



# Bosman at 10: The State of Play

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# The Themes

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- Legal certainty - since Bosman has the legal environment been clarified?
- Underlying problems – since Bosman have the underlying problems contributing to litigation been addressed?
- The discipline – since Bosman have academics responded coherently to the debates?



# Legal Certainty – Policy Initiatives

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- The Amsterdam Declaration on Sport (TOA 1997)
- The Helsinki Report on Sport (1999)
- Nice European Council Declaration on Sport (2000)
- Article 282 Constitutional Treaty.
- Independent Football Review (2006)



# Legal Certainty: Sports Regulation 10 Years After....

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1. Rules outside the scope of the EC Treaty (sporting exception / inherent rules)
2. Rules within the scope of the EC Treaty but capable of justification / exemption
3. Rules prohibited by the EC Treaty



# Unresolved Issues

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- Salary caps
- Licensing
- Home-grown players
- Player release clauses
- Break-away leagues
- European Model of Sport
- Services Directive



# The Underlying Problems

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- Commercialisation.
- Who gets what, when and how.
- Stakeholder representation.



# The Independent Football Review

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UK Presidency of EU initiative in 2005.  
Mandate:

*'To produce a report, independent of the Football Authorities, but commissioned by UEFA, on how the European football authorities, EU institutions and member states can best implement the Nice Declaration on European and national level'.*



# The Nice Declaration on Sport

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*'The European Council stresses its support for the **independence** of sports organisations and their right to organise themselves through **appropriate associative structures**. It recognises that, with due regard for national and Community legislation and on the basis of a **democratic and transparent** method of operation, it is the task of sporting organisations to organise and promote their particular sports.... While taking account of developments in the world of sport, federations must continue to be the key feature of a form of organisation providing a guarantee of **sporting cohesion** and **participatory democracy**'.*



# Specificity of Sport

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The Report identifies three types of sports rule designed to maintain:

- Regularity and proper functioning of competitions.
- Integrity of sport.
- Competitive balance.



# 1. Regularity and Proper Functioning of Competitions

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- Field of play rules, structure of championships and calendars: *'such rules must lie within the sole discretion of the governing body'*.
- Rules concerning the composition of national teams: *'these rules do not conflict with Community law'*.
- Rules relating to the national organisation of sport in Europe (home and away rule): *'..a pure sporting measure escaping the application of EC competition law'*.



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- Rules concerning organisation of sporting competitions in the European sports pyramid structure: *'rules related to the participation in sporting competitions in the European sports pyramid are not conflicting with Community law'*.
  - Rules relating to transfer 'deadlines': *'certain restrictions on labour mobility may be justified in order to protect certain important features of sporting competition'*.
  - Rules concerning the transfer of players in general: *'these principles are clearly in line with European legislation'*.



- Rules to encourage the attendance of spectators at sporting events: *'a good example of how to reconcile competition rules and the special characteristics of sport'*.
- Rules concerning the release of players for national teams: *'no conflict between the rule and any provision of Community law'*.
- Rules concerning doping: *'must be considered as pure sports rules and not subject to the prohibitions of Community law'*.



## 2. Integrity of Sport

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- Rules relating to good governance of clubs – club licensing: *'...fall within the legitimate autonomy of the football authorities'*.
- Rules related to the ownership/ control/ influence of clubs: *'the discretion of the football authorities to take the necessary steps to safeguard the integrity of the competitions that they organise should be respected as matters falling within their natural sphere of influence'*.
- Rules concerning players' agents: *'are inherent to the proper regulation of football and therefore compatible with Community law'*.



## 3. Competitive Balance

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- Rules concerning home grown players: *'such a system, which promotes education and training and competitive balance should be seen as compatible with Community law'*.
- Rules concerning the central marketing of commercial rights: *'it is both acceptable and necessary for the football authorities to require clubs to commit to a central marketing model as a condition of their participation in a sporting competition'*.
- Rules concerning salary caps: *'this is a subject that should fall within the regulatory purview of sports governing bodies in Europe'*.



# The Issues

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- The Report recommends the widening of UEFA's territory of 'autonomy'.
- But *'...both UEFA and its national associations must ensure that they are sufficiently representative and democratic and that they also respect appropriate governance standards'* (p.48).
- The Nice Declaration ***did not*** extend to UEFA an open ended invitation to UEFA to ignore EC law.
- Have the underlying problems of sports litigation been tackled since Bosman? – Stakeholder representation (who gets what, when and how)? See Oulmers.



# Stakeholder Representation in UEFA

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- Professional Football Committee (discussions with leagues – EPFL, based on 1998 Memorandum of Understanding).
- European Club Forum (represents best performing 100 clubs). No recognition of G14.
- Clubs Competitions Committee (discussions with clubs on UEFA competitions).
- Bi-lateral discussions with Fifpro (players union) based on 2005 Memorandum of Understanding.
- UEFA, Leagues and Fifpro Panel (tripartite dialogue).
- However, the stakeholder committees and panels are not formally part of UEFA decision making procedures.



## The State of the Discipline?

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- If the IFRs recommendations are adopted the territory of sporting autonomy will be expanded. Analytically, how can we explain these expansions and possible contractions?
- Multi-Level Governance
- Intergovernmentalism
- Neo-functionalism
- Policy Streams
- Advocacy Coalition Framework
- Policy Communities
- New Institutionalism



# Conclusions

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- Legal certainty - social dialogue a way forward?
- Underlying problems – what role for the social partners?
- State of the discipline – over to you...