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Spain: Parochialism or innovation?¹

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Introduction

Spanish professional football has embraced modernity and *La Liga* is one of the major football markets in Europe. Spain is one of the 'big five' European leagues in economic terms, according to the Deloitte review of football finances (Deloitte 2006). In the latest edition of the report, the Spanish championship was ranked third in total revenue (Deloitte 2009a: 6), only behind the English Premier League (total revenue of €2.3 billion in 2006-7) and the German Bundesliga (€1.4 billion). Similarly, a Spanish club, Real Madrid, tops Deloitte's so-called football money league, a yearly ranking of European richest football clubs (Deloitte 2009b). With a total revenue of €365.8 million in 2007-8, Real is ranked slightly ahead of Manchester United (€324 m) and another club competing in the Spanish top division, FC Barcelona is third of the *league* (Deloitte 2009b: 2). The Catalans, with a revenue of €308.8 million in the same period are ahead of Bayern Munich, Chelsea or Arsenal. Spanish football is also successful in sporting terms. Adding to the victory of the national team in the 2008 European Championships, Spanish clubs have traditionally done well in European club competitions. Also in the more recent era: Three Champions League victories for Barcelona (1993, 2006, 2009) and for Real Madrid (1998, 2000 and 2002); and two UEFA Cups for Sevilla (2007, 2006) and one for Valencia (2004). Overall, Spain is currently listed second (behind England and above Italy) in UEFA's country ranking that takes into account all matches played by clubs in all European competitions².

This chapter explains that Spanish football has not escaped major transformation trends in European football. However, it is submitted that national and local factors are the main motors behind those changes. Thus, the direct impact of europeanising forces is arguably less important in Spain than in other countries, although they have undoubtedly contributed to set the general context within which Spanish football has evolved. We argue that the reorganisation of Spanish football over the last two decades has been mostly introduced through legislation by the national government. It is not possible to

understand the transformations of Spanish football without considering the nature of Spain as a regulatory state³. Traditionally, Spain is a country where many aspects of life and society are regulated through legislation of the different levels of government. With a Napoleonic tradition of coded rules, the regulatory role of a hands-on state is in contrast with more liberal traditions of a small-size state in countries such as the United Kingdom or the United States.

However, this chapter also suggests that in some aspects Spain has been paradoxically a precursor of developments in Europe, mixing a good deal of local politics with a forward looking approach to football. For example, Spain abolished the retain and transfer system in professional sport nine years before the Bosman ruling. Also before the Bosman ruling, Spanish legislation introduced buy-out clauses in professional sportspeople's contracts, such clauses enable sportspersons to terminate unilaterally their contract upon payment of a compensation to their employer club. Such a practice is unusual in most European countries, but the Court of Arbitration for Sport recommended recently it could be adopted as best practice⁴.

This chapter raises attention to the importance of national and even local factors in the europeanisation of football. Spain is a good case to investigate the extent to which local factors reinforce or preclude europeanisation. The chapter analyses the reasons and consequences of profound transformations undergone by Spanish football in the last two decades. It focuses especially on the role of national legislation and the national government, but it also considers wider dynamics that have contributed to set the context. The chapter proceeds in four steps. The first section outlines the governing structures of Spanish football. The second section focuses on nationality quotas (Bosman I) and the transfer system (Bosman II). The third section deals with the organisational transformation of football clubs into private companies (plcs). Finally, the fifth section of the chapter looks at the selling arrangements of broadcasting rights in the Spanish league.

The political and legal context of Spanish football

Spain is a de-centralised state, constituted by the central government and the governments of seventeen *Comunidades Autónomas* (autonomous communities). In statutory terms it is the *Ley del Deporte* (National Sports Act, Law 10/1990 of 15 October), enacted by the national parliament in 1990 and currently under revision, that largely regulates the structures of Spanish sport. It acts as a framework law. It defines the roles of clubs, leagues and federations. The national sports act is of 1990, five years before the Bosman ruling. Thus, Spanish football was heavily regulated from the top-down when European Union (EU) policies started to have an impact on the game.

Football governing structures

The Spanish football federation (*Real Federación Española de Fútbol*, RFEF in its Spanish acronym) is the governing body for the game in the country. The RFEF is, in theory, regulated by the national sports act and other subsequent legislation. However, the RFEF resists outside regulation on the well-known grounds of the autonomy of sport⁵ (Blatter 2007; FIFA 2006; Vieweg 2000). The RFEF is currently being outstripped of some of its competences over the management of professional competitions (except for the Cup) in the benefit of the *Liga de Fútbol Profesional* (LFP, professional football league), mirroring movements common to other European countries (UEFA 2006). The LFP is the association of the 20 professional clubs in the top-tier (*Primera División*, also known as *La Liga*) and the 22 professional clubs of the second-tier (*Segunda División*). The LFP was founded under the regulations of the national sports act of 1990, which provides the legal basis for such and institution and its relationship with the football federation.

Professional football clubs in Spain used to be organised as voluntary members clubs, but they were obliged to transform into private entities

following the adoption of the national sports act. All professional football clubs taking part in the LFP competitions were obliged to transform into plcs, with the only exception granted to Athletic Bilbao, FC Barcelona, CA Osasuna and Real Madrid. These four still remain constituted as sports clubs. The national sports act justified the transformation of the clubs into plcs 'to establish a model of legal and financial responsibility' (Law 10/1990, recital).

Individual marketing of TV rights

Unlike the English Premier League or the German Bundesliga, in Spain each club sells its own individual broadcasting rights for the league. In this respect, competition in the 'upstream market' where broadcasting rights are sold to television outlets (European Commission 2003: paragraphs 61-3), is certainly not restricted. The consequence, however, is that clubs with major appeal to the market (i.e. Real Madrid and Barcelona) receive significantly higher offers from the television operators.

The exploitation of the rights in the audiovisual market by television companies, known as the 'downstream market' (European Commission 2003: paragraph 80), has been relatively homogenous in the last years. In the last decade one match per week of the *Primera División* has been shown live on free to air TV, whereas the rest of matches are offered also live on pay-per-view through subscription channels. In fact, all matches of the Spanish league are broadcasted live on television. Thus, the Spanish league has taken to its maximum the European Commission's view that the number of games available for live broadcasting should not be significantly restricted (European Commission 2006, 2002; Geey and James 2006), but there has been no direct influence or pressure from the Commission.

The regulation of the players market in Spain

Football governing bodies have traditionally adopted two sets of norms to regulate the employment of footballers: transfer systems and nationality quotas (Lanfranchi and Taylor 2001: 218). Both were addressed in the Bosman ruling of 1995 and, consequently, this section is structured following these two pillars. First we will analyse the evolution of nationality quotas in Spanish football (Bosman I) and we will then turn to the Spanish transfer system (Bosman II).

Bosman I: nationality quotas

Nationality quotas in Spanish football have not followed a stable pattern over the years. They have been modified many times, in general as a response to the performances of the national team (Lanfranchi and Taylor 2001). Nationality quotas are formally adopted by the Spanish FA as part of its regulations. In 1991 the Spanish government passed legislation whereby nationality quotas in sport ought to be negotiated between the federation, the professional league and the players union (Royal Decree 1835/1991, article 28.1). In the football sector, nationality quotas have been incorporated as part of the collective bargaining agreements signed between the football league and the players union.

Table 1: Nationality quotas in Spanish football (1928 to present)

Year	Nationality quotas
1928	No limit to foreign players as long as they had two years residence in Spain
1934	Two foreign players per club
1947	Lift of the ban: No limit of foreign players
1962	Total ban: Only players that could compete in the Spanish national team were allowed to play in club competitions
1973	Two foreign players per club
1987	Three foreign players per club

1991	Four foreign players per club
1993	Three foreign players plus two assimilated players per club (in line with UEFA's 3+2 recommendation)
1997 ^a	Restrictions to EU nationals lifted (not to EEA citizens) Non EU players (this includes EEA nationals) limited to a maximum of 6, with only 4 allowed to play at the same time.
1999	Restrictions to EEA nationals lifted
2004	Non EU-EEA players limited to three in the first division and two in the second division (see below for the case of nationals from countries that have signed an association agreement with the EU)

Source: Diario AS (2004) and RFEF regulations (compiled by the authors).

Note: ^a The formal decision was taken in March 2007, but the restrictions to EU nationals were lifted from September 1996 in reality.

Nationality quotas in Spanish football have been modified to different extremes, with almost no middle ground, as table 1 shows. The initial permissiveness when the League started in 1928 was followed by a very restrictive regime (only two players allowed) in 1934. The pattern was repeated in 1962, when five years of no quotas ended with a total ban on foreign players. The decision followed Spain's elimination at the group stage of the 1962 FIFA World Cup after defeats to Brazil and Czechoslovakia. Following the Bosman ruling of 1995, the Spanish FA decided to lift the ban on EU nationals with almost immediate effect. Thus, EU nationals were considered as non-foreigners. In this respect Spain is no exception to most of the cases analysed in this book. This represents clear top-down europeanisation, whose strength was enhanced by the legal bindingness and the degree of clarity of the ruling. The reaction of the Spanish FA was of acquiescence. Yet, one can find a certain amount of resistance to change in the fact that the Spanish FA did not go beyond what was strictly necessary, unlike the cases of Germany or Austria for instance. The restrictions to citizens from the European Economic Area (EEA) were only abolished in

1999, five years after the ruling. At the same time, the quotas for non EU players have been reduced from six players in 1997 to just three in 2004.

This resistance to change is specially illustrated in the case of nationals from third countries that have signed association agreements with the EU (the so-called *Kolpak players*). The Spanish FA has been extremely hesitant to incorporate the doctrine of the European Court of Justice (ECJ) in this respect. Indeed, the RFEF regulations in force at the time of writing do not contemplate the case of these players at all. Therefore, formally the *Kolpak players* should count towards their club's nationality quota. In practice, however, the RFEF in the last couple of years started to register players from countries signatories of the Cotonou agreements as EU-EEA nationals. It is not clear, though, whether the RFEF is willing to do the same with players from other countries with similar agreements, such as Turkey or Russia.

Reinforcing the idea of a resistance to this particular aspect of Bosman I, Spanish football has been the origin of two cases in which the ECJ has reinforced its case law in favour of the non-discriminations of nationals from countries signatories of an association agreement⁶. These two challenges originated in Spain were brought to the ECJ by Russian player Igor Simutenkov (CD Tenerife) in 2005⁷ and Turkish striker Nihat Kahveci (Real Sociedad and Villarreal) in 2008⁸. Similarly, Russian born Valery Karpin (Real Sociedad) took his case to the Spanish national courts in 2005, although he did not reach the ECJ. In all three cases the courts ruled in favour of the players and the RFEF was forced to register them under the EU-EEA category, so they do not count towards the nationality quota.

For our analysis it is interesting to see the resistance of the Spanish FA to extend the consequences of the Bosman ruling beyond what was strictly necessary. Yet, it is clear that, as a whole, the regulations on nationality quotas in Spanish football have been largely transformed following the

Bosman ruling. The composition of the teams in the Spanish first division also reflects that transformation, with an increment in the number of foreign players by 100 percent after the Bosman ruling, as illustrated by table 2 below.

Table 2: Number of players fielded in the Spanish *Primera División* (1995-2009)

Season	Players eligible for the Spanish national team	Players NOT eligible for the Spanish national team	Percentage of not eligible players
1995-96	446	104	18.9
1996-97	391	183	31.9
1997-98	315	195	38.2
1998-99	302	196	39.3
1999-2000	313	201	39.1
2000-1	329	185	36
2001-2	340	182	34.9
2002-3	384	163	29.8
2003-4	357	181	33.6
2004-5	384	159	29.3
2005-6	354	186	34.4
2006-7	330	193	36.9
2007-8	338	203	37.5
2008-9	339	191	36

Source: Pedro Martín, Documentation Service of Diario AS.

Whilst data before 1995 are not available, the table illustrates the tendency that followed the Bosman ruling. The table presents the total number of players fielded by clubs in the Spanish first division each season. It is divided in players that are eligible for the Spanish national team and those who are not eligible. The increase in foreign players is remarkable, to the extent that

the presence of non Spanish footballers doubled after the Bosman ruling and the abolition of nationality quotas for EU nationals. Whilst data disaggregating the nationality of non-selectable players are not available, it is safe to affirm that EU-EEA players have to be the large majority, since the quotas for non EU-EEA nationals have been reduced and *Kolpak players* are being slowly recognised. Thus, the system has suffered a major overhaul as result of the direct intervention of the ECJ in the Bosman ruling. This needs to be categorised as 'system transformation' and it is consistent with the reaction in most countries as shown in this volume.

The Spanish case is perhaps more interesting in the resistance to change by the RFEF. Whilst the overall reaction of the RFEF needs to be characterised as 'acquiescence', the slow recognition of *Kolpak players* could be best termed as 'confrontation through inaction' or 'lack of implementation'. And that seems to defy the logic of Europeanisation. In this case one cannot refer to a lack of legal bindingness, low degree of clarity or lack of uniformity in the ECJ's decision. These have been identified as measures of strong top-down Europeanisation (see introduction) and they clearly apply to the Kolpak and related cases. Yet, the RFEF has resisted applying the clear case law. The reasons for this are varied.

First, although it may sound topical, a traditional resistance to change seems to be embedded in the nature of football governing bodies. Second, these cases of third country nationals have, so far, low salience. There are clear differences between the case of Bosman and those of Simutenkov, Karpin or Nihat. Bosman (and its implementation) received major media attention, counted with the active support of players' trade unions and was promoted to the high levels of politics with interventions of high profile politicians. As a result, the European Commission took a very proactive stance following the ECJ ruling. Hence, the top-down force was even stronger. The RFEF and other football governing bodies had almost no option. But the Simutenkov or Karpin cases have gone almost unnoticed. Scarce media attention, no high

politics involvement and no significant action on the side of the footballers' trade unions because they logically defend the local players. Moreover, there is also a qualitative difference. Whilst the Bosman ruling affected the whole EU in one go, the other cases have built incrementally one country after the other. And although the ECJ case law is now sufficiently clear, this small margin of discretion is probably all the RFEF needed to delay the process. Thus, it is submitted here that issue salience and its low/high politics nature might affect its consequences in terms of europeanisation.

Bosman II: The transfer system in Spain

Spain is, traditionally, a country prone to the regulation of working conditions. The Spanish labour market is extensively regulated and the role of collective bargaining between employers and trade unions is also deeply entrenched in Spanish labour law. Understanding this tradition, it is perhaps not surprising to see the extension of wider labour market regulations to the field of professional sport and the relatively important role played through the years by the players trade union (*Asociación de Futbolistas Españoles*, AFE in its Spanish acronym) in the case of football⁹.

The Bosman ruling and the subsequent European Commission investigation into FIFA's international transfer system had almost no effect on Spanish football. Actually, Spanish football anticipated by ten years what the ECJ ruled in the Bosman case. A combination of government legislation and hard negotiations by the players' association modified the working conditions of Spanish footballers during the late 1970s and early to mid 1980s. The main transformations were the abolition in 1979 of the clubs' right to retain (Paradinas 1979; El País 1985), and the regulation of the circumstances under which players can unilaterally terminate their contract before it is due to expire. The former was achieved through collective bargaining between employers and employees following a series strikes by professional

footballers (González 1979), whilst the latter was directly imposed through government legislation.

Successive legislative efforts by the Spanish government clearly indicate the regulated nature of the Spanish labour market in sport. The first regulatory measures in professional sport in Spain were enacted in 1981 and this was followed by the all important Royal Decree 1006/1985, which delineates a true labour relationship for professional sports people. In article 6, the Royal Decree stipulates that 'the special labour relationship of professional sport shall always be of limited duration, be that in the form of fixed-term contract for a determined period of time or for a fixed number of sporting events that may constitute a competition in the area of sporting practice'. Moreover, article 16 of the mentioned Royal Decree presents one of the main peculiarities of the labour relations in Spanish professional sport. This article allows for the termination of the contract at the request of the sports person through the payment of a established compensation to the employer. Thus, one can consider that since 1985 there are no regulations preventing the unilateral breach of contract in Spain, neither are there regulations obliging compulsory extensions of the contracts between professional sports persons and their clubs. Within this context, the Bosman ruling of 1995 only reinforced the already existing prohibition to establish internal sporting rules that could limit players' freedom of movement between clubs through the so-called retain and transfer principle.

Therefore, it is not possible to recognise direct top-down Europeanisation in the Bosman II case because Spanish football was already in line with the Court's requirements in the ruling. The main driving force behind change was undoubtedly the footballers' association (AFE), which fought hard on both fronts since the late 1970s. Given the inaction of the Spanish FA, which sided for years with the clubs to facilitate the right to retain, the AFE had to resort to legal challenges, labour disputes and even strikes to force the employers and the governing bodies to sit at the negotiating table. The AFE first filed an

administrative challenge before the responsible government agency in 1978, where the trade union demanded that general legislation on working conditions and workers' rights should be applied to professional football (El País 1985). In March 1979 the AFE called for a footballers' strike that was massively followed by the players in all top three division of Spanish football (González 1979).

The government further strengthened the position of the players when it ruled that the demands of the AFE were reasonable and the regulations of the Spanish FA were in breach of the general legal framework that governed labour relations in Spain. As a result, the Spanish FA and the clubs had no option but to start negotiating a collective bargaining agreement with the players. The other possibility was to wait the outcome of the legal challenges, which was not promising for the governing body. Thus, the right to retain provisions were modified in 1979 but conflicts over the working conditions extended until 1985, with a call for another footballers' strike (González 1982). Finally, the above mentioned Royal Decree 1006/1985 was the culmination of the players' struggle with their employers. The intervention of the government, again, modified substantially the structures of the players market, by allowing unilateral termination of contract through a buy-out clause.

In conclusion, the modifications in Spanish football's transfer system amount to a clear 'system transformation'. However, there are no recognisable sources of direct top-down europeanisation. There is perhaps, some scope for indirect transnational benchmarking (and emulation). This is so because in the years before the AFE started its demands, similar conflicts between players, clubs and governing bodies were settled in France and England. In the former case, footballers also had to resort to strikes and negotiation with the intervention of the government (Lanfranchi and Taylor 2001). In the latter, the players benefited from the legal challenge of George Eastham and they negotiated hard to abolish the maximum wage (McArdle 2000; Greenfield and Osborn 2001). The AFE's demands, therefore, were mediated by what was

achieved in France and England, although there were no direct contacts with the trade unions in these countries. The Spanish transformation developed within a context of players' demands in other countries of Europe, which set a benchmark for the AFE. Yet, the execution of the changes followed a typical Spanish style with direct implication of the government through legislation. The Royal Decree 1006/1985 modified the transfer system beyond what was achieved in France and England by allowing players to terminate their contract unilaterally.

Structure and management of football clubs

The 1990 national sports act's main provision was the compulsory transformation of sports club into *sociedades anónimas deportivas* (a particular type of plc created specifically for the case of sport). The sports act mandated that every club participating in professional competitions ought to transform into the plc format. It is of particular interest that the national sports act reserved for the central government the right to decide which competitions would be categorised as 'professional' and which ones would not. Soon after the adoption of the national sports act, the government declared as 'professional competitions' the top two tiers of Spanish football.

The consequences of the regulatory endorsement of Spanish football's professionalisation were twofold. Firstly, on a macro level, there was an obligation to create a body to manage the professional competitions: the professional football league (*Liga de Fútbol Profesional*, LFP in its Spanish acronym). Secondly, on a micro level, clubs were obliged to transform their internal structures in order to become plcs.

Regulatory solutions to financial chaos

Two main reasons were behind the obligatory transformation of football clubs into plcs. They relate mostly to national factors, rather than to forces of europeanisation. First and foremost, the transformation was underpinned by the poor financial situation of Spanish football clubs. Before the enactment of the 1990 national sports act, the Spanish government already had to design a framework to save Spanish football from bankruptcy in 1985. This was known as *Plan de Saneamiento* (sanitation plan). This saving plan allowed Spanish clubs to get rid off and refinance their public and private debts. At that time the total level of debt in the top three tiers of Spanish football was of 20.7 billion Spanish Pesetas¹⁰. The money to finance the sanitation plan was obtained through the football pools, which in Spain are still a state monopoly.

The financial situation of Spanish football did not improve significantly with the 1985 sanitation plan and the levels of debt were only rising. Again, Spanish football was unable to find a solution on its own and it could only rely on the protection of the state. This time around, however, the government demanded a trade-off for another sanitation plan. The second *Plan de Saneamiento* was annexed to the national sports act of 1990. It was decided to devote 10 per cent of the money taken in the football pools to finance the saving plan. Clubs were allowed to get rid of their public and private debt and, therefore, the new plc organisations would emerge debt free. In other words, the Spanish state took charge of the clubs' debts but, in return, the clubs had to transform into private companies and, of course, follow from that moment the financial regulations applicable to plcs.

The second reason behind the transformation into private companies of the clubs was the manifest inefficiency of the old structures to deal with the demands of professional football. The football club owned by its members (the *socios*) was (and arguably it still is) deeply entrenched in Spanish culture and society, but it was clear that it was unable to manage itself in a context of increasing commercialisation, both at national and European level. Maybe in

this respect one can find a small trace of europeanisation originating from a transnational phenomenon, but it is difficult to identify and to define something as general as the commercialisation of football.

Multiple ownership of clubs

There is a particular point of the transformation of Spanish clubs that deserves some consideration. This relates to multiple ownership of clubs, which was an issue also raised at the supranational level by UEFA to the European Commission. In Spain, the national sports act contained no provisions to avoid multiple ownership of clubs. At European level, UEFA requested negative clearance of its rules regulating multiple ownership of clubs participating in European club competitions. The European Commission, in response to UEFA's request, acknowledged that sporting regulations aimed at preventing multiple club ownership are not in breach of EU competition law (European Commission 1999).

In the case of Spain, the government decided for a hands on approach rather than letting this issue to the football authorities and it adopted an amendment to the national sports act in 1998 (Law 50/1998). The aims of this amendment were (1) to establish a framework of transparency in the management of the clubs, (2) to set up limitations on clubs' ownership, (3) to adopt a supervisory and control mechanism of the clubs' finances (which has never entered into force!) and (4) to require administrative permission to any financial takeover involving more than 5 per cent of the club's capital.

The level of success of the 1998 reform of the national sports act is uneven. It seems that it managed to prevent attempts of multiple ownership in professional clubs, but it has certainly failed in improving the economic and financial situation of professional football clubs. In other words, Spanish football is not more transparent, neither it is in a healthy financial situation.

Whilst the issue of multiple ownership was active at the same time in the European and the Spanish agendas, it has not been possible to establish connections between the two. At the European level it was UEFA who raised the issue by requesting a negative clearance under competition policy, whilst in Spain the 1998 reform was directly related to the regulatory failure of the 1990 national sports act. It is difficult to talk about a process of europeanisation here, other than similar problems arising from the general commercialisation of football were identified at about the same time by the Spanish authorities and UEFA.

Television rights

The regulation of the selling and exploitation of broadcasting rights is one of the major problems of Spanish football. In absence of any regulatory decision on the ownership of the broadcasting rights, it was up to football stakeholders themselves to organise the selling of those rights. Formally, it was decided that the LFP will allow clubs to sell individually their own broadcasting rights for the Spanish league, which goes against the general trend in other European countries of accepting central marketing of TV rights. As a result, there is a clear difference between the revenue generated by the two major clubs (FC Barcelona and Real Madrid) and the rest of the competing teams in the league, as shown in table 3 below.

Table 3: TV revenue of the top Spanish clubs in the 2007-8 season

Club	Revenue (in € mill.)
Real Madrid CF	118.5
FC Barcelona	116.2
Valencia CF SAD	29.2
C Atlético de Madrid SAD	28.5
Total First Division	423.1

Average First Division	22.3
Average First Division without Real Madrid and Barcelona	10.46
Total Second Division	26.4
Average Second Division	1.7

Source: Data provided by Professor Angel Barajas, of Vigo University¹¹

Once again, Spanish football seems to go in a different direction than the other major European leagues. Only very recently some individuals, such as Getafe's chairman Angel Pérez have timidly called for a reflection to follow the Premier League's centralised model¹². It would be interesting to follow these movements in terms of europeanisation as they would amount, at least at a process of cross loading or international benchmarking.

The football war

Individual selling of TV rights in Spain only was adopted with the emergence of satellite television in Spain. It is important to point out that before that period (mid to late 1990s) the LFP marketed its TV rights centrally. It was understood that the provisions in the national sports act obliged to use all the television income to contribute to the *Plan de Saneamiento* (see above). The clubs thought that central marketing was the most efficient way of dealing with the legal requirements of the *Plan de Saneamiento*. With the deregulation of the Spanish audiovisual market and the arrival of private channels, demand for live football increased and clubs started to wonder whether they would be better off with individual selling, providing they still contributed the necessary part of the income to the *Plan de Saneamiento*. In this process that passed from central marketing to individual selling one can recognise the importance of some Europeanising forces. In the case of Spain it was not the European Commission, but the European Parliament's amendment of the TV without Frontiers directive. However, national factors still played a crucial role and the impact of Europeanising forces was indirect.

The emergence of satellite digital television in the mid 1990s in Spain led to what was then termed “the football war” (*la guerra del fútbol*) because of the acrimonious political and financial environment. This football war supposed to be just competition between television operators for the acquisition of broadcasting rights as a vehicle to gain a share in the emerging digital TV market. When the operator Sogecable seemed to be taking advantage in the new satellite TV market through the acquisition of a large part of league’s broadcasting rights, the Partido Popular government of José María Aznar introduced legislation in 1996 and 1997 that favoured the emergence of a rival operator (Via Digital), which also wanted to compete for football broadcasting rights to gain market share (El País 2003; López García 1999)

Sogecable was the audiovisual arm of PRISA, one of the largest media groups in Spain well known for its left of centre ideology and support of the Spanish Socialist Party. Sogecable was already broadcasting league football through its analogical pay channel Canal+. In 1996 Sogecable decided to create a digital satellite TV platform called Canal Satélite Digital. At the same time, the right of centre government of the Partido Popular, in power since March 1996, encouraged the formation of a competing digital platform named Via Digital, with Telefónica (the Spanish telecommunications giant) as a majority shareholder. In December 1996 Sogecable bought the majority of the first division’s broadcasting rights together with Antena 3, which was initially a shareholder in Via Digital together with Telefónica. However, when Antena 3 decided to sell its share in Via Digital and join Sogecable, the latter had effectively all the broadcasting rights for the Spanish league.

It is in this moment when the Partido Popular government started passing legislation that arguably was aimed at preventing Sogecable’s monopoly in the broadcasting of Spanish football. Whilst it may not be very difficult to sustain a pro-competition argument to justify the intervention, the problem is that the government did not use competition law at all. The effect of that legislation was to reinforce the trend of individual selling of TV rights. By

encouraging the success of Vía Digital over Sogecable, the government played in the hands of the clubs, which had now two competing TV operators willing to out-bid each other. Individual selling was already in place, but the competition between the two platforms (induced by the government for political rather than economic reasons) reinforced that trend. The bidding war between Vía Digital and Sogecable dwarfed the amount the clubs were receiving before under the central marketing scheme.

Mild europeanisation?

It is at this point when the concept of europeanisation might help in the analysis of what was a very complex political situation in Spain due to the importance of the audiovisual market. Central to the government's intervention was the act regulating the broadcasting of sport events (Law 21/1997) adopted on 3 July 1997. It has been acknowledged that there was a political motivation behind the actions of the Partido Popular government that tried to prevent market domination by an ideologically rival media group. However, for our analysis here it is interesting that the act regulating the broadcasting events was directly linked to the European Parliament's amendment of the TV without Frontiers directive in 1997.

The new TV Without Frontiers Directive featured an amendment introduced by the European Parliament whereby national governments could draft lists of general interest sporting events to be broadcast in free to air TV. Indeed, the 1997 Spanish law expressly refers in the recitals to the 1996 European Parliament report introducing that amendment. Formally, the Spanish act was used to implement the European directive, so there is a link. The Spanish legislation presents two fundamental dimensions. First, the legislator introduces the concept of 'general interest' to sports broadcasting (articles 4.3 and 5.1). The act established that sport events of general interest shall be broadcast live in free to air television to the whole country. Secondly, the act contains provisions (Articles 4.4, 5 and 6.2) aiming at guaranteeing

competition in the acquisition of broadcasting rights for sport events (Descalzo González and Palomar Olmeda 2001).

That piece of legislation created the concept of 'sporting event of general interest' that became quickly politicised. The government reserved itself the right to decide which sport events are of general interest. The government then decided to include the obligation to broadcast live and free to air one match per week of the *Primera División*, as it was considered of general interest. With that decision the government effectively broke any possible monopoly of Sogecable over Spanish top tier football since the operator did not have any free to air channel. Simultaneously, by encouraging the development of a competitor in the shape of Via Digital, the government was certainly increasing competition in both the upstream and downstream markets (European Commission 2003). Ironically for all the attention devoted to this *football war*, both platforms ended up merging under Sogecable's label, hence regaining a quasi monopoly over football broadcasting in Spain, except for the weekly free to air game.

The Spanish government defended its regulatory choice arguing it was implementing the TV without frontiers directive. This can be considered a top-down process of Europeanisation. However, any this process needs to be read in conjunction with the national elements explained above. Formally, the Spanish national legislation entered into force slightly earlier than the EU directive. The Spanish government was influenced by the debates in the European Parliament to apply the concept of general interest to sport in Spain, but it also seems clear that the debates in the European Parliament were used by the Spanish government to promote its own national agenda. In that respect, EU debates in this topic were more an excuse than a generator of transformation. On the other hand, one can read the analysis in the opposite direction: EU decisions are more likely to set in motion Europeanising processes when they are aligned with the preferences of actors at the national level.

Conclusion

The transformation of Spanish football in the last two decades presents a particular mixture of direct top-down Europeanisation (Bosman I), transnational benchmarking (Bosman II to some extent), soft Europeanisation (TV rights) and forward looking decisions that anticipated developments at European level. We argue, however, that the dynamics of the Spanish case cannot be appraised without an understanding of Spain as a regulatory state, where the government has a hands-on approach that organises through legislation many aspects of social and economic life. Similarly, very local political factors have conditioned the response of sport and political authorities to the challenges of the transformation of football. In this context, it is striking that some of the decisions taken in the regulation of football, especially those that refer to the transfer system (Bosman II), anticipated by a decade the decision of the ECJ in the Bosman ruling.

A classical process of direct top-down Europeanisation originating in EU institutions can only be recognised in Spain in the nationality quotas. The Bosman ruling led to system transformation, but the Spanish FA presented some resistance to change, especially in the case of *Kolpak players*. This directs our attention to the relevance of issue salience in Europeanisation processes. It seems that the low politics status of the Simutenkov and Nihat cases facilitate the resistance of the RFEF to apply what is very clear case law from the European Court of Justice.

Other important transformations in Spanish football have been introduced directly through legislation. This was certainly the case for the transformation of clubs into private companies, imposed on clubs by the government through legislation as a trade-off to wipe off the clubs' debts. That was a profound systemic transformation where no real Europeanisation process can be recognised. Similarly, Bosman II required no real change in Spanish football, as the transfer system had already been modified ten years before the

Bosman ruling due to the demands of the football players' association. In those demands it is perhaps possible to recognise a process of transnational benchmarking or crossloading that helped to set the context. Similarly, there has been no direct intervention of the European level in the arrangements to sell football broadcasting rights. Spain presents individual selling, which is in line with the European Commission's ideology.

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² This ranking position is relevant as this is a more inclusive indicator. The UEFA country index takes into account the results of all the matches played by the clubs of a particular country in all UEFA competitions over a period of five years. For more information see <http://www.xs4all.nl/~kassiesa/bert/uefa/data/method4/crank2009.html> (Accessed 6 May 2009). See also <http://www.xs4all.nl/~kassiesa/bert/uefa/calc.html> (Accessed 6 May 2009).

³ In this respect the word estate refers to all the levels of government: national, regional and local.

⁴ CAS 2008/A/1519-1520 – FC Shakhtar Donetsk v. Matuzalem Francelino da Silva and Real Zaragoza SAD and FIFA CAS 2008/A/1520; Matuzalem Francelino da Silva and Real Zaragoza SAD v. FC Shakhtar Donetsk and FIFA.

⁵ The most recent conflict in this matter involved FIFA president, Joseph Blatter suggesting (some would say threatening) that Spain may not be able to participate in FIFA competitions if the Spanish government continued to intervene (through a decree) in the electoral process of the RFEF (see for example Mateo 2008a, 2008b)

⁶ *Deutscher Handballbund v. Maros Kolpak*, Case C-438/00 [2003] ECR I-4135, explained at length by Richard Parrish in this volume.

⁷ *Igor Simutenkov v. Ministerio de Educación y Cultura and Real Federación Española de Fútbol* (Case C-265/03 ECR [2005] I-2579).

⁸ *Real Sociedad de Fútbol SAD and Nihat Kahveci v. Consejo Superior de Deportes and Real Federación Española de Fútbol*, Case C-152/08, reasoned order of 25 July 2008.

⁹ The regulation of the Spanish labour market and the sport labour market has been studied at length (see for example Cardenal Carro 1996; Cordero Saavedra 2001; Rubio Sánchez 2002; Sagardoy Bengoechea *et al.* 1991)

¹⁰ This amounts to almost €125 million using the Euro-Peseta exchange rate of 2002, when the European single currency was introduced. Of course, a level of debt of €125 million is relatively low for today's standards, but it is necessary to read that figure in the context of 1985 Spain, a deeply troubled economy about to join the European Union.

¹¹ We are thankful to Professor Angel Barajas (University of Vigo) for providing this unpublished information. He has collated the data from the financial audits of the professional football clubs.

¹² Mr. Pérez expressed his views in a radio interview in 'El Larguero', a programme of Cadena SER radio station on 31st May 2009.

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