

Chapter 2

The Sporting Industry

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2.1 Specificities/Special Characteristics of the Sporting Industry

2.1.1 Preliminary Remark on Phraseology

A lot of academic discussions thus far have focused on the question of ‘is sport special?’ in EU law and policy.¹ The objection to this is not related to the debate itself but to the phrasing of the theme of the debate. Regarding the general approach under freedom of movement provisions, sport is in principle not treated much differently than any other industry. The European Commission and the Court of Justice of the European Union (‘CJEU’ or ‘the Court’) always take into

¹ See, for e.g. Szyszczak 2007, pp. 3–32; and Siekmann 2008, pp. 37–49.

consideration the specificities of each industry and special circumstances of each case when enforcing and interpreting the provisions of the Treaty, and certain industries are in fact separately regulated due to their own specific requirements. In this sense, while it has its peculiar characteristics (specificities or special nature) which have to be taken into account in the application and interpretation of EU law as a matter of constitutional requirement under Article 165(1) TFEU, as well as a matter of judicial and administrative practice so far, sport is not special. The Nice Declaration on Sport states that ‘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’. This is not to say that sport is special under EU law but that, as many other industries, it has its own specificities which distinguish it from other sectors. By the same token, agriculture, fisheries, transport and the financial sector each have their own specificities which make them special in the sense that no other industry has that particular characteristic. Not once in the Court’s jurisprudence or the Commission’s practice was there an indication that sport is ‘special’ or that such an interpretation might hold to justify the wording in which the question is asked. In *Walrave* the Court made an exception for rules on direct discrimination of workers/service providers in the sporting sector in the matters that pertain to the selection of athletes for national representative teams. However, this is not incomparable to the exception for directly discriminatory measures regarding employment in the public service under Article 45(4) TFEU. In *Meca-Medina* the Court adopted a special approach under Article 101(1) for regulatory rules in sport. But this approach was borrowed from *Wouters* and its predecessor *DLG*, in which regulatory rules in a non-sporting context were examined and in both of which the Court applied the same test prior to *Meca-Medina*. Therefore, the discussion should be reconceptualised and the question refocused on the specificities of the industry that distinguish it from other ‘ordinary’ industries and merit consideration, the significance those specificities possess in EU law, and the degree to which they [should] matter when applying EU law to the specific sporting issues.² The answers to these enquiries are very context-sensitive and would have to be considered on a case-by-case basis. It is time to dispose of the question ‘is sport special?’ in academic writing on the topic.

2.1.2 The Concept of Specificity of Sport in EU Law and Policy

The legal concept of the specific nature of sport has been established, recognised and taken into account in the jurisprudence of the Court and in the Commission’s practice. In freedom of movement cases when the case does not fit into any of the

² The only use of the idea and the word of sport being ‘special’ can be found in European policy documents which represent political and ideological goals and should therefore not be taken as conveying authoritative legal expressions. See, for instance, Nice Declaration.

sporting exceptions that apply at the level of restriction analysis (that themselves take into consideration the specificity of sport), the specific nature of sport was taken into consideration on the level of objective justification and proportionality analysis.³ Similar analysis, which adopted the *Wouters* approach, was also conducted in the sports cases falling under EU competition law.⁴ The European Commission explained that in order to assess the compatibility of sporting rules with any EU law, it considers the legitimacy of the objectives pursued by the rules, whether any restrictive effects of those rules are inherent in the pursuit of the objectives and whether they are proportionate to them.⁵ Some examples of the objectives specific to the sporting community accepted as legitimate so far have been ensuring regularity of competitions,⁶ maintaining the balance between clubs by preserving a certain degree of equality and uncertainty as to results, encouraging the recruitment and training of young players,⁷ and combating doping in order for competitive sport to be conducted fairly including the need to safeguard equal chances for athletes, athletes' health, the integrity and objectivity of competitive sport and ethical values in sport.⁸ However, 'each sport has its specificities and deserves to be treated differently according to these objectives. The EU will thus not impose general rules applicable to all European sports'.⁹ This approach is something that sport federations agree on with the Commission.¹⁰

The White Paper on Sport addressed some of the general aspects of, and divided the approach to, the concept of specificity of sport into *the specificity of the sport structure* (notably including the autonomy and diversity of sport organisations, a pyramid structure of competitions from grassroots to the elite level, organised solidarity mechanisms between the different levels and operators, the organisation of sport on a national basis, and the principle of a single international federation per sport), and *the specificity of sporting activities and of sporting rules* (such as separate competitions for men and women, limitations on the number of participants in competitions, and the need to ensure uncertainty of outcomes and preserve a competitive balance between clubs taking part in the same competitions).¹¹ The Commission Staff Working Document on Sport and Free Movement

³ See, for e.g. Case C-325/08 *Olympique Lyonnais SASP v. Olivier Bernard and Newcastle United FC* judgment of Grand Chamber of the Court delivered on 16 March 2010.

⁴ Case C-519/04 *David Meca-Medina and Igor Majcen v. Commission* [2006] ECR I-6991 discussed in detail in Sect. 5.5.5.

⁵ Commission Communication on Developing European Dimension in Sport (2011), para 4.2.

⁶ Case C-176/96 *Lehtonen and Castors Braine* [2000] ECR I-2681.

⁷ Case C-415/93 *Union Royale Belge Sociétés de Football Association and others v. Bosman and others* [1995] ECR I-4921, and Case C-325/08 *Bernard*, judgment delivered on 16 March 2010.

⁸ Case 519/04 *Meca-Medina*.

⁹ Paragraph 4.1 of the Commission Staff Working Document.

¹⁰ See White Paper Consultation by Commissioner Figel with European Sport Federations, Sport Governance in Europe, Brussels 20/09/2006. More than 30 European sports federations took part in the meeting.

¹¹ White Paper on Sport, para 4.1.

of January 2011 states that ‘the specificity of sport cannot be used as an excuse for making a general exception to the application of free movement rules to sports activities. Exceptions from the EU’s fundamental principles must be limited and based on specific circumstances’.¹²

Finally, the concept of specificity of sport has been included in the Article 165 of the Treaty. Whereas the general approach to sports cases and the analytical structure have not been changed by this inclusion, there is an indication that after the Lisbon Treaty amendments entered into force, the concept might have gained some additional weight within the framework of the familiar analysis.¹³ The study group on the Lisbon Treaty and EU sports policy recommended to the sports movement to take a lead in defining the contested term, rather than passively relying on the reference to the ‘specific nature of sport’ contained in Article 165 to seek to repel the influence of EU law in sport. They further recommended that the ‘definition should be built into the relevant sports regulations following an open and transparent method of operation facilitated by the governing bodies but involving affected stakeholders. The definition should be thoroughly reasoned and backed with robust data’.¹⁴ Presumably, therefore, if the regulations and rules are drafted in this way, they are likely to comply with the requirements of EU law. Compliance with EU law is also the reason why after the *Meca-Medina* judgment and the White Paper on Sport, governing bodies have been much concerned with enhancing their adherence to the principles of good governance.

In case of doubt, the sport stakeholders are free to turn to the Commission for guidance on the relation between EU law and sporting rules in professional and amateur sport as well as ask about appropriate interpretation of the concept of the specific nature of sport. Regarding the application of EU competition law, the procedure in Regulation 1/2003 will continue to apply.¹⁵

2.1.3 *Special Characteristics of Sport*

The typical list of general characteristics peculiar to the sporting industry includes the following: First, *mutual interdependence* between the clubs fostered by the need to preserve uncertainty of the result is a truly distinctive feature not possessed by any other industry. It is not the purpose of clubs in their role as undertakings to eliminate their competitors from the market because without competitors there would be no purpose to running a club. The product of a certain sports league is the game, and the game must be interesting and integrated into a structured competition in order to attract an audience. Accordingly, the more equal the competitors,

¹² At p. 7.

¹³ See Sect. 1.3.4.4 above on Article 165 TFEU and Sect. 4.8 below on the *Bernard* case.

¹⁴ The Lisbon Treaty and EU Sports Policy Study (2010), pp. 11–12.

¹⁵ Commission Communication on Developing European Dimension in Sport (2011), para 4.2.

the more uncertain the result, and the more interesting the game—i.e. the product, becomes more marketable.¹⁶

Second, the need to maintain *competitive balance* is a driving force behind *financial solidarity* mechanisms that exist in many sports.¹⁷ The most common ones are vertical and horizontal solidarity in the same discipline. For example, a football club's participation in a league is often conditioned upon the transfer of the broadcasting rights to the league, which after collectively selling the rights thus acquired, distributes the profits to all the participating clubs with a view to improving competitive balance between them. Sometimes a part of this profit goes to the lower leagues consisting of clubs that are, at least theoretically, potential future competitors. In no other industry would the companies share a part of their profits with their less well-off competitors, i.e. engage in horizontal solidarity.¹⁸ Vertical solidarity implies channelling part of the finances from the most profitable leagues to the grassroots. Vertical investments and support for social causes, however, can find its parallels in other industries, albeit on a voluntary basis related to social responsibility rather than as a matter of a compulsory rule of the association or organisation to which they are affiliated.

Third, sports have a *transient nature*: individual sportsperson's careers are short and prone to many interruptions or abrupt endings due to injuries; sports broadcasting must take place as the event occurs; sports betting is a time-restricted game of chance and skill; commercial exploitation of, for example, certain sports merchandise, is limited to a short period in which the theme affixed to the item is popular; live attendance at the stadiums is a once-in-a-lifetime event and so on. It is essential that the personal or commercial assets are used in timely fashion—otherwise the possibility of their exploitation is lost.

Fourth, as recognised by the Court in its case law,¹⁹ sport performs an important *social, cultural and educational function*. This function is confirmed by the inclusion of sports into the framework of the Treaty, as well as by numerous policy documents. Apart from the obvious, it includes issues such as social inclusion, the health of the population, the fight against doping, and prevention of violence and racial intolerance. It is mostly this aspect of sports that has formed the basis of objective justifications accepted as such thus far in the Court's jurisprudence. In addition, the Association of European Team Sports (ETS) has drawn attention to the importance of volunteering which is 'deeply entrenched in the community and

¹⁶ Simmons 2009, p. 79. Scientific evidence on the correlation between uncertainty and popularity varies as some researchers suggest that the game is to be more visited when the home team has two times more chances of winning.

¹⁷ There are vertical and horizontal solidarity mechanisms: the former implies financial solidarity between professional and amateur leagues and clubs, financing of various social causes, infrastructure, etc. The latter implies financial solidarity between the clubs participating in the same league.

¹⁸ This is not to say that the commercially most successful clubs are happy with the distributional solidarity system. See Chap. 3.

¹⁹ See, for e.g. Case C-415/93 *Union Royale Belge Sociétés de Football Association and others v. Bosman and others* [1995] ECR I-4921.

volunteer movements' whose 'selfless commitment underpins grassroots activities, the development of the federations' respective sports and the promotion of sporting values'.²⁰

Finally, specificities inbuilt in certain aspects of sport confer upon it a certain degree of *exemption from application of ordinary laws*. This is most obvious in the application of criminal laws. For example, hitting and injuring another person is allowed in combat sports within the agreed-upon rules (such as boxing) and might win a match rather than time in prison,²¹ and use of illegal drugs will subject sportspersons to sporting sanctions such as prohibitions on competing for a certain period of time rather than being subject to criminal proceedings. Similarly, normal labour laws do not apply to players in their capacity as 'workers' in the sporting industry. Their employment is still regulated differently from employment in the ordinary private sector.²² A number of other regulatory and disciplinary aspects are left entirely in the hands of sporting authorities but can be challenged before the ordinary administrative and/or judicial authorities in addition to sport's own internal dispute settlement mechanisms.

These are some of the most distinctive features of the sector. While it is easy to list them and recognise that no other industry possess quite the same characteristics, it is much more difficult to develop specific guidelines as to the scope and mode of application of the term 'specificity of sport' in legal disputes. This is because the analysis is conducted on a case-by-case basis and the scope and mode of application therefore depend on many different factors surrounding the dispute. The White Paper on Sport provides a sufficient legal compass for assessment of the sporting rules for their compatibility with the EU law.

2.2 Structural Models of Sport

2.2.1 *Classic European Model of Sport*

Sport in Europe is typically (but not necessarily and not in all sports) organised in a pyramid structure. At the bottom of the pyramid are the amateur, semi-professional and professional clubs that play in various leagues according to their sporting achievements. They are all members of the national federations for their particular sport. The purpose of amateur clubs is largely recreation and the development of young players, while the more professional clubs operate as commercial undertakings with the main goal of maximising profits. National federations organise competition and regulate the sport in question at the national level, and

²⁰ The Position of the ETS on Article 165 of the Lisbon Treaty, p. 2.

²¹ See, however, Blackshaw 2008, pp. 106–107.

²² For instance, rules on transfer of players between clubs, contractual ties, as well as the 'home grown rule' on fielding the players are a part of the debates on this topic. A related topic is the application of internal market rules to the rules of sport bodies governing the players' contracts.

represent their branch at the European and international level.²³ European and global governing bodies are at the apex of the structure. Only one federation per country can be a member of the European or global governing body.²⁴ European and other regional confederations (usually organised roughly by continent) support and share the organisation of sport with the world federation. Nafziger saw the facilitation of an equitable distribution of revenue among the constituent sports clubs with the purpose of encouraging mass participation and competitive balance among clubs as the primary function of the pyramid structure.²⁵

The described 'one-federation-per-sport' structure reveals the apparent monopolistic position of the governing bodies that regulate everything from professional to amateur and youth sports. They are able to pass the rules and regulations which affect the way in which clubs buy and sell players, dispose of their commercial rights, conduct themselves on the stock market, impose disciplinary sanctions which in turn affect the clubs' profits, and so on.

For example, in football, a club such as FC Milan is affiliated with the *Federazione Italiana Giuoco Calcio* (Italian football federation—FIGC). The FIGC, the national federation, governs the game of football in Italy from all levels of clubs as well as the national team and is affiliated with *Union des Associations Européennes de Football* (UEFA). UEFA has 53 such member national associations. In addition to playing games in its Italian-based league, FC Milan, is (at the moment) one of the top four teams in the Italian Serie A (the highest Italian league) and is thus eligible to play in the UEFA-organised Champions League.²⁶ The world governing body for football is the *Fédération Internationale de Football Association* (FIFA). FIFA regulates matters and organises football events that have worldwide importance, such as the men's and women's World Cups. FIFA is comprised of six continental federations and 208 national federations. Many other sports in Europe have similar basic organizational arrangements (such as basketball), while others do not (such as boxing).

However, as the European Commission points out, in view of the diversity and complexities of European sport structures, it is unrealistic to try and define a unified model of organisation.²⁷

[...]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

²³ Most of the European countries also have a pan-federation of national federations acting as an umbrella organisation for all national federations.

²⁴ European Commission, *The European Model of Sport*, Consultation Document of DG X (September 2008).

²⁵ Nafziger 2009, p. 37.

²⁶ The best performing football clubs in the highest national leagues are qualified to play in the UEFA Champions League, the most prestigious pan-European league. Every European country has a space for at least one club. The number of places in the competition depends on the national association's rank in the UEFA coefficients table. Accordingly, countries such as Spain, England and Italy have 4 places reserved for their best teams in the Champions League, whereas, for instance, Finland, Sweden and Estonia have only one place.

²⁷ White Paper on Sport, para 4.

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. 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.²⁸

European sports leagues are open and operate on the basis of a system of promotion and relegation. Clubs are able to move up and down through the leagues depending on their on-pitch performance. If a club is successful in its league during a season, as measured by the number of points won, it can pass to compete in the higher league as of next season (promotion), and conversely, if a club constantly underperforms it can fall out into the lower league at the end of season (relegation). While there are different schemes for this system, depending on the rules of the respective national associations, it is common that the three best teams from the lower league pass into the higher league and are replaced by the three worst performing team from that league. For example, in the English Football League Championship, the two best performing teams are automatically promoted into the Premier League while the next four teams compete for the third place in the Premier League through play-offs.²⁹ In practice, however, rich clubs are almost never relegated as their financial resources ensure the acquisition of the star players helping them to win matches. Conversely, small clubs playing in the third or fourth national division and depending on different model of financing³⁰ are likely to never make it to the first league. This performance-based ranking in an 'open league' structure is not incomparable to the competitive 'ordinary markets' in which undertakings operate, notwithstanding the lack of a formal league structure.

2.2.2 *US Model of Sport*

The European model of sport must be contrasted with the American model. What follows is the orthodox (i.e. slightly exaggerated and often misjudged) European description of the distinctive features of the American model. Following the description, it will be shown that there is more similarity between the two than commonly described, and that the convergence is likely to grow in the years to come when the European model of sport formally (by formation of breakaway structures) or *de facto* (through concessions granted by the federations to the most powerful clubs, which is already happening in European football) begins to crumble.

The United States model of sport is characterised by the clear separation of amateur and professional sports. Professional sport leagues in the US are honest

²⁸ Commission Staff Working Paper, para 4.1.

²⁹ For more examples, see Szymanski 2009, p. 685.

³⁰ For different models of financing see Sect. 2.3.2.

and unambiguous about profit maximising being their most important goal. The four most popular professional team sports are organised in major leagues, each currently with 30–32 teams: Major League Baseball (MLB), National Hockey League (NHL), National Basketball Association (NBA) and National Football League (NFL). Participating teams adopt a constitution similar to business corporations, and elect a Commissioner in charge of administration, interpretation and enforcement of the rules and the discipline of the sport and the league. Commercially the leagues operate as associations of franchises, but also as joint ventures among the constituent teams. Each franchise is usually owned by either very wealthy individuals or large corporations.³¹

Furthermore, in US sports the leagues consist of a collection of franchises and do not operate the system of promotion and relegation. The leagues are closed for their members and clubs cannot fall out of the league, nor is there a possibility for new clubs to enter the league, unless a super-majority of the participating members decide to expand and admit new members or expel existing ones. Entry is usually subject to substantial fees which are then divided between the existing members. In this sense, the leagues are ‘hermetic’. But they are also ‘closed’ because teams belonging to different leagues in the same discipline do not compete with each other, and play only within their own league.³² Their players normally do not participate in the World Cups to represent their country. However, NBA ‘dream teams’ participate at the Olympic Games, MLB players have participated in the ‘World Baseball Classic’, and NHL players regularly participate in the World Hockey Championships. The latter is qualified because the Championships run during the same time as the NHL playoffs, so only those players who are not in the playoffs, or who are eliminated in the first round show up. But, unlike in European football, where the rules requiring national service are mandated by FIFA, the NHL is not under the umbrella of the world governing body for ice hockey, so even if there were such rules the NHL would not be bound by them. Solidarity mechanisms that are designed to maintain the internal equilibrium in competitions of US professional leagues include collective sales of media rights (like in Europe), and the salary caps and draft system (unlike in Europe).

The lower level in the professional hierarchy is represented by the minor leagues that compete at levels below that of major leagues. There can be many geographically distributed minor leagues. In baseball, all of the minor leagues are run as independent businesses, and many are members of Minor League Baseball, an umbrella organization for leagues that have agreements to operate as affiliates of MLB. Each league affiliated with Minor League Baseball comprises teams that are independently owned and operated but always directly affiliated with, and occasionally named after, one major league team, enforced through the so-called Player Development Contracts with that team. These are beneficial for the minor-league

³¹ Two exceptions to the rule are the NFL’s Green Bay Packers, who are owned by members of the local community, and teams that end up under league stewardship, such as the NHL’s Phoenix Coyotes, or the NBA’s New Orleans Hornets.

³² Halgreen 2004, p. 77.

teams as they get borderline major-league talent, and usually funding/staff, etc. from their major-league teams. This is why the lower levels of the professional sports are sometimes referred to as ‘farm systems’. Independent leagues do not have any links to MLB, and thus are not members of ‘organized baseball’.

Amateur sports in the US are separated from the professional structures.³³ The extent to which high-school and college sport is associated with education is remarkable. Students often receive scholarships to universities and colleges in recognition of their sporting potential and some of the universities are more known and respected for their sport teams than academic quality. These amateur sports are seen as the incubators for talent from which professional leagues’ clubs often draft top student athletes to sign professional contracts once they have completed their education. European sporting organisations, by contrast, are traditionally unconcerned with the education of young athletes alongside their sporting career.

2.2.3 Changing Characteristics of European Football

It has already been noted that the European description of the US model is exaggerated and that many features are not as extreme as commonly depicted by European commentators. Grassroots involvement as well as the strong social role of non-professional competition in North American sports culture is often ignored; even though the American model is closed and horizontally integrated, there is a subtle pyramid structure (albeit not formally organised as it is in Europe) which is also ignored; the slow and gradual process of promotion and relegation mechanisms do exist in a form with the possibility for teams to be relocated from big to small cities (i.e. from big to small markets) when they fail to produce satisfactory commercial revenues (from, for e.g. ticket sales) due to their poor competitive standing such as Seattle to Oklahoma (in NBA); Atlanta to Winnipeg (in NHL); LA to St. Louis and to Oakland (in NFL). Conversely, there are many examples of clubs from small markets moving to big markets, such as Montreal to Washington (in MLB); Winnipeg to Phoenix and Quebec to Denver (in NHL); Cleveland to Baltimore (in NFL); and Charlotte to New Orleans (in NBA).³⁴

On the other side of Atlantic, the changes in the club licensing system in football have eroded the strict system of promotion and relegation. They were introduced at the beginning of the 2004/2005 season and were modelled on the French practice of replacing the competitive merit-based approach to the clubs’ standing with more comprehensive criteria. A series of defined quality standards, which

³³ Amateur sports—essentially competitions involving unpaid athletes—are governed by several layers of authority: community leagues, school athletic associations, state and national regulatory boards, the National Collegiate Athletic Association (NCAA) and other supervisory organisations at the non-professional level, the Amateur Sport Act, and the rules and processes of the Olympic movement. See Nafziger 2008, p. 102.

³⁴ Thanks are due to Ryan Gauthier for interview, 2 May 2011.

now must be fulfilled in order for a club to be admitted to any of the UEFA club competitions cover matters including youth football development, medical care, experience of club staff, coaching standards, stadium and training facilities, legal declarations, audited accounts, settlement of debts, additional financial disclosures and financial budgets with supporting assumptions among the 34 specific criteria.³⁵ The result of the changed licensing rule is apt to be a semi-closed tournament system similar to the North American model.³⁶ Apparently, the criteria will be easier to fulfil for the clubs already in good financial standing than for those that struggle with budgetary problems. Contrary to the goals related to preserving competitive balance that UEFA relies on to defend some of its restrictive rules, this is a way to solidify the imbalance that already exists in European football.³⁷

Globalisation of the world's economies, the technological revolution within the broadcasting and telecommunication industries, and the subsequent explosion in media revenues are seen as factors that have brought the European and American sports industries closer to one another.³⁸ The European Parliament Report on the future of professional football in Europe recognises that the current trend of clubs going to the stock market is one step closer to the US model. It can be questioned whether the two goals (winning the game and maximising the shareholders' profits) can be combined within the traditional open European model.³⁹ Furthermore, both models of sport have certain shared ends such as the quest to find balance between cooperation and competition, and to enhance competitive balance between the clubs based on two principles of competition: equality of teams and uncertainty of outcome. It is the means by which they achieve these ends that differ. In the US, rules on annual players' drafts, hard and soft salary caps, sharing of broadcasting revenues, as well as the strong role of the players' unions are intended to reinforce the competitive balance. In European football 'a traditional reluctance' to adopt such restraints has led to competitive imbalances with the result that well-established elite clubs dominate the sport and reinforce those imbalances.⁴⁰ It seems, however, that despite the restraint mechanisms, the US sports are plagued with the same disease of imbalance in competitive strengths of the teams. ESPN reported that '[m]oney allows the NBA to ignore the fact that a third of its teams exist in an underclass. Despite more than half of the league (16 of 30 teams) qualifying for the

³⁵ UEFA Club Licensing and Financial Fair Play Regulations.

³⁶ Nafziger 2008, p. 101.

³⁷ Manchester United has won the Premier League (in which 20 teams compete) 10 times since its creation in 1992, Arsenal 3 times and Chelsea 2 times. C.F. Real Madrid has won 9 times in the European Cup/Champion League, 31 times in the Spanish League, and 17 times in the Spanish Cup. C.F. Real Madrid, AC Milan, Manchester United, FC Bayern Munich, and Liverpool F.C have between themselves won 28 European Cups/Champions Leagues since the creation of this competition in 1956.

³⁸ Halgreen 2004, p. 42.

³⁹ European Parliament Report on the future of professional football in Europe (2006/2130(INI)), Committee on Culture and Education, final A6-0036/2007, p. 14.

⁴⁰ Nafziger 2008, p. 104. See also Camatsos 2005, pp. 155–180.

playoffs every year, 11 teams have either won no playoff series or gotten past the first round just once in the last 10 years. The Washington Wizards have made it past the first round exactly once in the last 30 years'.⁴¹ This leads to the conclusion that the mechanisms aimed at enhancing competitive balance between the teams in the league do not work if they are not accompanied by efficient financial solidarity mechanisms, and conversely, financial solidarity (especially if insufficient) will not contribute in any perceptible way towards competitive balance if unaccompanied by effective restraints on competition.

2.3 Financing of Sport

2.3.1 Macroeconomic Aspects

On a macroeconomic level, European sport is directly financed from four major sources. They are: (1) households (purchasing of sporting goods and services, sports betting); (2) the central government; (3) the local government, and; (4) enterprises (e.g. sponsorship, TV and media rights).⁴² Partial tax exemption is available in most European countries as an indirect source of finance for sport organisations supplying public utility sporting activities, or for private persons who bring funds into sport.

Households are by far the most significant private sector contributor in all European countries, whereas local and regional governments account for most of the contributions in the public sector. Available data from 1990 that included 11 European countries attributed an average of 64 % of overall sport financing to households, 9.5 % to enterprises, 20 % to local governments, and only 6.5 % to central governments. Information dating back to 2000 showed a trend of increase in household, and decrease in public (both local and central government) share of sport finance.⁴³ Unfortunately, a much-needed report of a newer date is lacking, which prevents any conclusions on the current trends based on macroeconomic indicators. Currently, the Commission is preparing a study to assess the sport sector's contribution to the Europe 2020 strategy, with particular emphasis on contribution to economic growth and employment in the EU.

A study taken during the French presidency of the EU distinguished between three categories of sports participation (amateur sport contests, leisure and health sports practice, and high level sport) and demonstrated that each source of finance is predominantly allocated to one of those three categories. Households are geared toward leisure and health sport practice and then to high level sport; enterprises prioritise high level sport with high media exposure in a limited number of sport

⁴¹ ESPN 'The Sports Bubble' by Howard Bryant, 7 March 2013.

⁴² Andreff 2009a, p. 271.

⁴³ Ibid. p. 272.

disciplines; local authorities allocate their sport budgets mostly to amateur sport contests, and central government to high level sport.⁴⁴ Several economists have observed such allocation of central government contributions, accompanied by a tendency for private finance to flow into media-exposed high level sport, is threatening to break down the European pyramidal structure at its foundations due to the lack of financing.⁴⁵ Taking into consideration the organisation of sport in Europe, they suggest that averting this threat will require adoption of a series of measures: strong solidarity mechanisms at the Member State level; favouring private financing of mass sport (sport governance matters here and it should be designed so as to avoid a take-over of sport by purely financial concerns); supporting voluntary work, which is the pillar of the European model, and; a more pro-active role for the local authorities in defining sports public policy. Furthermore, betting and gambling revenue paybacks to sport must be maintained as they can make up to three quarters of a sports minister's budget (as was the case in Greece) and one quarter of overall public sport financing.⁴⁶ What this proposal actually entails is the concerted effort of different stakeholders in sport necessary to bring about a series of measures to consolidate the foundations of the pyramid structure, if such a structure is to be maintained.

2.3.2 *Microeconomic Aspects*

On a microeconomic level, it is important to distinguish between financing of amateur and professional clubs. Economic viability of the former is primarily dependent on subscriptions, private cash donations, subsidies and, in cases of more advanced amateur clubs with a certain fan base, gate receipts and sponsorship. All the sources of finances for amateur clubs are local.⁴⁷

Regarding professional clubs, it is important to emphasise the differences between traditional and contemporary models of financing. The traditional model that prevailed in the 1960s until the 1990s relied on gate receipts, subsidies and corporate sponsorship. TV revenues as sources of income appeared only in the 1980s but were not an important contributor to the overall budget. In fact, in 1967, the English Football Premier League turned down a £1 million offer from the BBC for the live broadcasting of championship matches because it was afraid that acceptance of such a contract would lead to losses from declining gate receipts.⁴⁸ As no other broadcasting companies existed at the time, there was no competition for the

⁴⁴ Cabinet Amnyos, 'Etude du financement public et privé du sport', Etude réalisée dans le cadre de la présidence française de l'Union européenne, Ministère de la Santé, de la Jeunesse, des Sports et de la Vie Associative et du Secrétariat d'Etat aux Sports, Paris (October 2008) cited in Andreff and Szymanski 2009.

⁴⁵ Andreff et al. 2009.

⁴⁶ Ibid.

⁴⁷ Andreff and Staudohar 2000, pp. 257–276.

⁴⁸ Andreff 2009b, p. 690.

TV rights and the offers remained confined to that of monopoly, usually held in each country by one public channel. This situation, which prevailed until the early 1990s, changed dramatically. The emergence of private broadcasters and increase in number of public broadcasters coupled with tremendous technological progress in the audiovisual industry started a new era in football financing: TV rights became the biggest part of the professional football club revenue. Broadcasting companies were competing to make the best offer and the leagues or clubs were negotiating the best possible deal for their rights.⁴⁹ Sponsorship deals consequently became far more lucrative due to television exposure. Merchandise was marketed more professionally and their sales made up a significant portion of the budget in some better-known clubs. These changes led to the decline of the traditional model of financing.⁵⁰ The contemporary model is based on professional management in the club administration, ownership by corporate giants including broadcasters, entry into capital markets, and a sole concern for profit maximising and growth to gain the competitive edge over other clubs' financial performance (i.e. a strategy focused on enhancing the main factor that determines the outcome of the matches).

The essence of successful on-pitch performance is the acquisition of star players through the liberalised player transfer market, a rare commodity. Excess demand has inflated the salaries of the star players to a level that often placed clubs into financial trouble. Deloitte's Annual Review of Football Finance 2012 notes that 'control of player wages, in order to deliver robust and sustainable businesses, continues to be football's greatest commercial challenge'. The sustainability of the contemporary model of financing for professional clubs therefore heavily depends on a dynamic equilibrium between a club's spending on wages and its media revenues.⁵¹ Due to a trend of ownership by wealthy tycoons some clubs are able to spend far more than they earn. Seeking to attain a better balance between revenue and costs and reduce the burden of ongoing funding required from owners or other sources, the new UEFA Financial Fair Play Regulations require the clubs to at least break even and to be able to operate on the basis of their own revenues.

More recent business strategies of the most successful leagues and clubs involve expanding to new markets such as Asia and North America. The Premier League has been particularly effective in creating and exploiting these new markets. Only a few big clubs and leagues are able to engage in a profitable business outside of Europe while for the rest of the clubs and leagues expanding to other geographical markets would be an unrealistic goal.

The main shortcoming of the contemporary model of finance and governance in European football is the dominance by rich clubs and the consequences associated with such dominance. This is the undertone of the theme of breakaway leagues, to which we turn in Chap. 3.

⁴⁹ See Sect. 1.2.

⁵⁰ This has been acknowledged by the Discussion Paper at the First European Conference on Sport 'Relations between Sport and Television', Olympia, 21 and 22 May 1999, p. 2.

⁵¹ Andreff 2009b, p. 695.

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