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European law and the governance sport

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Introduction

If there is an area of European, and even global,¹ sport that has been affected by the application of EU law is that of governance. This has been a rather long, protracted and indirect process, though. One will not find the EU directly regulating sport as it has done in other markets, such as the audio-visual industry or the air travel industry. Certainly, there is not a European directive on the governance of sport; but the commutative effect of EU policies, Court judgments, Commission competition policy decisions and, lastly, the nascent EU sport policy under Article 165 TFEU have contributed to the transformation of European sport governance. So for example *Walrave*,² the first sport-related ruling of the European Courts, was in essence a governance conflict. The case, let us remind, was about two sportspersons that were challenging the rules adopted by the International Cycling Union (UCI). In other words, there was a conflict about the power to regulate access to competitions between the governing body and the athletes. That, in essence, is what governance is about: Having robust, reliable and accountable processes by which an organisation takes decisions. As Tricker excellently put it, “management is about running an organisation, good governance is about ensuring and demonstrating that it is properly run”.³ What the ECJ did in *Walrave*⁴ and two decades after in *Bosman*⁵ was just to ensure that the governing bodies

¹ Borja García and Henk Erik Meier, ‘Global Sport Power Europe? The Efficacy of the European Union in Global Sport Regulation’ (2016) JCMS <<http://dx.doi.org/10.1111/jcms.12512>> accessed 15 January 2017.

² Case C-36/74, *Walrave and Koch v. Association Union Cycliste Internationale*, [1974] ECR 01405

³ Robert I. Tricker, *Corporate Governance, History of Management Thought* (Ashgate: 2000).

⁴ Case C-36/74 (n 2).

respected the basic rights of the athletes and, in doing so, it reminded those federations the need to take into account the rights and opinions of their most fundamental stakeholders. The term governance does not appear much in Court rulings or Commission decisions, though. It is actually much easier to find it in policy documents. In order to understand the reciprocal importance of governance and EU sports law, it is necessary to note a number of key points that are paramount for the correct understanding of this chapter.

First, it is essential to underline that the impact of EU sports law on governance is the aggregated result of the indirect (and to some extent also unforeseen) consequences of a large list of decisions and rulings in single cases. So, for example, *Bosman*⁶ fundamentally transformed the balance of power in the relationship between players, clubs and governing bodies.

Second, it is important to understand that much of the EU decisions in the area of sport governance are as much political as they are legal. Whereas this chapter contributes to a research handbook of law, it will invariably refer to policy and politics as well. Sport governance, at its very core, deals with the distribution of power and authority in sport, and that is a profoundly political reality as much as it may also be a legal debate. Thus, after years of court judgments and other decisions, the Council of the European Union incorporated in 2011 governance as one of the priority areas within the Work Plan for Sport⁷ that gave strategic direction to the nascent EU Sport Policy.

Third, for the sake of clarity and to facilitate analysis, this chapter makes a conscious choice to stay at a general level to explain EU sports law's relevance to shaping European sport

⁵ Case C-415/93, *Jean Marc Bosman v. Union Royale Belge Sociétés de Football Association*, [1995] ECR I-4921.

⁶ *Ibid*

⁷ Council of the European Union, *Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on a European Union Work Plan for Sport for 2011-2014* [2011] OJ C 162/01

governance. Given the tight space constraints, particular references are made at some points in the chapter to individual decisions but the intention is to provide an overview of how EU sports law and regulations have altered, over time, the power relations amongst stakeholders in European sport.

This chapter, therefore, aims to discuss and evaluate the implications of EU sports law for sport governance. It adopts a historical approach, although a major focus on most recent developments is preserved. The chapter is structured around a conceptual definition of governance, which comprise two different (yet complementary) dimensions. The chapter, therefore, proceeds in four steps. First, a definition of what we understand by sports governance is provided. Second, the impact of EU sports law and policies on systemic governance is discussed. In other words, that section deals with the changes in European sport's power structures that have an origin in EU law. Third, recent policy initiatives in the area of good governance principles are discussed. That section focuses on the more normative approach to sport governance adopted by EU institutions. Finally the chapter concludes with a reflection on the role of EU law and policies in the transformation of European sport governance.

Sports governance: What are we talking about?

Roderick Rhodes pointed out that the term governance is perhaps used in too many contexts and with different meanings.⁸ Yet, in the field of sport it is possible to narrow down our understanding of governance to a number of basic dimensions. Henry and Lee, for instance, argue that sport governance can be encapsulated under three headings: systemic governance,

⁸ Roderick Rhodes, *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability* (Open University Press 1997).

political governance and good governance.⁹ The first one refers to the structures that facilitate power and authority relations of stakeholders within the sports system. The latter refers to the normative principles that should define those relationships within the management of sport organisations. Political governance, for these authors, refers to the specific role of the state and public authorities in regulating sport and their relationship with sport non-governmental organisations. It is, however, possible to subsume political governance as one specific element of the wider systemic governance, which would then reduce the conceptual dimensions to just two useful heuristic devices to build our analysis upon.

Thus, this chapter refers to (1) governance as a systemic structure that makes sense of the relationships among a large number of stakeholders;¹⁰ and (2) governance as ‘good governance’, which is defined as involving the principles of effective, transparent and democratic management.¹¹ As Holt points out these definitions of governance can be seen as both analytical (or descriptive) and normative.¹² Applied to sport, this means that we can use the concept of governance to analyse how sport is governed systemically and to comment on how well it is or should be governed.

Therefore, in this chapter we will first explore the relevance of EU sports law for the systemic governance of European sport in order to continue, afterwards, analysing the normative vision that EU sports law and policy on how European sport should be governed through the principles of good governance. Before getting to that, this section needs to finish with a deeper look to the definition and implication of these two dimensions of governance.

⁹ Ian Henry and P. C. Lee, ‘Governance and ethics in sport’ in Simon Chadwick and John Beech (eds.), *The Business of Sport Management*. (Pearson Education 2004).

¹⁰ Rhodes, *Understanding Governance* (n 8), 53.

¹¹ *Ibid.* 49-50.

¹² Matthew Holt, *UEFA, Governance and the Control of Club Competition in European Football* (Football Governance Research Centre, Birkbeck College, University of London, 2006), 4.

Systemic governance

Systemic governance is an analytical concept. This definition of governance refers to the management of a structure with a large number of stakeholders where power, authority and resources are diffused and distributed across the system.¹³ In the area of sport, Chaker defined 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”.¹⁴ Chaker’s understanding of governance in the field of sport is, therefore, quite similar to Rhodes’ abstract and general definition. In both cases there are three important components: a systemic structure, the role of non-governmental organisations with a degree of self-regulation and the participation of public authorities in the networks. Thus, this chapter uses systemic governance as a concept to bind together, in one section, our discussion of the relevant EU law provisions that have facilitated an evolution of European sport’s governance structures. This relates mainly to questions about the role and responsibilities of governing bodies (e.g. IOC, European sports federations); the level of power and representation of stakeholders (e.g. athletes, supporters or professional clubs); and the regulatory relations between public authorities and all those other sports non-governmental actors.

Good governance

Those who study governance are also interested in the notion of good governance. Rhodes describes good governance as involving the principles of effective, transparent and

¹³ Rhodes, *Understanding Governance* (n 810), 53.

¹⁴ Adré Noël Chaker, *Good Governance in Sport, a European Survey* (Council of Europe Publishing 2004), p. 5.

democratic management, and we can certainly examine these in the context of sport.¹⁵ Good governance refers to the extent to which organisations observe principles of good management, transparency, democracy and/or accountability. Certainly, the notions of good governance and systemic governance are complementary, as one would expect those involved in the system of governance to observe good governance principles. In the case of sport, the necessity to observe good governance principles is applied to governing bodies and their policies but it is also applicable to other stakeholders, such as clubs in their management of economic and human resources.¹⁶

Systemic governance: EU sports law and the European Model of Sport

For a long time, the governance structures of European sport remained unchanged with a pyramidal structure that reinforced the vertical authority of international, European and national governing bodies over other stakeholders.¹⁷ The European Commission labelled this systemic structure in 1998, somehow accidentally, as the “European Model of Sport”.¹⁸ Years later, the same institution, the European Commission, had to acknowledge that it was “unrealistic to try to define a unified model of organisation of sport in Europe”.¹⁹ One of the reasons behind the Commission’s rectification was the transformation of the traditional European sport pyramid in the years after the Bosman ruling.²⁰ The commercialisation and professionalization of European sport was the origin of many conflicts between governing bodies and stakeholders, who wanted to reap the economic benefits of the growing sports industry. Much of that was also due to the liberalisation of the audiovisual market on the

¹⁵ Rhodes, *Understanding Governance*, (n 8), 49-50.

¹⁶ See for example S. Hamil, M. Holt, J. Michie, C. Oughton, and L. Shailer, ‘The Corporate Governance of Professional Football Clubs’, (2004) 4 *Corporate Governance*; S. Gardiner, M. James, J. O’Leary, J. and R. Welch, *Sports Law*, 3rd edn. (Cavendish Publishing, 2006).

¹⁷ Borja García, ‘Sport governance after the white paper: The demise of the European model?’ (2009) 3 (1) *IJSP* 267

¹⁸ *Ibid.*

¹⁹ European Commission, *White Paper on Sport* [2007] COM(2007) 391 final, p. 12.

²⁰ García ‘Sport governance’ (n 17).

continent, whose impact on sport cannot be overestimated, for it created numerous frictions amongst those who wanted to benefit from the booming TV and marketing contracts. This section explains the role that European sports law and policy have had in shaping the evolving nature of that elusive European Model of Sport. The section covers three main points. First, a reflection on the rulings and decisions that have shaped the balance of power amongst stakeholders, with special focus on the governing bodies. Second, a particular reference to the social dialogue, as an alternative forum outside traditional sport governance structures. Finally, the section looks at the structured dialogue, as a platform of cooperation between EU institutions and sport organisations.

-From pyramids to networks

When European law first entered the territory of sport in 1974, it was a major surprise for many of those in the industry. Even when the ECJ ruled in *Bosman*, it was also unexpected for those in the governing bodies of the sport. This is perhaps best explained by the organisational autonomy that the sporting movement had historically enjoyed. Sport has been mostly a self-regulating industry, which has perceived any external regulation as unnecessary, unless it is related to funding. The traditional pyramidal structure of sport governance put governing bodies firmly at the top, whereas athletes were relegated mostly to the bottom of the structure, without a major say in strategic decisions. However, this has been slowly overturned by the application of EU sports law over the years.

The Bosman judgment of 1995 was the first major blow for sport established powers, for it allowed team sport players to break free from the tight control of transfer regulations and nationality quotas; this was then further extended in *Kolpak*²¹ to nationals of countries with an association agreement containing non-discrimination clauses. In Bosman, the Belgian footballer had to bring the governing bodies to court, as European law was the only tool

²¹ Case C-438/00 *Deutscher Handballbund eV v Maros Kolpak*, ECLI:EU:C:2003:255.

available to him given the reluctance of the football federations to consider the necessary reforms of the transfer system.²² The clear tensions in the relationship between athletes and governing bodies are seen in the fact that a number of other legal challenges ensued, such as *Deliège*,²³ *Lehtonen*²⁴ or *Meca-Medina*.²⁵ Perhaps with less wide ranging consequences in governance terms than *Bosman*, these cases were interesting nonetheless. First and foremost, because they institutionalise clear tensions in the power and authority relations between governing bodies and athletes. Second, because they demonstrate an erosion of the former's legitimacy in the eyes of the latter. In *Lehtonen* the CJEU reminded that yet another typical regulation of sport (the so-called transfer windows) was not entirely in line with EU law, although the practical consequences of the case were relatively minor. Yet, it was once again the presence of EU law what reminded sport federations that there is another layer of accountability that they need to comply with. In governance terms, what EU law provided was an avenue for dissatisfied stakeholders in the governance of European sport to challenge the historical power of the governing bodies.

This was not limited to rulings of the Court of Justice. Competition policy investigations by the European Commission provide a more cost effective mechanism for those who, perhaps, cannot afford a fully-fledged legal challenge. Moreover, competition investigations can also be opened by the Commission at its own initiative. Whereas the Court cases referred above have mostly featured athletes challenging the governing bodies, in the case of competition policy it has been the clubs who were arguing that federations were behaving un-competitively and closing their access to the market.

²² Borja García 'He was not alone: Bosman in context' in A. Duval and B. Van Rompuy (eds.) *The legacy of Bosman: Revisiting the relationship between EU law and sport* (TMC ASSER Press, 2016) 13-30.

²³ Joined cases C-51/96 and C-191/97 *Christelle Deliège v Ligue francophone de judo et disciplines associées ASBL, Ligue belge de judo ASBL, Union européenne de judo* ECLI:EU:C:2000:199.

²⁴ Case C-176/96 *Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)* ECLI:EU:C:2000:201.

²⁵ Case C-519/04 P *David Meca-Medina and Igor Majcen v Commission of the European Communities*. ECLI:EU:C:2006:492.

The most representative of these cases is the European Commission investigation into the collective selling of broadcasting rights for the UEFA Champions League,²⁶ for it summarises perfectly the dynamics at play. In that case, the dossier was opened by UEFA communicating its selling arrangements to the Commission, so there was not direct challenge by the clubs. However, these were then interested parties in the handling of the case, therefore having the opportunity to submit their views to the Commission. It is not necessary to enter into the hard details of the case here, more so due to space restrictions. But one of the important decisions that the Commission had to make was to ascertain whether the broadcasting rights of the Champions League belong to UEFA as competition organiser or to the clubs participating. It is not necessary the implications of either choice. The commercial rights of the most prestigious, most lucrative, professional competition in Europe would certainly cement the economic and political hegemony of its holder. As it happens, the Commission took a Solomonic decision, for it considered that the rights belonged to both clubs and UEFA. Once again, what the Champions League case reminded was that EU law offers an opportunity to challenge the decisions of the governing bodies. In a similar way than players were *liberated* by Bosman, competition policy provided clubs the necessary impetus to question the decisions, regulations and commercial strategies of the governing bodies.

In football, the governing bodies have managed, after some reforms, to maintain their governance role. In other sports, such as basketball, this order has been heavily altered in Europe, as demonstrated by the creation of the semi-closed Euroleague, a breakaway European club competition featuring the top 16 teams of the continent.²⁷ This tournament is

²⁶ Case COMP/ AT.37398 Joint selling of commercial rights of the UEFA Champions League, (2003) O.J. L 291/25.

²⁷ SportsPro 'Euroleague basketball in rude health as the Euroleague turns 15', available online at http://www.sportspromedia.com/notes_and_insights/european_basketball_in_rude_health_as_the_euroleague_turns_15 (Accessed 15/02/2017)

managed and commercially exploited by the clubs themselves, not the sport's governing body (FIBA).

Thus, EU law needs to be seen as a facilitator, and perhaps accelerator, in the transformation of the governance and power structures in European sport. This refers specially to the way in which EU institutions offered stakeholders alternative avenues to challenge the power of the governing bodies. Such transformations differ greatly amongst different sports, as the cases of football and basketball clearly demonstrate. It is also true that the core regulatory nature of the governing bodies has not been fundamentally challenged, but perhaps moderated. In *Meca-Medina*²⁸ the CJEU recognised that it was for the IOC and other sport bodies to adopt anti-doping regulations. Similarly, in *Piau*²⁹ both the Court of First Instance and the CJEU also conceded that FIFA has a legitimacy to regulate the profession of football agents. In the competition investigation about the involvement of the International Motorsport Federation (FIA) in commercialising Formula One,³⁰ the Commission questioned the dual role of FIA as both regulator and commercial agent of the competition, for it could be a case of dominant position. However, the Commission did not fundamentally challenge the authority of FIA as a governing body, but the way in which it managed the business side of the sport. Despite the legal challenges, sport governing bodies have proved resilient due to the firm grip they hold on the transnational regulation of sport.³¹

The legal route, via legal challenges under EU law, has not been the only opportunity for sport stakeholders to affect change in European sport systemic governance. A more political process has been also possible through the so-called social dialogue (between employers and employees in the industry) and, more recently, the structured dialogue (between EU

²⁸ Case C-519/04 P (n 25).

²⁹ Case C-171/05 P *Laurent Piau v Commission of the European Communities* ECLI:EU:C:2006:149

³⁰ COMP/36.638 Notification by FIA/FOA of agreements relating to the FIA Formula One World Championship, OJ (2001) C 169, 13 June, p. 5.

³¹ Henk Erik Meier and Borja García 'Protecting private transnational authority against public intervention: FIFA's power over national governments', (2015) *Public Administration* 93(4), DOI: 10.1111/padm.12208.

institutions and sport organisations). These are processes that rely on negotiation and dialogue, therefore need to be seen as more political than going to court.

The social dialogue

The European social dialogue is considered by the Commission as ‘a unique and indispensable component of the European social model’.³² It 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. Professional football was the first sport to explore the possibilities of the social dialogue. This is not surprising given the proactive work of players’ trade unions such as FIFPro in demanding a reform of the footballers working conditions and the empowering effect of *Bosman*. Moreover, the European Commission encouraged clubs and players to pursue a social dialogue initiative in order to settle the problems arising from the disputes that originated the Bosman case and all the subsequent reforms of football’s international transfer system.³³ Following years of studies, the social dialogue in football was only launched on 1st July 2008 with the first meeting, in Paris, of the the sectoral social dialogue committee for football, with the presence of the then commissioners for Employment, Social Affairs and Equal Opportunities, Vladimír Špidla, and Education, Training, Culture and Youth (responsible for sport) Jan Figel.

That social dialogue committee was composed of representatives of FIFPro (as employees) and the European Professional Football Leagues (EPFL, as employers), but importantly there is also representation of UEFA (the governing body), whose president was elected to chair the committee. The decision to allow UEFA to be part of the committee is testimony to the

³² European Commission *The EU and Sport: Background and Context, accompanying document to the White Paper on Sport*, SEC (2007) 935, 11 July 2007, p. 59.

³³ *Ibid.*, p. 60.

power that the governing body still maintains over the game's stakeholders. Legally speaking UEFA is not required in that committee, as it is not an employer nor an employee. The Commission has justified the presence of governing bodies in sport social dialogue in two grounds, first as a decision of the social partners and, second, as an expression of the so-called specificity of sport.

The social dialogue can address issues such as stability of contracts, transfer systems or the release of players for national teams, among others. This could certainly lead to improved governance in professional sport. The social dialogue offers a venue for players and clubs to negotiate their employment conditions without the need to resort to the CJEU (like *Bosman* did). It is an institutionalised EU procedure, which gives legal certainty to any agreement achieved. In terms of governance, the social dialogue raises two important issues. Firstly, the institutionalisation of a sectoral committee where athletes and clubs (or leagues) are the main actors reinforces the idea of sport governance as a horizontal network of stakeholders, departing from the traditional vertical structures of the pyramid. Moreover, this could be seen as yet another example of sport stakeholders using EU (political) venues to challenge the legitimacy of governing bodies (UEFA in this case).

Whereas the social dialogue is an avenue open to any industry, the real results in the case of sport are best seen as modest, if not disappointing. The football social dialogue committee has only managed to reach agreement on minimum contract standards for football players, but it has not addressed more fundamental issues such as contract termination or player mobility.³⁴ The transformative effects of the social dialogue after nine years of work are nowhere near to what *Bosman* or other legal cases achieved. Similarly, clubs are able to force more change through threats of break-away competition than in the social dialogue

³⁴ Richard Parrish 'Social Dialogue in European Professional Football' (2011) *European Law Journal* 17(2), 213-229.

committee thus far. If anything, the case of the social dialogue in the football sector has demonstrated the ability of UEFA to control the governance agenda even when the stakeholders resort to an external political/regulatory venue. Football is not the only sport that has considered the European social dialogue, but results have been similar elsewhere. There were also attempts in cycling and more generically in the sport (as recreation) industry. None of these have had major results to date.

Whereas the social dialogue brings together sport stakeholders, the so-called structured dialogue provides an opportunity for sport organisations to enter into dialogue with EU institutions involved in the design of EU sport policy. This is, again, a political avenue whose objective is to inform EU policy-making. It is of interest because it provides an opportunity to analyse the extent to which sport organisations have conditioned EU decisions in this area. It is also relevant because it is one of the pillars of the now formal EU sport policy under Article 165 TFEU.

- Structured dialogue

One of the few explicit goals stated in Article 165 TFEU is to promote “cooperation between bodies responsible for sports” (TFEU 165:2), hence carrying the implication that the EU should engage with the sports movement going forward when developing this new policy area. In essence, structured dialogue refers to a mechanism of bi-annual meetings between the EU institutions and sporting stakeholders.

The concept of ‘structured dialogue’ was initially introduced in the *White Paper on Sport*, where the European Commission argued that one added value of EU action in sport was to provide a platform for dialogue on sport. It thus proposed organising “Thematic discussions

with limited participants”.³⁵ Shortly after the White Paper on Sport, the EU’s top political leaders meeting in the European Council decided that there was a need “for the strengthening of [the] dialogue with the International Olympic Committee and representatives of the world of sport”.³⁶ The Commission was therefore invited to implement this idea coming from the very top, the result being two meetings between representatives of the IOC³⁷ and the Commission³⁸ during 2009. Thus, in this definition of structured dialogue, the ‘sports movement’ was practically equated with the Olympic Movement; and the EU was equally equated with the European Commission.

Upon the ratification the Lisbon Treaty the Member States immediately started discussing the Council’s role in facilitating ‘structured dialogue’. The Spanish Presidency of the Council of the European Union in the first part of 2010 put the issue on the Council’s agenda, although it did not transmit any concrete proposals. The Council’s Working Party on Sport supported the Spanish Presidency’s initiative but requested further technical details, deciding it should be dealt with at a later time.³⁹

The succeeding Belgian Presidency constructed the Council’s proposal. In designing procedures for structured dialogue, the Member States looked at arrangements in similar policy areas, in particular those in Youth policy. In Youth policy’s structured dialogue, participants are explicitly defined and convened in a ‘European Steering Committee’, in which one pan-European organisation, the European Youth Forum, is the only designated

³⁵ Commission, *White Paper on Sport* (n 19).

³⁶ European Council, *Presidency conclusions - Brussels, 11 and 12 December 2008* [2009] Council Document 17271/08 REV 1.

³⁷ International Olympic Committee, ‘Meeting between Rogge and Figel on European Council Declaration’ (www.olympic.org, 29 Jan 2006) <<https://www.olympic.org/news/meeting-between-rogge-and-figel-on-european-council-declaration/>> accessed 27 January 2017.

³⁸ European Commission, *Commission holds second high-level meeting with Olympic movement* [2009], IP/09/888.

³⁹ Council of the European Union, *Preparations for the EYC Council in the field of sport* [2010] Council Document 8251/10.

civil society organisation.⁴⁰ However, the Belgian Presidency felt the model from the Youth field was not directly transferable, due to the “complexity” of the sports movement:

[R]egarding the sport movement's participation, the situation is less clear, given the complexity of European sport structures. The Presidency considers that, while the number of participants should be limited, the aim should be to achieve representative, broad and balanced participation.⁴¹

Thus, the Belgian Presidency argued for a broad representation – implicitly, that the IOC would not be representative of the entire sports movement. Two main options were outlined. First, the Council could designate a list of stakeholders to be invited for every meeting, invoking practices from the Youth field. Second, that the incumbent Presidency be given a mandate to “to invite participants at its discretion” depending on the specific agenda items and particular Presidency priorities.⁴²

During consultations, representatives of the Olympic Movement professed to the Belgian Presidency a preference for continuing the procedure at place during the ‘high-level’ meetings organised with the Commission. However, both the European Commission and the Member States now agreed that representation of the sports movement should not be handed over purely to the IOC in the new structured dialogue.⁴³

⁴⁰ Council of the European Union, *Council Resolution of 27 November 2009 on a renewed framework for European cooperation in the youth field (2010-2018)* [2009] OJ C 311/01.

⁴¹ Council of the European Union, *The EU Structured Dialogue on Sport - Background paper* [2010] Council Document 11954/10.

⁴² Ibid.

⁴³ Mads de Wolff, *Playing for the same team? The trio Presidency and agenda-management in European Union sport policy* [2016] doctoral dissertation, Loughborough University <<https://dspace.lboro.ac.uk/dspace-jspui/handle/2134/21470>> accessed 27 January 2017

The adopted resolution⁴⁴ saw the Council settling on the last option as recommended by the Belgian Presidency. Thus, structured dialogue meetings would be *ad-hoc* in nature, with topics chosen and stakeholders invited at the discretion of the incumbent Council Presidency.

In practice, structured dialogue refers to a one hour ‘working lunch’ held before the convening of the last ministerial Council meeting in Brussels of a Presidency term.⁴⁵ The Council of the European Union is represented by the so-called ‘trio Presidency’, and accompanied by a member of the incoming trio. The EU is also represented by the Commissioner responsible for sport; the Council Secretariat; and occasionally a member of the European Parliament. The lunch directly precedes the convening of the formal Council meeting which, after formal procedures, is followed by a policy debate between ministers, generally on the same topic that has been discussed during the structured dialogue meeting.

Sport Stakeholders are invited according to the topic of the day. Topics are generally, if not exclusively, linked to issues on the Council formal agenda. Thus, structured dialogue has been implemented in two main ways. First, as an opportunity to discuss specific topical issues which *may* require further action in the future, with an example being how the Hungarian Presidency in 2011 organised its meeting on match-fixing and ‘sport-related aspects of on-line betting’.⁴⁶ Second, to facilitate input on topics *already* set to move forward in the EU in the near future, with an example being how the Cypriot Presidency organised its structured dialogue meeting on the topic of the European Week of Sport.⁴⁷

⁴⁴ Council of the European Union, *Council Resolution of 18 November on the EU structured dialogue on sport* [2010] OJ C 322/01.

⁴⁵ For an extended analysis, see de Wolff, *Playing for the same team?* (n 43), chapter 5.

⁴⁶ Participating stakeholders: International Olympic Committee, European Olympic Committee, European Lotteries, Union of European Football Associations, European Non-Governmental Sports Organisation, Fédération Internationale de Football Association. See de Wolff, *Playing for the same team?* (n 43) p. 91

⁴⁷ Participating stakeholders: European Health and Fitness Association, Union of European Football Associations, European Physical Education Association, Federation of the European Sporting Goods Industry, International Sport and Culture Association. de Wolff, *Playing for the same team?* (n 43) p. 91.

Given the timing of the meeting – just before Council ministerial meetings, rather than at the beginning of a Presidency term – it is clear that structured dialogue has mainly been designed with a focus on *debriefing* the sports movement of Council outcomes and plans, thus strongly limiting the potential of stakeholders to influence EU sport policy in this mechanism. Thus, structured dialogue is decidedly ‘top down’ in direction. Given the scarce time allocated to these meetings, it may be seen, at best, as an exchange of impression to inform the Council.

Indeed, no actors in EU sport policy are able to point to any concrete actions or results deriving from the mechanism.⁴⁸ However, even if the mechanism has since been subject to much criticism from both stakeholders⁴⁹ and the European Commission,⁵⁰ the Member States have so far been unwilling to change how structured dialogue meetings are organised.

Summing up, it was shown how the Olympic Movement initially pursued a role as exclusive partner in the structured dialogue in sport. However, the Member States have been insistent on not giving *any* sporting stakeholders ‘special’ status in structured dialogue, similar to how the Member States have been unwilling to grant the international governing bodies any special legal exemption in terms of EU law.⁵¹ By design structured dialogue is informal; while intended to promote dialogue with the sports movement, it also seems to have been designed this way so as to keep the sports movement at arm’s length from the Council’s

⁴⁸ de Wolff, *Playing for the same team?* (n 43) p. 93.

⁴⁹ European Non-Governmental Sports Organisation, ‘EU Ministers of Sport adopt New Work Plan for Sport 2014-2017 and Council Conclusions on Gender Equality’ (www.engso.eu, 4 June 2014) <<http://www.engso.eu/newsletters.php?id=244>> accessed 27 January 2017.

⁵⁰ European Commission, *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of the European Union Work Plan for Sport 2011-2014* [2014] COM(2014) 22 final.

⁵¹ Borja García and Steven Weatherill, ‘Engaging with the EU in order to minimize its impact: sport and the negotiation of the Treaty of Lisbon’ (2012), *Journal of European Public Policy*, vol. 19, no. 2, pp. 238–256.

decision-making. Thus, as predicted by Meier and García,⁵² politics have seen the Member States not concede any particular status to the Olympic Movement in structured dialogue.

The impact of structured dialogue is superficially negligible. However, it needs to be understood as a initial stage in the policy process. It also needs to be emphasised that consultations and dialogue between public authorities and stakeholders takes place in many other settings. This is evident in the next section which explores how the EU has endeavored to develop and disseminate principles of good governance.

EU law and the quest for good governance in sport

The EU has had a longstanding interest in furthering good governance in sport organisations; as evident in this chapter, the early decisions of the European Courts were essentially governance conflicts. That good governance has risen to such a prominent position on the EU sports agenda during this time is not unexpected, considering how scandals suggesting deeply entrenched cultures of corruption within the governing bodies of sport seem to appear in a constant stream.⁵³

Accordingly, recent years have seen EU institutions adopt numerous decisions explicitly touching on good governance in sport. These include the European Commission's 2007 *White Paper*⁵⁴ and the 2011 communication on *Developing the European dimension of*

⁵² Henk Erik Meier and Borja García, 'Abandoning hopes for veto power: institutional options for sport governing bodies in the European Union' (2013), *International Journal of Sport Policy and Politics*, vol. 5, no. 3, pp. 421-443.

⁵³ See for example BBC, 'Sepp Blatter & Michel Platini lose Fifa appeals but bans reduced' (bbc.com, 24 February 2016) ><http://www.bbc.com/sport/football/35655454>< accessed 27 January 2017; Caroline Mortimer, 'Panama Papers: New Fifa boss Gianni Infantino linked to corruption scandal' (Independent.co.uk, 5 April 2016) ><http://www.independent.co.uk/sport/football/news-and-comment/panama-papers-new-fifa-boss-gianni-infantino-linked-to-corruption-scandal-a6970381.html>< accessed 27 January 2017.

⁵⁴ Commission, *White Paper on sport* (n 19).

sport.⁵⁵ To generalise, these documents can be said to define the relationship between public authorities and sport organisations as one of ‘supervised autonomy’. As described by Ken Foster, ‘supervised autonomy’ implies that “self-regulation should only be permitted subject to a proper rule of law system of governance”.⁵⁶ This has been the position taken by the European Commission, which has consistently described good governance as “a condition for the autonomy and self-regulation of sport organisations [...] there are inter-linked principles that underpin sport governance at European level, such as autonomy within the limits of the law, democracy, transparency and accountability in decision-making, and inclusiveness in the representation of interested stakeholders”.⁵⁷

Those are rather generic and strategic documents that relate to the power balance between public authorities and sport organisations. In this section, however, we intend to look more closely to the concrete level of policy making, more specifically on the EU’s quest for developing and spreading principles of good governance in sport through a variety of measures adopted by the institutions. Notably, this effort has been long-standing. For instance, amongst the European Commission’s preparatory actions in the field of sport (2009-2013), eight projects were focused on promoting good governance.⁵⁸

More recently, the Council of the European Union has become the key actor in this endeavour. In the 2011-2014 EU Work Plan in the field of sport, the Council specified ‘good governance’ as one of the key priorities in sport. To that end the Council established an Expert Group on ‘Good Governance in Sport’, which was tasked with developing “principles

⁵⁵ European Commission, *Developing the European Dimension in Sport* [2011] COM(2011) 12 final.

⁵⁶ Ken Foster, ‘Can Sport Be Regulated by Europe? An Analysis of Alternative Models’ (2000), In A. Caiger and S. Gardiner (eds) *Professional Sport in the European Union: Regulation and Re-Regulation*. The Hague: TMC Asser Press, p. 64

⁵⁷ European Commission, *Developing* (n 55), p. 10.

⁵⁸ European Commission, *Towards an EU Funding Stream for Sport: Preparatory Actions and Special Events 2009-2011* (2012) Luxembourg: Publications Office of the European Union.

of transparency concerning good governance” by mid-2012.⁵⁹ Notably, in Expert Groups, stakeholders are invited to actively contribute as observers.

The Expert Group on good governance released its deliverable in September 2013 in the form of a lengthy text defining ‘Principles for the good governance of sport in the EU’.⁶⁰ These principles are underpinned, again, by the idea of ‘supervised autonomy’, stating that “sports bodies that do not have in place good governance procedures and practices can expect their autonomy and self-regulatory practices to be curtailed”.⁶¹

While intended for universal use, the recommendations are also limited: they represent minimum standards that can be flexibly implemented at various levels. The principles are addressed to governments and to the sport movement at three different levels: grassroots sport organisations, national sports governing bodies, and European/international federations. Amongst the recommendations is the principle that all organisations should adopt a ‘code of ethics’ and that the respective roles, responsibilities and objectives of sports bodies and their stakeholders should be codified.

Importantly, the Member States have recognised the need to actively develop and disseminate these principles. This is evident in a number of ways, not least in how ‘good governance’ was highlighted as a specific priority in Erasmus+, the 2014-2020 EU programme for education,

⁵⁹ Council of the European Union, *European Union Work Plan for Sport for 2011-2014* (n 7), p. 4.

⁶⁰ Expert Group Good Governance, ‘Deliverable 2: Principles of good governance in sport’ ([www.ec.europa.eu](http://ec.europa.eu/assets/eac/sport/library/policy_documents/xg-gg-201307-dlvrbl2-sept2013.pdf), September 2013) >http://ec.europa.eu/assets/eac/sport/library/policy_documents/xg-gg-201307-dlvrbl2-sept2013.pdf < accessed 27 January 2017.

⁶¹ Ibid. p. 3.

training youth sport.⁶² Accordingly, numerous projects have already been funded on promoting good governance.⁶³

At the same time, the EU member states have actively sought to disseminate these principles of good governance. The key development in this regard is the adoption of the second EU Work Plan on sport for 2014-2017.⁶⁴ Here, the Council of the European Union again identified good governance as one of its main priorities in the field of sport. This decision includes a proposal for a new mechanism in EU sport policy, namely the establishment of so-called ‘pledge boards’. A pledge board is defined as an “instrument where mainly sport organisations can voluntarily make public their commitment to certain issues”.⁶⁵ Importantly, in the 2014-2017 Work Plan on sport, the Council agreed to continue the promotion of the good governance principles, “possibly followed by a pledge board”.⁶⁶

Indeed, the EU has already had some success in this regard. Thus, as reported by the European Commission in 2016, so far 31 sport organisations have signed onto a pledge board on good governance, a list which includes numerous national Olympic committees and sport federations, most notably perhaps UEFA.⁶⁷

Thus far, neither the European Commission nor the Council of the European Union have published any clear explanations on the functioning of these pledge boards. However, it is clear that they represent a desire amongst European public authorities to normatively define

⁶² European Parliament and the Council of the European Union, *Regulation (EU) No 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing ‘Erasmus+’: the Union programme for education, training, youth and sport and repealing Decisions No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC* [2013] OJ L 347/50.

⁶³ For example, see: European Commission, ‘Erasmus+: Sport 2015 - Round 2 - Collaborative Partnerships (Other topics)’ [2015] >https://eacea.ec.europa.eu/sites/eacea-site/files/sport_2015_round_2_collaborative_partnerships_other_topics.pdf < accessed 27 January 2017.

⁶⁴ Council of the European Union, *Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, of 21 May 2014 on the European Union Work Plan for Sport (2014-2017)* [2014] OJ C 183/12.

⁶⁵ Ibid. p 13.

⁶⁶ Ibid. p 15.

⁶⁷ European Commission, ‘A pledge to implement Good Governance in European Sport’ (www.ec.europa.eu, September 2016) >https://ec.europa.eu/sport/policy/organisation-of-sport/pledge_en< accessed 27 January 2017.

and monitor the activities of sport organisations. The EU has also proposed pledge boards on related issues such as gender equality⁶⁸ and the organisation of major sport events.⁶⁹ In proposing a pledge board for the latter, the Council makes it clear that while pledge boards are voluntary, they still constitute “a light monitoring system”.⁷⁰ Accordingly, such soft law initiatives need to be understood as the EU not only re-affirming its commitment to supervised autonomy, but a desire to spread normative principles and to enhance its ability to *monitor* how sport organisations actually govern themselves, based on said normative principles.

As pledge boards are entirely voluntary their impact, if any, would result from peer pressure and public shaming. In other words, pledge boards could, in theory, induce pressure to reform based on a mixture of ‘peer accountability’ and ‘public reputational accountability’; that is, pressure mechanisms that have traditionally not proven particularly effective.⁷¹ Nonetheless, pledge boards may still prove influential. Pledge boards do not directly represent a curtailment of the autonomy of sport organisations. Rather, they represent an implementation of the logic of ‘sincere cooperation’ between European public authorities and the sports movement as enshrined in the Treaties. While the effects are likely to be limited, pledge boards nonetheless represent a new stage in systemic European sport governance, namely a phase whereby European public authorities not only see their roles as providing normative guidance, but also expect a role in monitoring compliance.

⁶⁸ Council of the European Union, *Council Conclusions of 21 May 2014 on Gender Equality in Sport* [2014], OJ C 183/39.

⁶⁹ Council of the European Union, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on enhancing integrity, transparency and good governance in major sport events* [2016] OJ C 212/14.

⁷⁰ *Ibid.* p. 16.

⁷¹ Roger Pielke, ‘How can FIFA be held accountable?’ (2013) *Sport Management Review*, vol. 16, no. 3, p. 255-267.

Conclusion

This chapter has analysed different ways in which European Union sports law and policy has transformed or helped to transform the governance structures of European sport. From a systemic governance perspective, the most visible consequence is the weakening of the traditional pyramid of governance in European sport, the so-called European Model of Sport. The result is a much more horizontal network structured of stakeholders where power and authority is shared and diffused. Whereas this is true as a generic analysis, the intensity of these transformations is highly variable from sport to sport. Furthermore, it is fair to affirm that governing bodies still remain very central to European sport governance, even if their power has been eroded.

It is now more than 20 years after the well-known Bosman judgment, but it is clear that legal challenges through the court are the most powerful and effective tools to induce change in European sport governance. The rest of the avenues, even under the nascent and direct EU sport policy have, at best, reinforced the finite and supervised nature of the autonomy of sport. EU sports law remains a powerful and important element to understand the structures of sport in Europe. It is sometimes the threat of a legal challenge what may generate changes. It could be argued that the European Union has lacked the political will to enforce more direct regulation of sport governance structures in the continent. It is equally true that EU sports law has provided stakeholders with an opportunity that was not present before. What is clear is that the intervention of the European Union, both legally and politically has controlled the behaviour of sport governing bodies to a level that no other public institution has been able to achieve to date.