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*Committee on Culture and Education*

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## **WORKING DOCUMENT**

**The future of professional football in Europe**

Committee on Culture and Education

Rapporteur: Ivo Belet

## 1. GENERAL CONTEXT

The 2006 World Cup in Germany was a big success. The organisation was perfect. The magnificent results of European national teams of course are based on the high performances of the clubs in the national and European competitions. They set the standard for international football.

In economic terms, between 3-4% of the European Union's annual GDP is generated through sports and sports in a general have an average annual growth rate of 4%. This enormous expansion has led to an increase in the value of television rights, sponsorships, merchandising and all other ancillary activities, as well as to the multiplication of international competitions, with a consequent increase in jobs in the sector.

However, football in Europe is facing multiple challenges, that can not be tackled by the football governing bodies alone. Because of the influence of European law on the game, it is important that a constructive dialogue between European institutions and sport governing bodies takes place.

On the initiative of the UK presidency an independent football review has been launched, resulting in an exhaustive report that was presented to Commission president Barroso.

The Commission announced the presentation of a White Paper by mid-2007.

The European Parliament cannot stay aside but should make clear its position.

## 2. APPLICABILITY OF EUROPEAN LAW

### **Primary law**

The Treaties give the European Union no explicit competence on sport in general, or football in particular. But since sport is not exempted from EU primary law either, it is submitted to EU law. ECJ rulings and EC decisions have clarified how f.i. art.12, 39, 43-49, 81-87 have their impact on sport and professional football.

### **The Amsterdam and Nice Declaration**

Both declarations in 1997 and 2000 underline the societal role of football, but do not alter the fact that the economic aspects of sport are subject to the provisions of the Treaty.

### **Secondary law**

Also in secondary law the specificity of sport is not systematically taken into account. This holds true a.o. for the recognition of diplomas and permits for trainers, players' agents and not-EU players.

It is symptomatic to see the ECJ and EC are increasingly put in the situation of ultimate recourse by the sporting actors. This case by case approach has reinforced legal uncertainty.

The self-regulatory power of football organisations, such as the national leagues and UEFA, is questioned (see 4: Governance).

### Draft constitutional Treaty

Art. III - 282 in the draft constitutional treaty would bring a legal base for sport. This article of the draft constitution as it stands now, however, would not provide for legal certainty.

### 3. SPECIFICITY

Football performs important *social functions* regarding education and integration, public health, and cultural and recreational purposes.

Also *the essence of the game in itself* is a reason for the specificity. The laws of free economic competition cannot be applied as such, because a football club needs viable competitors of a comparable strength for having an exciting competition.

#### **European football model**

The European football model is characterised by open sporting competitions with relegation and promotion (the aim is winning the game) and without clear distinction between professional and amateur level. This results in a pyramidal structure where lots of amateur clubs form the basis for the top professional clubs playing on national and European level<sup>1</sup>.

The current trend of clubs going to the *stock market* is one step closer to the US model. It can be questioned whether the two goals (winning the game and maximising the shareholders' profits) can be combined within the traditional open European model.

### 4. GOVERNANCE

#### **A. Self regulation and multilevel governance:**

The principal challenge today is to maintain the prerogatives of the federations in the construction of the rules of the game and especially in the organization of sporting competitions. In principle, the legitimacy of federations and their decisions is conditioned by their degree of democratic, representative and accountable structures and the degree of transparency of the decision-making procedures.

As far as the European level is concerned, if the self-regulatory role of the representative and democratic football bodies is enhanced on a European level, clubs would no longer be tempted to consider the Commission as an "appeal" or recourse body.

Several other statements on issues linked to governance can be made:

1. Clubs are not only competing on a national level, but also on a European level (as a result of the UEFA club competitions). Due to national differences in the application of club licensing regimes, there is a *lack of a level playing field* in professional football in Europe.

It can therefore be questioned

- whether it is appropriate to continue with a licensing-system at national level
- whether the national federations can remain the centre of power
- whether more arrangements can be done at the level of UEFA.

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<sup>1</sup> In the US, professional and amateur leagues are clearly separated. US clubs in the highest closed leagues are profit maximising rather than winning maximising entities. Promotion and relegation do not exist. In order to have an exciting competition, clubs are open to redistribution measures

2. A very recent example the self regulatory power of UEFA and FIFA being questioned is the *Charleroi case*, in which clubs question the FIFA rule that clubs should release their players for matches of the national team without entitlement to compensation. A compromise should be found between FIFA and the clubs.

3. The principle of territorial organisation of football should be recognised

## **B. Good governance**

### **Financial transparency**

An identical financial control should be put in place for all European clubs in order to ensure financial transparency and to prevent financial drifts and inequalities of treatment leading to distortions of competition relating to the economic capacity of the clubs.

Therefore we should consider:

- whether the UEFA licensing system can be extended to all professional leagues in Europe;
- whether a structure controlling the management of the clubs should be put in place in each Member State;
- whether we should call on UEFA to establish an independent body to monitor overall compliance with the club licensing system, including more extensive use of spot-checking.

### **Other issues:**

- club ownership
- converging statutes for clubs

In order to further promote the involvement of supporters, incentives for the *supporters direct movement* are to be developed and stimulated.

## **5. THE SOCIAL AND CULTURAL ROLE**

Football is an excellent instrument to get socially vulnerable youngsters back on track.

UEFA has adopted the *home grown* player rule in order to overcome the growing neglect of youth training which resulted from the Bosman ruling. What is needed now above all is *legal certainty* concerning this matter.

At the same time, it must be prevented that clubs give contracts to ever younger players (minus 15) which would pervert the objective of the home grown player rule.

In this regard also the important role of *training centres* has to be underlined. A financial redistribution system or fiscal incentives should provide for a level playing field between clubs with and without training centres.

### **Fight against racism**

The work started by the Parliament with the written declaration of fight against racism should be continued. The European Commission, the Member States and all professional football actors should play their part by insisting on more strict sanctions against all sort of racist acts

in football. UEFA and national leagues should apply disciplinary rules in a coherent, firm and coordinated manner.

## 6. EMPLOYMENT AND SOCIAL ISSUES

### **Bosman - Players situation**

The Bosman ruling in 1995 has had long lasting positive effects on how European clubs approach players' contracts. But a lot of professional players in Europe (ca. 50% according to Fifpro) still do not have an employment contract with their club and a lot of employment and training contracts are legally problematic.

### **Social and fiscal differences**

The disparities between Member States' social and fiscal legislation are causing imbalances between the various European clubs and can be a reason for players to leave their home country.

Obviously these problems could be overcome by a harmonization/coordination of the legal, social and fiscal statuses applied to the professional players and clubs. This would also create an opportunity to strengthen professional players' *social rights* which are not ensured in all Member States (retirement, unemployment, sick leave ...). These issues have to be dealt with in a *social dialogue*.

Others issues (that might be treated in EMPL) are

- European players' agents directive
- social dialogue
- recognition of professional qualifications
- the question of quota of players
- the status for international transfers.

## 7. COMPETITION LAW AND FOOTBALL

As mentioned under point 3, the laws of free economic competition cannot be applied to football without taking its specificity into account. In order to have an interesting football competition we need a balanced economic competition.

### **Antitrust laws/ Salary cap**

The introduction of a (self regulatory) *salary cap* into professional football could be an instrument to promote greater competitive balance and therefore a level playing field for the teams at a European level.

However, the pros and cons of a salary cap should be further examined in detail

### **State aid**

On many different levels (local/regional/national) public authorities are involved in the financing of football. Because of different regulations, the clubs are not playing the game with the same tools. A level playing field requires *clear state aid rules*. The quintessential question is: what kind of public support is acceptable and legitimate in order to fulfil clear societal objectives (f.i. investments in training facilities) and which measures lead to distortion of competition?

## 8. INTERNAL MARKET ASPECTS OF FOOTBALL

### Issues that the internal market committee wants to address

- Restrictions to the cross-border provision of sponsorship services (for "sensitive products" such as alcoholic beverages and gambling services)
- Cross-border restrictions to the offer and advertising of cross-border sports betting services (on which the Commission has recently opened procedures against 7 Member States)
- Restrictions to the reception of sports broadcasts in other Member States because of the territorial sale of broadcasting rights
- Consumer interest: distribution of tickets

## 9. MEDIA & COMPETITION RULES

*Joint selling of media rights is fundamental* to protect the financial solidarity model of European football. The Commission has taken three principled decisions on media rights for football matches<sup>2</sup>, which allow the joint selling of media rights.

The European Commission is asked to investigate how this model can be adopted across Europe. This has to be preceded by a detailed evaluation of these media rights decisions (impact and effectiveness). The economic impact of new media has to be incorporated.

It is in the interest of the game that the *profits of these rights are distributed on a fair and redistributive way*. The current distribution of television rights in the UEFA C.L. (for a large part according to the television market shares) favours big countries and should be reviewed.

### Free-to-air TV

The merit of the current "Television without Frontiers Directive" can hardly be overestimated. It allows national authorities to specify a limited number of events which must be available for broadcasting free-to-air. This principle has to be maintained in the revised TWF-directive.

### Other issues that ask for clarity:

- right holders of the matches (clubs or federations)
- registration by clubs of their broadcasting-rights in their credits even if they are collectively managed
- disturbance of the football calendar by broadcasters choice

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<sup>2</sup> European Commission's formal decision exempting the joint selling of the media rights of the UEFA Champions League, 23 July 2003; European Commission decision, on 22 March 2006, under EC Treaty competition rules that renders commitments from the FA Premier League concerning the sale of media rights to the Premier League football competition legally binding. The case concerned the agreement between the clubs participating in the English Premier League competition to sell media rights to that competition jointly through the FA Premier League; Directive 89/552/EEC, "Television without Frontiers Directive"

- exclusive rights and free access to sporting enclosures for radio and written press
- temporarily blocking the broadcasting of matches in order to support the amateur games and the presence of the supporters in the stadiums.

## **10. DOPING**

The key to success in the fight against doping is the strength of international policy of prevention and repression.

## **11. LEGAL ACTION: FRAMEWORK, ACTIONPLAN, GUIDELINES, DIRECTIVE**

After consultation of all stakeholders, the EP can opt for different instruments (or make a combined choice):

- call for a *regulatory framework* that recognises the specificity of sports and puts into place harmonised rules that assure a healthy competition and a level playing field. It must be acknowledged, however, that this is difficult without a proper legal base in the Treaties.
- call for an *action plan* which sets out the issues for the Commission to treat and the legal instruments to use, such as guidelines, directives, recommendations, framework decisions
- call for the establishment of an *EU sport agency?*