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## **Sport governance after the White Paper: The demise of the European model?**

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### **Abstract**

In 1998 the European Commission introduced into the political arena the concept of a 'European model of sport' in the build up to the Helsinki Report on Sport, the Commission's first attempt to formulate a comprehensive approach towards sport in the 'post-Bosman era'. In the recently adopted White Paper on Sport (July 2007), the Commission however considers it 'unrealistic' to define a single model of sport for Europe. This article argues that the Commission's departure from its previous position deserves attention because it is an explicit acknowledgement of the transformations in the governing structures of European sport over the last two decades. The article suggests two possible motives for the Commission's new understanding of European sport. First, the Commission is responding to the politicisation and redefinition of the concept of the 'European Model' by sport governing bodies, who are attempting to forestall legal intervention by the European courts and the Commission. Second, the Commission is just acknowledging the reality of the new governance of sport. In this respect, the article focuses on professional football to argue that the governance of the sport in Europe is transforming from the old pyramidal and vertical structure to more horizontal configurations of stakeholder networks. The White Paper is just another indication of this process, and the Commission has used it to position itself within the network structure. The Commission, it is argued, has opted for a supervisory role, offering governing bodies a degree of 'supervised autonomy' where the specific role of federation is recognised in exchange for greater stakeholder representation within governing structures.

**Keywords:** European Commission; European Union; governance; supervised autonomy; legitimacy; sport

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## **Introduction<sup>1</sup>**

In 1998 the European Commission drafted a document entitled *The European Model of Sport* (European Commission 1998b) as part of its ongoing consultations with sports organisations that led to the European Conference on Sport<sup>2</sup> and, ultimately, to the *Helsinki Report on Sport* (European Commission 1999c). 10 out of the 23 pages of the document were devoted to the European model of sport, explaining the ‘organisation of sport in Europe’ (European Commission 1998b, p. 2-4), the ‘features of sport in Europe’ (p. 4-5), as well as the ‘importance’ (p. 5) and the ‘problems’ of sport in Europe (p. 7-9). Since then, this concept of a European model of sport has consistently featured in the debates concerning the sports policy of the European Union (EU). However, in the recently adopted White Paper on Sport, the Commission seems to be willing to liberate itself from the burden of the European model of sport when it affirms that it is ‘unrealistic to try to define a unified model of organisation of sport in Europe’ (European Commission 2007c, p. 12). This article explores the reasons behind the Commission’s distancing from the European model of sport which, it is argued, is a significant policy movement that seems to have been unnoticed so far. The article also situates the content of the White Paper within ongoing debates about sports governance.

The article argues that in the White Paper the Commission has decided not to favour any particular regulatory approach because it acknowledges the complexity of European sport’s governing structures that have developed as consequence of the economic and structural transformations in the last two decades. Indeed, it is suggested that the White Paper could be considered as a certification of those changes, best exemplified by developments in professional football, It is increasingly difficult to

reconcile the argument that the professional game has strong links with the amateur and grassroots levels. Whilst the governing bodies (the Union of European Football Associations, UEFA, and the *Fédération Internationale de Football Association*, FIFA) have used the European model of sport to justify their policies and decisions in the past, other stakeholders involved in football governance, such as players and clubs, have challenged the legitimacy of the federations. The article also argues that with the White Paper the Commission reaffirms itself as having a role to play in the governance of professional sport, but not a powerful, normative and homogenising role (Weatherill 2009, p. 111). It is more of a role of control, in line with the limited legal competences of the EU in the field of sport. The Commission is offering sports organisations, and particularly federations, a degree of ‘supervised autonomy’ (Foster 2000).

The article will, thus, proceed in four steps. First, it traces the origins of the concept of a European model of sport and provides some context to the European Commission’s actions in the field of sport. Second it will present and explain the White Paper’s reference to the European model. Third, it will suggest possible explanations for the new position of the Commission, mainly referring to the politicisation of the concept by other actors and the transformation of professional football’s governance structures. Finally, the article reflects on the consequences of the White Paper for the debate on sport governance.

### **The European model of sport: What is it?**

European Union institutions have been active in the field of sport for more than three decades. In particular, the European Commission has been one of the most active institutions in the area, although not by its own volition but rather due to the debate

about whether different provisions of the EC Treaty are applicable to sport (García 2007a, see also Rincón 2007, Parrish and Miettinen 2008). The European Union does not have a direct competence in the area of sport, but its institutions have been obliged to intervene mainly as a result of their duties to enforce the Treaty's free movement and competition policy provisions. The commercialisation of sport attracted litigation from stakeholders who used the Treaty's free movement and competition provisions to challenge the regulatory choices made by the governing bodies.

Following the ECJ ruling in *Bosman* in 1995 and the subsequent increase in the sports-related competition policy case-load of the Commission (Pons 2002), the European executive felt compelled to take a comprehensive approach to sport. In the view of the increasing activity within that sector, the Commission needed to reflect on the consequences of the ECJ rulings and also on how to apply EU law to sport if it was to fulfil its duties as guardian of the Treaties (European Commission 1996, European Commission 1999a). The European Council provided political guidance through the adoption of the non-binding Amsterdam and Nice declarations on sport (European Council 1997, European Council 2000). It has been argued that in all these documents there were two different and contrasting views of how sport should be approached by the EU: as an economic activity in need of regulation, or as a socio-cultural phenomenon in need of legal protection (Parrish 2003b, Parrish 2003a). It is in this context that the European Commission, as part of its reflections on how to treat sport, articulated the concept of the European model of sport. The way in which this concept is articulated is of paramount for the development of any EU policy on sport, for a reference to a European model which is characterised by vertical solidarity may have the potential to soften judicial intervention by the EU. This article focuses on the

evolution of that concept, by analysing the changes in the definition of the European model of sport.

The Commission's responded to the Amsterdam Declaration on Sport (1997) by drafting an internal working paper on sport in September 1998 (European Commission 1998a). The Commission prepared a consultation document for sport organisations to express their opinions. That document contained a descriptive section outlining the 'features and recent developments' of European sport (European Commission 1998b, p. 1). It is in that description where the Commission first introduced the concept of a European model of sport:

There is a European model of sport with its own characteristics. This model has been exported to almost all other continents and countries, with the exception of North America. Sport in Europe has a unique structure. For the future development of sport in Europe these special features should be taken into account (European Commission 1998b, p. 5)

It is worth noting the comparison between the European model of sport and that of North America, a contrast that featured heavily in the Commission's definition of the European model. Having established the alleged existence of the European model of sport, the document outlines its main features by focusing on two different aspects: the organisational structures of sport and the features of sport in Europe.

### ***The organisational structures of the European model***

The first characteristic of European sport highlighted by the Commission is the pyramidal structure in which it is organised (European Commission 1998b, p. 2). Sport is organised in a system of national federations, that are affiliated to European and international federations: 'Basically the structure resembles a pyramid with a

hierarchy' (European Commission 1998b, p. 2). From the bottom-up, this structure is formed by clubs, regional federations, national federations and European federations (European Commission 1998b, p. 2-3). It is important to note that the Commission acknowledges not only the vertical dimension of this structure, but also its hierarchical nature, hence recognising the authority channels that come from the top (international and European federations) to the lower levels of the pyramid (clubs). The Commission explains that national and European federations have a 'monopolistic' position and that by using their regulatory power 'these organisations try to maintain their position' (European Commission 1998b, p. 3).

The second organisational characteristic of the European model of sport is a system of promotion and relegation. The Commission explains that the pyramid structure 'implies interdependence between levels, not only on the organisational side but also on the competitive side' (European Commission 1998b, p. 4). In other words, European sport is an open system of competition whereby low level clubs can hypothetically earn promotion to the top tiers of their respective sport<sup>3</sup>. This system, identified as 'one of the key features of the European model of sport', is in contrast to the US model, that has developed 'a model of closed championships and multiple sport federations' (European Commission 1998b, p. 4).

### ***The features of sport in Europe***

Further to the organisational characteristics outlined above, the Commission completes its depiction of the European model of sport with a look at three different features that are considered paramount: a grassroots approach, commitment to national identity and the existence of international competitions.

First, the Commission considers that one of the most important features of sport in Europe is that it is 'based on a grassroots approach' (European Commission 1998b, p. 4). The Commission considers that the development of sport originates from the level of the local clubs and that, unlike in the US, it has not been traditionally linked to business (European Commission 1998b, p. 4). If the grassroots approach of sport is accepted, together with the system of promotion and relegation, this creates a strong link between the top and lower levels of sport and, in consequence, between the amateur and professional levels of sport. Thus, the European model of sport could be said to have an element of solidarity, according to which the objective of professional sport is not only profit maximisation but also support for amateur sport. Whether real or illusory, the notion of vertical solidarity in sport appears to underpin the Commission's thinking.

The second feature of the European model of sport highlighted by the Commission was the 'commitment to national identity or even regional identity', because it gives 'people a sense of belonging to a group' (European Commission 1998b, p. 4). The third feature is the existence of international competitions where different countries compete against each other, demonstrating their different cultures and traditions and, thus, 'safeguarding Europe's cultural diversity' (European Commission 1998b, p. 5). The Commission does not devote much discussion to this, but the sociological and identity aspects are certainly important features of sport (see for example, King 2000, Magee *et al.* 2005, Tomlinson and Young 2006). As the Commission suggests, sport, on the one hand, can be a vehicle for individuals to feel included in a group. This sense of belonging can be generated at the more amateur level by participating in sport clubs

in various roles (coach, administrator, player, etc.) or at the professional level by following and supporting a particular team. On the other hand, sport is also a symbol of identities and, quite often, a reflection of clashing identities. National teams are a good example of the former, while the case of FC Barcelona, which is a symbol of the Catalan identity as opposed to a Spanish national identity, would be a good example of the latter.

Therefore, to summarise the Commission's view as of 1998, the European model of sport is characterised by a multi-level, pyramidal and hierarchical structure of governance that runs from the international federations down to the national federations and the clubs. This features a top-down vertical channel of authority where the federations, holding a monopolistic position within their sport, attempt to retain their hierarchical position. Furthermore, sport in Europe is characterised by a grassroots approach and a system of promotion and relegation, which implies a close link between the professional and amateur levels in sport. Having said that, it is also necessary to acknowledge that in the same document the Commission recognised that sport was undergoing, at that time (late 1990s), major changes. The Commission referred mainly to the globalisation and commercialisation of sport, best exemplified by the decision of the International Olympic Committee (IOC) to abolish the distinction between amateur and professional sport for the Olympic Games (European Commission 1998b, p. 6). It also noted the conflict between top professional members and grassroots members of the sporting movement, mainly exemplified by the break-away movements of professional football clubs in the 1990s (European Commission 1998b, p. 7). Thus, the Commission seemed to be aware of the evolution of European

sport, but it still decided to invest significant time in stressing the vertical solidarity elements of the European model of sport.

### **The White Paper on Sport: A new look to the ‘European model’**

The European Commission adopted a White Paper on Sport in July 2007 (European Commission 2007c). The White Paper on Sport is not a traditional white paper as it does not lay out a legislative terrain for further Commission regulation. The Commission wanted to enhance its status within EU sports policy given that previous political interventions arguably had come to little. The Commission considers the White Paper on Sport its ‘first comprehensive initiative on sport’ (European Commission 2007d, p. 1), whose aims are:

Providing strategic orientation on the role of sport in the EU, encouraging debate on specific problems, enhancing the visibility of sport in EU policy-making, raising awareness of the needs and specificities of the sector, and identifying the appropriate level of further action at EU level (European Commission 2007d, p. 1).

In more practical terms, the White Paper hopes to contribute to ‘mainstream sport into the various relevant EU policies’ and to ‘increase legal certainty regarding the application of the *acquis* to sport, as a contribution to improved governance in European sport’ (European Commission 2007d, p. 2). The White Paper is divided into three sections. It opens by exploring the societal role of sport both at amateur and professional level (European Commission 2007c, p. 3-10). It then explores the economic dimension of sport in the EU (European Commission 2007c, p. 10-12). Finally, the White Paper addresses the problem of the organisation of sport in Europe, where issues related to the governance of sport, the specificity of the sector and the application of EU law to sport are addressed (European Commission 2007c, p. 12-17).

For the purpose of this article, the interest is focused on that third part dedicated to the organisation of sport, where the Commission revisits the European model of sport:

The Commission considers that certain values and traditions of European sport should be promoted. In view of the diversity and complexities of European sport structures it considers, however, that it is unrealistic to try to define a unified model of organisation of sport in Europe. Moreover, economic and social developments that are common to the majority of the Member States have resulted in new challenges for the organisation of sport in Europe. The emergence of new stakeholders (participants outside the organised disciplines, professional sports clubs, etc.) is posing new questions as regards governance, democracy and representation of interests within the sport movement (European Commission 2007c, p. 12).

By declining to define a single model of sport, the Commission withdraws an important element of the political debate. As is explained below, documents such as the Independent European Sport Review (IESR) relied heavily on the necessity to maintain the features of the European model of sport as defined in the Commission's 1998 paper (see Arnaut 2006). If the European model of sport is not recognised, then much of those arguments would be void. In governance terms, whereas the European model of sport focused heavily on the role of federations, their regulatory role and their monopolistic position, the White Paper now points towards the emergence of new stakeholders. The Commission, therefore, is not only backtracking in respect to the pyramidal and vertical structure at the core of the European model, but it is also flagging the fact that there are other stakeholders gaining power and importance. It is true that the 1998 document referred to the clubs, but it did so from the amateur level and it certainly focused much more on the role, power and authority of federations. The White Paper refers to the emergence of new stakeholders as a challenge to existing structures that needs to be taken into account.

The work of Roderick Rhodes can help in explaining the implications of the paragraph quoted above. He has pointed out that the concept of governance is perhaps used in too many contexts and with different meanings (Rhodes 1997, p. 47), but he narrowed it down mainly to two dimensions. On the one hand Rhodes (1997, p. 53) defines governance as a network structure with a large number of stakeholders 'that interact continuously because they need to exchange resources and negotiate shared purposes'. The Commission's willingness to highlight the importance of new stakeholders in European sport can be linked to this notion of network governance, where power and authority are diffused across the network, rather than in the hands of a single actor. This analysis clearly questions the regulatory powers of federations and governing bodies.

On the other hand, Rhodes refers to governance as 'good governance', which involves the principles of effective, transparent and democratic management (1997, p. 49-50). This second dimension of governance was not present in the 1998 document. In the White Paper, however, the Commission notes the importance of questions such as democracy, representation and dialogue in European sport. This again has important implications for every stakeholder in the network, but it is of special significance for governing bodies because the Commission acknowledges that there are certain principles of good governance that should be respected. These principles may reduce the degree of independence of federations with respect to other stakeholders, but their implementation should improve the legitimacy of the governing bodies. It is important to note that the notions of good governance and network governance are complementary, as one would expect those involved in network governance to observe good governance principles. The need to develop effective principles of good

governance arises from the need to comply with legal norms as well as to balance the diverging interests within the game (Gardiner *et al.* 2006, p. 153).

### **Problems with the ‘European model of sport’**

In the accompanying documents annexed to the White Paper, the Commission defends its refusal to define a single model of European sport mainly in two grounds: the great diversity of structures inherent to sport in Europe and the fact that many of the features of the model are global rather than exclusively European (European Commission 2007b, p. 41). Further to that, this article also suggests that the Commission has been faced with a further element that distorted the use of the European model of sport in policy making: it has been politicised and used to their own advantage by different actors in the EU sports policy-making community. The most notorious example of the latter, as explained below, is the use of the European model of sport by sport governing bodies, with the IOC, UEFA and FIFA at the very front. Those organisations welcomed the focus on the pyramidal structure and the role of federations to justify their own policies and to avoid regulatory interventions by public authorities (e.g. national governments, EU institutions) or legitimacy challenges by stakeholders (e.g. clubs, athletes).

### ***The Commission acknowledges the limits of its own creature***

As pointed out above, the Commission acknowledges in the annexes to the White Paper the shortcomings of the European model of sport. The Commission is of the opinion that such a concept cannot reflect the real diversity of sport in the EU:

It must be recognised that any attempt at precisely defining the 'European Sport Model' quickly reaches its limits. Some of the features often presented as 'characteristic', such as the system of open competitions based on promotion and relegation, are actually limited to a certain category of sport (team sport in this specific case). As a matter of fact, even for team sports the system of open competitions is somewhat mitigated by a licensing system that introduces financial criteria for participation in competitions. Other sports present in Europe have adopted a totally or partially closed system for participation in professional sport competitions, such as motor-sports or cycling (European Commission 2007b, p. 41)

It is interesting to see that the Commission chooses some of its own past arguments, such as the principle of promotion and relegation in open competitions, to explain why the European model is not considered so central any more. This reinforces the idea that the Commission was unhappy with the implications of the European model's description of 1998. The Commission then goes on to downplay another of its own arguments, the centrality of the pyramidal structure in European sport:

The relevance of the pyramid structure for the organisation of competitions (and of the sport itself) is thus greatly reduced. It should be noted that the organisation of competitions also largely diverges from the pyramid structure in other sports, such as golf or tennis (European Commission 2007b, p. 41)

In other words, the Commission acknowledges that sport's traditional vertical structures based on multi-level federations are now far more complex. The Commission notes the emergence of new stakeholders in sports governance, which are challenging the legitimacy and authority of governing bodies (European Commission 2007c, European Commission 2007b, p. 41-42). This is another factor undermining the pyramidal structure and one can consider the Commission's departure from the single model of sport in the White Paper as simply being an acknowledgement of that empirical reality. The governance of sport in the last decade is undergoing a process whereby the vertical channels of authority from the federations down to the clubs are

being replaced by a more complex horizontal dimension of stakeholder networks (García 2007b, p. 221). Moreover, there were some sports, such as snooker, Formula One, boxing or darts, that never resembled the structural organisation described by the European model of sport in 1998.

Of those sports conforming to the European model of sport, professional football is the best example of a transformation into new organising structures. New stakeholders such as the professional players trade union (FIFPro), the associations of top football clubs (be that the old G-14 or the newly established European Club Association, ECA) or the European Professional Football Leagues (EPFL) have now been recognised by FIFA and UEFA and incorporated to their consultation and decision-making procedures (García 2007b, p. 219 et seq., García 2009). The federations have incorporated representatives of the players, clubs and leagues to reduce the threat of breakaway competitions or litigation in the European courts. This is especially visible in UEFA's Professional Football Strategy Council, a consultative but highly influential body comprising four representatives each of UEFA, EPFL, FIFPro and ECA. Although this has been a long process, the challenge of the G-14 to FIFA's rules on mandatory release of players for national team duty (known as the *Oulmers* case) may be considered as a significant turning point in the relations between the governing bodies and the professional clubs. In the same way that *Bosman* also transformed the balance of power between players, clubs and federations. In *Oulmers*, G-14 and Belgian club Sporting Charleroi started legal actions under EU competition policy against the aforementioned FIFA rules. When the issue was referred for an ECJ preliminary ruling by the Belgian national court, G-14, FIFA and UEFA reached an out of court agreement in early 2008.

In addition to the ongoing arguments, the Commission is of the opinion that some of the features of the European model are not just only European, but rather global:

On the other hand, what is often presented as constitutive of a unique 'European' model can sometimes apply to the organisation of sport in other parts of the world or even globally. The European model of sport has been a successful model and many of its elements have therefore been adopted by other countries around the world (European Commission 2007b, p. 41)

This last argument is probably more a question of semantics rather than a conceptual problem. It is even contradictory that in the same paragraph the Commission first seems to dismiss the European model and then takes some sort of pride in the alleged adoption of the model beyond the EU. However, the importance of this paragraph lies in the demonstration of the Commission's willingness to find arguments to sustain its refusal to endorse again the European model of sport.

Thus, the Commission, in the White Paper and its annexed documents, justifies its latest position about the European model of sport mainly in conceptual terms. It is basically realising that it is an expression unable to grasp the complexities of sport in the EU and, therefore, should not be prominent in the policy-making process. Those directly involved in drafting the White Paper explain this along similar lines. They suggest that the decision not to define a single model of sport in Europe was taken after careful research and intellectual analysis; they wanted to 'test' a concept that had been used for many years, but which seemed not to have been rigorously cross-examined (Interview, European Commission Official, November 2007). The result was that they were faced with so many different structures and diversity in EU sport that they decided to abandon the idea of a single European model of sport. This, some

would argue, contradicts the Commission's traditional tendency towards homogenisation and approximation of policies among Member States, but it is necessary remember that the EU has no direct competency in sport. In this case it is logical (and probably welcome) that the Commission avoids a concept that might be seen as normative and harmonising throughout the EU. In this respect Stephen Weatherill (2009, p. 111) argues that the White Paper is 'not tainted by inflated claims about the EU's regulatory competence, it is a nuanced document worthy of the label "Better Regulation". Weatherill suggests that the Commission is humble in the White Paper, aware of its lack of direct competence in sport (Weatherill 2009, p. 114). A willingness to stay away from over-regulation can also be a plausible motive behind the acceptance of the limits of the European model of sport. Having looked at the Commission's own arguments, this section suggests now that there is a further element that can help to explain why the Commission found problematic the use the European model of sport, namely the adoption of the concept by stakeholders.

### ***The instrumentalisation of the European model of sport***

Once the Commission referred to the European model of sport in its 1998 documents, the concept seemed to take a life of its own due to the actions of different actors involved in EU sports policy-making. With the benefit of hindsight, it is probably fair to say that the Commission did not expect in 1998 the European model of sport to become such an important concept in the political game around EU sports policy. However, the legal challenges brought by stakeholders (football with cases such as Bosman or plans to create breakaway leagues is probably the best example, see García 2007b) and the interventions of the Commission (European Commission 1999b, European Commission 1999a, European Commission 2001, European Commission

2002) created an unstable environment in which the legitimacy of the federations was seriously challenged. In that context, it is not surprising that governing bodies welcomed any arguments that could reinforce their position. The European model of sport, with its focus on vertical solidarity and the central role of federations, was certainly of help.

Federations decided to make the European model of sport one of their key arguments in their strategy to minimise legal and political challenges. Many sports federations regarded the interventions of the ECJ and the Commission as dangerous attacks (Johansson 1995), but they found in the European model of sport an argument to forestall that legal intervention by the EU institutions. As Parrish and Miettinen (2008, p. 41-45) explain, the governing bodies argued that the features of the European model of sport should be considered part of the so-called 'sporting exception' and, therefore shielded against the application of EU law. This view was expressed in the Independent European Sport Review (Arnaut 2006).

European football's governing body, UEFA, is a clear supporter of the European model of sport. In its strategy document Vision Europe (UEFA 2005), the governing body, under the heading 'UEFA's philosophy', refers to the European model without naming it:

European football is structured as a pyramid and, as with any pyramid, a strong base is the only way to ensure a strong apex (...) Elite, professional, semi-professional and amateur football are inextricably linked through the pyramid, and each level supports the other levels. There is a magic thread running through the whole of football, from the most unknown player to the best player in the world – this link and chain should never be broken since it is a key component of the magic of football (...) UEFA speaks for the whole of European football. UEFA must always strive to keep the football family together (UEFA 2005, p. 11)

Logically, UEFA is keen to support the pyramid as an organisational structure for football and it is not surprising that a robust defence of this configuration is at the core of its philosophy and political strategy. UEFA refers here not only to its own role as a governing body with a duty to keep the pyramid together, but also to the intrinsic linkages between professional and amateur football, hence arguing that breakaway competitions would be negative to the sport in general. In terms of governance this means, of course, that UEFA sees itself in a central position of power, although the organisation realises governing bodies are not to abuse that power: 'UEFA and national associations have a natural position of power when it comes to regulating football - this power must not be abused' (UEFA 2005, p. 12). Based on that philosophy, which clearly resembles the concepts underpinning the European model of sport, UEFA's political strategy is a decisive support of the European model. This is expressed in the strategy section of Vision Europe:

UEFA and European football should continue with all levels of football - elite, professional, semi-professional and amateur - bound together as part of the same pyramidal structure. There should be no franchising and no encroachment on the fundamental principle of a link from top to bottom of the pyramid. The US model is appropriate in the US context, whereas in Europe sports federations have a central role in ensuring the essential solidarity between the various levels of sporting practice, from recreational to top-level sport. This is not only financial solidarity, but also sporting, moral, structural and other forms of solidarity. In order to most effectively achieve this essential solidarity, the pyramid must stay united (UEFA 2005, p. 27-28)

UEFA makes a vigorous defence of the European model of sport and the football pyramid and, interestingly enough, contrasts it to the US model as the Commission did in 1998. UEFA is one of the best examples of a governing body adopting the arguments of the European model of sport, but it is certainly not the only one (for other

sport bodies see for example International Olympic Committee 2003, FIFA 2006, Blatter 2007). The focus on UEFA is suitable because over the last years the organisation has taken the opportunity to reflect on its own political strategy and philosophy (see also UEFA 2005, García 2006, García 2007b).

Once the sports governing bodies adopted the idea of the European model of sport, they were keen to float it within the policy community. This was done very clearly in the run up to the White Paper on Sport. Before drafting the White Paper, the Commission structured a dialogue and consultation process with the so called 'European sport movement' where sport organisations were invited to discuss their views with the Commission (for details see European Commission 2007b, p. 110-115). In this consultation process, the International Olympic Committee together with the international Olympic sport federations submitted a common position to the Commission arguing in favour of maintaining and protecting the current structures (i.e. the pyramidal model and the role of federations):

The responsibility that sport has in society and the autonomy with which it regulates itself lead to its credibility and legitimacy. Autonomy thus means preserving the values of sport, the existing structures through which it has developed in Europe, i.e. federations and clubs, the integrity of the competitions, the role of volunteers, the education of young athletes, and the contribution to public health in all age groups (...) The governance or organisation of sport does not fall within the EU's competence and the White Paper must avoid attempting to change that status (International Olympic Committee 2007, p. 2)

In the same document, which represents the vision of a large majority of sport governing bodies, the international and European football federations (FIFA and UEFA) add a particular statement that is very representative of this use of the European model for political purposes:

The fact that in football the elite commercial end is high profile and has strong interest groups should not negatively affect the democratic, self-governing nature of the overall structure and model of sport in Europe. The fact that this model and structure exists is well-documented and established through various decisions and publications of the European political and sporting institutions. There is no need to repeat the detail of the key features of it here (...) This model produces enormous benefits for the EU and its Member States (...) It is now the turn of the Commission to express its views and to provide concrete proposals for action to give life to these beliefs and recommendations (International Olympic Committee 2007, p. 6).

The IOC, the Olympic sports federations, UEFA and FIFA argue here that sport in Europe has developed particular organisational structures (i.e. the European model of sport) and these arrangements (that is the pyramid with the federations at its core) need to be preserved. They clearly stress that the *status quo* need not be changed. Certainly the second extract (from FIFA and UEFA, but not including the IOC) goes further in requesting active measures by the Commission, but in both cases one can detect a normative use of the European model of sport. Ideally, these governing bodies would like to see a policy preserving and even helping to reinforce the European model of sport, which naturally means maintaining their own hierarchical position within the governing structures. In other words, the European model of sport is normatively used by the governing bodies in policy-making. This is in contrast with the Commission's position. The Commission, despite all the pages devoted to the European model of sport, did not use it as a normative resource. The Commission referred to the European model as a description, not as a policy objective. Indeed, the same consultation document that portrayed the characteristics of the European model ended up by asking sports organisations whether policy should be oriented towards preserving the model or not: 'Can we keep the European model of sport as it exists today? Should we keep the *status quo* or does the system need adjusting?' (European Commission 1998b, p.

11). Moreover, in the Helsinki Report on Sport the Commission is cautious in its language regarding the organisation of sport in the EU:

There are many common features in the ways in which sport is practised and organised in the Union, in spite of certain differences between Member States, and it is therefore possible to talk of a *European approach to sport* based on common concepts and principles (European Commission 1999c, p. 3)

Later in the Helsinki Report, the Commission makes another reference to sport structures that could be seen as policy oriented, but it is also relatively vague and conditional:

*If it is advisable*, as wished by the European Council, but also the European Parliament and the Committee of the Regions, to preserve the social function of sport, and therefore the current structures of the organisation of sport in Europe, there is a need for a new approach to questions of sport both at EU level and in the Member States (European Commission 1999c, p. 7)

Weatherill (2009, p. 111) argues that even with this vague approach the Commission already went too far in the Helsinki Report on Sport because its 'general tone was directed at safeguarding current sports structures in Europe' and there is a risk that 'the EU strains its own legitimacy by taking on tasks it is ill-suited to discharge' because, for example, it has no competence in law. Even if one accepts this argument, it is submitted here that there is a clear difference between the use of the European model made by UEFA, FIFA or the IOC (as explained above) and the Commission. Governing bodies welcomed the concept and argued that policies should be directed towards reinforcing that *status quo*, whereas the Commission was more hesitant and made no definitive claims. The Commission was rather floating ideas for an intra-institutional dialogue. In a way, the White Paper is the culmination of that hesitation.

Obviously, it is very difficult to prove that the Commission's refusal to endorse the European model of sport was a direct consequence of the politicisation of the concept. As Kingdon points out, it is almost impossible to trace policy decisions to a single point of origin (Kingdon 1995). Yet, it is safe to affirm that, at the very least, the governing bodies' strategy did not help the survival of the European model in the White Paper, if only because of the Commission's lack of direct competence in the area of sport.

### **'Supervised autonomy': A lifeline for a transformed European model**

It should be clear at this point that one of the main implications of refusing to endorse the European model of sport is to question the role and legitimacy of sports governing bodies. Yet, questioning does not necessarily mean denying. This section explores the implications of the Commission's White Paper for sports governing structures, with a focus on the role, power and authority of federations. Additionally, the section also explores what the Commission has to say on the role of EU institutions and EU law in structuring European sport. The support of federations for the European model, it is argued above, can be linked to their desire to forestall EU legal intervention. Therefore it is necessary to consider, albeit briefly, the consequences of the White Paper for the application of EU law to sport.

The White Paper is keen to highlight the emergence of new stakeholders in sports governance, which suggests a diffusion of the power and authority of governing bodies. That is certainly a reality and the case of football is, perhaps, the best example. The emergence of FIFPro, the EPFL and the ECA, which have all been incorporated into UEFA's Professional Football Strategy Council has already been noted. But this

diffusion of power goes beyond the sport's internal structures to create new policy venues, external to the system, where stakeholders interact. That is the case of the social dialogue in the professional football sector, launched in June 2008 by the social partners (FIFPro representing the employees and EPFL and ECA representing the employers) under the umbrella of the European Commission and the legal basis of the EU Treaties. The creation of this social dialogue committee, which is formally outside the structures of UEFA, exemplifies the movement away from the strict pattern of vertical channels of authority defined in the European model of sport.

But despite all these new stakeholders, is there still a role for federations in the eyes of the Commission? The answer to that question is affirmative. The movement away from the concept of a single European model of sport does not necessarily mean a decrease in the relevance of governing bodies in sports governance, but just realignment:

The Commission acknowledges the autonomy of sporting organisations and representative structures (such as leagues). Furthermore, it recognises that governance is mainly the responsibility of sports governing bodies and, to some extent, the Member States and social partners (...) The Commission considers that most challenges can be addressed through self-regulation respectful of good governance principles, provided that EU law is respected (European Commission 2007c, p. 13).

In this paragraph the Commission makes explicit mention of the governing bodies and their responsibilities in sports governance. Certainly, there is not a firm defence of their hierarchical and monopolistic position in the pyramid, but there is not a dismissal either. In the light of this argument, it is safe to affirm that the Commission's reluctance to define a common European model is not a firm rebuttal, but rather a pragmatic necessity for a re-definition. It is also a certification of the empirical reality

of modern sport, where structures have become more complex. Coming back to a concept already employed in this article, the Commission seems to assert that it is not willing to use the European model of sport normatively, but it does not want to determine its extinction either. The Commission does not see federations as illegitimate bodies, but the White Paper does not endorse their primacy in sports governance as other documents such as the Independent European Sport Review have done (Miettinen 2006, Smith and Platts 2008). The message of the White Paper is twofold. First, that there are alternative models to organise sport and it is up to each sport to decide which one to use, providing EU law and good governance principles are observed. This implies that the European model of sport will not be used as a normative concept to drive EU sports policy-making. Second, there are some features that were included in the definition of the European model whose importance is acknowledged as legitimate. One of those is the role of sports federations in sports governance. In the White Paper the Commission, for example, endorses club licensing systems operated by federations, such as the UEFA's club licensing system in football. The Commission also reiterates that it is happy to assist governing bodies in promoting good governance practices in sport by creating a catalogue of good governance principles and funding conferences to explore the implementation of licensing systems (European Commission 2007c, p. 12).

The White Paper shows a European Commission that is aware of its limitations to intervene in the sports sector, pointing towards good governance and self-regulation as the possible way forward in the organisation of sport. However, at the same time the Commission also affirms there is an area where the EU has full powers to scrutinise the actions of sports organisations: the application of EU law to their activities

(European Commission 2007c, p. 13). The Commission's reluctance to surrender this role has considerable implications because sports governing bodies have historically tried to minimise the application of EU law to their activities. In the run up to the White Paper the European federations of basketball, handball, volleyball and football requested the Commission to recognise the European model of sport by publishing clear guidelines on the application of EU law to sport that could counteract the possible consequences of ECJ rulings<sup>4</sup>: 'Sport should not be ruled by judges' (UEFA 2007). The Commission, however, did not accept the federations' argument. The Commission was bound to follow the ECJ's ruling in *Meca-Medina*, which required a case by case approach the application of competition policy to sport. Therefore, the Commission did not include any guidelines in the White Paper and it made very clear that sport is still subject to the application of EU law (European Commission 2007c, p. 14).

To explain the implications of the White Paper for the governance of sport in a holistic manner, it may be useful to use the work of Ken Foster on the regulation of sport by the EU (Foster 2000). Foster analysed three alternative models of sports regulation by the European Union (Foster 2000, p. 43). First, the enforcement of private rights through the European Court of Justice (Foster 2000, p. 46). Second, the regulation of sport by the Commission through competition policy, which allows for exemptions to be granted in particular cases (Article 81.3 TEC). This was conceptualised as 'supervised autonomy' (Foster 2000, p. 58). Third, a more political approach that would accept sports self-regulation without the intervention of EU law (Foster 2000, p. 60). Building on Foster's argument one can adapt that threefold typology to suggest three alternative visions of sports governance and, consequently, three different roles

for EU institutions in those systems of governance. These should be understood as ideal types and they are defined here to help in our analysis.

First, a direct or regulatory approach, where EU institutions would be an essential part of sports governance formulating policies about structures in sport. This is of course opposed by those advocating the specific characteristics of sport (Parrish 2003a). This approach would see an active role for the EU institutions in sports matters and would also imply that governing bodies' autonomy could be reduced, perhaps to the level of being considered merely *implementing agencies*. In this model the role of the EU could be characterised as a regulator.

Second, a level of 'supervised autonomy' (Foster 2000, p. 58), as suggested by Foster, where the sporting movement recognises the fundamental principles of EU law, but EU institutions do not have a proactive role in directly regulating sports governance, which is left to self-regulation. In this model, however, EU law adds a further layer of complexity because it is recognised that it applies to the activities of sports organisations. Here EU institutions would play a supervisory role to ensure sports organisations behave within the limits of EU law. In this supervision by EU institutions, there could be a debate about the specificity of sport. Sport governing bodies would try to reduce to a minimum the supervision of EU institutions, arguing that the specificities of the sector deserve a tailored application of EU law.

The third model would recognise the total autonomy of sport and sport would be granted an exemption from the application of EU law. In this approach EU institutions would have no regulatory role in sports governance, but ideally they would endorse,

support and facilitate sports governing bodies' initiatives (eg. giving them political recognition or creating funding initiatives). In this model the role of EU institutions could be categorised as partnership. For many sports governing bodies that would be an ideal outcome: to be exempted from the application of EU law, but being able to receive funding through EU sports programmes. However, there is a basic contradiction in that ideal outcome. The EU can only allocate funds to sport related programmes if it has the legal competence to do it<sup>5</sup>. In the absence of such a competence, the Commission is unable to set up major sports-related funding initiatives. However, the creation of such a competence might risk evolving into further regulatory functions for the EU in the area of sport if one is to believe traditional neo-functionalist arguments (Haas 1968, Schmitter 2005).

It is submitted here that in the White Paper the Commission suggests a 'supervised autonomy' in the governance of EU sport, where stakeholders are responsible for the organisation and good governance of their respective sport and EU institutions perform a supervisory function ensuring that they fulfil their duties in respect of EU law. This enables the Commission to avoid the normative use of the European model of sport whilst, at the same time, supporting some of its elements. From the governing bodies' point of view, this should be seen as a lifeline in a moment where their legitimacy and authority was questioned by other stakeholders and the legal scrutiny of the ECJ and the Commission. The White Paper might question governing bodies' primacy in the pyramid, but it affirms their significant role in sports governance. The Commission, however, demands a trade-off for that support: the application of EU law and the implementation of principles of good governance in sport. The Commission advocates that sport be governed in a horizontal structure of stakeholders networks where

governing bodies will play a central or 'steering role' (Rhodes 1997). Although the White Paper is careful in explaining that any other model adopted by the sporting movement would be acceptable as long as it respects EU law.

In that vision of a horizontal structure, EU institutions need be considered as also part of the network because they are likely to have a twofold role in the years to come. First, EU institutions (especially the ECJ and the Commission) will be supervising the application of EU law to sport, as explained in the White Paper. This is a powerful role because EU law might have considerable effects on the activities of sport organisations. EU institutions would be located within the network at a superior level to the governing bodies and other sport stakeholders due to the primacy of the law. Second, the Commission is happy to identify concrete areas in which its actions can add value to the work of federations and other stakeholders. This role can be characterised as partnership. The main objective of these partnerships shall be to ensure high standards of governance and a healthy development of sport. In this respect, the White Paper was accompanied by an action plan, called Pierre de Coubertin, that detailed a series of very concrete actions where the Commission can act in the benefit of sport within its current competencies (European Commission 2007a). As a whole, this dual role of supervisor and partner in concrete areas is relatively well encapsulated by the concept of supervised autonomy. The debate is open, however, as to where to put the stress, in the supervision or in the partnership. The IESR advocated maintaining the autonomy of sports organisations, hence privileging the EU partnership role over the supervision. However, the White Paper is much more cautious. The White Paper is very clear in stressing the necessity of

supervision, but without neglecting the autonomy. Future challenges will tell whether this equilibrium is changed or not.

## **Conclusion**

In 1998 a consultation document of the Commission introduced the concept of a European model of sport, which was defined by its pyramidal structure of governance with a central role of sports federations. Over the last decade the vertical channels of authority within the pyramid have been challenged by sports stakeholders, particularly those in football. Many of those challenges came in the form of cases brought to the ECJ or the Commission. In the 2007 White Paper on Sport, the Commission considered it 'unrealistic' to define a single model of sport in Europe. The Commission's reluctance to support the European model of sport can be explained by a series of reasons. First, the transformations in the governance structures of sport in Europe over the last decade. Second, the Commission's desire to avoid over-regulation. Third, the politicisation of the concept in the hands of some sports governing bodies, especially the IOC, UEFA and FIFA. Whereas the Commission conceived the European model of sport largely as a descriptive tool, sport governing bodies incorporated it into their political strategies, hence making normative use of it. Governing bodies were interested in the European model of sport not only to support their hierarchical situation in relation to other stakeholders, but also to minimise the legal interventions of EU institutions in the field of sport.

Having said that, the White Paper is not a total dismissal of all the elements identified in the European model of sport. The Commission is keen to recognise the importance

of some of the features of the European model such as the role of federations, but in a new and more modern context of sports governance. The Commission's vision of sports governance is of a complex horizontal dimension of stakeholder networks. The Commission also considers that it has a dual role to play in this structure. On the one hand, the Commission would act as a supervisor because it shall ensure the respect of EU law by sports organisations. On the other hand, the Commission may also act as a partner. It will identify areas in which it can help to promote best practice in sports governance. Despite other caveats, the White Paper deserves to be praised, at least, because it is a serious attempt at finding balance in the very complicated debate about of sports governance.

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<sup>1</sup> A first version of this article was presented at the 3<sup>rd</sup> annual Sport&EU workshop in Southport, July 2008. I would like to thank the two anonymous reviewers for their constructive comments.

<sup>2</sup> Also known as the *Assises européennes du sport*, this was a large conference held in Olympia (Greece) on 20 to 23 May 1999 where the Commission hoped to gather the opinions of the sporting movement in respect of the EU policies on sport (see European Commission 1999c, p. 3).

<sup>3</sup> See for example the case of German football club TSG Hoffenheim, a small club founded in 1945 that has seen recent success after receiving financial support of a German multibillionaire. Hoffenheim was promoted from non-league regional football to Germany's fourth division in 2000 and since then it has escalated to the Bundesliga, German football's top tier, where it enjoyed top positions for most of the 2008-09 season, finishing 7<sup>th</sup>, just six points away from playing European club competitions.

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<sup>4</sup> Similar requests regarding the publication of guidelines on the application of EU law to sport were also introduced in the Independent European Sport Review (Arnaut 2006, p. 96 et seq.) and in the European Parliament's report on the future of professional football in Europe (European Parliament 2007, paragraphs 7-8), although to different degrees. The European Parliament was much more cautious, explicitly stating that specific features of sport 'do not warrant an automatic exemption from the Community competition rules' (European Parliament 2007, paragraph 54).

<sup>5</sup> As acknowledged by the European Court of Justice in the ruling of *UK v. Commission*, case C-106/96, ECR [1998] I-0729 (Parrish and Miettinen 2008, p. 31-32).

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