Britain which is in control of its laws. She stated that Britain will not accept a role for the CJEA to have direct legal authority in the UK as "would to all intents and purposes mean not leaving the EU at all".<sup>19</sup>

UEFA has tried to avoid EU control in its short history, but it has always deferred to the ✓ CJEU for legal and judicial governance of football activities and disputes.<sup>20</sup> The CJEU is granted authority to interpret the relevant provisions of EU law and to undertake judicial review of the EU's acts<sup>21</sup> and this has extended to footballing matters which are economic. This extension is

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d212cbf68ce7/PL Handbook 2018-19 Digital.pdf . These criteria, if applied would have prevented players like World Cup winner, Ngolo Kante from playing professionally in the UK and at least 332 others as of 2016. See Ryan K. March 2019. How Brexit will affect Premier League football. Retrieved on April 18, 2019 from [www.goal.com/en-ng/news/how-brexit-will-affect-premier-league-football/](http://www.goal.com/en-ng/news/how-brexit-will-affect-premier-league-football/)

<sup>17</sup> Article 19(1) & 19(2) of FIFA Regulations on Status and Transfer of Players prohibits the international transfer of players under the age of 18 except *inter alia* the transfer takes place within the territory of the EU or EEA.

<sup>18</sup> Crystal Palace Chairman Steve Parish argued that the EU has acted as a bar to talent outside the EU. He said that Brexit will ensure that the UK will not be compelled to seek EU players because of current regulations thereby making it easier to sign non-EU players. That now UK clubs will seek to sign from other countries of the world because of a level playing field. He said it will also stop the signing of "a lot of kids" from Europe at the expense of British players. See Brexit: What effect could leaving the European Union have on football transfers? Retrieved on 18 April, 2019 from [www.bbc.com/sport/football/46038799](http://www.bbc.com/sport/football/46038799)

<sup>19</sup> Politics Home. January 17 2017. Theresa May's full speech outlining Britains's 12 point plan for Brexit. Retrieved on April 18, 2016 from [www.politicshome.com/news/europe/eu-policy-agenda/brexit/news/82451/read-theresa-mays-full-speech-outlining-britains-12](http://www.politicshome.com/news/europe/eu-policy-agenda/brexit/news/82451/read-theresa-mays-full-speech-outlining-britains-12)

<sup>20</sup> Geeraert, *op cit.* note 7: 83.

<sup>21</sup> Pollack M. 2003. *The engines of European integration. delegation, agency and agenda-setting in the EU*. New York: Oxford University Press. 160-163.

because the TFEU which lies at the heart of EU's foundation for the free movement of persons and free competition within the EU single market has usually been a cornerstone of UEFA's activities. The most notable CJEU influence is the 'Bosman ruling' where it held that players who are out of contract are allowed to move freely within the EU without demands for transfer fees.<sup>22</sup> This ruling gave far-reaching effects to EU internal market law on UEFA and FA transfer activities. Another of CJEU decisions on the application of the economic freedom principles to sports is the 'Kolpak ruling' where the court held that citizens of countries which have signed European Union Association Agreements have the same right to freedom of work and movement within the EU just like its citizens.<sup>23</sup> An interesting aspect of the 'Kolpak ruling' is that in case of a 'soft brexit', UK football professionals may still qualify as Kolpak citizens in EU football industry provided the EU & UK maintain free trade treaties.

At the moment, the idea of the UK changing its mind on Brexit seems farfetched, although it is still been promoted by 'Remainers'.<sup>24</sup> The Brexit situation of football in the UK highlights several issues which may not yet be fully comprehended until Brexit is concluded. The importance of football to the UK economy presents challenges to the UK to create a soft landing for the football industry. It will be beneficial to stakeholders that the UK and EU will be able to reach trade agreements that will protect and guarantee the rights enjoyed by EU citizens in the UK and vice-versa at the emergence of the post-Brexit era.

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<sup>22</sup> Union Royale Belge des Societes de Football Association ASBL v. Jean-Marc Bosman (C-145/93).

<sup>23</sup> Deutscher Handballbund eV v Maros Kolpak (C-438/00).

<sup>24</sup> Francis J. 2018. *"The EU after Brexit: institutional and policy implications"*. Palgrave Macmillian. p.99.



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