

# EUROPEAN PARLIAMENT

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## **DRAFT REPORT**

on the future of professional football in Europe  
(2006/2130(INI))

Committee on Culture and Education

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the future of professional football in Europe (2006/2130(INI))

*The European Parliament,*

- having regard to the Nice Declaration on the specific characteristics of sport and its social function in Europe,
  - having regard to the UK presidency initiative on European football, which resulted in the "Independent European Sport Review 2006",
  - having regard to the case-law developed by the European Court of Justice, the Court of First Instance and the decisions of the Commission in sports-related matters,
  - having regard to Rule 45 of its Rules of Procedure,
  - having regard to the report of the Committee on Culture and Education and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs (A6-0000/2006),
- A. whereas European sport, and football in particular, is an inalienable part of European culture, and the European Football Model, characterised by open sporting competitions within a pyramidal structure in which many amateur clubs form the basis for the top professional clubs, is the result of longstanding democratic tradition;
- B. whereas football plays an important social and educational role, and is an efficient instrument for social inclusion and multicultural dialogue,
- C. whereas the economic aspects of professional football are subject to Community law
- D. whereas growing professionalisation and commercialisation have led to Community law having a growing impact, which in turn has caused legal uncertainty, as it is not clear how much autonomy self-regulating bodies, such as UEFA and national associations, enjoy and to what extent they are bound by certain principles of Community law when exercising their right to self regulation,
- E. whereas this legal uncertainty is not only problematic in economic terms, but in particular as regards the social, cultural and educational function of football,
- F. whereas professional football clubs cannot operate under the same market conditions as other economic sectors, because they can only survive by means of balanced sporting competition between teams,
- G. whereas the future of professional football in Europe is threatened by the growing concentration of economic wealth and sporting power, which is, inter alia, due to the growing importance of broadcasting revenues, which are related to the size of national broadcasting markets, and the practice of individual selling of broadcasting rights in

certain leagues,

- H. whereas diverging national rules in Europe cause an unequal playing field, economically and legally, and that this situation seriously hampers free and fair sporting competition between teams in national and European leagues, and hence also between national teams,
- I. whereas, despite the fact that the Bosman ruling in 1995 had a positive effect on how European clubs approach players' contracts - though a lot of employment-related and social problems remain to be solved - its side effects cannot be neglected (for example, the transfer market has become the main means of building a team at the expense of training local players);
- J. whereas many criminal activities (match fixing, corruption, etc.) are the result of the spiral of spending, salary inflation and the subsequent financial crisis faced by many clubs;
- K. whereas the Commission has confirmed in formal decisions the compatibility of joint selling of media rights with EC competition law,

### ***General context***

1. Stresses its attachment to the European Football Model, with its symbiotic relationship between amateur and professional football;
2. Recognises the need for corrective action to be taken at EU level to counter certain negative developments in order to ensure a positive future for professional football with exciting competitions, a high degree of identification of supporters with their clubs and wide public access to competitions;
3. Welcomes the recommendations of the "Independent European Sport Review 2006" and calls on the Member States to continue the efforts initiated by the UK presidency to tackle the need for corrective action;
4. Expresses its desire to prevent the future of professional football in Europe from being determined by court decisions and to create greater legal certainty;
5. Agrees with the basic principle that pure sporting rules do not fall within the scope of the Treaties; notes, however, that the economic aspects of professional sport do fall within the scope of the Treaties, taking into account the specificity of sports as set out in the Nice Declaration;
6. Asks the Commission to establish an action plan for European football which sets out the issues for the Commission to deal with and the legal instruments to be used (directives, guidelines, group exemptions, recommendations) in order to create legal certainty and a level playing field for professional football;
7. Asks the Commission to continue a structured dialogue with the football authorities and other stakeholders in order to solve the problem of legal uncertainty; invites the Commission to make its views on the issues at stake clearly known;

## ***Governance***

8. Calls on national and European federations to better define and coordinate their competences, responsibilities, functions and decision-making procedures in order to increase their democracy, transparency and legitimacy; invites the Commission to define the conditions under which legitimate self-regulation is supported;
9. Believes that improved governance leading to more concerted self-regulation at European level will reduce the tendency to have recourse to the Commission and the European Court of Justice;
10. Insists that the principle of proportionality is essential to football authorities when exercising their self-regulatory power;
11. Calls on FIFA to increase its internal democracy and the transparency of its structures;
12. Believes that the Charleroi case currently before the European Court of Justice will have a significant impact on the competitiveness of smaller international football associations; in this respect, believes that clubs should release their players for national team duty without entitlement to compensation; asks the Commission to support efforts towards the development of a system of collective insurance being put into place;
13. Supports the UEFA club licensing system, which aims at ensuring a level playing field between clubs and contributing to their financial stability, and calls on UEFA and the national associations to establish an independent judiciary body under the UEFA umbrella to monitor and enforce overall compliance with this club licensing system;
14. Asks Member States to actively promote the social and democratic role of football supporters, for example through the involvement of supporters in the ownership and management of the clubs;

## ***Fight against criminal activities***

15. Supports the efforts of the football authorities to introduce greater transparency in the ownership structures of clubs and asks the Council to develop and adopt measures for the fight against the criminal activities that haunt professional football, including money laundering, illegal betting, doping and match fixing;

## ***Social, cultural and educational role of football***

16. Highlights the potential of football to help get socially vulnerable youngsters back on track and asks Member States to exchange best practices in this regard;
17. Clearly expresses its support for the UEFA measures that are intended to promote the education of young players by requiring a minimum of home-grown players in a club's squad and by placing a limit on the size of the squads, on the condition that these measures

- remain proportionate and are not linked to players' nationality;
18. Is convinced that additional arrangements are necessary to ensure that the home-grown players initiative does not lead to child trafficking, with clubs giving contracts to very young players; calls on the Commission to reflect on how this problem can be dealt with in the context of the Council Framework Decision on combating trafficking in human beings;
  19. Underlines the important social and educational role of training centres and supports financial incentives for clubs with a training centre;

### ***Employment and social issues***

20. Regrets the differences in social and fiscal legislation between Member States, which cause imbalances between clubs, and the lack of willingness of Member States to solve this at European level;
21. Calls on the Commission to present a proposal for a directive concerning players' agents and come up clear guidelines with regard to the recognition of the professional qualifications of trainers;
22. Calls on UEFA and the Commission to intensify their efforts to strengthen the social dialogue at European level, as it can prevent and overcome tensions between players and employers;

### ***Fight against racism***

23. Asks the Commission, the Member States and all those involved in professional football to accept their responsibility for continuing and intensifying the fight against racism by condemning any form of racism; asks for stricter sanctions against any kind of racist act in football; asks UEFA and the national leagues to apply disciplinary rules in a coherent, firm and coordinated manner;

### ***Competition law and the internal market***

24. Strongly believes that the introduction of a modulated cost-control system could be a way of enhancing financial stability and the competitive balance between teams, for instance when integrated into an updated club licensing system; calls on UEFA, together with the clubs and the Commission, to reflect on a cost-control system, to be operated on a self-regulatory basis, that would be compatible with the European Football Model;
25. Asks the Commission to draw up clear guidelines on state aid rules, indicating what kind of public support is acceptable and legitimate in order to attain clear societal objectives;
26. Asks the Commission and the Member States to reflect on the consequences of a possible liberalisation of the betting market and on mechanisms to secure the financing of sport in general and football in particular;

### ***Selling of -television rights and competition law***

27. Holds that central marketing of television rights is fundamental to maintaining the model of financial solidarity in European football;
28. Stresses that the merit of Article 3a of the current “Television without Frontiers Directive” can hardly be overestimated;
29. Points out that it is vital for professional football that the profits from television rights be distributed in a fair and redistributive way; notes that the current distribution of television rights in the UEFA Champions League is to a large extent done according to television market shares; notes that this favours big countries, thereby diminishing the power of clubs from smaller countries;
30. Invites therefore UEFA together with the Commission to develop mechanisms to secure a more competitive balance in this field;

### ***Doping***

31. Calls on Member States to consider the prevention of and the fight against doping as a priority, to carry out an in-depth evaluation of national action plans against doping and to foster and stimulate coordination at EU level.

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32. Instructs its President to forward this resolution to the Council, the Commission, the governments and the parliaments of the Member States, UEFA and FIFA.

## EXPLANATORY STATEMENT

### 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 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.

This exercise should, in a next phase, be broadened and opened up to other professional sports and should evidently also deal with *female* professional sport.

### 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.

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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

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.

2. A very recent example of 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 on the 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 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/ Cost control**

The introduction of a (self regulatory) *modulated cost control system* 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 cost control system should be further examined.

### **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

- 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
- 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.

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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"

## 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*?