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# The influence of the EU on the governance of football

Borja García,

School of Sport, Health and Exercise Sciences,

Loughborough University (UK)

## ***Introduction***

Shortly after the European Court of Justice (ECJ) delivered its ruling in the Bosman case, UEFA President Lennart Johansson personified the state of shock which football bodies across Europe were under: 'The European Union is trying to destroy club football' (Thomsen 1995). On the opposite side, European Commissioner for Competition Policy, Dutchman Karel van Miert, underlined in a harsh, but extremely realistic way football's need for change: 'UEFA needs to evolve, whether they like it or not' (quoted in Hopquin 1995). More than 15 years after the Bosman *shock*, European football is now coming to terms with the policies of the EU (García 2007, 2009a), but the game's organisational structures have certainly evolved, as Karel van Miert demanded. Whilst the European Union has no power to regulate directly on football structures, its policies have had a profound impact on the governance of the beautiful game.

In this chapter we analyse the extent to which European football's governance has been transformed as result of those EU policies. It is argued that European Union institutions cannot be considered directly responsible for the emergence of new governance structures in European football, but they have facilitated the challenge of governing bodies' legitimacy by those stakeholders that used to be located firmly in the bottom of football's pyramid (i.e. clubs and players). EU institutions have been used by dissatisfied stakeholders as alternative policy

venues to settle disputes with the governing bodies that could not be resolved within the internal structures of football governance (García 2009b: 120). As a result, EU policies have empowered (to certain extent) stakeholders in football governance, undermining the vertical channels of authority featured in the traditional pyramid of European football (García 2007). Conceptually, the EU impact has facilitated a transition to structures of network governance (Rhodes 1997; Holt 2007). Some concrete examples would be UEFA's creation of the Professional Football Strategy Council or the social dialogue committee in the football sector set up under the umbrella of the European Commission.

Before proceeding, it is necessary to note that the impact of the EU in football governance is the aggregated result of the indirect (and to some extent also unforeseen) consequences of a large list of decisions and ruling in single cases. The European Union does not have such a thing as a fully fledged sport policy<sup>1</sup>, and decisions are taken on a case by case basis. Policy-making in the EU involves a great number of actors and it would be incorrect to assume that their preferences are easily aligned. However, there is a certain trend in these sport-related decisions that allows us to treat EU decisions with a degree of homogeneity. For the sake of clarity and to facilitate analysis, this chapter makes a conscious choice to stay at a general level to explain the evolution of the EU policy on sport. Given the tight space constraints, particular references are made at some points in the chapter to individual decisions of the EU institutions but we presume a prior knowledge of the main football-related cases that EU institutions have dealt with in the last decade (for detailed

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<sup>1</sup> This is likely to change after the introduction of an article on sport in the Treaty on the Functioning of the European Union (article 165). However, at the time of writing the European Commission is only starting to consult relevant stakeholder to decide on the priorities of such policy and it is, therefore, difficult to predict how it might look like. In any case, this chapter deals with the consequences of past decisions and possible future developments are of much less importance for our purpose here.

analysis of single sport-related decisions see Parrish 2003; Parrish and Miettinen 2008). The intention in this chapter 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, and to concentrate on the consequences of those decisions for football governance.

The chapter proceeds in four steps. First, it focuses on the challenge of governing bodies' legitimacy by players. It then goes on to analyse the empowerment of professional football clubs in European football as consequence of EU decisions in competition policy investigations related to broadcasting rights. Third, the chapter analyses UEFA's response to regain ground in the political arena with the support of national governments and some EU institutions. Finally the chapter summarises briefly the structural changes consequence of these processes.

### **Contesting the legitimacy of governing bodies**

The European football pyramid, with its vertical channels of authority situated governing bodies at the heart of the game's governance. For a long time, national FAs, UEFA and FIFA regulated football without much opposition. The structure was one of the best examples of what the European Commission labelled in 1998 as the 'European model of sport' (European Commission 1998). The European model of sport, according to the European Commission features a pyramidal structure of governance (European Commission 1998: 2). Thus, in football one can observe a system of national federations, that are affiliated to European and international federations: 'Basically the structure resembles a pyramid with a hierarchy' (European Commission 1998: 2). From the bottom-up, this structure is formed by clubs, regional federations, national federations and European federations (European Commission 1998: 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 1998: 3). It is no surprise, logically, that football governing bodies embraced the concept of the European model of sport to maintain their position in the pyramid:

*UEFA and European football should continue with all levels of football - elite, professional, semi-professional and amateur - bound together as part of the same pyramidal structure. There should be no franchising and no encroachment on the fundamental principle of a link from top to bottom of the pyramid. The US model is appropriate in the US context, whereas in Europe sports federations have a central role in ensuring the essential solidarity between the various levels of sporting practice, from recreational to top-level sport. This is not only financial solidarity, but also sporting, moral, structural and other forms of solidarity. In order to most effectively achieve this essential solidarity, the pyramid must stay united (UEFA 2005: 27-28)*

In its recent White Paper on Sport, the Commission (2007a: 12) has rectified and it considers now 'unrealistic to try to define a unified model of organisation of sport in Europe'. This is relevant, for the Commission's reluctance to support the European model of sport can be seen as a certification of the emergence of new governance structures in European sport (García 2009b: 274). In football, the first of these transformations involved professional footballers, who fought a lengthy battle against the rules regulating their working conditions, especially nationality quotas and the retain and transfer systems.

## **Players break free**

Professional football players were the first stakeholders to contest the *status quo*, in football governance. Players have traditionally been positioned at the bottom of the pyramid by football's control structures (Tomlinson 1983: 173). Football governing bodies have traditionally adopted two sets of norms to regulate the employment and registration of footballers: transfer systems and nationality quotas (Lanfranchi and Taylor 2001: 218), but players themselves used to have little say in these decisions. However, representatives of the footballers now participate actively in the structures of the federations and FIFPro Division Europe is recognised by UEFA and FIFA as a valid interlocutor. The emergence of FIFPro is undoubtedly one of the first transformations of the football pyramid facilitated by the EU.

The ruling of the European Court of Justice in the Bosman case in 1995 sent shockwaves across the football system, but it is necessary to remind that footballers at national level had been fighting for their rights for a long time before Jean Marc Bosman's case. The first challenges came from England. The English Professional Footballers' Association (PFA) stepped up its fight to modify footballers' employment conditions in the early 1950s; the objects of the PFA's attack were the retain and transfer system and the regulation of the maximum wage (Greenfield and Osborn 2001: 76). The English challenge was followed in other European countries. In France, the footballers' trade union negotiated in 1969 with the French league the abolition of the 'life contract which had bound players to a club until the age of 35' (Lanfranchi and Taylor 2001: 217). The agreement stipulated that, at the end of a contract, players were free to sign with whichever employer they chose. In Spain, professional

footballers challenged the so-called *derecho de retención* (right to retain)<sup>2</sup> in the late 1970s and early 1980s. The Spanish Footballers' Union (*Asociación de Futbolistas Españoles*, AFE in its Spanish acronym) called three strikes in the period between 1979 and 1982. The first two strikes, in 1979 and 1980 had a considerable impact bringing Spanish professional football to a halt (González 1982, 1979).

The situation of players' working conditions can be characterised as a governance dispute between a group of stakeholders (i.e. the players, who in this case are also employees) and a coalition of another group of stakeholders (i.e. the clubs, who are also the employers) with the regulators (i.e. governing bodies). Despite some adjustments in different countries, the international transfer system still presented obstacles to the free movement of players and when Jean Marc Bosman took his personal case to the European Court of Justice he did so with the support of FIFPro, the international federation of players unions. In effect, the ECJ can be conceptualised as an alternative policy venue (Baumgartner and Jones 1991) that the players decide to explore when the internal football structures failed to address their demands. As it is now recognised by UEFA officials with the benefit of hindsight, the situation of the players in the football pyramid was difficult to sustain with the ongoing commercialisation of the game:

*I would say that the real effects of Bosman are probably overestimated; especially when the case put an end to a situation that, let's be honest, was not sustainable for long. The fact that a club still had to pay a release fee when a player was at the end of the contract with the former club is certainly not fair. I think we all*

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<sup>2</sup> The right to retain stipulated that clubs could retain the registration of players at the end of their contract by offering a 10 per cent salary rise. Players were unable to move to other clubs without the consent of their employer (El País 1985).

*agree now that this was not fair and, more importantly, not applicable nowadays (Interview, UEFA official, February 2007).*

In its ruling of the case, the ECJ stated that the regulations on players' transfers were in breach of article 39 TEC (now article 45 TFEU) because they demanded a compulsory transfer fee to be paid by the buying club to the selling club, even when a player was at the end of a contract (*Bosman*: Operative part of the judgement, paragraph 1). Moreover, the ECJ observed that the same article also precluded the application of nationality quotas to EU citizens (*Bosman*: Operative part of the judgement, paragraph 2).

First and foremost, of course, the direct outcome of *Bosman* was to transform the two pillars that had regulated the employment of professional footballers for many decades. Nationality quotas were the first to go (Goodbody 1996) and despite taking some time, the international transfer system was also amended in the end (European Commission 2002a, 2001a). But for the purpose of this chapter the most important consequence was that the intervention of the ECJ added new layers to the governance of sport. EU law had to be taken into account in the regulation of the game, but more importantly the players emerged as reinforced stakeholders that were able to challenge the *status quo*.

The importance of the EU in the transformation of the players' market is probably better understood in terms of scope rather than agency. It was the supranational nature of the ECJ what enabled players to finally tackle the power of the pan European governing bodies. *Bosman* represents the escalation of an ongoing governance conflict, rather than a new dispute on its own. Moreover, EU institutions cannot be accused of initiating the proceedings and/or actively regulating football. The ECJ cannot look for areas to intervene and it can only rule in the cases it receives. In the early stages, the ECJ and other



EU institutions did not get involved in football-related matters by their own volition.

As a result of the players' successful challenge, footballers' unions have now earned a formal place in the governance structures of football as recognised stakeholders. FIFPro has been recognised by both UEFA and FIFA as legitimate representative of the players (UEFA 2007b; FIFPro 2007, 2001) in a process that Holt (2006) has characterised as co-optation . FIFPro participates actively in FIFA's committees implementing and regulating the transfer system (FIFPro 2001), it also participates in UEFA's consultative bodies and it is represented in the Professional Football Strategy Council (UEFA 2007c: Article 35, 2007e).

### **The clubs' new power**

Following the emancipation of professional footballers, it was the turn of clubs to contest the legitimacy of the governing bodies, both at national and European level. Whilst employment conditions were at the heart of the player's actions, top football clubs were specially motivated by the commercialisation of football in the 1980s and 1990s. Following the liberalisation of the audiovisual market in the European Union (Wheeler 2004), new television operators were vividly interested in live football as a means to gain market entrance. Clubs realised the economic possibilities of professional football with the intervention of the media networks and, logically they wanted a share of the profits generated by the selling of broadcasting rights.

The impact of the EU on the relationship between clubs and governing bodies was, again, indirect because EU institutions (especially the Commission) were interested in the impact of football in the recently liberalised European audiovisual market, not in interfering in the power relations between clubs and

football federations. However, even if the impact has to be conceptualised as indirect, the choices of the Commission in its decisions had important consequences for the relations between clubs and governing bodies.

Traditionally, governing bodies used to market the rights for the competitions they organised. However clubs contested the power of federations and where the League was already organised by the clubs themselves (e.g. England), those at the top of the professional game broke with the second and third tiers. The movement of English top clubs to create the Premier League away from the Football League is perhaps the best example and one that at present might be replicated in Italy. Clubs presented different demands, but it could be divided in two categories. In some cases they requested to sell their rights individually, such as in the Spanish *Liga de Fútbol Profesional* (La Liga). In other cases clubs broke away from the formal governance structures in order to manage the competition and negotiate the television contracts on their own (English Premier League).

At the European level, there were also threats by the top professional clubs to organise a breakaway European super league. UEFA tried to adapt to the demands of the clubs in order to preserve the unity of European football by creating the Champions League. The dynamics leading to the transformation of the old European Champions Cup into the Champions League have been discussed at length (Holt 2006: 24-37, 2007; King 2003: 97-166; Morrow 2003), normally against the framework of the commercialisation of football and the economic potential of the sell of the competition's broadcasting rights. Beyond the pure economic dynamics, it is also possible to conceptualise the struggles of UEFA and the top European clubs in terms of governance, where the traditional structures did not favour the latter's drive for further economic development.

UEFA decided to transform the European Champion's Cup into the now familiar format of the Champions League, so the competition would generate more television money that could satisfy the demands of the participating top teams whilst still providing opportunities to redistribute money to the grassroots levels of the game. For that model to succeed it was paramount that UEFA retained the opportunity to market centrally the competition's broadcasting rights. However, the European Commission's competition authorities questioned whether that central marketing could constitute an infraction under article 81 TEC (now article 101 TFEU), as UEFA was effectively acting in a monopoly position.

In the Champions League case the decisions of the Commission had the potential to change the relations of power in football. If clubs were considered to be the owners of the competition's rights and, therefore they were allowed to sell their broadcasting rights individually, then they gain a large degree of economic power over governing bodies. However, if federations or UEFA can sell TV rights centrally without being considered as abusing a dominant position, then they have more possibilities to retain their central role in the governance of football. Therefore, the Commission investigations into the broadcasting of football had the potential to fundamentally alter the vertical structures of the football pyramid.

In the end, the Commission investigations were not entirely negative for UEFA. The Commission recognised clubs as stakeholders by giving them a say in the case, but DG Competition also demonstrated that it can accommodate central marketing, subject to certain conditions, hence throwing a lifeline back to the governing bodies (European Commission 2001b, 2002b).

In general, the Commission investigations recognised that governing bodies can market centrally broadcasting rights, but clubs should also be allowed to sell a share of the unexploited rights. In governance term, though, the Commission was an effective tool to undermine UEFA's strong position as governing body.

In this context, the emergence of clubs within the governing structures of football has been institutionalised at European level through different bodies/organisations. The group of 18 of the richest professional football clubs in Europe joined forces in 2000 creating the G-14. The G-14 was never recognised by UEFA or FIFA as a legitimate organisation. UEFA tried to counteract the actions of the G-14 by creating in 2002 the European Club Forum (ECF) to give a voice to the clubs. The ECF included 102 clubs representing all 53 UEFA national associations (Holt 2006: 96-97). The ECF was the recognised partner by UEFA as the voice of the professional clubs, and was incorporated into the Professional Football Strategy Council as well (UEFA 2007c: Article 35).

This conflict is now of less importance because of recent developments. The clubs have recently decided to dissolve the G-14 and to create the new European Club Association (UEFA 2008a). The European Club Association is a body independent of UEFA, whereas the ECF was heavily anchored within UEFA's structures (Holt 2006: 96). The ECF had a problem of credibility because it was not independent from UEFA. The new European Club Association is independent from UEFA, but it has been recognised by UEFA through a memorandum of understanding (UEFA 2008b, a) and it will be the representative of professional football clubs in their dealings with UEFA, FIFA and public authorities.

## **UEFA regains lost ground**

Whilst *Bosman* and the Commission investigations were an important challenge for UEFA, the organisation has learnt to evolve and to adapt in order to survive in the new environment. UEFA realised that it could regain some of its legitimacy in the governance of football by engaging with public authorities, in this case the EU institutions. The EU interventions in the players' market saw the emergence of UEFA as a natural partner in dialogue for the EU. The *Bosman* case helped UEFA to realise the importance of the EU for the organisation. EU law obliged UEFA to change its strategy. This is very clearly admitted by UEFA officials:

*It is not that our dealings with the Commission changed overnight; it is that we had to be pragmatic. If it is the law, we have to adapt to it, we have to go and talk to them. We had no other option. (Interview: Former UEFA official, February 2007)*

Yet, there is a difference between accepting the regulation of EU law and engaging in further co-operation. UEFA could have just resorted to a mere damage limitation exercise in the application of EU law. However, UEFA has gone further in terms of actively engaging with the European integration process. In 2007, for example, UEFA organised a football match to celebrate the 50<sup>th</sup> anniversary of the Treaty of Rome (European Commission 2007b). Furthermore, UEFA has worked in collaboration with the EU Council and the European Commission to examine ways to improve safety and security at sporting events (UEFA 2007a). Whilst these are just small initiatives, they show a willingness on the part of UEFA to engage with EU institutions in different areas.

UEFA officials consider that, despite having to adjust some of their structures, the negotiations with the Commission over the Champions League case cemented a good working relationship between the two bodies:

*[The turning point in our relations with the EU] was the agreement on the central marketing of the Champions League rights. That was a huge success, but a huge success for both sides. It was a mutual agreement; it was a compromise where both sides were happy. We had lots of meetings; many of them were very long and normally well spirited. We met every day, literally every day and always with lots of dialogue. Yes, we had different positions, but it was not dogmatic, we rather tried to find solutions. I think they saw that we were willing to move, so they accepted they could move as well to find a good solution for every one. (Interview, former UEFA official, February 2007).*

However, despite the increasing good understanding with EU institutions, it is important to highlight that the governing body has paid a price to regain its legitimacy through the political support of Member State governments and the European Commission. UEFA was forced to change internally, both in terms of governance (i.e. giving some of its power up with the co-optation of stakeholders to decision-making structures) and in terms of strategy and philosophy. In 2000, an internal audit carried out by UEFA overhauled the internal structure of the organisation to make it more efficient and transparent (UEFA 2000). The opening of a representative office in Brussels in 2003 might be seen, perhaps, as the turning point in UEFA's search for a more positive relationship with the EU.

If we consider the importance of that turning point, then it is necessary to point out that at the time of writing UEFA has recently decided to close its Brussels office. A surprising move when more sport organisations are setting up

representation in Brussels, be that through consultancy companies or their own offices. Yet, it is possible that UEFA joins forces with the recently created European Team Sports Association (created in December 2009, including the European federations of football –UEFA-, basketball –FIBA Europe-, handball –EHF-, ice hockey –IIHF-, rugby –FIRA AER- and volleyball –CEV-)<sup>3</sup> to be represented in Brussels. Moreover, Commission officials do not see, at the moment, significant changes in their working relation with UEFA: ‘With or without their office, they are here in Brussels every other day, so I personally would not say that UEFA has distanced itself from the EU, I do not think they have changed their strategy, but time will tell of course’ (Author’s personal communication with European Commission official, February 2010).

By engaging with public authorities, such as the EU, UEFA might find a way to regain the legitimacy contested by other stakeholders over the last few years. If UEFA manages to gain support from Member State governments, the Commission or the European Parliament in its bid to continue to act as European football’s governing body, it would be in a better position to preserve its central role in the governing structures of the game. However, the engagement with the EU represents a necessary trade-off for UEFA. UEFA will never win the EU’s approval if it is not seen to respect EU law. Thus, the supervised autonomy offered by the EU imposes a certain limit on UEFA’s powers to formulate policies with regard to the regulation of football (Foster 2000). If UEFA is genuinely looking to form a partnership with EU institutions, it will have to find a compromise. Curiously, the intervention of the EU was initially felt as a threat to UEFA’s independence. However, the interest of EU institutions in developing a policy on sport (see for example European Commission 2007a) could benefit UEFA in the long-term; however, taking this

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<sup>3</sup> For more information on the European Team Sports Association see UEFA’s website at <http://www.uefa.com/uefa/stakeholders/teamSports/index.html> (Accessed 22 March 2010).

opportunity involves a trade-off in terms of independence and regulatory power. UEFA's response to these new challenges will measure the real position of the governing body at this juncture and define its relationship with the EU for the years to come.

### **Governance transformations: From pyramid to networks**

This chapter has thus far analysed how European Union policies provided alternative policy venues to dissatisfied stakeholders to challenge the legitimacy of football governing bodies and the pyramidal structure of governance. Players and clubs benefitted from legal challenges to undermine the regulatory powers of national federations and UEFA. In doing so, the governing bodies had no other option but to recognise the new stakeholders, for they had been legitimised by the ECJ and the Commission. Moreover, UEFA has been forced to recognise the role of EU law and EU institutions in the governance of football which, at the very least, have played a supervisory role, granting UEFA and other governing bodies what Foster (Foster 2000) has labelled as 'supervised autonomy'. Logically, this new layer of supervision has reduced to some extent the autonomy of UEFA, as it cannot take decisions now at its free will.

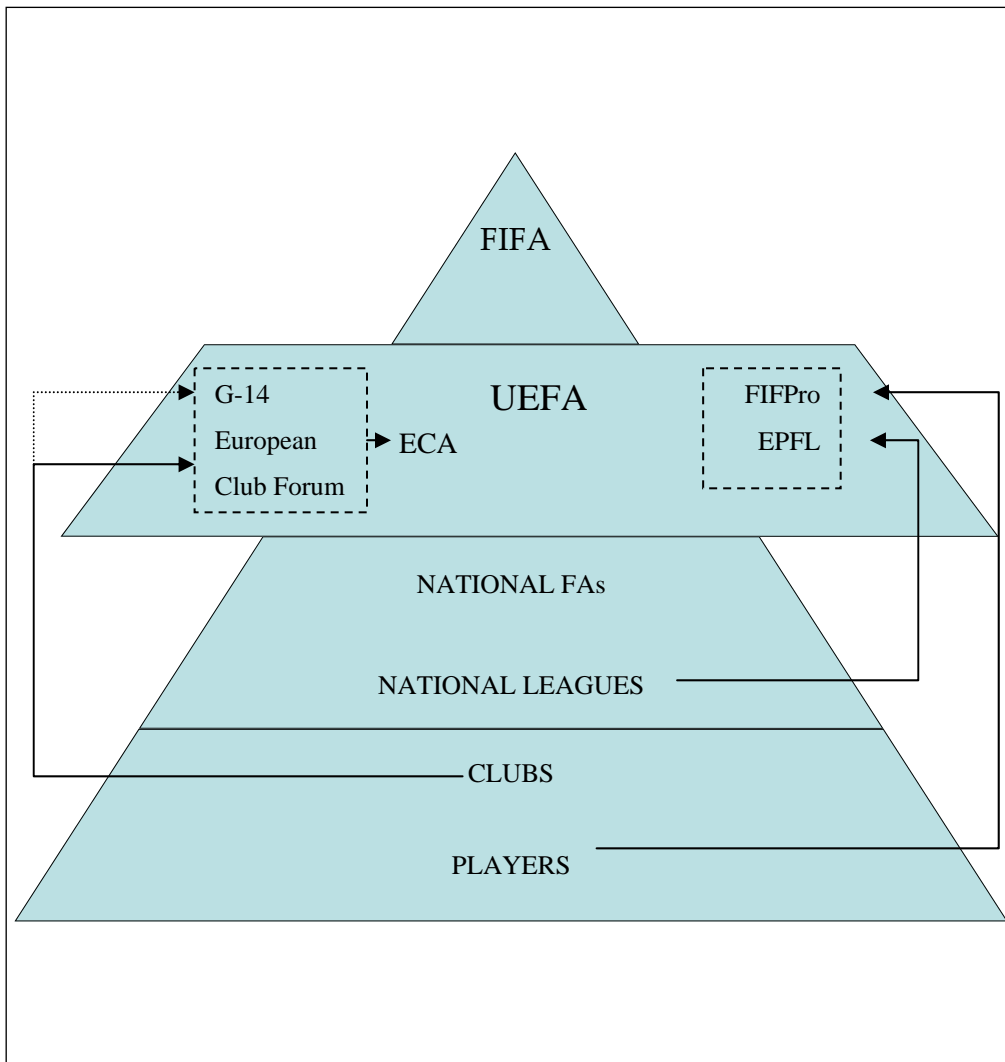
Paradoxically, the political engagement of UEFA with EU institutions has enabled the governing body to regain some legitimacy after the players and clubs' challenges. But in order to do so it has undergone a process of change, both internally and externally. The most evident changes relate to governance structures and the incorporation of stakeholders to consultation and decision making. This final section of the chapter outlines the main transformations to football governance, which need to be seen as consequences of the impact of EU decisions.



The latest decision of UEFA to give a voice to the stakeholders in the professional game reflects the increasing importance of clubs, leagues and players, hence the transformation of the traditional pyramid. Following the publication of the Independent European Sport Review (IESR) in 2006 (Arnaut 2006), UEFA decided to improve its dialogue with the representatives of professional football. UEFA set up the European Professional Football Strategy Forum, composed of four UEFA vice-presidents, four representatives of the European leagues selected by the EPFL and four representatives of the clubs appointed (then) by UEFA's European Club Forum (UEFA 2007e: 1). This new body was set up 'to enhance dialogue and cooperation between UEFA and the different stakeholders in European football, examining policy matters and working with the existing professional football consultative bodies on all relevant issues' (UEFA 2007e: 1). With the arrival of Michel Platini as the new President of UEFA in 2007 the Strategy Forum gained importance within the organisation's structures. It was renamed as the Professional Football Strategy Council and it was given statutory recognition (Article 35 of UEFA Statutes) as a permanent body of UEFA (Chaplin and Harte 2007: 1; UEFA 2007d). Moreover, the membership of the Professional Football Strategy Council was widened to incorporate the representatives of the players. Four representatives of the players, nominated by FIFPro sit now on this Council (UEFA 2007c: 35).

Thus, the new governance of European sport features a complex horizontal dimension of stakeholder networks (García 2007: 221) that is replacing the traditional vertical channels of authority defined in the European model of sport.

**Figure 1. The transformation of football's governance**



Professional football is probably the best example of this transformation into new governing structures (see figure 1). Stakeholders such as the professional players trade union (FIFPro), the associations of top football clubs (be that the old G-14 or the newly established European Club Association, ECA) or the European Professional Football Leagues (EPFL) have now been recognised by FIFA and UEFA and incorporated to their consultation and decision-making procedures (García 2009a, 2007: 219 et seq.). The consequence of this new dimension in football governance is that authority is more diffuse and UEFA and FIFA have lost part of their power. This transformation has been assisted by the interventions of the EU in football.

## **Conclusion**

The structures of football governance are adapting to a different environment and the European Union has contributed, albeit mostly in an indirect way, to shape the new reality. Federations, which were for a long time at the centre of football's governance with their monopolistic position in the pyramid, have resisted the transformations of the European model of sport (Infantino 2006; UEFA 2007f). It has taken the added pressure of stakeholders, public authorities and sponsors for the governing bodies to accept the necessity to open the system.

Thus, the new governance of European sport is characterised by a network structure. One of the main implications of this transformation was to question the legitimacy of sports governing bodies and, subsequently, the empowerment of stakeholders such as players, clubs and leagues. However, academics also call our attention to the fact that public authorities need to be considered active actors in the networks of sport governance (Chaker 2004).

In the new governance of football, EU institutions need be considered also part of the network because they are likely to have a twofold role in the years to come. First, EU institutions (especially the ECJ and the Commission) will supervise the application EU law to football in a case-by-case basis. This is a powerful role because EU law might have considerable effects on the activities of football organisations, both at the European and the national level. Second, the Commission is happy to work now with sport stakeholders to identify areas in which its actions can add value to the work of the sporting movement. At the time of writing the European Commission is working on the implementation of the new article on sport included in the Lisbon Treaty (article 165 TFEU). It is difficult to predict the consequences of this new article for the EU sports policy,

but in terms of governance changes are unlikely. As a whole, this dual role of supervisor and partner in concrete areas is relatively well encapsulated by the concept of supervised autonomy.

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