



**Independent
European
Sport Review**

2 0 0 6

Final version
October 2006

Report by: **José Luis Arnaut**



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Acknowledgments

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Finally, I would like to thank the over 1.300.000 visitors of the Independent Review's website (www.independentfootballreview.com) and the 84 comments sent to the website.

A handwritten signature in black ink, appearing to be 'John' or similar, written in a cursive style.

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FOREWORD

Given that the European Union Constitution, which contained an article on sport, has not been adopted, the Sports Ministers of France, Germany, Italy, Spain and the UK recognised that the time has come for some political action.

Accordingly, the UK Presidency decided to initiate an Independent Review, with a focus on European football, setting out precise Terms of Reference to tackle the specific issues which this sport faces.

The observations I have made, as a result of this Review have left me deeply concerned. Sports in general and football in particular are not in good health. Only the direct involvement of political leaders, working together with the football authorities, can put it back on the road to recovery.

The European Sports Model has delivered success and earned respect around the world as a system based on social inclusion, financial solidarity and true sporting values.

However, two important features also need to be taken into account: the rapid and irreversible trend towards commercialisation of sport and, at the same time, the development of the European Union into a wider political, economic and legal structure now extending to 25 member states.

How do we reconcile the competing interests and priorities of sport within this new framework? This is the question we have tried to address in the context of this Review. In so doing, we have tried to articulate the real meaning of sporting "specificity", to describe and understand the nature of the European sports "pyramid" and to consider how improvements could be made to this structure in order to ensure that it is sufficiently robust to serve the needs of European sport in the years to come.

For the purposes of this Review we have used football as a case study and the conclusions that we have reached may be of equal relevance to all sports in Europe. We have considered all relevant issues of corporate governance in football, including matters such as the regulation of agents, gambling activities, the integrity of competitions, the risk of money laundering, the ownership of clubs, trafficking of young players, and both racism and xenophobia.

In particular, I believe that if these issues are not urgently addressed there is a real risk that the ownership of football clubs will pass into the wrong hands, the true values of the sport will be eroded, and the public will become increasingly disaffected with the "beautiful game".

The responsibility of tackling these issues rests not solely with sports authorities themselves; political bodies have both the duty and the legal means to play their part in finding the appropriate solutions.

The task ahead of us is not easy and it will require both courage and commitment from all interested parties to meet our objective, which is to safeguard the overall interests of European sport in general and football in particular.

Our analysis leads to the clear conclusion that in the case of football UEFA should be established as the formal partner of the European Union to engage in dialogue and to work in cooperation with the European Union to tackle these issues going forward. Similar structures may be envisaged to operate as between other European sports governing bodies and the institutions of the European Union.

This is now the complete and final version of the Independent Review, taking into account the thoughts and feedback received from the Sports Ministers who met in Brussels on 19 September 2006 specifically to consider the findings contained in our analysis. And as a last remark, I might also say that the ruling of the European Court of Justice in the Meca-Medina case (delivered on 18 July 2006) has now only added to the urgency of our task. While we do not set out a detailed analysis of this very judgment in the Review itself, we can conclude that now (more

than ever before) there is a clear need to better define the relationship between EU law and sport to ensure that all interested parties have the security they need to perform their duties effectively and to serve the interests of the sports for which they have responsibility.

José Luis Arnaut

CHAPTER 1. INTRODUCTION

A) History of the European Sports Model

- 1.1** The **European Sports Model** is deeply rooted in European civil society and is an important expression of our culture and attitude towards sporting values. It is a **democratic model** that serves to ensure sport remains **open to everyone**. As a practical matter, the European Sports Model resembles a pyramid structure, with clubs constituting the base of the **pyramid** and offering maximum scope for **local participation**. At the next level are the regional associations and leagues, followed by the national federations, organising national championships and acting as regulatory bodies for all matters concerning their sport at national level. The top of the pyramid is formed by the European federations, usually based on a structure of one member per national association. It is their task to organise pan-European competitions and to perform regulatory functions at a European level¹.
- 1.2** The European Sports Model, based on this pyramid structure, is underpinned by the twin principles of financial **solidarity** and **promotion and relegation**. These are important features of the European model that distinguish it from the situation of the USA, where there is no possibility of relegation to a lower league and very little financial redistribution to smaller clubs or to the amateur or grassroots level. It seems to be almost universally accepted that the European Sports Model should be preserved and protected².
- 1.3** All European team sports are organised in accordance with the same basic pyramid structure and football is a good working example of the pyramid model. Thus, in European football the vast majority of amateur footballers are at the base of the "pyramid" and the professional elite is at the top. The supporting framework of this structure, which comprises some 23 million registered male and female players – many millions more playing informally – and 350,000 referees, is formed by clubs, regional associations, leagues and national associations³. **The work**

undertaken at the base of the pyramid may not be readily quantifiable in monetary terms and may not grab the headlines in the newspapers but is nevertheless fundamental to safeguard the future of the sport and also performs an extremely valuable social and economic role in European society.

B) Media influence: sport as a business

- 1.4** There is no doubt that sport has become more and more of a business and this trend has become particularly marked in the last two decades. In its Helsinki Report back in 1999, the European Commission already identified various factors behind this phenomenon, including the rise in popularity of sport (in terms of television viewers); the “internationalisation” of sport, with an increase in the number of international events and competitions; and, above all, the unprecedented development of the economic dimension of sport, driven in particular by the value of television rights⁴.
- 1.5** The United Nations has estimated that globally sport accounts for 3% of world total economic activity⁵. The European Commission has estimated that sport represents 1% of the GDP of the European Union⁶. Some of the headline figures would include the following: the TV rights for the 2006 FIFA World Cup are estimated to be worth some \$1.7 billion⁷. The 2012 Olympic Games are expected to boost the UK’s GDP by £1.9 billion over the next 14 years. The TV rights for the next UEFA Champions League (2006-2009) should comfortably exceed the previous record of \$780 million. Turnover of the world’s biggest football club (Real Madrid) in 2004/2005 was EURO 275.7 million⁸. And the overall revenues generated by the five largest football leagues in Europe in 2003/2004 totalled some £5.8 billion⁹.
- 1.6** In recent years, the economic dimension of sport has further increased with the development of media markets to include new distribution platforms, such as the internet and mobile telephones¹⁰. At the same time, the pay-off for those involved in sport at the very highest level (e.g. top professional players) becomes ever greater and creates another service industry in this sphere. This is, for example, the basic

reason behind the dramatic rise in the profile and activity of players' agents, a subject discussed later in this Review.

- 1.7** There is a danger, however, that an overly commercial approach to sport will end up compromising important sporting values and undermining the social function of sport. In this connection, it needs to be remembered that sport is not merely a business: according to a recent Eurobarometer on sport, 60% of all European citizens (271 million people) took part in one or other sporting activity in 2004. Furthermore, throughout the EU, sport is characterised by a flourishing club life, with 700,000 sport clubs and 70 million club members (15% of the EU population). These clubs build on the work of roughly 10 million volunteers¹¹.
- 1.8** Nevertheless, despite the important social role sport plays, there is no doubt that in today's business environment there is an **increased risk of legal conflicts**, as already witnessed in recent years. There can be little doubt that increased commercial opportunities coupled with an uncertain legal landscape have increased the scope for litigation and disputes. If this phenomenon is left unchecked, this will deprive sport of the legal security it needs to plan a healthy future. A key task of this Review is to help address this situation.
- 1.9** Furthermore, due to increased problems in the world of football, including the perilous financial situation of many clubs, the on-going "power struggles" between football bodies, and concerns about match-fixing and associated betting scandals, the completion of this task is more **urgent** than ever. Against this background, it is clearly time to review the situation and put European football back on a firm foundation for its future development. In this way, we will also address issues of wider relevance to European sport as a whole. As we will see below, this task also involves clarification of the legal environment in which European sport operates. The authors of the Review consider that the political institutions of the European Union have a duty (together with the sports bodies themselves) to find appropriate structures and solutions to meet the needs of football in the 21st century. With this aim

in mind, this Review will be practical and concrete, with a focus on tangible recommendations as a means to resolve real issues.

C) **Need for action**

1.10 For many years now, the European Union (EU) has discussed creating a more stable legal environment for sport. This discussion has occurred against the background of more litigation and an increased number of cases where sports rules or practices have been challenged under one or other provision of European Community law. Throughout the 1990s and, in particular, following the *Bosman* ruling of the European Court of Justice, the European Commission found itself handling an ever greater number of cases in the area of sport, in particular as regards the potential application of the Treaty rules on competition to sports rules and practices¹². For example, the Commission published its "Preliminary Guidelines on the Application of the Competition rules to sport" in 1999, largely in response to the increasing number of cases in which it had been asked to apply EU competition law to sport¹³. At the same time, there has, for example, also been a substantial increase in the number of cases brought before the Court of Arbitration for Sport (CAS) following its creation in 1986¹⁴.

1.11 The first EU Treaty-based reference to sport was contained in the **Declaration annexed to the Treaty of Amsterdam in 1997**. Whilst this Declaration recognised the social role and significance of sport it did little to explain what this recognition should mean, in real cases. Indeed, following the Treaty of Amsterdam, the world of sport continued to be embroiled in a series of high profile legal disputes regarding EU law, suggesting that this Declaration had, in fact, made little difference in practice.

1.12 The **European Commission's Helsinki Report in 1999** suggested that concrete steps could be taken to create a more stable legal environment for sport. It stated that:

"[...] accompanying, coordination or interpretation measures at Community level might prove to be useful, for example in the area of

the fight against doping. This would be designed to strengthen the legal certainty of sporting activities and their social function at a Community level"¹⁵.

In fact, however, no measures to clarify the legal environment were ever adopted.

- 1.13** In the **Nice Declaration of 2000**¹⁶, the European Council enumerated a number of the specific characteristics of sport that are considered to be of value and importance to European society as a whole. The Declaration, which contains 17 separate paragraphs, attempts to offer some policy guidance as to how certain issues regarding sport should be approached as a matter of Community law. Nevertheless, the Declaration is not itself legally binding and, as noted, only offers a broad indication of how certain issues should be approached. The Declaration, whilst positive in terms of its policy statement, does not provide the degree of **legal security** that the world of sport needs.
- 1.14** In this connection, it is also relevant to note that the European Constitution (which has, of course, not been adopted) had proposed the inclusion of an article devoted to sport. Unfortunately, the demise of the Constitution also means there is still no European Union Treaty article on sport. However, bearing in mind all the preparatory work that was carried out, the EU Sports Ministers still wish to carry the matter forward, building on the Nice Declaration, and therefore deliver legal stability and certainty for sport. This Review is an important element of this work.
- 1.15** In plain terms, **the aim of the current project is to support and give practical effect to the principles set out in the Nice Declaration, in other words, to implement the Declaration in sport** and more particularly in the specific case of football. **In this connection, it is important to emphasise that the European Heads of Government have already recognised the specificity of sport in the Nice Declaration. Consequently, the debate is no longer about whether sport has a specific nature: it is about the practical measures that need to be implemented to take account**

of this specific nature as a matter of European law. According to the Terms of Reference for the Review, the implementation of the Nice Declaration should entail consideration of certain key issues facing European football and an assessment of the measures needed to ensure that these issues are addressed in line with the policy principles expressed by the European Heads of Government in Nice.

D) Sport in general

1.16 The **Nice Declaration** refers to certain **specific characteristics of sport** and obviously this is wider than football alone. However, it is to be hoped that **the findings of this Review may be applied equally (or, at least, as appropriate) to the structure and organisation of all sports in Europe, particularly team sports.**

1.17 It cannot be denied that, in some cases, it is the economic dimension of sport that brings European Community law sharply into play (for example, as regards the application of competition law to the sale of media rights). Against this background, it is not always possible or appropriate to find common solutions to every issue across all sports. Nevertheless, the authors of the Review believe that there are **certain common themes (particularly the protection of sporting integrity and the social function of sport) that can be applied more or less equally to all sports** and where a consistent approach can and should therefore be developed.

E) Football as a case study

1.18 Due to the economic importance of football there is more potential (and there have been more examples) for rules and practices in football to be examined under European Community law. As confirmed in the Terms of Reference for the Review, football is arguably the only truly global game and its influence cuts across economic, political, social and cultural spheres. Perhaps more than any other sport, football is often seen as “big business”, even though this does not accurately reflect the wider role that it plays in the community. It is necessary to reconcile this

business side of football with its specific sporting nature in order to achieve the correct overall balance.

F) Objectives of this Review

- 1.19** As mentioned above, **the overall objective of this Review is to implement the Nice Declaration.** In concrete terms, this requires consideration of certain key issues facing football and then adoption of a series of recommendations setting out how the EU institutions, the EU Member States and the European and national football authorities can best implement the Nice Declaration at both a European and national level. These recommendations may also be applied to sports, particularly team sports, more generally across Europe.
- 1.20** Interpreting and applying the existing case law together with the policy principles set out in the Nice Declaration, **the aim of this Review is to provide a more comprehensive and robust legal framework for sport in general and football in particular.**

CHAPTER 2. WORKING PROCESS AND METHODOLOGY

A) Working process

- 2.1** Under the UK Presidency of the European Union, Sports Minister Richard Caborn called for a meeting of his ministerial counterparts in France, Germany, Italy and Spain, the European Commission and the relevant football bodies to discuss current issues in football. On the football side, this “kick off” meeting in Leipzig on 8 December 2005 was attended by Messrs. Blatter (FIFA President), Johansson (UEFA President), Grondona (FIFA Senior Vice-President, CONMEBOL) and Hayatou (CAF President). This meeting agreed on the “Context and Terms of Reference”¹⁷ for the Review.
- 2.2** A Reference Group, including observers, was established in order to oversee the conduct of the work, with the participation of the Sports Ministers of the EU Presidency (Austria), France, Germany, Italy, Spain and the UK as well as the General Secretary of FIFA and the CEO of UEFA. The final meeting of the Reference Group took place in Paris on 18 May 2006 and included the Sports Minister of Finland (future EU Presidency).
- 2.3** On 8 February 2006, José Luis Arnaut was appointed as Chairman of the Independent Review with a mandate to report on the specific Terms of Reference, which included the following seven headings:
- 1) *The European Sports Model: The central role of the football authorities to independently govern the sport in harmony with the EU institutions and member states.*
 - 2) *The arrangements for overseeing the ownership/control and management of clubs.*
 - 3) *The level of expenditure in respect of players, considering the financial (in)stability and concentration of wealth amongst clubs at both an international and national level.*
 - 4) *The arrangements by which the football authorities oversee (i) the activity of agents and intermediaries in respect of both the transfer of*

players' registrations and player contract arrangements; and (ii) the system of player registration and movement.

- 5) *The distribution of revenues generated within European football, considering the financial (in)stability and concentration of wealth amongst clubs.*
- 6) *The role of the EU institutions, member states and football authorities in respect of the provision of funding to generate opportunities for all people to participate in football, considering the level of support from top-level football to recreational football.*
- 7) *The role of the EU institutions, member states and football authorities in respect of support and encouragement for investment in football stadia.*

2.4 Twelve experts, invited on the basis of their acknowledged expertise, were divided into three groups to study legal, economic and political issues respectively. Furthermore, the Review commissioned a number of additional experts' reports on certain specific issues.

2.5 In addition, a wide-ranging consultation process was conducted in the form of a public hearing, which took place in Brussels on 29 March 2006 and which was attended by:

- Independent Football Commission (UK)
- Deputy Chief Executive, PFA and FIFPro Board member
- The Football Association (England)
- Football Supporters' Federation
- Royal Spanish Football Federation
- European Professional Football Leagues
- G14 EU Affairs External Advisor
- UEFA Vice-President
- UEFA Media Technologies SA
- SPORTFIVE GmbH & Co. KG
- Advisor to the President and Executive Committee UEFA
- Celtic Chief Executive
- Former President of La Liga Nacional de Fútbol Profesional (Spain)
- Gama Sport Events SA
- Advisor Open Stadium
- Supporters Direct

- FIFPro
- EUROALARM Ltd.
- Eamonn Bates Europe SA
- S3 Sports Management Limited
- Licensed Players Agents
- German Sports University Cologne
- Sport Contract
- School of Social Science - University of Aberdeen
- IFR Member
- Members of the European Parliament
- The Football League (England)
- European Commission (Sport Unit)
- Smallbusiness Europe

2.6 In addition, a series of one-to-one meetings was conducted personally by the Chairman with the following bodies:

- Football family bodies:
 - FIFA President
 - UEFA Executive Committee and CEO
 - National Associations
- Specific key stakeholder groupings:
 - European Club Forum (102 clubs from all 52 members of UEFA)
 - European Professional Football Leagues (14 Professional Leagues)
 - FIFPro (international professional players union/syndicate)
 - G14 (European Economic Interest Group – 18 clubs)
 - Supporters
- Political bodies and other interested parties:
 - Preceding Presidency of the EU (UK)
 - Current Presidency of the EU (Austria)
 - Future Presidency of the EU (Finland)
 - European Commissioners
 - Members of the European Parliament
 - Broadcasters, Sponsors, Agencies

Furthermore, some of those parties also submitted written contributions.

2.7 Finally, to ensure that this consultation process was as wide-ranging as possible and fully involved all members of the public interested, a dedicated website (www.independentfootballreview.com) was set up early March 2006 and received more than 1.3 million hits. This allowed all interested parties to participate actively in the Review and to provide their feedback.

B) Methodology

2.8 As will become apparent from the following discussion, many of the subjects covered by the Terms of Reference are interlinked and so, for the purposes of this Review, it makes sense to treat them in a holistic manner, with cross-references as appropriate.

2.9 The most logical method to approach the subject is to look into current (and possibly future) problem areas in sport and to analyse how the relevant EU jurisprudence based on existing case-law as well as the themes underlying this jurisprudence could be applied to these problem areas. These matters are covered in Chapter 3 (European Law and the Specific Nature of Sport). As explained later in the Review, we have managed to find three broad "themes" to the jurisprudence and have presented our discussion of the issues accordingly.

2.10 Separately, there are certain issues that are not strictly legal in character, but which rather relate to governance and efficient administration using football as a case study and these are dealt with in Chapters 4 and 5 below. In Chapter 6 we consider the nature of the legal instrument(s) that would best deliver stability and certainty to sport, whilst in Chapter 7 we set out our recommendations to the relevant parties, based on the analysis contained in the Review. Finally, in Chapter 8 we conclude on how bilateral relations between UEFA and the EU might be structured to achieve these ends in the case of football.

CHAPTER 3. EUROPEAN LAW AND THE SPECIFIC NATURE OF SPORT

A) The autonomy and independence of Sports Governing Bodies

- 3.1 Sport has a specific nature that sets it apart from any other field of business activity** and the Nice Declaration attempts to describe what some of these unique features are. Among other aspects, the Nice Declaration recognises that **sport has important social, educational and cultural functions and that these features must be taken into account when European Community law is applied.** It recognises that **solidarity** between different levels in sport (in particular, between professional and amateur) is a fundamental aspect of sport.
- 3.2** According to the Nice Declaration, the **independent nature of sports bodies** should be supported and protected and their **autonomy** to organise the sports for which they are responsible should be recognised. The Declaration further confirms that it is the **federation that should continue to be the key form of sporting organisation providing a guarantee of cohesion and participatory democracy.**
- 3.3 Self-regulation** of the sports sector is an aspect of the principle of **freedom of association**, recognised and protected as a fundamental element of personal liberty in all EU member states' constitutions and in the European Convention on Human Rights. The **self-organisation** and self-regulation of the sports world is an important expression and legacy of European civil society from the end of the 19th to the beginning of the 21st century.
- 3.4** Regulatory functions in sports are performed by private authorities – sports governing bodies – rather than by governments. For historical and cultural reasons, all EU member states have, to various degrees and to a large extent, left the regulation of sport to the sports bodies. This has helped to remove (or at least reduce) the risk of political influence being brought to bear on sports matters ("sports and politics don't

mix”), which is undoubtedly a principle that should be preserved for the future.

- 3.5** As noted, the Nice Declaration confirms that the sports federation should continue to be the guarantor of cohesion and should have a central role in ensuring solidarity between all different levels of sporting practice. In the context of European sport, this means that, to discharge their functions effectively, **both the European and the national federations should be independent and their autonomy to regulate should be recognised and respected. This implies, however, that these bodies also enjoy the necessary margin of discretion to perform their duties.**
- 3.6** At the same time, however, and this is discussed in detail in Chapter 4 of the Review, it is necessary that the various stakeholders in sport must be properly represented at both European and national association level because this is a precondition for ensuring that these authorities are best equipped to speak on behalf of all interests in the game.
- 3.7** There is perhaps no other economic sector where private bodies have the same scope of regulatory latitude as in the sports sector. Nevertheless, as we will see from the discussion below, **this scope for autonomous regulatory activity is by no means unlimited.** In particular, the potential application of EU law has resulted in a situation where it has become increasingly difficult for the sports authorities to judge when they are acting legally or not. It is also fair to say that both the European Commission and national courts in the EU have, on occasion, struggled to find appropriate solutions to cases involving sports matters.
- 3.8** Since the 1970s the Court of Justice has applied EU Treaty rules binding EU member states also to the activities of private regulators¹⁸. In the *Bosman* ruling, the Court specified that: “Article 48 not only applies to the action of public authorities but extends also to rules of any other nature”¹⁹. Consequently, the EU institutions have treated sports governing bodies in a similar manner to “public authorities” meaning that their private rules do not escape the application of EU Treaty

principles (in particular, regarding free movement of workers). At the same time, however, the EU has been less willing to recognise that sports governing bodies must enjoy a margin of appreciation, such that they are able to exercise their regulatory functions in a meaningful sense.

- 3.9** As will become apparent from the discussion further below, **there needs to be a clearer delineation as to those matters where sports bodies may act autonomously and with a legitimate and wide margin of discretion, without fear of their decisions being undermined by the application of European Community law.** This is not because sport should seek a blanket “exemption” from the rigours of EU law: it is rather because **certain matters (in particular, pure sports regulatory matters) are best left to the bodies with the expertise to deal with these issues.**

B) Specificity of sport: what it means from a legal point of view

1) Introduction

- 3.10** As indicated above and as generally recognised, there has been an **explosion of sports related cases in recent years and a great measure of legal uncertainty** still surrounds sport in Europe. So far the institutions of the EU have essentially adopted a “reactive” approach to the legal issues posed by sport. Typically, either the European Community courts or the European Commission have acted in response to complaints or private actions brought by interested parties. Thus, the European Commission has explicitly confirmed that it follows a “case-by-case” approach when deciding what is (or is not) a genuine “sports rule”²⁰. The Court of Justice naturally follows the same approach.

- 3.11** Whilst the resulting case law gives us some indications as to how European Community law can and should be applied in this sphere, this inherently haphazard approach does not provide sport with the overall legal framework it needs to develop in a climate of legal certainty and security. Consequently, a more “proactive” approach is needed, as recommended by this Review. In this connection, there are **a variety**

of legal instruments available to deliver greater legal certainty to sport and these are discussed in Chapter 6 of the Review.

- 3.12** The Terms of Reference of the Review indicate that it is useful to provide a commentary on the existing case law relating to sport with a view to providing interpretative guidance as to those measures that constitute “sports rules” and those other rules or practices that fall within EU law, albeit subject to the need to take the specificity of sport into account.
- 3.13** In certain cases, the specific characteristics of sport have been recognised in the jurisprudence of the European Courts in Luxembourg and in the decision-making practice of the European Commission in Brussels. The relevant case law is discussed in further detail below. In this next section, we consider the relevant jurisprudence and also assess how key issues faced by sport might be addressed applying similar principles. This is part of the concrete task with which this Review is concerned, i.e. practical implementation of the Nice Declaration.
- 3.14** The specificity of sport can be analysed under three major headings, each one having several sub-sections. It deserves to be mentioned that these headings are not “water-tight” and, depending on the rule under discussion, there may be some overlap between the three headings identified. Nevertheless, for the purposes of simplicity and since certain distinct “themes” connect certain rules and practices to be found in sport, we have adopted the three broad headings described below.
- 3.15** Regularity and proper functioning of competitions – This would include: “rules of the game” or “field-of-play rules”, structure of championships and calendars; rules concerning the composition of national teams; rules relating to the national organisation of sport in Europe (e.g. “home and away rule”); rules concerning organisation of sporting competition in the European sports pyramid structure; rules relating to transfer “deadlines”; rules concerning the transfer of players in general; rules to encourage the attendance of spectators at sporting events and the practice of amateur sport; rules concerning the release of players for national teams and rules concerning doping.

3.16 Integrity of sport - This would include: rules relating to good governance of clubs – the club licensing system; rules related to the ownership/control/influence of clubs; and rules concerning players' agents.

3.17 Competitive balance - This would include: rules concerning home-grown players; rules concerning the central marketing of commercial rights; and rules concerning cost controls.

2) Regularity and proper functioning of competitions

3.18 It is clear that any sports governing body must establish the rules of the competition, to ensure basic conditions of fairness and so all competitors know that they are bound by the same rules. There are a variety of issues where the sports governing body, in its capacity as overall guardian of sporting values, will use its knowledge and expertise to establish the rules of the competition and ensure that competitions are properly conducted.

a) Field-of-play rules, structure of championships and calendars

3.19 One of the main tasks of both the national and European sports authorities is to define the rules of the competitions that they organise. This is, of course, an area where the sports governing bodies have particular expertise. The notion of purely sporting rules covers the main body of rules of a sports federation. If such rules were subject to control by the courts (or arbitral bodies) this would result in the game constantly being disrupted and could paralyse competition and make events effectively impossible to organise. It is clear, therefore, that **such rules must lie within the sole discretion of the governing body.**

b) Rules concerning the composition of national teams

3.20 As confirmed in early case law²¹ it has been held that rules relating to the composition of national teams or rules relating to the selection criteria for athletes participating in high-level international championships²² fall outside the scope of European Community law. These are matters for sports governing bodies, not for civil courts.

3.21 As confirmed in the *Deliège* ruling:

“it naturally falls to the bodies concerned, such as organisers of tournaments, sports federations or professional athletes' associations, to lay down appropriate rules and to make their selections in accordance with them. [...] In that connection, it must be conceded that the delegation of such a task to the national federations, which normally have the necessary knowledge and experience, is the arrangement adopted in most sporting disciplines, which is based in principle on the existence of a federation in each country”²³.

3.22 In such areas, notwithstanding the fact that national teams also engage in economic activity, the European Community courts have recognised that it is legitimate and correct for the relevant sports governing body to decide on the appropriate rules. **These rules**, which are necessary for the efficient organisation of international competitions and which are motivated by purely sporting considerations, **do not conflict with European Community law.**

c) Rules relating to the national organisation of sport in Europe (e.g. “home and away” rule)

3.23 The approach adopted by the European Commission in the *Mouscron* case²⁴ is a further example of a sporting rule concerning the core organisational format of a sporting competition (“home and away” rule, in the case of international club competitions). The European Commission confirmed that matters relating to sports competition formats fall outside the scope of EU law.

- 3.24** Specifically, the European Commission took the view that the “home and away” rule was part of the national geographical organisation of football in Europe which is not called into question by European Community law and which falls within the legitimate scope of discretion of the football governing body. As such, requiring a club to play its “home” fixture at a ground located within the territorial boundary of its own national association could not be considered an abuse of UEFA’s regulatory powers²⁵.
- 3.25** The European Commission pointed out that European Community law did not put into question the power of self-management or self-regulation of sports authorities for questions related to the specific nature of sport²⁶. In this respect, the Commission recalled that Advocate General Cosmas in his opinion in *Deliège* had stated that “*the right of self regulation in sport is [...] protected by Community law*”²⁷.
- 3.26** In the circumstances, the European Commission found that the “home and away” rule was adopted to guarantee equality of chances of clubs participating in the same competition. The rule constituted a principle of sport that was indispensable to the good functioning of national and international competitions between clubs²⁸. In adopting the rule UEFA had exercised its legitimate right of self-regulation as a sports organisation and the fact that the rule had certain economic consequences was not sufficient in itself to exclude the qualification of the **rule as a pure sporting measure escaping the application of EC competition law**²⁹.

d) Rules concerning organisation of sporting competitions in the European sports pyramid structure

- 3.27** According to the European Sports Model, there is an inter-linked pyramid structure in European football, going all the way from clubs at the base of the pyramid to the European governing body at the top. The national competitions (such as national league and cup competitions) are also the route into European competition and it may be said that these events are part of the same over-arching structure, which is indivisible and in

certain respects resembles a cooperative. Every year, for example, clubs in the largest football leagues compete vigorously not just to win their own domestic championship but also to have the ability to compete in the most prestigious European club competitions, such as the UEFA Champions League.

- 3.28** Putting the matter differently, it may be said that football in Europe is based on a “twin pillar” structure, consisting of the national competitions and the European competitions and this is how the European Sports Model and tradition is perceived by the football fan. These pillars are not separate, but rather mutually supporting.
- 3.29** It follows from this structure, and appears to be in line with the jurisprudence of the European Court of Justice³⁰, that the sports authorities may legitimately require their clubs or individual members to commit to participation in the pyramid or cooperative structure as a whole, and not merely in one or other part of it. In several sports-related cases³¹, the European Court of Justice has referred to previous case law where it has indicated that there is no legal objection to the statutes of a cooperative group prohibiting members from participating in other organisations that are in direct competition with the cooperative.
- 3.30** There has been much discussion of “breakaway leagues” in the past and it would seem that if a group of clubs elected to “go their own way” there is no legal means to prevent this. In this respect, the authors of the Review raise a question mark over the existing provisions to be found for example in both the UEFA and FIFA Statutes, which purport to prohibit a football club from participating in any competition other than those officially recognised by the European and world governing bodies.
- 3.31** However, it follows from the above jurisprudence that once a club has gone its own way, it must accept the full consequences of taking that decision, including the fact that it will no longer be eligible to participate in those competitions that are organised and officially recognised by the competent football authorities (national, European and global).

3.32 Whilst European Community law provides for certain economic freedoms (including the right to organise or participate in alternative economic activities) there is no provision of European Community law that gives a club a legal right to “cherry pick” the events it plays in within the overall pyramid structure. The authors of the Review consider that the existence of any such right would serve to undermine the proper functioning of national and international competitions and, in addition, compromise the financial solidarity system on which the pyramid model of European sport is based. **Therefore, rules related to the participation (or non-participation) in sporting competitions in the European sports pyramid are not conflicting with European Community law.**

e) Rules relating to transfer “deadlines”

3.33 It is clear that late transfers can substantially alter the sporting strength of one or other team in the course of a championship, thus calling into question the proper functioning of the championship as a whole³². So, for example, the European Court of Justice has recognised that certain limitations on freedom of movement may be justified when needed to secure valid sporting objectives. Thus, in the *Lehtonen* case, which concerned the legality of transfer “deadlines” the European Court of Justice stated:

“it must be acknowledged that the setting of deadlines for transfers of players may meet the objective of ensuring the regularity of sporting competitions”³³.

3.34 A similar line of thinking was behind a key element in the “Transfer Settlement” negotiated between FIFA, UEFA, and the European Commission back in 2001 by an exchange of letters between those institutions. In particular, it was accepted that a breach of contract during the course of a sports season could upset the balance of competition and should therefore be penalised by a (deterrent) sporting sanction. In other words, given the need to protect the regularity of the

sporting season, it was considered acceptable and necessary that a special ("sports specific") rule should be implemented to preserve sporting regularity, even though it might restrict freedom of movement. Correspondingly, and also to protect the regularity and proper functioning of competition, it was deemed necessary to restrict the possibility for clubs to "buy and sell" players during the course of the season (hence the introduction of a comprehensive "transfer window" system). In other words, just as there was a restriction on the employees (i.e. players) so there was a parallel restriction on the employers (i.e. clubs) each motivated by the same sporting considerations. It follows that both the European Court (*Lehtonen*) and the European Commission (Transfer Settlement) have accepted that **certain restrictions on labour mobility may be justified in order to protect certain important features of sporting competition.**

f) Rules concerning the transfer of players in general

3.35 Following the *Bosman* case and a further investigation by the European Commission some years later, the international player transfer system was re-modelled in accordance with a set of principles agreed between the European Commission and FIFA in 2001.

3.36 This new player transfer system was designed to achieve a number of core objectives, including: (1) the protection of minors; (2) appropriate compensation to be paid for the training and education of young players; (3) maintenance of contractual stability, including necessary sanctions for clubs or players breaching a contract without just cause in particular during "protected periods"; (4) a financial solidarity system to reward clubs involved in the early stages of training and developing players; (5) a transfer "window" system to protect the regularity and proper functioning of sporting competition; and (6) a dispute resolution system to provide a speedy and effective means of resolving disputes based on an arbitration system tailored to the needs of football. As recognised by the European Commission, **these principles are clearly in line with European legislation.**

3.37 However, it needs to be stressed that any rules based on the criterion of nationality will be difficult to reconcile with European law. This principle extends not only to nationals of EU member states but also now to those countries with which the EU has concluded a bilateral association agreement as confirmed recently by the European Court of Justice in both the *Kolpak*³⁴ and *Simutenkov*³⁵ cases. Nevertheless, given the importance of nationality to the structure, organisation and tradition of sport perhaps there should be some further analysis of how this concept should be applied in the specific context of European sport (for example as regards “sporting nationality” for the purposes of participating in competitions).

3.38 The Nice Declaration itself contains an express reference to the subject of player transfers, stating as follows:

*“The European Council is keenly supportive of dialogue on the transfer system between the sports movement, in particular the football authorities, organisations representing professional sportsmen and women, the Community and the Member States, with due regard for the specific requirements of sport, subject to compliance with Community law”*³⁶.

3.39 The Terms of Reference for this Review specifically refer to the need to develop recommendations to ensure that there is a properly functioning system of player registration and movement at European and national levels, recognising fundamental principles such as stability of and respect for contracts, training compensation, sporting integrity of competitions, protection of minors and solidarity. In this respect, the authors of the Review consider that there are certain organisational changes that could be effected within football that would lead to the better governance and regulation of this matter as well as the more efficient administration of the system. This subject is addressed in the governance section of the Review, in Chapter 5 below.

g) Rules to encourage the attendance of spectators at sporting events and to encourage the practice of amateur sport

3.40 It is, of course, the attendance of spectators at sporting events that gives them such great character and atmosphere. Football, in particular, is not a mere television event, it is also a live spectacle. Indeed, a TV broadcast at a football match without any spectators is a dull affair. It follows from this that sports bodies also have a legitimate interest in taking steps to protect and promote attendance at live matches. This was a key consideration when the European Commission came to examine the case of UEFA Broadcasting Regulations. Thus, in 2001, the European Commission cleared UEFA's broadcasting rules that allow national associations to set aside two and a half hours at the weekend when they can block the broadcast of football matches. This is specifically to protect stadium attendance at football matches and to encourage the practice of amateur sport³⁷.

3.41 In this case, the European Commission also expressed the view that the objective of UEFA's broadcasting regulations was not to restrict the possibilities for broadcasters in a commercial sense but rather to promote the development of football and the variety of competition³⁸. The European Commission concluded that the UEFA regulations did not infringe EU competition law, stating that the rules were "**a good example of how to reconcile competition rules and the special characteristics of sport**"³⁹.

h) Rules concerning the release of players for national teams

3.42 The "player release" rule is currently under legal challenge. This rule appears to be motivated by purely sporting considerations and also functions to protect the regularity of international competitions, such as the World Cup and European Football Championships. In particular, the rule is necessary to ensure that these major competitions proceed in a proper and orderly fashion and that the participating teams are

composed of the best players each country has to offer. This is an eminently sporting consideration.

3.43 Furthermore, it does appear that the rule relates to the manner in which national teams are selected, an area specifically reserved to the sports federations themselves. As the Nice Declaration makes clear:

*"... it is the task of sporting organisations to organise and promote their particular sports, particularly as regards the specifically sporting rules applicable to the make-up of national teams, in the way which they think best reflects their objectives"*⁴⁰.

3.44 The player release rule serves as a guarantee that clubs must make players available to play for the national team and, in particular, serves to ensure that poorer nations (who could not pay for the services of top professionals) are able to field their strongest team in international competitions. In addition, the rule ensures that a national team playing in an international competition can be certain that players who had been selected for their country will be available for the entire duration of the competition (and may not be withdrawn at any stage by their club). As noted, the risk of disruption to the regularity and proper functioning of competition is something that every governing body must take steps to avoid.

3.45 In addition, the authors of the Review consider that, for the reasons explained above, this rule is intimately linked to the proper conduct of international events such as the European Championships and the World Cup and therefore would still satisfy the requirements of EU competition law as set out by the European Court of Justice in the *Wouters* case⁴¹.

3.46 Finally, there is also a strong element of financial and sporting solidarity at stake in connection with this rule, as explained in further detail in Chapter 4 of the Review. In this connection, the Terms of Reference for the Review explicitly state that it is necessary:

"to examine the central role of national associations and national team football as a primary source of funding for grassroots and recreational football."

National team football clearly performs a key role in funding the grassroots of the sport and the player release rule is an integral part of the overall solidarity system of European football. The authors of the Review recognise that any move to abolish this rule would place a disproportionate burden on the (financially) weaker nations whilst merely serving to reward those clubs with a large number of international players and hence exacerbating the existing imbalance between rich and poor.

3.47 Accordingly, the authors of the Review take the view that the player release rule is: (1) motivated by purely sporting considerations; (2) necessary to protect the regularity and proper function of international competitions; and (3) a key component of the overall financial solidarity system of European football. Against this background, the authors see **no conflict between the rule and any provision of Community law**. On the contrary, this rule can be considered as a prime example of a “sports rule” which should fall outside the scope of EU law.

3.48 It is a matter for the football authorities, in consultation with the relevant stakeholders, to consider further modifications to this rule where appropriate. The authors of this Review suggest introducing a collective insurance system at the occasion of final tournaments.

i) Rules concerning doping

3.49 All sports governing bodies have a natural and legitimate pre-occupation to ensure that their sports are clean: this can also be seen as an aspect of protecting the regularity and proper functioning of competitions. However, as with many other rules and practices in sport, anti-doping measures have also been subjected to challenge under EU law. As regards anti-doping rules, the European Court of First Instance confirmed in *Meca-Medina* ruling⁴² that it was for the sports governing body to implement proper controls on doping to ensure that sporting competition was fair.

3.50 In fact, the *Meca-Medina* case gave the European Court of First Instance an opportunity to summarise the legal position of sports rules as a matter of Community law. On this subject, it stated as follows:

"[T]he prohibitions enacted by those provisions of the Treaty do not affect purely sporting rules, that is to say rules concerning questions of purely sporting interest and, as such, having nothing to do with economic activity (Walrave, paragraph 8). In fact, such regulations, which relate to the particular nature and context of sporting events, are inherent in the organisation and proper conduct of sporting competition and cannot be regarded as constituting a restriction on the Community rules on the freedom of movement of workers and the freedom to provide services. In that context, it has been held that the rules on the composition of national teams (Walrave, paragraph 8, and Donà, paragraph 14), or the rules relating to the selection by sports federations of those of their members who may participate in high-level international competitions (Deliège, paragraph 64) constitute purely sporting rules which therefore, by their nature, fall outside the scope of Articles 39 EC and 49 EC. Also among such rules are 'the rules of the game' in the strict sense, such as, for example, the rules fixing the length of matches or the number of players on the field, given that sport can exist and be practised only in accordance with specific rules. That restriction on the scope of the above provisions of the Treaty must however remain limited to its proper objective (Walrave, paragraph 9; Donà, paragraph 15; Bosman, paragraphs 76 and 127; Deliège, paragraph 43; and Lehtonen, paragraph 34)."

3.51 It follows that, provided the rules in question remain limited to their proper objective (the campaign against doping and safeguarding the spirit of fair play), **they must be considered as pure sports rules and not subject to the prohibitions of European Community law**⁴³.

3) Integrity

3.52 It is essential to ensure that sporting competitions are genuine and free from any improper influence that might cast doubt over the authenticity of results. Equally important as the integrity is the perception of integrity, since the public must also believe that the outcome of a sporting contest is genuine. Sports bodies have an obvious interest in protecting the integrity of competitions that they organise.

a) Rules relating to good governance of clubs – the club licensing system

3.53 The running of stable competitions is clearly a major pre-occupation for the football authorities and a variety of complementary measures are employed to achieve this end. For example, the UEFA club licensing system has, among other things, introduced certain financial criteria that clubs must respect in order to be eligible to obtain a licence. A club needs such a licence to be eligible to participate in UEFA club competitions and one of the reasons for introducing this system is to ensure that clubs remain solvent throughout the course of a competition and do not have to drop out or play with a depleted squad because they cannot pay their players⁴⁴. In this respect, the licensing system could be said to protect the interests of not only the competition organisers, but also the interests of the players and the interests of the public.

3.54 Generally speaking, it is recognised that the UEFA club licensing system is proving to be a good instrument to help improve the financial stability of clubs, to increase transparency and the business credibility of club operations and thus deliver both short and long term benefits for clubs and football as a whole⁴⁵.

3.55 In this respect, it is notable that the football club licensing system has already been examined by one national competition authority (in Belgium) and has been found to comply with competition law, insofar as the licensing provisions in question are reasonable and proportionate⁴⁶.

3.56 The importance of introducing a club licensing system has also been recognised in the recent report of the FIFA Task Force *for the Good of the Game* as “an important step in establishing good corporate governance, financial transparency and stability and minimum standards in football”⁴⁷. **Measures of this nature should, if submitted, also fall within the legitimate autonomy of the sports authorities.**

b) Rules related to the ownership/control/influence of clubs

3.57 As stated in the FIFA Task Force Report “*the recent phenomenon of business investors taking stakes or having interests in more than one football club has meant that event organisers must be particularly vigilant to ensure that integrity of competition, and the public perception of that integrity, is protected*”⁴⁸.

3.58 This has become a more pressing concern as the financial stakes in football are constantly raised (for example, in relation to TV and merchandising revenues and also in relation to gaming issues). Sports governing bodies have already taken measures to address this issue, either in their Statutes or in the relevant competitions regulations⁴⁹. At European level this issue was addressed in 1998 by UEFA adopting its rule on “Integrity of Competition” (in respect of multi-ownership of clubs), stating basically that the same person or entity could not own or control, directly or indirectly, more than one club participating in the same competition. This rule was challenged and considered not to violate EU competition law by both the CAS⁵⁰ and by the European Commission⁵¹.

In this respect it is worthwhile mentioning that this approach has also been confirmed in the Nice Declaration:

*“In the view of the European Council, single ownership or financial control of more than one sports club entering the same competition in the same sport may jeopardise fair competition. Where necessary, sports federations are encouraged to introduce arrangements for overseeing the management of clubs”*⁵².

Consequently, football authorities have to continue to attach the very highest priority to ensuring that the sporting integrity of the competitions that they organise cannot be questioned. Obviously, as the financial circumstances in football continue to evolve, it will be necessary to re-examine and possibly adapt the existing regulations, in order to take account of new developments. In this connection, further attention will be given to some of the specific suggestions with a view to considering and implementing necessary adaptations.

3.59 It is submitted that the discretion of the sports authorities to take the necessary steps to safeguard the integrity of the competitions that they organise should also be respected as matters falling within their natural sphere of competence.

c) Rules concerning players' agents

3.60 The regulation and supervision of the activities of players' agents has become a well-known and rather notorious problem in sport and particularly football today. As explained earlier in the Review, the growing economic importance of sport coupled with dramatic wage increases of players and *de facto* liberalisation of the player transfer "market" (in particular, following the *Bosman* case) has fuelled the development of the players' agents "business".

3.61 There are a number of on-going challenges in connection with this area, including how to deal with non-licensed agents, how to tackle situations where several different agents work on the same transaction, and how to regulate the payment of agents, for the protection both of the players and of the clubs. These are pressing concerns for the efficient administration and financial well-being of football and for the image of the game⁵³.

3.62 In the *Piau* case⁵⁴ (concerning the FIFA rules on agents), both the European Court of First Instance and the European Court of Justice recognised the regulatory function of international sports governing

bodies, subject to compliance with over-riding principles of reasonableness, non-discrimination and proportionality.

3.63 Having analysed both the legal reasoning set out in the *Piau* case and also the practical operation of regulatory control of agents in the European area, the authors of this Review consider that a more rigorous form of regulatory enforcement is required. Furthermore, it may be appropriate to examine a system involving not only EU legal instruments but also with a stronger role for the European governing body (UEFA in the case of football) in particular to oversee effective enforcement of the rules⁵⁵.

3.64 A more effective system for regulating the activities of players' agents would also assist in the fight against money laundering by ensuring the integrity of registered agents and monitoring financial flows. This would represent a logical development of the central clearing house system that has been discussed in the context of player transfers in Europe.

3.65 It is submitted that rules concerning players' agents are inherent to the proper regulation of sport and therefore compatible with European Community law.

4) Competitive balance

3.66 It is clear that the promotion of competitive balance is a legitimate policy concern for all sports governing bodies. Quite simply, without a measure of equality between teams there will be less sporting competition and less excitement and variety for supporters. There are many complementary measures designed to enhance competition and many have been considered in this Review. There is both a sporting and business case for promoting competitive balance: the sporting case is that closely fought matches or championships are more attractive and exciting to watch; the business case is that an "unbalanced" league will not maximise the number of its spectators/viewers.

3.67 In this respect, it is recognised that those league competitions that adopt revenue sharing models and other measures designed to

maximise equality between teams will, in the long run, be most successful from both a sporting and economic point of view⁵⁶.

3.68 Worryingly however, in recent years there has been a significant decline in competitive balance in a number of top-flight football leagues across Europe, which is supported by statistical analysis. There is a concentration of wealth both within leagues (only a few teams capable of winning the national league) and between leagues (only teams from a few leagues likely to succeed in international competition). This growing concentration of wealth and success can only be detrimental to the long-term interests of football.

3.69 It follows that measures designed to address this negative trend are called for. Among the policies suggested are: (1) non-financial measures, such as squad-size limits and/or local trained player requirements; (2) greater revenue re-distribution based on a central or collective sales model; and (3) cost controls.

a) Rules concerning home-grown players

3.70 The Nice Declaration states as follows:

"Training policies for young sportsmen and women are the life blood of sport, national teams and top level involvement in sport and must be encouraged. Sports federations, where appropriate in tandem with the public authorities, are justified in taking the action needed to preserve the training capacity of clubs affiliated to them and to ensure the quality of such training, with due regard for national and Community legislation and practices"⁵⁷.

Furthermore, in the *Bosman* case itself, both the Advocate-General and the Court recognised that measures designed to encourage the education and training of players and to promote competitive balance were legitimate objectives to pursue by a sports governing body.

- 3.71** In the context of European football, UEFA has recently enacted a new system to encourage the “local training of players” coupled with a squad size limit. The twin aims of this new system are precisely to encourage player training and foster competition, within the framework of Community law.
- 3.72** This initiative is to be welcomed as it is now well documented and recognised that the current system is not functioning efficiently and produced systematic under-investment in formative training. Particularly in the bigger football leagues, there has been a tendency to “outsource” the training function. While the big clubs may save on training costs, they end up spending more on transfers, signing-on fees and players’ wages because fewer players are locally trained.
- 3.73** The authors of the Review consider that the link between the financial budget of a club and its playing strength will become less direct if a club is encouraged to incorporate a minimum number of locally trained players into its squad (instead of simply buying talent on the market). Money will not “buy success” with the same high probability and rich clubs trying to maintain their dominance on the pitch will come up against a decreasing marginal productivity of money if they are forced to become “education entrepreneurs”.
- 3.74** The authors of the Review believe that the UEFA rule represents a moderate and balanced response by the football authorities to some of the important challenges that they face. There is no nationality element to the rule and it is being introduced on a graduated basis. Positively, the home-grown player rule can therefore be compared favourably to the “6 plus 5” rule, which we understand is a proposal based on a nationality quota designed to ensure that the majority of players on the pitch are nationals of a particular country. It is difficult to see how such a proposal could be reconciled with European Community law.
- 3.75** It is against this background, that the authors of this Review consider that full support be given for the introduction of the new UEFA system on local trained players and maximum squad size limits⁵⁸. Moreover, similar systems should be incorporated at national level as well. **Such a**

system which promotes education and training and competitive balance should be seen as compatible with European Community law.

b) Rules concerning the central marketing of commercial rights

3.76 Perhaps the most obvious example where the specificity of sport needs to be taken into account in the context of competition policy is in relation to the central (or collective) marketing of television rights. Both the Nice Declaration and the Terms of Reference for this Review explicitly recognise that collective selling and mutualisation of the resulting revenue is a fundamental aspect of sporting organisation and an essential component in the solidarity structure inherent to European sport.

3.77 In this respect, it is important at the outset to recognise that football clubs cannot be assimilated to normal horizontal competitors. Unlike "normal" businesses, they must rely on each other for their survival and cannot produce anything on their own. In addition, a match between two teams only has real interest to spectators (and hence to broadcasters) when it takes place in the context of a league or cup championship. This is what gives the match both economic and sporting value. Moreover, this value is enhanced by ensuring as much equality as possible between the competing teams. It follows from all this that collective action by clubs is both natural and logical. The concept of "individual" selling or "individual" ownership of television rights cannot be accepted from an intellectual point of view.

3.78 As the U.S. Supreme Court has also stated, sport is "*an industry in which horizontal restraints on competition are essential if the product is to be available at all*"⁵⁹. Advocate General Lenz basically set out similar reasoning when he stated in the *Bosman* case that "the field of professional football is substantially different from other markets in that the clubs are mutually dependent on each other" and that "*certain restrictions may be necessary to ensure the proper functioning of the sector*"⁶⁰.

- 3.79** In recent years, the European Commission has made significant moves to accept the central (or collective) selling of media rights as a matter of European Community competition law. Starting with the UEFA Champions League case⁶¹ the European Commission has now, in two subsequent cases concerning the German *Bundesliga* and the English *Premier League*⁶² accepted the legitimacy of central marketing, subject to certain conditions.
- 3.80** Central (or collective) selling is fundamental to protect the financial solidarity model of European football and the authors of this Review strongly endorse the adoption of this model across Europe (for both pan-European and domestic competitions) as an essential means to help promote competitive balance and finance the future development of football⁶³. Annex 3 of this Review contains details of the financial solidarity system of the UEFA Champions League and the European Football Championship in particular, explaining who benefits from the system, what the money is spent on, how important the funding is to clubs and national federations as well as the main direct benefits to European football.
- 3.81** A central or collective selling model operated according to the same set of broad principles for both national and international competitions would also serve to reduce competitive imbalances resulting from different systems in different countries. For example, it does not seem correct that a small group of clubs in Italy or Spain should benefit from a so-called "individual" selling system, which results in windfall gains for a handful of clubs and exacerbates competitive distortions when these clubs face their rivals in Europe.
- 3.82** As confirmed by the European Commission, apart from the financial solidarity aspects, central or collective selling of rights also yields benefits and efficiencies for broadcasters and spectators alike.
- 3.83** Accordingly, the authors of this Review consider that it is legitimate for the football authorities to operate competition models that envisage and require a rights "pooling" arrangement involving the event organiser and the participating clubs⁶⁴. This model will ensure that rights marketing

proceeds smoothly, financial solidarity is enhanced, and that broadcasters and consumers share in the benefits. Thus, **it is both acceptable and necessary for the sports authorities to require clubs to commit to a central marketing model as a condition of their participation in a sporting competition and compatible with European law.**

3.84 Given that there are now a number of cases where central selling has been accepted by the European Commission under competition law, it may be the time is ripe for the EU institutions to adopt block exemption regulations or, at least, for the Commission to issue some “guidelines” related specifically to this issue. This subject is addressed in Chapter 6, when we consider the appropriate instruments to deliver greater security to sport in Europe.

c) Rules concerning cost controls

3.85 An agreed policy on cost controls is, first and foremost, a mechanism designed to promote competitive balance between teams. In the absence of any regulatory controls it is likely that the richest clubs will acquire all the best playing talent by simply paying more money to players. Perhaps that is acceptable (or even desirable) in a normal business or industry but it is not acceptable or desirable in sport. Football should not be a contest between corporate leviathans with the outcome dictated by whoever has the deepest pockets. It is legitimate – as recognised by the European Court of Justice in *Bosman* – for sports governing bodies to implement models designed to equalise conditions of competition or at least reduce the scope for competitive imbalance. A system which imposes some controls on costs fits squarely within this paradigm.

3.86 A variety of cost control structures on salaries have been considered and implemented in major league sports in the United States and there have also been steps in this direction in European sport, in particular with the example of Rugby League in England as well as the English Football League’s “Salary Cost Management Protocol”.

3.87 In recent years, and as described later in this Review, there have been a number of developments in European football that have placed cost controls higher up the agenda, both as regards the need for having one and as regards the practical opportunity to actually implement such a system. The authors of the Review consider that, as with the situation in relation to player transfers, **this is a subject that should fall within the regulatory purview of sports governing bodies in Europe.**

C) Conclusion

3.88 It is important that the margin of appreciation of the sports authorities be accepted and officially recognised when they act as pure regulators. The authors of this Review take the view that where governing bodies act as regulators, with no financial interest of their own, courts and other administrative authorities should recognise a wide margin of discretion on their part. This follows from their economically neutral role as a mere sports regulator. As the U.S. Court of Appeals for the First Circuit has stated *"if a regulation is adopted by an independent sanctioning organisation with no financial stake in the outcome, a court will have maximum assurance that the regulation is to protect fair competition within the sport"*⁶⁵.

3.89 In this respect, it should be emphasised that provided sports rules are limited to their proper objective, for example sporting fairness, the fact that such rules might have some or other economic consequence is irrelevant to the legal appreciation. This issue was addressed directly by the European Court of First Instance in the *Meca-Medina* case in the following terms:

"... the applicants submit that the anti-doping legislation at issue infringes their economic freedoms because it has economic repercussions for them.

That argument, which is tantamount to a submission that legislation cannot be purely sporting if it has economic repercussions, is at odds with the Court's case law. It is precisely because sporting rules have

economic repercussions for professional sportsmen and sportswomen and because those rules are considered to be excessive by some of those professionals that the dispute arises and that the question is raised whether those rules are purely sporting in nature (like the rules which gave rise to Walrave, Deliège and Dona) or whether they cover the economic aspect of sporting activity (like the rules which gave rise to Bosman, Lehtonen and Kolpak)”.

The Court went on to confirm that even if the sports body (in this case the International Olympic Committee - IOC) had certain economic considerations in mind when adopting the relevant anti-doping rules (for example, safeguarding the economic potential of the Olympic Games by reducing the scope for scandals as a result of doping) this would still not alter the purely sporting nature of the rules in question.

3.90 This was a significant legal clarification since nowadays it is more or less inevitable that any sporting rule or regulation will have some or other economic implications. This fact alone does not and cannot affect the legitimate discretion of the football authorities to regulate matters that fall within their natural domain. The approach of the European Court of First Instance in *Meca-Medina* is further discussed in Chapter 6 below, where we consider the various instruments available to deliver legal security to sport.

3.91 **There are a large number of cases where the margin of discretion of sports governing bodies in their decision making practice should be upheld, so long as they do not act in a manner that is unreasonable, disproportionate or arbitrary.** The authors of the Review consider that these cases would cover matters such as the **rules relating to the regularity, proper functioning and integrity of competition**, including the “rules of the game”, the structure of championships and calendars, the composition of national teams, the national organisation of sport in Europe (e.g. “home and away rule”), the organisation of competitions within the European sports “pyramid” structure, rules concerning the release of players for national teams, rules concerning the registration and transfer of players, rules to

encourage the attendance and participation on amateur sport, rules concerning the activities of players' agents, rules on the good governance of clubs (e.g. the club licensing system), rules relating to the ownership or control of clubs and rules concerning doping.

3.92 Furthermore, **when sports governing bodies act outside the pure sports regulatory sphere and enter the commercial arena (for example, in the marketing of television rights) the specific nature and features of football still need to be taken into account** so that the law can be applied intelligently in this area and in accordance with the underlying (legitimate) characteristics and concerns of sport.

3.93 Thus, as regards rules concerning home-grown players, rules concerning the central marketing of commercial rights and rules concerning cost controls, the authors of the Review consider that, when analysing the actions or decisions of sports governing bodies, the European institutions should **take into account the specific nature and characteristics of sport and its legitimate objectives, including the need to preserve competitive balance, to encourage player education and training, to foster ties of sporting and financial solidarity and to deliver benefits to football fans.**

3.94 Whilst the foregoing analysis demonstrates that certain principles have emerged in the jurisprudence over the years, it is nevertheless clear that this case-by-case approach is not sufficient as a means to deliver legal certainty and a more comprehensive and proactive approach by the EU is required. Accordingly, in Chapter 6 of this Review, we will set out our opinion as to the specific legal instruments that could be employed to offer greater stability and security to the world of sport. We believe this more systematic approach will help to ensure greater consistency in the interpretation of EU law and should also reduce the potential for conflicts, as the legal landscape will be clearer to all stakeholders. Last but not least, this approach should also alleviate the burden on courts and administrative authorities, by reducing the scope for speculative claims and complaints.

- 3.95** It follows from the foregoing analysis and from the subjects considered that sports-specific solutions need to be (and can be) found to the various problem areas in Europe and that in the case of football it is UEFA and its member associations, working together with the institutions of the EU, who are the bodies best equipped to put the necessary solutions into practical effect. The measures adopted will give faithful and fuller expression to the principles set out in the Nice Declaration, which is a key objective of this Review.
- 3.96** Nevertheless, as a corollary to this, the relevant sports governing bodies must also ensure that they are sufficiently representative and democratic and that they also respect appropriate governance standards. These matters relate to the proper internal organisation and structures of football (as a case study) and these issues are now considered more deeply in Chapters 4 and 5 of the Review.

CHAPTER 4. THE EUROPEAN SPORTS MODEL: THE EXAMPLE OF FOOTBALL

A) The football pyramid

- 4.1** As noted, the constitutional model of European sport is based on the so-called **pyramid** structure. At the top of the pyramid are the **European federations**, themselves formed by **national associations**. These national associations are, in turn, typically formed by **regional associations and/or leagues**, followed by clubs and players. This is the essence of the European Sports Model and a legacy of European sports history. The model applies for all sports in Europe, in particular team sports. It is also accurate to say that the pyramid is formed with elite professional football at the top and an infinitely greater number of amateur clubs and volunteers at the base.
- 4.2** This **European sports pyramid** functions on the basis of two key principles: the **principle of national organisation of sport** and the **principle of a single federation** governing the whole structure. The authors of the Review consider that the single federation structure is the best means to deliver clarity and efficient administration in European sport. In this connection, the authors note there is a specific legal environment in Europe. This significantly more demanding environment requires a Europe-wide solution meaning that it is necessary to find workable solutions that football can adopt across Europe⁶⁶.
- 4.3** Against this background and bearing in mind there are currently certain overlapping competences between FIFA and UEFA, a clarification would appear both desirable and efficient⁶⁷. In this context the authors have also noted that at the UEFA Congress in Tallinn in 2005 the national football associations in Europe unanimously called for UEFA to assume responsibility *"to deal with all questions relating to European football"*⁶⁸. In order to be best equipped to carry out these regulatory functions, it is appropriate for the sports governing body to have the proper institutional structures.

- 4.4** It should, in addition, be emphasised that the component parts of the European Sports Model – in particular, the European and national federations – should continue to evolve as institutions to ensure that they remain sufficiently representative from a democratic standpoint and to ensure that they are most effectively equipped to discharge their statutory responsibilities. This institutional **evolution** is already taking place and it may be noted that structural developments that have occurred in football mirror the kind of institutional change that often takes place in political life generally, as political organisations adapt and evolve to reflect new realities.
- 4.5** Similarly, as with political institutions generally, the **European and national sports federations adhere to a separation of powers and a system of checks and balances to ensure that decision-making is robust, independent, and free from improper influence.**

B) The separation of powers in football

- 4.6** One of the fundamental features of a democracy is the principle of **separation of powers**, which guarantees a system of **checks and balances**. The classic idea behind the separation of powers is that power must be divested to three different branches: the legislature, the executive and the judiciary. This is however not a water-tight division when it comes to the legislative and executive powers. For example, in Governments the Executive may often have certain residual legislative functions and may itself be divided into several organs.
- 4.7** Taking the example of European football (and even though UEFA is not a political body as such), UEFA has implemented the principle of separation of powers by keeping its own legislative, executive and judicial branches distinct.
- 4.8** Article 11 of the Statutes of UEFA provides that the organs through which it acts are the Congress, the Executive Committee, the Chief Executive and the Organs for the Administration of Justice.

- 4.9** The Congress: the Congress is UEFA's legislative body. It is composed of its member associations and is the supreme controlling organ of UEFA. It is entrusted with the general decision-making powers (art. 12 of the Statutes) and has responsibility for amending the Statutes (art. 13, j). Furthermore, the Congress elects the President, the members of the Executive Committee, and the auditing body (respectively, art. 13, f, g, I of the Statutes). Finally, in its decision-making practise the Congress follows the democratic rule of "one federation one vote" (art. 18 of the Statutes).
- 4.10** The Executive Committee: the executive power of UEFA is vested in the Executive Committee which consists of the President and thirteen other members elected by the Congress (art. 21 of the Statutes). The Executive Committee is empowered to take decisions on all matters that do not fall within the competence of the Congress or other relevant organs (art. 23 of the Statutes). Its main duties are the overall control of UEFA (art. 24, a) of the Statutes) and the establishment of competition regulations (art. 50 of the Statutes). In other words, the Executive Committee defines the strategy, which is then implemented by the Chief Executive.
- 4.11** The Chief Executive: the Chief Executive (CEO) is the highest operational-management organ. The main duties of the Chief Executive are the management of the administration and the implementation of decisions of Congress and Executive Committee (art. 30 and 39 of the Statutes). The CEO may also appoint experts panels and working groups (art. 38 of the Statutes).
- 4.12** The President: the President represents UEFA, chairs the Congress, as well as meetings of the Executive Committee. In the event of a tie in any vote, the President shall have the casting vote (art. 26 of the Statutes).

- 4.13** The Administration of Justice: the judicial power of UEFA is held by the organs for the administration of justice, i.e. the Control and Disciplinary Body and the Appeal Body (art. 32 of the Statutes). Their competencies are described in articles 33 and 34 of the Statutes. Furthermore, in its internal disciplinary proceedings, UEFA has foreseen the figure of a disciplinary inspector, which is comparable to a public prosecutor (article 32, c of the Statutes). The disciplinary regulations are contained in articles 52 to 58 of the Statutes.
- 4.14** The members of the judicial and disciplinary bodies of UEFA are appointed by the Executive Committee but may not be on the Executive Committee itself or the other standing committees of UEFA. This ensures the relevant persons are fully independent of other UEFA bodies, in the context of the self-regulatory framework.
- 4.15** As an additional guarantee from the judicial point of view articles 61 and 62 of the Statutes have foreseen, since 1997, the possibility of appeal to the CAS, an independent arbitration tribunal recognised as such also by the Swiss Supreme Court and acting in line with the New York Convention for arbitration. The provisions in the UEFA Statutes referring to the CAS have been updated and clarified at the most recent UEFA Congress on 23 March 2006 in Budapest. In general, and as discussed further in below, the authors of this Review firmly believe that **arbitration in sport and in particular football should be encouraged**.

C) Evolution of institutional structures in football: involvement of stakeholders

- 4.16** As with any governmental body, both dynamics and institutional compositions may evolve over time to reflect contemporary realities. In this respect, both the European and national football authorities have shown a willingness to examine their structures and decision-making bodies on an on-going basis to ensure that they are best able to discharge their statutory functions and safeguard the overall health of football.
- 4.17** Thus, UEFA has confirmed that whilst it will remain loyal to its traditions it does not intend to stay "set in its ways" at a time of rapid change in the European football environment. It recognises that new tools are needed

to facilitate communication and on-going dialogue within the European football family and with other relevant partners (such as, for example, EU institutions)⁶⁹.

4.18 In this respect, it has to be acknowledged that there has been a tension between the top professional clubs and leagues and the national and European federations. This largely reflects the fact that different stakeholders have different views and is also a result of changes to the economic, legal and political landscape in football.

4.19 For example, the *Bosman* case undoubtedly changed the face of European football, at one and the same time creating a liberalised “market” for player services whilst also playing into the hands of those clubs with the greatest disposable income and resources to spend on players. These developments occurred alongside the almost contemporaneous transformation of the television market (in particular, with the development of pay-TV) and had the effect of “transforming the sports world and widening the gulf between amateurs and professionals and between the top and bottom of sport in Europe”⁷⁰.

4.20 Of course, in this environment political institutions do not stand still. Thus, the elite professional clubs and the biggest leagues (coming from the largest national TV markets) considered themselves to be more important and, correspondingly, to be deserving of greater involvement in the decision-making process, both at national and European level. If the football authorities failed to take account of their views, there was a risk of secession (“break-away” leagues) and this fact also required the football authorities to adapt.

4.21 For its part, UEFA has developed a variety of structures to give more direct involvement to stakeholders in the decision-making process. Thus, new bodies have been established to give an institutional voice to leagues, clubs and players, as described below.

4.22 *The Leagues*: The European Professional Football Leagues (“EPFL”) is an organisation in which the largest western European professional (premier) leagues (and their clubs) are represented. UEFA has moved to integrate the leagues into its decision-making process and concluded a

“Memorandum of Understanding” with them in 1998 which was then further amended in 2005. Based on this Memorandum, the *Professional Football Committee* (“PFC”) was formed, a committee in which the national professional leagues are represented, and five members of which are appointed by the EPFL (four members and a vice-chairman). UEFA and the leagues are now cooperating on a wide range of issues and this cooperation is being further enhanced⁷¹.

4.23 *The Clubs*: As a complementary measure and in order to give a direct voice to the members at the base of the football pyramid (i.e. the clubs), the European Club Forum (“ECF”) was formed in 2002. It consists of more than 100 clubs selected on the basis of five-year on-field sporting performance and includes representatives of all 52 European national associations (with a maximum of 5 clubs for the top-ranked associations and a minimum of 1 club for every association).

4.24 The G14, by contrast, is an Economic Interest Group. It is a closed group of 18 leading European clubs with the objective of promoting the business interest of its members. It is difficult to reconcile its membership or structure with principles of democracy or transparency since it includes clubs from a mere 7 of the 52 European national football associations and the criteria for becoming a member remain unknown. Against this background, the ECF appears to be a far more appropriate forum for dialogue and consultation between UEFA and the clubs, at least if democratic and representative structures are considered important.

4.25 The ECF elects a board, consisting of 11 members, out of which five are representatives of the clubs of the national associations ranked 1 to 6, three represent the clubs of the associations ranked 7 to 15, two members represent the clubs of the associations ranked 16 to 26 and one member acts as representative of the clubs of the associations 27 to 52. This structure is also therefore a balanced representation, taking due account of the role and position of top-ranked clubs⁷².

4.26 In addition to the ECF, a further structure has been developed by UEFA to try to ensure that clubs (standing alone from the leagues) are integrated into the governance process. This is the Club Competitions Committee

("CCC"), which is composed of a chairman, two vice-chairmen, eight members, one Executive Committee observer and one co-opted member ("FIFPro member"). One of the vice-chairmen and three of the members are elected by the Board of the ECF.

4.27 The duties and priorities of the CCC include the following: (i) to exchange views on the current UEFA club competitions; (ii) to draw up recommendations in certain areas, including (a) possible modifications to the existing competitions and (b) regulations for each season's UEFA club competitions; (iii) to elaborate club competition formats; (iv) to co-ordinate international club competition fixtures with FIFA events, IOC events and national-team competitions; (v) to monitor the preparation and execution of the club competitions; (vi) to monitor the preparation and execution of draws for these competitions; and (vii) to cooperate with other relevant committees.

4.28 *The Players*: FIFPro is the international players union and most of its members are European. A Memorandum of Understanding between UEFA and FIFPro⁷³ was signed in 2005 to regulate the relationship between the parties and they have intensified their dialogue in recent years. Among recent subjects of discussion are the standard players' contracts, the possibility of some forms of fiscal harmonisation in relation to professional players in Europe, and a framework to offer appropriate training and support to ex-players in their subsequent careers. In addition, UEFA, FIFPro and the EPFL started a tripartite dialogue in January 2004 to foster cooperation between the European player unions, the leagues and UEFA which led to a further agreement in 2005 on the basis of which the UEFA, leagues and the FIFPro Panel was formed.

4.29 This Panel is composed of up to five league representatives (appointed by the EPFL), up to five players' union representatives (appointed by FIFPro – European members only), two members of the UEFA Executive Committee, the UEFA Chief Executive as independent chairman, as well as UEFA's Director of Professional Football and Director of Legal Services. The Panel is, for example, currently working on the definition of minimum requirements to be fulfilled in employment contracts for players.

- 4.30** These committees and panels referred to above have an advisory role and are not, formally at least, part of the UEFA decision-making process⁷⁴. Having said this, as is often the case with advisory bodies in other political institutions, it is rare for the opinions of these expert bodies not to be taken into account. In fact, to date, there is only one recorded instance of a major issue where the UEFA Executive Committee has been in disagreement with certain major clubs in the framework of the ECF (then called "European Clubs Panel") and that was in relation to the reduction of the number of match days of the UEFA Champions League as from season 2003/04. However, it seems to the authors of the Review that this decision was taken in the interests of the competition as a whole and in the interests of other stakeholders, such as the players and the supporters. This is a working example demonstrating how the balance needs to be struck between different interest groups. At all times, it is necessary to balance the power of money (the elite professional sector) and the power of numbers (the grassroots sector). The basic principle is that the football governing body should retain the authority to take decisions in the best overall interests of the whole sport.
- 4.31** *The Supporters*: the supporters are, of course, also a key stakeholder in football. As matters stand, however, there is no organised, pan-European body where football supporters are represented. It would be desirable for this situation to be remedied and for an appropriate body to be formed which could represent the interests of European supporters and it is believed that the football authorities should work together with their political counterparts and existing national supporters groups to bring this about.
- 4.32** In many ways UEFA's organisation and functioning can be compared to the organisation and functioning of a modern democratic government. UEFA has implemented the principle of separation of powers as set out in its Statutes, which can be compared to a Constitution for European football. Furthermore, as is the case with modern and democratic organisations, UEFA has also engaged in dialogue with different stakeholders (EPFL, ECF, CCC, FIFPro), who represent their particular interests.

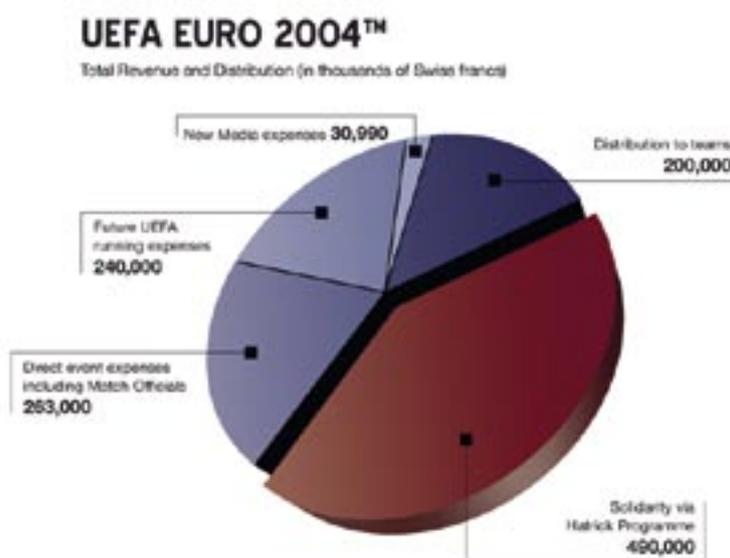
- 4.33** In fact, many European countries have institutionalised relationships of this nature thus establishing the necessary forum for formal consultation and dialogue. In these countries, and in the EU itself, a solution has been found in the creation of social and/or economic committees, the main function of which is their consultative role in the decision-making.
- 4.34** In this context, the authors of the Review consider that a **statutory recognition of the consultative bodies** currently operated by UEFA could be a valuable instrument in adapting to the new political environment in football.
- 4.35** Furthermore, the authors consider that, taking account of the views expressed during the consultation process particularly by leagues and clubs, it would be appropriate for UEFA to establish an additional advisory body, which should comprise representatives of the UEFA Executive Committee, leagues and clubs, to further enhance its decision-making process in relation to professional football matters. Granting statutory recognition to the above-mentioned bodies would also provide the opportunity for a more general clarification and improvement of the current UEFA Statutes.

D) Other fundamental aspects of the European Sports Model

- 4.36** Unlike its American counterpart, the European Sports Model is also characterised by two historic principles which are (1) an **open structure** and (2) a strong system of financial **solidarity to the grassroots**. The connection between professional and grassroots is fundamental to European sport. Furthermore, (3) **arbitration** as an efficient tool to settle disputes in sport has also developed into a fundamental characteristic of the European Sports Model.
- 4.37** Promotion and relegation: the principle of **promotion and relegation** finds expression within the context of the overall European pyramid structure. This is an "open" competition model. At the end of each season, champions are promoted to a higher level whilst those teams with the poorest record are relegated. This allows every team, however modest, the opportunity to follow the sporting "dream" and also leads to exciting competitions, at both ends of the league table.

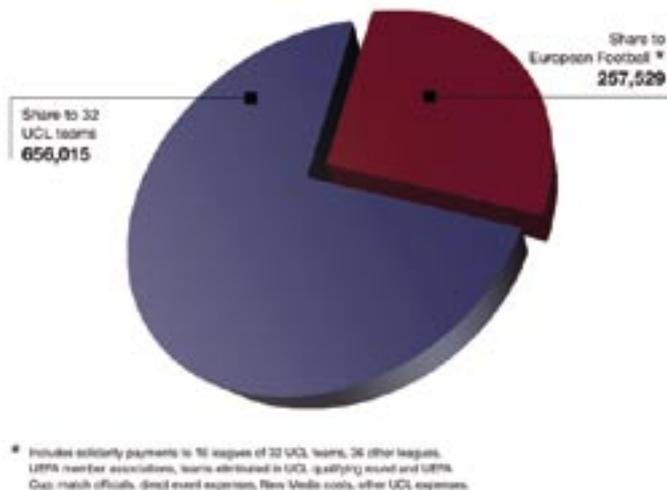
4.38 Also, within the pyramid, there is a fundamental link between the European and national football competitions. A key element in this structure is that the winners of national competitions become eligible to participate in pan-European international events. Particularly in recent years, the very fact that eligibility to play in UEFA club competitions depends on performance in the national league (or cups) means that this has created “competitions within competitions”. For example, in some of the major leagues, there is intense competition to secure the “4th spot” and thus book a place in the UEFA Champions League. This only serves to illustrate that the European football pyramid is part of an indivisible whole, which also means that clubs and players alike cannot simply “cherry pick” as to which part of the pyramid they wish to be a part of.

4.39 Solidarity: the principle of **financial solidarity** is equally a key aspect of European sport. At one and the same time, this principle operates to keep sporting competition varied and exciting and also finances the development of the grassroots. The way in which the solidarity system operates in European football – more particularly concerning the European Football Championships (EURO) and the UEFA Champions League (UCL) - is described in more detail in Annex 3 to this Review.



UEFA CHAMPIONS LEAGUE™ 2004 / 05

Total Revenue and Distribution (in thousands of Swiss francs)



4.40 It is clear from the statistical analysis contained in Annex 3 that a far greater percentage of centrally generated revenue is reserved for re-distribution and solidarity purposes in the case of the EURO⁷⁵. The authors of the Review consider that the more equitable re-distribution matrix, as operated in relation to the EURO, is the more appropriate model to follow in order to maintain and promote financial and sporting solidarity in European football.

4.41 The authors of the Review believe that the financial solidarity model on which European football is based should be further strengthened. Where possible, **it would be desirable to ensure that a greater proportion of centrally generated income is reserved for re-distribution, in particular, to finance the grassroots development of football.** This is especially the case in relation to the UEFA Champions League⁷⁶.

4.42 Furthermore, with regard to the EURO, if any direct financial distributions were made directly to clubs (for example, as demanded by the G14) this would inevitably be at the expense of the wider football community and would substantially diminish the opportunity to re-invest in the game at grassroots level, which is the main task of national football associations.

- 4.43** Having said this, it is, of course, equally important to ensure that when important financial solidarity functions are performed by the football authorities and as revenues generated by the central marketing of commercial rights increases, re-distribution policies must be operated by these same authorities in a manner that is both transparent and accountable. This is a subject that is discussed further in Chapter 5 below, when we consider governance issues in relation to the football authorities.
- 4.44** The ability of the football authorities to invest in the grassroots of the game is, of course, directly related to their ability to generate revenues from the competitions they organise. It follows therefore, that any diminution in the revenue from these competitions will translate into less spending on investment. With this in mind, in Annex 3 of the Review we also discuss a number of issues that are of current topical interest in European football and which have potential threats for the financial redistribution policies operated by sports governing bodies. These issues are: **ambush marketing** (or protection of intellectual property rights to major sporting events), **internet piracy**, and **news access**.
- 4.45** Dispute resolution in sport - Arbitration: as noted, arbitration as a means for the resolution of disputes is also a fundamental aspect of the European Sports Model. This is a matter that has undergone significant development in the recent past and we believe this mechanism should be further encouraged.
- 4.46** In this respect, it is considered desirable that football authorities should include arbitration clauses in their statutes, as an alternative to ordinary state court jurisdiction. At the same time, however, it is of course necessary that **relevant arbitral bodies be independent** and recognised as such under national laws and by the competent national courts. This has already occurred in relation to the CAS in Lausanne⁷⁷.
- 4.47** There are a variety of practical and positive reasons to use arbitration as a means of dispute resolution in sport. These include promoting the consistent resolution of disputes (avoiding the possibility that different courts in different countries reach inconsistent decisions in similar

matters); having disputes resolved in a speedy fashion; ensuring that the decision-making body has the relevant experience (specialist knowledge of sports arbitrators); reducing costs; and ensuring disputes are resolved in a binding and final manner.

4.48 In addition, there is no EU law objection to the use of such mechanisms. On the contrary, we have noted that, in the motor vehicle sector, the European Commission itself has enacted legislation that specifically provides that parties will only obtain competition law approval for certain categories of agreement if the agreement in question: "*provides for each of the parties the right to refer disputes concerning the fulfilment of their contractual obligations to an independent expert or arbitrator [...] without prejudice to each party's right to make an application to a national court*" (art. 3, para. 6)⁷⁸.

4.49 In the opinion of the authors of the Review, the sports sector is equally (if not more) adapted to have an arbitration system in place for disputes. Consequently, this form of dispute resolution is to be encouraged, as is the **legal recognition for the binding nature of arbitration clauses contained in the Statutes and Regulations of sports governing bodies**.

E) Regulatory and commercial functions

4.50 Aside from these fundamental aspects of the European Sports Model (promotion and relegation, financial solidarity, arbitration) another important matter that requires consideration is the **combination of regulatory and commercial functions** that may, in certain circumstances, be vested in the same sports governing body.

4.51 In this connection, it has been suggested by some commentators that the role of a sports federation as regulator should be decoupled from any form of commercial activity. In particular, it seems this suggestion is made in light of the European Commission's settlement in the *Formula 1* case in which the governing body for motor sports, the Fédération Internationale de Sport Automobile, agreed to separate its commercial activities to remove a perceived "conflict of interests" and to limit its role to that of a sports regulator⁷⁹.

- 4.52** It must be noted, however, that European Community law foresees no rule or principle that prevents a sports governing body from exercising a commercial function as well as a regulatory role. The key issue here is not to prohibit a governing body from acting in the commercial arena but rather to ensure that when a sports body enjoys regulatory power it does not use or "abuse" that power in a manner that would distort competition.
- 4.53** In this respect, the commercial and regulatory role of a sports federation, such as UEFA, may be compared in some respects to the position of public undertakings and the manner in which they are regulated under European Community law. Thus, EU member states may establish public undertakings⁸⁰, or allow them to exercise special or exclusive rights, provided in so doing they respect the rules of the EC Treaty, in particular, as regards competition. This issue is further considered in Chapter 6 of the Review, when we assess the position of sports governing bodies under Article 86 of the EC Treaty.
- 4.54** In many cases the European Court of Justice has held that the creation or existence of special or exclusive rights does not contravene Article 82 of the EC Treaty so long as the exercise of these rights does not result in the undertaking concerned abusing its dominant position or otherwise distorting competition.
- 4.55** In the view of the authors, **there is no inherent conflict between UEFA having both a regulatory role and commercial operations provided this combination does not lead to some form of anti-competitive activity.** Accordingly, it is not necessary to divorce the regulatory and commercial roles of a sports governing body - no more than it is necessary to prevent a public company from acting in other markets so long as the rules on competition and the EC Treaty in general are respected.
- 4.56** Furthermore, if UEFA (or indeed any other European sports governing body) did not, in certain circumstances, act in a commercial capacity (for example, with regard to the marketing of television rights) then all the solidarity benefits delivered to European sport, as described, would be substantially diminished or lost entirely. Moreover, it seems in any event

very doubtful whether Formula 1 motor racing could be compared to football or other sports, taking into account their social, educational and grassroots role.

4.57 Finally, the exemption decision granted by the European Commission in the UEFA Champions League case on the central marketing of the media rights⁸¹ demonstrates – correctly in the view of the authors of this Review – that the European Commission is comfortable with UEFA exercising a commercial role in combination with its regulatory role and that this is permissible under the rules of the EC Treaty. This is exactly the same approach the European Commission has followed in the national cases of the German *Bundesliga* and the English *Premier League*.

F) Conclusions

4.58 The authors of this Review consider that the **pyramid structure** of European sport is (1) **part of European sporting and social history**, (2) a **democratic and dynamic structure**, and (3) **perfectly compatible with European Community law**. In particular, there is no provision of the EC Treaty (competition or otherwise) that invalidates or undermines this basic organisational structure. To the contrary, the authors consider that this structure should even be strengthened.

4.59 The **European Sports Model** is not only based on **democracy** but also on **solidarity**, which is perhaps also a distinct feature of European society. The authors of this Review strongly believe that **preservation of the European Sports Model** is the best means to safeguard the interests of sport and the benefits that sport delivers to society. As we have seen, the European model guarantees **dialogue and exchange between the professional and the grassroots levels of sport** – a feature lacking in the US model.

4.60 Whilst the political, economic and legal situation may change, one fact remains the same: football authorities must continue to represent all the interests of the sport for which they are responsible. Thus, important as they are, the big leagues and elite clubs do not represent the collective interests of European football. So, whilst the football authorities must continue to adapt their structures to meet new realities, they cannot lose

sight of their overall objectives and statutory responsibilities, which centre around the protection and overall development of football as a whole.

- 4.61** In this respect, it needs to be recalled that **the European football authorities (i.e. UEFA and the national associations) are not stakeholders themselves, but are rather the bodies who must represent and reconcile the views of all the individual stakeholders, such as leagues, clubs, players and supporters.** They must find balanced solutions in the interest of the sport itself. This applies equally to other sports, in particular team sports.
- 4.62 All stakeholders must be properly involved and consulted** to give legitimacy to the decisions that the governing body takes. It is the task of the football authorities to balance their interests, which are sometimes consistent and sometimes conflicting. At national level for example, professional leagues and clubs are often involved in the decision making process. Indeed, the situation needs to be vigilantly monitored, to ensure that the balance does not move too far in favour of any single interest group.
- 4.63** The authors of the Review consider that decision-making at European level could be strengthened by foreseeing, at a formal level, the involvement of stakeholders with appropriate statutory recognition. The sports governing bodies must continue to examine their own structures to ensure that they conform to modern democratic principles. At a structural level, certain new bodies could be created.
- 4.64** In any event, the authors of the Review consider that whatever the composition of different organisational bodies may be, the internal governance of European federations should be organised in accordance with the principle of **separation of powers**, meaning in particular that internal procedures for disciplinary matters and for the settlement of disputes should be independent of regulatory powers. These procedures should be entrusted with internal judges of recognised independence and competence, appointed for a term of office sufficiently long to protect their independence. The same standard should apply to any person or body entrusted with licensing procedures.

- 4.65** This is merely part of the wider duty of ensuring that national and European football authorities always act in a **fair and transparent** way. **Decision-making processes** and **internal judicial procedures** should be **transparent**, and the texts of their statutes, regulations and decisions should be readily available to the public (in particular, through publication on their websites).
- 4.66** It will be apparent from the foregoing discussion that the EU institutions must, in many ways, grapple with similar political challenges as sports governing bodies as they fight to secure democratic legitimacy and to ensure that their structures are best adapted to the modern environment. The authors of this Review believe that the EU institutions should assist the football authorities in meeting these issues and should, in particular, apply EU law in a way that helps to maintain some degree of equality and balance in a world that is characterised by ever wider gulfs between rich and poor. **EU law should not be used to undermine the system for the financial benefit of one particular category of stakeholder.**
- 4.67** The authors of the Review consider that the **central role of European and national federations** will be preserved if, on the one hand, their role as private authorities and regulators is **officially recognised at European level** and, on the other hand, if they ensure **their powers are not exercised in an unreasonable, discriminatory or arbitrary manner**. The best guarantee for the preservation of this central role is to have a **democratic and transparent structure taking into account the interests of all stakeholders**.
- 4.68** The Nice Declaration confirms that the federation should continue to be the key organisation to guarantee sporting cohesion and participatory democracy. The authors of the Review fully support this conclusion and consider that steps can be taken on both sides to ensure that this policy objective of Nice is given practical expression. **At the same time, the institutions of the European Union and EU member states can play a role by endorsing and formally recognising the sports authorities, in a way that achieves both legal stability and ensures that federations remain equipped to perform their broad-reaching role.** We set out recommendations in this respect in chapter 7 below.

CHAPTER 5. CORPORATE GOVERNANCE ISSUES: THE EXAMPLE OF EUROPEAN FOOTBALL

5.1 For the purposes of this chapter, as previously, football is used as an example to illustrate the corporate governance issues that apply to sport more generally. It should be noted that corporate governance issues relate to all aspects of football. That is to say, not just to the **internal governance and organisation of clubs** but equally to the **internal governance and organisation of the football authorities** in Europe. Corporate governance also relates to the **transparent and efficient functioning** of football regulation. Consequently, the Review recommends certain changes to the current regulatory divisions of labour where such changes would be in the interests of the more efficient administration of football in Europe. In certain areas it is evident that action by the football authorities is needed. However, it is equally clear that the EU institutions and EU member states have also to do their part in promoting respect for best corporate governance standards in European football.

A) Ownership, control and management of clubs

1) Types of ownership model

5.2 There are a variety of ownership models for football clubs in Europe and it is fair to say that no single model provides a water-tight solution to safeguard the interests of football. The authors of this Review do not wish to suggest the adoption of a uniform ownership structure for football clubs. Rather it is the combination of appropriate ownership and governance structures that will best deliver the security and transparency that football needs.

5.3 The type of ownership model varies from the members club or association (common in Spain, France and Germany), to the company model (quoted on the stock exchange or privately owned, more common in the UK and in some central and east European countries), to the

“sport company” model (seen in France, Spain, Italy, Greece, Poland and Portugal), to the hybrid association/company model and even to certain state-owned companies (in some former Soviet republics).

- 5.4** Each form of ownership may have certain advantages and disadvantages, for example, the company model is vulnerable to takeover and there may be a certain lack of transparency as to who the real owners are. It may also be questioned whether minority shareholders (such as fans) have an effective voice in the running of the club. Furthermore, by far the single most important priority for a company is to maximise profit returns for shareholders and underlying investors. A football club cannot follow this same philosophy, not least because it has a wider role in the society which does not translate into monetary value.
- 5.5** It may, however, be said that one advantage of the “quoted” company model is that at least there is usually binding legislation to encourage good corporate governance. At the same time, however, it cannot be denied that this model has not been a great success for football clubs; the trend of football clubs rushing to float on the stock market has now drawn to a close and many clubs have either chosen (or been forced by market pressure) to “de-list”. This may, in fact, simply be a reflection of the fact that, unlike other businesses, football clubs are inherently not “profit maximisers”, not least because of the financial and sporting incentives they constantly face to spend additional revenues earned on players’ wages. This is perhaps where some form of **cost control** might be further considered: not only to **promote competitive balance** but also to help **restore some financial stability** to football and **make clubs more attractive to potential investors**.
- 5.6** In this connection, the underlying theme of the “sport company ” model is at least to place some form of restriction on the payment of dividends with a view to delivering some measure of financial stability. A further variant on this theme (introduced in England) was to introduce a specific rule prohibiting owners from winding-up a club and making a profit from selling the ground: a necessary protection as many clubs own their

grounds often located in prime city centre sites that could be sold for residential or commercial development.

5.7 It would appear that the members association model does offer the most effective protection against ownership of the club by an unscrupulous individual and it is also a more democratic model, at least insofar as the president and board of directors are voted by the members on a one-person, one-vote basis. Nevertheless, a members association (just like a company) may also become dependent on external finance if it becomes substantially indebted. If and when this happens, it also becomes vulnerable to outside influence. Further, just as minority shareholders may lack an effective voice in the corporate structure, there may also be inadequate mechanisms to encourage effective participation by members in the association model. In each case, a common theme is that because of supporter loyalty to the club, the normal market mechanism of exit does not work and badly run businesses continue to be tolerated by their customers, in this case the fans.

5.8 In light of this analysis, the authors of the Review consider that, **regardless of the organisational form of a football club, the focus of the football authorities should be on ensuring that appropriate regulatory controls are put into place to protect the integrity of the game and, to the extent possible, to encourage principles of sound financial management and transparency** in football clubs.

2) Inappropriate or unsuitable persons

5.9 It would, of course, be desirable to exclude inappropriate or unsuitable persons from being involved in the running of football clubs. There is perhaps a more pressing need than ever to address this particular issue, given the notorious increase in scandals (including attempted match-fixing and betting) that have been reported in the newspapers recently. *A fortiori* this consideration applies to those directly involved in officiating football matches, i.e. referees.

- 5.10** At the moment, only the football authorities in England have established a “fit and proper” persons test applicable to directors of football clubs. Such systems are not applied in other European football territories.
- 5.11** The authors of the Review consider that there may be certain base-level standards that those involved in football should have to meet. For example, it would seem reasonable to exclude those with a criminal record, or a history of match-fixing, money laundering, sexual offences (in particular with minors), bankruptcy or involvement in doping. Having said this, such a test can never be a panacea and certainly could not substitute for other controls to protect the integrity of competition.
- 5.12** Furthermore, even where a “fit and proper” person test is applied (in England) this gives rise to a number of practical problems and therefore does not offer full protection. For example, the test only applies to directors and not to the owners of the business. It also operates on a self-declaration (i.e. voluntary) basis and applies only after the person concerned has been recruited (not at the point of recruitment). Whilst the authors of the Review consider that the implementation of **“fit and proper” person tests** should be further studied, these issues should also be addressed if such a test is to deliver meaningful benefits to football.

3) Independence of clubs

- 5.13** The **independence of clubs** is clearly a key concern of the football authorities as they must take the necessary steps to avoid any conflict of interests that might cast doubt on the **integrity of competition** and the **authenticity of sporting results**⁸². In addition, it seems that the development of the player agent “industry” has created yet another dimension that threatens the integrity of football. In this respect, there are reported links and commercial arrangements between agents and both players and clubs which, if left unregulated, could undermine the reputation of the sport in Europe.
- 5.14** At present, UEFA regulates this matter by ensuring that **no two clubs under common control** may participate in the same UEFA club

competition. In this respect, UEFA adopts a legal definition of control and, thus far, there seem to have been few alleged instances of match-fixing or other form of irregularity in relation to UEFA competitions.

- 5.15** Nevertheless, given the substantial (and growing) financial importance of football, the authors of the Review consider that it may be appropriate to tighten the existing regulation to cover the situation of possible *de facto* control of a club (for example, by a sponsor or sports marketing company). It seems appropriate to impose additional disclosure obligations, to reveal true beneficial ownership details and also cash flows derived from important commercial partners.
- 5.16** Furthermore, given the rise in **betting activities** (in particular, cross-border betting over the internet) and the **risk of a conflict between the economic interests of a betting company and sporting results on the field**, there is a case for prohibiting the ownership or commercial involvement (e.g. sponsorship) of football clubs by betting companies. This matter should be further analysed.
- 5.17** In this respect, the authors of the Review consider that UEFA should revise and update both its regulations and the questionnaire it currently sends to clubs entered for UEFA competitions, to ensure that all relevant data is captured. This system could be administered in tandem with the UEFA Club Licensing system.

4) Supporters Direct movement

- 5.18** As noted in the previous Chapter, there is currently no organised pan-European body to **represent the interest of supporters in Europe** and, consequently, UEFA has thus far not been able to engage in structured dialogue with the European fan base.
- 5.19** We note that the "Supporters Direct" movement in England and Scotland is based on a "democratic trust" or cooperative ownership model designed to give supporters a greater say in the running of their club. It originally developed in response to a perceived lack of "voice" in the context of the British "company" club model and, thus far, it seems to

have worked successfully in fostering closer relations between supporters and “their” team (bearing in mind that it is comparatively rare for a supporter to change his team, in the way he or she might change some other product or service provider)⁸³.

5.20 Although the Supporters Direct phenomenon arose in the UK (and largely as a result of the club ownership model in the UK) there is, nevertheless, a case for examining the development of this structure across European football. Analysis reveals that, even in those countries where club ownership models offer more direct supporter involvement (such as the members association) the reality is that fans may have little practical influence in the way these clubs are run as well, not least since it is inherently difficult to effectively marshal a large and heterogeneous body of football supporters.

5.21 The authors of the Review believe that properly structured supporter involvement will help to contribute to improved governance and financial stability (as well as other benefits) and, as such, it would be worthwhile to examine the feasibility of rolling out the **Supporters Direct** framework on a European level, subject to compliance with the club ownership models that exist in other jurisdictions. In order to achieve real progress with this initiative, it would be for UEFA and the national football associations to play a positive and proactive role in creating and developing Supporters’ Trusts, possibly employing staff in a coordinated European unit, to be housed in the UEFA administration. It is possible to envisage the cooperation of the EU and EU member state authorities in this initiative as well.

B) Financial management in football and other regulatory matters

1) The Club Licensing System and related matters

5.22 As a background to the rationale for club licensing, it is important to understand that greater **inequality in revenue distribution** results in both a **decline in competitive balance and greater financial risk and instability**. Thus, it is necessary to consider a **holistic solution** to the issues faced by football. Measures such as **central marketing** (and

re-distribution of income) can serve to reduce financial disparities. Measures such as the **home-grown player rule** and squad size limit can play a similar role. And **cost control structures** can also reduce competitive imbalance and also promote financial prudence. The club licensing system fits into this overall model as well, and is strongly geared to improving the financial management of football clubs.

- 5.23** The introduction of the club licensing system by UEFA in 2004/05 represents a quantum step forward in terms of improving transparency and the overall running of football clubs and goes some way to promote standardisation of the regulatory requirements in football across Europe, at least for regulation in the five core areas identified by UEFA (sporting, infrastructure, personnel and administration, legal and financial)⁸⁴.
- 5.24** It is also the case that clubs playing in the same competition continue to face different national regulatory regimes in terms of financial management and corporate governance. Having said this, the new UEFA requirements for 2008/09 are stronger and include more forward-looking provisions in terms of financial management. It is important that the bar continues to be raised in this way, to extract the maximum benefits from the club licensing system. However, it needs to be remembered that the club licensing system is not an end in itself, but is rather a new regulatory framework which will lead to the better governance of clubs and help to ensure that other football regulatory structures (for example, in relation to player transfers or cost controls) can also function more efficiently.
- 5.25** It may also be worth considering the introduction of a **code of corporate governance for clubs**, which could sit alongside the licensing system and which could be developed at European level. In this respect, certain useful lessons could be taken from existing structures in European company law⁸⁵. A system of "**benchmarking**" could also help to increase transparency in football administrative and financial practice and thus promote standards of governance over time.

5.26 Finally, it is essential that the licensing system be diligently enforced. This is presently done by the national associations themselves, with “**spot checks**” carried out by UEFA. It is recommended that the system of spot checking could be intensified to lend further credibility to the system and could be operated by an independent body within the UEFA structure as currently applies to the disciplinary bodies. Obviously, deterrent sanctions should be applied for those found to be in breach of the licensing criteria.

2) Cost controls

5.27 There is no doubt that football in Europe has faced a form of financial crisis for many years now. This crisis is directly related to the massive wage inflation the sport has seen in recent years (particularly following the *Bosman* ruling) fuelled by the ever higher financial demands made by players at the encouragement of their ubiquitous agents. In the face of these trends, many clubs have been unable to control their spending. Indeed, frequently spending on wages exceeds the total turnover of the club itself – a situation that would be unthinkable in any other field of business.

5.28 Thus, a very strong theme that emerges from all available evidence is that clubs are increasingly involved in some form of “arms race” in relation to spending on player salaries. It is also clear that: (1) there has been a significant decline in competitive balance in all European top-flight national leagues; and (2) clubs continue to face significant pressures to spend very substantial and often unrealistic sums on player salaries. Against this background, it seems essential that some form of regulatory control be introduced, both for the benefit of football as a sport and for the financial well-being of the clubs themselves. The players also have an interest in this matter, insofar as they must also benefit from a healthy and vibrant football sector.

5.29 With specific reference to the issue of **cost controls**, the authors of this Review understand that there may be significant administrative challenges with regard to enforcement. Nevertheless, it must also be

pointed out that the institution of the UEFA club licensing system has provided a framework for the harmonisation of different approaches (e.g. as regards accounting) and therefore does put into place one of the necessary mechanisms to help make a **pan-European cost control system** achievable in practice.

5.30 At the same time, the authors of the Review note that the G14 clubs have considered and the English Football League has actually implemented a (broadly similar) approach to a form of salary cost control system. The European Professional Football Leagues also consider that a **salary cost control system** should be further examined, as a possible tool to bring both **financial stability** to football and help to maintain and improve **competitive balance** in the sport⁸⁶.

5.31 Against this background, the authors of the Review consider that the relevant question is not whether it would be possible to implement a perfect and seamless pan-European salary cost control system, but rather whether it is possible to envisage some form of cost control system, capable of enforcement without disproportionate administrative burden, which would constitute an improvement on the current situation. In this respect, the authors of the Review again draw attention to the fact that competitive imbalance appears to be worsening and (with few exceptions) clubs appear to be making little progress towards more prudent financial management, an issue which will be further discussed below.

5.32 Further steps should be taken towards the establishment of an effective cost control system in Europe. **This requires further study of the exact form or model that would be best suited to the needs of European football, in particular to foster competition.** In this respect, a common feature of cost control systems is to stipulate a **given percentage of club revenues which may be spent on players' salaries**. Whilst we understand the rationale for this approach, care needs to be taken to ensure that any system does not create a structural advantage for those clubs that already have a larger turnover and therefore would inevitably be able to spend more money

on players' wages. **Consequently this issue requires further detailed study to determine what is the most appropriate model to fit the circumstances of European football.**

5.33 In addition, any such system must exclude the possibility of "avoidance", for example, by failing to take account of wealthy or anonymous benefactors standing behind clubs. A clear set of rules, in particular, **defining those income streams that can be considered as relevant club revenue**, has to be drawn up and rigorously applied to give the system practical effect and credibility. This presents particular challenges in the pan-European context, not least as a result of different tax systems and the fact that certain countries in Europe are at different stages of football development from an economic point of view. Whilst a number of alternatives need to be further analysed, the authors of the Review believe that a form of **payroll tax**⁸⁷, which requires clubs to pay a **"redistribution levy"** if they exceed the relevant limit on salaries, warrants particular consideration.

5.34 Consequently, even though we appreciate the complexities involved in formulating the most appropriate model, the authors of the Review nevertheless fully support the concept of introducing a **cost control** system in Europe. Finally, to ensure that any such system enjoys legal stability, and in accordance with the underlying philosophy of this Review, the authors also consider it desirable that the structure once finalised be agreed with and supported by the authorities of the EU.

C) Corporate governance issues for sports governing bodies

5.35 Thus far, the corporate governance matters considered in this Chapter have concerned primarily the running of football clubs. Nevertheless, the authors of the Review also consider that the governing bodies, that is to say both the national football associations and UEFA itself, should also conform to best practice in terms of corporate governance.

5.36 In this respect, we refer to the **Council of Europe Resolution on "Principles of Good Governance in Sport" adopted in 2004** by the European Ministers responsible for sport⁸⁸. Among other things, that

resolution calls on all institutions involved in sport to implement, strengthen and support initiatives based on the principles of good governance, including as a minimum: democratic structures based on clear electoral procedures open to the membership; professional organisation and management, with appropriate procedures for dealing with conflicts of interest; accountability and transparency in decision-making and financial operations; fairness in dealing with the membership and solidarity; and an equitable partnership between the public authorities and the sports movement. The resolution specifically provides that these principles should be integrated into sports policies and practices at national level and effectively monitored.

5.37 In particular, bearing in mind the significant and complex administrative functions which have to be carried out by sports governing bodies these days, it is essential that they are all equipped with experts and professional staff to guarantee stability and smooth running of the sport for which they are responsible.

5.38 Furthermore, with particular regard to professional organisation and management and, as mentioned at the beginning of this Chapter, the authors of the Review believe that corporate governance is also related to the efficient functioning of football regulatory structures. As such, it is also necessary to consider the most appropriate division of tasks between the governing bodies of football to deliver maximum benefits for the game.

5.39 Firstly, however, we will consider certain corporate governance issues related to national associations in Europe and to UEFA itself.

1) National Associations

5.40 National associations have to monitor, implement and sanction compliance with their regulations. It is therefore vitally important that these organisations operate as role-models and adapt sound financial management and best practice governance.

5.41 These governing bodies must have the appropriate organisational structures in place to meet their objectives and should be subject to review on an on-going basis. In this respect, it is not sufficient to leave this matter to some external review to be undertaken from time to time by consultants. Such reviews need to be built into the very system itself. **Governing bodies have a leadership role to play** and they themselves must therefore have clarity and vision.

5.42 In this respect, there is an on-going need to increase the levels of democracy, transparency and capability of national football associations in Europe. There is a need to develop professionalism and know how; to guarantee a minimum level of education for coaches; to improve training policies; to promote grassroots programmes, in particular, for school, youth and amateur tournaments; to improve infrastructure; and to ensure financial transparency. The UEFA Top Executive Programme – which is aimed to assist national associations in meeting these objectives - is a move in the right direction but more still needs to be done, for example the introduction of **“minimum corporate governance standards” for national football associations** to be monitored by UEFA.

2) UEFA

5.43 Like its national member associations, UEFA also has important regulatory and commercial functions to undertake. It is crucial that, in the discharge of these tasks, UEFA is also seen to be operating according to sound corporate governance principles, in particular as regards the transparency of decision-making.

5.44 As mentioned above, the authors of the Review consider that the **statutory recognition of certain consultative committees** and the establishment of additional **advisory bodies to represent key stakeholder groups** in professional football will contribute to an improved overall governance structure for European football.

5.45 In addition, the authors also consider that the efficient conduct of regulatory responsibilities can be subsumed under the heading of

general corporate governance and that is why certain amendments to the existing allocation of tasks has been proposed, such as transferring responsibility for administration of the football transfer system in Europe to UEFA.

3) Transfer system, players' agents, labour related matters

a) Transfer system

5.46 As mentioned above, corporate governance also implies efficient and effective administrative and regulatory structures. In this connection, examination of the player transfer system has identified problems not only with regard to certain substantive rules governing international transfers but, in particular, with regard to the effective and efficient implementation and enforcement of these rules.

5.47 Of particular relevance is the fact that countries outside the European area often operate under a different legal framework, especially as regards free movement and competition law issues. There are many examples of different rules and/or practices that correspond to the sporting needs and legal cultures prevailing outside Europe but which are not suited or appropriate to the European environment (and vice versa).

5.48 Accordingly, the authors of the Review consider that **national transfer matters should be handled by the national association**, taking into account the specificities of national law; **European transfer matters should be handled by the European governing body**, taking into account the specificities of European Community law; and, finally, **intercontinental transfer matters should be handled by the world governing body**. This would be the most practical and efficient way of addressing the issue of player registration and movement within Europe and this view is reflected in the Recommendation section in Chapter 7 below.

5.49 It seems appropriate for FIFA to establish certain minimum principles and standards on transfer matters to ensure that these can be applied and enforced by national associations and confederations in a consistent

way. This way, stricter rules and standards should be implemented by the national associations and confederations which are in a position to do so. The authors of the Review consider that taking into account the current cultural and legal environment in Europe, Europe is ready to enforce a stricter transfer system complying with the minimum standards set out by FIFA. This approach is in line with the "Vision Europe" document in which UEFA is clearly mandated by its membership to deal with all questions related to European football. The system of registration and transfer of players is one of the crucial issues related to European football and therefore it also follows that UEFA should proactively deal with this matter.

5.50 Furthermore, and taking into account the club licensing requirements already established by UEFA (in particular the principle of "no overdue payables from transfer activities") the authors of the Review also consider that UEFA should create a "**central clearing house**" system for all European transfers. Besides allowing an efficient monitoring of the club licensing system, this would increase transparency and permit a more effective control of the flow of money in relation to player transfers. Such a system could be readily combined with the financial reporting requirements of the club licensing system and, among other things, this may assist international efforts to combat perceived problems such as money laundering in football.

b) Players' agents

5.51 The activities of players' agents is one of the most criticised aspects of football today, not least in the eyes of the supporters⁸⁹. Not only do certain agents try to extract greater and greater sums from football (often to obtain very substantial commissions for themselves) but they frequently act on "both sides of the fence" which means that the scope for conflict of interests is considerable and extremely difficult to control. This has consequences for financial transparency in football and also potentially affects issues of integrity as well. There is a critical need for more effective regulation of agents in Europe: without this reform football will continue to suffer significant reputation damage.

- 5.52** Football authorities must reinforce the control and examination of agents⁹⁰ (knowledge of legal, contractual and commercial aspects etc.) and far greater care must be given to the monitoring and enforcement of the regulations. Regulations should foresee that the activity of agents is carried out in a more transparent way (e.g. no “dual-representation”, remuneration, length of contract, means of termination, etc.).
- 5.53** The authors of the Review noted that the questions of both player transfer regulation and players’ agents regulation have been subject to investigation by the European Commission and litigation in the European Community courts. In all probability, further refinement and modification of each system in Europe may be required and these matters will be subject to monitoring and further discussion with the European Commission.
- 5.54** This is a further reason why it is both logical and efficient for each system to be administered by UEFA in Europe, and for further amendment to the system(s) to be agreed in dialogue with the EU authorities, preferably within the overall context of a formal consultation process between UEFA and the European Commission. Our recommendations in this respect are set out in Chapter 7.

c) *Labour related matters*

- 5.55** While the **transfer system** per se is a **sport regulatory matter rather than an employment matter**, it may be noted that **as regards strict issues of employment relations, the vehicle of European Social Dialogue could be instrumental in finding appropriate solutions**. In this respect, it is noteworthy that UEFA and the EPFL leagues have, together with the players representatives (FIFPro), already created a tri-partite football dialogue to discuss various labour related issues⁹¹. These parties have already started discussing matters of common interest, such as the outline structure of a basic player contract (“Player Contract Minimum Requirements”).

D) Criminal activities around football: money laundering and trafficking of young players

1) Money laundering

- 5.56** With the increased economic importance of football it is necessary to guard against the risk that the sport could be used as a vehicle for criminal activity, in particular, money laundering. There are a variety of money flows on transactions in football in relation to which the risk of money laundering might arise. These would include: player transfers, payments to agents, investment in clubs and a variety of other commercial deals associated with football, such as sponsorship.
- 5.57** Whilst there is no existing anti-money laundering framework within football and whilst it is clear that football bodies cannot take the legal responsibility for adjudicating on all money laundering activities, it is considered that European and national football authorities can play a role – together with the EU and the EU member states – in combating this risk. This would require a tightening of existing football regulations, in particular as regards the club licensing system and as regards rules concerning the integrity of competition.
- 5.58** For example, as regards club licensing, it is possible to envisage the submission of annual statements meeting minimum information requirements and subject to independent audit. Similarly, as part of an enhanced system to help ensure the independence of clubs (and protect the integrity of competition) it is reasonable to obtain properly documented and corroborated information as to the identity, background, business and sources of wealth and funds of each club and its owners.
- 5.59** In this context, it is vital to understand who the real beneficial owners and controllers of a club are. This requirement is needed to preserve the independence of clubs (as discussed above) but will also assist in the fight against money laundering. Establishing certain minimum requirements to be satisfied by club directors (a European-wide “fit and proper person” test) would also assist in this respect. Finally, the

establishment of a central clearing house system for European transfers would also allow financial flows in football to be more effectively monitored and this increased transparency would also help to combat criminal activity.

5.60 Thus, it may be seen that current regulations already operated in European football represent a platform that can be built on to make significant progress. For the overall system to be credible it is essential that it be diligently enforced, preferably by the same organisation, and this is a further reason why **UEFA should assume responsibility** for all these matters in the European area.

2) Trafficking of young players

5.61 The problem of “trafficking” young players became apparent in many European countries at the beginning of the nineties in professional (and even in amateur) football. It seems that international networks coordinated by agents based in Europe started to manage this “business”, especially in relation to young players coming from Africa and Latin America.

5.62 The phenomenon has been well documented in several reports in relation to Belgium, France, Switzerland, Italy, Brazil and various African countries. The core problem football has to face is that young players may often end up being abandoned by both the agent and the club in a foreign country. There is a risk of both illegality when the player has no proper work papers (as is often the case) and unfair exploitation in relation to conditions of work, as often happens in such “underground” industries.

5.63 The current football regulatory framework is not sufficiently adapted to deal with this matter and it is believed that closer collaboration between the football authorities, the EU and the EU member state authorities is necessary to develop appropriate solutions. Our recommendations in this respect are set out in Chapter 7 of the Review.

E) Racism and xenophobia

- 5.64** Part of the social function of sport is to foster integration and to bring people together from different cultural or ethnic backgrounds. Nevertheless, it cannot be ignored that sports events have often witnessed outbreaks of racism and xenophobia. This is part of a more general problem in society, also sometimes related to the problem of hooliganism.
- 5.65** In addition to the essential work that must be done on an educational level, we believe that racism and xenophobia have to be dealt with through a combination of criminal (state) laws and disciplinary (sporting) measures (e.g. sanctions against clubs) in order to effectively deter such conduct.
- 5.66** In this respect the recent Written Declaration of the European Parliament tackling racism in football must be applauded. This resolution confirms that one of the basic objectives pursued by the EC Treaty is protection against discrimination based on ethnic origin or nationality. It condemns all forms of racism at football matches, both on and off the field, and commends the excellent work done by UEFA and FARE (Football Against Racism in Europe) in tackling this problem.
- 5.67** Furthermore, the UEFA, Leagues and FIFPro Panel has also addressed the issue of racism and, in April 2006, came forward with a series of recommendations to tackle this issue in football. The authors of the Review believe this work should be carried forward and we set out our own recommendations in this respect in Chapter 7 of the Review.

F) Gambling in sports and particularly football: its importance and its complexity

1) The legal situation in Europe

- 5.68** It appears that betting in sport has reached new levels of sophistication with various operators involved across several countries and continents and new off-shore betting companies being established, which service the needs of their clients – often through the internet – whilst at the

same time avoiding paying tax in the EU. These matters need urgent examination and investigation.

5.69 It also has to be noted that there is a somewhat ambiguous relationship between betting and sport. On the one hand, betting has historically been an important revenue source for sport in many countries. On the other hand, betting has also been associated with attempts to fix matches and alter the results of sporting competitions.

5.70 Consequently, there are two important issues to consider when we examine the relationship between betting and sport and these are: (1) the importance of betting as a source of funding for sporting activity; and (2) the regulatory measures needed to ensure that sport is protected from any improper influence associated with betting. We will consider issue (2) when we examine measures concerning “match-fixing, corruption and betting” in the following section.

5.71 As regards the legal situation in Europe, it is necessary to recall recent decisions of the European Court of Justice (in particular, the *Gambelli* case⁹²) as well as the European Commission investigation into restrictions on betting activities in Denmark, Finland, Germany, Hungary, Italy, the Netherlands and Sweden.

5.72 There is currently a move away from state monopolies in many European countries and this includes monopolies in the gambling market. Furthermore, internet betting providers are by their very nature trans-national businesses. Against this background, it is necessary to consider whether national restrictions on cross-border betting providers can be upheld in the future.

5.73 In many EU member states there is still a state monopoly for gambling operators, which provides funding for sport, including football. However, following the decision of the ECJ in the *Gambelli* case, it is not clear if EU member states will be able to continue protecting national monopolies in the gambling sector. If this proves to be the case, it will no longer be possible to prevent third parties from entering this “market”, and the reduction in revenues generated by the (former) state monopolies may have consequences for the financing of sport. As noted, the European

Commission has just sent an official request for information to seven EU member states to analyse the situation⁹³.

5.74 Under the circumstances, it seems reasonable to wait for the outcome of these investigations before making any firm recommendations. Nevertheless, in the event that competition in this market is opened to private operators, it may be desirable to consider the imposition of some form of "tax" for the benefit of sport, in particular, to support solidarity and grassroots funding. An alternative idea might be for UEFA and national associations to take an active position over betting by establishing their own betting agency, maybe even under state control. This could provide important revenues for the development of football whilst at the same time helping to control any risk of improper betting activity. Obviously, any direct involvement of football authorities in the area of betting is a complex and delicate matter which would require further study and careful evaluation.

2) Match fixing, corruption, illegal betting

5.75 The FIFA Task Force "for the Good of the Game" has correctly observed that "football offers an interesting platform for irregular betting activities"⁹⁴. Needless to say, recent scandals in several European countries involving betting and the manipulation of match results have seriously damaged the image of football. It is therefore crucial for the football authorities to act, supported by the EU institutions and the EU member states, and also by the betting providers.

5.76 The authors of this Review consider that a number of mutually reinforcing mechanisms are needed to reduce the risk of match-fixing, illegal betting or other forms of corruption. Some regulatory controls can be introduced and monitored by the football authorities themselves; certain other measures will require the more active involvement of the state authorities, possibly working in tandem with the football bodies⁹⁵.

5.77 Among the measures that the football bodies can implement are more rigorous controls on common ownership or influence over clubs and possibly also further examination of a fit and proper person test, to help

reduce the risk of corrupt activities. In particular, it seems appropriate to exclude the possibility for anybody directly involved in football, such as players, coaches and referees to bet on the outcome of football matches.

5.78 In addition, the authors of this Review consider that measures to protect the intellectual property rights in the football fixture list will also help to reduce the incidence or likelihood of betting-related match fixing.

5.79 At present, betting companies pay nothing for the fixture list and they have no contractual relationship to the leagues, national associations or UEFA. A proper contractual agreement for the use of the fixture list would enhance the possibilities of monitoring betting activities (for example, by requiring the betting company to notify any unusual betting patterns to the relevant competition organisers). Thus, it would be possible to choose betting companies who are willing to cooperate with the football rights holders to detect this kind of illicit activity.

5.80 Furthermore, in a regime with strong intellectual property rights protection for football fixture lists, more of the value generated by betting will be captured for the sport itself, there will be fewer participants in this business (with better opportunities for effective monitoring) and therefore the probability for match-fixing should be reduced. Consequently, the authors of the Review consider that sport in general and football in particular should obtain legislative support from both governments and the EU institutions **to secure the protection of intellectual property rights for fixture lists**. Our recommendations in this respect are set out at Chapter 7 of the Review.

G) Safety and security in stadia

5.81 These days, ensuring safety and security at sporting events is a major task that carries with it enormous responsibility, pressure and costs. Not only is there the potential risk of hooliganism, but also threats such as terrorism.

5.82 Much of the responsibility of safety and security evidently rests with the public authorities. However, a social governance model of sport implies

that the football authorities also work together with the public authorities in dealing with these matters. As a recent example, UEFA and the UK Presidency of the EU agreed in December 2005 to develop closer cooperation between UEFA and European governments and police, to develop improved communication channels through shared or linked security and safety databases to exchange perspectives, experiences and expertise.

- 5.83** Various initiatives have been taken by football authorities in the past, such as the introduction of match delegates, tight match-day operational procedures and guidelines, substantial financial support for the improvement of infrastructure and the training of officials involved, as well as the establishment and enforcement of a strict disciplinary system. A more recent, but equally important, concern is the development of stadia, as well as safety and security within the smaller European countries.
- 5.84** It would be desirable to have a **strong, practical and harmonised legal framework in order to deal with the various threats and events like hooliganism**. As mentioned in the 2005 Review to the Parliament of the UK Home Office⁹⁶, international cooperation is to be considered as a “key component” for tackling what must be recognised as an international, rather than a local problem. UEFA has also indicated that a harmonised legislative approach is needed⁹⁷. The authors of the Review support this approach and we set out our recommendations in this respect in Chapter 7.
- 5.85** As regards the related subject of hooliganism, the authors of the Review note that there have been a number of European initiatives aimed at dealing with this problem already, in both the Council of Europe and in the European Union⁹⁸. We consider that European institutions should continue to address this issue, working in tandem with the football authorities, as previously suggested.
- 5.86** Tailor-made measures need to be implemented in order to isolate unwanted elements. The introduction of a stadium ban, issued by a court, is indispensable in this respect⁹⁹. Procedures for the necessary

(international) exchange of information need to be improved, following the example of countries such as the UK, Germany and the Netherlands, who work with an effective national database. This should also be expanded to a European level. There is, in sum, a pressing need for greater and better exchange of information between national police information points, local police forces and match organisers.

5.87 "Black Market": one issue that is related both to safety/security and potentially to hooliganism is the question of ticket touting and the prevalence of the "black market" in tickets for football matches. The demand for tickets for major international sporting events such as the FIFA World Cup, the European Football Championships or the UEFA Champions League far exceeds supply. Thus, in several countries a "black market" for tickets has developed.

5.88 The legal situation to restrict operation of the "black market" is somewhat disputed and it is not easy for football bodies to issue tickets and manage the ticketing in a way to prevent abuses effectively. In this respect, the authors of the Review consider that the legal framework should be re-examined in order to combat this problem more effectively. We set out our recommendations on this subject in Chapter 7.

H) Conclusions

5.89 It follows from the foregoing discussion that a considerable amount of work needs to be done to improve corporate governance standards in football and protect the game from a variety of threats. These threats include the chronic financial instability in football, ownership of clubs by questionable individuals or organisations, the risk to integrity of sport, particularly as a result of sophisticated international betting operations, the boom in the player agent "industry", which adds little if any value to the sport, a tendency towards racism in certain areas, an on-going need to ensure safe and properly equipped football stadia, and a need to take decisive action to combat any criminal activities associated with football, in particular regarding the trafficking of young players and the risk of money laundering.

- 5.90** These matters must be addressed by the football authorities themselves. At the same time, however, it is clear that cooperation between the EU authorities and the football authorities is essential. **If football is to put its house in order it is equally important and necessary that the EU delivers the legal framework and stability needed for football to put into place all necessary reforms.**
- 5.91** In conclusion, and in accordance with the general methodology we have adopted for the purposes of the Review **we believe that the corporate governance issues we have analysed in this chapter specifically in relation to football are of wider relevance for sport in general.** Consequently, it may be instructive for other sports, in particular team sports, to consider and assess how some of the above mentioned corporate governance principles might apply in the context of their own sport, against the background of their own specific needs and circumstances
- 5.92** There is now a **need for a proactive and systematic approach** involving the commitment of both the EU and football to achieve these objectives. The aim of the next Chapter is to discuss the nature of the legal instruments that can be employed to help deliver these results.

CHAPTER 6. INSTRUMENTS

- 6.1** Formally, the EC Treaty contains no single explicit reference to sport. Despite the provision of sport in the European Constitution¹⁰⁰, this text is still not in force. In this context, sport is subject to EU law¹⁰¹ without having a specific legal basis. This means an unclear legal status of sport and inherent legal uncertainty and insecurity.
- 6.2** **Due to the above mentioned and analysed specificity of sport, the authors of the Review are totally against a blind and insensitive application of EU law to sport.**
- 6.3** As it is stressed in the Helsinki Report¹⁰², there is a need for a new approach as far as the application of EU law to sport is concerned: *"[t]his new approach involves preserving the traditional values of sport, while at the same time assimilating a changing economic and legal environment".* In this Chapter, we will suggest different ways of implementing this new legal approach and propose different instruments that can be used for such implementation.
- 6.4** The purpose of this Chapter is therefore to consider the form of legal instrument(s) that would be best adapted to achieve this result in practice.

A) Instruments to the application of EU Competition Law to sport

- 6.5** Before considering the most appropriate legal instrument(s) for these purposes, it is important to underline: (i) the inherent "unbalanced or asymmetric" nature of sport, and (ii) the difference between "sporting competition" and "economic competition", which must also logically lead to a different legal appreciation.

1) Sport implies certain forms of "discriminations"

- 6.6** Since the objective of a sporting competition is frequently to find the best in a given category, there are inherent "discriminations" based on,

for example, gender, weight, age, or national “quotas” for participation in international sport events¹⁰³. Such “discrimination” has no restrictive aim¹⁰⁴, but is rather an inherent feature of organising the competition in question.

2) “Sporting competition” is not the same as “economic competition”

6.7 “Sporting competition” is distinct from “economic competition”¹⁰⁵. As a practical matter, and as explained elsewhere in this Review, the distinct features of sporting competition would include the following:

- Because both players and clubs are economically dependent on each other, sport is perhaps the only sector in the economy where there is need for a certain degree of solidarity between participants¹⁰⁶;
- It is essential that no clubs in a competition drop out prematurely, for instance because of business difficulties, as this would distort the final results¹⁰⁷;
- A sporting federation or league is a ‘natural monopoly’;
- Fans prefer a single sports organisational structure as this meets the natural sporting objective of seeing who the single champion is¹⁰⁸; and
- Sports fans are not “consumers” in the normal free market sense. They tend to be loyal to “their” club, which they follow almost unconditionally¹⁰⁹.

There is a need to treat differently what is different.

6.8 These characteristics demonstrate the specificity of sport and illustrate how sport is different from other parts of the economy. In the opinion of the authors, it is necessary to take account of these specific features in the application of EC Law.

6.9 Karel VAN MIERT, former EU Competition Commissioner, expressly recognised the specificity of sport in the framework of the application of EU Competition law:

*“I would like to underline that the specificities of this sector imply certainly restrictions in the sports spectacle’s production or organisation that can not be admitted in other sectors of industry and services.”*¹¹⁰

6.10 Another former Competition Commissioner, Mario MONTI¹¹¹ also took a similar view, concluding that:

"[r]ules, without which a sport could not exist, (that is, rules inherent to a sport, or necessary for its organisation, or for the organisation of competitions) should not, in principle, be subject to the application of EC competition rules. Sporting rules applied in an objective, transparent and non-discriminatory manner do not constitute restrictions of competition.

However, the recognition of that specificity is still insufficient and casuistic, if not too theoretical.

6.11 It is still necessary to find a more stable and predictable legal framework in which the world of sport can function. The case-by-case approach followed by the European Commission (and by the EC courts) does not provide the legal certainty that is needed.

6.12 In the view of the authors, specific instruments need to be put into place which can, on the one hand, provide stability and predictability for the sports sector, and, on the other hand, provide a clear set of guidelines for both courts and administrative authorities to follow when dealing with disputes of a sporting nature. Indeed, it is to be hoped that, following the adoption of certain "sports specific" legal instruments, the incidence of legal disputes will be reduced because the legal landscape will be considerably clearer than it is today.

6.13 This approach would be in line with the proposal of Gérard RASQUIN¹¹² who states:

"What we can do, what we must do, is make the Commission aware of certain specificities of sport, and to convince it that an automatic, almost mathematical application of certain European Law rules to sport, with no margin of discretion, is not in conformity with the nature of sport".

B) Instruments to recognise the specificity of sport in EU Law

1) Block exemptions regulations

- 6.14** Academic writers specialising in both sports and competition law consider that block exemptions could be a valid option. Such instruments could provide much needed legal security for all interested parties in the sports sector (such as event organisers, broadcasters, athletes, clubs and club-owners, etc.).
- 6.15** The European Commission may, acting on the authority of the Council of the European Union, issue such block exemptions provided the agreement in question satisfies the four conditions of Article 81(3) EC¹¹³.
- 6.16** Block exemptions regulations shall only apply for as long as the four relevant conditions of Article 81(3) EC are fulfilled, i.e. the agreement must: (i) contribute to improving the production or distribution of goods (or services) or to promoting technical or economic progress; (ii) allow consumers a fair share of the resulting benefit; (iii) not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; and (iv) must not afford undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.
- 6.17** If an agreement falls within Article 81(1) EC but is covered by one of the block exemptions, the parties are relieved of their burden of demonstrating that the agreement fulfils the mentioned conditions of Article 81(3) EC.
- 6.18** There are presently a variety of block exemptions, covering matters such as: (i) vertical agreements¹¹⁴; (ii) horizontal agreements¹¹⁵; (iii) technology transfer agreements¹¹⁶; (iv) insurance¹¹⁷; (v) motor vehicles¹¹⁸; and (vi) transport¹¹⁹.
- 6.19** The typical format of most block exemptions is to start with a series of recitals explaining the reason for adopting the regulation in question. These recitals are also of legal significance, and may be referred to for the purpose of construing the substantive provisions of the regulation.

6.20 Block exemptions applied to the area of sport would automatically exempt certain categories of agreement from the application of Article 81(1) EC. Thus, where an agreement is covered by a block exemption the parties to it have full legal security that they are operating in conformity with EU competition law¹²⁰. Such exemptions are directly effective before national courts. Consequently, this is one legal option that would help address the current erratic application of EC competition law to sport.

6.21 Some examples of clauses that could be included in a block exemption regulation on central marketing of media rights would be: (i) maximum duration of contracts; (ii) appropriate rights “packaging” to facilitate competition; (iii) agreement on “pooling” as a pre-condition of participation in competition; (iv) maximum availability of matches (full exploitation) (v) appropriate exploitation of new media rights (Internet, mobile, ...); (vi) no-bundling sale; (vii) open tender procedures; (viii) sub-licensing for unused rights; (ix) balance between pay- and free TV; and (x) equitable redistribution of revenues.

6.22 Similarly, as regards matters relating to the movement of players, the following clauses could be envisaged: (i) rules limiting rosters of teams; (ii) rules providing “home-grown” players schemes; (iii) transfer windows limitations; (iv) stability of contracts; (v) protection of young players / minors; (vi) training compensation; and (vi) independent arbitral tribunal for disputes.

2) Guidelines to the application of EU Competition Law to Sport

6.23 As an alternative or in addition to block exemptions, it is possible to envisage the issuance of “Guidelines” regarding the application of competition law to sport. The legal bases for such instruments are Articles 10 and 211 EC, which can be considered as empowering the European Commission to explain court judgements and to spell out implications both for undertakings and for the EU member states.

6.24 According to Häcon A. COSMA and Richard WISH¹²¹, although mainly defined as interpretative documents, these Guidelines can also be considered to be decisive instruments in the sense that they:

"(...) can aim at both interpretation of the existing rules and they can also indicate how discretionary powers will be used. Their role is to secure a correct and consistent application of the Community rules. (...) This is a tool used particularly by the Commission in the competition area. It can present its interpretation without waiting for the Council or the Court and stake out the course in the competition field. Guidelines play an important role in this context."

6.25 Guidelines in the field of sport would help interested parties understand how relevant legal rules would be interpreted in their sphere of activity. As such, this particular form of instrument could be a valuable source of information to anyone in the sports field trying to assess whether or not their agreement or practice is caught by the EC Competition rules.

6.26 In this connection, it has been noted that: "(...) while these instruments do not have the force of law (...) [s]ome of these notices and guidelines will now also be of increased importance to the national competition authorities and courts, in light of their recently enhanced role in the enforcement of EC competition law. As these national institutions have less experience than the Commission in applying the EC competition rules, the Commission's notices and guidelines will provide them with a valuable reference point"¹²².

Proposals for the content of the "Guidelines to the application of Competition Law to Sport"

6.27 In the authors' view "Guidelines" in sport should address the following topics:

- a) Measures that fall outside the scope of Articles 81 and 82 EC and rules on the four freedoms;
- b) Measures that deserve an exemption pursuant to article 81 (3) EC;

- c) Furthermore, the Guidelines should also propose the following:
- (i) To assume that sport organisations fulfil a task of general economic interest in the sense of Article 86 (2) EC;
 - (ii) To recognise the specificity of sport in the context of state aids, and consequently apply article 87 (3) paragraphs c) and d) EC.
- d) Finally, there should be Guidelines focused on specific issues that arise in sport, namely the following: (i) central marketing; (ii) rules regarding the training of youth athletes (e.g. "home-grown players"); (iii) rules related to the clubs' release of players to play in the national teams; (iv) cost controls; and (v) club licensing system.

a) *Measures that fall outside the scope of articles 81 EC and 82 EC and of rules of the four freedoms*¹²³

6.28 Rules of "purely sporting interest", consist of those rules inherent to sport, i.e., needed for the proper functioning of sport. In certain cases, these rules may also have economic consequences; however, this does not alter their character as sports rules outside the scope of EU law.

6.29 To achieve legal certainty, it is desirable to provide a non-exhaustive list of rules that belong to this category. Furthermore, it is desirable that a mechanism exist to identify rules of this nature, and this could be envisaged in the context of the formal agreement that should be entered into between the EU and UEFA, as discussed further below. For the time being, however, the authors of the Review suggest the following indicative (non-exhaustive) list:

- "Rules of the game" (e.g. rules fixing the length of matches or the number of players on the field);
- Nationality clauses/restrictions in competitions between national teams¹²⁴;
- Rules related to selection criteria: rules relating to the number of teams or athletes per country in international competitions and selection of athletes on the basis of objective, non-discriminatory criteria¹²⁵;
- Rules on doping;
- Rules laying down fixed transfer periods/windows for protecting the regularity and proper functioning of competition ¹²⁶;

- Rules organising sport on a territorial (national, regional or local) basis;
- Rules preventing club relocation¹²⁷;
- “Home and away rule”- the UEFA rule that obliges each club to play home matches in its own ground¹²⁸;
- Rules preventing multi-club ownership¹²⁹;
- Rules to encourage the attendance of spectators at sporting events and the practice of amateur sport;
- Rules relating to the training of young sportspeople (e.g. “home-grown” players rule); and
- Rules regarding the release of players by clubs to the national teams.

6.30 This list provides basic guidance to assist courts in the appreciation of the rules, particularly in light of the *Meca-Medina*¹³⁰ approach. Prior to *Meca-Medina*, courts conducted a more individual assessment, depending on the circumstances of each case and considering whether a rule in question had an economic character, thus bringing it within the scope of European Community law. However, in *Meca-Medina*, the court directly examined whether the anti-doping rules adopted by the IOC (International Olympic Committee) were based on “purely sporting considerations”. The conclusion was that rules based on purely sporting considerations were only subject to EC Law if they did not remain limited to their proper scope or objective.

6.31 As pointed out by Pablo IBÁÑEZ COLOMO¹³¹

“It is submitted that this new test may have several advantages in case the European judiciary is still willing to keep rules ‘of purely sporting interest’ outside the scope of the EC Treaty. First of all, it would avoid the confusion raised by the double reference to the term ‘economic activity’ in Walrave. Second, the application of the EC Treaty would follow uniform rules irrespective of the provisions invoked. Third, it would arguably contribute to understand the scope of the ‘rules of purely sporting interest’”.

6.32 In the view of the authors of this Review, the list proposed in paragraph 6.29 above will also help judges to identify so called “rules of purely sporting interest” and thus help to deliver legal certainty in this area.

b) Measures that deserve an exemption pursuant to article 81 (3) EC

6.33 Following BELLAMY & CHILD¹³²,

“(…) the question of exemption under Article 81(3) is more complex as it involves more than exclusively economic considerations, recognizing the special characteristics of sport and the public interest in solidarity between stronger and weaker, or professional and amateur participants in the sport” (emphasis added).

6.34 There are certain judgments that may be considered particularly relevant when trying to define – for the purposes of the Guidelines – those rules or practices that should be exempted from the application of Article 81 (1) EC.

6.35 The cases are the following: (a) *Wouters* judgment; (b) Cooperatives’ judgments; (c) Collective labour relations; and (d) Collective Societies’ Decision.

6.36 *Wouters* judgment¹³³: according to this ruling, not every agreement that restricts competition necessarily infringes Article 81(1) EC. In this context, it is necessary to take account of the overall context in which an agreement is made and, in particular, the objectives of the agreement. In *Wouters*, the Court concluded that the Netherlands Bar Association regulation banning multi-disciplinary partnerships did not infringe Article 81(1) EC since it could reasonably have been considered that the rules in question, despite having restrictive effects, was necessary for the proper practice of the legal profession, in particular for the protection of the public.

6.37 The court seemed to follow a kind of “socio-political rule of reason” approach enshrining non-competition and non-economic objectives into the first paragraph of Article 81 EC¹³⁴. This approach could also apply in

the domain of sport¹³⁵, for example, in a case involving UEFA and its legitimate powers of self-regulation. Several authors share this view¹³⁶.

- 6.38** *Cooperatives*: Sport functions on a basis that is in some respects similar to a cooperative and rulings of the court in this sphere may also be of relevance as regards the correct appreciation of Article 81 (3) EC¹³⁷. In this context, the Judgment of the Court of First Instance *Dansk Pelsdyravlerforening*¹³⁸ is of particular interest. In this case, the court held that certain obligations imposed on members of a cooperative group did not restrict competition since they were justified to give effect to a more general duty of loyalty to the cooperative itself, without which it could not function effectively. A similar approach can be seen in *Gottrupp Klim*¹³⁹.
- 6.39** Like the members of a cooperative, football clubs may not be in direct economic competition with each other. Moreover, for the cooperative to function effectively, it is legitimate to expect the members of it not to engage in competition with it or otherwise undermine it. Exactly the same considerations are relevant when examining the rules that bind clubs into the structures of organised football.
- 6.40** *Collective labour relations*: it has become evident from the discussion in Chapter 3 of this Review that sport has a specific nature that requires specific solutions. Moving forward, one such structure that may meet the needs of sport is the establishment of a particular mechanism for labour-related matters. As a slight variant to the "Social Dialogue" model, it could be imagined that a "football dialogue" could be established, involving representatives of the players, the leagues, and the governing bodies. To the extent this model can successfully resolve labour related matters, the legal precedents suggest that competition law should not be used to undermine the outcome of these discussions.
- 6.41** Thus, in the *Albany* judgment¹⁴⁰, the court held that a collective agreement between management and labour covering an employment matter (pension fund) fell outside the scope of Article 81 EC "by virtue of its nature and purpose". This was because the social policy objectives pursued by such agreements would be seriously undermined if Article 81

EC applied. This is quite similar to the application of the so-called “non-statutory labour exemption” in the US, which also takes certain agreements concluded between leagues and players outside the scope of US anti-trust, when they have occurred in a collective bargaining agreement.

6.42 *Collecting Societies’ Decision*: as with the situation in relation to cooperatives, certain analogies can also be made with collecting societies, particularly as regards solidarity. Thus, in a 1982 decision¹⁴¹, the European Commission accepted the need for joint action by a collecting society to protect the economic interests of its members, to centrally exploit copyright works assigned by the members, to collect the royalties agreed and to distribute the funds¹⁴².

6.43 The economic model followed is to centralise first and redistribute later, from the top to the bottom, which is also similar to the UEFA model. The authors of the Review believe an analogy with the European Sports Model is logical here.

c) Further issues to be addressed by the “Guidelines”

(i) To recognise that sport organisations fulfil a task of relevant general economic interest, and, consequently, apply article 86 (2) EC.

6.44 Article 86 (2) EC provides:

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

6.45 Article 16 (former 7D) EC reads as follows:

Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

6.46 It follows from the foregoing that Article 86 (2) EC may allow derogation from the prohibitions contained in Article 81 (1) EC when this is necessary for the achievement of a purpose of general economic interest (public service) that has been entrusted by the state to one undertaking.

6.47 The “service of general economic interest” is a European Community law concept that more or less corresponds to the notion of “public services” existing in some EU member states¹⁴³. Given the functions that sports federations perform, the authors of the Review believe the Guidelines should recognise that they carry out a task of “general economic interest” and so the exception of Article 86(2) EC applies.

6.48 There is no doubt that sport organisations perform a service for the public within a given geographic area, helping to ensure that people have access to sport. As such, they can be considered as carrying out public policy functions, as entrusted by national law or other acts of public authority¹⁴⁴.

6.49 In this respect, the “general economic interest” function of sport organisations is reinforced by both the Amsterdam and Nice Declarations on sport. The Amsterdam Declaration on Sport recognises the sports associations’ role as social partners: *“The Conference emphasises 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". The Nice Declaration¹⁴⁵ states that: "8. It [the European Council] notes that sport federations have a central role in ensuring the essential solidarity between the various levels of sporting practice, from recreational to top-level sport, which co-exist there; they provide the possibility of access to sports for the public at large, human and financial support for amateur sports, promotion of equal access to every level of supporting activity for men and women alike, youth training, health protection and measures to combat doping, acts of violence and racist or xenophobic occurrences. 9. These social functions entail special responsibilities for federations and provide the basis for the recognition of their competence in organising competitions. 10. While taking account of developments in the world of sport, federations must continue to be the key feature of a form of organisation providing a guarantee of sporting cohesion and participatory democracy" (emphasis added).

6.50 The "general or public interest" mission pursued by sport is also confirmed by a considerable body of academic writing¹⁴⁶. In similar vein, Article 3 A of the Television Without Frontiers Directive¹⁴⁷ is another example demonstrating that sports events can be considered of "general economic interest". This provision foresees the possibility of the EU member states setting out a list of events which should be made available on "free" television, in light of the overall public general interest in these events.

(ii) To recognise the specificity of sport in the context of state aids, and consequently apply article 87 (3) paragraphs (c) and (d) EC.

6.51 Sport is a field of activity where state aids are commonly used. Typical state aids in sport can be summarised as follows: (i) special tax rates; (ii) loans with lower interest rates; (iii) guarantees with lower commissions; (iv) direct subsidies; (v) public financing of sport facilities through clubs or any public administration; (vi) acquisition of a public-municipal stadium by a private club or institution at a symbolic price; (vii) renting of sports facilities by public entities at a low price; (viii) municipal stadia construction or renovation paid by the local council; (ix) public works in private sport facilities; (x) public acquisition of publicity

spaces in the stadia; and (xi) land sale or donation or an exchange of one piece of land for sport facilities.

6.52 These kind of aids have many beneficial effects, for example: (i) income for local commerce or industry; (ii) social inclusion and cohesion; (iii) association or identification of the clubs with the local communities; (iv) acquisition or renting of publicity spaces in the stadium; (v) local entertainment of the population; (vi) increase of sports practice; and (vii) profile and a better image of the village/town/region (state aids as a tool of communication strategy).

6.53 Whilst it is accepted that aid granted in the area of professional sport might give rise to some distortions, at the same time it is particularly complex to apply the rules in this sector. As one author¹⁴⁸ notes: *"[t]aking into consideration the lack of harmonisation of social and tax systems applicable to professional clubs and players, it is very difficult to assess in an homogeneous way the question of the different state aids to sport activities". (Unauthorized translation)* In sum, our conclusion as regards Article 87(3) EC is:

- Article 87 (3) (c) EC should apply to sport as it is currently applied to the cinematographic industry, informatics, aeronautic construction or other economic sectors, i.e. state aids in sport may be considered to be compatible with the common market as long as they *"(...) facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest"*;
- Article 87 (3) (d) EC must apply to sport: the sports cultural impact¹⁴⁹ and its contribution towards the European society is consensual. It is also well known that instead of being concentrated in a few countries, sport is global and crosses frontiers. Consequently, state aids in sport may be considered to be compatible with the common market as long as they contribute to *"(...) promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest"*;

- Article 87 (3) (e) EC could be a legal basis for a proposal of the European Commission to the Council of the European Union in order to approve a decision regarding state aids in sport (*"The following may be considered to be compatible with the common market (...) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission"*).

Another solution could be envisaged in the framework of Article 1 (1) of the Council Regulation (EC) No. 994/98 of 7 May 1998 on the application of Articles 92 [87] and 93 [88] of the EC Treaty establishing the European Community to certain categories of horizontal aid.

The mentioned article, which regards "Group exemptions", states as follows:

1. The Commission may, by means of regulations adopted in accordance with procedures laid down in Article 8 of this Regulation and in accordance with Article 92 [87] of the Treaty, declare that the following categories of aid should be compatible with the common market and shall not be subject to the notification requirements of Article 93(3) [88(3)] of the Treaty:

(a) aid in favor of

(i) small and medium-sized enterprises;

(ii) research and development;

(iii) environmental protection;

(iv) employment and training

One additional paragraph (v) should be added with the word "sport", in order to allow a group exemption to certain categories of state aids to sport.

6.54 The first two conclusions should be drafted in the Guidelines. The third one could be either an alternative option or a consequence of the Guidelines.

d) *Guidelines focused on specific issues that arise in sport, namely the following: (i) central marketing; (ii) rules regarding the training of youth athletes; (iii) rules related to the release of players for the national team; (iv) cost controls; and (v) club licensing system.*

(i) Central marketing/collective selling/mutualisation

6.55 As explained in Chapter 3 dealing with the specificity of sport, a central selling model for media rights is justified because it delivers many positive benefits and produces efficiencies for sport, its commercial partners, and for consumers. Accordingly, in section 2 of this Chapter we have already proposed that it would be appropriate to adopt a block exemption regulation in relation to the central marketing of media rights. This is particularly the case since there are now three formal European Commission decisions dealing with this matter and it would be desirable to establish a commonly accepted and secure legal precedent across Europe in relation to this matter.

6.56 However, only in the event that a block exemption regulation is not possible, or the procedure for its adoption is too cumbersome, would we propose some clear guidelines explaining the basis of which central marketing would be legitimate under competition law. In this respect, inspiration can already be drawn from the three decisions taken by the European Commission in this sphere¹⁵⁰.

(ii) Rules regarding the training of youth athletes (e.g. "home-grown players rule")

6.57 It is recognised that the objective of maintaining a competitive balance and encouraging training programs is legitimate¹⁵¹. Again, as mentioned above, it is possible that systems designed to foster these objectives could be included in a block exemption regulation.

6.58 In this connection, the authors of the Review have considered the recently adopted UEFA rule on “home-grown” players. As from the start of the 2006-2007 season, clubs should include four home-grown players in their 25 man squads (six in 2007-2008 and eight in 2008-2009). “Home-grown” means trained by the club or within the national association in which the club is based for 3 years between the ages of 15 and 21. The objectives of this rule are:

- To encourage training programmes in order to promote, develop, nurture and educate new talents;
- To promote the local nature of clubs, so fans identify more with their team¹⁵²;
- To maintain competitive balance by reducing the importance of money;
- To reduce the tendency towards “hoarding” of players;
- To widen the pool of talent within an association eligible to represent the national team.

6.59 In the view of the authors, the purpose and nature of this rule is such that it would qualify for an exemption under EU competition law. Equally, however, if this is not the most appropriate legal instrument to provide security for this system, the authors also consider that Guidelines could be very useful on the matter to confirm the compatibility of the rule with European Community law.

(iii) Rules related to the release of players for the national team

6.60 Guidelines could also be an appropriate means to clarify any legal question concerning this matter. First of all, it can be noted that several sport federations have this kind of rule¹⁵³ and the rule itself has no economic aim. Furthermore, the rule defines the core identity of the sport, namely: the “make-up of national teams”, which is recognised by the Nice Declaration as a role of sports federations.

6.61 The object of the rule is to ensure that international competitions are played by national teams composed of the best possible players and also to protect the proper functioning of competitions such as European

Championships and World Cup. In short, the aim is to safeguard the nature and authentic character of the competition for the benefit of the fans. In light of these facts, the authors of the Review consider that Guidelines should confirm that these rules are of “purely sporting interest”.

(iv) *Cost control*

- 6.62** A cost control system is not a ceiling on the absolute level of salary paid to any player but rather a mechanism placing an overall limit on the amount any club can spend on player wages, intended to preserve a degree of competitive balance between teams and to prevent extremely wealthy individuals from purchasing teams and winning sporting competitions by signing all the best players and paying them more money than anyone else. In this respect, the European Sports Model might usefully look to the system in the United States where balanced measures have been introduced and remain in place to foster competition in professional sports leagues.
- 6.63** These measures include a salary cost control system, the strictest form of which is to be found in the NFL and, incidentally, is also the most successful major league sport in the United States¹⁵⁴.
- 6.64** In the opinion of the authors of the Review, Guidelines should consider the application of Article 81 (3) EC when (salary) cost control mechanisms are pro-competitive. The cost control system is aimed at both maintaining the economic viability of the clubs and preserving competitive balance between them, ensuring that the richest cannot secure all the best players and thus dominate competition.

(v) *Club licensing system*

- 6.65** By establishing minimum criteria to be satisfied by clubs (obliging clubs to fulfil various requirements such as legal, infrastructural and budgetary ones), the licensing system could be said to have a “restrictive” nature, and consequently recommend the application of Article 81 (3) EC.

6.66 Nevertheless, Guidelines should underline its contribution to the objective of the continuity of professional football competitions, by guaranteeing stability, quality, transparency and differentiation.

C) Instruments concerning the application of the fundamental freedoms to sport: Guidelines to the application of free movement rules to sport

6.67 We have already suggested that it may be desirable to implement block exemption regulations, confirming that certain rules or practices in sport are compatible with European Community competition law. As an alternative, guidelines may also be used to confirm the compatibility of rules or practices with competition law.

6.68 However, it is quite often the case that rules or practices in sport need to be assessed under both competition law and free movement law. In such cases, in order to provide legal security for sport, it is necessary for the instrument in question to confirm general acceptance as a matter of European Community law: it is of little practical value to have a blessing under competition law if the same rule or practices is illegal under the EC Treaty provision on free movement.

6.69 There are no block exemptions available as regards free movement law. Nevertheless, it is possible to envisage Guidelines that would provide sport with security that certain rules and practices are also compatible with the EC Treaty provisions on free movement.

6.70 For these purposes, the authors of the Review consider that a consistent approach should be taken with regard to sports rules. That is to say, it should be confirmed that a list of "rules of purely sporting interest" means that the aforesaid provisions are compatible with both European competition law and free movement law.

6.71 In addition, however, it may be noted that certain rules that are caught by the EC Treaty may be justified under free movement law, but according to a slightly different legal test than applies in the case of competition law. Thus, the EC Treaty foresees certain express justifications to restrictions on freedom of movement, these being on the basis of public policy, public security and public health considerations.

- 6.72** However, in a situation where there is a de facto or indirect restriction on freedom of movement (not based on nationality) it is also possible to justify the rule or practice in question where measures are: (i) applied in a non-discriminatory manner; (ii) justified by imperative requirements in the general interest; (iii) suitable for securing the attainment of the objective which they pursue; and (iv) do not go beyond what is necessary to attain it.
- 6.73** The authors of the Review consider, for example, that the UEFA rule on locally trained players (the “home-grown players rule”) would meet the criteria enumerated above. This would be a suitable case, for example, to be included in the Guidelines confirming the compatibility of a sports rule or practice with free movement law.
- 6.74** Similarly, such Guidelines might usefully clarify the category of matches where it is possible to impose nationality restrictions. For example, in the *Bosman* case the court confirmed that it was perfectly legitimate to restrict matches between national teams to players possessing the nationality in question. However, it would appear that such a restriction is also possible in the case of other (national) “representative” matches¹⁵⁵ but it has not been clarified exactly what these other representative matches would be and whether they might, for example, include club sides representing their countries¹⁵⁶.
- 6.75** In the opinion of the authors of the Review, the Guidelines could define those matches and avoid any future confusion or uncertainty. In particular, the relevant question is to assess those matches that can be “assimilated” to matches between national teams.

D) Other EU Instruments

1) Directive on Minors in Sport

a) *Labour issues*

- 6.76** In the sports sector, minors may be used for profit purposes (e.g. labour and sponsorship contracts) and may often enter a country with no legal authorisation (e.g. visa). Firstly, this amounts to a disrespect of the

Resolution A-3-0172/92 of the European Parliament adopting the European Chart of the Rights of the Child and A-3-0051/93 of 9 March on child abduction¹⁵⁷. Secondly, this also means that the competent authorities do not comply with Council Directive 94/33/EC of 22 June 1994¹⁵⁸ on the protection of young people at work, which also extends to employment in the sports sector.

6.77 The authors of the Review consider that the European Commission should vigilantly control EU member states' compliance with this Directive, in accordance with the European Commission's general role as guardian of the EC Treaties.

b) *Non-labour issues*

6.78 Intensive training can affect physical, psychological, moral and educative skills. There is a clear danger for health and security of minors with direct and indirect consequences in their school and family environment. However Directive 94/33/EC does not cover the "non-work sport practice". Having this in mind, it is essential to adopt strict and appropriate legal measures and it is for the EU to fulfil this role¹⁵⁹.

6.79 In this context, it should be advisable to adopt a "Directive on Minors in Sport", covering labour and non-labour issues related to sport, and imposing strict sanctions.

2) European Bargaining Contract

6.80 Like any other sector, social dialogue may apply also to sport. Nevertheless, despite the pan-European nature of the sports "business" and the free and frequent movement of sports professionals across borders, there is no EU Collective Bargaining Contract in any sports discipline.

6.81 In sports, and particularly in football, the elaboration of a European collective bargaining contract could be further studied. This could cover the following issues of labour law¹⁶⁰: (i) legal nature of contracts; (ii) minimum and maximum duration of contracts; (iii) conditions of employment of third-country nationals; (iv) social security scheme for

players; (v) post-career education for players; (vi) contractual stability; and (vii) breach and termination of contracts.

- 6.82** This could help create a homogeneous regime, which could even lead to certain harmonisation of national labour standards and thus ensure more equality among all professional participants in the sports competitions.
- 6.83** Regarding the procedure of the elaboration of such a contract, the agreement could be submitted to the European Council by the European Commission upon the joint request of the social partners and could be made applicable *erga omnes* if the European Council gave it status of law by incorporating it into a European directive.
- 6.84** As a further illustration of the specificity of sport, however, it should be underlined that one of the key features in the framework of social dialogue for sport resides in the definition of the “social partners”. In the authors’ view the social partners at European level should be FIFPro (or its European members – representing the players), EPFL (representing the clubs) and UEFA (representing the football governing bodies, i.e. guaranteeing that the sporting values – which must always prevail – are properly taken into account).

3) Directive on agents in sport

- 6.85** Some sports already have specific regulations concerning agents, football being the main example. However there may be a need for legislation regarding agents applying to the different sports disciplines at a European level.
- 6.86** As “commercial agents” are regulated by the Council Directive 86/653 of 18 December 1986, a similar tool should be employed in the case of football (or sports) agents. The directive should exert a measure of harmonisation on the terms of agency contracts, with certain mandatory rights and obligations for the agent and the player. The directive could contain certain minimum requirements like examinations for acquiring the status of agent, remuneration, length of contract, method of termination, non-competition clause as well as the need for a national

examination based on the knowledge of legal, contractual, commercial aspects, etc. ¹⁶¹.

4) Directive on betting

6.87 There is a strong need to issue a directive on betting in order to control betting on sports. The directive would also cover the exchange of information between the EU member state authorities and the sports authorities (like for instance information gathered by those authorities within the framework of criminal investigations).

6.88 This directive would also provide that betting companies should not be entitled to make use of sports events without a specific licence granted by the organiser. As part of this legislative initiative, it may also be appropriate to investigate the wide-spread use of off-shore operations by betting companies.

5) Soft law instruments

6.89 The authors of the Review have already proposed the adoption of Guidelines which belong to the category of soft law documents¹⁶². In addition, other measures could be considered including: (i) recommendations; (ii) voluntary agreements; (iii) white and green papers; (iv) action plans or programmes; (v) informative communications; (vi) simple exchange of letters; (vii) codes of conduct; (viii) guidance notes; (ix) circulars; (x) declarations; (xi) conclusions; (xii) reports; (xiii) memoranda; and (xiv) opinions.

6.90 The "Open Method of Coordination (OMC)" may also be a useful instrument to achieve a greater degree of legal certainty in matters relating to sport, whilst also respecting the principle of subsidiarity. First introduced in 1997 as regards European Employment Strategy, this model involves the participation of different actors at Community, national and infra-national levels. The coordinating dimension of the instrument distinguishes it from more traditional harmonization techniques, achieved primarily through the adoption of directives, and therefore also makes it suitable for areas such sport where the EU lacks

any specific legal basis for the adoption of “hard law” measures. As an instrument of “soft law” policy coordination, the OMC offers flexibility and openness in the Community legal order, which may also be useful in the context of 25 different national sport policies.

6.91 In the *Grimaldi*¹⁶³ case the European Court of Justice expressed the view that national courts were obliged to take *soft law* measures into consideration when deciding concrete matters, meaning that non-binding measures can give rise to practical and/or legal effects.

6.92 Even though not included in the Terms of Reference, it is also relevant to mention the wider European context. In this respect, initiatives such as the Enlarged Partial Agreement on Sport (EPAS) of the Council of Europe (another positive and constructive example of the Council of Europe initiatives in sport) have to be applauded, as they should help to achieve similar objectives to those targeted by the Review.

6) European Sports Agency

6.93 We advocate the creation, with due regard for the subsidiarity principle, of a European sports agency which could act as a European sports monitoring centre and provide the European Community, the EU member states and the sports governing bodies with reliable and comparable data on sport.

6.94 This agency could also be responsible for the management of certain parts of the EU’s programmes or initiatives (indirectly) related to sport (e.g. a new European Year on Education through Sport) and also act as a liaison entity with sports bodies in Europe. The purpose of such an agency is simply to act as a repository for information but not in any way or form to threaten the legitimate autonomy of recognised sports governing bodies.

E) The enforcement of the Independent European Sport Review

6.95 This Review is by nature a non-mandatory document, which includes several recommendations to different recipients: EU institutions, EU governments and sport authorities (public and private authorities).

- 6.96** As to the **EU institutions**, different instruments were already proposed: (i) block exemptions regulations; (ii) guidelines to the application of EU competition law to sport; (iii) directives; and (iv) soft law measures.
- 6.97** As to **sport authorities**, the Review contains proposals that these authorities can adopt through political and/or legislative measures, in accordance with the procedures provided for in their respective bylaws and regulations.
- 6.98** As to the **25 EU member state governments** we recommend the adoption of the Review within the EU Council of Ministers or the European Council.
- 6.99** A further possibility is the signature of a formal declaration or memorandum of understanding in which the governments of the EU member states recognise, accept and commit themselves to adopt and implement the measures called for in this Review by a fixed date.
- 6.100** Implementation of the Review could be achieved through the following steps: (i) review of national public policy; (ii) adaptation of existing legislation or approval of new legislation through instruments consistent with the constitutional and administrative framework of each EU member state, as it affects or relates to the Review's Terms of Reference and its content; (iii) development of a strategic plan to implement the Review's proposals, through which EU member state governments could work individually and collectively (by inter-governmental consultation).
- 6.101** A further possibility would be to use a similar procedure as adopted in the transfer settlement between the European Commission and FIFA, that is to say: (i) joint statement by the competent European Commissioners and the Presidents of FIFA and UEFA; (ii) exchange of letters between the parties; and (iii) a joint press release.
- 6.102** This is a formula according to which the parties express their common intention to enter into binding commitments, thus marking out a given direction.

F) The preparation and adoption of EU instruments in the specific case of football: the role of UEFA

- 6.103** The European Commission maintains an open and structured dialogue with special interest groups¹⁶⁴ and, in this context, recognises certain non-governmental organisations as the appropriate interlocutor for bilateral contacts and discussions. Furthermore, as regards federations, the European Commission clearly distinguishes between European and international bodies: *"The Commission is frequently contacted by the representatives of special interest groups. These groups can be divided into non-profit making organisations (European and (inter) national associations/federations (...))"* (emphasis added).
- 6.104** In addition, the European Commission specifies the role of the special interest groups: "(...) some of these special interest groups serve as a channel to provide specific technical expertise to the Commission from a variety of sectors, such as in the drafting of technical regulations".
- 6.105** In 2000, the Commission Discussion Paper "The Commission and Non-Governmental Organisations: Building a Stronger Partnership" presented by Romano PRODI and Neil KINNOCK¹⁶⁵, pointed to the important role of non-governmental organisations in the European Union. In this context, the role of the non-governmental organisation is to represent the broad spectrum of interests in a given sector and also to provide expert input for EU policy making¹⁶⁶.
- 6.106** The Commission also selects its non-governmental organisations on the basis of their: (i) structure and membership; (ii) transparency of organisation and the way they work; (iii) previous participation in committees and working groups; (iv) track record as regards competence to advise in a specific field; and (v) capacity to work as a catalyst for exchange of information and opinions between the Commission and the citizens¹⁶⁷.
- 6.107** In the case of football, given UEFA's statutory responsibilities and broad ranging, representative membership and since UEFA is the football authority with responsibility for European and EU related issues it falls to UEFA, in dialogue with the EU, to work on the legal

framework needed to deliver security to football whilst respecting European Community law.

6.108 For these purposes, it would be efficient for the EU to enter into a formal arrangement with UEFA defining the nature of the relationship between the parties and recognising and clarifying that UEFA is the relevant interlocutor for the EU institutions in all matters relating to European football. This would also reflect the position at national level where governments have often entered into agreements with national football associations to regulate the most important elements of their national activity.

G) Conclusion

6.109 We start the Recommendation section of our Review in Chapter 7 with a further explanation of the rationale and specific framework foreseen in this formal agreement between UEFA and the EU.

TABLE 1: PROPOSED EU INSTRUMENTS TO RECOGNISE THE "SPECIFICITY OF SPORT"

PROPOSAL	LEGAL BASES	PROCEDURE
To issue "Guidelines to the application of EC Competition Law to Sport"	Article 211 EC	Commission's adoption
To insert a new paragraph (v) in Article 1 (1) (a) of Regulation 994/98 EC, in order to exempt certain categories of state aids to sport	Article 8 of the Council Regulation (EC) No. 994/98 of 7 May 1998 Article 87 (3)	Commission's proposal Consultation of the Advisory Committee on State Aid Council's Decision (qualified majority)
To consider compatible with the common market certain state aids in the field of sport	Article 87 (3) (a) to (e) Article 88 (2)	Commission's decision; <i>or</i> Council's decision

To conclude a "European Bargaining Contract" for each sport discipline	Article 138 EC Article 139 (1) and (2) EC	Commission's proposal Council's decision (qualified majority or unanimity)
To assume that sport organisations (federations) fulfil a task of relevant general economic interest	Article 86 (2) and (3) EC	Commission's decisions and directives when necessary
To adopt several soft law instruments, such as (i) Recommendations; (ii) Voluntary agreements; (iii) White and Green papers; (iv) Action Plans or Programmes; (v) Informative communications; (vi) Simple exchange of letters; (vii) Codes of conduct; (viii) guidance notes; (ix) Circulars; (x) Declarations; (xi) Conclusions; (xii) Reports; (xiii) Memoranda; (xiv) Opinions	Article 211 EC	Commission adoption
To adopt Block exemption's regulations on certain categories of agreements and concerted practices in sport (e.g. Block exemption regulation on central marketing of television and media rights; Block exemption regulation regarding the players market)	Article 83 (2) (b) EC Regulation No 19/65/EEC of 2 March of the Council on application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices, as amended by Regulation 1/2003	Commission's proposal European Parliament's consultation Council's decision (unanimity)
To adopt a "Directive on Minors in Sport"	Article 94 EC Article 137 (1) (a) and (b) EC Article 251 EC	Commission's Proposal Opinion of the European Parliament, the Economic and Social Committee and the Committee of Regions Council Decision

To adopt a "Directive on Betting in Sport"	<p>Article 44 (1) EC</p> <p>Article 52 (1) EC</p> <p>Article 94 EC</p>	<p>Commission's proposal</p> <p>Opinions both of the European Parliament and of the Economic and Social Committee</p> <p>Council's Decision (qualified majority)</p>
To adopt a "Directive on Agents in Sport"	<p>Article 44 (1) EC</p> <p>Article 52 (1) EC</p> <p>Article 94 EC</p>	<p>Commission's proposal</p> <p>Opinions both of the European Parliament and of the Economic and Social Committee</p> <p>Council's decision (qualified majority)</p>
To set up an European Sports Agency	<p>Article 308 EC</p> <p>Council Regulation (EC) No 58/2003 of 19 December 2002</p>	<p>Commission's proposal</p> <p>European Parliament's opinion</p>
To issue "Guidelines to the application of free movement rules to Sport"	<p>Article 211 EC</p>	<p>Commission's adoption</p>

TABLE 2: INSTRUMENTS TO ENFORCE THE REVIEW'S PROPOSALS

	INSTRUMENT
EU GOVERNMENTS	<p>Adoption of the Review within the EU Council of Ministers or at the European Council</p> <p><i>or</i></p> <p>Signature of a formal Declaration or a Memorandum of Understanding in which the Governments of the Member States recognize, accept and commit themselves to adopt and implement the proposed measures by a date to be fixed</p> <p><i>or</i></p> <p>Joint Statement by the competent Commissioners and Presidents of EU sport's authorities; Bilateral exchange of letters between the involved parties; Joint Press release</p>
SPORT'S AUTHORITIES	<p>Political and/or legislative measures, in accordance with the procedures provided for in the respective by laws and regulations (normally the competent entity for the approval is the deliberative organ, namely the Congress or General Assembly)</p>

CHAPTER 7. RECOMMENDATIONS

A) To the EU Institutions (in particular the European Commission) and to the EU Member States

CONSIDERING

The Amsterdam Declaration adopted by the EU Governments 1997;

The Helsinki report of 1999;

The Nice Declaration adopted by the EU Governments in 2000;

The case-law developed by the European Court of Justice, the Court of First Instance and the European Commission in sports related matters;

The urgent need for a more pro-active and comprehensive approach in order to strengthen legal certainty in sport;

The relevant legal bases of the EC Treaty;

And the content of this Review;

IT IS RECOMMENDED THAT THE EU INSTITUTIONS, IN PARTICULAR THE EUROPEAN COMMISSION, AND THE EU MEMBER STATES

- Provide **clear guidance** as to the type of “**sports rules**” that are automatically compatible with European Community law (either because they fall outside the scope of EU law entirely or because they are inherent to the proper functioning of sporting competition) and on other “**sports related rules**” where European Community law applies, albeit subject to the need to take the specificity of sport into account, whereas the following delimitation is proposed:

- "Sports rules": the rules relating to the regularity, proper functioning and integrity of competition, including: the "rules of the game", the structure of championships and calendars; the composition of national teams; the national organisation of sport in Europe, e.g. "home and away rule"; the organisation of competitions within the European sports "pyramid" structure; rules relating to transfer "deadlines"; rules concerning the release of players for national teams; rules concerning the transfer of players; rules to encourage the attendance of spectators at sporting events and to encourage the practice of amateur sport; rules on the good governance of clubs, e.g. the club licensing system; rules relating to the ownership/control/influence of clubs; rules concerning players' agents; and rules concerning doping;
 - "Sports related rules": the rules relating to competitive balance, including: home-grown players rule, central marketing and cost control systems (such as those on salaries).
- Without prejudice to the generality of the foregoing, to provide legal security by means of the most **appropriate legal instruments**, for example, directives, block exemption regulations, guidelines or other national or European legislative instruments (as summarised in detail in the table below), in relation to the following matters:
- An effective club licensing system, based on the minimum standards introduced in 2004 by all European football associations, to be permitted;
 - The central marketing of commercial rights to be permitted in accordance with the principles already established by the European Commission;
 - A European system of player transfer regulations to be permitted in accordance with the principles agreed with European Commission on 5 March 2001;

- A European players' agents directive to be implemented foreseeing the tools for appropriate sporting regulations on players' agents at European level including for instance the following topics: strict examination criteria, transparency in the transactions, minimum harmonised standards for agents contracts, efficient monitoring and disciplinary system by European sports governing bodies, the introduction of an "agents licensing system", no "dual representation", payment of the agent by the player;
- An effective system to be permitted for encouraging local education of players, based on the obligation for all clubs to have a certain number of home-grown players in their squads coupled with a squad size limitation;
- An effective system for maintaining competitive balance through cost control to be permitted (in particular referring to the possible introduction of cost controls on issues such as salaries to be administered by European and national sports governing bodies);
- Legal protection for the player release rule, foreseeing that clubs have to release their players for national team duty without entitlement to compensation;
- Legal protection for the pyramid structure of European football and official recognition of national sports governing bodies by the EU member states and of European sports governing bodies by the European Union institutions;
- Provide for appropriate national or European Community legislation to secure the protection of intellectual property rights for sports and football fixture lists;
- Provide for appropriate corrective mechanisms to secure the financing of sport in general and football in particular in the event of a liberalised betting market, e.g. through the payment of a "tax";

- Provide for appropriate national or European Community legislation to combat the threat and incidence of “ambush marketing” and legal protection of intellectual property rights to major sporting events;
 - To review the existing EU proposals regarding “news access” to guard against any unfair prejudice to the interests of sports events organisers;
 - To enact an appropriate legal framework to combat the practice of “ticket touting” in Europe;
 - To harmonise the legal approach to issues of hooliganism and institutionalise cooperation between police authorities in this respect;
 - To enact appropriate (national) legislation recognising the role and function of sports governing bodies, in particular, regarding their capacity to represent the interests of their sport and their ownership of commercial rights in the competitions that they organise;
- Take this Review into account in the elaboration of the “White Paper” on European sport;
 - Establish a “European Sports Agency” to assist sport in Europe in providing relevant information and comprehensive data.

B) To the European Football Authorities

CONSIDERING

The issues relating to the good governance of football in Europe, the question of competitive imbalance and the need for measures to encourage player training;

The need for all governing bodies in sport to continually re-examine their structures and institutions in order to ensure that they are sufficiently

democratic and representative having regard to the realities of their particular sports;

The questions as to the most efficient organisational structure for the administration of certain football regulatory matters in Europe;

The club licensing system, which constitutes a start on the road to better governance and financial management of football in Europe;

The need for on-going and more structured cooperation between the European political institutions and the European governing body for football, to combat illegal activities associated with sport;

That a holistic approach is required to tackle the problems of European football and to provide a solid foundation for its future healthy development;

And the content of this Review;

IT IS RECOMMENDED TO THE EUROPEAN FOOTBALL AUTHORITIES

- For UEFA to review, improve and enforce the club licensing system across Europe, in particular by:
 - Ensuring that national associations implement the system;
 - Publishing reports on compliance;
 - Establishing an independent body to monitor overall compliance of the club licensing system, including more extensive use of spot-checking;
 - Establishing a European Code of Corporate Governance for clubs;
 - Elaborating benchmarking procedures to help establish best practice for clubs;
 - Introducing additional measures to achieve competitive balance in European football, including some form of cost control mechanism;

- Implementing a European “clearing house system” for transactions related to the transfer of players;
- Improving the system of regulations designed to ensure the independence of clubs (“multi-ownership” problematic);
- For UEFA to examine its own structures to ensure they are appropriate and representative given contemporary developments in football and, in this connection:
 - UEFA to officially recognise (by appropriate statutory provisions) the ECF, the EPFL, FIFPro (or its European members) and the tripartite European Football Dialogue (FIFPro- UEFA- EPFL), in order to ensure structured and continuous consultation of all stakeholders (including supporters where possible);
 - To consider further structural improvements to reflect new developments, including for example, the creation of a “strategy board” comprising representatives of the Executive Committee of UEFA, the leagues and the clubs to establish an efficient consultation process on matters related to professional club football;
 - To consider establishing further “advisory bodies”, which can improve the quality of decision-making;
 - To involve supporters organisations as important stakeholders when they are organised at European level and to examine the feasibility of a European Supporters Direct body;
- To re-align current organisational functions in football, so that UEFA assumes full responsibility for all EU-related matters and can efficiently discharge its role as official European football interlocutor vis-à-vis the EU institutions:
 - In accordance with the above, for UEFA to administer a European wide player transfer system according to the conditions prevailing in Europe (both sporting and legal);

- Similarly, for UEFA to review, improve and administer an effective system to govern the activities of players' agents in Europe, including the elements mentioned above;
- For UEFA to continuously review and up-date the financial solidarity system of the UEFA Champions League to protect the good health of the European football family and, in particular, to provide for the further education and development of young players, in this respect to reserve a higher proportion of the Champions League revenue for distribution to the grassroots;
- For UEFA to introduce a collective insurance coverage for players during the final round of the European Football Championship;
- For UEFA to establish European-wide agreements with betting companies envisaging an "early warning" system for the detection of irregular gaming activities;
- For UEFA and national associations to examine and implement a "fit and proper person test" for all those involved in football such as, for example owners of clubs, club managers and referees dealing in particular with questions of conflict of interests;
- For UEFA and national associations to introduce "minimum standards for good governance of national associations" in order to achieve maximum transparency and accountability, including publication of statutes and relevant decisions, separation of powers, free elections etc.;
- For UEFA and national associations to continually review the professionalism and efficiency of their administrative structures;
- For UEFA and national associations to review current disciplinary systems and enact strict rules, with appropriate sanctions with a view to deterring any form of racism or xenophobia;
- For UEFA and national associations to establish specific internal "governance units", including specialised independent "anti-fraud bodies" within their structures;
- For UEFA and national associations to introduce arbitration clauses in their Statutes as an alternative to ordinary state court jurisdictions.

Finally, it may be noted that many of the recommendations addressed to the European football authorities could also be usefully taken on board by other sports governing bodies across Europe.

C) To the EU Institutions and the European Football Authorities jointly

CONSIDERING

That only a cooperation between the European football authorities and the EU institutions can provide efficient solutions to many of the problems affecting European football;

IT IS RECOMMENDED

- To establish a consultation process providing a mechanism for confirming which "sports rules" and practices of sports fall outside the scope of European Community law and which rules and practices do not;
- For the parties to work in cooperation with the immigration and national labour inspection services, in particular to examine the issuance of short-term visas and related international transfer certificates to deter "trafficking" of young players;
- To cooperate to the maximum extent possible (including the police forces) to detect and fight against criminal activities around football and in particular to deter match-fixing, fraud, money laundering or any other form of corrupt or criminal activity;
- To cooperate in all matters relating to safety and security for the maximum protection of the public and to further develop the partnership between EU institutions, EU member states and the football authorities;
- For the EU institutions to grant official recognition to UEFA as the governing body for European football and as the counterpart of the EU when dealing with football-related issues in Europe; in return, UEFA to ensure respect for principles of transparency and democracy and

- assume responsibility for all relevant football-related issues in Europe;
- To conclude a formal agreement between the EU and UEFA setting out the framework for bilateral relations and agreeing on a model of cooperation with a view to safeguarding the interests of sport within the context of European Community law.

Again, we consider that many of the recommendations addressed to the EU institutions and European football authorities jointly could be equally applicable to other sports in Europe.

CHAPTER 8. CONCLUSION: THE NEED FOR A FORMAL FRAMEWORK AGREEMENT BETWEEN THE EU AND UEFA

The findings of this Review demonstrate that there is a crucial need to have a formal structure for the relationship between the EU institutions and the European governing body for football.

As already noted, in the last few months alone, several European countries (such as Belgium, Finland, Germany, Italy, Portugal etc.) have been shaken by match-fixing and corruption scandals, linked to betting and to players' agents.

In addition, the financial situation of many European clubs is perilous, with bankruptcy cases and deficits of hundreds of millions of Euros.

Furthermore, there has been a consistent series of legal challenges to fundamental sports rules and practices which has undermined confidence in the system and created a climate of instability.

Against this background, a comprehensive and proactive approach is needed by both the EU institutions and the football authorities in order to deliver greater legal certainty in football and protect the European Sports Model.

UEFA is the football authority with responsibility for the European area¹⁶⁸ and therefore it falls to UEFA, in dialogue with the European Commission, to work on the legal framework needed to deliver security to football whilst respecting European Community law. For these purposes, it seems indispensable that the EU enters into a formal agreement with UEFA which defines the nature of the legal relationship between the parties and clarifies that UEFA is the relevant interlocutor for the EU institutions on all matters relating to European football.

This agreement shall foresee a duty of mutual consultation between UEFA and the EU regarding all relevant football related matters in Europe. In this context, the agreement should provide an established procedure for cooperation between the parties.

At the same time for UEFA to legitimately enjoy this status as interlocutor on EU-related matters, it must ensure, on an ongoing basis, that its own structures are sufficiently democratic, representative and transparent.

It is clear to us that the problems experienced in football are common to many sports across Europe and the jurisprudence we have discussed is by no means limited to football. The European Court of Justice has for example reached decisions in cases dealing with cycling, basketball, handball, swimming, judo as well as football. Furthermore, all sports face governance issues which are largely similar to those confronted by football. Consequently, the conclusions and recommendations reached in this Review should be of considerable relevance to sport generally and not only football.

As such, we believe there should also be no obstacle to other European sports governing bodies having similar relationships with the European Union on condition that they also respect the above-mentioned principles.

We conclude by recalling that the European Model of Sport has delivered success and earned respect around the world as a system based on social inclusion, financial solidarity and true sporting values. Nevertheless, we face significant challenges in Europe and only the direct involvement of political leaders, working together with the sports authorities in general and the football authorities in particular, can protect this model and secure a healthy future for sport in Europe. If we fail to take our responsibilities there is a real risk that the true values of sport will be eroded, and the public will become increasingly disaffected as a result.

The UK Presidency has taken this initiative and recognised that the political will on both sides exists to find solutions and the conclusion of this Review is that a clear framework agreement between the parties is the means to achieve this.

It's time to act.

ANNEX 1

THE NICE DECLARATION

DECLARATION ON THE SPECIFIC CHARACTERISTICS OF SPORT AND ITS SOCIAL FUNCTION IN EUROPE, OF WHICH ACCOUNT SHOULD BE TAKEN IN IMPLEMENTING COMMON POLICIES

- 1.** The European Council has noted the report on sport submitted to it by the European Commission in Helsinki in December 1999 with a view to safeguarding current sports structures and maintaining the social function of sport within the European Union. Sporting organisations and the Member States have a primary responsibility in the conduct of sporting affairs. Even though not having any direct powers in this area, the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured.
- 2.** The European Council hopes in particular that the cohesion and ties of solidarity binding the practice of sports at every level, fair competition and both the moral and material interests and the physical integrity of those involved in the practice of sport, especially minors, may be preserved.

Amateur sport and sport for all

- 3.** Sport is a human activity resting on fundamental social, educational and cultural values. It is a factor making for integration, involvement in social life, tolerance, acceptance of differences and playing by the rules.

4. Sporting activity should be accessible to every man and woman, with due regard for individual aspirations and abilities, throughout the whole gamut of organised or individual competitive or recreational sports.
5. For the physically or mentally disabled, the practice of physical and sporting activities provides a particularly favourable opening for the development of individual talent, rehabilitation, social integration and solidarity and, as such, should be encouraged. In this connection, the European Council welcomes the valuable and exemplary contribution made by the Paralympic Games in Sydney.
6. The Member States encourage voluntary services in sport, by means of measures providing appropriate protection for and acknowledging the economic and social role of volunteers, with the support, where necessary, of the Community in the framework of its powers in this area.

Role of sports federations

7. The European Council stresses its support for the independence of sports organisations and their right to organise themselves through appropriate associative structures. It recognises that, with due regard for national and Community legislation and on the basis of a democratic and transparent method of operation, it is the task of sporting organisations to organise and promote their particular sports, particularly as regards the specifically sporting rules applicable and the make-up of national teams, in the way which they think best reflects their objectives.
8. It notes that sports federations have a central role in ensuring the essential solidarity between the various levels of sporting practice, from recreational to top-level sport, which co-exist there; they provide the possibility of access to sports for the public at large, human and financial support for amateur sports, promotion of equal access to every level of sporting activity for men and women alike, youth training, health protection and measures to combat doping, acts of violence and racist or xenophobic occurrences.

- 9.** These social functions entail special responsibilities for federations and provide the basis for the recognition of their competence in organising competitions.
- 10.** While taking account of developments in the world of sport, federations must continue to be the key feature of a form of organisation providing a guarantee of sporting cohesion and participatory democracy.

Preservation of sports training policies

- 11.** Training policies for young sportsmen and -women are the life blood of sport, national teams and top-level involvement in sport and must be encouraged. Sports federations, where appropriate in tandem with the public authorities, are justified in taking the action needed to preserve the training capacity of clubs affiliated to them and to ensure the quality of such training, with due regard for national and Community legislation and practices.

Protection of young sportsmen and -women

- 12.** The European Council underlines the benefits of sport for young people and urges the need for special heed to be paid, in particular by sporting organisations, to the education and vocational training of top young sportsmen and -women, in order that their vocational integration is not jeopardised because of their sporting careers, to their psychological balance and family ties and to their health, in particular the prevention of doping. It appreciates the contribution of associations and organisations which minister to these requirements in their training work and thus make a valuable contribution socially.
- 13.** The European Council expresses concern about commercial transactions targeting minors in sport, including those from third countries, inasmuch as they do not comply with existing labour legislation or endanger the health and welfare of young sportsmen and -women. It calls on sporting organisations and the Member States to investigate and monitor such practices and, where necessary, to consider appropriate measures.

Economic context of sport and solidarity

- 14.** In the view of the European Council, single ownership or financial control of more than one sports club entering the same competition in the same sport may jeopardise fair competition. Where necessary, sports federations are encouraged to introduce arrangements for overseeing the management of clubs.
- 15.** The sale of television broadcasting rights is one of the greatest sources of income today for certain sports. The European Council thinks that moves to encourage the mutualisation of part of the revenue from such sales, at the appropriate levels, are beneficial to the principle of solidarity between all levels and areas of sport.

Transfers

- 16.** The European Council is keenly supportive of dialogue on the transfer system between the sports movement, in particular the football authorities, organisations representing professional sportsmen and - women, the Community and the Member States, with due regard for the specific requirements of sport, subject to compliance with Community law.

The Community institutions and the Member States are requested to continue examining their policies, in compliance with the Treaty and in accordance with their respective powers, in the light of these general principles.

ANNEX 2

CONTEXT AND TERMS OF REFERENCE

UK PRESIDENCY INITIATIVE ON EUROPEAN FOOTBALL

CONTEXT

Football is an activity like no other. It is arguably the only truly global game and its influence cuts across economic, political, social and cultural spheres. In order to preserve the special nature of football a delicate balance between these different elements is needed to ensure sport's traditions, such as the link with local communities, can be maintained while embracing the modern nature of the game.

With its increasing revenues, football is often seen as 'big business', and is, therefore, often subject to commercial governance rules which do not necessarily take into account the wider role that it plays in the community. However, it is clear across EU Member States that sport, and particularly football, is more than just a business. Football can play a significant role in helping to deliver wider public agendas, including improving social inclusion, community cohesion, increasing participation and healthy lifestyles.

The EU has currently no direct competence to develop a sports policy, but particular aspects of sport are often subject to the full application of the EU legal framework. Football has been involved in this situation on many occasions. However, the special nature of sport is recognised in the "Nice Declaration on the Specific Characteristics of Sport" (Annex IV of the Presidency Conclusions for the Nice European Council, December 2000). The European Council stated that *"Even though not having any direct powers in this area, the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured"*.

After dialogue between EU Sports Ministers, the IOC, FIFA, UEFA and other sports bodies, a reference to sport was introduced to the Draft EU Constitutional Treaty which, in its Article III-282, recognises the specific characteristics of sport.

It is for the football authorities to run the game; however sports authorities, EU institutions and Member State Governments should work together to ensure the principles of the Nice Declaration are upheld and supported. To this end, under the UK Presidency, Richard Caborn called a meeting of the European Sport Ministers representing the “big” football nations and relevant football bodies to discuss how best to implement the Nice Declaration in football.

The meeting explored how the principles in the Nice Declaration relating to the special characteristics of sport can best be put into effect by the football authorities, the EU institutions and the member states so as to ensure that its social and cultural role is respected and nurtured. By identifying key issues in the game that either support or undermine these principles, the football authorities can ensure that football’s special characteristics are upheld and improved for the good of the game itself and, also, for the communities of each member state.

In particular, with reference to the Nice Declaration, it is generally considered that, in European football:

- 1.** special attention has to be paid to corporate and social governance;
- 2.** grassroots football plays a crucial role in social inclusion, in the fight against discrimination, in the development of a healthy lifestyle and the delivery of other key components of public policy;
- 3.** central marketing (collective selling) of rights by the football authorities at European level is essential to ensure that solidarity nurtures the different levels of the pyramid, not least the grassroots;

4. UEFA's Club Licensing System is an important step in establishing good corporate governance, financial transparency and stability, and minimum standards in European football;
5. there are a range of problems – such as doping, corruption, racism, illegal gambling, money laundering and other activities detrimental to the sport – where only a holistic approach between football and the EU and national authorities will be truly effective;
6. the central role of the football authorities is to independently govern the sport, whilst taking into account the views of the different stakeholders and working in harmony with the EU institutions and the member states.

The meeting discussed and took stock of existing work on European Football. The conclusions of this debate outlined the need for a report to be made, into how the football authorities, the EU institutions and the member states can best implement the Nice Declaration and address key issues of the corporate and social governance of football affecting the European game.

The report, while focusing on European Football, will provide analysis and recommendations that will be made available to the "FIFA Task Force For the Good of the Game", commissioned by the FIFA World Congress in Marrakech (September 2005), and acknowledge that any report findings may have an important input into this Task Force and its recommendations for the rest of the world football.

Furthermore, this report will also recognise the role of UEFA, and FIFA, in governing European football respectively world football. Recommendations will look to enhance current practices, where appropriate, and facilitate Member State Governments, EU Institutions and football's stakeholders working in partnership with both FIFA and UEFA to build upon any current measures or strategies being undertaken.

It is the intention of this report to consider and provide tangible recommendations for possible implementation during future Presidencies. The

report recommendations will also be available in a timeframe for them to be considered, by FIFA, for wider application in conjunction with recommendations of FIFA's Task Force For the Good of the Game which are due in 2006.

TIMING

The report will be compiled by the end of May 2006, and the recommendations will be presented back to the football authorities, the EU institutions and member states.

PROCESS

The meeting of the parties on the 8th December has agreed:

- Independent review;
- Reference Group composed of UEFA and UK Sports Minister (for the EU Governments); observers: other sports ministers invited to Leipzig meeting, Urs Linsi (FIFA);
- The terms of reference of the review are defined below;
- The timeframe in which the review will be completed– by end of May 2006, whilst some aspects may need further analysis.

It is expected that the persons conducting the independent review will consult with all the relevant national government ministers and departments, the EU, football authorities, leagues and clubs, supporters organisations and other stakeholders in the game.

TERMS OF REFERENCE OF THE INDEPENDENT EUROPEAN FOOTBALL REPORT

Overall Aim:

To produce a report, independent of the Football Authorities, but commissioned by UEFA, on **how the European football authorities, EU institutions and member states can best implement the Nice Declaration on European and national level.** The report will take into account relevant input from UEFA's high level strategy *Vision Europe* (April 2005). These Terms of Reference have been drafted in consultation between UEFA and under the UK Presidency, some of the EU member states. Whilst led by UEFA, the EU ministers are part of the governance of the report. The "football authorities" in Europe are UEFA for European/EU matters and UEFA's member associations for national matters.

In particular, the independent review will report on:

1) The "European Sports Model": The central role of the football authorities independently to govern the sport while respecting the European and national legal frameworks and in harmony with the EU institutions and member states

Aim:

- To make recommendations for how the EU institutions, member states and football authorities can improve and support the central role of the football authorities independently to govern all aspects of the sport, whilst taking into account the views of the different stakeholders and working with the EU institutions and the member states in respect of the underlying legal framework. Whilst the autonomy of football and its responsibility for self-regulation are recognised, it is also true that national Governments and the EU adopts legislation which can affect football. There is a need for coordination, dialogue and transparency.

- Within such recommendations it should in particular be described (i) which rules or measures do clearly constitute “sports rules”, i.e. rules which are for the competent football authority – enjoying a reasonable amount of discretion - to decide and (ii) for which other rules or measures the specificity of sport should be increasingly considered in the interpretation/application of the relevant legislation. For this purpose it will be of interest to provide an inventory of the existing interpretations by the ECJ and by the Commission on the “specificity of sport” (with concrete examples, particularly in the areas of free movement and competition policy) and consequently to provide a definition.
- To define the various stakeholders within the “European Sports Model”, as this applies to football, and to clarify their role and how they relate to one another. In particular, to demonstrate the natural and necessary role of the football authorities to care for the health and development of the sport as a whole from the grassroots to the professional elite.
- To demonstrate that the central role of football authorities, provided that they govern democratically and transparently, can be consistent with economic and/or legal concepts of a dominant position.
- To identify and analyse relevant examples from other sports that demonstrate the risks of undermining or dismantling the central role of a governing body, e.g. basketball, boxing.

2) The arrangements for overseeing the ownership/control and management of clubs, and to recommend changes where appropriate.

Aim:

- For the football authorities to have effective arrangements to oversee the identity and integrity of the person(s)/entity owning/controlling/managing clubs, and to help prevent matters such as one person/entity influencing the management or sporting performance of more than one club entering the same competition.

- For the football authorities, EU institutions and member states to develop effective arrangements to prevent money laundering, and to prevent unsuitable owners/management being involved in the game.
- For the football authorities and member states to develop effective arrangements to protect the game from match-fixing and other forms of corruption.
- To examine the feasibility of UEFA, the EU institutions and the member states launching a European-wide 'supporters Direct movement' (a thriving example of which exists in England) to improve the opportunity for supporters to take part in the running of their professional club.

3) The level of expenditure in respect of players, considering the financial (in) stability and concentration of wealth amongst clubs at both an international and national level, and to recommend changes where appropriate.

Aim:

- To examine ways to enhance the football authorities' current efforts to encourage and support high standards of financial management, prudential operation within budgets and corporate governance amongst the clubs and to help achieve an appropriate level of competitive balance.
- To examine ways to support and encourage the education and training of young players at clubs within the local community.
- To update the UEFA study on salary caps undertaken at the end of the 1990s to take into account recent changes in the environment and re-examine the feasibility of salary caps.

4) The arrangements by which the football authorities oversee

- (i) the activity of agents and intermediaries in respect of both the transfer of players' registrations and player contract arrangements; and**
- (ii) the system of player registration and movement, and to recommend changes as appropriate.**

Aim:

- To explore ways for there to be effective and transparent arrangements to oversee the activities of agents in respect of their dealings with clubs and players, and to promote greater consistency between national regimes.
- To develop recommendations to ensure that there is a properly-functioning system of player registration and movement at European and national levels, recognising fundamental principles such as stability of and respect for contracts, training compensation, sporting integrity of competitions, protection of minors and solidarity.
- To propose measures to efficiently protect the minors and therefore to fight against the "trafficking of young players".

5) The distribution of revenues generated within European football, considering the financial (in)stability and concentration of wealth amongst clubs, and to recommend changes where appropriate.

Aim:

- Acknowledging the validity of European football's efforts to increase revenues by effective conduct of its business - to encourage central marketing (collective selling/mutualisation) and the consequent solidarity distributions of part of the revenue from such activities on both European and national levels, in so doing to help achieve an appropriate level of solidarity between all levels and areas of football.

- To find ways for the EU institutions, member states and football authorities to consider central marketing (collective selling/ mutualisation) and the consequent solidarity distributions, and to work together to find ways to ensure solidarity is enhanced.

6) The role of the EU institutions, member states and football authorities in respect of the provision of funding to generate opportunities for all people to participate in football, considering the level of support from top-level football to recreational football, and to recommend changes as appropriate.

Aim:

- For the football authorities to undertake an effective role in ensuring social inclusion, integration and sustainable youth development as well as an appropriate level of funding to support solidarity between the top-level and recreational level of the game, and thereby encouraging participation for all and to recommend measures that can be carried at EU and member states' level to assist the football authorities to ensure financial solidarity within the game.
- To examine the central role of national associations and national team football as a primary source of funding for grassroots and recreational football throughout their country, and to identify existing examples of best practice, e.g. the UEFA-funded mini-pitches, which attempt to create new spaces for youngsters to play football.

7) The role of the EU institutions, member states and football authorities in respect of support and encouragement for investment in football stadia, with a focus on security and safety.

Aim:

For professional football matches to be played in stadia that are of sufficient quality (to an agreed standard) to help ensure the safety and enjoyment of spectators, and to examine ways in which the EU and member states, in conjunction with the football authorities, can adopt a strong and effective

harmonised legal framework to deal with security threats caused by events such as hooliganism and activities such as ticket touting.

ANNEX 3

SOLIDARITY AND REDISTRIBUTION SYSTEM IN EUROPEAN FOOTBALL

A) The UEFA Champions League

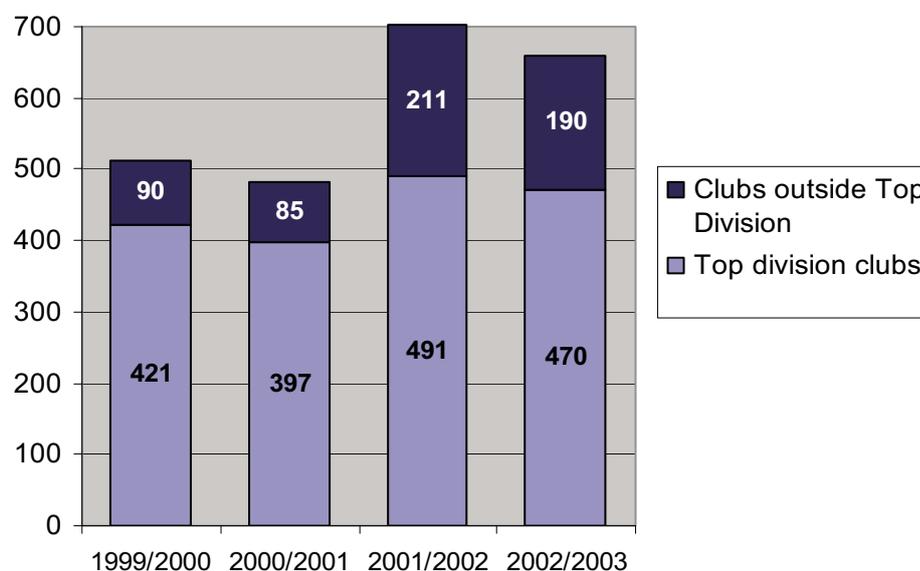
At European level, the UEFA Champions League (UCL) is based on a system of central or collective selling that is fundamental to protect the financial solidarity model of European football.

In the context of the UCL, central marketing and the resulting re-distribution of revenues serves a crucial role. Solidarity payments to the European leagues is one example of solidarity and accounts for around 6% of gross UCL income.

The 32 clubs in the UCL group stage do not receive payments from this pool – instead the money is distributed to the hundreds of medium and small sized professional clubs across Europe. In this way, although it was a small percentage of the overall revenue generated by the competition (which went predominantly to the participating clubs), approximately 215 million EURO has been spent funding youth development in small and medium sized professional clubs across Europe over the last six years (payments made via the leagues). The information below provides further details setting out who benefits from this system; what the money is spent on; how important the funding is to clubs; and what are the main direct benefits to European football.

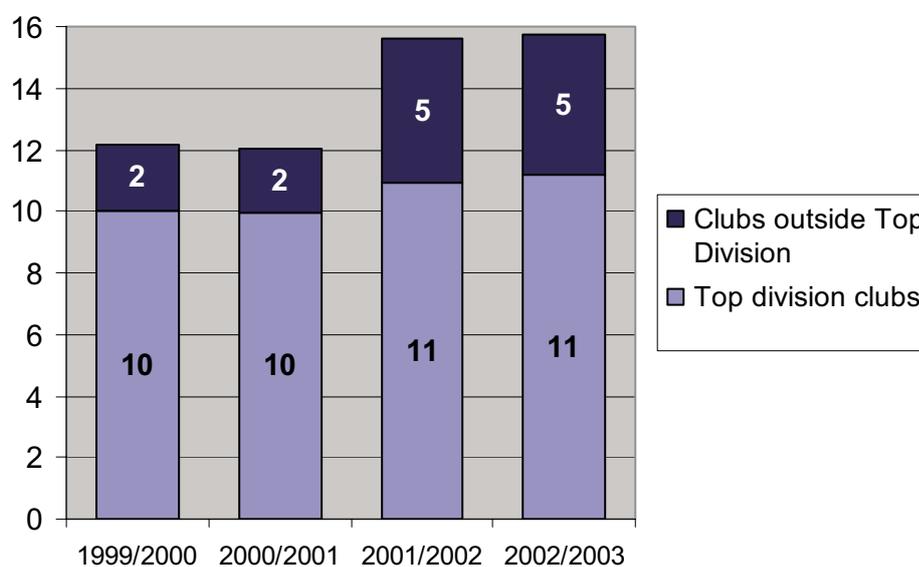
1) Who benefits from the solidarity system?

- The number of clubs benefiting from solidarity payments per season can be summarized as follows:



- over 650 small and medium sized professional clubs across Europe have their youth development programmes funded (either partially or fully) thanks to the system;
- over 2,300 separate club payments have been made to fund youth development in small and medium sized professional clubs across Europe in the first four years of operation of the system;
- over 1,750 payments have been made to small and medium sized professional clubs in top divisions across Europe in the first four years of operation of the system;
- nearly 600 payments have been made to small and medium sized professional clubs outside the top divisions across Europe in the first four years of operation of the system;

- average number of clubs (per league/association) benefiting from solidarity payments:



In the average European league, 11 clubs in the top division and five clubs outside the top division are receiving financial support to fund their youth development programmes every year.

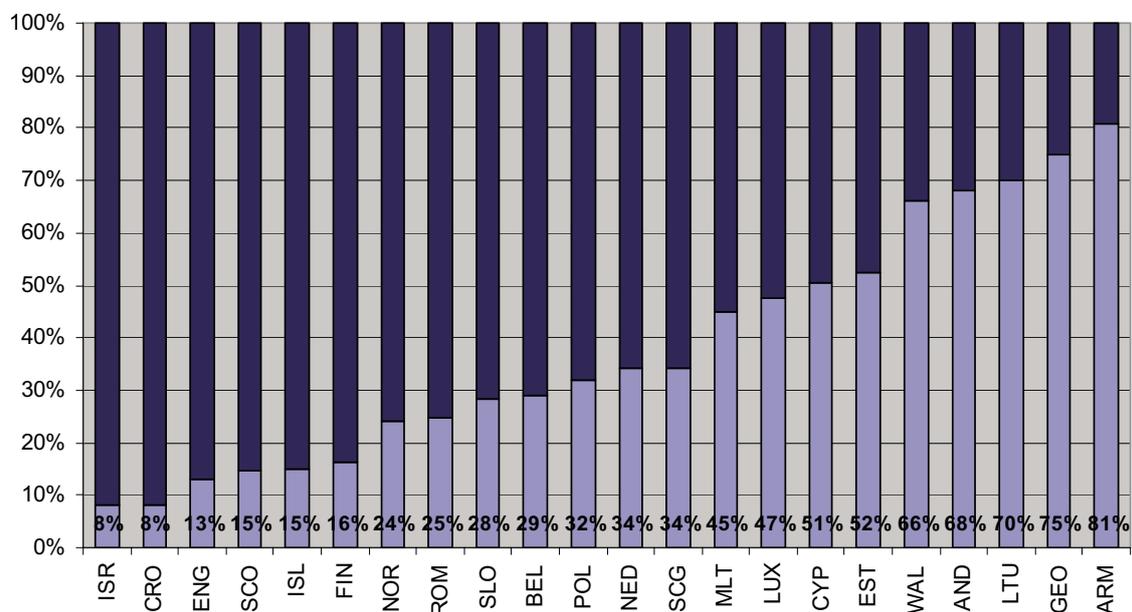
2) What is the money spent on?

The areas being supported within clubs are, in concrete terms, for example:

- coaches and coach education;
- facilities;
- equipment;
- school coaching programmes;
- medical staff;
- participation in tournaments and matches; and
- travel costs.

3) How important is the funding to clubs?

Percentage of clubs' youth budget funded by UCL:



In medium-sized countries such as Belgium, the Netherlands, Poland, Romania and Serbia & Montenegro – the system is funding one third of the youth development budget of those clubs receiving funding.

In small countries such as Armenia, Cyprus, Estonia, Georgia, Lithuania and Wales – the system is funding 50-100% of the youth development budget of those clubs receiving funding.

4) Main direct benefits to European football

The benefits of the solidarity mechanism include the following:

- direct financing of youth development programmes in small and medium sized professional clubs across the whole of Europe;
- helping clubs fulfil their youth training obligations towards the UEFA Club licensing system (see below);
- enhancing competitive balance in domestic leagues;
- supporting the domestic league organisations and associations;

- promotion of local training of players; and
- supporting young players.

B) The European Football Championships

The philosophy of financial solidarity operated in connection with the UEFA Champions League is also very much in evidence in the case of the European Football Championships (EURO). However, when it comes to the EURO, it may be seen that a far greater proportion of the money flows back to the grassroots for football development (in particular, via the “HatTrick” programme). Naturally, this financial distribution system is dependent on the success of the competition and, of course, the availability of the best players to perform for their national teams (a factor that would be seriously jeopardised if the “player release” rule was undermined, as discussed above).

Set out below are details showing from where this income is derived; how the money was distributed by UEFA; how the “HatTrick” programme works; how many such programmes have been approved to date; and how “HatTrick” benefits European football as a whole. In particular, it deserves to be emphasised that a sum of CHF 490 million was earmarked specifically to finance the “HatTrick” programme, in which all 52 national associations participate equally.

1) Income generated by UEFA from UEFA EURO 2004™ (CHF)

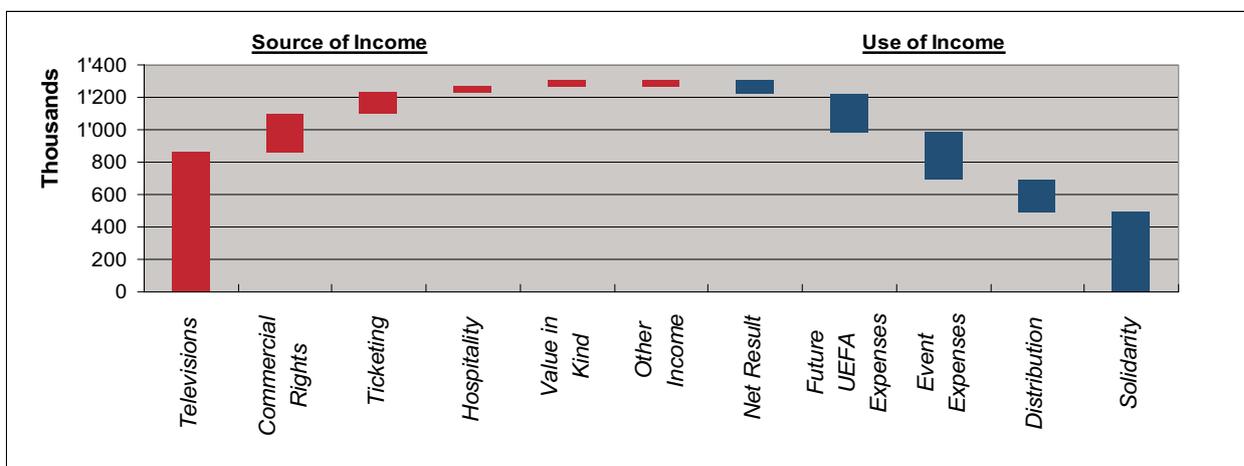


Fig. 1

2) How was the income from UEFA EURO 2004™ distributed by UEFA?

UEFA used this income partly to cover expenses related to the organisation of UEFA EURO 2004™ and allocated a percentage towards future administrative expenses. Naturally, a part of the income was also distributed to the member associations that qualified for the final tournament with a direct correlation between the financial rewards and the sporting success of the participating teams (see *Fig.1* and *Fig. 2*).

A considerable part of the income generated from UEFA EURO 2004™ was allocated directly towards a “EURO pool” fund, the purpose of which was to maintain the principle of solidarity underpinning the pyramid structure of European football. This fund provided the financial basis for UEFA’s HatTrick programme, which was launched in March 2003 to provide substantial financial assistance to all 52 of UEFA’s member associations during the period 2004-2008 for the development of football-related projects.

UEFA originally anticipated that approximately CHF 400 million would be generated from UEFA EURO 2004™ in order to finance the HatTrick programme. However, the overall success of UEFA EURO 2004™ surpassed all such expectations and CHF 490 million was made available for this purpose instead (see *Fig. 2*). This is more than five times the amount that was made available to UEFA’s member associations (CHF 76 million) after the previous UEFA European Football Championship held in Belgium and the Netherlands in 2000.

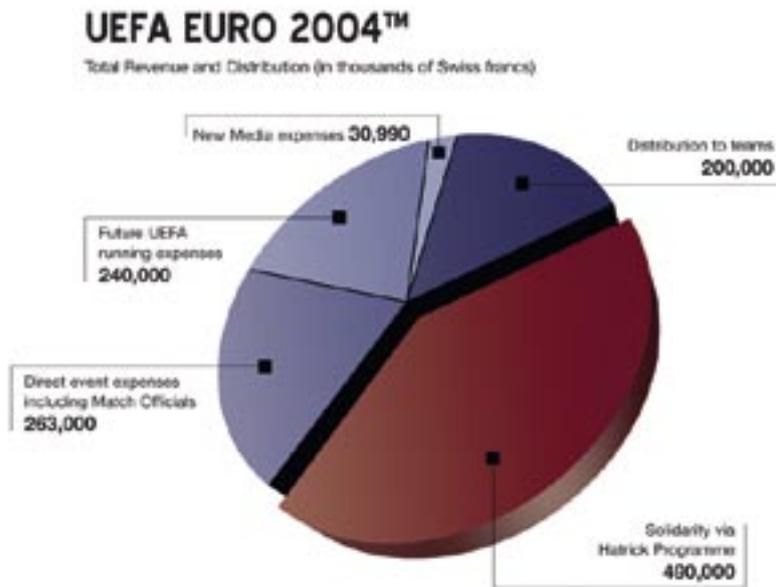


Fig. 2

3) How does UEFA's HatTrick programme work?

UEFA allocated a maximum of CHF 2.5 million for each of UEFA's 52 member associations to spend on developing physical and/or so-called intellectual football infrastructure projects. These include projects to:

- construct/renovate stadiums, headquarters, training centres and pitches;
- develop technology (IT systems and telecommunications);
- purchase football-related equipment;
- improve training for players, coaches and/or administrative personnel;
- support refereeing;
- combat doping; and
- develop women's football and Futsal.

Each of UEFA's member associations are required to submit concrete proposals for such projects to the HatTrick Board for approval. The HatTrick Board will review the project and award either a percentage or all of the

CHF 2.5 million after taking into account the various political, social and economic environment of the football association concerned as well as the perceived benefits of the project that has been submitted for approval.

4) How many HatTrick projects have been approved to date?

By 31 December 2005, 75 projects in 42 countries were approved by the HatTrick Board amounting to a total sum of CHF 85.5 million, which is equivalent to 66% of the overall budget. CHF 65 million of that sum has been paid out to UEFA’s member associations already (see Fig. 3).

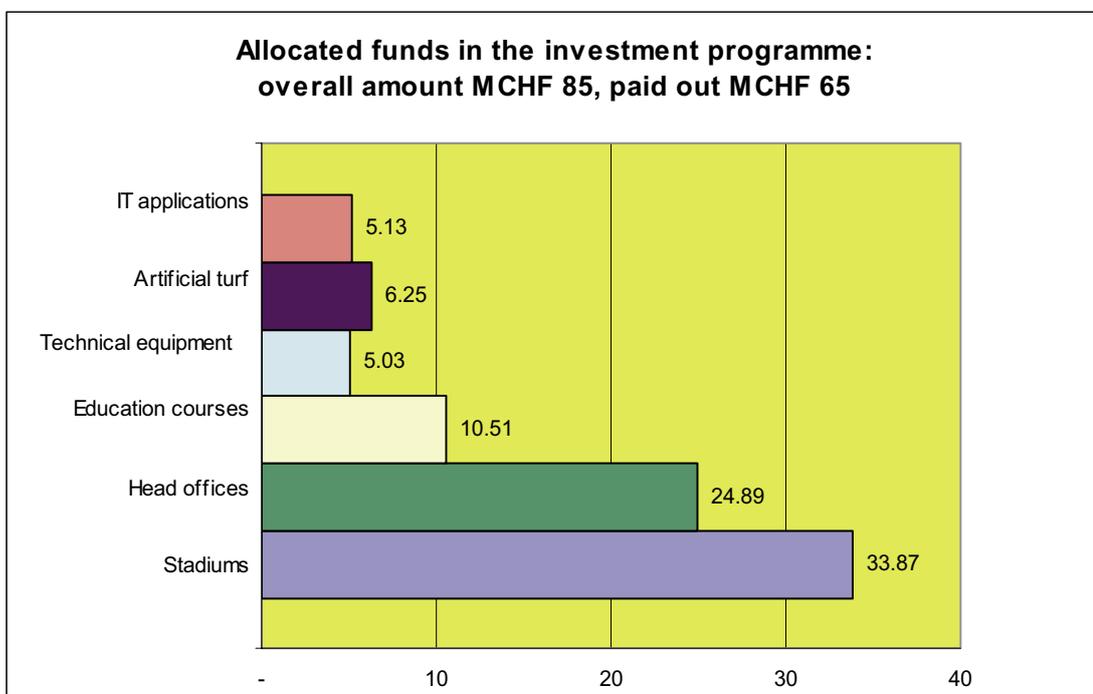


Fig. 3

5) How has UEFA’s HatTrick programme benefited European football as a whole?

The revenue that was generated by UEFA from UEFA EURO 2004™ and allocated towards UEFA’s HatTrick programme has helped to apply the principle of solidarity in the form of financial payments across the member associations on an equal basis rather than purely for those lucky enough to

participate at the top level of European football competitions. This structure allows UEFA to regulate and administrate the fair and proportionate distribution of revenue from a competition of this nature while preserving the unity of the European football family.

C) Potential threats to solidarity

As explained, there are a number of current issues in European sport which are not specifically mentioned in the Terms of Reference. However, since these matters are of contemporary interest in European sport (and, in particular, football) the authors of the Review consider that it is appropriate to make some brief remarks about them. These matters are (1) ambush marketing; (2) internet piracy; and (3) news access.

1) Ambush Marketing and protection of major sporting events: a threat to the solidarity function of sports governing bodies

The economic aim of an "ambush" marketer is to take advantage of the commercial platform offered by a sporting event without the authorisation of the event organiser and without paying a share of the event's costs. The aim might also be to diminish the marketing benefit a competitor gains from who has paid the full amount to be officially associated with the event in question.

This activity has developed to a point where it has become a major threat to any sporting event and this obviously includes football. Proper organisation of future events, as well as the solidarity redistribution mechanisms for financing sport may be jeopardised if no solution is found to stop this form of parasitic marketing activity.

At present, European law does not grant sports events any particular form of protection against ambush marketing. This matter falls under the ordinary field of protection offered by copyright, unfair competition or other intellectual property laws (in some occasions misleading advertising or consumer protection rules).

This situation is unsatisfactory, in particular, because: (1) ambush marketing is a trans-national phenomenon since major sports events attract public attention and consequently ambushers' interest, on a worldwide basis; (2) Special laws or decrees – where they exist - are often of limited value or application in practice. In light of this situation, and given the importance of sports in European society, the authors of this Review also consider it necessary to combat the activities of ambush marketers with appropriate legislations at European and national level.

2) Internet Piracy

The value of sports rights is based on exclusivity and any erosion of such exclusivity will inevitably result in less income to football and less investment in the grassroots of the game.

In this respect, internet piracy which consists of the unlawful streaming of matches over the web by unlicensed third parties needs to be tackled effectively by either the courts or in primary legislation. Due to the international character of the web a harmonised European approach to this issue is also indispensable.

3) News Access: freedom of information vs. commercial gain with short extracts

Freedom of information and the right for news reporting of major sporting events are fully legitimate and must be supported. At the same time, however, the right to report on newsworthy events does not extend to obtaining valuable footage of sports events for free and then exploiting this material by selling it as 'news' for commercial gain.

In this context, the European Commission is currently elaborating a new proposal aimed at creating a pan-European news access right in the framework of the revision of the Television Without Frontiers Directive. At present, national laws or voluntary codes of practice provide broadcasters

with the possibility to obtain footage for news reporting purposes, a system which seems to work quite well.

The authors of the Review consider that any new provision to regulate News Access should carefully examine issues related to new media distribution techniques such as the internet and mobile phones, as it is clear that coverage of sport events on these platforms is typically much shorter (such as a clip). The proposed wording of the provision related to news access is unfortunately not sufficiently clear in this respect.

¹ See "The European Model of Sport" (Consultation Document of DG X, November 1998).

² See The Helsinki Report on Sport: "with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework", COM (1999) 644, p. 3. See also paragraphs 1, 2 and 8 of the Nice Declaration, December 2000. See also generally "UEFA Vision Europe".

³ See UEFA Vision Europe, page 3.

⁴ See Helsinki Report, pages 3-4.

⁵ United Nations Environment Programme (UNEP), November 2004.

⁶ European Commission, "the European Model of Sport", cit.

⁷ Deloitte & Touche Reports.

⁸ Deloitte's Rich List.

⁹ Deloitte & Touche Reports.

¹⁰ See, for example, the recent European Commission Sector Inquiry concerning sports content on 3G mobile phones (Commission Press Conference IP/04/134, 30/01/2004).

¹¹ See "The EU and Sport, Matching Expectations", Brussels 14/15 June 2005.

¹² See "Sport and European Competition Policy", presentation by Jean-Francois Pons, International Antitrust Law and Policy, Fordham Corporate Law Institute, 1999, referring to the great increase in sports antitrust cases opened by the Commission in recent years.

¹³ Information memo to the Commission, from Commissioner Van Miert in agreement with Commissioners Oreja and Flynn, Brussels, 15 February 1999.

¹⁴ Statistics may be found at: <http://www.tas-cas.org/en/stat/frmstat.htm>.

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- ¹⁵ Helsinki Report, page 6 under the heading "Clarifying the Legal Environment of Sport".
- ¹⁶ Full text of Nice Declaration, see Annex 1.
- ¹⁷ Full text of "Context and Terms of Reference", see Annex 2.
- ¹⁸ Case 36/74, *Walrave* [1974] ECR 1405 and Case 13/76 *Dona v Mantero* [1976] ECR 1333.
- ¹⁹ Case C-415/93, *Bosman* [1995], para. 82.
- ²⁰ See Torben TOFT, Broadcasting Competition Law, *Competition Law Review*, 31 January 2006, page 5.
- ²¹ *Walrave*, cit. para. 8, *Donà*, cit. para. 14.
- ²² *Deliège*, cases C-51/96 and C-191/97, para. 64.
- ²³ Cit. paras 67-68.
- ²⁴ *Mouscron* Case, Commission Decision adopted on 3 December 1997.
- ²⁵ Commission press release IP/99/965 of 09/12/1999.
- ²⁶ *Mouscron*, cit. para. 17.
- ²⁷ *Deliège*, cit., opinion of AG Cosmas, para. 87.
- ²⁸ *Mouscron*, cit. para. 20.
- ²⁹ *Mouscron*, cit. para. 20.
- ³⁰ See, in particular, judgment *Gottrup-Klim v. Dansk Landbrugs Grovarelskab*, Case C-250/92 [1994] ECR I-5461.
- ³¹ See, in particular, *Lehtonen*, case C 176/96 [2000] ECR I 2681 and *Deliege*, cit.
- ³² *Lehtonen*, cit. para. 54.
- ³³ Cit. para. 53.
- ³⁴ Case C-438/00, *Kolpak* [2003], ECR I-4135.
- ³⁵ Case C- 265/03, *Simutenkov* [2005], ECR I-2579.
- ³⁶ Nice Declaration paragraph 17.
- ³⁷ Commission Decision of 19 April 2001 (Case 37,576), *UEFA's broadcasting regulations*, Commission Press Release of 20 April 2001, IP/01/583.
- ³⁸ Commission Decision, cit. para. 50.
- ³⁹ Commission press release, cit.

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- ⁴⁰ Nice Declaration paragraph 7.
- ⁴¹ Case C- 309/99, *Wouters* [2002], ECR I-1577.
- ⁴² Case T-313/02.
- ⁴³ Paras 55-57 of the judgment.
- ⁴⁴ *Pons* presentation, Fordham international conference on antitrust, 1999.
- ⁴⁵ As stated in the written submission of the EPFL.
- ⁴⁶ As stated in the written submission of G14.
- ⁴⁷ FIFA Task Force Report, p. 29.
- ⁴⁸ FIFA Task Force Report, p. 16.
- ⁴⁹ See FIFA Statutes, or UEFA Club Competition Regulations.
- ⁵⁰ AEK Athens FC and Slavia Prague FC v UEFA, CAS 98/200, interim order of 17 July 1998.
- ⁵¹ ENIC/UEFA, COMP/37 806, OJ L 354, 30/12/1998.
- ⁵² Paragraph 14 of the Nice Declaration.
- ⁵³ As stated in a document prepared by the French Football League (11 April 2006).
- ⁵⁴ Case T-193/02; Case C-171/05 P.
- ⁵⁵ As stated in the written submission of G14.
- ⁵⁶ The Economist, 27 April, 2006 « In a league of its own ».
- ⁵⁷ Nice Declaration paragraph 11.
- ⁵⁸ As stated by the Football Supporters Federation in its written submission.
- ⁵⁹ Judgment of 27 June 1984, *NCAA v. Board of Regents of the University of Oklahoma*, in 468 U.S. 85, 101.
- ⁶⁰ Opinion of 20 September 1995, *Bosman*, cit., para. 270.
- ⁶¹ *Champions League* Case, COMP/37.398, OJ L 291, 08/11/2003, pp.25-35.
- ⁶² *Bundesliga* Case (Case No IV/37.214-DEB), Commission press release IP/03/1106 of 24/07/2003; *Premier League* Case, Commission press release IP/03/1748 of 16/12/2003 and Commission press release IP/06/356 of 22/03/2006.
- ⁶³ As stated by the EPFL in its written submission.

⁶⁴ This is irrespective of the question of "ownership" of rights, a matter which may vary from one country to the next and where there is, in any event, often no clear answer.

⁶⁵ M&H Tire v. Hoosiers, 733 F.2d 973, 1st Cir. 1984, at 982-983.

⁶⁶ See also press release DCMS, 22.02.2006 (www.culture.gov.uk).

⁶⁷ See UEFA's « Vision Europe », p. 33.

⁶⁸ See UEFA's « Vision Europe », p. 7.

⁶⁹ See UEFA's « Vision Europe », p. 8.

⁷⁰ A.-M. Wachtmeister, chef d'Unité IV/C2, Broadcasting of Sports Events and Competition law, in: Competition Policy Newsletter June 1998 - number 2, available under http://europa.eu.int/comm/competition/speeches/text/sp1998_037_en.html.

⁷¹ As stated by the EPFL in its written submission.

⁷² The Terms of Reference of the ECF can be found on www.uefa.com.

⁷³ For more information on FIFPro, www.fifpro.org.

⁷⁴ Ultimate decisions are taken by the UEFA Executive Committee and Congress. See art. 37 of the Statutes of UEFA.

⁷⁵ Further details on the solidarity system for EURO and UCL are described in Annex 3.

⁷⁶ As mentioned by the EPFL and the Football Supporters Federation in their written submission.

⁷⁷ *Lazutina* Case: CAS 2002/A/370 Lazutina v IOC, Arbitral Award delivered by the CAS on the 29th November 2002.

⁷⁸ Commission Regulation (EC) No 1400/2002 of 31 July 2002.

⁷⁹ OJ C 169 (2001), pp 5-11; Commission press release IP/01/1523 of 30 October 2001 and Commission press release IP 03/1491 of 31 October 2003.

⁸⁰ The term public undertaking appears only in Article 86(1) EC and is not defined. However, Article 2(1)(b) of the Transparency Directive states that a public undertaking means "any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it". The ECJ accepted this definition in Case 188/80 *France v. Commission* [1982] ECR 2545.

⁸¹ COMP/37 806, cit.

⁸² This issue was considered in detail by the CAS in the ENIC/AEK Athens case, cit.

⁸³ There are now over 100 Supporters' Trusts in the UK; 61 with an equity stake in the club and 39 with supporter representation on the board. Supporters actually own or control 4 football league clubs.

⁸⁴ For a more detailed description of the criteria see www.uefa.com.

⁸⁵ See EU instruments in relation to corporate governance.

⁸⁶ As stated by the EPFL in its written submission.

⁸⁷ As operated in NBA and MLB.

⁸⁸ Council of Europe Resolution, Budapest 14-15 October 2004.

⁸⁹ As stated by the Football Supporters Federation in its written submission.

⁹⁰ As stated by the Football Supporters Federation in its written submission.

⁹¹ As stated by the EPFL in its written submission.

⁹² Case C-243/01, *Gambelli* [2003], ECR I-13031.

⁹³ Commission press release IP 06/436.

⁹⁴ FIFA Task Force "for the Good of the Game", page 25.

⁹⁵ See also the early warning system contemplated by the FIFA Task Force, designed to track unusual betting patterns.

⁹⁶ Home Office, Football (Disorder) Act 2000 – Report to Parliament, November 2005.

⁹⁷ UEFA's publication "Good practices for safe and secure major sporting events: Experiences and lessons from UEFA EURO 2004", March 2005, p. 12.

⁹⁸ European Convention on Spectator Violence, various Council Resolutions on police matters and hooliganism.

⁹⁹ For an example of best practice: Home Office, Football (Disorder) Act 2000 – Report to Parliament, November 2005.

¹⁰⁰ Article I- 17 (e) and Article III-282.

¹⁰¹ See François MANDIN, *La soumission de la norme sportive au droit communautaire*, Recueil Dalloz 1998, 3 Cahier, pp. 32-36.

¹⁰² Commission of the European Communities (1999), *Report from the Commission to the European Council with a view to safeguarding sports structures and maintaining the social significance of sport within the Community framework: The Helsinki Report on Sport*, COM (1999) 644. p. 3.

¹⁰³ For this reason, Ferdinando RICCARDI says that "(...) *the principle of non-discrimination provided in the European treaties is not transferable qua tale to sport* " (Our unauthorised translation), "Enquêtes journalistiques et commentaires sur son deuxième anniversaire ont confirmé les effets délétères de l'Arrêt Bosman sur le sport européen", in *Bulletin Quotidien Europe* N.º 9105- Mardi 10 Janvier 2006, p. 4.

¹⁰⁴ "The legal autonomy of sport organisations and the restrictions of European Law", in *Professional Sport in the EU: Regulation and Re-regulation*, The Hague, TMC Asser Press, p. 100. Quoting Klaus VIEWEG, "Sports events can only be carried out if the competitors follow certain rules that may restrain them from 'free' competition. One must bear in mind that these rules make sport what it is and therefore form the basis for the

existence of sportsmen and women themselves. They enhance competition between competitors rather than restrict it".

¹⁰⁵ See Nicolas PARISIS "L'application des règles de concurrence à l'activité sportive", in *Sport et Union européenne*, Bruxelles, Éditions de l'Université de Bruxelles, p. 107.

¹⁰⁶ See VAN BAEL & BELLIS, *Competition Law of the European Community*, London, Kluwer Law International, p. 1429 and Gauthier ERVYN, *Le respect du droit européen des aides d'Etat dans le sport*, <http://www.droitdusport.be/news.html> (Accessed 10 May 2006).

¹⁰⁷ See Jean-François PONS, *Sport and European Competition Policy*, Fordham Corporate Law Institute-Twenty-sixth Annual Conference on International Antitrust law & Policy, New York, 14-15 October 1999, p. 6.

¹⁰⁸ See Ken FOSTER, "Can sport be regulated by Europe?: an analysis of alternative models", in *Professional Sport in the European Union: Regulation and Re-regulation*, TMC Asser Press, The Hague, 2000, p. 55.

¹⁰⁹ See Ken FOSTER, "Can sport be regulated by Europe?: an analysis of alternative models", in *Professional Sport in the European Union: Regulation and Re-regulation*, TMC Asser Press, The Hague, 2000, p. 55.; According to Nicolas Parisis, "[q]uelle que soit en effet la qualité du spectacle offert par un club, notamment en raison de la qualité des joueurs qu'il aura pu recruter, il est certain que la partie la plus importante du public constituée par les supporters d'une équipe restera attachée envers et contre tout à celle-ci", "L'application des règles de concurrence à l'activité sportive", in *Sport et Union européenne*, Bruxelles, Éditions de l'Université de Bruxelles, p. 108.

¹¹⁰ Sport et concurrence: Développements récents et action de la Commission, Speech at the European Sports Forum, 21/11/97, Luxembourg.

¹¹¹ « Competition and Sport : The Rules of the Game », Speech presented at the Conference on « Governance in Sport », organized by the European Olympic Committee, FIA and Herbert Smith, Brussels, 26 February 2001.

¹¹² "Ce que l'on peut faire, ce que l'on doit faire, c'est rendre la Commission attentive à certaines spécificités du sport, la convaincre qu'une application automatique, presque mathématique, sans pouvoir d'appréciation, de certaines règles du droit communautaire au sport n'est pas conforme à la nature du sport", *Incidences du droit communautaire sur le sport*, Paris, Les Cahiers de l'INSEP, 1994, p. 47.

¹¹³ The agreement must: (i) contribute to improving the production or distribution of goods (or services) or to promoting technical or economic progress; (ii) allow consumers a fair share of the resulting benefit; (iii) not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; and (iv) not afford undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

¹¹⁴ Regulation 2790/1999 on the application of Article 81 (3) of the Treaty to categories of vertical agreements and concerted practices, OJ 1999 L336/21 (The "Vertical Agreements Block Exemption").

¹¹⁵ Regulation 2658/2000 on the application of Article 81 (3) of the Treaty to categories of specialization agreements, OJ 2000 L 304/3 (the "Specialization Agreements Block Exemption"); Regulation 2659/2000 on the application of Article 81 (3) of the Treaty to categories of research and development agreements, OJ L 304/7 (the "R&D Agreements Block Exemption").

¹¹⁶ Regulation 772/2004 on the application of Article 81 (3) of the Treaty to categories of technology transfer agreements, OJ 2004 L123/11 (the "Technology Transfer Block Exemption").

¹¹⁷ Regulation 358/2003 on the application of Article 81 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector, OJ 2003 L53/8 (the "Insurance Block Exemption").

¹¹⁸ Regulation 1400/2002 on the application of Article 81 (3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ 2002 L 203/30 (the "Motor Vehicle Block Exemption").

¹¹⁹ Regulation on the application of Article 81 (3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports, OJ L 155/18 (the "Air Transport Block exemption"); Regulation 823/2000 on the application of Article 81 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between shipping companies (consortia), OJ 2000 L 100/24 (the "Consortia Block Exemption").

¹²⁰ See BELLAMY & CHILD, *European Community Law of Competition*, 5th Edition, London, Sweet & Maxwell, 2001, pp. 186-199.

¹²¹ "Soft law in the field of EU competition policy", in *European Business Law Review* 2003, v. 14, n. 1, p. 49.

¹²² VAN BAEL & BELLIS, *Competition Law of the European Community*, London, Kluwer Law & International, 4th edition, pp 8 and 1146.

¹²³ See Michael BELOFF, "The Sporting Exemption in EC Competition Law", in *European Current Law Yearbook 1999*, Sweet & Maxwell, 2000, p. lx and Working Paper "Professional Sport in the Internal Market" , study requested by the European Parliament's Committee on Internal Market and Consumer Protection on the initiative of Mr. Toine MANDERS, The Hague, TMC Asser Institute, Edge Hill College, p. 83.

¹²⁴ *Walrave*, cit. and *Dona*, cit.

¹²⁵ *Deliège*, cit.

¹²⁶ *Lehtonen*, cit.

¹²⁷ Case Wimbledon.

¹²⁸ Case *Mouscron*, cit.

¹²⁹ ENIC/UEFA Case, cit.; AEK Athens FC and SK Slavia Prague FC v UEFA, cit.

¹³⁰ Cit.

¹³¹ The Application of EC Treaty Rules to Sport: the Approach of the European Court of First Instance in the *Meca Medina* and *Piau* cases, available at <http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume3/number2/colomo/>.

¹³² *European Community Law of Competition*, Fifth Edition, London, Sweet & Maxwell, 2001, p. 247.

¹³³ Cit.

¹³⁴ See Assimakis P. KOMMINOS, *Non-competition Concerns: resolution of Conflicts in the Integrated Article 81 EC*, The University of Oxford Centre for Competition Law and Policy, Working paper (L) 08/05, available at www.competition-law.ox.ac.uk/lawvle/users/ezrachia/CCLP%20L%2008-05.pdf (accessed 11 May 2006).

¹³⁵ Evangelia PSYCHOGIOPOULOU claims for the application of the *Wouters* approach to "cultural public policy concerns", "EC Competition law and cultural diversity: the case of the cinema, music and book publishing industries", in *European Law Review*, December 2005, London, Sweet & Maxwell, p. 857.

¹³⁶ In this regard, Stephen WEATHERHILL held that : "One would in this vein employ *Wouters* to underpin an argument that the overall context in which sports regulation occurs, built around pursuit of a broad objective of fair competition, produces effects which though apparently restrictive of competition are nonetheless inherent

in the pursuit of those objectives. Sport has its own admitted peculiarities, but in EC competition law the application of Art. 81(1) is always conditioned by and receptive to the particular context in which arrangements are struck”, “Anti-Doping Rules and EC Law”, in *European Competition Law Review* Volume 26, Issue 7, July 2005, p. 418.

In another article, the same author defends the following: *“Wouters, applied to sport, should be taken to mean that the rules of the Treaty governing competition and free movement apply only where, after assessment of the overall context in which the decision was taken or produces its effects and after account is taken of its objectives, the consequential restrictive effects go beyond those inherent in the pursuit of those objectives. Or seen from the other side of the coin, the consequential restrictive effects of a sporting decision which cause economic hardship are not treated as restrictions for the purposes of application of Articles 39, 49 and 81 EC provided they are inherent in the pursuit of those objectives. In this sense EC law admits that sporting bodies enjoy a conditional autonomy from its requirements. Provided the rules are shown to be necessary for the organisation of the sport, they escape control.”* (emphasis added), “Is the Pyramid Compatible with EC Law?”, in *The International Sports Law Journal*, 2005/3-4, p.5.

Richard WISH has a similar opinion: *“Regulatory systems exist for a variety of reasons: for example, to ensure prudential supervision of financial institutions, to protect the environment, to achieve effective waste disposal, or to guarantee the safety of products or to maintain the integrity of sporting tournaments. On a broad interpretation, the judgement in Wouters would appear to be applicable to any of these situations”* (emphasis added), *Competition Law*, Fifth edition, Oxford University Press, London, p.122.

¹³⁷ See Dirk BRINCKMAN and Erik VOLLEBREGT, “The Marketing of Sport and its Relation to E.C. Competition Law”, in *European Competition Law Review*, Issue 5, 1998, Sweet & Maxwell Limited, p. 283.

¹³⁸ Case T-61/89 [1992] ECR, p. II-01931.

¹³⁹ Case C-250/92, [1994] ECR Reports 1994, p. I-05641.

¹⁴⁰ Case C-67/96, [1999] ECR, p. I-5751.

¹⁴¹ Decision 82/204/EEC of 4 December 1981, *GEMA*, OJ L 94, 08/04/1982, p.12-20.

¹⁴² According to the Court, “(...) the need for joint copyright protection by collecting societies to counterbalance the user’s market strength. Collecting society membership is above all necessary in relation to communication to the public (...) Only through the collecting societies therefore can the copyright holders obtain the fair compensation due for their intellectual labour”, p. 37.

¹⁴³ See FAULL & NIKPAY, *The EC Law of Competition*, Oxford, 1999, pp. 312-320.

¹⁴⁴ This is, for instance, the case of Portuguese, Spanish and French Sport Federations.

¹⁴⁵ Presidency Conclusions, Nice, (2000), Declaration on the Specific Characteristics of Sport and its Social Function in Europe, of Which Account Should be Taken in Implementing Common Policies, Nice European Council Meeting, (12/00).

¹⁴⁶ As Bernard GENESTE writes: *“(...) The organization of the sport competitions, the adoption of decisions strictly linked to the functioning and financing of the representative organs of each sport discipline, the disciplinary power, the rules concerning the delivery of champions’ trophies , etc, are part of the mission of general interest committed to the sport federation, and constitute the implementation of public power prerogatives”* (Unauthorised translation; emphasis added), *Les fédérations sportives face au droit de la concurrence*, in *Revue des affaires Européennes*, 9ème Année, 1999/2, Mys & Breesch, éditeurs, p. 150.

In the words of Charles-Etienne GUDIN and Arnaud PARCELLIER, *“The right of organizing sport competitions is historically inseparable of the pursuit by the federations of a mission of general interest”* (Our unauthorised

translation; emphasis added), "L'organisation et l'exploitation des activités sportives et le droit communautaire", in *Revue des affaires européennes*, 9ème Année, 1999/2, Mys & Breesch, éditeurs, p. 150.

For his part, Frédéric JOLIT underlines that "(...) *the positive effects of sport, including the professional one, or training and, generally speaking, education, the "social function" (social cohesion, exemplariness...), the cultural aspects are sufficient indicators that call for the recognition of a specificity, of one certain general interest* (Our unauthorised translation; emphasis added), "La compatibilité des aides d'Etat aux clubs sportifs professionnels au regard du droit communautaire", in *Sport et union européenne*, Bruxelles, Éditions de l'Université de Bruxelles, p. 133.

Gérard AUNEAU and Patrick JACQ have the same approach: "(...) it is widely recognized that the sport movement has (...) a mission of general interest. Should the derogation in Article [86] 2 of the Treaty apply to the sport enterprises, this would allow them to better manage their contradictions". (Our unauthorised translation; emphasis added), "L'application du Droit de la Concurrence aux pratiques sportives (1re partie)", in *Revue de Jurisprudence Commerciale- Janvier 1995*, 39. Année, N.1, p. 376.

A former Italian Member of the European Parliament, Pietro PAULO MENNEA stresses both the sporting and the economic general interest pursued by the sport federations: "Sport federations represent one fundamental structure for the pursuit of the sport activity: these entities not only take in charge the regulation and promotion of sport but are also entities that really provide services and organize major sport events" (Our unauthorised translation), *Diritto Sportivo Europeo: scritti su alcune problematiche di diritto sportive europeo*, Italia, Delta 3 edizioni, p. 36.

In Richard PARRISH's view, "*With further political pressure, the "sporting' justification argument may develop into a 'public interest' justification*", *Sports Law and policy in the European Union*, Manchester, Manchester University Press, 2003, p. 217.

Finally, Alberto PALOMAR OLMEDA remarks that: "*As long as the sport federations have a role of vertebra of the social activity of sport's structure one can say that it does not exist a radical incompatibility between the sport federation's organizational monopoly and competition law*" (Our unauthorised translation; emphasis added), "La aplicación al ámbito del deporte de las reglas de Derecho de la competencia", in *Modelo europeo del deporte*, Ed. Bosch, Madrid, 2002, p. 240.

¹⁴⁷ Directive 89/552/EEC, adopted on 3 October 1989 by the Council and amended on 30 June 1997 by the European Parliament and the Council Directive 97/36/EC. Article 3 A (1) states as follows: "*Each Member State may take measure in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by the member State as being of major importance for society(...)*" (emphasis added).

¹⁴⁸ Alexandre HUSTING, "Un cadre réglementaire pour l'activité sportive", in *Sport et Union européenne*, Bruxelles, Éditions de l'Université de Bruxelles, p. 38.

¹⁴⁹ In the seventies the Commission has advocated the link between sport and culture, stating that a modern conception of culture also comprises sport- European Communication of 22 November 1977 concerning Community action in the cultural sector- [1977] OJ Supplement 6/77, 26, pts 55-57.

¹⁵⁰ See David HENRY, "Joint selling of football media rights – have we reached a level playing field?", in *EUFOCUS- Essential Developments in EU Law and Policy*, Issue 153, October 29, 2004, pp. 2-4 and Ingrid NITSCHKE, "Collective Marketing of Broadcasting by Sports Associations in Europe", in *European Competition Law Review* 2000, Issue 4, Sweet & Maxwell Limited, pp. 208-214.

¹⁵¹ *Bosman*, para. 106; Nice Declaration para. 11; Helsinki Report: 4.2.1.3.

¹⁵² According to Charles-Etienne GUDIN and Arnaud PARCELLIER, "we must realize that contrary to a normal enterprise a sport club has close cultural and social links to the town or region where it is located. That explains why sport federations impose to the club the obligation to play in the national championship of the

State where they are established" (Our unauthorised translation), "L'organisation et l'exploitation des activités sportives et le droit communautaire", in *Revue des affaires Européennes*, 2001-2002/3 (L'Europe et le sport), Bruxelles, Mys & Breesch éditeurs-publishers, p. 376.

¹⁵³ See Annex 1 of the FIFA Regulations for the Status and Transfer of Players; Regulation 9) and its guidelines of the International Rugby Board; article 10 of the Regulation of the Ice Hockey International Federation; Article 20 of the Regulation of the Handball International Federation; Article 4.4.3.3. of the Regulation of the International Federation of Basketball and Article 2.2.3.5 of the Regulation of the International Federation of Volleyball.

¹⁵⁴ See "The Economist", cit.

¹⁵⁵ See *Bosman*, para. 128 and *Deliège*, para. 44.

¹⁵⁶ See Jean-Philippe DUBEY, *La libre circulation des sportifs en Europe*, CIES (Centre International D'Étude du Sport), Collection CIES, Staempfli Editions SA Berne and Bruylant SA (Bruxelles), p. 465.

¹⁵⁷ OJ C 115/34 of 26 April 1993.

¹⁵⁸ OJ L 216, 20/08/1994, p.12,; see in particular, Article 5.

¹⁵⁹ Dimitrios PANAGIOTOPOULOS remarks that it is up to the EU to fulfil its role: "*The European Union places major importance on implementing protective labour legislation in order to ensure the health and well-being of young athletes and for this reason sports associations must monitor and investigate commercial transactions which relate to minor athletes, including athletes from non-Member-States, in order to verify that these transactions do not breach community rules*", "Sporting Activity in European Union", in *Sports Law (Lex Sportiva) in the World, Regulations and implementation*, Ant. N.Sakkoulas Publishers, 2004, pp. 214-215.

According to Juan Antonio LANDABEREA UNZUETA, "The Community institutions cannot limit themselves to the usual Reports and Declarations already denounced by the sports doctrine. It is absolutely indispensable to establish a clear prohibition of the commercial practices that affect minors in sport (...) it is also indispensable that Member States and regions commit themselves to take legal steps in order to eradicate any abusive exploitation of minors in sport". (Our unauthorised translation). "La protección jurídica de los menores en el deporte y la Europa de las regiones", *Congreso Internacional de Derecho del deporte, El Deporte en la Europa de las Regiones*, Madrid, 8-10 Marzo 2001.

A specific binding legal instrument is needed, which, as Loïc GRARD recalls, does not exist yet: "A European legislation on the protection of young athletes does not exist, but this is an objective justifying derogation to the principles of the liberalization of economic exchanges" (Our unauthorised translation), "Le sport dans le droit de l'Union européenne: exception, dérogations, spécificités et droit commun", in *Revue des affaires Européennes*, 2001-2002/3 (L'Europe et le sport), Bruxelles, Mys & Breesch éditeurs-publishers, p. 296.

¹⁶⁰ Fields like the calendars' definition or other organisational issues or other "sports rules" are, by nature, out of the scope of this kind of contract. The same goes for disciplinary matters, doping, commercial rights issues etc.

¹⁶¹ Luís MARÍN HITA suggests an adoption of a EC Regulation for agents- "Una lectura diferente de las decisiones de la Unión Europea acerca de la normativa FIFA relativa a los agentes de jugadores", in *Revista Jurídica de Deporte, Entretenimiento*, Año 2005-3, p. 15, Madrid, Thomson/Aranzadi, p. 422.

¹⁶² For a general definition of soft law, see K.C. WELLESN and G.M. BORCHARDT, "Soft law in European Community Law", in *European Law Review*, 1989, 14/05, pp.267-321; "Soft Law in European Community Law", Oxford, Hart Publishing, 2004; Ulrika MORTH, "Soft Law and New Modes of EU Governance- a Democratic Problem?", Paper presented in Darmstad November 2005; for the analysis of sports law in the framework of EU competition policy see Hakon A. COSMA and Richard WISH, "Soft law in the field of EU competition policy", in *European Business Law Review* 2003, v. 14, n. 1, pp.25-56; Linda SENDEN; for the application of soft law in

sport see Alexandre Miguel MESTRE, "Sport in the European Constitution", in *The International Sports Law Journal*, 2005/1-2, pp. 83-84.

¹⁶³ Case C-322/88 [1989] ECR, p. 4407.

¹⁶⁴ 93/C 63/02.

¹⁶⁵ Available at http://europa.eu.int/comm/secretariat_general/sqc/ong/en/communication.pdf.

¹⁶⁶ "(...) through their links at local, regional, national and European level, NGOs can provide expert input for EU policy-making. In particular, they can provide feedback on the success or otherwise of specific policies by fully taking into account its overall public policy responsibility".

¹⁶⁷ "The Commission is frequently contacted by the representatives of special interest groups. These groups can be divided into non-profit making organizations (European and (inter) national associations/federations (...))"(...) some of these special interest groups serve as a channel to provide specific technical expertise to the Commission from a variety of sectors, such as in the drafting of technical regulations (...) "The role of NGOs is representing the views to the European institutions of specific groups of citizens (...) In particular, many NGOs have an ability to reach the poorest and most disadvantaged and to provide a voice for those not sufficiently heard through other channels. In the European context, NGOs perform this role not only in relation to the Commission, but also the European Parliament, the Economic and Social committee, the Committee of the Regions and the Council. Their involvement in policy shaping and policy implementation helps to win public acceptance for the EU. In some cases, they can act as a balance to the activities and opinions of other interests in society." (emphasis added).

¹⁶⁸ See Terms of Reference as well as "Vision Europe".



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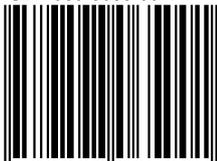
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