It's often said, about one thing or the other, that if it didn’t exist, someone would invent it. This applies very much to sports, although it is clearly difficult to reason counterfactually about a phenomenon that so permeates the daily lives of all people. So let’s avoid imagining a world without sports, and restrict this speculation to a supposed introduction of sports in society in 2010. How would that work? – Like so much else today, it would probably be a project introduced from above, e.g. in Europe at EU level, with directives to member states to adopt laws that initiate and regulate this new form of entertainment. Much of what we today take for granted in terms of recreational and competitive sports would probably never come into being, such as sports where the participants might get hurt (like boxing), or where the environment might suffer (such as motor racing), or contests between nations – international competitions would most likely take the form of the Ryder Cup, extrapolated to the global level, that is to say that Europe will compete against the U.S. or the North American continent, South America, Africa, Asia, Oceania. One can imagine athlete transfers between continents, but with strictly regulated transfer fees and salaries – maybe decided by the UN? One can also easily imagine far-reaching regulations in areas such as sport injury management – paid sick leave, physical working capacity estimation, work injury compensation, etc; fan activity – the number and size of bengal lights, protected areas where controlled fights between supporters may be allowed, etc; to say nothing of sporting equipment, with amazingly detailed rules for table tennis rackets, for discuses, for running shorts, or, for that matter, footballs – and all of it with an advanced, enormous control unit. Conclusion: the massive bureaucracy would keep this new form of entertainment called sports from even leaving the starting blocks.

This reflection was initiated by Marie Kronberg’s legally oriented article about football’s future in the European Union. The starting point is obviously the Bosman ruling in 1995, that is, the European Court of Justice landmark ruling in the case concerning Jean-Marc Bosman, by which footballers, as other workers, is guaranteed freedom of movement within the Union. Footballers can thus freely move to another club in another country when the existing contract with a club expires. That decision also outlaws UEFA rules regarding the maximum number of other EU nationals in a team in its competitions. Sports, and particularly the heavily commercialized sport of football, must be considered, said the court, like any other business activity and fall under usual EU rules. Many feared that this would mean the end of European league football, but did that really happen? Not at all, says Kronberg, who has studied the EU’s approach to sports after the Bosman ruling; in numerous rulings post-Bosman, as well as in reports and treaties. The EU and its courts have, says Marie Kronberg, showed greater sensitivity to the special needs of sports than we had reason to fear, with the result that European football today is very much alive and kicking.
Introduction

Football is a sport that unites the world like no other. This is particularly true for Europe, where last night’s league results often make the front page instead of important political issues. Football – just like sports in general – is helping global understanding in general and European integration in particular. Despite the strong South American teams and many Brazilian top players dominating European teams, European League football is arguably the strongest and most influential in the world.

Recent activities of FIFA, UEFA and national federations, as well as from the European institutions, have, however, brought the question of the future of European football back on the agenda.

The Bosman case

As usual when it comes to sports and the EU, it all starts with, and goes back to the infamous Bosman ruling\(^1\) by the European Court of Justice (ECJ) in December 1995. It has been considered the turning point both of the organization of European football as also the beginning of the implementation of a so-called European Sports Law Policy\(^2\).

Bosman

Jean-Marc Bosman was a professional Belgian football player who wanted to transfer from his Belgian club RC Liège to the French club US Dunkerque after the expiry of his previous contract, because RC Liège had only offered a quarter of his previous salary in a new one-year-contract. However, Liège refused to release Bosman’s registration unless Dunkerque accepted to pay a rather high transfer fee. Due to doubts about Dunkerque’s solvency, Liège never issued the necessary transfer certificate and suspended Bosman from playing for the entire season. Bosman challenged this decision in a Belgian court which referred the questions, whether the transfer fee rules and the foreigner clauses currently practiced in Europe were compatible with the free movement of workers and the competition law as guaranteed in the EC Treaty, to the ECJ for a preliminary ruling.

In its ruling, the ECJ confirmed that sport does not fall out of the ambit of European Law, and that due to the horizontal effect of the fundamental freedoms, sporting bodies are bound by these rules just as are Member States. It declared the foreigner clauses to be a prohibited discrimination based on nationality and stated that within the realm of EU law they had to be applied so that all EU citizens were to be regarded as nationals and not foreigners.

The transfer fee practices were regarded as an unlawful restraint of the free movement of workers because they affect players’ opportunities to find employment and the terms under which such employment is offered. Thus they could deter professional football players from entering into working contracts in another Member State. However, such restrictions could be justified on non-economic grounds which relate to the particular nature and

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1 ECJ case C-415/93 (Bosman), ECR 1995, I-4921 ff.
context of certain competitions, though such a restriction must remain limited to its proper objective. The objectives claimed to be the reason for the rule could, in this case, not be regarded as an acceptable justification for the transfer fee practices:

Nor are they an adequate means of achieving such legitimate aims as maintaining a financial and competitive balance between clubs and supporting the search for talent and the training of young players, since

- those rules neither preclude the richest clubs from securing the services of the best players nor prevent the availability of financial resources from being a decisive factor in competitive sport, thus considerably altering the balance between clubs,
- the fees provided for in those rules are by nature contingent and uncertain and are in any event unrelated to the actual cost of training borne by clubs and
- the same aims can be achieved at least as efficiently by other means which do not impede freedom of movement for workers.\(^3\)

The reason why *Bosman* gave rise to such a turmoil is that it crossed the presumed but invisible borderline between sports and the law, and the following discussions led up to a series of legal questions that have until today never been answered unequivocally.

Nearly 15 years later, it is reasonable to conclude that the *Bosman* ruling was not the beginning of the end of European football. Nationality changes in order to circumvent foreigner clauses have decreased, fans identify with their team’s foreign top players, European national teams are still excelling on global level, and there is much more money to be made in the football business than ever before. This obviously leads to new legal problems.

**Sport in the EU’s legal framework**

One could argue that European law should not apply to football at all, that sport is outside the law. This may have been true some 50 years ago, when playing sports was a mere pleasure, and amateurism was the rule. But it is not today’s reality. Today, sports – and on a European level in particular football – is business. And business has to follow the rules. And as Weatherill\(^4\) points out, ‘so far the business of sport has failed to provide an intellectually coherent account of why it should be allowed a partial or total immunity from the application of legal rules to which normal industries are subject’.

However, sport was not explicitly mentioned in the EU and EC Treaties before the entry into force of the Treaty of Lisbon in December 2009. But sport as an economic activity has to respect the economic rules and laws, such as the market freedoms and the competition law. This was already acknowledged by the ECJ in the 1970s when it had to deliver judgment on the cases *Walrave & Koch*\(^5\) and *Donà / Mantero*\(^6\).

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5 ECJ case 36/74 (*Walrave & Koch*), ECR 1974, 1405 ff.
6 ECJ case 13/76 (*Donà / Mantero*), ECR 1976, 1333 ff.
Walrave & Koch
The Dutch pacemakers Bruno Walrave and Longinus Koch used to compete in mixed
teams with Belgian and German cyclists until the Union Cycliste Internationale
changed its regulation to single-nationality teams. Walrave and Koch challenged the
rule before a Dutch court which referred the question of compatibility to the ECJ.

Donà / Mantero
Gaetano Donà, an Italian player’s agent, was looking for prospective football players
in Belgium for Mario Mantero’s Italian club, although the Italian football federation’s
regulation allowed only Italian nationals as professional players in their leagues. Donà
therefore did not get his expenses refunded and challenged this rule, and the case was
referred to the ECJ for preliminary ruling by the Italian court.

Both cases treated the question of whether EC law should apply to sport or whether sporting
issues should be granted an exemption from Treaty provisions. The ECJ stated\(^7\) that ‘having regard to the objectives of the Community, the practice of sport is subject to Com-
munity law (only) in so far as it constitutes an economic activity within the meaning of
Article 2 of the Treaty’. This reasoning was confirmed in the Bosman ruling: ‘The activities
of professional or semi-professional footballers, where they are in gainful employment or
provide remunerated service’ are to be considered as economic activities and thus come
within the scope of the Treaty\(^8\).

Thus, today it can be concluded that sport does not fall out of the ambit of European
Union Law: EU law applies to sport as an economic activity. Relevant EU law rules are in
particular the fundamental freedoms (or market freedoms) and the competition law (or an-
titrust law).

The market freedoms are indispensable for the creation of an internal market and consist of:

- the free movement of goods\(^9\),
- the free movement of persons\(^10\),
- the freedom to provide services\(^11\), and
- the free movement of capital\(^12\).

The ECJ has acknowledged and confirmed their horizontal effect in several rulings which
means that privately organized sporting bodies are bound by the market freedoms just as the Member States are.

The competition law rules in Art. 101 and 102 TFEU, ex-Art. 81 and 82 EC, provide
sanctions for the unlawful restriction of competition within the internal market. Undertak-
ings and associations thereof are not to conclude agreements which have as their object or
effect the prevention, restriction or distortion of competition within the common market,

\(^7\) ECJ case 36/74 (Walrave & Koch), ECR 1974, 1405 ff., para 4 ff.; ECJ case 13/76 (Donà / Mantero), ECR 1976, 1333 ff., para 12 f.
\(^8\) ECJ case C-415/93 (Bosman), ECR 1996, I-4921 ff., para 73.
\(^9\) Art. 34 ff. TFEU, ex-Art. 28 ff. EC.
\(^10\) Art. 45 ff. TFEU, ex-Art. 39 ff. EC (for workers/employees) and Art. 49 TFEU, ex-Art. 43 ff. EC (for freedom of establishment).
\(^11\) Art. 56 ff. TFEU, ex-Art. 49 ff. EC.
\(^12\) Art. 63 ff. TFEU, ex-Art. 56 ff. EC.
nor to abuse a dominant position within the common market or in a substantial part of it. Sports clubs and associations thereof are to be considered as undertakings for the purpose of these competition rules in so far as they engage in economic activities. However, the sports market is not a ‘normal’ market because actors are usually interdependent. Participants in a sports league do not aim at driving their competitors from the market because they need credible rivals in order to sustain competition and uncertainty of outcome. Therefore, measures inherent to the functioning of the sports organisation can be justified or exempt from the competition law prohibitions when determining whether the restriction of competition is to be considered unlawful.

**Specificity of sport**

Despite the confirmation of the general applicability of European Law in the ambit of sporting matters, there has been widespread criticism – before and after the Bosman ruling – based on the suggestion that sporting matters should to a certain extent be exempt from the application of European Union law because of the “specificity of sport”.

The so-called specificity of European sport can be approached in two ways:

- The specificity of sporting activities and of sporting rules, such as separate competitions for men and women, limitations on the number of participants in competitions, the uncertainty of outcomes, a competitive balance between clubs taking part in the same competitions;
- The specificity of the sport structure, especially the autonomy and diversity of sport organisations, the pyramid structure of competitions from grassroots to elite level, organised solidarity mechanisms between different levels and operators, the organisation of sport on a national basis, and the principle of a single federation per sport.

However, this specificity of sport cannot lead to a complete exemption from EU law for sporting matters which constitute an economic activity. And with the on-going commercialization of European sports, and in particular football, it is hard to imagine an area of sport that cannot be considered an economic activity in some way or other.

The specificity of sport should however be kept in mind when considering whether a restriction of market freedoms can be justified by a legitimate objective and proportionate measures. It also needs to be considered when deciding whether a measure contains an

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unlawful restriction of competition. The ECJ has ruled on this matter on various occasions, in particular Delière\(^{20}\), Lehtonen\(^{21}\) and Meca-Medina & Macjen\(^{22}\), and clarified how the ‘specificity of sport’ is to be handled legally.

**Deliège**

The Belgian judoka Christelle Deliège was not nominated by the Belgian judo federation to compete in qualifications for the Atlanta 1996 Olympic Games due to the limitations of squad quota. Deliège challenged this decision as a restriction of her freedom to provide services.

**Lehtonen**

Jyri Lehtonen transferred from a Finnish basketball club to a Belgian basketball club after the fixed deadline for such transfers had passed. The first match he played was therefore rated as lost although his new Belgian team won. They did not field him again for the rest of the season and challenged the transfer deadline rules.

**Meca-Medina & Macjen**

David Meca-Medina and Igor Macjen, a Spanish and a Slovenian swimmer, were tested positive to performance enhancing drugs (nandrolone) and therefore sanctioned with a 2 years competition ban. Meca-Medina and Macjen challenged this decision as an alleged restriction of their freedom to provide services and the EU competition rules.

In Delière, the ECJ held that if there was ‘a need inherent in the organisation of such a competition’\(^{23}\), a national federation could limit the number of participants for that competition. In this case, the ‘need inherent’ was that a tournament needs a fixed number of participants to be organised properly. The ECJ also stated that the national federation has a wide measure of discretion in deciding whether or not there is a ‘need inherent’. Thus, ‘it falls to the bodies concerned, such as organisers of tournaments, sports federations or professional athlete’s associations, to lay down appropriate rules and to make their selections in accordance with them’\(^{24}\).

In Lehtonen, the ECJ confirmed that purely sporting matters are to be left to the federations, if they go to the ‘functioning of the championship as a whole’\(^{25}\) which it considered to be the case for the transfer deadlines, as otherwise permanent transfers throughout the season would lead to chaos in championship rankings.

The case Meca-Medina & Macjen brought further clarification as to that the mere fact of a rule being purely sporting in nature does not have the effect of removing it from the scope of the Treaty. If the sporting activity in question falls within the scope of EU law, it is then subject to all obligations resulting from the Treaties’ provisions. But justification of a restrictive rule is possible when the rule is purely sporting in nature, and justified by

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20 ECJ joined cases C-51/96 and C-191/97 (Deliège), ECR 2000, I-2549 ff.
21 ECJ case C-176/96 (Lehtonen), ECR 2000, I-2681 ff.
23 ECJ joined cases C-51/96 and C-191/97 (Deliège), ECR 2000, I-2549 ff., para 69.
24 ECJ joined cases C-51/96 and C-191/97 (Deliège), ECR 2000, I-2549 ff., para 67 f.
a legitimate objective. This is true for anti-doping rules: Such a limitation is inherent in
the organization and proper conduct of competitive sport and its very purpose is to ensure
healthy rivalry between athletes. However, all such rules and measures must not go beyond what is necessary, they must be proportionate to their objectives.

**Problems: Football and the law**

There are several fields in which football has come (or could come) into conflict with the law, such as foreigner clauses, nationality changes, eligibility for national teams, transfer rules, multiple ownership of clubs, doping controls and sanctions, qualification and nomination standards for teams and competitions, recognition of trainers’ licences in other Member States, sport betting and advertisement, sponsorship and exclusive contracts, broadcasting rights, and many more.

This paper will focus on the issues of foreigner clauses, transfer rules and multiple ownership of clubs and analyse how they conflict with European Union law and what possible solutions there are for justification.

**Foreigner clauses**

The *Bosman* ruling – a story of the past? So one would think, given the fact that almost 15 years have gone by since the ECJ declared the foreigner clauses and the transfer fee practices to be incompatible with EC law, in particular with Art. 45 TFEU concerning the free movement of workers.

This judgment did not stay limited to be applied to EU citizens only, but due to several treaties also includes EEC nationals, candidate state nationals, Russian nationals, Turkish nationals and is most likely also to be applied to Switzerland, ACP States and Mediterranean partners. In the cases *Kolpak* (concerning a Slovakian handball player in Germany), *Simutenkov* (concerning a Russian football player in Spain) and *Kahveci* (concerning a Turkish football player in Spain), the ECJ ruled that athletes from associated states are to be treated like EU citizens, if the relevant Association Treaties contain an unconditional prohibition of discrimination based on nationality.

Many saw the end of football approaching; the loss of spectators’ identification, the detriment of national teams, or the bankruptcy of little clubs, were only a few of the imagined threats. Looking back at these now, *Bosman*, however, has not been the end of European

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27 According to the so-called ‘3+2 rule’ each club was to field a maximum of 3 foreigners, plus a maximum of 2 ‘assimilated players’ (who had been playing in the country for the past five years, three of those in junior teams). National federations were however free to allow more foreigners in their league’s teams.
28 ECJ case C-438/00 (*Kolpak*), ECR 2003, I-4135 ff.
30 ECJ case C-152/08 (*Kahveci*), ECR 2008, I-6291 ff.
football. In the 2009/2010 season, players such as (French) Franck Ribéry and (Dutch) Arjen Robben were the heroes of (German) FC Bayern München’s fans, (Portuguese) Cristiano Ronaldo generated (Spanish) Real Madrid’s highest revenue in merchandise sales, and (Swedish) Zlatan Ibrahimovic and (Argentinian) Lionel Messi led (Spanish) FC Barcelona through Champions League, and were only stopped by Inter Milan who fielded not more than one native Italian player. But all of them were celebrated by local and international fans. No obvious loss of identification can be seen here. What is more detrimental to fan identification is not the nationality of players but the permanent change of club alliances. And what about the national teams? One of the globally top ranked national teams is Spain – despite their league being dominated by Brazilians and other foreigners. Have small clubs disappeared because they could not afford to keep up with the expensive international player markets? No: German village club Hoffenheim made it from nowhere to serious candidate for the league title in the first half of the 2008/2009 season, and Spanish 3rd league club Alcorcón managed to kick almighty Real Madrid out of their Copa del Rey in 2009.

So European football has not died with the Bosman ruling. It is now more present, albeit more commercialized, creating both more spectators’ interest and economic income through various resources (broadcasting rights, ticketing, merchandising and sponsorships to name just the main ones) than ever.

However, FIFA does not seem to have got over the ‘defeat’ and is planning to introduce the so-called ‘6+5-rule’, which stipulates a minimum number of ‘national players’ to field per team and match. ‘National players’ in this context are players eligible for the national team of the club’s federation. The number of these players is to be increased gradually season by season until it reaches six ‘national’ players to field per game in the 2012-2013 season. But where is the difference between a rule that limits the maximum number of foreign players to field (‘3+2-rule’ as in Bosman) and a rule prescribing the minimum number of national players to field (‘6+5-rule’)? There is none. Both have identical effects. And both are thus incompatible with European law, especially the free movement rights. The FIFA ‘6+5-rule’ therefore constitutes a prohibited discrimination based on nationality, despite the alleged criteria for classification being eligibility for the federation’s national team and not the player’s nationality itself, but this leads to the same result: not every national player may be eligible for the national team (for various reasons, such as changes of nationality, or the existence of several ‘sport nations’ within the same Member State as is the case in the UK), but whoever is eligible for the national team is always a national of that country and never a foreigner.

UEFA has gone a different way with its ‘Homegrown Players Rule’ which demands a minimum number of young players fielded who have been trained within the same club or federation, with no (direct) nationality related discrimination. The UEFA ‘Homegrown Players Rule’ is compatible with EU law and justified because it induces clubs to train young players, not necessarily their own nationals. If a club wants to meet the require-

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35 Currently, in the so-called “Big 5” leagues (England, Spain, Italy, Germany, France), an average of 56.1% of players are ‘homegrown’, 3.5% of which are non-indigenous homegrown players; at the same time there is an average of 40% of foreigners per team (Littlewood, Martin and David Richardson and Chris-
ments to play in UEFA competitions, it will have to invest in the training and education of young players of whichever nationality and develop an effective youth system – and that is the aim of this rule. Justified as an incentive to develop young talent, the ‘Homegrown Players Rule’ does not violate European free movement rights.

Transfer rules
In the Bosman ruling, the transfer fee practices were declared incompatible with the market freedoms by the ECJ because a fee to be paid for any out-of-contract-transfer is a restriction of the free movement of workers. However, the ECJ acknowledged that ‘in view of the considerable social importance of sporting activities and in particular football in the Community, the aims of maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate’. But both the ends pursued and the means employed by a restrictive measure must be justified, and the transfer fees practiced at that time were considered an inadequate method. In certain circumstances transfer fees for out-of-contract players might be acceptable, but a clear distinction has to be made about what the ‘transfer fee’ is to be paid for. This was also seen by the ECJ in another recent ruling concerning football transfer rules.

Olympique Lyonnais v. Olivier Bernard & Newcastle United
In 1997, Olivier Bernard signed a ‘joueur espoir’ contract with French Olympique Lyonnais for three seasons. Before that contract was due to expire, Olympique Lyonnais offered him a professional contract for one year. Bernard refused to sign that contract and instead signed a professional contract with English Newcastle United FC. Olympique Lyonnais sought an award of damages both against Bernard and Newcastle United, equivalent to the salary which he would have received over one year if he had signed the contract offered by Olympique Lyonnais.

On 16 March 2010, the ECJ ruled that European football clubs may seek compensation for the training of young players whom they have trained if and when those players wish to sign their first professional contract with another club. The amount of that compensation is to be calculated by taking account of the costs borne by the clubs in training both future professional players and those who will never play professionally. The difference to Bosman is that what was demanded is not a reward for any transfer (a ‘selling’ of an out-of-contract player), but a compensation for the training when a young player enters his first professional contract with another club.


However, the protection of minors needs to be kept in mind when applying this rule. The emergence of a ‘market of exploitation’ of very young talents particularly from South America and Africa needs to be prevented.

Compensation for a preliminary breach of contract is a different question because it touches upon the freedom of contract and the principle of pacta sunt servanda, and is therefore not in breach of European law.

ECJ case C-415/93 (Bosman), ECR 1996, I-4921 ff., para 106.


ECJ case C-325/08 (Olympique Lyonnais v. Olivier Bernard & Newcastle United), 16 March 2010, not officially published yet.
The ECJ has shown considerable care in handling this matter and distinguishing it from *Bosman* by confirming that the training of young players and the establishment of a youth system are legitimate objectives, but measures must not go beyond what is necessary to achieve these aims. The compensation asked for by Olympique Lyonnais was in no relation to the actual training costs and could therefore not be granted. A system for the international transfer based on arbitrarily calculated payments with no relation to training costs is prohibited. A system of transfers based on objectively calculated payments however is justified by the need to enable clubs to train prospective young players without having to fear that their work input will be used against them by another club without compensation.

**Multiple / majority ownership of clubs**

Another subject related to football and the law that has come up recently is the introduction of external (and possibly foreign) capital in football clubs by investors taking over the majority. In England, this has been the rule for several years, in other countries such as Germany or Sweden, regulations exist which provide for the majority of ownership to remain with the original club for several reasons such as avoiding conflicts of interest. These aims have to hold up against the free movement of capital and the EU competition law rules.

The German rule (called ‘50+1-rule’) however does not include limitations as to how many investors may own less than 50% of the same club, or as to the possibility for one investor to own shares in more than one club. With regard to the objective of wanting to avoid conflicts of interest, this is not a very stringent rule. Another possibility would be to design strict conditions which a prospective majority owner has to comply with in order to be allowed to take over the majority of shares and providing for the investor to lose his majority if he does not comply with these conditions throughout his ownership. Possible solutions to these problems are still vividly discussed.

**Summary**

All these problems need legal handling with care, keeping in mind the specificity of sport. Sporting bodies must comply with European Law regulations, there is, however, the possibility to justify rules and measures which are inherent in the organisation and functioning of (European) sport as a whole.

**New European Sports Policy**

Despite the reverse allegations, the ECJ does not seem to have done much harm so far, most post-*Bosman* fears have not come true. And whoever says, spectators want 6+5 because they do not identify with multinational teams, should wonder why stadiums are bigger than ever, audiences both live and on TV are larger than ever, and the income generated by and with football is higher than ever. The ECJ has ruled carefully on various sporting issues lately, and there has been a lot of activity going on as to how to grant sports a specific status within EU law despite being the business that it is.
Declaration No. 29 on sport annexed to the Final Act of the Treaty of Amsterdam (1997)

The first of these steps was the Declaration No. 29 on sport attached to the Treaty of Amsterdam\(^{41}\):

> The Conference emphasizes the social significance of sport, in particular its role in forging identity and bringing people together. The Conference therefore calls on the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue. In this connection, special consideration should be given to the particular characteristics of amateur sport.

With this declaration, the EU officially acknowledged the special status of sports in the EU, albeit not in a legally binding manner.

Helsinki Report on Sport (1999)

The next step was the Helsinki Report adopted by the Commission in 1999. It analyses recent developments in sport in Europe, and particularly its growing commercialization. It also focuses on sports structures and the social function of sport within the EU. Proposals include strengthening the role of sport in education and training and the fight against doping.

The Commission also calls for the legal environment of sport to be clarified because the need for sport to be dealt with specifically by European Union law has become clear in the latest cases referred to the ECJ. In this respect, the Helsinki Report states that the rules of the Treaty do not conflict with regulatory measures of sports associations provided that these measures are objectively justified, non-discriminatory, necessary and proportional.

White Paper on Sport (2007)

Arguably, the most important document is the White Paper on Sport\(^{42}\) adopted by the Commission in 2007. It aims at providing strategic orientation on the role of sport in the EU and recognises its important social and economic roles while respecting the requirements of EU law. The White Paper is the result of extensive consultations with sport organisations such as the Olympic Committees and sport federations, as well as with Member States and other stakeholders, including an online consultation.

The White Paper underlines the principle of subsidiarity, the autonomy of sport organisations and the current EU legal framework, and it develops the concept of specificity of sport within the limits of existing EU competences\(^{43}\). It also contains a detailed Action Plan which addresses mainly societal and economic aspects of sport, such as public health, education, social inclusion, volunteering, external relations and the financing of sport. Furthermore, a structured dialogue with sport organisations such as European sport federations, European and national organisations such as the Olympic Committees, and European non-governmental sport organisations is proposed.


Treaty of Lisbon (2009)

And last but not least sport was finally introduced into the Treaty framework by the Treaty of Lisbon in 2009. The EU still has no independent competence in the field of sport, but the new Treaty on the Functioning of the European Union (TFEU) now states in its Art. 6 that the EU may take action:

The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be:

/…/
(e) education, vocational training, youth and sport; /…/

And the specificity of sport is explicitly mentioned in Art. 165 TFEU:

1. /…/ The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

2. Union action shall be aimed at /…/
– developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe. /…/’

The effects of this explicit introduction of sport into the European Union’s legal framework are yet to be seen. For the moment it is mainly a statement of the status quo that has been developed by the ECJ’s jurisdiction and several soft law documents over the past years, rather than the introduction of a new legal base for the regulation of sport.

Conclusion

There is no denying that (European) football has become business. And as such, it will have to be treated as such. Sport, and in particular football, is an economic activity, a business, an industry.

The danger for football’s future does not lie in the application of business law rules to the sports business, but in the on-going professionalization and commercialization of the sport which has raised and is raising legal questions.

The European Union and the ECJ have shown more sensibility on this subject than publicly perceived, and have published several documents, such as the White Paper on Sports, to address these matters. In addition, a sports article has been introduced into the Lisbon Treaty.
So we need not worry about the future of European football; it most definitely has one. It might be more commercial than sports purists would like it to be, but the only ones able to change this are we, the spectators and fans. As long as commercialization does not take over sporting ideals, football still has a bright future in the European Union. Let’s make the most of it.