

Review of the Balance of Competences between the United Kingdom and the European Union:



The Football Association's Response

August 2013

Introduction

The Football Association is the national governing body responsible for football in England. The FA's remit is to support, govern and develop the game from the grassroots through to the professional game. The FA also runs 24 national teams (which include, men's, women's, youth and disability teams) and its own competitions such as the Women's Super League and The FA Cup. As a not-for-profit organisation, The FA invests the revenue generated from these assets back into the game.

The EU's competence in sport

1.1 To what extent should the EU be exercising its supporting competence for sport to add value at a European level?

The Lisbon Treaty (or Treaty for the Functioning of the European Union, TFEU) gave the EU a competence in sport for the first time. Specifically Article 165 gives the EU this supporting competence, although it prohibits the harmonisation of regulation in the field. The FA believes that this supporting role is appropriate for the EU. This supporting role means that the EU should only act if it is better placed than the Member States to do so because of the scale or effects of the proposed action and the EU should recognise the principle of subsidiarity within sports policy and that it should only take action in the field when Member States request such support. The UK Government should ensure that it holds the EU to account to this effect; but also recommend EU intervention in specific areas where the EU's action would be helpful for sport in the UK.

Within this remit, it is therefore very important for the EU to recognise the parameters within which it should be working and, very importantly, the structures of sport across Europe. The EU should ensure that it consults with national federations when intervening in the field of sport. Sports are run nationally by national governing bodies in individual countries; this national subsidiarity for sport as well as Member States should be recognised and respected.

2.5 What other areas of EU competence or activity impact on your sector and how?

In order to provide the context for the rest of this paper, it seems appropriate to answer question 2.5 before returning to the narrative of the consultation.

Despite the EU only recently receiving a competence in sport, and despite this competency only being a supporting one, the EU has long influenced how sport is run and with very direct effect. In 1974 the European Court of Justice ruling in *Walrave and Koch v Association Union Cycliste* stated that sport was only subject to EU laws "in so far as it constitutes an economic activity", whereas in

Dona v Mantero [1976], the courts ruled that rules imposed purely for a sporting reason need not apply to EU laws.

This provides a somewhat delicate balance for sport which is often very difficult to interpret, given that it could be argued that all rules are of a sporting nature and all activity is economic. Since the 70s, the ECJ has influenced sport on a regular basis in cases such as Bosman (player contracts), Deliege (picking of national teams for competition), Lehtonen (transfer windows), Simutenkov (quotas on third country nationals) and Murphy (media rights). The current ECJ position (from Meca-Medina- an anti-doping case) clarifies that the specificity of sport must be ruled on by a case by case basis¹ which, while defending the specificity of sport, does not give sport any legal certainty.

The EU's new powers actually provides it with a very positive opportunity as it should be able to, for the first time, analyse the other competences which affect sport and, with the input of the Member States, define this specificity of sport and thereby providing better legal certainty in support of national federations and the specificity and subsidiarity of the sports movement. This would prevent sports policy being shaped in the courts.

1.2 What value have you seen from the 2011-14 EU Work Plan on Sport, and what should be the EU priorities for sport in the future?

The implementation of the EU Work Plan has seen the setting up of expert groups on education and training, the fight against doping, the sustainable financing of sport and match fixing. Given that the EU has a supporting competence in sport, these appear to be sensible priorities for the EU. However, as outlined in the previous section, the sports movement may well expect the most influence from the EU to be exerted in 'non-sporting' competences.

The UK Government should be congratulated on its proactive work in ensuring that each of the working groups had UK representation and many were chaired by UK representatives. However the challenge in running such working groups is ensuring representation is appropriate. In a competence that is only a supporting one, sport is still run by national organisations and making sure such bodies have access to the group is important.

2.1 What evidence is there that EU action in the areas of Culture, Tourism and/or Sport benefits or disadvantages the UK?

There is no doubt that EU action in sport has shaped sport in the UK and across Europe. As outlined in previous sections, free movement of players, transfer windows, the prohibition of national quotas and the right to play in national teams have all been shaped by ECJ decisions.

It is clear from these rulings that the specificity of sport does not mean an exemption for sport from EU law. The EU, and indeed Member States should recognise, however, that, in order to nurture grassroots/non-professional sport, sport needs to be able to continue to develop rules autonomously – and interventions, if any, should help grassroots/non-professional sport and/or be proportionate (please see the following section).

¹ Walrave and Koch C-36/74, Deliege C-51/96, Lehtonen C176/96, Simutenkov C-265/03, Meca-Medina C-519/04, Murphy C-403/08 & C-429/08

2.2 Do you think the EU should do more, or less in relation to Culture, Tourism and Sport, and why?

While the balance of EU competences is reasonable within sport, it would appear that the EU could do more to support sport and ensure sustainable financing of grassroots sport. The FA, as a not-for-profit organisation, uses the revenue made from its competitions, the England team and Wembley Stadium to reinvest into football. The FA has reinvested £100m per year for the last four years back into the game. This model is designed to support grassroots sport and we would welcome the EU intervention to ensure this model can continue specifically in:

Broadcasting: The 2007 White Paper on Sport supported the principles of collective selling and territoriality. Collective selling means that The FA can sell the rights to The FA Cup as a whole and redistribute revenue to grassroots sport and not just to the individual teams in a televised match. Likewise The FA is able to sell the rights to The FA Cup around the world which allows different markets to customise the product as they desire. The territorial nature of sports markets and collective selling should be classic cases of the specificity of sport and should be promoted as such.

Digital Piracy: The EU seems focussed on creating a pan-European digital market in order to open the marketplace and allow consumer choice across Europe. Such a pan-European proposal threatens the territorial markets which sport current uses. With respect to barriers to entry in the market, recent activity in England has shown that the barriers for new entrants are minimal. BT Vision is a new entrant and will cover The FA Cup this season along with the Women's Super League. BT has also acquired the rights to a number of Premier League games.

The European Commission can act to help develop the market by taking action against those who run parasitic websites which provide illegal digital streaming of matches. Such streaming of sport is common and, for example, the advertising received on such sites is estimated to be £12m per year on English Premier League football matches alone. Considering that The FA, as a non-profit organisation, invests the revenue it generates from its media rights into supporting grassroots football, ensuring that 100% of the value of rights is diverted to sport is of real importance for the long term sustainability of grassroots sport.

Sports Owners Rights: The European Parliament has stated in three reports that sport owner's rights should be protected. The protection of the value of these rights, as outlined above, are vital to our reinvestment model and The FA would welcome further protection of sports owners' rights in order to strengthen our ability to reinvest in grassroots sport.

State Aid: The Commission is now reviewing State Aid and, while The FA would support clarification and further assistance to grassroots clubs which is a national competence across the EU, any relaxing of State Aid rules at the professional level could allow favourable deals on land from local authorities, tax breaks or debt relief and other supportive measures. These should not be considered appropriate in the professional game as it would make the professional game within Europe less of a level playing field and result in possible circumvention of UEFA Fair Play requirements in UEFA competitions by allowing State Aid to pro-clubs which could then happen in some countries and not others.

Staging Major Events: The UK has proved very successful in staging major sporting events in recent years. Events like the Champion's League Final at Wembley are reported to add over £300m to the Global economy, including some £50m to London. The Ryder Cup in Wales 2010 saw the total economic impact for Wales of £82.4m. These events are won on a competitive bidding process and are won against stiff opposition. Support is given by National Governments to bid for these events. As taxation concessions are included in such support, this cannot be harmonised at EU level, we

would therefore recommend the UK Government ensures that bidding for international events is made easy by creating Major Event legislation. This could ensure that help was given to right owners in terms of ambush marketing, ticket touting, taxation and other bid requirements.

2.3 What are the benefits or disadvantages of directing funding through the EU rather than national arrangements?

Grassroots sport would benefit greatly from EU funding which would provide capital expenditure and facility investment. Transnational EU projects in the field of sport are largely academic in nature and therefore lack direct investment which the people of Europe would be able to recognise as a positive intervention. It should be noted that the current level of investment in these projects is relatively low; a higher budget for capital projects with match funding locally would have a higher impact on grassroots sport across Europe.

2.4 Have you noticed any change in EU activity or emphasis since the 2009 Treaty of Lisbon and is this welcome?

There has clearly been added interest in sport in recent years, both directly in terms of the DG EAC's competence, but also indirectly with further investigations on State Aid in professional sport from DG MARKT.

2.5 What other areas of EU competence or activity impact on your sector and how?

This question is answered at the start of this paper.

2.6 What international bodies or arrangements are important to your sector beyond the EU?

Within football the most obvious international bodies with which The FA deals are UEFA and FIFA. As previously mentioned in this paper, it is the national federations across the world that run football in the individual countries. The rules governing the game are created globally by FIFA and nationally by the national federation. UEFA is the European umbrella body for national football associations in Europe and organises its European club and international competitions but does not create rules that apply nationally other than in relation to its competitions. This distinction is important and one policy makers must understand when creating pan-European interventions.

2.7 How could the EU co-ordinate its activity in these areas of competence to greater effect?

As previously mentioned, it is important for the EU to involve national federations in discussions and it is important that the UK Government continues its strong liaison with national federations to ensure that the voices of sports in the UK are represented in Europe.

Conclusion

The supporting competence afforded to the EU through the Lisbon Treaty seems not to have had a marked effect on how EU policy affects sport. This is mainly because it is non-sporting (economic) policy which impacts sport the most. What should have an effect on how the EU treats sport is the requirement for the EU to take into account the specific nature of sport; the chance to help national federations develop sport using this specificity should be encouraged and developed.

This actually provides a real opportunity for the EU to add value to the sporting landscape if it can create more legal certainty for sport with regards to its specificity and in its assessment of

competition law with respect to sport. It should, however, be for the Member States to direct the EU in the areas in which they feel The EU ought to act. The FA believes that the EU can play an important role in the sustainability of sport by ensuring that media rights, property rights and other income streams for sport are protected.

Finally, it is important that the EU recognises the structures of sport across Europe and that sport is not only a national competency for Member States, it is also a national competency for sports federations and the EU should ensure that this structure is respected when working in the field of sport.