



WE CARE ABOUT FOOTBALL

Union des associations européennes de football

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Sent by email to: freetoairevents@culture.gov.uk

Department for Culture, Media and Sport
For the attention of David Patterson
5th Floor
2-4 Cockspur Street
London SW1Y 5DH
United Kingdom

Your reference Your correspondence of Our reference Date

Dear Sirs,

Consultation by the Advisory Panel on the UK Listed Events Regime: Response by the Union of European Football Associations

Introduction to UEFA's Response

Further to its hearing with the Advisory Panel on 18th May 2009, the Union of European Football Associations ("UEFA") welcomes the opportunity to provide the Panel with its views on UK listed events. The Panel has, UEFA believes, a very important role to play in helping to shape the future of UK broadcasting policy in a manner that meets the real interests of the British people but which also safeguards the future of sport. We very much hope that our contribution will assist the Panel in its deliberations and that our concerns will be taken into account by the Secretary of State when a final decision is taken on the content of the UK list.

Before turning to the specific questions raised in the consultation document, it may be helpful to provide a general description of UEFA's role and responsibilities, including an outline of UEFA policy with regard to television coverage of our own events.

Founded in 1954, UEFA is the governing body for football in Europe with a membership comprising 53 national football associations including four from the United Kingdom (the Football Association, the Scottish Football Association, the Irish Football Association - Northern Ireland and the Football Association of Wales). Our mission is to develop European football at all levels, to promote the principles of unity and solidarity, and to deal with all questions relating to European football. UEFA organises 16 amateur and professional tournaments for men and women, the most famous of which are the UEFA European Football Championship (the "EURO"), the UEFA Champions League and the UEFA Europa League (until season 2008/09 known as the UEFA Cup).

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UEFA works closely with its member associations and with the different stakeholders in European football (supporters, clubs, leagues, players) to:

- Increase access and participation in the game, without discrimination on grounds of gender, religion or race and to support growth in the grassroots;
- Support re-investment and re-distribution of revenues in accordance with the principle of solidarity between all levels of football, professional and amateur alike;
- Promote positive sporting values, including fair play and anti-racism, as well as safe and secure match environments;
- Organise successful competitions for professional, youth, women's and amateur football.

These objectives are at the heart of UEFA's activities and also inform its approach to broadcasting policy. Consequently, for UEFA, it has never been a simple question of selling media rights to the highest bidder: we also take into account the expectations of football supporters as well as our duty to make top competitions widely available to the public.

Thus, as a matter of policy and irrespective of any regulatory requirements, UEFA already makes its top competitions available to a very wide audience, including on free-to-air television. We adopt this policy in all European markets, not just in the UK. This is most obviously the case in relation to the EURO, however, it is also true of our two major club competitions, namely, the UEFA Champions League and the UEFA Europa League (former UEFA Cup). In fact, we think it is fair to say that, with the exception of some national cup competitions, the UEFA Champions League and the UEFA Cup/UEFA Europa League offer the only regular opportunity for British viewers to see major English and Scottish clubs playing live on free-to-air television.

Moreover, as the Advisory Panel will be aware, these UEFA club competitions are not listed in the UK, which only underlines the fact that UEFA chooses to make these events available on free-to-air television; we are not compelled to contract with free-to-air broadcasters, which is effectively the case in relation to the UK market for the EURO.

Nevertheless, even in relation to EURO, we should again emphasise that as a matter of policy choice and without regulatory compulsion, UEFA always ensures that matches of major interest to society are available on free-to-air television. So, for example, in the case of EURO 2008, the policy adopted by UEFA ensured that a minimum of one match per match-day (out of a maximum of two in the current competition format) was available live on free-to-air television, whether or not the EURO (or any part of it) happened to be listed in the relevant territory.

In practice, this meant that a minimum of 19 matches out of 31 – including the opening game, semi-finals and final – had to appear live on free-to-air television in every European country. Further, UEFA policy required that matches of the national team in the EURO also had to be broadcast live by free-to-air broadcasters. This is because UEFA recognises – without needing to be told – that matches involving the national team in the EURO are likely

to be of major interest in the country concerned. Some countries have "listed" these matches and others have not, however, UEFA follows the same policy approach in all markets irrespective of the regulatory framework. Furthermore, UEFA intends to maintain this policy for the foreseeable future. We believe that our track record has consistently demonstrated our commitment to free-to-air broadcasting.

The problem – and we see it as a problem – is that the UK's current list designates every single one of the 31 matches in the EURO as a "Group A" listed event. We do not believe that every single match in the EURO can reasonably be described as an event of "major importance" to UK society **[Redacted]**.

For the purposes of the review, the crucial point to grasp is that the listing of the entire EURO in the UK distorts the competitive environment in which the rights are sold, protects no real or legitimate public interest and, at the same time, materially reduces the amount of revenue available for grass roots investment in British football. **[Redacted]**

To put this in context, in March 2009, the then Secretary of State for Culture, Media and Sport (Andy Burnham) called on the major sports to invest **5%** of their revenue on funding grass-roots projects (as an absolute minimum). UEFA shares the view that it is the responsibility of sports governing bodies to invest in grassroots development and to lead by example and this is exactly what UEFA does on a voluntary basis in relation to its own competitions. In fact, many grass-root projects could simply not happen without the investment put in by UEFA and its member associations from income generated by the EURO. However, this also implies that, consistent with the wider public interests that we have already described, UEFA must be able to optimise the revenues generated by this competition and market the media rights in an environment that is not materially distorted by an unjustified and unwarranted listed events regime.

It is against this background that UEFA decided to challenge the European Commission decision to approve the current UK list of major events before the European Court of First Instance. In our view, the listing of every match in the final tournament of the EURO could not be justified as these matches are clearly not all of "major importance" to UK society. For the sake of completeness, we are also of the view that qualifying matches of the national team are not of "major importance" to UK society either and, consequently, we think these qualifying matches should remain "unlisted", as they are at present.

Finally, we consider that the listing of the entire EURO results in a significant distortion of competition and constitutes an unwarranted interference with our property rights. In our view, the European Commission made a mistake by approving the UK list as a matter of Community law.

Turning then to the specific questions that have been raised in the Consultation, UEFA would respond in the following manner:

Question 1: Do you think that the UK should continue to protect certain major events through live or deferred coverage on free-to-air television?

While UEFA is broadly sympathetic to the aims of the listed events legislation (i.e. that the public should have access to events of major importance to society) we believe that this objective can be achieved by responsible decision making by sports bodies themselves.

As explained, UEFA reflects this philosophy in its own broadcasting policy and we have elected to follow this course irrespective of the prevailing regulatory environment in any given European country. Thus, in the majority of EU countries where there is no listed events legislation UEFA still insists, particularly in the context of the EURO, that the most important matches are made available live on free-to-air television.

UEFA believes that, where a national list exists, it should be limited to those events that are genuinely of major importance to society as a whole. A listed events regime should not shield a small number of free-to-air broadcasters from competition when there is no valid reason for this **[Redacted]**

It is important to appreciate that listing distorts competition on the market for media rights and should, for these reasons, be used sparingly and only when there are overwhelming public interest considerations involved which outweigh the negative financial impact that listing has on sport and investment in the grass roots.

It is not so much sports rights holders that suffer from market distortions resulting from listing decisions but rather the sport itself and, in particular, the young people who might otherwise benefit from the availability of funds to finance grass roots projects, training and education and so on. This is particularly true when the economic climate threatens severely to strain public spending on sport. Thus, it is important to understand that government intervention possibly designed to promote or enhance sport may actually have the unintended consequence of damaging the financing of it.

Question 2: Do you think that events other than sporting events should be listed?

UEFA does not have any views on this subject.

Question 3: Do you agree that the essential criterion test should remain as follows:

“the event has a special national resonance, not just a significance to those who ordinarily follow the sport concerned; it is an event which serves to unite the nation, a shared point on the national calendar.”

UEFA believes that, if there is to be a listed events regime, then the essential criterion test seems broadly sensible. It is, however, the application of this test that has caused the problem because it is impossible to argue that every single match in the EURO “unites the nation” and/or constitutes a “shared point on the national calendar”.

[Redacted]

Question 4: The essential criterion is of course currently expressed solely in terms of sporting events. If your answer to Question 2 was that non-sporting events should also be considered for listing, what might an essential criterion be?

UEFA has not provided an answer to Question 2 so this question is not applicable.

Question 5: Having qualified under the essential criterion test, an event was more likely to be listed if it exhibited particular characteristics such as:

- **It is likely to command a large television audience;**
- **It has a history of being broadcast live on free-to-air television.**

Do you consider that these characteristics remain appropriate. If you do not, or consider that additional characteristics should be included, please explain why.

Audience

The fact that an event is likely to command a large television audience seems to be a good indicator of its "importance to society". **[Redacted]**

History of being broadcast live on free-to-air

The fact that an event may have had a history of being broadcast live on free-to-air television is not, in our opinion, particularly relevant. The practical reality is that certain events, such as the EURO, can only be broadcast live on free-to-air television and this is because of the distortions created by the listed events regime in the UK. **[Redacted]**

Question 6: In deciding whether to list an event, the Secretary of State had regard to other factors affecting the likely costs and benefits to the sport concerned, to the broadcasting industry and to viewers, such as:

- **Whether it is practical to offer full live coverage on a general channel – extended events such as season-long championships involving many matches will not normally be listed in their entirety;**

The EURO also constitutes an "extended event" which should not be listed "in its entirety". In the case of the EURO 2012, there will be 31 matches played over a 24 day period and there will be at least two matches played on each of the first twelve days of the tournament.

[Redacted]

UEFA considers that events (such as the EURO) which last an extended period and consist of a high number of different matches should be sub-divided into those constituent parts that are truly of major importance to society and those which are not. In the case of the EURO,

this is the policy followed by nearly every other EU country that has placed the event on a national list. It is also the policy followed by the UK itself in relation to other sports, notably in relation to cricket and rugby. In the interests of consistency and logic, it would be sensible to extend this approach to the EURO as well.

- ***The impact of listing in reducing the income or potential income of the sport and consequences of that reduction for its investment in increasing participation and/or improving levels of performance and/or in creating safe facilities.***

We believe this is a crucial consideration that has not been fully taken into account by the UK authorities in relation to listing policy. The fact that the EURO is listed in its entirety has reduced and distorted competition in the UK market for the sale of the media rights with a consequential negative impact on the income available for re-investment in grassroots sport and, in particular, for grassroots football in Britain. As the vast majority of EURO revenues are redistributed to grassroots football (via national football associations) the detrimental impact on the development of the sport is clear and significant.

[Redacted]

- ***The likely impact of listing on the broadcasting market, including future investment in sports broadcasting, the level of competition and the position of public service broadcasters.***

[Redacted]

When commenting on listing policy at the time of the last review (in 1997), the Office of Fair Trading drew attention to the adverse consequences that listing has on competition in the market for sports rights, with implications for investment in sport and competition between broadcasters and broadcasting technologies. At the time, the Director General of Fair Trading stated as follows:

"Listing sports events can distort competition in the sale of sports rights, and it can distort competition between broadcasters and broadcasting media. In my view, listing events should only be adopted in clear cut cases."

"The distortion of competition in the sale of sports rights occurs because holders of sports rights are not free to sell their rights as they would wish. Because they are not free to sell their rights (on an exclusive basis) to subscription or pay-per-view broadcasters, they may not be able to realise the maximum value of their rights."

The Director-General concluded his submission with the following comment:

"I consider that listing events distorts investment in sport, the market for sports rights, and competition between broadcasters and broadcasting technologies. For this reason I believe that listing should be used sparingly, and only where an event clearly has 'national resonance' and where it would result in a substantial loss of consumer welfare if it were exclusive to subscription television. The criteria used for determining

whether an event has national resonance should be as objective as possible, and historical viewing figures may provide such a criterion, in combination with the others discussed above.”¹

UEFA considers that the current list and the rules governing its implementation produce a high degree of rigidity, which greatly favours a small number of free-to-air broadcasters in the UK, which impedes effective competition, and which serves to undermine future investment in football in the UK.

- ***Whether there are arrangements to ensure that access to the event is available to all viewers by means of highlights, delayed coverage and/or radio commentary.***

In addition to UEFA's commitment to one match per match day being broadcast live on free-to-air television, UEFA also ensures that all EURO matches are on free-to-air television throughout Europe as highlights. In a long tournament such as the EURO, where only certain games are of major importance to society, highlights on free-to-air channels would allow a more reasonable and proportionate listing of games for live coverage. Indeed, in some cases, particularly at the group stage, the highlights may be a greater draw than the live matches themselves.

For example, a group-stage match between Greece and Sweden (as happened at EURO 2008) might appear live on a specialised sports channel, and then later as highlights on a free-to-air channel. This mix would reflect the different preferences of hardened sports fans, who will watch every match live in a tournament, and occasional viewers who only wait for the 'big' matches.

Are there additional factors that should be taken into account by the Secretary of State?

In addition to the comments above, UEFA considers that both national viewing statistics and the behaviour of "qualifying broadcasters" should act as a guide in the assessment of whether an event should be fully listed. **[Redacted]**

Question 7: Do you agree that both an A and B list should be maintained? If not, please explain why.

As mentioned, while UEFA is broadly sympathetic to the aims of the listed events legislation (i.e. that the public should have access to events of major importance to society) we believe that this objective can be achieved by responsible decision making by sports bodies themselves.

However, where a list exists, it is sensible to have two separate groups of events for live coverage and highlights / deferred coverage respectively. This allows for a degree of flexibility and should help to ensure that decisions are "proportionate" in the sense that only certain matches in an event (e.g. matches of the national team and "gala" matches, such as

¹ Letter from John Bridgeman to Rt. Hon Chris Smith, dated 22 August 1997.

the opening match, semi-finals and final) may be included on the A list - because they are of genuine importance to the country as a whole.

Question 8: Are there any issues that you would wish to bring to our attention in regard to the way in which the listing arrangements are given practical effect by OfCom?

[Redacted] For example, it is theoretically possible for non-qualifying (e.g. pay-TV) broadcasters to acquire exclusive rights to a listed event, in circumstances where there has been no "fair and reasonable" offer from qualified broadcasters.

The Code of Conduct provides that OfCom will take the following approach in assessing whether a non-qualified broadcaster may broadcast listed events:

"In deciding whether to give its consent it may be sufficient for Ofcom to establish that the availability of the rights was generally known and no broadcaster providing a service in the other category had expressed an interest in their acquisition to the rights holder, or had not bid for the rights. However, Ofcom will wish to be satisfied that broadcasters have had a genuine opportunity to acquire the rights on fair and reasonable terms ..."

In assessing whether a price offered is "fair and reasonable", Ofcom is supposed to have regard to the following considerations:

- Previous fees for the event or similar events;
- Time of day for live coverage of the event;
- Revenue or audience potential associated with the live transmission of the event (e.g. the opportunity to sell advertising and sponsorship; the prospects for subscription income);
- Period for which rights are offered; and
- Competition in the market place.

It follows from this regulatory set-up that Ofcom, if called to do so, would have to assess whether a "fair and reasonable" offer had been made for the rights by a qualified broadcaster as a pre-condition for a rights holder to be able to enter into an exclusive contract with a non-qualified (e.g. pay-TV) broadcaster. **[Redacted]**

It is interesting to note that Channel Five objected to this request noting the unfairness of a system that allowed ITV to acquire the rights whilst shielded from competition and then put certain matches on secondary channels. At the same time, Five (which was not technically a qualifying broadcaster at the time) could not effectively bid for any of the rights in the first place. In its response of 10 April 2006, Channel Five stated:

“Five has no problem with ITV obtaining such consent for the matches to be show live on ITV 1 since that is a free to air service received by at least 95% of the UK population BUT believes that it would be inappropriate and contrary to the intent and purpose of the Rules on Listed Events for Ofcom to consent to 4 of the matches in the Tournament to be shown live on ITV 2 / ITV 4 which would be free to air but not capable of being received by more than about 50% of the UK population.”

[Redacted]

Given Ofcom’s central role to the regulation of the listed events regime and the fact that the Secretary of State is obliged by statute to consult Ofcom with regard to listing policy, it might have been expected that Ofcom would play an active role in this current review. However, on the basis of recent correspondence, UEFA understands that Ofcom may not provide any input to the Panel at all. In the submission of UEFA, this would be a serious omission by Ofcom, particularly given its role as sectoral regulator with responsibility for competition policy in the broadcasting sphere. By contrast, at the time of the last review in 1997, the Office of Fair Trading provided cogent advice on the listed events regime and its impact on competition (which unfortunately was ignored).

UEFA considers that a proper analysis on the competition effects of the listed events regime ought to be carried out as part of the current review. While competition is not the only consideration in designating a listed event, it should nonetheless form an important part of the analysis, particularly given the implications of a distorted market for future investment in sport. UEFA considers it crucial that the Advisory Panel obtains a full competition law analysis of the proposed list of major events from OfCom.

Question 9: Ultimately the decision as to what events are listed, and whether there is one or more lists, is a matter for the Secretary of State, subject to consultation with the broadcasting authorities and affected rights holders. But the Advisory Panel is keen that its own recommendations should be informed by the widest possible views from the public, from the broadcasting and media industries, and from sports bodies and rights holders. Do you think that the Secretary of State should:

- ***leave the current arrangements unchanged;***
- ***move existing events between the A- and B- lists;***
- ***add any entirely new events; or***
- ***remove any events that are currently listed?***

It is not reasonable or proportionate to list every single game of the EURO in ‘Group A’ (full live coverage on free-to-air television). The UK list could and should be more balanced, proportionate and reasonable.

Greater use could be made of the Group B list in order to ensure that the public has adequate coverage of major events. As UEFA has explained throughout this submission, the designation of sports events for free-to-air broadcasting should be strictly limited to those events which truly could be said to “unite the nation”.

Question 10: As can be seen, the current lists are a mixture of one-off events and of single-sport or multi-disciplinary tournaments that take place over an extended period of time or over a period of days.

If you have suggested that live coverage of any such tournaments should be listed do you think that:

- **the entire tournament should be listed; or**
- **only selected stages, events or matches involving national teams or representatives.**

Please give reasons for your view and, if you favour selected listing, please specify which tournaments and which stages, events or matches.

It would be more appropriate, for example, to list the gala matches of the EURO (opening game, final, and possibly the semi-finals) as well as the games involving the national team.

[Redacted]

The fact that matches involving the national team have far greater resonance with the public is blatantly obvious and has been frequently recognised. For example, in the *Eurovision* case, the European Commission (correctly) observed as follows:

“...the attraction of sports programmes and hence the level of competition for the television rights varies according to the type of sport and the type of event... International events tend to be even more attractive for the audience in a given country than national ones, provided the national team or a national champion is involved, while international events in which no national champion or team is participating can often be of little interest.”² (emphasis added)

[Redacted]

This pattern is followed in other sports as well. In the UK, whether in relation to football, rugby or cricket, the clear and consistent trend is that matches not involving a home nation are not of significant interest or concern to the nation as whole.

This is also confirmed by a comparison of television audience ratings for the EURO in France, Germany, Italy, the Netherlands, Spain and the UK.³ It is always the case that matches involving the national team are of far greater interest to the public in any given

² Commission Decision 2000/400/EC, Case IV/32.150, *Eurovision* (2000) OJ L 151/18 (“*Eurovision*”), paragraph 40.

³ Based on audience ratings achieved in EURO 2000 and EURO 2004.

country. There is nothing to suggest that people in the UK are more interested than any other national public in non-home matches in the EURO.

Question 11:

Please suggest which non-sporting events you would like to see listed and why.

UEFA has not answered Question 2 so this question is not applicable.

Question 12: In the light of the Panel's recommendations, which will be informed by the outcome of this consultation process, the Secretary of State will reach conclusions and will then consult the broadcasting authorities and any affected rights-holders on how he intends to proceed in line with the requirements of the 1996 Broadcasting Act.

Do you have any other issues that you would like the Panel to take into account in considering what its recommendations should be?

For all the reasons expressed in this submission, UEFA considers that the UK list should be amended in such a way that only those matches that are of genuine interest to UK society as a whole remain as "Group A" listed events. In reality, it is only the matches of the national team in the EURO together with the "gala" matches (i.e. opening game, final and possibly the semi-finals) that could really be said to "unite the nation" in any meaningful sense. It is simply not logical or reasonable to continue with the myth that every single match in the EURO is of "major importance" to UK society.

Furthermore, the unfair and disproportionate policy currently followed by the UK significantly distorts competition in the market for the sale of media rights to the EURO. There is no "consumer gain" here: only a financial loss to sport and to future investment in the development of football talent in the United Kingdom (for which the four UK national associations are primarily responsible).

As the government's 'Digital Britain' strategy has stated, the UK is rapidly entering a new world. 'Digital Britain' recognises that the "genesis of the UK's public policy market interventions took place in the mass, analogue world," and the government needs to "address the place for intervention... as we move from the analogue to the fully digital world."⁴ The present review of listed events gives the Secretary of State a clear opportunity to modernise a regime that has remained untouched for more than a decade; the current list of events was drawn up in a world that no longer exists. The government can maintain its commitment to free-to-air broadcasting of events that are genuinely of major importance to society, while refreshing the regime so that it properly reflects modern broadcasting and the needs of UK citizens.

In all these circumstances, we would urge the Panel to reconsider the content of the current UK list and advise the Secretary of State in the strongest possible terms to remove the

⁴ "Digital Britain", Executive Summary paragraph 50.

relevant EURO matches from the "Group A" list. Hopefully, this Panel will succeed where its predecessor failed in 1998.

We thank you for your consideration of our response to the consultation and remain available to meet with the Panel to discuss this response in further detail. **[Redacted]**

Lastly, UEFA would expect to be consulted by the Secretary of State prior to any final decision on the UK list and look forward to having this opportunity in due course.

Yours faithfully,

UEFA

A handwritten signature in black ink, appearing to be 'GIANNI INFANTINO', written in a cursive style.

Gianni Infantino
Deputy General Secretary