



GAME ON?

Uefa's Michel Platini (left) with European president José Manuel Barroso earlier this year

Governing bodies are pushing for reform of European sports regulation. The next few months will be crucial for their campaign, outlines **James Thellusson**

Uefa called it 'a missed opportunity', and they weren't the only ones. Fifa, football's global governing body, and the International Olympic Committee (IOC) also damned this summer's European white paper on sport with faint praise.

The white paper, which sports governing bodies had lobbied hard for, failed to fully recognise – in Fifa and the IOC's words – 'the autonomy and specificity of sport as well as the central role and independence of the sports federations (governing bodies) in organising, regulating and promoting their respective sports'.

Their campaign, which had started in 2005 with the Independent Football Review (also known as the Arnaut Report), looked to have hit the buffers. Why were they so disappointed? Because, at heart, their goal is to persuade the EU that sport has characteristics that should exempt its governing bodies from aspects of EU law and that this should be included in the EU Reform Treaty.

Matter for member states

Until now, the organisation of sport has been exclusively a matter for member states, which set the legal frameworks within which sport organisations and sportspeople operate. The EU had no competence, except where sports crossed swords (so to speak) with EU law on the free movement of persons, services, capital or competition

issues. As long as sport's rules and regulations abided by national law, governing bodies were allowed to get on with the job of managing their largely amateur games.

For a long while, this system sufficed. But during the 1990s, sport (especially football) became a multi-billion-euro business creating a new, global marketplace for rights, players and brands.

Commercial boom

In one sense, everyone gained from this commercial boom. Unshackled thanks to the Bosman ruling (the 1995 European Court of Justice decision that allowed professional football players in the EU to move freely to another club at the end of their term of contract), professional players saw their salaries soar and top professional clubs gained from the creation of a TV global market for their product. Governing bodies gained, too, as revenues from national tournaments (such as football's World Cup and European championships) rocketed.

But this growth has tested the traditional power balance and relationship between players (employees), clubs (employers) and governing bodies (regulators). As the white paper puts it, rather demurely: 'The emergence of new stakeholders... is posing new questions as regards governance, democracy and representation of interests within the sport movement.'

By the time of the Arnaut Report launch in 2005, governing bodies had come to feel

their ability to regulate the game for the benefit for all had been badly weakened. Worse, they claim the 'case by case' approach taken by the European Court of Justice (ECJ) and the European Commission to the application of EU law to sport was creating 'legal uncertainty and insecurity', which was harming their ability to govern.

Almost by implication, a number of problems (doping, the power of agents, lack of development of local players and a perceived decline in competitive balance) that the game faced could not be solved because EU law would not allow it. It needed exemptions to get on with its job and to protect the values of sport from the global taint of commercialisation.

The white paper clearly acknowledges the important role of the governing bodies, the impact of sport on society and the need to deal with exemptions on a case-by-case basis. But it seems to categorically reject any form of block exemption, stating 'the case law of the European courts and decisions of the Commission show that the specificity of sport

has been recognised....' and that the ECJ, in the Meca-Medina ruling (where Spanish swimmer David Meca-Medina successfully claimed that anti-doping rules contravened Article 81 of the European Community Treaty), 'dismissed the notion of 'purely sporting rules''. It also appears to refute the idea that there is such a thing as the 'European sports model'.

Into extra time...

Some would say these views are logical, legal and wholly unsurprising. After all, governing bodies are commercial businesses, not just not-for-profit regulators, so how can you justify them being above the law? If you allow governing bodies to be exempt, why not other businesses? If the law is already taking account of sport-specific circumstances on a case-by-case basis, why do we need anything new in the Reform Treaty?

So, is the game over for the governing bodies? If the main strategic objective is to secure acceptance that sport and its governing bodies deserve exemption from EU law, then the campaign to date has not yet succeeded. But the campaign has the support and sympathy from many fans, politicians and large sections of the football media.

And... the governing bodies have substantial funds and organisational ability to maintain a campaign; and... this is just a white paper; and... in politics a week is a long time. So, no. But October will be an important month for the legal future of football, and the game is being played indoors – in the corridors of Brussels and Europe's capital cities.

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