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**The European Union and
the Governance of Football:
A Game of Levels and Agendas**

by

Borja García García

Doctoral thesis

Submitted in partial fulfilment of the requirements
for the award of

Doctor of Philosophy of Loughborough University

15 May 2008

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Abstract

The institutions of the European Union (EU) have been involved in football-related matters for more than 30 years without having a direct competence in sport. This apparent paradox is the starting point of this thesis, which investigates the origin, development and consequences of EU policies on football. The EU interventions in football issues are examined through a conceptual framework based on models of agenda-setting and multilevel governance. This thesis draws on qualitative research through primary sources, mainly semi-structured interviews and official documents.

The most important policy initiatives and decisions of the EU on football matters can be grouped under three headings: freedom of movement for workers, football broadcasting and football governance. EU institutions did not become involved in football matters by their own volition, but as a result of their responsibilities to adjudicate in legal disputes related to freedom of movement for workers and competition policy. The commercialisation of professional football especially over the last few decades generated internal conflicts in the governance of football that were only resolved with recourse to the European Court of Justice (ECJ). The EU has acted as an alternative policy venue for football stakeholders wishing to challenge the decisions of football federations. Thus, the EU and football appear as two systems of multilevel governance that have coexisted in parallel for some time but have since clashed as a result of the instrumentalisation of EU venues by football stakeholders.

The policies of the EU on football are a compromise between two different visions of the game. Whereas football was initially introduced onto the EU agenda only in economic terms through the ECJ and the Commission, the EU has subsequently developed a more holistic and nuanced vision of football that takes into account its wider social and cultural values. The intervention of the Member States and the European Parliament, at the request of football governing bodies, facilitated the further evolution of EU policies on football. As a result of all these processes, the authority of federations such as the international football federation (*Fédération Internationale de Football Association*, FIFA) and the Union of European Football Associations (UEFA) has been diffused in favour of a horizontal network of governance that includes representatives from players, clubs and leagues.

Keywords: European Union; agenda-setting; multilevel governance; football; UEFA

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This is mostly an empirical thesis. Therefore, I have to be grateful to those who have facilitated my access to primary sources. I would like to thank every one of the 44 interviewees contacted in the process of this research. Their availability was essential to complete this thesis. I am especially indebted to Alex Phillips for his hospitality during the time I spent researching at UEFA headquarters. In this respect I also would like to thank Robin Hourican and his team at UEFA's documentation centre. I also would like to dedicate a special word to those who have provided valuable-feedback on early drafts of this thesis: Ivo Belet, Pedro Velázquez, Graham Noakes and Mathieu Moreuil. In this respect I am especially thankful to Lars-Christer Olsson for his dedication and enthusiasm. Similarly, I have benefited from the assistance of Oliver Daddow, Michael Mulligan and Matt McCulloch in proof reading the final versions of my chapters.

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'Solo no puedes, con amigos sí'

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List of acronyms

ACT	Association of Commercial Television in Europe
AFE	Asociación de Futbolistas Españoles (Spanish Footballers' Trade Union)
BFR	Belgian Francs
BSB	British Satellite Broadcasting Ltd., later BSkyB after merging with Sky
BSkyB	British Sky Broadcasting Group Plc.
CAF	African Football Confederation
CDA	Christian Democratic Appeal, Dutch main Christian Democratic party (Christen Democratisch Appèl)
CEO	Chief Executive Officer
CONCACAF	Confederation of North, Central American and Caribbean Association Football
CONMEBOL	South American Football Confederation
DCMS	Department for Culture, Media and Sport (UK government)
DFB	German Football Federation (<i>Deutscher Fussbal Bund</i>)
DG	Directorate General
EC	European Communities
ECA	European Clubs Association
ECF	European Clubs Forum
ECJ	European Court of Justice
ECOFIN	Economic and Financial Affairs Council (EU Council of Ministers)
EEA	European Economic Area
EEC	European Economic Community
ELDR	European Liberal Democrat and Reform Party
EP	European Parliament
EPFL	European Professional Football Leagues
EPP-DE	European People's Party - European Democrats
ETUC	European Trade Union Confederation
EU	European Union
FA	Football Association
FAPL	The Football Association Premier League Ltd.
FIBA	International Basketball Federation
FIFA	International federation of national football associations (Fédération Internationale de Football Association)
FIFPro	International Federation of Professional Footballers' Associations
FIGC	Italian national Football Association

FINA	International Swimming Federation
FSF	Football Supporters Federation of England and Wales
G-14	Grouping of 18 of the richest and most important professional football clubs in Europe
IESR	Independent European Sport Review
IOC	International Olympic Committee
ITV	Independent Televisions Network
ITVA	Independent Television Association Limited
MEP	Member of the European Parliament
MLG	Multilevel governance
MMC	Monopoly and Mergers Commission
OFT	Office of Fair Trading
PES	Party of the European Socialists
PFA	Professional Footballers' Association
PL	Premier League
RAI	Italian public broadcasting network
RPC	Restrictive Practices Court
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the functioning of the European Union
TV	Television
TVE	Televisión Española, Spanish public broadcasting channel
UCL	UEFA Champions League
UEFA	Union of European National Football Associations
ULEB	Union of European Leagues of Basketball
UMTS	Universal Mobile Telecommunications System
URBSFA	Belgian national Football Association (Union Royale Belge des Sociétés de Football Association)

*Some people believe football is a matter of life and death,
I am very disappointed with that attitude.
I can assure you it is much, much more important than that
(Bill Shankly)*

Chapter 1. Introduction

*'If God had wanted us to play football in the clouds,
he would have put grass up there'*
(Brian Clough)

'All that I know most surely about morality and obligations, I owe to football'
(Albert Camus)

The EU and football: An apparent paradox

This thesis originates in the recognition of an empirical reality: since the 1970s EU institutions have been dealing, on quite a regular basis, with football-related issues, which traditionally used to be an area of domestic competence for national governments. According to the EC Treaty, the EU 'shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein' (Article 5.1 EC¹). Article 3 EC, however, does not cite sport as a competence of the EU, which means that no authority has been conferred on the EU to develop any kind of policy on sport-related matters. Thus, the EU has no **direct** competence in the field of sport.

Despite this lack of direct competence, the interventions of EU institutions in football-related matters have increased in the last decade, especially after the 1995 ruling of the European Court of Justice (ECJ) in the Bosman case. Football is now part of an EU agenda more than ever before. It has featured at all institutional levels in the last year, from the ECJ (Charleroi case, see chapter 6), to the European Parliament (Report on the Future of Professional Football in Europe, see chapter 6), the Commission (White Paper on Sport, see chapter 6; Competition Policy investigations, see chapter 5) and the EU sports ministers (Independent European Sports Review, see chapter 6). The presence of football issues on the EU agenda, in the light of the above, is neither temporary nor sporadic. Furthermore, it is unlikely to go away after the inclusion in the recently agreed EU Reform Treaty of a direct competence on sport for the Union for the first time, even

¹ Treaty Establishing the European Community, Consolidated version, OJ C 325 of 24 December 2002.

if it is at the lowest level of supporting competencies.² Where does all this interest of EU institutions in football originate? What are the reasons for this apparent paradox whereby the EU has entered into an area where it has no direct competencies? It is legitimate to ask about the reasons that underpin the interest of EU institutions in football and the way in which they have developed their policies on the matter.

Why football?

Academic attention to the EU and football (or sport in general) from a political and/or policy-making perspective has tended to be quite scarce.³ This is unfortunate, for football represents a profitable area of study which casts light on the characteristics of the EU as a political system. This thesis investigates why the EU got involved into football, but in doing so it also analyses why and how new issues are incorporated onto the EU agenda. Reviewing the main EU football-related decisions also helps us understand EU's inter and intra-institutional relations, as well as the impact of non-institutional actors on EU policy-making.

So, why study football in particular? The first way to make the case for football as an area of research relies on acknowledging the major economic and social importance of the game in Europe. In the last ten to fifteen years the development of sport as an

² If the provisions of the Reform Treaty are finally ratified and enter into force, Article 165 of the *Treaty on the functioning of the European Union* (TFEU) shall concede to the EU competences in the area of sport to 'contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function' (Article 165.1 TFEU). EU action shall be aimed at 'developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen' (Article 165.2 TFEU). However, it is necessary to point out that this article explicitly precludes any harmonisation of the laws and legislation of the Member States in this area (Article 165.4 TFEU) and that EU competencies in the area of sport will be restricted 'to carry out actions to support, coordinate or supplement the actions of the Member States' (Article 6 TFEU). The competencies on sport attributed to the EU in the Reform Treaty are, thus, located at the lowest level of the EU competencies.

³ Richard Parrish's *Sports Law and Policy in the European Union* (Parrish 2003a) is the most comprehensive attempt to date to build a theory-based explanation of the development of a EU policy on sport. Osvaldo Croci (2007) has recently contributed a second attempt to study and explain EU sport policy from a governance perspective. Croci's account is necessarily less detailed than Parrish's due to space restrictions (Croci's contribution is a chapter in an edited book, compared to Parrish's single authored monograph). Croci argues that the policy of the EU in sport 'can be better portrayed as the result of a process of governance by negotiation with elements of competition and cooperation' (Croci 2007: 26).

industry has reached peak levels: ‘A study presented in 2006 suggests that sport in a broad sense generated value-added of €407 billion in 2004, accounting for 3.7% of EU GDP, and employment for 15 million people or 5.4% of the labour force’ (European Commission 2007b: 11). Even with a narrower definition of the sports sector, the European Commission found that it accounted in 2004 for some 800,000 jobs in the EU-25;⁴ since 1980 the total number of jobs classified under sporting activities has tripled (European Commission 2007d: 24). The social importance of football and other sports in Europe should not be underestimated either. Sport plays a significant role in health-promotion, education, training and social inclusion and networking (European Commission 2007d: 7). The European Commission estimates that ‘10 million volunteers in about 700,000 sports clubs through the EU’ are involved in sport at the social level (European Commission 2007d: 14). It is fair to affirm that sport represents a vast and dense social network for European citizens. Moreover, one should not forget the social implications for those not actively engaged in sport, but just interested from the spectator, fan or supporter point of view. That would surely increase the numbers.

Unfortunately, there are no disaggregated data to help us to single out the contribution of football to this economic and social development, but it seems safe to affirm that football is probably the most popular team sport throughout Europe. It is perhaps not far from the truth either to assert that football is one of the main factors in the economic and commercial development of professional sport as an industry. Just a glance at recent figures on the value of television rights for top professional football competitions gives an idea of the economic importance of football.⁵ For example, the English Premier League has recently received £1.7 billion for the broadcasting rights for live games in the domestic UK market for three seasons (Gibson and Milmo 2006); it is expected that the revenue from overseas broadcasting rights for the same period will eventually exceed the £1.7 billion mark (Wilson 2007). Moreover, the interest in European professional football is not contained within the EU’s borders: ‘English Premier League games are broadcast to 600 million homes in 202 countries across Europe, Asia, Australasia, Oceania, Africa, the Americas and the Middle East’ (Wilson 2007).

⁴ This covers only the group identified as ‘operation of sports facilities and other sports services’ (European Commission 2007d: 25).

⁵ Chapters 2 and 5 also provide details about the economic development of football in Europe (for a detailed analysis of the macro and micro economic relevance of professional football in Europe see Deloitte 2006b, 2006a).

The relevance of football in social and economic terms could justify this study just by itself. However, football also has important particularities that make it worthy of greater academic attention. It is a fact that the involvement of EU institutions in football-related issues has grown exponentially in the last decade despite the lack of direct competence. The increasing impact of EU decisions on football prompted a serious reaction from the game's governing bodies, as this thesis points out.

Both these developments justify the choice of football. Rather than being just another policy case study which could be left to enthusiasts or football fans, the study of EU policy towards football can help explain wider issues in EU policy-making. Some of the remarkable features of EU intervention in football include, among others, the role of the ECJ as *policy instigator* or the apparently contradictory reactions of the Commission to the ups and downs of football on the EU agenda. Football-related issues have also seen the intervention of every institution of the EU at one time or another. This creates the opportunity to analyse both inter and intra institutional dynamics. A particular characteristic of football is its multilevel governing structure, as explained in chapter 2. This creates a number of stakeholders subject to the consequences of EU decisions in this area. Governing bodies, clubs and players all try to have a say in EU policies towards the game. Thus, the role of non-governmental actors in shaping (or at least trying to shape) the approach of EU institutions to football is a valuable but routinely overlooked area for inquiry. In this area we see issues that have long interested scholars of the EU: creeping competencies, inter-institutional conflict, dialogue with civil society, to name but a few. Studying the involvement of EU institutions in football-matters represents a clear potential to further our understanding of EU politics.

Research questions

The preceding paragraphs have outlined the relevance of football as an area for research; now, it is necessary to consider the objectives of this thesis. This research can be better conceived as problem-driven in the sense that it tries to explain an apparent empirical paradox. The research questions emerge from the observation of the topic

studied, rather than being fundamentally deduced from a theoretical framework. Four research questions guide this thesis throughout:

- **RQ₁**: Why and how did the EU get involved in football related matters?
- **RQ₂**: What is the policy of the EU institutions towards football and football governance?
- **RQ₃**: What role/influence have EU institutions and football stakeholders played in shaping the EU policy towards football?
- **RQ₄**: What has been the impact of EU policies and decisions in the governance structures of football?

RQ₁ aims at understanding the routes by which football reached the EU agenda in the absence of a direct treaty competence for it. In more abstract terms, this question leads to the dynamics behind the management of the EU's agenda. Concepts drawn from agenda-setting and policy-making models will be utilised to try and make sense of the involvement of the EU in football matters. Hopefully this will enhance the thesis' contribution to knowledge, for the application of agenda-setting models to study EU decision-making has been scarce to date, as chapter 3 explains.

RQ₂ is fundamental to any policy-focused research. It aims at finding out the main decisions of EU institutions that have shaped their approach towards football over the years. Any study of policy-making needs to present and analyse critically the decisions of the EU institutions in the area of research; this is done in chapters 4 to 6.

RQ₃ investigates the nature of policy-making in the EU. It discusses the power of each component of the EU institutional framework and the respective ability of each to shape a policy. It also asks about the influence of outsiders on the EU system: football organisations in this case. The research question interrogates the contribution of each actor to the development of the EU policy on football. However, while doing that it is hoped that more general conclusions about EU policy-making dynamics can be drawn.

RQ₂ and RQ₃ have a strong empirical focus, but theoretical concepts drawn from agenda-setting models shall be used to structure the analysis of the empirical findings.

Finally, RQ₄ refers to the consequences of the EU's interventions into football matters. It seeks to identify the reactions of football federations, leagues and clubs to the increasing involvement of European institutions in their sport. This research question investigates football's relations with the EU institutions. It identifies and analyses, in addition, the transformation of the governing structures of football as a result of the intervention of EU institutions.

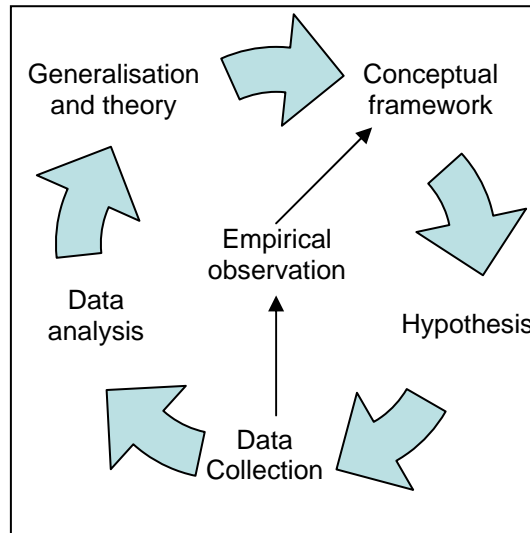
Therefore, this is a thesis about the origin, evolution and consequences of the intervention of EU institutions in football-related issues. This is EU-focused research that takes onboard the case of football. In more scientific terms, the governance of football is the dependent variable and EU policies/decisions are considered the independent variable(s). Consequently, the thesis is structured around the main decisions that have shaped the approach of EU institutions towards football over the years. These EU actions are the driving force of the research and, as such, they provide structure for the remainder of the thesis.

Research design and methodology

It has been pointed out above that this thesis originates in an empirical observation. In this sense, this research is inductive in nature: 'Inductive research involves identifying research questions and issues from the process of data collection' (Greenwood 2002: 29). This thesis aims to draw conclusions about EU institutional and agenda-setting dynamics; yet, it does not intend to construct a fully fledged theory or model of the European Union's policy-making. In this respect, the thesis is closer to the 'research-before-theory model' than to the 'theory-before-research model' (Berg 2007: 23). Consequently, the research design in this thesis is closer to the so-called 'research wheel', where the research process starts with empirical observation which leads to the development of research questions and the proposal of a conceptual framework (Burnham *et al.* 2004: 45). The diagram below shows the interaction between empirical observations, a conceptual framework and data collection (Figure 1). Nevertheless as

Burnham *et al.* (2004: 45) point out, ‘research is a complicated process (...) uncertain and never straightforward as these ideal typical models of the research process suggest’.

Figure 1. The research wheel model of the research process



Source: Burnham *et al.* 2004: 46

The role of the conceptual framework in the thesis is twofold. First, it structures and guides the empirical observation of the EU’s policy on football. The conceptual framework and the research design have informed the choice of the EU decisions that are included in the analysis. Second, the conceptual framework provides the *tools* for a concept-based analysis of the information gathered. It will structure the analysis of the empirical data, providing focus for the enquiry and facilitating the extraction of generalisable conclusions. Therefore, this thesis should be best conceived as theoretically and methodologically-driven empirical research.

Given the nature of the thesis and the research questions, this thesis uses a qualitative methodology. This fits well with the focus of the enquiry. The thesis asks questions about *how* and *why* things happened, rather than *how much* or *how many*, hence justifying a choice of qualitative methods. This thesis has been researched using a mixture of primary sources and secondary literature. This has included qualitative semi-structured interviewing and the analysis of written sources: academic literature, official documents and press reports.

Selection of cases and structure

This thesis analyses the EU interventions in football-related matters. Primary and secondary sources have been used to research the development of the EU's policy on football. Table 1 details the types of written documents and contributions consulted.

Table 1. Documentary sources

Primary sources	Secondary sources
Official documents and press releases of the European Commission	Scholarly journals and books
Verbatim reports of debates in the European Parliament	Chapters and contributions to collective books
European Parliament resolutions	Law reviews
Presidency conclusions of EU sports ministers' meetings	Doctoral dissertations
European Council conclusions	Conference papers
Parliamentary questions to the Council and the Commission	Reports of conferences and research institutes
Judgements of the ECJ	
Commission's decisions on Competition Policy investigations and documents relating to informal settlements, such as letters of confort or exchange of informal letters	
European Commission's Sports Unit website	
Press releases of football organisations	
Websites of football federations and other stakeholders	
Official and working documents of UEFA	
Newspaper articles and other media	

Analysis of these documents served three purposes. First, to map the decisions of EU institutions on football-related matters. Second, to research the progress and outcomes of the different dossiers. Third, to establish the positions and reactions of the affected institutions and football organisations in each case. Academic contributions have also provided in-depth analysis of the various decisions. Thus, the review of documents through primary and secondary sources as detailed above revealed a number of decisions in which EU institutions got involved in the regulation of professional football over the years. The criteria used to select the cases to be studied in the thesis were as follows:

- Relevance of the dossier in the institutions' agendas.
- Impact on the development of the EU's policy towards football.
- Consequences for the governing structures of football.
- Actors involved.
- Information available.
- Time frame.
- Explanatory powers of the case within the thesis' wider framework.
- Original contribution to knowledge.

The result of this selection is a total of 15 policy initiatives, ten of which form the central backbone of the thesis in chapters 4 to 6. These policy outputs have been grouped under three headings: freedom of movement, broadcasting of professional football and the governance of the game. Each area is dealt with in a separate chapter (chapters 4, 5 and 6). These three areas include the most important decisions of EU institutions in football-related matters. To facilitate navigation through the thesis, it is advisable to provide an overview of the decisions that will feature in chapters 4 to 6. Table 2 distributes the dossiers analysed under each one of the three headings mentioned above. Table 3 details the timeframe and actors involved in each case.

Table 2. Policy initiatives and decisions classified within three areas of research

Freedom of movement (Chapter 4)	Broadcasting of football (Chapter 5)	Governance of football (Chapter 6)
Bosman ruling	UEFA broadcasting regulations	Independent European Sport Review
International Transfer System	Sale of TV rights for UEFA Champions League	EP resolution on the future of professional football
UEFA rules on locally-trained players	Sale of TV rights for the English Premier League	Commission White Paper on Sport
		Charleroi/Oulmers
Other cases mentioned to provide context⁶		
Antecedents to Bosman (<i>Donà</i> , 3+2 rule, EP Van Raay report)	Sale of TV rights for other leagues: German Bundesliga	Future developments
Amsterdam and Nice Declarations on Sport		

The main bulk of the research extends from the well-known Bosman case (which began in 1990 although the ECJ ruling did not come until 1995) and the Commission investigation into UEFA's broadcasting regulations (first complaint to the Commission in 1989, formal settlement in 2001, see chapter 5) to the adoption of the European Commission White Paper on Sport in July 2007 (see chapter 6). However, to provide the necessary context, there are also less detailed references to cases before 1989, especially those in the area of freedom of movement for footballers that preceded the Bosman ruling of 1995 (i.e. *Donà* in 1974 and the 3+2 rule of 1991, see chapter 4 for details). Similarly, the closing chapters also refer to some very recent developments after the adoption of the White Paper, such as the agreement between UEFA, FIFA and professional football clubs to create a new European Clubs Association (see chapter 6).

⁶ These do not constitute the core focus of the chapters, therefore they are not analysed in detail.

Table 3. Summary of cases and decisions analysed in this thesis

Policy areas	Cases/decisions	Time frame	EU actors involved	Football actors involved
Freedom of movement for players (Chapter 4)	Bosman	1990 – 1995 (Ruling)	ECJ European Commission	Jean Marc Bosman Bosman’s legal team FIFPro FIFA, UEFA, National FAs
	International transfer system	1996 – 2001 (agreement) – 2002 (formal decision)	European Commission National governments (especially UK and GER)	FIFA, UEFA FIFPro Representation of clubs (G-14) and leagues
	UEFA rules on locally trained players	Late 2003 (consultation) - 2005 (adoption) - 2007 (ongoing implementation)	European Commission European Parliament EU sports ministers	UEFA Internal consultation with other stakeholders
Broadcasting of football (Chapter 5)	UEFA broadcasting regulations	1989 - 2001 (formal decision)	European Commission (DG Competition)	UEFA National FAs
	Sale of TV rights for Champions League	1999 - 2002 (agreement) - 2003 (formal decision)	European Commission (DG Competition)	UEFA
	Sale of TV rights for English Premier League	2001 – Nov. 2005 (agreement) – March 2006 (formal decision)	European Commission (DG Competition) UK government	English Premier League
Governance of football (Chapter 6)	Independent European Sport Review	Sept. 2005 (UK presidency of EU) - 2006	EU sports ministers	UEFA, FIFA Other stakeholders consulted
	EP resolution on the future of professional football	Dec. 2004 - March 2007 (adoption in plenary)	European Parliament	Wide consultation with football stakeholders
	Commission White Paper on Sport	2005 - July 2007 (adoption) – ongoing implementation	European Commission (DG Education and Culture)	Wide consultation with football stakeholders
	Charleroi/Oulmers	2005 – January 2008	ECJ	FIFA, UEFA, G-14

With the selection of the cases and their distribution under three policy areas, this thesis adopts a case study research strategy. Robert Yin (2003: 5-7) points out that case study research is best recommended when (i) the research questions are *how* or *why* questions, (ii) there is no control over events and (iii) there is a focus on contemporary events. This thesis meets all three criteria. A case study is defined as an empirical enquiry that focuses on ‘contemporary phenomenon within its real-life context’ (Yin 2003: 13). Case study research ‘relies on multiple sources of evidence’ and benefits from the development of theoretical propositions to guide data collection and analysis (Yin 2003: 14). This choice of research design is also justified because the limited number of actors involved and the identifiable range of decisions in which they interact make it credible to construct a case study as a manageable research design, both in terms of time and methodology.

This thesis has also a longitudinal component in the study of EU institutions’ involvement in football, for the selected decisions extend over a period of 18 years. This is primarily research on policy-making in the EU and, consequently, it is necessary to range over a number of years to analyse the origin, developments and consequences of the EU policy towards football. Although one can certainly focus on one particular stage of decision-making, it is only natural for policy studies to cover an extended period of time. Longitudinal studies have the advantage of ‘improving our understanding of causal influences over time’ (Bryman 2001: 47). This is not, however, a traditional longitudinal study such as a panel or cohort study. This is rather a longitudinal element within a case study (Bryman 2001: 51) or, as Yin puts it, a ‘longitudinal case study’ that analyses the same issue [the evolution of EU institutions’ policies towards football] at two or more different points in time (Yin 2003: 42).

The structure of the thesis to include three policy areas might lead one to question whether it features a single or multiple case studies (Yin 2003: 39-53). On the one hand, one can understand the structure as a single case study (EU policies on football) with three different ‘units of analysis’ (Yin 2003: 42). On the other hand, it is possible to consider that the thesis is composed of multiple case studies (three), each one crystallising around different units of analysis (individual decisions). However, this is probably more a semantic distinction than a real methodological dichotomy, because

both single and multiple case studies are ‘variants within the same methodological framework’ (Yin 2003: 46). The crux of the matter is that this thesis researches the origin, development and consequences of EU interventions in football matters over a period of 18 years. To do so, EU football-related decisions and initiatives, once identified, are grouped under three headings, whether one considers these areas as individual case studies or policy areas within a single case study.

Research interviews

The review of primary and secondary documents has served the purpose of identifying decisions and policy initiatives relevant for this thesis. The interpretation of these documents has provided information on the development of these cases as well. However, research interviews constitute the main source of evidence in this respect. Interviews are normally ‘essential sources of case study information’ (Yin 2003: 89) and standard procedure in case studies.

A total of 44 persons were interviewed between January 2006 and July 2007. Interviewees were selected on the basis of the policy decisions singled out for exploration (see Table 2 on page 10 and Table 3 on page 11 above). Once the cases were selected and distributed in the three policy areas, the objective was to identify individuals that could provide information about these dossiers. The sample combined targeted selection of individuals and the snow-ball method. The snow-ball method consists of asking interviewees to recommend other individuals that could be included in the method to make it more complete and representative. The small size of the EU-football policy community makes it possible to construct a representative sample for qualitative analysis with targeted selection of officials. Individuals were first included in the sample using the following four criteria:

- Knowledge and expertise about each policy decision.
- The level of seniority to elaborate on the organisation/institution’s perception of the EU involvement in football.
- The sample’s overall level of representation (including the majority of actors involved to guarantee contrasting views).
- Triangulation.

After the selection of a first group, the snow-ball method was used to strengthen and complete the sample. Interviewees were asked to identify individuals inside and outside their own organisation/institution that could provide further information and/or give a contrasting view of the interpretations offered by target interviewees.

Interviews covered representatives of EU national governments, present and past Commission officials, Members of the European Parliament, present and past UEFA officials, representatives from professional clubs and national leagues, officials of national FAs, representatives from footballer's trade unions, representatives from supporters' organisations, and other specialists in the field, such as academics and lawyers. Table 4 summarises the distribution of interviewees according to their affiliation.

Whilst the coverage of the sample is fairly extensive, it is necessary to acknowledge some weaknesses. FIFA (the world's governing body for football) and the G-14 are not represented because their officials rejected the interview requests. The case of FIFA was resolved with a combination of newspaper articles and FIFA's press releases, as well as academic accounts. The positions of the G-14 as an organisation were mapped using a mixture of newspaper articles and press releases. Moreover, the sample includes representatives from European leagues, some of whose members belong to the G-14 as well. Whilst this does not fully articulate the G-14's positions as an association, it is considered that the participation of top professional clubs is covered in the sample, albeit with some weaknesses. In any case, the importance of the G-14 as an organisation has recently been reduced, as is explained in chapter 6. Finally, it is necessary to acknowledge the slim representation in the sample of professional footballers. Although the sample includes two representatives from FIFPro (the international trade union for professional footballers), they are legal advisers who worked in the past for the organisation, although they still have certain links with the trade union. By the same token, it may appear that there is an over representation from UEFA, the European Commission and the European Parliament. This is consequence of the nature of the cases selected for analysis and the actors involved in those cases.

Table 4. Distribution of interviewees by affiliation

Organisation	Number of interviewees
Governments of EU Member States	3
European Commission	9
Members of the European Parliament	6 (5 MEPs and 1 policy adviser)
UEFA	10
FIFPro	2
EPFL	1
National FAs	4
English Premier League	2
English Football League	1
Football supporters' organisations	2
IOC	1
Other sports organisation (non football)	2
Others	1

A list of interviewees including names and affiliation can be found following the bibliography, at the end of this thesis. To guarantee the interviewees' right to anonymity (see below) quotes from interviews are reported in the thesis according to interview numbers assigned. A full list of interviews with interview numbers, interviewees' names and affiliation, as well as date and place of the interviews has been provided to the examiners of this thesis.

Semi-structured interviews

Interviews were undertaken between January 2006 and July 2007. Most of them were concentrated in two particular periods. A first group was conducted in Brussels between late March and the end of June 2006. A second major group of interviews was conducted in Switzerland in February 2007. Some other interviews took place in Madrid

and the UK before, in between and after these periods to accommodate the interviewees' schedules. Interviewees were first contacted by letter or email. They were informed about the thesis' outline, the research objectives, the issues they would be interviewed on and the type of questions they could expect. Following standard ethical guidance in the use of interviews as research methods (see for example Burnham *et al.* 2004: 253-262; Bryman 2001: 479-483) and Loughborough University's ethical guidelines (Loughborough University 2006), interviewees were assured of the following rights:

- Anonymity in the treatment of the information.
- Not to be quoted without permission.
- Right to withdraw their permission to use the interview as source of information at any time.
- The information gathered in the interview to be used only for the purpose of academic research; it will not be passed to third parties without prior permission of the interviewee.
- 'Off the record' will be respected.
- Analysis based on their information will be subject to triangulation.

All interviewees were explicitly asked for permission to use the data in the elaboration of this thesis and related academic work, to which they all agreed. They were informed about who will own the data and the final result of research as well as the methods used to store the information.

Interviews were semi-structured face-to-face conversations of around one hour each. Interviews were flexible, as qualitative interviewing looks for rich and detailed answers with an interest in the interviewee's point of view (Bryman 2001: 313). Semi-structured interviews consist of a list of questions or fairly specific topics, but where the interviewee has a great deal of leeway in how to reply; questions not initially included in the questionnaire might be asked as the interview progresses, but normally all of the questions prepared will be asked and a similar wording was used from interviewee to interviewee (Bryman 2001: 313). Interviewees were asked five sets of questions:

- About the motives that have facilitated the rise of football issues on the EU agenda.
- About their general perception of the European Union's involvement in football and their strategy to deal with it or about football bodies' reactions to the interventions of the EU (depending of the interviewee's affiliation).
- About the dialogue with EU institutions/football organisations (depending of the interviewee's affiliation).
- About the transformation of football's governing structures.
- About their specific role in individual cases, such as the Bosman case or the negotiations with the Commission on the selling of television (TV) rights.

Particular care was put to formulate the questions in a neutral way in order to avoid leading the interviewee. Logically, the questions were different depending on the interviewee's affiliation, although they still conformed to the five areas described above.

Triangulation

Interviews were mainly aimed at obtaining information about strategies, perceptions, formal and informal roles, relationships or processes. As such, they form a major part of this research. However, it is important to be aware that what people say in interview is not the whole picture (Gillham 2000: 94). Moreover, it is clearly not advisable to base any piece of research entirely on elite interviewing (Burnham *et al.* 2004: 206). Burnham *et al.* (2004: 274) point out the importance of using more than one method or source of data in qualitative research, a principle that is known as triangulation. Indeed, case study research is defined as relying on multiple sources of evidence with data that converge in a triangulating fashion (Yin 2003: 14).

The approach to triangulation in this thesis is threefold. Firstly, a combination of methods and sources of evidence were used. Interviews and written documents reinforce one another to produce a stronger set of data on which to base analysis. Secondly, the sample and the elaboration of the questions tried to include as many sides as possible for each policy initiative or decision researched. The preparation of the interview guides included questions to confront versions obtained in earlier interviews or in written

documents. This was done in a neutral way. That is to say, interviewees were asked about a given issue, but it was not revealed that there were other accounts about the same issue. Thirdly, a small group of six key interviewees was selected for a further process of respondent validation (Bryman 2001: 273). The aim of this process was to seek corroboration of the account this research arrived at. This was undertaken once the data had been analysed and the chapters drafted. The individuals contacted had been previously interviewed in the process of this research. They were representatives of UEFA (2), national FAs (1), Commission (2), and the EP (1). These selected people were sent relevant draft chapters of the thesis as well as the conclusions. They were asked to check:

- Whether the account of the facts was correct to their understanding.
- Whether they agreed with the conclusions or not.
- Whether they thought there was any imbalance in the research.
- Whether they wanted to provide any extra feed-back.

This process of respondent validation has been successful. The respondents agreed that the thesis accurately portrays the evolution of the EU involvement in football-related matters and they generally agreed with the analysis.

Limits of the thesis

This thesis studies the involvement of EU institutions in football matters and the consequences of their activities. It makes use of concepts drawn from models of agenda-setting and multilevel governance to structure the presentation and analysis of the empirical findings. This introductory chapter has already outlined the importance of football as a subject of study and the relevance of this thesis' contribution to knowledge. The thesis contributes to enhance our understanding of EU policy-making through the study of football-related decisions. The thesis is also relevant to both academics and practitioners to understand the role of EU institutions in the governance of football and their approach to the game. Finally, this thesis has a strong empirical focus with especial attention to perceptions, processes and opinions.

Yet, there are some limitations that need to be declared from the outset. Firstly, there is the time frame. As explained above, the thesis studies the involvement of EU institutions in football matters from the Commission investigation of UEFA's broadcasting regulations and the Bosman case up to the adoption of the White Paper on Sport in July 2007. Any research exercise needs to define boundaries, otherwise it will continue indefinitely. The White Paper is a suitable cut off point because it takes a holistic approach to sport and the consultation preceding the adoption of the document was wide ranging and inclusive; moreover, the White Paper brings together similar policy initiatives by EU sports ministers and the European Parliament (see chapter 6).

Secondly, there is the geographical scope. Although football is a global sport, this thesis is about EU intervention in football matters. Therefore, the geographical scope is mainly confined to the EU. However, it is clear that EU law and policies have consequences outside the EU borders. This is also true in the case of football. Perhaps it is more accurate to consider this thesis' geographical scope as being the EU but in a broader European context. This is so due to several reasons: first, because some provisions of the EU Treaties are also applied in countries outside the EU, such as Iceland, Norway and Liechtenstein as members of the European Economic Area; second because EU association agreements with third countries create rights for nationals of those countries (see chapter 4); and third because UEFA membership extends to 53 national FAs, 23 of them located in countries outside the EU/EEA area (see chapter 2 for details) therefore any EU regulation of UEFA's activities is prone to have a wider effect.

Thirdly, this thesis researches the consequences of EU policies for the governance of football, but it does not explore the effects of these decisions for the game itself. For example, it is outside the scope of the thesis to debate whether the freedom of movement for footballers recognised in the Bosman ruling has been counterproductive for football or not. It is also outside the scope of the thesis to analyse whether there is more or less competitive balance in European football as a result of the evolution of the professional game in the last decade. As important as these or similar debates might be, they are not part of this research. This thesis focuses on the transformations of football's governance structures. It is interested in the structures behind the game itself and the relationships of power and legitimacy among stakeholders.

Fourthly, the thesis focuses on professional football. Chapter 2 explains the multiple dimensions of football, from the amateur game to the professional. Football, like other sports, brings all these dimensions together. This study, however, deals with the professional level only. For stylistic reasons, however, the word football is also used as a substitute of ‘professional football’.

Structure

This thesis investigates the origins, development and consequences of the EU’s intervention in football-related matters. It explores the initiatives and decisions of EU institutions between the late 1980s and 2007. In order to structure the analysis, the thesis adopts a conceptual framework based on models of agenda-setting and multi-level governance. The thesis has selected the main policy initiatives and decisions of EU institutions concerning football according to the criteria explained above. These decisions have been grouped under three headings that structure the thesis: freedom of movement for footballers; competition policy and the broadcasting of football; and the governance of football. There is also a chronological component in the order chosen for the presentation of these three areas.

Following this introduction, **chapter 2** provides the necessary background information to fully understand the empirical chapters of the thesis. Chapter 2 presents the historical development of football from an amateur game in the 19th century to a fully professional industry in recent years. This chapter goes on to explain the governance structures of European football and the institutional framework of the European Union as two multi-level systems of governance that co-exist in parallel. The chapter introduces the actors that have helped shape the EU’s policy on football.

Chapter 3 presents the conceptual framework that informs the analysis of the empirical information presented in the thesis. This is not the construction of a fully fledged theory, but rather the use of concepts to provide method and structure to the analysis of the development of the policy in question. The framework explores concepts from agenda-setting and multi-level governance.

Chapter 4 starts the empirical part of the thesis with an examination of the application of the EU's principle of freedom of movement for workers to professional footballers. The chapter first analyses the precedents that led to the well-known Bosman ruling of the ECJ. It secondly analyses the judgement itself. Finally, it continues studying the Commission investigation into the legality of FIFA's international transfer system and the recent introduction by UEFA of rules on locally-trained players.

Chapter 5 focuses on the application of EU competition law to the regulation of professional football broadcasting. The chapter deals with European Commission investigations into the activities of football organisations. First, it looks at the investigation on the legality of UEFA broadcasting regulations adopted in the late 1980s. Second, the chapter presents the Commission investigation into the sale of TV rights for UEFA Champions League. Finally, this chapter studies the investigation of EU competition authorities into the sale of television rights for the English Premier League.

Chapter 6 moves the focus to a different area: the governance of football. It is the most contemporary of the three empirical chapters. First, it analyses the Independent European Sport Review, an initiative launched by British Sports Minister Richard Caborn during the UK presidency of the EU in 2005. Second, the chapter looks at the European Parliament resolution on the future of professional football, voted in plenary in March 2007. Third, this chapter considers the European Commission White Paper on Sport, adopted in July 2007. Finally, the chapter briefly considers the implications of the so-called Charleroi case, which was set for a preliminary ruling of the ECJ but which was finally withdrawn in January 2008.

Finally, **chapter 7** concludes the thesis with a holistic analysis of the decisions presented in chapters 4, 5 and 6. The analysis is structured around the four research questions outlined above in this introduction.

Chapter 2. Football and the EU: The history of two systems of governance

*'Football is a simple game; 22 men chase a ball for 90 minutes
and, at the end, the Germans always win'*
(Gary Lineker)

*'The EU is just a regional organisation, which does not even
represent all the countries in the European continent'*
(Joseph Blatter)

Introduction

This thesis intends to unravel the influences of European Union (EU) policies on the governance of football. To achieve fully this objective it is necessary, first, to understand the structures governing the game. Prior to that, the first step is to define the multi dimensional nature of football. The EU, as will be shown in chapters 4 to 7 of this thesis, has struggled to find a common and coherent approach towards football due in great part to the multidimensional nature of the game.

This chapter introduces the reader to the complex reality of football, its governing structures and the political system of the EU. It is intended to provide basic information that will facilitate understanding of the remaining chapters. The chapter is divided into four sections. First, it starts by discussing a definition of sport and its different dimensions. The focus is put on the tensions between amateur sport and the increasing commercialisation of professional sport, a tendency that can clearly be seen in the case of football. Second, the chapter turns to the particular case of football with a brief historical overview of the development of the game. It shows how football started as the sport of the working classes in urban England during the industrial revolution and developed into an entertainment product in the 21st century. Third, the chapter presents the governance structures of football and identifies the stakeholders involved in the government of the game. Finally, the chapter sketches the EU's political system and

institutional structure with special attention to these parts of the EU that have played a relevant role in the EU's involvement in football matters.

A definition of 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. This definition is also used by the European Commission in its recently adopted White Paper on Sport (European Commission 2007b: 1). The Council of Europe defines sport as:

All form of physical activity which, through casual or organised participation, aims at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels (Council of Europe 1992: Article 2.1).

In the Council of Europe's definition one can find a twofold role for sport. On the one hand, sport has a social function. This approach is consistent with the Olympic Charter's fundamental principles, which states that sport, 'combining in a balanced whole the qualities of body, will and mind', should be 'at the service of the harmonious development of man, with a view to encouraging the establishment of a peaceful society concerned with the preservation of human dignity' (International Olympic Committee 2004: 9). This view considers sport as an objective in itself and it is better identified with amateur sport, where economic wealth is not the primary objective. In the Council of Europe's definition (above), the amateur dimension of sport is referred to as physical activity aimed at improving fitness and forming social relationships (Council of Europe 1992: Article 2.1). On the other hand, the Council of Europe's definition also emphasises that sport is a competitive activity aimed at obtaining the best possible results at all levels. Certainly an amateur sportsperson might aim at obtaining the best results, but this reference can be best identified with 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 former aiming at maximising revenue and the latter aimed at maximising sporting results in competition.

One of the most difficult points for those involved in the regulation and governance of sport is to decide on the optimum relationship between the professional and amateur dimensions of sport. The European Commission attempted in 1998 to find the links between the two dimensions of sport when it defined the *European model of sport* (European Commission 1998). According to the Commission, the European model of sport is characterised by having a grass-roots approach, a commitment to national identity and the participation of national teams in international competitions:

The development of sport originates from the level of clubs. They organise sport on a local level. Sport traditionally has not been linked to a state or a business. This is illustrated by the fact that sport in Europe is run mainly by non-professionals and unpaid volunteers. They are responsible for the operation of sport in Europe. For them sport is a pastime and a way of contributing to society (...) Sport represents and strengthens national or regional identity by giving people a sense of belonging to a group. It unites players and spectators giving the latter the possibility of identifying with their nation. Sport contributes to social stability and is an emblem for culture and identity (European Commission 1998: 4).

The grass-roots approach to sport in Europe also features a system of promotion and relegation in which teams from the lower levels have the theoretical possibility of reaching the top echelons of their sport. This, in turn, creates a strong link between the amateur and professional levels of sport. Thus, the European model of sport is based on a solidarity principle, according to which professional sport's objective is not only to obtain economic benefits but also to maintain the social and educational values of amateur sport (European Commission 1998, 1999a).

However, in the recently adopted White Paper on Sport the Commission has chosen to retract its earlier vision outlined around the concept of the European model of sport. The Commission is of the opinion now that it is 'unrealistic' to try to define a single European model due to the highly heterogeneous structures of sport across the continent (European Commission 2007b: 12; 2007d: 40-41, see chapter 7 for a detailed analysis of the White Paper and the Commission's new opinion on the European model of sport). Yet, in light of these distinctions, it can be argued that there are four different dimensions of sport, regardless of whether it is considered a European model or not:

- **Sport for all:** Physical activity anyone can do for his or her own leisure or benefit. It is the dimension of sport in which the focus is on the participants and the benefits that practising sport may have for the population, in terms of health, personal and social development, and integration.
- **Amateur sport:** It is very much similar to the above because it is leisure oriented. It adds to ‘sport for all’ the characteristic of being competitive and organised. There are many sports that, unlike football, have not developed commercially and which remain amateur in nature. Sports like curling, fencing, or archery belong to this category. However, it is important to note that almost every sport has an amateur level, even football.
- **Elite-amateur sport:** This dimension is difficult to define because it is halfway between amateur and professional sport. It includes sports in which there are no large amounts of money involved, hence making it difficult for the sportspersons to make a living out of it. Examples of it could be less popular sports, such as rowing, swimming or badminton, in which the top performers dedicate a great amount of time, but they normally do not earn enough money unless they are subsidised by public authorities to compete in international competitions. This can also be the case for the lower categories in non-league football.
- **Professional sport:** This is the polar opposite of ‘sport for all’. It is sport as a business, a pure industry and economic activity. It is practised by well-paid professionals, who earn large sums of money, especially in football. It is normally organised as a competing entertainment, with large media coverage and public attention. It is what one might call *sportainment*, a fusion of sport, industry and entertainment. In football, Europe’s top football leagues, the FIFA World Cup or the UEFA European Championships are a clear example of this.

These four dimensions are not mutually exclusive; they are points in a continuum. Almost every sport has a vertical axis that goes from the *sport for all* to the *sportainment*. This is certainly the case of football, which has evolved from amateurism to total professionalisation. The empirical chapters of the thesis will come back on several

occasions to the connections and disparities between the different dimensions of football. The next section explains, albeit briefly, the historical evolution of football; it emphasises especially the commercialisation of the game in the last few decades because this will be an important concept in the remainder of the thesis.

The history of football: From leisure to business

The origins of football as a game are difficult to trace, for ‘characters have been depicted kicking a ball in Egyptian relics, religious paintings, Grecian vases’ and it even ‘existed in ancient China and Japan, in the Americas before the Europeans arrived, and in most European countries long before it became officially recognised’ (Murray 1994: 1). It is not until the fourteenth and fifteenth century that much clearer references to a game similar to football being played in England appear (Marples 1954: 24). At the beginning of the nineteenth century, football was played in public schools all around England, although the formats and rules of the game were very different from place to place: Rugby, Harrow, Shrewsbury all had their particular version of a game played between two teams and involving a ball (Marples 1954: 107). Football was well established in the public schools by the middle of the nineteenth century, but none of the schools played against each other, and as a result the rules were numerous and inconsistent (Murray 1994: 13).

Amidst different efforts to find a common format for the game, Ebenezer Cobb Morley called a meeting of representatives from clubs in the London area with the purpose of ‘forming an association with the object of establishing a definite code of rules for the regulation of the game’ (Murray 1994: 14); the meeting, held on 26 October 1863 at the Freemasons Tavern in London was the foundation of the Football Association (FA). At that time, the London FA was just one of many football associations around the country, with the Sheffield FA being the main competitor (Murray 1994: 14). In 1877, both FAs reached a compromise agreement, with the London FA standing virtually as the sole authority of the game in England; by 1905 the FA had 10,000 members (Murray 1994: 15). Despite having a single authority and a common set of rules, a new division emerged, between those favouring the amateur ethos of the game and those embracing professionalism. The FA had no option other than to recognise professional football in

July 1885 (Giulianotti 1999: 4-5). In 1871 the FA introduced the Challenge Cup (Murray 1994: 17) and in 1888 the first league competition (the Football League) was played (Giulianotti 1999: 5). The 1880s witnessed a surge in the popularity of football, closely linked to the social transformation brought about by the Industrial Revolution; from games in the 1860s where the players outnumbered the crowd, to the 1901 FA Cup final when 110,820 watched the game between Tottenham Hotspur and Sheffield United (Murray 1994: 26).

By the turn of the century football had become the main outdoor leisure pursuit of the working classes and the most highly prized career for workers who might otherwise be consigned to a life down the pits, amid the clamour of the shipyard or bound to a bench in the boredom of the factory (Murray 1994: 31).

Since those early days, football has never stopped growing and spreading throughout the world. The Welsh FA was founded in 1876, the Irish in 1880 (Murray 1994: 20), and football went on to conquer the rest of Europe with the Dutch and Danish FAs founded in 1889 (Murray 1994: 54). On 21 May 1904 seven footballing nations founded in Paris the *Fédération Internationale de Football Association* (FIFA, world football's governing body), although it was not until the 1920s that FIFA emerged as the dominant body in world football (Sudgen and Tomlinson 1998: 18-19). After the Second World War, it became apparent that football was expanding so much throughout the world that the organisational structures of FIFA could not cope with it. In Europe, several national FAs started to feel that their interests were not well served by FIFA (UEFA 2004b: 44-45). On 15 June 1954, after two years of deliberations, the new European confederation of national football associations was born with 28 members at a meeting in Basle (Switzerland); four months later, on 29 and 30 October in Copenhagen, the newly born confederation adopted its statutes and called itself the *Union of the European Football Associations* with the initials UEFA (UEFA 2004b: 46). It did not take long for the first European club competition to be organised. The European Cup (now the Champions League), a brainchild of three journalists of the French sports daily *L'Equipe*, was inaugurated in 1955 (UEFA 2004a: 60).

From the sociological perspective, Richard Giulianotti (1999) divides the stages of football's evolution into three: 'traditional', 'modern' and 'post-modern'. The 'traditional' period lasted until after the First World War, and it was marked by 'the

establishment of the game's rules, their international diffusion and the formation of national associations to administer the sport, under the aegis of ruling elites' (Giulianotti 1999: 166). The 'modern' era of football is sub-divided into three periods. 'Early modernity' is the first of these three sub-divisions, running from the 1920s to the Second World War. During that time the Olympic Games and the World Cup cemented football's global status. During this period football became the major national sport in Europe and Latin America, players started to emerge as national heroes and earn better than average wages, but they lacked long-term security (Giulianotti 1999: 167). The 'intermediate modernity' of football lasted from the post war period to the early 1960s. In this period continental confederations of national FAs (such as UEFA) emerged as another tier of governance for the game, and, above all, television became more prevalent in family homes, making the skill of top players known world-wide (Giulianotti 1999: 168). 'Late modernity' ran from the early 1960s to the late 1980s. Consumer culture and youth culture had a massive impact on the game, with players becoming superstars and icons of modernity (Manchester United's Northern Irish star George Best is one of the best examples); revenues from sponsorship and merchandising started to overcome gate-receipts as the first source of income for clubs (Giulianotti 1999: 168).

Football's 'post-modern' era began in the late 1980s and it has been evolving ever since. It has entailed a major commercialisation of the sporting activity and the influence of television companies in controlling clubs and financing the game (Giulianotti 1999: 168). Brand new or totally refurbished stadiums became a symbol of this new era of football, where television deals and ticket distribution policies maximise income, but may in turn damage the interests of the most dedicated supporters (Giulianotti 1999: 169). In the 'post-modern' era fans represent a new middle class, 'a new kind of football spectator keen to produce and consume a variety of football media' (Giulianotti 1999: 169). With television revenues multiplying the benefits of top clubs, tournaments have become a huge business and the elite players enjoy higher than ever wages, especially after the 1995 Bosman ruling (Giulianotti 1999: 169). The time frame of this thesis covers this 'post-modern' era of football, when EU authorities have been increasingly involved in football issues.

The modernisation and commercialisation of European football has come hand in hand with the increase in the revenues from the selling of the game's broadcasting rights. Chapter 5 explains the reasons behind the interest of television operators in football, which mainly refer to the power of live football broadcasting to attract viewers/subscribers (hence advertising) and the season-long (football seasons tend to extend over nine or ten months, depending of the country) nature of most football competitions. The latter allows television operators to retain their viewers or subscribers (in the case of pay TV) for a long period of time, since fans would logically be interested in following the league or the Champions League through the whole season, from August to May. Therefore, television companies have been willing to invest large amounts of money to secure exclusive deals for the broadcasting rights of the most important football competitions, which in turn has multiplied the money available for the organisers and participants of these competitions. The economic growth of European professional football can be measured through some indicators, such as the revenue generated by Europe's top professional football leagues, the so-called big five (i.e. England, France, Germany, Italy, and Spain), but also UEFA's Champions League and other top professional leagues outside the big five:

Whilst the English Premier League continues to generate the greatest revenues, which at €2 billion in 2005-06 were almost €600m above the next highest earner, the French Ligue 1 showed the largest absolute and relative growth in 2005-06, as we predicted last year, with an increase of €214m (31%) driving revenues to €910m (...) Looking forward, English Premier League revenues are set to exceed €2.5 billion in 2007-08, the first year of new broadcasting deals, which is likely to be €1 billion above the next highest earning league. (...) UEFA Champions League revenues generated from centrally negotiated broadcasting and sponsorship deals totalled €610m in 2005-06, with €437m (72%) distributed to the 32 clubs participating in the group phase, over 17 times the level distributed to clubs in 1992-93, the competition's inaugural season (...) Whilst non 'big five' leagues tend to have a different revenue profile compared to the 'big five', they continue to show growth. Outside the 'big five', the Dutch Eredivisie generates the next highest revenues of any top-tier domestic league with income of €355m in 2005-06 (Deloitte 2007: 1).

This section has broadly depicted the origins and development of football, with a special emphasis on the economic importance and market power of professional football. The key things to take from this historical overview are the ways in which football has organised itself from the very beginning and the massive commercialisation of football since the 1980s. The independence from public authorities is an argument

often used by football governing bodies when they want to avoid outside regulation (see for example UEFA 2007b, 2007a; FIFA 2007a). The following section will explain how the governance structures of football operate.

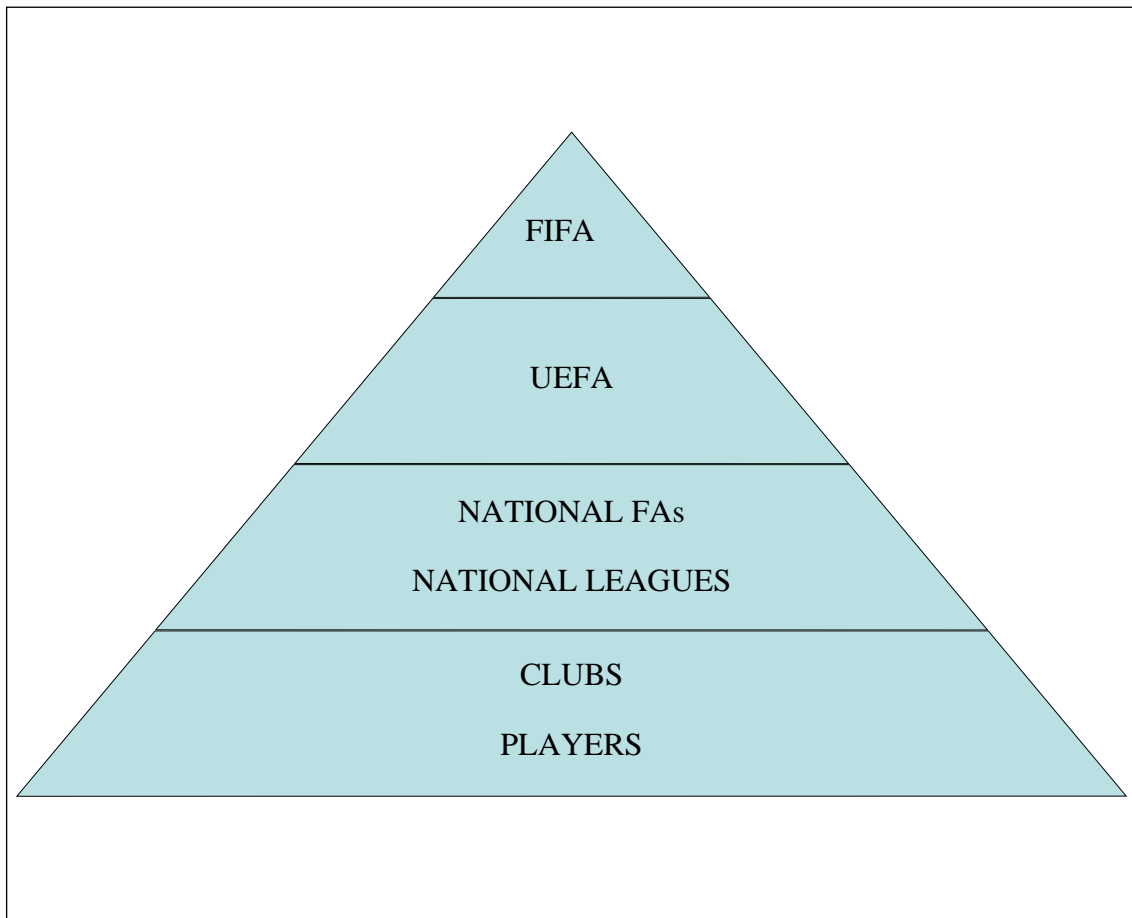
The governance of football in Europe

This chapter analyses the governance structures of European football at present. The objective of this section is twofold. First, it presents the governing structures of football in order to unravel the channels of authority and possible conflicts of power among stakeholders. Second, it introduces one by one the main organisations that have been affected by the EU's interest in football-related issues. It is necessary to outline the role, composition and structure of these organisations because they will be referred to in many occasions in chapters 4 to 7. The presentation of football organisations in this section is divided between the governing bodies and other stakeholders. This division is slightly artificial because they all form part of football governance, but it is justifiable for analytical purposes. This section will use the concept of the 'traditional' pyramidal structure of football governance. However, this should not be taken to suggest that football governance features this structure **at present**. Whether it does or not is discussed through chapters 4 to 6 and, especially, in chapter 7.

The traditional pyramid of European football

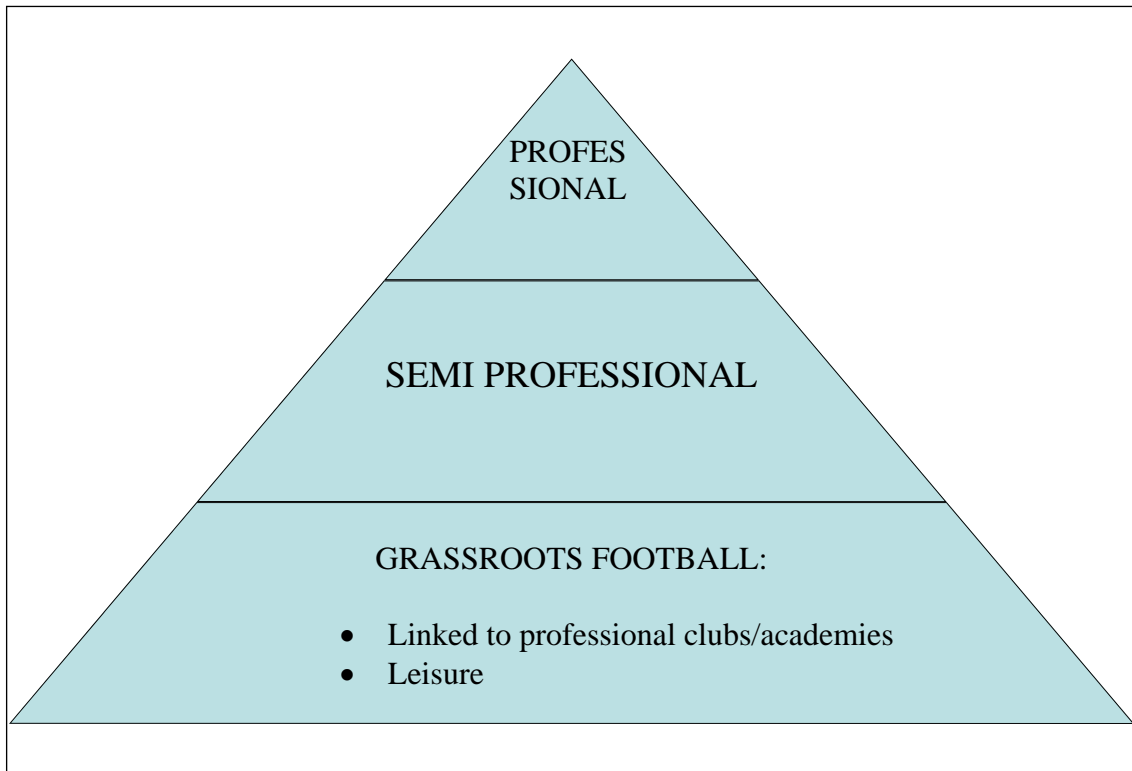
The governance of European football can be described as a pyramid where each level takes on responsibilities with a different geographical scope. The international federation (FIFA) sits at the apex, followed by European football's governing body (UEFA) and national FAs; clubs and players form the base of the pyramid. The pyramid was built from the bottom-up, for clubs were the first to associate, creating national FAs, which in turn founded FIFA and UEFA. The pyramidal structure of football can be interpreted in two different but complementary ways. First, the pyramid is a hierarchical structure of regulatory authority (see Figure 2). Governing bodies have different powers according to their geographical level and they have regulatory authority over the levels below. The main feature of the traditional pyramid is a top-down vertical channel of authority. Thus, a decision by FIFA will be passed down the line to the continental governing bodies (UEFA in Europe) and then to the national level.

Figure 2. The traditional pyramid of European football's governance



Second, the pyramid can also be understood as representing the dimensions of football as a sport (not just the governance structure), with the professional game at the top and the grassroots at the base (see Figure 3).

Figure 3. The pyramid of football



The European Commission has argued that some of the main features of European sport are the principle of solidarity and the principle of promotion and relegation (European Commission 1998). The argument about solidarity, according to which the professional levels of football have a duty of care towards the grassroots, is becoming pivotal to the strategies of governing bodies (Grant 2007; UEFA 2001). Advocates of a different view consider that there is a separation between professional and grassroots football and the former has to detach itself from the rest of the pyramid in order to be able to maximise the economic possibilities of football as an industry.⁷ Let us now introduce the components of the traditional pyramid of European football: FIFA, UEFA, national FAs, professional football leagues, and the clubs.

⁷ The desired level of separation between professional and grassroots football varies according to opinions. Some argue for a separation but within the current structures (Interview 36). Others have argued in the past for a more radical separation, even creating break away leagues (for more on that see for example Holt 2007; King 2003).

FIFA

Founded in 1904, FIFA is the supreme authority of football worldwide. FIFA is ‘an association registered in the Commercial Register in accordance with art. 60 ff. of the Swiss Civil Code’ (FIFA 2007b: Article 1.1). The objectives of FIFA are ‘to improve the game of football constantly and promote it globally, to organise its own international competitions; to draw up regulations and provisions and ensure their enforcement; and to control every type of Association Football⁸ by taking appropriate steps to prevent infringements of the Statutes’ (FIFA 2007b: Article 2).

FIFA is an association of national football associations. To be a member of FIFA, a national FA needs to be ‘responsible for organising and supervising football in their country’ and only one national FA will be recognised per country (FIFA 2007b: Article 10.1).⁹ National FAs have direct membership of FIFA. They are represented in the FIFA Congress (FIFA 2007b: Article 12), under the principle of one member-one vote (FIFA 2007b: Article 23.1). FIFA activities are run by three different bodies (FIFA 2007b: Article 21). The congress is the supreme and legislative body (FIFA 2007b: Article 21.1, see also Articles 22-29), the executive committee is the executive body (FIFA 2007b: Article 21.2, see also Articles 30-31) and the general secretariat is the administrative body (FIFA 2007b: Article 21.3, see also Articles 65-66). In addition, standing and *ad hoc* committees are set up to advise and assist the executive committee in fulfilling its duties (FIFA 2007b: Article 21.4, see Articles 34-54 for a list of the standing committees and their duties).

To ensure its authority and to preserve the unity of football world wide, FIFA statutes contain provisions obliging continental confederations such as UEFA to comply with and enforce compliance with FIFA regulations and decisions (FIFA 2007b: Article 20). Similar obligations apply to national FAs (Article 13), which are obliged to ensure that their members (i.e. clubs, leagues, etc) comply with the statutes, decisions and regulations of FIFA (Article 13.1 (d)). Due to these provisions in the FIFA statutes, the consequence is that decisions coming from FIFA are binding for all the levels below it in the pyramid: continental confederations, national football associations, national

⁸ This refers to FIFA’s objective of establishing itself as the governing body for all the variations related to the game, such as beach football or futsal.

⁹ With the exception of the United Kingdom, where the national FAs of England, Northern Ireland, Scotland and Wales are recognised as separate members of FIFA (FIFA 2007b: Article 10.5).

professional leagues and local football clubs. This creates increasing tensions between the layers of the football pyramid (Owen 2006), especially because top professional clubs feel that both FIFA and UEFA abuse their position when they adopt regulations that may affect clubs' business without giving them direct representation in the decision-making bodies.

FIFA has a difficult relationship with the EU, to put it mildly. FIFA has been affected by EU law and policies mainly in two areas: the ticketing arrangements for World Cup tournaments and the Commission investigation into the international transfer system (Parrish 2003a).¹⁰ FIFA President, Joseph Blatter, traditionally has been hostile to what he sees as unacceptable intrusions of EU law into football: 'How is it possible that 25 countries can dictate the laws for 207 football associations around the world?' (quoted in Martínez de Rituerto 2005b). Blatter's opinion on the EU is peculiar: 'The EU is just a regional organisation, which does not even represent all the countries in the European continent' (quoted in Maroto 2007). Strictly speaking, Blatter's assertion is true of course. But the problem lies in Blatter's refusal to accept that EU law is binding in those FIFA associations that are members of the EU. FIFA has not opened any kind of representative office in Brussels, hence making it very difficult to have a dialogue with EU institutions (Interview 13).

UEFA

The next level of the pyramid is formed by the continental federations. The football confederation for Europe is UEFA. As was noted above, it was founded in 1954 by 28 European national football associations that felt their interests were not being served by FIFA structures (UEFA 2004b: 46). UEFA has a current membership of 53 national FAs (see Table 5 below). With the latest enlargement of the EU (12 new members since 2004), plus the agreements of the European Economic Area (EEA), UEFA membership is now dominated by national associations where EU law is applicable. UEFA's geographic scope is certainly wider than the EU (or the EEA), but this does not make the organisation immune to the decisions of the EU. UEFA is a politically and religiously neutral society 'entered in the register of companies under the terms of Art.

¹⁰ The European Commission investigation into FIFA's international transfer system is thoroughly analysed in chapter 4 below (for details on the issues regarding ticketing schemes for the World Cup see for example Parrish 2003a: 128-130).

60 et seq. of the Swiss Civil Code’, whose headquarters shall be in Switzerland (UEFA 2007j: Article 1.1). UEFA is, like FIFA, a confederation of national football associations:

Membership of UEFA is open to national football associations situated in the continent of Europe, based in a country which is recognised by the United Nations as an independent state, and which are responsible for the organisation and implementation of football-related matters in the territory of their country (UEFA 2007j: Article 5.1).

National FAs are required to comply with and to enforce UEFA statutes and regulations in their jurisdiction (UEFA 2007j: Article 7bis); they are also required to observe minimum standards of internal democracy, having a freely elected executive body (UEFA 2007j: Article 7bis (2)). UEFA statutes establish that ‘leagues or any other groups of clubs at Member Association level shall only be permitted with the Association’s express consent and shall be subordinate to it’ (UEFA 2007j: Article 7bis (3)). This subordination ensures, theoretically, the vertical channel of authority from UEFA to national FAs and from the latter to other organisations lower in the pyramid, such as professional football leagues and clubs.

Table 5. National Football Associations members of UEFA as at October 2007

European Economic Area			Others	
EU		Non-EU		
Austria	Belgium	Iceland	Albania	Andorra
Bulgaria	Cyprus	Liechtenstein	Armenia	Azerbaijan
Czech Republic	Denmark	Norway	Bosnia Herzegovina	Belarus
England	Spain		Croatia	Faeroe Islands
Estonia	Finland		Georgia	Israel
France	Germany		Kazakhstan	Moldova
Greece	Hungary		F.Y.R. Macedonia	Montenegro
Ireland	Italy		Russia	San Marino
Lithuania	Luxembourg		Serbia	Switzerland
Latvia	Malta		Turkey	Ukraine
Netherlands	Northern Ireland			
Poland	Portugal			
Romania	Scotland			
Slovakia	Slovenia			
Sweden	Wales			

Source: Adapted from UEFA website¹¹

UEFA's organs are the congress, the executive committee, the president, and the organs for the administration of justice (UEFA 2007j: Article 11). The congress is the supreme controlling organ of UEFA (UEFA 2007j: Article 12.1), where all national FAs are represented under the principle of one member-one vote (UEFA 2007j: Article 18.1). In addition to the formal decision-making organs, UEFA has a network of consultative bodies with the aim of informing deliberations prior to the adoption of decisions (UEFA

¹¹ <http://www.uefa.com/uefa/aboutuefa/matchassociations/index.html> [Accessed 22-10-2007].

2007j: Articles 35-38). UEFA consultative bodies are the Professional Football Strategy Council (UEFA 2007j: Article 35),¹² the committees (UEFA 2007j: Articles 35bis-37), expert panels, and working groups (UEFA 2007j: Article 38).

UEFA's position in the football pyramid has also been criticised by those in the lower levels, especially top professional clubs and national football leagues. Recognising the growing importance of football clubs and national leagues for the future of the professional game, UEFA is trying to find formulas to incorporate these stakeholders into the decision-making process (see chapters 6 and 7). The recent creation of the European Clubs Association (ECA) in January 2008 is the latest step to try and improve the dialogue between the professional clubs and UEFA. The ECA has been recognised by UEFA as its official partner in dialogue for issues concerning professional clubs (UEFA 2008a, 2008c). This is further explained in chapter 7. UEFA has also tried to foster dialogue with the professional leagues through the signing of a memorandum of understanding with the Association of European Professional Football Leagues (EPFL). A similar document has also been signed with professional footballers' trade union, FIFPro (UEFA 2007g; FIFPro 2007c). The recently created Professional Football Strategy Council aims at improving the dialogue between the stakeholders in professional football (UEFA 2007f; 2007j: Article 35.3, for more details on the Strategy Council see chapter 7). However, these movements fall short of the ambitions expressed by some professional leagues and clubs, whose aim is to have direct representation on the executive committee, not in the consultative bodies (Interview 25).

UEFA is probably the football organisation that has most often found itself in conflict with EU law. Nevertheless, rather surprisingly, UEFA did not decide to open a representative office in Brussels until April 2003. UEFA representatives acknowledge, to a certain extent, that it probably should have taken this decision earlier and list among the factors causing the delay the inherent difficulties of change in a large organisation such as UEFA and the fact that the representation of sport in Brussels has traditionally been scarce (Interview 5, Interview 35). The evidence gathered in the interviews conducted for this thesis demonstrates that the image of UEFA within EU

¹² The Professional Football Strategy Council is composed by representatives of UEFA, professional clubs, professional leagues and professional players (UEFA 2007j: Article 35). For a full list of UEFA committees, see Article 35bis of UEFA Statutes (UEFA 2007j). Articles 36 and 37 set up the rules governing the committees' composition and obligations.

institutions tends to be relatively positive. Representatives from both the Commission and the EP have encouraging words to say about UEFA, as chapters 4 to 7 illustrate. They praise, for example UEFA's new proactive approach towards EU institutions in the drafting of the rules on locally-trained players¹³ (Interview 13, Interview 23), or the commitment of the organisation to the grassroots levels of football (Interview 16, Interview 20). Similarly, UEFA has modified its approach towards the EU, which is not perceived anymore as an 'enemy', but rather as a 'partner' because there are 'many common objectives in which UEFA and the EU can collaborate' (Interview 5).¹⁴

National federations

The position of national federations has been traditionally one of 'monopoly for their sport within the country' (European Commission 1998: 3). FIFA will only recognise one association per territory (FIFA 2007b: Article 10), with the exception of the four UK FAs (FIFA 2007b: Article 10.5). National FAs are the supreme regulatory and disciplinary body of the sport within their national boundaries, although they have limited autonomy and have to abide by the rules of UEFA and FIFA (Ducrey *et al.* 2003: 12). National federations are obliged to comply with and enforce FIFA and UEFA statutes and regulations (FIFA 2007b: Article 13; UEFA 2007j: Article 7bis). National FAs are responsible for organising club competitions in their territory, and the coordination of a national team to represent the country in international competitions, such as the World Cup (Ducrey *et al.* 2003: 12). As will be explained in chapter 5, the monopoly of national FAs over the organisation of club competitions has been weakened over time with the emergence of professional football leagues.

National professional leagues

In most European countries, national FAs used to enjoy a monopoly over the organisation of club competitions, such as leagues and cups. Professional clubs, however, started to challenge this monopoly when they realised that they could get a better share of the television money invested in football if they managed their own league. Thus, football clubs joined forces and created their own associations, normally known as football leagues or professional football leagues. The objectives of these

¹³ See chapter 4.

¹⁴ See more on that in chapter 7 (for a detailed analysis of the evolution of UEFA-EU relations see also García 2007a).

organisations are to manage the top football competitions and to defend the interests of the league and the clubs before governing bodies and other stakeholders. National leagues still have to be considered as part of the football pyramid because they are bound by the regulations of the governing bodies:

Leagues or any other groups of clubs at Member Association level shall only be permitted with the Association's express consent and shall be subordinate to it. The Association's statutes shall define the powers apportioned to any such group, as well as its rights and obligations. The statutes and regulations of any such group shall be subject to the approval of the Association (UEFA 2007j: Article 7bis (3)).

While the national FA is responsible for the control and development of the wider aspects and disciplines of football within the national boundaries, the league's main interest is the commercial development of its product: a league competition (Ducrey *et al.* 2003). National leagues might not aspire to be legislating/regulatory bodies, but they certainly require representation in the decision making bodies of their national FAs because they consider that club competitions are the basis of the game (Interview 25, Interview 36). The recent emergence of professional leagues within the supranational governing structures of football through the association of European Football Leagues (EPFL) is explained below.

The clubs

Clubs are the basic cell and the foundation of the pyramid (Ducrey *et al.* 2003: 11). Clubs were originally founded as local associations with the objective of offering the local community the possibility of engaging in sport, thereby promoting the idea of 'sport for all' (Ducrey *et al.* 2003: 11). It is probably at club level where we can see most clearly the different dimensions of sport, from little local amateur clubs that have facilities for the training of children, to the major top professional clubs such as Manchester United, Real Madrid or Bayern Munich that are real money-making machines, even if they also have their football academies. Professional clubs have felt the effects of the EU mainly through the ECJ ruling in the Bosman case (chapter 4) and the Commission investigations into the selling of TV rights for national competitions (chapter 5). It is their position at the bottom of the football pyramid that has caused more problems, especially when top clubs consider that they are underrepresented in decision-making. Federations, though, point to the fact that formal structures do not

necessarily represent the real power in the governance of football. Therefore, even if professional clubs are not directly represented on UEFA or FIFA decision making bodies, they still retain an important amount of power to influence the governing bodies' decisions, mainly due to their economic power: 'De facto power is also important, why do you think that the Champions League was created?' (Interview 34).

At this point, the reader will have realised that the structure of European football governance was bound to be a source of conflict when coupled with the economic development of the game in the last decade. The massive amounts of money generated by professional football, mainly through television rights, prompted an internal debate over the distribution of power (and the distribution of money) within the pyramid.

New stakeholders

The typical pyramid of football, as described above, does not contain all the organisations active in the governance of the game. Whereas federations still play a central role, other stakeholders have emerged, many of them in connection with the involvement of EU institutions in football-related matters. Chapters 4 to 6 explain the role of these organisations in particular cases, whilst chapter 7 analyses their impact on the governing structures of the game. The objective here is only to introduce these organisations, outlining their structures, composition and objectives with the purpose of facilitating the reading of the remaining chapters. They are the G-14 and the newly established ECA as clubs representatives, the EPFL on behalf of the leagues,` and FIFPro as the players' union.

G-14

The G-14 was the association of 18 of the leading professional football clubs in Europe. It started as an informal network in 1997 and was formally constituted in 2000 under Belgian law with its headquarters in Brussels (G-14 2003: 11). Although the G-14 claimed to be 'the voice of the clubs' (G-14 2003: 7), this statement should be approached with caution because the G-14 was a direct membership organisation that a club could only join by invitation (G-14 2003: 13). The membership of G-14 reflected the economic power of the so-called big five leagues, with 15 out of the 18 members coming from these championships (three each). Only three G-14 members came from

outside the big five: two from the Netherlands and one from Portugal. The G-14 was funded through the contributions of its members and its commercial activities. In terms of organisation, the highest hierarchical level was occupied by the general assembly, in which the representatives of the 18 members met at least four times a year (G-14 2003: 6). The management committee was the intermediary echelon between the general assembly and the permanent staff based in Brussels (G-14 2003: 6). The G-14's Brussels office was established in 2000. The G-14 has not been affected by EU policies in the same sense that UEFA has. Clubs being at the bottom of the pyramid, the G-14 considered that FIFA and UEFA's monopolistic power in organising European football needed to be broken. Therefore, the G-14 used the EU institutions as mediators in its struggle against UEFA and FIFA. Indeed, the G-14 was very much pleased with the approach towards sport taken by the European Commission's DG Competition. UEFA and FIFA never recognised the G-14 as a dialogue partner. They accused the organisation of being just a group of self-appointed clubs that represented their own interests without taking into account the wider structures of football. In recent years the main conflict between the G-14 and UEFA and FIFA was about the rules concerning the release of players for national team duty (see chapter 7). In January 2008, however, FIFA, UEFA and the clubs within G-14 reached an agreement. The clubs decided to dissolve the G-14 in order to create a wider and more representative association that could be considered an independent voice of professional clubs (G-14 2008a, 2008b). The European Clubs Association was founded in January 2008 and it has been quickly recognised by UEFA through a memorandum of understanding (UEFA 2008b, 2008c).

FIFPro

FIFPro is the International Federation of Professional Footballers' Associations; in other words it is the international trade union of professional footballers. FIFPro is a federation of national associations, with 42 members. FIFPro has 25 European members. The European membership of FIFPro is naturally dominated by footballers' associations from EU Member States (see Table 6 below). FIFPro has recently decided to create continental divisions in Africa, the Americas and Europe to improve its dialogue with their counterparts amongst the continental governing bodies (FIFPro 2007e: 1). FIFPro Division Europe was founded in July 2007 with the election of the board members at a meeting in Vienna (FIFPro 2007d: 1).

Table 6. Membership of FIFPro Division Europe as per October 2007

EU + European Economic Area			Others
Austria	Belgium	Cyprus	Israel
Denmark	England	Finland	Russia
France	Germany	Greece	Switzerland
Hungary	Ireland	Italy	Ukraine
Netherlands	Poland	Portugal	
Romania	Scotland	Slovenia	
Spain	Sweden	Norway (Non EU)	

Source: Adapted from FIFPro website¹⁵

The membership of FIFPro is composed of national associations representative of professional footballers in their territory, and only one organisation per country can be admitted as a member (FIFPro 2007b: Article 3.1). The organisations affiliated with FIFPro remain independent, although they are required to ‘observe decisions made by the General Meeting [General Assembly], unless extraordinary circumstances imply that the country in question cannot reasonably be expected to follow the decision’ (FIFPro 2007b: Article 4). FIFPro was founded on 15 December 1965 in Paris as a joint initiative of the footballers’ associations of the Netherlands, Scotland, England, Italy and France (FIFPro 2007a: 1). Since then, it has developed to become the recognised representative of professional footballers worldwide. The directive board of FIFPro is dominated by European members, as five out of nine board positions are reserved for representatives from England, France, Italy, the Netherlands and Spain (FIFPro 2007b: Article 10.1).

The main period of transformation of FIFPro has occurred from the 1990s onwards, when a permanent secretariat was established and, as a result of the ‘Bosman boom’, FIFPro achieved its current status. It has been a long journey, though: ‘It was only after the Bosman case (1995) when FIFA and UEFA accepted FIFPro as a valid interlocutor’

¹⁵ <http://www.fifpro.org/index.php?mod=plink&id=3532> [Accessed 20-10-2007].

(FIFPro 2007a). FIFPro has been proactive on EU matters, trying to break FIFA and UEFA's dominant position. FIFPro was supportive of Jean Marc Bosman's complaint before the ECJ (see chapter 4). FIFPro is not a big organisation, it is certainly a smaller organisation than UEFA (almost 300 employees). However, this needs to be nuanced. FIFPro does not enjoy UEFA's economic resources, such as broadcasting rights or ticketing arrangements. Nevertheless, it has at its disposal a wide range of facilities through its network of 42 members. Its permanent secretariat has eight staff and it can draw on the expertise and resources of its members right across Europe and the world. In addition, FIFPro can also rely on national trade union federations and, finally, it counts on the support of the European Trade Union Confederation (ETUC) at European level.

EPFL

Professional leagues have been part of the governing structures of football in Europe for quite some time now. However, they used to be restricted to the national level, where they had to negotiate with their respective FA in matters such as management of league championships, division of competencies, selling of TV rights or, decisively, representation in the supranational governing bodies. The last years, however, have seen the rise of professional leagues as recognised stakeholders in European football at the supranational level. The institutionalisation of professional football leagues came with the foundation on 10 September 1997 of the Association of European Union Professional Football Leagues on the initiative of the English Premier League and the Italian *Lega Nazionale Professionisti* (EPFL 2006: 12). The association was founded at that time by twelve members (EPFL 2006: 12); in December 2003 the leagues decided to rename the association as European Professional Football Leagues (EPFL), its actual name (EPFL 2006: 13). The EPFL has 23 full members (see Table 7 below) plus two associate members for leagues not covering a top flight division in their territory.

Table 7. Leagues members of the EPFL as per October 2007

Full members	
Österreichische Fussball-Bundesliga (Austria)	FAI Eircom League of Ireland
Ligue Professionnelle de Football (Belgium)	Lega Nazionale Professionisti (Italy)
Bulgarian Professional Football League	Eredivisie CV (Netherlands)
Divisionsforeningen (Denmark)	Norsk Toppfotball (Norway)
FA Premier League (England)	Ekstraklasa SA (Poland)
Liga Nacional de Fútbol Profesional (Spain)	Liga Portuguesa de Futebol Profissional (Portugal)
Finnish Football League Association	Russian Football Premier League
League de Football Professionnel (France)	Scottish Premier League
Deutsche Fussball Liga (Germany)	Swiss Football League
Superleague Greece	Zdrufenje Klubov 1 (Slovenia)
	Föreningen Svensk Elitfotboll (Sweden)
	Professional Football League of Ukraine
	The Welsh Premier League (Wales)
Associate members	
The Football League (England)	Association Professional Football League (Russia)

Source: List facilitated by the EPFL Bureau

The mission of the EPFL is ‘to be the common voice of professional football leagues’ (EPFL 2006: 16). The EPFL aims to represent the leagues in the decision-making process of UEFA, ‘to achieve solutions on key issues affecting European football’ (EPFL 2006: 16). The EPFL is also committed to be the voice of the leagues before national governments and EU institutions (EPFL 2006: 16). The EPFL has been successful in establishing itself within the governing structures of football. The association signed a memorandum of understanding with UEFA in 1998 through which the governing body recognised the existence of the EPFL (EPFL 2006: 12). The EPFL

and UEFA signed a new and more exhaustive memorandum of understanding in June 2005 that has also been approved by FIFA (EPFL 2006: 13).

In the new memorandum of understanding UEFA recognised the EPFL as the legitimate representative of the professional leagues in Europe. UEFA commits to ensure that the views of the leagues are incorporated in its decision-making process and that ‘the leagues are properly represented in the international football structures dealing with issues relating to professional football’ (EPFL-UEFA 2005: 4). In return, the leagues commit, amongst other things, to abstain from organising ‘any supra-national sporting competitions, tournaments or football matches’ (EPFL-UEFA 2005: 3). The EPFL works currently in co-operation with UEFA. The governing body has not only recognised the EPFL, but it has also incorporated the association to its consultative structures (see chapter 7 for more details). In recognition of its relationship with UEFA, the EPFL has established its central bureau in the Swiss town of Nyon (EPFL 2006: 26), just fifteen minutes walk from UEFA Headquarters.

This section has outlined the governing structures of football, with an emphasis on their multilevel nature and the vertical channels of authority. Football has been characterised as possessing a multilevel system of governance, although the strength of the top-down pyramidal structure is certainly questionable following the events of the last decade as is explained in chapters 4 to 7. On the other hand, this section has also introduced organisations such as FIFPro or the EPFL that have gained importance in the governance of football in the last years. This chapter will now explain the institutional structure of the EU because it is necessary to understand the development of the EU involvement in football matters.

The European Union¹⁶

The institutional framework of the EU is anything but simple. With an increasing number of checks and balances between national and supranational levels, policy-making in the EU is cumbersome and complex. The multi-institutional nature of the EU opens decision-making to non-governmental actors when issues pass from one institution to another. The complex EU policy-making machinery is characterised by providing multiple access points for outside actors seeking to influence decisions (Greenwood 2003). Many of the conflicts that have arisen between the EU and football, especially in the early years covered in chapters 4 and 5, relate to the application of EU law to the activities of football organisations. For this reason, it is advisable to explain not only the political structure of the EU, but also its legal system.

The EU as a political system

The institutions of the EU recognised in the Treaty are the European Commission, European Parliament, Council of Ministers, Court of Justice and Court of Auditors (Article 7.1 EC). The Committee of the Regions and the Economic and Social Committee feature as consultative bodies (Article 7.2 EC). This summary of the EU machinery focuses on the Commission, Parliament, Council of Ministers and European Council.

The Commission

The European Commission 'is centrally involved in EU decision-making at all levels and on all fronts' (Nugent 2006: 149). As an institution the Commission is a complex organisation. Legally the Commission is a single entity. When it formally acts it always does so collectively. However, the Commission is far from a homogeneous decision-making body. Much of this diversity stems from the structure of the institution that, in practice, has two distinct levels: the college of commissioners and the services.

¹⁶ This section refers to the EU's institutional structure in place at the time of writing. The recently agreed Reform Treaty introduces modifications to the institutional framework and the decision-making process. However, as long as the new Treaty is not ratified one has to refer to the framework currently in place. Moreover, the decisions analysed in chapters 4 to 6 were adopted under the current TEU and TEC framework. Given the possible impact of the institutional framework on these decisions, it is advisable to focus on the current structures.

The college of commissioners sits at the apex of the Commission. The college is the political hub of the institution. It is currently composed of 27 Commissioners, one per Member State. The responsibility for the appointment of the college of commissioners, including its president, is shared by the European Parliament and the Member States through their heads of state or government (see Article 214.2 EC). The college of commissioners provides political leadership and decision-making capacity to the institution (Cini 1996: 111). The weekly meetings of the college deal with the most politically sensitive issues since much of the day-to-day business is dealt with in the preparatory meetings (Nugent 2001: 95-96). Every commissioner has a specific responsibility for a particular area of the Commission's work; the portfolios are assigned at the beginning of the college's term by the Commission President. The Commissioner in charge of football matters at present (i.e. the 2005-2010 Commission) is Jan Figel (Slovakia), Commissioner responsible for Education, Training, Culture and Youth, whose responsibilities also cover sport.

There are two defining elements of the college: collegiality and independence from national governments. The principle of collegiality has two important dimensions. First, commissioners and their president are not appointed individually, but collectively as a body (Nugent 2001: 91). Second, the college is collectively responsible for decisions and actions taken in the name of the Commission (Nugent 2001: 92). The independence of commissioners from national governments is mandatory (Article 213.2 EC). The real degree of independence of the Commission is, however, debatable. The Commission is a hierarchical institution. Below the commissioners lies the Commission's administrative arm: the services. The services are divided into different organisational units known as Directorates General (DGs), whose size and internal organisation vary from one to another (Nugent 2006: 160, 2001: 138-143). DGs are headed by a director general; the DGs are subdivided into directorates headed by directors, which in turn are divided into units or divisions. The DG directly responsible for football-matters is DG Education and Culture, through the sports unit. However, football has implications that touch upon the responsibilities of many other DGs. For example, up to 17 DGs participated in the elaboration of the recently adopted Commission White Paper on Sport (see chapter 7). The large number of sub-divisions within the Commission creates almost inevitably a degree of fragmentation, thus producing conflicts within the services

that can be either over areas of competencies or over ideology and policy approaches (Nugent 2001: 159).

The functions of the Commission range over the legislative, the executive and even the judicial. First, the Commission has a quasi-monopoly over policy initiation in the EU: the Commission drafts, promotes and develops many of the policy initiatives that are launched at EU level. In its role as policy initiator, the Commission is the starting point of the EU's legislative process. Second, the Commission undertakes executive responsibilities in implementing EU policies, although direct implementation is shared with a wide range of agencies. Third, the Commission is the legal guardian of the Treaties, executed in association with the ECJ. This function involves ensuring that the EU treaties are respected and empowers the Commission to start legal proceedings against national governments or private companies. Competition policy is one of the areas where the Commission has the power to ensure that the provisions of the Treaty (see chapter 5) are not breached. Fourth, the Commission undertakes external responsibilities. The European Commission is arguably the EU institution that has been most involved in football-related matters over the years, largely as a result of its role as guardian of the treaties. Therefore, the Commission features heavily in the chapters ahead. Football provides an invaluable, yet mostly unexplored, occasion to analyse the actions and structures of the Commission with the objective of enhancing our understanding of this complex institution.

The European Parliament

The European Parliament (EP) consists of 'representatives of the peoples of the States brought together in the Community' (Article 189 EC). Members of the European Parliament (MEPs) are elected by direct universal suffrage (Article 190.1 EC). The first direct elections to the EP were held in 1979; since then, MEPs have been elected every five years (Nugent 2006: 258). The election of MEPs, however, follows a different electoral system in every Member State since no uniform electoral system has been agreed between the EP and the Council. Each Member State has an allocated quota of MEPs. The EP is currently composed of 784 MEPs from across the 27 Member States.¹⁷

¹⁷ For up to date information of the allocation of MEPs by Member State and by political group, see the European Parliament's website at <http://www.europarl.europa.eu/members/expert.do?language=EN> [Accessed 29-10-2007].

The powers and competencies of the EP are exercised in three main ways: ‘Through the legislative process, through the budgetary process and through control and supervision of the executive’ (Nugent 2006: 240). If the Commission can mostly be identified as the EU’s executive, the EP is, together with the Council, the EU’s legislative branch.

The legislative power of the EP is exercised in several ways. The most important and direct is the participation of the EP in the drafting of EU legislation through the decision-making procedures recognised in the Treaties, namely consultation, co-operation, co-decision and assent procedures. The input and the power of the EP varies according to each procedure, with co-decision bringing the Parliament on an equal footing with the Council.¹⁸ The EP can also try to affect EU policies outside the formal policy-making procedures, and even outside its areas of direct competences. The EP can express its own ideas for suggested policies, hence putting political pressure on the Commission and the Council to act. One way to do that is to adopt own initiative reports, which normally are also accompanied with public hearings on the matter (Corbett *et al.* 2005: 306). These reports do not oblige the other institutions to act, despite the political pressure. However, one should not disregard their importance. Indeed, the EP has been active in football matters through its power to analyse problems in own-initiative reports (see chapter 6 for more details).

The second way in which the EP exercises power is over the budget. The EU budget should not be confused with the multi-annual financial perspectives, which are agreed by the national governments within the Council and the European Council (for details on the EP’s role on the annual budgetary procedure see Corbett *et al.* 2005: 240-257). Last, but by no means least, the EP plays an important role in the control and supervision of the executive. The EP’s power of control is especially acute over the Commission. The EP has a role in the appointment of both the president and the whole college, as noted above. Moreover, the EP has the power to dismiss the whole Commission through a motion of censure. The EP has also the power to debate in open session the Commission’s annual report (Nugent 2006: 252). MEPs have the possibility to address questions directly to the Commission. The EP’s power of supervision over

¹⁸ Since the 1997 Amsterdam Treaty entered into force, most significant EU legislation is subject to the co-decision procedure (the role of the EP in these procedures is carefully analysed in Corbett *et al.* 2005: 196-237).

the Council is arguably less effective. This is so mainly because the view is that Council members should be principally responsible to their national parliaments (Nugent 2006: 255). Moreover, there are certain policy areas, such as CFSP, where the EP's powers are relatively weak. The EP certainly suffers when intergovernmentalism is preferred in decision-making.

The EP has been active in football matters, normally through questions to the Commission or own-initiative reports. Despite having little direct competence in that area, the influence of the EP has been significant, as is shown in the chapters ahead. The attention of the EP has contributed to football remaining high on the EU agenda. Finally, it is important to highlight the more political nature of the EP as an institution, as compared to the rather technocratic and legal nature of the Commission. The approach of MEPs to football is necessarily more political given their job specification. It might also have more of a national perspective to football for MEPs are linked to their constituencies back home, whereas the Commission is more supranational in nature.

The representation of national governments: Council and European Council

The national level of the EU political system is represented in the Council of the European Union (also known as Council of Ministers or in simple terms, the Council) and the European Council. The Council of Ministers is another component of the EU's legislative branch: 'The Council is responsible for decision-making and coordination' (Hayes-Renshaw 2006: 66). The principal responsibility of the Council within the EU system is to take policy and legislative decisions. Indeed, the Council shares with the EP the legislative function of the EU. The Council is much more independent from the EP in the so-called second and third pillars, dealing with foreign, security and defence policies. The Council is less independent under the first pillar, mainly because it has to act on the basis of proposals presented by the Commission and it has to agree with the EP as co-legislator.

The Council is a layered and hierarchical institution. Below the most visible meetings of the Member States' ministers, there is a complex machinery of preparatory bodies (Hayes-Renshaw 2006: 62-64; Westlake and Galloway 2004: 201-221; Hayes-Renshaw and Wallace 1997: 73). The permanent representatives (and their deputies) of Member

States in Brussels meet in COREPER I and II (Westlake and Galloway 2004: 201-216), whilst specialists in particular areas compose the base of the system in the Council's working groups that deal with the technical questions of legislation (Hayes-Renshaw and Wallace 1997: 97-100). Although legally there is only one Council, the institution meets in different formations or configurations to deal with different policy areas. Thus, foreign affairs ministers meet in the General Affairs and External Relations Council or agriculture ministers meet in the Agriculture and Fisheries Council (Westlake and Galloway 2004: 47-143). The sports ministers or sports directors of the Member States cannot meet in a Council formation because the EU has no direct competence in that area at the moment. Therefore, in sports matters (including of course football) national governments have resorted to 'informal summits'. Sports ministers meet normally twice a year (once every six months). The increasing importance of European sports ministers in shaping the EU's approach to football is discussed in chapter 6.

The European Council is the highest political forum for the national governments in the EU. The European Council is, formally, the meeting of the EU heads of state and/or government and the president of the Commission (Article 4 EU). The European Council is not mentioned in the founding treaties, but it was institutionalised in 1974 due to the 'growing feeling that the Community was failing to respond adequately to new and increasing difficult challenges' (Nugent 2006: 219). Yet, the European Council remained a structure outside the formal Treaties until it was included in the Treaty on European Union (Article 4). Even after this formalisation, the European Council does not feature in the list of *official* EU institutions in charge of policy-making (Article 5 EU, Article 7.1 EC). There is little doubt, however, of the increasing political gravitas that the European Council has earned over the last years, hence strengthening the position of national governments within the EU (Nugent 2006: 236-238).

It is precisely the vague legal definition of the European Council (as in Article 4 EU) that has allowed the institution to grow in political importance within the EU. Whereas legally binding decisions may be taken elsewhere in the EU political system, it is in the European Council where major political agreements are cemented. The European Council is responsible for providing the EU with the general political guidelines and the impetus to develop policies (Article 4 TEU). The treaty requires the European Council to meet 'at least twice a year' (Article 4 TEU), but in recent years it has been the norm

for the European Council to meet four times a year. The European Council is relatively free to decide on its agenda and its activities, and as a result the institution deals with a wide range of matters. The main areas on which the European Council has worked extensively can be grouped under five headings: The evolution of the EU, constitutional and institutional matters, the economic and monetary policies of the EU, external relations and specific internal policy issues (Nugent 2006: 232-236; see also Schoutete 2006: 49-54). The institutionalisation of the European Council meetings has inevitably 'strengthened the position of national governments in the EU system' (Nugent 2006: 236) and thus added an extra element of intergovernmentalism to the EU. However, there are still some limits. European Council decisions are of a political nature, not legislative. Therefore, despite providing political orientation and guidelines to the other institutions, these are normally rather imprecise and general in nature. The implementation of these guidelines is then left to other institutions, where national governments have to be vigilant if they want their policy preferences to be respected because it is the Commission who retains the right to initiate legislation.

National governments of the EU Member States have often been involved in football-related decisions, even at the European Council level. For example, the European Council shaped the debate on sport (not only football) in the EU with two informal declarations: the Amsterdam and Nice Declarations on Sport (see chapter 4). National governments have also been involved at the highest political level providing support for governing bodies and other football organisations in their struggles with the Commission (see chapters 4 and 5). The intervention of the EU political leaders in the area of sport is noticeable because one can consider that it had an impact on the other institutions' approach to sport in general and football in particular. This discussion is picked up again in chapters 4 and 5 and especially in the concluding chapter 7.

The EU as a legal system

The EU is governed through both primary and secondary legislation. Primary legislation is composed by the framework of treaties signed by the Member States and the case law of the ECJ. Secondary legislation is formed by the instruments of community law making, namely directives, regulations and decisions (Craig and De Búrca 2003: 112). Recommendations and opinions are also considered instruments of community law,

although they are not binding (Craig and De Búrca 2003: 116). The EU has also numerous ‘soft law’ methods, which serve to develop and give strategic directions to policies; these include guidelines, policy statements or political declarations by the European Council (Craig and De Búrca 2003: 116-117).

To simplify the rather complex series of treaties governing the EU, it is possible to say that the EU is governed by two consolidated treaties: the Treaty on European Union (TEU) and the Treaty Establishing the European Community (TEC). The TEU contains provisions on common foreign and security policy, police and judicial cooperation, and closer cooperation. On the other hand, the TEC deals with the institutional structure of the EU and the policies under the Single European Market; it establishes the fundamental freedoms (free movement of workers and capital, freedom of establishment and to provide services), it does also establish the principles of competition policy and lays down the basic principles of policies such as transport, employment or customs cooperation among others.

The direct effect of the Treaty provisions is one of the important features of the EU as a legal system. This doctrine has no basis in the TEC or TEU, but it has been established by the ECJ through its case law (Craig and De Búrca 2003: 178-179). The ECJ considers that the Treaty concedes direct rights to citizens that must be protected by the courts. The importance of this doctrine for football can be appreciated in the case of the free movement of players presented in chapter 4. Direct effect is complemented with another doctrine developed through the ECJ case law: the supremacy of EU law. The ECJ has established the doctrine of the supremacy of EU law over national laws of the Member States because it considers that EC law is autonomous ‘on the basis that Member States have voluntarily chosen to transfer their sovereignty’ (Craig and De Búrca 2003: 274).

It can be inferred from the paragraph above that the role of the ECJ in the development of the EU as a legal system is almost as important as the Treaties themselves. Indeed, the legal and political importance of the ECJ in the evolution of European integration should not be underestimated. The ECJ is part of the institutional framework of the EU. The ECJ and the Court of First Instance (CFI) constitute the judicial branch of the EU’s political system (Craig and De Búrca 2003: 86). The ECJ is based in Luxembourg and it

consists of one judge from each Member State. The CFI is also made up of one judge from each Member State. The functioning of the ECJ is assisted by the existence of advocates general (AG): 'An AG is a full member of the Court who participates at the oral stage of the judicial hearing. His or her most important task is to produce a written opinion for the Court. This opinion is produced by the AG who has been assigned to a given case, before the Court makes its decision (...) This opinion does not bind the Court, but it is very influential and in fact is followed by the ECJ in a majority of cases. The AG's opinion tends to be a comprehensive and thoroughly reasoned account of the law governing all aspects of the case' (Craig and De Búrca 2003: 93-94). The opinion of the AG in football-related cases was especially relevant in the Bosman case, because it made football governing bodies aware of how damaging for them the ruling could be if the judges agreed with the AG, as they did (see chapter 4).

The European courts cannot initiate actions. They must wait for cases to be referred to them. However, despite their inability to initiate actions, it is undeniable that the EU courts, especially the ECJ, have had an impact on the development of the EU, mainly derived from its responsibility for interpreting the provisions of EU law (Nugent 2006: 306). The courts have certainly played an important role in the evolution of EU law and policies, and the case of football will prove no exception. The ECJ has been involved in football related cases as a result of its duty to adjudicate on questions regarding the application of the Treaty to rules adopted by the game's governing bodies. The ECJ features heavily in chapter 4, which examines questions related to freedom of movement of workers (notably the Bosman case). Therefore, it is always necessary to keep in mind that the judgments of the ECJ have the potential to alter the course of other institutions' approach to football.

Conclusion

This chapter provides the necessary information to grasp fully the remainder of this thesis. It has explained the historical development of football, the governing structures of the game, and the political system of the EU. In terms of the history of football, two issues stand out. First, football emerged autonomously, outside the regulation of public authorities. Football experienced over the years a process of institutionalisation with the

creation of governing bodies that have tried to remain independent of regulation by public authorities. Second, the development of professional football in Europe as an industry has accelerated in the last ten to fifteen years. The commercialisation of football has gone hand-in-hand with the interest of new digital TV operators to invest large amounts of money in the broadcasting rights of football competitions. The conflicts created by football's economic development over the last years are paramount to understand many of the decisions presented in the chapters ahead. Chapter 4 explains the conflicts between professional footballers on one hand, and clubs and governing bodies on the other, for the control of the players market. Chapter 5, in turn, analyses the disputes between professional football clubs and the governing bodies over the distribution of income coming from the selling of television rights to football competitions.

The institutionalisation of football created a multilevel system of governance that resembles a pyramid. For a long time the game was self-regulated through a top-down pyramidal structure in which governing bodies played a central role. FIFA, the world football's governing body sits at the apex of the pyramid; UEFA, the continental governing body for Europe is immediately below. These two form the supranational level of the pyramid. National FAs, and national leagues are situated below, with individual clubs and players firmly at the bottom. One of the main characteristics of the football pyramid is the vertical channel of authority meaning that regulations adopted at the top must be passed down. Indeed, FIFA and UEFA statutes have provisions to ensure that national FAs, leagues and clubs respect the regulations and decisions taken at the supranational level. It is essential to note that the top-down vertical channel of authority is, therefore, a possible source of conflict if the lower levels of the pyramid do not recognise the legitimacy of the governing bodies' decisions. In the last decade new stakeholders in the governance of the game have emerged. These new actors represent players, clubs and leagues at the supranational level in order to ensure proper dialogue with governing bodies and public authorities (i.e. EU institutions).

The structure of the EU presents a striking resemblance to the pyramid of football. The EU has also been conceptualised as a multilevel system of governance due, among other things, to the mix of national and supranational institutions contained within it. Two things stand out about the EU. First, this chapter has highlighted the supranational

features of the EU as a legal system. This is important because many of the decisions analysed ahead stem from the application of EU law to football bodies. The strength and importance of EU law lie in the direct effect of Treaty provisions. Second, the political system of the EU is both multilevel and multi institutional. The Commission is charged with safeguarding the general European interest. It represents the supranational level. The EP is the EU's co-legislator and it is directly elected by the citizens. The European Council and the Council of Ministers represent national governments. The channels of authority in the EU, however, are different from the traditional top-down approach of football. Certainly, the ECJ and the Commission have legal resources to bring the other institutions in line with EU law. However, the EP has powers to hold the Commission to account, and the Council and European Council provide political and legislative direction to the Union. In any case, it is important to highlight that the different levels and institutions of EU policy-making provide many entrance points for those non-institutional actors willing to have an impact on EU decisions. This chapter aims to provide the reader with the background to fully grasp the rest of the thesis. The next chapter introduces the conceptual framework that structures the thesis' analysis. The conceptual framework is based on models of agenda-setting and multilevel governance.

Chapter 3. Agenda-setting and Multilevel governance

‘A “theory of European integration” is neither feasible nor desirable’
(Jachtenfus 2001: 259)

‘Agenda-setting is crucial, no policy can be made if the issue to which it is addressed cannot be placed onto the active agenda first’
(Peters 2001: 78)

Introduction

Theorising European integration has been an academic endeavour since the establishment of the European Communities. The result is a vast amount of literature with many differing approaches. As William Wallace points out (2005c: 483), in the EU ‘there is no single pattern of policy-making; the different demands of distinctive issue areas, the different actors and institutions drawn in, make for diversity’. Whilst this thesis does not seek to formulate a fully-fledged theoretical approach to EU policy-making, it is nevertheless necessary to rely on a conceptual framework in order to provide a minimum of structure and rigour to the analysis. Thus, this chapter takes stock of the concepts that underpin this research and will be used in the remaining chapters. Chapters 1 and 2 elaborated upon the of the initial observations that motivated this research. Football only appeared on the EU agenda in the mid 1970s, but really only became a major issue following the Bosman ruling of 1995. This coincided with the massive commercialisation of professional football generated by the interest of television companies in broadcasting live football competitions.

If one accepts the conceptualisation of football as an evolving industry within the internal market, then it would almost natural to argue that the EU intervention in football could be explained in terms of neo-functionalism: The natural spill-over of European economic integration reaching a commercially developing area such as football (Haas 1968; Lindberg 1963). Indeed, this is a plausible explanation if one focuses on the regulatory actions of the ECJ and DG Competition’s initial reactions to the Bosman decision (see chapter 4 and chapter 5). However, it is more difficult to

explain through neo-functionalism the hesitancy of the Commission to act in 1976, when football first arrived to the agenda (see chapter 4, page 94 *et seq.*). It is also difficult to explain in the case of EU football policies the absence of a political follow-up to the drive of economic integration after the Bosman case. Indeed, the governments of the Member States saw the interventions of the ECJ and the European Commission's DG Competition as 'unintended and undesirable', thus 'the connection between the functional logic and the political strategy did not happen' (Barani 2005: 53). The logic of spill-over dictates an almost automatic integration of economic sectors. Therefore, after the first arrival of football to the EU agenda one would expect (following the neo-functionalist argument) the development of a new European policy on sport. This has not happened, though. How can be explained, in the case of football, the changes in direction and intensity of the EU institutions in their treatment of football issues? Or how can be explained the different reactions of competition authorities in 1976 (*Donà*) and in 1995 (*Bosman*)? An agenda-setting perspective might help with these weaknesses of the neo-functionalist logic to explain the twists and turns of football's place on the EU agenda.

Agenda-setting as a political process

This thesis sets out to discover why the European Union got involved in football matters. In more general terms, it enquires into why some issues get the attention of EU decision-makers over others, and how these issues fluctuate up and down the agenda. The choice of agenda-setting as a conceptual framework is not just based on the observation of the rise of football as an issue of attention for the EU institutions. Agenda dynamics are of vital importance in all aspects of policy-making. This is so for several reasons. First, agenda-setting is a highly political process: 'Actors seek actively to bring issues on to the agenda if they are looking for a change of policy' (Princen 2007: 21). Second, 'how policies are initially formulated and packaged has a strong bearing on eventual outcomes' (Princen and Rhinard 2006: 1119). This explains why agenda dynamics 'are so politically charged and highly competitive' (Princen and Rhinard 2006: 1119).

Agenda-setting has received very little attention as a conceptual framework to analyse EU policy-making, however. This is striking given the potential that it might have if applied to the EU. Princen (2007: 22) argues that an agenda-setting perspective can contribute to, at least, three of the current debates in EU studies. First, agenda-setting can ‘aid our understanding of policy-making in general’ because the agenda process is as political as the methods of deciding on issues once they are on the agenda (Princen 2007: 22). Second, agenda-setting can ‘shed more light on structural biases inherent in EU policy-making’ (Princen 2007: 22). Third, ‘an understanding of agenda-setting may contribute to our understanding of the development of European integration more generally’ (Princen 2007: 22).

One of the main explorations of EU agenda-setting to date can be found in Mark Pollack’s analysis of EU politics through the principal-agent model; a wider work that studies the nature of the connection between the national and supranational levels of governance in the EU (Pollack 1997, 2003). Two different types of agenda activities are distinguished: formal and informal agenda-setting. The former is ‘the Commission’s right and the European Parliament’s conditional right¹⁹ to set the Council’s formal or procedural agenda by placing before it provisions that can more easily adopt than amend, thus structuring the choices of member states’ (Pollack 1997: 121). Informal agenda-setting is defined as ‘the ability of a policy entrepreneur to set the substantive agenda of an organisation, not through its formal powers, but through its ability to define issues and present proposals that can rally consensus among the final decision makers’ (Pollack 1997: 121).

Pollack’s use of agenda-setting within a rational choice principal-agent model falls short of explaining the dynamics of agenda-setting as a political process, though. First, Pollack’s assumption of comprehensive rationality and perfect information in EU decision-making is problematic. It is not illogical to assume that information would tend to be less than perfect in cases of new issues, where the EU ventures into new areas in which it may have limited knowledge. In the case of football, perfect information is lacking because it was a completely new area for the EU. Second, Pollack’s principal-

¹⁹ The role of the European Parliament as a conditional agenda-setter for the Council, under the same paradigm of rational institutionalism, has mainly been studied by George Tsebelis (see for example Tsebelis 1994).

agent model has no place for non-governmental actors. It is focused on the relationship between national governments and EU institutions. This is particularly unfortunate in the case of football, due to the role of federations and other stakeholders, as explained in chapter 2. Third, Pollack's account considers agenda-setting just as one single decision, that of choosing what issues are up for consideration by EU institutions. Agenda-setting, however, presents more complex dynamics as this chapter is about to explain.

Peters (2001; 1994) takes a different approach to agenda-setting in the EU when he conceptualises it as a political process with several components (Peters 2001: 71). Agenda-setting is influenced by the characteristics of the EU as a political system, among which the most important are a fragmented decision-making system with multiples avenues for influence, the absence of clear policy co-ordination and a multilevel system of governance (Peters 2001: 82-85). The fragmentation and the large number of competitive actors in the EU political arena produces an environment that is 'better suited to policy entrepreneurship than to actually achieving policy goals' (Peters 2001: 87). Thus, agenda-setting in the EU for Peters presents a multiplicity of actors with their own policy conceptions and a large number of policy options and solutions combined 'through a loosely linked process' (Peters 2001: 88). The European Union is 'an agenda-setter's paradise' because there is, potentially, a very broad agenda, with numerous issues around (Peters 2001: 89).

Peters presents a general overview of agenda-setting in the EU, but he does not enter into the details of agenda dynamics. The task ahead is to find in the literature on agenda-setting the pieces to continue the foundations laid by Peters. This chapter draws on the vast literature on agenda-setting at national level, where it has received more attention. Concepts drawn from that literature will need to be adapted to the EU reality. This conceptual framework links some of the agenda-setting concepts used at national level with the EU's institutional and legal framework, taking account in this respect of the recent contributions of Princen and Rhinard (2006) and Princen (2007).

What is agenda-setting?

Dearing and Rogers (1996: 5) point out that 'the agenda-setting process is composed of the media agenda, the public agenda, and the policy agenda, and the interrelationships

among these three elements'. Much of the research on agenda-setting tends to focus on the influence of each agenda over the others. Dearing and Rogers (1996) or Maxwell McCombs and Donald Shaw (1972; 1993; see also McCombs 2005) have thoroughly researched the influence of the mass media on the public agenda that, in turn, might dictate the political agenda. Roger Cobb, Charles Elder and others have focused on the dynamics behind the expansion of issues from wider public agendas to the formal agendas of political institutions (see for example Cobb and Elder 1972; Cobb *et al.* 1976).

Agenda-setting in the EU needs to be understood in a slightly different way because of the specific characteristics of the EU as a polity. The lack of a European public sphere makes EU policy processes 'less likely to be affected by public mobilisation' (Princen 2007: 31). Thus, the influence of the public agenda as defined in national politics will be arguably lower in the case of the EU: 'A focus on political-public agenda dynamics is less relevant in the EU context' (Princen and Rhinard 2006: 1121). The first move to adapt agenda-setting concepts to the EU reality is, therefore, to concentrate in the analysis of the political agenda.

Policy-making has traditionally been divided into different stages by analysts: Constructing the agenda, the specification of different policy alternatives for the items in the agenda, the authoritative adoption of a policy to deal with the issue in the agenda and, finally, implementation (Kingdon 1995: 2-3). Agenda-setting is located at the very beginning of the policy-making cycle, but which processes unfold during the agenda-setting phase? First of all, agenda-setting is not just 'a moment of deciding whether to take an issue or not' (Peters 1994: 11). Agenda-setting goes beyond that simple decision of promoting an issue to the decision-makers' agenda. It needs to be understood as a cumulative process (Peters 2001: 78) where several sub-processes or components unfold.

Princen (2007: 29) argues that the study of all these processes can be summarised under three concepts: conflict expansion, issue framing and institutional constraints. Conflict expansion relates to the way in which particular issues reach high agenda status by increasing the circle of participants that declare an interest/concern about them (Princen 2007: 29). The idea is that issues have higher possibilities of reaching the political

agenda when they attract the attention of a larger number of participants in the policy process. Issue framing refers to the way in which issues are defined while being promoted to the agenda (Princen 2007: 30). This definition is crucial, as it may influence the degree of support by decision makers. Issue definition has not only an impact on the possibilities of reaching the agenda, but it will also determine ‘which set of decision-making institutions will process the issue’ (Peters 2001: 78). The process of issue definition during agenda-setting is, therefore, paramount and will focus the attention of this analysis. Finally, the institutional constraints acknowledge that ‘the rise of issues on the political agenda depends on the availability of institutionally favourable conditions within the political system’ (Princen 2007: 30).

For analytical purposes, one can build on Princen’s argument and disaggregate agenda-setting in several elements. Cobb *et al.* (1976: 127) argue that issues proceed through four important milestones during their agenda career: initiation, specification, expansion and entrance.

Issue initiation

Issue initiation (also known as issue identification) relates to the way in which an issue is created in order to promote it to the agenda (Princen and Rhinard 2006: 1121). It is also possible to understand this initial stage from the decision-maker’s perspective, in which case it can also be termed as issue recognition or issue identification, the process by which the attention of policy-makers and those around them is captured by particular problems over others, hence getting on the agenda (Kingdon 1995: 87). It is necessary to understand how problems are recognised by policy-makers and which dynamics can favour one set of problems over others when entering the agenda. The initiation of an issue can be either internal or external to the policy community.

Issue specification, definition or framing

This is the process of further elaboration of a general issue into a set of more specific problems or proposals (Princen and Rhinard 2006: 1121). It is closely linked to the concept of issue framing, as defined above. During the agenda process, issues are not only identified as important, but they are also defined and redefined whilst rising through the agenda. As pointed out above, this is extremely important because the

definition of an issue during its rise to the agenda may affect the rest of the whole policy-making process (Peters 2001: 78). Therefore, it is very important to distinguish between placing an issue on an agenda and its placement on the agenda in a particular form (Peters 1994: 12). That is to say, it is necessary to distinguish the dynamics of issue initiation and issue framing.

Issue expansion

This refers to the ways in which issues are moved by the initial actors to a wider set of participants (Princen and Rhinard 2006: 1121). Under this idea, issues need to gain visibility in order to be incorporated into the formal agenda of political institutions. It is intimately related to the concept of conflict expansion outlined above. Processes of agenda-setting have usually been explained in a conflict perspective (Princen 2007: 30; see also Robinson 2000: 23-25) because issues have more possibilities of reaching the formal agenda of decision makers when they are perceived to interest a wide circle of participants in the policy process.²⁰ Issue expansion is paramount to ensure success in setting the agenda. The possibilities of expansion of a particular issue are heavily influenced by the institutional framework in which agenda-setting is taking place. Political and governmental institutions are more receptive to some issues than others (Princen 2007: 30).

Issue entrance

This is the last hurdle that issues need to jump before policy formulation. Issue entrance occurs when an issue finally gains access to the formal agenda²¹ of decision-makers (Princen and Rhinard 2006: 1122). Issue entrance is conditioned by many of the factors already cited above. First, there is both issue framing and issue expansion. Whether decision-makers incorporate a particular issue onto their policy agenda might depend on how such item is defined. An important part of the definition of an issue is also the perceived number of participants that express an interest/concern in the issue.²² Second, there are institutional constraints. Institutional structures play an important role in

²⁰ The dynamics of issue expansion and their role in agenda-setting are further elaborated below, see page 70.

²¹ See below (page 64) the differences between the systemic agenda and the institutional or formal agenda.

²² This is encapsulated by the concept of visibility, see page 70 below.

whether issues are accepted onto the formal agenda or not. They will also condition the way in which issues are treated and resolved. Finally, there is a third factor affecting issue entrance onto the formal decision agenda that is often ignored. Issue entrance is heavily influenced by the existence of policy alternatives. Issues are more likely to be incorporated onto the agenda if decision-makers are presented with a policy that is thought to provide a solution for the issue (Kingdon 1995: 87).

The last paragraphs identified four different components of agenda-setting. They refer to issue recognition, issue framing and the importance of institutional arrangements in the expansion of items to the formal agenda. Summing up the ongoing discussion, it is possible to say that issues have higher probabilities of getting on the political agenda (or being promoted high on it if they were already being considered) if: (i) they seem to attract the attention of a large number of participants in the policy process; (ii) there is a receptive institutional framework to deal with the issue; and (iii) there are perceived solutions to formulate a suitable policy in order to deal with the issue. These three factors, in turn, are heavily influenced by the definition of the issue, also known as issue framing. Issue definition, however, is by no means pre-determined. Actors participating in the agenda process will try to formulate and reformulate issue definition according to their own policy objectives (Princen 2007: 30).

Having identified four different processes within agenda-setting, one must proceed with caution, though. It is necessary to stress that the four components outlined above are conceptual. Not all of them will be prominent in every case of agenda-setting. Each component has been identified and singled out to help in the understanding of agenda-setting. Moreover, they do not necessarily follow a particular chronological order. It would be possible to assume that the identification of a problem goes first, followed by access to the formal agenda and the formulation of a suitable policy. However, Kingdon (1995: 205-206) points out that policy alternatives may well be in the public domain before an issue is identified by policy-makers.

The different nature of agendas

The term agenda, as applied to policy-making, can be defined as ‘the list of subjects or problems to which government officials, and people outside the government, closely

associated with those officials, are paying some serious attention at any given point in time' (Kingdon 1995: 3-4; for a wider definition see also Cobb and Elder 1972: 14). Kingdon's definition of the term is rather broad, because it comprises both the issues that are effectively being decided and the subjects that policy-makers are paying attention to without taking any executive decision. In terms of policy output, getting one issue on the agenda does not necessarily mean that action will be taken. In fact there are different levels within the political agenda. It is possible to distinguish between the systemic agenda and the formal or institutional agenda (Cobb and Elder 1972).

Systemic agenda

The systemic agenda consists of 'all issues that are commonly perceived by members of the political community as meriting public attention and as involving matters within the legitimate jurisdiction of existing governmental authority' (Cobb and Elder 1972: 85). There are normally three prerequisites for an issue to enter the systemic agenda: (i) widespread attention or awareness; (ii) shared concern of an important portion of the public that some type of action is required; and (iii) shared perception that the matter is an appropriate concern of a governmental unit (Cobb and Elder 1972: 86).

Achieving systemic agenda status, however, does not guarantee that any action will be taken by public authorities. For that to happen it is necessary that issues are promoted to the institutional agenda, also known as governmental or formal agenda. The systemic agenda will be composed of fairly abstract and general items that identify a problem area, but they will not suggest the alternatives available to cope with the problem (Cobb and Elder 1972: 87).

Institutional agenda

The institutional agenda (also known as decision or formal agenda) is composed by 'that set of items explicitly up for the active and serious consideration of authoritative decision-makers' (Cobb and Elder 1972: 86). The institutional agenda is composed by those items that are up for policy-formulation. The institutional agenda will be more specific, concrete and limited in the number of items it carries. Issues that have made their way through the agenda will gain institutional/formal agenda status through the process of issue entrance, as explained above. In this respect, three factors will

condition the promotion of issues to the institutional agenda: the definition of issues, the availability of policy solutions, and the institutional framework of the political system.

Agenda-setting has been conceptualised as a process of issue-building in which issues move more or less steadily to the systemic and the formal decision agenda (Cobb *et al.* 1976). Many issues will first reach systemic agenda status and later on, when conditions are right, they will be included in the decision agenda (Kingdon 1995: 202). However, this might not always be the case. For instance, external factors can bring issues directly to the decision agenda in cases such as policy or economic crisis, natural disasters or institutional changes (e.g. elections) (Robinson 2000; see also Sabatier and Jenkins-Smith 1999). Finally, Cobb *et al.* (1976: 127) draw attention to an important remark: agenda-setting can be both exogenous and endogenous to the system. Issues can be promoted to the agenda both by actors from outside the political system or the policy-making community and by actors from within. The importance of the ongoing discussion on the nature of agendas lies on the realisation that political agendas are not monolithic lists of issues which governments decide on, but rather a mix of problems and other issues among which decision-makers have to choose to formulate policies.

Systemic and institutional agendas in the EU

As Parrish points out (2003a: 40), there is a similarity between the notion of the systemic agenda and the construction of EU agendas. There is also a similarity between the concept of the institutional agenda (which entails policy formulation) and the stage at which issues are finally defined and EU policies are shaped. In EU policy-making, therefore, the construction of the EU systemic agenda can be understood as the process by which institutions select certain issues as worthy of their attention and work on them. Those issues are analysed and consultations might take place during this phase, although this may not involve active policy formulation. The construction of the institutional agenda in the EU, on the other hand, will involve the final definition of issues to be included for formal decision and subsequent policy formulation.

Building on this, it is possible to identify which agenda-setting stages are important in the formation of the EU's systemic and institutional agendas. Table 8 summarises the processes (as described earlier in the chapter) that can be identified as playing a major

role in the formation of the systemic and the institutional agenda and, in turn, it identifies the factors associated with these processes that will condition promotion to the agenda. The distribution of processes and factors in the table is mostly analytical because agenda processes can unfold at different times either in parallel or one after the other, as was pointed out above. The table has to be understood as summarising the processes that theoretically might be expected to have a higher impact in the formation of each agenda.

Table 8. The systemic and institutional agenda in the EU

Agenda	Processes	Factors
Systemic agenda	Issue initiation Issue framing	Level of attention
		Institutional framework
		Characteristics of the problem
Institutional agenda	Issue entrance Issue expansion Issue framing	Institutional legitimacy
		Definition of the problem
		Social and/or political relevance (visibility)
		Availability of policy solutions
		Inter/Intra institutional consensus

Based on this distinction, an issue will have higher possibilities of being incorporated into the EU systemic agenda when: (i) it attracts the attention of wider circles within the policy-making community (e.g. the attention of more institutions, the attention of more non-governmental actors); (ii) it can find a receptive niche in the EU institutional framework; and (iii) it is framed as an issue related to the EU area of competence or the EU political objectives. In turn, issues will have higher possibilities of being promoted to the EU institutional agenda when: (i) they were present on the systemic agenda; (ii) the EU is perceived as the right level of government for action in that particular domain;

(iii) there is a formal institutional framework able to adopt policy decisions in that domain; (iv) the issue is perceived as having a high level of social or political importance (visibility); (v) there are apparent policy solutions to deal with such an issue; and (vi) there is enough inter and intra institutional consensus to reach a policy decision (given the complex policy-making structures of the EU, as explained in chapter 2).

The greater openness of the EU's policy-making (as compared, for instance, with most national political systems) seems to be relevant for getting issues onto the systemic agenda, but it makes it more difficult to move those issues to an active institutional agenda (Peters 2001: 80). It is clear that the list of conditions for EU institutional agenda success (above) is more detailed and complex than the requirements to achieve systemic agenda status.²³ It may be possible to take part in the discussions and consultations leading to policy decisions in the EU, but it is more difficult to secure a particular policy output: 'In the EU it is relatively easy to gain agenda access but difficult to condition decision-making and implementation' (Princen 2007: 33). Refining Princen's words, it can be argued that it is easier to influence the systemic agenda than to secure success in the institutional agenda.

The EU agenda at work: Problems, actors and institutions

Above it was discussed at a theoretical level the processes that unfold during agenda-setting. But how does this work in practice? Conceptualising the ways in which agenda-setting might be expected to operate, one has a firmer idea of what to look for in the analysis of the empirical information contained in chapters 4 to 6. This section rounds up the conceptual framework with a closer look at the variables at work in the formation and building of EU political agendas. It builds on the arguments discussed above. In the ongoing analysis of agenda-setting, there has been a constant reference to three elements that have appeared at almost every stage: The characteristics (i.e. definition/frame) of the issue at stake, the relative number of actors within the policy community that express attention/concern about the issue and, finally, the institutional

²³ Justin Greenwood in his study of interest representation in the EU explained that the institutional nature of the EU grants easy access to those wishing to have a say in policy-making, however he warns that access does not mean influence (Greenwood 2003).

framework. This brings the argument back to Princen's proposal to encapsulate agenda-setting in three concepts: conflict expansion, issue framing and institutional constraints (Princen 2007: 39). Conflict expansion and issue framing describe processes in which actors and issues interact, whilst institutions provide the framework for that interaction. Thus, issues, actors and institutions can be considered the variables in agenda-setting. This section takes a closer look at the role of these variables.

The evolution of problems and the systemic agenda

Issues, their characteristics and their nature, are the first variable identified in the analysis of the EU agenda. It is possible to consider agenda-setting from an issue or problem-centred perspective. In this vision, the agenda is set by the evolution of a problem, which demands some form of response by decision-makers (Robinson 2000: 25). Kingdon (1995: 109) draws a distinction between a 'condition' and a 'problem'. Conditions are present daily in a community and in our life. A condition is very broad, it includes almost everything: 'bad weather, illnesses, poverty...' (Kingdon 1995: 109). Conditions are only defined as problems 'when it is believed that something should be done about them' (Kingdon 1995: 109). The process of identifying a particular condition as a problem susceptible to policy-action is at the core of the issue recognition stage and, thus, central to the formation of the systemic agenda.

Problems have two essential components: the social conditions and the interpretation of those social conditions (Kingdon 1995: 110). The social conditions are, quite simply, the nature of the problem, the intrinsic characteristics of the problem as it is. The interpretation of the social conditions is the definition that actors within the policy community or wider circles (when focusing on wider agendas) make of these social conditions.²⁴ The opportunities for problems to rise high on the systemic and institutional agenda are a function of the problem's nature (social conditions), as much as they are of the definition being articulated by political and social actors (issue or problem framing): 'For those who wish to control the dynamics of an issue, the manipulation of the public's perception of it is vital' (Robinson 2000: 18).

²⁴ Kingdon's differentiation between social conditions and interpretation might raise deeper ontological and epistemological debates as to how social realities are perceived. One should understand this differentiation in the context of agenda-setting processes and not relate it to wider philosophical questions that would be out of scope. Kingdon refers to the fact that in agenda-setting terms, political actors will try to present problems in favourable terms to their policy-objective.

A key element in the characterisation of a problem whilst rising to the agenda is visibility. Visibility can be understood as the number of persons or groups that are aware of the existence of the problem and its possible consequences (Cobb and Elder 1972: 43). Visibility is 'a key requirement if an item is to engage the interest of an actor or institution who will subsequently act on it' (Hogwood and Gunn, quoted in Robinson 2000: 17). Visibility is the operational concept of what was referred to above as 'the number of actors expressing an interest/concern for a particular issue'. Visibility, therefore, is intimately linked to the process of issue expansion. Indeed, issue expansion is about enhancing an issue's visibility within the policy community so it has higher chances of agenda promotion.

Thus, problem framing and visibility for the policy community become paramount in the rise of issues to the agenda. Therefore, actors involved in policy-making will try to manipulate in their favour the perception of these two dimensions. A problem-centred analysis of agenda-setting confirms the importance of the intrinsic characteristics of an issue when grasping the attention of decision-making, but it also recognises that problems are constructed and reconstructed during the conflict between actors over visibility and framing (Robinson 2000: 16). The characteristics of problems are more likely to have an impact on the formation of the systemic agenda, which is of wider scope. Whilst playing a role, these should be of lesser importance in the building of the institutional or formal agenda. Yet, visibility shall be paramount for both the systemic and the institutional agenda.

Actors, venues and conflict expansion

The activities of actors are important both in the recognition and framing of issues and in their expansion to facilitate issue entrance to the formal agenda. Therefore, actors might impact on both the systemic and the institutional agenda. Indeed, in the EU successful formal agenda-setting 'requires a considerable degree of consensus among important actors about the needs to address the issue' (Princen 2007: 33). The analysis of agenda-setting with an actor-centred viewpoint considers the agenda-setting from a conflict perspective where actors try to retain control over the visibility and framing of issues, as well as over the possible policy alternatives to address it (Robinson 2000: 23).

Normally, these conflicts are articulated along the lines of ‘insiders’ versus ‘outsiders’ in relation to a policy-making core (see Maloney *et al.* 1994), but there are also possibilities for conflict among insiders.

In the early stages of agenda-setting, insiders to the policy community try to restrict the scope of rising issues to minimise the need for other actors’ interventions. However, when one issue’s visibility expands to wider circles (either for procedural reasons or just the influence of public opinion), then insiders will try to manage the definition of the issue so as to ensure their preferred outcome (Baumgartner and Jones 1991). The agenda in a policy community will be controlled by insiders if there is general agreement over the definition of any particular issue rising to the agenda. However, if an insider group does not find its interests well served by the policy proposals, it will try to expand the issue to include supportive actors outside the policy-making core, potentially generating an internal (to the policy community) legitimacy crisis in the system (Baumgartner and Jones 1991: 1056). This is conflict expansion in action. Early action could prevent a low salience issue from getting to the high levels of the political agenda; issue definitions are better controlled at the outset, when rival conceptions tend to be scarce. However, if unhappy insiders succeed in challenging the prevailing status of a problem by attracting the interest of others outside the policy-making core, an ‘external legitimacy crisis’ may develop, provoking a reassessment of the current definition (Baumgartner and Jones 1993: 68).

Outsiders, on the other hand, find it more difficult to influence agenda-setting. If they are sufficiently informed, they will try to propose their preferred issues and definitions for the agenda. If they are not closely related to the policy-making core, outsiders will be at a disadvantage because they will struggle first to win legitimacy within the system and afterwards to get their options considered on the agenda. For outsiders a key tactic to influence agenda-setting and policy-making is to use indirect methods, by moving the discussion out of the normal arena and making it open to the public (Cobb *et al.* 1976). This includes trying to take the issue to a different policy-venue (Baumgartner and Jones 1991, see below), also known as venue-shopping. Venue-shopping is especially important in the EU, where multiple institutions offer different venues to those wishing to promote (or block) issues in the agenda (Princen 2007). The possibilities of issue

expansion (i.e. venue-shopping) in the construction of the EU agenda will be conditioned, as explained above, by the institutional framework.

High politics and low politics in EU agenda-setting

The interaction between problems and actors is at the core of agenda-setting in the European Union. Actors and problems do not interact in a vacuum, though, but rather in a structured (and quite complex) institutional framework. It has been suggested above that the EU's institutional framework facilitates the promotion of items to the systemic agenda, whereas it restricts the leverage for action in the composition of the institutional or decision agenda (Peters 2001).

The formal role of institutions in agenda-setting is defined by the procedural opportunities offered by the system to actors to promote particular items to the agenda. The institutional system provides specific points for the introduction or re-definition of issues. Institutions, and those working within them, benefit from the advantage of being able to incorporate issues directly onto the agenda (either systemic or institutional) (Kingdon 1995: 163). On the other hand, the institutional and legal framework of the EU also presents procedural constraints. The EU is not omni-competent and access to the agenda is not open to every issue at every time. In the same way that the institutional structure defines the opportunities to promote issues onto the agenda, it also sets procedural restrictions since the EU is not a blange where any issue can be promoted. The importance of policy arenas/institutions in agenda-setting goes beyond providing or restricting points of access, because policy-making venues are also intimately linked to issue framing (Baumgartner and Jones 1993). Thus, institutions will not only condition when and where an issue can reach the agenda, but they will also influence the way that the issue is placed on the agenda.

Baumgartner and Jones (1993; 1991) explain changes in political agendas through the link between issue definition and policy venues. They argue that changes in issue definition often lead to the promotion of an issue on the agenda (Baumgartner and Jones 1993: 12). Issue definition, in turn, is linked to the use of policy venues, for 'some types of issue definition may be accepted in one venue, but considered inappropriate when raised in another institutional arena' (Baumgartner and Jones 1993: 32). Therefore,

there will be competition to place issues on the agenda of a sympathetic policy venue. In some areas issues might be closely linked to a pre-determined institution, but issues do not necessarily have a clear venue linked to them because normally problems are too complex and present many different characteristics (Baumgartner and Jones 1993: 33). Baumgartner and Jones argue that policy change occurs when actors succeed in shifting debates and decision-making to new venues. Those unhappy with the agenda status of a particular issue will try to go venue-shopping to find a more sympathetic arena in which their definition of the issue is accepted (Baumgartner and Jones 1993: 35-36). In this process of venue-shopping the manipulation of issue definition is a key element because changes in definition are used purposefully in an effort to attract attention of the members of a particular policy venue (Baumgartner and Jones 1993: 36).

Thus, institutions can have two different effects during agenda-setting. They provide formal procedural opportunities for actors to promote issues to the agenda and they also present possibilities to affect issue definition through venue-shopping. EU policy-making has a systemic bias towards venue change, which in theory could facilitate modifications in issue definition. This, however, will depend on procedural constraints. Obviously, new issues coming onto the agenda, such as football, might face fewer procedural constraints than established policies such as the Common Agricultural Policy or competition policy. However, this does not mean that promoting new issues to the agenda is easier because the EU's legal system provides the context where EU policy actions develop and, as it was pointed out above, the EU is not omni-competent and unconstitutional decision making can be annulled. New issues need to find not only a receptive institutional venue, but also a suitable legal base to be established on the agenda. A very good example of this was the ECJ's decision to annul Commission projects that sought to overcome social exclusion because there was no legal base in the treaty to establish a budgetary line to fund those projects (*United Kingdom of Great Britain and Northern Ireland v. Commission of the European Communities*, case C-106/96 ECR [1998] I-02729). Following this decision of the ECJ, the Commission interpreted that budgetary lines without a legal base should be cancelled and, consequently, the Commission stopped funding for sports programmes such as the Eurathlon Programme or the Sport for the Disabled Programme. This case is a good example of the procedural constraints of the EU institutional and legal framework. Despite being relatively open to the promotion of issues onto the systemic agenda, it is

also necessary to have in mind that the entrance to the institutional agenda is conditioned by legal and procedural constraints. Thus, issues will have more possibilities to be promoted to the institutional agenda if they can fit within the legal framework and avoid these procedural constraints.

The analysis of EU agenda-setting needs to identify the points of agenda entrance and the routes through which issues move in their promotion to the EU agenda. Princen and Rhinard point out that there are two possible routes in the EU agenda: the 'high politics route' and the 'low politics route' (Princen and Rhinard 2006).

The high politics route (Princen and Rhinard 2006: 1120-1123) is primarily a political one. It starts in the European Council, where issue recognition and some issue framing/definition takes place. The nature of the problem, especially if coupled with a focusing event, is a major factor in the initiation of the agenda in the high politics route. The European Council, due to its own nature, will normally limit itself to providing general principles about the issue in question, so normally the bulk of problem framing and policy formulation will go down one level to either the Commission or the Council of Ministers, who have to interpret the decisions of the political leaders and act accordingly. This is how the systemic agenda is formed through the high politics route. It is a top-down approach. Once the problem in question is recognised and framed in the European Council, it moves outside the initial circle of policy initiators to the formal institutional agenda, where different policy alternatives will be considered by the Commission, Council of Ministers and European Parliament. These changes of venues may be suitable for outsiders to try to influence policy output. The high politics route has the advantage of providing momentum to EU policy-making, as the Commission and other institutions may feel compelled to follow the European Council's recommendations. On the other hand, once the issue has left the political leaders, it may be watered down during the formulation of the policy, especially if the debate reverts to one that is low key and focussed on technical issues. If the political momentum (i.e. the visibility of the issue) is maintained and the issue remains framed in political terms, it may be more difficult to change with technical arguments.

The low politics route (Princen and Rhinard 2006: 1120-1123) is mainly technocratic and technical. Issues do not originate here as the result of a political decision, but rather

through the professional and technical concerns of people working in the same issue area. This is rather typical of the Commission and Council working groups. There are also opportunities for individuals to use the institutional framework to promote issues from below. Issue framing in the low politics route will take part in the Commission and the Council, but the process is likely to be framed in much more precise and technical terms than the high politics route due to the work of expert groups. This is the formation of the systemic agenda in the low politics route.

Once the issue is recognised and framed as a problem, it has to be incorporated into the formal agenda and to go through the decision-making process. The dynamics of the low politics route in agenda-setting are bottom-up. Moving issues up to the institutional agenda via this route is difficult, because the receiving institutions have the possibility to veto or modify the problem as presented to them. For issues to be promoted to the institutional agenda via the low politics route, advocates need to gradually build support around them, so there is a general consensus that the new problem deserves a higher agenda status. The risk is that problems might be blocked, re-defined or even 'hijacked' by other actors when moving up in the agenda.

The high politics route is more likely to affect issue recognition and issue framing (i.e. the systemic agenda), whereas the low politics route can have a major impact on the re-definition of a given problem or the elaboration of policies once problems are on the agenda (i.e. the institutional agenda). It is necessary to understand the two routes as the two ends of a spectrum, because it is unlikely that an issue will follow purely just one of them (Princen and Rhinard 2006: 1122). Indeed, issues may change from one route to the other. A particular problem may start as low politics, but be promoted to high politics by a focusing event and the reverse is also possible. Moreover, both processes can unfold simultaneously and have reciprocal effect on each other (Princen and Rhinard 2006: 1123).

The identification of the high and low politics routes in EU agenda setting has highlighted both the opportunities and challenges of the EU institutional framework for those willing to incorporate new issues on the EU political agenda. This concludes the conceptualisation of agenda-setting as a framework for analysis. The last sections have stressed the differences between the systemic and the institutional agenda and the

significance of conflict among actors involved in policy-making, the nature and definition of issues and the institutional framework. In the following chapters this thesis will analyse the promotion of football onto the EU agenda in the light of these concepts. Before turning to that however, this chapter concludes now with an examination of a second set of concepts of importance for this thesis: those relating to the idea of multilevel governance.

Multilevel governance

Agenda-setting is intended to explain the rise of football onto the EU agenda. In this respect, it will be of most use when analysing the first stages of the EU's involvement in football matters. This corresponds mainly to chapters 4 and 5. The thesis needs a complementary approach to deal with the latest developments of football in the EU once it has been established on the agenda. The EU institutional framework has had an important impact on the development of a policy on football. In this respect, it was observed in chapter 2 that the EU and football both have complex systems of governance. Multilevel governance has been chosen to complement agenda-setting in providing this thesis with a conceptual framework.

The term multilevel governance (MLG) can be traced back to Gary Marks' work on EU regional policy. Marks employed the term for the first time in 1993, when he suggested the emergence of multilevel governance in the EU:

A system of continuous negotiation among nested governments at several territorial tiers -supranational, national, regional and local- as the result of a broad process of institutional creation and decisional reallocation that has pulled some previously centralised function of the state up to the supranational level and some down to the local/regional level (Marks 1993: 392).

Marks argued that the implementation of regional policy was reallocating power and authority across different levels and, at the same time, that it was facilitating the emergence of transnational networks of subnational governments (Marks 1993: 404). Marks characterised the emerging multilevel governance phenomenon as a 'centrifugal process' in which some decisional powers were shifting to the local/regional level and some transferred to the EC level (Marks 1993: 407).

The proponents of MLG have since retreated from some of their far-reaching empirical claims, especially when EU member governments have regained central roles in successive reforms of regional policy (Pollack 2005: 39; for a summary of the evolution of EU regional policy see, for example, Allen 2005). However, MLG has continued to be used to explore both the vertical and horizontal dimensions of the reallocation of power and authority in the European Union.

Although MLG is intimately linked to the study of the EU and its regional policy, scholars have found the increasing necessity for analysis across contested jurisdictional and territorial boundaries ‘both within and beyond the state’ (Bache and Flinders 2004a: 4). Thus, terms such as multi-tiered governance, polycentric governance or multi-perspective governance (to name a few) have been used to describe similar dynamics (Marks and Hooghe 2004: 15-16). Whilst these concepts are not entirely similar, ‘they share a concern with explaining the dispersion of central government authority both vertically (...) and horizontally’ (Bache and Flinders 2004a: 4). These concepts are all concerned with a process that can be termed as ‘diffusion of authority’ (Hooghe and Marks 2003: 234). MLG in the context of the EU is linked to the dispersion of national governments’ authority, but the concept can be used to encapsulate other phenomena in which decision-making is spread among different levels of authority, hence preventing any single level from totally dominating governance structures.

Multilevel governance is used both as a normative and analytic concept. Proponents of MLG as a normative concept suggest that it is a ‘normatively superior mode of allocating authority’ (Bache and Flinders 2004b: 195). For them, MLG is simply a realistic vision of contemporary governance: ‘Modern governance is (and, according to many, should be) dispersed across multiple centres of authority’ (Hooghe and Marks 2003: 233). It is suggested that MLG’s main advantage is its flexibility to deal with externalities (Marks and Hooghe 2004: 29). This normative vision of MLG also has its critics, especially in terms of what is perceived to be a democratic deficit as well as an excessive diffusion of authority that complicates proper accountability (see for example Jessop 2004; Peters and Pierre 2004). On the other hand, MLG is also understood as an analytical framework. The explanatory powers of MLG are disputed, though, (Peters and Pierre 2004: 88); hence, some authors prefer not to consider it a fully fledged

theory, but rather a ‘compelling description of what happens to decisions once they escape the domain of intergovernmental bargaining in the EU’ (Bache and Flinders 2004b: 203; see also Rosamond 2000: 111). Be that as it may, Bache and Flinders (2004b: 203) consider that, despite obvious shortcomings, MLG is useful:

Whether multilevel governance is accepted as a theory, an organising perspective or a contrastive concept, it can be used in a number of ways that contribute to our understanding of the changing nature of policy making.

MLG is usually praised as a counterpoint to state-centric approaches that have dominated analysis of international relations (a classic example of this contraposition is Marks *et al.* 1996). In this case, MLG is welcome because it ‘raises questions about the role of non-state actors and highlights variation in different patterns of participation and influence in different cases that state-centric approaches may well overlook’ (Bache and Flinders 2004b: 203).

Vertical and horizontal MLG

MLG refers to a process whereby a central locus of power and authority is ‘melded gently into a multi-level polity’ (Marks *et al.* 1996: 371). In the case of the EU, this is applied to central governments of Member States in relation to both supranational institutions and regional/local authorities. As a metaphor, however, MLG can be used to understand other structures where power and authority is diffused. This section focuses now in a more systematic definition of MLG to identify the characteristics of multilevel governance structures.

The multilevel governance concept contains both vertical and horizontal dimensions:

‘Multi-level’ referred to the increased interdependence of governments operating at different territorial levels, while ‘governance’ signalled the growing interdependence between governments and non-governmental actors at various territorial levels (Bache and Flinders 2004a: 3).

There are, therefore, two dimensions to multilevel governance. The vertical dimension relates to the territorial distribution of authority, whereas the horizontal dimension relates to the relations between governmental and non-governmental actors. Indeed, Marks and Hooghe (2004) identify two different types of MLG which they label

somewhat unoriginally Type I and Type II of MLG (see also Hooghe and Marks 2003, 2001). These two types of MLG are not mutually exclusive; quite to the contrary, ‘Type I and Type II governance are complementary’ because Type II ‘tends to be embedded in legal frameworks determined by Type I jurisdictions’ (Marks and Hooghe 2004: 29).

Vertical MLG

Marks and Hooghe’s Type I refers to the vertical dimension of MLG. In this model, authority is dispersed to jurisdictions at a limited number of levels (Marks and Hooghe 2004: 16). These jurisdictions are general purpose and present non-intersecting memberships because membership ‘is usually territorial, as in national states, regional and local governments’ (Marks and Hooghe 2004: 18). The key systemic characteristics of vertical MLG are the limited number of jurisdictional levels (i.e. there are just a few levels of governance) and a system-wide and durable architecture (Marks and Hooghe 2004: 18-19). Vertical (or Type I) MLG is consistent with the structures of the European Union (Marks and Hooghe 2004: 18-19).

The characteristics of MLG in the EU can be summarised in three points (Marks *et al.* 1996: 346-347):

- Decision-making competences are shared by actors at different levels. Supranational institutions in the EU can have influence in policy output.
- Collective decision-making among Member States involves a significant loss of control for individual state executives.
- Political arenas are interconnected, rather than nested. Therefore, subnational actors operate in both national and supranational arenas, creating transnational associations in the process.

MLG in the EU asserts the diffusion of central governments’ authority, but it does not reject the importance of the Member States in EU policy-making, it rather stresses that governments of the Member States no longer retain a monopoly of power and authority:

The multi-level governance model does not reject the view that state executives and state arenas are important, or that these remain the most important pieces

of the European puzzle, [but it] asserts that the state no longer monopolises European level policy-making (Marks et al. 1996: 346).

Generalising this characterisation of the EU, systems of vertical MLG present competences shared across different (but limited) levels, a loss of control (to some extent) for the initial locus of power, authority or legitimacy, and structures in which actors cut across embedded jurisdictions in order to access interconnected policy arenas. This, in turn, can favour the creation of trans-jurisdictional networks (e.g. transnational or transregional networks).

Horizontal MLG

Marks and Hooghe's Type II refers to the horizontal dimension of MLG. In this model authority is dispersed towards task-specific jurisdictions that present intersecting memberships (Marks and Hooghe 2004: 20). The systemic characteristics of Type II MLG are a large number of jurisdictional levels and a flexible, and not necessarily durable, design (Marks and Hooghe 2004: 20). These types of arrangements are common in EU cross-border regions and in local government (Marks and Hooghe 2004: 25). The horizontal dimension of MLG refers to a process that could be described as decentralisation in policy management. Central authorities resort to policy networks, public-private partnerships or independent regulatory agencies to delegate certain areas of their responsibilities.

The EU, which is one of the prime examples of vertical MLG also presents a considerable amount of horizontal diffusion of power and policy-making. Helen Wallace points out that over the past decade there has been a proliferation of agencies for operating EU policy regimes (Wallace 2005a: 76-77). One group of agencies deals with the administration of programmes which the Commission is unable to manage (e.g. the Socrates programme); a second group of agencies handles regulatory functions (e.g. European Agency for the Evaluation of Medicinal Products); and a third group of agencies provides services for the institutions (e.g. the Publications Office or the European Personnel Selection Office). But the horizontal component of MLG goes beyond the institutional arrangements of agencies or other types of bodies. It signals a process whereby there is growing interdependence between governments and non-governmental actors at different levels within the EU.

Consequences of MLG

MLG has been mostly applied to the EU and, therefore, most of its language is focused on the role of the state, national governments and EU supranational institutions. It refers to the diffusion of power from Member States towards EU institutions and sub-national authorities. This reallocation of authority in the EU has important implications for governance within this multilevel system. MLG models describe what these structures look like.

A crowded environment

First of all, decision-making in multilevel systems of governance tends to be a crowded environment. Chapter 2 explained that the EU decision-making process is anything but easy. This is first due to the emergence of non-governmental actors: 'Decision making at various territorial levels is characterised by the increased participation of non-state actors' (Bache and Flinders 2004b: 197). Secondly, because the number of institutional actors is multiplied. In the EU, the participation of Member States and supranational institutions transform decision-making in a very crowded environment.

A redefinition of Member States governments

The role of Member States in MLG 'is being transformed as state actors develop new strategies of coordination, steering and networking to protect state autonomy' (Bache and Flinders 2004b: 197). This is a fundamental claim of the MLG approach. Whilst retaining an important position in governance structures, Member States have been forced to respond to the changing context of governance in the EU. Some of the strategies adopted by Member States in MLG are summarised by Bache and Flinders (Bache and Flinders 2004b: 201-202). First, Member States focus on 'metagovernance', that is 'providing the ground rules for governance'. Their authority may be diffused, but Member States are, at the end of the day, the 'Masters of the Treaty', therefore they can shape a great deal of the multilevel structure. Indeed, Member States can introduce institutional reforms with the aim of increasing their vertical and horizontal capacity within the system. Second, national executives have some control over what powers are transferred to the EU and the regional levels, so they might opt to pass on some

responsibilities and concentrate resources on others. Third, Member States may use MLG to their advantage by drawing on the resources of supportive non-state actors to achieve specific objectives.

Despite the need for redefinition and adaptation of Member State governments, they retain a very considerable advantage: 'Popular legitimacy through free elections' (Bache and Flinders 2004b: 202). Whilst the democratic credentials of MLG can be questioned (Peters and Pierre 2004), national governments will still possess democratic legitimacy. For many theorists this is a key element in the resilience of the state *vis-à-vis* EU MLG dynamics (Bache and Flinders 2004b: 201).

Complex policy-making and system instability

Policy-making in the EU as a system of multilevel governance is characterised by mutual dependence, complementary functions and overlapping competencies. Decision-making in this MLG structure is complicated because of the 'complex interplay among contenders in a polity where control is diffuse' (Marks *et al.* 1996: 372). As a result, outcomes will tend to be second choice for all participants (Marks *et al.* 1996: 372). MLG is unlikely to be stable equilibrium unless there is solid constitutional framework or a wide consensus on the goals to be pursued in the system (Marks *et al.* 1996: 372). As a result, the allocation of competences between Member States and EU institutions is ambiguous and contested, and thus prone to change (Marks *et al.* 1996: 372).

The objective of this final section of the chapter was to summarise the concept of multilevel governance. MLG encapsulates the recent emergence of governance systems where authority and power is shared by different actors across levels, both vertical and horizontally. MLG is intimately linked to the study of EU politics since the term, in fact, emerged in the study of EU's regional policy. For the purpose of this thesis, it seems clear that the governance structures of football, described in chapter 2, are *prima facie* multilevel. There is indeed a territorial division of power from FIFA to UEFA and the national FAs. There is also evidence of the emergence of an horizontal dimension, at least at the national level, with the emergence of professional leagues. But, moreover, transnational organisations such as FIFPro, EPFL or G-14 seem to be the structure that

professional players and clubs have chosen to bypass their national FAs and speak directly to UEFA or FIFA.

MLG is characterised by the distribution of power and authority among different actors across levels. In the development of MLG systems there is both a vertical and horizontal dimension due to the role of non-governmental actors and transnational networks. Decision-making in these systems is complicated and it takes place in a crowded environment. It is difficult to argue that decision-making is dominated by any single actor. The EU has been conceptualised as a MLG system many times in the academic literature. This thesis claims that football can also be conceptualised as a multilevel system of governance. At least, the governing structures of the game seem to present many of the features attributed to MLG. The question that remains to be analysed is whether the multilevel structures of both the EU and football have had any impact on the development of the EU policy towards football and the response of football to these policies, or not.

Conclusion

This chapter has presented the conceptual framework underpinning this thesis. As explained in the introductory chapter, the conceptual framework's role is to guide and structure the research design and to provide analytical tools to analyse the empirical information presented in chapters 4 to 6. Whilst it is not intended to elaborate a fully fledged theory of EU policy-making, nevertheless it is necessary to set a framework for the sake of structure and analysis. Agenda-setting and multilevel governance are the concepts explored in this chapter. The former seems a logical choice to structure this thesis' analysis since football was a relatively new and unexplored issue on the EU agenda whose importance rose exponentially following the 1995 Bosman ruling. The latter reflects the structures of both the European Union and football as systems of governance.

Agenda-setting has been used sparingly to analyse EU policy-making. This conceptual framework draws on concepts used to study agenda-setting at the national level, which have been adapted to the context of the European Union. The use of agenda-setting will

contribute an answer to the first research question - why and how the EU got involved in football related matters.

Agenda-setting concerns more than a single decision about placing issues on and off an agenda. It is a cumulative process where several political components can unfold at the same time. Before they are considered for formal policy formulation, issues usually need to feature on the systemic agenda. Issues are most likely to be promoted to the agenda when they are perceived to receive the attention of a large number of actors in the policy community, when they are suitably framed, when there is an institutional venue available to deal with them, and when there are suitable policy options available. Since football was not initially contemplated as an issue for consideration by the EU, these factors might help to explain its subsequent emergence on the EU agenda. The EU's institutional framework is well suited to provide prospective agenda setters with opportunities to push their issues forward. However, this is a double edged sword because the multiple points of access can be used by both proponents and opponents of new issues. Thus, it is easier to influence the EU's systemic agenda than the institutions' formal agenda, where policies are decided and shaped.

Agenda-setting models conceptualise the agenda process as a political struggle among actors to control the definition of problems within the system's institutional framework. Agenda-setting argues that the definition of an issue when it is placed on the agenda has a major bearing on the subsequent policy adopted. It is expected, therefore, that this focus on issue definition will contribute to answer the second research question - what is the EU policy towards football?

Agenda-setting also stresses the importance of the institutional framework in conditioning the passage of issues through the agenda. Chapter 2 explained that the EU is a system of governance where authority and decision-making is shared among institutions and across levels. This is encapsulated by the concept of multilevel governance, which emerged in the study of the EU's regional policy but has been subject to further elaboration and analysis. It happens that the governing structures of football present a striking resemblance to the MLG model as well. The literature on MLG has developed enough to allow us to describe the systemic dynamics of multilevel structures of governance. MLG presents a system where power and authority has been

diffused from the initial holder to actors across different levels, both vertically and horizontally. Governance in multilevel systems can be expected to be crowded, with the increasing participation of horizontal networks where non-governmental actors have an active role. As a result policy-making is difficult to control and policy output might be second choice for all.

The importance of MLG for this thesis lies in the fact that both the EU and European football present characteristics that can be classified as multilevel. The multilevel nature of both systems may have played a role in the development of the EU policy towards football. Therefore, MLG concepts can be useful to provide answers to the third research question - what is the role of EU institutions and football organisations in the origin and development of EU football policies. Finally, if European football is indeed characterised by a multilevel structure of governance, then the concepts drawn from this model might also be used to provide answers for the fourth research question – what has been the impact of the EU’s football related activities on the governance of the game.

Thus, this chapter has set the conceptual framework for the thesis. It has filled the toolbox with the necessary instruments to make sense of the European Union’s involvement in football matters. This thesis is now at the right juncture to begin exploring the rise of football on the EU agenda.

Chapter 4. Freedom of movement for players

'The organisation of football appears to be on a collision with more than one area of the [EC] Treaty. This should not be a surprise'
(Weatherill 1989: 87)

'Bosman has been the mother of all interventions [by the EU]'
(Interview 38)

Introduction

This chapter begins the presentation of the European Union's involvement in football-related matters. The EU's initiatives and policy decisions in the area of football have been grouped under three headings, as explained in the introductory chapter. The division is partly thematic, but it also carries some elements of chronology. The order in which chapters 4 to 6 are presented is not gratuitous. This chapter deals with the application of the principle of freedom of movement for workers to the regulation of professional footballers' employment. It is situated at the start of the empirical section of the thesis because this was the first area of football that attracted the attention of EU institutions. Chapter 5, next, focuses on the broadcasting of professional football, which followed Bosman onto the EU agenda. Finally, Chapter 6 dealing with the current situation as with regard to the governance of European football is the most contemporary of the three.

Thus, the present chapter has to be understood as the first step in the exploration of football's rise up the EU agenda. It focuses on the regulation of the footballers' market. The background to this chapter goes back to the 1970s and traces the evolution of football onto the EU agenda. Consequently, it is expected that the analysis of the EU's involvement in the regulation of footballers' employment will contribute to the understanding of how and why football was placed on the EU agenda, thus providing answers for this thesis' research questions.

Footballers' employment has been largely regulated through transfer systems and nationality quotas. The transfer system and the application of nationality quotas in club competitions were the first two points of conflict between the European Union and football when the Commission and the European Court of Justice were asked to elucidate whether those norms were lawful in the light of the freedoms recognised in the Treaty of the European Communities.

The chapter opens up with an introduction to the football transfer system, nationality quotas, and the EU Treaty articles applicable. It then goes on to review the main decisions by which the EU has shaped the regulation of footballers' employment. Firstly, the chapter starts with the road to the Bosman case, the decisions in the 1970s and 1980s when EU institutions did little to change the *status quo* in terms of nationality quotas and transfer system. Secondly, the chapter focuses on the well known Bosman case. Thirdly, the Commission investigation into the FIFA international transfer system is evaluated. Finally, the recent UEFA initiative on locally trained players, which is perceived as an attempt by the governing body to regain some of the ground lost after Bosman, is analysed.

Regulating footballers' employment

The control structures of football have traditionally positioned players at the bottom of the football pyramid (Tomlinson 1983: 173). Clubs must register their players with their respective national FA or league to participate in national championships. They have to follow similar procedures with UEFA if they participate in European competitions. These governing bodies regulate and decide which players can be registered to play in the competitions they organise, thus having a certain amount of power over the players that any given club can hire. 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). This chapter is structured around these norms and, especially, the intervention of EU institutions in their evolution. But before entering into the detailed analysis, this section provides some necessary background information. The section first explains how the football transfer system works. It then deals similarly with the operation of nationality quotas. Finally, it

summarises the Treaty provisions on freedom of movement for workers that are fundamental in the intervention of EU institutions.

The origins of the football transfer system

When clubs hire a player, they have to register him or her with the respective governing body or competition organiser, which will then issue a license enabling the player to take part in the competition. If a player is to be transferred from one club to another, the competent governing bodies have to deal with the paperwork and issue a new license to allow the footballer to be fielded by the new club. The so-called transfer system is a set of rules that regulate the circumstances under which players can move from one club to another and establishes bureaucratic clearance procedures for issuing the player's license with the new club. Transfer systems are said to protect small clubs that dedicate their resources to train and educate young players, so the richest clubs cannot just 'steal' the players once they had finished their grass-roots education without any compensation (Roderick 2006: 116). One of the functions of the transfer system is to stipulate which type of 'transfer fee' has to be paid by the buying club to the seller in order to complete the transfer. In the case of small clubs dedicated to the training of young players, these transfer fees were considered paramount for their survival.

From the players' point of view, the most contentious issue of a transfer system is any rule that can be used to prevent a player from moving from one club to another at the end of the contract, for instance if agreement cannot be reached between the buying and selling club about an appropriate 'transfer fee'. The football transfer system used to favour clubs rather than players, for it allowed clubs to retain a player at the end of the contract when there was no agreement over compensation for a transfer. These provisions are normally known as a retain and transfer system because clubs are permitted to retain the player's license even when the contractual relationship between the club and the footballer has expired.²⁵

The origins of the transfer system can be traced back to the days when English football first turned professional. In the 1880s, the English Football League created a system of

²⁵ Despite the contract having expired, the footballer was prevented from taking employment with a different club that, perhaps, was offering him or her better wages.

player registration where players were prevented from changing clubs during the season. Moreover the Football League rules required the player's club permission for any transfer to a new club to proceed at the end of the season (McArdle 2000: 19), hence creating the 'retain and transfer principle' (Roderick 2006: 116). The retain and transfer system did not change much until the 1960s. If anything, it made things even more difficult for players, as the system went global and was adopted by leagues and governing bodies world-wide (McArdle 2000: 25). The foundation of FIFA 'led to the formalisation of the transfer system at the international level' (Lanfranchi and Taylor 2001: 216). FIFA adopted a comprehensive set of regulations on international transfers in 1953 (Lenz 1995: paragraph 20). FIFA has normally implemented its transfer regulations world-wide, but between 1979 and 1995 UEFA dealt with international transfers within its territory and operated an arbitration scheme in case of disputes (UEFA 2005b: 16). Following the Bosman case in 1995, FIFA decided to regain the implementation of the transfer system in UEFA's territory, thus being the sole authority for international transfers world-wide. This was a typical example of multilevel governance, with different bodies regulating activities at different levels. The problem, as this chapter explains further below, is that an overlap in the regulation of the transfer system can create conflicts in several ways. Firstly, there may be a conflict of competences between FIFA and UEFA as to who is better suited to regulate international transfers. Secondly, there can be a conflict on the interpretation of the rules between the two bodies.

Challenges to the transfer system came, naturally, from the players. It first began at national level, when footballers unions protested against the regulations governing transfers between clubs within their own country. Perhaps unsurprisingly, 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 occasion came with Newcastle United's refusal to grant a transfer to George Eastham in December 1959, hence making use of its right to retain the player (Greenfield and Osborn 2001: 79). Eastham decided to challenge the transfer system, arguing it was in breach of the restraint of trade regulations (Greenfield and Osborn 2001: 79-80). The judgment (*George Eastham v Newcastle United FC* [1963] 3 All ER 139, hereinafter *Eastham*)

found in favour of the player. The ruling considered that the retention elements of the transfer system went beyond what was necessary to ensure that clubs were able to protect their legitimate interests (McArdle 2000: 25; Greenfield and Osborn 2001: 80-81). *Eastham* precipitated the introduction of a new transfer system in England which addressed the concerns of the ruling, eventually dismantling the retain part of the retain and transfer system (for details see McArdle 2000: 27-28).

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)²⁶ 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 1982a, 1979). The third strike in 1982 led to the intervention of the national government to facilitate an agreement between clubs, the football federation and the players. (González 1982a, 1982b). In their struggle against clubs and the national FA, the Spanish footballers achieved the abolition of the right to retain and a transformation of the transfer system and other employment conditions (El País 1985; Paradinas 1979). There is no evidence available to establish a formal link between these movements in different countries, but there is clearly a pattern whereby footballers in the 1960s and 1970s challenged their situation at the bottom of the football pyramid as they mobilised to improve their conditions.

Nationality quotas

Nationality quotas are intended to fix the maximum number of non-national players that a club can field in any given game. Nationality quotas are justified as a means to ensure the quality of national teams and to maintain the identification of the supporters with their club (Roderick 2006). Although the concept of nationality quotas is relatively

²⁶ 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).

simple, it is difficult to trace the evolution of the implementation of quotas in European football. This is due to the variation among countries of the definition of what a non-national player is, and the difference in the numbers of these players that were allowed (Lanfranchi and Taylor 2001: 218-219). Despite these asymmetries, nationality quotas are based on a common principle, the differentiation between national and foreign players.

In terms of nationality quotas, **national players** are those that can be selected for the national team of the country where the club is based. Thus, Frank Lampard qualifies as a national player for Chelsea since he is English and he can play for England. National players do not count towards a club's nationality quota.

Foreign players are those that cannot be selected for the national team of the country where the club is based. For example, Ghanaian Junior Agogo is a foreign player at Nottingham Forest. Foreign players count towards nationality quotas.

With the resolution of the Bosman case, a third category of players emerged, which for the sake of clarity will be termed **EU players**. They are nationals of an EU Member State that are playing for a club in another Member State. For example, Dutch striker Ruud van Nistelrooy is an EU player at Real Madrid. EU players are clearly also foreign players, as they cannot play for the national team of the country where they are based (i.e. Van Nistelrooy cannot play for Spain). However, following the Bosman case EU players enjoy the same rights as national players; therefore they do not count towards a club's nationality quota.²⁷

Whilst the transfer system was quickly institutionalised at international level, nationality quotas remained for a long time a matter for national FAs (Lanfranchi and Taylor 2001: 49-50), and this contributed to a diversity of regulations in this respect (Greenfield and Osborn 2001: 85). For example, in Italy, the Italian Football Federation (FIGC)

²⁷ Legally, nationals from Iceland, Norway and Liechtenstein shall enjoy the same employment rights as EU nationals because of the EEA agreements. So Norwegian players, for example, fall under the EU player category. Moreover, nationals from countries that have completed association agreements with the EU that contain a directly effective non-discrimination clause within the agreement cannot be discriminated against on the basis of nationality once they are legally employed in a Member State, although they do not enjoy free movement within the internal market. This is explained in more detail on page 107.

permitted, from 1947, the recruitment of five foreign players per club, however the FIGC later banned all foreign players from 1966 to 1980 (Lanfranchi and Taylor 2001: 96). In Spain, foreign players were allowed until 1962, when a total ban was introduced; in 1973 a quota of two per club was adopted (Lanfranchi and Taylor 2001: 97).

Nationality quotas, however, were not attacked by footballers' unions. Logically, national unions of footballers will endorse regulations that protect their members from competition by foreign players. Nationality quotas found opposition in clubs willing to employ foreign players. Ironically, nationality quotas arrived on the EU agenda before the issue of the transfer system. As is explained below, the *Donà* case (*Donà v. Mantero*, case C-13/76 [1976] ECR 01333, hereinafter *Donà*), ruled upon in 1976 by the ECJ, was the first occasion in which EU institutions were involved in football-related matters. *Donà*, curiously, had to do with issues of nationality quotas. Nationality quotas were also a part of Jean Marc Bosman's litigation against football's governing bodies. This section now takes a brief look at the EU Treaty provisions on freedom of movement for workers, which were precisely the lenses through which the EU first approached transfer systems and nationality quotas.

Treaty articles applicable

Freedom of movement for workers is recognised by article 39 EC, which reads as follows:

1. *Freedom of movement for workers shall be secured within the Community.*
2. *Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.*
3. *It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:*
 - (a) *to accept offers of employment actually made;*
 - (b) *to move freely within the territory of Member States for this purpose; (...)*

Article 39 EC represents an application in the specific case of workers of the general principle in article 12 EC (Craig and De Búrca 2003: 702), which reads:

Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

Both principles are central to the completion of the single market and they are considered fundamental freedoms that citizens shall enjoy within the EU. The European Court of Justice gives extreme importance to these rights and, accordingly, it has acted in three different ways to ensure their protection (Craig and De Búrca 2003: 762). Firstly, the ECJ has established a monopoly in the definition of the terms used in the article; ‘worker’ is a Community concept and it can only be developed through Community legislation ‘to counteract possible restrictions of the application of the rules on freedom of movement by the different Member States’ (Craig and De Búrca 2003: 706). Secondly, article 39 EC has direct vertical effect, so it establishes rights that citizens can rely upon and are protected by the courts (Craig and De Búrca 2003: 702). Article 39 EC has also horizontal effect, since it is also applied to regulations governing collective employment (such as the FIFA and UEFA rules relating to players employment), as recognised by the ECJ in the ruling of the Walrave and Bosman cases. Thirdly, the ECJ has defined the term ‘worker’ very broadly and inclusively. The Court has asserted that the freedom of movement for workers is not only important in economic terms, to achieve the completion of the single market, but it also has a social aspect in that the personal right to take up employment in a different Member State without discrimination can improve the standard of living of workers and their families (Craig and De Búrca 2003: 707-710).

In the light of this, the Court has considered as workers both full-time and part-time employees, trainees, and even those not currently employed but seeking work (Craig and De Búrca 2003: 713). The Court has not hesitated to rule that professional football players are engaged in an economic activity and therefore must be considered ‘workers’ as defined by the Treaty (*Jean Marc Bosman v. Union Royale Belge Sociétés de Football Association*, case C-415/93 [1995] ECR I-4921, hereinafter *Bosman*, at paragraph 70; see also *Donà* at paragraph 12). In consequence, footballers enjoy the rights recognised in the Treaty, among which freedom of movement is paramount. The next section demonstrates how these decisions were taken.

The road to Bosman

It was in 1976 when football appeared for the first time on the EU agenda. It did so through a preliminary ruling of the ECJ at the request of an Italian court. This section describes the first decisions on football-related dossiers that led to the well known Bosman case of 1995. It is interesting to look at the first entries of football onto the EU agenda in order to map the early reactions of EU institutions to this agenda item, and to observe in subsequent chapters whether the EU's position has evolved or not. Thus, this section starts by presenting the *Donà* case. It then goes on to describe the reactions of football organisations, and other EU institutions, that lead eventually to the Bosman ruling.

Before considering the 1976 ECJ preliminary ruling on *Donà*, it is necessary to go back a couple of years. In 1974 the ECJ was asked by a Dutch court to deliver a preliminary ruling in the case of two pacemakers, participating in the old speciality of cycling behind motorbikes, who were challenging the selection rules of the world cycling governing body (*Walrave and Koch v. Association Union Cycliste Internationale*, case C-36/74 [1974] ECR 01405, hereinafter *Walrave*). This was indeed the first time that the then EC had to deal with a sport-related issue. Despite not being a football case, the importance of *Walrave* lies in the Court's assertion that 'the practice of sport is subject to community law only in so far as it constitutes an economic activity' (*Walrave*: paragraph 4). Thus, in *Walrave* the ECJ asserted the EC's legitimacy to consider sport-related issues, at least in the application of community law to sport. The Court, moreover, specified that this was the case only when sport constituted an economic activity. The ECJ opened the door of the EU agenda to sport, but in a very particular form, only as an economic activity.

Nationality quotas first

Having established the ECJ's decision to apply EU law to sport, it was two years later that football arrived on the EU agenda. Nationality quotas were the focus of the EU's first incursion into football. The case originated in Italy, where the FIGC had banned foreign players since 1966. At the time of the case in 1976, the rules laid down by the FIGC provided that players were required to hold a federation membership card to play in the competitions; Article 28 (g) of the FIGC's rules stated that only players of Italian

nationality could be issued with the card (Parrish 2003a: 87). Therefore, only players of Italian nationality could take part in club competitions. The Italian Court reviewing the case, asked the ECJ for a preliminary ruling²⁸ to clarify whether nationality restrictions for professional footballers in Italy were compatible with EU law or not. In particular, the ECJ was asked to elucidate whether football players were to be considered as participating in gainful employment, as described in the Treaty, and, if in the affirmative, whether the freedoms granted in the Treaty prevent the adoption of discriminatory rules by sports federations (*Donà*: paragraphs 2-4). In response to the questions, the ECJ ruled:

Rules or a national practice, even adopted by a sporting organisation, which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the state in question, are incompatible with article 7 [now article 14] and, as the case may be, with articles 48 to 51 [now articles 39 to 42 EC] or 59 to 66 [now articles 49 to 56 EC] of the treaty, unless such rules or practice exclude foreign players from participation in certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only (Donà: Operative part of the judgement, paragraph 1).

In *Donà*, the ECJ noted clearly that nationality quotas were contrary to European law. In addition, the ECJ established three points that were going to prove important for the regulation of footballers' employment and future EU interventions in football.

Firstly, the Court reiterated that 'the practice of sport is subject to community law only in so far as it constitutes an economic activity' (*Donà*: paragraph 12). The ECJ clarified that this applies to professional and semi-professional football players because they are engaged in gainful employment, hence falling within the definition of worker in the Treaty (*Donà*: paragraph 12). This is of paramount importance, because if footballers qualify as workers, they can therefore rely on the rights recognised by the Treaty.

²⁸ The preliminary ruling is a legal procedure whereby a national court in a Member State requests the ECJ's interpretation of the provisions of the Treaty to be applied to a particular case. It is the national court's prerogative to decide whether to refer a question to the ECJ or not. Following the ECJ ruling, it will be also for the national court to apply EU law in the case at hand. The preliminary ruling procedure is governed by article 234 EC. A request for a preliminary ruling from the ECJ can be made in relation to three types of subject matter: The interpretation of the Treaty; the validity and interpretation of acts of institutions of the Community; and the interpretation of statutes of bodies established by an act of the Council (Craig and De Búrca 2003: 435).

Secondly, the ECJ confirmed that the provisions on freedom of movement for workers and freedom to provide services (articles 39 and 49 EC) do ‘have a direct effect in the legal orders of the member states’, as they confer on individuals ‘rights which national courts must protect’ (*Donà*: paragraph 20). This means that individual football players can defend these rights directly before the courts, hence opening the door to litigation against any restriction of these rights.

Thirdly, the ECJ was keen to clarify that the prohibition on discrimination based on nationality does not apply only to the action of public authorities, but also to any rules aimed at regulating employment and services (*Donà*: paragraph 17; see also *Walrave*: paragraph 17). Therefore, it follows that rules laid down by sporting organisations are also subject to the application of EU law (*Donà*: paragraph 18-19; see also *Walrave*: paragraph 25) and, consequently, they can be challenged by footballers. This negates the argument that sporting organisations are not bound by European law (*Donà*: paragraph 18). Therefore, *Walrave* first and *Donà* immediately afterwards should have made clear to the football governing bodies that they must respect EU law when regulating the game. In *Donà*, the ECJ clearly stated that nationality quotas were in breach of European law. But, even more importantly, the ECJ recognised that professional footballers are ‘workers’ as defined by the Treaty and, therefore, they can challenge before the courts any rule adopted by governing bodies that might restrict their rights.

A timid follow up

The ECJ’s decision in *Donà* could have been a severe blow for nationality quotas in club football competitions, but in fact they remained in place for another 20 years. This was possible because the reaction of other EU institutions to the ECJ ruling was relatively conciliatory, at least in the immediate aftermath of the judgement. The Commission decided to negotiate and ‘reach a compromise with national federations towards the elimination of any kind of discrimination’ (European Commission 1991: 1). In 1978, following negotiations with the Commission, UEFA agreed that it would authorise clubs to hire as many foreign players as they wanted, but that they would be

restricted to just fielding two such players in any game²⁹ (European Commission 1996a: 2; see also *Bosman*: paragraph 25). The Commission engaged in further negotiations with UEFA again in 1984 when Commissioner Peter Sutherland requested the end of restrictions for EU players, but no progress was really made and nationality restrictions remained in place (Parrish 2003a: 91; Greenfield and Osborn 2001: 85).

The Commission's willingness to negotiate in the aftermath of *Donà* contrasts with the assertiveness and even belligerence that followed *Bosman* in 1996 (see below page 106 onwards). Chapter 7 elaborates further on the implications of the Commission's different attitudes in 1996 and the late 1970s, but at this point it is appropriate to explore the factors that might have conditioned the Commission's reaction to the judgement in *Donà*. First of all, it is the nature of the issue itself. The Commission's reaction indicates that football was not at that time a priority; otherwise, they would have been more assertive. In the mid 1970s, football was not the major commercial industry that it is today. In agenda-setting terms, the *Donà* ruling brought the problem of nationality quotas to the agenda, but at the systemic level. The Commission was paying attention because of the Court's ruling, but it did not feel the necessity to incorporate it onto the institutional agenda and adopt formal decisions. Second, there were not a large number of actors expressing concern about the problem of quotas. Lanfranchi and Taylor (2001: 221) point out that players' associations through Europe were divided on the issue of quotas because for some unions they were an acceptable mechanism to preserve their members' jobs. In other words, it was an issue of low visibility, which reduced the chances of nationality quotas being placed high on the Commission's agenda. Third, no other EU institution seemed to contest the Commission's decision at that time. In an agenda-setting perspective, this is another element contributing to the low visibility level.

Despite an initially mild reaction, the interest of EU institutions on the rules that regulated the players' market increased over time. The European Parliament, which held its first elections in 1979, entered the 'football' scene in the 1980s. The EP addressed the issue of footballers' employment conditions in 1989 when it adopted a report on the freedom of movement of professional footballers drafted by the Dutch Christian

²⁹ Note that UEFA made no distinction at that time between non-national players from the EU and non-nationals from outside the EU. They all were considered to count towards the quota.

Democrat James Janssen van Raay (European Parliament 1989b). Van Raay was elected to the EP in the first elections in 1979 and he was an MEP for 20 years, stepping down in 1999 after completing his fourth term in the EP.³⁰ More importantly, Van Raay was one of FIFPro's founding fathers in 1965 (Interview 9). He had a long history of involvement in players' unions as chairman of the Dutch footballers association and FIFPro (Lanfranchi and Taylor 2001: 221). Because Van Raay was an MEP, players unions had the possibility to influence the EU agenda regarding transfer systems and quotas.

The Van Raay report was extremely hard on the football employment regime. It considered the transfer system 'a latter-day version of the slavery trade' (European Parliament 1989b: paragraph 1). The EP also criticised strongly nationality quotas as being contrary to the provisions of the EC Treaty (European Parliament 1989b: paragraphs 4, 15). The report requested that the Commission starts legal proceedings against UEFA, national football associations and/or individual clubs with the aim of abolishing the transfer fee system and nationality quotas (European Parliament 1989b: paragraphs 2, 16).

Given Van Raay's affiliation as FIFPro Chairman, his report does not only indicate the interest of the EP in that matter. It also suggests an increase in the political awareness of players unions to the point of using the supranational level (EP). For the EU agenda, the intervention of the EP and the players' associations can be conceptualised as issue expansion, for a wider circle of actors expressed interest in the issue of quotas and transfer system with the result of a new institutional venue (EP) being added to the discussion. It has been pointed out in chapter 3 that a change of venue can propitiate a re-definition of issues on the agenda (Baumgartner and Jones 1993). Indeed, the EP proposed a change of strategy, criticising the Commission in the way it was dealing with the issues of the transfer system and nationality quotas. The Van Raay report proposed a different interpretation of the issue and a new idea about where more assertive steps ought to be taken to ensure players' rights.

³⁰ See James Janssen van Raay's profile in the EP's archive at <http://www.europarl.europa.eu/members/archive/term4/view.do?language=EN&id=1455> [Accessed 13-2-2008].

The Van Raay report also had the effect of raising the visibility of this issue. The Commission decided to threaten UEFA with heavy fines should the restrictions to free movement remain in place (McArdle 2000: 38; Greenfield and Osborn 2001: 85). It was at that point, after protracted negotiations with Commission Vice-President Martin Bangemann that UEFA came up with the so-called 3+2 formula³¹ to lift progressively nationality quotas in European football (UEFA 1992: 39; Interview 35). The reception of the 3+2 formula was mixed. For the football authorities it was a good result. UEFA had the conviction that it was a stable and durable agreement:³²

At the time of the 3+2 agreement, we concluded the agreement with the commissioner that was responsible for the area. It was [Commission vice-president and responsible for internal market] Martin Bangemann. Who else could we have talked to? We were convinced that we were right because we had an agreement with the person responsible for our dossier. For us it was a deal, it was there to last and we believed this because it was good for football (Interview 28).

For the Commission, though, it was just a provisionally *bona-fide* scheme to give football authorities some time to put their structures in line with EC law before moving towards the progressive abolition of nationality quotas (La Dernière Heure 1996; El País 1996). On the other hand, FIFPro was opposed to the agreement, for it considered that it was not enough to ensure free movement for players (Interview 9). Given its previous position in the Van Raay report, it is not surprising that the European Parliament criticised the agreement, which was considered an unacceptable concession by the Commission to football authorities (European Parliament 1994). In any case the 3+2 gentleman's agreement proved to be short-lived. While the Commission and UEFA were engaging in negotiations, a relatively unknown Belgian footballer started judicial

³¹ The 3+2 formula allowed for three foreign players to be fielded at the same time in any given game, plus two 'assimilated players'. Assimilated players were defined as those who had played in the country in question for five years uninterrupted, including three years in junior teams (Parrish 2003a: 92). Thus, under the 3+2 rule, clubs were allowed to have a maximum of five foreign players in their squad. Players with nationality from another EU Member State counted towards that quota. For example, at that time Manchester United's Eric Cantona would have been considered non-national, hence counting as one of the 3+2 players, despite his French nationality. The 3+2 formula was agreed between the Commission and UEFA on 18 April 1991 (UEFA 1991). The 3+2 formula was to be applied first in the top-divisions of professional football, being extended to the rest of non-amateur football by the end of the 1996-97 season.

³² With hindsight, it is difficult to understand UEFA's confidence on the legality of the 3+2 rule. It has been pointed out that three motives can explain that position (García 2007a: 208): First, UEFA's clear lack of understanding of EU structures and EU law; second, UEFA's over-confidence because it had not suffered the EU regulatory powers before; and third, a reliance on the political power of football that does not necessarily work with judges or unelected officials.

proceedings after his attempted transfer from Belgian club Liège to French club Dunkerque collapsed. His name was Jean-Marc Bosman and he was about to change the relationship between football and the European Union. This chapter turns now to the analysis of the facts and consequences of the Bosman case.

The Bosman earthquake

The Bosman case is one of the most controversial decisions that the EU has taken towards football. It is clear that *Bosman* is an important milestone in the EU's regulation of football in Europe, as it questioned the legality of nationality quotas and of the international transfer system. *Bosman* also had consequences for the way in which the EU has approached football since. Despite that, one needs to treat *Bosman* with some caution. It has certainly had important consequences as it is explained below. It influenced the governance structures of modern football and the EU's understanding of its role in football governance, but it is by no means the only factor underlying these developments,³³ a view which now seems to be acknowledged by some within the game's governing bodies (Interview 34, Interview 38, see chapter 7 for more details). This section puts *Bosman* into context. First, it presents the background to the case followed by the ruling's main line of argument. It then goes on to map out the reactions of various actors to the ECJ's decision. Finally, this section assesses the importance of *Bosman* by reviewing the consequences of the ruling for the EU's approach towards football.

The three musketeers behind European football's revolution

Jean-Marc Bosman was a Belgian footballer who in May 1988 signed a two year contract with RC Liège, a Belgian first division club.³⁴ On 21st April 1990, two months before the contract's end, RC Liège offered Bosman a new contract for one season,

³³ UEFA's strategic document *Vision Europe* analyses the development of professional football in the last decade, identifying several trends that have facilitated the transformation of the game's structures: geopolitical change mainly in eastern and central Europe, modernisation of facilities and stadiums, increase in revenue through television and marketing, development of new technologies, financial polarisation, and changes in objectives of professional clubs, among others (UEFA 2005b: 17-24).

³⁴ For more details on the facts of the case and legal analysis of the ruling see the ECJ's judgement (*Jean Marc Bosman v. Union Royale Belge Sociétés de Football Association*, case C-415/93 [1995] ECR I-4921) and the Advocate General's opinion (Lenz 1995; see also Blanpain and Inston 1996; McArdle 2000: 38-50; and Parrish 2003a: 91-101).

reducing his pay to BFR 30,000, the minimum wage permitted by the rules of the Belgian football federation (URBSFA). When Bosman refused to sign such a contract, the club placed him on the transfer list, asking a fee of BFR 11,734,000 for the transfer. The club was only willing to offer Bosman the minimum wage, but they were asking for a relatively high transfer fee from any club that wanted to sign him as a player. It should also be noted that the original contract between RC Liège and Bosman had expired.

Since no club was willing to pay the requested transfer fee, Bosman contacted French second division club US Dunkerque, who 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 agreed on a transfer fee of BFR 1,200,000 so that the transfer only required the transfer clearance certificate that had to be issued by the Belgian federation. However, the transfer collapsed because the Belgian FA, at the request of RC Liège, refused to issue the mandatory transfer certificate necessary to complete the move. That was the club exercising its right under the retain and transfer system. As a result, Bosman was not allowed to undertake work at Dunkerque even though his contract with RC Liège had expired, nor could he play for RC Liège because he had not signed the new contract offered to him since it would have made him economically worse-off.

In that situation, Bosman decided to take legal action against RC Liège and the Belgian FA. When looking for legal advice, Bosman decided not to go to his parents' lawyer, but rather to a certain Jean-Louis Dupont; Dupont's girlfriend at that time (now wife) was a long-term friend of Bosman's (Interview 19, Bent *et al.* 2000: 9). Bosman's lawyers were of the opinion, from the start, that the only way to deal with the case was to go the European route and challenge the international retain and transfer system at the ECJ (Interview 19). Indeed, the nature of the Bosman case cannot be fully understood without reference to the legal team behind Jean-Marc Bosman formed by Luc Misson and Jean-Louis Dupont. The latter was at that time a young graduate in European law employed by Liège based lawyer Luc Misson, who had already some experience in cases regarding freedom of movement.³⁵ Dupont himself had studied for some time the

³⁵ Luc Misson is a well respected Liège based lawyer, specialised in European law. He does not hide his federalist and pro-European views, which he very much identifies with the period of the Delors Commission. In the early 1980s, well before getting to know Bosman, Luc Misson wrote several academic articles on the employment regulations of football players and the freedom of movement provision in the EC Treaty. Luc Misson considers himself something of a specialist in freedom of

regulations of sports governing bodies and their conflict with EU law; he was convinced that sport should be brought in line with EU law (for more on Jean-Louis Dupont's background and personal agenda see Bent *et al.* 2000: 9-22). In a way, the Bosman case was the result of the personal situation of a football player, combined with the desire of a renowned lawyer to explore the limits of the right to free movement, and the links between EU law and sport.

The player felt so badly treated by his club and the Belgian FA that he was extremely angry, so he wanted 'to make the transfer system explode if possible' (Interview 19). The legal team of Misson and Dupont agreed that the only way to achieve that was to challenge FIFA and UEFA regulations on transfers and nationality quotas before the ECJ³⁶ (Interview 19). Besides the legal expertise of Luc Misson and Jean-Louis Dupont, Bosman counted on the support of FIFPro when he finally requested the Belgian national court to refer the case for a preliminary ruling of the ECJ. FIFPro realised that an ECJ ruling could be an opportunity to liberalise the players market (Interview 9). FIFPro backed Bosman both morally and financially to go on with his legal challenge (Interview 9, Interview 19).

Although the judicial proceedings started in 1990, the Bosman case started to make headlines in September 1995 when Advocate General Lenz issued his opinion on the case (Lenz 1995). AG Lenz considered that both the international transfer system and nationality quotas were unnecessary restrictions on the freedom of movement for footballers (Lenz 1995: paragraph 287). The whole judicial proceedings ended in dramatic fashion three months later, on 15 December 1995, when the ECJ issued its ruling confirming AG Lenz's opinion.

movement because, before Bosman, he had brought to the ECJ another three cases in that area, which the Court used to extend the definition of 'worker' and consequently the provisions of Article 39 EC to new groups, such as students or prostitutes (Interview 19).

³⁶ At the time of the conflict between Bosman and RC Liège (1990) international transfers were regulated by rules of both FIFA and UEFA (for a summary of both see Lenz 1995: paragraphs 12-26). In theory, the UEFA system applied in Europe whereas FIFA rules applied for transfers to and from Europe (UEFA 2005b: 16). It has been suggested that the UEFA system was less restrictive because it did not allow clubs to retain their players in the event of a disagreement over the transfer fee to be paid (Interview 28, Interview 29, see also Lenz 1995: paragraphs 12-19). However, the Belgian FA applied to Bosman the rules of the FIFA system, a decision that was controversial and severely criticised at the time (Interview 11, Interview 35). In any case, Bosman challenged before the ECJ the transfer regulations of both FIFA and UEFA, plus UEFA's rules on nationality quotas.

The ECJ ruled that the challenged regulations on players' transfers were in breach of article 39 EC 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 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' (*Bosman*: Operative part of the judgement, paragraph 2). The decision of the ECJ can hardly be considered surprising in legal terms, as it draws totally on the case-law established in *Walrave* and *Donà*. The ruling is based on the free movement of workers principle stating that it is 'one of the fundamental principles of the Community' (*Bosman*: paragraph 93).

The judgement of the ECJ in *Bosman* was the first time that both the transfer system and nationality quotas were declared illegal. In the cases before 1995 it was either one or the other, but not the two at the same time. As such, *Bosman* took to another level the legal scrutiny of the regulation of the players market. Moreover, the supranational nature of EU law and the ECJ enabled *Bosman* (and by extension the players' unions) to challenge the international rules of FIFA and UEFA, which had escaped until that date the laws of individual Member States.

Reactions to the judgement

The *Bosman* case received unprecedented media attention, which added a theatrical effect to the reactions of almost every actor involved. On the football side, FIFA and UEFA were in shock after the ruling, which they considered 'nothing short of a disaster' (Johansson 1995). On the other hand, FIFPro and the players' unions were extremely satisfied; they thought this decision would bring a liberalisation of the players market with the abolition of the right to retain and nationality quotas, at least within the EU (Interview 9). On the EU side, the ruling encouraged the Commission to scrutinise the compatibility of football organisations' activities with EU law, whilst, on the other hand, Member States were moved to express concern about the consequences that a complete liberalisation of the players market could have for football.

Football wakes up to the power of EU law

The football governing bodies reacted with anger to the ECJ decision. UEFA president, Lennart Johansson, accused the EU of ‘trying to destroy club football’ (Thomsen 1995). UEFA, at the time, saw the Court’s ruling as a ferocious attack on football, and some people still resent the ECJ for its decision to this day:

At the time, in 1995, [the ruling] was an attack because it did not give even time until the end of the season. This was careless and an attack on football. I will remain in that. In the meantime, I think it is now visible to everyone what developments we have had in the professional side of football. How can we keep it under control? (Interview 28).

FIFA was equally bemused by the judgement, but it expressed its reaction with an attitude of superiority towards the EU:

FIFA has noted with disappointment the decision taken by the European Court of Justice regarding the case of Jean-Marc Bosman. FIFA points out that the decision affects only 18 of the 193 national associations affiliated to the world body. The current transfer system is based upon the Statutes and Regulations which have been duly approved by all the FIFA member associations and has proved to be effective, and is therefore not cast into doubt by today’s decision (FIFA press release of 15 December 1995 quoted in Sudgen and Tomlinson 1998: 50).

As Sudgen and Tomlinson point out (1998: 50), FIFA looked ‘obstinate and foolish’ in their reaction, unable to comprehend the potential implications of the Bosman judgement. The attitude of UEFA and FIFA is difficult to understand, but can possibly be explained by the football authorities’ traditional conservative nature and by their reluctance to accept exogenous regulation (Greenfield and Osborn 2001: 90). By 1995, there were surely enough precedents to assume that the ECJ could and would rule in Bosman’s favour. There was a misinterpretation by FIFA and UEFA of the ECJ’s case-law in *Donà* (1976) and, perhaps, there was also an inability to understand new trends in European football in the 1990s:

Admittedly, and with the benefit of hindsight, I must admit that at UEFA we did not help when saying that sport has no economical consequences. This did not help us in putting our message across, because it was clear that more and more money was coming into the game and football was having an impact in other sectors (Interview 35).

In a somewhat naïve attempt to escape from the effects of the ruling, FIFA and UEFA published a joint statement on 22 December 1995 in which they declared their view that the Bosman ruling had no effect on European club competitions, as the clubs were representing their country; two days earlier UEFA had sent a letter to the European Commission requesting some time to study the consequences of the ruling (Hopquin 1995).

UEFA's steadfast attitude regarding transfers and nationality quotas was not shared by professional clubs and leagues, though. For example, the English Premier League lifted the ban on EEA nationals with immediate effect after the ruling (International Herald Tribune 1995b), because it was clear that clubs were not willing to respect any more the 3+2 rule in place at the time.³⁷ Clubs decided to take advantage of the liberalisation of the players' market instead of siding with the inflexible attitude of the governing bodies. The tensions between professional clubs and governing bodies were not new. European clubs in the early 1990s challenged the legitimacy of national FAs and UEFA in their organisation of club competitions. The conflict between clubs and governing bodies was certainly focused on the exploitation of television rights, but *Bosman* opened another front for disagreement.

If governing bodies reacted with anger to the ECJ ruling, the plaintiff and his legal team were exultant: 'We have won, it is a massive victory, no one can doubt it', declared Luc Misson immediately after receiving the ruling (Oppenheimer 1995). Similarly, the players' unions understood the ruling as a victory that could transform the traditional power structures of the game, where footballers were situated at the bottom of the pyramid (Interview 9, Interview 19, see also Thomsen 1995). FIFPro expected the ruling to mean the end of the right to retain and the abolition of nationality quotas within the EU (Interview 19).

On the football side, therefore, there were varied reactions to *Bosman*. Governing bodies responded with a mixture of anger, shock and superiority that is rather difficult to understand given the precedents. Clubs were relatively ambivalent, while

³⁷ Manchester City was the first English club to take advantage of the Bosman ruling when it fielded four non-selectable players in a game against Chelsea on 23 December 1995 (Maddock and Goodbody 1995). Ironically, Manchester City lost to Chelsea (0-1) with a goal of Gavin Peacock.

professional players could only be positive because the ECJ had declared illegal the restrictions to their free movement within the EU. The situation was that actors located in different levels of the football pyramid were divided (to say the least) on the regulation of players' employment conditions. *Bosman* represents a point of rupture in football's multilevel governance structure. For the EU, *Bosman* brought the regulation of footballers' employment back onto the agenda, and the subsequent reaction of the EU institutions was in strong contrast to their attitude back in 1976.

Divergences in the EU

The reluctance of UEFA and FIFA to accept the outcome of the judgement infuriated the Commission, which found in the ruling a new impetus to bring football in line with EU law. The Commission took a proactive approach following the ruling. Competition Policy DG and its commissioner, Karel van Miert, took the leading role in the pursuit of football authorities. Van Miert warned that UEFA had to evolve 'whether they like it or not' (quoted in Hopquin 1995). The Commission addressed a warning letter to UEFA and FIFA giving them six weeks to inform of the measures they have taken to comply with Community law (European Commission 1996b: 1). If they failed to provide a satisfactory explanation, the Commission reserved the right to start infringement procedures against football's governing bodies.

On the other hand, Member States' governments seemed to be more sympathetic with the cause of FIFA and UEFA, although there was no official position taken by the Council in the aftermath of the ruling. The Belgian Prime Minister at the time, Jean-Luc Dehaene, expressed his concern. He suggested that the Treaty of Rome should be amended to allow for the 'sporting exception' that could protect sport from the application of European law (La Libre Belgique 1995).³⁸ The support of the Member States for UEFA and FIFA was much clearer during the negotiations between the governing bodies and the Commission on the reform of the international transfer system.

³⁸ In the months previous to the ruling, Jean-Luc Dehaene met with the presidents of UEFA and the International Olympic Committee, who expressed their concerns about the negative effects of the application of EU law to sport (for more on that see Miller 1995).

Football jumps to the institutional agenda

The consequences of the Bosman ruling can be divided into two groups. First, there were the direct consequences for the rules on transfers and nationality quotas. Second, there were the indirect consequences for the status of football as an issue on the EU agenda.

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. The English Premier League lifted quotas for EU players straight after the ruling. UEFA had no option but to follow. The organisation's Executive Committee meeting in London on 19 February 1996 adopted a decision to lift all nationality quotas and to scrap the 3+2 rule with immediate effect (Goodbody 1996).³⁹

The geographic scope of *Bosman* was extended by the ECJ a few years after the ruling with two judgements related to sportspersons with nationality from a country that had signed an association agreement with the EU. One was the case of Maros Kolpak, a Slovakian handball player in *Deutscher Handballbund v Maros Kolpak* (C-438/00 [2003] ECR I-4135, hereinafter *Kolpak*) and the other case concerned Igor Simutenkov, a Russian footballer, in *Igor Simutenkov v. Ministerio de Educación y Cultura and Real Federación Española de Fútbol* (Case C-265/03 ECR [2005] I-2579, hereinafter *Simutenkov*). On both occasions, the ECJ ruled that the association agreements signed between the EU and Slovakia and Russia prevented discrimination on the grounds of nationality for the citizens of these countries once they were legally employed within an EU Member State. It needs to be pointed out that these association agreements prevent discrimination because they had a directly effective non-discriminatory clause within the association agreement. Association agreements with other countries where there is not such a clause do not have the same effect, logically. The case of Slovakia lost its importance once the country joined the EU in 2004. But the principle of non

³⁹ From the start of the 1996-97 season, clubs participating in European Club Competitions were required to register a squad of 25 players, which no longer took into account the concept of 'non-selectable' player. National FAs and leagues were asked to do the same for domestic competitions because they could face legal challenges if they failed to do so (UEFA 1998: 3). The UEFA decision was radical. It lifted all type of nationality quotas, including also on players from outside the EU. The nationality of players was not taken into account for UEFA competitions anymore. However, some national FAs decided to still make a distinction between players from the EEA and those coming from outside the European Economic Area, whose presence in the squads was still limited.

discrimination to nationals from countries with an association agreement that includes a non-discrimination clause widens the geographical scope of *Bosman* significantly. However, *Kolpak* and *Simutenkov* seem to have attracted little attention from the football organisations. This is probably because the ECJ clarifies that players from those countries first need to be legally employed before benefiting from the non-discrimination rule; moreover *Kolpak* and *Simutenkov* do not recognise freedom of movement (Boyes 2005: 4).

Beyond the direct consequences, *Bosman* also had the effect of renewing the EU institutions' interest in football matters. The *Bosman* case propelled the issue of football high up the EU agenda because the ECJ's ruling forced the Commission and other EU institutions to take a position on the regulation of footballers' employment. Before the *Bosman* explosion football was low on the EU agenda. It had reached the EU's systemic agenda, as it was an area of limited interest, but it had no real institutional agenda status because there were no real efforts to formulate a coherent approach. This changed with *Bosman*. It was suggested in chapter 3 that the promotion of issues to the institutional agenda is a function of their visibility and the availability of the institutional framework. The *Bosman* case precipitated the stages of issue expansion and issue entrance onto the formal agenda. First, the issue of the regulation of footballers' employment attracted both institutional and non-institutional actors: players, clubs, federations, EP and governments. Moreover, the popularity of football ensured wide media coverage of the *Bosman* case, hence enhancing the visibility level of the issue. With the *Bosman* ruling, football gained in visibility and it was placed in the EU institutional agenda. Furthermore, the *Bosman* case did not only contribute to the rise of football up the EU agenda. Chapter 3 explained that it is also important how an issue is defined when it is promoted to the EU agenda. The ECJ reinforced the definition of football taken after *Walrave* and *Donà*: the ECJ looked at football as an economic activity. Therefore, the Court's ruling put the issue on the agenda in economic and regulatory terms.

It is true that in *Bosman* the ECJ acknowledged some of the specific characteristics of football that make it different from other industries, such as the contribution to the training of young players or the necessity to maintain uncertainty in the results (*Bosman*: paragraphs 105-110). In that respect, the ECJ considered up to some extent the non-economic features of football. By doing that, the ECJ opened a door for those

arguing in favour of the so-called specificity of sport (see below in this same chapter and also in chapter 5) and certainly football governing bodies were going to take that opportunity, even if it took them some time. However, despite that, the reality of the judgment in *Bosman* is that the ECJ decided to extend the boundaries of the concept of non-discrimination to professional and semi-professional sportspersons (football players in this case). The ECJ could, instead, have analysed only the case of football. That means that the ECJ considered the players to be engaged in gainful employment and economic transactions. The Court situated the issue of transfer systems and nationality quotas in a wider economic context of employer-employee relations. Moreover, the ECJ insisted once again that EU law is applicable to sport ‘in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty’ (*Bosman*: paragraph 73). Effectively, the ECJ was focusing the attention of the other institution to sport as an economic activity, and with that definition entered the institutional agenda. The other institutions, thus, received football and were compelled to act because the issue had gained in visibility.

The way in which the ECJ had shaped the discussion pointed towards the economic aspects of football, and this is extremely important in order to understand the subsequent decisions of the Commission in the aftermath of the ruling. As the guardian of the treaties, the Commission is bound to follow the ECJ’s case law. Therefore, it is not surprising that football was considered at that time as a market place, at least in the eyes of the Commission or, to be more precise, in the eyes of DGs Competition Policy and Internal Market.

Finally, the ruling in the *Bosman* case represented a reality check for the governing bodies. The judgement obliged UEFA and FIFA to realise the far reaching effects that EU law could have for football: ‘We had no other option, we had to adapt to the new reality’ (Interview 29). As a consequence, the intervention of the ECJ added a new layer to the governance of sport, as EU law had to be taken into account in the regulation of the game. The first opportunity to test the new relationship between football and the EU was the remaining pillar regulating the footballers’ market, the international transfer system. With nationality quotas gone, the Commission turned to the reform of the transfer system as its next objective.

The international transfer system

Whilst nationality quotas for EU players were lifted relatively quickly after the Bosman ruling, the situation of international transfers remained unclear. The European Commission was of the opinion that the football governing bodies had to amend their rules on international transfers if they wanted to avoid any further legal action. It was only in 2001 (almost six years after the ECJ handed down its judgement in the Bosman case) that a new international transfer system was adopted. The European Commission had to threaten FIFA and UEFA with a formal investigation and possible fines to secure a reaction from the governing bodies. This section investigates the negotiations that led to the transformation of the international transfer system. There were three main sides to those negotiations: the Commission, FIFA and UEFA, and FIFPro. The section starts by looking at the Commission's impetus in the aftermath of the Bosman case that crystallised in a challenge to the international transfer system. It then goes on to present the agreement reached between the Commission and FIFA and UEFA for reforming the transfer system and to analyse the factors that facilitated such agreement.

The Commission follows the Court and raises the stakes

Since 1979, international transfers in Europe had been regulated by a mixture of UEFA and FIFA rules (UEFA 2005b: 16). Following the Bosman case, FIFA decided to withdraw UEFA's competences over transfers, assuming for itself the regulation and implementation of international transfers within Europe in 1995 (UEFA 2005b: 16). For that reason the Commission's investigation of the international transfer system⁴⁰ was addressed to FIFA, which was formally responsible for their regulation. In consequence, this section will refer to these rules as the FIFA transfer system,⁴¹ even though UEFA also took part in the negotiations with the Commission.

⁴⁰ The international transfer system is defined as the set of rules governing the transfer of players from clubs in one country to clubs in a different country. This includes transfers of players from one EU Member State to another Member State, as well as transfers from EU Member States to third countries and vice-versa.

⁴¹ For stylistic reasons the expression 'international transfer system' will also be used as synonym of the FIFA transfer system. Both are taken to mean the FIFA rules regulating international transfers, as explained in the footnote above.

In the aftermath of the Bosman ruling, the Commission did not only contemplate the legality of the transfer system *vis-à-vis* article 39 EC (freedom of movement), but it also decided to study the possibility of starting an investigation under its competition policy rules (European Commission 1996a: 5-6). FIFA and UEFA informed the Commission at that point that the international transfer system would no longer apply to players who changed clubs at the end of their contracts to play in a different country within the EEA, although the rules were not officially revoked (European Commission 1996c: 3). This decision was taken in February 1996. Unhappy with this informal arrangement, the Commission wrote to FIFA and UEFA on 27 June 1996 informing them that two particular issues, where the Court had not ruled in *Bosman*, posed extra problems in the light of article 81 EC.⁴² Effectively, the Commission went beyond the reach of the ECJ's decision on Bosman when it asked FIFA to take these new issues into account. By resorting to the use of competition policy, the Commission went one step further in its commitment to liberalise the football players' market, which is in stark contrast with its conservative approach 20 years earlier after the ECJ's judgement in the Donà case.

In reply, FIFA and UEFA informed the Commission that they did not plan to take into account aspects that were not covered by the Bosman judgement. The Commission notified the governing bodies that in that case it would have no other option but to start formal infringement proceedings (European Commission 1996c: 4). On 14 December 1998 the Commission finally started an infringement procedure following the reception of three formal complaints against the international transfer system (Reding 2000: 2; European Commission 2002b: 1).

The willingness of the Competition Policy DG to extend the inquiry into the transfer system to an investigation under articles 81 and 82 EC suggested a new proactive stance on football from the Commission. If the relatively low economic importance and the reduced visibility of football as an issue in the EU agenda were cited as factors conditioning the Commission's reaction to *Donà* in 1976, the reversal of these trends can explain DG Competition's assertiveness in 1996.

⁴² The Commission considered problematic the payment of fees for international transfers within the EEA of players from third countries at the end of their contracts and the obligation imposed by FIFA and UEFA on national FAs to set up national transfer systems mirroring the one outlawed by the Court in Bosman (for more on that see European Commission 1996c: 3-4; Parrish 2003a: 140-142).

A compromise solution that pleases FIFA and UEFA: Who is behind it?

On reception of the Commission's statement of objections, FIFA decided that it should conduct negotiations with the Commission on its own, without any assistance from UEFA (Interview 28). FIFA's choice is a reflection of the difficult relationship that the two governing bodies enjoy. It was suggested in chapter 2 that the top down structures of football's pyramid can lead to conflict among the different levels in the governance of the game. This is true for players *vis-à-vis* governing bodies, as this chapter is already demonstrating, but it can also be the case for governing bodies at different levels. Although FIFA and UEFA are part of the same multilevel system of governance, one should not assume that they will always agree on every issue. MLG makes for crowded and difficult decision-making, as explained in chapter 2, and this analysis seems to be applicable in the case of football as well. The reasons behind FIFA and UEFA's problematic relationship and their power struggle are further explored at length in chapter 6.

Thus, FIFA took on its own the task of reforming the international transfer system. During 1999 and 2000 FIFA held talks with FIFPro but it did not present any formal alternative to the international transfer system challenged by the Commission (Reding 2000: 2). The Commission's response to the governing bodies' perceived inaction came in the summer of 2000. The Commission gave FIFA a firm deadline of 31 October 2000 to come up with formal proposals to amend the international transfer system, threatening FIFA with a formal decision to both enforce changes and, if necessary, impose fines (Parrish 2003a: 141).

The new threat from the Commission provoked a reaction from UEFA, which considered that FIFA might agree on an unacceptable liberalisation of the players' market in Europe. UEFA officials were unhappy with the way in which FIFA had conducted the talks with FIFPro and the Commission:

Most of the problems we had in the dossier of the transfer system were not with the Commission, but with FIFA. FIFA tried to strike its own deal with the players directly, whereas we [UEFA] tried to negotiate with the leagues, which represent the clubs (...) Of course, we also wanted to talk to the players, but we learnt one day that FIFA and the players had been secretly negotiating on their own, so the players were not willing to talk to UEFA (...) This indicates how difficult it was to talk to the European Commission when in the football side we

were playing tricks. So you can imagine what impression we made to the European Commission (Interview 28).

Thus, UEFA decided it should take a leading role in the negotiations with the Commission:

We believe that a constructive and positive dialogue with the EC is both possible and necessary. We accept that change is inevitable but the form and pace of that change must be subject to a much wider dialogue than that conducted so far by FIFA with the world of professional football (UEFA 2000c).

The Commission's pressure obliged the governing bodies to come up with solutions for a reform of the international transfer system. A Transfer Task Force with the participation of FIFA, UEFA, the players unions, and European professional leagues was set up under the chairmanship of Per Omdal, UEFA vice-president in charge of the relations with the EU (UEFA 2000a). FIFA, UEFA and the leagues represented in the Task Force agreed on a first set of proposals on 27 October 2000, which were then sent to the Commission (Bose 2000).

The Commission had a positive but cautious reaction to the proposals, which were considered 'a significant development after nearly two years of discussions' (European Commission 2000: 1). The Commission moderated its previously aggressive position. It conceded that it was ready to accept rules limiting transfers to a certain period during the season (the so-called transfer windows). It also recognised that 'stability of contracts is very important in this sector' (European Commission 2000: 1), starting to side with the governing bodies on this issue rather than with FIFPro. Finally, the Commission was prepared to consider the concept of 'training compensation fees'⁴³ designed to protect and encourage the training of young players (European Commission 2000: 1). The Commission encouraged FIFA and UEFA to hold further discussions with FIFPro with

⁴³ Training compensation fees would replace the old transfer fees. Whereas the latter applied to the transfer of every player, the former would be restricted to the transfer of players under 23 years and would be set up following transparent criteria. Training compensation fees are supposed to be less restrictive and proportionate to the objective of protecting the training of young players. The training of youth players was recognised as a legitimate objective by the ECJ in *Bosman*: 'In view of the considerable social importance of sporting activities and in particular football in the community the aims of maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate' (*Bosman*: paragraph 106).

a view to finding a negotiated compromise that could be subscribed to by all the parties (European Commission 2000: 2).

In 2001 the negotiations towards a final settlement gathered more pace. The Commission proposed a meeting at the highest level between the commissioners responsible for the negotiations and the presidents of FIFA and UEFA (L'Equipe 2001). That meeting, held in Brussels on 14 February 2001, paved the way for a final settlement. The two sides realised that there was agreement, in principle, on important issues such as transfer windows, minimum and maximum duration of contracts and the principle of compensation for training costs (European Commission 2001f: 1). The Commission let it be known that there were still some issues to be ironed out, but it was firmly committed to and optimistic of finding a final compromise before the end of February (European Commission 2001f: 1). Two further meetings between the Commission and FIFA and UEFA were held in February 2001 to clarify the technicalities of the remaining issues (European Commission 2001b, 2001a). The agreement was finalised on 5 March 2001 in another meeting between the Commissioners and the presidents of FIFA and UEFA (European Commission 2001e). Following the deal, the European Commission formally closed the investigation into the rules governing international transfers in June 2002 (European Commission 2002b).

The settlement with the Commission required FIFA to amend its transfer regulations on the basis of the following points:⁴⁴

- Training compensation fees to be allowed in the case of transfers of players under 23 years.
- The creation of one transfer period per season and a further limited mid-season window.
- Minimum and maximum contract duration would be 1 and 5 years respectively, except where national legislation provides otherwise.

⁴⁴ The FIFA Executive Committee adopted the new international transfer system in July 2001 (for more details on the agreement between FIFA and the Commission on the structure of the new transfer system see European Commission 2001e; Parrish 2003a: 147-149; for an extensive analysis of the implementation of the new transfer system, see especially Drolet 2006).

- Creation of solidarity mechanisms that would redistribute income to clubs involved in the training and education of football players.

The settlement falls short of a total liberalisation of the transfer market. It has been interpreted as a compromise between the initial positions of FIFA and the Commission, although it has been considered as beneficial for the governing bodies (Parrish 2003a: 147). The agreement between the Commission and FIFA-UEFA was closed with an exchange of letters between Commissioner Mario Monti and FIFA President Joseph Blatter (European Commission 2001e), which is an informal settlement. Although the Commission was happy to consider the proposals of FIFA, this does not mean that the new transfer system is legal under EU law. Neither the Commission, nor the ECJ have ruled on that matter, and it has been suggested that the new FIFA transfer system is still an obstacle to the free movement of players, hence illegal under EU law (see especially Drolet 2006). The Commission's informal endorsement (i.e. not legally binding) of the FIFA transfer system creates, thus, some legal uncertainty. On the one hand, it is clear that the new concept of training fees could be seen as an obstacle to a total freedom of movement. However, on the other hand it could be argued that the training fees pursue a legitimate objective and the restriction on the freedom of movement is proportionate to the objective. Logically, this debate can only be settled with a judgment of the ECJ, but for the moment this has not been possible. Be that as it may, it is necessary to note that the debate on the legality of the new FIFA transfer system does not seem to feature (at the moment) on the agendas of the players' trade unions or the professional clubs.

Despite possible doubts about the legality of the 2001 agreement, the Commission seemed to be pleased with the outcome of this case. Its president, Romano Prodi welcomed the result of the negotiations as a 'satisfactory solution that respected both the needs of football and also Community law' (European Commission 2001c: 1). The Commission was especially happy to point out that they were able to engage 'in open and constructive dialogue leading to mutually satisfying solutions' with the football authorities (Reding 2001: 2). The Commission, one should note, had softened its discourse towards football during the negotiations. There was an evolution towards a more constructive approach, especially when the Commission made clear that it had no interest in the total abolition of the transfer system, but rather on a substantial modification that could achieve the same objectives within the limits of EU law.

Satisfaction in FIFA and UEFA

The football governing bodies were equally happy with the agreement. FIFA considered the settlement, 'very positive for football' (FIFA 2001: 1). FIFA President, Joseph Blatter expressed his satisfaction with the resolution of the negotiations:

I am very happy about the finalisation of an agreement of principles between the European Commission and the football family (...) These amendments will provide for a very solid foundation for the future of the international game (FIFA 2001: 1).

When the Commission announced its formal closure of the investigation, Blatter could not resist putting some spin on the final agreement, trying to reap the benefits:

I am very pleased at this decision by the European Commission, as it shows that my policy of a better dialogue with politicians is bearing fruit. We can say that it represents a milestone for EU law to now recognise the specific nature of sport and the important social, cultural and integrating role that football play in society. This is my own philosophy entirely (FIFA 2002: 2).

UEFA was equally satisfied with the negotiations with the Commission:

It was a very good agreement, we are very happy with the outcome, but also with the way in which the negotiations ended, because I think we built some trust in both sides and this was important for the future (Interview 35).

But for UEFA, the resolution of the conflict had implications beyond the positive content of the agreement. The fruitful negotiations with the Commission represented a turning point in the relationship between UEFA and the EU institution. The positive outcome started to transform, slowly, some attitudes within UEFA:

I would say that after Bosman there was a clear hostility towards the EU. Even for some years after Bosman. The EU was seen as a problem, as something external. I would say that now we have much better dialogue and even collaboration. We see now the EU as a useful partner (...) It has been a process of dialogue, building trust on both sides, especially with the Commission (...) When we managed to get agreements such as the transfer system or the Champions League [see chapter 5], people in UEFA realised that one can talk to the Commission. They realised that there are human beings one can discuss and reach agreements with (Interview 30).

Certainly, this should not be interpreted as UEFA suddenly embracing the EU. UEFA engaged in negotiations with the Commission because it had no other option. But it is plausible to argue that the meetings between UEFA and Commission officials facilitated a mutual understanding that was appreciated on both sides (Interview 29, Interview 35). In contrast with FIFA and UEFA, the footballers' union, FIFPro, was initially outraged with the agreement. FIFPro considered the outcome as a capitulation of the Commission before the governing bodies (Interview 19). FIFPro's strategy was initially to go to court in every EU country challenging the agreement between the Commission and FIFA (Parrish 2003a: 148). FIFPro hired a familiar figure to orchestrate its legal response to the agreement: Luc Misson (FIFPro 2001b: 1).

However, FIFPro then entered into negotiations with FIFA and it agreed to withdraw the legal challenge in exchange for participating in the implementation of the new transfer system:

FIFA and FIFPro are pleased to announce that they have reached agreement about FIFPro's participation in the implementation of FIFA's new regulations on international transfers of football players. As part of the overall agreement, the international union of football players will cease the legal challenges it had initiated against these new rules (FIFPro 2001a: 1).

Luc Misson is of the opinion that FIFPro was wrong to accept FIFA's offer because they had a very strong case (Interview 19), but for FIFPro's president Gordon Taylor it was more important to be on board the system:

It is important for the game that FIFPro and FIFA work together. The world of football is changing, and we should make sure that commercial interests are given their proper place. Through closer cooperation we can achieve a better future for football. The negotiations on international transfers have not been easy, but we appreciate FIFA's determination to keep the players on board (FIFPro 2001a: 2).

Therefore, despite some problems, all the actors involved in the dossier seemed to be satisfied with the outcome. There is a point that deserves further clarification though. Which factors contributed to the speedy resolution of the dossier in just six months after years of problems between the Commission and the governing bodies?

The intervention of Member States

Although the reform of the transfer system was a negotiation between FIFA and UEFA and the Commission, a great deal of responsibility for the speed in which the negotiations moved after October 2000 can be attributed to the Member State governments. In the hope of putting political pressure on the Commission, UEFA and FIFA skilfully lobbied national governments after the ECJ ruling in the Bosman case to send a message about the risks that the Commission's liberalising efforts could have for football. At that moment, FIFA and UEFA's interests coincided with the governing bodies of other sports. Back in 1995, the International Olympic Committee (IOC) had been lobbying national political leaders for a few years to promote the inclusion of sport in the Treaty (for more on that see García 2007b; Parrish 2003a). The so-called sporting movement managed to introduce the issue of sport (sport in general, not just football) onto the agenda of the European Council but the only concrete results they achieved were two non-binding declarations attached to the Treaties of Amsterdam (1997) and Nice (2000)⁴⁵. The *Amsterdam Declaration on Sport* was very short, just one paragraph. It seems a deference of the political leaders to the sporting organisations, but it nevertheless demonstrates that the issue of sport had arrived high in the EU political agenda:

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 (European Council 1997).

The *Nice Declaration on Sport* was longer than its Amsterdam precedent. It is a three page document where the EU political leaders stressed the social and cultural role that sport has to play in European society; the European Council also invited the institutions to take into account the specific characteristics of sport and collaborate with sports governing bodies when designing and applying their policies (European Council 2000). The Amsterdam and Nice declarations contributed to raise the status of sport in general within the EU agenda. However, they were non-binding and rather general texts. That is not to say that these declarations are unimportant. Perhaps the most important feature of the Amsterdam and Nice declaration was the reference to the specific characteristics of

⁴⁵ The recently adopted Reform Treaty has finally included sport as an EU competence.

sport, also known as the specificity of sport. These two declarations introduced this concept into the discourse of EU institutions. This was an important point because sport's specific features would be a recurring argument of sports organisations in their negotiations with EU institutions as the next chapters explain. However, it is surprising that the specificity of sport, despite being widely used, is a concept that has not been really defined. The Amsterdam and Nice declarations refer to the specific characteristics of sport, but they do not explain what these characteristics are. Weatherill (2004) has pointed out that sports governing bodies, despite referring to the specificity of sport in their discourses (see for example Infantino 2006), still have to produce an intellectually convincing argument regarding why sport is specific or special.

It is only very recently that one can find attempts at defining what the specificity of sport is. The Independent European Sport Review defines the specificity of sport with reference to the so-called European model of sport and the pyramidal structure of governance (Arnaut 2006); this is further explained in chapter 6. The European Commission White Paper on Sport approached the specificity of sport from two angles: First, there is the specificity of sporting activities and rules such as separate competitions for men and women (European Commission 2007b: 13). Second, the Commission considers the specificity of sports structures such as the autonomy of sports organisations or the organisation of sport on a national basis (European Commission 2007b: 13). Thus, the idea of the specificity of sport refers to those characteristics that differentiate sport (even at the professional level) from other industries. The political discourse articulated by sports governing bodies around the concept of specificity is that sport has strong socio-cultural properties that make it special and, therefore, it deserves protection from a blunt application of EU law because otherwise those specific characteristics would be at risk. For example, UEFA invoked the specificity of sport to justify its central marketing of the Champions League's broadcasting rights, an activity that was considered anti competitive by the Commission (see chapter 5). Of course, one needs to approach these arguments with caution, for there is a risk that the specificity of sport is used as an excuse to avoid the scrutiny of sports organisations under EU law without any solid reason (for a detailed and critical analysis of the intellectual arguments underpinning the specificity of sport see Parrish and Miettinen 2008).

Even if the long term effects of the Amsterdam and Nice Declaration have been relatively important (this is further elaborated in chapters 5 and 6), it is necessary to highlight the contrast between the relatively soft nature of the declarations and the much firmer involvement of some Member States in the particular issue of the FIFA transfer system. It is explained in the next pages that some Member States were ready to help FIFA and UEFA in their negotiations with the Commission. There seems to be a difference in the outcomes of the lobbying efforts of sports organisations. Whereas sport as a whole, under the IOC's umbrella, could only get non-binding declarations, FIFA and UEFA on their own managed to involve political leaders such as the British Prime Minister, Tony Blair, and the German Chancellor, Gerhard Schroeder, in their favour.

EU political leaders showed special attention to the future of football's transfer system. On 9 September 2000 Tony Blair and the Gerhard Schroeder published a joint statement that diplomatically supported UEFA and FIFA:

The British and German Governments are concerned at the potential impact of proposed changes to the football transfer system. (...) The European Union has criticised the present system of transfer fees (...) We acknowledge the current system is not perfect. We fear however that a radical reform could have a negative impact on the structures of football in Europe. (...) We believe that any solution has to balance carefully the justified interests of both the players, the clubs and the associations. (...) We offer our help in seeking to resolve the issue. (...) We look to the Commission to be sympathetic to the special needs of professional football in seeking a solution (Prime Minister's Office 2000b: 1).

Both leaders met again at an informal dinner in Berlin in January 2001, where they talked about 'continuing to work together to solve the problem surrounding the football transfer system' (Prime Minister's Office 2001d: 1). Blair and Schroeder issued a second joint statement in which they encouraged all the parties involved to work together towards a solution and they hoped for a quick settlement with the European Commission (Prime Minister's Office 2001e). With this statement both leaders intended to send 'a strong signal of support that they regarded this an important matter which needed to be resolved' (Prime Minister's Office 2001a: 1). The British Prime Minister was quite active on the matter throughout the negotiations. He worked not only with Gerhard Schroeder, but also with the governments of Spain, the Netherlands and Italy to demonstrate their disagreement with the Commission's initial plans of a thorough liberalisation of the football market (Prime Minister's Office 2000a: 1).

The involvement of Tony Blair and Gerhard Schroeder was the result of the lobbying efforts of UEFA and FIFA and the English and German FAs. When the negotiations with the Commission reached a critical point in 2000, UEFA intensified its lobbying strategy. UEFA requested its national associations to contact national leaders and it even sent the FAs sample letters that could be used for that purpose (Interview 11). Tony Blair, who was the most active of the national leaders, showed special concern for the effects that a liberalisation of the players market could have for smaller clubs in the Football League (Interview 11). It has been suggested that the arguments of the Football League were especially persuasive for Blair (Interview 11). One can only speculate about this, but it might be safe to assume that Blair could have seen in that a good political battle to fight. Certainly, football clubs in the lower leagues represent a major number of constituencies and Blair's siding with the governing bodies might pay political dividends.

The British Prime Minister also shared his concerns on the outcome of the negotiations with the Commission President, Romano Prodi, when they met on 15 February 2001 (Prime Minister's Office 2001b). Once the news of the settlement broke, Tony Blair was pleased with the outcome:

This is very encouraging news. The agreement appears to meet all the concerns Chancellor Schroeder and I had to maintain stability and ensure the needs of all in the game, including smaller clubs, are met. I hope that matters can be concluded quickly (Prime Minister's Office 2001c: 2).

The political pressure of national governments is more difficult to measure than the legal implications of an ECJ ruling. It is of course easier to demonstrate the effect that the Bosman ruling had on the Commission's behaviour since the executive is bound to respect and protect ECJ's rulings. However, it is plausible to say that the political intervention of the national leaders influenced the Commission's new approach to football. The Commission, however, was adamant in its defence of its independence in the transfer system settlement:

Despite considerable pressure from some senior government members, the Commission has held its ground in strict observance of its jurisdiction. As a result of this outcome, my colleague Mario Monti will not need to propose that

the Commission adopt a negative decision concerning FIFA transfer rules (Reding 2001: 3).

Without disputing the Commission's independence, this remark by Viviane Reding in a statement to the European Parliament is indicative of the possible influence of the Member States in the Commission's strategy towards football. The transfer system dossier, however, was the beginning of a long journey for football and the EU. The analysis of other football-related decisions will add to our understanding of the evolution of the relationship between football and EU institutions. In yet another interesting turn in the regulation of the status of professional players, this chapter looks now at the more recent UEFA regulations on locally-trained players.

UEFA's home grown players initiative

UEFA senior officials started to consider around late 2003/early 2004 the possibility of making a political case for a rule that would encourage football clubs to actively train new young talents (Interview 5). This was the origin of the rules on locally-trained players, adopted by UEFA in 2005 (UEFA 2005a). This section finishes the chapter by looking at these rules. It starts by briefly presenting the origin and content of the rules on locally-trained players. It then goes on to explain the proactive dialogue started by UEFA with the EU institutions to introduce their new idea. Finally, it analyses the positive reception of this new UEFA initiative.

The idea and the rule

The origin of the home grown players initiative arises from UEFA's concerns about evolving current trends in professional football. UEFA was of the opinion that an increasingly globalised market-place for football players was tempting clubs to look for easy solutions, hiring players from elsewhere rather than training them (UEFA 2004e: 1). The globalisation of the football players market was linked to the liberalising decision of the ECJ in *Bosman*, as explained above in this chapter. The jurisprudence of the Court facilitated the movement of the labour force (players in this case), hence tempting clubs to hire players from abroad rather than training them. On the other hand, the effect of *Bosman* in this globalisation needs to be weighted, as the

internationalisation of the players market was also influenced by wider economic trends and the commercialisation of the game (Lanfranchi and Taylor 2001). UEFA, in response to the new situation of the players market, adopted its rules on locally trained players ‘in an attempt to encourage local training of players, maintain competitive balance and ensure a better future for new talent’ (UEFA 2004e: 1).

The regulations on locally-trained players apply only to UEFA club competitions (UEFA 2005c). The rules establish that clubs participating in UEFA competitions are required to register a maximum of 25 players in their A List, their top squad. From the beginning of the 2006-2007 season, four of those 25 players had to be ‘locally trained’, a number that would rise to six from the beginning of the 2007-2008 season and eight from the beginning of the 2008-2009 season (see Table 9 below). These locally-trained players may be either ‘club-trained’ or ‘association trained’. The former are defined as those players that have been registered for three seasons/years with the club between the age of 15 and 21. The latter are defined as players that have been registered for three seasons/years with the club or with other clubs affiliated to the same national FA between the age of 15 and 21 (UEFA 2005c). In both cases, the nationality of the player is not relevant.

Table 9. Rules on locally trained players for UEFA club competitions

Season	Players in the A squad		
	TOTAL	FREE	LOCAL TRAINED (of which a maximum of half can be association trained)
2006-2007	25	21	4
2007-2008	25	19	6
2008-2009	25	17	8

Source: UEFA 2005c

UEFA justifies these rules as a reaction to the worrying trends that it identified as a result of the over commercialisation of football in recent years, namely a lack of competitive balance in UEFA competitions and an increasing difficulty for players to follow their careers in the country where they were trained as youths (Chaplin 2005a).

UEFA avoided making any reference to the nationality of the players in an attempt to respect the provisions on freedom of movement as applied by the Bosman ruling of 1995. The governing body is relatively confident with the legality of the rules on locally-trained players and it is especially happy with the political support received by the EP and the Commission (Interview 5, Interview 29).

UEFA learns its way around Brussels

The adoption of the rules on locally-trained players was preceded by a wide consultation with EU institutions, national governments, national FAs, clubs and players. UEFA put special effort into the dialogue with clubs and leagues, which were invited to join a working group in January 2004 to participate in the discussions aimed at drafting the regulations (UEFA 2004d). UEFA also devised a dialogue strategy to introduce the new ideas to EU institutions built on contacts at all levels, from the high politics of the Commissioners and MEPs to the more technical lower levels of officials in DG Competition, DG Employment and Social Affairs and DG Education and Culture (Interview 5). In summer 2004, UEFA made public a first set of ideas on the subject of locally-trained players (UEFA 2004d), which were presented to the Commission and the European Parliament later in the autumn that year (Chaplin 2005b; Interview 5).

UEFA wanted to involve the EU institutions in the process as much as possible from the very beginning. UEFA recognised the necessity to adopt a proactive strategy in which EU institutions would play an important role in providing both expertise and, should the case arise, political support (Interview 5, Interview 30). UEFA framed the rules on locally-trained players not as a regulation of the footballers' market, but as an attempt to contribute to the training and education of young people⁴⁶ through football (UEFA 2004e, 2004d). The main idea behind UEFA's message was that if professional clubs are obliged to field more locally-trained players, then they will invest more money in football academies, which in turn will benefit local communities. This, of course, can be conceptualised as an irresistible message on the part of UEFA. An idea dressed with social and cultural values is easier to accept than to reject.

⁴⁶ An objective recognised as legitimate by the ECJ in Bosman (paragraph 106).

UEFA contacted the Commission in the very early stages of the process. The Commission was informed first of the idea surrounding locally-trained players and it was later presented with more advanced drafts (Interview 13). UEFA organised joint meetings attended by officials from DG Competition, DG Employment and Social Affairs and DG Education and Culture in the autumn of 2004 and early 2005 (Interview 5). The representatives of DG Competition withdrew from the meetings at a relatively early stage because they felt the rules on locally-trained players did not fall within their competence (Interview 14). The other DGs kept exchanging opinions and views with UEFA. Indeed, the Commission officials involved in this case appreciated the proactive behaviour of UEFA:

UEFA informed us of their plans on locally-trained players. They provided us with a lot of information and they have kept us up to date of their plans on home-grown players (...) A lot of contacts and constructive dialogue went on. I think this has been very well received in the Commission, definitely (Interview 23).

In a second stage, UEFA sought also support from the Commission's political leaders. In January 2005, a UEFA delegation met in Brussels with Commissioners Neelie Kroes (Competition) and Jan Figel (Education and Culture), so the Commission was able to understand the governing body's thinking (Chaplin 2005b).

MEPs were also consulted by UEFA. The project was presented in the so-called Friends of Football group (Chaplin 2005b), an informal cross party group in which MEPs with an interest in football discuss with UEFA issues of their mutual interest. The Friends of Football group was created in 2003 at the initiative of UEFA and a number of MEPs with an interest in football (Interview 5, Interview 7). Friends of Football, however, does not have any official status within the EP. It does not even qualify as an intergroups.⁴⁷ It is UEFA who provides the necessary resources to keep the group alive and organise the meetings (Interview 5). Currently, the Friends of Football group brings

⁴⁷ Intergroups consist of MEPs from different political groups with a common interest in a political theme. Intergroups have no official status, they are not organs of the EP and cannot express the Parliament's point of view (Corbett *et al.* 2005: 179). However, the concerns that intergroups could be too closely linked to lobbies led to the internal regulation of their activities by the EP. As a result, the Conference of Presidents adopted detailed rules on intergroups in 1999 (Corbett *et al.* 2005: 179). The consequence of that regulation is that intergroups, despite not being formal EP bodies, have become almost semi-official because there is a register of their activities (Corbett *et al.* 2005: 180). The resources of intergroups are extremely varied, 'some are assisted by EP political groups and others obtain help in terms of staffing and finance from industry or NGOs' (Corbett *et al.* 2005: 176).

together 31 MEPs of six different political groups. UEFA and the MEPs that take part in the group have heralded their meetings as interesting, constructive and positive for the development of a mutual understanding and political support between the EP and UEFA (Interview 8, Interview 16, Interview 29). UEFA organised several meetings with the Friends of Football group in which the rules on locally-trained players were discussed. MEPs backed UEFA's idea, but they also warned the governing body to take into account EU law when drafting the regulations, so they could avoid legal challenges in the future (Interview 8).

The strategy of UEFA, therefore, was threefold. Firstly, it needed to frame the rules on locally-trained players as an irresistible message combining elements of public policy and competitive balance in football. UEFA was very careful to avoid any reference to players' nationality throughout. Secondly, UEFA followed an internal process of consultation that included the main affected stakeholders within football. Finally, UEFA intensified its political efforts to generate support for the proposals, both at high and low political levels in Brussels.

The EU embraces home-grown football

The rules on locally-trained players have been in place since the beginning of the 2006-2007 season and there has been little dissent. UEFA has apparently succeeded in framing the political debate on locally-trained players, both inside and outside football. The clearest message in support of the rules has come from the European Parliament:

[The European Parliament] Expresses its clear support for the UEFA measures to encourage the education of young players by requiring a minimum number of home-grown players in a professional club's squad and by placing a limit on the size of the squads; believes that such incentive measures are proportionate and calls on professional clubs to strictly implement this rule (European Parliament 2007a: paragraph 34).

Therefore, there is no surprise that UEFA now sees the EP as its main political ally amongst the EU institutions in Brussels (Interview 34). The governing body is certainly interested in cultivating its links with the EP because it feels that at the moment it is the institution most receptive to its messages (Interview 5).

The European Commission has not formally endorsed the rules, although it has expressed a sympathetic view. Of course, it is very important to stress that this falls short of ensuring the legality of the rules, as UEFA should be aware by now after its experience of the 3+2 rule. The European Commission, as such, has not said that the rules on locally-trained players are legal under EU law. However, the recently adopted White Paper on Sport explained in which conditions such rules could be accepted:

Rules requiring that teams include a certain quota of locally trained players could be accepted as being compatible with the Treaty provisions on free movement of persons if they do not lead to any direct discrimination based on nationality and if possible indirect discrimination effects resulting from them can be justified as being proportionate to a legitimate objective pursued, such as to enhance and protect the training and development of talented young players (European Commission 2007b: 6).

This is a timid message, for the Commission does not clarify whether the rules, as drafted by UEFA, meet these requirements or not. But it is probably as far as the Commission can go on that issue without risking legal challenge to its decision. This is further explained in chapter 6, where the Commission White Paper is analysed. In any case, it is fair to say that the Commission's mood is certainly far more positive towards UEFA than in 1996.

For the sceptical observer, however, there is room to question whether these rules are a return to quotas through the back-door or not, despite their positive reception from the EP and the Commission. It is not totally clear if the rules on locally-trained players, as currently implemented by UEFA, meet the criteria to be considered lawful under EU law. Miettinen and Parrish consider that, although not a direct nationality discrimination, the rules might constitute an indirect discrimination (Miettinen and Parrish 2007; see also Wathelet 2007: 13-14). In that case, the rules on locally-trained players would only be legal if that indirect nationality discrimination can be considered to be proportionate to the objective pursued. This opens a line of legal argument for UEFA if they manage to prove that the rules are proportionate. Miettinen and Parrish (2007), though, consider that there might be less restrictive methods to achieve the same objectives. On the other hand, it is true that the rules on locally-trained players are far less restrictive than the recent proposal of FIFA to rescue nationality quotas with the 6+5 rule. The 6+5 rule is an idea of FIFA whereby clubs participating in competition would

be obliged to field a minimum of six national players at the start of the game. This is effectively a return to the implementation of nationality quotas. FIFA has called EU politicians to allow the reinstatement of nationality quotas in club football. FIFA President Joseph Blatter has argued that football deserves a different treatment:

When you have 11 foreigners in a team, this is not good for the development of football. Football has never had the courage to go against this practice but it must now. The EU say that this [nationality quotas] is not possible based on free circulation of workers but in football principles are different (...) You cannot consider a footballer like any normal worker because you need 11 to play a match - and they are more artists than workers (quoted in Spongenberg 2007; see also BBC Sport 2007).

However, UEFA President, Michel Platini, recently stated that a return to quotas is unrealistic and 'impossible' because of EU law (Blitz 2007). Platini, instead, would like to strengthen football academies through rules such as the ones discussed above (Blitz 2007). The latest development in this respect took place in the 2008 FIFA Congress, where a resolution was passed requesting FIFA President, Joseph Blatter, to start talks with EU representatives to make possible the implementation of the 6+5 rules. In that same congress, Michel Platini warned that such measures are illegal under EU law.

Whilst European institutions seem to have embraced UEFA's efforts on locally-trained players, some clubs expressed their doubts about the usefulness of the rules (Edgar 2005; UEFA 2004d). Top clubs in the English Premier League such as Manchester United and Arsenal were not satisfied with the adoption of the regulations. They referred to the decision as 'misguided' (Hughes 2005) and they even suggested a legal challenge to the rules through the G-14 (Wallace 2005b). The English clubs failed to convince their partners at G-14, however. G-14 did not present a major fight to UEFA on the issue of locally-trained players because it failed to find a common position. Most of the G-14 members are 'maybe not favourable, but not opposed either'.⁴⁸

⁴⁸ As expressed by Thomas Kurth, G-14 General Manager, at the European Parliament public hearing on 'Professional football, market or society?', Brussels 3 May 2006 (author's notes of the hearing). Thomas Kurth explained that the group had not been able to reach a common position, but there was no great opposition. Only some concerns about the legal certainty of the measures, because clubs do not want to have to invest resources on locally-trained players if the rules can be scraped some years down the line due to a legal challenge. However, G-14 was not planning to mount such a legal challenge, he assured.

The rules on locally trained players have now been in place since the beginning of the 2006-2007 season and no major dissent has been voiced. It seems that UEFA has been able to adapt to the new environment created by the intervention of EU institutions in the regulation of the players' market. However, there is no certainty about the legality of the rules *vis-à-vis* EU law. Be that as it may, UEFA has certainly improved its political stance in Brussels and it has intervened again in a players market that seemed to go into complete liberalisation after the Bosman case.

Conclusion

This chapter launched the empirical part of the thesis with an analysis of the European Union's involvement in the regulation of the footballers' market. The employment conditions of football players have traditionally been dictated by the game's governing bodies through their rules on nationality quotas and the transfer system. The chapter explains how footballers have had recourse to legal challenges in national and EU courts to alter the structures of the players' market. The chapter describes the first incursions of EU institutions into football-related matters and therefore it helps to provide answers for this thesis' first research question (Why and how did the EU get involved in football related matters?). Football entered the EU agenda through the ECJ. It is submitted here that the European Union did not get involved in football-related issues by its own volition. It was dragged into football as a mediator in an internal dispute between stakeholders in the governance of the game. The ECJ was the first EU institution to deal with football as a result of its duty to adjudicate on legal disputes over freedom of movement for workers in the Community.

This chapter also provides a hint towards answering the second research question (What is the policy of the EU institutions towards football and football governance?). It shows an evolution in the treatment of football issues by EU institutions that is especially exemplified in the case of the Commission. An agenda-setting perspective calls attention to issue definition. In this case, the result of the ECJ rulings was to bring football to the EU agenda with a very precise initial definition: the regulation of footballers' employment conditions as an economic activity. However, the resolution of the FIFA transfer system dossier and the apparent positive attitude towards the rules on

locally-trained players suggest an evolution. This chapter gives only partial answers to the second research question; the next two chapters should complete this process. Similarly, this chapter has also described important dynamics among actors in the resolution of the different dossiers, which is the cornerstone of the third research question (What influence have EU institutions and football stakeholders played in shaping the EU policy towards football?). The issue of nationality quotas and the international transfer system was promoted to the EU agenda due to internal conflicts within football. FIFPro and Bosman's legal team played a very important role in bringing together the EU and football, two multilevel systems of governance that had coexisted in parallel without major problems until that moment. The chapter has also highlighted the interaction of different EU institutions when football, via the Bosman case, was brought onto the EU institutional agenda. The Commission was the first to react, fulfilling its role as guardian of the treaties. The involvement of national governments in support of FIFA and UEFA during the investigation on the international transfer system seems to be an important factor to explain the Commission's willingness to come to a swift resolution after having sent a statement of objections to FIFA.

This chapter has also shown that some football governing bodies have managed to adapt to the new reality of the game in the EU. Indeed, one of the features of this chapter is the emergence of UEFA as a partner in dialogue for the EU institutions, as demonstrated in the last section on the rules on locally trained players.

The focus of this chapter, however, is on the early days of football's arrival on the EU agenda. The value of the decisions reviewed here lies in the realisation that EU institutions did not get involved in football by their own initiative. They were dragged to it. The ECJ, therefore, has proved to be an effective institution in introducing the issue onto the EU agenda. The second key point to retain is the definition with which football was promoted to the agenda. The EU was initially considering the regulation of players' employment from an economic perspective. However, it was more difficult to control the definition of the issue once it left the ECJ. This is further clarified in chapters 5 and 6. The next chapter helps to complement these arguments whilst also continuing the story of the development of football as an issue on the EU agenda.

Chapter 5. The broadcasting of professional football in the European Union

‘Television, or more specially satellite television, has been the most important contributory factor in the new business era of football’
(Morrow 1999)

‘The European Commission for us is like having a fire in the kitchen, it wastes your time but you have to deal with it’
(Interview 25)

Introduction

This chapter investigates the relationship between television and professional football. The game’s commercialisation has gone hand in hand with the development of satellite, digital and pay-per-view television. The money obtained from the selling of broadcasting rights has transformed the game and its governing structures over the last 10 to 15 years. But at the same time, football is also very important for the television companies. New television operators have relied on live football broadcasting to enter the market. The decision as to which operators are allowed to broadcast live football is, therefore, very important because it can have vital repercussions for the audiovisual market, a significant industry in economic terms. This chapter investigates the links between European football and the television industry and, in particular, how the EU has tried to regulate these links.

Although some of the facts described in this chapter predate the Bosman case, the main focus of the study is located from 1998 onwards, when the Commission issued its statement of objections in the first of the three cases analysed below. It has been established that by this time football had already arrived on the EU’s formal agenda. The importance of the cases reviewed in this chapter lie in the fact that they provided EU institutions with opportunities to define further their approach to professional football. In other words, they were used to dealing with football once it was established on the institutional agenda. Therefore, this chapter provides further information relevant

to the thesis' first research question, but it is mainly focussed on the second research question (What is the policy of the EU institutions towards football and football governance?).

The transition from freedom of movement to broadcasting issues is a natural progression in the development of football through the EU agenda. The evolution from one area to the other implies also a change in the type of EU decisions under review. This chapter focuses entirely on the EU's competition policy provisions, the tool chosen by the Commission to look at the commercial activities of professional football in the TV market. First, the chapter deals with the Commission's investigation into UEFA broadcasting regulations. This case is the first one chronologically and it covers a period when UEFA wanted to reduce the exposure of football on television. Thus, UEFA adopted regulations to reduce the broadcasting of live matches. The Commission intervened to guarantee that these regulations did not hamper the broadcasting market. Second, the chapter presents the Commission's investigation into the selling of the broadcasting rights for the UEFA Champions League. This case illustrates the Commission's understanding of the effects of football on the television market. It addresses particularly the practice of joint selling, where the competition organiser sells the television rights on behalf of all the participants, hence creating a single point of supply. Finally, the chapter analyses the Commission's investigation into the selling of broadcasting rights for the English Premier League. This case is more recent, and it helps us to evaluate the way that the Commission's approach to football broadcasting has evolved. The case deals in particular with exclusivity, that is the practice whereby competition organisers sell all broadcasting rights to a single TV operator on an exclusive basis.

Competition policy: At the heart of the single market

EU competition law covers mainly articles 81, 82 EC, dealing with anti-competitive agreements between firms (81), abuse of dominant position and mergers (82). Article 83 EC, dealing with state aid, is also part of the Treaty provisions on competition policy, but it is of less interest for this chapter. Competition law provisions were included in the

founding Treaty of Rome of 1957.⁴⁹ Competition policy has always played a central role in the evolution of the EU and the construction of the Single European Market. EU competition policy has three general objectives. First, it is to promote market efficiency, in the sense of maximising consumer welfare and avoiding a concentration of resources amongst a limited range of market actors (Craig and De Búrca 2003: 936-937). Second, to protect the consumer and small and medium sized-enterprises from the dominance of large aggregations of economic power (Cini and McGowan 1998: 4; Craig and De Búrca 2003: 937). Third, competition policy's core objective is to facilitate the creation of the single European market (Craig and De Búrca 2003: 937), thus it is central to fostering economic integration. Competition policy is an essential tool to ensure that private barriers to trade do not substitute the public barriers previously removed by the governments during the construction of the single market (Cini and McGowan 1998: 11).

The emphasis placed on market and economic integration means that competition policy is heavily anchored within the EU *acquis*. It is one of the key competencies of the EU, especially in the case of the Commission, which has the power to enforce competition policy provisions. The centrality of competition policy has permitted the Commission to establish its Directorate General for Competition Policy as one of the most active and effective centres of power within the EU institutional framework (Wilks 2005: 114-115). The Commission has been assertive in the enforcement of competition policy, using it to regulate both governments and private companies (Wilks 2005: 115). DG Competition Policy is one of the most active and powerful departments within the Commission, which sometimes causes friction with other DGs, as it will be seen in this chapter.

The role of Articles 81 and 82

Article 81 EC is the principal regulatory tool to control anti-competitive practices by cartels in the EU. Article 81 (1) EC prohibits agreements between undertakings and other concerted practices which may affect trade between Member States and whose

⁴⁹ However, EU competition law and policy have evolved over time both in terms of interpretation and enforcement (for a detailed description of the historical evolution European competition policy see for example Cini and McGowan 1998: 15-37; Goyder 1993: 15-76; for a closer analysis on more recent developments, including the so-called modernisation of competition policy under Regulation 1/2003 (OJ L 1/2003), see Fairhurst 2006: 565-608; Forrester *et al.* 2005: 511-617).

object or effect is the prevention or distortion of competition in the single market. The term undertaking is defined as any entity engaged in economic activity, regardless of its legal status; the Court has considered as undertakings both individual persons or state agencies when they are performing economic or commercial functions (Craig and De Búrca 2003: 939; Goyder 1993: 87-91). Sports organisations, such as football governing bodies, clubs or professional leagues, have been consistently defined as ‘undertakings’ or ‘associations of undertakings’ because they engage in economic activities (Gardiner *et al.* 2001: 392-393; in the specific case of football clubs, FAs and UEFA see also European Commission 2001h: paragraph 14; European Commission 2003b: paragraph 106).

Article 81 (1) defines the cartel-like activities that are prohibited due to their distorting of competition in the single market. However, some economic practices that are anti-competitive *prima facie* might be accepted if they generate benefits that outweigh the restriction on competition. This possibility is regulated by article 81 (3). It allows for exemptions to be made, under certain conditions, of practices that, otherwise, would normally be banned by article 81 (1). Exemptions under article 81 (3) are only granted if the economic practice in question meets four cumulative criteria: it contributes to improving the production or distribution of goods or to promoting technical or economic progress, it allows consumers a fair share of the resulting benefit, it does not impose restrictions which are not indispensable to the attainment of the objectives, and it does not create the possibility of eliminating competition in respect of a substantial part of the products in question. The exemptions can be granted on an individual basis or they can be block exemptions, covering a category of agreements (for a more detailed analysis of the type of exemptions and their application see Craig and De Búrca 2003: 964-968; Goyder 1993: 124-149; Fairhurst 2006: 542-548).

Therefore, undertakings need to make sure their decisions and activities do not restrict competition in the market which they are operating in. Failing to do that, they can apply for an exemption under article 81 (3) if they can demonstrate that their practices generate benefits for the consumers whilst the restriction to competition does not go beyond what is strictly necessary to achieve these benefits. The Commission, to be precise DG Competition, will analyse in detail the impact of such economic practices on the market and determine whether (i) they do not restrict competition, (ii) they restrict

competition but may be exempted, or (iii) they restrict competition and cannot be exempted. The Commission may initiate competition policy investigations on its own initiative or following the reception of formal complaints from third parties.

Article 82 EC is the second pillar of EU competition policy. This article prohibits the abuse of a dominant position within the market by one or more undertakings in so far as it may affect trade between Member States (Craig and De Búrca 2003: 993). Football governing bodies such as UEFA or FIFA could, in principle, have serious problems with article 82 EC due to their position in the pyramid of football governance. Their economic activities have to be judged by the impact they have on the European market and on trade between the EU Member States. Article 82 EC is less important for the purpose of this chapter, though, because the three cases analysed are focused on the restriction of competition under article 81 EC.⁵⁰

The application of competition law to the rules and regulations of sports organisations has been explored by the ECJ in the Meca-Medina case (*David Meca-Medina and Igor Majcen v. Commission of the European Communities* Case C-519/04 P, [2006] ECR I-6991). *Meca-Medina* clarifies that the rules adopted by sports governing bodies are subject to competition law and it establishes a proportionality test to ascertain whether the sporting rules comply with EU competition law or not (see chapter 6 for more details). In the case of football broadcasting, however, the focus is not the problem lies in the influence that the transmission of live football might have on the television market. The Commission is of the opinion that football is a premium product that attracts viewers, subscribers and/or advertising revenue. Therefore it is highly desired by television operators competing in the market. Competition organisers (such as UEFA or the English Premier League) do not operate directly in the television market because they are not broadcasters, but their decisions as to how many games can be broadcast, and who is allowed to do so might have an impact in the television market. The question therefore is whether the activities of these football bodies in the television market either comply with competition rules or, at least, need to be granted an exemption if they do not comply with the rules but do generate benefits that outweigh the restriction of

⁵⁰ Article 82 is also fundamental for EU competition law (for a thorough explanation of the application of Article 82 EC see for example Craig and De Búrca 2003: 993-1030; Goyder 1993: 339-372; Fairhurst 2006: 565-607).

competition. Football organisations need to ensure that the way in which they sell their broadcasting rights do not have the consequence of restricting competition in the television market. Thus, competition policy regulates the activities of football organisations in the television market. This chapter considers how football organisations have dealt with the obligations imposed by EU competition law. Before analysing the particulars of the three cases presented in the chapter, it is necessary to understand the dynamics of the relationship between television and professional football.

Football, competition and the television market, what is at stake?

The interest of EU institutions in the audiovisual industry is based on the importance that the European Commission attached to the media industry as a key sector for economic growth in Europe during the 1980s and 1990s (Harcourt 2002: 739). The Commission considered that the media industry was one of the key sectors expected to produce job growth in the EU due to technological developments such as digital and satellite television, pay-per-view or mobile UMTS technology (European Commission 1993: 103-104; for more detailed figures on economic growth and job creation related to the audiovisual industry see European Commission 1999b: 6-7). However, the EU authorities considered that national audiovisual legislation fragmented and distorted the market, hence preventing European media companies from competing with their American rivals that had a larger market to exploit (Harcourt 2002: 739; Wheeler 2004: 350). The Commission identified a line of action to liberalise media markets in the EU. Yet, the development of a EU-wide audiovisual policy has not been easy due to the opposition of the Member States in a debate between market liberalisation and cultural values and information pluralism (Wheeler 2004: 366-367).

Liberalising the EU television market

Television markets in the EU used to be dominated by national public service broadcasters. The liberalisation of the television market in the EU has been achieved through a mixture of supranational and national measures. The former comprise the so-called Television Without Frontiers Directive and the use of competition policy to control the structure of the market once it was liberalised (Wheeler 2004; see also Collins 1994; Cawley 1997). The latter was formed by the reforms in the regulatory frameworks of national television markets undertaken by Member States to liberalise

the sector at national level and end public broadcasters' monopoly (Harcourt 2002). The opening of the market to competition, coupled with the technological development of satellite and digital television, paved the way for the creation of new private television platforms throughout the EU that wanted a share in the lucrative market previously dominated by public broadcasters.

The new companies in the television market were faced with a tough challenge to win viewers over from the previously dominant public broadcasters. Private television companies realised that one way to secure access to the market was to offer live and exclusive coverage of sporting events, especially professional football. Private television companies were prepared to pay large amounts of money to sign exclusive deals with the organisers of football competitions for the exploitation of the broadcasting rights to their tournaments. The Commission understood that football is considered prime-time content for television companies because it has the power to attract new customers to subscription and pay-per-view services and to ensure advertising revenue in free to air channels (European Commission 2003b: paragraphs 63 and 76). Moreover, football competitions such as the Premier League and the Champions League extend from September to May, which allows television operators to retain their viewers throughout the year (European Commission 2003b). Television rights now constitute the main income source for clubs in the five top professional leagues in Europe (Deloitte 2006b: 14).

With the audiovisual market liberalised and open to private competition, the European Commission's DG for competition policy realised that there could be a serious danger of market concentration if the new digital channels grew too much (Wheeler 2004: 364). Competition authorities were worried that the creation of large media empires based on digital and pay-per-view television could distort the market (Wheeler 2004: 364). Therefore, there was a possibility that economic forces could end up closing competition in the same market that the EU had just liberalised. To avoid media concentration in a recently liberalised market, the regulator can resort to legislation. This is what the EU tried to do in the television market. However, the Television Without Frontiers Directive did not include instruments to deal with media concentration and, therefore, the Commission sought to establish a directive concerning the concentration of media ownership (Wheeler 2004: 357). Commissioner Mario Monti

presented a draft directive in 1996 but his proposals ‘floundered as the Member States disputed the appropriate level of diversity within ownership for the different markets’ (Wheeler 2004: 357). The Commission was unable to find a compromise on this issue with the EP and the Member States that would secure the adoption of the directive and the draft directive was abandoned in 1998 (Wheeler 2004: 357).

Football and TV markets: The role of competition policy

Failing to find a political agreement to legislate on matters of media concentration, the Commission had only one other mechanism to ensure competition in the television market: competition policy (Wheeler 2004: 357). In this situation, DG Competition ‘has become an active player in intervening in European television markets’ (Wheeler 2004: 357). DG Competition has pursued a twofold strategy. Firstly, it has supervised mergers between media companies to ensure that there was no market dominance arising from them; secondly, it has investigated the accumulation of content to be broadcast (such as football) in order to ensure that no television operator accumulates too much premium content, hence distorting the market through a dominant position (Wheeler 2004: 361-365). It is in the latter that DG Competition has come across football and its deals with television companies. The Commission considers that an excessive concentration of football broadcasting in one operator’s hands has the potential to heavily distort competition and, more importantly, reduce the opportunities and choices for the consumer (Interview 14). The Commission has identified two markets where the selling of broadcasting rights by tournament organisers might distort competition; they have termed these the upstream market and the downstream market (European Commission 2003b: paragraphs 57-80).

The upstream market is defined as ‘the market for the acquisition of TV broadcasting rights of football events played regularly throughout the year’ (European Commission 2003b: paragraph 63), that is to say, the market where television operators buy broadcasting rights for football events. In this market, therefore, competition organisers are the suppliers and television companies are the demanders. This market includes the selling of ‘broadcasting rights to matches in national league and cup events as well as the UEFA Champions League and UEFA Cup’ (European Commission 2003b: paragraph 61). The Commission is of the opinion that ‘there is no substitutability

between the TV rights to football and the TV rights to other types of programmes' (European Commission 2003b: paragraph 77). If television companies could use other content, such as for example movies, to attract customers, then the importance of football games would be logically lower, but this is not the case according to the Commission's analysis. Competition in this upstream market can be restricted by football organisations when they sell broadcasting rights collectively on behalf of the participating clubs. Logically, if every club in the Premier League sells its own broadcasting rights, there would be 20 points of supply for TV companies. It is this type of practice that the Commission is concerned about in the cases reviewed in this chapter.

The downstream market is defined as the television market in which football events are broadcast as an important element of the competition for advertisers, viewers or subscribers among TV companies (European Commission 2003b: paragraph 80). The downstream market, therefore, is the market where television operators fight for customers; it is the real television market. In this market television companies are the suppliers and the viewers or subscribers are the customers. Football is important in this market as a content that may entice viewers or subscribers into a particular channel (European Commission 2003b: paragraphs 80). The impact of football in this market is indirect, but very important for the Commission. If a particular television operator can group together a large number of football broadcasting rights, it is likely to be in an advantageous position in the market. Football organisations impact on this downstream market if they sell all their broadcasting rights to a single operator on an exclusive basis. The Commission is of the opinion that excessive concentration of football rights in the hands of a television company may restrict competition because other channels would find it difficult to compete in attracting viewers. It is this scenario that the Commission wants to avoid.

DG Competition decided that the best way to address these possible problems in the upstream and downstream markets was from the supply side. That is to say, to ensure that competition organisers do not sell their broadcasting rights in a way that one single broadcaster can accumulate an excessive amount of them, hence reducing the options of the consumer to choose between channels to watch football (Interview 14). Therefore, the application of competition policy to the selling of broadcasting rights for football

competitions has focused on two issues: exclusivity and collective selling (Gardiner *et al.* 2001: 415-432; Spink and Morris 2000: 176-180). Exclusivity is the practice of selling the broadcasting rights only to one single television operator on an exclusive basis to maximise revenue (Gardiner *et al.* 2001: 401-403; Spink and Morris 2000: 176-178). Collective selling is the practice through which a competition organiser sells the broadcasting rights on behalf of the clubs participating in the tournament (Gardiner *et al.* 2001: 424-432; Spink and Morris 2000: 178-180).

This section has established the close relationship between the television industry and football. It has defined the problems that the selling of football broadcasting rights might create in television markets, identified as the upstream market and the downstream market. The chapter turns now to three cases that exemplify how the Commission addressed the restriction of competition created by football in the television market.

UEFA, TV and the Commission, a difficult beginning

It has been explained that broadcasting rights have become a lucrative business for the organisers of football competitions. However, not everyone involved in professional football understood the importance of television for the game at the same time. This section demonstrates that; the facts reviewed here go back to the late 1980s, when the liberalisation of the EU television market was in its infancy and the relationship between football and television operators was only really starting. This section focuses on the reactions of UEFA, as the European football governing body to the interest of television companies in football in the late 1980s and through the 1990s. It was, in essence, a defensive reaction that attempted to control the number of games that could be broadcast live.

This case is of interest because it illustrates the first reactions of UEFA to the interest of television in professional football. It provides also a first occasion to map the relationship between UEFA and DG Competition. Moreover, the resolution of this case ran in parallel to the settlement on the FIFA transfer system, therefore it can complement the conclusions extracted from the latter. Finally, this investigation enabled

the Commission to lay broadly out its concerns about the impact of football on the television market, which were later fine-tuned in the cases of the Champions League and the English Premier League. This section starts by presenting the UEFA broadcasting regulations that were the object of the Commission investigation. It then goes on to analyse the resolution of the case and its consequences.

UEFA Broadcasting Regulations

This case relates to UEFA broadcasting regulations. These are provisions adopted by UEFA to regulate cross-border transmission of football matches in Europe. In the late 1980s, UEFA was concerned about the possible negative effects that excessive television coverage could have for the game:

It is in the interest of football that there should be firm control over the televised coverage of matches. An invasion of such transmissions can only lead to a devaluation of the game's worth and thus to a decline in interest not only on the part of the public but also in that of the commercial circles which are currently seeking to become involved in football (UEFA 1990a: 34).

UEFA was of the opinion that television transmission of football matches could be counterproductive because it threatened attendances at stadiums and participation in football at all levels, but especially amateur and grass roots levels (Parrish 2003a: 127). Consequently, in 1988 UEFA adopted rules aimed at controlling the cross-border transmission of football matches. These rules were introduced in article 14 of UEFA Statutes (UEFA 1988).⁵¹ Article 14 (2) provided that national FAs could ban the television transmission of foreign football in their territory. For example, under these regulations the Italian FA had to authorise RAI if they wanted to broadcast a live match from the Spanish Primera División at the same time that league games are played in Italy. The way these regulations worked was slightly cumbersome. Following the previous example, the Italian FA had no legal basis to prevent RAI from programming a match of the Spanish league, but they could impede the access of RAI to the content. The Spanish FA would only provide the television signal to RAI if the Italian FA agreed (Interview 28).

⁵¹ Renumbered as article 44 by UEFA in 1997, article 47 in the 2000 edition of the statutes and currently article 48 (since 2001).

The introduction of the broadcasting regulations prompted a series of formal complaints by television companies to the European Commission, the first of which was registered with DG Competition on 5 April 1989 by the British company Independent Television Association Limited (ITVA). The complainant argued that the rules unduly restricted competition, a concern shared by the Commission in its initial analysis of the situation (European Commission 2001h: paragraph 3). Thus, it is important to highlight that the Commission acted on receipt of a third party's formal complaint, although DG Competition does not deny that they had an interest in investigating the wider impact of football on the audiovisual market (Interview 14). A total of 10 different audiovisual outlets from across Europe complained to the Commission at different stages of the case (European Commission 2001h).

The objections of the Commission

The Commission was of the opinion that UEFA broadcasting regulations were contrary to Article 81 (1) EC because they restricted competition by unnecessarily restricting access to television markets (European Commission 2001h: paragraph 3). The Commission held several meetings with UEFA officials to explain the problems identified in their broadcasting regulations. The Commission objected to the wide scope of the regulations that permitted national FAs to ban foreign football transmissions almost arbitrarily (UEFA 1991: Enclosure 3). The preliminary assessment of DG Competition suggested that the broadcasting regulations should be amended in three ways to comply with EU competition law (UEFA 1991: Enclosure 3). Firstly, UEFA's regulations should aim at protecting 'live' football not 'national' football because the latter is difficult to define (UEFA 1991: Enclosure 3). Secondly, the Commission proposed that the restrictions for broadcasting should be limited to well defined time slots on weekend afternoons (because this is when the majority of league fixtures are played). These time slots had to be determined by national FAs well in advance in order to prevent any arbitrary application of the regulations (UEFA 1991: Enclosure 3). Thirdly, the Commission proposed that the ban should apply only to national TV stations, not to transnational, cable and satellite channels (UEFA 1991: Enclosure 3).

Following the first meetings with the Commission, UEFA decided to review the broadcasting regulations. UEFA amended the broadcasting regulations in 1990 (UEFA

1990b) and 1993 (UEFA 1993: 7), but the Commission remained adamant that real changes should take into account the three points reviewed above. The Commission sought to find an amicable solution with the parties (i.e. UEFA and the television companies that had registered formal complaints with the Commission) that would be compatible with EU law. For that purpose, ‘a mediator was appointed in 1994 who concluded in 1996 that a compromise solution could not be found’ (European Commission 2001h: paragraph 3). Thus, the Commission decided to start legal proceedings against UEFA. DG Competition issued a statement of objections on 16 July 1998 finding that the broadcasting regulations infringed Article 81 (1) EC (European Commission 2001h: paragraph 4). The decision to issue the statement of objections was motivated by the Commission’s exasperation with the football authorities as much as by the issue at stake itself:

The dossier had been on our desks for ten years. It passed from case handler to case handler and it never got solved. We needed to get it done to move forward. So we decided that the only way to get UEFA to react was through a formal statement of objections. Then it was quick! (Interview 14).

Indeed, UEFA’s reaction to the statement of objections was fast, as it presented a proposal for new broadcasting regulations on 15 October 1998, just three months after the statement of objections was sent (European Commission 2001h: paragraph 5). UEFA decided this time to include the Commission’s recommendations in the new regulations, which were formally adopted on 2 July 1999 and notified to the Commission two weeks later (European Commission 2001h: paragraph 6). After examination of the new regulations, the Commission insisted that UEFA should reduce further the scope of national FAs to block the broadcasting of football. The Commission requested that the possibility of blocking foreign football broadcasting should be clearly linked to the main domestic fixture schedule. The Commission insisted that national FAs should not be allowed to block football transmission for more than two and a half hours per week-end on the day that football is traditionally played in the country (European Commission 2001h: paragraph 7). UEFA accepted DG Competition’s request and informed the Commission on April 2000 of the amendment to their broadcasting regulations, which came into force on 1 August 2000 (European Commission 2001h: paragraph 8). The case was finally closed with a formal decision in which the Commission stated that ‘the UEFA broadcasting regulations cannot be

considered to constitute an appreciable restriction of competition within the meaning of article 81 (1) of the EC Treaty in this market' (European Commission 2001h: paragraph 61).

A very orthodox solution

UEFA's new broadcasting regulations complied in full with the Commission's demands. The new regulations dictate that national FAs can ban foreign football only for a period of two and a half hours per week-end (UEFA 2003a: Article 3.1). These periods, known as 'blocked broadcasting hours' must be notified in writing to UEFA by the national FAs at least 14 days before the start of the season and apply for the whole season (UEFA 2003a: Article 3.2). The Commission, therefore, obtained what they demanded from the very beginning of the case: a very limited and clearly defined structure of the instances in which national FAs could block the transmission of foreign football. The wide scope of UEFA's initial broadcasting regulations contrasts with the maximum of two and a half hours per week-end that UEFA finally conceded. Moreover, UEFA set up a procedure whereby national FAs are requested to provide written evidence that their chosen blocked broadcasting hours actually correspond to the main domestic fixture schedule (UEFA 2003a: Article 3.3).

The Commission decision giving the green light to the amended UEFA broadcasting regulations was adopted in April 2001. It was based on the argument that the amended regulations did not affect the market in which television companies buy football broadcasting rights (European Commission 2001h: paragraphs 49-51). It is interesting to note that the decision was not to grant an exemption under Article 81 (3) but rather to find the broadcasting rules directly lawful. UEFA broadcasting regulations are not considered anti-competitive.

One interesting point concerning the Commission decision is that DG Competition started to identify the television markets affected by football broadcasting, although they were not comprehensively defined (this was eventually done in the Champions League decision considered below). The Commission suggested the existence of the upstream market where television operators buy broadcasting rights for football competitions and the downstream markets where broadcasters compete for audience and

advertising revenue (European Commission 2001h: paragraph 22), but it did not provide a precise definition of them (European Commission 2001h: paragraphs 42 and 43). The case of UEFA broadcasting regulations allowed the Commission to reflect on the relationship between football and television. Although no markets were defined in this decision, it is undeniable that the Commission had identified the economic effect of professional football. The decision deals with UEFA broadcasting regulations in economic and competition terms. It is safe to say that in this dossier football retained its definition as an economic issue on the agenda of DG Competition.

This is especially evident in the way that the Commission worded the decision that cleared UEFA's broadcasting regulations. The decision is reasoned entirely on economic and market grounds. There are no references at all to the specific characteristics of sport, nor to the Amsterdam or Nice Declarations on Sport. In this case the Commission retained its economic analysis and the resolution was much closer to the Commission's position than to UEFA's. The governing body accepted every one of the Commission's requests, but it was not unhappy with the outcome (Interview 28).

UEFA's quick reaction after receiving the statement of objections in 1998 is in contrast to its earlier resistance to comply with the Commission's requests. This can be explained in several ways. First, the statement of objections from the Commission came, after the Bosman case, at a time when UEFA knew very well what European law could do to the organisation. So, UEFA had no other option than to adapt. On the other hand, the development of digital and pay-per-view television was rendering the broadcasting regulations less and less important, almost obsolete. These regulations were introduced in 1988 and the statement of objections was sent to UEFA ten years later. In that decade the emergence of digital and pay-per-view television had transformed football, and governing bodies like UEFA were forced to reformulate their strategies towards television. The relatively low relevance of the broadcasting regulations nowadays is demonstrated by the fact that in the season 2007-2008, only 13 national FAs out of the 53 members of UEFA have used their right to block foreign football under the UEFA broadcasting regulations (UEFA 2006a). The broadcasting regulations are now a minor issue for UEFA's legal and commercial departments, taking little time in their work schedule (Interview 32, Interview 33). This chapter will now turn to what proved to be the major challenge between UEFA and EU competition

policy with regard to the broadcasting of professional football: the joint selling of the broadcasting rights for the UEFA Champions League.

The Champions League, the arrival of ‘sportainment’

The UEFA Champions League is probably the best example of the characteristics of modern professional football in Europe. The Champions League, in line with modern trends, is much more than a football tournament. It is a commercial brand, a profitable show closely linked to the revenues generated by television. For example, the commercial revenue of the 2005-2006 Champions League amounted to €607 million (UEFA 2007d: 35).⁵² Qualifying for the Champions League is now paramount for top clubs, which need the extra income if they are to compete with their rivals both at national and European levels. Underlying the financial success of the UEFA Champions League is, of course, the willingness of television companies to broadcast European club football.

This section focuses on the European Commission’s investigation of the selling arrangements for the Champions League’s TV rights. This case continues the analysis of the preceding section. The importance of the case is threefold. First, it continued the development of DG Competition’s understanding of the impact of top professional football on the television market. This is especially related to the thesis’ second research question (What is the policy of the EU institutions towards football and football governance?), since the Commission had here another opportunity to define its policy on professional football. Secondly, it established a blueprint for future investigations into the selling of football broadcasting rights at national level. Thirdly, this case is a good example of the strained relationship that has developed between the football clubs and their governing bodies (UEFA in this case). This, of course, goes straight to the heart of the fourth research question (What has been the impact of EU policies and decisions in the governance structures of football?). The section starts with an overview of the origins and evolution of the Champions League to contextualise the case. It then goes on to present the Commission investigation into UEFA’s selling arrangements of broadcasting rights. Finally, the consequences of this case are analysed.

⁵² This includes television rights for Europe and overseas, sponsorship and suppliers agreements, new media rights and other income such as licensed products. It does not include, for example, ticket revenue.

From Champions Cup to Champions League

The Champions League is UEFA's top competition for football clubs. It is the current version of the European Champions Cup which was established in 1955. The European Champions Cup was born as a competition for the league champions of various European countries. FIFA, world football's governing body, insisted at the time that the competition be organised by UEFA; thus the organisation of the competition 'consolidated UEFA's role in European football as the sovereign organisation with regard to pan-European competitive structures' (Holt 2006: 22). Arguably, the Champions League has contributed towards the consolidation of UEFA's position within the governance structures of European football once it was challenged by clubs and by commercial pressures from the audiovisual industry; this is further explored in the next two chapters. Chapter 6 analyses UEFA's central role in the governance of European football as interlocutor with the EU institutions, and chapter 7 examines the transformations in European football's governance structure and their consequences for UEFA as a governing body.

The European Champions Cup was played in almost the same format from 1955 to 1991. In the late 1980s and early 1990s the concept of a European league (as compared to a knock-out competition) was advanced by AC Milan chairman and, importantly, media mogul Silvio Berlusconi (Holt 2006: 30-31). UEFA responded to these movements and it introduced modifications to the competition format of the Champions Cup (Interview 28). It was in the 1991-1992 season when the quarter final and semi final rounds of the European Champions Cup were replaced with two groups of four teams, the winners of which went directly to the final. The competition was rebranded and renamed as the UEFA Champions League for the 1992-1993 season (Holt 2006: 31). Over the next decade the competition would undergo several transformations, the most important of which was arguably the increase in the number of participating teams,⁵³ allowing for more matches to be played and, in turn, increasing the revenue from the broadcasting rights. The current format encompasses three preliminary knock-out rounds and the Champions League proper (UEFA 2007c: article 7). A total of 90 football matches are played in the three qualifying rounds followed by 125 games in the

⁵³ In the 1997-1998 season the participation in the Champions League was open for the first time to clubs other than the national league champions. Under the current format, up to the fourth team in Europe's top ranked leagues can qualify for the tournament, albeit for the preliminary round, not the group stage of the Champions League proper.

Champions League proper spread over 13 match days from September to the final in May (UEFA 2007c: annex Ib).

The dynamics leading to the transformation of the old European Champions Cup into the Champions League have been discussed at length elsewhere (Holt 2006: 24-37, 2007; King 2003: 97-166; Morrow 2003), normally in the context of the wider commercialisation of football. There is a consensus that two main forces were behind the changes: (i) the development of digital and satellite channels willing to broadcast more European football; and (ii) the growing awareness by the top football clubs of their economic potential - which in fact led to some clubs threatening to set up a break-away European football league outside UEFA's umbrella (for an overview of this particular debate see especially Holt 2006: 30-38).⁵⁴

Joint selling of broadcasting rights

UEFA considers that the central marketing of the Champions League's commercial rights is a prerequisite for the existence of the tournament; UEFA would not organise the Champions League without its joint selling arrangement and without being able to redistribute the revenues among the football family (European Commission 2003b: paragraph 130). Participating clubs are obliged to accept joint selling if they want to compete in the tournament. According to the Champions League Regulations, UEFA is the exclusive owner of the competition's commercial rights (UEFA 2007c: articles 27 and 28).

The Champions League case has a different origin to that relating to the broadcasting regulations, for it was UEFA who notified the Commission about the selling arrangements for the Champions League. This time there was no third party complaint. UEFA notified the Commission on 19 February 1999 (see Table 10, below, for a time line of the dossier). UEFA requested clearance under EU competition rules (European Commission 2003b: paragraph 18) to ensure that the selling arrangements complied

⁵⁴ In basketball, some clubs and professional leagues broke away in 1991 from the sport's main governing body (FIBA) to form the Union of European Leagues of Basketball (ULEB) and organise their own competition called the Euroleague. For some years, the Euroleague co-existed with FIBA's own European Champions Cup, both trying to attract the top teams in Europe. At present, the Euroleague has finally established itself as the top European club competition in basketball, although there still remains the 'FIBA EuroCup', which is now generally seen as the third tier of European basketball, even behind the ULEB Cup.

with Article 81 (1) EC. This decision from UEFA suggests that the governing body was coming to terms with the reality of EU law and the presence of the EU as an extra element in the governance of football. However this does not mean that UEFA happily embraced the interventions of EU institutions; it was more a matter of pragmatism. Nevertheless UEFA's objective was expressly to comply with EU legislation when designing a system to sell the broadcasting rights to the Champions League (Interview 32).

Table 10. The Commission investigation into joint selling of UCL broadcasting rights

Date	Commission action	UEFA action
19 February 1999		Notifies the new joint selling arrangements
18 July 2001	Issues statement of objections	
16 November 2001		Replies to statement of objections requesting more time to draft a new joint selling arrangement
November 2001 to March 2002	Meetings between the institutions to help UEFA draft a new selling system acceptable to the Commission	
13 May 2002		Notification of the new selling system
17 September 2002	Conditional approval of the new system presented by UEFA	
23 July 2003	Formal decision exempting UEFA joint selling arrangements under Article 81 (3) EC until 2009	

Source: European Commission 2003b

UEFA's 1999 arrangement to sell the Champions League's broadcasting rights consisted of UEFA selling on behalf of the clubs a bundle of all the free-to-air and pay-TV rights on an exclusive basis to a single broadcaster per country for a period of up to

four years (European Commission 2001g; Parrish 2003a: 123).⁵⁵ So, for example, ITV could obtain all the Champions League rights in England, RAI could get the same rights for Italy or the Spanish public broadcaster (*Televisión Española*, TVE) could buy the rights to broadcast the competition in Spain.

UEFA was especially interested in winning the authorisation of the Commission for its policy of joint selling. The governing body defended joint selling mainly with two arguments related to brand image and financial solidarity. First, UEFA argued that central marketing is necessary to preserve the Champions League brand. UEFA was of the opinion that only through joint selling would it be able to create and maintain the uniformity and consistency of quality of the UEFA Champions League product (European Commission 2003b: paragraph 154). Second, UEFA considered that joint selling was necessary to ensure financial solidarity within football; UEFA argued that the model of financial solidarity upon which the competition is based helps to maintain a balance between clubs and to encourage the recruitment of young players (European Commission 2003b: paragraph 126). UEFA undertakes the task of marketing the Champions League's commercial rights in order to maximise income, which is re-distributed throughout the pyramid of football, hence the competition's aim is not profit *per se* but profit as a means to nurture the 'solidarity system' (for more details on the Champions League solidarity system see UEFA 2001).⁵⁶

The Commission's objections

The European Commission, however, objected to UEFA's proposed arrangement because of the effect that it could have on the broadcasting market. The Commission issued a statement of objections on 18 July 2001, which informed UEFA that the selling arrangements were not eligible for an exemption under Article 81 (3) EC (European Commission 2003b: paragraph 18). The Commission's objections were threefold (European Commission 2003b: paragraph 19): firstly, that the joint selling system prevented clubs from marketing their broadcasting rights, hence restricting competition

⁵⁵ The rights were normally sold to a free-to-air operator that was allowed to sub-license some of the rights to pay-per-view channels.

⁵⁶ Whether the solidarity system in place for the Champions League effectively achieves real redistribution within football is a different matter (for more on the necessity of robust and effective mechanisms of redistributing TV income see for example European Commission 2007b: 17, 2007d: 54-55).

among the clubs and between UEFA and the clubs. Secondly, the Commission argued that central marketing made it possible for one single broadcaster to acquire all the TV rights of the competition to the detriment of other smaller broadcasters. The Commission argued that the value of a single package bundling all the rights would be so high that it would price out small broadcasters from the upstream market where broadcasting rights are sold by the competition organiser. Finally, the Commission was unhappy because UEFA was leaving a number of rights effectively unexploited.

Notwithstanding the statement of objections, the Commission was especially careful when making public its intentions to force UEFA to change the joint selling arrangements:

The Commission fully endorses the specificity of sport as expressed in the declaration of the European Council in Nice in December 2000, where the Council encourages a redistribution of part of the revenue from the sales of TV rights at the appropriate levels, as beneficial to the principle of solidarity between all levels and areas of sport. However, the Commission considers that the current form of joint selling of the TV rights by UEFA has a highly anti-competitive effect by foreclosing TV markets and ultimately limiting TV coverage of those events for consumers. The Commission considers that joint selling of the TV rights as practiced by UEFA is not indispensable for guaranteeing solidarity among clubs participating in a football tournament. It should be possible to achieve solidarity without incurring anti-competitive effects (European Commission 2001g: 1).

The paragraph above, part of the Commission's press release announcing the legal proceedings against UEFA, is a good example of the compromise that DG Competition would have to negotiate to settle this case. There are several points of interest in the Commission's position. First, the Commission seems to accept (or at least it does not reject) joint selling in principle. The Commission understands the principle of solidarity linked to joint selling, but it is of the opinion that the selling arrangements proposed by UEFA go beyond what is necessary. In other words, the Commission might be ready to accept joint selling, but not as proposed by UEFA. The Commission explained its position in a memorandum published at the same time:

While joint selling arrangements clearly fall within the scope of Article 81 (1), the Commission considers that in certain circumstances, joint selling may be an efficient way to organise the selling of TV rights for international sports events.

However, the manner in which the TV rights are sold may not be so restrictive as to outweigh the benefits provided (European Commission 2001d: 2).

Second, the Commission makes reference to the Nice Declaration on Sport, adopted by the European Council in December 2000, and to the specificity of football. As explained in chapter 4, the Nice Declaration was adopted by the Member States following the lobbying of the so-called sporting movement under the umbrella of the IOC. Despite being non-binding in nature, the paragraph above suggests that the Nice Declaration had an effect on the Commission's approach to football and television. This was also a departure from the resolution of the broadcasting regulations case, where the Commission made no mention at all of solidarity or specificity. The express mention of the specificity of football suggested also that the Commission might be willing to define football as something other than purely an economic activity. Yet, the Commission was still initiating legal proceedings against UEFA. Despite accepting joint selling and acknowledging the specificity of football, DG Competition had still challenged UEFA's selling arrangements as anti-competitive. However, this less confrontational attitude (although still firm) suggests an evolution in the definition of football by the Commission.

UEFA replied to the statement of objections on 16 November 2001. It presented an outline of new joint selling arrangements on 8 January 2002 (European Commission 2003b: paragraph 21). UEFA's new proposal was the subject of several meetings between the governing body and Commission officials (European Commission 2003b: paragraph 23). According to UEFA, the breakthrough in the negotiations came on 3 June 2002, when UEFA representatives met Commissioner Mario Monti in Brussels (UEFA 2003b: 46). Following that meeting, DG Competition announced that it had decided to give its preliminary approval to the new system of joint selling proposed by UEFA, subject to giving third parties the opportunity to comment on the arrangements (European Commission 2002a: 1).

A new joint selling system

The details of the new structure to sell the Champions League's TV rights were the subject of many meetings between UEFA's legal team and DG Competition officials (Interview 14, Interview 32). Under this agreement, the Commission respected UEFA's

joint selling philosophy. UEFA could still sell the Champions League's broadcasting rights on behalf of the participant clubs, but it had to abandon the idea of selling only one package of TV rights to one single broadcaster in each country. Basically, the philosophy behind the new arrangements seems to have been to increase the quantity of broadcasting rights on offer by UEFA (i.e. broadcasting more matches, not just a few every match day). Forcing UEFA to make more matches available for broadcasters means that smaller packages that contain several football games can be organised. With more packages on offer, more television platforms could bid for the rights, even if it is just for one small package of highlights or less important games. Moreover, UEFA was forced to sell the TV rights on a country by country basis. The Commission thought that this segmented structure would, in theory, prevent one single television channel from buying all the Champions League rights for its country, hence opening the competition in that country's downstream market. Moreover, with more packages on offer there is also the possibility to divide the rights between UEFA and the clubs, hence theoretically enhancing competition in the upstream market as well. The Commission, therefore, respected joint selling, but forced UEFA to offer a wider variety of packages instead of the single package structure suggested by UEFA in 1999 (European Commission 2002a; European Commission 2003b).

UEFA divided its commercial rights (including TV broadcasting, internet, streaming through mobile telephones (UMTS), sponsorship and licensing) into 14 smaller packages, to be sold on a country by country basis for a period not exceeding three years (European Commission 2002a: 1; European Commission 2003b). The new packages now include every Champions League game played through the season, so more games are transmitted live. This represented a major change for UEFA. Whilst the broadcasting regulations of 1988 aimed at limiting the transmission of football games, UEFA was now ready to permit live broadcasting of every Champions League match. The structure of the 14 different packages is slightly complicated. UEFA retains the exclusive right to sell the two main live rights packages for free-TV and pay-TV, but other packages are co-exploited by both UEFA and the participating clubs;⁵⁷ similarly, the rights for internet and UMTS are also co-exploited by UEFA and the participating clubs (for a detailed description of the complex segmentation of the Champions League

⁵⁷ Normally these include less attractive games, since the top two packages reserved for UEFA (called golden and silver packages) would include the most attractive games of every match day.

broadcasting rights see European Commission 2003b: paragraphs 32-54; see also UEFA 2002).

The Commission was happy to close the case with a formal decision in July 2003. The Commission took the view that the new joint selling of Champions League broadcasting rights, despite its anti-competitive nature *prima facie*, merited an exemption under Article 81 (3) EC. The exemption was granted on the grounds that the UEFA system to sell the broadcasting rights creates a single point of sale and it facilitates the protection of the Champions League as a brand product of high quality (European Commission 2003b). The exemption, however, has been only granted until 31 July 2009 (European Commission 2003b).

Positive reception

The agreement between the Commission and UEFA was positively received. The G-14, which represents many of the clubs participating in the Champions League, expressed its satisfaction with the new marketing model because it allowed clubs to sell some of the rights to their Champions League matches (European Commission 2003b: paragraph 92). The Commission itself was also satisfied that the new policy allowed UEFA to continue selling the rights on a central basis whilst still bringing football within the reach of more broadcasters. In the words of Mario Monti:

The Commission's action will provide a broader and more varied offer of football on television. It will allow clubs to develop the rights for their own fan base and will give an impulse for the emerging new media markets such as UMTS services (European Commission 2003a: 1).

The Commission was also very keen to stress its commitment to central marketing:

This positive outcome shows that the marketing of football rights can be made compatible with EU competition rules without calling into question their sale by a central body to the benefit of all stakeholders in the game (European Commission 2003a: 1).

Logically, UEFA was very satisfied as well, for it had managed to retain the principle of joint selling. UEFA's Director of Legal Services, Markus Studer, was even enthusiastic when he reported to the organisation's congress:

UEFA is very satisfied with the outcome of this case, which marks the first occasion where the European Commission has approved central marketing arrangements for a major sporting event. The decision gives legal security for UEFA to sell the commercial rights of the competition until at least 2009. At the same time, the decision provides a modern and balanced solution, opening up further possibilities for technological innovation and maximising variety and choice for football fans to follow Europe's flagship competition (UEFA 2004c: 53).

But UEFA was satisfied beyond the specific decision. People within UEFA appreciated the good spirit in which the negotiations with the Commission had taken place. Despite having sorted out other dossiers before (e.g. FIFA transfer system, broadcasting regulations), it was the Champions League case that really transformed UEFA's perception of the EU and its interventions in football issues:

[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. It was a very good agreement, we are very happy with the outcome, but also with the way in which the negotiations ended, because I think we built some trust in both sides and this is important for the future. 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 35).

A compromise solution

The Commission's decision on the Champions League case seems to have met with the approval of those involved in the negotiations. As a whole, the decision can be best defined as a compromise between the total liberalisation of broadcasting rights⁵⁸ and a restrictive joint selling arrangement;⁵⁹ it is probably fair to say that the final decision is closer to the latter than the former.

⁵⁸ A total liberalisation would entail a system in which every club is allowed to sell its own broadcasting rights regardless of the competition organiser or the other participating clubs. This is for example the case of the Spanish league.

⁵⁹ A restrictive selling arrangement was the scheme proposed in 1999 by UEFA, where the competition organiser restricted the amount of rights on offer to the market and did not allow the clubs to exploit any broadcasting rights.

The Commission's decision in this case sanctioned joint selling of broadcasting rights as a legal practice provided they were broken up into several smaller packages. However, this does not mean that the Commission prefers central marketing as a principle over a decentralised system in which the clubs sell their broadcasting rights individually. It does not mean the opposite, either. It is a compromise solution carefully tailored by DG Competition when drafting the formal decision. In practical terms, it is safe to affirm that both UEFA and the Commission won something with the agreement. UEFA retained joint selling and it has certainly excelled in the development of the Champions League. The tournament is now an extremely profitable business and a top sporting competition. UEFA is now wealthier thanks to the Champions League and joint selling. It is in a position to redistribute revenue among the participating clubs and, perhaps, thanks to that UEFA is also able to retain its authority in the governance of football:

Since the beginning of the 1990s it is UEFA who pays its members, because you have no authority if you do not control also the economic part of it. The clubs would not have respect if there is no economic power behind a central body. So, by introducing central marketing of TV rights, we introduced a solidarity system in European football and we enhanced also the authority of UEFA as the competent authority to control and develop football, including the professional game (Interview 28).

The Commission, on the other hand, also achieved some of its objectives. DG Competition continued to bring football's practices into line with EU law, but it also contributed to a more comprehensive understanding of football's structures. It seems that the cumulative effect of the decisions on broadcasting regulations, FIFA transfer system and Champions League addressed some of the problems created by the arrival of football on the EU agenda through the Bosman ruling.

It is interesting to note the way in which the Commission crafted its decision. The decision finds that joint selling is indeed an anti-competitive practice under article 81 (1) EC (European Commission 2003b: paragraph 113). DG Competition maintains that joint selling restricts competition in the upstream and downstream markets (European Commission 2003b: paragraphs 113-117). It is safe to interpret this part of the economic analysis of joint selling as DG Competition holding its ground against the views of the European Council as expressed in the Nice Declaration on Sport. However, despite the

restriction of competition, the Commission is prepared to grant an exemption under Article 81 (3) EC. This decision enables DG Competition to find a solution without relinquishing its economic analysis of the structures of both football and the television market.

Second, it is extremely interesting to analyse the grounds on which the Commission decided to grant an exemption to UEFA's central marketing system. The Commission adopted the decision because the system of joint selling proposed by UEFA 'leads to the improvement of production and distribution by creating a quality branded league product sold via a single point of sale' (European Commission 2003b: paragraph 201). The Commission's reasoning in granting an exemption under article 81 (3) is expressed purely in economic terms (European Commission 2003b: paragraphs 139-196). Interestingly, the Commission does not refer to any argument based on solidarity or the specificity of football when justifying the exemption (European Commission 2003b: paragraphs 164-167). In an interesting exercise, the Commission explicitly states that it is 'in favour of the financial solidarity principle, which was also endorsed by the European Council declaration on sport' (European Commission 2003b: paragraph 165). However, it then refuses to consider financial solidarity as a motive for granting the exemption, which is only justified on terms of benefits for the consumer and other efficiencies for the market (European Commission 2003b: paragraph 167).

The Commission seems to be keen to endorse the specificity of football in press releases and other non official documents (Wachtmeister 1998, see especially page 26; European Commission 2002a, 2003a), but, come the formal decision, this specificity is sidelined. This is not to say that the argument had no importance in the decision. Certainly, there is no evidence to establish a formal link between this decision and the wider context of the debate on financial solidarity and the specificity of football. However the political game in Brussels cannot always be traced through documents. The Commission's constant references to the Nice Declaration on Sport are indicative, though. In the same way that it was safe to assume that the intervention of some Member States helped to settle the transfer system case (chapter 4), it is not very risky to affirm that the Champions League decision reflects a change in the Commission's appreciation of football beyond the economics of the game. The arguments in favour of a less economy-driven approach to football can be recognised. DG Competition, however, preferred not

to take risks and to stay on safe territory as much as it could, hence the economic reasoning of the exemption under Article 81 (3) EC.

Putting this decision in a more general context, the Commission finally defined its understanding of the relationship between top football competitions and the television market. The Commission used this decision to provide a definition of the upstream and downstream markets (European Commission 2003b: paragraphs 77-80, see above for a definition of these markets). Moreover, the Commission created a blueprint for the commercial exploitation of the broadcasting rights for football competitions: Central marketing is permitted, but the TV rights have to be divided into small packages, which are sold on an individual basis. The consequence of this new system is that more football matches are now shown live on television.

The Champions League case addressed the issue of joint selling whilst also touching on the problems arising from exclusivity. Furthermore, it established some form of doctrine in the Commission's regulation of football's broadcasting. The Champions League, though, is only one of the many football competitions attracting fans and broadcasters alike around the EU. National championships are equally important. This chapter will now advance to investigate the Commission's participation in the regulation of football broadcasting at the national level. The case analysed is the Commission's investigation into the selling of the broadcasting rights for the English Premier League.

The Commission, BSkyB and the Premier League

The English Premier League (PL) is arguably one of the most successful national football competitions in Europe, both on and off the pitch. If the UEFA Champions League represents all the characteristics of modern professional football in Europe, including the commercial success, the Premier League replicates that at the national level. Both competitions, quite curiously, were launched at the same time, in the 1992-1993 season. It is certainly not a coincidence that these movements followed the creation of BSkyB in 1990 after the merger of British Satellite Broadcasting and Rupert Murdoch's Sky Television Plc. BSkyB held the exclusive rights to broadcast live

Premier League football from the creation of the tournament until the end of the 2006-2007 season (see Table 11 below).

Having regard to the arguments in the preceding section, the European Commission's interest in investigating the relations between broadcasters and the Premier League should come as no surprise. The Premier League is the prime example of a football competition linked to the development of digital and pay-per-view television. The profitable ventures of BSkyB and the Premier League have gone hand in hand. The Premier League is also a demonstration of the economic power of the top professional clubs and their willingness to challenge the traditional governing structures of the game. In terms of EU intervention in football-matters, the Premier League case naturally follows on from its investigation of the Champions League and, therefore, it builds on the arguments of the latter.

Table 11. Value of the Premier League's domestic broadcasting rights for live matches

Deal starts (Season)	Deal ends (Season)	Broadcaster(s)	Broadcasting rights (in £ million)	Average per season (in £ million)
1988-1989	1991-1992	ITV	44	11
1992: Breakaway of the First Division clubs to form the Premier League				
1992-1993	1996-1997	BSkyB	191.5	38.3
1997-1998	2000-2001	BSkyB	670	167.5
2001-2002	2003-2004	BSkyB	1100	366.6
2004-2005	2006-2007	BSkyB	1024	341.3
2007-2008	2009-2010	BSkyB and Setanta	1700	566.66

Source: Dobson and Goddard 2003: 81-83; Massey 2007

The Premier League case now represents a step forward in time. It comes at a point when professional football has clearly evolved. It is also a moment when football organisations and EU institutions have a more sophisticated understanding of one

another. The interest of the Commission in the Premier League's activities has been met with a traditional reaction from the football side: 'The European Commission is a synonym of problems for us. It has caused a massive headache for the last six years!' (Interview 25). Quite a profitable headache, though, as the Commission's request to modify the structure of the latest round of bidding for the TV rights to the Premier League has resulted in a 66% increase in the Premier League's broadcasting revenue.

This section concentrates on the Commission's influence on the broadcasting of football at national level through the analysis of the selling of broadcasting rights to the English Premier League. Whilst the Champions League case addressed joint selling, the Premier League dossier will focus in particular on the restriction of competition caused by exclusivity in the deals signed between broadcasters and competition organisers. The section starts with a short overview of the origin of the Premier League. It then continues by presenting the Commission investigation into the selling of the tournament's broadcasting rights. Finally, the consequences of the Commission's actions and the Premier League's reactions are analysed.

The Premier League: (Even) more power to the clubs

The Premier League is England's top club football competition. It has been organised since 1992 by the Football Association Premier League (FAPL). Previously, top flight football in England was organised by the Football League, the organisation that the clubs forming the FAPL abandoned. The FAPL is a corporation, whose shareholders are the 20 clubs participating in the Premier League (Premier League 2007a: 1). The Premier League was born as a breakaway from the Football League's First Division; a movement that also reflected the struggle for power between the English FA and the Football League, the two bodies in charge of football in England (King 2002: 65-66). The clubs formally left the Football League on 28 June 1991 and the first meeting of the new organisation was held on 10 October 1991 (King 2002: 66). The FAPL was constituted as a limited corporation on 27 May 2002 and the first football game of the new competition was played on 15 August 1992 (Premier League 2007b: 1).

The factors behind the move of England's top professional clubs have been well documented (see for example King 2002: 55-79 and 75-106; also Holt 2006: 22-24 and

28-30). There were long term factors, such as the economic decline of English football during the 1980s, especially exacerbated by the costs of the reforms demanded in the Taylor report after the Hillsborough disaster of April 1989 (King 2002: 100-103). A shorter term factor, but probably the one that ignited the flame, was the emergence of new television channels and the dispute over their potential revenue for the clubs (Spink and Morris 2000: 167-168). The top clubs in the old First Division were keen to benefit from the TV income provided by BSkyB, but they did not want to redistribute money to lower categories within the Football League. The FAPL acknowledges the importance of television in the origin and development of the organisation:

Television has played a major role in the history of the Premier League. The money from TV deals has been vital in helping to create excellence both on and off the field. The initial decision to go with Sky was, again, a radical decision, but one that has paid off. At the time pay television was a relatively untested proposition in the UK market, as was charging fans to watch live televised football. However a combination of Sky's marketing strategy, the quality of the Premier League football and the public's appetite for the game has seen the value of the Premier League's broadcast rights soar and delivered huge benefits to the game (Premier League 2007b: 2).

The commercial success of the English Premier League is undeniable. The Premiership is the highest earning domestic league in Europe, ahead of the other four big leagues (Deloitte 2006b: 11). The Premier League's revenue for the 2004-2005 season was €1,974 million, compared to Italy's Serie A €1,336 million, German Bundesliga's €1,236 million, Spain's Liga de Fútbol Profesional €1,029 million and France's Le Championnat €96 million (Deloitte 2006b: 12). Broadcasting is the most important revenue stream for the Premier League, representing 43% of the total income for the 2004-2005 season; match day income (31%) and merchandising and sponsorship (26%) were the other sources of revenue (Deloitte 2006b: 14). Therefore, one can appreciate the importance for the Premier League of any regulation regarding the selling of broadcasting rights.

From the outset, the FAPL has sold the broadcasting rights to the competition on behalf of the participating clubs. Article 48 of the FAPL Rules and Regulations grants the FAPL the exclusive right to negotiate the media rights (European Commission 2006d: paragraph 5). The revenue is then redistributed not only among the 20 clubs taking part in the Premier League, but there also so-called parachute payments for those clubs

relegated to the Coca Cola Championship, English football's second tier run by the Football league. Television rights are paid to clubs by the Premier League annually. The total of television income is pooled and, after deducting taxes, the FAPL's contribution to the Professional Footballers' Association and the contribution towards grassroots football, the money is distributed to the clubs: 50% of the total amount is shared equally by the 20 Premier League Clubs and a smaller amount goes to the relegated clubs as parachute payments, the other 50% is allocated to clubs according to their final position in the league and the number of times they have appeared on TV through the season (Spink and Morris 2000: 181; Deloitte 2006a: 15). The FAPL usually carries out the joint selling by issuing one or more invitations to tender every three years specifying in each one the rights that are up for sale (European Commission 2006d: paragraph 6). Until 2006, all the rights to live football transmission were sold to one single broadcaster (BSkyB) on an exclusive basis. Only with the deal that began in the 2007-2008 season has the market been opened up to a second operator, Setanta (Gibson 2005).

It was the practice of joint selling, coupled with the exclusivity granted to BSkyB, that attracted the attention of the national and EU competition authorities. For the FAPL, the selling arrangements are the lifeblood of the competition and the organisation; however for competition authorities, such agreements might be seriously restrictive.

The Commission investigation

The links between English football and media companies have been in the spotlight of competition authorities, both at national and European level, for some time. The first Premier League-BSkyB deal, signed in 1992, was subject to scrutiny by national competition authorities in England (King 2002: 110). The British Office of Fair Trading (OFT) began its investigation into the sale of Premiership TV rights as soon as the agreement was notified by the parties, although it took until February 1996 (when the contract was about to expire) for the OFT to refer the case to the Restrictive Practices Court (RPC) as the arrangements were considered to be potentially anti-competitive (Spink and Morris 2000: 173). Therefore, already in the mid 1990s, the British competition authority expressed some concerns about the consequences that football deals with TV operators might have for competition in the TV market.

The RPC took three years to examine the case. It was only in 1999 that the RPC decided that the Premier League-Sky deal complied with the 1976 Restrictive Trade Practices Act (Lewis and Taylor 2003: 409; Gardiner *et al.* 2001: 426-427). It is necessary to stress two points. Firstly, the RPC judgement referred to the first contract signed between BSkyB and the Premier League, but by the time of the ruling both parties had already agreed to a second deal that would run until 2001 (see Table 11 above). Secondly, the judgement conceded only momentary relief to the Premier League.⁶⁰ Spink and Morris had already pointed out in 2000 (183-185) that future agreements between the FAPL and broadcasters would have difficulty in replicating the 1992 and 1996 contracts in which BSkyB obtained all the rights to live Premiership football.

Following the investigation of the British competition authority, the European Commission started to gather information about the Premier League's television deals in 1999. The Commission sent questionnaires to the FAPL and each one of the clubs requesting information about the new deal; the Commission also urged the Premier League to notify it about the selling arrangements of the broadcasting rights as soon as possible, so they could be examined under EU competition law (Lewis and Taylor 2003: 410; European Commission 2002c). The Commission, after gathering information, decided to open an own initiative investigation in June 2001 (European Commission 2002c: 1), when the Premier League had already agreed a third exclusive deal with BSkyB to broadcast live Premiership matches worth £1.1 billion for three seasons. It took a whole year for the FAPL to reply to the Commission's investigation, although in the meantime there were contacts between FAPL and DG Competition officials (Interview 25; European Commission 2006d: paragraph 11) until the FAPL finally agreed to notify formally the Commission about the selling arrangements. On 21 June 2002 the FAPL requested negative clearance under article 81 (1) EC or an individual exemption under article 81 (3) EC (European Commission 2006d: paragraph 11). The Commission, however, considered that it was not possible to endorse the Premier League's selling arrangements. Thus, the Commission addressed a statement of

⁶⁰ The RPC ruled in favour of the FAPL because the 1976 Restrictive Trade Practices Act did only allow the court to consider whether the system of collective selling operated in the public interest (Gardiner *et al.* 2001: 426; Lewis and Taylor 2003: 408). Under this test, collective selling is defensible as less restrictive means of achieving the stated objectives cannot be considered. However, under the new 1998 UK Competition Act, regulators can consider if less restrictive means are available. This new framework of analysis is in line with EU's competition policy (Gardiner *et al.* 2001: 427).

objections to the FAPL on 17 December 2002 (European Commission 2006d: paragraph 12), giving the FAPL two and a half months to reply (European Commission 2002c: 1).

The Commission objected to the foreclosure of the upstream market for the acquisition of the media rights for top football competitions (European Commission 2006d: paragraphs 21-22). DG Competition argued that joint selling by the FAPL reduced supply in the upstream market, hence forcing broadcasters to pay significant amounts of money to acquire the rights and indirectly preventing competition from smaller media companies (European Commission 2006d: paragraph 25). However, the Commission put significantly more emphasis on the consequences that the FAPL practices had for the downstream market where television operators exploit their acquired rights. This is exemplified in the formal decision that closed the case: Whereas 5 paragraphs are devoted to the downstream market and exclusivity, only one is dedicated to the upstream market (European Commission 2006d: paragraphs 25-30). DG Competition argued that collective selling of large packages of media rights on an exclusive basis was likely to create barriers to entry for small operators in the UK audiovisual market due to the importance of football for television (European Commission 2006d: paragraphs 26-27). Therefore, it is not joint selling that the Commission is seeking to change, but rather the exclusivity granted to BSkyB by the Premier League:

All this anti-competitive effects do not mean, however, that joint selling is to be banned outright (...) The Commission fully accepts that sport is not to be treated like any other sector and respects the declaration of the European Council in Nice in December 2000 (...) [However] The Commission believes at this stage that the selling of media rights as practised by the FAPL is not indispensable for guaranteeing solidarity among clubs participating in the English leagues and that it is possible to achieve solidarity without incurring in anti-competitive effects (European Commission 2002c: 1-2).

The Commission, once again, was very careful in announcing the start of legal proceedings against the FAPL, but it was nevertheless determined to break BSkyB's exclusive stranglehold on Premiership football. The Commission's press release that communicated the decision to challenge the FAPL selling arrangements explicitly mentioned the preliminary agreement reached with UEFA in the Champions League case earlier that same year (European Commission 2002c: 2). In addition, the Commission made reference to solidarity among clubs and to the Nice Declaration on

Sport. The Commission's statement referred to the fact that 'sport is not to be treated like any other sector'. This is a further step towards recognising an alternative definition of football as a problem on the EU agenda. In this press release the Commission abandons its understanding of football solely as an economic activity.

Following the statement of objections of June 2002, the FAPL decided to negotiate with the Commission to modify its arrangements for the selling of the competition's broadcasting rights. In June 2003 the FAPL proposed changes to the way in which it intended to sell the TV rights in the future; that proposal led to the first formal set of commitments sent by the FAPL to the Commission in December 2003 (European Commission 2006d: paragraph 14). The Premier League committed itself to increase the number of matches to be broadcast per season in the UK from 106 to 138 per season starting in 2004. (European Commission 2003c: 1). The FAPL had also to concede to another request of the Commission: breaking BSkyB's monopoly. The FAPL assured the Commission that once the 2004 deal was over,⁶¹ the selling of rights would ensure that 'there are **at least two television broadcasters** of live Premier League matches' (European Commission 2003c: 1, my own emphasis). With that commitment by the FAPL, the Commission had finally forced the breaking of BSkyB's monopoly on Premiership rights, a move that was underlined by Commissioner Mario Monti:

By creating opportunities for broadcasters other than BSkyB now, and even greater opportunities in the future, the Commission is aiming to increase consumer choice in the UK. For the first time, there is a real opportunity for free to air broadcasters to provide their viewers with top flight Premier League action throughout the season (European Commission 2003c: 2).

The case, however, was far from over. The FAPL thought that the provisional agreement reached in December 2003 would mean 'the end of the problems with the Commission' (Interview 25). The Commission, however, continued with its procedures. DG Competition published in April 2004 a notice inviting comments on the agreement with the FAPL from affected third parties (European Commission 2006d: paragraph 15). Following the third party comments, the Commission raised further issues with the FAPL that led to the last act of the saga in the second half of 2005. The FAPL was due to resolve another round of bidding for broadcasting rights in 2006. This round would

⁶¹ The 2004 deal was signed, once again, with BSkyB on an exclusive basis. See Table 11 in page 160.

sell the broadcasting rights for the seasons 2007-2008 to 2009-2010. The Premier League had agreed that this time more than one broadcaster would be allowed to show live Premiership football in the UK. It seemed, however, that the Commission and the FAPL had differing interpretations of their 2003 provisional agreement.

The FAPL understood that it was only required to sell one package of matches to a second broadcaster in order to comply (Interview 25). The Commission however, thought that more than one package should go to a second broadcaster (Dombey and Edgecliffe-Johnson 2005), and they communicated that to the Premier League when they were preparing for the upcoming bidding round. This new communication from the Commission irritated senior officials in the FAPL:

We received a letter late in July [2005]. The Commission announced that we had to modify our 2003 commitments. We had to start all over and lose more time with that? (...) Not only that, but it seemed that they sent the letter in the last minute. They always do that. They send the letter and then they go on holiday. We could not contact anyone during August to talk about the issue because they had all gone (Interview 25).

The FAPL finally replied to the Commission's latest request in early September 2005 (Dombey and Edgecliffe-Johnson 2005), arguing that a 'meaningful' number of matches would go to a second broadcaster (Martinson *et al.* 2005). However, DG Competition, under the direction now of Commissioner Nelie Kroes, thought that the FAPL was backtracking from its 2003 promise. The competition authorities threatened the FAPL with economic sanctions if it did not ensure a true choice of games for broadcasters other than BSkyB:

*As the FAPL has taken no steps to prepare for the implications of its 2003 commitments, and is now trying to backtrack on its December 2003 commitment by minimising consumer choice, it looks as though an agreement is impossible. Negotiations have ended (Competition commissioner spokesman, Jonathan Todd, quoted in Martinson *et al.* 2005; see also Buck and Terazono 2005).*

The debate between the Premier League and DG Competition focused on how many packages should be on offer, the composition of those packages and how they should be distributed among broadcasters. The FAPL considered that it could divide the television rights into 4 packages of between 30 and 40 matches each, with just one of them going

to a second broadcaster (Martinson *et al.* 2005). The Commission wanted to cap the amount of games awarded to one single broadcaster to no more than half of the total number of games up for auction (Martinson *et al.* 2005). Talks between the Premier League and DG Competition took place between September and October 2005, including some interventions at the highest political level, as it is explained below.

The FAPL tried to rally as much support as it could to put pressure on DG Competition during the talks between the parties in the second half of 2005. The FAPL lobbied the Commission's DG Education and Culture (Interview 13). Moreover, the FAPL tried to play the politics of the case to its favour. FAPL Chief Executive Richard Scudamore's strategy was to involve the political circles from the outset (Kelso 2005b). In Brussels, the FAPL met not only middle ranked officials in DG Competition, but also Commissioner Kroes (Gow *et al.* 2005). In the UK, the Premier League was reported to have the support of Sports Minister Richard Caborn, Culture Secretary Tessa Jowell and, more importantly, Prime Minister Tony Blair and Chancellor Gordon Brown (Kelso 2005b).

The end of the case approached in October 2005. FAPL Chief Executive Richard Scudamore met with Commissioner Nelie Kroes on 17 October to break the deadlock (Gow *et al.* 2005). For Richard Scudamore, the meeting was 'a fruitful, civilised and decent discussion' (Gow *et al.* 2005). Nelie Kroes welcomed the 'constructive' proposals of the Premier League which, she said, brought the two sides 'closer to an amicable result' (Gow *et al.* 2005). In the days following the meeting between Kroes and Scudamore it was increasingly clear that the settlement was close and DG Competition was ready to accept part of the Premier League's argument. It emerged that the basis of the agreement was that the rights for live Premiership broadcasting in the UK market would be divided into six packages with at least one of them going to a second broadcaster (Conn 2005). That represented a compromise, for it was a departure from the FAPL's initial intention of having only four packages, but it was also a concession from the Commission's alleged aim of capping BSkyB's Premiership rights to no more than half of the total number of matches broadcasted in total.

The final settlement: Did Blair call the Commission?

On the basis of that provisional agreement, the FAPL worked on a revised set of commitments resulting in a binding document sent by the FAPL explaining how the next rounds of bidding for TV rights would be organised. This new set of commitments was sent to the Commission in November 2005 (European Commission 2006d: paragraph 17, 2005a), after being ratified by the Premier League's chairmen (Gibson 2005). In that document the FAPL agreed that it would sell the live TV rights for the domestic UK market in six balanced packages with no one bidder being able to buy all six packages; moreover, packages would be sold to the highest standalone bidder for each package and bids for more than one individual package would be disregarded (European Commission 2005a: 1; for a detailed description of the proposed segmentation of media rights see European Commission 2006d: paragraphs 36-37; and especially Premier League 2005).

The Commission accepted the new arrangements proposed by the FAPL and it formally closed the case in March 2006. DG Competition adopted a decision in which the FAPL commitments were rendered legally binding (European Commission 2006d, 2006b), so the League could be prosecuted if it failed to deliver. The advantage of that resolution, at least for the Commission, is that should the FAPL breach its commitments, then DG Competition can impose a fine of up to 10 per cent of the FAPL's total worldwide turnover 'without having to prove any violation of the EC Treaty's competition rules' (European Commission 2006b: 2).

The new arrangements for the sale of live TV rights of the Premiership permit joint selling. A total of 138 games per season would be broadcast in the UK (up from 106). It was also agreed that the deals between the FAPL and broadcasters would be for three seasons, although that was already common practice for the FAPL. The 138 matches per season were divided into 6 packages of 23 games each, with a fair distribution of attractive fixtures. The FAPL had to auction each package individually, awarding it to the highest bidder for a period of three seasons. This process is designed to ensure that no global deals can be done. These arrangements for joint selling will remain in force until 30 June 2013 (European Commission 2006b: 1).

With this structure, there is scope for the FAPL to award 115 games (5 packages) to one single broadcaster (probably only BSkyB has the economic power to bid for such a large amount of packages), because it was only required by the letter of the agreement to ensure that ‘no one bidder is able to buy all six packages’ (European Commission 2005a: 1). In such a scenario it would be fair to say that the settlement can be considered closer to the initial FAPL objective than to the Commission’s. However, there is a second part of the agreement to balance this possibility. The FAPL is required to auction each package separately, which in theory makes it more difficult for broadcasters to guess rivals’ bids, hence giving some more choice for operators others than the established BSkyB. All in all, the result of the Premier League case is, once again, a compromise solution between the two sides. A package deal in which joint selling is allowed, but exclusivity for a single broadcaster is broken, albeit not to the extent initially requested by the Commission. It is probably fair to say that the compromise is closer to the FAPL’s initial position and is seen as a victory for Richard Scudamore, the FAPL’s Chief Executive (Gibson 2005). The Commission, though, seems to be able to live with it.

With the case settled, the FAPL could then go on to invite broadcasters to present their offers for the broadcasting rights of live Premiership games for the seasons 2007-2008 to 2009-2010 (three seasons). This was done in 2006. The result of the selling of Premiership broadcasting rights under the new system has been that BSkyB was awarded four packages (Murray-Watson 2006) and a competing operator (Setanta) won the two remaining groups of live matches (Robinson 2006). BSkyB paid a total of £1.31 billion for the four packages (Gibson and Milmo 2006), 92 live Premiership matches per season during three seasons. Setanta was awarded two packages, for a total of £392 million (Robinson 2006; Gibson and Milmo 2006). The end result of this case has been rather profitable for the Premier League, at least in economic terms. The live TV rights for the domestic UK market totalled a staggering £1.7 billion for three seasons, up from the £1.024 billion paid by BSkyB in the earlier deal in 2004, a 66% rise (see Table 11 on page 160).

The speedy resolution of the conflict between DG Competition and the FAPL in the last quarter of 2005 can be attributed to a series of factors. Firstly, there was the time constraint of the new auction for the broadcasting rights from 2007 onwards. But what

was probably more important was the intervention of senior figures from the British government, whose support for the Premier League might have helped to shape a settlement which proved to be rather beneficial for the FAPL. According to press reports, senior cabinet figures supported the FAPL in the negotiations with DG Competition. The offices of the Prime Minister Tony Blair and the Chancellor, Gordon Brown, contacted the Competition Commissioner to discuss the case and Brown himself reportedly spoke about the issue with Nelie Kroes at a meeting of the EU's Economic and Financial Affairs Council of Ministers (Ecofin) in October 2005 (Milmo and Martinson 2005). It was also reported that Culture Secretary Tessa Jowell and Sports Minister Richard Caborn pressed DG Competition to find a solution favourable to the League 'in exchange for an increase in the TV revenue the Premier League passes on to the grassroots game via the Football Foundation' (Kelso 2005b). Both London and Brussels have denied any involvement of the British Government in the resolution of the case (Milmo and Martinson 2005; Conn 2005), but this is understandable, for the Treaty expressly forbids Commission members receiving instructions from the national governments (Article 213 (2) EC). Furthermore, DG Competition, one of the strongest departments within the Commission, will never compromise its independence by recognising the existence of external pressures in competition cases.

However, there is enough evidence to consider that the intervention of the British government is a plausible explanation for the resolution of the case. First, it would not be the first time that Tony Blair supported the 'football family' in its negotiations with the competition authorities, as has been documented in the previous chapter. Tony Blair played an active role in the negotiations between FIFA, UEFA and the Commission with regard to the transfer system case. Second, the British Government's support was offered in exchange for a larger commitment of the Premier League to supporting grass roots football (Conn 2005). Culture Secretary Tessa Jowell negotiated an increase in the Premier League's contribution to the Football Foundation with the FAPL's Chief Executive Richard Scudamore in return for the government's political support. In a meeting between the two of them, which has been documented, the Premier League agreed to redistribute around seven per cent of the income from the new TV deal (Conn 2005). Even if the Premier League denied that it had done a deal with the government (Conn 2005), the reality is that the FAPL has recently agreed to contribute around £155

million to grass-roots football over three years (Kelso 2006a), nine per cent of its new television deal.

Therefore, there is enough evidence to sustain the argument that the British Government did indeed offer its political support at the highest level to the FAPL. In turn, it is a plausible explanation that the interventions of Tony Blair and Gordon Brown helped to resolve the case in the Premier League's favour. The intervention of the British government raises two important issues. First, the extent to which the multilevel structure of the EU's political system affects decision-making, even in a less open area such as competition policy. DG Competition has the benefit of the institutional framework on its side, but the case of the FAPL demonstrates that it is not immune to pressure, both internal and external. Yet, one should not over do that argument. Whilst the effect of the political intervention in the resolution of the case seems to be clear, the British Government did not alter the basic premise of the case (i.e. to break BSKyB's monopoly on live Premiership football). Indeed, it is necessary to remember that the first challenge to the joint selling arrangements of the Premier League came from the OFT, the British competition regulator, with the blessing of the government (Spink and Morris 2000).

Second, the intervention of the UK government could also be seen as a form of soft regulation. Having failed to force the richest football clubs to redistribute part of their income to the grass-roots game, the government used this case to secure that objective without having to resort to statutory regulation. It has been well documented that Richard Caborn had a negative opinion of the financial excesses of professional English football (see for example García 2006b; 2006a, this is further analysed in chapter 6). The negotiations between the FAPL and the Commission presented an opportunity for the government to try to reduce the consequences of the commercialisation of top professional football. On the other hand, both the Commission and the British government were also able to re-shape the British television market by breaking BSKyB's monopoly.

The intervention of the European Commission has shaped the broadcasting of football in the UK. The model adopted is one whereby the Premier League is allowed to sell centrally the TV rights on behalf of the clubs but several packages are available to

ensure that at least two different broadcasters transmit live Premier League football. This is similar to the solution found in the Champions League case. The cumulative effect of the two cases appears to shape a particular understanding of football's TV rights by the Commission. The Premier League or Champions League models have also been used by the Commission to structure the broadcasting market of the German Bundesliga (see European Commission 2005b). The German FA (DFB) requested in 1999 the Commission's clearance for its centralised system of joint selling of the Bundesliga's TV rights (Brand and Niemann 2007: 191-192). Following negotiations with the Commission, the DFB followed a similar arrangement to that of the FAPL to sell their TV rights: the creation of different small packages of live games that would be auctioned, hence giving several operators the option to broadcast the Bundesliga (Brand and Niemann 2007: 193). The Commission, again, accepted joint selling but with a modification in the creation of several rights packages (European Commission 2005b).

The Commission has not found it necessary to intervene in other national markets to investigate the selling of broadcasting rights. In the Netherlands, for example, the national competition authority did the work for the Commission and actually went even further. The Dutch competition regulator suggested that joint selling is not necessary to achieve redistribution and financial solidarity in football, hence advocating that clubs sell the TV rights on an individual basis (Interview 13). In Spain and Italy, the other big markets for live football in the EU, the clubs sell their respective broadcasting rights on an individual basis; therefore there is no collective selling and the Commission has found no necessity to intervene.

Conclusion

This chapter continues the analysis of the EU's involvement in football matters with the presentation of the European Commission's investigations into the operations of football organisations in the audiovisual market. This chapter is a natural continuation of the case analysed in chapter 4. Following their intervention in the players market, EU institutions and especially the Commission have focused on the major commercial aspect of professional football, namely its relationship with the television industry. This chapter has explained the link between the liberalisation of the television market in the

EU and the commercialisation of professional football in the last few decades. The selling arrangements of broadcasting rights for football competitions are probably the best expression of the commercialisation of professional football in the EU. Consequently, the interventions of the European Commission in this area have focused on the economic effects that such arrangements could have for the audiovisual market. This chapter has explained how football governing bodies reacted to the interest of television companies in football. The chapter has also analysed the European Commission's investigations into the effects of football broadcasting for the television market. The three cases presented here follow on from the Bosman ruling and, therefore, they should contribute to the analysis of the development of the Commission's policy towards football, hence contributing to answer the second research question (What is the policy of the EU institutions towards football and football governance?). The Commission launched the investigations when football had arrived on the institutional agenda through the Bosman ruling with a definition focused on the economic effects of the game as an industry. DG Competition's investigations are, therefore, logical consequences of that definition. The focus on the economic side of football was reinforced with the initial impetus of the Commission, but the development of the cases suggests an evolution whereby new arguments on financial solidarity and the specificity of football were introduced.

The three cases presented in this chapter need to be considered within a holistic perspective. Taken as a group, they describe the evolution of the Commission's thinking on football broadcasting. The solutions accepted by the Commission for the selling of broadcasting rights to the UEFA Champions League and the Premier League are far from a total liberalisation. In the cases reviewed in this chapter UEFA and the FAPL have had to concede two important points: the exclusivity for one single broadcaster and the number of matches to be shown live. However, the settlements as a whole are closer to a success for the football organisations than to total liberalisation. The principle of joint selling has been mostly preserved, whereas exclusivity has been eroded. Although the three decisions as a whole can be considered as compromise solutions between the two sides, the final result is that UEFA and the Premier League have benefited greatly from the liberalising efforts of the Commission. At least in economic terms, the Champions League and the Premier League have provided their organisers with

economic strength. UEFA and the Premier League might be unhappy about having to deal with the Commission, but at the end of the day they are better-off.

This chapter explains also the evolution of football as a result of the money invested by television companies in the game. This is encapsulated in the conflict between clubs and governing bodies in the creation of the Premier League and the Champions League. These conflicts go to the heart of football's governance, hence relating to this thesis' fourth research question (What has been the impact of EU policies and decisions in the governance structures of football?). If the EU interventions in the players market facilitated the emergence of players' trade unions, this chapter has seen the rise of the top clubs in conflict with the governing bodies. Clubs have emerged as yet another layer in the governing structures of football. Here again it is possible to see the EU and football as two multilevel systems of governance in which actors from both sides try to take advantage of the situation for their own benefit. In this interaction between the two systems of governance, the role of the football governing bodies and the Member States in the resolution of the three Commission investigations is another factor of analysis that addresses mainly the third research question (What role have EU institutions and football stakeholders played in shaping the EU policy towards football?). The British government was directly involved in the resolution of the Premier League case and the Commission referred constantly to the Nice Declaration on Sport, adopted by the European Council. Competition policy might be one of the strongholds of the Commission, but this chapter demonstrates that it is not free from external interference.

Chapters 4 and 5, taken as a whole, represent the initiation and consolidation of football as an issue on the EU agenda. The EU institutions had to address two relatively concrete areas, the players market and the broadcasting of football. With their decisions, EU institutions contributed also to the transformation of the structures of professional football in Europe. The next chapter takes this empirical analysis to a more recent stage. It seeks to analyse the most recent developments of the EU interest in football, which relate directly to governance, power and representation. The EU institutions are now in a position to formulate more general approaches to football because it seems to be accepted as a legitimate topic on their agenda and this is the subject of the next chapter.

Chapter 6. The Governance of European Football in a new era: Authority, power and representation

'The future of professional football in Europe is threatened by the growing concentration of economic wealth and sports power'
(European Parliament 2007a: 3)

'There are many uses of governance, it has too many meanings to be useful'
(Rhodes 1997: 15)

Introduction

This chapter concludes the empirical presentation of the main EU decisions on football-related issues. The EU initiatives reviewed in this chapter address problems of more general scope. They address the broader structures of football, the relationships between stakeholders, the healthy development of the game and the possible role for the EU in all these. This chapter brings the story of the EU's involvement in football matters up to date dealing with a period when the EU institutions have taken a more holistic approach to their treatment of football. This chapter presents research on recent developments, some of which are still ongoing. In 2005 EU sports ministers launched the Independent European Sport Review (IESR) (Arnaut 2006), the results of which were published in 2006. In March 2007, the European Parliament adopted a resolution on the future of professional football in Europe (European Parliament 2007a) and in July 2007 the Commission produced its White Paper on Sport (European Commission 2007b). These three developments are the focus of the chapter and they are all concerned with the subject of governance. EU institutions have developed an interest in the governing structures of football and the problems resulting from the game's transformation in recent times. This chapter looks first at the concept of governance and its application to football. It then goes on to analyse the three important initiatives listed above which have shaped the EU's recent understanding of football.

Football governance, a new topic on the agenda

With football firmly anchored on the EU agenda, debates about the players market or television have been replaced by a concern about the game's wider governing structures. EU institutions, football governing bodies and other stakeholders all seem to have focused recently on this concern. This has facilitated the promotion of football governance as an issue area:

I think the main issue [on the agenda] nowadays is the broad issue of governance in football. This is broader than particular initiatives, such as TV rights. I think that it is, by far, the more important of the challenges that football is facing. Within this broad topic of governance there is the whole question of club ownership, linked to financial propriety. There are also issues of criminal law: betting, money laundering... Those questions relate to the money coming to football, but also to the current structures of football. They all belong to the debate on governance, how football should be governed and where the power lies (Interview 5).

Thus, football governance is a fairly broad area that relates to issues of power, authority, structures and management in football. This wide variety of topics grouped under the heading of governance is probably a consequence of the fairly varied definitions of the term itself. Roderick Rhodes (1997: 47) has pointed out that the term governance is probably used in too many contexts and with different meanings. For the purpose of this chapter, though, the focus will be on Rhodes' definition of governance as a network structure (1997: 53), which states that governance covers both state and non-state actors that interact continuously in networks because they need to exchange resources and negotiate shared purposes. This definition of governance refers to the management of a structure with a large number of stakeholders where authority and resources are distributed (Rhodes 1997: 53). In the area of sport, Andre-Noel Chaker has defined sports governance as 'the creation of effective networks of sport-related state agencies, sport non-governmental organisations and processes that operate jointly and independently under specific legislation, policies and private regulations to promote ethical, democratic, efficient and accountable sports activities' (Chaker 2004: 5). Chaker's understanding of governance in the field of sport is, therefore, quite similar to Rhodes' definition. In both cases there are three important elements: a network structure, the role of non-governmental organisations with a degree of self-regulation and the participation of the state in the networks. This definition is important because the three documents analysed in this chapter refer more or less explicitly to a vision of

football governance as a network where both governmental and non-governmental organisations interact. The purpose of the chapter is to investigate the EU's exact understanding of football's governance structure. This relates to questions about the role and responsibilities of FIFA and UEFA, the level of power and representation of other stakeholders such as FIFPro, the EPFL, football supporters or professional clubs and last, but by no means least, the relations between EU institutions and all those other non-governmental actors, which in many cases might be exemplified in the application of EU law to football.

Those who study governance are also interested in the notion of 'good governance'. Rhodes (1997: 49-50) describes good governance as involving the principles of effective, transparent and democratic management, and we can certainly examine these in the context of football. Good governance does not refer to the overall governing structures of football, but to the extent to which stakeholders observe principles of good management, transparency, democracy and/or accountability. Certainly, the notions of 'good governance' and network governance are complementary, as one would expect those involved in network governance to observe good governance principles. In the case of football, the necessity to observe good governance principles can be applied to governing bodies in their regulation of football⁶² (see for example Michie and Oughton 2005, this issue was also raised by interviewees in Interviews 26 and 36), but also to clubs in their management of economic and human resources (see for example Hamil *et al.* 2004; Gardiner *et al.* 2001: 170-171). Gardiner *et al.* (2001: 165-166) point out that growing calls for improved good governance in sport arise from the commercialisation and professionalisation of sport. The need to develop effective principles of good governance arises from the need to comply with legal norms (e.g. EU law) as well as to balance the diverging interests within the game (Gardiner *et al.* 2001: 167). There is also a more specific requirement arising from public expenditure on sport: if a government (or the EU as a quasi-government once the Reform Treaty is ratified) decides, as many do, to invest tax-payers' money in the funding of sports organisations and sporting activities, then it is reasonable to expect that these organisations will be

⁶² FIFA, UEFA and the national FAs adopt rules for the regulation of football that are later implemented at club level, as explained in chapter 2. Therefore, it is legitimate to expect that these governing bodies observe good governance standards in their decision making procedures, such as transparency, wide consultation, representation of stakeholders or accountability. It is also legitimate to expect that the governing bodies manage their economic and human resources in a transparent and effective manner.

required to follow good governance principles in the management of that public money (Interview 26). Finally, good governance principles should be seen in the best interests of the governing bodies: ‘Only through high standards and the application of universal principles can sporting bodies retain what authority they have and secure their own financial and political futures’ (Holt 2006: 6). The notion of ‘good governance’ is important for this chapter because it features also in the three documents analysed below. This chapter aims to investigate the extent to which EU institutions consider that football stakeholders need to implement good governance principles. This raises questions about whether EU institutions are ready to regulate in this respect or not, and also about whether some football stakeholders are targeted over others in the need for better governance.

Thus, as Holt (2006: 4) points out definitions of governance can be seen as both analytical (or descriptive) and normative. Applied to football this means that we can use it to comment both on how football is governed and on how well it is or should be governed. This is what the three policy initiatives discussed in this chapter have done. And this is why it is necessary to keep in mind the definitions of governance as both network governance and good governance. The IESR, the EP report on the future of professional football and the Commission’s White Paper in sport all dedicate a great deal of space to football governance. The chapter is set to investigate the institutions’ stance on football’s network of governance and the application of good governance principles in the game. In doing that, it is also expected to find whether EU institutions have modified their general vision (or definition, in agenda-setting terms) of football as an issue on the agenda.

The Independent European Sport Review

The governments of the EU Member States have a history of involvement in football issues, as chapters 4 and 5 explained. Richard Parrish correctly points out (2003a: 68-69) that national governments see football as more than just an industry and so most of them are sympathetic to the arguments of governing bodies who express concerns about the risk of over-commercialisation. Yet, it has also been shown that Member States’ support is not unconditional. They have fallen short of conceding to the full demands of

governing bodies, which for example would like to see better protection against the application of EU law (UEFA 2007b). With the Independent European Sport Review some EU sports ministers have taken a more proactive role in football issues. The full 175 page report of the IESR (Arnaut 2006) is aimed at identifying the challenges facing the game in the 21st century and providing recommendations for the more effective governance of football. This section discusses the origin and the content of the IESR report and then goes on to explore the reactions of the EU institutions and the football organisations to the initiative.

The origin of the idea

The IESR is the brainchild of British Sports Minister Richard Caborn⁶³ during the UK presidency of the EU in the second semester of 2005 (Department for Culture Media and Sport 2005). Caborn invited his fellow EU sports ministers to an informal meeting in Liverpool on 19 and 20 September 2005. During that meeting the ministers discussed, amongst other things, the current state of professional football in Europe (Interview 26). It was in that meeting where Caborn presented to his fellow EU sports ministers the idea of an independent review of European football⁶⁴ as a suitable way of action (Interview 26). However, it is important to clarify from the outset that the IESR cannot be considered an initiative of the EU sports ministers as a whole, even if it was subject of their discussions. EU sports ministers had discussed worrying developments in professional football for some time (Interview 1, Interview 26, see page 182, below, for a detailed analysis). And this issue was again treated in the mentioned meeting at Liverpool during the UK presidency of 2005 (Interview 26), but the IESR never became a formal initiative of the 25 EU sports ministers, mainly because the sports ministers meet informally and do not constitute a formation of the Council of Ministers, as explained in chapter 2. Thus, the IESR is perhaps better conceived as an initiative of Richard Caborn that counted on the explicit political support of the ministers from France, Germany, Italy and Spain (Department for Culture Media and Sport 2005: 1) and was taken in discussions within the wider framework of EU sports ministers

⁶³ Richard Caborn MP was Minister for Sport under Tony Blair from 2001 to 2007. With Blair's resignation in June 2007, Caborn was substituted by Gerry Sutcliffe MP under the new Prime Minister Gordon Brown.

⁶⁴ The IESR was initially conceived as an exercise focused only on European football, it was known as the Independent Football Review (see for example Department for Culture Media and Sport 2006). It was not until the review's chairman, Jose Luis Arnaut, presented his report in Brussels on 23 May 2006 that the initiative was re-branded as the *Independent European Sport Review*.

meetings. Thus, some EU sports ministers were more involved than others and this is probably why the IESR was not mentioned in the Presidency conclusions of the Liverpool meeting (see UK Presidency of the EU 2005).

Richard Caborn was the main political promoter of the IESR, but it is necessary to look at a wider picture to understand why he came to the idea that there was a need for an independent review of professional football, and why some of his fellow EU sports ministers agreed with him. Three factors can be identified in the process leading to the launch of the IESR: The attention to football problems at the domestic level in the UK; focusing events related to scandals in European football such as corruption allegations in Italy (Hooper 2006a, 2006b), or the imprisonment of German referee Robert Hoyzer for two and a half years for fixing matches (Harding 2005; Scott 2005); and the clever manoeuvring of UEFA in the political arena. Each one of these factors will be addressed in turn.

Football governance as a domestic problem in the UK

Firstly, there is a long history of attention to the development of domestic football in the UK by the British government. Different aspects of football have been subject to attention by public authorities in the UK well before the IESR. In the 1980s it was stadium safety and hooliganism. Lord Taylor's report, following the death of 96 Liverpool fans at Hillsborough addressed problems of safety in UK stadiums (Lord Taylor 1990). In the late 1990s, with the Labour Party in power, the attention turned to the overall structures of English football. Richard Caborn was only appointed as sports minister in 2001, but he had to devote large amounts of time to football-related issues. This should not be understood as meaning that Richard Caborn dealt with football governance issues almost exclusively during his time in office. Logically, Caborn's sports policy had many other priorities such as the bid for the 2012 Olympics, the reform of some national sport governing bodies (e.g. UK Athletics) or the development of 'sport for all' programmes (Interview 26). As part of his remit as sports minister, Richard Caborn responded positively to initiatives such as the work of the All Party Football Group in the House of Commons (Interview 26). The All Party Football Group, chaired by Alan Keen MP, launched an investigation entitled 'Football and Finances' in 2003 (All Party Football Group 2004a). The final report requested better

corporate governance in English professional football (All Party Football Group 2004a, 2004b). Caborn also observed that his agenda was more and more dominated by issues relating to the finances and governance of football, such as the take over of English Premiership clubs by foreign investors (Interview 26). Thus, the governance of football was already an issue for Richard Caborn at the national level before it was raised at the EU level. In this respect, Kingdon (1995: 97) points out that policy makers' personal experience acts as reinforcement when moving issues up the agenda, especially if this is coupled with other dynamics such as focusing events.

Corruption scandals in European football

The second factor contributing to the launch of the IESR was the fact that football gained the attention of the EU sports ministers collectively (Interview 1). It cannot be said that there was an unanimous opinion on the matter, but Richard Caborn felt that his concerns about 'the excesses of the game' (Culf 2006a) were shared by other ministers (Interview 1, Interview 26). It has been argued that this concern for something as vague as European football's health could be based more on the ministers' beliefs, assumptions and ideology than on hard facts and evidence (Miettinen 2006; Smith and Platts 2008). However, several crises related to corruption in football caught the ministers' attention (Interview 1) and thus acted as focusing events. Focusing events are circumstances that push policy makers' attention towards a problem (Kingdon 1995: 94). The best known of these scandals was the match-fixing practices in the Italian Serie A. Juventus, and a number of other clubs including AC Milan, were found guilty of approaching referees to secure favourable decisions during football games (Owen and Barber 2006; BBC Sport 2006; Hooper 2006a). Almost as notorious, Robert Hoyzer, a Bundesliga referee, was jailed for two and a half years for participating in a match-fixing network linked to betting (Harding 2005; Scott 2005). In Belgium and Poland also, match-fixing allegations related to betting were also being investigated (Burke 2006). For Richard Caborn and other EU sports ministers, these scandals helped to focus their attention on the problems surrounding professional football (Interview 1, Interview 26). Again, the concept of visibility plays an important role. Scandals, even if they are few and far between, grab more headlines than long periods of normal functioning. These scandals pushed football up the EU sports ministers' agenda and they felt it was necessary to act together to protect the future of the game.

UEFA plays behind the scenes

The third factor that favoured the launch of the IESR was the intervention of football governing bodies, especially UEFA:

Originally [FIFA President] Joseph Blatter had spoken to Richard Caborn about the difficulties FIFA were having with political interference and Lars-Christer Olsson [CEO] of UEFA, had also approached Richard about the difficulties he was having at the European level (Interview 26).

This quote suggests that UEFA had an ongoing dialogue whereby it patiently explained to national politicians the kind of problems that UEFA was facing. John Kingdon (1995: 128) argues that for ideas to be considered on the agenda, a period of ‘softening-up’ is needed; this is a process whereby stakeholders present their proposals to convince policy-makers of the necessity for action (Kingdon 1995: 128-129). The contacts referred to in the quote above developed over a few years. They fit Kingdon’s concept of ‘softening-up’ because UEFA in particular cultivated its contacts with politicians explaining the kind of problems they thought football was up against. Having successfully completed a process of ‘softening up’, UEFA then took the opportunity handed by the scandals surrounding football (focusing events) which in turn had led to Richard Caborn and other EU sports ministers taking an interest in these issues. UEFA approached Richard Caborn just when the UK was about to hold the EU presidency in 2005:

I have to confess that it [launching the IESR] was partially our initiative. What happened in practice was the following. We [UEFA] had identified several problems in football and we were convinced that those problems could not be solved by football on its own. So you have to have a co-operation with the public authorities (...) As part of the developments in our contacts with politicians, we decided that it was important to ask for a meeting with each one of the [rotating] EU presidencies. So we took this initiative and we asked to see Mr. Caborn even before he was starting his turn in the presidency of the EU [second semester of 2005]. We described to Mr. Caborn the problems we had identified [in football]. We said: ‘there is a risk of money laundering, we see illegal betting, we see a lot of things happening in football that are outside our possibilities to control’ (Interview 29).

UEFA, therefore, presented directly to EU politicians what they thought were important problems for the future of football governance. UEFA’s understanding of the EU

political process is demonstrated by their support for the IESR. UEFA suggested that the latest scandals in football required concerted action by both the governments of the EU Member States and UEFA. UEFA's influence on the origins and later organisation of the IESR has been subject to some criticism. It has been suggested that the IESR cannot be seen as a truly independent review because of UEFA's heavy involvement (Miettinen 2006) and that the review was therefore nothing more than a clever PR exercise by UEFA in conjunction with allies within the EU institutions:

The initiative [of the IESR] was led by a core group of people with very good contacts in the Commission and even the [European Commission] White Paper [on sport, adopted in July 2007], for a while, seemed as if it was going to be based on the conclusions of the IESR. We did not like that because we thought the consultation process of the IESR was not wide enough if it was to serve as a base for a white paper on all sports. This is why we wrote to the Commission expressing our concerns about the IESR and the White Paper (Interview 37).

UEFA was especially successful in presenting its vision of the problems that it thought politicians should resolve. It is less clear whether the option of an independent review of football (later sport) was UEFA's preferred solution (Interview 26, Interview 29). It is possible, given his experience at the national level, that Caborn thought of an independent review as a possible solution to the problems defined by UEFA. He then offered UEFA participation in the process. That was, of course, in the words of an EU official 'an offer that they [UEFA] could not refuse' (Interview 13). Having said that, it is undeniable that UEFA had an active role in setting up the IESR and, moreover, UEFA was also involved during the process of drafting the review's final report.

The development of the IESR

Once Richard Caborn came to the idea, with UEFA's support, that it was necessary to undertake an independent review of European football, he managed to enlist the political support of his counterparts in France, Germany, Italy and Spain, as previously explained. However, although the IESR was discussed among the EU sports ministers, it is necessary to recall that this process took place outside the framework of the ministers' informal meetings. The IESR started with a meeting in December 2005:

Under the UK Presidency of the European Union, Sports Minister Richard Caborn called for a meeting of his ministerial counterparts in France, Germany,

Italy and Spain, the European Commission⁶⁵ and the relevant football bodies to discuss current issues in football. On the football side this ‘kick-off’ meeting in Leipzig on 8 December 2005 was attended by Messrs. Blatter (FIFA President), Johansson (UEFA President), Grondona (FIFA Senior Vice-President) and Hayatou (CAF President). This meeting which took place in Leipzig on 8 December 2005 agreed on the ‘Context and Terms of Reference’ for the European Independent Review (Arnaut 2006: 19).

The official version of the IESR is that the review’s Terms of Reference (see Independent European Sport Review 2006) were adopted in the Leipzig meeting referred above (Arnaut 2006: 19). However, it has been suggested that these Terms of Reference were drafted before the meeting by officials in the English Department of Culture, Media and Sport (DCMS, Richard Caborn’s department) together with UEFA (Interview 13). It has not been possible to confirm this, but it might not be far from the truth, especially if one considers the content of the aforementioned Terms of Reference. The IESR is, according to the Terms of Reference, a report ‘independent of the football authorities but commissioned by UEFA’ (Independent European Sport Review 2006: 4), which shall take into account UEFA’s strategic document Vision Europe (Independent European Sport Review 2006: 4). If UEFA officials did not draft the Terms of Reference themselves, they had at the very least a very important say in their content. Moreover, the review was supervised by the so-called ‘reference group’ that comprised Richard Caborn and UEFA CEO Lars-Christer Olson, with the FIFA General Secretary and the sports ministers from France, Germany, Italy and Spain as observers (Arnaut 2006: 19). In February 2006 the ‘reference group’ appointed the former Portuguese minister Jose Luis Arnaut as the IESR chairman (Department for Culture Media and Sport 2006). Arnaut had the mandate ‘to report on the specific Terms of Reference’ (Arnaut 2006: 19).

Whereas UEFA was actively involved in the IESR, FIFA had a more cautious approach. FIFA finally acceded to its participation in the IESR and the ‘reference group’, but it was difficult to secure their support (Interview 26). FIFA President Joseph Blatter was unconvinced of the necessity for the IESR (Kelso 2005a) and, despite coming finally onboard, he never seemed very enthusiastic about the project (Interview 29, Interview 37). Blatter and FIFA’s position might be explained by a mixture of personal and

⁶⁵ The European Commission later decided not to be involved in the drafting of the IESR because it was logical to expect that the final IESR report would make recommendations to the Commission for future policy actions (Interview 13).

institutional motives, both with a common cause: UEFA's heavy involvement in the initiative. In personal terms Blatter's rivalry and antipathy towards UEFA President Lennart Johansson,⁶⁶ (who challenged Blatter and lost in the 1998 FIFA presidency elections) is well known. Since the IESR counted on the total support of Johansson, it was not very difficult to anticipate that Blatter was going to be sceptical at the very least. In institutional terms, FIFA has always been wary of any initiative that could end up by giving more competences or power to UEFA. It was explained in chapter 4 that there have been tensions between the two organisations in recent years (Interview 28, Interview 29). Blatter's initial opposition to the IESR is an example of these problems, which can also be explained with reference to the inherent difficulties of decision-making in multilevel governance systems (these points are explained in more detail below, see page 195).

Therefore, it is fair to say that the IESR was conditioned by UEFA's management of the agenda, but it might be slightly more difficult to argue that Jose Luis Arnaut and his team of experts were writing at UEFA's dictate. In any case, it is advisable to approach the IESR with caution. This section presents now the contents of the IESR. The contents of the IESR can be considered under four main headings. Firstly, the IESR seeks to define the elusive concept of the specificity of sport. Secondly, it outlines what are considered to be the main worrying trends of professional sport in Europe. Thirdly, the IESR suggests what it considers to be the appropriate legal instruments to deal with the problems outlined in the second part. Finally, there is a set of recommendations addressed to EU institutions, to football authorities and to both of them jointly.

The specificity of sport

The so-called specificity of sport has always been an elusive concept that has never been comprehensively defined. The *Amsterdam Declaration on Sport* referred to the 'particular characteristics of amateur sport' (European Council 1997); the *Nice Declaration on Sport* recalled the 'specific characteristics of sport and its social function in Europe' (European Council 2000), but neither of them defined what the specific characteristics of sport are. Sports governing bodies have not produced intellectual

⁶⁶ Lennart Johansson was UEFA president at the time of the IESR. He was later replaced by Michel Platini in January 2007.

arguments about the specificity of sport either (Weatherill 2004, 2003). The IESR undertook the task of finding out what the specificity of sport meant in legal terms (Arnaut 2006: 25). The IESR looks at the specificity of sport under three headings: (i) the regularity and proper functioning of competitions, (ii) the integrity of sport, and (iii) the competitive balance between participants (Arnaut 2006: 29-48). The IESR argues that rules adopted by governing bodies whose aim is to maintain these three pillars of the specificity of sport have to be compatible with EU law. The IESR then enumerates such rules, most of them employed by UEFA, and explains why they are compatible with EU law.

In order to maintain the regularity and proper functioning of competitions, the administration of competitions and calendars has to be the competence of football authorities (Arnaut 2006: 28-29). The IESR stresses that the existence of ‘rules concerning the organisation of sporting competitions in the European pyramid structure of sport’, where ‘all levels are part of an overarching structure, which is indivisible’ (Arnaut 2006: 29) is considered compatible with EU law. In practice, this means that rules preventing breakaway competitions in football are legal under EU law.⁶⁷ Finally, the IESR also offers protection to the rules concerning the release of players to national teams, which at the time of the IESR had been challenged before the ECJ by the G-14 in the Charleroi case. The G-14 eventually decided to drop its legal challenge following negotiations with FIFA and UEFA (see below, page 227). The IESR endorsed the rules on the release of players for international duty because they are ‘necessary to guarantee the correct development of national team competitions’ (Arnaut 2006: 35). These last two arguments of the IESR are important because they support UEFA and FIFA in their struggle against professional clubs.

To protect the integrity of sport, the IESR considers that rules relating to the good governance of clubs (such as the UEFA licensing system), rules concerning the ownership of clubs and especially those rules related to players’ agents, are compatible with EU law (Arnaut 2006: 40). In this section the IESR fundamentally endorses UEFA initiatives to regulate the management and ownership of clubs. However, the report does not mention anything about the application of governance principles to the

⁶⁷ An opposite argument would consider, for example, that such rules might be illegal because they could be an abuse of dominant position by the governing bodies.

federations themselves. Certainly, the ongoing analysis suggests that the IESR is heavily supportive of UEFA and the football federations. Certainly, it is too uncritical of these governing bodies.

Finally, competitive balance in football competitions is considered to be another important feature of the specificity of sport. In order to maintain competitive balance, rules on home-grown players must be enforced (Arnaut 2006: 44). It is also imperative for organisations like UEFA that the central marketing of TV rights is allowed, so that clubs can be obliged to commit to central marketing of TV rights as a condition of participation (Arnaut 2006: 44). Again, the IESR is supportive here of the governing bodies' practices. This thesis has already treated the problems that collective selling of TV rights, and the rules on locally trained players, have encountered *vis-à-vis* EU law. Certainly, both seem to have been accepted, but the IESR's position is qualitatively different to that of the Commission, because the report considers that these rules are inherent to the specificity of the game.

The worrying trends of professional football in Europe

The second part of the IESR is dedicated to a discussion of what the authors consider to be the main problems of European football. First and foremost, there are important issues addressed relating to the management of football clubs, the organisation of federations and the role of public authorities in promoting the best standards of governance in sport (Arnaut 2006: 67). These include the necessity to ensure principles of sound management and transparency in clubs (Arnaut 2006: 70). This could be done through a strengthened club licensing system (Arnaut 2006: 73-75). There are also good governance issues to be tackled by the sports governing authorities. National FAs and UEFA must be role models and adopt best practice, increasing their own levels of democracy and transparency (Arnaut 2006: 77). One important issue raised by the IESR in this respect is also the 'critical need for a more effective regulation of agents in Europe' (Arnaut 2006: 80). Finally, it is argued that there is a need for very close collaboration between the public authorities and the game's governing bodies in three worrying fields that are emerging, namely (i) criminal activities around football such as money laundering and trafficking of young children, (ii) racism and xenophobia in stadiums, and (iii) gambling in football, which may result in match fixing scandals.

This section of the IESR goes straight to the problems of football governance. It addresses the governance of the game from two of the perspectives outlined in the preceding section. On the one hand, the IESR refers to principles of good governance when it recalls the necessity for high standards of management in football clubs and increasing levels of democracy and transparency in governing bodies. The IESR proposes tighter regulation of club management through club licensing systems. At the same time, governing bodies must also be models of best practise. Although it is true that the IESR mentions problems at both club and federation level, the report seems to give more attention to the clubs' side of the equation. Without saying so explicitly, the IESR suggests that most of the problems related to good governance in football arise from mismanagement at the club level. This is reinforced when the IESR refers to governance as a network of stakeholders. The IESR calls for close co-operation between public authorities and the football governing bodies (governmental and non-governmental organisations). This call for co-operation between public authorities and football federations implicitly suggests that governing bodies (i.e. UEFA, FIFA and national FAs) have to be the cornerstone of football's governance networks. They should retain a central position. For the IESR, football federations are the valid interlocutors with EU institutions, not clubs, leagues or players. In short, the IESR identifies more problems of good governance in the management of clubs and it suggests that federations must remain central to football governance in Europe.

Proposals and specific solutions

The aim of any independent review is to recommend measures to redress the problems encountered in the analysis of the *status quo*. The IESR also produced a number of specific proposals to address the current problems of football in the EU. There are conclusions addressed to the EU institutions (in particular the European Commission) (Arnaut 2006: 121-124), to the European football authorities (124-127) and to the EU institutions and the European football authorities jointly (128).

The recommendations addressed to EU institutions are mainly focused on legal instruments that might be adopted. First and foremost, the IESR considers it necessary to deal with the application of competition policy to sport. The report advocates the

adoption of block exemptions from competition law. Alternatively, if block exemptions are not possible, then clear guidelines on the application of EU competition law to sport should be issued (Arnaut 2006: 96). Secondly, the application of the Treaty's fundamental freedoms to sport needs to be clarified. Since no block exemptions are possible here, the authors of the IESR suggest the use of clear guidelines as to which sporting rules fall under free movement provisions and which are exempt (Arnaut 2006: 108). Thirdly, other instruments are considered necessary to tackle specific issues. These are: (i) a directive on the role of minors in sport, (ii) a framework for a European Bargaining Contract in which the social partners should be FIFPro (representing the players, i.e. the employees), the EPFL (representing the professional football leagues, i.e. the employers) and UEFA, and (iii) a directive on betting in sport and the provision of betting services in Europe. Finally, the IESR calls for the creation of a European Sports Agency that could monitor and coordinate the implementation of the review (Arnaut 2006: 113).

This is a very exhaustive and detailed list of recommendations, and it is aimed at clarifying the application of EU law to the activities of sports organisations. It has been suggested that many of these recommendations are based on contestable legal analysis and, therefore, their implementation would be problematic (Wathelet 2007; see also Miettinen 2006). Despite being an important criticism, the legal analysis is outside the scope of this thesis. However, it is interesting to see that the recommendations to EU institutions focus almost entirely on finding legal instruments to protect the role and activities of governing bodies such as UEFA. Indeed, the IESR suggests essentially the need to find a legal basis to endorse UEFA's current practices with regard to the central marketing of TV rights or rules on locally trained players. The EU institutions, especially the Commission, have demonstrated an ability to find compromise solutions that take into account the arguments of the football organisations. The IESR seems to suggest that this is not enough and so it calls for extra protection. In this respect, the IESR supports UEFA's argument that the interventions of the ECJ in sports issues produce instability and make football governance more difficult: 'Sport should not be ruled by judges' (UEFA 2007b: 1). This, of course, raises concerns about UEFA's ability to perform its duties whilst complying with EU law and observing good governance principles such as democracy and transparency. Whereas guidelines on the application of EU law might certainly be useful because they could produce certainty

about the implications of EU law for football, the IESR's insistence on block exemptions is slightly more worrying. Chapters 4 and 5 have demonstrated that the governing bodies' activities have implications beyond their own domain, be these players' working rights or the audiovisual market. The EU acted in that area in a supervisory role to make sure that UEFA, FIFA and other federations did not make a disproportionate use of their powers. The IESR's recommendations to the EU all go in the same direction: to protect and reinforce the regulatory role of the sporting federations. This might be legitimate, but it is probably not reasonable to demand EU institutions relinquish their duties as guardian of the treaties so as to protect football's self-regulation. There is a need for a middle ground where the supervisory role of EU institutions is not sidelined.

The recommendations to the EU are aimed at giving governing bodies 'legal certainty' to perform their duties (Arnaut 2006: 92). The IESR suggests that UEFA needs some space to govern football in the best interest of the game. That might be legitimate. But if UEFA or any other governing body is given that space, it needs to demonstrate that it can perform its duties to the highest standards of governance. In that respect, one would have expected the IESR's recommendations to football institutions to be as demanding as the ones addressed to the EU. However, in contrast to the very detailed recommendations addressed to the EU, the football authorities are only the recipients of general suggestions, focused mainly on the improvement of governance and good management across football. UEFA is required to examine its own structures 'to ensure they are appropriate and representative given contemporary developments in football' (Arnaut 2006: 126). Both UEFA and the national associations should 'introduce minimum standards for good governance within the national associations and should establish internal governance units, including specialised independent antifraud committees' (Arnaut 2007: 127). Apart from that, there are just three concrete requirements: (i) that UEFA provides collective insurance cover for players during the final round of the European Championships, (ii) that a higher proportion of Champions League revenues should be redistributed to the grass roots (Arnaut: 127), and (iii) that UEFA should provide statutory recognition to the existing consultative bodies and that an additional advisory body should be created, 'which could comprise representatives of the UEFA executive committee, leagues and clubs' (Arnaut 2006: 128). Certainly, the authors of the IESR mention the need for good governance standards. However, when

reading the report one has the impression that this is a general comment. There are not many details as to how these minimum standards of governance should be ensured. The two strongest suggestions of the IESR in this respect are the reinforcement of the redistribution mechanisms for Champions League money (Arnaut 2006: 127) and the need to give statutory recognition to the representatives of stakeholders in the governance of football (Arnaut 2006: 126). The latter is of special interest, for it reinforces the idea of football governance as network governance. The role of stakeholders such as players, clubs or leagues has been prominent over the last few decades and the IESR recognises their importance. According to the IESR, UEFA does not only have to deal with them, but also to recognise them as legitimate stakeholders.

Finally, the IESR asserts that UEFA needs to take a central role in relations between football and the EU. This is again a call to reinforce UEFA's role in football governance *vis-à-vis* EU institutions and, indirectly, also in relation to the rest of the football family. If the IESR considers that UEFA is the body that needs to conduct football's relations with the EU, this implies that UEFA has the legitimacy to deal with public authorities, which in turn vindicates UEFA's position in the governance structure of football. UEFA is called upon to 're-align its current organisational functions, so that it assumes full responsibility for all EU related matters' (Arnaut 2006: 126). For this purpose, the EU should 'grant official recognition to UEFA as the governing body for European football and as the counterpart of the EU when dealing with football issues' (Arnaut 2006: 128). Any official recognition of UEFA as the counterpart of the EU would be especially important for the multilevel dynamics of football governance between FIFA and UEFA. To sum up, the recommendations of the IESR are clearly focused on supporting the role and position of football governing bodies (in particular UEFA) in the game's governance by reinforcing their position in relation to EU law, EU institutions and other stakeholders within football. It should be not surprising, therefore, that the IESR received mixed reactions.

Reactions to the IESR

The reactions to the IESR were twofold. Firstly, those with strong negative reactions, led mainly by the professional football clubs and leagues. Secondly, there were those in favour of the IESR, unsurprisingly led by UEFA. Somewhere in between, but probably

closer to the first group, the reaction of FIFA is a perfect example of the tensions in football's governance. Once again, the analysis of multilevel governance and the tensions among levels in EU policy making are also applicable to football, whose multilevel structure of governance replicates many of the dynamics of the EU. These arguments are now briefly examined.

The opposition to the IESR has come mainly from the professional clubs and leagues (Culf 2006b), which is quite logical since the IESR decided to accept most of UEFA's arguments on the current problems of football. Therefore, this opposition is easily understandable in terms of the internal politics of football governance, for the clubs and leagues do not favour a strengthened UEFA where their own voice might be diminished. The EPFL accepts that there may be some problems of governance in European football, but the solution for them is not to empower UEFA:

We at the EPFL will support every initiative aimed at improving governance and transparency in football, but only if there is a real and open debate. A true dialogue with everyone involved. We will support these initiatives only if there is an understanding that football governance needs to be tackled as a global phenomenon. To improve the governance of football you cannot look only at specific sectors. It is not fair to look only at clubs, or to look only at federations. Solutions, if there are any, need to be holistic. If there are initiatives in this respect, with a holistic view of football, we want to contribute to them because we feel that football can set a positive example for other sectors in society (Interview 36).

It is fair to say that the critics of the IESR have a point in this respect. Although the number of recommendations to the EU and to the football authorities is similar, it is worth noting the very detailed nature of the exposition regarding the legal instruments that EU institutions should adopt. In contrast, the recommendations addressed to 'the European football authorities' (Arnaut 2006: 124) are far less detailed and are, without any doubt, more sympathetic with the current *status quo*.

Probably the strongest negative reaction to the IESR came from the English Premier League (Kelso 2006b). The Premier League's Chief Executive Richard Scudamore has been one of the most vociferous opponents of the IESR. The FAPL considers the IESR to be an unnecessary intrusion of the EU into football matters: 'The beautiful game is in danger of becoming Europe's latest political football' (Scudamore 2006). This is an

argument that may win support from some eurosceptic minds in the UK, but has no real intellectual merit. Firstly, the IESR is an initiative of sports ministers acting on an intergovernmental basis. Ministers have the legitimacy to regulate sport in their respective countries. Secondly, the IESR report does not impose legislation directly on football, it asks the EU to create a framework within which football bodies could sort out their problems through self-regulation (Corbett 2006). Whether the IESR is right in suggesting that UEFA should be at the core of that self-regulation is a different matter. But the review cannot be considered EU interventionism, for the implementation of the recommendations will be down to the football organisations (Corbett 2006).

Fortunately, the Premier League produced some more refined arguments that deserve consideration. The FAPL considers that the IESR focuses too much on the socio-cultural aspects of football, undermining the economic possibilities of the game. The FAPL is of the opinion that many of the reforms advocated in the IESR are not necessary because the report's vision of football is mistaken and detached from reality (Conn 2007). Moreover the FAPL opposed the review because of the prominent role proposed for UEFA:

UEFA is not and should not be the governing body of European football – they have their own competitions to run and should be free to do so as they see fit, just as we have ours (Scudamore 2006; see also Scott 2006).

The reaction of FIFA to the IESR has been ambivalent, although on the whole it is fair to consider it negative. FIFA was very reticent to participate in the project from the outset (Kelso 2005a, 2005c). Once the report was published, FIFA maintained an ambiguous position. On the one hand, FIFA welcomed three key messages of the review: the support for the autonomy and self-regulation of sport, the need for legal certainty in the application of EU law, and the need for a clear definition of the division between governmental and sporting responsibilities (FIFA 2006: 1; see also Blatter 2007). On the other hand, FIFA considers that any solutions to the problems of governance should come from within football, not from public authorities:

Any initiative launched by individual states or the EU must take account of the special attributes of sport, and should be confined to promoting these (...) Football is strong enough to organise and police itself. However, FIFA understands and also accepts the demands made of sporting authorities by

political institutions for orderly management, and is prepared to implement this responsibility in football (...) Solutions for football must be devised by football, and not by politicians (Blatter 2007: 2).

Despite these ambiguous messages, FIFA's deeds have spoken clearer than its words. During the consultation process for the European Commission White Paper on Sport, there were times when it was thought that the contents of the IESR would feature heavily in the White Paper (Financial Times 2006). FIFA then decided to express its concerns, sending a letter to the European Commissioner on Education, Culture and Sport, Jan Figel, to ask whether the IESR was going to influence the preparations of the White Paper on Sport and to express its opposition to that possibility (Andersen 2006). That strongly worded letter, signed as well by IOC President Jacques Rogge, emphasised IOC and FIFA's opposition to any EU intervention in sports governance:

We believe that the issue of governance is of utmost importance for the sports movement and that this issue should be dealt with by sports themselves based on the principle of the autonomy of the sports movement. Therefore it does not fall within the EU's competence. We also feel that in this respect, the report of Mr. Arnaut does not represent the Olympic and sports movement's view as a contribution to this consultation process [the consultation for the White Paper] (International Olympic Committee 2006: 1-2).

So, FIFA did not make public statements against the IESR but it privately tried to minimise the effects of the report. Moreover, FIFA president Joseph Blatter is well known to be opposed to any outside regulation of football and he is especially aggressive towards the EU: 'The EU is just a regional organisation, which does not even represent all the countries in the European continent' (FIFA President Joseph Blatter, quoted in Maroto 2007). In these terms, it is difficult to imagine that an initiative such as the IESR would be well received by Joseph Blatter's FIFA. Indeed, the IESR combined almost every factor that causes major opposition in FIFA, namely the intervention of the EU and the prominent role of UEFA. FIFA's negative reaction to the IESR can also be understood in relation to the internal politics of football and its system of multilevel governance. Firstly, FIFA considers that any reforms to the governance of football should be decided within football under the umbrella of FIFA as the game's global governing body (Blatter 2007), not UEFA or any other continental confederations. Secondly, the most important point is that FIFA and UEFA, despite being part of the governing structures of the game, do not enjoy an easy relationship.

The IESR recommended giving UEFA a large amount of responsibility to conduct the relations of football with the EU. This may seem a logical application of the principle of subsidiarity in football, but FIFA is reluctant to relinquish areas of power to the continental confederations, especially in the case of UEFA. This has been especially the case since Lennart Johansson was elected as UEFA President in 1990 and more so when Johansson presented his candidacy to the vacant FIFA presidency in 1998 with a manifesto for the modernisation of FIFA's governance structures. Johansson, however, was defeated by FIFA General Secretary Joseph Blatter, who advocated maintaining the *status quo* in FIFA. Blatter has remained in power as FIFA President ever since although Johansson has now been replaced by Michel Platini. The differences between FIFA and UEFA do not relate only to personal disputes between the two presidents. UEFA adopted two documents in 1995, entitled Vision I and Vision II, proposing an overhaul of football's governing structures that would have stripped FIFA of many of its powers in favour of the continental federations (Hawkey 1995; International Herald Tribune 1995a). The tensions between FIFA and UEFA are both personal and structural. There is a real and ongoing fight for power within football.

The positive reactions to the IESR have come from EU institutions, football supporters' organisations and UEFA. Unsurprisingly, UEFA has led those praising the recommendations of the IESR. However, the organisation does not agree with all the recommendations made by the authors. For example, UEFA joined FIFA in considering unnecessary the creation of an European Sports Agency (FIFA 2006: 1). On the whole, however, UEFA backed the review without reservations (UEFA 2006d; Chaplin 2006; UEFA 2006b). UEFA went beyond words in its support for the IESR. It has been proactive in the implementation of some of the report's recommendations. UEFA and its national member associations agreed that concerted action was needed to implement the IESR at all levels:

It is time to act. It is the responsibility of UEFA and all the associations to work together with our political heads to ensure that this unique opportunity to protect football is not wasted (UEFA 2006c: 2).

Supporters organisations, such as Supporters Direct and the Football Supporters Federation of England and Wales have also endorsed the IESR (Interview 40; Interview 41; see also French 2006). The fans representatives support Jose Luis Arnaut's report

because they share the IESR's vision of the problems that football is facing due to the predominance of market principles over sporting values (Interview 40, Interview 41). Moreover, these organisations are happy with the IESR because the report urges UEFA and other football organisations to recognise supporters as legitimate stakeholders in football governance. Finally, the IESR has been positively received by the EU. The EP had positive words for the IESR. This should not be surprising because two MEPs participated in the drafting of the report: Ivo Belet and Richard Corbett. The EP's report on the future of professional football, drafted by Ivo Belet, has endorsed the findings of the IESR:

[The European Parliament] welcomes the work of the Independent European Sport Review 2006 (...) and calls on the Member States, European and national football governing bodies and the Commission in its forthcoming White Paper on Sport to continue the efforts initiated by the UK Presidency to assess the need for policy measures with due respect for the principle of subsidiarity by considering the principles and main recommendations of that Review (European Parliament 2007a: paragraph 4).

Logically, it is unsurprising that Ivo Belet included in his report a paragraph in support of the IESR, but it is more interesting that this point of view got through a plenary meeting of the EP without amendment or indeed a divisive vote, hence reflecting the view of the EP as an institution.⁶⁸ The European Commission has not endorsed the IESR as clearly as the EP, although there is a feeling that the report did have the college's political support. Commission President Jose Manuel Barroso followed the development of the IESR with interest, not least because he is a personal friend of Jose Luis Arnaut, the IESR chairman. Barroso met Arnaut in Brussels on the day of the publication in May 2007. Having said that, the Commission does not have an official institutional position on the IESR. The expressions of interest are, so far, purely on a personal basis. The recently adopted White Paper on Sport is as close as it gets to an official position on the IESR. The Commission acknowledges the role of the IESR in generating political momentum for the publication of the White Paper (European Commission 2007c: 12). The White Paper itself, however, only mentions the Arnaut report as a source of information (European Commission 2007b: 11). Moreover, the White Paper disagrees with the IESR on several points as we shall see later in this

⁶⁸ See below (page 203) for more on the European Parliament's report on the future of professional football in Europe.

chapter. It seems that the Commission, despite some positive noises, prefers to distance itself from the IESR.

The future of the Independent European Sport Review is uncertain, but the initial impetus generated by the publication of the report seems to have been lost. The IESR has fallen down the agenda of both EU institutions and football organisations. Whereas UEFA initially embraced the report, the reaction of the leagues and clubs was far less enthusiastic. It also remains to be seen whether the new UEFA administration led by Michel Platini as president and David Taylor as general secretary will distance itself from the positions under Lennart Johansson and Lars-Christer Olsson or not. There seems to be a feeling within some sectors at UEFA that the IESR might have been a missed opportunity. EU institutions have, in general, also welcomed the IESR, but so far there have been no legislative proposals to start implementing the recommendations. Despite these caveats, the IESR is important for the analysis carried in this thesis. Firstly, it confirms the importance of football governance on the EU agenda. Secondly, the case of the IESR is an excellent example of the opportunities offered by the multilevel nature of the EU to influence policy-making. Thirdly, the IESR reinforces the definition of football as a socio-cultural activity in need of protection from commercialisation. Consequently, the IESR understands the problem of governance in football as a need for tighter regulation of the management of financial resources at club and league level. It does not question the role of governing bodies such as UEFA. This chapter turns now to analyse the EP's intervention in these debates.

The EP report on the future of professional football

The European Parliament might not have made as many headlines as the Commission or the ECJ on football issues, but that does not mean that the EP has remained outside the evolution of football on the EU agenda. Football has been on the EP's agenda for quite some time. Even well before the Bosman ruling, the EP turned its attention to footballers' employment conditions as explained in chapter 4. Yet, it is also true that the EP has limited powers in this area. The importance of the European Parliament for this thesis is threefold. Firstly, football issues have been fairly consistent on the EP's agenda over the last few decades. The EP has normally dealt with football within the more

general framework of its attention to the role of sport in the EU, but the game has also merited parliamentary debates and resolutions on its own. That was the case even before football arrived on the EU's formal agenda with the Bosman ruling in 1995 (see for example European Parliament 1994, 1989b, 1989a, 1984). Secondly, with all its interventions, the EP has contributed to shaping the definition of football as an issue on the EU agenda, which in turn affects the policies adopted on football. This goes straight to the second research question of the thesis, which examines the nature and development of EU policies towards the game. Thirdly, the EP is also important in institutional terms. The EU's institutional framework is based on a constant series of checks and balances between the institutions, as explained in chapter 2. The EP provides another policy venue for those trying to modify the ECJ and the Commission's vision of football issues. Moreover, the EP is a more political institution, where issues might be defined in slightly different terms than the legal discourses before the ECJ or DG Competition. Indeed, the EP's political nature might suit better UEFA's willingness to minimise the impact of judicial decisions on football's structures. It is fair to say that the EP is at present sympathetic to UEFA's arguments (Interview 7, Interview 8, Interview 20). However, as Richard Parrish (2003a) correctly points out, the EP has also been adamant that football needs to be in line with EU law.

It is probably logical that the EP's profile on football issues has risen lately, when the discussion has moved from more technical/legal concepts concerning freedom of movement or competition law to wider political/ideological arguments about football governance. This section analyses the EP resolution on the future of professional football in Europe, adopted at the plenary in March 2007 following the report of Belgian MEP Ivo Belet. The section starts by taking a brief look at the evolution of football on the EP agenda. It then goes on to present the Ivo Belet report. It finally explores the reactions and consequences to the EP intervention.

Football in the European Parliament

The EP has normally looked at football as part of its wider interest in the role of sport in the EU. The EP has used a variety of instruments to deal with football related issues, such as parliamentary debates or questions to the Commission or the Council (see, just as an example of many others, European Commission 2006c; European Parliament

2004). But the most important tool for the EP in this area has been the adoption of own initiative reports and parliamentary resolutions, which express the official position of the EP as an institution. EP resolutions and reports are stages of the same process. Indeed, EP resolutions are voted in the plenary on the basis of reports previously adopted at committee level. The process in the EP is as follows. The EP will normally draft reports and opinions to consider legislative or other texts from the Council or the Commission (Corbett *et al.* 2005: 129),⁶⁹ but it can also decide to initiate a report by its own initiative on a particular issue on which it has not been consulted (Corbett *et al.* 2005: 130). Once the formal decision to draft a report has been taken, the responsible committee will appoint a *rapporteur*; the role of *rapporteurs* is ‘to prepare initial discussions on the subject within the committee, to present a draft text, and to amend it, if necessary, to take account of the committee’s observations of new developments’ (Corbett *et al.* 2005: 133). *Rapporteurs* might certainly want to draft the report according to their own political opinion, but they need to take into account that the report will have to be adopted by the committee and, later on, it will have to win the EP’s vote in the plenary. Draft reports are normally composed of two or three elements. Firstly, there is the motion for a resolution. That is the text proposed as the official resolution of the EP, which in the case of a favourable vote will be published in the Official Journal. Secondly, there are the draft opinions of other committees on that issue. Thirdly, *rapporteurs* tend to add a longer explanatory statement of the resolution’s content.

The draft report is voted on the corresponding committee, where it might be subject to amendments by other committee members. Once it has been formally adopted by the committee, the report will be presented to the whole plenary, where MEPs can also table amendments to the draft resolution (Corbett *et al.* 2005: 133-134). The plenary can adopt (with or without amendments) or reject the report. *Rapporteurs* will normally ensure that their proposal reflects the views of a majority within the EP to guarantee smooth approval of their reports (Corbett *et al.* 2005: 135-137). Once voted in the plenary, the report is therefore transformed into a parliamentary resolution. Parliamentary resolutions have three different parts. First, a procedural page explains the legal basis under which the resolution is adopted. Second, there is a list of recitals

⁶⁹ For example, the EP is currently preparing a report and resolution on the European Commission’s White Paper on Sport, which is not legislation *per se*.

labelled with letters from A to Z, where the EP expresses an account of the facts that it considers important when dealing with the issue at stake. Recitals contain statements and definitions of certain aspects of the resolution that the EP wants to present up front. Thirdly, following the recitals, the resolution itself is structured in numbered paragraphs. It is through this type of report and resolutions that the EP has normally intervened in football matters.

Prior to the 1995 Bosman ruling, the EP was adamant that freedom of movement for players should be respected. The 1984 *Resolution on Sport in the Community* requested that the Commission ‘take energetic step against rules that limit the freedom of movement and establishment of Member State citizens in certain sports’ (European Parliament 1984: paragraph 8). The EP’s concern about the restrictions to sportspersons’ freedom of movement crystallised in 1989 in a resolution addressed particularly at football (European Parliament 1989b). Adopting the report of the Dutch MEP James Jansen van Raay, the EP was extremely hard on football governing bodies. The EP considered that footballers ‘like any other employee in the Community, should enjoy the protection of European law’ (European Parliament 1989b: recital B) and that ‘UEFA and some national football associations are in breach of national and European law’ because of the transfer system (recital C). The resolution states that the EP regards ‘the payment of transfer fees in its present form as a latter-day version of the slave trade’ (European Parliament 1989b: paragraph 1); it also considers that nationality quotas constitute a discrimination on the grounds of nationality, hence contravening articles 38 and even 81 of the TEC (European Parliament 1989b: paragraph 4). The EP urged the Commission to initiate legal action against UEFA, and national associations to abolish the transfer system and phase out gradually the nationality quotas (European Parliament 1989b: paragraphs 12 and 16).

The EP maintained its attention to sport with the 1994 *Resolution on the European Community and Sport*, adopted after the report of Dutch MEP Jessica Larive. The resolution is focused on the consequences of the single market for sport (European Parliament 1994: paragraphs 4-13), the promotion of participation in sport (paragraphs 14-19), combating violence in and around sport (paragraphs 20-24), and the instruments for an active EU policy on sport (paragraphs 25-33). The resolution dedicates five important paragraphs to freedom of movement, in which the EP ‘urges that it be made

clear to the sporting world that the legislation of and the administration of justice by the EU take precedence over internal sports regulations and disciplinary procedures' (European Parliament 1994: paragraph 5). The EP's attention to football increased when Advocate General Lenz issued his opinion on the Bosman case (Lenz 1995). In 1995, as the ECJ ruling approached, the EP organised a public hearing on the matter, just days before the ECJ ruling was due in December 1995 (Lassoie 1995). After the Bosman ruling, the EP attention focused more on the possibilities of giving political recognition to sport through the inclusion of an article on sport in the Treaties. Yet, the 1997 *Resolution on the Role of the EU in the Field of Sport* still called on the Commission to make the necessary proposals to regulate the transfer of players from one club to another 'without infringing the freedom of players to change clubs' (European Parliament 1997: paragraph 6(g)). The tone of the resolution is less demanding than the 1989 Van Raay report, though. There is a call for the EU to recognise the 'specific nature of sport and the autonomy of the sports movement', but it is again recalled that 'professional sport cannot be exempt from the provisions of Community law' (European Parliament 1997: paragraph 3).

Outside the plenary, football finds its natural home in the EP in the Committee on Culture and Education. There are also other unofficial forums that have contributed to raising the profile of sport among MEPs. The sports intergroup facilitated MEPs having more in-depth discussions on relevant issues related to sport.⁷⁰ The sports intergroup was set up under the initiative of several MEPs, with British conservative Chris Heaton-Harris being one of its main advocates. Since football tended to monopolise the sessions of the sports intergroup, some members felt it could be a good idea to have a separate space to debate the problems of football on their own (Interview 7). UEFA, realising this possibility, suggested the idea of the Friends of Football group, rapidly embraced by members of the sports intergroup. Friends of Football was set up in 2003, shortly after UEFA opened its Brussels office. The first meeting took place in Strasbourg on 3 June 2003 (Interview 5). Friends of Football has no links to the EP other than the fact that its participants are MEPs. It is outside the EP's structure. UEFA provides the necessary resources to organise the group's meeting, at least, twice a year. The membership of Friends of Football is open to all MEPs, who were invited to join at the

⁷⁰ See chapter 4 (page 125) for an explanation on the role of intergroups in the European Parliament.

beginning of the parliamentary term (Interview 16). The meetings of the sports intergroup and, since 2003, those of the Friends of Football group, have kept the issue of football fresh in the minds of MEPs in recent years (Interview 7, Interview 8, Interview 16). The EP attention to football has recently culminated with the *Report on the Future of Professional Football in Europe (European Parliament 2007a)*, to which this section now turns.

The Belet report

The EP resolution on the future of professional football in Europe is formally an own initiative report from the Committee on Culture and Education. It was drafted by Belgian MEP Ivo Belet (EPP-ED), who was appointed as *rapporteur* by the committee in February 2006 (European Parliament 2007b: 1). The Culture and Education Committee adopted Ivo Belet's draft report on 29 January 2007, tabling it for a parliamentary vote in March of that same year (European Parliament 2007b: 1). Ivo Belet's report finally became a European Parliament resolution after being voted on in the plenary on 29 March 2007 (European Parliament 2007a).

The origin of the initiative

Like many other political initiatives, the origins of the Belet report are diffuse and can be attributed to several factors. It helps to differentiate the long-term dynamics and the short-term factors. The former refer to the EP's attention to sport in general and football in particular. The latter relate to the particular consideration of football governance and the concrete idea of drafting an own initiative report on this subject. In a long-term perspective the main element of analysis is the attention that the EP has devoted to sport and football over the years. This has been explained above, so there is no need to repeat it here. The EP reports on sport and football outlined above need to be considered as an incremental interest in these issues. They can be conceptualised as the instruments whereby the EP moved football from the general EU systemic agenda to its own institutional agenda. The important point is that the EP is no stranger to football issues. Following *Bosman*, the EP also contributed to the increased visibility of football on the EU agenda. As the issue evolved with Commission decisions, Member States' interventions and European Council resolutions on sport, the EP also became involved, as is demonstrated in the resolutions summarised above. Yet, EP resolutions were not

focused exclusively on football. One can consider that the EP had still to define a concrete policy on the precise issue of football. Thus, when the wider issue of football governance appeared on the agenda, there was positive ground to receive it within the EP.

The short-term factors that facilitated the initiation of a report on professional football cover activities inside and outside the EP. The first idea for this report can be traced back to December 2004, although it was a long process rather than an instant realisation (Interview 20). Three oral questions to the commissioner responsible for sport, Jan Figel, were lined up for a parliamentary debate on 1 December 2004 (European Parliament 2004). The three questions related to a common subject: the evolution of professional football and, in particular, the necessity to encourage training of young footballers by professional clubs (for the precise content of the questions see European Parliament 2004: 1-2). One would note that the training of young players by professional clubs was an issue raised by UEFA to introduce its rules on locally-trained players, as explained in chapter 4. Indeed, UEFA produced a first set of arguments and ideas in the summer of 2004 (UEFA 2004d) that were presented to MEPs in the Friends of Football group later in the year (Chaplin 2005b; Interview 5). UEFA's presentation about the professional clubs' lack of commitment to youth training caught the attention of Ivo Belet, a member of the Friends of Football group. Belet had also followed with interest other football discussions in his Belgian constituency, such as the takeover of second division club Lierse by a foreign owner or the number of African players employed by first division club Beveren. The combination of these circumstances stimulated Belet to reflect on the situation of professional football in Europe and the need for a EP report in the matter:

It is curious to see that at the beginning no one seemed to be interested in this issue, but later everyone has been jumping on the wagon. All the other committees wanted to take the leading role and as time went by it seemed that everyone was interested. However, I wanted to go ahead because it is more than football. There are issues affecting competition policy, social policy, employment... (Interview 20).

Belet's personal idea would have come to nothing if other fellow MEPs had not seconded the motion to start the report. Initially, there was a general scepticism, even within Belet's own Committee on Education and Culture (Interview 20). Paradoxically,

it was the intervention of another EP committee that opened the possibility for the report to go ahead. The Committee on the Internal Market and Consumer Protection, through one of its members, the Dutch liberal Toine Manders (ELDR) may have played a key role in the decision to draft a report on professional football. Manders, as a member of the Internal Market and Consumer Protection Committee, commissioned an external study on professional football in the internal market (European Parliament 2005) that was debated in the committee. Manders' intention was to initiate an own initiative report on football in the internal market on the basis of that report (Interview 15). It is very important to note that Manders has a different vision of football from Belet. Manders, as a liberal, has a market oriented vision of professional football (for a detailed exposition of Toine Manders' vision of football see European Parliament 2006). He is of the opinion that the protectionist approach of governing bodies like UEFA is hampering the economic development of football as an industry.

Toine Manders' initiative provoked a reaction from the Committee on Education and Culture, which is the responsible committee in the EP for sports matters (Interview 20). This galvanised support for Ivo Belet's idea of a report on professional football. The committee formalised his decision by appointing Belet as *rapporteur* on 13 February 2006 (European Parliament 2007b: 1). As time progressed, other EP committees expressed an interest in the report on professional football (Interview 20). Besides Ivo Belet's own Committee on Education and Culture and Toine Mander's Committee on the Internal Market, two other committees were interested: the Committee on Employment and Social Affairs and the Committee on Economic and Monetary Affairs (Interview 20). It is not unusual in the EP to have discussions as to which committee should be responsible for drafting particular reports (Corbett *et al.* 2005: 129). If the involved committees cannot find a solution to their dispute, then it is up to the Conference of Presidents to decide which committee is the one competent to draft the report (Corbett *et al.* 2005: 129-130). It was in June 2006 that the issue was finally settled, and it was decided that the Committee on Culture and Education would take the leading role on the report with Belet as *rapporteur* (European Parliament 2007b). However, the report would also attach the opinions from the other three committees. The four draftsmen in charge of following the dossier for their respective committees decided to collaborate, creating an informal working group where drafts and

amendments were discussed (Interview 20).⁷¹ Nevertheless, authorship of the report and motion for a resolution remained with Ivo Belet and the Committee on Education and Culture.

Two other elements helped also to situate the governance of football on the EP agenda: the IESR and the 2006 World Cup. The initiative of the IESR served to attract MEPs' attention. The IESR was paramount in bringing the EP's attention to the precise issue of governance, which the report would slowly drift towards. Two MEPs were part of the team that drafted the IESR under Jose Luis Arnaut's chairmanship: Richard Corbett and Ivo Belet. Finally, the proximity of the 2006 FIFA World Cup also stimulated MEPs to turn their attention to football. The World Cup, of course, brought football onto the public agenda. MEPs recognised the importance of football as an issue on its own merits, but they also noticed that the World Cup provided an invaluable opportunity to raise the public profile of the EP through football (Interview 16; Interview 20). It was suggested in chapter three that issues are more likely to be promoted to the institutional agenda for a formal decision when there are a large number of actors involved (high visibility), there are solutions available, and there is a receptive institutional framework. In the case of football governance and the EP, all the boxes were ticked. Firstly, football governance was a highly visible issue after the IESR, which involved a wide circle of participants. Moreover, the World Cup further enhanced that visibility. Secondly, there was a solution proposed to deal with the issue. The solution in this case was the adoption of an own initiative report. Thirdly, there was a receptive policy venue, for several committees finally agreed on the need for such a report and, of course, the EP rules of procedure allow for an own initiative report to be drafted. Even if this chapter is not particularly aimed at dealing with agenda dynamics, the conceptual framework can also help to explain the decision to accept football governance onto the EP institutional agenda.

A balanced vision of football's governance

The EP resolution presents a vision of football that goes beyond the economic aspects of professional football, hence adhering to UEFA's arguments in this respect. The EP

⁷¹ Ivo Belet for the responsible Education and Culture Committee, Toine Manders for Internal Market, Jean-Luc Bennhamias for Employment and Social Affairs, and Eoin Ryan for Economic and Monetary Affairs.

highlights the socio cultural aspects of football that make it different to other economic activities. The report endorses the idea of the specificity of football. However, the EP resolution is better balanced than the IESR and it is more demanding of the football federations. The EP might accept some of the arguments put forward by UEFA, but it does not support the governing bodies unconditionally. The resolution is long, at 66 paragraphs and 20 recitals. It is divided into nine sections. It starts with an overview of the general context (European Parliament 2007a: paragraphs 1-10). It then goes to tackle eight different topics: governance (paragraphs 11-26), the fight against criminal activities surrounding football such as illegal betting or money laundering (27-31), the social, cultural and educational role of football (32-41), employment and social issues (42-48), the fight against violence, racism and other forms of discrimination in football (49-52), competition law and the internal market (53-58), the selling of TV rights and competition law (59-64), and doping (65).

The EP sets out its vision of professional football in the recitals. The EP considers that football is part of the 'European Sports Model, characterised by open competitions within a pyramid structure' (European Parliament 2007a: recital B). The EP recognises that football has both an economic and non-economic dimension (recital D), because it plays 'an important social and educational role' (recital C). Therefore it is necessary to ensure that the application of EU law to the game 'does not compromise its social and cultural purposes' (recital F). The EP considers that professional football does not function like a typical sector of the economy because of the interdependence between opponents and the need for competitive balance (recital L). Finally, the EP asserts what the problems of football are: the growing concentration of economic wealth and sports power (recital M), and a spiral of spending, salary inflation and financial crisis faced by many clubs (recital S). Therefore, the EP positions itself clearly on the debate about football governance. The issue for the EP is defined in social terms and the problems posed by uncontrolled commercialisation of the professional game. Having said that, the resolution is very balanced. It has as a core guiding principle the respect of EU law. The EP agrees that 'the economics of sport are subject to EC law' (European Parliament 2007a: paragraph 6).

The EP opens the resolution by welcoming the IESR and calling public authorities and football bodies alike to consider the recommendations of the review (European

Parliament 2007a: paragraph 4). Whilst the EP recognises that football governing bodies and other stakeholders would benefit from greater legal certainty in order to perform their duties in the government of the game (paragraphs 8-9), it puts the emphasis on football itself rather than on public authorities to achieve that objective:

[The European Parliament] believes that improved governance leading to more concerted self-regulation at national and European level will reduce the tendency to have recourse to the Commission and the Court of Justice (European Parliament 2007a: paragraph 13).

The EP considers that more internal dialogue and higher standards of governance would lead to fewer stakeholders having to resort to the ECJ. The EP requests governing bodies to better define their competences and decision-making procedures, in order to increase their democracy, transparency and legitimacy (European Parliament 2007a: paragraph 11). The EP also considers that professional footballers, clubs and leagues ‘should be more closely involved in the governance of football’ (European Parliament 2007a: paragraph 26). However, the EP also criticises clubs and leagues. The resolution believes that clubs should release their players for national team duty without compensation (European Parliament 2007a: paragraph 19). This was certainly a major gesture of support for the governing bodies.⁷² Finally, the EP deals with the issue of the application of competition law to football. It is in that section that the EP, again, remains vigilant towards the football organisations:

*[The European Parliament] considers that football must ensure the interdependence of competitors and the need to guarantee the uncertainty of results of competitions, which could serve as a justification for sports organisations to implement a specific framework on the market for the production and the sale of sport events; however, considers that such specific features **do not warrant an automatic exemption from the Community competition rules** for any economic activities generated by professional football (European Parliament 2007a: paragraph 54 emphasis mine).*

The analysis of the application of competition policy to football leads almost naturally to the selling of broadcasting rights to football events. The EP begins by asserting that ‘collective selling in all competitions is fundamental to protecting the financial

⁷² When the Belet report was adopted, clubs had challenged before the ECJ their obligation to release players for national team duty. That case was later withdrawn following an agreement between FIFA, UEFA and G-14 (see below, page 227).

solidarity model of European football' (European Parliament 2007a: paragraph 59). However, it falls short of endorsing the expansion of this model across the EU. Instead, the EP calls for further debate and investigation into whether it would be beneficial to make collective selling compulsory for all football competitions (European Parliament 2007a: paragraph 59). Furthermore, the EP explicitly links the selling of media rights to solidarity and redistribution:

It is vital for professional football that the revenues from television rights be distributed in a fair way that ensures solidarity between the professional and amateur games, and between competing clubs in all competitions (European Parliament 2007a: paragraph 62).

Moderate reactions

Taken as a whole, the Belet report is a political statement by the EP. It endorses a particular way of understanding football. The resolution, however, is well balanced and calls for all stakeholders to accept their responsibilities in football governance. It points to all of them without benefiting massively a single stakeholder or group of stakeholders over the others. It is maybe for that reason that the Belet report has been received with less controversy than the IESR. On the positive side, UEFA is understandably 'very happy' with the outcome of the report for several reasons (Interview 29, Interview 34). Firstly, the resolution takes a view of football similar to UEFA's. Secondly, the EP sent a clear message of political support on two contentious issues that UEFA was dealing with, namely the rules on locally trained players and the Charleroi case. The Belet report has reinforced UEFA's view that the EP is currently its main political ally in Brussels (Interview 5, Interview 29). The outcome of the EP resolution reflects the importance of informal forums such as the Friends of Football group, where UEFA has maintained regular contacts with MEPs. It also demonstrates the positive image that UEFA enjoys amongst a majority of MEPs (Interview 7, Interview 8, Interview 16, Interview 20). The Belet report reveals also that UEFA is more at ease in political arenas than in judicial venues. UEFA, with its irresistible message of grass roots football, links to the community and solidarity, finds it easier when the debate about the regulation of football becomes politicised. The EP resolution has also been positively received by the representatives of Supporters Direct and the FSF, because it calls for the inclusion of supporters' organisations as stakeholders in the governance of football (Interview 40, Interview 41).

On the negative side, the EPFL, representing the professional football leagues, is not that happy with the resolution. Yet, the EPFL does not reject directly the findings of the Belet report:

The Belet report is important because it focuses on professional football. It has some negative points for us, but it is positive that the report refers to the importance of professional football, which is a different reality from football in general (...) Nonetheless, I think there are some issues we do not like. The role of professional football leagues is not entirely recognised, there is not enough analysis of the social dialogue, which from our point of view is very important to give professional football stability (...) The problem, I think, is that there is in general some sort of disdain for money in professional football. This is hypocrisy because without generating money, there is no solidarity. If you do not generate income, it is impossible to redistribute later (Interview 36).

The Belet report is an important addition to the EU debate on football governance because it confirms the importance of football governance as an issue on the agenda of EU institutions. This report adds to the momentum created by the IESR. Content-wise, the Belet report has two implications. Firstly, it is in line with the arguments that consider professional football beyond economics and market dynamics. The Belet report reinforces a general definition of football on the EU agenda that takes into account the so-called specificity of sport. Therefore, it contributes to a trend that departs from the initial definition proposed by the ECJ in *Bosman*. Secondly, the Belet report presents a more balanced vision than the IESR of the particular problem of football governance. The EP might support the governing bodies' definition of football, but in terms of governance it draws a fine balance. The Belet report identifies problems of good governance at all levels in football: FIFA, UEFA, national FAs and clubs. The EP endorses the centrality of FIFA and UEFA in the governance of football, but it reminds them of the need to observe principles of democracy and transparency. Moreover, the Belet report reminds football organisations of their duty to comply with EU law. The EP endorses football's self-regulation, but there is a constant reminder through the report that the law of the land is still applicable and that football has an obligation towards society. In governance terms, this insistence in the role of EU law could be translated as meaning that the EP considers that there is a place for EU institutions in the network of football governance. In other words, that football's independence from the EU is not total. This contrasts with the IESR's attention towards the shielding of football from the

application of EU law. This legal debate can also be articulated in governance terms. Whereas the IESR insisted on football's autonomy from EU law, the Belet report makes that autonomy conditional. In consequence, the IESR suggested a smaller role for the EU in football's governance network in favour of UEFA, whereas the Belet report reminds us that football governance needs supervision by EU institutions. Therefore, there is a common vision of football but two different (but not completely opposed) understandings of the role of EU institutions and EU law in the governance of the game. Undeniably, the Belet report was also drafted with the purpose of influencing the European Commission's policies on football (Interview 20), more so when half way through the EP procedure the Commission revealed that it had decided to publish a White Paper on Sport. This chapter is now at the right juncture to look at the Commission's White Paper and analyse whether the Commission accepts the IESR and EP's positions or not.

The Commission White Paper on Sport

The European Commission adopted a White Paper on Sport (European Commission 2007b) in the hope that it will contribute to mainstream sport in the institution's policies (Interview 13). The scope of the White Paper is wider than football, however it is included here for three reasons. Firstly, the White Paper takes stock of the Commission's involvement in sport matters (including football) up to the present and it includes a plan of action for the future (European Commission 2007a). Secondly, one third of the White Paper is devoted to sports governance. Thirdly, it is likely that the White Paper will have an impact on the European Commission's wider approach to football. Consequently, this section of the chapter is devoted to the Commission's vision of football governance as presented in the recently adopted (11 July 2007) White Paper on Sport. The analysis of the White Paper has the potential to add to the understanding of two ongoing discussions in this thesis. Firstly, it should clarify whether the Commission's vision of professional football has continued to evolve along the lines identified in chapter 5 or not. Secondly, the White Paper is the Commission's contribution to the debate on football's governance. In line with the rest of this chapter, the White Paper's input to these discussions is of course intimately related to this thesis' second and fourth research questions. Thus, this section explains the origins of the

White Paper and then summarizes its content. Finally, the section sketches the reactions of the different stakeholders to the White Paper.

The genesis of the project

The White Paper is not a legislative document, for the EU has no legal basis on which to legislate in the field of sport. It was conceived as a political initiative to promote debate at all levels within the Commission, from the services to the college, on how sport should be approached (Interview 13). Political decisions are not taken in a vacuum and the Commission is no exception to that. Many of the elements discussed in this and previous chapters contributed to the decision to launch a white paper on sport. It helps again to differentiate the long-term political trends from the short-term demands or focusing events.

Firstly, in a long term perspective it is necessary to consider the Commission's involvement with sports issues over the last few decades. The Commission has built up a series of policy actions on sport and football over the years. Moreover, when the Member States decided to introduce an article on sport into the ill-fated European Constitution, the European Commission's DG Education and Culture (responsible for sport) started to prepare for the implementation of that article (Interview 13). All these preparations were aimed at having a structure within DG Education and Culture in place once the ratification of the European Constitution was completed. Despite the constitutional crisis created by the negative referenda in France and the Netherlands, the Commission's actions created some momentum. This had a twofold consequence: it raised the issue of sport on the Commission's agenda and it created expectations from national governments and sports organisations alike about future Commission initiatives in the field of sport (Interview 13). In other words, the European Constitution's article on sport generated expectations about a political initiative in that area from the Commission (Interview 13). Secondly, the Commission acknowledged the important role of the European Parliament in maintaining sport as a political issue in the EU agenda:

The European Parliament has been very important in this, although indirectly. The Parliament has maintained alive the interest of the EU in sport with their resolutions and their questions to the Commission. When commissioners notice

that the Parliament organises debates on sport, and oral questions, and resolutions, and more questions again, and another resolution.... Then all this gets to the commissioners and, finally, to the President and make them think... What happens here, why is the European Parliament so interested in our policy on sport? (Interview 13).

Finally, the Commission found that there was also a short-term political expectation for a Commission intervention: ‘The public debate on European sport policy choices and governance in sport is currently high on the agenda’ (European Commission 2007c: 11). Initiatives such as the IESR and the EP Belet report demonstrated the importance of sport on the EU agenda, thus justifying the need for a comprehensive intervention by the Commission. Moreover, the Commission identified a desire from national governments to enhance the visibility of sport in EU policy-making (European Commission 2007c: 11). Finally, the Commission, in its dialogue with sports organisations, also identified a demand for comprehensive action in the field of sport that could include some input from the sporting movement (European Commission 2007c: 11). In the light of the elements above, the Commission realised the need for a document that could set, at least, a minimum understanding of the role of sport in the EU (Interview 13). The Commission felt compelled to act due to a mixture of the long-term relevance of the issue, political pressure from the European Parliament and short-term political momentum for the initiative in the shape of demands from the Member States and sports organisations. Therefore, in agenda-setting terms, the Commission realised that the issue of sport was already on the agenda and that the governance issue was gaining visibility. The demands for action by the EP, Member States and sports organisations suggest that there were a large number of actors showing an interest in this issue, hence facilitating issue expansion. The Commission then looked at the possible policy solutions available. The Commission considered four different options: No action, a green paper, a white paper, or regulatory measures (European Commission 2007g: 2). The White Paper was chosen as the most cost effective alternative (European Commission 2007g: 2; for a complete analysis of the suitability of the four options see European Commission 2007c: 20-34). Certainly, football as a general issue was already on the agenda for the Commission, but the attention to governance problems presented a new perspective. The decision to draft a white paper on sport fits the criteria set in chapter 3 for the promotion of issues within the formal agenda.

Wide consultation

The White Paper on Sport is an official Commission document and as such authorship remains solely with the European Commission. The leading service in the Commission for the White Paper was DG Education and Culture (European Commission 2007c: 5). The sports unit within that DG was in charge of drafting the White Paper, although the sections relating to the internal market and competition policy have been co-drafted with the DGs responsible for these areas. However, the Commission explains that the White Paper followed a wide consultation exercise. When the college of commissioners formally asked Jan Figel to arrange an initiative on the role of sport in the EU, DG Education and Culture started preparations for the White Paper. The first stage was an internal inter-services consultation within the Commission (Interview 13). The internal consultation involved up to 17 DGs, confirming the need for a strong collegial approach to sport (European Commission 2007c: 6). These inter-service consultations had the objective of collecting different views on sport across the Commission DGs (Interview 13). But they also served to inform DGs about the role of sport in the EU. In addition, the White Paper was an initiative aimed internally within the Commission, with the objective of educating the services on sport related matters (European Commission 2007e: 2). In this respect, the efforts put into internal consultation have been positively received:

The White Paper on sport has been very important as an education process for the different DGs within the Commission. This has been a very good job by DG Education and Culture, explaining and debating what sport issues are about and how it affects a lot of Commission's activities. I think that there is now a bigger awareness about sport across DGs (Interview 23).⁷³

Consultations for the White Paper were not just internal within the Commission. External consultations were fundamental to the process of producing the White Paper as well:

Stakeholder consultations have been an essential tool in the process leading to the adoption of the White Paper on Sport. In addition to the formal requirements to consult with relevant actors, the Commission has been able to profit from its

⁷³ Please note that this quote has been extracted from the meeting with this interviewee during the respondent validation process, which was undertaken after the adoption of the White Paper. It is not usual to use quotations from those meetings, but this one has been introduced (with the interviewee's consent) due to its value for the analysis. For more on the research interviews and the process of respondent validation see chapter 1.

large framework for consultation, communication and interaction with Member States' Governments, sport organisations, other representatives of civil society, and individual citizens in the field of sport (European Commission 2007d: 110).

The Commission structured its consultations along three lines: dialogue with the 'European sport movement' (European Commission 2007d: 110-115), on-line public consultation (European Commission 2007d: 115-124) and consultation with the Member States (European Commission 2007d: 125-127). Besides, the Commission also took into account the views of the European Parliament, especially the Ivo Belet report, which provided valuable input for the drafting of the White Paper (European Commission 2007d: 128). The consultation with the so-called European sport movement was organised through conferences and bilateral meetings. The Commission organised a conference under the title 'The Role of Sport in Europe' on 29-30 June 2006 (European Commission 2007d: 111). The conference included both 'non-traditional sport' (e.g. socio-cultural sport organisations) and 'organised sport' (European Commission 2007d: 113). The conference adopted the form of three workshops that dealt with the three big themes of the White Paper: the societal role of sport, the economic impact of sport, and the organisation of sport (for a summary of this conference's conclusions see European Commission 2007d: 111-113). The Commission organised a second consultation conference under the title 'Sport Governance in Europe' focused exclusively on governance issues (European Commission 2007d: 113). This conference was conceived as a high level meeting between the Commission and European sport federations. It was chaired by Commissioner Jan Figel and only sports governing bodies were invited:

This high-level meeting included both federations with a high level of professionalisation in management structures, as well as other federations which, despite being often big in terms of membership figures, are less professionalised and also less commercialised (European Commission 2007d: 113).

Finally, a number of organisations asked to meet the Commission on issues related to the White Paper. These bilateral meetings involved contacts with 52 different organisations, seven of which were football stakeholders: EPFL, FIFPro, FIFA, G-14, FAPL, Supporters Direct and UEFA (for the full list see European Commission 2007d: 113-115).

Consultation with the Member States was also extensive. The Commission presented the idea of a white paper to Member States' sports directors at a meeting in March 2006 during the Austrian presidency of the EU (European Commission 2007c: 10). National governments were supportive of the idea. Sports ministers remained fully involved in the process, formulating concrete proposals and issuing political recommendations for the White Paper, especially at a ministerial conference organised by the Commission in November 2006 (European Commission 2007d: 125; for the sports ministers' proposals see European Commission 2006a: 1-2). Following this ministerial conference, where only Member States and Commission officials were invited, EU sports ministers decided to create an *ad-hoc* working group on the White Paper (European Commission 2007d: 127). This working group discussed 'concrete, practical topics of interest, thus providing informal input and concrete ideas for the White Paper' (European Commission 2007d: 127). Moreover, the Commission also organised a range of expert meetings with representatives of Member State governments focusing in issues such as the fight against doping, equal opportunities in sport, the free movement of sportspeople and volunteering in sport (European Commission 2007d: 125).

The sports unit within DG Education and Culture led the process of drafting the White Paper, circulating various drafts among commissioners, DGs and stakeholders. Finally, the White Paper was also debated by the college of commissioners at the highest level and it was adopted in July 2007 (European Commission 2007h: 1).

A pragmatic document

The Commission considers the White Paper on Sport its 'first comprehensive initiative on sport' (European Commission 2007e: 1), whose aims are:

Providing strategic orientation on the role of sport in the EU, encouraging debate on specific problems, enhancing the visibility of sport in EU policy-making, raising awareness of the needs and specificities of the sector, and identifying the appropriate level of further action at EU level (European Commission 2007e: 1).

In more practical terms, the White Paper hopes to contribute to 'mainstream sport into the various relevant EU policies' and to 'increase legal certainty regarding the

application of the *acquis* to sport, as a contribution to improved governance in European sport' (European Commission 2007e: 2).

The White Paper represents a departure from the IESR and the EP resolution on the future of professional football, which both had a clear normative view of sport. The White Paper is difficult to classify in that respect. The White Paper is, above all, a pragmatic document. The Commission does not adopt any clear ideological position on sport. It is difficult to find in the White Paper any normative assertion as to how sport in the EU is or should be. The Commission recognises that some sports in Europe present some values and traditions that should be promoted (European Commission 2007b: 12). However, the Commission finds it 'unrealistic' to try to define a unified model of organisation of sport in Europe given the heterogeneity of structures across sports and Member States (European Commission 2007b: 12, 2007d: 40-41). The Commission moves away from the normative concept of a single European model of sport and this is a highly significant step because it deactivates the arguments of those relying on the European model of sport to structure EU sports policy.⁷⁴

The role of sport in European society and economy

The White Paper is divided into three sections. It opens by exploring the societal role of sport both at amateur and professional level (European Commission 2007b: 3-10). It then explores the economic dimension of sport in the EU (European Commission 2007b: 10-12). Finally, the White Paper addresses the problem of the organisation of sport in Europe, where issues related to the governance of sport, the specificity of the sector and the application of EU law to sport are addressed (European Commission 2007b: 12-17). For the purpose of this analysis here, the interest is focused on the third part dedicated to the organisation of sport. However, the other two sections need also to be summarised, albeit briefly.

The White Paper starts by identifying the societal role of sport and reflecting on possible policy actions to enhance it. The Commission is of the opinion that sport can provide many benefits to citizens. Sport can help by improving public health through

⁷⁴ This is, for example, a typical argument of UEFA (UEFA 2005b), which was also supported in the IESR (Arnaut 2006).

physical activity (European Commission 2007b: 3). Sport also has an educational role that should be enhanced (European Commission 2007b: 5-6). It is in this section where the Commission makes an interesting incursion, albeit timidly. The Commission considers that the promotion of training of young sportspersons ‘is crucial for a sustainable development of sport at all levels’ (European Commission 2007b: 6). In this respect, the White Paper gives the first official position of the Commission on regulations concerning locally-trained players, and here it was clearly influenced by UEFA’s initiative:

Rules requiring that teams include a certain quota of locally trained players could be accepted as being compatible with the Treaty provisions on free movement of persons if they do not lead to any direct discrimination based on nationality and if possible indirect discrimination effects resulting from them can be justified as being proportionate to a legitimate objective pursued, such as to enhance and protect the training and development of talented young players (European Commission 2007b: 6).

The football governing bodies had asked the Commission to address the issue of locally-trained players (FIFA and UEFA 2007: 2; European Commission 2007e: 3). They hoped, of course, to receive from the Commission some sort of direct support similar to that given by the EP (see European Parliament 2007a: paragraph 34). In this paragraph, however, the Commission is extremely prudent. It does recognise the protection of the training of young players as a legitimate objective (in line with the ECJ’s case-law in *Bosman*, see the ruling at paragraph 106) and lays down the criteria under which UEFA rules could be accepted. The White Paper, however, does not offer any legal assessment. This can probably be interpreted as a minimal gesture of sympathy towards UEFA’s regulations on locally-trained players. But after the experience of the 3+2 gentleman’s agreement, the Commission could not go any further.⁷⁵ The second section of the White Paper addresses the economic dimension of sport. The Commission notes the scarce attention given to sport as a macroeconomic

⁷⁵ The European Commission informally agreed in 1991 with UEFA the 3+2 rule, which was supposed to lead towards a progressive abolition of nationality quotas, as explained in chapter 4. However, the ECJ in *Bosman* referred to that agreement with a clear and strong reprimand to the Commission: ‘As regards the argument based on the Commission’s participation in the drafting of the 3+2 rule, it must be pointed out that, except where such powers are expressly conferred upon it, the Commission may not give guarantees concerning the compatibility of specific practices with the Treaty. In no circumstances does it have the power to authorise practices which are contrary to the Treaty’ (*Bosman*: paragraph 136). Surely the Commission does not want to risk another corrective from the ECJ should the rules on locally-trained players be considered by the Court in the future. This is probably why the White Paper is so cautious when addressing this question.

sector that could contribute to the EU's objective of growth and job creation (European Commission 2007b: 10). However, the Commission acknowledges that before going any further to establish policy actions in this respect, it is necessary to do more research in order to have sound and comparable data on the economic weight of sport. Therefore, the White Paper envisages the launch of policy actions in close cooperation with Member States to assess the sports sector's direct and indirect contribution to the Lisbon Agenda (European Commission 2007b: 11).

The limits of the European model of sport

The White Paper gets finally to the organisation of sport. The section can be defined as a recompilation of problematic areas related to the effective organisation of sport. Most of them were brought to the Commission's attention by sports organisations (European Commission 2007b: 13). Probably the most important point is that the Commission abandoned its previous support for the European model of sport:

The Commission considers that certain values and traditions of European sport should be promoted. In view of the diversity and complexities of European sport structures it considers, however, that it is unrealistic to try to define a unified model of organisation of sport in Europe. Moreover, economic and social developments that are common to the majority of the Member States have resulted in new challenges for the organisation of sport in Europe. The emergence of new stakeholders (participants outside the organised disciplines, professional sports clubs, etc.) is posing new questions as regards governance, democracy and representation of interests within the sport movement (European Commission 2007b: 12).

By declining to define a single model of sport, the Commission withdraws an important element of the political debate surrounding EU sports policy. The IESR's arguments, for example, are based on the need to maintain the European sport model. For the analysis in this thesis, the Commission is implicitly acknowledging here the transformation of the traditional governance structures in sport (i.e. the pyramid where federations are in a superior position) due to the emergence of new stakeholders. However, the Commission still believes there is a role for the governing bodies. For the Commission, the movement away from the concept of a single European model of sport does not necessarily mean a decrease in the importance of the governing bodies in sports governance, but just a realignment:

The Commission acknowledges the autonomy of sporting organisations and representative structures (such as leagues). Furthermore, it recognises that governance is mainly the responsibility of sports governing bodies and, to some extent, the Member States and social partners (...) The Commission considers that most challenges can be addressed through self-regulation respectful of good governance principles, provided that EU law is respected (European Commission 2007b: 13).

The Commission's reluctance to define a common European model is, quite simply, a verification of the reality of modern sport. The case of football is the best example as this thesis has explained in the last chapters: the traditional pyramidal model of governance has been challenged by stakeholders and the economic realities of modern football alike. The Commission does not say at all that federations are illegitimate bodies, but the White Paper does not endorse their primacy in football governance as the IESR did. The message of the White Paper is clear. There are many different models to organise sports governance and it is up to each sport to decide which one to use. The Commission, however, is happy to help sport to raise good governance standards. The Commission is committed to helping the development of a common set of principles for good governance in sport (European Commission 2007b: 12). The White Paper follows the discussion of the European model of sport and the autonomy of sport with an incursion into some particular areas related to sports governance. Four of them are of relevance for this thesis because they cover some of the aspects of football treated in the previous chapters: the specificity of football in the application of European law, the selling of media rights, licensing systems for clubs and the regulation of agents and transfers in the players market.

The specificity of football: case by case approach

The White Paper's section on the specificity of sport is, in reality, devoted to a discussion of the application of EU law to sport. The question is to what extent regulations laid down by sporting organisations can be accepted under EU law despite their anti-competitive effects. The White Paper reminds us that EU law is applicable to sport in so far as it constitutes an economic activity (European Commission 2007b: 13; see also the very detailed account of the application of EU law to sport in the accompanying document to the White Paper: European Commission 2007d: 63-109). At the same time, the White Paper recognises the specificity of sport, which can be approached through two prisms. On the one hand, there is 'the specificity of sporting

activities and of sporting rules, such as separate competition for men and women or the need to ensure uncertainty concerning outcomes and to reserve competitive balance' (European Commission 2007b: 13). On the other hand, there is the specificity of the sport structure, including 'the autonomy of sport organisations, a pyramid structure of competition and solidarity mechanisms between the different levels and operators' (European Commission 2007b: 13).

The specificity of sport has traditionally been invoked by sports governing bodies to justify a lenient application of EU law, as explained in chapters 4 and 5. The Commission asserts that 'in line with established case law the specificity of sport continues to be recognised', however 'it cannot be construed so as to justify a general exemption from the application of EU law' (European Commission 2007b: 13). This section of the White Paper deserves special attention because it contradicts the recommendations of the IESR and the Belet report. The IESR and the EP called for the Commission to issue guidelines on the application of EU law to sport in order to improve legal certainty in the sector (Arnaut 2006: 95-100; European Parliament 2007a: paragraph 55). The Commission, however, considers that 'the assessment whether a certain sporting rule is compatible with EU competition law can only be made on a case-by-case basis' (European Commission 2007b: 14). The Commission justifies its decision on the recent ruling of the ECJ in the *Meca-Medina and Igor Majcen v. Commission of the European Communities* Case C-519/04 P, [2006] ECR I-6991, hereinafter *Meca-Medina*), where the ECJ analyses the compatibility of the IOC's anti-doping rules under competition law (for an in-depth analysis of the *Meca-Medina* case and its consequences for the application of EU law to sport see Weatherill 2006; Vermeersch 2007). The Commission argues that the ECJ established in *Meca-Medina* a proportionality test for the application of EU law to sport. Such an approach requires a consideration of the particularities of each case (to see whether the sporting rule in question is proportionate to the objectives or not), therefore 'it does not allow for the formulation of general guidelines on the application of competition law to the sport sector' (European Commission 2007b: 14).

TV rights and redistribution

The application of EU law to football, especially competition law, leads almost naturally to the legality of the selling of commercial rights to football tournaments. Two main issues were identified in chapter 5: collective selling and exclusivity. The White Paper addresses only the former. The Commission is ready to accept collective selling under certain conditions, as seen in chapter 5. Yet, DG Competition officials were adamant to stress that other arrangements (i.e. clubs selling their media rights individually) are also possible. The White Paper acknowledges the benefits of collective selling:

Collective selling can be important for the redistribution of income and can thus be a tool for achieving greater solidarity within sports. The Commission recognises the importance of an equitable redistribution of income between clubs, including the smallest ones, and between professional and amateur sport (European Commission 2007b: 17).

However, it fails to endorse clearly this system over other arrangements:

The Commission recommends to sport organisations to pay due attention to the creation and maintenance of solidarity mechanisms. In the area of sports media rights, such mechanisms can take the form of a system of collective selling of media rights or, alternatively, of a system of individual selling by clubs, in both cases linked to a robust solidarity mechanism (European Commission 2007b: 17).

The White Paper does not depart here from the previous Commission case-law although one can detect a subtle message. Firstly, there is a clear reference to redistribution and solidarity in sport linked to the selling of media rights. In a White Paper relatively thin on political statements, this could be one of them. The arguments of solidarity and redistribution are typical of UEFA, FIFA and other sport governing bodies. In this respect, the White Paper may not clearly endorse collective selling, but it certainly makes a case, albeit subtle, for solidarity and redistribution. One should not forget that the argument of solidarity was considered by DG Competition in the Champions League case, although it was finally sidelined in favour of more economic reasoning (European Commission 2003b). The introduction of solidarity in the White Paper might be interpreted as another attempt by DG Education and Culture (where financial solidarity in sport is favoured) to reinvigorate the argument *vis-à-vis* DG Competition.

Licensing systems for clubs

The IESR and the Belet report supported the efforts of UEFA to establish a licensing system for clubs. The idea of a licensing system in sport assumes that a central body can set a number of criteria that clubs need to meet in order to be granted a license. Only licensed clubs are then allowed to take part in competitions. Of course, a licensing system is only as good (or as bad) as the criteria set and the way that it is implemented. Licensing systems could be useful if they are open and transparent, but they could also be used to restrict competition. UEFA is currently developing a licensing system that it would like to implement through its 53 member associations. UEFA sees its licensing system as a basic tool to ensure sound principles of financial transparency and corporate governance in European football clubs (Interview 29). Any endorsement of UEFA's club licensing system is, indirectly, recognition of the governing body's role, for a club licensing system could, hypothetically, be implemented by another central body (e.g. EPFL, and association of European clubs, national leagues...). Moreover, the consideration of club licensing systems also implies that clubs rather than the governing bodies are responsible for some of the problems that football is currently facing. The White Paper makes an important statement recognising the role of licensing systems:

The Commission acknowledges the usefulness of robust licensing systems for professional clubs at European and national levels as a tool for promoting good governance in sport (European Commission 2007b: 17).

In the case of football, where UEFA is already working at the European level, the White Paper encourages governing bodies to start using licensing systems at national level as well. The Commission is ready to help:

Starting with football, the Commission intends to organise a conference with UEFA, EPFL, FIFPro, national associations and national leagues on licensing systems and best practices in this field (European Commission 2007b: 17).

Thus, the Commission's support of licensing system could be interpreted as an indirect endorsement of UEFA's strategy and UEFA's central role in football governance.

The players' market: Transfers and agents

Finally, the White Paper addresses the role of players' agents and transfer systems. With reference to the latter, the White Paper considers the FIFA transfer system (negotiated

between the governing bodies and the Commission as explained in chapter 4) to be ‘an example of good practice that ensures a competitive equilibrium between sport clubs while taking into account the requirements of EU law’ (European Commission 2007b: 15). The Commission recognises that the transfer of players has begun to raise concerns about the legality of the financial flows involved. The Commission considers that ‘an information and verification system for transfers could be an effective solution [for this problem]’. The Commission, however does not agree with the IESR’s idea that such a system should involve a ‘clearing house system for transactions’ (Arnaut 2006: 125). The White Paper believes it should have only a control function (European Commission 2007b: 15).

As for the agents, the White Paper acknowledges the press reports of bad practices in the activities of some agents (European Commission 2007b) and the calls for EU legislation on this matter (see for example Arnaut 2006: 122-123; European Parliament 2007a: paragraph 44). The Commission is ready to progress this issue, but it falls short of launching legislative proposals at this stage:

The Commission will carry out an impact assessment to provide a clear overview of the activities of players’ agents in the EU and an evaluation of whether action at EU level is necessary, which will also analyse the different possible options (European Commission 2007b: 16).

The Commission is now ready to launch the impact assessment, which could end up suggesting the adoption of legal regulations for the agents’ sector. If this is the case, it would be the first direct consequence of the White Paper.

A look to the future

The White Paper raised high expectations among those involved in the governance of football (see for example FIFA and UEFA 2007; UEFA 2007e, 2007b). The political momentum created by the IESR and the EP report enhanced that feeling. The governing bodies expected the Commission to find the courage to make a political statement on how football should be governed. Therefore, it is not surprising that the White Paper was not received that enthusiastically by the IOC, FIFA, UEFA or other governing bodies:

The leading European team sports acknowledge the publication of the EU White Paper on Sport (...) the content of the final version represents – unfortunately – a missed opportunity. Much work remains to be done. (...) We are disappointed that the EU has not reached firmer conclusions with regard to some of the key issues facing sport today (...) It was in particular expected that the White Paper would give concrete expression to the Nice Declaration including providing sport with a more stable legal environment for the future, fully recognising both the autonomy and specificity of sport (UEFA 2007a: 1; see also FIFA 2007a).

FIFPro, the football players' trade union, has reacted more positively to the White Paper. For FIFPro, the document is constructive because it provides a basis 'for negotiation about aspects which are characteristic of sport in general and football in particular' (FIFPro 2007f: 1). The trade union is particularly happy with the White Paper's interpretation of the application of EU law: 'Football is and remains an economic activity and the European Commission sees no cause to exclude football from the law as a special branch of the industry' (FIFPro 2007f: 1).

The White Paper confirms the importance of sports governance as an important issue on the EU agenda, for it devotes one third of the document to that problem. However, the definition of the problem and the solutions proposed are different from the other two initiatives reviewed in this chapter. For the debate on the regulation of football the White Paper represents, to say the least, a slowing down of the momentum initiated by the IESR and the Belet report. The EP Belet report departed already from the IESR because it was more demanding of football governing bodies, especially UEFA. The White Paper is another step in that direction. There are certainly some gestures in favour of UEFA's arguments, but they are timid. Moreover, the document refuses to endorse the European model of sport, accepting the emergence of new stakeholders in football governance. On the other hand, it is also true that the White Paper could have been critical of UEFA, and it is not. It might not be as clearly supportive as the IESR, but it is not extremely negative towards the football governing bodies. It is probably safe to say that the White Paper represents another compromise in true Commission style. It is realistic and well balanced.

This chapter singled out two aspects regarding football governance: the network structure of football governance and the need for good governance principles. In respect to the former, the White Paper explicitly recognises the diffusion of power across a

network of stakeholders because the Commission downplays the sporting federation's vertical authority in sports governance systems (a feature of the so-called European model of sport). In this respect the White Paper endorses the vision of sports governance as network governance, rather than a pyramidal structure. It is also true that the White Paper does not deny the role of governing bodies such as UEFA or FIFA in that network structure, either. It takes a middle ground, but it is in contrast with the position adopted previously by the IESR. In relation to good governance principles, the Commission recognises the necessity to improve governance standards and it is ready to help stakeholders to achieve best practice. The White Paper, however, addresses these comments to federations, clubs and leagues alike.

Despite its pragmatic approach to governance, the White Paper is still a document that focuses very much on the socio-cultural aspects of sport. It does not return to an economic definition of sport. Yet, this seems to be insufficient for UEFA and FIFA. The governing bodies are not satisfied with the Commission's reluctance to issue any guidelines on the application of EU law to their activities. In the White Paper, the Commission repeats that, for the moment, there is no movement from the compromise between football and EU law represented by the decisions in the Champions League or the FIFA transfer system. Only the ECJ could alter the present equilibrium in the application of EU law to football.

This chapter suggests that football has certainly evolved as an issue on the EU agenda. There is now a more holistic and political vision of football issues that might be considered favourable to UEFA and FAs *vis-à-vis* top clubs and leagues. However, recourse to the ECJ or the Commission is always open to those unhappy with that definition. This was raised by the G-14 with its legal challenge before the ECJ to FIFA's rules on the release of players for international team duty. The case has finally been dropped by the G-14, but it deserves some brief attention. The next section takes a quick look at the Charleroi case and at the possibilities of a social dialogue between employers and employees in the professional football sector under the umbrella of the European Commission.

The Charleroi case and the social dialogue

The final section of this chapter analyses, albeit very briefly, two of the most recent events relating to the EU intervention in football governance issues, namely the so-called Charleroi case and the establishment of a social dialogue committee in the professional football sector under the umbrella of the European Commission and pursuant to articles 137 to 139 EC. The Charleroi case was a timely reminder that the *status quo* of football governance might be prone to change with recourse to the ECJ. In that case the G-14 challenged FIFA rules on the release of players for national team duty. Arguably the case has lost its importance because it was dropped by the G-14, but it still deserves attention because it demonstrates the potential for change in the EU intervention in football issues. The social dialogue, on the other hand, is treated here as an issue for further research and, consequently, it is briefly treated. The social dialogue is important because it has the potential to create yet another layer in the governance of football that will be situated outside the vertical authority of governing bodies such as UEFA and FIFA. This section analyses now these two cases in turn.

The Charleroi case

The Charleroi case (*SA Sporting du Pays de Charleroi and G-14 Groupment des clubs de football européens v Fédération internationale de football association (FIFA)*, case C-243/06, hereinafter *Charleroi*), was registered for a preliminary ruling before the ECJ. The G-14 has recently withdrawn the case following negotiations with FIFA and UEFA (BBC Sport 2008), but it was a timely reminder for all involved in the regulation of football that the political debate of the IESR or the Belet report can be quickly altered by a court case. This brief section will summarise the basis of the case and the implications for the debate on football governance. *Charleroi* needs to be understood on the basis of the case's wider implications. Professional clubs challenged under EU law the regulatory power of governing bodies. If the ECJ had ruled in favour of the clubs, the power of FIFA and UEFA would have been seriously diminished. It is certainly legitimate to affirm that the Charleroi case was about governance and power in football as much as about the release of players for national team duty.

This case originated when Moroccan international Abdelmadjid Oulmers, employed by Belgian First Division club Sporting Charleroi, was called by his national team for a

friendly match against Burkina Faso on 17 November 2004. During the game, Oulmers picked up an injury and he was not able to play for eight months, missing the rest of the season. Sporting Charleroi had not contracted any insurance for its player prior to the match, so the club contacted the Moroccan FA to enquire about possible compensation. The Moroccan FA replied that it did not contemplate any compensation. Sporting Charleroi started legal proceedings on 12 July 2005 against the FIFA regulations for the release of players for national team duty. The proceedings, brought before the *Tribunal de Commerce de Charleroi*, were later joined by the G-14 on 5 September 2005. The clubs presented their case before Charleroi's Commercial Court (Martínez de Rituerto 2005a), who referred it to the ECJ for a preliminary ruling under article 234 EC. The ECJ was asked to rule whether the FIFA rules were contrary to articles 81 and 82 EC or to any other Treaty dispositions.

Legal experts awaited the ECJ ruling with considerable anticipation, for it would have clarified the ECJ case law on the application of EU competition law to sport (see for example Vermeersch 2007). Unfortunately for them, the case will never be ruled. The plaintiffs decided to withdraw their demands after negotiations with UEFA and FIFA. The amicable resolution of the case was reached in the first months of 2008 and, therefore, it is outside the time frame of this thesis. However, it deserves a brief mention due to its potential for further research. FIFA and UEFA agreed a compensation and insurance scheme for those clubs whose players are called to national teams for official matches, including the European Championships and the World Cup finals (BBC Sport 2008). Clubs withdrew their legal challenge in exchange for a compensation scheme (UEFA 2008b), but the agreement had also important consequences for football governance. Clubs participating in the G-14 realised the need to create a more inclusive and representative body that could speak to UEFA and other authorities on behalf of football clubs, not just the 18 members of G-14 (G-14 2008a). The decision was to dismantle G-14 in favour of a new association called the European Club Association (ECA), which was established in January 2008 (UEFA 2008b); the European Club Association will include clubs from all 53 UEFA member associations, hence being truly representative (UEFA 2008a: 2, 2008c: 1). In exchange, UEFA has recognised the European Club Association as the representative of professional clubs through a memorandum of understanding (Chaplin 2008). The European Club Association's objective is to be the voice of professional clubs in football's governance structures (G-

14 2008b). The Association, being recognised by UEFA and FIFA, will nominate representatives to those consultative bodies within UEFA and FIFA where clubs are represented (UEFA 2008a: 2; G-14 2008b; UEFA 2008c: 1).

Thus, the settlement of the Charleroi case outside court is a package deal whereby clubs obtain economic compensation and political recognition by FIFA and UEFA and the governing bodies have secured the dissolution of the G-14 and the withdrawal of the legal challenge before the ECJ. The agreement might be considered as a triumph for FIFA and UEFA over the G-14 because the latter has been dissolved, but one should not overdo that argument because clubs have also achieved their objectives. It is important to note, though, that the Charleroi case is a timely reminder that EU policies on football could change again through the intervention of the ECJ. In agenda-setting terms the Charleroi case presents a familiar pattern: the challenge of rules adopted by sports governing bodies, as Jean-Marc Bosman did a decade ago. In the current debate on the governance of football, the recourse to the ECJ can be conceptualised as another possible change of venue in order to shift again the definition of the debate set by the IESR and the EP. Currently, football's definition on the EU agenda is focused on the specific values of the game, which tends to benefit governing bodies over professional clubs, leagues and players. But this might be subject to change. *Charleroi* also has implications for football governance. It is a reminder to governing bodies that any desire for independence from public authorities and EU law is difficult to achieve. The agreement has been presented by FIFA and UEFA as proof that football can deal with its own problems without outside regulation. It is true that the settlement was negotiated outside the courts, but it is plausible to argue that the threat of another ECJ ruling encouraged FIFA and UEFA to agree to some of the clubs' demands. In governance terms, this means that the EU still has a role to play in football's governance network, whether UEFA and FIFA like it or not. If federations want to influence the EU agenda on football, as UEFA has done on several occasions, they need to be considered as insiders in the policy community. They will do better if they engage with the EU and they are careful to respect EU law, not making the same mistakes that led to *Bosman*.

The social dialogue in the football sector

The European social dialogue is considered by the Commission 'a unique and indispensable component of the European social model' (European Commission 2007d: 59). Articles 138 and 139 EC give recognition to the social dialogue between employers and employees at Community level. Basically, the social dialogue is an opportunity for management and labour to achieve collective bargaining agreements to regulate their employment conditions under the umbrella of the Commission and EU law. In the professional football sector, the Commission invited during the settlement of the transfer system case in 2001 governing bodies (FIFA and UEFA) to encourage clubs and players to start or pursue social dialogue (European Commission 2007d: 60). The Commission is of the opinion that social dialogue could be a method for football organisations to regulate the employment conditions of football players without need for EU direct intervention. Thus, since 2001 the Commission has supported projects to explore and consolidate the possibilities of social dialogue in the football sector (European Commission 2007d: 60). Following all these years of studies and preparations, the social dialogue in the football sector is about to be launched on 1st July 2008 with the first meeting, in Paris, of the sectoral social dialogue committee for football, with the presence of European commissioner for Employment, Social Affairs and Equal Opportunities, Vladimír Špidla, and Ján Figel, the EU Commissioner for Education, Training, Culture and Youth (responsible for sport).

The social dialogue committee will be composed of representatives of FIFPro (as employees) and the EPFL (as employers), but there will also be present UEFA and the recently founded ECA as observers. Branco Martins (2007) points out that the social dialogue in football can address issues such as stability of contracts, transfer systems or the release of players for national teams, among others. He also points out that it could lead to improved governance in professional football. Certainly, the social dialogue offers a venue for players and clubs to negotiate their employment conditions without the need to resort to the ECJ (like Bosman did). It is an institutionalised EU procedure, which gives legal certainty to any agreement achieved. In terms of football governance, the social dialogue raises two important issues. Firstly, the institutionalisation of a sectoral committee where FIFPro and the EPFL are the main actors reinforces the idea of football governance as a horizontal network of stakeholders, departing from the traditional vertical structures of the football pyramid. Moreover, this is yet another

example of football stakeholders using EU venues to challenge the legitimacy of governing bodies (UEFA in this case). UEFA does not deny the advantages of collective bargaining between players and clubs or leagues, but they would like to see that social dialogue to take place within UEFA structures, not under the Commission's umbrella (Interview 32). The second issue that needs to be analysed is the representativeness of the social dialogue. Especially in the employers' side, it is not clear whether the EPFL (the leagues) or the ECA (the clubs) should be the social partner and this tension might create conflicts in the future. Be that as it may, the social dialogue in the football sector has not yet reached any agreement but it will surely deserve further research in the future.

Conclusion

This chapter concludes this thesis' empirical section. It has presented the latest policy initiatives of EU institutions on football matters. The chapter represents a step forward in time from the main focus of chapters 4 and 5, dealing with football as an issue already established on the EU institutional agenda. This chapter is therefore set to deal with the second and fourth research questions, which relate to the evolution of EU policies on football and to the consequences for football's governing structures. This chapter is also one of the most important sources of originality of the PhD. Firstly, it reflects on current issues that the academic literature has scarcely touched on to date and, secondly, it is built on a strong base of empirical research, featuring documentary research and interviews with the main actors involved in the three initiatives analysed.

With football firmly established on the EU formal agenda, the EU has turned its attention to the broader issue of football governance. To understand this attention to governance, it is necessary to take into account the previous interventions of the EU in football-related matters and their consequences. The preoccupation with governance is a result of the previous decisions. The regulation of the players' market benefited the emergence of footballers' trade unions as a stakeholder in the governance of the game. The investigations into the selling of TV rights to football competitions facilitated the economic development of football and a spectacular transformation of the game. Football clubs started to challenge the authority of the governing bodies and demanded different competitions and new structures at national and European level. With new

stakeholders and other interests around the game, increasing economic development and a popularity higher than ever, the question arises as to what to do to ensure a sound future for the game. The Independent European Sport Review managed to set the EU agenda around the problems of football governance. Formally, the IESR was an initiative of the British Sports Minister, Richard Caborn. However, the political skills of UEFA played a major role in managing the agenda for launching the IESR. Not surprisingly, the IESR was well received by UEFA, heavily criticised by the clubs (especially in the English Premier League), well valued by the European Parliament and cautiously received by the Commission in its own White Paper. The European Parliament resolution on the future of professional football in Europe followed the presentation of the IESR. Finally, the European Commission decided to publish a White Paper on Sport that raised many expectations amongst the football organisations. The effects of the White Paper are still to be evaluated, and the reactions of stakeholders have to be further explored. This is certainly an avenue for future research.

The IESR, the Belet report and the White Paper have expanded the debate on football governance. As a whole, the three documents have maintained a vision of football that departs from the simple focus on football in economic terms. Thus, this chapter reinforces the tendency towards an evolution in the EU policies on football, which is the main question addressed by the thesis' second research question. The three documents' vision of football governance is slightly different, though. Whereas the IESR is extremely supportive of UEFA and the pyramidal structure of football governance, the EP resolution and the White Paper are more realistic and pragmatic. These two reinforce the idea of football governance as a network where FIFA, UEFA and the national governing bodies still play a central role. Whereas the IESR stresses the vertical dynamics in football governance, the EP report and the White Paper understand football governance more as a horizontal structure. The White Paper reminds football organisations that respect for EU law is unavoidable as it is the role of EU institutions in football governance. The IESR saw the EU more as a shield from litigation, which would facilitate football's self-regulation rather than another stakeholder in the game's governance. The White Paper presents, once again, football and the EU as two parallel systems of governance that offer opportunities for stakeholders to interact both horizontally and vertically.

The last three chapters have presented the empirical evidence of the main EU involvement in football matters. Football is now an established item on the EU agenda. Having regard to the increased interest of the EU institutions, it is likely to remain on the agenda for the foreseeable future. The paradox is that EU institutions still have no direct competence on sport. This thesis set the task of finding out the reasons behind the EU's involvement in football. The concluding chapter that follows, takes all the empirical evidence presented in the last three chapters and summarises the answers to the four research question that were set in the introduction. Many answers have already been suggested, but the next chapter is the place where these conclusions are extracted and presented systematically.

Chapter 7. Conclusions

‘European integration and European football are two success stories that have gone hand in hand over the last 50 years, opening new horizons for millions of people’
(European Commission 2007f: 1)

‘The European Union is now a long-term strategic partner for UEFA’
(Interview 5)

This thesis originates in the recognition that since the 1970s different EU institutions have been dealing on a regular basis with football-related issues. This thesis has shown that the EU’s involvement in football matters has developed considerably in recent years. Football is now active on the EU agenda and it involves all the EU institutions. The presence of football issues on the EU agenda, in the light of the findings of this thesis cannot be said to be sporadic. It is, then, legitimate to ask about the reasons that underpin the involvement of EU institutions in football. Four research questions were established in the introduction to guide the research throughout the thesis.

- Why and how did the EU get involved in football related matters?
- What is the policy of the EU institutions towards football and football governance?
- What role/influence have EU institutions and football stakeholders played in shaping the EU policy towards football?
- What has been the impact of EU policies and decisions on the governance structures of football?

This concluding chapter summarises the answers to these four research questions in the light of the empirical evidence presented in chapters 4, 5 and 6. With that objective in mind, the chapter is divided into five sections, one for each research question plus a short look to the future for further avenues of research.

Why and how did the EU get involved?

The EU did not get involved in football-related issues by its own volition. EU institutions did not pursue the creation of a policy on football. A mixture of long-term tendencies, such as the commercialisation of football, and short-term focusing events can explain the involvement of the EU in football matters. Moreover, the EU has been used as an alternative venue to the multilevel system of football governance in order to resolve some internal disputes amongst the stakeholders in football governance. Players resorted to the ECJ to liberate themselves from their contractual ties with clubs (*Bosman*). Clubs, in turn, turned to the ECJ to reduce their dependence on governing bodies' regulations (*Charleroi*). In response, UEFA has approached EU sports ministers as well as MEPs in the European Parliament in support of its arguments about the specific nature of football (IESR, Belet report) as well as in support of its ambition to prevent the clubs from gaining power. These dynamics suggests that one can describe football and the EU as two parallel multilevel systems of governance that have clashed several times over the last two decades because actors/stakeholders in both systems have been using one another as alternative policy avenues.

The ECJ was the first EU institution to deal with football as a result of its duty to adjudicate in legal disputes over freedom of movement for workers. The ECJ was required to rule on legal proceedings about the regulations governing the employment and registration of players. These rules have traditionally been based on two pillars: nationality quotas and transfer systems. Players and players' unions in England, France and Spain successfully challenged their national transfer systems, but at the EU level nationality quotas were first challenged in the *Donà* case. Some 20 years after *Donà*, the ECJ was asked by Jean-Marc Bosman to rule on the legality of the transfer system and nationality quotas as well. The way that the ECJ operates reinforces the argument that the EU got involuntarily dragged into football. The ECJ cannot proactively pursue policies unless it is presented with suitable cases. The ECJ can only act when it receives cases to rule on. The EU involvement in the regulation of the players' market could be conceptualised as a two decade long process in which the EU institutions have been approached by stakeholders within the structures of football who wanted to challenge the *status quo*. These stakeholders made use of the legal and institutional possibilities of the EU because they could not achieve their objectives within the internal governance structures of football.

The intervention of the ECJ in the players' market is of paramount importance to this thesis because it opened the EU door to football. The European Commission, prior to *Bosman*, was rather conciliatory and reactive, facilitating agreements such as the 3+2 rule. The Commission modified its position once the *Bosman* ruling brought football abruptly onto the agenda. Following the *Bosman* case, the Commission first started to explore the regulation of the players' market (transfer system), but it soon expanded its interest to other areas such as the selling of TV rights to football competitions. Several factors can explain the rise of football up the EU agenda. To facilitate the analysis, it is useful to differentiate between long-term and short-term aspects.

Problem recognition, a long-term perspective

In a long-term perspective, the increasing commercialisation of professional football in the last 10 to 15 years is behind most of the conflicts that facilitated the intervention of EU institutions. Chapters 2 and 5 have provided enough evidence of the scale of football's economic dynamism in the last couple of decades. It is this rapid economic development of football that has contributed to the litigation between players, clubs and governing bodies, as each one sought a bigger share of the benefits created by the commercialisation of professional football. In the *Bosman* case, a football player challenged FIFA's international transfer system when he wanted to move to a club that offered him three times his salary. Another aspect of the commercialisation of football (if not the origin of the whole process) is the involvement of television companies. Media operators have invested large amounts of money in buying the broadcasting rights to major football competitions. The interest of television operators in football had several consequences. Firstly, it encouraged clubs to exploit television revenues on their own, hence fostering the creation of breakaway leagues at national and European level. Secondly, it motivated competition organisers to set up revenue maximising arrangements, such as exclusivity, which in turn caused the intervention of DG Competition (Premier League case). Some governing bodies, such as UEFA, resorted to collective selling as a mechanism to increase television revenues, but also with the objective of maintaining a central role *vis-à-vis* clubs in the governance of the game.

The first research question is especially targeted at the first arrival of football onto the EU agenda, hence looking more closely at issue initiation and issue expansion. The economic development of football has already been identified as a factor contributing to an increase in the EU's attention to football matters. Chapter 3 explained that agenda-setting can be considered from a problem centred perspective to analyse the first stages of issue recognition. In the case of football and the EU, the commercialisation of football can be conceptualised as the 'social conditions' (Kingdon 1995: 110), the characteristics that attracted the attention of EU institutions. It was a slow process and the commercialisation of football was only promoted to the systemic agenda of the EU (Cobb and Elder 1972) as an issue that appeared from time to time, but which did not deserve that much attention. This can be seen especially in the attitude of the Commission following *Donà*. It took years for football to get to the level of the institutional agenda from which firmer policy initiatives derive. It was not until the ECJ ruling in *Bosman* raised the political profile of football, that it was recognised as a real problem on the institutional agenda. The different reactions of the Commission in 1976 (conciliatory and reactive) and in 1995 (adamant and proactive) can be explained, among other reasons, by the different levels of issue visibility, one of the factors that condition issue expansion, as explained in chapter 3. *Bosman* increased the visibility of football as an issue on the EU agenda and thus pushed it towards the institutional agenda because there was a wider circle of actors showing an interest on it. The Commission and other institutions found in *Bosman* a new item (football) on the agenda that was politically sensitive. When football was restricted to the systemic agenda due to its low visibility, there was no urgency to formulate any policy on the matter, hence the Commission's reaction to *Donà*. With its new agenda status after *Bosman*, the EU institutions were compelled to adopt a more concrete and articulated position to football matters.

DG Competition was among the first institutional actors to react, invigorated by the ECJ's assertive ruling in *Bosman*. This is logical because of the Commission role as the guardian of the treaties. Competition authorities dedicated their attention first to the players' market, as a direct consequence of the *Bosman* ruling. But they jumped soon to broadcasting. The interest of DG Competition in the regulation of football broadcasting was parallel to the investigation of the international transfer system. It is logical, therefore, to expect an overlap in the dynamics underpinning the interventions in both

cases. Again, the commercial impact of football is important to understand DG Competition's vigorous intervention after the Bosman ruling, especially in regard to the broadcasting dossiers. There is, however, a qualitative change in the intervention of DG Competition in the area of broadcasting. In the dossiers discussed in chapter 5 DG Competition was proactive. The competition authorities launched an own initiative investigation in the case of the Premier League and its exclusive contracts with BSkyB. There is a second factor that helps to explain DG Competition's proactive stance. It is the Commission's interest in the liberalisation of the television market that prompted the investigations on the sale of broadcasting rights for the Champions League and the Premier League. The liberalisation of the audiovisual market is another long-term tendency to explain the Commission's attention to football broadcasting. The actions of the Commission could be conceptualised again as the identification of a problem that was placed on the institutional agenda (Cobb and Elder 1972) of DG Competition.

The focus of problem centred agenda-setting on the characteristics of issues reaching the agenda relates to another stage in agenda-setting. It is the notion of issue framing or issue definition. Issue framing is the political and social characterisation given to a particular issue when it is incorporated to the agenda (Peters 2001: 78). When issues are promoted to the agenda they carry a particular definition, which in turn affects the possible policy outcomes because 'the way a policy problem gets defined says a great deal about how it will be solved' (Baumgartner and Jones 1993: 31). It is logical to expect that the characteristics of an issue that served to attract policy makers' attention might be reflected in the definition given to the problem once it is promoted to the agenda. In the case of football, EU institutions were attracted by the commercial activities of football organisations because the ECJ had stated that EU law applied to sport only in so far as it could be regarded as an economic activity. As a natural consequence, the Commission was interested in football only from an economic perspective. When football was incorporated into the EU systemic and institutional agendas, it was an issue defined only in economic terms. Football was only a market place in need of investigation to make sure that it complied with EU law. This is demonstrated in chapter 5 where the Commission's economic analysis of the selling of broadcasting rights is examined. DG Competition, following its commitment to ensure liberalisation of the TV market, could only see in football a risk for the media market. Consequently, it framed the selling of broadcasting rights in economic terms. It is not a

problem that arises from sports policy or the redistribution of income among participants in tournaments, but just of the economics of the television market. The economic definition of football is especially seen in the Commission decision on the Champions League case, where the exemption under Article 81 (3) EC was granted only on economic grounds.

Short term factors: Individuals and focusing events

The reference to the commercialisation of football is certainly important to understand the game's emergence on the EU agenda. The explanatory powers of this analysis can be taken only so far though. An examination of short-time factors adds to our understanding of the process. The short-time perspective helps especially in realising why the specific cases (and no others) were included on the agenda. In the players market, for example, why were nationality quotas and the transfer system promoted and not the release of players to national teams?⁷⁶ In other words, the characteristics of the problem (commercialisation of football and influence in the TV market) explain the attention of the EU to football as a whole. It can explain its promotion to the EU systemic agenda. But short-term factors contribute to explaining the concentration on particular aspects and thus the incorporation of particular issues on the formal agenda. The cases investigated in the previous chapters reveal two different types of short-term variables that attract the attention of EU institutions, namely the actions of individual actors and crisis or focusing events.

Chapter 3 identified actors as the second variable of agenda-setting. The activities of actors are important both in the recognition and framing of issues and in their expansion to facilitate entrance to the formal agenda. Therefore, actors might impact on both the systemic and the institutional agenda. Very determined individuals contributed to the introduction of football onto the EU agenda. This is especially the case in the early stages of the policy process reviewed in chapter 4. *Donà* was a case staged by club officials willing to change the Italian FA's rules on nationality quotas. Jean-Marc Bosman relied on the support of FIFPro to challenge FIFA's international transfer system. In both cases the EU was used as an external policy venue to the internal arenas

⁷⁶ The latter has only made it to the agenda very recently with the Charleroi case, as explained in chapter 6.

of football's governance system. The analysis of agenda-setting with an actor-centred perspective considers agenda-setting from a conflict perspective (Robinson 2000). In the regulation of the players' market, footballers were at odds with their governing bodies and clubs. This was initially an internal negotiation within football's governance system. However, failing to convince clubs and federations, players resorted to actions outside football's structures. The agenda-setting approach argues that actors within a policy network are more likely to resort to a change of policy venue when there is internal disagreement on the on-going policy definition (Baumgartner and Jones 1991: 1056). That was the case of Jean-Marc Bosman, and can be extended to professional players as a whole. Unhappy with the regulation of transfers and nationality quotas, the players looked for alternative policy venues where their case could be upheld. Since they found little sympathy within football, they resorted to legal challenges at the EU level. Actors resorting to the ECJ benefit, should they win, from the immediate effect of the ruling. Given the EU institutional setting, the ECJ, as the Bosman case demonstrates, provides relatively easy access to the EU agenda.

Chapter 6 (and the section on locally-trained players in chapter 4) reveals a complementary aspect of the importance of actors in agenda-setting. UEFA used its increased knowledge of the EU political system to frame events around football in a particular way in order to present solutions to policy-makers. UEFA's success in terms of policy output, however, has not been the same with every institution. UEFA presented to EU sports ministers and MEPs the problems they identified in European football. In agenda-setting terms, this contrasts with the route employed by Bosman and his legal team. UEFA's strategy has been more long-term, employing an approach which Kingdon conceptualises as 'softening-up' (Kingdon 1995: 128), that is continuous contact with policy makers presenting a vision of the problems and the best solutions available. Kingdon argues that issues are more likely to be considered by policy makers the longer they have been subject to softening-up (Kingdon 1995: 128). The differences between the strategies of UEFA and the players can suggest some interesting lessons about the nature of the EU agenda. Bosman tried the ECJ, whereas UEFA tried the political route via the EP and national governments. Arguably, the legal route is more direct, but it is difficult to control. Once the case is before the ECJ, it is complicated to influence the decision beyond the formal hearings. On the other hand, if the case is correctly presented and analysed the effects on the agenda are immediate, as

the Bosman ruling demonstrated. There is a further distinction between the two cases. UEFA benefited from almost a decade of presence of football on the EU agenda. UEFA was re-framing or re-defining an issue already present on the agenda, rather than introducing the subject outright, as Bosman did. It is probably plausible to argue that the legal route is more effective to set the EU agenda when actors try to introduce new problems. And even more if the EU has, *prima facie*, no competence in that area, as was the case of sport.

The assessment of UEFA's strategy needs to be careful. Certainly, UEFA contributed to a redefinition of football on the EU agenda. The early definition in economic terms has been replaced by a more elaborated framing that incorporates elements of redistribution, social values and the specificity of football. However, UEFA has been less successful in obtaining concrete policy outcomes. The IESR was very favourable to UEFA, but the Belet report and the White Paper on Sport toned down the IESR's initial proposals. Yet, it is also true that UEFA has obtained at least some political victories on important issues for the organisation such as the rules on locally-trained players. Whilst the legal route ensures direct effect, the political road to the EU agenda provides fewer guarantees of success in policy terms. This is so especially because of the multilevel nature of EU policy making. The EU's institutional framework presents several access points, hence making it more difficult for any single actor to control the agenda and to influence policy outcomes. The case of football reinforces the idea that it is easier for non-institutional actors to influence wider problem definitions than to secure concrete policy outcomes. Princen and Rhinard (2006: 1120-1123) pointed out that the evolution of issues on the EU agenda is difficult to control because it is subject to many changes of institutions in the policy process. In agenda-setting terms, it seems easier to influence the systemic agenda, but it is far more difficult to manipulate the choice of policy alternatives on the institutional agenda.

In the short-term perspective of agenda setting, it is not only actors that influence issue recognition and issue framing. Focusing events might also play a very important role in attracting the attention of decision-makers (Kingdon 1995: 94-95). In this thesis that is especially exemplified in chapter 6. EU sports ministers were faced with match-fixing scandals in football when some of them decided to launch the IESR. The Belet report also refers to these practices to justify the need for action. Some of these crises have

therefore acted as focusing events, such as the match-fixing scandal in Italy (BBC Sport 2006; Hooper 2006a) or the imprisonment of German referee Robert Hoyzer (Harding 2005). Logically, the more visible a focusing event is, the more possibilities it has to attract the attention of decision-makers. This, again, raises the question of how actors might manipulate focusing events for their own benefit. Chapter 6 certainly suggested that actors can reinforce the impact of focusing events on the agenda. UEFA's strategy amplified the effects of the corruption scandals on the agenda, hence facilitating EU sports ministers' reaction in the form of the IESR. UEFA was effective not only because it was able to exploit the scandals at the right time. UEFA was also effective because it invested resources in 'softening-up' policy-makers over a long period of time.

This thesis demonstrates that the reasons behind the interest of EU institutions are complex. The answers to the first research questions refer to several factors and processes, bringing together long term developments, short term focusing events and, of course, the activities of football stakeholders. Summarising the ongoing discussion, it can be concluded that the EU did not get involved in football issues by its own volition. EU institutions found football on their agenda as a result of the ECJ and the Commission's duties to adjudicate in freedom of movement and competition law issues. Football was brought to the EU agenda by a combination of two factors: the commercialisation of professional football, whose development started to clash with EU law, and the instrumental use of EU policy venues by football stakeholders to challenge the legitimacy of governing bodies. The former seems to have more explanatory powers to account for the early promotion of football to the EU systemic agenda (issue recognition), whereas the latter explains better the expansion to the institutional agenda (issue expansion, issue entrance). The legal challenge of Jean-Marc Bosman was fundamental to raise the visibility of football onto the EU agenda. Through the ECJ Bosman managed to incorporate football into the formal agenda, which compelled other institutions to adopt a position on football matters and dedicate more attention to it. During this promotion to the systemic and formal agenda, football was primarily defined (issue framing) in economic and regulatory terms.

Table 12. Why and how did the EU get involved in football related matters?

<ul style="list-style-type: none">• As result of duties to adjudicate in freedom of movement and competition law• Origin of conflicts: commercialisation of football (long term)• Players and clubs used EU policy venues to challenge federations' legitimacy (short term)• First decisions in the 1970s and 1980s bring football to the systemic agenda: issue recognition• Bosman promotes football to the EU formal agenda: issue expansion and high visibility explains the new impetus of the Commission• Definition: all along, football is mainly defined in economic terms
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What is the policy of the EU towards football?

Once a problem is identified and promoted to the institutional agenda, it is necessary to deal with it. This is why the second research question relates to the policy of EU institutions on football. How did the EU deal with the new issue on the agenda once it got there? This section summarises the answers to this second research question. Chapters 4, 5 and 6 presented individual policy decisions of the EU institutions in three areas of interest. This section takes a wider perspective and tries to find, if possible, a holistic approach to the EU decisions analysed in this thesis. Having regard to all the decisions presented in the preceding chapters, the main conclusion is that the EU policy towards football is result of a compromise, in typical EU style. A compromise between a regulatory vision of football as an economic activity and a more political understanding of the game's specific features that link football to wider socio-cultural values.

Brussels in action: a compromise solution

The result to date of EU intervention in the regulation of football is best interpreted as a compromise. Chapter 4 investigated the intervention of EU institutions in the rules regulating the employment of football players. One of the most important consequences

of the ECJ's intervention in the Bosman case was the definition of terms on which football was introduced onto the EU agenda. It was framed in economic terms, as a market place in need of regulation. However, after the initial post-Bosman reaction, the policy has been re-defined within the EU institutions. The intervention of the football governing bodies, with the assistance of Member States (international transfer system) and the European Parliament (rules on locally-trained players), facilitated a change towards a compromise. The old system of nationality quotas and retain and transfer system has not survived, but it has not been totally dismantled either. In chapter 5, the formulas accepted by the Commission for the selling of broadcasting rights to the UEFA Champions League and the Premier League are far from a total liberalisation. It is also interesting to see the emergence of a pattern for the selling of broadcasting rights to football competitions that the Commission is happy to accept: Joint selling is accepted if the number of live games broadcast is increased and then distributed in several small packages that can be sold separately to different broadcasters. Chapter 6 investigated the emergence of a new issue on the EU football agenda: the governance of the game. It is more difficult to draw general conclusions in this case. The effects of the White Paper, the Belet report and the IESR remain to be seen and the reactions of stakeholders have to be further explored. Yet, it can be safely affirmed that none of these three documents represents a return to perceiving football purely in economic terms. They all reinforce the EU policy of considering some aspects of the specificity of football. The IESR proposed to go further, whilst the Commission White Paper repositioned the policy around the fine compromise that has emerged over the years.

What is football?

The origin of this compromise policy lies in the very own nature of football. Professional football might be reaching historical levels of commercialisation, as explained in chapter 2, but to many it is still a game with multiple socio-cultural values. In chapters 4, 5 and 6 it is possible to identify for analytical purposes two different (almost opposed) ways of understanding football. In agenda-setting terms these would be conceptualised as two definitions of the problem (football) or two different policy alternatives for resolving the problem.

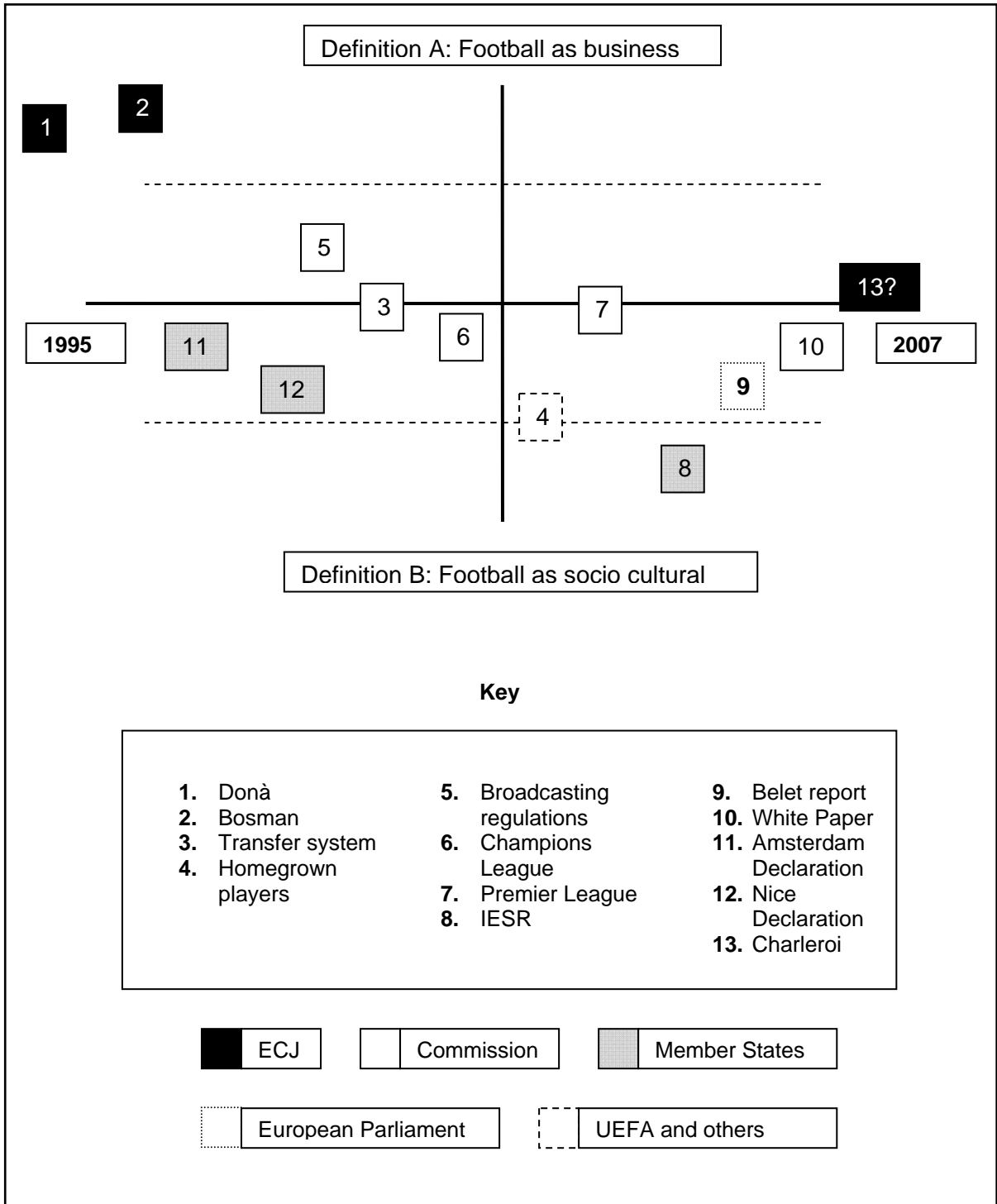
On the one hand, **Definition A** understands football as a market place, as an industry in need of regulation. It defines football as an economic activity that has important effects for competition in different markets. This looks, obviously, to the professional side of football. The economic definition of football was the first one to emerge for EU institutions following the ECJ ruling in *Bosman*. The consequences of this definition of football are wide and affect every aspect raised in this thesis. In terms of policy, football would be then subject to the full application of EU law. In institutional terms for the EU, this definition favours DG Competition or DG Internal Market within the Commission and, more generally, the Commission over the European Parliament because the latter is a more political institution. Finally, for the governing structures of football, the economic definition would favour those that try to maximise economic profits, mainly top professional clubs and leagues. Governing bodies, such as UEFA, are heavily penalised by this definition because their power to formulate policies aimed at solidarity and redistribution would be subject to full EU competition law restrictions. This definition also has consequences for football governance. If football is defined in economic terms, hence suggesting a full application of EU law, then the relationship between the EU and football would be of a regulatory nature.

On the other hand, **Definition B** understands football as a wider phenomenon that extends from the professional to the grass roots. It is a characterisation of football as something beyond economics, a socio-cultural activity with important benefits for society. It is a definition that focuses on the socio cultural elements of football, such as the power of the game to promote integration, links with the community, team work or the training of young athletes. The socio-cultural definition of football emerged as an alternative to the initial focus on economics that followed from the *Bosman* case. The consequences of a socio-cultural definition of football are also wide. In policy terms, this would justify a specific application of EU law, or even an exemption if it is taken to the extreme. It would also justify the inclusion of football as a tool for the implementation of policies such as those dealing with health, education or urban regeneration. This would enable institutions such as the EP or different formations of the Council of Ministers to participate. In the Commission, this definition diminishes the importance of DG Competition. Finally, this definition of football tends to benefit the governing bodies as long as they can prove that they are effectively taking care of the game. Conversely, this definition could be problematic for the professional clubs if

they are perceived to prioritise economic objectives over sporting success. The relationship between football and the EU under this definition can be defined as a partnership. This definition would situate governing bodies in a central position in the governance of football.

These two definitions are ideal types. They can be identified for analytical purposes and they serve as parameters to a continuum. Indeed, the decisions analysed in the three preceding chapters reflect aspects of both definitions. It is possible to situate them somewhere between the two end points on the continuum. Moreover, EU institutions and football organisations have played with elements of both sides to their own advantage. The EU policy on football as a compromise can be characterised as the negotiation between these two alternatives and, therefore, the majority of the policy decisions analysed in the thesis could be situated in a comfort zone that represents the compromise between these two definitions (see Figure 4 below). In Figure 4 that comfort zone is represented by the two dashed lines on either side of the horizontal axis.

Figure 4. The EU policy on football



In this figure, the horizontal axis represents time, showing the chronological evolution of the EU policy with respect to the vertical axis, which represents the continuum between Definition A and Definition B. The two dashed lines mark the compromise

zone where most EU decisions on football have been situated in recent years. The disposition of the decisions suggests a trend that could be describe as an oscillation between Definition A and Definition B, although normally within the compromise zone. This also suggests that, despite some common points, the EU policy on football is relatively unstable and subject to change. But this is a change within limits, for it is safe to affirm that EU policies on football are unlikely to abandon the compromise zone. In the figure, decisions are also divided by institution. If one focuses on each single EU institution, it is clear that there are differences in their predominant definition of football. Whereas the ECJ and the Commission tend to be closer to Definition A, the EP and the Member States are more sensitive to Definition B. In consequence, the intervention of one institution in one direction tends to balance the intervention of other institutions that went in the opposite direction. Chapter 3 explained that multilevel governance in the EU makes for difficult and at times incoherent decision making due to the multiplicity of policy-venues and actors. The case of football, as summarised in Figure 4, is a perfect example of that. The MLG concept also suggests that authority has been transferred from the Member States to other levels. Again, this is reflected in the EU policy on football, for no institution seems to be able to control the development of the policy.

Actor-centred institutionalism

It can be argued that this evolution of EU policy on football fits Richard Parrish's actor-centred institutionalism (Parrish 2003a, 2003b), the only comprehensive attempt to date at explaining and theorising EU sports law and policy from a political science perspective. Whilst Parrish's argument focuses on sport in general, it certainly does include football. Therefore, it is pertinent to explore the values of the model. Parrish argues that in order to understand EU policy-making in the area of sport it is necessary to depart from macro theories to descend to the sub-system level of policy-making (Parrish 2003a: 28-36 and 56-60). He argues that approaches based on governance and day-to-day policy-making are more useful (Parrish 2003a: 36). Parrish uses the Advocacy Coalition Framework (Sabatier 1998) to formulate his 'actor centred institutionalism'. In a nutshell, Parrish explains the evolution of EU sports policy as the result of negotiations between two rival advocacy coalitions within the 'sports policy subsystem' (Parrish 2003a: 64). On the one hand, there is a coalition advocating a

regulatory approach to sport as an economic activity: the single-market coalition (Parrish 2003a: 65-68). On the other hand, there is a rival coalition advocating a more conciliatory line, focusing on the socio-cultural elements of sport: the socio-cultural coalition (Parrish 2003a: 68-71). According to actor centred institutionalism, policy output is a function of the negotiations between advocacy coalitions and the institutional resources in which they can draw:

Belief systems will determine the direction in which an advocacy coalition will seek to move a governmental programme, its ability to do so will be critically dependent upon its resources. Institutions and institutional venues are one such critical resource. Institutions constrain and empower actors operating within subsystems (Parrish 2003a: 72).

Therefore, Parrish identifies the actors composing each one of the two coalitions, their core and secondary beliefs (Parrish 2003a: 66-67) and the institutional resources at their disposal (Parrish 2003a: 72-76). DG Competition and the ECJ are firmly situated within the single-market coalition, whereas sports organisations, the EP and Member State governments are part of the socio-cultural coalition (Parrish 2003a: 66-67). Parrish also recognises the complexity involved in trying to assess the composition of the coalitions in the case of sport, especially because of the heterogeneity of the so-called socio-cultural coalition (Parrish 2003a: 68). Finally, in the application of the model to EU sports policy, Parrish argues that the current *status quo* is a compromise between both coalitions (Parrish 2003a: 160-200). The initial regulatory impetus of the ECJ and DG Competition has been counteracted by the initiatives of the socio-cultural coalition. Unhappy with the initial stages of EU Sports Policy, the actors of the socio-cultural coalition went ‘venue shopping’ to find new policy arenas such as the EP and the national governments where their arguments got a more sympathetic hearing. The institutional resources of the national governments sitting in the European Council facilitated a change towards a compromise, but not a complete overhaul of the single-market coalition’s position because the latter still has the power conferred by the Union’s legal framework.

Undoubtedly, this is a compelling analysis where the dynamics described in this thesis do fit. Parrish’s argument is both plausible and explanatory. Indeed, this thesis acknowledges the existence of two contrasting definitions of football in the

development of the EU intervention in this area. In this respect, this research reinforces Parrish's findings. It is clear that the EU is faced with two different definitions of football. It is also recognised that the policy emerging is a compromise between the two extremes, although probably closer at the moment to the socio cultural end of the scale. Furthermore, the merits of actor-centred institutionalism are also acknowledged. However, the idea of two different policy alternatives can be framed in different terms to try to complement Parrish's analysis. An agenda-setting focus should not be understood as opposed to Parrish's model, but rather as complementary.

First, it is submitted that Parrish's analysis focuses more on the development of sports policy, rather than on its origins. Actor centred institutionalism does not focus on the reasons why and how football became an issue of attention for the EU. Hence it overlooks the impact that the rise onto the agenda may have on the final policy output. Agenda-setting provides a more robust link between policy initiation and policy output. Moreover, agenda-setting, through the concept of visibility provides a way of accounting for the different degrees of activism by the Commission before and after *Bosman*.

Second, agenda-setting allows for more flexibility in the analysis of actors' behaviour because it considers each one individually. It is debatable whether the 'socio cultural coalition' within the sports policy subsystem recognised by Parrish (Parrish 2003a: 68-75) is actually a coalition, even if it is considered a 'coalition of convenience' (Parrish 2003a: 69). The case of football is especially tricky for the justification of a coalition. In many of the cases reviewed in this thesis, and certainly in the three discussed in chapter 5, football organisations opted to free ride and go venue-shopping alone. The FAPL, for example, lobbied the British government directly to ensure political support in the negotiations with the Commission. On other occasions, though, football has joined with the wider sporting movement, presenting a unified front with other sports organisations, such as the IOC. That was especially the case with the Amsterdam and Nice declarations and the White Paper on Sport. However, the evidence presented here suggests that football organisations have been more effective when dealing on their own with their particular cases (e.g. transfer system, UCL television rights, Premier League rights) than when acting in coalition with others.

Finally, actor centred institutionalism does not explore the dynamics of venue change, despite focusing on the importance of institutional resources. This is an important caveat, especially given the multi-institutional nature of EU policy-making. Agenda-setting links the actions of actors to policy definitions and the change of policy arenas to policy redefinitions.

Finding the middle ground: venue change and policy re-definition

Agenda-setting explains the evolution of EU policy on football with reference to the change of policy venues and the re-definition of the issue. Before *Bosman*, football was only slowly recognised on the systemic agenda, and it was thus not clearly defined. Of course, it was the case of Jean-Marc Bosman which finally brought football onto the institutional agenda. It was argued in chapter 3 that the definition of a problem when it is incorporated into the agenda has an impact on the subsequent policy decisions. The case of football certainly reinforces this assumption. The Bosman ruling defined football strongly in economic terms. Therefore, Definition A provisionally prevailed, especially for the Commission and its DG for Competition Policy. Once the Commission found a new incentive to investigate football's governing bodies after the Bosman ruling, it was the turn of the Member States governments to get interested in football. The Amsterdam and Nice Declarations on Sport (European Council 1997, 2000) were the context in which Tony Blair and Gerhard Schroeder suggested that the Commission be receptive to the governing bodies' arguments about a change of policy towards the socio-cultural definition of football (Prime Minister's Office 2001e, 2000b). It is not necessary to see the interventions of the governments as a bitter turf war with the Commission. Should the European Council have wanted to send a stronger signal to the ECJ or the Commission, it could have modified the treaties instead of adopting non-binding political declarations. It is more sensible to see in these exchanges the checks and balances of policy-making in the EU. Indeed, one might even be reassured to see that the Commission can be brought to account by those who are directly elected by the citizens.

An agenda-setting perspective draws our attention to the importance of institutional arrangements in European policy-making. Issues are more likely to be promoted onto the formal agenda (issue expansion and issue entrance) when there is a suitable

institutional framework available for the proposed definition of the problem. Moreover, changes in policy definition tend to go hand in hand with changes of the policy arena (Princen 2007; Baumgartner and Jones 1993). Football governing bodies, especially UEFA, could not avoid football getting onto the EU institutional agenda, but they have worked since to change the way that it is dealt with on that agenda. UEFA presented decision-makers with a different policy alternative, based on another definition of the football problem, the one summarised in definition B. Unhappy with the policy on football shaped by the ECJ and the Commission after the *Bosman* case, UEFA sought a change of venue. It identified national governments (heads of governments and sports ministers) and the European Parliament as its targets. This is a logical decision, because UEFA was trying to change the nature of the Commission's regulatory effort into a more political debate. National leaders and MEPs are more sensitive to this kind of argument. UEFA's proposed definition of football is more political. Building on the agenda-setting concepts outlined in chapter 3, issues are more likely to be accepted onto the formal agenda when they are perceived to involve a wide number of actors and when there is a suitable policy venue for the proposed definition. It is therefore logical that UEFA's argument, focused on definition B, had more possibilities to rise high on the agenda of the Member States and the EP, two institutions that are more political in nature and that, moreover, have closer links to local constituencies. UEFA involved national FAs, hence expanding the circle of actors interested in the issue. UEFA also relied on the intervention of FIFA and other sports organisations, such as the IOC. There was a wide circle of actors involved. Then, UEFA counted with an institutional framework suited to the definition proposed.

The evolution of football on the EU agenda from Definition A to Definition B can also be seen as an example of the two agenda-setting routes in the EU: the high politics and low politics routes (Princen and Rhinard 2006: 1120-1123). The initial entrance of football onto the EU agenda through the ECJ and the Commission can be conceptualised as via the low politics route. Princen and Rhinard do not contemplate the ECJ in their study of EU agenda setting, though. The low politics route is normally initiated by the working groups of the Council or the Commission (Princen and Rhinard 2006: 1120). The ECJ is another entrance point to the EU agenda that can affect both the low and high politics routes. Football kept a relatively low politics profile after *Donà*, whereas it began to enter the area of high politics with *Bosman*. Yet, before the

issue really reached the high politics level, it was still at the Commission level when it reinforced the economic definition of football in the immediate aftermath of the *Bosman* ruling. Therefore, it can be said that football reached the EU systemic agenda through the low politics route with an economic definition. Following that, the intervention of Member States governments transformed football into a high politics issue. It was explained in chapter 3 that both routes can unfold at the same time (Princen and Rhinard 2006: 1122). One of the risks of the low politics route is that issues might be blocked or redefined when they are promoted to higher levels in the decision-making institutions (Princen and Rhinard 2006: 1121). In the case of football, the use of the high politics route was also encouraged by UEFA, FIFA and the national FAs. Thus, the redefinition of football on the institutional agenda gathered impetus via the high politics route.

This thesis suggests that the policy of the EU on football issues is multi-faceted and subject to change. This is mainly because EU institutions do not share a common definition of what football is. Summarising the ongoing discussion, the second research question can be answered by arguing that the policies and decisions of EU institutions in football matters are the result of a compromise between two definitions of football: a first definition that considers football as an industry in need of regulation because of the impact of football commercial activities on the single market, and a second definition that considers football's specific features, namely the sporting, social and cultural values of football that ought to be preserved despite the commercialisation of the professional tiers of the game. The EU institutions have recently demonstrated a more holistic approach to football that is closer to the second definition. The arguments of football's specificity are now being considered on a regular basis. EU institutions now prefer to supervise football's self-government, rather than attempt to regulate it directly. This is an evolution from the initial regulatory impetus that followed *Bosman*. However, the equilibrium of this compromise might be reversed in the future because the multilevel governance of both football and the EU could yet create new conflicts.

Table 13. What is the policy of the EU towards football?

<ul style="list-style-type: none">• Policy compromise as result of two definitions of football: business and socio-cultural values of football (specificity)• Initial policy focused on regulating football as a business following <i>Donà</i> and <i>Bosman</i>• Change of policy definition with the intervention of Member States at the request of UEFA, FIFA and national FAs• EU institutions have different visions of football. Multilevel governance provokes unstable equilibrium in football policy• Football's multilevel governance might also create future conflicts if stakeholders use EU venues to resolve their conflicts again• The current debate on football governance is more political than legal. Overall, EU policies on football are now closer to the social definition of the game
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What role have EU institutions and football stakeholders played in shaping the EU policy towards football?

The first two research questions examine the origin and development of the EU policies and decisions on football matters. Necessarily, in answering these two questions the role of institutional and non-institutional actors has been considered. Decisions are not taken in a vacuum and, therefore, it is difficult to separate the actions of actors from the content of policy decisions. The third research question considered in this thesis relates to the influence of EU institutions and football stakeholders in shaping EU policy towards football. As some of this has already explained above, it is reasonable to expect some overlap with the material that relates to the third research question. Below we summarise the role of the different actors that have participated in the events described in the thesis. It will distinguish between EU institutions and football organisations.

EU institutions

The EU institutions did not get involved in football matters of their own volition. The EU found itself involved with football as a result of the internal conflicts within the

multilevel governance of football. The ECJ was the first institution to deal with football issues and, as such, it was very important in issue framing during the rise of football onto the EU systemic and formal agendas. The most recent developments explored in chapter 6 suggest that football is now a consolidated issue across every EU institution. The IESR, the Belet report and the Commission White Paper all suggest an informal policy-making structure where all the EU institutions are now involved in the formulation of policy initiatives towards football. The ECJ and the Commission (especially DG Competition) monopolised the early stages of the EU policies on football, whereas the Member States, the European Parliament and DG Education and Culture have enjoyed a more significant role as the issue has been redefined. Each institution's role is briefly summarised now.

The ECJ

The European Court of Justice was the first institution to deal with football issues in the EU. The ECJ, however, cannot actively pursue policies because it is constrained to rule on the cases that it receives. That does not mean that the ECJ decisions have no impact on EU policies. Quite the contrary, the case of football is a good example of the impact that ECJ rulings might have on EU agenda-setting and on the EU policy-process. The ECJ is an effective institutional venue to introduce new issues onto the EU agenda, but actors that try to exploit this avenue are restricted in their control of the issue. The ECJ is mainly a formal and legal venue, less accessible for political and informal contacts. Thus, the role of the ECJ in the rise of football onto the EU agenda can be summarised under three headings: firstly, the ECJ introduced football onto the EU systemic agenda as a result of the ECJ being instrumentalised as an alternative policy venue by football stakeholders that challenged the rules of the governing bodies. Secondly, the ECJ also contributed to football getting on the institutional or formal agenda because the Bosman ruling enhanced the visibility of football as a problem for EU institutions. Thirdly, the ECJ framed football in economic and regulatory terms during the first stages of agenda-setting.

The European Commission

The Commission has been central to the development of the EU interest in football matters. Except for the very early stages of issue recognition, the Commission has been

present at every phase of the evolution of the EU's involvement in football. The Commission only realised the importance of football after *Donà*. But even then, it was only following the Van Raay report from the European Parliament and the ECJ Bosman ruling that the Commission adopted a more proactive approach towards football issues. Probably the most interesting feature of the Commission's interventions is the institution's own evolution. Before *Bosman*, the Commission was conciliatory and reactive. In the immediate aftermath of *Bosman*, the Commission was resolute and proactive, with a vision of football defined in regulatory terms. The Commission approach to football issues has subsequently evolved towards a more holistic view where the arguments about football's specific nature are taken into account. It is not only that the Commission has modified its initial positions, but also that it is possible to identify different views about football within the institution. The Commission is a collegiate body, where decisions are taken normally by consensus because they bind the whole institution. The Commission is supposed to have, as an institution, one single official vision of issues. The case of football, however, brings to the fore the internal divergences among DGs within the Commission and their relative internal power.

The Commission policy on football demonstrates the fragmentation of the institution, as well as the relative power of every DG. The focus on the economic aspects of football in the aftermath of *Bosman* reflects the fact that it was DG Competition who had to deal with the dossiers on the table. The evolution towards a more nuanced policy, taking into account the socio-cultural aspects of the game is partly due to the intervention of DG Education and Culture. It is in the sports unit, located within DG Education, where the socio-cultural definition of football finds a sympathetic reception. Indeed, as Parrish points out (Parrish 2003a), the sports unit has acted as a broker between the two definitions of sport, trying to disseminate through the rest of the services a wider vision of sport that goes beyond the economics of the professional game. Despite having reached a compromise where the Commission can say, at least, that it takes into account the specific characteristics of football (see for example European Commission 2003a), the tensions between DGs are unlikely to disappear, as the White Paper on Sport demonstrates. The Commission is a collegial body, not without difficulties, but probably it is fair to say that on some occasions it is more collegial than on others. Issues affecting the Single European Market, hence involving DG Competition or DG Internal Market, are likely to be subject to the power of these two departments within

the Commission. The case of football reinforces the idea that the Commission is probably a more fragmented institution than it is supposed to be. Conversely, it does also demonstrate that the institution has procedures to deal with that fragmentation in order to reach solutions.

Member States

Governments of the EU Member States have had a decisive influence on the redefinition of football policy in the EU. The governments of the Member States only intervened when football reached the EU institutional agenda, but their involvement has been paramount. The role of the Member States has been three fold. Firstly, the political leaders intervened at the highest level of the European Council over the Amsterdam and Nice Declarations on Sport. Although these two declarations are not within the scope of this thesis, they deserve mentioning because they provided the context for a different definition of football that could take into account the social features of the game. Secondly, some political leaders, such as Tony Blair, Gerhard Schroeder and Gordon Brown have supported football organisations in their particular negotiations with the Commission. Thirdly, EU sports ministers have been an important point of contact for UEFA and FIFA. As a whole, Member States have provided an alternative policy venue for UEFA, FIFA and the national FAs in their efforts to redress the initial interventions of the ECJ and the Commission. However, it is necessary to note that the Member States' support has not been unconditional. Firstly, national governments have not accepted all the positions of the football governing bodies. This is especially clear with the Member States' reluctance to grant any special status to football in the application of EU law. Secondly, football bodies have been required to give something in exchange. UEFA, for example, is transforming its decision-making structures to put them in line with good governance standards, as explained below. The Premier League, probably in a clearer example, has increased its commitment to grassroots football through the Football Foundation.

The European Parliament

The European Parliament has normally focused on sport in general, rather than on football in particular. However, it has also intervened in football matters. The EP has had two distinct influences on the evolution of the football issue in the EU. In the late

1980s and early 1990s, the EP was extremely critical of footballers' employment conditions. The report of the Dutch MEP Jansen van Raay urged the Commission to start legal actions against UEFA and the national FAs. The EP in this respect reinforced the then established definition of football on the EU agenda. It is also possible that the EP resolution contributed to the Commission's relative activism in the early 1990s, which culminated in the 3+2 agreement. This can be conceptualised as the EP contributing to issue expansion. The Commission felt compelled to be more active when it perceived that other actors were showing concern about the rules regulating footballers' employment. Besides these activities in the early stages of football on the EU agenda, the EP is now more clearly identified as a political ally for UEFA. The EP has contributed to the redefinition of football by providing a more political policy venue where UEFA has been able to get its messages across. The EP has had less influence on the promotion of football to the systemic and institutional agendas and it has been less important with regard to issue recognition and issue entrance. However, it has played a part in the re-definition of the football issue. The EP has been important in issue expansion and issue framing, therefore. The EP now has a vision of football closer to Definition B, as reflected in the Belet report.

Football stakeholders

The intervention of the EU in football issues cannot be understood without reference to non-institutional actors. Football stakeholders were the driving force behind the promotion of football onto the EU agenda and currently they are regular interlocutors of EU institutions in the formulation of policies towards football. Among all the football organisations, UEFA has emerged as the most reliable and influential partner for EU institutions.

UEFA and FIFA

FIFA and UEFA have been forced to recognise the supervisory role of the EU in the governance of football, especially in the application of EU law to the commercial activities of the governing bodies. UEFA and FIFA were initially the passive objects of the EU interventions on football issues. FIFA and UEFA have been traditionally very reluctant to accept any outside regulation on football matters, but their response to this has been completely different. On the one hand, FIFA has resisted the intrusions of EU

institutions in the governance of football. FIFA has conceded the minimum to the EU. FIFA's reaction has been belligerent towards the legal regulation of the ECJ and the Commission. FIFA does not seem to accept the primacy of EU law. The end result is that FIFA, despite its position as world football's governing body, cannot be considered a regular participant in the day to day formulation of EU policies on football. On the other hand, UEFA has been more receptive and pragmatic. UEFA understood that it is futile to confront EU institutions because they have the legal and institutional framework on their side. UEFA recognises and accepts the primacy of EU law. Hence, UEFA has adapted to the new environment. Both UEFA and FIFA were instrumental in encouraging Member States, the EP and DG Education and Culture to redefine football as an issue on the EU agenda. Indeed, their resort to venue shopping and venue change introduced the high politics route. As a result, football began to be considered in different terms to the economic definition. FIFA and UEFA had no role in bringing football onto the EU systemic and institutional agendas, they had to react once the issue was promoted. However, they have been important players ever since (especially UEFA). UEFA contributed to the change of definition of the football issue and to raising the importance of additional problems, such as football governance. UEFA has demonstrated that it is more at ease in political arenas, such as with the EP or the Member States, whereas it finds it more difficult to articulate its discourse in legal terms. UEFA's engagement with EU institutions has had a twofold consequence. Firstly, UEFA's image within EU institutions has improved notably. Secondly, UEFA has been able to retain its central position in football governance, as is explained below.

Players

Professional footballers are directly responsible for bringing football onto the EU agenda. Jean-Marc Bosman's challenge to UEFA and FIFA regulations on international transfers and nationality quotas was the culmination of a long struggle between footballers and governing bodies. Jean-Marc Bosman, however, was not alone in his challenge. He counted on the support of FIFPro and also on the personal agenda of Luc Misson and Jean Louis Dupont. Ultimately, the players resorted to legal actions because FIFA and UEFA were unable (or unwilling) to accommodate their demands. This is extremely clear when one compares the Bosman resolution with the very recent agreement in the Charleroi case. In the latter, clubs withdrew their case before the ECJ

because the federations finally conceded to their demands. Players have been the main drivers as far as the promotion of football to the EU systemic agenda is concerned. FIFPro also had a role to play in the negotiations on the reform of the FIFA transfer system, but the players lost ground once the issue got politicised with the interventions of the Member State governments. However, as a result of all these actions, players have won a significant place in football governance, being incorporated into FIFA and UEFA consultative bodies. This is further explained below.

Clubs and leagues

The role of professional football clubs and leagues in the evolution of the EU policies on football is perhaps more diffuse than that of UEFA or FIFPro. Paradoxically, the *Donà* case originated in Italy at club level. So it can be argued that the first introduction of football onto the EU systemic agenda was the responsibility of a club. However, the consequences of *Donà* were relatively low key. The influence of clubs and leagues has been mainly limited to two areas: football broadcasting and football governance. The activities of clubs and leagues in the television market was one of the motives behind DG Competition's interest in the application of competition policy to football. The commercialisation of big clubs such as Manchester United or Real Madrid tends to play into the hands of those advocating that football be regulated through the application of EU law. In respect of football governance, clubs and leagues have been very critical of initiatives such as the IESR that recommended empowering the governing bodies. Clubs and leagues have played here a crucial role in balancing the arguments of those that were bringing the EU policy on football closer to Definition B.

This thesis has found that non-institutional actors must be considered, at least, as important as EU institutions in the promotion of football onto the EU agenda. Professional players were instrumental in bringing football to the EU institutional agenda through Jean Marc Bosman's challenge before the ECJ. At that moment, players' representatives such as FIFPro favoured a definition of football in economic terms, closer to Definition A. The role of clubs and leagues has been more important once football was on the institutional agenda. Clubs have acted mainly as a counterweight against those favouring a redefinition of football closer to Definition B. Finally, FIFA, UEFA and the national football associations were passive witnesses of

the initial promotion of football to the EU agenda. They all have been important players in the redefinition of football policy towards a compromise that takes into account the specificities of football. UEFA has been, by far, the football organisation that has clashed most often with the EU. However, UEFA has managed to adapt to the new reality and it is now a natural partner for the EU on football matters. In the EU, the ECJ had a high impact on issue recognition, hence setting the systemic and institutional agendas. The European Commission initially reinforced the ECJ's agenda-setting powers by pursuing the framing of football in economic terms. Member States made it possible for football to enter the high politics route of EU agenda-setting. Member States have participated through the interventions of heads of state and through the initiatives of sports ministers. Finally, the European Parliament has also contributed to the redefinition of the EU policy on football by offering an alternative policy venue to the Commission.

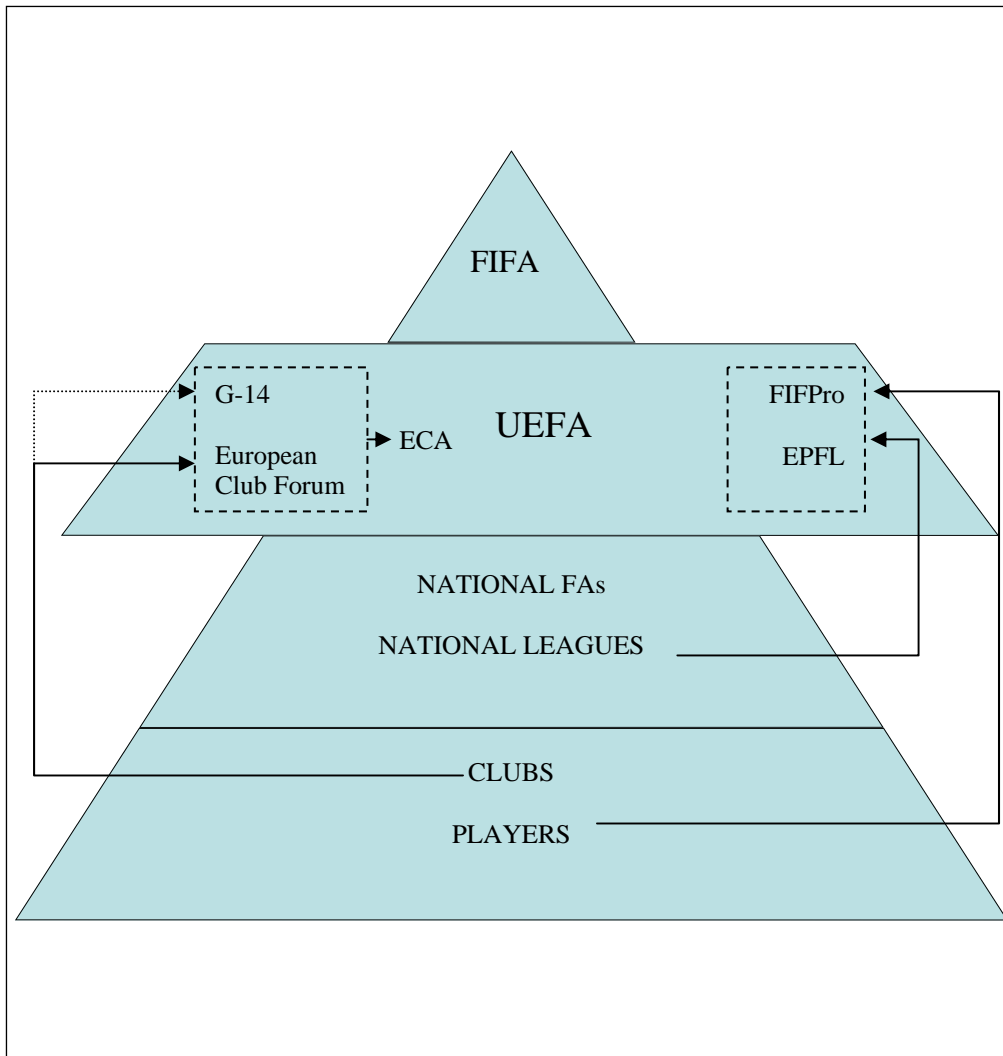
Table 14. What role have EU institutions and football stakeholders played in shaping the EU policy towards football?

- Non institutional actors as important as EU institutions
- ECJ responsible for promoting football to systemic and institutional agenda (issue recognition)
- Commission reinforced initially EU policy on the economics of football
- Member States and the EP used as alternative policy venues to propitiate policy redefinition (issue expansion and issue framing)
- Legal challenge of players before the ECJ is responsible for bringing football to the EU institutional agenda
- UEFA, FIFA and national FAs were passive witnesses of the promotion of football to the EU agenda
- UEFA has been fundamental in promoting redefinition of football in the EU. It is now a reliable partner for EU institutions
- FIFA has been more belligerent towards the EU. It does not recognise the primacy of EU law

What has been the impact of EU policies and decisions on the governance structures of football?

The fourth research question of this thesis investigates the consequences of EU involvement in football for the governing structures of football. Some of the consequences of EU policies for football governance have already been suggested through the thesis. This section focuses systematically on the most important factors. There is general agreement amongst those interviewed for this thesis that the main consequence of the intervention of the EU has been to facilitate the transformation of football's pyramidal structure. This does not mean that the EU has directly transformed the pyramid, but from the evidence presented in the last three chapters it can be concluded that the EU has at least made a significant contribution to that transformation. As Holt correctly points out (2006: 19-37; 2007: 52-53), football governance in Europe is now a more crowded environment, because the legitimacy of the governing bodies is contested especially by the richest clubs and leagues. The vertical channels of authority in the pyramid of football that were identified in chapter 2 have been severely undermined. They are being replaced by an horizontal axis of stakeholder networks (Holt 2006; García 2007a), more in line with modern definitions of governance (see for example Rhodes 1997, 1996). The EU provided stakeholders with alternative policy venues to challenge the governing body's decisions. As a result, representatives of the players, leagues and clubs do not have to rely on their respective national FAs to enter into dialogue with UEFA and FIFA. The supranational level of European football governance is now more crowded with the incorporation of clubs, leagues and players (see Figure 5). The EU and European football appear in that as two parallel multilevel systems of governance that have been used as alternative policy venues by a variety of stakeholders. It is within this complex framework of levels and agendas that the EU has developed its policies on football. It is also in this framework of overlapping agendas and levels that the governance of football has evolved.

Figure 5. The transformation of the football pyramid



Thus, the intervention of the EU has facilitated the diffusion of power across football’s governance system. Although it may look contradictory, it can also be argued that the EU has provided UEFA with an opportunity to regain its lost legitimacy as far as football governance is concerned. To do that, however, UEFA has had to evolve and adapt. These two consequences are two sides of the same coin. For analytical purposes it is better to study each one in turn.

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 organisation. For a long time, national FAs,

UEFA and FIFA regulated football without much opposition. Professional football players were the first to contest the *status quo*, because they were relegated to the bottom of the pyramid by a firm alliance of clubs and governing bodies. Representatives of the players now participate actively in the structures of the federations and FIFPro is recognised by UEFA and FIFA as a valid interlocutor. The emergence of FIFPro is one of the first transformations of the football pyramid facilitated by the EU.

Players break free

The representatives of professional footballers used the ECJ and the Commission as a platform to attack the regulations of the governing bodies. However, as powerful as these actions were, it is again necessary to remember that they did not appear in a vacuum. Footballers at national level had been fighting for their rights for a long time. The situation of the players in the football pyramid was difficult to sustain with the ongoing commercialisation of the game. A fact that is recognised within UEFA:

Bosman has had the bigger impact in football. It is the [EU decision] with major consequences [for football] for the moment. As some people put it, Bosman is the mother of all interventions [of the EU in football]. Although 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 agree now that this was not fair and, more importantly, not applicable nowadays (Interview 38).

The EU provided a platform that facilitated the overhaul of the players' market and the emergence of footballers and their representatives in the governing structures of the game. The importance of the EU in the transformation of the players' market is probably better understood in terms of scope rather than agency. In other words, it is plausible to say that the situation of professional footballers was already changing. The difference introduced by the use of the ECJ was the supranational nature of the EU. The actions of players at national level had effect only within their respective country. FIFA and UEFA remained untouched by the legal challenges in English courts or the strikes in Spain. Only the supranational nature of the ECJ and the Commission could limit the power of the pan European governing bodies. As a result of their successful challenge, players unions have now won a place in the governance structures of football. FIFPro has been recognised by both UEFA and FIFA as legitimate representative of the players

(UEFA 2007g; FIFPro 2007c, 2001a). FIFPro participates in UEFA's consultative bodies. FIFPro is represented now on the Professional Football Strategy Council (UEFA 2007j: Article 35, 2007f).

The new power of the clubs

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. Clubs realised the economic possibilities of professional football with the intervention of the media networks. Logically, clubs wanted a share of the profits generated by football competitions, possibly even to organise the competition themselves outside the framework of the governing bodies. The impact of the EU on the relationship between clubs and governing bodies was indirect because EU institutions (especially the Commission) were interested in the regulation of the European audiovisual market, not in interfering in the power relations between the clubs and the football federations. However, even if the impact has to be conceptualised as indirect, the choices of the Commission in the decisions presented in chapter 5 had important consequences for the relations between clubs and governing bodies.

The structure of the selling arrangements for football broadcasting rights has very important implications for the governance of the game. Traditionally, governing bodies used to market the rights for the whole competition. However, as explained in chapter 5, clubs contested the power of governing bodies. 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 preferred to break away partially from the traditional structures in order to manage the competition and negotiate the television contracts on their own (English Premier League). At the European level, UEFA tried to adapt to the demands of the clubs in order to preserve the unity of European football. The decisions of the Commission could have changed the relations of power in football. If clubs are 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. Has this potential being fulfilled? Certainly, the Commission made it possible for clubs to break away from the governing bodies. However, DG Competition has demonstrated that it can also accommodate central marketing, subject to certain conditions, hence throwing a lifeline back to the governing bodies.

The emergence of the clubs within the governing structures of football has been institutionalised at European level through three different bodies/organisations. The group of 18 of the richest professional football clubs in Europe joined forces in 2000 creating the G-14, an economic interest group whose origin and development was examined in chapter 2. 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. UEFA argued that the ECF was the real representative of football clubs in Europe, because its membership was wider than the G-14's. 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 2007j: Article 35). All these conflicts are 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 2008c), as explained in chapter 6. 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 2008a, 2008c) and it will be the representative of professional football clubs in their dealings with UEFA, FIFA and public authorities.

Finally clubs can also be represented through their leagues, which at the European level have joined forces to create the EPFL. However, the EPFL represents the leagues, not the particular interests of the clubs. This is an indirect mechanism of representation for clubs. The EPFL has won recognition from UEFA. The governing body and the EPFL have signed a memorandum of understanding (EPFL-UEFA 2005) and the EPFL also participates in the Professional Football Strategy Council (UEFA 2007j: Article 35).

The latest decision of UEFA to give a voice to the stakeholders in the professional games reflects the increasing importance of clubs, leagues and players, hence the transformation of the pyramid. Following the publication of the IESR, 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 2007f: 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 2007f: 1). With the arrival of Michel Platini as the new President of UEFA in 2007 the Strategy Forum has gained importance within UEFA'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 2007h). 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 2007j: 35). The creation of the Professional Football Strategy Council reinforces the argument that football governance has been transformed and a horizontal dimension of stakeholder networks is appearing. The consequence of this new dimension in football governance, as explained in chapter 6, 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. However, the EU is also presenting opportunities to UEFA to regain some of its legitimacy in the transformed horizontal governance of football.

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 has been clever enough to recognise the importance of the EU. UEFA realised that it could be able to 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. This thesis does not affirm that UEFA has unconditionally embraced the EU or the European ideals. On the contrary, it has demonstrated that EU law obliged UEFA to change its strategy towards the EU. This is very clearly admitted by UEFA officials: 'We had no other option' (Interview 29). 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; even going so far as to organise a football match to celebrate the 50th anniversary of the Treaty of Rome (European Commission 2007f). 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 2007i). While, these are just small initiatives, they show a willingness on the part of UEFA to engage with EU institutions in different areas. Chapter 6 shows that UEFA seems to be managing for the moment to present itself as a reliable partner to political authorities such as the EU, and as an organisation that wants to preserve, somehow, the soul of the game from the excesses of commercialisation (Caborn 2006; Arnaut 2006).

However, in order to win the trust of the EU, UEFA has had to pay a price. UEFA has been forced to change internally, both in terms of structure and in terms of strategy and philosophy. Once football reached the EU agenda, UEFA had to reformulate its strategy towards the EU:

I think that we recognised a necessity to change our communication with the EU. We abandoned our reactive stance. We became much more proactive and engaged in dialogue with different institutions. We talk now about ideas, strategies... Not only about facts. We want to inform the Commission and the Parliament well before we plan to take any decision in the Executive Committee. A good example of this is the adoption of the rules on locally-trained players (...) We see the EU now as an ally that can help us achieve our policy objectives to maintain football in good health (Interview 30).

In 2000, an internal audit carried out by UEFA overhauled the internal structure of the organisation to make it more efficient and transparent (UEFA 2000b). 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. The work of the Brussels office has been instrumental in building bridges between both sides:

My feeling is that the work of the UEFA representative office in Brussels is extremely good and efficient because it seems that the people working here in Brussels are also being able to change attitudes within the organisation back in Switzerland. I think the office in Brussels is managing to improve the understanding of the EU inside UEFA and, vice versa, our own understanding of football and the activities of UEFA. You can see all that when representatives of UEFA come to Brussels for meetings or speeches. I really think that there has been a positive evolution in their discourse and their attitudes. This is why we have been able to reconcile our positions through the years, and the work of their office here has been very important (Interview 13).

Although there are still areas of criticism, it is fair to say that UEFA enjoys a positive image in general within the EU institutions. The structural changes have been accompanied by a re-definition of policies and policy preferences. UEFA's strategic vision for the organisation and the game as a whole was set up in *Vision Europe* (UEFA 2005b). *Vision Europe* is the first strategic document in UEFA's history, where the organisation explains its goals and priorities for the future. UEFA recognises in *Vision Europe* the necessity for modernisation and a better dialogue with EU institutions (UEFA 2005b: 30-31). UEFA has had to adapt not only to the interventions of the EU, but also to a new environment in a highly globalised market. This thesis has demonstrated that initially UEFA decided to abandon its crusade with the EU simply for pragmatic reasons: 'We had no other option. We had to adapt to a new reality that was imposed and to live with it in the best way possible' (Interview 29). However, the findings of this thesis suggest that UEFA has certainly evolved (see also García 2007b). The counter-argument would be that initiatives such as the rules on locally-trained players are just very good lobbying strategies to regain some of the ground lost after *Bosman*, but not real philosophical changes of the organisation. Yet, in the light of the results of this research, this seems to be a slightly harsh judgement of UEFA. There are certainly still problems of stakeholder representation that UEFA has to resolve (see for example Grant 2007). Moreover, recent developments could cast a doubt over UEFA's willingness to engage with the EU. New UEFA President Michel Platini's diatribe against the 'bureaucrats in Brussels' and his call to exempt football from the application of freedom of movement provisions (Blitz 2007) were reminiscent of old times that should be left behind. The governing body's sceptical reaction (UEFA 2007a) to the

Commission White Paper on Sport might be worrying as well. One could also suspect that behind UEFA's insistence on legal certainty (see particularly UEFA 2007b) there is the old objective of avoiding outside regulation or supervision. Sometimes it seems that UEFA understands supervision as intrusive and a challenge to its autonomy. However, in political systems the fact that a supreme or constitutional court can revise a parliament's decision does not mean that the parliament is not independent.

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 much 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 2007b) could benefit UEFA in the long-term; however, taking this 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.

Table 15. What has been the impact of EU policies on the governance structures of football?

- EU policies have undermined football's traditional vertical channels of authority
- The legitimacy of governing bodies has been contested by clubs, leagues and players
- The interventions of EU institutions favoured the emergence of new stakeholders: FIFPro, EPFL, G-14, ECA
- New horizontal structure of network governance emerging
- UEFA transformation: new strategy towards the EU
- UEFA recognised as partner by EU institutions. It might regain legitimacy in football governance as being central to the emerging networks if it observes principles of good governance
- There is a role for EU law and EU institutions in football governance, this entails a supervised autonomy of football organisations

Summary and possible future avenues for research

To summarise the main findings of this thesis and answer as briefly as possible the research questions, one can say that EU institutions did not get involved in football-matters by their own volition, but as a result of their duty to adjudicate in freedom of movement and competition policy issues. The increasing commercialisation of the game in the last decade, tightly linked to the interest of digital and pay-per-view television operators, put football on the EU's systemic agenda. Football issues, however, were only promoted to the institutional agenda when individual stakeholders within the pyramid of European football instrumentalised the policy venues offered by the EU. The image that is presented by this research is one of European football and the EU as two parallel systems of multilevel governance that coexisted for a while but which were brought abruptly in conflict with one another by football stakeholders using for their own benefit the policy venues offered by the EU system. The policy of EU institutions on football is shaped by a compromise between two different visions of the game. On the one hand, there are those focusing on professional football as a market place in need of liberalisation. On the other hand, there are those who see football as something

beyond economics, who take a holistic and unitary vision of the game, from the grassroots to the professionals, and stresses the socio-cultural aspects of football. The European Commission's DG Competition and the ECJ initially classified football within the first definition. The subsequent interventions of the European Council, the EU sports ministers, the EP and the Commission's DG Education and Culture have facilitated an evolution towards the second vision of football. The interventions of EU institutions have facilitated, either directly or indirectly, the transformation of the governance structures of European football that used to be based on a pyramidal structure with vertical channels of authority. This thesis has mainly focussed on the European level of football governance, where new stakeholders have emerged to represent players, clubs and leagues. The vertical channels of authority have been undermined with recourse to the ECJ and the Commission. UEFA's legitimacy as European football's governing body has been challenged by the G-14, FIFPro and the EPFL among others. As a result, a horizontal axis of stakeholder networks in the governance of European football is now emerging where issues of representation, accountability and legitimacy have replaced the old style of direct vertical regulation. On the other hand, the intervention of the EU has also given UEFA the opportunity to react and regain some of its central position in European football. However, in order to do that UEFA has been forced to transform the structure and the philosophy of the organisation.

This thesis has demonstrated the potential of football as an area of research for students of the EU. It has demonstrated that the interest of the EU in the game cannot be considered sporadic. It is here to stay. At the same time, there are still many unresolved questions that only further research can elucidate. First, there is of course the medium and long term consequences of the decisions presented in this thesis, especially those in chapter 6. The beginning of the social dialogue in the professional football sector, as explained in chapter 6, can be one of the most important points for further research in the near future. But there are other possibilities. This thesis has focused on the European level of governance. However, through the chapters the importance of national actors has emerged on a number of occasions. It would be interesting to investigate the consequences of the EU decisions for football at national level. This is an area of research that is starting to develop (Brand and Niemann 2007), but a more systematic and comparative approach is needed. It is also possible that football, as a case study,

might be special, but there may also be comparable cases. The consequences of EU policies for other professional sports (e.g. basketball, handball, rugby) is thus another potential avenue for further research. This thesis has used agenda-setting concepts to explain the emergence of football in the remit of EU institutions. Agenda-setting has been traditionally applied to national politics, but it has the potential to improve our understanding of the EU political system. With a few exceptions, as explained in chapter 3, agenda-setting has barely been used in EU studies. The explanatory powers of agenda-setting in the case of football and the EU seem to be stronger in the early stages of the process than in the latest developments. This thesis did not intend to create an EU agenda-setting model, but only to make some conceptual/theoretical comments based on agenda-setting. Nevertheless it is argued here that the use of the agenda-setting framework aided the understanding of how football became an area of EU interest.

Football and sport are unlikely to disappear from the EU's agenda in the foreseeable future and so it also seems unlikely that football and sport will cease to be of interest to students of the EU.

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List of interviews

A total of 44 individuals have been interviewed in the process of this research between January 2006 and July 2007. In order to protect the interviewees' right to anonymity, interviews have been quoted in the thesis according to assigned numbers. A full list of interviews with interview numbers, interviewees' names and affiliation, as well as date and place of the interviews has been provided to the examiners of this thesis. Interviewees are listed here by surname's alphabetical order, giving only their name and affiliation to ensure anonymity of the quotations. The order of the list in this page **does not** correspond to the numbers used throughout the thesis.

Name	Surname	Affiliation
Gerhard	Aigner	UEFA (now retired)
José María	Alises	Spanish ministry for sport
Jaime	Andreu	European Commission (DG Education and Culture)
Marc	Balcar	Department for Culture, Media and Sports, UK government
Ivo	Belet	Member of the European Parliament (EPP, BE)
Jacobo	Beltrán	Spanish ministry for sport (until 2004)
Marcel	Benz	UEFA
Roger	Blanpain	FIFPro (now retired)
David	Boyle	Supporters Direct
William	Bush	The Premier League
Richard	Corbett	Member of the European Parliament (PES, UK)
Christophe	De Kepper	IOC
Simon	Drake	UEFA
Ian	Forrester	White & Case lawyers
Mike	Foster	The Premier League
Tilo	Friedmann	EU-Office of German Sports

William	Gaillard	UEFA
Klaus	Hänsch	Member of the European Parliament (PES, DE)
Chris	Heaton Harris	Member of the European Parliament EP (EPP, UK)
Jonathan	Hill	UEFA
Susanne	Hollmann	European Commission (DG Education and Culture)
Philip	Kiepnafel	European Commission (DG Competition)
Dimitris	Kontizas	European Commission (DG Employment and Social Affairs)
Jacob	Kornbeck	European Commission (DG Education and Culture)
Yves	Le Lostecque	European Commission (DG Education and Culture)
Grégory	Lepesqueux	UEFA
Lenita	Lindstrom	European Commission (DG Competition)
Emanuel	Macedo de Medeiros	EPFL
Giorgio	Marchetti	UEFA
Luc	Misson	Jean-Marc Bosman's lawyer and FIFPro advisor
Mathieu	Moreuil	European Commission (DG Employment and Social Affairs)
Paul	Mullen	The English FA
Joseph	Muscat	Member of the European Parliament (PES, MT)
Graham	Noakes	The English FA
Lars-Christer	Olsson	UEFA (until January 2007)
Alex	Phillips	UEFA
Stephen	Powell	Football Supporters' Federation of England and Wales
Phil	Smith	The English FA
Markus	Studer	UEFA
Sjef	Swinkels	Policy advisor to Toine Manders, MEP

Pedro	Velázquez	European Commission (DG Education and Culture)
Angel María	Villar	Spanish FA
Andy	Williamson	The Football League
Judith	Wood	The Central Council of Physical Recreation

List of judicial cases

Walrave and Koch v. Association Union Cycliste Internationale, case C-36/74 [1974] ECR 01405

Donà v. Mantero, (Case C-13/76 [1976] ECR 01333

Jean Marc Bosman v. Union Royale Belge Sociétés de Football Association, case C-415/93 [1995] ECR I-4921

United Kingdom of Great Britain and Northern Ireland v. Commission of the European Communities, case C-106/96 ECR [1998] I-02729

Deutscher Handballbund v. Maros Kolpak, Case C-438/00 [2003] ECR I-4135

Igor Simutenkov v. Ministerio de Educación y Cultura and Real Federación Española de Fútbol (Case C-265/03 ECR [2005] I-2579

David Meca-Medina and Igor Majcen v. Commission of the European Communities Case C-519/04 P, [2006] ECR I-6991

SA Sporting du Pays de Charleroi and G-14 Groupment des clubs de football européens v. Fédération internationale de football association (FIFA), case C-243/06

George Eastham v Newcastle United FC [1963] 3 All ER 139