Evolving Europe: Voices of the Future

Loughborough, 8-9 July 2013

www.uaces.org

EU sport policy after Lisbon:
The implementation of Article 165 TFEU

Mads de Wolff
Loughborough University, United Kingdom
M.De-Wolff@lboro.ac.uk

Abstract

Considering the rise of match-fixing and the ever-present ghost of doping, the Member States of the European Union (EU) are facing no shortage of highly visible issues with transnational and European dimensions that demand attention. While the EU has been informally involved in the governance of sport for decades, it has only recently been granted a direct, formal competence in the area of sport with the coming into force of the Lisbon Treaty in 2009 and hence article 165 of the Treaty on the Functioning of the European Union (TFEU). While the 'story' of how sport policy came to be included in the Treaty of Lisbon has been analysed is great detail, less work has been done on how the EU has made use of this competency. Accordingly this paper analyses the implementation of article 165 TFEU and the early steps undertaken by the European Commission, European Parliament and the Council of Ministers, which will be done from the theoretical perspective of agenda-setting.

KEY WORDS: sport; agenda-setting; Article 165 TFEU; Lisbon Treaty

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1. Introduction

The EU's emergence into the field of sport has been reactive and 'indirect', a gradual instance of task expansion as result of legal cases where regulations adopted by the governing bodies of sport have been challenged by stakeholders and brought before the Commission and the European courts on the grounds of EU law (e.g. Tokarski et al. 2004; Meier 2009; García & Meier 2012). The infamous 1995 *Bosman* ruling,[1] in which a marginalised football player succeeded in contesting the power of football bodies to restrict player mobility, proved the turning point in which sport moved beyond regulation and became a political issue (García 2007). The rise of EU sport policy has thus typically been described as the struggle of two competing definitions of sport: one, principally adopted by the Commission and the Courts, framing sport in economic terms and hence falling under EU-regulation; and two, the countering socio-cultural definition as invoked by sport bodies and their alternating EU-level supporters, which emphasised the social, cultural and educational particularities of sport, i.e. sport as distinct and *specific* from other industries (e.g. Parrish 2003a; Parrish 2003b). Following negotiations with the sports movement and the Commission, the Member States decided to include an article on sport in the Lisbon Treaty and, in this sense, Article 165 TFEU represents the current compromise between these two definitions of sport (García & Weatherill 2012).

Whereas the 'story' of how sport came to be included in the Treaty of Lisbon has been subject to great deal of scrutiny, less work has addressed what has transpired following this landmark agreement; how the EU has made use of its direct competency and how the formalisation of sport policy has affected policy-making dynamics. Accordingly, this paper explores these questions by analysing the on-going implementation of Article 165 TFEU, specifically enquiring into how agenda-setting dynamics in sport policy have been affected by the coming into force of the Lisbon Treaty and whether EU sport policy is, as a consequence, becoming increasingly 'normal'. Empirically the analysis is based on a review of official documents, focusing on recent decisions in the area of sport by the Commission, European Parliament (EP) and the Council of Ministers, and conceptually draws on the burgeoning literature on EU agenda-setting.

This paper proceeds in four steps. First, the literature on EU agenda-setting is introduced. Building on Sebastiaan Princen's (2011b) typology of agenda-setting strategies, the second and third sections examine how, from 2010 and onwards, the EU has been 'building credibility' far as dealing with sport and been struggling over the relative amount of 'attention' to afford various

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[1] Case C-415/93 [1995] ECR I-4921.

issues. Finally, the concluding section considers which lessons may be drawn from this case-study.

2. Agenda-setting

Initially developed in the context of US politics (e.g. Kingdon 1995; Baumgartner & Jones 1993; Cobb & Elder 1972), agenda-setting has only recently made its way to EU studies. This has taken two forms. On the one hand, the number of case studies continue to rise (e.g. García 2007; Ackrill & Kay 2011; Bache 2013; Grugel & Iusmen 2013; Moschella 2011; Vanhoonacker & Pomorska 2013). On the other hand Sebastiaan Princen has endeavoured to systemise these case-study insights and further theoretically appropriate agenda-setting to the context of the EU (e.g. Princen 2007; Princen 2011b; Princen 2011a; Princen 2009). Nevertheless, whilst agenda-setting has become an increasingly popular framework for analysing EU policy-making, the mapping of EU agenda-setting dynamics remains a work-in-progress to which this paper hopes to contribute.

The 'agenda' is typically defined as "the set of issues that receive serious consideration in a political system" (Princen 2009, 19) and agenda-setting thus concerns the struggle of getting an issue considered by decision-makers. In this sense it is analytically useful to distinguish between the 'governmental agenda' and the 'decision agenda' (Kingdon 1995, 4). The *governmental* agenda refers to issues that are being discussed in policy-making institutions. The *decision* agenda goes one step further as it includes the issues on which a decision is set to be taken. The political struggle in agenda-setting then concerns getting issues on to the governmental agenda followed by a struggle as to how and where the issue should be dealt within the polity – if at all.

If agenda-setting is the first stage of the policy-making process, it is no less crucial: If an issue fails to gain enough attention from policy makers it will never come up for decision-making (Princen 2007, 21) and "apart from determining *which* issues are discussed, agenda-setting processes also determine *the terms in which* they are discussed" (Princen 2011a, 108). Agenda-setting, then, should be considered a cumulative process (Peters 2001, 78) which, in the EU, is best understood via three concepts: conflict expansion, issue definition ('framing') and institutional constraints (Princen 2007, 29). The concepts are now briefly introduced.

2.1. Conflict expansion
Conflict expansion concerns the way in which issues reach a high agenda-status by increasing the number of participants who express an interest or concern about a given issue. The standard route of conflict expansion is from a small circle of experts to the 'public at large' (Princen 2007,

29) which, generally, is not how conflict expansion works in the EU. As Moschella (2011, 255) points out, most studies on EU agenda-setting agree that conflict expansion in the EU is crucial despite not necessarily entailing public mobilisation. Instead conflict expansion is possible and important because of the EU's complex institutional structure. As Peters (2001, 82ff) points out, the EU's fragmented decision-making system, its multiple arenas of influence, the absence of clear coordination and system of multi-level governance make the EU an "agenda-setter's paradise" (Peters 2001, 87). Yet, while such institutional features make it relatively easy for an issue to reach the EU's governmental agenda they also make it potentially harder to reach the decision agenda as the EU's institutional architecture lends itself to a crowded governmental agenda. In addition, the multi-institutional nature of EU and its decision-making rules require an even larger degree of consensus than most domestic polities (Princen 2007, 33). Getting an issue high on the EU's agenda-ladder revolves around negotiating this complex institutional landscape and expanding the conflict to a wider (and the right) circle of participants, as issues considered by a larger number of participants is more likely to reach the 'formal' decision agenda. Conflict expansion is thus intimately linked to how an issue is defined or 'framed'.

2.2. Issue framing

Issue framing refers to the way issues are defined (or re-defined) while being promoted on the agenda, through which the "line between proponents and opponents of a proposal may be drawn differently" (Princen 2007, 30). Issue definition is important because it may not only impact the possibilities of reaching the agenda – by expanding the conflict and increasing attention – but also because framing an issue a certain way will also influence which "set of decision-making institutions will process the issue [and therefore] to some extent determine its fate" (Peters 2001, 78). It is further useful to recall Kingdon's distinction between a 'condition' and a 'problem'. Conditions are present in everyday life and can conceivably be anything: "pestilence, poverty, fanaticism" (Kingdon 1995, 109). But *conditions* only become *problems* "when it is believed that something should be done about them" (Kingdon 1995, 109). Problems have two sides: one, their actual, measureable social conditions; and two, a perceptual, interpretive element (Kingdon 1995, 109–110). Thus, as Princen (2007, 30) argues, successful framing often depends on whether the link between *problem* and *solution* can be made convincingly; that issues are more likely to gain agenda entrance (or reach high agenda status) if there are viable solutions to dealing with the problem available. Hence it is not enough to highlight a problem – that something should be done – but also to argue that something *can* be done; that the right solution or instrument is available (Princen 2007, 30).

2.3. Institutional constraints

Aside from issue framing, conflict expansion is also conditioned by institutional factors. Institutional constraints refer to the acknowledgment that "the rise of issues on the political agenda depends on the availability of institutionally favourable conditions within the political system" (Princen 2007, 30). Thus frames are only one side of the equation, the other being formed by what Baumgartner & Jones (1993) call 'venues', the institutional forums in which decisions are taken. Recognising that "organisation is the mobilisation of bias" (Schattschneider 1961, 71), Baumgartner and Jones highlight that various institutional policy-making units tend to be more receptive to *some* issues than others and, hence, issue are more likely to come on to the agenda if tied to those key concerns. The link between framing and institutions is central to Baumgartner and Jones' theory of 'venue-shopping' which argues that policy change often occurs when an actor succeeds in shifting debates and decision-making venues on an issue to venue(s) susceptible to a different set of ideas. The key element in venue-shopping is the way the issue is framed: defining or re-defining an issue may draw the line between proponents and opponents of a proposal differently (Baumgartner & Jones 1993, 83ff). In other words, actors unhappy with the current agenda will go venue-shopping in order to find a more sympathetic venue in the quest of getting their issue definition through (Baumgartner & Jones 1993, 35–36).

When agenda-setting at the EU-level, however, there is a need to negotiate the EU's 'vertical' constraints as EU agenda-setting, more so than domestic politics, carries with it a discussion about the *appropriateness* of the EU as the right level to deal with the issue (Princen 2007, 32). Firstly, there is the question of legal competence: the EU operates under a system of conferred competences meaning that the EU can only act within its defined reach. For instance, despite the EU having been conferred a competence in sport certain options remain excluded, specifically harmonisation, and competency thus shapes both the nature of issues and type of proposals that can be pursued. Secondly, the EU operates under the principle of subsidiarity, i.e. that the EU can only deal with an issue if that issue cannot be dealt with (at least) equally well by the member states. Although hard to enforce legally, the subsidiarity principle remains a political hurdle to be negotiated (Princen 2011b, 930), not least in policy areas like sport where EU action should (only) "support, coordinate or supplement those of the Member States" (TFEU, Article 6).

2.4. Two challenges, four strategies

So: conflict expansion, issue framing and institutional constraints are the major factors of EU agenda-setting. Based on these general theoretical insights, Princen (2011b) has developed a typology agenda-setting strategies. Essentially, this typology takes the concept of 'conflict expansion' and separates it into two challenges faced by agenda-setters, namely 'gaining attention'

and 'building credibility'. To negotiate these challenges, actors may employ four generic strategies – mobilising support; arousing interest; claiming authority; and building capacity – all of which imply affecting the agenda through issue-framing and venue-shopping/modification. Below, these four strategies are described.

Challenges	Venue strategies	Framing strategies
Gaining attention	Mobilising supporters	Arousing interest
Building credibility	Capacity-building	Claiming authority

Table 1: Adapted from Princen (2011b) and Vanhoonacker & Pomorksa (2013)

Gaining attention

A key challenge when aiming to put an issue onto the EU agenda is to gain attention for it. The two main strategies concern controlling participation (mobilising support) or framing the topic (arousing interest).

Mobilising support concerns the involvement/exclusion of actors which may be attempted though various strategies, including venue-shopping horizontally (between different EU bodies) or vertically (e.g. national to supranational). All venue-shopping efforts, however, takes place within the existing venues, but if a suitable venue does not exist actors may create new venues or change the *modus operandi* of existing ones to suit their purposes.

Arousing interest: when mobilising supporters, success often depends on the way a problem is framed. Two options exist: A 'big words' or a 'small-step approach'. In the first, agenda-setters can link an issue to values considered central to the EU's purpose or 'identity' or by connecting (sporting) issues with larger EU priorities (e.g. the Lisbon Agenda). In other cases a small-step approach may be preferred, which is more time-consuming and focuses on a dossier's technical aspects, slowly drawing attention to issues by such instruments as presenting studies, organising conferences or informal ministerial meetings.

Building credibility

Considering there are numerous venues in which sporting issues may be discussed and dealt with – within and beyond the EU – it is paramount that the proposed venue is considered 'credible' in terms of its organisational capacities and appropriate as far as legal competency.

Building capacity: In the EU, capacity-building efforts focus especially on the Commission bureaucracy but does also takes place in other venues, examples including the formation of EP intergroups and Council working parties. Capacity-building, however, does not only take place within EU institutions since the Commission, the Council of Ministers and interests groups themselves actively try to develop 'European' networks of experts and stakeholders, such as the annual 'EU sport forum' that connects sporting stakeholders and policy-makers.

Claiming authority involves framing an issue in 'EU terms'. For some issues this will require little effort, i.e. if an issue has self-evident cross-border dimensions or can be easily tied to a conferred competency. For other issues/policy areas the connection may be more contested. Two general strategies exist: Linking an issue to existing EU policies or identifying a 'common ground'. An example of the former is anti-doping which was framed in public health terms when came onto the EU agenda (Vermeersch 2006). An example of the latter is how the Commission launched the concept of a 'European model of sport' (European Commission 1998) as the first step in its initial attempt to develop an EU-approach towards sport in the 'post-Bosman era' (García 2009).

A few notes. First, these strategies are neither mutually exclusive nor omnipresent and the typology rather invites one to enquire which combinations are used in the particular case(s) at hand. As will be elaborated below, the implementation of Article 165 TFEU has mostly concerned capacity-building and arousing interest (privileging certain issues through issue framing). Second, it needs to be acknowledged that these strategies may be used by 'external' as well as 'internal' actors. EU policy-making is not restricted to institutional actors – indeed, the rise of EU sport policy is a prime example of the important role played by stakeholders. However, because our focus is on exploring the institutional dynamics of sport policy implementation, 'external' actors are ignored in this paper.

Finally, while this typology can serve multiple uses, for our purposes it is used to provide a comparative-analytical framework for assessing agenda-setting dynamics. As Princen (2011b, 940) notes, in policy areas where the EU is a 'newcomer', building credibility can be expected to be the principal concern, and efforts will tend to be 'indirect' and focused on linking issues to more developed policy areas and to develop EU policy communities in order to cultivate receptiveness among EU policy-makers. In more established areas, building credibility will be of secondary importance, and agenda-setting efforts will tend to focus more on gaining attention and, in this sense, agenda-dynamics can be expected to become increasingly 'normal' (i.e. like domestic politics) and focused on gaining attention.

In order to asses if EU sport policy has, indeed, become increasingly 'normalised' post-Lisbon, we now turn to exploring the implementation of Article 165 TFEU. We thus explore the institutional dynamics of post-Lisbon sport policy by looking at how various EU institutions have been 'building credibility' as far as dealing with sport followed by an examination of how the various EU institutions have been debating the relative amount of 'attention' to be afforded various issues.

3. Building credibility in sport

Building credibility is key a challenge in agenda-setting, particularly in areas where the EU is a newcomer, and strategies centre on building organisational capacity and claiming political and legal authority to pursue policy. However, with the coming into force of the Lisbon Treaty the question of 'authority' has largely been resolved. Accordingly, the primary 'credibility challenge' in implementing Article 165 TFEU has centred on capacity-building.

3.1. Formalising working procedures and building organisational capacity

Until the entry into force of the Lisbon Treaty, member state political cooperation on sport took place informally outside the formal Council structure. Initiative lay at the hands of individual Presidencies who could decide to prioritise sport, yet discussion was restricted to informal meetings of EU Sport Minister and EU Sports Directors and to *ad hoc* meetings on priority themes (Parrish et al. 2010, 11). It is therefore no surprise that the ratification the Lisbon Treaty and hence Article 165 TFEU has seen the Council of Ministers emphasise formalising its informally developed working procedures and deepening its bureaucracy in ways more in line with the new formal competency. In this sense capacity-building capacity has been a bi-product of gaining formal authority in sport: The building of organisational capacity and need for formalising the Council's *modus operandi* has been framed in light of a percieved necessity and duty involved with the new official status of sport policy. As the Sport Directors concluded following their first post-Lisbon informal meeting: "The entry into force of the Treaty implies a change in the decision making process in the field of sport, which will from now on follow the normal procedures, with clearly defined roles for the different EU institutions" (Spanish Presidency 2010, 2). At the initiative of the Spanish Presidency, the Council on 24 February 2010 approved the creation of a Working Party on Sport to assist the Council and the Committee of Permanent Representatives (COREPER) in daily work, so as to enable the preparation of the first EU Sport Council meeting in May 2010 (Spanish Presidency 2010). Accordingly, the European Council in September 2010 modified the Council's official configurations in order to new competencies in sport and space following Lisbon (European Council 2010).

The Council's 'European Union Work Plan for Sport' (Council 2011c) especially indicates a wish of formalising the working methods and procedures in light of implementing Article 165 TFEU. In the Work Plan, the Council recognises achievements prior to the Lisbon Treaty, done through informal working structures, yet points out the "need to strengthen cooperation between the Member States and the Commission after the entry intro [sic] force of the Lisbon Treaty" (Council 2011c, 2). The Council further agrees that all "[a]ctivities at EU level in the field of

sport should focus on the priority themes, actions and working methods listed in this Work Plan" (Council 2011c, 2) and proceed by setting out working methods and aims for the Member States, Presidencies and the Commission, which are all invited to take the Work Plan into account when developing policies. For the Presidencies, this includes taking the Work Plan into account when setting their priorities, whereas the Commission is invited to do numerous things, including to monitor and inform the Council of EU-developments that may impact sport, and in general to "work with and support the Member States in cooperating within the framework set out in the present Resolution" (Council 2011c, 3). Lastly, the Work Plan invites the Commission to undertake an impact assessment of its Preparatory Actions in Sport to help "determine the added value of a specific funding programme to cover actions in the area of sport" (Council 2011c, 3).

The Council has hence emphasised 'building credibility' by enhancing organisational capacity and formalising working procedures as part of the implementation of Article 165 TFEU. Nevertheless, efforts to build capacity have not just centred on the EU-level but also on developing 'European' networks on sport.

3.2. Developing European networks

As hinted above, the development of EU sport policy has to a great extent been shaped by stakeholders. Indeed, Article 165's explicit recognition of "the specificity of sport" (TFEU 165:1) carries with it the implication that policies should be sensitive to sporting stakeholders. Moreover, one of the few specific goals stated in Article 165 TFEU is to promote "cooperation between bodies responsible for sports" (TFEU 165:2). Accordingly, much work has centred on institutionalising dialogue with stakeholders and national experts in order to develop European networks on sport.

The key development this regard has been the Commission's White Paper on Sport (2007a), released in anticipation of sport acquiring treaty base, which presents a number of Preparatory Actions to be implemented, most of which concern establishing 'European' networks. These Preparatory Actions have thus led to the creation of a limited funding scheme centred on 'European Partnership on Sports', which generally aim to "support transnational projects put forward by public bodies or not for profit organisations in order to identify and test suitable networks and good practices in the field of sport" (European Commission 2012, 1). Also laid out White Paper was the intention of organising an annual 'EU Sport Forum', ultimately held since 2008, with the stated goal of strengthening 'structured dialogue' between policy-makers and stakeholders.

The Council, too, has sought to build on these efforts. For instance, in their Resolution on Structured Dialogue on Sport (Council 2010) the Ministers highlight that the entry into force of the Lisbon Treaty means that "a new era of EU priorities in the field of sport has begun" and that a "strengthened EU dialogue with sport stakeholders would serve as an opportunity for continuous and well-structured exchange of views on the priorities, implementation and follow-up to EU cooperation in the field of sport" (Council 2010, 3(ii)). As a result, they agreed that informal meetings between EU public authorities and the stakeholders should be held regularly on the margins of Council meetings, consolidating existing practices such as the EU Sport Forum.

The Council's Work Plan (Council 2011c) also serves to foster 'European' sport policy networks by establishing six 'Expert Groups' composed of member state-nominated experts. It should be noted that these six Expert Groups are not completely novel insofar as they replace the six 'EU Working Groups' which have existed since 2005 and which largely corresponded to the priority-themes agreed in 2004 by the Commission and the EU sport ministers to constitute the *Rolling Agenda on Sport* (Vermeersch 2009, 4). The groups do differ on certain points, however. One, where the working groups were chaired by the Commission (European Commission 2007b, 5.2), the 'experts' are in charge of choosing chairs and co-chairs among themselves, with the Commission providing "expertise as well as logistical and secretarial support" (Council 2011c, p 5). Two, the themes are changed to represent the Council's current political priorities. Three, these Expert Groups are charged with producing very specific deliverables (i.e. proposals) according to precise deadlines which will feed into the Council's formal decision-making process. Moreover, insofar as the groups are allowed to invite other relevant participants, the formation of expert groups explicitly seeks to facilitate the goal of establishing "structured dialogue" with stakeholders (Council 2011c, p 2). An early review suggests that the degree of this practice varies depending on the specific Group and that while invited participants are classified as 'observers' stakeholders do participate in discussions (e.g. Expert Group Good Governance 2013; Expert Group Sport Statistics 2013)

Summing up, the implementation of Article 165 has seen (1) the Council emphasise formalising the overall architecture of EU sport policy as a forum for policy coordination and build a larger bureaucracy to develop proposals and (2) the Commission and the Council supporting the creation 'European' networks in sport. However, there is arguably a second aspect of implementing Article 165 TFEU (relating to credibility), namely the challenge of securing the EU's financial *capacity* to support various actions and programmes. The second challenge of

implementing Article 165 TFEU thus concerns securing a long-term financing model for the "incentive measures" legitimised by Article 165 TFEU, i.e. incorporating sport into the EU's multi-annual financial framework (2014-2020). As will be shown in the next section, an agreement is still being pending, with the Council and the EP still negotiating the Commission's proposed 'Erasmus For All' (EFA) programme, with the debate revolving around how attention should be framed, a matter to which we now turn.

4. Framing Article 165

Having looked at the efforts to build credibility in sport, especially through capacity-building, we now turn to the struggle of 'attention' in relation to the implementation of Article 165 TFEU. This process has involved answering one central question, namely: If the EU is now invited to adopt "incentive measures" aimed at "developing the European dimension in sport", what exactly is this to entail? Rather than tracing how specific issues have risen to the top of the EU agenda through intricate processes of 'arousing interest' (framing) and 'mobilising support' (venue-shopping), which is beyond the scope of this paper, this section examines how the Commission, the EP and the Council have each attempted fix the EU's broad governmental agenda on sport to a specific set of priorities to be pursued in the medium and ultimately long term; that is, how various institutions have sought to *frame* post-Lisbon sport policy.

4.1. Defining the European dimension in sport

In the past the Commission has had to make creative use of EU competencies in order to justify actions (Bogaert & Vermeersch 2006). For instance, when the EP and the Council established 2004 as the 'European Year of Education through Sport' (European Parliament & Council 2003) the measure had to be justified on the EU's education competency. With the ratification the Lisbon Treaty some of the fundamental agenda-dynamics in sport have been redrawn, especially by allowing framing-strategies to more 'direct'. Thus, Article 165 TFEU (4) formally allows the EU to do two things:

- creates a legislative competence allowing for budgeted "incentive measures" following the ordinary legislative procedure;
- allows for the Council to adopt recommendations, adopted solely by the Council based on a proposal from the Commission;

Because there is no longer any need to bring 'sport' as such onto the formal agenda, the implementation of Article 165 TFEU has not concerned the 'big' authority-related question of *if* the EU should deal with sport but rather been a struggle about how the 'attention' of sport policy should be framed, i.e. what the "incentive measures" on sport called for in article 165

TFEU should involve. In this regard, Article 165 TFEU provides some guidelines by declaring that EU action shall be aimed at:

> developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen (TFEU 165(2)).

While loaded with meaning, a few observations will suffice here. First, "developing" is a modest goal, indicative of sport's relative 'newcomer' status. Second, it clearly frames EU sport policy as being concerned with 'grassroots' rather than professional sports by privileging the "youngest sportsmen and sportswomen".

Interestingly, the first real step top define a EU sport policy under Article 165 TFEU actually happened a few years before the coming into force of the Treaty of Lisbon with the release of the Commission's White Paper on Sport (European Commission 2007a). The result of consultations with Member States and stakeholders, the White Paper is noteworthy in the context of the implementation of Article 165 TFEU because, aside from presenting the Preparatory Actions discussed above, which serve(s) as pilot projects for future actions, it set a lasting trend of defining EU sport policy in terms of three dimensions, namely (1) the societal role of sport, (2) its economic dimension and (3) its organisation.

The Commission's (2011b) Communication on 'Developing the European Dimension on Sport', its first document following the ratification of the Lisbon Treaty, quite overtly represents the Commission's vision of EU sport policy priorities under Article 165 TFEU. In it, the Commission notes that most actions mentioned in the White Paper either had or were being implemented wherefore it had "gathered useful evidence regarding themes to be addressed in the future" (European Commission 2011b, 2). Noting that the Communication builds on rather than replaces the White Paper, it once again presents a number of themes and specific actions to be pursued under the three 'dimensions' of EU sport policy. These incentive measures, however, are now defined with a particular goal and timeframe in mind, specifically as "part of the discussions accompanying the preparation of the next Multiannual Financial Framework" (European Commission 2011b, 4), though the Communications' actions would be supported (financially) though the scheme of Preparatory Actions in the short term. Lastly, the Commission invites the EP and the Council to support the proposals made in the Communication and indicate their immediate priorities.

Table 2: Sporting priorities of the EP, Council and Commission

Commission *White Paper on Sport* and Communication on *Developing the European Dimension of Sport**	Council *European Union Work Plan for Sport*
❖ **The societal role of sport** ➢ <u>fight against doping</u> ➢ <u>education, training and qualifications in sport</u> ➢ prevention of and fight against violence and intolerance ➢ <u>health-enhancing physical activity</u> ➢ <u>social inclusion in and through sport</u> ➢ <u>voluntary activity in sport</u> ➢ cooperation with third countries and organisations ➢ sustainable development in and through sport ❖ **The economic dimension of sport** ➢ <u>evidence-based policy-making in sport</u> ➢ <u>sustainable financing of sport</u> ➢ application of EU State aid rules to sport ➢ regional development and employability ❖ **The organisation of sport** ➢ <u>good governance in sport</u> ➢ the specific nature of sport ➢ free movement and nationality of sportspeople ➢ Transfer-rules and activities of sport agents, ➢ <u>integrity of sporting competitions, including match-fixing</u>, corruption, money-laundering and other forms of corruption ➢ European social dialogue in the sport sector ➢ protection of minors ➢ licensing system of clubs ➢ media and intellectual property rights. *<u>Underlined</u> represents the themes prioritised by the Council.	❖ **Integrity of sport** ➢ fight against doping ➢ match-fixing ➢ promotion of good governance, ❖ **social values of sport** ➢ health ➢ social inclusion ➢ education ➢ volunteering ❖ **economic aspects of sport** ➢ sustainable financing of grassroots sports ➢ evidence-based policy making **EP Report on *Developing the European Dimension of Sport*** ❖ **Developing European Identity though sport by** ➢ expanding existing programmes ➢ further EP-recommended measures such as calling upon the Commission to: ▪ organise an annual 'European Day of Sports' ▪ launch mobility programme for amateur coaches and athletes ▪ suggesting that the European flag should be featured more prominently at major international sporting events

The first institution to reply was the Council, who welcomed the Communication in its Work Plan, calling it "an important step toward the identification of areas for cooperation at EU level whilst respecting the autonomy of sport's governing structures and the principle of subsidiarity" (Council 2011c, p 4). In terms of framing, the documents are similar by calling for the need for further cooperation in light of Article 165 TFEU, but both also now point to sport's ability to contribute to the objectives of the Europe 2020 Strategy (Council 2011c, 1; European Commission 2011b, 3). Moreover, the Council welcomed the themes identified by the Commission in its Communication (2011b) and White Paper (2007a), in which the Council identifies 21 themes and selects 10 which until mid-2014 "should be given priority by Member States and the Commission" (Council 2011c, 2). As table 2 shows, the Council's three thematic groups do not directly correspond to the Commission's three dimensions insofar as 'the integrity of sport' grouping draws both from the social (anti-doping) and the organisation of sport (good governance; match-fixing). Moreover, and very much in tune with article 165 TFEU, the "sustainable financing of sport" is framed to concern "grassroots sport". Regardless, this list represents the Council's immediate priorities for EU sport policy at large; it's framing of the broader governmental agenda on sport to a smaller set of issues to be pursued.

One of the notable aspects of Article 165 TFEU is that 'incentive measures' are to be adopted by co-decision, meaning that EP now has more direct influence on shaping the EU's agenda on sport beyond its budgetary powers. In that regard, the EP's Report on 'Developing the European Dimension in Sport' is generally approving, somewhat expectedly urging "the Commission to propose a dedicated and ambitious budget for sports policy under the future MFF given the public health, social, cultural and economic benefits of sport" (European Parliament 2011, 1). Whereas the Council's Work Plan is all about limiting the agenda as set forth by the Commission, the EP's Report is especially interesting in that it seeks to reframe the underlying *rationale* governing EU sports policy. Whilst the EP Report follows the Commission's Communication relatively closely, first considering the three dimensions of sport, the last part of the Report introduces a new concept to the debate, suggesting that the entire principle behind EU action in sport should be to improve 'European identity through sport' (European Parliament 2011, 98-99). While this should be achieved, in part, by expanding existing programmes, it also makes a series of recommendations as to the launch of new initiatives (see table 2).

In these decisions, the EP, Council and the Commission have each presented their ideas and priorities for an EU sport policy in the short term. All of these decisions, however, also feed into the larger discussion of fully implementing Article 165 TFEU with sport's inclusion in EFA-programme.

4.2. Preparing for the future: A glance at Erasmus For All

The final, crucial element of implementing Article 165 TFEU thus concerns including sport within the Multi-Annual Framework, specifically within the Commission's proposed EFA-programme (European Commission 2011d). The first thing to acknowledge of course is that sport is very small component of the activities of Education, Training, Youth and Sport and outright minuscule in the grander scheme of the EU budget. Indeed, in the Commission's proposal for a EFA-programme, sport is 'only' allotted one percentage of the proposed EFA budget[2] (European Commission 2011c, 15) which testifies both the 'supporting' nature of sport's competency and the relatively low level of *attention* of sport in the EU.

In line with the wider EU agenda, the EFA-programme is framed in terms of achieving the Europe 2020 goals since "Education and training are at the core of Europe 2020 Strategy for smart, sustainable and inclusive growth" (European Commission 2011d, 2) just like, for instance,

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[2] The Commission proposed budget for the EFA-programme for 2014-2020: €17.299.000.000 (European Commission 2011d, 6).

the new Horizon-programme, replacing FP7, claimed for research and innovation (European Commission 2011e, 2). At a structural level the EFA-programme represents the Commission's wish of uniting the "complexity of multiple programmes and actions" under a "a simpler, streamlined architecture" (European Commission 2011c, 2). In this sense it is interesting to consider the Commission's thoughts on the placement of sport in the EFA-programme. The Commission had considered multiple options: A baseline of no further sporting actions; establishing a stand-alone Sport programme; or within a single programme. The Commission did not anticipate any problem with the latter option, considering that "The proposed measures aim at reaching out to grassroots sport organisations, which are generally not part of the education, training and youth sectors" and for that reason "the proposed incentive measures would maintain their specificity as a sub-programme" (European Commission 2011a, 24). A fourth option, where a new stand-alone Sport Programme would be accompanied by the creation of an Open Method of Coordination (OMC) mechanism, was quickly dismissed with reference to a 2010 assessment which had concluded that it would "be premature to establish an OMC for a new policy area such as sport" (European Commission 2011a, 25). Ultimately, the Commission settled on the third option in its Proposal, where sport is included in the larger EFA-programme with its own sub-programme. The sport sub-programme of EFA is justified on the basis of Article 165 TFEU and its stated general objective is to contribute to "developing the European dimension in sport" (European Commission 2011d, 4(1)). Sport is given its own separate chapter (III) and two articles (11 and 12) which state specific objectives and activities to be taken.

Both the Council (2011b) the European Parliament (2012) have proposed amendments in their first readings and are currently involved in 'trilogue' negotiations, with the Cyprus Presidency of 2012 indicating that an agreement is expected to be reached during 2013 (Council 2012, 9). The major points of disagreement seem related to the budget size and the EP, unlike the Council and the Commission, preferring the name 'YES Europe' and wishing to retain the 'old' sub-programme names (e.g. Comenius, Erasmus, Grundtvig) rather than combining everything under 'Erasmus for All' (see Council 2013a, 9-10). As to sport, there is a general level of agreement between the Council and EP, though it should be noted that the Council was the first to issue its partial approach and the EP accepted many of the Council's changes. First, whereas the Commission's proposal merely stated that the scope of the programme would "also support activities in the field of sport" (European Commission 2011d, 1(4)), both the Council and the EP specify "sport, in particular grassroots sport" (European Parliament 2012, amd 5; Council 2011b, art 1: 3c), which is also stressed under their amendments to Article 11's specific objectives of the programme. Ultimately the Council and the EP therefore also agree to add a definition of

grassroots sports, which is not defined and only briefly mentioned in the Commission's proposal under "access", i.e. potential beneficiaries (European Commission 2011d, 27) .

Nevertheless there are a number of interesting disagreements, most of which relate to the different ways of framing EU sport policy identified in the previous section. Thus, in the Commission's proposal, Article 4 ('General Objectives') merely states that the Programme should aim to develop "the European dimension in sport", with the Council proposing that this should be done "in line with the Union work plan for sport" (Council 2011b, art 3). The EP seemingly accepts the Council's Work Plan being inserted as being the EFA-programme's main, guiding document as to sport, but rephrases everything, adding numerous things: "the objective of developing the European dimension in sport, in particular grassroots sport, in line with the Union work plan for sport, taking into account the added value of sport for the Union's cultural and historical heritage" (European Parliament 2012, amd 76).

Figure 1: EP re-framing: European identity as the central purpose of EFA sporting actions

We here see a pattern emerge with the EP introducing matters of identity and heritage through sport. Regarding Article 20, which concerns the basic framework of the three 'dimensions' as elaborated in the Commission's *Devleoping* Communication, the EP's amends that this Communication produces a "list of concrete actions for the Commission and the Member States **to increase sport's European identity**" (European Parliament 2012, amd 24), thus restating the EP's interpretation of what is supposed to be the grand purpose of EU sport policy (see figure 1). Moreover, the EP's amendment 193 wants the Programme to explicitly support to the organisation of a European Sports Day or Week hence promoting "the social and cultural role of amateur and professional sport and the benefits of sport in terms of public health". As to the specific objectives and activities outlined by the Commission in Article 11 and 12, the EP and Council largely agree on changes to the Commission text, though there is some disagreement

particularly as to Article 11(A). First, the Commission and the EP are united in preferring the term "transnational threats" to the Council amendment of "cross-border threats". Second, the EP prefers a broadening of the scope Article 11(a). Thus, were the Council merely points out that the objective is to tackle "cross-border threats to sport such as doping, match fixing, violence, racism and intolerance", the EP wants the objective redrafted as being to "tackle transnational threats to the integrity of sport, including grassroots sport, such as doping, match fixing and violence as well as all kinds of intolerance and discrimination". Interestingly the EP here borrows the category of "the integrity of sport" from the Council's Work Plan, which again suggests a general level of agreement as to what should be the focus of attention in implementing Article 165 TFEU and seeing it included into the EU's multi-annual framework.

In summation, the on-going process of implementing the "supporting measures" stipulated by Article 165 TFEU, specifically by securing sport's inclusion it in the EFA-programme, has seen a great deal agreement as to how sport should be framed, with the Commission presenting the larger themes and the Council accepting and specifying these to a concrete set of priorities. The EP, too, has largely agreed on the same priorities but has sought to re-frame the rationale of the EFA's sporting action be concerned with promoting European identity through sport and, in addition, sought additional emphasis on grassroots sports, tough such differences are not likely to be major stumbling blocks in terms of reaching a final agreement on the EFA-programme.

5. Discussion and conclusion: the new normal of EU sport policy, or how everything has to change to stay the same

The arguably biggest impact of the efforts to implement Article 165 TFEU has been the way it has spurred the Council to adopt a more formalised, coherent approach to cooperating on sport, and in particular seen them build a larger bureaucracy to prepare and coordinate policies and positions, in addition to the combined efforts of the Commission and the Council to develop 'European' policy networks on sport by establishing forums for stakeholder and policy-makers to discuss European, transnational issues affecting sport. Hence, building capacity has been a key concern and the aspect of implementing the goals set forth in Article 165 TFEU which have come the furthest. On the other hand, the second main aspect relating to implementing Article 165 TFEU – i.e. enveloping sport in the EU's multi-annual framework, hence providing the foundation for carrying out the stipulated "incentive measures" – has yet to be implemented. With the negotiations on the EFA-programme still on-going, it is hard to make any definitive assessment on the tendencies of how the 'attention' of EU sport policy under Article 165 TFEU is set to be framed and ultimately implemented, though we can make some tentative

observations. In general, we seem to be seeing an overall acceptance that the Council's Work Plan is the new 'bible' of EU sport policy in the period 2014-2020 – perhaps only natural in light of sport being a 'supporting' competency of the Member States – with the EP seeking to secure additional emphasis on grassroots sports being the primary focus at the expense of professional sports, and a wish to highlight sport's potential to promote European identity.

The question then remains if through the on-going process of implementing Article 165 TFEU there can be observed a tendency towards EU sport policy becoming increasingly 'normal'? The answer is both 'yes' and 'no'. On a purely superficial level, EU sport policy seems to reflect all the characteristics of a typical 'newcomer' policy as described by Princen (2011b, 940). Thus efforts *have* centred on 'building credibility' as far as organisational capacity and key concern has been to develop EU communities on sport. At the same time the coming into force of Article 165 TFEU has, equally expectedly, made EU sport policy much more 'direct' with sporting issues now being linked to Article 165 TFEU and less reliant on linking sport to more developed policy areas. With sport gaining treaty recognition, EU sport policy has arguably become increasingly 'normal' and more focused on matters of 'gaining attention' for various issues; the question is less whether the EU *should* be involved in sport and more where and how it should spend its (albeit) limited resources.

Nevertheless, this case-study also suggests that, at a very fundamental level, the implementation of Article 165 TFEU has not really changed any of the larger agenda-dynamics of EU sport policy; that the ratification of the Lisbon Treaty has, to some extent, meant that everything has had to *formally* change for everything to basically stay the same. As noted by Parrish (2002, 2; 2003b, 257) in his influential, early studies, the EP's source of power through the 1990's and early 2000s lay in its legislative scrutiny and budgetary powers while the Member States' agenda-setting powers lay in regularly releasing political guidelines through subtle uses of soft power to steer the Commission in the direction that they saw sport EU sports policy and regulation develop, and were arguably rather successful in that regard. While the underlying bureaucracy has expanded, working procedures have been formalised and the 'Working Groups' have been replaced by 'Expert Groups', the fundamentally same agenda-dynamics remain under Article 165 TFEU, just as the *exact* question of how EU law applies to sport remains loosely defined.

So, too, are there contradictory indications as to the extent that the Member States wish to use the EU as a way of coordinating efforts in relation to the major transnational threats facing sport. For instance, while the Council seems poised to adopts its first Recommendation authorising the Commission 'to participate, on behalf of the EU, in the negotiations for an international

convention of the Council of Europe to combat the manipulation of sports results' (Council 2013b), the Member States a few years earlier opted *not* to allow the Commission to be one of its 3 possible representatives in WADA negotiations despite this having been the recommended that option by the Presidency (Council 2011a), ultimately choosing to keep representation among themselves (Council 2011d). At the same time, while there is dispute that 'match fixing' has risen to the top of the Council's and the EU's agenda on sport, formal rules and internal disagreements constrain progress. For instance, the Council was not able to adopt a set of draft conclusions on a 'strategy to combat the manipulation of sports results' because Malta would not accept the text, wherefore the conclusions could only be adopted as Presidency conclusions (Council 2012, 25). Indeed, as evidenced in the seeming lack of feasibility of including an OMC-mechanism in EU sports policy, the Member States' still appear very far removed on issues related to sport, wherefore it seems likely that for many years to come EU sport policy will continue to revolve around modest funding programmes and developing European policy networks, possibly laying the ground for gradual convergence of opinions and national legislation.

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