



The European Model of Sport

- Most international sports federations (IFs) were established in the late 19th and early to mid 20th Centuries: e.g.
 - FIG 1881
 - ISU 1892
 - UCI 1900
 - FIFA 1904
 - IAAF 1912

The Role of an IF

Traditional	Modern
Regulation: rules of the game	Commercial exploitation (inc media)
Admin & organising events	Integrity issues
Developing the sport	Good governance (inc ADR)

Figure 1 - The pyramid structure of sport



Data source: European Commission, 1998 (adapted).

Organisational Structure

Positive	Negative
<p>Natural monopoly structure is organisationally efficient.</p>	<p>Concerns about transparency, democracy, stakeholder representation. SGBs have not responded to effectively to new threats (doping, match fixing etc).</p>
<p>European model is understood and accepted by the public - e.g. national and European champions are known.</p>	<p>Public does not have a choice. Alternative models exist in some sports and in the USA.</p>
<p>Maintenance of organisational structure requires members to commit to it: alternative structures strongly discouraged.</p>	<p>Gives rise to unfair protectionist restrictive practices & disproportionate sanctions imposed on athletes and clubs who participate in unsanctioned events. Stifles innovation.</p>

League Structure

Positive	Negative
<p>Fluid, merit based promotion and relegation is fair.</p>	<p>Access to competitions determined by financial strength not merit. Competitive imbalances. Effective closed leagues operate (e.g. UEFA Champions League).</p>
<p>European model is based on national league structure which is popular with the public. Club relocation and cross border leagues discouraged.</p>	<p>National league structure is contrary to EU's single market philosophy. It also gives rise to competitive imbalances in some sports as small leagues cannot compete with larger leagues.</p>
<p>National league structure promotes national team competitions which is popular with the public and drives important revenues.</p>	<p>This gives rise to governance questions re international match calendar and player release rules.</p>

Governing Body Function

Positive	Negative
<p>European model promotes solidarity at all levels.</p>	<p>Solidarity function is not working / does not promote competitive balance. It impedes those sports more interested in profit maximisation.</p>
<p>Governing body primary role is to promote the sport at all levels.</p>	<p>Alternative models exist – e.g. US model of sport.</p>
<p>SGBs strongly encourage ADR in sport which is economical, effective and efficient.</p>	<p>ADR is a mask for self-regulation and is flawed.</p>

- In order to maintain the European model of sport, IFs adopt rules that discourage participants from disturbing model and limit the role of 'third parties'.
- Examples...

Club Location Rules

- The European model of sport promotes national geographical tying: clubs must play within their 'home' association.
- Some clubs want to relocate and play in other national associations either temporarily (Mouscron case 1999) or permanently.
- Does a prohibition on this breach EU competition law (Article 101 & 102)?
- White Paper (2007): '*...the organisation of football on a national territorial basis was not called into question by Community law*' as the rule was indispensable for the organisation of national and international competitions in view of ensuring equality of chances between clubs and that it did not go beyond what was necessary.
- Impact of *Meca-Medina* – national tying inherent and proportionate?

Breakaway Structures

- The prospect of a breakaway structure in European football has long been mooted. See Media Partners proposal (1998).
- Break-away leagues give rise to two legal issues (1) Restrictions on creating new competitions and (2) scrutiny of any new league – e.g. a closed league model could give rise to market foreclosure.
- Apply *Meca-Medina* methodology to test above.

Unsanctioned / Rival Events

- An increasingly common feature of European sport is a SGB preventing the organisation of an event that rivals its own or preventing athletes / clubs participating in unsanctioned events.
- Are these rules necessary to promote certain legitimate objectives (e.g. health and safety) or are they designed to shield sports bodies from competition?
- *Formula 1* case (2001): Commission insists on separation of FIA's commercial and regulatory functions.
- In Case 49/07 *Motoe* the ECJ only required some recourse for those bodies refused consent to organise motorcycle events.
- *ISU* complaint (2014): re the inherency and proportionality of effective life bans for skaters participating in unsanctioned events.

Club Ownership Rules

- UEFA rule on '*Integrity of the UEFA Club Competitions: Independence of Clubs*' (1998).
- ENIC Article 101 & 102 Complaint (2000): Rule affected ENIC (Athens excluded from UEFA Cup as Slavia Prague had qualified).
- Commission Decision 2002: (1) The object of the rule is not to distort competition (2) Restrictions on clubs flowing from the rule are 'inherent' to the very existence of credible UEFA competitions – need for integrity of competitions (3) The rule is proportionate.
- Thus – rule doesn't fall within the 'sporting exception' but within the realm of 'inherent rules' (forerunner to *Meca-Medina*).
- See FC Salzburg & RB Leipzig case (UEFA Adjudicatory Chamber 2017).

Mandatory Player Release Rules

- FIFA Regulations (Art's 36-41) on the Status and Transfer of Players require clubs to release players for internationals.
- *FC Charleroi v FIFA* (Oulmers case). G14 joins case alleging mandatory player release rules amount to breach Article of 102 EC. ECJ case withdrawn.
- Led to changes to governance standards in European football. Clubs acquired greater representation. Social Dialogue Committee formed 2008.
- Impact of *Meca-Medina* on future litigation: inherency and proportionality.

Regulating Players' Agents

- Concern over role of agents in sport.
- FIFA indirectly regulated agent activity: licensing system at national association level.
- ECJ Laurent Piau case (1998-2006): rejection of complaint.
- Persisting doubts as to the efficacy of FIFA Regulations. Reform April 2015 ('de-regulation'?).
- New FIFA Regulations on Working with Intermediaries conflict with EU law?

The Impact of the EU on Sports Governance

- Hard impact: Commission decisions and ECJ jurisprudence.
- Soft impact: Structured and social dialogue.

Social Dialogue

The Social Dialogue:

'The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy'.

(Article 152 TFEU)

'The Commission shall have the task of promoting the consultation of management and labour at Union level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties'.

(Article 154 TFEU)

'Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements'.

(Article 155 TFEU)

Social Dialogue

- EU sports policy encourages dialogue within sport as a means of avoiding litigation (see White Paper & Communication & Art.165).
- 30 existing Sectoral Committees (agricultural, telecom, civil aviation, etc.).
- Content of social dialogue must relate to the employment relationship between employers and employees.
- Social Dialogue Committee in football established in 2008.
- Fifpro represents workers & EPFL (leagues) and ECA (clubs).
- Role of UEFA as chair of SD committee?

2012 Social Dialogue Agreement



Social Dialogue Agreement 2012

- Minimum Requirements in Standard Player Contracts (2012).
- Will the social partners go further and sign further agreements on more contentious issues: reform of FIFA transfer regulations, home-grown player rules, agent regulations...?
- Will social dialogue transform labour relations in football & re-shape the European model of sport?
- Can social dialogue establish legal certainty in sport?

Conclusions: legal certainty in sport?

- 1. Rules that are not restrictions under EU law (purely sporting & inherent rules)**
- 2. Restrictive rules capable of justification / exemption**
- 3. Rules prohibited by the Treaty**

Proportionate Rules that are not Restrictions under EU Law

- Nationality restrictions in the composition of national team sports (*Walrave*).
- Rules relating to selection criteria (*Deliège*).
- National territorial tying? (*Mouscron*).
- Rules preventing multiple club ownership (*ENIC*).
- Doping Sanctions (*Meca-Medina*).

Restrictive Rules Potentially Capable of Justification / Exemption

- FIFA Regulations on the Status and Transfer of Players – compensation payments, contract stability & transfer windows? (*FIFA Reg's – not decided*).
- Transfer windows (*Lehtonen*).
- Rules regulating players' agents? (*Piau*).
- Training Compensation (*Bernard*).

Rules Prohibited by the Treaty

- Nationality restrictions in club sport (*Bosman*).
- End of contract transfer payments (*Bosman*).
- Breaches of association agreements (*Kolpak, Simutenkov*).
- Abusive regulatory rules designed to maintain commercial / regulatory dominance (*Formula One, ISU(?)*).
- National territorial exclusivity in sale of media rights (*Murphy*).

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Sport&EU Annual Conference
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