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The Consequences of Brexit for British Football and the Impact on Football Law

Dr. Gregory Ioannidis¹

Introduction

After a series of political manoeuvres and parliamentary, constitutional, and judicial controversies, the government has triggered article 50, which opens the door for Britain's exit from the EU. This decision will have a major effect on every facet of people's lives and it will create several socio-economic ramifications. Football is one of the areas that it is anticipated it will be affected. Given the significant role football plays in society, with its considerable financial parameters, Brexit and its consequences for British football cannot be dismissed at face value.

Free movement

One of the four fundamental freedoms guaranteed by the European Union (EU) is the right of EU citizens to move freely within the member states of the EU for the purposes of employment. As things stand, EU citizens (including football players currently working in the UK) will continue to enjoy this freedom, until the Brexit process has been completed. Upon completion of the Brexit process, the government must have in place an agreement, which determines its relationship with the EU and consequently the rights of EU citizens in the UK.

In the premises, it is difficult to pre-determine the stance of both parties to this negotiation process. Given that rights of millions of people will be affected and, if prudence and logic prevail, it is highly likely concessions will be made by both parties and the negotiated settlement may produce a 'freedom of movement' outcome, which remains unchanged and/or by and large, maintains the main pillars of such freedom.

In the event, however, where there is no agreement as to the particulars of such relationship, the UK will be forced to negotiate different individual agreements with different member states of the EU, making the process, thereby, time-consuming, expensive and uncertain. This will have an impact on EU players who will be unable to move freely and seek employment in the UK. Although an argument has been made that those EU (including EEA) citizens already residing in the UK prior to Article 50 being triggered should be afforded the existing rights, including the right to work, the current government has refused to offer such blanket rights to EU/EEA citizens, unless there is a reciprocal arrangement for British citizens who currently reside in the EU. This, of course, creates a political

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anathema with serious economic and social ramifications, as the lives of individual citizens are being used as bargaining tools in this uncertain negotiation process.

Brexit and The FA's Work Permit system

The legitimate aim pursued by FIFA and UEFA and, consequently shared by The FA, is the development of national (local) players, hence, the creation of regulations that aim to restrict free movement in football. This means that every non-EU football player must apply for a Governing Body Endorsement (GBE) to The FA, before a work permit could be issued by the Home Office. Such permit can automatically be given to the applicant, if the latter has satisfied several stringent criteria that depend on the applicant's percentage of senior competitive matches with his national team, in the two years preceding his application. Such percentages are determined by FIFA's world ranking system:

- Ranking 1-10: 30% and above.
- Ranking 11-20: 45% and above.
- Ranking 21-30: 60% and above.
- Ranking 31-50: 75% and above.

In the event the applicant is unable to meet such criteria, there is an appeal (review) process, based on a points system, which takes into consideration the player's transfer fee (if any), the salary agreed for his services and how relative such salary is in comparison to salaries of other players in the league. Points could also be awarded to the applicant where consideration is given to the applicant's previous league and the level his previous club belonged to.

Notwithstanding the fact that the current work permit regulations were established for the best non-EU players, it is reasonable to suggest that the Brexit outcome will force The FA to re-consider and, possibly, re-adjust the current regulations, to accommodate not just the non-EU players, but also the EU players, in a future scenario where there is a failure of a trade agreement (and a freedom of movement and services agreement) between the UK and the EU.

It is submitted, that such re-adjustment will be the point of severe friction between The FA and the Premier League, as it is evident there are conflicting interests between the two regulators. The FA's primary consideration, on one hand, is a strong national team and, consequently, the development of national young players. This can only be achieved if such young players are given opportunities at the elevated level of competition that the Premier League can offer. On the other hand, the Premier League has a vested interest in maintaining a competitive league through strong individual clubs, who can employ the best players from around the world. This means that the less restrictions on the

movement of players, the higher the chances that the best EU and non-EU players could be attracted by the competitive and highly lucrative Premier League.

In the premises, it is submitted that the outcome of the UK's negotiations with the EU would also trigger a series of events, that, in the long term, could affect severely the competitiveness of domestic football in the UK. A restriction on the ability of clubs to recruit the players they desire, may affect their ability to create competitive squads. If British clubs are unable to compete effectively with their European counterparts, in the long term, the national product may suffer in terms of revenue that can be identified in sponsorship, broadcasting rights, merchandise sales, etc. Eventually, it would be a decision as to whether the national team is more important than individual clubs and, therefore, can justify the continuation of restrictive practices, as opposed to an exception to immigration controls for football players. The latter is a matter that must be decided upon by the government. Although the Chancellor suggested, last year, that highly skilled and highly paid workers from the EU would be exempt from post-Brexit immigration controls, it is highly likely that football players may not be included in the former category and, consequently, they may fail to gain such exemption.

The Importance of FIFA's Article 19

The impact assessed in the paragraphs above could become greater if the UK government fails to reach a satisfactory agreement on trade tariffs and free movement of people and services. *Article 19 of FIFA's Regulations on the Status and Transfer of Players* states that international transfers, save for a limited number of exceptions, are only permitted for those who are over 18 years of age. One of these exemptions applies to players of EU/EEA origin, in which case the restriction is relaxed, to allow international transfers for those who are sixteen to eighteen years of age. If the UK fails to reach an agreement with the EU, it is submitted that UK clubs, could potentially lose the exemption to Article 19. The ramifications of such loss are great, considering the financial and football regulatory implications arising from a club's inability to recruit young players. Notwithstanding UEFA's restrictions placed on international transfers, regarding the *Financial Fair Play Regulations* and *Article 19's* applicability, where no EU/EEA countries are concerned, UK clubs will find themselves in a compromising situation, with inability to recruit players either way. The exemption to Article 19, in particular, is significant, as clubs prefer to recruit young talented players, in order to minimise costs and see a greater return in their investment of developing such young players.²

² The loss of the exemption to Article 19 could potentially affect the UK clubs' ability to make effective use of the *Home Grown Rule* regarding their EU players, for the purposes of UEFA competitions. Currently, clubs must register 25 players for the purposes of European competitions, 8 of which must be club trained or association trained. To be club trained, a player must have been registered with his current clubs for at least three seasons between the ages of 15-21.

Conclusion

This development is fascinating for sports lawyers, given the uncertainty surrounding the potential implications for football law and the broader legal discipline of sports law. The same cannot be said, however, for those in charge of football clubs in the UK and those who are responsible for the regulatory framework of the sport. In the author's respectful submission, it is likely that the tension between The FA and the Premier League will grow bigger, particularly if any potential pressure (surprisingly enough by the two aforementioned 'enemies' working together) against the government, to grant an exemption to football players from post-Brexit immigration controls, yields no results.

Although it is highly unlikely the football authorities in the UK would desire to place further restrictions on Bosman transfers³, it is envisaged that some form of restriction in the recruitment of EU players could be imposed on UK clubs. This may, as a matter of fact, materialise should the UK government fail to implement a beneficial agreement on tariff-free trade and/or on the free movement of workers and services. This 'hard Brexit' scenario will make European football clubs more competitive and, in the long term stronger, on and off the pitch. On the other hand, it could possibly strengthen the local and national young players' production, as more opportunities, for participating at a higher level, could be created for such young players. Consequently, any decision to place restrictions or not on the clubs' ability to recruit players of their preference, will be based on political considerations, that would affect the future of UK football, as well as the development of football law.

³ *Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman (1995) C-415/93* (known as the **Bosman ruling**) is a 1995 European Court of Justice decision concerning freedom of movement for workers, freedom of association, and direct effect of article 39 (formerly 48) of the EC Treaty.