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Walter Champion

Daniel Lee

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A NEW ORDER IN A WORLD IN MOTION: BREXIT AND ITS IMPACT ON THE BRITISH PREMIER LEAGUE

WALTER CHAMPION* & DANIEL LEE**

I. INTRODUCTION

The United Kingdom's 2016 referendum decision to leave the European Union, colloquially referred to as Brexit, halted then reversed a decades long trend of European integration that emerged after World War II.¹ One of the key issues at the heart of the Brexit debate was that of sovereignty and the perception that European Union law, which considers free movement of labor to be a fundamental right, was an infringement on the United Kingdom's sovereignty.² The unprecedented events that led to the withdrawal of a

* Professor of Law, South Texas College of Law Houston.

** J.D. Candidate, South Texas College of Law Houston. I would like to extend special thanks to Professor Champion for his insight and encouragement, and Joe Brucker for his contributions throughout the editing process.

1. See Erin Blakemore, *How the European Union rose from the ruins of WWII*, NATIONAL GEOGRAPHIC, (Oct. 10, 2010), <https://www.nationalgeographic.co.uk/history-and-civilisation/2019/10/how-the-european-union-rose-from-the-ruins-of-wwii> [<https://perma.cc/9NHS-2TKH>] (“The EU has roots in the devastation of World War II. In 1945, Europe’s economy was in shambles. Huge swathes of the population were homeless or displaced. And as European industries tried to get back on their feet, political tensions split East and West in a rising Cold War. Economic instability and the spectre of hyperinflation—the exact conditions that earlier had helped give rise to German fascism and pave the road to World War II—prompted post-war European leaders to act. Officials banded together to sidestep conflict through economic means.”).

2. See Ralph C. Bryant, *Brexit: Make hard choices but don't confuse sovereignty with autonomy*, BROOKINGS (Dec. 21, 2018), <https://www.brookings.edu/blog/up-front/2018/12/21/brexit-make-hard-choices-but-dont-confuse-sovereignty-with-autonomy/> [<https://perma.cc/WCF8-FB34>] (“British debate about exit from the European Union (‘Brexit’) has been dominated by yearning for ‘restoring U.K. sovereignty.’ Pro-Brexit advocates want Britain to ‘take back control’ from European Union governments and bureaucrats. . . Regulation and oversight of immigration from Europe is more controversial. Some British residents complain, for example, that the free movement of labour within the EU has led to a surge of

member state from the European Union created a significant number of important legal, financial, and economic issues that required resolution. The loss of member state access to the European single market – collateral damage caused by Brexit – required the dissolution then redefining of trade terms between the European Union and United Kingdom and became a source of friction between the parties as well as a cause of global economic anxiety.³ The withdrawal of the world’s then fifth (now sixth) largest and European Union’s second largest economy, particularly one as important in political influence as the United Kingdom, affected every industry and required a wholesale reframing of British trade and foreign policy positions and agreements.⁴ This also required businesses to adapt to a new and changing environment.

The effect of Brexit on one of the highest profile institutions based in the UK, the British Premier League, was of particular interest to the global sports and business audience. To the detriment of British Premier League teams’ recruitment efforts and overall competitiveness, player and staff recruitment from European Union nations has become a more difficult, complicated, costly, and uncertain process. High-profile transfers in the sport are al-

Europeans coming into the UK, taking jobs away from locals, flooding the schools with their children, committing crimes. Emotions can run high about threats to national culture and traditional ways of life. In turn the U.K. governments experience strong pressure to reduce the ease of movement of Europeans crossing the U.K. border.”).

3. See Yan Q. Mui, *‘Brexit’ could send shock waves across U.S. and global economy*, WASHINGTON POST (Jun. 18, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/06/18/how-brexit-could-hurt-america/> [<https://perma.cc/W3Q7-MRHA>] (“Britain’s departure from the European Union could send shock waves across the global economy and threaten more than a trillion dollars in investment and trade with the United States. International policymakers are ramping up their warnings of the dangers of a British exit - popularly known as ‘Brexit’ — from the political and economic alliance that has united Europe for the past four decades. Voters in Britain will decide whether to leave or remain in the European Union in a referendum on Thursday, but financial market volatility has already spiked as polls show a growing desire to abandon the partnership.”).

4. See Stephen Fidler & Laurence Norman, *After Brexit, Britain Has to Redefine Ties with EU*, WALL STREET J. (Dec. 13, 2010), <https://www.wsj.com/articles/british-vote-is-likely-to-bring-brexit-but-not-end-brexit-divisions-11576192787> [<https://perma.cc/VR8Q-X7SL>] (“Once Britain leaves the EU, negotiations will start over a complex and divisive question: What should be the U.K.’s future relationship with the huge trading bloc on its doorstep? The debate will echo the political arguments of the past three years over Brexit and is likely to mark an enduring divide in British politics.”); see also Philip Aldrick & David Goodman, *UK Slips Behind India to Become World’s Sixth Biggest Economy*, BLOOMBERG (Sept. 2, 2022), <https://www.bloomberg.com/news/articles/2022-09-02/uk-slips-behind-india-to-become-world-s-sixth-biggest-economy?leadSource=uverify%20wall> [<https://perma.cc/3SZ5-PGHY>] (explaining that India’s gross domestic product (“GDP”) has surpassed UK’s GDP based on data from International Monetary Fund).

ready some of the most expensive, complicated, and speculative investments in the sporting world. Further, these transfers are creating additional bureaucratic hurdles that will give club teams from Europe a significant competitive advantage over British teams.

II. OVERVIEW

The United Kingdom (“UK”) and European Union (“EU”) have since agreed to the EU-UK Trade and Cooperation Agreement, a comprehensive free trade agreement covering the movement of labor.⁵ Since the signing of the agreement in late 2020, the effects of Brexit are more readily observable.⁶ This paper’s purpose is to compare the difference between pre and post-Brexit work permit requirements and processes, then evaluate their impact on the British Premier League (“BPL”) and its teams.

In Section III, this paper will provide background on the various financial, legal, and political issues that shaped the final years of the pre-Brexit era of European football, particularly the influence of the EU law precept that freedom of labor mobility is a fundamental right.⁷ Subsequently, the growth of the BPL, the drivers of that growth, and the subsequent changes to British football caused by that growth, will be examined.⁸ In Section IV, this paper will analyze pre and post-Brexit employment law issues as they re-

5. See *The EU-UK Trade and Cooperation Agreement*, EUROPEAN COMMISSION (last visited Dec. 18, 2022) https://commission.europa.eu/strategy-and-policy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en [<https://perma.cc/9H2Q-JZ3D>] (“The EU-UK Trade and Cooperation Agreement concluded between the EU and the UK sets out preferential arrangements in areas such as trade in goods and in services, digital trade, intellectual property, public procurement, aviation and road transport, energy, fisheries, social security coordination, law enforcement and judicial cooperation in criminal matters, thematic cooperation and participation in Union programmes. It is underpinned by provisions ensuring a level playing field and respect for fundamental rights. While it will by no means match the level of economic integration that existed while the UK was an EU Member State, the Trade and Cooperation Agreement goes beyond traditional free trade agreements and provides a solid basis for preserving our longstanding friendship and cooperation.”).

6. See Andrew Atkinson, *Brexit Is Costing the UK £100 Billion a Year in Lost Output*, BLOOMBERG (Jan. 30, 2023), <https://www.bloomberg.com/news/articles/2023-01-31/brexit-is-costing-the-uk-100-billion-a-year-in-lost-output> [<https://perma.cc/SNT2-GQPS>] (“However, it is clear that UK economic performance started to diverge from the rest of the Group of Seven following the 2016 vote to leave the EU, and has widened since.”).

7. For further discussion of background of the financial, legal, and political issues that shaped pre-Brexit era of European football, see *infra* notes 6–51 and accompanying text.

8. For further discussion of growth of BPL see *infra* notes 52–89 and accompanying text. This paper considers the terms “football” and “soccer” to be interchangeable.

late to BPL players and staff, the current and predicted impacts on the league and its teams, and present mitigation strategies clubs can employ to cope with these impacts.⁹ Lastly, this paper will conclude on its findings and assertions and briefly address the proposed European Super League.

III. BACKGROUND

Soccer is, by far, the world's biggest sport as measured by number of fans with sources estimating there are approximately four billion soccer fans worldwide.¹⁰ Therefore, a little over half the world's population is estimated to be soccer fans.¹¹ As a result, the sport has an inherent international quality that is more pervasive than in any other sport. This is not surprising considering the simplicity of the game and how various cultures claim to have played precursors of the sport in antiquity or the Middle Ages.¹² For instance, there is documented evidence of similar games played by civilizations from Central America, China, Australia, Greece, Italy, and the British Isles.¹³

However, the modern version of soccer can be traced back to 19th century Britain.¹⁴ It began as an extension of less organized versions of a game played throughout the Middle Ages among different villages, now referred to as "mob football."¹⁵ Around the mid 19th century, concerted attempts to standardize the rules of the game by students from the University of Cambridge resulted in the

9. For further discussion of post-Brexit employment law issues, see *infra* notes 90–140 and accompanying text.

10. See *Most Popular Sports in the World – (1930/2020)*, STATISTICS & DATA (last visited Sept. 10, 2022), <https://statisticsanddata.org/most-popular-sports-in-the-world/> [<https://perma.cc/7UUK-TLC7>] (explaining that football is most popular sport globally).

11. See *U.S. and World Population Clock*, US CENSUS BUREAU (last visited Sept. 10, 2022), <https://www.census.gov/popclock/> [<https://perma.cc/XX3R-TBNT>] (providing population of world).

12. See *Football History*, FOOTBALLHISTORY.ORG (last visited Sept. 10, 2022), <https://www.footballhistory.org> [<https://perma.cc/5B89-4Q7P>] (documenting similar sports played by civilizations prior to modern version of soccer).

13. See *id.* (documenting similar sports played by civilizations prior to modern version of soccer).

14. See Richard C. Giulianotti, *Football-Soccer*, BRITANNICA (Aug 25, 2022), <https://www.britannica.com/sports/football-soccer> [<https://perma.cc/CP6L-VH2S>] (explaining how modern version of soccer began).

15. See Michael J. Madison, *Fair Play: Notes on the Algorithmic Soccer Referee*, 23 VAND. J. ENT. & TECH. L. 341, 358 ("The modern game of soccer was codified in the late nineteenth century in England and Scotland out of various versions of so-called 'mob' football that were common in rural communities and later in working-class towns and villages.").

“Cambridge rules.”¹⁶ The influence of these rules spread as some of these Cambridge students later formed the first football clubs.¹⁷ These collaborations eventually led to a formalization of soccer with the formation of the Football Association (“FA”) in 1863, and English Football League (“EFL”) in 1888.¹⁸ The establishment of the FA and EFL lead to further standardization and professionalization of the sport.¹⁹

In the early 20th century, soccer began to expand into other countries in Europe and South America.²⁰ This created a need for a governing body to oversee and administer transnational competitions.²¹ As a result, in 1904, the Fédération Internationale de Football Association (“FIFA”) was established.²² Approximately a quarter century later, FIFA established the World Cup creating the first major international soccer competition.²³ Regional tourna-

16. See Bob Braunwart & Bob Carroll, *Before the Beginning: The Roots of Pro Football*, THE COFFIN CORNER: Vol 2, Annual (1980), at 3, available at: <https://profootballresearchers.org/coffin-corner80s/02-An-051.pdf> [<https://perma.cc/J4F7-4PUY>], (“In 1848 a committee was established at Cambridge University charged with the task of devising a football code acceptable to as many public school graduates as possible.”).

17. See *id.* (“The Cambridge rules, however, formed the basis for those later adopted by the Football Association and the football clubs which were beginning to spring up around the country.”).

18. See Giulianotti, *supra* note 14 (“In 1863 a series of meetings involving clubs from metropolitan London and surrounding counties produced the printed rules of football, which prohibited the carrying of the ball. Thus, the ‘handling’ game of rugby remained outside the newly formed Football Association (FA). Indeed, by 1870 all handling of the ball except by the goalkeeper was prohibited by the FA. . . . Professionalism also sparked further modernization of the game through the establishment of the Football League, which allowed the leading dozen teams from the North and Midlands to compete systematically against each other from 1888 onward.”).

19. See Madison, *supra* note 15 at 359 (“In 1863, members of the Football Association (FA) developed and adopted a set of rules during a meeting at the Freemasons’ Tavern, Lincoln’s Inn Fields, in London, which emerged as the victor in this informal competition. Historians generally acknowledge this date as football’s founding moment.”).

20. See generally, David Goldblatt, *The Ball is Round: A Global History of Soccer* (2008), available at: https://ezproxy-villanova-edu.ezp1.villanova.edu/login?URL=https://search-ebshost-com.ezp1.villanova.edu/login.aspx?direct=true&db=nlebk&AN=1126310&site=ehost-live&scope=site&ebv=EK&ppid=Page-__-64 [<https://perma.cc/H6RR-NY83>] (explaining the evolution and spread of modern soccer from the nineteenth to the twentieth century).

21. See *id.* at 138 (explaining international progenitors of FIFA).

22. See *id.* at 233 (“[O]n 21 May in Rue St-Honoré in Paris, FIFA or in its full Gallic glory Federation Internationale de Football Association was formed by delegates from seven countries: Belgium, Denmark, France, the Netherlands, Spain, Sweden and Switzerland.”).

23. See *id.* (explaining that first World Cup was hosted in Montevideo, Uruguay in 1930 after 1928 Olympics where football was most popular event).

ments such as the Copa America (1916) and Euros (1960) were also established and sanctioned as FIFA tournaments.²⁴ During these formative years of soccer, international competitions such as the World Cup were considered to be the pinnacle of the sport in both prestige and quality over domestic league and cup competitions. It was obviously more prestigious to win the World Cup than it was to win the Welsh Cup. However, for a variety of reasons, such as a greater selection in broadcasting diversity and quantity, the lack of a constraint to pick exclusively from one geographic region, the format of club competitions requiring a new season to be played every year, and the fact that players' livelihoods depend on their club teams, club league and club cup competitions have since supplanted international cup competitions such as the World Cup, Copa America, Euros, African Cup of Nations, Gold Cup, and AFC Asian Cup as the gold standard of elite football.²⁵

This shift started in the post-World War II years with the establishment of the European Cup competition in 1955, which pitted the champions of the major European leagues against one another.²⁶ Competitions such as the European Cup (which has since been rebranded as the Champions League) and the Inter-Cities Fairs Cup and its successor, the UEFA Cup (rebranded as the Europa League), raised the profiles of the best club teams and validated their leagues by virtue of defeating the champions of the other European leagues. At the same time FIFA increased their credibility through the continuity of providing the competition platforms for the clubs.²⁷ However, at that point, the game had not yet matured into the sport now observed. Though it was building

24. See Steven Goff, *COPA AMERICA*, WASH. POST (Jun. 11, 1997), <https://www.washingtonpost.com/archive/sports/1997/06/11/copa-america/021fd549-dd67-4915-958f-459d840450c0/> [https://perma.cc/EAS4-DXM4] (“WHAT: 38th South American soccer championship, held irregularly since 1916. It is the oldest major international soccer tournament in the world, surpassing the World Cup (1930) and European Championship (1960).”).

25. See Goldblatt, *supra* note 20 at 144, 237, and 363 (explaining the rise and fall of international cup competitions).

26. See *id.* at 363 (“The impetus for change came from Europe; in 1958 UEFA proposed that the winners of the European Cup should, each year, play the champions of South America for an Intercontinental Cup.”).

27. See Scott Murray, *A Brief History of the Champions League – and why it’s so Hard to Win Two in a Row*, GUARDIAN (Jun. 3, 2015), <https://www.theguardian.com/football/2015/jun/03/champions-league-brief-history-barcelona-juventus> [https://perma.cc/3AH6-2AY9] (“Uefa launched their new competition – the European Cup would morph into the Champions League in 1992 – back in 1955. Chelsea, the English champions, didn’t bother entering, because the big cheese of the Football League, Alan Hardaker, was a myopic little-Englander fool who couldn’t (or didn’t want to) see what was happening on the other side of the English Channel. Hardaker went on to launch the League Cup in an attempt

generational fanbases, traditions, and rivalries, soccer as a whole hadn't fully developed its legal, financial, and organizational structures. For British teams in particular, two key elements were missing: the necessary revenues and the freedom of movement of labor.²⁸

A. The Foundation of the Premier League: Video Killed the Radio Star

Sports, in general, were a big beneficiary of the television era, and soon after the introduction of the television as a tool for mass broadcasting, it became the preferred medium for sports consumption.²⁹ Prior to the mass availability of television broadcasts, fans could only remotely receive information related to soccer via newspaper or radio.³⁰ Because of the obvious appeal of being able to witness and interpret the action in real time, television is more capable of interesting unfamiliar audiences.³¹ Sports television broadcasts do not require an understanding of the language of the

to see off Uefa's new continent-wide midweek club competition, and that illustrates his judgment perfectly.”).

28. See *How the Premier League has Changed Football Forever*, THE WEEK (Aug. 9, 2017), <https://www.theweek.co.uk/premier-league/87650/how-the-premier-league-has-changed-football-forever> [<https://perma.cc/EA45-9YTV>] (“Nothing illustrates the scale of the Premier League more than the TV rights auction, which last time raised £5.1bn from domestic broadcasters Sky and BT Sports, and around £8bn in total. ‘Sky is now paying over £10m to broadcast every match, which is astonishing considering rights to the entire final old First Division season, in 1991-92, cost less than £15m,’ says Cox of ESPN. . . . Part of the Premier League’s strength is its global appeal. That’s because it’s become home to the world’s best players, but back in 1992 the English league was rather less international. ‘Out of 242 players who lined up for the first games 25 years ago, only 13 were from overseas,’ says the Times. . . . The Bosman ruling in 1995 made a huge difference, allowing players to leave clubs for free when their contracts expired and banning limits on the number of foreign EU players.”).

29. See *Sports On Television*, ENCYCLOPEDIA.COM (last visited Feb. 5, 2023), <https://www.encyclopedia.com/arts/news-wires-white-papers-and-books/sports-television> [<https://perma.cc/QTP6-XFXC>] (“The natural appeal of sports on television has created large, enthusiastic audiences for many different types of athletic contests. In fact, TV was responsible for introducing a number of lesser-known sports to American viewers, including ice hockey, soccer, golf, tennis, and auto racing. TV profits, in turn, have made many professional sports leagues, teams, and players very wealthy.”).

30. See *id.* (explaining technological developments in sports broadcasting).

31. See David Goldblatt, *The Ball Is Round: A Global History of Football*, 398 (2006) (“This initiated a change in the game’s economics and its relationship with the swirling currents of pop culture, youth movements and celebrity but most profoundly it transformed the collective experience and memory of the game, for prior to the advent of the televisual record our historical vision is at best partially sighted; for the most part it is blind.”).

broadcast or rely on another's interpretation of events without accompanying visual context.³²

Once demand for television broadcasts reached critical mass, soccer clubs found a new, powerful, and – for most – most important revenue stream.³³ In the modern era, payments from broadcasting rights contracts are a key source of revenue for club teams.³⁴ The imposition of Financial Fair Play (“FFP”) rules, require clubs to maintain a defined level of financial equilibrium between revenues and expenses.³⁵ FFP regulations were a direct response to a solvency crisis within teams in Europe’s top soccer leagues.³⁶ The unit of FIFA representing Europe, UEFA, discovered many teams were dangerously overleveraged with debt.³⁷ Jarring examples of near or complete financial collapse of clubs pushed to the brink by recklessly ambitious owners, such as Peter Ridsdale’s tenure as chairman of Leeds, Tom Hicks and George Gillet’s leveraged buyout of Liverpool, and Alexandre Gaydamak’s time as owner at Ports-

32. *See id.* at 775 (explaining how television helped usher in new era of football fandom).

33. *See* David Conn, *How the FA Betrayed their Own Game*, GUARDIAN, (Nov. 14, 2004), <https://www.theguardian.com/football/2004/nov/14/sport.comment> [<https://perma.cc/MC56-UK5Y>] (“The big clubs gobbled the TV cake throughout the 1980s; in 1985 they threatened to break away, forcing the smaller clubs to agree a new split: 50 per cent to the First Division, 25 to the Second, 25 to the Third and Fourth. Still they wanted more, and in 1990, flush with Dyke’s promise of TV riches, they deputed David Dein of Arsenal, and Noel White, a Liverpool director, to approach the FA and see if they would support their breakaway.”).

34. *See id.* (“Since 1992, the Premier League’s TV deals have added up to £3.675bn.”).

35. *See* Valerie Kaplan, *Uefa Financial Fairplay Regulations and European Union Antitrust Law Complications*, 29 EMORY INT’L L. REV. 799, 807–808 (“There are two main parts to FFP: (1) Clubs’ transfer and employee payables must not be overdue (this has been monitored since the summer of 2013); and (2) clubs will be required to have their books break even starting in the financial years ending 2012 and 2013 (which will be accessed for the first time before the 2013/2014 season). Beginning with the 2013/2014 season, clubs are faced with sanctions from European football if they do not comply with FFP.”) (footnote omitted).

36. *See Uefa Approves New Spending Plans*, BBC SPORT (last visited Feb. 5, 2023), <http://news.bbc.co.uk/sport2/hi/football/europe/8256279.stm> [<https://perma.cc/SJ2R-F9R5>] (“Plans to force clubs to balance their books has been approved at a Uefa executive committee meeting. The proposals will prevent clubs from spending more than they make from their revenues and aim to curb billionaire owners investing huge amounts of money.”).

37. *See* José Félix Dfáz, *The End of Financial Fair Play?*, MARCA, (Aug. 9, 2021) <https://www.marca.com/en/football/international-football/2021/09/08/6138d9c9ca474137568b4680.html> [<https://perma.cc/AMA4-JN8D>] (“The Financial Fair Play model introduced by Michel Platini in 2010 was a delayed response to teams spending beyond their means. The idea was to prevent financial ruin, but it was never a set of rule which would promote fairness or equality.”).

mouth, further convinced soccer's regulatory authorities to act.³⁸ Compliance with FFP rules are purportedly paramount to a club's participation in competitions, and FFP rules have the authority to severely sanction clubs when violated.³⁹

However, UEFA has been hesitant to impose the most feared FFP sanction, removal from European competitions (i.e. the Champions League and Europa League), and has instead typically used financial penalties to sanction FFP violators.⁴⁰ It could be argued that such penalties are meaningless to a number of clubs engaged in skirting FFP rules by "financial doping," and whose owners are cash-rich-billionaires, some of whom are backed by some of the most powerful sovereign wealth funds in the world, namely from the Middle East.⁴¹ Nonetheless, FFP rules monitor the financial health of clubs and *can* sanction violators, placing high importance on strong revenue streams. Prior to income earned from the selling of broadcasting rights, club teams' primary source of income came from gate receipts, sales of club merchandise, prize monies from competitions, sponsorships, and endorsements.⁴²

38. See, e.g., Brian Cathcart, *Money to Burn*, GUARDIAN (Mar. 7, 2004) <https://www.theguardian.com/football/2004/mar/07/sport.features1> [<https://perma.cc/8FYM-V4WF>] (explaining how Leeds United came to owe creditors nearly £100 million under tenure of chairman Peter Ridsdale); see also David Conn, *No New Stadium. A Huge Debt. Despite Their Promises, Hicks and Gillett Have Done a Glazers*, GUARDIAN (Jun. 5, 2009), <https://www.theguardian.com/football/blog/2009/jun/05/liverpool-tom-hicks-george-gillett> [<https://perma.cc/5D7H-ASA8>] (explaining how many fans felt club owners Tom Hicks and George Gillett did not keep promises given poor financial performance of club); *Portsmouth Likely to Close Down and be Liquidated*, CBC (Oct. 22, 2010), <https://www.cbc.ca/sports/soccer/portsmouth-likely-to-close-down-and-be-liquidated-1.975350> [<https://perma.cc/5UXD-H5SZ>] ("Portsmouth said Gaydamak 'has shown complete disregard for the supporters, the club and the city of Portsmouth.'").

39. See *Uefa Approves New Spending Plans*, *supra* note 36 ("The new rules will be in place from the 2012/13 season and clubs could be thrown out of European competition if they do not abide by the regulations.").

40. See *Uefa: Paris St-Germain One of Eight Clubs Fined for Breaching Financial Fair Play Rules*, BBC SPORT (Sept. 2, 2022), <https://www.bbc.com/sport/football/62771118> [<https://perma.cc/QS6Z-XZ6Q>] ("Paris St-Germain is one of eight clubs to be fined by European football's governing body, Uefa, for breaching Financial Fair Play rules. PSG have been ordered to pay an unconditional 10m euros (£8.6m) for not complying with 'break-even' rules and could pay as much as 65m euros (£56.3m) depending on future compliance.").

41. See Charlie Parker-Turner, *Jurgen Klopp Backed on Dig Against State-Owned Teams as Kylian Mbappe PSG Contract Leaked*, DAILY EXPRESS (Oct. 24, 2022), <https://www.express.co.uk/sport/football/1687227/Liverpool-news-Jurgen-Klopp-PSG-Kylian-Mbappe-contract-Premier-League> [<https://perma.cc/TB9Z-57KJ>] ("Football finance journalist Tariq Panja said: 'It's a classic example of what Klopp and others say about state-owned teams. Creates absurd inflationary pressure, and once again raises questions for UEFA and FFP.'").

42. See *Sports On Television*, *supra* note 29 (explaining how television impacted business of soccer).

The advent of satellite television in the 1990s further expanded soccer's footprint and increased the value of broadcasting rights contracts.⁴³ As the size of these broadcasting rights contracts grew, so did an existing grievance between the top league in the UK and the leagues below them. In most world soccer leagues, there are multiple professional leagues within a tiered structure.⁴⁴ In each season, a set number of teams from the top and bottom of a given league are promoted up or relegated down to the league above or below the one they competed in.⁴⁵

The English Football League ("EFL") administered the league structure for English teams from its inception in 1888 until the early 1990s.⁴⁶ The EFL was organized into three leagues: The First, Second, and Third Divisions.⁴⁷ In the early 1990s the First Division teams decided to resign from the EFL and form a new company that would administer the top division in English soccer.⁴⁸ The main aim of this move was a fundamental reorganization of the dis-

43. See Brian Reece, *Sky Sports and the Premier League: Money, Money, Money*, WORLD SOCCER TALK (Mar. 29, 2009), <https://worldsoccertalk.com/news/sky-sports-and-the-premier-league-money-money-money-20090329-CMS-5323.html> [<https://perma.cc/AUD3-ZCGE>] ("Prior to the creation of the Premier League, top flight football matches in England had been broadcast for free by the BBC. Whilst broadcasting revenue for the Football League had been increasing steadily during the 1980s, the final BBC broadcasting deal of £44m over four years would prove to be a fraction of what Premier League football would soon generate. In 1992 the newly formed Premier League made the decision to make an unprecedented break with convention, and to sell the broadcasting rights for England's most popular sports league to a pay-per-view satellite television service. Sky Sports put in a mammoth offer of £191 for the broadcasting rights of the first five seasons of the Premier League – almost a fourfold increase in broadcast revenue compared to the previous BBC deal. The transfer of broadcasting rights to BSkyB sparked outrage in Britain, where football fans had grown accustomed to watching their favorite clubs play for free. However, the public was soon to see the benefits of millions of dollars being poured into the coffers of the country's biggest clubs as the significant increase in broadcast revenue allowed clubs to recruit world-class players, and also to improve stadiums and facilities.").

44. See Nick Schwartz, *Current Premier League Relegation and Promotion Scenarios*, USA TODAY (July 18, 2020, 9:30 PM), <https://ftw.usatoday.com/2020/07/current-premier-league-relegation-and-promotion-scenarios> [<https://perma.cc/VZ3P-F78G>] (explaining mechanics of promotion and relegation in soccer leagues).

45. See *id.* (explaining promotion procedure).

46. See *The EFL: Who we are*, EFL, <https://www.efl.com/-more/all-about-the-efl/history/> [<https://perma.cc/L6T7-FYJX>] (last visited Jan. 6, 2023) (providing history of EFL).

47. See *id.* ("Innovation . . . 1888 - The Football League is formally created . . . 1892 - Second Division formed as The Football League expands to 28 clubs . . . 1920 - Introduction of a Third Division with expansion to 66 clubs").

48. See *Origins*, BRITISH PREMIER LEAGUE, <https://www.premierleague.com/history/origins> [<https://perma.cc/TJ3M-5CC3>] (last visited Sept. 10, 2022) (providing brief history of BPL).

tribution of television broadcast rights money.⁴⁹ The EFL administered commercial affairs for the leagues and the teams within the leagues and mandated that broadcast rights revenues be more equally distributed amongst the three leagues.⁵⁰ This became a point of friction that eventually led to a breaking point, as the leading First Division teams increasingly believed they deserved a greater share of these revenues, as well as greater control over their distribution, because it was the broadcasts of their games that drove the value of broadcasting rights contracts.⁵¹

Though the EFL attempted to impose its authority through the British judicial system, a High Court ruling held British courts could not review the decision as it was made by a private body.⁵² Instead, the First Division teams succeeded in their goals and established the English Premier League (which has since been rebranded as the British Premier League) on May 27, 1992 with the FA's blessing.⁵³ The first season of the newly formed league began in the fall of that year.⁵⁴ This consolidation of revenues at the top end of the British game allowed the bigger clubs more transfer funds and money to offer bigger salaries to better compete for talent against the other elite teams from other European leagues,

49. See *id.* ("The League would have commercial independence from the Football League and The FA, leaving it free to organise its own broadcast and sponsorship agreement.").

50. See Andrew Murray, *How the Premier League Breakaway Happened: The First Season of 1992/93, as Told by its Heroes*, FOURFOURTWO (Aug. 15, 2022), <https://www.fourfourtwo.com/features/199293-premier-league-first-season-sky-sports-man-utd-champions> [<https://perma.cc/F3PK-A92Y>] ("The top-flight would now retain all money from a yet-to-be-agreed exclusive television rights deal, instead of having to divide it equally with the rest of the Football League.").

51. See Adrian Kajumba, *The First Premier League Season 30 Years ago was a Riotous Tale of Fireworks, Football, Glitz and Gimmicks. . . but There was NO Inkling of the Monster it was Going to Grow into: SPECIAL REPORT*, DAILY MAIL (Aug. 3, 2022), <https://www.dailymail.co.uk/sport/football/article-11070079/Premier-League-30-years-flight-formed.html> [<https://perma.cc/CR6J-2JAS>] ("The concept was the brainchild of 'the big five' back then, Manchester United, Liverpool, Everton, Arsenal and Tottenham, who wanted to remove the old First Division's 22 clubs separate from the 92-club Football League structure, form a new top division and claim a greater share of the game's cash, which they felt English football's biggest draws were entitled to.").

52. See Jason Rodrigues, *Premier League Football at 20: 1992, the Start of a Whole New Ball Game*, GUARDIAN (Feb. 2, 2012, 5:06 AM), <https://www.theguardian.com/football/from-the-archive-blog/2012/feb/02/20-years-premier-league-football-1992> [<https://perma.cc/7B3V-MYX5>] (citing High Court ruling that paved way for a split between the top division and three tiers below it).

53. See *Origins*, *supra* note 48 ("On 20 February 1992, the 22 First Division clubs resigned from the Football League en masse and three months later, on 27 May, the Premier League was established as a limited company.").

54. See Rodrigues, *supra* note 52 ("The inaugural Premier League kicked off in August 1992 with Arsenal tipped by many to win it.").

namely La Liga in Spain, Ligue Un in France, Serie A in Italy, and the Bundesliga in Germany.⁵⁵ The newly formed BPL financially primed British teams for an explosion in growth in viewership and revenue.

B. The Bosman Ruling: European Union Law Regulates Soccer

A few years after the inception of the BPL, a monumental decision handed down by the European Court of Justice (“ECJ”) fundamentally altered the transfer market for players.⁵⁶ Prior to the late 1970’s, the ECJ had little interest in regulating soccer leagues.⁵⁷ As a result, soccer clubs had huge leverage over players regarding contractual matters, particularly regarding the use of a quota system to limit the number of foreign players at each club and the transfer market rules imposed by the clubs.⁵⁸

Both issues, the quota system and unregulated transfer market rules, conflicted with a fundamental precept of EU law, the freedom of the movement of labor, and were considered to be a violation of the Treaty of Rome, the document that founded the EU and established the freedom of labor movement as a fundamental

55. *See id.* (“In return for exclusive broadcast rights, the clubs would now get an unprecedented windfall, which would help them lure some of the best footballing talent to the Premier League.”).

56. *See* Case C-415/93, *Union Royale Belge des Societes de Football Ass’n ASBL v. Bosman*, 1995 E.C.R. I-04921, P 25, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61993CJ0415&rid=1> [<https://perma.cc/5T76-PYB4>] (holding that transfer market rules violate EU law); *see also*, Jon Carter, *The Bosman Effect*, ESPN (Dec. 13, 2011), https://www.espn.com/soccer/columns/story/_/id/996013/rewind-to-1995:-the-bosman-effect [<https://perma.cc/65NM-XHHX>] (“On December 15, 1995, the football world was forced to embrace a concept that would forever change the way that business in the game was conducted.”); Fiona McHugh, *Bosman Judgement Spreads Confusion in Europe’s Soccer Clubs*, POLITICO (Jan. 10, 1996, 5:00 PM), <https://www.politico.eu/article/bosman-judgement-spreads-confusion-in-europes-soccer-clubs/> [<https://perma.cc/85BQ-8LWA>] (“JUST three weeks after the European Court of Justice ruled in favour of Belgian footballer Jean-Marc Bosman, signs of the revolution in European soccer predicted by many have already been spotted.”).

57. *See* Carter, *supra* note 56 (“David McArdle, in his book *From Boot Money to Bosman: Football, Society and the Law*, reveals: ‘UEFA had traditionally regarded itself as immune from external legal regulation and entitled to run its fiefdom in whatever way it saw. At various times, UEFA has been accused of acting in restraint of trade, placing unlawful restrictions on individuals’ freedoms of movement, engaging in racial discrimination and encouraging concerted practices.’”).

58. *See id.* (“But the two practices that caused the most concern within the Community were the use of ‘quotas’ to control the numbers of foreign players at each club and the transfer fee system.”)

right.⁵⁹ The transfer market rules imposed by clubs created big disparities in the balance between clubs' and players' power.⁶⁰ For example, soccer clubs were able to retain players past the expiration of their contracts due to their holding of players' registration rights.⁶¹ Players needed these rights to be eligible to play in a given league.⁶² This allowed clubs to leverage these registration rights into transfer fees for players who were out of contract.⁶³ This put FIFA on a path of conflict with the EU right of the freedom of labor movement.⁶⁴

The EU and UEFA agreed to address these issues in the late 1970's, but the football regulatory body had made little to no progress by the late 1980's.⁶⁵ Eventually a game changing moment cre-

59. See *Treaty Establishing the European Economic Community* ("Treaty of Rome"), 25 March 1957, 298 U.N.T.S. 3 Art. 48 (establishing principle of free movement of workers and outlawing discrimination between workers of member states); Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 (granting right of workers to remain in territory of Member State after having been employed in State); and Regulation (EEC) No 1612/68 of the Council of 15 October 1968 (granting freedom of movement for workers within Community); see also, David Penn, *From Bosman to Simutenkov: The Application of Non-Discrimination Principles to Non-EU Nationals In European Sports*, 30 SUFFOLK TRANSNAT'L L. REV. 203, 206 (2006) (evaluating impact of the *Bosman* decision on non-EU nationals).

60. See Duncan McHardy, *Reconciling Soccer Authorities and European Union Institutions: Who is Best Placed to Administer Governance Within The European Soccer Market?*, 18 SETON HALL J. SPORTS & ENT. L. 105, 124–125 ("Significantly, Article 5 of [Bosman's] contract stipulated that RC Liege was entitled to withhold the player's registration certificate under any circumstances (a common term in most contracts between soccer clubs and players). There was little interest from prospective clubs due to the over-inflated price tag that RC Liege had requested. . . . Unsurprisingly, the excessive price of nearly 12 million BF discouraged many clubs.") (footnote omitted).

61. See Carter, *supra* note 56 (establishing the issues that motivated Bosman's legal challenge).

62. See Bobby McMahon, *Why The Bosman Ruling Never Brought The Chaos so Many Predicted*, FORBES, (Dec. 15, 2015), <https://www.forbes.com/sites/bobbymcmahon/2015/12/15/the-threat-of-players-using-the-bosman-rule-has-been-more-powerful-than-invoking-it/?sh=f8d965520043> [<https://perma.cc/BL8S-MDMX>] ("Some soccer leagues within the European Union had already granted freedom of contract to players, but most had maintained a variation of the 'retain and transfer' system that had underpinned the registration of players system for many decades. Essentially the system granted the power to clubs to hold the registration of players even those out of contract.")

63. See James G. Irving, *Red Card: The Battle Over European Football's Transfer System*, 56 U. MIAMI L. REV. 667, 669 (2002) ("The club owners understood that the transfer system violated players' rights and freedom of contract. They decided, however, that the system was a necessary evil in order to control player mobility and to prevent wealthier clubs from buying up all of the best players without compensating the original club.")

64. See *id.* (describing how FIFA transfer system may have violated international law).

65. See *id.* at 675 ("Prior to the explosion of the transfer battles of the 1990s, two lesser known decisions by the ECJ helped to establish the lines, albeit fuzzy

ated a paradigm shift from a legal ruling with humble beginnings. In 1988, a journeyman Belgian footballer named Jean-Marc Bosman challenged the collapse of a proposed transfer to a French team that was blocked by his club, despite the player himself being out of contract.⁶⁶ The collapse of the deal rendered him ineligible to play football anywhere while keeping Bosman's registration rights, and therefore his means to work, in the care of his club.⁶⁷ Though a prospective buying club was interested in his services, the deal fell apart because his club had no intention of releasing him without receiving a fee for Bosman's registration rights, which complicated the overall transfer leading to its collapse.⁶⁸ Alternatively, because they failed to agree to an extension to Bosman's contract, his club had no plans to register or play him, resulting in Bosman's suspension.⁶⁹ Bosman took legal action and brought his grievances to the ECJ arguing UEFA rules violated the Treaty of Rome's freedom of movement rights grant.⁷⁰

Bosman waited five years while his legal challenge was considered by the ECJ, but his persistence was rewarded as the ECJ eventually agreed with his position that transfer fees for out of contract players and quotas on players from other EU countries were violations of the Treaty of Rome's precept of the fundamental right of the freedom of movement of labor.⁷¹ The *Bosman* ruling also established EU law as the regulator of business transactions in European

ones, between areas where sporting associations could and could not create regulations free from EC interference.”).

66. See David D'Orlando, *6+5 = Discrimination? Why FIFA's Proposed Quota Rule Doesn't Add Up*, 115 PENN ST. L. REV. 749, 760 (explaining origins of Bosman's claim against RC Liege).

67. See *id.* (establishing issues that motivated Bosman's legal challenge).

68. See *id.* (explaining how Bosman's club used leverage provided by UEFA's transfer market rules to block transfer of out-of-contract player).

69. See *id.* (demonstrating how the collapse of a proposed transfer led to Bosman's suspension from football).

70. See Carter, *supra* note 56 (“Taking the club to court, Bosman sued in three separate cases over the next three years. First, against RC Liegeois, who were not paying him a wage while he looked for a new club; second, against the legality of the Belgian FA's transfer system; while the third, against UEFA for breaching the 1957 Treaty - citing the ‘freedom of movement’ argument among others - was taken to the European Court of Justice (ECJ).”)

71. See McHugh, *supra* note 56 (“Bosman secured himself a place in soccer history last month by successfully challenging football's authorities in court. Supporting Bosman's claim, the European judges said that the foreigners rule and the current system which allows clubs to charge transfer fees restrict players' rights to move freely within the Union. UEFA greeted the verdict with dismay, saying it would lead to a bankruptcy of talent and of small clubs, which have traditionally survived by breeding young players for sale to big clubs.”)

soccer leagues.⁷² It also had the effect of harmonizing transfer rules and regulations between EU countries, simplifying the transfer process while lowering costs.⁷³ The *Bosman* ruling heralded a new era for the player transfer market, granting greater mobility, contract leverage, and gave more power to players.⁷⁴

This ruling ultimately benefited the player transfer market, i.e. soccer's labor market, which in turn strengthened teams and the quality of the on-field product. Pre-*Bosman* transfers were inflated by unbalanced contract negotiation leverage clubs had over players, forcing buying clubs to pay markups for players the selling club may not even intend to use, simply by holding a player's eligibility (and therefore livelihood) hostage.⁷⁵ In contrast, in the post-*Bosman* world, players whose contracts are within six months of expiry are free to negotiate with other teams for their services. This is beneficial to the acquiring (or signing) clubs because they are able to minimize or eliminate the unnecessary expense of paying the player's old team, allowing them the mutual benefit of saving money while allowing the signing club the ability to offer better terms to the player. Furthermore, the removal of the quota system increased the value of players from other EU countries, as their use was far less limited. Premiums for players in the post-*Bosman* era were a result of a player's skill and potential rather than their nationality. The *Bosman* ruling established, or at least greatly contributed to, a highly competitive and efficient global player transfer

72. See Webmanager, *Bosman Case*, PENGUIN COMPANION TO EUROPEAN UNION (Jan. 10, 2012), https://penguincompaniontoeu.com/additional_entries/bosman-case/ [<https://perma.cc/W3PJ-SQ35>] ("The long-term effects of the Bosman case were significant. Most obviously, it helped create a single market in football, a self-regulating sector where previously many assumed that European law did not apply, and promoted the emergence of football clubs which drew heavily on foreign players, underpinned by high salaries in an increasingly competitive international arena. More widely, it confirmed that non-public bodies with the power to regulate entire sectors, as in sport, fell within the remit of the Treaties.").

73. See Case C-415/93, Union Royale Belge des Societes de Football Ass'n ASBL v. Bosman, 1995 E.C.R. I-04921, P 107, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61993CJ0415&rid=1> [<https://perma.cc/ASR3-6PN4>] (finding that restrictive rules struck down by ECJ were not effective at ensuring financial stability or competitive balance).

74. See Carter, *supra* note 56 ("However, the players relished their new-found freedom and those who stayed used the power to negotiate themselves better contracts. After years of fighting, Bosman's role in changing the face of game was complete and ITV's *Encyclopaedia of Football* described the ruling thus: 'It will go down in football history as the day the sky fell on more than a century of financial and contractual tradition.'").

75. See *id.* (Until then, players had been little more than personified banknotes in the game's financial structure.'").

market for EU countries, governed by uniform rules regulated by the ECJ.⁷⁶

C. The BPL Emerges as One of Soccer's Leading Lights: The Empire Strikes Back

The breakaway of the Premier League and redistribution of television broadcast rights provided the BPL with the financial vehicle needed to compete with top teams from other European leagues. The *Bosman* ruling provided the BPL with a competitive labor market governed by a uniform set of laws, whose geographic reach expanded with the footprint of the EU. These two events combined to transform the BPL into what it is today, one of soccer's leading competitions. From 1996, the year after the *Bosman* ruling, to 2023, BPL revenues have grown from €685,000,000 to €7,110,000,000, a near tenfold increase.⁷⁷ The BPL, and its rivals – La Liga in Spain, Ligue Un in France, Serie A in Italy, and the Bundesliga in Germany – have established themselves as the leading club league competitions in the world by virtue of the success of their teams in continental club competitions, namely the European Cup/Champions League.⁷⁸ The history, tradition, fanbases, and competitiveness of the elite teams from these five leagues, such as Liverpool, Madrid, Barcelona, A.C. Milan, and Bayern Munich, boost the value of broadcasting rights contracts and provide these clubs with huge revenues that allow them to offer the best contracts to the best talents.⁷⁹

76. See Bill Gerrard, *How Might Brexit Affect the English Premier League?*, ECONOMICS OBSERVATORY (Mar. 3, 2021), <https://www.economicsobservatory.com/how-might-brexit-affect-the-english-premier-league> [<https://perma.cc/K82M-FVLB>] (“The Bosman ruling transformed the labour market for professional players within the EU. A globally competitive labour market for players began to emerge just as Premier League revenues started to grow exponentially.”).

77. See Sports Business Group, *A new dawn Annual Review of Football Finance 2022*, DELOITTE, 8 (Aug 2022), <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/sports-business-group/deloitte-uk-annual-review-of-football-finance-2022.pdf> [<https://perma.cc/YTY9-TGV4>] (exhibiting BPL revenue growth).

78. See *Champions League Explained*, BRITISH PREMIER LEAGUE (last visited Sep 10, 2022), <https://www.premierleague.com/uefa-champions-league-explained> [<https://perma.cc/UET4-X72K>] (“The UEFA Champions League is UEFA’s elite club competition with top clubs across the continent playing for the right to be crowned European champions.”).

79. See Carlos Gazapo, *TV Rights in Football – Premier League Analysis*, SPORTS BUSINESS INST. BARCELONA, (Apr. 29, 2021), www.sbibarcelona.com/newsdetails/index/403 [<https://perma.cc/SJ7K-M2VL>] (“The value of the best European football leagues has skyrocketed as fans worldwide increasingly follow their favourite football clubs, players and competitions.”).

The BPL and La Liga, in particular, are considered to provide the highest quality league platforms.⁸⁰ Though La Liga is less competitive in the number of clubs that seriously compete, the two clubs locked in an eternal struggle for dominance happen to be the two biggest clubs in the world, Real Madrid and Barcelona.⁸¹ Both teams exist near the top of the football food chain, in good times and in bad. However, it could be argued that the preeminence of the elite Spanish teams is eclipsed by what the BPL offers.

This assertion is supported by comparisons of revenue and viewership statistics of the respective leagues. Between 1996 and 2023, La Liga failed to keep pace with the BPL's revenue growth, growing at a smaller pace, from €524,000,000 in 1996 to €3,700,000,000 in 2023.⁸² Therefore, La Liga revenues are projected to gross approximately half of the BPL's projected earnings for the 2023 fiscal year.⁸³ Furthermore, in the last iteration of its Global Sports Salaries Survey, Global Sports Salaries calculated the BPL earned \$3,831,250,000 per year from the sale of overseas and domestic broadcasting rights compared to \$2,272,321,429 per year paid to La Liga.⁸⁴ Interestingly enough, BPL overseas rights constituted a higher percentage of the BPL's overall broadcast revenue total (45.7%) than they did in La Liga where 44% of their broadcast revenue total came from overseas broadcasts.⁸⁵ This indicates that the BPL has an edge in global reach, not only in the amount of dollars, but also in proportion. This makes intuitive sense when considering the fact that the BPL possesses the added advantage of being the most elite English-speaking league, allowing the league to

80. See Dale Johnson, *Premier League Ranked No.1 League in Europe by UEFA, Overtaking La Liga*, ESPN, <https://www.espn.com/soccer/uefa-europa-league/story/4373377/premier-league-ranked-no-1-league-in-europe-by-uefaovertaking-la-liga> [<https://perma.cc/6QJX-SRM2>] (corroborating claim Premier League and La Liga are perceived to be top football leagues in the world).

81. See Mike Ozanian & Justin Teitelbaum, *The World's Most Valuable Soccer Teams 2022: Real Madrid, Worth \$5.1 Billion, Is Back on Top*, FORBES, (May. 26, 2022), <https://www.forbes.com/sites/mikeozanian/2022/05/26/the-worlds-most-valuable-soccer-teams-2022-real-madrid-worth-51-billion-back-on-top/?sh=312f5cd7286b> [<https://perma.cc/P9AA-BJ27>] (“Real Madrid leapfrogs its Spanish rival Barcelona in Forbes annual ranking . . .”).

82. See Sports Business Group *supra* note 77 (exhibiting La Liga's revenue from 1996-2022).

83. See *id.* (illustrating BPL's dominant position as measured by revenue).

84. See *Global Sports Salaries Survey 2019*, SPORTING INTELLIGENCE,22, <https://globalsportssalaries.com/GSSS%202019.pdf> [<https://perma.cc/DS5B-GPA3>] (last visited Sep 10, 2022) (exhibiting comparative BPL and La Liga revenues from broadcasting rights).

85. See *id.* (comparing overseas broadcasting rights between the BPL and La Liga as measured by percentage of revenue).

penetrate more widely and deeply across the world by virtue of English being one of the world's most spoken second languages. Lastly, in the last World Cup in 2018, 108 of 736 players were BPL players whose representation in the tournament was 38% higher than players from La Liga.⁸⁶

Ironically, the BPL was the last of the big European leagues to modernize and had a somewhat insular reputation at the start of the Premier League era. Though the British leagues have had many great teams, managers, staff, players, and champions, the makeup of the league was almost homogenously British until the advent of the Premier League and the *Bosman* ruling by the ECJ.⁸⁷ In fact, the British leagues were stagnating in the late 1980's and early 1990's.⁸⁸ The last British European Cup winner, Liverpool, were at the end of a cycle of domination and the club, and British soccer in general, declined in the aftermath of the Heysel and Hills-

86. See James Cavanagh, *A New Era for English Football: How Will Brexit Affect the Premier League?*, JOBS IN FOOTBALL (May 6, 2020), <https://jobsinfootball.com/blog/a-new-era-for-english-football-how-will-brexite-affect-the-premier-league/> [<https://perma.cc/WVZ5-MPYZ>] (comparing BPL versus La Liga player representation in the 2018 World Cup).

87. See Gary Parkinson, *How the 1990s Saved English Football*, FOURFOURTWO (Mar. 21, 2018), <https://www.fourfourtwo.com/us/features/how-90s-saved-english-football> [<https://perma.cc/5KH5-EQ8X>] (“First Division clubs winning six consecutive European Cups around the turn of the decade hadn’t helped to dispel the notion that the denizens of Albion had nothing to learn from across the water. As a result, overseas footballers – excluding the Irish – continued to be a rare species.”); see also Adam Bate, *Premier League had only 13 Foreign Players in 1992: Craig Forrest and Michel Vonk Explain What it was Like for Them*, SKYSPORTS (Sep. 9, 2022), <https://www.skysports.com/football/news/11095/12671228/premier-league-had-only-13-foreign-players-in-1992-craig-forrest-and-michel-vonk-explain-what-it-was-like-for-them> [<https://perma.cc/TV46-95ZC>] (“There are 113 different nations that have been represented on the pitch in the Premier League era but thirty years ago, on the opening weekend of the competition, only 13 players in total came from outside the British Isles.”).

88. See Parkinson, *supra* note 87 (“Again, the comparison is with the late-80s. Banned from Europe and shunned by most compatriots, English football became insular.”).

borough tragedies.⁸⁹ Lastly, at that time, the reputation of the British game was damaged by hooliganism.⁹⁰

In the preceding decades, the greatest Latin American stars tended to play in Spain and Italy and the best African, Asian, and Eastern European players often played in Italy or Germany.⁹¹ However, the *Bosman* ruling and Premier League generated revenue streams reinvigorated the league and elevated its status and quality year after year. These dynamics have also combined to trigger profound changes in the makeup of the league. For instance, in 1992 70% of starters were English.⁹² However, this number dropped to 33% by the 2018-19 season.⁹³ This was a direct consequence of its success and the subsequent growth in viewership, revenue, and the available talent pool. BPL teams increasingly attracted the best players, coaches, and management staff from all over the world in a seemingly exponential trend, and the BPL benefitted in the form of access to talent, growth in revenues, and viewership the world over.

89. See Simon Burton, *Quarantine Our Sad, Sick Game': How Heysel Tragedy Changed English Football*, GUARDIAN (Jun. 20, 2020), <https://www.theguardian.com/football/2020/jun/02/how-heysel-tragedy-changed-english-football-clubs-banned-europe> [<https://perma.cc/Z5VZ-6Q9S>] (“If this was English football in the gutter, it had taken more than Heysel and a European football ban to drag it there. Indeed, that Sunday Times editorial was published 10 days before Liverpool and Juventus met in Brussels. Already that season had seen riots involving Luton and Millwall fans in March and the Bradford fire, which led to 56 deaths, on 11 May, among countless lesser known incidents caused by decaying infrastructure or fan violence.”).

90. See *id.* (“In May 1985 the Sunday Times published a now-notorious editorial which alleged that British football was ‘in crisis: a slum sport played in slum stadiums and increasingly watched by slum people, who deter decent folk from turning up’. That deterrent was reaching peak effectiveness: in the following season top-flight attendances dropped to their lowest level since the first world war, and in the second tier to depths not seen since 1906-07.”); see also Parkinson, *supra* note 87 (“In 1985 – the year of Heysel, the Bradford disaster, the Luton-Millwall riot, of English teams being banned from European competition – *The Times* described the game as ‘a slum sport played in slum stadiums and increasingly watched by slum people’. And this wasn’t an unusual opinion; many would merely alter ‘slum’ to ‘scum.’ . . . In 1991, police predicted horror when Manchester United reached the Cup Winners’ Cup final in Rotterdam . . .”).

91. See generally, F.C., *South American Football Clubs are Missing out on European Riches*, ECONOMIST (Aug. 31, 2019) <https://www.economist.com/game-theory/2019/08/31/south-american-football-clubs-are-missing-out-on-european-riches> [<https://perma.cc/N9MW-YTAS>] (explaining how European clubs have historically imported talent from South American clubs).

92. See Cavanagh, *supra* note 86 (citing the makeup of the Premier League in 1992).

93. See *id.* (explaining how makeup of league shifted from predominantly British to majority overseas starters).

When looking at just an average BPL team, it is often a “team of captains” meaning it is comprised of a group of players who are themselves captains, vice-captains, or senior players of their national teams, which in turn contributes to the BPL’s outstanding on-field product.⁹⁴ This international quality extends to the coaching and corporate staff who also tend to bring their talent or capital from other parts of the world to contribute to the BPL’s competitiveness. However, in 2016, the British people voted to leave the European Union after 47 years of membership, a move which fundamentally altered the BPL’s recruitment market.

IV. BREXIT’S IMPACT ON THE BPL: BREXITBALL BEGINS

In 2016, the UK and EU found themselves on a collision course that would unravel decades of European political and trade integration. The BPL realized how such a move could weaken their competitiveness, and in 2016, all twenty clubs opposed Brexit.⁹⁵ There were concerns that additional barriers to immigration imposed by Brexit would shrink the BPL clubs’ collective talent pool.⁹⁶

A. Pre-Brexit Requirements

In the pre-Brexit era, BPL teams shared a single marketplace with teams playing in leagues from other EU countries, regulated by EU law which enshrined the freedom of mobility of labor as a fundamental right. When the UK was a part of the EU, scouting and signing players from other EU countries required very little bureaucratic oversight and provided member states with expanded access to youth talent.⁹⁷ BPL teams also had a development avenue of

94. See The Athletic UK Staff, *International Break: Who Goes and Who Stays From Premier League Clubs*, THE ATHLETIC (Sept. 10, 2022), <https://theathletic.com/3607593/2022/09/20/international-break-who-goes-and-who-stays-from-premier-league-clubs/> [https://perma.cc/TCC9-EHTS] (emphasizing how many highly experienced international players play for BPL teams).

95. See Ryan Kelly, *How Brexit Will Affect Premier League Football*, GOAL.COM (Jan. 30, 2020), <https://www.goal.com/en-us/news/how-brexit-will-affect-premier-league-football/cwp6p3hhmuxe119cm1syhwyi2> [https://perma.cc/P7NN-CN4A] (“It will come as no surprise to learn that all 20 Premier League clubs were against Brexit back in 2016.”).

96. See Ryan Bailey, *How Brexit Could Put the Premier League at a Disadvantage for Years to Come*, YAHOO! (Apr. 4, 2019), <https://www.yahoo.com/now/how-brexit-could-put-the-premier-league-at-a-disadvantage-for-years-to-come-052440458.html> [https://perma.cc/7KZ2-FJFW] (“Essentially, the restriction of free movement caused by Brexit is likely to put up barriers to player recruitment, which could in turn lower the talent pool of the planet’s most-watched domestic league.”).

97. See *Brexit Impact on Football Player Transfers*, THE UK LAW SOCIETIES JOINT BRUSSELS OFFICE (Aug. 31, 2021), <https://www.lawsocieties.eu/news/brexit-im->

loaning promising players to teams in EU countries to get game-time while waiting on work permits which would allow them to play in the BPL.⁹⁸ In the aftermath of Brexit, British teams are now subject to a limitation of six overseas U-21 players and cannot sign players under the age of 18 from EU countries.⁹⁹

B. Post-Brexit Requirements

Brexit has replaced EU immigration law with a new system based on a Football Governing Body Endorsement (“GBE”), will determine work permit eligibility for non-British talent.¹⁰⁰ In its assessment, the GBE evaluates a player based on a points system.¹⁰¹ If the player accrues enough points, the GBE will endorse the player, thereby allowing registration eligibility to the BPL.¹⁰² The points system factors are based on: (a) the number of international appearances for the player’s national team, (b) the reputation of the Academy that developed the player as a youth, (c) the FIFA ranking of the country of the selling club, (d) the number of appearances the player made for their club, and (e) the strength of the league in which the selling club plays.¹⁰³

Players applying for a GBE must accrue at least fifteen points based on the factors above.¹⁰⁴ The strength of the league in which

pact-on-football-player-transfers/6001959.article [https://www.lawsocieties.eu/news/brexit-impact-on-football-player-transfers/6001959.article] (explaining pre-Brexit transfer market conditions).

98. See Jamie Spencer, *7 Premier League Teams That Have Established and Used ‘Feeder Club’ Relationships*, 90MIN.COM (Jun 13, 2017), https://www.90min.com/posts/5133780-7-premier-league-teams-that-have-established-and-used-feeder-club-relationships [https://perma.cc/HJ5H-BY8G] (“It was intended that the Reds might use Genk as place to send non-EU players from South America or Africa to play until they could get a work permit, as employment laws in Belgium and many other European countries are less strict than the United Kingdom.”).

99. See *Brexit Impact on Football Player Transfers*, *supra* note 97 (presenting new limitations placed on clubs due to Brexit regulations).

100. See *id.* (“A GBE is confirmation by the football association that a footballer migrating to the UK is established at the highest level and will make a significant contribution to the development of football at the highest level in the UK.”).

101. See *id.* (“Like other overseas workers in other industries, foreign footballer players must pass a points-based system before moving to the UK.”).

102. See *id.* (explaining how GBE’s are awarded).

103. See *id.* (“Players will only be awarded the GBE if they meet the following points-based eligibility criteria:

International caps gained by a player.

FIFA ranking for the country involved in the transfer.

Academy where the player first developed their career.

Domestic club appearances made by a player.

Relative strength of the domestic league where the player made appearances.”)

104. See *id.* (explaining post-Brexit work permit qualification requirements).

the selling club plays will have a major influence on GBE eligibility.¹⁰⁵ Selling clubs in the aforementioned “major leagues” of Europe (i.e., BPL, La Liga, Bundesliga, Ligue Un, and Serie A) are much more likely to qualify for a GBE than players from clubs competing in leagues in lower bands such as the Primeira Liga in Portugal in Band 2, the Scottish Premier League in Band 3, MLS in Band 4, and Danish Superliga in Band 5.¹⁰⁶ Lastly, the leagues provided as examples of each band do not represent the entirety of that band, and all leagues not in Bands 1 through 5 form Band 6.¹⁰⁷ Players who failed to reach the 15 point threshold, and score between 10-14 points can appeal their GBE evaluation to an Exceptions Panel.¹⁰⁸

The post-*Bosman* to pre-Brexit transfer market also saw a marked change in the makeup of staff.¹⁰⁹ In the 1992-93 inaugural Premier League season, nineteen of twenty clubs were managed by a British manager, and one was managed by an Irish manager.¹¹⁰ Fast forward to the upcoming 2022-23 season and British managers make up only 40%, or eight out of the twenty managers.¹¹¹ This

105. See *Plan Agreed on Entry Requirements for Overseas Players in England Post-Brexit in 2021*, THEFA (Dec. 1, 2020), <https://www.thefa.com/news/2020/dec/01/gbe-points-based-system-launched-011220> [<https://perma.cc/SJ39-F4R4>] (explaining post-Brexit work permit qualification requirements).

106. See Jonathan Fadugba, *How the New Brexit Regulations Will Change Player Recruitment in British Football Completely*, JUST-FOOTBALL (Dec. 17, 2020), <https://www.just-football.com/2020/12/how-new-brexit-regulations-change-player-recruitment-english-football/> [<https://perma.cc/8X69-NV99>] (explaining post-Brexit work permit qualification requirements).

107. See *id.* (“Bands are as follows:

Band 1 = Europe’s big 5 leagues (Premier League, German Bundesliga, France Ligue 1, Spain La Liga, Italy Serie A)

Band 2 = Portugal, Dutch Eredivisie, Belgium, Turkey, English Championship

Band 3 = Russia, Brazil, Argentina, Mexico, Scottish Premiership

Band 4 = Czech Republic, Croatia, Switzerland, Spain Segunda, Bundesliga II, Ukraine, Greece, Colombia, MLS, Austria, France Ligue 2

Band 5 = Serbia, Denmark, Poland, Slovenia, Chile, Uruguay, China

Band 6 = all other leagues”)

108. See *id.* (“While 15 is the qualification threshold, 10-14 points means a club can request an EXCEPTIONS PANEL hearing to decide if a player will receive and endorsement (at a cost of £5,000+VAT).”).

109. See *Managers*, BRITISH PREMIER LEAGUE, <https://www.premierleague.com/managers?se=489&cl=-1> [<https://perma.cc/WTV7-F624>] (last visited Sept. 10, 2022) (demonstrating the change in the makeup of the nationality of coaching staff).

110. See *id.* (citing the near homogeneity of British managers in the inaugural Premier League season – filter by season 1992/93).

111. See Kobe Tong, *Ten Hag, Gerrard, Klopp, Guardiola: Ranking 2022/23 Premier League managers*, GIVEMESPORT (Aug. 1, 2022), <https://www.givemesport.com/88042018-ten-hag-gerrard-klopp-guardiola-ranking-2022-23-premier-league->

trend started with the hiring of Arsene Wenger as Arsenal manager in 1996.¹¹² At the time, Wenger was coaching a Japanese team after having worked many years managing French teams.¹¹³ Wenger quickly found success by introducing a new style and tactics from experience gleaned from previous roles on the field and introduced culture changes off the field by promoting the work of performance and data analysts, sports scientists, dieticians, and psychologists who were brought in as support staff.¹¹⁴ Wenger also recruited heavily from talent based outside the UK, bringing in players such as Thierry Henry, Marc Overmars, Robert Pires, Freddie Ljungberg, and Patrick Viera whose style and skillset were novel to the English leagues.¹¹⁵ British audiences used to games dominated by physicality and all-out effort were soon won over by a more organized, refined, technically proficient, and aesthetically pleasing approach to the game.¹¹⁶ It could be argued that it was the successful marriage of these approaches that ultimately gave the Premier League its distinct, intense-yet-refined style. Other clubs soon looked to managerial talent from outside the UK, such as Gerard Houllier, Rafael Benitez, and Jose Mourinho whose success accelerated the trend of the hiring of non-British managers.¹¹⁷ Furthermore, these non-British managers tended to bring coaching and support staff from the teams and leagues that they had worked with in previous roles, which caused a corresponding change in the

managers/ [<https://perma.cc/EFL7-KS4B>] (establishing that at the start of the 2022-2023 BPL season, eight of twenty managers were British).

112. See Mattias Karen, *Five Ways Arsenal's Arsene Wenger Changed English Football Forever*, ESPN (May 13, 2018), <https://www.espn.com/soccer/club/arsenal/359/blog/post/2959355/five-ways-arsenals-arsene-wenger-changed-english-football-forever> [<https://perma.cc/F7W4-2FTK>] (illustrating when shift in nationality of coaching staff to non-British personnel began by explaining background of Premier League's first successful non-British manager in BPL era).

113. See *Wenger – Japan Spell had Profound Effect*, ARSENAL (Jun. 5, 2013), <https://www.arsenal.com/news/news-archive/wenger-japan-spell-had-profound-effect> [<https://perma.cc/8C8Q-DAHP>] (explaining where Wenger was employed immediately prior to taking on the Arsenal job).

114. See *id.* (explaining the methods and approach, not native to the UK, that Wenger employed to improve Arsenal).

115. See *Arsène Wenger, a Football Coach for Europe*, ECONOMIST (Feb. 25, 1999), <https://www.economist.com/europe/1999/02/25/arsene-wenger-a-football-coach-for-europe> [<https://perma.cc/PHA9-VF9V>] (citing Wenger's proclivity for signing non-British players).

116. See Parkinson, *supra* note 87 (explaining how non-British players and coaches won over British audiences).

117. See Martyn Herman, *Soccer: Pioneer Wenger Broke Down Barrier for Overseas Coaches*, REUTERS (Apr. 20, 2018), <https://www.reuters.com/article/soccer-england-ars-wenger-foreign/soccer-pioneer-wenger-broke-down-barrier-for-overseas-coaches-idINKBN1HR2S2> [<https://perma.cc/8NQ5-ZB8C>] (demonstrating how Wenger's success opened the door for non-British managers).

makeup of coaching and support staff in BPL teams to non-British personnel.¹¹⁸ In the aftermath of Brexit, non-British coaches, support staff, and managers will be evaluated along the lines of a similar tiered point system.¹¹⁹

Lastly, women's professional club teams and leagues will be held to a similar tiered point system when applying for work permits for players.¹²⁰ However, it's important to note that the women's game is in an earlier stage of development and operates under different dynamics than men's soccer.¹²¹ Despite this, the women's game is becoming increasingly internationalized, particularly after the establishment of the Women's Champions League, and so these new regulations will have an impact on the women's game.¹²² As it stands, women's teams based in EU countries already

118. See Matt Hughes and Tom Collomosse, *REVEALED: Brexit BLOCK on Foreign Managers as FA's New Rules Threaten to Change the Face of English Football. . . and Would Have Stopped Ole Gunnar Solskjaer and Marcelo Bielsa Working Here*, DAILY MAIL, (Feb. 10, 2021), <https://www.dailymail.co.uk/sport/football/article-9246955/Brexit-BLOCK-foreign-bosses-FAs-new-rules-threaten-change-face-English-football.html> [<https://perma.cc/FY5D-3WU2>] (“The regulations will also have a dramatic effect on clubs seeking to appoint foreign coaches to their backroom staff, as the guidance states that even prospective assistant managers ‘must have managed a club in a top league for the prescribed time’. Foreign managers often bring their own coaching staff, which would be prohibited in most cases unless they have prior management experience at the top level.”).

119. See Fadugba, *supra* note 106 (supporting the claim that coaching and support staff, like players, are now required to qualify for work permit via tiered point system).

120. See Paul MacInnes, *Football and Brexit: a Guide to the New Rules and Their Impact on Clubs*, GUARDIAN (Dec. 28, 2020), <https://www.theguardian.com/football/2020/dec/28/football-and-brexit-a-guide-to-the-new-rules> [<https://perma.cc/S7YW-P5PW>] (“All of the above refers to conditions imposed on the men's game, but women's teams will also need to apply for GBEs for new players and the points needed for qualification are even higher, with 24 the minimum.”).

121. See Drew Kann, *Yes, the US Women's Soccer Team is Dominant. That's Because Most of the World is Playing Catch-up*, CNN (Jul. 25, 2019, 8:27 AM), <https://www.cnn.com/2019/06/16/us/uswnt-dominance-womens-soccer-world-cup-history-explained/index.html> [<https://perma.cc/S5KG-X4LE>] (“The success of US women's soccer can't solely be attributed to Title IX. But there's little question that the law sparked huge growth in women's athletics, at a time when many countries were either not investing in women's sports, or, in some places, were actively quashing them. The law prohibited any educational institution receiving federal funds from discriminating on the basis of sex, which includes athletics. In 1971, the year before Title IX became law, there were only 700 girls participating in high school soccer programs, according to the National Federation of State High School Associations.”).

122. See Asif Burhan, *FIFA Reveal Women's Soccer Transfers Generated \$487,800 in January*, FORBES, (Feb. 8, 2022, 12:15 PM), <https://www.forbes.com/sites/asifburhan/2022/02/08/fifa-reveal-womens-soccer-transfers-generated-487800-us-dollars-in-january/?sh=2519a5c2485e> [<https://perma.cc/GJ9R-PA59>] (citing recent transfers of international transfers in European women's club teams).

have a big head start, as they have dominated the Women's Champions League.¹²³

C. Impact If New Criteria Were Retrospectively Applied in the Pre-Brexit Era

Proponents of the new system argue that more restrictive criteria will afford more opportunities to British youth players and increase the quality of non-British imports by requiring them be more experienced in their careers.¹²⁴ Detractors will point to the opportunity cost of missing out on less established talents and argue that the new criteria system will increase the value of players based solely on nationality rather than on the player's talent, potential, or contributions to their team. It is important to note that players' careers rarely run along a projected, even positive slope. Instead, most careers, even those of elite players, are subject to the volatility and vicissitudes of life. Therefore, it is useful to consider what players and coaches would have been impacted had the new eligibility criteria rules been in place in the post-*Bosman* to pre-Brexit era of Premier League football. It is also important to consider how this will affect British players' opportunities in the European leagues.

The most noticeable impact will be in the recruitment of youth players from EU countries. Soccer is seemingly, increasingly commercialized and globalized year on year, and the competition for the best talent is fierce.¹²⁵ Elite teams are always competing to find

123. See *UEFA Women's Champions League Records*, UEFA.COM (Dec. 22, 2022), <https://www.uefa.com/womenschampionsleague/news/025b-0ef163bc672f-4f70d38ff3af-1000—uefa-women-s-champions-league-records/> [<https://perma.cc/FGH4-739X>]

(“Titles (by club)
 8 Lyon (FRA)
 4 Frankfurt (GER)
 2 Turbine Potsdam (GER)
 2 Umeå (SWE)
 2 Wolfsburg (GER)
 1 Arsenal (ENG)
 1 Barcelona (ESP)
 1 Duisburg (GER)”)

124. See Paul Macdonald, *How Brexit is Impacting Premier League Recruitment*, FOOTBALL TRANSFERS (May 19, 2021), <https://www.footballtransfers.com/en/transfer-news/it-serie-a/2021/03/how-brexit-is-impacting-premier-league-recruitment> [<https://perma.cc/KZ6E-CNVN>] (citing possible favorable changes caused by Brexit).

125. See Tom McTague, *The Ugly Truth About the Beautiful Game*, ATLANTIC (May 28, 2022), <https://www.theatlantic.com/international/archive/2022/05/european-soccer-kylian-mbappe-real-madrid/643116/> [<https://perma.cc/KG4T-RWVE>] (“European soccer became more and more commercialized in the 1980s and ‘90s, but everything changed in 2003 when Chelsea—not part of the traditional European elite—was bought by the Russian billionaire Roman Abramovich, instantly

the next big thing among the youth ranks in the hopes of turning the promising youth players of today into future stars. Clubs lower down in the food chain often rely on the strategy of finding undervalued gems who need a high-profile platform like the Premier League to shine. Some clubs, such as Chelsea, have found a revenue stream in the recruitment of large numbers of promising youth players who are then loaned out for experience, and from which they sometimes receive loan fees.¹²⁶ Some of these players return to their parent club while many are sold off for a fee after they've gained first team experience from their loans.¹²⁷

In regard to youth player recruitment, the most consequential post-Brexit requirement is the ban on signing EU players under the age of 18 years old. One of the most prominent examples of this would be the inability for Arsenal to sign Cesc Fabregas who was signed from Barcelona as a 16 year old youth player.¹²⁸ Cesc Fabregas was an unproven, undeveloped youth player with world-class potential when he was signed by Arsenal, but he eventually developed into one of the world's finest midfielders and enjoyed considerable success in his club and national career.¹²⁹ Similarly, Manchester United would have been unable to sign a young Paul Pogba, though it's likely both parties would probably retrospectively agree

becoming a superclub in terms of wealth. Then, in 2008, an investment company with close links to Abu Dhabi's royal family bought Manchester City, instantly transforming a team that had been in England's third tier barely a decade earlier into the world's richest club. Three years later, Qatar's sovereign wealth fund bought Paris Saint-Germain, known everywhere as PSG. Since the takeover, PSG-whose founding in 1970 leaves it extraordinarily young among the classes of Europe's elite-has gone on a spending binge, breaking the transfer-fee world record twice as well as signing perhaps the greatest player of all time, Lionel Messi.”)

126. See Peter Sharland, *Football news - Has Chelsea's Loan Strategy Changed This Summer? Honestly, it's Complicated*, EUROSPORT, (Aug. 17, 2021), https://www.eurosport.com/football/transfers/2020-2021/football-news-has-chelseas-loan-strategy-changed-this-summer-honestly-its-complicated_sto8494744/story.shtml [<https://perma.cc/3H9K-S7PQ>] (“The idea was simple: use Chelsea's immense wealth to create an unparalleled scouting network that allowed the club to sign the best youngsters in the world. From that point they were given loans in some of Europe's best leagues for talent development.”).

127. See *id.* (“They would then either be sold for a profit to a top team who wants them as a first-team regular or given a chance in Chelsea's senior squad.”).

128. See Fadugba, *supra* note 106 (confirming Brexit would have prohibited Arsenal from signing Fabregas as youth player).

129. See Rahul Lakhani, *Arsenal's 5 PFA Young Player of the Year winners & how they fared*, FOOTBALL365, (May. 14, 2022), <https://www.planetfootball.com/quick-reads/arsenal-young-player-year-winners-fabregas-anelka-wilshere/> [<https://perma.cc/4YX6-3QTN>] (demonstrating Fabregas' growth from talented teenager to world-class midfielder).

that would have been for the best.¹³⁰ However, going forward, the point is that the BPL will be at a marked disadvantage when recruiting youth players from EU countries. Elite teams from EU countries will have a minimum two-year head start on BPL teams in the race to sign EU youth players.¹³¹

Next, it's important to consider current Premier League players who would not have qualified for a GBE when they were signed. Promising attacker Emiliano Buendia, who currently plies his trade at Aston Villa, would likely not have qualified for a GBE when he signed with Norwich City from Getafe who were playing in Spain's second tier league, the Segunda Liga.¹³² Perhaps the most prominent examples of players who would not have qualified for a GBE are N'Golo Kante and Riyad Mahrez.¹³³ Both players were relative unknowns with an unproven body of work playing for clubs in France's lower tier leagues when they were signed by Leicester.¹³⁴ The EU grant of freedom of mobility of labor allowed Leicester the opportunity to sign these players despite those considerations weighing against them.¹³⁵ Kante and Mahrez eventually developed into key players who played a pivotal role in Leicester's miracle 2015-16 title winning campaign.¹³⁶ This feat is considered to be one of the greatest upsets in sports history as Leicester's preseason

130. See *How will Brexit rules affect the Premier League?*, FRANCE24 (Dec. 23, 2020), <https://www.france24.com/en/live-news/20201223-how-will-brexit-rules-affect-the-premier-league> [<https://perma.cc/2XKD-E5MF>] (identifying players who would not have qualified for work permit post-Brexit).

131. See *id.* (emphasizing clear competitive advantage clubs from EU countries possess over BPL clubs due to Brexit).

132. See Fadugba, *supra* note 106 (identifying players who would not have qualified for work permit post-Brexit).

133. See Peter Berlin, *British Football Braces for Life After Brexit*, POLITICO (May 10, 2017), <https://www.politico.eu/article/british-football-braces-for-life-after-brexit-chelsea-ngolo-kante-english-premier-league/> [<https://perma.cc/NM4L-LMNW>] (providing background on Kante and Mahrez).

134. See *id.* ("Last season Leicester City's title-winning team was built around two players the club unearthed in the less fashionable reaches of the French league: Riyad Mahrez and N'Golo Kanté. Both were winners of the Premier League Player of the Year award.")

135. See *id.* ("If Britain had not been an EU member at the time, neither player would have qualified for work permits. And the Premier League would have lost a highly marketable fairy tale.")

136. See Tom Hamilton, *Leicester's Premier League Title Winners of 2015-16: Where Are They Now?* ESPN (Jun. 15, 2020), <https://www.espn.com/soccer/leicester-city/story/4107774/leicesters-premier-league-title-winners-of-2015-16-where-are-they-now> [<https://perma.cc/DM4Q-ZSFY>] ("Leicester City's 2015-16 Premier League title win is arguably the most remarkable in history. Claudio Ranieri's men began the season as 5,000/1 outsiders, and according to bookmakers at the time there was more chance of Elvis Presley being alive than there was of the Foxes bringing home the trophy.")

odds of winning the league as determined by bookmakers were 5000 to 1.¹³⁷ Both players eventually signed for bigger Premier League teams, Chelsea and Manchester City, and have now established themselves as elite Premier League players.¹³⁸ There can be no doubt of the talents and contributions of players like these who have greatly contributed to the Premier League's competitiveness and the perception of it as arguably the best league in the world.

Furthermore, signings like Mahrez's and Kante's represent more than a good return on investment – they are jackpots available for bargain pricing accessible to shrewd buyers in the EU. For example, if Mahrez had developed into the player he is now in an EU country, it would cost a BPL club far more to purchase him than the approximately \$500,000 Leicester spent. Additionally, players from countries with low FIFA country coefficients will encounter greater difficulty securing work permits under the new scheme. However, these players offer incredible upside if they are able to establish themselves as stars, especially if their country of origin doesn't have a strong history of producing world-class players, by converting uncommitted or uninterested observers in their country into fans of their club (and in turn, the league), such as Mohamed Salah's impact on Egyptian football.¹³⁹ Leaving the EU

137. See *id.* (citing how contemporary sources were dismissive of Leicester City, and how Leicester were largely perceived to be unfancied outsiders with virtually no chance of winning the league.); see also J.T., *How Leicester City Staged the Greatest Upset in Sporting History*, *ECONOMIST*, (May 2, 2016), <https://www.economist.com/the-economist-explains/2016/05/02/how-leicester-city-staged-the-greatest-upset-in-sporting-history> [<https://perma.cc/P9FW-56W4>] (“ANYONE who watches sport for long enough will see his share of upsets. Boxing aficionados remember Buster Douglas knocking out Mike Tyson at odds of 42 to 1—and occasionally an underdog will keep going for an entire tournament. Greece's football side were 150 to 1 to win the 2004 European Championship, whereas the Minnesota Twins were 500 to 1 to win baseball's 1987 World Series. But nothing could have prepared football fans for Leicester City's remarkable run in the 2015-16 English Premier League. The Foxes were 5,000 to 1 to win the title on the season's opening day.”)

138. See Adam Bate, *The rise of Mahrez and Kante*, *ECONOMIST* (May 2, 2016), <https://www.skysports.com/football/story-telling/11662/12318848/riyad-mahrez-and-ngolo-kante-from-paris-via-leicester-the-parallel-lives-of-champions-league-stars> [<https://perma.cc/G28A-D89K>] (“‘They had unbelievable seasons,’ King tells *Sky Sports*. ‘It was not just their outstanding performances but it was where they came from in the lower leagues of France. Nobody had really heard of them and now they are both global superstars.’”).

139. See Joanna Durkan, *More Than a Footballer: Mohamed Salah's Profound Impact in Egypt*, *THIS IS ANFIELD* (Feb. 5, 2022), <https://www.thisisanfield.com/2022/02/more-than-a-footballer-mohamed-salahs-profound-impact-in-egypt> [<https://perma.cc/63RL-YMQR>] (demonstrating how stars from countries with less established football traditions can bring entire nations of supporters into fold of supporting team or league).

denies BPL clubs the opportunity to sign extraordinary values like Fabregas, Kante, and Mahrez. This is particularly hurtful to smaller teams who depend on finding these types of players in their attempt to keep up with the big spenders.¹⁴⁰

Lastly, post-Brexit regulations on transfers will limit opportunities for British players in EU countries.¹⁴¹ In a relatively recent trend, some of the best British youth prospects have chosen to sign for European teams, most notably Jadon Sancho and Jude Bellingham who signed for Dortmund and developed into elite players.¹⁴² Teams from the EU who wish to sign British players will be subject to similar criteria regulations.¹⁴³ For instance, La Liga has already categorized British players as “non-EU players” who are subject to a quota.¹⁴⁴ Brexit regulations will limit the pathways for British youth to develop at clubs in EU countries, at for example, Ajax, Dortmund, or Barcelona, who are world renowned for developing top potential into world-class talent.¹⁴⁵

140. See Berlin, *supra* note 133 (“If Brexit means that they are applied to EU citizens, this will hurt the richest clubs least. They can afford to buy and pay the biggest established stars. And most of their EU players satisfy the rules. Clubs lower down the Premier League, with less money to spend, often buy potential, in the hope of selling later for a profit. Such players are less likely to have reached the international appearance thresholds. Further down the English soccer pyramid, and in Scotland, the problem would be increasingly acute. More than 400 EU players in the lower English divisions would fail the work permit test.”).

141. See Kelly, *supra* note 95 (explaining Brexit’s impact on pathways for British players in EU countries).

142. See Neil McLeman, *How Brexit Impacts Transfers and Youth Policy as UK Leaves European Union Single Market*, THE MIRROR (Dec. 31, 2020), <https://www.mirror.co.uk/sport/football/news/how-brexit-impacts-transfer-market-23246689> [<https://perma.cc/6X5S-RWHM>] (“Young British talent, like Jadon Sancho and Jude Bellingham of Borussia Dortmund, will now not be able to play in Europe until they are 18.”).

143. See Kelly, *supra* note 95 (“Another concern that has arisen as a result of Brexit is the status of British footballers plying their trade in places such as Spain, Germany or France. . . . Brexit could make it more difficult for individuals to make the move to an EU country due to the increased paperwork that is anticipated due to the probable need for work permits.”)

144. See *Brexit: British Players Signed from 1 January will be Classified as Non-EU players in LaLiga*, AS.COM (Dec. 31, 2020), https://en.as.com/en/2020/12/31/soccer/1609443767_403790.html [<https://perma.cc/FY7Y-ZC5F>] (demonstrating how leagues in EU countries have implemented policies limiting pathways for British players after Brexit).

145. See Rahul Lakhani, *The 13 Most Profitable Youth Academies in The World Since 2015*, PLANETFOOTBALL (May 1, 2022), <https://www.planetfootball.com/quick-reads/profitable-youth-academies-transfers-liverpool-benfica-ajax-barcelona/> [<https://perma.cc/N84S-EMX8>] (“Youth academies are a fundamental part of any football club as they help young players develop and potentially become good enough to command a big fee – which these 13 clubs have done successfully since 2015.”).

The net effect of these regulations will be a rise in the costs of transfers accompanied by increased bureaucratic hurdles caused by the shrinking of the BPL's available talent pool. Football transfers are some of the most expensive and complex investments in sport, and these regulations will increase both the costs and complexity of such transfers of players and staff from EU countries. However, these new regulations could also create more opportunities for British youth players and increase investment in youth development.¹⁴⁶ Unfortunately, the end result will likely be increased costs and lower quality because Brexit regulations shrink the talent pool available to British clubs. Less experienced and skilled players will replace cheaper, more experienced, and more highly skilled foreign imports. The value of British youth players will rise based on the need for clubs to satisfy the quota of required home-grown players rather than on their talent, potential, or ability to improve a team. This seems to undermine the primary goal of producing the best end product. Aren't sports, after all, supposed to be the ultimate meritocracy? And in an industry where the margins between success and failure are so thin, and the stakes so high, a reduction in quality would damage the BPL's position.

Furthermore, it can be reasonably argued that exposure to higher skilled players during their youth careers would be beneficial to the development of British youth players, and senior players commonly serve as mentors to the youth team. Lastly, it's worth pointing out that, the performance of the England national team has been remarkably consistent in disappointing its fans, outside of the 1966 World Cup and the Lionesses's recent Euro 2022 victory, and so there is little basis in the claim increasing English representation in the league will change their fortunes in international competitions.¹⁴⁷ England has consistently produced a great deal of world-class talent of their own from one generation to the next. The England national team's lack of performance is not from a shortage of talent, but from a persistent inability to play well as a team.¹⁴⁸

146. See MacDonald, *supra* note 124 (citing possible favorable changes caused by Brexit).

147. See *What is England National Football Team?*, BUSINESS STANDARD, <https://www.business-standard.com/about/what-is-england-national-football-team#collapse> [<https://perma.cc/9U3X-ASZV>] (last visited Sep. 10, 2022) (citing trophy history of England national team).

148. See John Nicholson, *Ranked! The 19 Worst Moments in England National Team History*, FOURFOURTWO (Mar. 22, 2018), <https://www.fourfourtwo.com/features/ranked-19-worst-moments-england-national-team-history> [<https://>

However, despite these new regulations, Premier League teams continue to flex their financial might. In the last transfer window, 13 of the top 25 spending clubs in Europe were BPL clubs.¹⁴⁹ Furthermore, BPL clubs spent a record \$2.23 billion dollars in the same 2022 summer transfer window, outspending the aggregate spend of clubs from La Liga, Serie A, and the Bundesliga.¹⁵⁰ Therefore, while some avenues might have closed, BPL teams have kept others open through sheer financial strength.

D. Mitigation Strategies

BPL clubs will have ways to circumvent some of the effects caused by post-Brexit regulation. The use of allied feeder clubs on the European continent is a solution that has proven its worth.¹⁵¹ For instance, Manchester United have well-known links to Royal Antwerp in Belgium.¹⁵² In the past, Manchester United have sent many promising non-EU players to Royal Antwerp to gain the experience and game time needed to qualify for an EU work permit alongside the best of their domestically recruited youth players. This relationship could be utilized to acquire U-18 EU players, as allied clubs in the EU could sign and develop these youth players until they turn 18 and are eligible to sign for a Premier League team.

A similar solution would be to utilize the ownership group strategy. This strategy is most famously employed by Red Bull and City Football Group.¹⁵³ Red Bull group owns multiple teams in dif-

perma.cc/U9YE-LN54] (illustrating England national team's failures despite fielding world-class players).

149. See Emlyn Begley, *Deadline Day: Window Closed as Aubameyang to Chelsea Confirmed*, BBC (last visited Sept. 22, 2022), <https://www.bbc.com/sport/live/football/62717249/page/2> [<https://perma.cc/MD7Z-K3ZZ>] (emphasizing financial strength of Premier League clubs relative to clubs in other European leagues).

150. See Gab Marcotti, *Premier League Dominance Shown yet Again in Summer Transfer Window Spending*, ESPN (Sept. 1, 2022) <https://www.espn.com/soccer/blog-marcottis-musings/story/4736316/premier-league-dominance-shown-yet-again-in-summer-transfer-window-spending> [<https://perma.cc/8DK7-Z88R>] (emphasizing financial strength of Premier League clubs relative to clubs in other European leagues).

151. See Spencer, *supra* note 98 (providing history of successful feeder club relationships).

152. See *id.* (exhibiting BPL clubs' use of feeder clubs).

153. See Ian King, *Multi-Club Ownership: All the Questions you Wanted Answering After Boehly's Chelsea Comments*, FOOTBALL365, (Sep. 16, 2022), <https://www.football365.com/news/opinion-multi-club-ownership-questions-you-wanted-answering-todd-boehly-chelsea> [<https://perma.cc/FZE6-4R7L>] ("This is the policy followed by the two best-known multi-club operations. City Football Group own clubs in England, the USA, China, Spain, Australia, Japan, Uruguay, Belgium and

ferent leagues, such as RB Leipzig in Germany and New York Red Bull in the United States.¹⁵⁴ They have run into regulatory issues, such as when more than one team affiliated with the ownership group competed in the same tournament, the Champions League, which required Red Bull to prove it did not have a “decisive influence,” meaning managerial/executive control over RB Salzburg, and were instead simply corporate sponsors.¹⁵⁵ A more relevant comparison for BPL purposes would be City Football Group who own Manchester City, New York City FC in the US, and Melbourne City in Australia.¹⁵⁶ The City Football Group could acquire another club in an EU country, possibly allowing them member state access to talent playing in the EU, so long as the acquired club didn’t play in any of the same competitions as Manchester City (i.e., the Champions League).

V. CONCLUSION

It is likely that Brexit regulations will define a new era of the global football transfer and labor market, just as the creation of the Premier League and *Bosman* ruling defined the preceding era. If British talent can keep the level of quality up in the absence of cheaper, more experienced, and higher quality imports, post-Brexit regulations can be considered a success. However, it is more likely they will increase the complexity and cost of importing talent while simultaneously increasing the cost of purchasing less talented home-grown players.

On a final note, there is an increased appetite for competition between the top club teams in Europe, which last manifested itself in a failed attempt to establish the European Super League. Despite the project’s deep unpopularity and the seemingly unanimous rejection by fans, the clubs in the ESL pursued the project because of massive projected revenues from more broadcasts featuring games between the top teams from different leagues.¹⁵⁷ Though

India, with a ‘partner club’ in Bolivia. Red Bull own clubs in Austria, Germany, the USA and Brazil.”).

154. *See id.* (providing example of ownership group strategy).

155. *See* Rory Smith, *UEFA Approves Entry of 2 Red Bull-Branded Teams in Champions League*, N.Y. TIMES (Jun. 20, 2017), <https://www.nytimes.com/2017/06/20/sports/soccer/uefa-soccer-red-bull-champions-league.html> [<https://perma.cc/V5RB-44KG>] (providing background on how UEFA has previously managed multi-club ownership issue).

156. *See* Spencer, *supra* note 98 (providing background on City Football Group’s multi-club ownership strategy).

157. *See* Mike Ozanian, *European Super League Will Make Soccer’s Most Valuable Teams And Their Owners Richer*, FORBES (Apr. 19, 2021), <https://www.forbes.com/>

the attempt failed, it's likely that the clubs who attempted to establish the ESL, and those like them, will continue to try to maximize revenues and entrench their elite status through other means.

For instance, just as video killed the radio star, streaming has the potential and ability to fundamentally alter the status quo of league negotiated TV rights packages. The elite clubs of Europe are likely already assessing the viability of a new model of direct-to-consumer streaming. If this concept catches on, leagues will have little leverage when negotiating TV broadcasts rights and lose overall influence over their clubs. Additionally, the teams with the biggest audiences and fanbases will take an even greater proportion of revenues leaving less for smaller and developing clubs. Alternatively, these clubs may simply try to launch the ESL again in a more palatable form. The effects of these trends are yet to be determined, and football fans will likely only glean insights retrospectively. However, one thing fans can expect is that there will be changes as the football world, much like the game itself, is constantly in motion.

sites/mikeozanian/2021/04/19/super-league-will-make-soccers-most-valuable-teams-and-their-owners-richer/?sh=644f6a2765e1 [https://perma.cc/4AA5-GXTJ] (“It’s all about the money, especially for the champion. The club that wins the European Super League could be due close to \$470 million (€400 million), compared with the \$141 million (€120 million) that is given out to the Champions League winner each year, according to the Spanish sports newspaper Marca.”).

