

FOOTBALL GOVERNANCE AND EU POLICY-MAKING AFTER LISBON: A VETO PLAYER ANALYSIS OF UEFA AND FIFA POSIBILITIES UNDER THE NEW TREATY

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Abstract

Since the seismic Bosman judgment, sport governing bodies have long lobbied the Member States to take the necessary decisions that could grant them, at least, favourable application of European Union (EU) law (García 2007). In the eyes of FIFA and UEFA, the preferred instrument for achieving that aim would have been a treaty provision exempting sport from the application of the EU's free movement and antitrust provisions (Weatherill 2010).

The Treaty of Lisbon denied the sport bodies once more any exception under EU law, and early legal analysis point out that it is unlikely to modify the approach taken by the Commission and the Court of Justice of the European Union in the application of EU law to sport (Parrish et al. 2010, Weatherill 2010). However, the sport article in the Treaty sets a new scenario under which to develop EU sport policy, which also has the potential to induce change in football (and other sports) governance structures.

This paper aims to explore the extent to which football governing bodies might find beneficial to engage in the emerging EU sports policy community. The paper will make use of Tsebelis' veto player theory to analyse the possibilities open to UEFA and (to a lesser extent) FIFA by the new sports policy to be developed under Article 165 of the Treaty on the Functioning of the European Union. Now that the EU has the legal base to develop a supplementary and complementary sports policy, it is pertinent to explore whether football bodies would benefit from having any involvement in the development of such policy. In this paper we set to explore what institutional status, within EU policy making, would benefit the governing bodies' policy preferences most. This focus on the governing bodies over other football stakeholders has a three-fold justification. First, because Article 165 TFEU itself calls for EU institutions to take account of 'the specific

nature of sport, its structures based on voluntary activity' and to 'foster cooperation with third countries and the competent international organisations in the field of education and sport' when developing EU sports policy. Second, because the three main EU institutions involved in the legislative process (Commission, Council and Parliament) have all expressed their willingness to involve governing bodies in this process. Indeed, the sports ministers meeting in the Council recently adopted a resolution 'establishing a high-level structured dialogue with sport' that will be coordinated by the rotating EU presidency (Council of the European Union 2010: 12). Third, because the involvement in the EU sports policy-making community might have consequence for the internal governance structures of sport.

In this paper, our main argument is that, for football governing bodies, achieving some form of veto power in the policy process would indeed reduce the risk of detrimental policy change induced by EU decisions, but on the other hand veto power can bring about ambiguous effects since it can result in deadlock, governance instability and venue shifting. Only if UEFA and FIFA would be given the status of a sole legitimate representative of the sport, they could easily prevent detrimental EU induced policy change. The latter, however, is extremely difficult (if not almost impossible) to envisage given the trend towards network and multiple stakeholder governance structures in European sport that has been well documented in the last years (see for example García 2010, Council of the European Union 2010).

We support our argument by employing the analytical tools of veto player (VP) theory as developed by Tsebelis (1995, 2002). VP theory allows analysing the implications of different institutional rules on decision making outcomes.

The paper will first present some basic theoretical propositions about the effects of veto power on decision making output. It will then move to provide empirical evidence by examining two well-known antitrust cases in football: The Commission investigation into the selling of Champions League TV rights and the investigation into FIFA's international transfer system. Finally, the conclusions recommend the governing bodies to continue the strategy of stakeholder management as recently pursued by UEFA in order to maintain their legitimacy vis-à-vis professional clubs and Leagues. The conclusions also considers the rising importance of the EU social dialogue committee in the professional football sector as an emerging venue in football governance outside UEFA and FIFA's structures.

References:

- Council of the European Union, 2010. Decisions of the 3046th Council meeting, Education, Youth Culture and Sport. 16500/10, 18-19 November 2010.
- García, B., 2007. 'From regulation to governance and representation: Agenda-setting and the EU's involvement in sport', *Entertainment and Sports Law Journal*, 5 (1).
- García, B., 2010. 'The governance of European sport'. In: P. Dine and S. Crosson, eds. *Sport, representation, and evolving identities in Europe*, Oxford: Peter Lang, 22-38.
- Parrish, R., García, B., Miettinen, S., and Siekmann, R., 2010. *The Lisbon Treaty and EU sports policy*, Study PE 438.607, Brussels: European Parliament.
- Tsebelis, G., 1995. 'Decision making in political systems: Veto players in presidentialism, parliamentarism, multicameralism and multipartyism'. *British Journal of Political Science*, 25 (3), 289-325.

Tsebelis, G., 2002. *Veto players: How political institutions work*. Princeton, NJ: Princeton University Press.

Weatherill, S., 2010. 'Fairness, openness and the specific nature of sport: Does the Lisbon Treaty change EU sports law?' *International Sports Law Journal*, 2010 (3-4), 1-6.