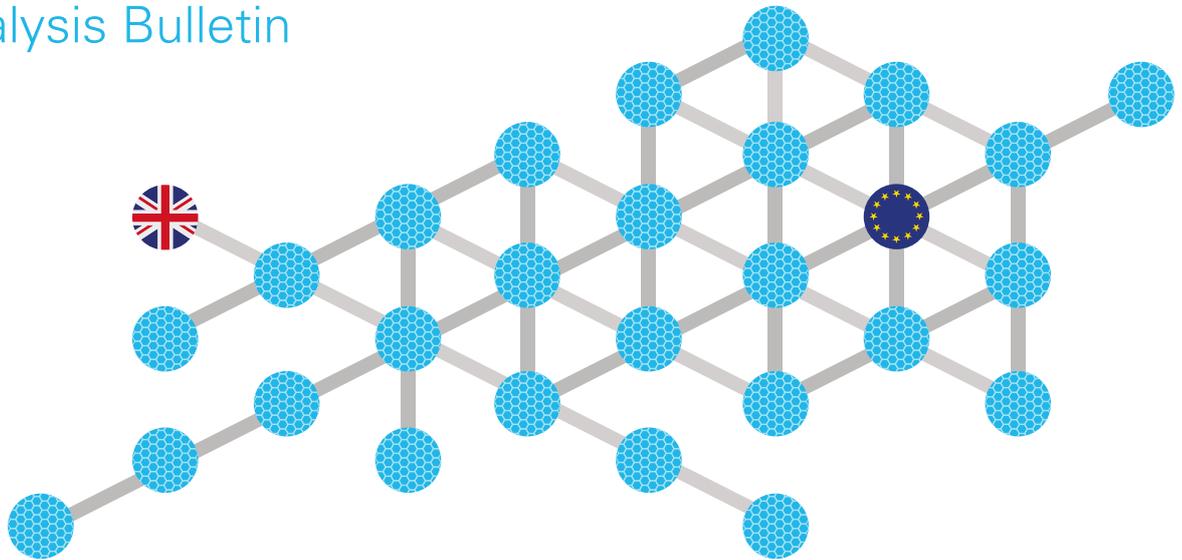


Brexit Analysis Bulletin

Sports



The sports sector embraces a vast number of sports, businesses and governing bodies within the UK. It has enormous social and cultural value to citizens as well as economic value but little has been said about it in the context of Brexit. Brexit is likely to impact on sports in a range of ways, many of which will depend on the relationship that the UK negotiates with its nearest neighbours following a Brexit. Accordingly the exact details of how a Brexit will play out in the sporting arena are not entirely predictable. This note however focuses on a number of key issues including freedom of movement and the listed events regime as well as the potential impact of a withdrawal on the collective selling of rights.

Background

Economic activity relating to sports consumption or participation contributes £20.3bn in total direct GVA to the UK economy according to Sport England. Of this, EY estimates that the Premier League and the 20 Premier League clubs, contributed £2.2bn directly in GVA in 2013/14. If indirect and induced contributions are taken into account the Premier League and the 20 PL clubs contributed £3.36bn to UK GDP in the same year. In addition to the direct benefits of sport noted above, Sport England estimated that sports' volunteering alone had an economic value of £2.7bn a year. In 2012, Deloitte calculated that there were 75m separate attendances at professional sports events in the UK and that there were approximately 151,000 different sports clubs in the UK. Sport, therefore, is a valuable contributor to both the social and economic framework of the UK.

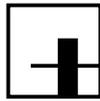
The impact of a loss of free movement

If following a Brexit, a deal under which free movement between the countries of the European Union is not reached, then all UK professional sports people who are required to travel to other countries within the current European Union to participate in events will be impacted.

Golfers on the European tour may need to apply for individual visas or work permits to allow them to compete in individual countries.

Given the huge number of athletes and teams across a wide range of sports who travel to compete in tournaments and events, this change will affect not only individual athletes but organisers and promoters of events as well.

Within the UK, the loss of free movement is a worry for professional sporting leagues who are concerned about their ability to recruit the best players post Brexit. Since the 1995 Bosman case and the creation of the Premier League there has been a growing migration of EU and EEA players into the UK to play in the Championship and the Premier Leagues. This migration relies on the freedom of movement provisions within the EU treaty. Rugby Union clubs have also benefited from the freedom of movement provisions to allow them to bring in predominantly French and Italian players, though this has occurred to a more limited extent than their football counterparts.



Not all parties have been happy about the alleged impacts of freedom of movement, particularly in respect of football. In May 2014 the FA Chairman's England Commission report (the Report) expressed the view that freedom of movement had been a one way street with very few UK players taking up the opportunity to play in European leagues. At the time the report stated that "whilst 43% of the Spanish squad and 37% of the French national squad have appeared in the Premier League, only one current senior England international plays outside of Britain". The Report argued that at the time the England national selectors were disadvantaged when compared with their German or Spanish counterparts because the number of EU foreign players in the Premier League and Championship was crowding out English players and therefore giving the English selectors a more limited pool to draw upon.

Were freedom of movement to be lost, what rules would apply to EU and EEA players in football and rugby?

In respect of football, would they mirror the recently tightened rules that the FA introduced along with the Home Office to govern the eligibility of players from non EU/EEA countries? The current rules governing non EU/EEA players provide that in order to be eligible to play in the UK, players from a nation that is ranked in the top 10 in the FIFA rankings must have played in 30% of their nation's international games in the two years prior to their application for a work permit. Players from countries ranked 11 -20 in the rankings need to have participated in 45% of their countries' games over the preceding two years. Finally for nations ranked 21-30, players must have participated in 60% of those countries' international games and the bar is set at 75% of games for countries ranked 31-50 in the FIFA rankings.

The Rugby Football Union has also been recognised by the UK Border Agencies as the body responsible for issuing endorsements for foreign players (i.e. players who are not EU/EEA or Association Agreement countries). Currently the RFU's requirements for granting a player an endorsement differ as between first and second tier rugby nations and others.

Players from first or second tier rugby nations must have started at least one full international match (15 a side) during the 15 months prior to their application. Players from nations outside the first or second tier must have started in an international match in the last 15 months and over the course of their career must have played in a minimum of 10 full internationals.

Analysis by the BBC of English Premier League and Championship squads and Scottish Premiership Squads have revealed that a total of 332 football players would

not meet the current FA foreign criteria if they were to be imposed on EU/EEA and Association Agreement players. If this were the case it could have a dramatic impact on the make up of individual squads (dependent on whether existing players had been in the UK long enough to apply for permanent residency). Whilst some might see this as a benefit for UK players, many football club officials see this potential outcome as a disaster not only in terms of the quality of the football played but in economic terms as well.

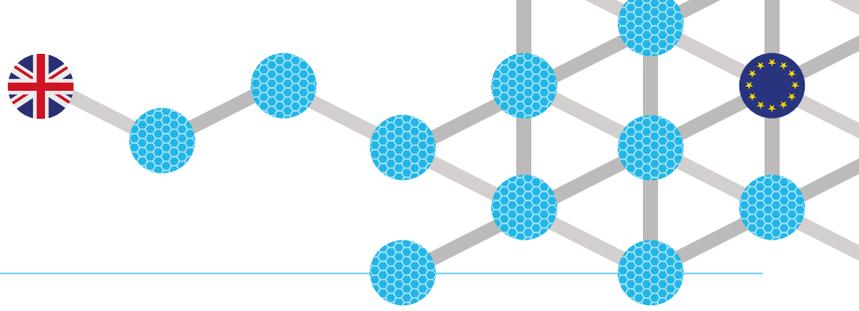
Whether the existing foreign player rules would be imposed on EU/EEA players or whether new rules would be negotiated is, at this stage, unclear and therefore the impact on UK rugby union and football post the two year negotiation period of a leave vote remains unknown. It will depend largely on the final form of the UK's relationship with its neighbours post Brexit and/or the clout of sport in negotiating special work permit arrangements.

It is possible however that English football could lose ground to other European leagues such as Serie A or the Bundesliga who will remain unrestricted in their ability to target EU players.

Listed Events Regime

The Broadcasting Act 1996 makes provision for the Secretary of State to designate a key sporting or other event as a "listed event". Listed events consist of List A where full live coverage is protected including events such as the Olympic Games, the FIFA World Cup, the European Football Championships Finals Tournament, the Rugby World Cup Finals and the Wimbledon Tennis Finals and List B where secondary coverage is protected and which includes the Commonwealth Games, The Ryder Cup and The Open amongst other events. The right to broadcast List A events in full or the highlights of List B events must be offered to a qualifying broadcaster; that is a broadcaster whose service is free to at least 95% of the UK population.

The listed events regime, although enshrined in UK legislation flows directly from the EU AudioVisual Media Services Directive (AVMSD) and there is the possibility that if the UK were to leave the EU, sports rights owners would lobby heavily either for a complete withdrawal or amendment of the legislation. The types of arguments that would be made can be seen in the response of the Sports Rights Owners Coalition (SROC) to the recent EU consultation on the AVMSD. The SROC argued that a regime for listing events was no longer necessary given that pay TV penetration was over 60% in at least 20 EU states and was over 90% in nine EU countries. They argued that the requirement for a listed events regime was no longer justified.



Following a Brexit, the UK would be free to make its own choices as to whether to retain such a regime. Any abandonment of such a regime or even a substantial amendment of it is likely to have a positive impact on the value of the broadcast rights of events currently on the list within the UK. At the same time however, such a move is likely to attract public dissatisfaction, given the recent negative reaction of the public to Formula 1 moving their live coverage exclusively to Sky.

There is also a question as to whether current EU jurisdictions following a Brexit would make particular UK events List A in their own countries which would diminish broadcasting rights value in those countries. To take an extreme example, if France and Italy chose to argue under their regimes that the English Premier League was a key sporting event and should be listed either on list A or B that would not only seriously diminish the international value of those rights but would also impact on the UK value. Even if such a scenario might be considered unlikely, the reality is that post Brexit, the UK government would lack the influence to argue against such a move.

In addition, currently the Broadcasting Act also provides for Ofcom to give consent before a broadcaster transmits coverage of events to other EEA states where that event has been listed in that state. Even if states were not to go further and list new events, exactly how the interaction between different countries designated lists would be dealt with following a Brexit is unclear.

Collective Selling of Rights

Collective selling of broadcast rights is the current foundation on which sports coverage of the English Premier League is founded. The current way in which that collective selling takes place has been heavily shaped by the commitments given by the Premier League to the European Commission in 2006 in order to respond to the Commission's concerns that the collective selling arrangements were in breach of Article 81 (1) of the Treaty (now 101(1) TFEU).

Those commitments which expired on 30 June 2013 saw the Premier League commit: *i*) that no single buyer would be allowed to buy all packages; *ii*) to an increase in the number of packages available from four to six; *iii*)

to an increase in the number of radio rights and mobile rights being made available; and *iv*) to a specific way in which the bidding process would be run. Although the commitments have expired, the Premier League continues to follow the key tenants of the commitments.

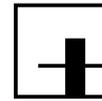
Interestingly the collective selling of rights by the Premier League is once again being investigated but this time by Ofcom who is examining the allegations to see whether there has been a breach of the UK Competition Act or Article 101 of the Treaty. In doing so it is currently heavily influenced by European case law. Although the role of EU case law in Ofcom's analysis may diminish in scope under a Brexit, the fact that UK competition law mirrors that of the EU means that unless there is legislative change to the Competition Act, the approach of Ofcom is unlikely to change radically. Therefore it is unlikely that in respect of this particular investigation and the sale of collective rights in the future that a Brexit would provide greater freedom to the Premier League.

Conclusion

For many UK citizens sport is a fundamental part of their social identity and their cultural life. It is also a huge contributor to the UK economy. How the issues we have outlined above in regard to sport and many others will be dealt with post a possible Brexit, is therefore extremely important.

Currently the quality of many of the sporting events enjoyed by UK is based largely on the fact that broadcasting and sponsorship revenues allow clubs or events within the UK to field the best players and deliver exciting levels of entertainment both live and through high quality broadcasts. If Brexit impacts on either the ability to generate broadcast and sponsorship revenues or the ability to attract the best players and athletes to compete in the UK, then the quality of competition is likely to dissipate and with that the support of both consumers, sponsors and broadcasters.

How the UK interacts with its nearest neighbours post Brexit therefore would not only impact sports broadcasters and rights owners but sports clubs and those who follow sport at both the professional and the amateur level.



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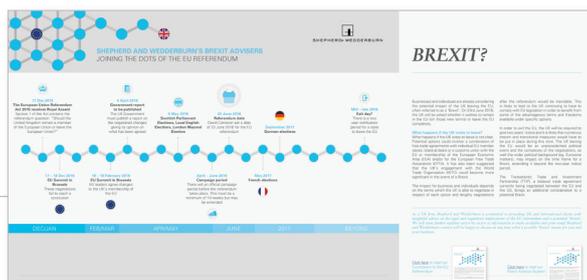


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