The European Union and Sport, rescuing the nation-state?

Borja García

Department of Politics, International Relations and European Studies
Loughborough University
b.garcia-garcia@lboro.ac.uk

Abstract

Despite the lack of legal base, the European Union has been increasingly involved in the regulation of certain aspects of sport during the last 20 years, up to the level of finally including an article on sport (Article III-282) in the Constitutional Treaty. This paper aims at complementing the workshop by presenting a longitudinal case study with the main decisions of European institutions in sport-related issues that have shaped the approach of the Union towards sport in the last years. Working inductively, the paper will be divided in two main sections. First, the paper will present the involvement of different European institutions in three sport related areas: Freedom of movement of professional sports persons, European Competition policy and sport and the constitutionalisation of sports policy at European level. In the second part, the paper will discuss several suggestions to explain the EU’s intervention in sport and to relate it to the study of national sports policies. I will argue that in order to understand the Union’s interest in sport, we need first to differentiate between the several dimensions of sport. The conceptualisation of the EU as a Multi-Level system of governance can provide an starting point to link the EU’s policy on sport to the national and subnational levels. Finally, national governments may find useful to rely on EU initiatives to bring into account the otherwise independent sports organisations, hence restoring somehow the authority of the nation-state.

This is work in progress. Comments are welcome, but please do not quote or circulate without the author’s permission

Paper to be presented at the Workshop ‘Sport, Politics and Public Policy’. ECPR Joint Sessions of Workshops, Nicosia (Cyprus), 25-30 April 2006

*I acknowledge the financial support of the ECPR Mobility Fund to attend this workshop. Part of the empirical research presented on this paper has been carried thanks to the financial support of UACES through its Scholarships 2006 programme, to which I am also thankful.
1 Introduction

Article 5 (1) of the EC Treaty provides that the European Union (EU) ‘shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein’. Article 3 EC does not cite sport as a competence of the EU, which means that no authority has been conferred to the EU to develop any kind of policy on sport.

However, despite this lack of competencies, the EU has got involved in sport-related matters for more than 30 years now, and especially in the last decade after the well known ruling of the Court of Justice of the European Communities (ECJ) in the case of Bosman v. Union Royale Belge Sociétés de Football Association (Judgement of 15 December 1995, case C-415/93, hereinafter Bosman). This paper aims at complementing the workshop by presenting a longitudinal case study with the main decisions of European institutions in sport-related issues that have shaped the approach of the Union towards sport in the last years. This is mainly an empirical paper, in which I will present the involvement of European institutions in sport related issues in three main areas: Freedom of movement for sports persons, the application of competition policy to sports organisations and the constitutionalisation of sport in the European Union (i.e. the inclusion of an article on sport on the European Treaties).

In the second part, following inductive research, the paper will debate whether the EU’s involvement in sport can be considered as a policy on its own right or not and it will then proceed to explain the rationale behind the EU’s intervention in sport and to relate it to the national level of sports policies. I will argue that in order to understand the Union’s interest in sport, we need first to differentiate between the several dimensions of sport (e.i. professional and sport for all). The EU has taken care mainly of the professional side. This, I will suggest, may be understood as a ‘rescue of the nation state’ (Milward 2000), in that the EU has helped to bring into account supranational (and in some cases even national) sports organisations, such as FIFA, UEFA, IAAF or FIA, that were escaping legal scrutiny otherwise.
Finally, it is suggested that the Multi-Level nature of governance in the European Union (Marks et al. 1996) may provide an starting point to relate the study of sport policies at national, sub-national and European level. Although sport as a policy area in the European Union may be still too young to apply concepts such as Europeanisation (Bulmer and Radaelli 2004), the inclusion of the supranational level as a variable in the study of national sports policies may be of interest in the future.

2 The European Union meets sport

In this first part of the paper the objective is to present the main sport related decisions that the European institutions have taken over the years. It needs to be stressed that for reasons of space not every decision is reviewed here, nor every area in which the EU and sport have collided. However, the objective is to focus on the decisions that can show what has been the general approach of European institutions to sport. To do so this part of the paper will be divided into four sections. First, the initial pre-Bosman cases are introduced as a way to contextualise the ground breaking decision in Bosman. The second section will deal with the Bosman case on its own. Third, the Commission’s investigation on the application of competition policy to sport. And fourth, the debates and decisions that have considered sport not as an economic activity, but as a leisure activity with many socio-cultural benefits.

2.1 Sport in the EU before the ‘Bosman revolution’

The first European institution to hear about sport was the Court of Justice of the European Communities (herein the European Court of Justice, ECJ). In 1974 the case of Walrave and Koch v. Association Union Cycliste International (Case c-36/74, ECR 1405, hereinafter Walrave) was referred to the ECJ for a preliminary ruling by a Dutch court. When confronted with the case, the ECJ had to decide first whether EU law is applicable to sport. Without hesitation in this point, the Court ruled that sport is subject to EC law ‘in so far as it constitutes an economic activity within the meaning of article no. 2 of the EC Treaty’ (European Court of Justice 1974: Paragraph 4, emphasis added). Furthermore, the ECJ considered that the Treaty provisions are
applicable to rules laid down by sport governing bodies, in spite of their private nature (European Court of Justice 1974: Para. 17-20).

Thus, sport comes under the scrutiny of European law, but one will note the definition of sport taken by the Court: *only the economic side.* Indeed, the ECJ in its ruling started to draw a thin distinction between the economic implications of professional sports and the pure sporting activities, not economically motivated. Therefore, the main contribution of Walrave for the involvement of the EU (at the time the EC) in sport was the expansion of EC law to *sport’s economic dimension.*

Two years after Walrave, the ECJ reiterated its point of view in the case of Donà v Mantero (Case C-13/76, ECR 1333, hereinafter Donà). The Italian Court asked the ECJ to clarify whether nationality restrictions for professional footballers in Italy were compatible with the Treaty. In particular, the ECJ had to elucidate whether football players were to be considered as participating in gainful employment, as described in the Treaty and, in the affirmative, whether the freedoms granted in the Treaty prevent the adoption of discriminatory rules by sports federations (European Court of Justice 1976).

In Donà, the ECJ deepened its already existing case law about the application of EC law to professional sport and made clear that sports players ought to be considered as professional workers and, as such, they shall enjoy the freedom of movement recognised in the Treaty. The ECJ particularly stressed that ‘where such players are nationals of a Member State they benefit in all other member states from the provisions of the Community law concerning freedom of movement of persons and of provision of services’ (European Court of Justice 1976: Para. 13). However, the Court also reminded about the special features of sport (its dual nature as being both leisure and business at the same time) and stated that some rules of sporting nature, despite being contrary to the letter of the Treaty, could be allowed ‘as far as they remain limited to its proper objective’ (European Court of Justice 1976: Para. 15-16).

The Commission acted somehow contradictory in reaction to the new item brought onto the agenda through the ECJ. Indeed, after Donà, the Commission expressed its concern for the freedom of movement restrictions imposed by sports governing bodies
(Parrish 2003c). It did not launch, however, any major action addressed to sports governing bodies in order to guarantee compliance with the Treaty, as it would do after Bosman. The Commission decided instead, in 1978, to take a conciliatory approach and to have contacts with football authorities, ‘to try to reach a compromise with national federations towards the elimination of any kind of discrimination’

In 1978, a meeting between Commissioner Davignon and representatives of European football’s governing body (UEFA) concluded with a minimal agreement by which federations had to abolish discriminations on the grounds of nationality (Parrish 2003a: 91). UEFA said it was committed to comply with EC law, but restrictions remained in place and the agreement was never implemented (McArdle 2000: 37). In December 1984 the Commission then again requested a change in football’s discriminatory rules, this time by 1st July 1985, but the response of UEFA was deceiving: They proposed to allow a maximum of two non-nationals to be fielded per match and a re-examination of the problem in 1989 (Parrish 2003a: 91).

2.2 Bosman shakes it all

Given the facts, it is really striking that it took such a long time for another sports case to get before the ECJ. Through the judgement in Bosman v. Union Royale Belge Sociétés de Football Association and others the ECJ effectively transformed the relationship between the EU and European sport.

A Belgian football player of modest talent, Jean Marc Bosman, was the starter of a seism for sport in Europe he probably never would have imagined2. Mr. Bosman signed in May 1988 a two years contract (expiring on 30 June 1990) with SA Royal Club Liégeois (hereinafter RC Liège), a Belgian first division club. The contract ensured Mr. Bosman an average net salary of BFR 75,0003 per month. On 21st April 1990, two months before the contract’s end, RC Liège offered Mr. Bosman a new

1 Commission’s answer to a written parliamentary question, OJ C 177/91, Item 40.
2 The following is a summary of the main proceedings in the case. For a detailed description see mainly Blanpain and Inston 1996. See also McArdle 2000: 38-50; Parrish 2003a: 91-101.
3 BFR 45 = £ 1
contract for one season, reducing his pay to BFR 30,000, the minimum permitted by
the rules of the Belgian football federation (URBSFA). When Mr. Bosman refused to
sign such a contract, the club placed him on the transfer list, asking a compensation of
BFR 11,734,000 for the transfer. Since no club showed an interest in a compulsory
transfer, Mr. Bosman made contact with the French second division club US
Dunkerque, which offered the player a monthly salary in the region of BFR 100,000
plus a signing-on bonus of some BFR 900,000. Both clubs also agreed on a transfer
fee of BFR 1,200,000; so the movement was just pending of the transfer certificate
that had to be issued by the Belgian federation. However, worried about the solvency
of US Dunkerque, RC Liège failed to apply for the certificate and the whole deal
collapsed. Furthermore, the club suspended the player as per 31st July 1990,
preventing him from playing in the new season. So that, Jean-Marc Bosman was not
allowed to move to France and he was not allowed to play for his club as he refused to
sign a new contract, which was economically worse-off for him.

Mr. Bosman decided to bring action before the competent Belgian court with the
support of two Liège based layers, Jean-Louis Dupont (nowadays a renowned lawyer)
and Luc Misson, the former being at the time a neighbour of Bosman and a trainee at
the law firm of the latter4. The important step in Bosman was that the plaintiff (i.e.
Bosman) asked directly for UEFA’s transfer rules to be abolished under EU law.
Whereas the questions referred to the ECJ in Walrave and Donà were rather
concerning general principles, in Bosman there was a very precise request: whether
UEFA’s rules on transfer fees and nationality quotas were in breach of EU law or not.
On 15th December 1995, the ECJ issued a ruling which affected not only the particular
Bosman case, but the whole governance of football (and other sports in a domino
effect). The Court based its ruling on the free movement of workers principle stating
that it is ‘one of the fundamental principles of the Community’ (European Court of

The Court ruled that football’s transfer system (mirrored by many other sports) was in
breach of Article 48 of the EEC Treaty since it asked for a compulsory transfer fee to

4 Interview, Roger Blanpain, Emeritus Professor in Law (Catholic University of Leuven) and legal
adviser to Mr. Bosman, Leuven (Belgium), 22nd March 2006.
be paid by the buyer club to the seller, even when a player was at the end of his contract. Moreover, the ECJ observed that the same article also precludes ‘the application of rules laid down by sporting associations under which, in matches in competitions which they organise, football clubs may field only a limited number of professional players who are nationals of other Member States’ (European Court of Justice 1995). The ECJ referred to its case-law in Walrave and Donà to establish, once again, that sport is subject to EC law in so far as economic activity and that professional footballers ought to be considered as workers involved in an economic activity (European Court of Justice 1995: Para. 73-74). It also recognised that natural sporting rules may be kept outside the scope of the Treaty, but in the case of transfers the ECJ saw no arguments as to allow for an important breach in EC law, because ‘the consequences of a Court decision cannot go as so far as to diminish the character of law’ (European Court of Justice 1995: Para. 77). Thus, for the first time, the Court of Justice declared illegal under the Treaty of Rome a provision adopted by a sport governing body.

The main consequence of Bosman was that the issue of sport was now high on the EU’s agenda and, conversely, the importance of the European Union was finally felt by sports organisations (especially football). Before Bosman there was a general preoccupation about sport in the EU, as the Coopers and Lybrand (1995) report highlighted, but it was not very intense, indeed, it was rather patchy. This was to change with Bosman because the popularity of the affected sport (football) multiplied the media coverage, as well as the interventions of political leaders, who saw in sport and Bosman a ‘sexy issue’ to exploit politically at home. For example, the Belgian Prime Minister’s public intervention asking for an EU-wide agreement that would prevent the application of EU law to sport (Blanpain and Inston 1996).

In conclusion, a very important consequence of Bosman was the definition given to the problem. Since the ECJ stated that the European law was only concerned with the economic side of sport, the subsequent actions of the Commission were focused on the regulation of sport as a market place. With Bosman, sport was now an economic

---

5 Interview, Chris Heaton Harris, Member of the European Parliament (EPP-ED, UK), Brussels 22nd March 2006.
issue in the door of European institutions. The next sections will deal with the consequences of Bosman for the intervention of European institutions in sport related cases and the policy adopted by the European Union in response to the increasing commercialisation of professional sport in Europe.

2.3 Sport as a ‘market place’

Despite earlier interventions, Bosman can be considered as the effective firing pistol for the hypothetical development of a European Sports Policy. Only after Bosman a real political debate on the suitability of dealing with sport at supranational level emerged. Yet, sport was still defined in regulatory terms. In the aftermath of Bosman, the question was whether the EU can/should regulate the commercial activities of sports organisation (and if so, how to do it), rather than whether the EU should develop a common sports policy, as in ‘sport for all’ or ‘elite sport’ policies at national level. There have been some attempts to create programs aimed at developing sporting structures (such as the Eurathlon or Helios programmes, see below) and also some attempts to use sport as a tool in other policy areas. Indeed, this is one of the present approaches towards sport within the Commission’s Directorate General (DG) for Education and Culture (responsible for sport), as in the case of the 2004 European Year of Education Through Sport or the study on the role of sport to prevent obesity in Europe\(^6\). But at that time in the early-mid 1990s, the focus was on the regulation of sport as a business.

This section and the next one will describe the journey of sport as a possible policy at EU level after the earthquake of Bosman. First following a chronological approach, in the present section the focus is on the more economic approach of the European Commission’s Competition Policy DG, which was especially active in the immediate aftermath of Bosman. The following section will present the arguments and actions of those that have argued that there is a different dimension to the economics of professional sport in which the EU may have a say as well. But let’s start first with the application of Competition Policy to the commercial activities of sport.

---

\(^6\) Interview, Jaime Andreu, former Head of Unit ‘Sport’, DG Education and Culture, European Commission. Brussels, 22\(^{nd}\) March 2006.
2.3.1 Competition policy and sport in Europe

Right after the judgement, the Commission was adamant to ensure that *Bosman* ‘clearly also applies to similar cases in other sports’, so they were ‘examining the implications of Bosman case for other sports’. Moreover, the executive did not stop in the application of the free movement provisions that were the core in *Bosman*, but it was also considering the possible application of competition policy to the commercial activities of professional sports. The Commission wanted to explore the ‘restrictions of competition under articles 85 of the Treaty’ posed by the new economic activities of professional sports and, therefore, it reserved ‘the right to take actions vis-à-vis national sports federations where necessary to ensure compliance with Community competition law’.

It will not be accurate to say that the scrutiny of sports organizations’ commercial activities by the European Competition Policy authority began right after Bosman. Indeed some cases developed in the early 1990s, although they were of lesser importance (for a detailed description of sport related Competition Policy issues before Bosman see for example Coopers and Lybrand 1995: 61-89). The intention here is to review the main areas in which the Commission focused, rather than go case by case. The aim is to explain the nature of the problems faced and the rationale behind the Commission’s actions.

The great publicity given to the ruling in *Bosman* created a feeling of legal uncertainty within the sporting community. Bosman also showed that the decisions of the governing bodies, which used to be reluctantly accepted by other actors, could be effectively challenged. As a consequence, a large number of competition policy complaints were brought before the Commission. According to the then deputy Director General for Competition Policy, Jean-François Pons, some 60 sport related cases reached the Commission between 1996 and 1999 (Pons 2002: 241). The reasons for this growth were, mainly, the increase in the broadcasting of sports events and the consequences of the Bosman ruling, which made clear to everybody that sport was

---

7 Commission’s answer to a parliamentary question, OJ C 137/1996, Item 4, emphasis added.
8 Commission’s answer to a parliamentary question, OJ C 173/1996, Item 94.
subject to EC law (Jean-François Pons, quoted in Gardiner et al. 2001: 386). The scope of the Commission’s inquiries focused in four areas (Gardiner et al. 2001; Parrish 2000):

- Sporting equipment and merchandising.
- The organisation of sport.
- Ticketing arrangements.
- The broadcasting of sporting events.

### 2.3.1.1 Merchandising and sponsorship

Commercial firms are keen to pay the organisers of sports events important sums of money to be able to use the term ‘official’ in some of the goods they produce. For instance, Nike is the official football of the Spanish Primera División or Adidas will be the official football of the 2006 FIFA World Cup in Germany.

One example of a Commission investigation into this area was the case of Danish Tennis Federation (DTF). The DTF agreed with three ball manufacturers to label their tennis balls as ‘official’ (Parrish 2003a: 131). Moreover, the federation obliged that tennis balls for all the competitions organized under its auspices had to be bought through specific distributors (Coopers and Lybrand 1995: 76). Following a complaint from a different ball manufacturer, the Commission considered that the DTF’s arrangement did not comply with competition policy rules, in particular with the so-called parallel imports rule (Coopers and Lybrand 1995: 76). The case was closed without resorting to legal action after a settlement following negotiations between the DTF and the Commission (Parrish 2003a: 131).

### 2.3.1.2 Ticketing arrangements

Ticketing arrangements for sporting events were among the first activities to come under the scrutiny of the Commission. It was common practice for the organising committees of sporting events to enter into agreements with ticket distributors to guarantee them exclusivity in the distribution of tickets within each Member State (Parrish 2000: 31). Organisers argue that such system guarantees a ticket quota for each country, permitting a fair distribution of tickets.
On three occasions has the Commission objected to these arrangements as breaching Articles 81 and 82 of the Treaty. The investigations concerned the ticket distribution for the 1990 FIFA World Cup in Italy, the 1992 Summer Olympics Games in Barcelona and the 1998 FIFA World Cup in France. On the first case no fine was imposed because it was the first of its kind; in the second one the organising committee amended its practice according to the Commission requirements; in the third case the organising committee amended its practice and a symbolic fine of €1,000 was imposed (Parrish 2000: 31-32).

2.3.1.3 The organisation of sport

Sports federations occupy a privileged position in the governance of sport, especially those at European and world level. This is right and necessary to ensure the correct organisation of sport and to guarantee a level of income redistribution between the professional and grass-roots levels of sport (European Commission 1998b). However, when federations engage in commercial activities their position can cause a dominant position within the market. The European Commission monitors constantly that federations do not used their powers as regulator of their sport to restrict market competition.

The most high profile case in this area has been, by far, the investigation on the organisation and commercial exploitation of Formula One. Acting on two complaints received in 1997, the Commission investigated the role of the Fédération International de l’Automobile (FIA, motor sport’s governing body) as both regulator of its sport and organiser of events (races, championships…). The Commission considered that FIA was using its power as regulator to block and force out of the market the creation of events challenging its own competitions and to make impossible that an alternative Formula One championships could be created (Parrish 2000: 30).

---

9 Article 81 prevents agreements and decisions by undertakings that may affect trade between Member States and distort competition within the common market. Article 82 prohibits the use of a dominant position within the common market that may affect trade between Member States.
The Commission’s investigation came at a time when FOA (Formula One Administration Ltd., the company created by FIA to exploit Formula One and dominated with firm hand by Bernie Ecclestone) was about to be listed in the stock exchange. FIA’s president, Max Mosley, and FOA’s big boss, Bernie Ecclestone, used all their economic and political influence to stop the Commission’s investigation (for details see Van Miert 2000: 137-138), but the Commission was determined to go ahead. The case was finally settled after negotiations at the highest level that included Commissioner Mario Monti. FIA and FOA amended their regulations to strip the former of its commercial functions, thus distinguishing clearly between the sporting and the commercial activities (Parrish 2003a: 137). With this case the Commission sent a message of determination to sports organizations: If they were to behave as commercial companies, then they will be treated as such.

2.3.1.4 The broadcasting of sport

The broadcasting of sporting events focused much of the attention of the European Commission and it still does. It is the main economic activity of sports federations (Gardiner et al. 2001: 415) and, as such, it is closely scrutinised both at national and European level. The Commission has examined mainly two aspects of the relationship between sports and broadcasting.

First, the practice of selling broadcasting rights on an exclusive basis. It is common for organisers of leagues and tournaments to grant exclusive rights for broadcasting in order to maximise its benefits (Parrish 2000: 32). The Commission, following ECJ’s case-law, does not consider exclusivity as contrary to the Treaty per se (Gardiner et al. 2001: 420). However, it is necessary that the length and scope of the exclusive arrangements remains limited and proportionate to the objective they are trying to achieve (Parrish 2000: 32).

---

10 Interview with Jean-François Pons, former deputy Director General for Competition Policy, Brussels 2nd April 2004.

11 For example, the recent Commission investigation on the selling of the broadcasting rights for the English Premier League, which ended with a negotiated settlement by which the Premier League agreed to sell the rights in different packages, avoiding this way the monopoly of one TV operator (i.e. Sky) over the broadcasting of live top-tier football in Britain (European Commission 2006).
Second, the collective selling of broadcasting rights on behalf of the participants. In that case the Commission has to examine whether the collective selling is a cartel-like practice, preventing individual clubs to sell their broadcasting rights individually and, thus, distorting the market (Parrish 2003a: 122). As such, collective selling may be in breach of Article 81. However, paragraph 3 of Article 81 provides for the possibility of an exemption. Collective selling has only been addressed recently by the Commission, mainly in the investigation launched in 2001 on the selling of football Champions League broadcasting rights by UEFA (European Commission 2001).

The Commission takes the view that collective selling may be allowed in sport because it is a useful tool to redistribute income to lower categories, as suggested by Advocate-General Lenz in *Bosman* (Parrish 2003a: 125)\(^{12}\). These cases from the early 2000s showed a change in the Commission’s approach to sport. By allowing collective selling, the European executive acknowledged that sport has not only an economic dimension and, more importantly, that the economic activities within sport do not follow the same logic as in other industries. It is an important variation in the definition of sport. If it had initially reached the Commission’s agenda only to be treated as an economic activity, what happened between 1995 and 2002 for this new discourse to emerge? Parallel to the Commission investigations, the initial debate launched with Bosman, to which I referred at the beginning of this section, was changing slowly. New actors and new points of view came to the front in different fora and the policy debate was now focused on the suitability and definition of a European Sports Policy. Whilst this section has dealt with the economic aspects of sport, the next one is presenting the arguments and actions of those that, in reaction, considered that the EU should take into account a different dimension of sport, because if the Commission and other institutions were to follow the initial path of the ECJ and the Competition Policy DG, sport in Europe would be at risk (Parrish 2003a, 2003c).

2.4 **The special nature of sport: Towards a Common Policy?**

The debates on how to treat sport at EU level gathered momentum straight after *Bosman*, in 1997 during the IGC in charge of revising the Treaty of Maastricht. Its origins can be traced to some years before, though. Amongst the suggestions to give a more human face to the Community, the 1984 Andonino Report on a people’s Europe included a section on the possible use of sport as a vehicle to increase europeaness (European Commission 1984). It is worth to note that some of the few redistributive initiatives (as opposed to simply regulatory measures) of the EU towards sport date back to the period immediately before *Bosman*. The Helios II programme, running from 1993 to 1996 funded sporting initiatives aimed at promoting equal opportunities and the integration of disabled people (Coopers and Lybrand 1995: 115). The Eurathlon programme, launched in October 1994, was designed to provide a framework for Community subsides for sports (Coopers and Lybrand 1995: 97). The posterior developments (i.e. *Bosman*) have minimized the importance of these programmes, though.

After *Bosman* and the investigations of the Commission, sports organizations resorted to a change of arena in order to set a different agenda for sport (for more on venue shopping and the change of the EU's sport agenda see Parrish 2003a, 2003c; García 2006). The European Union is especially well suited to provide actors with the opportunity to switch venues in the decision making process and, at this point, national governments were called to participate in the redirection of sports policy.

### 2.4.1 The ‘Amsterdam Declaration on Sport’

The important goal for sports federations was to reduce the regulatory activity of the Commission. They wanted to see introduced into the Treaty the necessary provisions that would allow for a softer application of European law to sport, or even for a complete exemption from it (for details on the demands see for example UEFA 2001). The problem was that the sporting movement was not able to present a unified front. Simplifying slightly, two big groups of sports organisation could be differentiated (Parrish 2003a: 69):
• One representing mainly big commercial sports (i.e. Formula One, UEFA and FIFA) that demanded a protocol to prevent all involvement of the EU in sport, that is a blanket exemption from EU law.

• Another one representing mainly amateur sport (i.e. ENGSO and the Olympic Committees) that was happy to see the EU develop a Sports Policy through a Treaty article that could take into account the special characteristics of sport, not only its economic side.

Football authorities launched an intensive lobbying campaign at the highest level during the 1997 IGC up to the point of convincing the German chancellor and the Belgian Prime Minister of the necessity to amend the Treaty to protect sport (Husting 2004: 517; Van Miert 2000). The European Parliament also suggested the inclusion of an article on sport in the Treaty of Amsterdam, but with a much more justified case for it (European Parliament 1997). The European Council, however, did not go as far. It decided to adopt a political declaration. It is the declaration number 29, on Sport, attached to the final act of the IGC reforming the Maastricht Treaty (herein the Amsterdam Declaration on Sport). It reads:

*The Conference emphasises the social significance of sport, in particular its role in forging identity and bringing people together. The Conference therefore calls on the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue. In this connection, special consideration should be given to the particular characteristics of amateur sport.*

This declaration was introduced in the final act of the Inter Governmental Conference at the request of Germany, whose chancellor, Helmut Kohl, wrote on a piece of paper part of the suggested wording of the declaration. This was intended to be a gesture to the regional authorities in charge of sport in Germany and the issue was so low key that there was no opposition\(^\text{13}\).

---

\(^{13}\) Interview, Jaime Andreu, see note 6.
2.4.2 The ‘Nice Declaration on Sport’

Shortly after the Amsterdam Declaration on Sport, the Sports Unit within the Commission’s Education and Culture DG emerged as a key actor to find the equilibrium between the commercial side of sport and a better attention to the amateur and educational dimension (Parrish 2003a: 178-179). The Sports Unit initiated a process of dialogue and consultation with the sports world. Part of it were two working documents in which the Commission analysed the characteristics of the ‘European Model of Sport’ (European Commission 1998b) and it explored the possible Community actions in the field of sport (European Commission 1998a).

The Sports Unit immediately identified the problems that European Sport was facing, mainly as a result of the economic and commercial development of professional sport, which created two different kinds of problems: First, the negative effect of increased competition for financial resources (e.g. doping) and second, the distortions to other markets that the commercial activities of sports bodies could cause (e.g. the selling of TV rights can affect the TV and entertaining market). As a result, the European Council decided to invite the Commission ‘to submit a report to the Helsinki European Council with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework’ (European Council 1998).

In response to the European Council’s request, the Commission adopted the so-called Helsinki Report on Sport in December 1999. The report acknowledges that the commercial development of sport in Europe ‘risks weakening its educational and social function’ because ‘new phenomena are calling into question the ethics of sport to the detriment of a more balanced development of sport’ (European Commission 1999: 3).

The Helsinki Report on Sport presents a general view of the suitable European Sports Policy. The key concept in the report is ‘partnership’. The Commission calls for a new approach to sport both at European and national level, with greater consultation among actors, both institutional and non institutional. Sports federations are

14 Interview, Jaime Andreu, see note 6.
recognised their vital role in the governance of sport, but they are reminded of their responsibility to ensure the solidarity and democracy within the sports community. It is expressed the necessity for regulation in order to deal with the economic development of sport, but at the same time a window is open to study the ‘specific characteristics of sport’ when applying EC law in order to ensure the uncertainty of results (European Commission 1999).

Straight after the adoption of the Helsinki Report on Sport, the timing of the 2000 IGC could not be better for sports federations. For the second time, the IGC denied the demands of the sports world, deciding not to include any reference to sport in the Treaty of Nice. Instead, the European Council adopted the Nice Declaration on Sport, whose aims are perfectly summarised by its title: Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies (European Council 2000).

As Parrish points out (Parrish 2003c: 255) the Declaration ‘in effect launches an informal Member State commitment to establish an EU sports policy based on the construction of the separate territories approach’ (separation between the commercial and the socio-cultural approaches to sport). This has resulted in a softer application of EU law to sport, although some argue that this is nothing new, for the Commission and the ECJ always take into account the specific context of each particular market when applying the common market regulations (Weatherill 2004).

2.4.3 The Convention and the Constitution: Game over?

After the adoption of the Nice Declaration on Sport, the dialogue between sport and the European institutions intensified, trying to find a way to follow-up of the Declaration. With the Laeken Declaration, that entrusted the European Convention to

---

15 In another sport related case, that of Christelle Delliègue v. Ligue Francophone de Judo et Disciplines Associées ASBL and others (Joined cases C-51/96 and C-191/97), the ECJ in its judgement of 11 April 2001 referred to the Amsterdam Declaration on Sport, despite not being legally binding, as one of the reasons to justify a legal approach to sport that needs to take into account the special characteristics of sport and its social importance within society (Judgement, Para. 42).
draft a new Treaty in the form of the so-called European Constitution\textsuperscript{16}, the sporting movement saw it could be the last chance to get political recognition for sport in the Treaty (Parrish 2003b). During the Convention, both the Commission and sports bodies presented their case for the inclusion of sport in the Constitution, but it was not until 2003 that the sporting movement was able to overcome its internal differences and present a common front: The sporting movement asked for the inclusion of an article on sport\textsuperscript{17} in which the special nature of sport as a cultural and social tool would be recognised, alongside its independence from public authorities and the central role of governing bodies in the government of sport (International Olympic Committee 2003).

Sport was initially introduced in the Convention’s first draft as part of a generic article on Youth, Education and Vocational Training. During the IGC, under Italian presidency, there were demands to make of sport one article on its own merits. At an informal meeting of Sports Ministers in Florence, the sports bodies proposed a wording in which their independence from public authorities and possible regulation was clearly highlighted\textsuperscript{18}. The Commission, however, was opposed to this view because it felt that, whereas sport deserves some special treatment because of its particularities, it was dangerous to create an article whose words could be taken as a blanket exception in the application of European law for sport, creating possible precedents for other sectors\textsuperscript{19}. Despite the Commission’s position, 12 out of the 15 sports ministers, with the exception of Ireland, Denmark and Finland, signed to a wording similar to the one proposed by the sporting movement\textsuperscript{20}. In any case, the conclusions of this meeting were just informal, so the fate of the article on sport was


\textsuperscript{17} The idea of a protocol for sport (see UEFA 2001) was still presented by UEFA to the Convention in their contribution to the debates (see Sport in the European Union: The need for a legal basis in the Treaty, Contribution to the European Convention. Available on the internet at http://europa.eu.int/futurum/forum_convention/documents/contrib/socio/0446_c_en.pdf, accessed 3/04/2006). However, this argument was dropped for the sake of a common ground with the rest of the sporting movement when it was clear that the Convention wanted a simple single Treaty without any protocols or add-ons (Interview, Jonathan Hill, Head of UEFA’s Brussels Office, Brussels 10-03-2006)

\textsuperscript{18} Interview, Jonathan Hill, Head of UEFA’s Brussels Office, Brussels 10-03-2006.

\textsuperscript{19} Interview, Jaime Andreu, see note 6.

\textsuperscript{20} Interviews, Jaime Andreu and Jonathan Hill, see notes 6 and 18.
to be sealed at a later meeting of the General Affairs Council (that is, Foreign Affairs ministers) at Naples on November 2003.

At that meeting, where legal experts reviewed carefully the wording of every article, the position of the Commission prevailed, and in a routine decision Foreign Affairs ministers rubber stamped the wording suggested initially by the Commission and the Italian presidency. As a result, article III-282 was introduced in the European Constitution\textsuperscript{21}. It was an article for sport on its own, giving it political recognition, but it did not award the degree of independence for governing bodies they were demanding.

The crisis in the ratification process of the European Constitution left without effect all the plans that the European Commission and the European Parliament were drafting to put into practise some sport related programmes under article III-282; these would have been decisions directly aimed at promoting sport (more similar to the ‘sport or all’ policies), rather than the old regulation of professional sports within the Single European Market\textsuperscript{22}. However, all the debates about the way in which the EU should look at sport have not been in vain, as some important developments have taken place.

First, it is noticeable that all the 25 Member States decided it is worth to give some competencies to the supranational level in sporting matters, even if it is at the lowest level of competencies, as it was article III-282. Despite not entering into force, the commitment of the national governments to Europeanise somehow their sports policies is present. Yet, Article III-282 is a very small step whose importance is still to be proved, although European sports ministers, in their informal meetings that are held every six months have expressed their desire to work together: ‘We would like to
create the base for an sporting structure within the European Union in which Member States can co-operate, because only working together we can assure the good and common development of sport in Europe.²³

Second, the initial focus on the regulation of the commercial activities of sport has been replaced by an interest on the possibilities of sport as a tool to promote social inclusion and a healthy lifestyle, fight against racism and other similar objectives. The lack of a legal base prevents the adoption of many of the ideas that both the Commission and the European Parliament have had in the last years. However, with some imagination and legal engineering, some activities have been organised, the most important one being, probably, the 2004 European Year of Education through Sport (EYES), which was allocated a budget of €11.5 million²⁴. The activities of EYES were considered a success and the Commission wants to build on them to continue promoting the educational values of sport (European Commission 2005: 10).

Third, the European institutions are coming to terms with the special nature of sport. Tilo Friedmann, from the EU-Office of German Sports (the first office set up in Brussels to represent the interests of a sport organisation, in that case the German Sports Confederations –DSB-) considers that ‘the learning curve of EU politicians and civil servants has undoubtedly been beneficial because they understand now what the particularities of sport are and its governing structures at national and regional level²⁵. However, it is still felt that there are differences on the approach towards sport taken both across and within institutions, because the issue of sport ‘is very young at European level”²⁶. The level of consistency on the European institutions’ approach towards sport is debatable, and indeed each actor within the policy network has its own account of it. It is outside the scope of this paper to assess the coherence and effectiveness of the EU’s approach to sport, but in fairness it has to be acknowledged that EU institutions have now a clearer idea of what role they want to

---

²³ Interview, José María Alises, Deputy Director General, Consejo Superior de Deportes (Spain). Madrid, 4 January 2006.
²⁶ Idem.
play on sport and how to do it, despite some inconsistencies that may still arise in particular cases.

This section has reviewed the latest developments in the involvement of the European Union on sport related issued. It has focused on the efforts made to treat sport as something else than a mere business and it has showed a change of definition and discourse on the EU’s approach to sport. In the next (and final) part, this paper aims to present suggestion for explaining the EU’s involvement on sport and how to relate it to national sports policies.

3 Conclusion: Rescuing sport or the nation-state?

Sport has come a long way in the European Union since the first ECJ ruling in 1974 and, especially, after the ground breaking judgement on Bosman in December 1995. The preceding sections of this paper have presented the main decisions of the EU institutions that have articulated an approach to sports and to the possible development of an European Sports Policy. From this standpoint, the paper provides mainly an empirical contribution to the workshop to introduce a debate on the relative importance of the European Union for sport in general and for national (and sub-national) sports policies in Europe. This concluding section will explore the lessons we can learn from the case of sport. Working inductively, the paper attempts to reflect now on the case study presented above. I will deal mainly with two issues: How we can understand and explain the EU’s involvement in sport and how this can be related to the study of national and sub-national sport policies.

3.1 The complex nature of sport

Sport is a social, cultural and economic phenomenon with multiple dimensions, which may follow different dynamics from one another. The growing intervention of the EU in sport related matters reflect this multidimensional nature of sport. It is paramount to understand the complexity of sport to explain the development of the EU’s policy on sport.
The only official definition of sport in Europe is to be found in the European Sports Charter, adopted by the Council of Europe in 1992. The Council of Europe defines sport as ‘all form of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels’ (European Sports Charter Art. 2.1). In the Council of Europe’s definition we can find a twofold implication. On the one hand, sport has to be taken into account by the values of social cohesion, education and self improvement it transmits. This view, which considers sport as an objective itself is normally identified in the numerous manifestations of amateur sport, where economic wealth is not sought.

On the other hand, sport may be understood as a competitive activity aimed at obtaining the best possible results. This is the professional side of sport or, as Lincoln Allison (1986: 5) put it, the ‘institutionalisation of skill and prowess’. Allison distinguishes between the ‘commercial-professional’ ethos and the ‘amateur-elite ethos of sport’ (Allison 1993: 6). The first one looks to exploit the market possibilities of mass audiences for sport, whereas the latter holds that commercialisation hampers the nobility and purity of sport, opening the door to corruption or doping (Allison 1993: 7).

In the light of that distinction, I would argue that we can find mainly four different dimensions of sport.

- **Sport for all**: It is just the physical activity any one can do for its own leisure or benefit. Public authorities will normally facilitate this kind of activities by introducing sport into school or building public facilities.

- **Amateur sport**: It is very much similar to the former because it is leisure oriented. It adds to the ‘sport for all’ the characteristic of being competitive and organised.

- **Elite-amateur sport**: This is a category difficult to define, halfway between the amateur and the completely professional sport. It is the case of sports in
which there are no large amounts of money involved. They are practised and
organised with the aim of earning money, but it is normally not enough to live
only from it. Examples of it could be less popular sports, such as rowing or
curling, in which the top performers dedicate a great amount of time to it, but
they do not earn enough money, unless they are subsidized by public
authorities to compete in international competitions. This could be also the
case of popular sports in their lower categories, such as football League 2 or
the Conference.

- **Professional sport:** This is the opposite side to ‘sport for all’. It is sport as a
  business, as a pure industry and economic activity. It is practised by very well
  paid professionals, who earn millions of pounds. It is normally organized as a
  competing entertainment, with large media coverage and public attention. It is
  what I would call sportaiment, a fusion of sport, industry and entertainment.
  Clear examples are numerous: football, snooker, rugby, ice hockey…

The problem when trying to adopt an approach to sport is that these four dimen-
sions are not mutually exclusive. They are rather points in a continuum. Moreover, one
cannot say that a particular sport will fall entirely within one category. Quite to the
contrary, almost every sport has a vertical axis that goes from the sportaiment to the
sport for all dimension. Yet, we can appreciate that the major part of the EU’s
involvement in sport (at least until recent years) has been focused on the commercial
side of the sportaiment, whereas national and sub-national authorities have kept their
say on the other dimensions of sport. It was clearly the increasing commercial and
economic development of sport what brought it to the agenda of the European Union.
The internal struggle for the power and the money within particular sports (Cycling in
Walrave, football in Bosman) or the possible distortions of the internal market created
by the commercial activities of sport bodies prompted the actions of particular actors
or European institutions. In a way, the early interventions of the EU in sport related
matters are another symptom of a growing economy in a globalising world. After the
first decisions arrived on a case-by-case basis, the European Commission recognised
the necessity for more co-ordinated action because the increasing commercialisation
of professional sport was putting at risk the socio-cultural values that sport has to play
within European society (European Commission 1999). The view of the Commission,
also shared by the European Parliament (1994; 1997) was that sport needed to be rescued from the misdemeanours of a massive influx of money, which could put enormous pressure (and maybe health risks) on athletes.

### 3.2 Sports policy in a multi-level polity

The *Amsterdam Declaration on Sport* marked the beginning of the involvement of national governments on sport at supranational level. The initial request for action has to be understood as a desire to redress the decisions of the ECJ and the Commission (Parrish 2003a), but the final outcome of the process has not been a clear denial of the intervention of the supranational authorities on sport related matters, but rather the founding stone of what could develop into something resembling a sports policy, although this is still to be seen.

However, strictly speaking it does not exist a legally rooted EU’s sports policy (Parrish and McArdle 2004: 418) for the Treaty does not recognize any competence in this field. This adds a further layer of complexity not only to the categorisation of the sport-related EU’s decisions, but to the whole research agenda in that area because it is legitimate to question whether there exists a European Sports Policy or not.

The case arguing in favour of the existence of a sports policy on its own right draws mainly on the literature on sports law. First, that the European institutions have designed over the years a distinct and progressively consistent vision of sport focused in the ‘separate territories approach’ (Parrish 2001) Second, it is acknowledged by legal experts that a recognised body of sports law (as compared to sport and the law) has developed within the EU’s legal order (Gardiner *et al.* 2001). Third, the Constitution for Europe could solve the final hurdle to consider sport as a fully fledged policy on its own right. Should the Constitution enter into force, the EU will finally have a legal base to legislate in the field of sport.

The case against the existence of a European Sports Policy relies also primarily on legal reasons. First, there is no legal base in the Treaty to develop a Sports Policy. The Treaty and the jurisprudence of the ECJ is very clear: The EU can only act insofar it has a legal base to do so. Therefore, whatever the EU does in reference to sport, it
cannot amount to a policy. Second, the Council’s declarations on sport may serve as guiding lines, but they are not legally binding. This causes legal uncertainty in both the Commission and sports organisations, which do not know how to proceed next, hampering the possibilities of developing a coherent policy. Third, there is no common vision within the institutions. Finally, even if we accept that the provisions in the Constitution will enter into force, it can be argued that article III-282 gives only a very weak power to the EU to be involved in sports policy. Therefore, the actions of the EU in sport would be just mere support of national sports policies, but no a policy on its own.

Be that as I may, much of this debate is about semantics because the impact of the EU is undeniable and it is clearly recognised by the majority of stakeholders in the policy-making process; especially by sports governing bodies, which were once defiant to the ‘intrusion’ of the EU in their territory but they see now the EU now as a partner to promote the good values of sport. It is my view, it is difficult to sustain the argument that the EU’s action in sport amounts to a policy. However, the effect of these decisions may have important consequences not only for sport governing bodies, but also for national sports policies.

A way to relate the supranational level to national and sub-national sports policies may be by focusing on the multi-level nature of the European Union as a system of governance (Marks et al. 1996). Despite falling short of the traditional Weberian definition of a state, the EU can be theorised as a political system, with a network of institutions that perform the traditional roles of legislative, executive and judicial powers (Hix 1994, 1999). In this system, the levels of governance are interconnected, being able to influence one another because policy-making in the EU is seen as a system of ‘non hierarchical, mobilising networks of private as well as

28 The European Union is categorised as a political system (note it is not considered a state!), among other reasons, mainly because the EU has a clear set of institutions and structures for collective decision-making, an increasing number of political (both governmental and non governmental) groups and citizens recognise it as the arena to put forward their demands, EU decisions are highly significant and have serious consequences throughout the continent including important levels of redistribution and, finally, there is a continuous interaction between political actors on a daily basis in Brussels (Hix 1999: 2-4; for more on the EU as a political system see also Andersen and Eliasen 1993; Lindberg 1967).
public actors, who engage in deliberation and problem-solving efforts guided as much by informal as by formal institutions’ (Pollack 2005: 36). The multi-level nature of EU politics is defined by three main characteristics: (Marks et al. 1996: 346-347):

- First, ‘decision making competencies are shared by actors at different levels, rather than monopolized by state executives. One must also analyse the role of European level actors to explain European policy-making’.
- Second, ‘collective decision-making among states involves a significant loss of control for individual state executives’.
- Third, ‘political arenas are interconnected rather than nested. Subnational actors operate in both national and supranational arenas, creating transnational associations in the process’.

In this scenario of an integrated European Union, the study of sports policy needs to take into account the actions and decisions taken at EU level. National governments are now exploring the possibilities of mutual co-operation to enhance the profile of sport as a beneficial activity for European citizens. To include this variable in the research agenda of national sports policies may be of interest, even if it is only for the sake of completeness. The concept of Europeanisation may be useful. It is normally defined as:

*Processes of a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public policies* (Bulmer and Radaelli 2004).

It certainly may be too early to appreciate Europeanisation in national sports policies, but if we understand the term in the wider sense of the European level becoming somehow important for decision-makers on sport at national level, then the role of the EU may become more interesting.

Moreover, there is the problem that policy actions of the EU on sport have been so far focused on regulation, therefore the links to the national level would be mainly tied to
this regulatory actions. Yet, this may be an interesting avenue for research. In a way, what the ECJ and the European Commission have done over the years is to ensure that different governing bodies act within the law. For a long time, sports authorities have shown no respect, nor recognition, for outside regulation because they thought sport is self-sufficient. This situation made very difficult for public authorities to bring to account the activities of sports federations. When sport remained largely an amateur activity, there was no problem, but once sport embraced the modern times of TV and sponsorship, large amounts of money were changing hands escaping legal control. In turn, this was allegedly leading to a distortion of sport itself with growing scandals of doping and increasing pressure put on athletes.

Thanks to the application of European law and European policies, public authorities have been able to scrutinise the behaviour of the bodies in charge of governing sport (not only federations, also clubs), which of course play a very important part in any national sports policy, be it ‘sport for all’ or ‘elite sport’. One of the consequences of all those actions is probably the recent interest in good governance in sport, a topic whose salience is directly linked by policy actors with the interventions of the EU. In a way, this may be seen as a ‘rescue of the nation-state’ (Milward 2000), because national authorities have now the possibility to resort to the European level to influence and supervise the activities of sports organisations and even to help to achieve some of the objectives of the national sports policy.

Two very recent examples come at hand. The first one, is about TV rights and redistribution of resources in English football. The British Government conditioned its political support to the English Premier League in its recent negotiations with the Commission’s Competition Policy DG on the selling of broadcasting rights (see European Commission 2006) to a higher amount of money being redistributed for the grassroots levels (Conn 2005). Also recently, the Spanish Government used a Commission’s letter of formal notice (European Commission 2004) as an extra argument to force the Spanish FA to amend its internal regulations, which did not allow the participation of Community nationals in amateur competitions.

---

29 Interviews, Graham Noakes (see note 27) and Jonathan Hill (see note 18).
30 Interview, José María Alises, see note 23.
It is difficult to claim that the European Union has a fully-fledged sports policy, but the intervention of EU institutions in sport since 1974 (but especially since Bosman in 1995) have had an important impact on European sport, mainly on the professional levels. It is necessary to differentiate between the ‘sport for all’ and the sportainment dimensions of sport to understand how and why the EU has become involved in sport related matters over the last decade. Moreover, all this interventions and debates can have an influence on sports policies at national and sub national level. The Multi-Level nature of politics and policy-making in Europe opens numerous points of access and communication for policy levels to influence each other and an starting point to evaluate the influence of EU policies on national sport polices and vice-versa. This paper just wanted to put forward this argument and to present some of the sport related activities that the European institutions have been involved. Further research is needed to elucidate whether the European rescue of the nation-state, a part from being an ‘economic rescue’ (Milward 2000: 5-10) is also an sporting game.
4 References


European Commission (1998b) The European Model of Sport, Consultation Document of DG X.


European Council (2000) *Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies*, Presidency Conclusions. Nice European Council, 7-9 December 2000.


