



2021

Why the United Kingdom Should Look to Switzerland's Immigration System to Protect the English Premier League After Brexit

Fraser Goodlad

Follow this and additional works at: <https://scholarlycommons.law.emory.edu/eilr>



Part of the [International Law Commons](#)

Recommended Citation

Fraser Goodlad, *Why the United Kingdom Should Look to Switzerland's Immigration System to Protect the English Premier League After Brexit*, 35 Emory Int'l L. Rev. 671 (2021).

Available at: <https://scholarlycommons.law.emory.edu/eilr/vol35/iss4/4>

This Comment is brought to you for free and open access by the Journals at Emory Law Scholarly Commons. It has been accepted for inclusion in Emory International Law Review by an authorized editor of Emory Law Scholarly Commons. For more information, please contact law-scholarly-commons@emory.edu.

WHY THE UNITED KINGDOM SHOULD LOOK TO SWITZERLAND'S IMMIGRATION SYSTEM TO PROTECT THE ENGLISH PREMIER LEAGUE AFTER BREXIT

INTRODUCTION: THE UNCERTAINTY OF THE ENGLISH PREMIER LEAGUE'S DOMINANT GLOBAL STATUS POST-BREXIT

In June 2016, Richard Scudamore, the English Premier League's (EPL) Executive Chairman from 2014 to 2018, announced that all twenty EPL clubs favored remaining in the European Union (EU).¹ Scudamore stated, "There is an openness about the Premier League which I think it would be completely incongruous if we were to take the opposite position [being in favor of Brexit]. We would just be . . . respected less around the world."²

After the result of the United Kingdom's vote to leave the EU, EPL clubs made it clear to England's national soccer federation, the Football Association (FA), that the clubs do not plan to reduce the number of foreign players they sign after Brexit.³ The EPL clubs worry that reducing the number of foreign players they sign will be detrimental to their ability to win matches in elite European competitions and lessen the EPL's attractiveness to television broadcasters.⁴

The FA, in divergence with the EPL, sees Brexit as an opportunity to reduce the number of players from overseas in the EPL.⁵ "[H]omegrown" players accounted for approximately forty percent of the EPL clubs' squads in the 2018/19 season.⁶ The Union of European Football Associations (UEFA) ascribes homegrown status to players whom were registered with a single club in that particular state for three seasons between the ages of fifteen and twenty one.⁷ The FA wants to curb imports from abroad to increase the proportion of

¹ Peter Yeung, *EU Referendum: All 20 Premier Clubs Back Remain*, GUARDIAN (June 20, 2016), <https://www.independent.co.uk/news/uk/home-news/eu-referendum-premier-league-clubs-back-remain-brex-it-vote-what-happens-to-football-teams-a7091201.html>.

² *Id.*

³ David Hellier, *Soccer's Brexit Fight Heats Up as Clubs Resist Curbs on Imports*, BLOOMBERG (Nov. 15, 2018), <https://www.bloomberg.com/news/articles/2018-11-15/u-k-soccer-clubs-said-to-oppose-plan-for-fewer-overseas-players>.

⁴ *Id.*

⁵ *Id.*

⁶ Danny Ryan, *The Premier League Table Based on the Number of Homegrown Players Used in 18/19*, GIVEMESPORT (Feb. 6, 2019), <https://www.givemesport.com/1450706-the-premier-league-table-based-on-the-number-of-homegrown-players-used-in-1819>.

⁷ STEPHEN WEATHERILL, PRINCIPLES AND PRACTICE IN EU SPORTS LAW 195 (David Anderson et al. eds., 1st ed. 2017).

English players playing in the EPL.⁸ The FA believes that if a higher proportion of homegrown players are able to play in the EPL, the English national team will benefit from the larger pool of players gaining experience in England's top tier of soccer.⁹ Martin Glenn, the FA's Chief Executive, proposed cutting the maximum number of foreign players in a twenty-five person squad from seventeen down to twelve.¹⁰ The EPL, on the other hand, wants to use Brexit as a chance to widen its net and secure the services of talented players from across the globe who are restricted by the current immigration system.¹¹

The EPL is a major player in the U.K. economy, and allowing EPL clubs to attract the world's most exciting talent is pivotal if the EPL is to maintain its dominant global status after Brexit.¹² In the 2016/17 season, the twenty EPL clubs generated around \$4.4 billion in tax revenue and contributed around \$10 billion to the British economy.¹³ As the EPL stands at this post-Brexit crossroads, it can either follow the path of *openness* exemplified by the Swiss immigration system or the more insular path of prioritizing homegrown players, exemplified by the Russian immigration system. Approaches adopted by Switzerland and Russia demonstrate vastly differing relationships with the European Union. To illustrate the difference between these two approaches, this Comment analyzes the Swiss and Russian immigration systems with specific emphasis on the rules applying to soccer players in each state.

In Section I, this Comment explains the backdrop of *lex sportiva* in the European Union and how Brexit will affect the EPL. Section II discusses immigration law in the United Kingdom and European Union, Switzerland, and Russia. Section III focuses specifically on the laws and rules that national soccer federations and governments apply to soccer players in the United Kingdom, Switzerland, and Russia. Section IV describes how the Swiss model of immigration with regard to soccer players is more workable than the Russian model and will best preserve the EPL's position of global dominance.

⁸ Hellier, *supra* note 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Matt Hughes & Martyn Ziegler, *Premier League Makes £7.6bn for the Economy*, TIMES LONDON (Jan. 24, 2019), <https://www.thetimes.co.uk/article/premier-leagues-7-6bn-contribution-to-uk-economy-glz53vf6>.

¹³ *Id.*

I. SPORTS LAW AND GOVERNANCE IN EUROPE

Sports are hugely influential both socially and economically in Europe. The EPL is at the apex of all major sports and sports leagues in Europe. The EPL's economic dominance is unparalleled.¹⁴ Accordingly, the EPL and the other major sports leagues across Europe are regulated and administrated by a number of national and international organizations. In soccer, each nation has a national federation and all of the national federations are members of the regional federation for Europe, UEFA.¹⁵ The regional federations throughout the world are members of the global soccer federation, FIFA.¹⁶ Soccer clubs and national federations in Europe are under the jurisdiction of their national laws, EU law (known as *lex sportiva* as it applies to sports), and Swiss law (because UEFA and FIFA are headquartered in Switzerland).¹⁷ Now that the United Kingdom has left the European Union, the governance of possibly the best-known sports league in the world is now subject to change. The next section explains the backdrop to the United Kingdom's decision to leave the European Union as it applies to soccer.

A. *The Importance of the English Premier League to the United Kingdom's Economy*

The EPL is a financial behemoth.¹⁸ The EPL entered into television contracts worth around \$12 billion in 2019 for the next three seasons.¹⁹ The twenty clubs in the EPL recorded revenues of around \$6.3 billion in 2017/18.²⁰ In 2017/18, the clubs in the EPL paid \$3.7 billion in wages.²¹ The EPL has financial dominance over all of its rival leagues in Europe.²² In 2017/18, the EPL's closest competitors were La Liga in Spain and the Bundesliga in Germany.²³ Spain's

¹⁴ David Conn, *Premier League Clubs' Record £4.8 billion Revenues Widens Gap to Rest of Europe*, GUARDIAN (May 22, 2019), <https://www.theguardian.com/football/2019/may/22/premier-league-clubs-record-48bn-revenues-widens-gap-la-liga-bundesliga>.

¹⁵ Borja Garcia, *UEFA and the European Union: From Confrontation to Cooperation?*, 3 J. CONTEMP. EUR. RES. 202 (2007).

¹⁶ Karen Perry & Madison Steenson, *A Post-Brexit Impact: A Case Study on the English Premier League*, 10 HARV. J. SPORTS & ENT. L. 1, 6 (2019).

¹⁷ WEATHERILL, *supra* note 7, at 195.

¹⁸ Conn, *supra* note 14.

¹⁹ Note that this Comment converts Pound sterling (£) to U.S. Dollars (\$). *English Premier League Broadcast Rights Rise to \$12 Billion*, USA TODAY (May 21, 2019), <https://www.usatoday.com/story/sports/soccer/2019/05/21/english-premier-league-broadcast-rights-rise-to-12-billion/39500789>.

²⁰ Conn, *supra* note 14.

²¹ *Id.*

²² *Id.*

²³ *Id.*

top two divisions recorded combined revenues of around \$5.2 billion, over \$1 billion less than England's top division.²⁴ Germany's top two divisions also lagged behind the EPL and posted similar revenues of around \$5.2 billion.²⁵

The top European leagues court a global audience.²⁶ In stark comparison, the insular Russian Premier League (RPL) struggles to compete with its European rivals.²⁷ For comparison, the television rights for the RPL in 2016 were worth just \$36 million, which is less than one percent of the annual deal that the EPL signed for its television rights.²⁸ The relatively small Swiss Raiffeisen Super League (RSL) secured a new television rights package in 2016 worth \$163.2 million over four years, which represented a seventy percent jump from its previous television rights arrangement.²⁹

In the 2016/17 season, the twenty EPL clubs generated around \$4.4 billion in tax revenue and contributed around \$10 billion to the British economy.³⁰ Compared to three years before, the tax yield in the 2016/17 season represented an increase of almost fifty percent and doubled the gross value added to the economy from three years prior.³¹ EPL players paid around \$1.4 billion in personal taxes.³² EPL clubs support the equivalent of 100,000 full time jobs, and over 686,000 visitors come from overseas every year to visit EPL clubs.³³ Undoubtedly, the EPL is a worldwide sporting brand and a massive contributor to the U.K. economy.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *La Liga Targeting Global Audience of Three Billion by 2018*, AS, (Dec. 6, 2016), https://en.as.com/en/2016/12/06/football/1481043910_079877.html; *Premier League Global Audience on the Rise*, PREMIERLEAGUE.COM (July 16, 2019), <https://www.premierleague.com/news/1280062>; Kevin Baxter, *Germany's Bundesliga Pursues a Global TV Expansion*, L.A. TIMES (Nov. 28, 2015), <https://www.latimes.com/sports/soccer/la-sp-soccer-baxter-20151129-story.html>.

²⁷ Sean Williams, *The Downfall of a Russian Soccer Team*, NEW YORKER (Feb. 11, 2016), <https://www.newyorker.com/sports/sporting-scene/the-downfall-of-a-russian-soccer-team>; Conn, *supra* note 14.

²⁸ Williams, *supra* note 27; Conn, *supra* note 14.

²⁹ *Swiss Football League Agrees to New Four-Year, \$163.2M Broadcast Rights Deal*, SPORTS BUS. J. (Oct. 7, 2016), <https://www.sportsbusinessjournal.com/Global/Issues/2016/10/07/Media/Swiss-Football-TV-deal.aspx>.

³⁰ Hughes & Ziegler, *supra* note 12.

³¹ *Id.*

³² *Premier League Players Paid £1.1bn Tax in 2016-17 Season*, BBC SPORT (Jan. 24, 2019), <https://www.bbc.com/sport/football/46985178>.

³³ Hughes & Ziegler, *supra* note 12.

B. Soccer's Governing Bodies

The European model of sports is a monopolistic pyramid.³⁴ The hierarchical structure of European sports is arranged with a global federation at its apex.³⁵ Under the global federation is a European federation.³⁶ Underneath the European federation is each state's national federation.³⁷ These federations work cohesively to manage their sports.³⁸ The federations implement rules of competition, integrity, safety, and promotion amongst other rules.³⁹ In addition to the rules of competition, federations implement strategies to maximize the economic interests of their sports and enter into contracts to sell merchandise, tickets, hospitality packages, and broadcasting rights for their sporting events.⁴⁰ Needless to say, the federations have a broad and crucial role in ensuring functioning of their sports and the federations' compliance with both national and EU laws.

At the summit of soccer's hierarchical pyramid sits the Fédération Internationale de Football Association (FIFA), which operates under Swiss law.⁴¹ FIFA was founded in 1904 and its headquarters are in Zurich, Switzerland.⁴² FIFA is responsible for passing rules for soccer that apply throughout the world, describing its statutes as "the constitution of FIFA and world football."⁴³ Under FIFA sits the European federation, UEFA. UEFA organizes European competitions and represents European national federations.⁴⁴ Like FIFA, UEFA is headquartered in Switzerland.⁴⁵ The United Kingdom has national soccer federations in England, Wales, Scotland, and Northern Ireland.⁴⁶ England's national federation is called the FA. The FA

³⁴ Katarina Pijetlovic, *European Model of Sport: Alternative Structures*, in RESEARCH HANDBOOK ON EU SPORTS LAW AND POLICY 326 (Jack Anderson et al. eds., 2018).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* Because of the monopolistic nature of sports federations in the Member States of the European Union, the federations must be careful not to commit any antitrust infringements named under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

⁴¹ Perry & Steenson, *supra* note 16, at 6.

⁴² *Id.*

⁴³ WEATHERILL, *supra* note 7, at 10.

⁴⁴ Perry & Steenson, *supra* note 16, at 6.

⁴⁵ Garcia, *supra* note 15, at 205.

⁴⁶ Brandon Wiggins, *Why England and Other UK Countries All Have Their Own Soccer Teams*, BUS. INSIDER (June 18, 2018), <https://www.businessinsider.com/england-national-football-team-uk-great-britain-2018-6>. The United Kingdom has four separate federations because soccer originated in the United Kingdom and the original international soccer games were played between the Home Nations (England, Northern Ireland,

controls the England national team as well as club competitions throughout England.⁴⁷

The English league system for clubs is a pyramid structure with promotion and relegation between the leagues. This pyramid system is foreign to American sports but is ubiquitous across the soccer leagues of Europe.⁴⁸ Promotion and relegation are devices that increase the effective competition among teams.⁴⁹ Theoretically, a small amateur club team could be promoted season after season and eventually end up in the EPL, assuming it meets the FA's standards required for stadia and infrastructure at each level of the pyramid. In England there are four professional soccer leagues.⁵⁰ The EPL is the top division, the Championship is the second division, League 1 is the third division, and League 2 is the fourth division.⁵¹ Underneath League is myriad regional semi-professional leagues that form a pyramid at the tip of which is the promised land of professional soccer.⁵² The English system today has a wealth of examples of teams that have made the long journey up the ladder of English football: Bournemouth was relegated into League 2 (the fourth professional division) in 2008 and faced debts of around \$8 million,⁵³ but just ten years later the club finished 12th in the EPL and recorded a turnover of approximately \$178 million.⁵⁴ In contrast to the triumphs at Bournemouth, it is possible for a team to

Scotland, and Wales). *Id.* When FIFA became the international governing body of soccer in 1904, it chose to respect the international matches played in the decades prior and recognize the Home Nations as separate entities. *Id.*

⁴⁷ *The History of the FA*, THEFA (Jan. 10, 2020), <http://www.thefa.com/about-football-association/what-we-do/history>.

⁴⁸ See, e.g., Oliver Roeder, *Beneath the Premier League Stands the Great Football Pyramid of England*, FIVETHIRTYEIGHT (Sept. 19, 2014), <https://fivethirtyeight.com/features/beneath-the-premier-league-stands-the-great-football-pyramid-of-england/>; Erwann Penland, *National 3: Le visage des futurs groupes se dessine*, FOOT NATIONAL (Mar. 21, 2017), <https://www.foot-national.com/foot-national-3-le-visage-des-futurs-groupes-se-dessine-94930.html>; *Italian Serie A*, FOOTBALLHISTORY.ORG (Jan. 10, 2020), <https://www.footballhistory.org/league/serie-a.html>; Sean Rollins, *American Soccer Moving Toward a German Pyramid Structure*, MANE LAND (Apr. 3, 2017), <https://www.themaneland.com/2017/4/3/15150724/american-soccer-moving-toward-a-germany-pyramid-structure>; Gavin Willacy, *Reserve Teams in the Lower Leagues? That Idea Doesn't Even Work in Spain*, GUARDIAN (Feb. 26, 2019), <https://www.theguardian.com/football/2019/feb/26/pep-guardiola-reserve-teams-championship-spain>.

⁴⁹ Stephen F. Ross & Stefan Szymanski, *Open Competition in League Sports*, 2002 WIS. L. REV 625, 675 (2002).

⁵⁰ *A Guide to the Leagues and Cups of English Football*, GROUNDHOPPER SOCCER GUIDES, <https://groundhopperguides.com/guide-leagues-cups-english-football>.

⁵¹ See *id.*

⁵² See *id.*

⁵³ *Bournemouth Enter Administration*, BBC NEWS (Feb. 8, 2008), <http://news.bbc.co.uk/sport2/hi/football/teams/b/bournemouth/7233678.stm>.

⁵⁴ *Club Release Annual Accounts*, AFC BOURNEMOUTH OFF. CLUB WEBSITE (Mar. 27, 2019), <https://www.afcb.co.uk/news/club-news/club-release-annual-accounts>.

slide in the opposite direction. In 2017, Sunderland was competing in England's glamorous top tier, facing the likes of Liverpool and Manchester United, yet just years later Sunderland began its second year battling it out with much smaller clubs like Fleetwood Town and Accrington Stanley in League 1, England's gritty and much less glamorous third tier of soccer.⁵⁵

The FA governs the league structure in England.⁵⁶ The FA formally legalized professionalism in 1885 and the English Football League (EFL) was founded as the competition in which the professional teams would play.⁵⁷ In 1992, the clubs in the top division decided to break away to form their own league and take advantage of commercial opportunities.⁵⁸ With the blessing of the FA, the EPL was formed.⁵⁹

C. *Lex Sportiva*

Soccer in the United Kingdom comes under the jurisdiction of three bodies of law: domestic law in the United Kingdom, Swiss law, and EU law.⁶⁰ Firstly, teams based in the United Kingdom must abide by the laws of the United Kingdom. EPL clubs must adhere to the rules created by the world soccer governing body, FIFA, which operates under Swiss law.⁶¹ The EPL also falls under the remit of the European soccer federation, UEFA, which operates under EU law.⁶²

⁵⁵ *Compare Sunderland 2016/17 Premier League Season Review*, SKYSPORTS (May 22, 2017), <https://www.skysports.com/football/news/11695/10887365/sunderland-2016-17-premier-league-season-review>, with Joe Owens, *End of Season Review: Sunderland's Report Card From the 2017/18 Campaign*, 90 MIN (May 12, 2018), <https://www.90min.com/posts/6058075-end-of-season-review-sunderland-s-report-card-from-the-2017-18-campaign>. See generally Karl Matchett, *What Happened to Sunderland's Final Premier League Squad in 2017*, CHRON. LIVE (May 25, 2020), <https://www.chroniclive.co.uk/sport/football/football-news/sunderland-chelsea-premier-league-relegation-18308105>.

⁵⁶ Paul Fletcher, *One Letter, Two Meetings, and 12 Teams: The Birth of League Football*, BBC SPORT (Feb. 26, 2013), <https://www.bbc.com/sport/football/21492352>.

⁵⁷ *Id.*

⁵⁸ *The Men Who Changed Football*, BBC SPORT (Feb. 20, 2001), http://news.bbc.co.uk/sport2/hi/tv_and_radio/1180279.stm.

⁵⁹ Paul MacInnes, *Deceit, Determination, and Murdoch's Millions: How Premier League was Born*, GUARDIAN (July 23, 2017), <https://www.theguardian.com/football/2017/jul/23/deceit-determination-murdoch-millions-how-premier-league-was-born>. The FA's blessing was incredibly important for the formation of the English Premier League because with it, the English Premier League would have lacked the legitimacy to be England's top league. *Id.* The FA was particularly receptive to the idea due to the ongoing hostility it was receiving from the EFL. *Id.*

⁶⁰ Perry & Steenson, *supra* note 16, at 1.

⁶¹ *Id.*

⁶² See *infra* Section III.C, ¶ 5; Perry & Steenson, *supra* note 16, at 1.

FIFA Statutes clearly lay out the dominant role of arbitration, particularly the Court of Arbitration for Sport.⁶³ The pertinent articles are Article 57 and Article 59.⁶⁴ Article 57(1) states, “FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents.”⁶⁵ Article 57(2) points specifically to Swiss law and states, “CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.”⁶⁶ Article 59(1) of the FIFA Statutes states, “The confederations, member associations and leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated players and officials comply with the decisions passed by CAS.”⁶⁷ Article 59(2) provides, “Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations.”⁶⁸ It is possible to challenge a ruling by the Court of Arbitration for Sport under Swiss law but only to a limited extent and with a low chance of success.⁶⁹

The EU’s founding treaties, the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), make little reference to sports.⁷⁰ The principal of conferral is a cornerstone of the EU.⁷¹ Under Article 5(2) of the TEU, it states “the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein.”⁷² The vague competences of the EU with regard to sports are set out in Article 165 of the TFEU, which was enacted in 2009.⁷³ Article 165 of the TFEU states that the EU “shall contribute to the promotion of European sporting issues, while taking into account the specific nature of sport” and the aim of the EU will be “developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and

⁶³ WEATHERILL, *supra* note 7.

⁶⁴ FIFA STATUTES 54, art. 57(1) (June 2019).

⁶⁵ *Id.* § IX, art. 57(1).

⁶⁶ *Id.* § IX, art. 57(2).

⁶⁷ *Id.* § IX, art. 59(1).

⁶⁸ *Id.* § IX, art. 59(2).

⁶⁹ WEATHERILL, *supra* note 7, at 16.

⁷⁰ Consolidated Version of the Treaty on the Functioning of the European Union, art. 15, May 9, 2008, 2008 O.J. (C 115) [hereinafter *TFEU*].

⁷¹ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) art. 5 [hereinafter *TEU*].

⁷² *Id.* art. 3b(2).

⁷³ *TFEU*, *supra* note 70, art. 165.

sportswomen.”⁷⁴ Although not explicitly mentioned, sport is subject to the Treaty provisions regarding, *inter alia*, the establishment of the internal market under Article 3(3) of the TEU and Article 26 of the TFEU.⁷⁵

EU law has primacy over the domestic law of the Member States.⁷⁶ The Court of Justice (CJEU) is the supreme court for the European Union and it applies the principles of the European Union to the economic market.⁷⁷ Under *Walrave & Koch v. Union Cycle Internationale*, sports are under the jurisdiction of the CJEU.⁷⁸ The court held, “having regard to the objectives of the Community, the practice of sport is subject to community law in so far as it constitutes an economic activity within the meaning of Article 2 of the TFEU.”⁷⁹ In *David Meca-Medina & Igor Majcen v. Commission of the European Communities*, the CJEU established the primacy of EU law over regulations imposed by specific sports federations.⁸⁰ *Meca-Medina* set a precedent which required that any limitation on competition be justified subject to the principle of proportionality.⁸¹

Every national soccer federation of the EU Member States is a member of UEFA.⁸² UEFA operates in every EU Member state and therefore must follow EU law. However, this was not always a simple equation. UEFA and the European Union were at loggerheads for decades.⁸³ UEFA was founded in 1954, three years prior to the Treaty of Rome in 1957.⁸⁴ UEFA and the EU existed without much interaction for a number of years until the 1990s when the European Union began to step in to regulate employment conditions for soccer players.⁸⁵ The UEFA system of transfer regulations and nationality quotas had a significant effect on soccer players’ choice of work and governing bodies had the power to greatly influence employment conditions.⁸⁶ When the European

⁷⁴ *Id.*

⁷⁵ *TEU, supra* note 71, art. 3(3); *TFEU, supra* note 70, pt. 3, title 1, art. 26(2). (defining the internal market as an “area without frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties”).

⁷⁶ Case C-6/64, *Costa v. ENEL*, 1964 E.C.R. 585.

⁷⁷ *Perry & Steenson, supra* note 16, at 9.

⁷⁸ Case C-36/74, *Walrave & Koch v. Union Cycle Internationale*, 1974 E.C.R. 1405.

⁷⁹ *Id.* at 1417 ¶ 4. The court’s holding means that national representative teams, where the economic activity is marginal, are not affected by European Union law prohibiting discrimination based on nationality.

⁸⁰ *Perry & Steenson, supra* note 16, at 9; Case C-519/04, *David Meca-Medina & Igor Majcen v. Comm’n of the European Communities*, 2006 E.C.R. I-06991.

⁸¹ *Perry & Steenson, supra* note 16, at 9.

⁸² *Member Associations*, UEFA.COM, <https://www.uefa.com/insideuefa/member-associations>.

⁸³ *García, supra* note 15, at 206.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

Union enacted regulations to restore the balance between players and the clubs, with cases such as *Bosman* detailed below, UEFA and the European Union collided.⁸⁷ In December 1995, UEFA President Lennart Johansson proclaimed that the EU was attempting “to kill club football in Europe,” to which European Commissioner Karel van Miert responded, “if they [UEFA] want war, it will be war.”⁸⁸

The European Union has generally regulated sports under free movement and competition law.⁸⁹ One of the most pivotal cases that established the hugely impactful role of EU law in the areas of free movement and competition law with regard to sports was in *Union Royale Belge Des Sociétés De Football Association ASBL v. Jean-Marc Bosman*.⁹⁰ Jean-Marc Bosman was a relatively unknown soccer player whose contract with Belgian club RFC Liège expired in June, 1990.⁹¹ At the expiration of his contract with RFC Liège, Bosman entered into a contract with French side, Dunkerque.⁹² However, Bosman’s transfer from RFC Liège to Dunkerque collapsed when the Belgian Football Association (Belgium’s national soccer federation), at the request of RFC Liège, refused to issue the transfer certificate needed to finalize Bosman’s move.⁹³ Consequently, Bosman was unable to sign for Dunkerque even though his contract with RFC Liège had expired.⁹⁴

Bosman brought suit against RFC Liège, the Belgian Football Association, UEFA, and FIFA.⁹⁵ In Bosman’s lawsuit he challenged UEFA’s “3+2” quota system.⁹⁶ The “3+2” system allowed clubs to field three players who were not nationals of the state in which they were competing, as well as two other “assimilated” players who had played in that state for five years, three of which at a junior level.⁹⁷ The CJEU had already ruled in *Gaetano Donà v. Mario Mantero*⁹⁸ that nationality quotas were discriminatory and violated European Community law but UEFA and the European Commission had come to a gentleman’s agreement on the “3+2” rule and these nationality quotas were still

⁸⁷ *Id.*

⁸⁸ *Id.* at 202 (internal citation omitted).

⁸⁹ Perry & Steenson, *supra* note 16, at 10.

⁹⁰ Case C-415/93, *Union Royale Belge des Sociétés de Football Ass’n ASBL v. Bosman*, 1995 E.C.R. I-5040.

⁹¹ Garcia, *supra* note 15, at 208.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 207.

⁹⁸ Case 13-76, *Gaetano Donà v. Mario Mantero*, 1976 E.C.R. 1976-01333.

in place by the time *Bosman* brought suit.⁹⁹ In *Bosman*, the CJEU held that Article 48 of the European Economic Treaty precludes the application of the rules FIFA laid down that denied a soccer player from moving freely to another club at the expiry of his contract.¹⁰⁰ The CJEU in *Bosman* further held that Article 48 of the European Economic Treaty precludes the application of rules laid down by soccer federations which limit the number of players from other Member States.¹⁰¹ UEFA was forced to abolish nationality quotas in all club competitions across Europe and players from Members States are now allowed to ply their trade much more freely across Europe.¹⁰²

European soccer leagues have moved to circumvent the prohibition on nationality quotas by implementing the “homegrown” player rule in the 2006/07 season.¹⁰³ Homegrown players are likely to be nationals of the state in which the club is located, but that is not necessarily the case.¹⁰⁴ For example, Paul Pogba of Manchester United is considered a homegrown player despite having played for Le Havre’s youth team, Juventus for four years, and representing France at U16, U17, U18, U19, U20, and senior level.¹⁰⁵ UEFA ascribes homegrown status to players whom were registered with a single club in that particular state for three seasons between the ages of fifteen and twenty one.¹⁰⁶ The goal of the rule is to encourage clubs to invest in youth development to maintain a long-term supply of high quality players rather than cherry-picking the best talent.¹⁰⁷ The rationale is that rewarding youth development leads to stronger national teams and a more even competitive balance between clubs with differing financial resources.¹⁰⁸

The CJEU has not ruled specifically on the issue of homegrown player rules.¹⁰⁹ However, the Commission has stated that homegrown player rules do

⁹⁹ Garcia, *supra* note 15, at 208 (explaining that one Member of European Parliament commented on the influence UEFA had on the European Union stating, “Football is sexy for politicians; it gets votes, and they want to be seen during the World Cup for example. People within the game, in federations, clubs . . . they are aware of that power.”).

¹⁰⁰ Case C-415/93, *Union Royale Belge des Sociétés de Football Ass’n ASBL v. Bosman*, 1995 E.C.R. I-5081.

¹⁰¹ *Id.* at 5081.

¹⁰² Garcia, *supra* note 15, at 209.

¹⁰³ WEATHERILL, *supra* note 7, at 197.

¹⁰⁴ WEATHERILL, *supra* note 7, at 195.

¹⁰⁵ 2019/20 Premier League Squads Confirmed, PREMIER LEAGUE OFF. WEBSITE, <https://www.premierleague.com/news/1335777>.

¹⁰⁶ WEATHERILL, *supra* note 7, at 195.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

not contravene EU law because they promote balanced sporting competition and encourage the training of younger players, which is in line with the objectives of the EU provided in Article 165 TFEU.¹¹⁰ In 2011, the Commission stated that homegrown player rules can be compatible with EU law on free movement as long as they adhere to the principle of proportionality.¹¹¹ The Commission stated the three-prong test as such: 1) the rules must efficiently achieve the legitimate objectives; 2) there must be no method available that is less discriminatory; and 3) the rules must not go beyond what is necessary to achieve the objectives.¹¹² Under this test, homegrown player rules seem susceptible to challenges in the future because although the ends may be lawful, the means used seem not to be.¹¹³

D. *Brexit*

A referendum on EU membership is not unprecedented in the United Kingdom.¹¹⁴ The United Kingdom joined the European Economic Community (EEC), the precursor to the European Union, in 1973.¹¹⁵ In 1975, following intra-party controversy, the Labour government held a nationwide referendum on the U.K.'s membership of the EEC based on renegotiated terms of the U.K.'s membership.¹¹⁶ The United Kingdom voted to stay in the EEC by a resounding margin, with 67.2% of voters (17.4 million people) voting to remain in the EEC.¹¹⁷ The issue of the U.K.'s membership did not simply fade away following the 1975 referendum.¹¹⁸ The subject was dragged back into the public forum repeatedly.¹¹⁹ First, in 2004, the Constitutional Treaty set alarm bells ringing when the treaty was introduced which, if ratified, would have created a

¹¹⁰ TFEU, *supra* note 70, art. 165; STUDY ON TRAINING OF YOUNG SPORTSMEN/WOMEN IN EUROPE, EUROPEAN COMMISSION (June 2008); WEATHERILL, *supra* note 7, at 195.

¹¹¹ Developing the European Dimension in Sport, COM 11 (2011).

¹¹² TEU, *supra* note 71, art. 5(4).

¹¹³ WEATHERILL, *supra* note 7, at 199.

¹¹⁴ James Walsh, *Britain's 1975 Europe Referendum: What Was it Like Last Time?*, GUARDIAN (Feb. 24, 2016), <https://www.theguardian.com/politics/2016/feb/25/britains-1975-europe-referendum-what-was-it-like-last-time>.

¹¹⁵ *The History of the European Union*, EUROPA: ABOUT THE EU, https://europa.eu/european-union/about-eu/history_en (last updated Nov. 11, 2020); *Brexit: Your Simple Guide to the UK Leaving the EU*, BBC NEWS (July 30, 2019), <https://www.bbc.com/news/uk-46318565>.

¹¹⁶ Helen Wallace, *Heading for the Exit: The United Kingdom's Troubled Relationship with the European Union*, 12 J. CONTEMP. EUR. RES. 809, 810 (2016).

¹¹⁷ Richard Nelsson, *How the Guardian Reported the 1975 EEC Referendum*, GUARDIAN (June 5, 2015), <https://www.theguardian.com/politics/from-the-archive-blog/2015/jun/05/referendum-ec-europe-1975>.

¹¹⁸ Wallace, *supra* note 116, at 810.

¹¹⁹ *Id.*

consolidated constitution for the European Union.¹²⁰ The U.K. public was not comfortable with the idea of an EU Constitution and was reluctant to cede more sovereignty to the European Union.¹²¹ The United Kingdom once again revisited its membership of the European Union when the United Kingdom signed the Treaty of Lisbon in 2009, an agreement that amended the constitutional bases of the EU, the TEU (Maastricht Treaty) and the TFEU (Treaty of Rome).¹²²

The rise of the United Kingdom Independence Party in British politics mirrored the increase in Euroscepticism¹²³ and populism throughout Europe.¹²⁴ As Euroscepticism gained more traction, the ruling Conservative-Liberal Democrat coalition government introduced the European Union Act in 2011.¹²⁵ The European Union Act made provision for a referendum if a treaty proposal occurred that would serve to transfer further significant powers to the European Union.¹²⁶ In 2015, however, the Conservative Party formed a majority government and, without the Liberal Democrats tempering its ambition to hold a referendum on the U.K.'s membership of the European Union, announced that a referendum would be held on Thursday, June 23, 2016.¹²⁷ The announcement of a referendum rendered the European Union Act effectively obsolete because no treaty proposal was required to trigger a referendum. The ballot paper for the referendum asked the question, “[s]hould the United Kingdom remain a member of the European Union or leave the European Union?”¹²⁸ With over 30 million people voting, the turnout rate was seventy-two percent—higher than every

¹²⁰ Honor Mahony, *Ratification Problems Loom Over Convention*, EU OBSERVER (May 31, 2003), <https://euobserver.com/political/11481>.

¹²¹ Nile Gardiner & Sally McNamara, *The EU Lisbon Treaty: Gordon Brown Surrender's Britain's Sovereignty*, HERITAGE FOUND. (Mar. 7, 2008), <https://www.heritage.org/europe/report/the-eu-lisbon-treaty-gordon-brown-surrenders-britains-sovereignty>.

¹²² TEU, *supra* note 71.

¹²³ Political observers have divided Euroscepticism into two varieties: hard and soft. Hard Euroscepticism is defined as “a principled opposition to the EU and European integration.” Soft Euroscepticism is defined as “opposition to specific EU policy areas” or “a sense that ‘national interest’ is currently at odds with the EU’s trajectory.” Drew Desilver, *Euroskeptics are a Bigger Presence in the European Parliament than in the Past*, PEW RSCH. CTR. (May 22, 2019), <https://www.pewresearch.org/fact-tank/2019/05/22/euroskeptics-are-a-bigger-presence-in-the-european-parliament-than-in-past>.

¹²⁴ *Euroscepticism on the Rise, Poll Suggests*, BBC NEWS (June 8, 2016), <https://www.bbc.com/news/uk-politics-eu-referendum-36471989>.

¹²⁵ Wallace, *supra* note 116, at 810.

¹²⁶ *Id.*

¹²⁷ *Id.* at 811; *Brexit: Your Simple Guide to the UK Leaving the EU*, *supra* note 115.

¹²⁸ *EU Referendum: Final Results*, BLOOMBERG, <https://www.bloomberg.com/graphics/2016-brexit-referendum>.

general election since 1992.¹²⁹ Of the votes cast, 51.9% voted to leave the European Union and 48.1% voted to remain in the European Union.¹³⁰

Article 50(1) of the TEU provides, “[a]ny Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.”¹³¹ After the United Kingdom held the non-binding referendum on its membership of the EU, the U.K. government decided to withdraw from the EU. Article 50(2) of the TEU provides, “A Member State which decides to withdraw shall notify the European Council of its intention.”¹³² On March 29, 2017, the United Kingdom invoked Article 50 of the TEU, notifying the European Council of the United Kingdom’s intention to withdraw from the European Union.¹³³ Under sections (2) and (3) of Article 50 of the TEU, the United Kingdom then had “two years after the notification” to set out “the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.”¹³⁴ Article 50(3) also contains provisions for the European Council to extend the period for withdrawal if the European Council and the United Kingdom unanimously agree to the extension.¹³⁵

The United Kingdom was due to officially leave the European Union on March 29, 2019.¹³⁶ However, Parliament rejected the deal that former Prime Minister Theresa May agreed with the European Union. With no deal agreed, Brexit was delayed via the process outlined in Article 50(2) of the TEU above.¹³⁷ May’s repeated failure to get her Brexit deal passed by Parliament eventually led to her resignation as Prime Minister.¹³⁸ Boris Johnson replaced her in July 2019, and Johnson was required to seek a third extension from the European Union.¹³⁹ The new deadline for a deal was January 31, 2020—over three years after the referendum on the U.K.’s membership of the European Union was

¹²⁹ *Brexit: Your Simple Guide to the UK Leaving the EU*, *supra* note 115; BRIEFING PAPER: TURNOUT AT ELECTIONS, NUMBER CBP 8060, HOUSE OF COMMONS LIBRARY 4 (Nov. 2020) (showing that turnout was higher than every general election since 1992).

¹³⁰ *Brexit: Your Simple Guide to the UK Leaving the EU*, *supra* note 115.

¹³¹ *TEU*, *supra* note 71, art. 49A(1).

¹³² *Id.* art. 50(2).

¹³³ *Brexit: Article 50 Has Been Triggered—What Now?*, BBC NEWS (Mar. 29, 2017), <https://www.bbc.com/news/uk-politics-39143978>.

¹³⁴ *TEU*, *supra* note 71, art. 50(2), (3).

¹³⁵ *Id.* art. 50(3).

¹³⁶ *Brexit: Your Simple Guide to the UK Leaving the EU*, *supra* note 115; *see also* *TEU*, *supra* note 71, art. 50(2).

¹³⁷ *Brexit: Your Simple Guide to the UK Leaving the EU*, *supra* note 115.

¹³⁸ *Brexit: MPs Give Final Backing to Withdrawal Agreement Bill*, BBC NEWS (Jan. 9, 2020), <https://www.bbc.com/news/uk-politics-51051178>.

¹³⁹ *Id.*

held.¹⁴⁰ Johnson entered into negotiations with the European Union and changed the customs arrangements for the United Kingdom post-Brexit.¹⁴¹ The new deal will allow the United Kingdom to enter into trade agreements with other states around the world but also effectively creates a customs and regulatory border between Great Britain and Northern Ireland.¹⁴² The remainder of the agreement is substantially similar to the agreement May negotiated with the European Union.¹⁴³ Due to the parliamentary deadlock over concerns about a possible exit from the European Union with no deal, a vote was never held on Johnson's agreement.¹⁴⁴ Accordingly, Johnson called a general election to alleviate the standstill.¹⁴⁵

A general election was held on December 12, 2019, which resulted in a Conservative majority of eighty seats.¹⁴⁶ Just eight days after the election, Members of Parliament (MPs) voted in favor of the Withdrawal Agreement Bill 358 to 234, and the remaining stages of the bill were quickly completed in January, paving the way for the United Kingdom to finally leave the European Union on January 31, 2020.¹⁴⁷

II. IMMIGRATION LAW

Soccer federations and leagues are bound by the general immigration laws of their respective states, consequently the limits on foreign players must comply with the general immigration laws set forth by the state's government and by the European Union.¹⁴⁸ Therefore, this Section details the immigration laws of the United Kingdom as a member of the European Union, Switzerland as a member of the European Free Trade Association (EFTA) but not a member of the European Economic Area (EEA), and Russia as a state outside the European Union.

¹⁴⁰ *Brexit: Your Simple Guide to the UK Leaving the EU*, *supra* note 115.

¹⁴¹ *Brexit: MPs Give Final Backing to Withdrawal Agreement Bill*, *supra* note 138.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Bianca Britton & Tara John, *Speaker Refuses Vote on Boris Johnson's Brexit Deal*, CNN, Oct. 21, 2019.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ WEATHERILL, *supra* note 7.

A. State Immigration Laws

1. The European Union and the United Kingdom

Under Article 21(1) of the TFEU, citizens of the European Union enjoy the right to move and reside within the European Union.¹⁴⁹ Article 21(1) of the TFEU provides, “[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.”¹⁵⁰ Building on Article 21 of the TFEU, the Citizenship Directive provides the legal framework for almost all legal issues regarding free movement of people in the European Union.¹⁵¹ The Citizenship Directive consolidates previous Directives and now governs the right to movement and short-term residence, residence in another Member State for periods of more than three months, and permanent residence.¹⁵²

Articles 4 to 6 of the Citizenship Directive provide that EU citizens can move throughout the territory of the European Union and live in any Member State for a period of up to three months without any formalities except the possession of a valid identity card or passport.¹⁵³ The only condition upon this right is that a citizen cannot become an unreasonable burden on the social assistance system of the host Member State.¹⁵⁴ This rule is in place despite the fact that a migrant who enters for a period of less than three months has no right to use the social assistance system of the host Member State.¹⁵⁵ As a result, a migrant is unlikely to ever be considered an unreasonable burden on the social assistance system of the host Member State.¹⁵⁶ The only EU citizens who are effectively exempt from this condition are those who are employed, self-employed, or are looking for work and can show that they have genuine chances of obtaining jobs.¹⁵⁷

For EU citizens who wish to reside in another Member State for a period of longer than three months, the conditions are more restrictive.¹⁵⁸ Article 7(1) of

¹⁴⁹ TFEU, *supra* note 70, art. 21(1).

¹⁵⁰ *Id.*

¹⁵¹ DAMIAN CHALMERS, GARETH DAVIES, & GIORGIO MONTI, EUROPEAN UNION LAW, 476 (3rd ed. 2014).

¹⁵² Directive 2004/38/EC, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, 2004, O.J. (L 158) 77 [hereinafter *Directive 2004/38/EC*].

¹⁵³ *Id.* arts. 4–6.

¹⁵⁴ *See id.* art 10.

¹⁵⁵ *See id.*

¹⁵⁶ *Id.* art. 14(1).

¹⁵⁷ *Id.* art. 14(4).

¹⁵⁸ CHALMERS, DAVIES, & MONTI, *supra* note 151, at 476.

the Citizenship Directive applies to EU citizens who wish to reside in another Member State for a period of between three months and five years.¹⁵⁹ Article 7(1) provides that an EU citizen has the right to reside in another Member State for a period of longer than three months if she is a worker or is self-employed in the host Member State, has sufficient resources for herself and her family members to ensure that they do not become a burden on the social assistance system of the host Member State and she and her family members must have comprehensive sickness insurance cover in the host Member State.¹⁶⁰

Alternatively, an EU citizen is eligible to reside in another EU Member State for a period of longer than three months if she is enrolled at an accredited establishment for the principal purpose of following a course of study (including vocational training), has comprehensive sickness insurance cover in the host Member State, and declares that she has sufficient resources for herself and her family members so that they do not become a burden on the social assistance system of the host Member State.¹⁶¹ In general, an EU citizen who loses her job involuntarily, is temporarily unable to work because of ill health, or chooses to stop working to pursue further training, continues to enjoy the status of a worker or self-employed person for the purposes of residence.¹⁶²

To become a permanent resident of another Member State, an EU citizen must have legally resided in that Member State for five years.¹⁶³ Permanent residents are not subject to the conditions concerning sufficient resources.¹⁶⁴ An EU citizen can lose permanent residence status if she is absent from the host Member State for two consecutive years.¹⁶⁵ Granting permanent residence is seen as a reward for those whose “integration into their host state is based on sustained economic activity or self-sufficiency.”¹⁶⁶ The CJEU stated that rewarding sustained economic activity with permanent residence is a “key element in promoting social cohesion” that works “to strengthen the feeling of Union citizenship.”¹⁶⁷

¹⁵⁹ *Directive 2004/38/EC*, *supra* note 152, art. 7(1).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* art. 7(3).

¹⁶³ *Id.* art. 16.

¹⁶⁴ *Id.* art. 16(1).

¹⁶⁵ *Id.* art. 16(4).

¹⁶⁶ CHALMERS, DAVIES, & MONTI, *supra* note 151, at 478.

¹⁶⁷ *Directive 2004/38/EC*, *supra* note 152, at recital 17; *see generally* Case C-378/12, *Nnamdi Onuekwere v. Secretary of State for the Home Department*, 2014 E.C.R.

2. *Switzerland*

Although Switzerland is not a member of the European Union or the EEA,¹⁶⁸ it enjoys a close relationship with the European Union.¹⁶⁹ Switzerland is a member of the EFTA and has adopted a number of provisions of EU law as part of its agreement to participate in the EU's single market.¹⁷⁰ Switzerland first entered into a free trade agreement with the EEC that came into force in 1973¹⁷¹ and today Switzerland is the European Union's fourth largest trading partner, after the United Kingdom, the United States, and China.¹⁷²

To protect its economic integration with the European Union, Switzerland began bilateral negotiations with the European Union.¹⁷³ The bilateral treaties that resulted effectively make a large proportion of EU law applicable to Switzerland.¹⁷⁴ A group of seven treaties, known as Bilaterals I, was signed in 1999 and are mutually dependent.¹⁷⁵ The seven treaties cover subject matter such as the free movement of people, air traffic, road traffic, agriculture, technical trade barriers, public procurement, and science.¹⁷⁶ Bilaterals II, entered into in 2004, was another set of treaties that covered, *inter alia*, Schengen and Dublin, agreements on taxation of savings, processed agricultural products, statistics, combatting fraud, and participation in the EU Media Programme and the EU Environment Agency.¹⁷⁷ In total, more than 100 bilateral agreements currently exist between the European Union and Switzerland.¹⁷⁸

¹⁶⁸ The EEA expands the EU's single market to the EFTA states of Iceland, Liechtenstein, and Norway. Switzerland held a referendum on December 6, 1992, in which it rejected EEA membership 50.3% to 49.7%.

¹⁶⁹ *Switzerland*, EUROPEAN COMMISSION: TRADE: POLICY: COUNTRIES AND REGIONS, <https://ec.europa.eu/trade/policy/countries-and-regions/countries/switzerland> [hereinafter *Switzerland Trade*].

¹⁷⁰ *Id.*

¹⁷¹ *Summary of Treaty*, EUROPEAN UNION TREATIES OFFICE DATABASE, <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=73>.

¹⁷² *Switzerland Trade*, *supra* note 169.

¹⁷³ It was politically important that these negotiations were seen by the public as bilateral because it maintained a sense of Swiss sovereignty. Jan Atteslander, Marc Englehard & François Baur, *Bilateral Agreements Between Switzerland and the EU: Very Beneficial but Always at Stake*, ECONOMIESUISSE, <https://www.economiesuisse.ch/sites/default/files/publications/Factsheet%20Bilateral%20agreements.pdf> (last accessed Apr. 12, 2021).

¹⁷⁴ *Switzerland Trade*, *supra* note 169.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* The mutual dependency of these seven treaties comes from the "guillotine clause" which states, "seven agreements are intimately linked to one another by the requirement that they are to come into force at the same time and that they are to cease to apply at the same time, six months after the receipt of a non-renewal or denunciation notice concerning any one of them." Paul McMahon, *EU/Switzerland*, BREXIT INFO, <http://brexitlegalguide.co.uk/eu-switzerland>.

¹⁷⁷ *Switzerland Trade*, *supra* note 169.

¹⁷⁸ *Id.*

Pursuant to Switzerland's agreement with the European Union on free movement of people, citizens of EU Member States are subject to the immigration laws outlined above when discussing the U.K.'s immigration law as a member of the European Union.¹⁷⁹ In 2014, Switzerland held a referendum on whether to limit free movement by imposing quotas.¹⁸⁰ 50.3% of the population voted in favor of the restrictions on immigration.¹⁸¹ The referendum result put Switzerland in a precarious position because if free movement of people were terminated, the rest of the Bilateral I treaties would be terminated as well.¹⁸² In 2016, Switzerland entered into an agreement with the European Union whereby a new Swiss law can require Swiss employers to give priority to Swiss nationals but cannot limit the free movement of EU workers.¹⁸³

Citizens of states outside EFTA and the EU are subject to the Foreign Nationals and Integration Act (FNIA), which was implemented on January 1, 2019 and builds on the Foreign Nationals Act of 2008 (FNA).¹⁸⁴ Article 21(1) of the FNIA provides, "Foreign nationals may be permitted to work only if it is proven that no suitable domestic employees or citizens of states with which an agreement on the free movement of workers has been concluded can be found for the job."¹⁸⁵ A domestic employee can be a Swiss national, a person with permanent residence in Switzerland, a person with a work permit, a temporarily admitted person, or a person who has been granted temporary protection and has a work permit.¹⁸⁶ The FNIA sets out integration criteria for foreign nationals, even after they have been granted residence.¹⁸⁷ Foreign nationals must respect the values set out in the Swiss Constitution, "maintain public security and order," participate in economic life, and meet basic language skill requirements.¹⁸⁸ If a foreign national residing in Switzerland fails to meet the integration criteria

¹⁷⁹ Citizens of the most recent states to accede to the European Union face some restrictions on travel, i.e. visas, but do not face substantial obstacles. *Schengen Area – The World's Largest Visa Free Zone*, SCHENGEN VISA INFO, <https://www.schengenvisa.info.com/schengen-visa-countries-list> (last updated Mar. 4, 2021).

¹⁸⁰ Jon Henley, *Swiss Climbdown Over Free Movement May Deal Blow to UK Hopes*, GUARDIAN (Sep. 22, 2016), <https://www.theguardian.com/world/2016/sep/22/switzerland-votes-for-compromise-to-preserve-relations-with-eu>.

¹⁸¹ *Id.*

¹⁸² Henley, *supra* note 180.

¹⁸³ Henley, *supra* note 180.

¹⁸⁴ Rayan Houdrouge & Maxime Gay-Crosier, *Stricter Language Skill Requirements for Foreign Nationals*, INT'L L. OFF. (June 7, 2019), <https://www.internationallawoffice.com/Newsletters/Employment-Immigration/Switzerland/Lenz-Staehelin/Stricter-language-skill-requirements-for-foreign-nationals>.

¹⁸⁵ Foreign Nationals Integration Act, 142.20, art. 21(1) [hereinafter *FNIA*].

¹⁸⁶ *Id.*, art. 21(2).

¹⁸⁷ *FNIA*, *supra* note 185, art. 4; *see also* Houdrouge & Gay-Crosier, *supra* note 184, at 1.

¹⁸⁸ *FNIA*, *supra* note 185, arts. 4–5; *see also* Houdrouge & Gay-Crosier, *supra* note 184, at 1.

provided in the FNIA, the cantons have authority.¹⁸⁹ Switzerland is a federal state, divided in twenty-six cantons, which occupy a similar role to the fifty states in the United States.¹⁹⁰ The cantons have the power to implement “integration agreements” that include specific dates and requirements.¹⁹¹ For example, a canton may require a foreign national to attend a language course to meet the basic language requirement.¹⁹² Under Article 63 of the FNIA, if the integration agreement is not met, the foreign national’s residence permit can be revoked.¹⁹³

3. *Russia*

Unlike Switzerland, Russia and the European Union do not share integrated immigration laws.¹⁹⁴ Consequently, since the fall of the Soviet Union, migrants from post-Soviet states have emigrated to Russia in the largest numbers.¹⁹⁵ As Russia’s birth rate has fallen, economically active migrants have become important for the Russian economy.¹⁹⁶ The Russian government classifies migrants into two categories.¹⁹⁷ The first is temporary migrants who perform low-skilled jobs and return to their state of origin annually.¹⁹⁸ The second category is workers who stay in Russia for more than a year and eventually seek citizenship.¹⁹⁹ The flow of temporary migrants has remained steady, but long-term migrants have declined to the lowest levels since 2005 and the total Russian population is projected to decrease from 146 million to 128 million in the next eleven years.²⁰⁰

Due to the demographic crisis that Russia faces, the government has taken steps to liberalize migration and turn the tide.²⁰¹ President Putin approved the

¹⁸⁹ *FNIA*, *supra* note 185, art. 33(5); *see also* Houdrouge & Gay-Crosier, *supra* note 184, at 1.

¹⁹⁰ Valmira Rashiti, *Cantons of Switzerland, All 26 of Them*, LIFE IN SWITZERLAND (Nov. 24, 2019), <https://studyinginswitzerland.com/cantons-of-switzerland>.

¹⁹¹ *FNIA*, *supra* note 185, art. 33(5); *see also* Houdrouge & Gay-Crosier, *supra* note 184, at 1.

¹⁹² *FNIA*, *supra* note 185, art. 4; *see also* Houdrouge & Gay-Crosier, *supra* note 184, at 1.

¹⁹³ *FNIA*, *supra* note 185, art. 63; *see also* Houdrouge & Gay-Crosier, *supra* note 184, at 1, 2.

¹⁹⁴ Olivia Waring, *Is Russia in the EU? Why the Russians Never Joined the European Union*, METRO (Mar. 13, 2018), <https://metro.co.uk/2018/03/13/russia-eu-russians-never-joined-european-union-7383116>.

¹⁹⁵ Anastasya Manuylova, *Russia Needs Workers. Its Migration System is Keeping Them Out*, EURASIANET (May 23, 2019), <https://eurasianet.org/russia-needs-workers-its-migration-system-is-keeping-them-out>.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.* (explaining that, according to the Institute of Demography at Moscow’s Higher School of Economics, if the current migration rates continue, Russia’s population will decrease from 146 million to 128 million by 2030).

²⁰¹ *Executive Order on Russia’s State Migration Policy Concept for 2019-2025*, KREMLIN.EU (Oct. 31,

State Migration Policy Concept in 2012, which sets the direction for Russian immigration policy until 2025.²⁰² The Kremlin stated that the “Concept was developed in accordance with the Constitution of the Russian Federation, federal constitutional laws, federal laws and other regulations and documents on strategic planning in the Russian Federation, as well as the generally recognized principles and norms of international law and Russia’s obligations under international agreements on migration.”²⁰³ The aims of the State Migration Policy are to help Russians who live abroad to resettle in Russia, to promote the immigration of “qualified specialists,” create conditions that attract investors and entrepreneurs to immigrate to Russia, to simplify the procedures for entry and residence for foreign citizens who do business in Russia.²⁰⁴

To entice migrants to the Eastern provinces such as Siberia, the new immigration laws allow the government to support migrants who want to develop economic and cultural ties with Russia by facilitating their entry and settlement and even learning the Russian language.²⁰⁵ The Kremlin states that the State Migration Policy will also promote “the development of internal migration by Russian citizens.”²⁰⁶ The State Migration Policy is broken up into three stages: 1) 2012–2015, creating the infrastructure for the integration and adaptation of migrant workers; 2) 2016–2020, adopting programs to implement the main areas of Russian immigration law; and 3) 2021–2025, assessing the efficacy of the adopted programs.²⁰⁷ The Kremlin expects that the third stage of the program “will result in a migration inflow to the Siberian and Far Eastern regions by 2026.”²⁰⁸

4. *Comparison of Switzerland and Russia*

Switzerland and Russia have markedly contrasting relationships with the European Union. Switzerland maintains a close relationship with the European Union, which includes, *inter alia*, trade, and free movement of people.²⁰⁹ As part

2018), <http://en.kremlin.ru/events/president/news/58986>.

²⁰² *Concept of the State Migration Policy of the Russian Federation Through to 2025*, KREMLIN.EU (June 13, 2012), <http://www.en.kremlin.ru/events/president/news/15635> [hereinafter *State Migration Policy*].

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Indrani Talukdar, *Russia’s State Migration Policy Concept 2019-2025*, RUSSIAN INT’L AFF. COUNCIL (June 25, 2019), <https://russiancouncil.ru/en/analytics-and-comments/columns/asian-kaleidoscope/russia-s-state-migration-policy-concept-2019-2025>.

²⁰⁶ *State Migration Policy*, *supra* note 202.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Switzerland Trade* *supra*, note 169.

of the Schengen Association Agreement, Switzerland is intertwined with the European Union objective of eliminating frontiers.²¹⁰ Russia, however, keeps the European Union at arm's length.²¹¹ Russia does not experience a large amount of immigration from EU Member States, with the largest proportion of migrants coming from post-Soviet states.²¹² The Bilateral Agreements between Switzerland and the European Union show just how strong the ties remain between Switzerland and the European Union, while Russia, in contrast, has yet to agree on uniform visa requirements with European Union.

The FNIA implemented by the Swiss government in January 2019 provides for "integration agreements," under which the cantons can intervene on a case-by-case basis to ensure that immigrants are integrating fully into Swiss society.²¹³ This integration requirement applies to foreign nationals who already have residence in the Switzerland as well as new arrivals.²¹⁴ Russia's State Migration Policy passed in October 2018, however, merely includes a language requirement for citizenship and does not include an integration requirement for foreign nationals who are in the state on a limited term visa.²¹⁵

B. Immigration Laws Applied to Soccer Players

1. The English Premier League, the United Kingdom, and the European Union

The EPL rules state that a club may not register more than seventeen players who are not homegrown in its squad of twenty-five players.²¹⁶ Citizens of the EEA are able to move freely between states, however, citizens from outside the EEA require a Governing Body Endorsement (GBE) from the FA as a prerequisite to obtaining a Tier 2 (Sportsperson) or Tier 5 (Temporary Worker – Creative and Sporting) visa from the U.K. Home Office²¹⁷ under current U.K. immigration law.²¹⁸ Therefore, the only restrictions on EEA citizens playing in

²¹⁰ *TFEU*, *supra* note 70, art. 26; *see FNIA*, *supra* note 185, art. 2(4) (explaining that the provisions on the visa procedures must comply with the Schengen Association Agreement).

²¹¹ *State Migration Policy*, *supra* note 201.

²¹² Manuylova, *supra* note 195.

²¹³ *FNIA*, *supra* note 185, art. 33(5); *see also* Houdrouge & Gay-Crosier, *supra* note 184.

²¹⁴ *Id.*

²¹⁵ *State Migration Policy*, *supra* note 202.

²¹⁶ FOOTBALL ASS'N PREMIER LEAGUE, PREMIER LEAGUE HANDBOOK: SEASON 2019/20 93, § A.1.174 (2019).

²¹⁷ The Home Office is the department of the U.K. government responsible for immigration, counterterrorism, police, drugs policy, and related science and research. *Home Office: About Us*, GOV.UK <https://www.gov.uk/government/organisations/home-office/about>.

²¹⁸ *Sportsperson Visa (Tier 2)*, GOV.UK, <https://www.gov.uk/tier-2-sportsperson-worker-visa>. Governing

the EPL are the homegrown player rules implemented by the EPL, whereas non-EEA citizens must comport with the immigration laws that the Home Office sets out, including the requirement of a GBE to obtain a visa.

To be eligible for a visa, soccer players must first obtain a sponsor in the United Kingdom.²¹⁹ A club is an eligible sponsor if it is a member of the EPL or EFL.²²⁰ Tier 2 visas are valid for either three years or the length of the player's contract, whichever is shorter.²²¹ The Tier 2 visa can be extended for an additional three years or the length of the player's contract, whichever is shorter.²²² Although a player can repeatedly request an extension, the player must obtain a new GBE and meet the requisite concomitant conditions.²²³ The alternative to a Tier 2 visa, the Tier 5 visa, is valid for a shorter period than the Tier 2 visa.²²⁴ Tier 5 visas are valid for one year or the length of the player's contract, whichever is shorter.²²⁵ If a player obtained a Tier 5 visa for less than twelve months, the renewal will be granted to extend the visa to twelve months (for example, if a player had an eight-month visa, he could then renew the visa for an additional four months).²²⁶ If a player had a twelve-month visa initially, he must return to his state of origin to apply for another twelve-month Tier 5 visa.²²⁷

A player may enter the United Kingdom on a Tier 5 visa and apply for a Tier 2 visa while in the United Kingdom.²²⁸ A player may choose to enter on the shorter length Tier 5 because it does not include the same English language requirement stipulated by the Home Office.²²⁹ This means that the player has twelve months in the United Kingdom to pass the English language test and transition to a Tier 2, longer term visa.²³⁰

With no deal currently agreed between the United Kingdom and citizens of the EEA, all EEA citizens are likely to be automatically subjected to the GBE

Body Endorsements apply to the English Football League in addition to the EPL.

²¹⁹ *Id.*

²²⁰ FOOTBALL ASS'N PREMIER LEAGUE, POINTS BASED SYSTEM, GOVERNING BODY ENDORSEMENT REQUIREMENTS FOR PLAYERS, 2019/20 SEASON 4, 6 (2019) [hereinafter POINTS BASED SYSTEM].

²²¹ *Id.* at 9.

²²² *Id.*

²²³ TIER 2 OF THE POINTS BASED SYSTEM: POLICY GUIDANCE, UK VISAS & IMMIGRATION, § 222 (2019).

²²⁴ POINTS BASED SYSTEM, *supra* note 220, at 10.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.* at 11.

²³⁰ *Id.*

requirement.²³¹ The EPL defines a GBE as “an endorsement issued by The FA to a club for a non-EU/EEA elite player who is internationally established at the highest level, whose employment will make a significant contribution to the development of football at the highest level in England.”²³² The Home Office authorized the GBE criteria after consultation with the FA, the EPL, the EFL, the Professional Footballers’ Association (PFA),²³³ and the soccer federations of Northern Ireland, Scotland, and Wales.²³⁴

A player is automatically eligible for a GBE if he has participated in the required percentage²³⁵ of his nation’s senior international matches in the preceding two years (this period of time is known as the Reference Period).²³⁶ Senior international matches encompass competitive matches, friendlies, and any other international match that the senior team plays.²³⁷ If the player under the age of twenty-two at the time of his application, the FA only takes into account the preceding year.²³⁸ Games in which the player was “unavailable for selection” do not count towards the required percentage.²³⁹ “Unavailable for selection” is defined as when the player is unavailable due to injury or suspension and has written evidence in support, which sets of the games missed and the reasons for missing the games, provided by the player’s National Association or club doctor to the FA.²⁴⁰ If a player is listed as a substitute for a match and was not used, that match will count as a non-appearance and will not count as “unavailable for selection.”²⁴¹

²³¹ Jack Pitt-Brooke, *FA Pushing to Limit Number of Foreign Players After Brexit*, INDEP. (Nov. 20, 2018), <https://www.independent.co.uk/sport/football/european/brexit-fa-limit-premier-league-foreign-players-cap-a8643301.html>.

²³² POINTS BASED SYSTEM, *supra* note 220.

²³³ The PFA is the trade union for professional soccer players in England and Wales. *About the PFA*, PFA, <https://www.thepfa.com/thepfa/about>.

²³⁴ POINTS BASED SYSTEM, *supra* note 220, at 1.

²³⁵ *See infra* Figure 1.

²³⁶ POINTS BASED SYSTEM, *supra* note 220, at 7.

²³⁷ *Id.*

²³⁸ *Id.* at 3.

²³⁹ *Id.* at 5.

²⁴⁰ *Id.* at 6.

²⁴¹ *Id.*

The required percentages are as follows:

Required Percentage of Games Played	Nation's Aggregated FIFA World Ranking²⁴²
30	1-10
45	11-20
60	21-30
75	31-50

Figure 1²⁴³

If a player does not meet the requirements set out above, he may appeal to an arbitration panel (the Exceptions Panel), which considers a player's experience and value to determine whether a GBE should be granted notwithstanding the player's failure to meet the required percentage of games played.²⁴⁴ The Exceptions Panel consists of three members: the Chair, who is qualified to practice law; and two Independent Members, who have relevant experience with the top level of soccer and would not objectively be considered to have a current association with the applicant club.²⁴⁵ Collectively, they are referred to as the Panel Members.²⁴⁶ The Exceptions Panel makes its decisions by a simple majority, with the Chair having a casting vote.²⁴⁷

The Exceptions Panel utilizes a "mixed objective and subjective review" of applications.²⁴⁸ The objective review considers issues such as the transfer fee paid for a player, the player's wages, from which league the player is transferring, and whether the player has played in continental competitions.²⁴⁹ First, the player is reviewed against the Part A objective criteria (see Figure 2), each of which is assigned a points value.²⁵⁰ If a player scores more than three points on the initial objective criteria, the Exceptions Panel then reviews subjective materials provided by the club and relevant interested parties.²⁵¹ If a player scores three points or fewer, the player is reviewed against the Part B

²⁴² Aggregated FIFA World Ranking is defined as the aggregated rankings list for senior men's international teams over the Reference Period, which are published by the FA on a monthly basis following publication of the FIFA World Rankings.

²⁴³ POINTS BASED SYSTEM, *supra* note 220, at 3.

²⁴⁴ *Id.* at 8.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 9.

²⁴⁸ *Id.* at 15.

²⁴⁹ *See generally id.* at 15–16.

²⁵⁰ *Id.* at 15.

²⁵¹ *Id.*

objective criteria, see Figure 3.²⁵² After reviewing the secondary objective criteria, the Exceptions Panel will review the subjective materials provided by the club and relevant interested parties.²⁵³

The FA considers the value of the transfer fee paid for the player and the wages paid to the player.²⁵⁴ When considering the transfer fee, the FA only considers guaranteed elements of the contract and excludes conditions to an obligation and conditions to discretionary authority.²⁵⁵ Transfer fees are compared to the fees paid in the previous EPL season.²⁵⁶ Such transfers are referred to as “[q]ualifying [t]ransfers” and are defined as all transfers to the EPL in the previous season that have been submitted to the EPL squad lists.²⁵⁷ If a player has been transferred without any transfer fee, which is known as a free transfer and usually occurs under the limitations set by the CJEU in *Bosman*, the Exceptions Panel uses its discretion to ascribe a transfer value to the player.²⁵⁸ Wages are also considered in a similar way to transfers and are referred to as “[q]ualifying [w]ages.”²⁵⁹ “Qualifying [w]ages” are defined as the basic wages paid to the top thirty earning players at each EPL club at the end of the season previous to the application and do not include elements of a contract that include conditions to an obligation or conditions to discretionary authority.²⁶⁰

The FA also considers whether a player was transferred from a “[t]op [l]eague” or a “[s]econdary [l]eague,” whether he played in “[c]ontinental [c]ompetition,” and the number of “[a]vailable [m]inutes” played by the player.²⁶¹ A “[t]op [l]eague” is defined as either the six European leagues that provide the most players to the top twenty squads in the Aggregated FIFA World Rankings at the time of the application or the two Central and South American leagues that provide the most players to the top twenty squads in the Aggregated FIFA World Rankings at the time of the application.²⁶² “Secondary [l]eague” is defined as either the European leagues that provide the seventh and eighth most players to the top twenty squads in the Aggregated FIFA World Rankings at the time of the application or the Central and South American league that provides

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.* at 5.

²⁵⁵ *Id.* at 5–6.

²⁵⁶ *Id.* at 3.

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 16.

²⁵⁹ *Id.* at 3.

²⁶⁰ *Id.*

²⁶¹ *Id.* at 16.

²⁶² *Id.* at 5.

the third most players to the twenty squads in the Aggregated FIFA World Rankings at the time of the application. “Continental [c]ompetition[s]” are defined as the UEFA Champions League, the UEFA Europa League, and the Copa Libertadores de América.²⁶³ “Available [m]inutes” are defined as the total number of minutes, excluding stoppage time, played by the player’s club in its domestic league competition.²⁶⁴

Part A Objective Criteria	Points
Transfer fee paid for the player is above the 75th percentile of Qualifying Transfers.	3
Wages paid to the player are above the 75th percentile of Qualifying Wages.	3
Transfer fee paid for the player is between the 50th and 75th percentile (inclusive) of Qualifying Transfers.	2
Wages paid to the player are between the 50th and 75th percentile (inclusive) of Qualifying Wages.	2
The player’s current club is in a Top League.	1
1) The player’s current club has played in the group stages or later of a Continental Competition within the last twelve months; and 2) the player has played in at least 30% of the Available Minutes.	1

Figure 2²⁶⁵

Part B Objective Criteria	Points
Transfer fee paid for the player is between the 20th and 50th percentile of Qualifying Transfers.	1
The player has a virtual transfer value higher than the value that is 20% below the 50th percentile of Qualifying Transfers.	1
Wages paid to the player are within 20% of the 50th percentile of Qualifying Wages.	1
1) The player’s current club is in a Secondary League; and 2) the player has played in at least 30% of the Available Minutes.	1
1) The player’s current club has played in the final qualification rounds of a Continental Competition within the last twelve months; and 2) the player has played at least 30% of the Available Minutes.	1

²⁶³ *Id.* at 2.²⁶⁴ *Id.*²⁶⁵ *Id.* at 16.

1) The player has participated in the Secondary Percentage ²⁶⁶ of his nation's matches during the Reference Period; 2) the player's nation was a semi-finalist in the Asian Cup or the African Cup of Nations in the preceding twelve months; or 3) if the player's nation is ranked outside the top 60 of the Aggregated FIFA World Rankings, the player played in at least 75% of the Available Minutes.	1
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------

Figure 3²⁶⁷

If a player scores four points on Part A of the objective criteria, the Exceptions Panel will likely grant a GBE.²⁶⁸ Although four points is the threshold that the Exceptions Panel may grant, the Panel is under no obligation to grant a GBE and still may use its discretion, after reviewing the subjective materials, to deny a GBE to a player who accrues more than four points under Part A of the objective criteria.²⁶⁹ If a player scores fewer than four points in Part A of the objective criteria but reaches a cumulative score of at least five when including the Part B objective criteria, the Exceptions Panel will likely grant a GBE.²⁷⁰ However, similar to the Part A objective criteria, the Exceptions Panel may use its discretion after reviewing the subjective materials, and is under no obligation to grant a GBE if a player cumulatively accrues five points.²⁷¹ Immigration guidelines state that players who accrue fewer than four points on Part A and cumulatively fewer than five points after Part B, should not be granted a GBE unless the subjective criteria satisfactorily shows that the player is “internationally established at the highest level and that his employment will make a significant contribution to the development of football at the highest level in England[.]”²⁷²

Let's run through an example. Take Joelinton, who plays for Newcastle United. Newcastle United signed Joelinton from Hoffenheim in Germany during the summer transfer window of 2019 for around \$50 million.²⁷³ Joelinton is from

²⁶⁶ *Id.* at 5. Secondary Percentage is a lower threshold percentage than the Required Percentage. *Id.* For example, for nations ranked 1–10 in the Aggregated FIFA World Rankings, the Secondary Percentage is 25% instead of 30%. *Id.*

²⁶⁷ *Id.* at 16–17.

²⁶⁸ *Id.* at 19.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Transfer Records: Premier League*, TRANSFERMARKT, https://www.transfermarkt.us/premier-league/transferrekorde/wettbewerb/GB1/plus//galerie/0?saision_id=2019&land_id=alle&ausrichtung=&spielerposition_id=alle&altersklasse=&leihe=&w_s=&zuab=0 [hereinafter *Transfer Records*].

Aliança, Pernambuco, Brazil,²⁷⁴ thus is not a citizen of the EEA and therefore needs a GBE to obtain a visa under U.K. immigration law. According to the FA's Aggregated World Rankings, Brazil is number three,²⁷⁵ therefore, Joelinton would have had to have played thirty percent of Brazil's Available Minutes.²⁷⁶ Joelinton has yet to represent Brazil at senior level; although he has represented his nation at U17 level (under the age of 17).²⁷⁷

Because Joelinton does not meet the automatic requirements for a GBE, his case would have been considered by the Exceptions Panel. Under Part A of the objective criteria, Joelinton would have comfortably accrued the required four points. Only eight players were transferred for a higher fee in the previous season,²⁷⁸ so Joelinton would likely receive three points. Accordingly, Joelinton is likely to have high wages to match his transfer value, although Newcastle United does not have a large wage budget relative to other EPL teams,²⁷⁹ so he would likely receive at least two points. Joelinton transferred from Hoffenheim in the German Bundesliga,²⁸⁰ a Top League, therefore Joelinton would receive another point. In 2017/18, Hoffenheim finished third in the Bundesliga, which resulted in qualification for the group stage of the Champions League (a Continental Competition). Joelinton played 2,136 minutes out of Hoffenheim's 3,060 minutes in Bundesliga games,²⁸¹ thus comfortably meeting the requisite thirty percent of Available Minutes with seventy percent and gaining him another point towards a GBE from the Exceptions Panel.

2. Switzerland

Switzerland's Bilateral Agreements with the European Union keeps its immigration system in relative conformity with the nations of the European

²⁷⁴ Joelinton, SOCCERWAY, <https://int.soccerway.com/players/-/331264> [hereinafter *Joelinton*, SOCCERWAY].

²⁷⁵ THE FOOTBALL ASSOCIATION, FIFA RANKINGS AGGREGATED FOR PERIOD JULY 2018 TO JUNE 2019 (12 MONTHS) 1 (2019).

²⁷⁶ See *infra* Figure 1.

²⁷⁷ Joelinton, TRANSFERMARKT, https://www.transfermarkt.us/joelinton/nationalmannschaft/spieler/333241/verein_id/23130 [hereinafter *Joelinton*, TRANSFERMARKT].

²⁷⁸ *Transfer Records*, *supra* note 261. The eight highest transfer fees paid in the 2018/19 season were: 1) Kepa Arrizabalaga, \$88 million; 2) Riyad Mahrez, \$75 million; 3) Christian Pulisic, \$70 million; 4) Alisson Becker, \$69 million; 5) Naby Keita, \$66 million; 6) Fred, \$65 million; 7) Jorginho, \$63 million; and 8) Fabinho, \$50 million. *Id.*

²⁷⁹ David Conn, *Premier League Finances: The Full Club-by-Club Breakdown and Verdict*, GUARDIAN (May 22, 2019), <https://www.theguardian.com/football/2019/may/22/premier-league-finances-club-guide-2017-18-accounts-manchester-united-city>. Accounts for the year up to June 30, 2018, show that Newcastle United had the thirteenth largest wage budget of the twenty EPL clubs that year. *Id.* The wage bill was around \$120 million, which was fifty-three percent of the club's turnover. *Id.*

²⁸⁰ Joelinton, SOCCERWAY, *supra* note 274; Joelinton, TRANSFERMARKT, *supra* note 277.

²⁸¹ *Id.*

Union.²⁸² Accordingly, although operating outside the European Union like Russia, the Swiss RSL²⁸³ adopts similar rules to the EPL for the regulation of foreign soccer players.²⁸⁴

Under Article 17 of the Swiss Football League's Competition Regulations, clubs competing in the RSL may have squads of twenty-five players, of which a maximum of seventeen players can be non-homegrown.²⁸⁵ Players under the age of twenty-one do not count towards the twenty-five player limit for squads.²⁸⁶ In stark contrast to the Russian approach, the RSL rules in 2017 explicitly stated that the foreign players limit on the squad does not affect how many foreign players may be on the field in a match.²⁸⁷

Even though the RSL employs the same homegrown player rules as the EPL, it does not generate even a fraction of the revenue that the EPL enjoys; the champions of the RSL receive just \$2.5 million.²⁸⁸ FC Basel's former Director of Football, Georg Heitz, points out that Switzerland faces a problem because there is no viable domestic television audience.²⁸⁹ Heitz said, "There's no chance because we don't have a TV market here. We have 7 million people living in this country. Out of the population, 4.5 million speak German, a few million speak French and Italian . . ."²⁹⁰

The RSL is home to dozens of foreign players, yet the Swiss clubs consistently churn out quality homegrown players, both for the Swiss national team and as exports to foreign leagues.²⁹¹ For example, FC Basel, one of Switzerland's most successful and famous teams, has produced over forty players for the men's senior team in the last twenty years and is responsible for Liverpool's Xherdan Shaqiri, Barcelona's Ivan Rakitic, and Arsenal's Granit

²⁸² *Switzerland Trade*, *supra* note 169.

²⁸³ Raiffeisen, a banking group, has sponsored the Swiss Super League since 2012 and the league is therefore named the Raiffeisen Super League. See Michael Long, *New Title Sponsor for Swiss Super League*, SPORTSPRO (June 18, 2012), https://www.sportspromedia.com/news/new_title_sponsor_for_swiss_super_league.

²⁸⁴ SWISS FOOTBALL LEAGUE, SFL COMPETITION REGULATIONS (2019).

²⁸⁵ *Id.* art. 17.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ Chris Wheatley, *'The Talent Factory': How Basel Bred Xhaka and Rakitic for Europe's Best*, GOAL (Dec. 6, 2016), <https://www.goal.com/en/news/596/exclusive/2016/12/06/24237872/the-talent-factory-how-basel-bred-xhaka-and-rakitic-for>.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ As of 2016, Switzerland ranked fifth in the principal origins of expatriate soccer players in the "big-5" European leagues. Drs. Raffaele Poli, Loïc Ravenel & Roger Besson, *Strategic Analysis of a Professional League: Switzerland as a Case Study*, CIES FOOTBALL OBSERVATORY MONTHLY REPORT, Mar. 2017, at 4.

Xhaka.²⁹² Switzerland's national team has consistently performed above its station as well, reaching the round of sixteen at the three of the last four World Cups.²⁹³

Switzerland's embrace of foreign players and its overachieving national team juxtaposes with the Russian system, see *infra* Section II.B.3, in which the RPL places strict limits on foreign players yet produces few top-quality players for its national team despite a much larger population.²⁹⁴

3. *Russia*

In addition to meeting the general immigration criteria for migrants required by the Russian government, the RPL instituted competition regulations that are designed to protect Russian players.²⁹⁵ The RPL creates its rules and regulations, which must be approved by the Executive Committee of the Russian Football Union (RFU).²⁹⁶ The RFU is Russia's national soccer federation and is a publicly owned organization.²⁹⁷

The current RPL rules include the terms "legionary" and "homegrown player."²⁹⁸ A legionary is defined by the RFU as a player who cannot represent the Russian or Belarussian national teams under the rules laid down by FIFA.²⁹⁹ The RFU defines homegrown players slightly differently to the soccer federations of Switzerland and England.³⁰⁰ A homegrown player in Russia is a player who, between the ages of twelve and twenty-one, has continuously or intermittently been registered with a Russian club for at least three years.³⁰¹

²⁹² Wheatley, *supra* note 276.

²⁹³ *Petkovic: Switzerland Have No Reason to Fear Anyone*, FIFA (Dec. 4, 2020), <https://www.fifa.com/worldcup/news/petkovic-switzerland-have-no-reason-to-fear-anyone>.

²⁹⁴ Before reaching the quarterfinals in the World Cup it hosted in 2018, Russia (formerly the USSR) had not reached the round of sixteen since the 1986 World Cup. *Russia Reaches World Cup Quarterfinals With 4-3 Penalty Victory Over Spain*, MOSCOW TIMES (July 1, 2018), <https://www.themoscowtimes.com/2018/07/01/russia-reaches-world-cup-quarterfinals-with-4-3-penalty-victory-over-spain-a62069>; WORLDFOOTBALL.NET: WORLD CUP 1986 MEXICO ROUND OF 16, <https://www.worldfootball.net/schedule/wm-1986-in-mexiko-achtelfinale/0>.

²⁹⁵ See *supra* Section II.A.3.

²⁹⁶ RUSSIAN FOOTBALL UNION, REGULATIONS OF THE RUSSIAN PREMIER LEAGUE SEASON 2019–2020 1 (2019).

²⁹⁷ *Id.*

²⁹⁸ *Id.* at 4.

²⁹⁹ *Id.*

³⁰⁰ *Id.* art. 5.10.

³⁰¹ *Id.* at 3.

While Article 5.10 of the current RPL rules merely stipulates that a club cannot have more than six legionnaires on the field at the same time, changes will come into effect for the 2020/21 season which will limit the number of legionnaires in the club's squad overall.³⁰² Article 5.10 governs on-field matters and affects team selection, which is an integral part of the sport.³⁰³ Article 5.10 is unlike the *lex sportiva* seen within the European Union.³⁰⁴ The European Union has chosen to avoid interfering with the competition rules that affect the essential nature of sport, such as which players may enter the field, as much as it can, instead using the economic nature of sport as the legal basis for regulation.³⁰⁵

Such a regulation stipulating the number of legionnaires on the field at any one time has the effect of shielding Russian players from competition. Russian players are afforded greater opportunities to get game time and legionnaires are forced to compete for a very limited number of positions in the team. Players from abroad might be more likely to choose to play for clubs in other States where opportunities to play are more abundant in those leagues without such restrictions.

It is clear that the Russian authorities have an interest in protecting Russian talent above the interests of the so-called legionnaires. President Putin was critical of Zenit St. Petersburg, Russia's most successful team in recent years, when manager Roberto Mancini (an Italian) chose to start a match in the UEFA Europa League against Real Sociedad of Spain with just three Russians in the lineup.³⁰⁶ In response to Zenit's president, who had previously suggested that more attractive styles of play could attract fans and make soccer "a real Russian game," Putin sarcastically said, "You've got eight foreigners running across the pitch, playing for Zenit in the Europa League, well done[.]"³⁰⁷ Putin lamented the lack of starts given to Russian players on a number of occasions and says

³⁰² *Id.* art 5.10.

³⁰³ RUSSIAN FOOTBALL UNION, REGULATIONS OF THE RUSSIAN PREMIER LEAGUE SEASON 2019–2020 13 (2019).

³⁰⁴ WEATHERILL, *supra* note 7, at 195.

³⁰⁵ Case C-36/74, *Walrave & Koch v. Union Cycle Internationale*, 1974 E.C.R. 1405, 1421.

³⁰⁶ *Putin Mocks Russian Team Zenit Over Foreign Players*, ASSOCIATED PRESS (Oct. 3, 2017), <https://apnews.com/article/7ca765d665394bf4be180feca262695e>. Zenit St. Petersburg's 2017 lineup: Andrey Lunev (Russia); Domenico Criscito (Italy); Miha Mevlja (Slovenia); Emanuel Mammana (Argentina); Branislav Ivanović (Serbia); Daler Kuzyayev (Russia); Leandro Paredes (Argentina); Matias Kranevitter (Argentina); Sebastián Driussi (Argentina); Aleksandr Kokorin (Russia); and Emiliano Rigoni (Argentina). *Zenit Rosenborg Betting Prediction*, BETTING ACAD. NIGERIA: ACAD.: STATS: UEFA EUROPA LEAGUE EURO.: ZENIT VS ROSENBERG, <https://www.bettingacademynigeria.com/stats/match/europe/uefa-europa-league/zenit/rosenborg/2580407/preview>.

³⁰⁷ *Id.*

that soccer cannot be a “truly Russian game” until Russian teams begin to give Russian players more opportunities.³⁰⁸

The insular RPL struggles to compete with its European rivals. For comparison, the television rights for the RPL in 2016 were worth just \$36 million, whereas the EPL entered into an agreement worth \$11.3 billion for a three-year term between 2016 and 2019.³⁰⁹ Regardless, in 2016, the RFU decreased the limit on legionnaires for clubs in the RPL from seven to six as Russia pressed forward with its plan to develop Russian talent at the expense of foreign influence.³¹⁰

Three years later however, in the wake of Russian clubs struggling to compete with their European counterparts, the RFU seems to have toned down its fervor for developing Russian players. The current rule that stipulates at least five homegrown players must be on the field at all times will be relaxed in the 2020/21 season and drop to three under the changes approved by the RFU in June 2019.³¹¹ Under the upcoming rule, there will be a maximum of eight legionnaires in each club's squad of twenty-five players.³¹² Since the new restrictions were passed by the RFU, Russian clubs have had to offload a number of foreign players. In the 2018/19 season, Zenit St. Petersburg's squad had the most legionnaires of all the RPL squads with fourteen,³¹³ but by the 2020/21 season the number of legionnaires in the Zenit St. Petersburg squad was reduced to just eight.³¹⁴ The rule change signals a shift in policy by the RFU and is an implicit admission that the rules restricting the number of foreign players had a detrimental effect on the overall sustainability of the RPL.

³⁰⁸ *Id.*

³⁰⁹ Williams, *supra* note 27; Conn, *supra* note 14.

³¹⁰ Williams, *supra* note 27.

³¹¹ *Russia to Allow More Foreigners on Soccer Field*, ASSOCIATED PRESS (June 26, 2019), <https://apnews.com/article/8df7037edce645d996a0aa8c9d0b8062>.

³¹² *Id.*

³¹³ *Id.* In the 2018/19 season, Zenit St. Petersburg's squad included the following legionnaires: Branislav Ivanovic (Serbia); Yaroslav Rakitsky (Ukraine); Luis Neto (Portugal); Emanuel Mammana (Argentina); Miha Mevlja (Slovenia); Leandro Paredes (Argentina); Wilmar Barrios (Colombia); Christian Noboa (Ecuador); Hernani (Brazil); Róbert Mak (Slovakia); Claudio Marchisio (Italy); Sebastian Driussi (Argentina); Sardar Azmoun (Iran); Luka Djordjevic (Montenegro). *Zenit First Team Squad*, ZENIT FOOTBALL CLUB OFF. WEBSITE, (Apr. 12, 2021), <https://en.fc-zenit.ru/zenit/players>.

³¹⁴ In the 2020/21 season, Zenit St. Petersburg's squad included the following legionnaires: Yaroslav Rakitsky (Ukraine); Douglas Santos (Brazil); Dejan Lovren (Croatia); Wendel (Brazil); Malcom (Brazil); Wilmar Barrios (Colombia); Sebastian Driussi (Argentina); Sardar Azmoun (Iran). *Zenit First Team Squad*, ZENIT FOOTBALL CLUB OFF. WEBSITE, (Apr. 12, 2021), <https://en.fc-zenit.ru/zenit/players>.

III. PROPOSAL

For the EPL to maintain its position of global dominance, the United Kingdom must implement an immigration strategy that allows EPL clubs to secure the most exciting talent from across the globe. The United Kingdom's relationship with the European Union allows EPL clubs to sign some of the world's best players without having to overcome burdensome hurdles. The United Kingdom must maintain a close relationship with the European Union to ensure that EPL clubs are able to sign players just as easily after the United Kingdom withdraws from the European Union. The danger is that if United Kingdom immigration laws make it more difficult for foreign players to play their trade in the United Kingdom, the easier option would be for such players to choose major European leagues where immigration laws are more favorable. This would result in the EPL eventually losing its position at the summit of world soccer.

Switzerland and Russia provide two examples of radically differing relationships with the European Union. The Swiss model provides an example of a state that is not a member of the European Union but employs similar immigration laws to that of the U.K. and EU Member States. Switzerland's integration with the European Union is antithetical to that of Russia. Migrants to Russia are largely from post-Soviet states and Russia the number of long-term migrants is at the lowest for fifteen years.³¹⁵

As a member of EFTA, and with the implementation of the Bilaterals, Switzerland shares a free trade agreement and the free movement of people with the European Union.³¹⁶ Switzerland is an example of a state outside the European Union with immigration laws that are extremely similar to that of the United Kingdom. As former EPL Executive Chairman Richard Scudamore noted, it is crucial for the EPL to maintain its openness to the best talent from abroad.³¹⁷ Transitioning to an immigration system like the Swiss system would ensure the United Kingdom maintains its close relationship with the European Union with limited disruption and, therefore, preserves the openness required for the EPL to continue to thrive. In contrast, ending free movement with the European Union and enacting a system like that of Russia would leave the United Kingdom isolated in the west as Russia is in the east.

³¹⁵ Manuylova, *supra* note 195.

³¹⁶ *Switzerland Trade*, *supra* note 169.

³¹⁷ Owen Gibson, *Richard Scudamore: The World Likes What English Football Has To Offer*, *GUARDIAN* (Aug. 15, 2013), <https://www.theguardian.com/football/2013/aug/14/richard-scudamore-premier-league>.

In applying immigration laws to soccer players, it is imperative that the United Kingdom does not begin to require GBEs for players from the EU. Since the EPL's inaugural season in 1992, over half of the EU players transferred to the EPL would not have qualified for a GBE under the current rules.³¹⁸ Had these players been denied entry to the United Kingdom, it would have deprived the EPL, its fans, and its broadcasters of legendary players such as N'Golo Kanté, Cesc Fàbregas, and Gianluca Vialli.³¹⁹

Maintaining a similar homegrown player policy is key to limiting disruption and maintaining the EPL's current recipe for success. Switzerland is able to develop top talent, like Rakitic and Shaqiri, and employs a homegrown rule like the one used in the EPL currently.³²⁰ Russia provides an example of how the FA would seek to limit the number of foreign players in order to favor English players. The legionnaire system in Russia is in place to ensure that Russians comprise the majority of the RPL's players. However, Russia has not performed as a national team and has not produced any talented players of note. In comparing the two contrary approaches, it seems that a model like in Switzerland would better satisfy both the FA and the EPL because high quality homegrown players would continue to be produced while maintaining the multicultural, global product that is the EPL.

CONCLUSION

As the United Kingdom stands on the brink of leaving the European Union, it must make a decision as to what its immigration laws and standards will be for professional soccer players. The U.K.'s current immigration laws allow EU citizens to easily work in the United Kingdom, however, there are burdensome restrictions on players who wish to come to the United Kingdom from outside the European Union and EEA. The EPL is renowned for being the "best league in the world" and this is largely due to the talented players on show. Rather than pull away from the European Union and place the emphasis on homegrown talent, like the system in Russia does, the United Kingdom should transition its immigration to a system similar to that of Switzerland, which would maintain

³¹⁸ Laurie Shaw, *Brexit Could Drastically Change English Soccer*, FIVETHIRTYEIGHT (Dec. 11, 2018), <https://fivethirtyeight.com/features/brexit-could-dramatically-change-english-soccer>.

³¹⁹ Justin Humphries, *Brexit Means Brexit but What Does it Mean for the Premier League and its Players?*, LAWNSPORT (Dec. 9, 2019), <https://www.lawnsport.com/topics/item/brexit-means-brexit-but-what-does-it-mean-for-the-premier-league-and-its-players>.

³²⁰ See *supra* Section II.B.2.

many of the favorable traits of the current U.K. immigration system and protect the EPL's dominant global status.

FRASER GOODLAD*

* As an international student from the United Kingdom, Fraser was excited to be able to be part of *Emory International Law Review's* 35th Volume and is looking forward to continuing working on transnational issues. Upon graduation from Emory Law in Spring 2021, Fraser will begin his career with a global law firm working on complex cross-border and multijurisdictional matters. Fraser would like to express his gratitude to his advisor, Professor Teemu Ruskola, for his support throughout the drafting process.