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The Capture of EU Football Regulation by the Football Governing Bodies

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Abstract

The article traces how European football regulation has been ‘captured’ by the football governing bodies. The European Commission re-aligned with the European football governing body Union des Associations Européennes de Football (UEFA), which enabled the latter to solidify its role as industry regulator. Four factors seem to account for the successful capture of European football regulation by UEFA. (1) UEFA enjoys a substantial mobilization advantage. (2) As legitimacy maximizer, the Commission avoids unnecessary confrontations. (3) Substantial interest heterogeneity amongst football stakeholders such as clubs, players and leagues prevented the emergence of strong countervailing constituencies to oppose UEFA regulatory proposals. (4) The legacy of amateur ideology in European football nurtures a strong socio-cultural regulatory frame, which depicts the football governing bodies as trustees of the public interest in football as community institution. The findings come with implications for EU football regulation and the limits of the EU regulatory state.

Keywords: UEFA; football regulation; reputation; lobbying; regulatory bodies; regulatory capture

Introduction

When in April 2021 a number of top clubs challenged the monopoly of the European football governing body, Union des Associations Européennes de Football (UEFA), by announcing an independent ‘Super League’, the European Commission (Schinas, 2021) and the European Parliament (2021, paras. 13–14) quickly signalled their support for UEFA. This open partisanship indicates far-reaching changes in EU football regulation since 1995, when the Commission used its powers under competition law to challenge the dominant position of the football governing bodies (Duval and Van Rompuy, 2016). Thus, this article aims to explore the dynamics behind this remarkable change and discusses the implications for wider EU regulatory politics.

In order to do so, the article proposes the use of ‘regulatory capture’ to complement existing frameworks that have studied the development of EU sport policy and regulation. These frameworks suffer from analytical gaps insofar as they focus too much on the macro level, only cover early stages of the policy cycle or fail to account for stakeholder interactions and the transformatory impact of regulatory policies. Yet, the main research gap addressed here is why the EU seems to have not lived up to its regulatory potential in the case of football. The article contributes to the debate on EU football regulation by claiming that its trajectory partially resembles a ‘regulatory capture’ during which UEFA managed to persuade EU institutions that its regulatory powers should not be dismantled but rather reinforced. The article emphasizes the importance of ‘cognitive capture’ and the relevance of policy feedbacks.

I. Theoretical Background

In order to identify our original contribution, we first discuss existing scholarship on EU sport regulation. Then, we review literature on regulatory capture to set our analytical framework.

The study of EU football regulation commenced with a growing body of legal scholarship examining the application of EU law to football by the Court of Justice of the European Union (CJEU) and Commission (Foster, 2000; Gardiner et al., 2001; Parrish, 2002; Weatherill, 2003). Legal scholarship, though, faces difficulties in analysing the dynamics driving litigation and the reasons behind political turns in regulatory and legal debates. In other words, legal scholarship lacks the tools to explain why changes in EU sport regulation happen. Therefore, scholars adopted conceptual lenses from political sciences, public administration and European studies and undertook macro-level analyses of EU football regulation. By utilizing Sabatier's advocacy coalition framework, Parrish (2003) claimed that actor coalitions forming around corresponding belief systems shaped EU sport regulation, which was conceptualized as a combination of 'single market regulation' and 'socio-cultural regulation' driven by two competing advocacy coalitions. The former defined sport as pure business to be deregulated, whereas the latter viewed sport as a socio-cultural activity needing regulatory protection from the markets. The so-called socio-cultural regulatory frame is rooted in the European amateur tradition, which emphasizes the social role of sports and involves strong sentiments against professionalism and commercialization. Parrish failed, however, to provide mechanisms to explain how actors put their beliefs and policy objectives into practice. Moreover, Parrish did not examine additional explanatory variables. Also, subsequent research criticized Parrish's depiction of the rival advocacy coalitions, which are not as homogeneous as claimed, whilst beliefs systems of actors and the regulatory processes are more complex (Yilmaz, 2018).

Following Parrish, scholars explored the impact of EU sport regulation on sport governance. Adopting an agenda-setting perspective, García (2007, 2009) showed that the EU's growing involvement in football transformed the vertical governance pyramid of the sport governing bodies (SGBs) towards more horizontal stakeholder networks. Building on this work, García and Meier (2012) and Meier and García (2013) used concepts of interest politics. They claimed that the institutional setting of the EU provided aggrieved football stakeholders with a number of access points allowing them to challenge the monopolistic power of UEFA and football's global governing body, Fédération Internationale de Football Association (FIFA). Thus, understanding the outcomes of EU football regulation required considering preferences and access of institutional and non-institutional stakeholders. However, they relied primarily on institutional opportunity structure as the key explanatory variable. Moreover, they did not examine responses of football SGBs that led to an improved stakeholder representation and involvement in the governance of football. Finally, they did not examine the role of the Commission as regulatory agency and explored the more general implications for understanding EU regulation. Thus, their framework did not allow for an encompassing conceptualization of decision-making, implementation and, crucially, evaluation.

Recently, Geeraert (2016, 2019) and colleagues (Geeraert et al., 2013; Geeraert and Driessens, 2015, 2021) attempted to bridge some of the identified gaps. Geeraert and colleagues deserve credit for formulating a framework that moves the analysis of EU sport

policy beyond the early stages of the policy-making cycle. These authors analyse the relations between the Commission, other EU institutions and SGBs to explain the extent to which the EU might be able to control UEFA and FIFA in their role as governing bodies. The authors rely on a principal–agent (PA) framework and present a triangular principal–supervisor–agent model whereby the football SGBs have political and football stakeholders which approach the Commission or the CJEU to deploy control instruments for sanctioning UEFA or FIFA’s misconduct. From a governance perspective, Geeraert (2016, p. 1) interrogates the potential of the EU to ‘curtail’ the autonomy of FIFA and UEFA.

This triangular model aptly summarizes the changes in European football regulation as a result of the involvement of several EU institutions in sport policy. It also maps different avenues for interactions between football stakeholders, SGBs and EU institutions. Another original contribution is to emphasize the emergence of an EU ‘sport policy route’, where the Commission, lacking strong formal competencies, meets the SGBs on equal footing. Nevertheless, it is claimed that the Commission manages to use the policy route to influence the SGBs via ‘steering’ by capitalizing on a long-term ‘shadow of hierarchy’ (Geeraert, 2016; Geeraert and Drieskens, 2015). Hence, this framework allows us to explore in more detail the interactions between the Commission and sport stakeholders.

This specific PA framework centres mainly around the concept of control with bold claims about the power of the EU to ‘curtail’ the autonomy of FIFA and UEFA (Geeraert, 2016, p. 1). In fact, the framework focuses more on the potential and activation of control instruments by EU institutions rather than the actual degree of regulatory control over UEFA and FIFA. Moreover, Geeraert (2016) identifies different strategies through which SGBs might mitigate or resist control from the EU institutions: manipulating the preferences of their principals through lobbying, out-of-court settlement of cases, increased stakeholder participation or expanded arbitration. Identifying such a vast array of mitigation strategies indicates that there is danger of overemphasizing the efficacy of the EU’s control over football SGBs. Geeraert (2016) even states that within the multiple PA relationships, ‘it is nearly impossible to assess the extent to which control is exercised’ (p. 20). Hence, there exists an epistemological problem leaving the analyst with the dichotomic choice to diagnose either none or some EU control. In addition, Geeraert (2016, 2019) and Geeraert and Drieskens (2015) do not explain convincingly why and how some mitigation strategies are selected over others and do not provide variables to identify the degree of control that the Commission is able to achieve, or, conversely, the degree of mitigation that those strategies are able to achieve. Moreover, the intervening role of football stakeholders in the process is not fully examined. Dissatisfied football stakeholders are portrayed as bystanders that rely on EU institutions to control UEFA and FIFA. These gaps reflect a fundamental shortcoming. Geeraert and colleagues (2015, 2019) focus primarily on EU institutional features of football regulation. This runs the risk of neglecting an important part of regulatory activity, that is, the complex interplay between sectoral dynamics, policy outcomes and regulatory politics.

Hence, existing literature on EU sport policy and regulation shows analytical limitations, which relate to a focus on earlier stages of the policy process, an inability to explore in detail interactions between EU institutions and SGBs, ambiguity about the actual control of the Commission over SGBs, and a lack of concepts to analyse the dynamics of the sport industry and the role of football stakeholders in the regulatory process. In order to

fill some of those gaps, we argue that it is necessary to understand not only how UEFA and FIFA might be able to limit the Commission's regulatory prowess but we also need to explore how UEFA has won the active support of EU institutions even for controversial regulatory ambitions. We propose to use the concept of regulatory capture because it has broader relevance for a deeper understanding of the limits of the EU regulatory state. The framework is a useful complement to the existing literature because it emphasizes the transformatory impact of regulatory policies.

Building on capture theory is appropriate as the EU, and in particular the Commission, have been characterized as the epitome of the regulatory state in which markets should deliver desirable policy outcomes once adequate regulations are employed for disciplining the behaviour of economic actors and for reducing market failures. To avoid political inference and to guarantee technical expertise, the regulatory state delegates policy functions to non-majoritarian institutions (Lodge, 2008; Majone, 1997; Young, 2007). Thus, the non-majoritarian character of the Commission has been compared to that of an independent regulatory agency, which enforces the treaties adopted by the Member States. Moreover, regulation is the primary policy mode of the EU due to limited budget power (Majone, 1997).

However, the literature on regulatory politics has always emphasized the risk of capture, which refers broadly to the process through which special interests affect state interventions and, more narrowly, to the manipulation of regulatory agencies by the very business interests they are supposed to control (Dal Bó, 2006). While capture theory has a long tradition, recent accounts also employ PA theory but primarily emphasize that 'agency loss' is a fundamental problem in every form of delegation (McNollgast, 1987). As regulation often relies on a three-layer hierarchy composed of (1) a political principal who delegates powers to (2) an independent agency (supposed to regulate an industry) and (3) the industry, interests have different targets for capture: the political principal and the agency itself (Rex, 2020). PA theory assumes that the principal tries to control agency behaviour by using rewards and sanctions, such as change of legal mandates, replacement of officials, budget constraints and more (Shapiro, 2012). Since monitoring agency behaviour and enforcing compliance creates transaction costs, administrative procedures authorize more diverse interest groups than business representatives to ring the 'fire alarm' to trigger political responses to agency drift (McNollgast, 1987).

Yet, the PA theory of regulatory capture avoids suggesting that the 'shadow of hierarchy' or 'fire alarms' suffice to prevent agency loss. Scholars have identified a number of robust mechanisms of capture: (1) Business interests enjoy a mobilization advantage to lobby legislators to promulgate favourable legislation (Levine and Forrence, 1990); (2) over an agency's life cycle, political principals might lose interest in the regulatory mission so that the agency relies on business interests as the last bastion of support (Martimort, 1999); (3) agencies are heavily dependent on the expertise provided by regulated industries with the latter exploiting such information asymmetries (Laffont and Tirole, 1991); (4) agencies identify with the industry on the basis of shared cultural norms or cognitive frames (Kwak, 2014); (5) regulated industries might threaten to damage a regulator's reputation by escalating conflicts; and (6) business interest bribe officials directly or indirectly (Dal Bó, 2006). Due to its shared origin in PA theory, some of these mechanisms resemble the mitigation strategies aiming to limit EU's control over SGBs

as identified by Geeraert and colleagues (2015, 2016). Yet, in particular the life cycle hypothesis draws scholarly attention not only to capture mechanisms but also to the fact that the relationship between principals, regulators and regulated industries is of a dynamic nature, which is not only affected by (exogenous) changes in policy salience. Thus, capture theory emphasizes the dynamic links between sectoral interest conflicts, regulatory politics and policy outcomes. Regulatory policies can transform regulated sectors. They can reconfigure power balances and stakeholder constellations. Regulatory policies can change the political environment by producing (unintended) policy outcomes, which might motivate political principals to impose new agendas, and which will feed back into the regulatory process (Moynihan and Soss, 2014).

Capture theory has been criticized for conceptual and empirical weaknesses. The concept has been used both as a description of which interests prevail and as a normative criticism of agency practice (Shapiro, 2012). Moreover, regulatory capture has been insufficiently operationalized (Rex, 2020) and relies on rather heroic ideas on a clearly defined public interest (Potter et al., 2014). Finally, the empirical evidence for regulatory capture has been often ambiguous (Rex, 2020; Shapiro, 2012). In addition, in contrast to most regulatory agencies, the Commission enjoys substantial discretion as a policy entrepreneur (Lodge, 2008). Therefore, Majone (2001) argued that the Commission is not a mere agent but assumes a fiduciary trusteeship function. The Commission's substantial discretion raises all the more the question why the Commission has not lived up to its regulatory potential in the case of football.

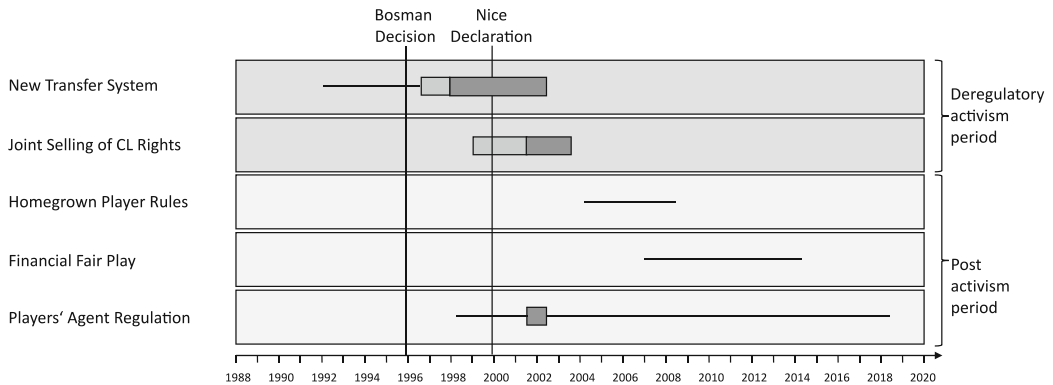
Capture theory is a useful analytical tool for exploring this question. On the one hand, it provides a clear framework to assess regulatory outcomes. Accordingly, we define capture as (a) bias for UEFA, (b) despite the controversial character of certain regulatory policies and conflicting interest(s) of other stakeholders. Hence, we do not claim the existence of a well-defined public interest but emphasize its contested character. On the other hand, capture theory as a more general framework has identified a robust set of mechanisms for interest group influence on regulators and allows exploring the transformatory impact of regulatory policies.

II. Research Design and Methods

Case selection was based on two criteria: (1) The relevance of the EU policy area (legal base) – thus, cases related to the four fundamental freedoms and to competition take precedence; and (2) size of the affected constituency. Eventually, we selected five regulatory ‘encounters’ of the Commission and UEFA since the 1995 Bosman ruling. Due to their salience, some of these cases have been analysed before. However, we investigate more recent cases and apply a different theoretical lens to it, contributing to the originality of this study (Figure 1).

Since we measure capture as ‘preference attainment’, the case studies are structured as follows: (1) we examine the regulatory issues at stake, (2) discuss the controversies and legal basis surrounding them, (3) present the constellation of stakeholders and their interests, and (4) assess regulatory outcomes from a capture theory perspective. The narrative presentation allows moving beyond ‘pattern matching’ (Yin, 2014) and applying process-tracing techniques, which aim at the ‘selective explanation of salient features of a historical episode by means of partial causal analogies’ (Tilly, 2015, p. 13). Capture

Figure 1: Chronology of the Regulatory Issue Examined



New transfer system. 1 January 1992: 3 + 2 rule becomes effective; 15 December 1995: Bosman judgment; 27 June 1996: Commission communication to FIFA and UEFA informing of legal problems of the transfer system; 14 December 1998: Commission starts infringement procedure against FIFA; 5 March 2001: Informal agreement between FIFA and Commission; 5 June 2002: Commission closing investigation.

Joint selling of CL commercial rights. 1 February 1999: Notification to the Commission; 18 July 2001: Statement of objection by the Commission; 13 May 2002: Third parties invited to comment on modified selling arrangement; 23 July 2003: Commission decision.

Homegrown players rules. January 2004: UEFA starts drafting rules; June 2004: UEFA presents first draft of rules to stakeholders; January 2005: UEFA meets with Commissioners for Competition and Education and Culture; April 2005: UEFA Congress approves rules; 28 May 2008: European Commission endorses rules.

Financial Fair Play. January 2007: UEFA announces plans to tackle financial problems; September 2009: UEFA Executive Committee adopts FFP concept; May 2010: UEFA Congress approves FFP framework; July 2011: Implementation of FFP starts; 21 March 2012: Joint statement of Commission and UEFA supporting FFP; 19 May 2014: DG Comp refuses to investigate FFP.

FIFA's Players' Agents Regulation. 20 May 1994: FIFA Adopts the Players' Agents Regulations (PAR), 23 March 1998: Commission starts investigation against PAR; 3 August 2001: After removal of restrictive elements Commission closes investigation; May 2007: European Commission included the issue of agents in the White Paper on Sport; 2009: FIFA started reforming PAR; November 2009: EU study on agents published; 17 June 2010: European Parliament adopted a resolution on players' agents; 1 April 2015: FIFA adopted its new Regulations on Working Intermediaries; June 2018: FIFA decided to re-introduce the licensing system. Boxes indicate interactions between football governing bodies and Commission. Light shade refers to informal interactions, dark shade to formal proceedings against of the Commission against the football governing bodies.

theory provides the guidance to empirically single out and describe mechanisms of regulatory capture and to construct theoretically structured and verifiable stories about coherent sequences of motivated actions (Aminzade, 1992). Our analysis relies on rich primary sources, that is, official documents of football stakeholders and EU institutions, which represent on-the-record versions of actors' moves and events, as well as secondary sources, that is, existing academic research. Hence, we can trace lobbying and arbitration activities, stakeholder involvement and conflicts, and the political resonance of regulatory frames. For the sake of brevity, we present stylized facts.

The Deregulatory Activism Phase

The EU's involvement in football's regulation was provoked by the governing bodies' restrictive labour market regime. Clubs hiring a player had to pay transfer fees to the former employer even after a contract had ended. Additionally, the number of foreign players was restricted. These regulations clearly exploited players but were believed to promote more balanced competitions, avoid salary inflation, subsidize small clubs and inspire talent development. Notwithstanding a clear violation of EU law on freedom of movement, the Member States pressured the Commission to enter a questionable agreement with UEFA (the so-called 3+2 rule) in 1991 (Parrish, 2003). In the famous Bosman judgment of 1995, the CJEU abolished many labour market restrictions and also heavily criticized that agreement (Weatherill, 1996). Bosman motivated the Commission's Competition Directorate (DG Comp) to engage in deregulatory activism against UEFA and FIFA, which were classified as associations of undertakings restricting competition or abusing dominant positions [Arts. 101 and 102 Treaty on the Functioning of the European Union (TFEU)]. Simultaneously, football's commercialization after Bosman inspired a different Commission department, DG Education and Culture (DG EAC), to coin the term 'European Model of Sport' in 1998 for a highly ideologized version of a socio-cultural regulatory frame of sport (European Commission, 1998; García, 2009).

Player Market Regulation

Regulatory Issue

After Bosman, FIFA, UEFA and clubs replaced the old transfer system by extending contract terms and by demanding astronomic fees for premature abolition. DG Comp perceived this as an illegal circumvention of Bosman. In December 1999, the Commission sent an official 'statement of objections' to FIFA. The Commission demanded a profound reform and made clear that mobility restrictions were only possible for arrangements promoting competitive balance and training efforts (European Commission, 1999).

Interest Constellation

The constellation of interest was complex (Meier and García, 2013). Top clubs and UEFA were trying to defend the status quo (García, 2011). In contrast, FIFA was primarily interested in increasing training compensations. The Member States clearly supported UEFA and emphasized the need to maintain football's economic stability and training compensations (European Council, 2000). The international players' union FIFPro was paralysed by a clash between a deregulatory faction and a pragmatic one concerned about economic stability (Dabscheck, 2003). The Commission was also divided, with DG Comp aiming for a far-reaching liberalization and a faction willing to accept training compensations (Reding, 2000).

Policy Process

DG Comp's start of formal proceedings provoked intense lobbying efforts by the football industry (Meier and García, 2013). Member States clearly disapproved of DG Comp's deregulatory approach but could not agree on a treaty revision granting sport a legal exemption. The negotiations conducted by the Commission arrived at a deadlock after UEFA and FIFA clashed and FIFPro almost split. This created an opportunity for the

Member States to put direct political pressure on DG Comp and to support a negotiated agreement between FIFA and the Commission (García, 2011).

Outcomes from a Capture Theory Perspective

The transfer system agreement of 2001, seen from the initial demands of DG Comp, represented a major concession to the football governing bodies and the clubs. Although the agreement implemented traineeship contracts and restricted contract durations, it maintained in essence the post-Bosman transfer system (García, 2011). The football industry had successfully lobbied the Member States as principal to discipline the Commission as their agent, although a comprehensive sport exemption was not granted. The entire conflict indicated a strong cultural capture not only of the Member States but also parts of the Commission, which finally acknowledged that specific player market regulations were necessary for football's social role, and opposed strong de-regulation. However, the Commission indicated its frustration with the lack of support as regulator, stating that it would prefer if future player market issues could be dealt with by social dialogue (European Commission, 2001a).

Joint Selling of Champions League (CL) Broadcasting Rights

Regulatory Issue

Collective selling of football TV rights is common in professional leagues as a means for redistributing revenues. However, collective selling creates supply side monopolies. UEFA used the joint selling system for the CL to restrict the number of matches broadcast and to enter long-term exclusive contracts with broadcasters (European Commission, 2003). Aware of the need to comply with EU competition law, UEFA applied for clearance of its CL collective selling arrangements from the Commission under Art. 101.3 TFEU. As UEFA offered only to restrict contract duration, DG Comp was unwilling to accept UEFA's initial proposal (European Commission, 2001b, 2001c, 2003).

Interest Constellation

For UEFA, the regulatory battle was existential because DG Comp raised the crucial issue of broadcasting rights ownership when it invited the so-called G-14, a lobby group of major European clubs, to comment on UEFA's proposal (Van den Brink, 2000). The preferences of the Member States were heterogeneous since not all national leagues practised collective selling at that time and the Member States were interested in creating a vibrant media industry. Thus, the Member States supported not joint selling directly but only the maintenance of revenue distribution as 'beneficial to the principle of solidarity between all levels and areas of sport' (European Council, 2000). While the Commission involved the media industry as another countervailing force, broadcasters and media operators actually supported the principle of exclusive media rights. Sports rights agencies feared that decentralized marketing could damage the CL brand (European Commission, 2003).

Policy Process

Without strong support by Member States, it was of major importance for UEFA that neither media operators nor European top clubs fundamentally challenged the incumbent

collective selling system. The top clubs only demanded secondary exploitation of broadcasting rights, decentralized selling of so-far minor rights and a stronger say in CL sponsoring (Meier and García, 2013). Hence, the Commission resorted to a less adversarial approach.

Outcomes from a Capture Theory Perspective

DG Comp maintained collective selling, but requested UEFA to modify its approach: Selling of different packages with limited exclusivity and contract periods (European Commission, 2003). In terms of the highly important ownership of rights, the Commission opted for an equitable decision considering both UEFA and clubs co-owners (European Commission, 2003, para. 32–40). While the Commission did not refer to solidarity within football as a reason for maintaining joint selling – it rather cited brand value and consumer attractiveness as economic rationales – the decision stabilized UEFA's position. Once again, UEFA had proven to be able to mobilize high-level support by invoking a regulatory frame according to which the specific character of the football industry justified specific governance arrangements.

The intervention of the Member States signalled to the Commission that it risked becoming isolated if it adopted a highly adversarial approach towards UEFA. Moreover, countervailing constituencies to UEFA (for example, clubs) did not possess the capacity or willingness to serve as strong allies for DG Comp. Despite UEFA's lobbying success, the two incidents catalysed changes in football governance. So far marginalized football stakeholders, primarily players and clubs, became aware that EU competition law provided a low-cost venue for contesting UEFA's power (García and Meier, 2012; Geeraert and Drieskens, 2015). UEFA conversely realized that better stakeholder involvement was a potential strategy to avoid such confrontations (Holt, 2009).

III. The Post-Activism Phase

UEFA Rules on Homegrown Players

Regulatory Issue

Since the player market liberalization following Bosman, UEFA had criticized that clubs preferred to hire players from abroad and that there was a need to regulate clubs' lack of investment in local training of players (UEFA, 2004b). As a remedy, UEFA (2005a) developed rules on 'locally trained players' in 2005 according to which clubs participating in UEFA competitions will register no more than 25 footballers, eight of whom need to qualify as either 'club trained' or 'association trained' (UEFA, 2019). In order to avoid violations of EU law, the homegrown player rules do not consider the nationality of a player. Nevertheless, the rules restrict the clubs' freedom to hire players.

Interest Constellation

UEFA and national football associations (FAs) were promoting the homegrown player rules, while clubs and professional leagues were divided (Hughes, 2005). Crucial also was that the EU institutions were broadly in support. This ranged from the formal endorsement of the European Parliament (2007, 2012) to the informal support of the European Commission DG EAC (European Commission, 2007).

Policy Process

The support of several EU institutions was the product of intense lobbying by UEFA (García, 2007), which was keen to avoid any formal proceedings (UEFA, 2004a). UEFA negotiated the homegrown player rules for three years to win the support of football stakeholders, EU institutions and national governments. Of particular importance was the formal support of the Parliament (European Parliament, 2007) and the absence of any effective opposition. Clubs and leagues decided not to oppose these rules, as they could not find internal consensus, and it would have been unpopular in some national markets (Hughes, 2005).

Outcomes from a Regulatory Capture Perspective

UEFA succeeded in reversing some player market liberalization and imposed a new layer of regulation to the players' market. Moreover, there was no formal intervention of the Commission or the Court. UEFA changed its political strategy and lobbied EU institutions directly to win their support. The long-planned campaign also silenced potential resistance from within the football industry. Ultimately, the strategy's success was rooted in the popularity of the socio-cultural regulatory frame, which links labour market restrictions to socially desirable training efforts (European Parliament, 2007, 2012).

*UEFA Financial Fair Play Regulations**Regulatory Issue*

The system of promotion and relegation and the character of most clubs as non-profit entities have made persistent overspending and debt into key features of the European football industry. In order to improve the financial management of football clubs, UEFA developed the Financial Fair Play (FFP) regulations. Key was the introduction of a 'break-even rule', limiting a club's debts in each three-year reporting period. Moreover, money injections by benefactor owners were tightly restricted. If a club violates these regulations, UEFA can impose sanctions ranging from fines to exclusion from competitions. The regulations heavily restrict the commercial freedom of clubs and could potentially be contested as abuse of a monopoly position as both the efficacy and the legality of FFP have been questioned: Overspending and even insolvency do not necessarily threaten the existence of football clubs, the ban against benefactor money has been characterized as arbitrary and as partisanship of UEFA with the incumbent club elite, and, as FFP allows for annual losses of €5 m, it hardly addresses the more severe economic problems of smaller clubs (Peeters and Szymanski, 2014).

Interest Constellation

Stakeholders within the football industry were divided. Naturally, the big benefactor-owned clubs opposed the FFP concept. However, the project was endorsed by some national FAs. UEFA managed also to gain the support of major leagues (Spain, France, Germany) and powerful clubs, such as Bayern Munich, which felt outcompeted by benefactor clubs (Schubert et al., 2016). Especially the German and the Spanish league had complained about distortions of competition by state aid granted to football clubs. German clubs also seemed to have initiated Commission investigations into state aid cases in football (García et al., 2017). The FFP regulations were further

backed by EU sport ministers (Arnaut, 2006), the European Parliament (2007) and, importantly, the European Commissioner for Competition and Commission Vice President, Joaquín Almunia (European Commission, 2012).

Policy Process

FFP regulations were the brainchild of Michel Platini, who assumed the presidency of UEFA in 2007. The project was supported by the French government, which had the EU rotating presidency in 2008. Key to the success of the FFP project was a successful framing of public discourse. UEFA emphasized increased levels of club debts and denounced benefactor money as ‘financial doping’ responsible for salary inflation, financial unsustainability and risk taking (Schubert et al., 2016). UEFA dominated the public discourse and spent 18 months presenting the concept to internal and external stakeholders. The adoption of the rules in 2009 was relatively simple, as the UEFA Executive Committee was (at that time) only composed by representatives of national FAs. Moreover, UEFA managed to convince EU institutions to endorse the concept. UEFA aligned its FFP project with the Commission’s ambitions to mitigate illegal state aid in football (García et al., 2017), which materialized in a joint statement between the Commission, represented by Joaquín Almunia, and UEFA, represented by Michel Platini:

These objectives [of FFP] are also consistent with the aims and objectives of the European Union [...] the financial regulations by UEFA and the State aid rules by the Commission pursue broadly the same objective [...] There is a strong link between the FFP that introduce discipline and rationality in club football finances, and the State aid rules that prevent unauthorised public interventions [...] FFP and State Aid policy are also consistent insofar as each legal framework provides for specific treatment in the case of expenditure directed towards matters such as youth training and development (European Commission, 2012).

FFP regulations have been challenged twice under EU law by a players’ agent. However, the European Commission (Conn, 2014) as well as a Belgian national court (Van Rompuy, 2015) rejected both cases on procedural grounds.

Outcomes from a Regulatory Capture Perspective

The adoption of the FFP framework represents a major success for UEFA, which gained political support for a controversial regulatory project and the expansion of its regulatory powers. Again, a long-planned campaign created enough support for the initiative and silenced resistance. UEFA managed to convince stakeholders that the social role of the clubs and the football industry required to protect them against overspending. Although most European leagues have adopted their own version of FFP and UEFA claims that FFP is a success (UEFA, 2015, 2018), regulatory outcomes appear questionable. FFP seems to ‘ossify’ the incumbent club hierarchy but not to improve financial stability (Ahtiainen and Jarva, 2020). Moreover, after UEFA banned Manchester City from European club competitions due to breaching FFP rules, the Court of Arbitration for Sport reduced substantially the sanctions and defined such high standards of sufficient proof that it seems questionable how FFP can be enforced against big clubs (Bidder-Potts, 2020).

FIFA's Players' Agents Regulation

Regulatory Issue

The liberalization of the players market gave players' agents a key role. Since agents are usually paid for brokering new contracts, they have been blamed for the increase in transfer activities and player salaries. Therefore, FIFA tried to impose a highly restrictive licensing system in 1994 labelled Player's Agents Regulations (PAR). In 2001, the Commission enforced some liberalization of the PAR (European Commission, 2002b). The remaining restrictions were deemed to promote the better operation of the agent market and economic progression. However, the criminal nature of some agent activities attracted increased criticism (EU Sectoral Social Dialogue Committee for Professional Football, 2017; Yilmaz, 2018). Since the football SGBs lack the capacity to tackle criminal activities, the issue raised the crucial governance question whether player agent regulation should remain a matter of self-regulation.

Interest Constellation

The European Parliament called the Commission several times to adopt a European Agent Directive (Arnaut, 2006; European Parliament, 2007) and a European-wide agent register (European Parliament, 2010, 2017). UEFA resisted repeated calls to become the primary regulator of agents in European football and claimed that the issue fell under FIFA's competences (UEFA, 2005b). The Commission was not interested in assuming direct responsibility and opted instead to become a facilitator of dialogue between football stakeholders on an effective regulatory model (European Commission, 2007b, 2011a, 2011b, 2019).

Policy Process

Players' agents regulation was placed on the EU agenda in the Commission's White Paper on Sport in 2007. FIFA and UEFA managed, however, to ensure their authority to regulate agents was not questioned (Arnaut, 2006). The Commission avoided direct involvement and financed a study on sports agents in Europe in 2009 (KEA, CDES, EOSE, 2009), organized an EU conference in November 2011 and funded a project on football agents in 2018. UEFA and FIFA agreed that an in-depth regulatory reform was required but not through EU or other legal regulation (Yilmaz, 2018, p. 363). While UEFA emphasized 'the Social Dialogue' as an adequate mechanism (European Commission, 2011b), FIFA announced that it 'would go ahead with its draft proposal' for its own self-regulation of agents (European Commission, 2011b). The Parliament continued, however, to press for an EU intervention (European Parliament, 2007, 2010, 2017, 2019a). Yet, even though the first EU Work Plan on Sport 2011–2014 identified sports agents' regulation as a priority (Council of the European Union, 2011, p. 4), FIFA independently adopted new regulations based on the rather loose concept of (non-licensed) intermediaries, which came into force in April 2015 (FIFA, 2015). Only three years later, in June 2018, FIFA decided to re-introduce a licensing model to govern agents (FIFA, 2019). After the European Parliament inquired about the Commission's views on the initiative (European Parliament, 2019b), the Commission once more committed itself to the autonomy of sport (European Commission, 2019).

Outcomes from a Capture Theory Perspective

The regulation of players' agents represents an example of regulatory capture as UEFA and FIFA defended their competence for self-regulation despite missing governance capacities. The issue contradicts claims that sports autonomy will be revoked in case of governance failures (Geeraert and Drieskens, 2021) and is an example of the Commission's unwillingness to act despite its powers. The Commission ignored its principals and avoided confrontation with the football governing bodies and dealing with highly complex legal issues.

Discussion and Conclusion

We have provided evidence that EU football regulation is characterized by regulatory capture as, after a short-lived period of deregulatory activism by the Commission, UEFA managed to solidify and even to expand its role as industry regulator with the backing of several EU institutions. Several mechanisms contributed to and accelerated regulatory capture (Table 1).

First, all cases indicate that UEFA enjoys a mobilization advantage. UEFA enjoyed privileged access to the Member States (Prime Minister's Office (UK), 2000, 2001), which opposed the spillover of EU into football and its deregulatory impact (cases 1 and 2). After the Member States 'disciplined' the Commission, UEFA started directly addressing the Commission and the Parliament (UEFA, 2004b) to determine the acceptability of its regulatory initiatives (cases 3 and 4). Moreover, UEFA has a superior capacity to run lobbying and publicity campaigns (cases 3 and 4). Second, at least in three cases (cases 1, 2 and 5), there is some evidence that the Commission seemed to be concerned that escalating conflicts would damage its reputation (European Commission, 2001a, 2002a, 2007). The Commission acted as a 'legitimacy maximizer' (Murdoch et al., 2018) avoiding unnecessary and unpopular confrontations (García, 2007). Third, countervailing stakeholders were too weak to serve as reliable allies for a stricter regulatory approach by the Commission (cases 1, 2, 3 and 4), and often accepted UEFA's position and legitimacy (Dalziel et al., 2012, p. 102). The weakness resulted from interest heterogeneity (García, 2011), incapacity to assume governance responsibilities or

Table 1: Presence of Mechanisms of Regulatory Capture

Regulatory issues	<i>Mobilization advantage of UEFA</i>	<i>Conflict avoidance by the Commission</i>	<i>Weakness of countervailing interests</i>	<i>Cultural or cognitive capture</i>
(1) New transfer system	++	+	++	++
(2) Joint selling of CL rights	+	++	+	++
(3) Homegrown player rules	++	0	++	++
(4) Financial Fair Play	++	0	++	++
(5) Players' Agents Regulation	+	++	0	+

Legend: ++ Strong presence; + Moderate presence; 0 Absence.

capitulation to UEFA's superior campaigning power (see Schubert et al., 2016; UEFA, 2005a, 2005b). Fourth, case studies 1, 2, 3 and 4 suggest that the ultimate key to UEFA's success is, however, cultural or cognitive capture (Kwak, 2014).

Some of these mechanisms have been identified by previous research and the list of UEFA's potential strategies is not exhaustive (García and Meier, 2012; Geeraert, 2016; Geeraert and Drieskens, 2015). However, the key role of cultural or cognitive capture is one of the main contribution of this article and deserves a more thorough theoretical reflection. It appears paradoxical that notwithstanding the hyper-commercialization of European football, the EU discourse on football regulation seems to be almost completely dominated by the socio-cultural regulatory frame as invoked in key documents of EU institutions that support the so-called European Model of Sport (Council of the European Union, 2021; European Commission, 1998, 2007b; European Parliament, 2007, 2012, 2021).

The frame's commitment to the public and social interest in football serves to legitimate very specific regulations as well as UEFA's key role as governing body. By now, UEFA's status as guardian of the public interest in football has become institutionalized as in October 2014 the Commission and UEFA penned an Arrangement for Cooperation (European Commission, 2014). The Arrangement, which was extended in 2018, strengthens the relations between the Commission and UEFA in co-ordinating matters of common interest. The Commission adopted the Arrangement by way of a decision which renders it legally binding (Article 288 TFEU) and confers special political status upon UEFA. The Arrangement provides UEFA ample opportunities to influence EU sports policy-making. The Arrangement, though, merely states broad themes for co-operation but not concrete targets (Geeraert, 2016). The agreement is a 'soft institutionalization' of regulatory capture as it re-affirms UEFA's legitimacy as chief football governing body. It includes a commitment to 'responsible self-regulation' (European Commission, 2014, Art. 2.7) and backs UEFA's regulatory ambitions in several domains covered here. In contrast, the Arrangement does not define specific obligations for UEFA, although it calls on UEFA to promote good governance in sport.

This arrangement between UEFA and the Commission supports our claim of regulatory capture as it resembles more classical neo-corporatism than the adversarial relationship between regulatory agency and regulated industry. Nevertheless, regulatory capture is neither total nor perfect. Still, UEFA operates in the shadow of hierarchy (Geeraert and Drieskens, 2015). It remains subject to EU law, as the recent request for a CJEU preliminary ruling on the Super League demonstrates. This case, which is still pending at the time of the publication of this article, could come with important implications for football governance. Moreover, the progressive regulatory capture by UEFA does not represent a return to the status quo ante, as the EU interventions transformed UEFA. UEFA had to align its politics and processes, was subjected to principles of good governance and became more inclusive in terms of stakeholder participation (Holt, 2009). However, not all stakeholders are equal. The EU anti-trust interventions forced UEFA to side primarily with the European club elite on which it is commercially dependent and which can make credible threats of secession. The players or the fans have not received the same level of attention by UEFA.

Hence, our more general and original contribution to literature is the claim that the trajectory of EU football regulation demonstrates the limits of the project of the EU regulatory state. Football regulation is a key example for the relevance of path dependent lock-in effects (Pierson, 2000). The socio-cultural regulatory frame represents a legacy

of European amateur traditions, which lastingly shaped perceptions and expectations of European sport policy-makers and served to legitimate the central role of the SGBs. Therefore, the deregulatory impact of the spillover of EU law has shocked sport policy-makers and, as demonstrated, a considerable share of the post-Bosman EU agenda represents attempts to reverse this impact. Parrish's (2003) single market coalition – if ever existent – failed to provide answers how to maintain football's social role when liberalized markets fail to deliver desirable policy outcomes.

Therefore, it is an over-simplification to characterize the EU's support for UEFA simply as manipulation of the preferences of the EU's principals (Geeraert, 2016) or solely as cultural capture (Kwak, 2014). In contrast, we claim, as another contribution of this study, that the reinstatement of UEFA as key governance actor represents a response to unwelcome policy feedback effects and lack of institutional alternatives. The EU regulatory state has helped to unleash the forces of commercialization but faces problems implementing regulations on its own guaranteeing that the (perceived) public interest in football is served. Facing strong pressures to fully transform football into a profit-making industry and lacking alternative allies, EU sport policy-makers resorted to re-strengthening incumbent governance actors. UEFA is perceived as enjoying a strong first-mover advantage in providing football governance (Meier et al., 2022). UEFA's capacity to govern and to raise revenues for both professional and amateur football is still unmatched. Hence, what appears to represent a regulatory capture can also be interpreted as an (inept) attempt to tame unleashed commercialization by re-strengthening UEFA as a countervailing force. We believe that our claim is of broader relevance as it indicates the limits of the EU regulatory state. Market regulation might not always suffice to produce socially desirable results and the EU might be forced to side with incumbent power players.

Regarding the analysis of football regulation, we acknowledge that a PA theory of regulatory capture focusing on interactions between principals, agents, regulated industries and affected stakeholders is not able to fully grasp the dynamics of EU football politics. However, the capture perspective allows us to address some of the research gaps identified and is an instructive complement to existing theorizing as it reminds scholars to take policy outcomes and feedback effects more systematically into account. Thus, we have to go beyond analysing how EU involvement transformed political opportunity structures, interest politics and sectoral governance and also to examine how the sectoral dynamics and policy outcomes produced within and by the heavily reconfigured governing network affect subsequent regulatory politics. Preferably, such analyses should cover more cases.

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