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The EU and sport governance, between economic and social values

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**Introduction**

The relationship between the European Union (EU) and sport is paradoxical and complex, which certainly difficult any attempt of parsimonious analysis. This is due to a series of circumstances that is necessary to mention beforehand as way of introduction. First, a constitutional constraint conditions any EU approach to sport since it has no direct competence in that matter. Sport remains an exclusive competence of the Member States and, some would also argue, of the so-called sporting movement (sport non-governmental organisations). This, however, has not prevented sport from appearing in the EU political agenda relatively often, especially since the well known Bosman ruling in 1995 (García 2007a). Moreover, the constraint may disappear with the Lisbon Treaty, which includes a direct competence on sport for the EU, albeit at a very basic level. This is discussed further ahead in the chapter. Second, given that constitutional constraint, the EU has tended to approach sport indirectly through the regulatory policies of the Single European Market (SEM). This has lead Tokarsky *et al.* (2004) to differentiate between direct and indirect EU sports policy, the former being relatively modest and patchy, whereas the latter focuses on the economic and legal aspects of professional sport. Third, the European Union has been characterised as a multi-level and multi institutional political system (Marks...
and Hooghe 2004; Marks et al. 1996; Hix 2003). Policy-making in the EU involves a great number of actors and it would be incorrect to assume that their preferences are easily aligned. In the case of sport the European Court of Justice (ECJ), the European Parliament, the Commission and the Member States (meeting either in the Council of Ministers or the European Council) have differing views of sport. Even within the European Commission one can find contrasting internal approaches to sport. The result is a heterogeneous policy community that makes generalisations about EU policy on sport very difficult. Fourth, it is now acknowledged and accepted that, despite diversity, there are two main (and contrasting) views of sport among EU institutions that have developed over time (Parrish 2003a, 2003b): sport as an economic activity in need of regulation when it affects the SEM, and sport as a socio-cultural activity with important implications for civil society, identities and culture throughout the EU. Due to the complex institutional structure of the EU, none of these visions has real prevalence over the other. This depends of the circumstances of each particular situation. Thus, the implications, tensions and evolution of these two views can explain a large majority of EU decisions in sport. Finally, sport non-governmental organisations have been reluctant to engage with EU institutions in order to protect their alleged autonomy from the political sphere. Yet, they have had no real option than to enter in dialogue with the different institutions and to become active members of the young sports policy community in the EU.

Given these complexities, for the sake of clarity this chapter makes a conscious choice to stay at a general level to explain the evolution of the EU policy on sport. Particular references are made to individual decisions of each institution, but the intention is to remain on a macro or meso level of decisions to explain the wider picture of how the EU has balanced the tensions between the economic and social dimensions of sport with a special
attention to the compatibility of governance structures with EU law. The chapter suggests that EU institutions identified the social and political possibilities of sport relatively early, in the mid 1980s when the EU was trying to advance its economic and political project of a single market and an ‘even closer union among the peoples of Europe’. Some of these social qualities of sport featured heavily in what the European Commission termed a few years later as the European Model of Sport (European Commission 1998a; European Parliament 2000; European Commission 1999b). This was followed by a focus on the regulation of sport economics through the application of EU law (Coopers and Lybrand 1995; European Commission 1996, 1999c, 1999d). It is only in recent years that an interest in the social values of sport seems to regain prominent agenda status with initiatives such as the European Year of Education through Sport in 2004 or the recent European Commission White Paper on sport that devotes one third of the document to the social characteristics of sport (European Commission 2007a). It is argued, however, that any incursion of the EU in the social capabilities of sport is necessarily timid and, consequently, the EU has opted to concentrate more on the supervision and a form of gentle steering of the governance structures of sport in Europe, especially their adjustment to EU law.

Thus, the chapter builds on this dual approach to sport and proceeds in three steps. First it considers the EU vision of the socio-cultural values of sport, with a specific analysis of the so-called European model of sport. Second, the chapter considers the EU regulation of the economic dimension of sport, mainly at professional level. Finally the chapter brings together both sides of the equation to explain the EU’s recent interest in sport governance, its implications for sport non-governmental organisations and the future development of the EU sports policy in light of the Commission’s White Paper on Sport and the Lisbon Treaty.
The European model of sport: Illusion or reality?

It may come as a surprise to some that the social and cultural aspects of sport caught the attention of the EU institutions well before decisions such as the Bosman ruling (1995) grabbed headlines and major media attention. This vision of sport, however, was poorly articulated until the European Commission in 1998 suggested the existence of a European model of sport in need of protection from excessive commercialisation (European Commission 1998a). The idea of a European model of sport gained importance rapidly within some actors in the EU sport policy community and for that reason it features heavily in this section.

In the mid 1980s the European Communities (EC) were starting to recover from a long period known as Euro-sclerosis, marked politically by Charles De Gaulle’s empty chair policy and economically by the financial and oil crisis of the late 1970s. The EC had recently taken on another expansion (Greece in January 1981) and it was negotiating the inclusion of two further Member States (Portugal and Spain finally joining in January 1986). Despite having completed a customs union in 1968 as a result of the Treaty of Rome, European leaders felt there were still too many protectionist regulations deterring the recovery of Europe’s economy. The decision was to launch a far reaching six-year programme to remove all those obstacles to create the single market. The Single European Act (SEA) was signed in February 1986 and it was intended to revises the Treaties of Rome in order to add new momentum to European integration. It amended the rules governing the operation of the European institutions (giving more power to the Parliament) and expanded the EC powers. At the same time, the political leaders felt that it was
necessary to procure social support for the European project if the citizens were to accept the increased levels of integration and the possible negative consequences of the single European market. For these reasons, the European Council commissioned a group of experts to draft a report on the social aspects of European integration. It was titled Report on a people’s Europe, although it is known as the Andonino report (European Commission 1984). The Andonino report explored different ways in which to increase social support for European integration, and one of the suggestions was the use of sport. The Andonino report proposed the sponsoring of sporting events in which EC logos could be present, the formation of European teams for major sporting competitions, the promotion of sport for athletes with special needs or the increased exchange of athletes within the EC (European Commission 1984).

These suggestions were well received by the European Council meeting in Milan in 1985 and also embraced by the European Parliament. The European Commission embarked for a few years in the sponsorship of selected sporting competitions such as Antwerp’s tennis tournament (included in the professional tennis circuit), the Tour de l’Avenir (an under-23 version of the Tour de France) was renamed as Tour of the European Communities from 1986 to 1990, or the 1992 summer Olympic Games received a grant from the Commission to display prominently EU flags and emblems during the games. Other initiatives included the Eurathlon programme, whereby the Commission funded between 1995 and 1998 sport related projects. This was an instrumental use of sport rather than a policy about sport in Europe. However, it demonstrates that there was some awareness of the social and cultural implications of sport. To some extent, the inclusion of sport in the Andonino report is testimony to a positive vision about sport as possible source of social capital in Europe.
One can certainly connect this political discourse of ‘an even closer union among the peoples of Europe’ with an attempt to create a bottom-up Europhile sense of belonging. The generation of social capital through sport appears to be one of the tools identified by European leaders to do this. In this respect, the introduction of sport in the Andonino report and the idea of the social construction of Europe, can be linked to Putnam’s democratic stream of social capital (see Putnam 1993, 1995, 2000). Certainly, this is an analysis ex-post, as the EU leaders never conceptualised their thinking in these terms, but the links are apparent. Robert Putnam has a positive view of social capital, which he defines as ‘connections among individuals, social networks and the norms of reciprocity that arise from them’ (Putnam 2000: 19). In this vision, the association of individuals has the capacity of generating mutual trust, hence facilitating social stability. One could argue that, without mentioning it, the Andonino report and the EU leaders identified sport as a generator of European social capital because it can be a vehicle to facilitate exchange and people’s connections.

In terms of concrete policy decisions, whilst initiatives such as student exchange (e.g. Erasmus programme) have grown up to be a clear success, projects in the field of sport linked to this idea of generating social capital have obtained very modest results. These proposals, such as the Eurathlon Programme mentioned above, languished slowly until the European Court of Justice in 1998 ruled that the Commission cannot fund any programmes or initiatives in areas where the EU has no direct legal basis, which is the case of sport1. It is only very recently, with the adoption of the Commission’s White

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1 UK v. Commission, case C-106/96, ECR [1998] I-0729. This brought to an end, for example, the Eurathlon programme (see Parrish and Miettinen 2008: 32-4). The 2004 European Year of
Paper on Sport (European Commission 2007a) and the inclusion of an article on sport in the Treaty of Lisbon (awaiting formal ratification of Poland and the Czech Republic at the time of writing) that new policy initiatives are being proposed (see European Commission 2007c).

In the absence of concrete measures, the debate about the socio-cultural values of sport moved to the level of ideas: Is there something in sport beyond the commercial dimensions of professional sport? Is it the role of EU institutions to enter into that debate? If that were the case, what are these socio cultural features of sport and how should they be approached? These discussions raised their prominence in the EU agenda following the ECJ ruling in the Bosman case. A diverse amalgam of national governments, some Members of the European Parliament and, especially, sport governing bodies felt there was a risk in applying EU law to sport as the Court had just done in Bosman (Parrish 2003a; García 2007a). It was at that point that the Education and Culture Directorate General (DG) of the European Commission formulated its idea of the European model of sport.

What is the European model of sport?

In 1998 the Commission prepared a consultation document that contained a descriptive section outlining the ‘features and recent developments’ of European sport (European Commission 1998a: 1). It is in that description where the Commission first introduced the concept of a European model of sport:

Education through Sport was an exception that had to be accommodated under the EU’s competencies on education.
There is a European model of sport with its own characteristics. This model has been exported to almost all other continents and countries, with the exception of North America. Sport in Europe has a unique structure. For the future development of sport in Europe these special features should be taken into account (European Commission 1998a: 5).

Having established the alleged existence of the European model of sport, the document outlines its main features by focusing on two different aspects: the organisational structures of sport and the features of sport in Europe.

The organisational structures of the European model

The first characteristic of European sport highlighted by the Commission is the pyramidal structure in which it is organised (European Commission 1998a: 2). Sport features a system of national federations, that are affiliated to European and international federations: ‘Basically the structure resembles a pyramid with a hierarchy’ (European Commission 1998a: 2). From the bottom-up, this structure is formed by clubs, regional federations, national federations and European federations (European Commission 1998a: 2-3). It is important to note that the Commission acknowledges not only the vertical dimension of this construction, but also its hierarchical nature, hence recognising the authority channels that come from the top (international and European federations) to the lower levels of the pyramid (clubs). The Commission explains that national and European federations have a ‘monopolistic’ position and that by using their regulatory power ‘these organisations try to maintain their position’ (European Commission 1998a: 3).

The second organisational characteristic of the European model of sport is a system of promotion and relegation. The Commission explains that the pyramid ‘implies interdependence between levels, not only on the
organisational side but also on the competitive side’ (European Commission 1998a: 4). In other words, European sport is an open system of competition whereby low level clubs can hypothetically earn promotion to the top tiers of their respective sport.

The features of sport in Europe

Further to the organisational characteristics outlined above, the Commission completes its depiction of the European model of sport with a look at three different features that are more linked to values of social cohesion and social capital: a grassroots approach, commitment to national identity and the existence of international competitions.

First, the Commission considers that one of the most important features of sport in Europe is that it is ‘based on a grassroots approach’ (European Commission 1998a: 4). The Commission considers that the development of sport originates from the level of the local clubs and that, unlike in the US, it has not been traditionally linked to business (European Commission 1998a: 4). If the grassroots approach of sport is accepted, together with the system of promotion and relegation, this creates a strong link between the top and lower levels of sport and, in consequence, between the amateur and professional levels of sport.

The second feature of the European model of sport highlighted by the Commission was the ‘commitment to national identity or even regional identity’, because it gives ‘people a sense of belonging to a group’ (European Commission 1998a: 4). The third feature is the existence of international competitions where different countries compete against each other,
demonstrating their different cultures and traditions and, thus, ‘safeguarding Europe’s cultural diversity’ (European Commission 1998a: 5).

The sociological and identity features of sport have been largely analysed elsewhere (see for example Tomlinson and Young 2006; Magee et al. 2005; King 2000). As the Commission suggests, sport, on the one hand, can be a vehicle for individuals to feel included in a group. This sense of belonging can be generated at the more amateur level by participating in sport clubs in various roles (coach, administrator, player, etc.) or at the professional level by following and supporting a particular team. This links directly to concepts of social capital, especially those outlined by Putnam (1993; 1995; 2000).

*The European model of sport through the lens of social capital*

To summarise the Commission’s view as of 1998, the European model of sport is characterised by a multi-level, pyramidal and hierarchical structure of governance that runs from the international federations down to the national federations and the clubs. Furthermore, sport in Europe is characterised by a grassroots approach and a system of promotion and relegation, which implies a close link between the professional and amateur levels in sport. The Commission also acknowledges that sport has a strong social component, particularly referred to identity and social inclusion.

The Commission does not use the concept of social capital, but the references to ‘a sense of belonging to a group’ can easily be linked to that. In the so called EU’s socio-cultural vision of sport one can identify some attention to issues of social capital in its more positive view as a glue for society (Putnam 2000). Indeed, the value of sport as an element of social capital formation appears to underpin the Commission’s thinking. It is perhaps for that reason
that the *Helsinki Report on Sport* suggested in 1999 that excessive commercialisation of sport could put at risk its most characteristic social values and, therefore, it was necessary to act if there was a political will to protect the social features of sport (European Commission 1999b). Yet, the *Helsinki Report on Sport* never translated into concrete policy actions and it has been severely criticised as an unnecessary intervention of the Commission in an area where it has no competences (Weatherill 2009). It is necessary to remind that most of this debate has moved for years in the abstract, for it is very difficult for EU institutions to formulate policies in the absence of a direct treaty competence.

Whilst the European Commission’s vision of the European model of sport is certainly underpinned by a positive assessment of sport for local communities and social cohesion, there are some elements that could also be interpreted in quite a different way. This relates especially to the reliance on the pyramidal structure of governance and the monopolistic and hierarchical position of sport governing bodies within. This could be associated to Pierre Bourdieu’s more excluding vision of social capital, which is oriented towards the notion of having and using social capital to exercise power. The European model, as defined by the Commission in 1998, puts a lot of weight on the organisational features derived from a pyramidal structure dominated by sport governing bodies. Thus, it should come as no surprise that sport federations and Olympic committees embraced wholeheartedly the concept of the European model of sport (UEFA 2007, 2005; International Olympic Committee 2006). In a period when sport federations found their authority seriously challenged by stakeholders, public authorities and courts alike, they identified a lifeline in the European model of sport’s emphasis on the pyramidal structure. Consequently, sport governing bodies have been among the most fervent defenders of the European model of sport, instrumentalising in their favour
the European Commission’s description and making a normative use of it (García 2009a: 275-8).

In this line of analysis, the pyramidal structure of the European model of sport provides the governing bodies with an excuse to reinforce the institutionalised relationships with stakeholders. One could argue that the pyramidal structure is systemically biased towards the generation of governing bodies’ social capital within sport governance so they can then activate their economic and cultural capital, as argued by Bourdieu (1986). In this case the European model of sport is not inclusive at all, but it is related to the exercise of power and to governance structures. This has a twofold implication. First, it refers to the power of elites within the sporting movement. The governing bodies see in the European model a possibility to use and to increase their social capital vis-à-vis other stakeholders. Second, it can also refer to the so-called autonomy of sport with respect to public authorities. If the sporting movement were united and homogenous (which it really is not), then the European model could be interpreted as generating social capital for sport organisations as a whole in their attempt to keep at bay governments’ regulatory functions.

Certainly, this second interpretation of the European model of sport through the lens of Bourdieu’s social capital definition does not seem to be in the European Commission’s mind, but it turns to be a compelling explanation of the governing bodies’ complete adoption of the concept. The sporting movement found in the European model a real lifeline in difficult times. They used it also as an artefact to hide against the legal scrutiny of the ECJ and the Commission. Similarly, the use of the European model of sport by the governing bodies distracts attention of the real diversity of structures in European sport. European sport has traditionally presented a long history of
conflicts and tensions between professional and amateur sports, but the links between these two dimensions are an ‘irresistible message’ in political terms that sport organisations have tried to exploit to their favour when lobbying the EU. It is only very recently, in the 2007 White Paper on Sport, that the European Commission has certificated the diversity of structures within sport that make it ‘unrealistic’ to define a single European model (European Commission 2007a: 12; see also García 2009a).

**A contrasting view: Sport as a market place**

It would be a major mistake to assume that the socio-cultural approach to sport in Europe, best exemplified by the concept of the European model of sport, created a consensus among those involved with sport related policies in the EU. From an academic and legal perspective, Stephen Weatherill (2004; 2003; 2009) has consistently argued against that vision mainly on two grounds: First, it is illusory and misleading to concentrate on amateur sport whilst ignoring that sport is a very important industry and, second, the European model of sport is too normative and prescriptive in an area where the Commission has no competence at all. Similarly, Stefan Szymanski has consistently argued, from an economics point of view, that sport is an industry and that references to the amateur or social dimensions of sport are misleading (Hoehn and Szymanski 1999; Szymanski 2003, 2006).

Toine Manders, a Dutch liberal Member of the European Parliament (MEP), has argued that European sport (particularly football) needs further liberalisation to flourish as a real industry, not the protective cover of the European model of sport (European Parliament 2006). Manders’ view is not majoritarian within the European Parliament, as the adoption of the report on
the future of professional football drafted by Belgian MEP Ivo Belet demonstrates (see European Parliament 2007), but it is indicative of the diversity that surrounds sport issues within the EU.

The case law of the ECJ is also symptomatic of a different vision of sport. The Court has consistently argued (since 1974) that sport has an economic dimension that is subject to the application of EU law like other industries in the single market. Moreover, the Court has also consistently reminded that professional and semi-professional sports people are engaged in gainful employment and, therefore, they shall be considered ‘workers’ as defined by the EU Treaties. The Bosman ruling of 1995 brought this vision of sport to the top of the EU political agenda and to the media (García 2006), but Bosman was not the first case in which the ECJ recognised the economic dimension of sport. Even within the European Commission there are diverging views about sport. The Education and Culture DG defined the European model of sport and advocated its protection (European Commission 1999b), but other departments such as DG Competition Policy (one of the most powerful DGs within the Commission, see Cini and McGowan 1998) are keen to point out that other structures in the organisation of sport are equally valid and none should take preference (Lindström-Rossi et al. 2005).

An indirect policy with direct consequences

It is difficult to translate this economic vision of sport into an articulated policy discourse, since one cannot find similar gluing concepts such as the European model of sport. Basically, the interest in the economic and commercial dimension of sport originates in a very concrete question: Is EU law (especially the regulations of the single market and competition policy) applicable to sport like to any other economic sector? Those who believe sport
is first and foremost an economic activity and, therefore, should be subject to the full application of EU law have been characterised by Richard Parrish (2003c: 65) as the ‘single market coalition’. DG Competition and the ECJ are firmly situated within the single-market coalition, whereas sport governing bodies, a large majority within the European Parliament, Member State governments and DG Education ad Culture are part of the socio-cultural coalition (Parrish 2003c: 66-7).

The single-market coalition defines sport as an economic activity that has effects for competition in different markets (i.e. the television market). The ECJ was the first EU institution to deal with sport in this form. The Court already suggested in 1974 and 1976 that sport as an economic activity is subject to European law (in Walrave and Koch v. Association Union Cycliste Internationale, case C-36/74 [1974] ECR 01405; and Donà v. Mantero, Case C-13/76 [1976] ECR 01333). But it was only in 1995 with the Bosman ruling when other EU institutions realised the implications. The European Commission’s DG Competition was among the first institutional actors to react, invigorated by the ECJ’s assertive ruling in Bosman. They became aware that many practices within the sporting world (e.g. the selling of broadcasting rights, the agreements with official suppliers or sponsors) could be in breach of the single market’s most basic regulations. Competition authorities dedicated their attention first to the regulation of footballers’ market, as a direct consequence of the Bosman ruling. But they jumped soon to issues such as broadcasting\(^2\), licensing of official products\(^3\) or the commercial exploitation of competitions by governing bodies\(^4\).

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\(^2\) The cases of UEFA broadcasting regulations (European Commission 2001a, 2001c), the Champions League (European Commission 2002b) or the Premier League (European Commission 2002a).
These interventions in sport-related cases were not driven by an interest in sport itself, but on the consequences for other sectors of primary importance for the Commission, such as the audiovisual market (European Commission 1999a). These decisions were underpinned by the fact that certain policies and commercial operations of sport organisations could be in breach of basic principles of competition policy or the single market’s four fundamental freedoms. For that reason, the interventions of EU institutions in sport issues through the regulatory policies of the Single European Market have been labelled by Tokarsky et al. (2004) as ‘indirect sports policy’. The paradox is that this indirect policy, firmly based in the economic vision of sport, accounts by far for the large majority of EU decisions in the area of sport. This is easily explained for the lack of direct competence in sport whilst competition policy and the four single market freedoms are at the very core of the EU’s nature, to the point that some authors have characterised the EU as a ‘regulatory state’ (Majone 1994).

Despite being an indirect policy, the consequences of this EU’s regulatory impetus for sport have been very direct and far reaching. In terms of policy, sport is subject to the full application of EU law. In institutional terms for the EU, this definition favours certainly DG Competition or DG Internal Market within the Commission and, more generally, the Commission over the European Parliament because the latter is a more political institution. Finally, for the governing structures of football, the economic definition favours those that try to maximise economic profits, mainly top professional clubs and

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3 The case of the Danish tennis federation and their official ball supplier (European Commission 1998b)
4 The case of FIA and Formula 1 (European Commission 2001b).
5 Free movement of workers, goods, capital and freedom to provide services.
leagues. Governing bodies, such as the IOC, UEFA or FIFA, are penalised by this definition because their power to formulate policies would be subject to full EU competition law restrictions.

Arguably, the most significant consequences can be found in the area of sport governance. The application of EU law has opened a door to those stakeholders unhappy with the policies of the governing bodies. In the past the decisions of sports federations escaped largely unchallenged. The vertical channels of authority in the pyramid of sports governance required those in the bottom to abide by the decisions adopted at the top. This changed with the intervention of the EU, since stakeholders found a sympathetic audience in the Court of Justice and the European Commission. Effectively, EU institutions have acted as ‘alternative policy venues’ (Baumgartner and Jones 1993) for the internal conflicts within the governing structures of sport. In Bosman, for example, the underlying conflict was that the players (employees) were unhappy with the policies adopted by federations and clubs (employers) regulating their working conditions. In the Delliège case, a Belgium judoka was questioning her national federation’s selection criteria for international competitions. More recently, David Meca Medina and Igor Majcen challenged (unsuccessfully) before the Commission and the ECJ the anti doping regulations of the International Swimming Federation and the IOC.

Thus, sport governing bodies have realised that they are now subject to a new layer of scrutiny, whereas stakeholders have found a new avenue to make their voice heard. As a result, the sporting world has created a new type of bodies, which Chappelet has labeled ‘regulators’, such as the Court of Arbitration for Sport or the World Anti Doping Agency (Chappelet and Kübler-Mabbot 2008: 10-2). Similarly, those stakeholders that used to be at the
bottom of the pyramid are now starting to integrate in the decision making structures of the governing bodies. For example, the IOC session is now more representative by including, at least, 15 athletes as IOC members (Chappelet and Kübler-Mabbot 2008; Theodoraki 2007). Or UEFA has created the Professional Football Strategy Council, where representatives of the players, the clubs and the leagues negotiate with UEFA issues pertaining to professional competitions before they are adopted by the governing body’s Executive Committee (García 2007b).

**Reaction against the ‘single-market coalition’**

In this situation sport governing bodies have been caught in the middle of two converging dynamics. On the one hand, financial pressures and demands from stakeholders derived from the wide commercialisation and professionalisation of sport. On the other hand, EU institutions require those governing bodies to bring their structures and practices in line with EU law. It is not surprising, therefore, that the most vigorous opposition to the EU’s single-market approach has come to from the governing bodies. They have argued that it is misguided to consider the economic aspects of sport in isolation and that further liberalisation through the application of EU law would be counterproductive for sport as a whole and, especially, for its socio cultural values.

Unfortunately, Olympic committees and sport federations failed for some time to articulate a convincing discourse to justify their claims about the so-called specificity of sport. Paradoxically, it was in documents from EU institutions where one could find those arguments. The previous section has already referred to the definition of the European model of sport. The Commission further explored those arguments in the Helsinki report on sport
(European Commission 1999b). But probably the most noticeable political weight was carried by the two non-binding declarations adopted by the heads of state and government of the EU Member States in the European Council. These are known as the Amsterdam and Nice declarations on sport (1997 and 2000). European Council declarations are not legally binding, but they carry a major political weight and they can certainly steer EU politics and policies because other institutions are supposed to take into account the political guidelines of the European Council. They are often referred to as soft law.

The effect of the Amsterdam and Nice declarations was to deflate slightly the impetus gained by the economic vision of sport in the immediate aftermath of Bosman. As a result, the EU found itself in a situation whereby there were effectively two different and contrasting visions of sport. The European Parliament and the European Council put their political weight behind the socio cultural values of sport, whilst the Court and the Commission have the legal instruments to pursue the economic dimension. It is within these two contrasting forces that the EU sports policy (direct and indirect) has developed over the last two decades.

The EU and sports governance: A compromise solution?

In this stalemate, it is perhaps not surprising that a compromise around EU sports policy, in true Brussels style, is emerging in the last years. European institutions now recognise the so-called specificity of sport (Parrish and Miettinen 2008; Rincón 2007). That is to say, they acknowledge that sport is a complex reality that certainly goes beyond the economic nature of professional sport. They also realise that sport has an important societal role worth of attention (European Commission 2007a: 3-10) On the other hand, EU
EU institutions are also very clear that there are certain aspects where the application of EU law to sport is unavoidable (European Parliament 2007: paragraph 6). The European Commission has made very clear that it is by no means prepared to relinquish its role as guardian of the treaties in the sport sector and, therefore, it will continue monitoring the activities of sport organisations on a case by case basis if required (European Commission 2007b).

The end result of that compromise is something that perhaps one could label as an EU approach to sport since it cannot be considered formally as a policy. Regardless of the labels, the EU seems to have found a distinctive way of dealing with sport. This approach is basically a compromise between the two different visions of sport outlined above, but leaning towards the socio-cultural vision. EU institutions are interested in preserving the social features of sport. In the White Paper on Sport the Commission highlights that sport can provide many benefits to citizens. Sport can help by improving public health through physical activity (European Commission 2007a: 3). Sport also has an educational role that should be enhanced (European Commission 2007a: 5-6).

However, EU institutions cannot legislate directly, which reduces their scope for action. Moreover, the EU faces the stark opposition of sport governing bodies to develop a fully fledged sports policy. Sport federations defend what they call the autonomy of sport. In other words, that they should be allowed to regulate and govern their sport without external intervention (International Olympic Committee 2006, 2007). This is a long established principle within the sporting movement and international sport federations have tried to reduce as much as possible the legislative impetus of the EU in the area of sport. It is perhaps for that combination of a lack of direct competence and the
opposition of sport federations that the European institutions have adopted lately a pragmatic approach. EU institutions are focusing their efforts now in helping sport to self-regulate and self-organise. EU institutions have decided to focus much of their efforts in policing and improving sport’s standards of governance, rather than on legislating directly. The objective being that improved governance will lead to less internal conflicts within sport and, therefore, less recourse to the ECJ and the Commission by dissatisfied stakeholders.

EU institutions seem to be playing a game of carrot and stick with the sporting movement. If sport organisations improve their standards of governance and demonstrate that their commercial activities are really motivated to develop the social and grassroots dimensions of sport, then there will be less reason for EU intervention. The EU is offering sports organisation a degree of ‘supervised autonomy’ (Foster 2000; see also García 2009b), whereby EU institutions are willing to help sports organisations to improve their standards of governance and to promote best practice. Thus, the interest of the EU in sports governance is largely instrumental. On the one hand, they are interested in ensuring that sports fulfils its societal role and it is not hampered my excessive commercialisation. On the other hand, improved governance would allow sport governing bodies to self-organise with less intervention from the EU institutions.

This developing interest in governance is very much ongoing at the time of writing and only time will tell whether this strategy has delivered or not. The European Commission attached a 53-point action plan to the White Paper (European Commission 2007c) whose implementation is ongoing. These 53 proposals are low key initiatives that can be taken within the current competences of the EU. They include the commissioning of research in
different areas, so decisions can be taken with a real knowledge base. The action plan also includes an improved dialogue with the sporting world and different initiatives to disseminate good practice in sports governance: A conference in club licensing, drafting of guidelines, a decided support of the social dialogue, to name a few. After using the hard measures of EU law, the Commission is now trying to gently steer sport towards improved governance, but without being too prescriptive or normative due to the lack of direct competence. This is an effort that has been praised as ‘an exercise of better regulation’ by Stephen Weatherill (2009).

Conclusion

The European Union has been dealing with sport-related issues for more than three decades now. EU institutions have navigated a difficult area in which they never felt really comfortable due to the lack of legal base to formulate a direct policy and to the political and social sensitivity of sport, which has the potential to cause very bad publicity for a European Union that is already experienced problems of legitimacy. The actions of EU institutions have been guided by a twofold vision of sport. On the one hand, EU institutions identified the potential of sport to general bottom-up social capital in the process of European integration during the mid 1980s. This was suggested by the Andonino report in 1985 and happily accepted by the European Council, the Commission and the Parliament. The social vision of sport was further strengthened by the commission with the definition of a European model of sport that highlighted the importance of grassroots sport and the social role of sport in creating identities and sense of belongings among citizens. In this respect, EU institutions appear to consider sport as a positive generator of social capital, which can be linked to Robert Putnam’s vision of the concept. This socio-cultural definition, however, has never developed into a fully
fledged policy. The ‘direct sports policy’ of the EU is, at best, patchy and discontinuous due to the lack of Treaty legal base.

On the other hand, the 1995 Bosman ruling of the European Court of Justice propelled to the EU agenda the economic nature of professional sport. The so-called ‘single market coalition’ (Parrish 2003c) or economic vision of sport has generated a long list of decisions that can be categorised as ‘EU indirect sports policy’ (Tokarski et al. 2004). This accounts for the large majority of EU decisions in the area of sport and, despite being indirect through the application of competition policy or free movement provisions, they have had a major impact in the governing structures of sport, especially at professional level.

In recent years, following the involvement of the EU political leaders in the European Council (European Council 1998, 2000, 1997), these two visions are reaching a compromise that is developing a distinctive approach to sport. EU institutions have recognised that they cannot legislate in sports matters. Even if the Treaty of Lisbon was ratified, the new EU competence in sport would only be at the lowest level of complementary and support actions. But they have also acknowledged that indirect regulation through single market rules had the potential to damage the socio-cultural features of sport if EU law was applied without taking into consideration some particularities of sport.

6 The competences of the EU fall within three categories. Exclusive competences are those fully transferred by the Member States to the Union. Shared competencies are those whereby Member States have partially transferred some power to the Union, but still retain competencies. Finally, complementary and support actions are those where the EU is given a legal basis in the Treaty to develop a policy, but the competence still remains fully with the Member States and, thus, the EU can only complete at European level the actions of the national governments. Any harmonisation or approximation of legislation is not possible under complementary competences. Therefore, the EU will be unable to formulate a harmonising EU sports policy as they have done in other sectors such as audiovisual services, for example.
Consequently, EU institutions are focusing now their efforts in promoting good governance in sport. EU institutions are happy to play a gentle steering role to ensure that sports organisations do their best to protect the social elements of sport whilst bringing their structures and practices in line with standards of good governance and EU law. Quite interestingly, this new approach seems to be working and the EU now is engaged in generating a knowledge base that could guide its future actions in the field of sport. The EU is also happy to provide guidelines and promote good practice, so sport can self-govern and self-regulate without excessive external intervention. This approach heavily focused on governance has already yielded some concrete results, such as the creation of the Professional Football Strategy Council within UEFA or the decided support of the Court of Arbitration for Sport and the World Anti Doping Agency by the IOC. The EU seems to be putting pressure in the appropriate points to generate a reaction from the governing bodies. Yet, it is clear that these bodies are still resenting and resisting to some extent the EU interventions (see for example UEFA 2007; Andersen 2006; International Olympic Committee 2006, 2007).

At least, the 2007 European Commission’s White Paper on Sport has succeeded in one of its core objectives: mainstreaming sport in other EU policies and promoting a debate to finally bridge the gaps between the two contrasting visions of sport. At the same time, the implementation of the actions proposed in the White Paper is engaging sports organisations to some extent. The European Commission is at the time of writing drafting preparatory actions for the development of the EU actions and programmes in case the Treaty of Lisbon enters into force following the ratification process. These preparatory actions include the identification of organisations and networks for the implementation of projects in priority areas such as education and sport, the access of women to sport or sport for the disabled. In
a way, the Commission is trying to generate with this some social capital across the 27 member states in the area of sport. Yet, it remains to be seen if the networks will operate to facilitate individual’s interaction, hence generating social capital in Putnam’s view. There is always a risk that these networks are created for the benefit of the elites, so they maintain their power in the formulation of sport policy.


European Council (1997) Declaration No. 29, on Sport, Attached to the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts.


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