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From regulation to governance and representation: agenda-setting and the EU's involvement in sport

Borja García
Loughborough University¹

ABSTRACT

This paper presents the origins and development of the EU's involvement in sport through the examination of the landmark decisions that have shaped its approach over time. The initiation and development of that policy can be considered an example of 'task expansion', in which the EU has extended the scope of its activities as a consequence of actors instrumentalising institutional venues to their own benefit. It draws on concepts from agenda-setting to argue that the initial insertion of sport in the EU's systemic agenda can be explained by the commercialisation of sport in the 1980s and 1990s. However, actor centered agenda-setting models may be more suitable to

explore the consideration of sport in the institutional agenda after the 1995 Bosman case. Two routes of agenda-setting are identified: the high politics route and the low politics route. At first, sports policy was just regulatory in nature, being introduced through the low

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politics route. The response to the *Bosman* case from actors both outside and within the system (mainly sports federations and European Council) moved the issue to the high politics route, focusing more on the socio-cultural and educational particularities of sport.

KEYWORDS

Agenda-setting – Bosman - European Union – Sport – Regulation – Governance

INTRODUCTION

The Treaty of the European Communities, Art. 5 (1) provides that the European Union (EU) 'shall act within the limits of the powers conferred upon it by this Treaty and of the objectives as laid down therein'. Article 3 TEC does not cite sport as a competence of the EU, which means that no authority has been conferred on the EU to develop any kind of policy on sport. However, the EU has got involved in sport-related matters for more than 30 years and especially in the last decade after the well known ruling of the Court of Justice of the European Communities (ECJ) in *Union Royale Belge Sociétés de Football Association*, (case [1995] ECR I-4921, hereinafter *Bosman*). Through the years, different groups of decisions have shaped sport policy. On the one hand, there has been a general and overarching debate about whether sport should be treated by the European institutions, as the ECJ was asking, 'what is sport?' This debate is particularly relevant in the context of the decade-long negotiations leading to the inclusion of a new article on sport (Article III-282) in the draft European Constitution (OJ C 310/2004, 16 December). Upon the failure of the Constitutional treaty, recent initiatives such as the Independent European Sport Review (Arnaut, 2006) or the European Parliament's report on the future of professional football (European Parliament, 2007) have pursued this avenue. On the other hand, Commission decisions and ECJ rulings in particular cases have also shaped the way in which EU sports law has developed.

The case of sport is one in which a new policy area of responsibility has emerged within the remit of the EU. How has this been possible? How can we explain the EU's involvement in sport related matters? This paper provides some tentative answers to these questions by reviewing the key decisions that have shaped EU sports policy over the years. It adopts a conceptual framework based on agenda-setting, an approach that has not attracted much attention to date in the study of EU policy-making. The article begins by outlining the concept of agenda-setting and its relation to EU policy-making. It then goes on to review the main decisions that have shaped European sports policy. This is done in three stages. First, the initial regulatory approach that culminated in *Bosman*; second, the intervention of high politics in the debates about the inclusion of sport in the European Treaties. Finally, the article looks at the more recent interest in the governance of sport in initiatives such as the Independent European Sport Review.

WHAT IS AGENDA-SETTING?

Agenda-setting has received very little attention as a conceptual framework to analyse EU policy-making. It has been used

of principal-agent models of European politics (Pollack, 1994; 2003), whereas other accounts present a rather general description of some basic characteristics of agenda-setting in the EU (Peters, 1994; 2001) but do not analyse the particular dynamics of agenda-setting. This is striking given the potential that agenda-setting might have if applied to the EU. European integration is a history of incremental development of competences, in which new areas of action are taken to the supranational level to form new policies. Moreover, policy-making in the EU is a multi-venue process that offers many entry points to those wishing to affect the range of issues on the agenda. In principle, one would think that agenda-setting would be suitable tools to inform our study of these processes. This article draws on the vast literature on agenda-setting at national level where it has received more attention than in EU studies (in the United States agenda-setting has developed as a distinct study in its own right). The article links some of the agenda-setting concepts used in that literature with the EU's specific institutional and legal framework, taking account in this process the very recent contribution of Princen and Rhinard (2000).

Before going into the details and disaggregating the dynamic of agenda-setting, it is necessary to clarify from the outset that agenda-setting is not just the simple decision of placing an issue into the agenda. If we want to make use of the explanatory powers of agenda-setting then the concept has to be broadened. Indeed, agenda-setting needs to be understood as a cumulative process (Peters, 2001, p. 78); therefore, it is more appropriate to use the term agenda-setting process or, in short, the 'agenda-setting process' (Robinson, 2000, p. 13). Agenda-setting relates to the decisions by which new issues are recognised by policy-makers hence jumping onto the agenda; but it also relates to the decisions which those issues are defined or framed and the impact of that definition in the policy adopted subsequently. Moreover, agenda-setting does not only concern new issues entering the agenda but also how old issues do move up and down in the agenda and get redefined along.

For analytical purposes, one can distinguish four main elements in the agenda process. First, issue recognition or identification: the process by which the attention of policy-makers and the public and them is captured by particular problems over other ones entering the agenda (Kingdon, 1995, p. 87). Second, the construction of problems (issue framing or definition): during the agenda process, issues are not only identified as important but they are also defined and redefined whilst rising through the agenda. Getting a particular definition may affect the rest of the whole policy-making process (Peters, 2001, p. 78). Third, the specification of different policy alternatives: this is the process where policy advocates and specialists propose their preferred solution(s) to the issue that is occupying the decision-making agenda (Kingdon, 1995, p. 87). To put forward their preferred policy, they may need to change the ongoing issue-framing. Finally, the emergence/switch of policy arenas: when new issues rise to the agenda, there is a chance that institutional arrangements are set up in order to deal with it. Institutional actors and other groups in society will organise the necessary structures to deal with the problem in question. These structures can either be new (if the issue is deemed to be completely new) or just part of the available institutional framework (Bau

The term 'agenda', as applied to policy-making, can be defined as 'the list of subjects or problems to which government officials and people outside the government closely associated with government officials, are paying some serious attention at any given time. (Kingdon, 1995, pp. 3-4). Cobb and Elder (1972) distinguish between the systemic agenda and the institutional agenda. The systemic agenda consists of 'all issues that are commonly perceived by members of the political community as meriting public attention and involving matters within the legitimate jurisdiction of executive governmental authority' (Cobb and Elder, 1972, p. 85). The institutional agenda, in turn, is composed by 'that set of issues explicitly put up for the active and serious consideration of authoritative decision-makers' (86). The greater openness of policy-making (as compared, for instance, with national political systems) seems to be apparent at least for getting issues onto the systemic agenda, but it makes it more difficult to move these issues to an active institutional agenda (Peters, 2001).

Richard Parrish points out the similarity between the construction of the systemic agenda and the construction of the European Union institution's agendas and between the institutional agenda and the stage in which issues are finally defined and European policies are shaped (Parrish, 2003b, p. 40). The construction of the systemic agenda can, thus, be understood as the process through which policy-makers select certain issues as worthy of their attention, although this may not involve active policy-making. From the four components of the agenda process outlined by Kingdon, the systemic agenda will be most related to issue recognition and to problem framing. The promotion from the systemic agenda to the formal institutional agenda is influenced mostly by the specification of policy alternatives and the nature of political actors.

AGENDA-SETTING IN THE EUROPEAN UNION

The characteristics of the European Union as a political system include a fragmented decision-making system with multiple avenues for influence. The absence of a clear policy coordination and a multi-level system of governance, make agenda-setting 'very much akin to the model of garbage can decision-making' (Peters, 1994, p. 20). The agenda process in the EU is characterised by a large number of actors involved and a large number of policy alternatives, 'with the consequence that an entrepreneur may be able to expand the range of issue consideration and with it expand the scope of Community action' (Peters, 1994, p. 20). Whilst Peters provides a good description of the consequences of the EU's cumbersome decision-making process on agenda-setting, he does not go as far as to analyse how this may work. For that, the literature on national agenda-setting can be of much help. John Kingdon's work on agenda-setting applies the 'garbage can model' to the EU agenda-setting process. Kingdon considers that in a political system there are three different 'streams' - problems, policies and politics - each one governed by a different dynamic (Kingdon, 1995, pp. 8-9).

First, the problems stream is that of situations within a political system. Problems develop independently of other factors within a political system and we should focus our attention on 'how problems capture the attention of decision makers' (Kingdon, 1995, p. 90). This is true for the European Union, which

be a tight polity in comparison to the Member States, but certainly has its own sphere of problems. Indeed, some of European integration, such as neo-functionalism (see for example Haas, 1968; Lindberg, 1963), adopt a problem approach to explain the logics of integration.

Second, the policy stream comprises the alternatives and proposals generated by both insiders and outsiders in a system for the different problems in society (Kingdon, 1995, p. 116). The policy stream focuses, then, on the interaction of different actors while proposing their preferred policy or problem. These dynamics can also be recognised in the EU, where institutional and non-institutional actors negotiate to find consensus around issues in policies that normally take the shape of global package deals.

Finally, the politics stream can be regarded as the frame within which the agenda process takes place. 'It is composed of things such as public mood, pressure groups campaigns, election results (...) or changes of administration' (Kingdon, 1995). The politics stream, as understood by Kingdon, is composed of two elements: public sphere and institutional settings. The influence of the public sphere in EU politics is less likely to be relevant (Princen and Rhinard, 2006, p. 1121). There is little evidence to support the existence of a European common or a European public agenda, which would be necessary for an EU-wide public sphere. The importance of the institutional setting, though, is far more important. There are two possible routes for agenda-setting in the EU: the 'high politics route' and the 'low politics route' (Princen and Rhinard, 2006).

Building on Kingdon's work, one can identify three major factors behind the EU's agenda process: problems, actors and institutions. This is certainly not a revolutionary finding; similar conceptual approaches to European policy making have used these elements to date. The difference is that agenda-setting makes an alternative use of them. In the field of European policy, Richard Parrish uses the Advocacy Coalition Framework (Sabatier, 1998) to formulate his 'actor centred institutionalism' (Parrish, 2003a; 2003b). In short, Parrish explains the evolution of EU sports policy as the struggle between rival advocacy coalitions. On the one hand, there is a coalition advocating a regulatory approach to sport as an economic activity. On the other hand, there is a rival coalition advocating a more conciliatory line, focusing on the socio-cultural elements of sport. The evolution of the policy is explained in terms of the differential weight of each coalition's belief systems and institutional resources.

Whilst this article certainly uses the idea of two different alternatives along similar lines, it is framed differently. First, it is submitted that actor centred institutionalism focuses more on the development of sports policy, rather than in the origins. It does not help to explain the reasons why sport became an issue of attention, which has an impact on the final policy results. Agenda-setting can provide a more robust link between policy input and policy output. Moreover, agenda-setting, through the concept of visibility provides a more suitable explanation to the changing attitudes of the Commission before and after *Bosman*. Second, agenda-setting allows for more flexibility in the analysis of actor behaviour because it considers each one individually. It

debatable whether the 'socio cultural coalition' within the policy subsystem recognised by Parrish is actually a coalition if it is considered a coalition of convenience (Parrish, 2000, p. 75).

THE EVOLUTION OF PROBLEMS AND THE POLITICAL AGENDA

Problems are the first variable identified in our analysis of the political agenda. In this vision the agenda is set by the evolution of a problem, which demands some form of response. Kingdon (2000, p. 109) draws a distinction between a 'condition' and a 'problem'. Conditions are present daily in a community and in our lives. A condition is very broad, it is almost everything happening in a community: weather, illnesses, poverty... Conditions are only defined as problems 'when it is believed that something should be done about them' (109). Problems, once identified, have two components. First, the social conditions (the problem as it is in nature) and second the interpretation or perception that actors make of these social conditions (the problem as it is seen or defined) (110). The possibility that a problem will rise onto the political agenda are closely linked to its nature. How a problem is interpreted by actors is as important as its nature: 'for those who wish to control the dynamics of the manipulation of the public's perception of it is vital' (Kingdon, 2000, p. 18). Moreover, it is highly important to note that the definition 'is by no means an a priori given' as actors within a community will not necessarily agree on a definition (Kingdon, 1995, p. 101).

A key element to the definition of a problem is visibility, which can be defined as the number of persons or groups that are aware of the existence of the problem and its possible consequences (Kingdon, 1995, p. 43). Visibility is 'a key requirement if a problem is to engage the interest of an actor or institution who will subsequently act on it' (Hogwood and Gunn, quoted in Kingdon, 2000, p. 17). Thus, problem definition and visibility for a problem in a community become paramount in the rise of problems onto the political agenda. Therefore, actors in policy-making will try to make their favour the perception of these two dimensions. Actor centred models of agenda-setting, problems are defined and constructed during the conflict between actors over visibility and definition (Robinson, 2000, p. 16). This is especially important because the definitional bias which a problem reaches to the political agenda will condition the development of a policy. The interplay between visibility and definition in the definition of a problem lies in the way in which a definition can condition policies. The nature of the problem is likely to have more influence in the early stages of the agenda-setting process, the formation of the systemic agenda.

THE ROLE OF ACTORS IN THE AGENDA PROCESS

Actor centred models consider the agenda process from an actor's perspective, where actors try to retain control over the intensity and visibility of an issue (Robinson, 2000, p. 23). The activities of actors are important both in the recognition and framing of problems and in the specification of policy alternatives. Therefore, actors have impact in both the systemic and institutional agenda, although it is in the latter where they tend to have a greater explanatory power. The EU being an open political system with a large number of actors, it is natural to find conflicts among actors about the suitable solution to the problems present in the agenda.

In the early stages of the agenda process, insiders to the community will try to restrict the scope of any rising issue to maintain it within the core of the policy community, hoping to retain problem definition of the issue (and therefore a potential action) suitable to their interests. If there is agreement on a definition of the issue and the suitable policy to be adopted, the agenda will be controlled by insiders. However, if an insider does not find its interests well served by the initial policy proposals, it will try to expand the scope and visibility of the issue to include actors outside the policy-making core, generating an internal [to the policy community] legitimacy crisis in the process (Baumgartner and Jones, 1991, p. 1056). Early action can prevent a low salience issue from getting to the high level political agenda; policy images and problem definitions are controlled at the outset, when rival conceptions tend to emerge. However, if insiders succeed in challenging the prevailing definition of a problem, attracting the interest of others outside the policy-making core, an 'external legitimacy crisis' may develop, leading to a reassessment of the policy definition (Baumgartner and Jones, 1993, p. 68).

Outsiders, on the other hand, find it more difficult to influence the agenda process. If they are sufficiently informed, they will propose their preferred definitions and policy proposals as the issues are growing on the agenda. If they are not close to the policy subsystem, they will be at a disadvantage because they will struggle first to enter into the subsystem and then to get their options considered as policy alternatives. For outsiders, a key method to affect policy is to use indirect channels by moving the discussion out of the normal core arena and making it open to the public (Cobbett *et al.*, 1976). One way for outsiders in the EU to affect the agenda is the use of institutional resources at their disposal, such as legal challenges, and direct contact with political representatives (MEPs, Commission officials, political groups, lobby groups, etc). If successful, the legal challenge is obviously a strong avenue due to its direct enforcement mechanism. On the other hand it may be time consuming.

HIGH POLITICS AND LOW POLITICS IN AGENDA-SETTING IN THE EU

The interaction between problems and actors is at the core of agenda-setting in the European Union. There is, however, another key variable that needs to be analysed, for actors and problems do not interact in a vacuum, but rather in a structured (and quite complex) institutional framework. The important policy arenas in agenda-setting cannot be underestimated because there is a strong link between the framing of a problem and the venue in which it is being dealt with (Baumgartner and Jones, 1993). The EU offers multiple opportunities for venue shopping, as issues move from one institution to the other through the long and complex policy-making process. Thus, there are many opportunities to set or modify the agenda. Prince and Rhinard (2006) have identified two routes in which agenda-setting operates through the EU's institutional framework. They distinguish between the old distinction between high politics and low politics

The high politics route (Princen and Rhinard, 2006, pp. 1-2) is primarily a political one. It commences in the European Council where problem recognition and some issue framing/definition takes place. The nature of the problem, especially if cou-

a focusing event, is a major factor in the initiation of the high politics route. The European Council, due to its nature, will normally limit itself to providing general principles about the issue in question, so normally the bulk of problem framing will go down one level to either the Commission or Council of Ministers, who have to interpret the decisions of political leaders and act accordingly (1121). This is how the systemic agenda is formed through the high politics route: a top-down approach. Once the problem in question is recognized and framed, it moves outside the initial circle of policy in the formal institutional agenda, where different policy alternatives will be considered by the Commission, Council of Ministers or European Parliament. These changes of venues may be open for outsiders to try to influence policy output. The high politics route has the advantage of providing momentum to EU decision-making, as the Commission and other institutions may feel compelled to follow the European Council's recommendations. On the other hand, once the issue has left the political leadership, it may be watered down during the formulation of the policy, especially if the debate reverts to be a low key and technical issue. If the political momentum is maintained and the issue remains framed in political terms, it may be more difficult to change through technical arguments.

The low-politics route (Princen and Rhinard, 2006, pp. 1-2) is mainly technocratic and technical. Issues do not originate due to a political decision, but rather through the professional or technical concerns of people working in the same issue area. This is rather typical of the Commission and Council working in technical areas. There are also opportunities for individuals (such as Bosman and lawyers) to use the institutional framework to promote issues from below. Issue framing in the low political route will be done by the Commission and the Council, but the process is likely to be framed in much more precise and technical terms than the high politics route due to the work of expert groups (1121). The formation of the systemic agenda. Once the issue is recognized and framed as a problem, it has to be brought to the formal agenda and go through the decision-making process. The dynamics of the low politics route in agenda-setting are quite different (1122). Moving issues up to the institutional agenda route is difficult, because the receiving institutions can place a veto or modify the problem as presented to them. For an issue to be promoted to the institutional agenda in the low politics route, advocates need to gradually build support around them until there is a general consensus that the new problem deserves formal agenda status. The risk is that problems might be blocked, redefined or even 'hijacked' by other actors when moving to the formal agenda.

The high politics route is more likely to affect problem recognition and problem framing, whereas the low politics route can have a major impact in the re-definition of a given problem or the elaboration of policies once problems are in the agenda. It is necessary to understand the two routes as the two ends of a spectrum, as it is unlikely for an issue to follow purely just one of them (1122). Indeed, issues may change from one route to the other. A particular problem may start as low politics, but be promoted to high politics by a focusing event and the reverse is also possible. Moreover, both processes can unfold simultaneously and have reciprocal effect on each other.

THE EUROPEAN UNION AND SPORT: A REGULATORY ST

This section looks at the early stages of the EU's involvement in sport related matters. This period is mostly characterised by a regulatory approach in which European institutions were asked to analyse whether the rules adopted by sports governing bodies were in line with EU law, normally at the request of third parties, the ECJ ruling in *Bosman* being the peak of this regulatory approach.

Before *Bosman*, European institutions suffered what could be considered as relatively low-key encounters with sport. It is worth noting that both *Walrave and Koch v. Association Union Cycliste Internationale*, (case C-36/74 [1974] ECR 01405, hereinafter *Walrave*) and *Donà v. Mantero*, (Case C-13/76 [1976] ECR 00000, hereinafter *Donà*) were cases brought to the courts to challenge rules adopted by sports governing bodies (cycling in *Walrave* and football in *Donà*) that particular individuals deemed to be in violation of their rights as established in the TEC. It is also worth noting that despite the ECJ rulings, no other EU institution took any robust measures in the field of sport. There was something about the period nothing comparable with the post-*Bosman* period. The European Commission took a contradictory approach (Parrish, 2000) because it did not pursue action against football governing bodies despite claiming that the restrictions highlighted by the *Donà* should be lifted. Instead, the European Commission preferred to reach a negotiated solution (European Commission, 1996). In the meantime, national governments meeting in the Council did not seem to be very interested in sport, except for problems regarding doping (see for example Council of Ministers, 1990) and the European Parliament was more interested in finding a European dimension to sport, although it did request the Commission to 'take energetic steps against rules that limit the freedom of movement and establishment of citizens engaged in certain sports' (European Parliament, 1984, paragraph 8).

The ruling in *Bosman* seemed to give new impetus to the European Commission, especially DG Competition. Karel van Miert, the Commissioner in charge of that area, was rather quick to stress that 'UEFA has to evolve, whether they like it or not' and threatened football governing bodies with sanctions if they did not apply the ruling immediately (Kempson, 1996; Hopcraft, 2007). In its commitment to make sport organisations accountable to European law, DG Competition started proceedings in football in three high profile cases: (i) UEFA's rules on football broadcasting rights (European Commission, 2001a); (ii) the possible dominant position of motor-sports' governing body (FIA) in relation to the organisation of Formula One (European Commission, 1999); and (iii) FIFA's transfer system (European Commission, 2002a) and the central marketing of Champions League's television rights (European Commission, 2001b). All were settled after lengthy negotiations with the affected sports governing bodies, the Commission having to resort to sanctions or formal complaints only in the case of the FIA.

The initial stance of the Commission's Competition authority was not well received by the affected sports organisation rather by sports governing bodies, especially in the case of FIFA and UEFA (Interview, Gerhart Aigner, former UEFA General Secretary and CEO, Nyon, Switzerland, 2007). However, the long negotiations proved to be, at least in retrospect, constructive for football representatives, which now tend to regard that period as a tough but positive one in which to get used to a new reality (Interview, UEFA top senior official, Nyon, Switzerland, 2007).

FROM THE SYSTEMIC TO THE INSTITUTIONAL AGENDA: VIS VENUES AND DEFINITION

The most direct consequence of *Bosman*, of course, was abolition of the old football transfer system and of the quotas in club competitions. In terms of our analysis for policy, the main consequence of *Bosman* was that sport propelled high up in the EU agenda because the ECJ's ruling forced the Commission and other institutions to take a position on the regulation of sport, which they had failed to do previously. There was a general concern about sport in the EU as reflected for instance in the 1994 European Parliament Report by Larive (European Parliament, 1994), but it was not very high indeed, it was rather patchy. Before the *Bosman* explosion, sport was decidedly low on the agenda. It could be said to have reached the EU's systemic agenda, as it was an area of interest but it had no real institutional agenda status because there were no real efforts to formulate a coherent approach towards sport.

Agenda-setting concepts can shed some light on the very different reactions of the EU institutions after *Bosman*, as compared to the virtual indifference that followed *Donà*. In a problem-solving agenda-setting approach, one can consider sport *pre-Bosman* as having a low level of visibility, as only few actors involved in decision-making were interested. With such a low visibility level, there was no real conflict about the definition of sport within EU institutions and it was not yet considered a problematic issue. Most sport decisions were taken on a case-by-case basis at a level of low politics. At this point, the definition or framing of the issue 'sport' was done rather in economic, technocratic or regulatory terms. In short, sport was not a hot and politically salient issue. This changed with *Bosman*. First, the visibility of the issue was enhanced. The popularity of the affected sport (football) multiplied the media coverage. Moreover, football in 1995 was a completely different sport to the one in the *Donà*. Professional sport in general, and football in particular, benefited massively from the large influx of money from television channels (García, 2006a). The commercialisation of professional sport contributed to the Commission's early interest in the issue in economic terms. Thus, with *Bosman* sport gained visibility as it was placed in the institutional agenda because the ECJ's ruling forced the Commission and other institutions to take a position on the regulation of sport by the EU.

Once on the institutional agenda, the change in the definition of sport and sports policy took a while. The actions of the Commission in the aftermath of *Bosman* were logically focused on the regulation of sport as a market place because the ECJ stated in *Walrave*, *Donà* and *Bosman* that European law was concerned with the economic side of sport. Thus, the actions of the Commission were led by the DG Competition Policy and the Internal Market. Indeed, *Bosman* enhanced the definition of sport within the EU as just an economic activity in the eyes of the Directorates General within the Commission, but this was to change. Shortly after *Bosman* the issue of 'sport in the EU' was politicised with the interventions of the European Council. Moreover, external actors such as sports governing bodies sought to change the ongoing definition of sport in the EU agenda.

economic activity. It was time for high politics and new p arenas if the policy was going to be redefined.

THE 'HIGH POLITICS' OF SPORT IN THE EU: SPECIFICITY AND AUTONOMY

Despite earlier warnings in *Walrave* and *Donà*, *Bosman* a real shock for sports governing bodies, not least for the authorities who abruptly realised the far reaching consequences that European law could have for their activities (Interview Jonathan Hill, Head UEFA Brussels Office, 17 March 2006). It is difficult to understand how this was possible given the complexity of the law of the court. Be that as it may, sports governing bodies had the need to engage with the EU to redress the situation after *Bosman* and the high-profile Commission investigation. Sports federations' main goal at that moment was to reduce the regulatory activity of the Commission (Interview, Christof Kepper, IOC's Chief of Staff, Lausanne 16 February 2007). They wanted to see introduced into the Treaty the necessary provisions that would allow for a *softer* application of EU law to sport, or even for a complete exemption from it (for more on the demands see for example UEFA, 2001).

The arguments of the sporting movement were structured around two concepts: specificity and autonomy (Interview, Christof Kepper, Lausanne, 16 February 2007). Specificity is a rather elusive, concept that is referred to constantly by sports governing bodies. However, sports organisations are still unable to produce a clear definition of what the specificity of sport is. Broadly speaking, the so-called specificity of sport can be understood as the inherent characteristics of sport, both as a social and economic activity, which can justify a tailored application of EU law and policies. The most common example is that of the necessity of balanced competitions, as recognised by the ECJ in *Bosman* (paragraph 103). So that, rules aimed at maintaining that balance should be deemed to be compatible with EU law. On the other hand, the autonomy of sport has been better defined by the sporting movement. It is the idea that sports as a civil society movement that emerged on the margins of public authorities' regulation, should remain self-governed by its own structures and bodies that have done so over the years (organisations such as FIFA in football, FIBA in basketball, the International Olympic Committee and so on), with minimal intrusion by public authorities.

Sport authorities launched an intensive lobbying campaign at the highest level during the 1997 IGC, ultimately convincing the German Chancellor and the Belgian Prime Minister of the need for amending the Treaty to protect sport (Husting, 2004, Van Miert, 2000). The European Parliament also suggested the inclusion of an Article on sport in the Treaty of Amsterdam with a much more justified case for it and excluding the possibility of a legal exemption for sport (European Parliament, 1997). The European Council's intervention took the form of the rather slim Declaration Number 29 on Sport, which became the final act of the IGC reforming the Maastricht Treaty (hereinafter the Amsterdam Declaration on Sport).

ALLIES WITHIN THE COMMISSION: THE SPORTS UNIT

Shortly after the Amsterdam Declaration on Sport, the Sports Unit within the Commission's Education and Culture DG emerged.

key actor to find the equilibrium between the commercial sport and a better attention to the specificity of sport (P 2003b, pp. 178-179). The Sports Unit initiated a process of dialogue and consultation with the sports world. As a result, the European Council decided to invite the Commission 'to submit a report to the Helsinki European Council with a view to safeguarding current sports structures and maintaining the function of sport within the Community framework' (European Council, 1998).

In response to the European Council's request, the Commission adopted the so-called Helsinki Report on Sport in December 1998. The report acknowledges that the commercial development of sport in Europe 'risks weakening its educational and social function' because 'new phenomena are calling into question the ethics of sport to the detriment of a more balanced development of sport' (European Commission, 1999c, p. 3). The Helsinki Report on Sport presents a general view of the suitable European Policy. The key concept in the report is 'partnership'. The Commission calls for a new approach to sport both at European and national level, with greater consultation between all stakeholders, both institutional and non institutional. Sports federations are recognised for their vital role in the governance of sport, but they are reminded of their responsibility to ensure solidarity and democracy within the sports community (European Commission, 1999c).

Straight after the adoption of the Helsinki Report on Sport, the European Council intervened again, backing the Commission's vision as stated in the Helsinki Report. Under French presidency, the European Council that adopted the Treaty of Nice in 2001 included the Nice Declaration on Sport in the presidency conclusions of the summit. The aims of the declaration are perfectly summarised by its title: 'Declaration on the specific characteristics of sport and its social function in Europe, which should be taken into account in implementing common policies' (European Council, 2000). The Nice Declaration is more than the one adopted in Amsterdam and it calls for EU institutions to take into account sports organisations' opinions when formulating their policy on sport. Yet, it is again a non-binding political declaration. It is interesting to note that the Helsinki Report on Sport was drafted by DG Education and Culture, not the Commission. The vision of sport in this document differs from the earlier regulatory impetus of DG Competition. The nature of the Commission as a single monolithic institution with a unified vision of policies is certainly challenged in the case of sport. I do not have the space outside the scope of this article to detail the internal dynamics of policy-making within the Commission, but it is worthy of mention as an issue for further research. It is even more interesting to note how the European Council intervened to change the balance of power in favour of DG Education and Culture.

After the Nice Declaration on Sport, the dialogue between the Commission and the European institutions intensified, trying to find a common ground and build upon the momentum. The sporting movement regarded the so-called European constitution as possibly the last chance for the political recognition of sport in the Treaty (Parrish, 2003). The article was initially introduced in the Convention's first draft as a generic article on Youth, Education and Vocational Training. During the IGC, under Italian presidency, the Convention's proposal

<http://ec.europa.eu/sport/action_sports/article/docs/a_final.pdf>. It was an article for sport on its own, giving it recognition, but it did not award the degree of independence governing bodies were demanding.

A NEW DEFINITION FOR EU SPORTS POLICY: THE IMPACT OF POLITICS IN THE AGENDA

The Treaty Establishing a Constitution for Europe has not yet come into force due to the negative referenda in France and the Netherlands that stopped the ratification process. However, the whole debate on the constitutionalisation of sport in the EU, and the interventions of the European Council and the Commission's Sports Unit had an effect on the framing of the issue 'sport' and redefining sports policy. Indeed, the arguments put forward for the specificity and the autonomy of sport (as recognised in the Nice Declaration on Sport) informed the ECJ and the Commission's decisions in particular cases. The Court recognised in *Clément Delière v. Ligue Francophone de Judo et Disciplines Associées* (Joined cases C-51/96 and C-191/97 [2000] ECR I-2549 hereinafter *Delière*) that the rules for the selection of sportspeople to take part in international competitions are inherent to sport, hence they are compatible with EU law as long as they remain not discriminatory and proportionate. Despite being prima facie an obstacle to the freedom to provide services, the ruling the Court made reference to the Amsterdam Declaration on Sport as a reinforcement of the recognition of sport's specific features (*Delière*, paragraph 42). Similarly, in *Jyri Lehtonen v. Castors Canada Dry Namur-Braine ASBL v. Fédération Royale des Sociétés de Basket-Ball ASBL* (case C-176/96 [2000] ECR I-2681, hereinafter *Lehtonen*) the Court considered that the limitation of players' transfers to short periods during international competitions (the so-called transfer windows) can be accepted as a means to preserve the integrity of championships, despite being an obstacle to the freedom of movement. The Commission took account of the new arguments when settling investment rules such as the one on the central marketing of the UEFA Champions League TV rights (European Commission, 2002b), where the Commission accepted that central marketing is a valid tool to redistribute income among the participating clubs, thus ensuring a balanced competition. Similarly, the Commission cleared UEFA's rules on the ownership of clubs participating in European clubs' competitions (European Commission, 1999a).

The period that extends from the aftermath of *Bosman* to the adoption of the Constitution in 2004 saw a rise in the importance of sport in the EU agenda due to the political attention the issue caused by a focusing event (*Bosman*). During this period, the issue was at the top of the institutional agenda, there was also a change in the direction of sports policy as a result of the redefinition of 'sport' as a problem in the EU's political agenda. In a general setting terms, this is a period focused on policy framing/implementation in the formal institutional agenda, whereas the years that culminated in *Bosman* can be understood as a period of recognition and entrance in the systemic agenda. Sport, which was seen before as an economic industry, was re-defined as a socio-cultural activity with important benefits for Europe as a whole. Some European institutions now see sport as a tool for policies in areas such as health (fight against obesity), social inclusion (fight against racism) (Interview, DG Education

Culture Official, Brussels 12 May 2006). Two groups of actors were instrumental in this redefinition. On the one hand the European Council and DG Education and Culture, as insiders to the system and the policy community. On the other hand, sports governing bodies, which started as outsiders to the policy community but gained importance over time.

Agenda-setting explains this redefinition of issues and positions in terms of actors exploiting new policy venues. The shift of arenas is one of the most powerful instruments at hand to change policy status-quo (Baumgartner and Jones, 1993). Once sports emerged on the institutional agenda after *Bosman*, DG Competition in the Commission was the first to act. Sports policy being dealt in the low politics route. However, sports federations (and also the European Parliament) hoped for an alternative route to be considered. Unhappy with the regulatory efforts of the Commission, the sporting movement proposed a new definition of sport to the EU. They found allies within the institutional framework in the form of the European Council. The interventions of the European Council changed the low politics route in which sport was located at that time, proposing a different approach to sports policy to take more into account the specificity and autonomy of sport. This is an example of the difficulties faced in moving an issue up the agenda. The intervention of the European Council modified the course of policy that had arisen through the low politics route. It was left to the Commission's Sports Unit (with input from the Parliament and the sports organisations) to give particular content to the redefinition started by the political leadership of the Council. The negotiations culminating in Article III-282 of the Constitution are considered as the point in which both routes (high and low politics) and both policy definitions (regulation v. political agreement) met.

A LOOK TO THE FUTURE: THE QUEST FOR GOOD GOVERNANCE

Despite the failure to ratify the European Constitution, sports policy remained an active item in the European agenda. The main concern of the actors involved in EU sports policy agree that the key issue of the last two years has been the role of European institutions in the governance of sport and the autonomy of sport governing bodies (interviews, *passim*). Whilst the specificity of sports policy is considered as addressed by the decisions reviewed in this report above (even if sport governing bodies are unhappy with the result of this settlement), the exact degree of self-regulation that should/could be granted to sport was (and probably is) not yet decided. This section deals with the latest development in sports policy, namely the Independent European Sport Review (IESR, 2006), the so-called *Charleroi* case (*SA Sporting du Pays de Charleroi and G-14 Groupment des clubs de football europeen v. Fédération internationale de football association (FIFA)*, case C-243/06, hereinafter *Charleroi*), and the ECJ ruling in *Davutyan v. Medina and Igor Majcen v. Commission of the European Communities* (Case C-519/04 P, [2006] ECR I-6991, hereinafter *Meca-L...*

The Independent European Sport Review (IESR) is an initiative of the British sports minister, Richard Caborn (for a detailed analysis of the IESR see García, 2006b). The IESR was initially set up as a review of European football, but it has been later transformed in a report in print for the governance of professional sport in the 21st century. The recent corruption scandals surrounding European football

the last year, such as match fixing in Italy, prompted EU ministers to find a solution to the consequences of mass commercialisation that professional sport in Europe has in the last decade (García, 2006a). One of the particular IESR is that despite its claims for independence it has been 'commissioned by UEFA' (Independent European Sports 2006). The final report of the IESR concludes that professional sport in Europe 'is not in good health' (Arnaut, 2006, p. 10). It goes on to propose a series of recommendations to improve the governance of sport.

The IESR defends the so-called European Model of Sport (European Commission, 1998). The Review asks for the EU to empower sport governing bodies as their natural role in the governance of sport. Indeed, the report proposes a series of legal measures by which the EU could reinforce the role of federations in the governance of sport, giving them what is referred to as 'legal certainty' to perform their role as governing bodies. Some see the IESR as an attempt to reinforce the on-going development of sports policy, but giving an even more important role to the autonomy of sport federations in relation to public authorities also in relation to other stakeholders such as clubs and UEFA. UEFA has played an important role in the initiation and development of the IESR by framing the corruption scandal around football as problems of governance related to the mismanagement of money at club level and has also benefited from its experience in dealing with EU-matters and its status as an insider closer to the sports policy-making core in Europe. Indeed, UEFA senior officials dedicate now a good portion of their time to traveling regularly to Brussels (Interview, UEFA official, 8 February 2007). Focusing events, such as the match-fixing allegations in Italian football, helped European football governing body to put forward its particular agenda. A good choice of venue was also important, as the political presence of national governments (high politics) helped to raise the profile of the IESR and it is hoped that it can influence the next sports policy of the Commission regarding sports policy. For instance, the Review could feature heavily in the upcoming European Commission Paper on Sport (Financial Times, 2006).

However, the possibility of a sudden change remains. The *Charleroi* case, which is now awaiting a preliminary ruling from the ECJ, is a good reminder of this possibility. In this case, the B division club Sporting Charleroi has started proceedings against FIFA's rule on the release of players for national team duties. It is considered as an abuse of dominant position by world football governing body. Sporting Charleroi has now been joined in the proceedings by the G-14, the grouping of 18 of the most powerful professional football clubs in Europe. The argument is that they have to release their players for national team competition (such as the World Cup) without being entitled to any type of compensation even if they come back to their club injured (Financial Times, 2005). The clubs presented their case before Charleroi's Commercial Court (Martínez de Rituerto, 2005), who has referred it to the ECJ for a preliminary ruling under Art. 234 TEC. The ECJ has been asked whether the analysed FIFA rules 'are covered by Arts. 81 and 82 TEC or to any other Treaty dispositions, such as Arts. 39 and 49 TEC' (OJ C 212/2006, 2 September, p. 10).

As the ECJ's decision is pending, it is not possible to elaborate

decision go in the clubs' way, it could have an important impact on the power structures within football (and sport in general). Clubs and leagues would have an important weapon against governing bodies. Indeed, it is interesting to see that for football clubs and leagues, the problem of governance is not about the management of money at club level, but rather an issue of democracy and representation in the decision-making structure of the governing bodies. The *Charleroi* case is a timely reminder that sports policy could change again through the intervention of the European Court, especially if we take this case in consideration with the recent ruling of the ECJ in Case C-519/04 *Meca-Medina v Commission of the European Communities* (CMLR 18 (Ibáñez Colomo, 2006), where the ECJ indicated the legality of the anti-doping rules under Competition law as ascertained using the tests set out in *Wouters* (Case C-344/02 [2002] ECR I-1577).

It is outside the scope of this article to enter in the legal assessment of the consequences of *Meca-Medina* for the application of EU law to sport (for that, see Weatherill, 2006), it is also too early to see what the consequences in political terms will be. However, there is an interesting point in terms of a comparison: setting if *Meca-Medina* and *Charleroi* had in 1995, the judgments go against governing bodies, because the political discourse about sport in the EU is totally different. The judgments (regardless of the outcome) are considered together. Both present a familiar pattern: the challenge to rules adopted by sports governing bodies, as Jean-Marc Bosman did more than a decade ago. In the current debate on the governance of sport and the independence of federations for self-regulation, the recourse to the ECJ can be seen as another change of order in order to shift the current definition of sports policy. The current policy definition is focused on the socio-cultural values of sport which tends to benefit governing bodies over professional leagues and athletes, more keen on the economic side of professional sport. However, it is difficult to say if the next recourse to the ECJ can have the same impact.

In practical terms, *Meca-Medina* casts a shadow on the II analysis of the role of governing bodies in the governance of sport (García, 2006b). *Charleroi* is a reminder to sports federations of their desire of total independence from public authorities to achieve. Sports governing bodies would probably do better if they accept the reality of a degree of independence similar to the concept of supervised autonomy (Foster, 2000, p. 57). If federations want to remain able to influence the EU agenda on sport, they need to be considered as insiders to the political community, thus they will do better if they engage with the Commission and are careful to respect European law, not make the same mistakes that led to *Bosman*.

CONCLUSION

European institutions did not get involved in sport of their own volition, but as a result of the powers conferred to the Commission to control the single market. In this respect, one could argue that the application of European law to sport is easily understood in terms of neo-functionalism and the spill-over of European economic integration reaching a commercially developing area of activity such as sport (Foster, 2000, p. 57).

1968; Lindberg, 1963). Indeed, this is a plausible explanation for why we focus on the initial regulatory actions of both the EC and the European Commission. However, it is more difficult to understand the hesitancy of the Commission in 1976 after *Donà* and the absence in the case of sport of a political follow-up to the economic integration. In the case of sport regulation, national governments saw the Court's interventions as unintended and undesirable, thus 'the connection between the function and the political strategy did not happen' (Barani, 2005, p. 5).

Agenda-setting can provide an alternative explanation for why in some sectors do complete the logic of spill-over and others do not. It can also help to understand the role of external actors in the integration process, such as the role of the sports federations. A problem centred model of agenda-setting can explain this first stage of the agenda process in EU sport. It can be argued that it was the commercial development of sport and the internal fights between employers (clubs and federations) and employees (players) that mainly forced sport into the systemic agenda of the EU through the cases before the Court. However, sport only reached the EU's institutional agenda through the ECJ ruling in *Bosman*. In the case of sport, visibility was very low and the salience of the issue was minimal in the agenda. The change in sports policy after *Bosman* illustrates two different routes through which agenda-setting can reach the EU: the route of high politics or the bottom-up route of low politics (Princen and Rhinard, 2006, p. 1122). It also illustrates the connections between policy redefinition and policy venue. The interventions of the European Council facilitated a change in sports policy from a regulatory approach to a more political and socio-cultural point of view that takes into account the social context and the autonomy of sport.

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[1 B.garcia-garcia@lboro.ac.uk](mailto:B.garcia-garcia@lboro.ac.uk)

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