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intervention into the regulation of players' agents in Europe**

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# **THE EU & PLAYERS' AGENTS:**

## **A theoretical analysis of the EU's intervention into the regulation of players' agents in Europe**

**SERHAT YILMAZ**

**A thesis submitted in partial fulfilment of the  
requirements of the University of Westminster for the  
degree of Doctor of Philosophy**

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## Abstract

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This research investigates the EU's intervention into the regulation of players' agents, as a policy issue, in the context of EU sports policy. A socio-cultural perspective is developed through analyzing the EU policy actors of the socio-cultural advocacy coalition (the Education and Culture DG within the Commission, the Committee on Culture and Education in the European Parliament and the Member States) operating within the EU sports policy subsystem. The research conceptualizes the socio-cultural regulation of sport as the EU policy actors' strongly held policy core beliefs. In order to deduce policy core beliefs, there are three research dimensions examined in relation to the regulation of players' agents: coordinated activity between the actors, selective perception by policy core beliefs, and the actors' preference with regards to policy instruments to regulate players agents at European level. This research utilizes the advocacy coalition framework (ACF) as the theoretical framework. Primary documentary sources of the EU are analyzed through the method of content analysis.

The EU policy actors have gradually coordinated their activities with regards to the regulation of players' agents. During the preparatory phase of the White Paper on Sport, there was a weak level of coordination involving interactions and information exchange. During the aftermath of the White Paper on Sport, the actors fostered a stronger coordination through developing and implementing a common plan of action. At the same time, the actors learned about the problems within the activities of players' agents which they perceived as a threat to their policy core beliefs. As a result, the EU policy actors developed their policy position in relation to players' agents. In this context, their policy core beliefs performed selective perception by selecting, interpreting and ignoring certain stimuli in order to support that policy position. Consequently, the EU actors agreed on the necessity of a more effective regulatory framework governing players' agents, yet the EU's constitutional limitations have constrained potential available options at European level, in particular the emergence of European legal initiative. The research evidences that the EU policy actors' policy core beliefs have been the main driver for their activities, perceptions and preferences related to players agents.

**Keywords:** European Union; European Union Sports Policy; Players' Agents; Advocacy Coalition Framework; Coordinated Activity; Selective Perception.

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Finally, I am thankful to my wife, Ayse, for extending her unconditional love and support. Without her encouragement, this research would not have been possible.

## **Declaration**

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This thesis is submitted to the Westminster Law School, University of Westminster, in partial fulfillment for the degree of Doctor of Philosophy. I declare that all the material contained in this thesis is my own work.

Date:

Signed:

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## List of Acronyms

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ACF	Advocacy Coalition Framework
AFA	The Association of Football Agents in the UK
CEN	European Committee for Standardization
CFI	European Court of First Instance
DG	Directorate General
ECA	European Club Association
CJEU	Court of Justice of the European Union
EP	European Parliament
EPFL	European Professional Football Leagues
EU	European Union
FA	Football Association
FAPL	The Football Association Premier League Limited
FIBA	International Basketball Federation
FIFA	International Federation of National Football Associations (Fédération Internationale de Football Association)
FIFPro	International Federation of Professional Footballers' Associations
G-14	Grouping of 18 of the richest and most important professional football clubs in Europe existed between 2000 and 2008 and was replaced by the European Club Association.
IESR	Independent European Sport Review
MEP	Member of the European Parliament
MLPA	California Marine Life Protection Act
PA	Principal and Agent Analysis
RDT	Resource Dependency Theory
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

UEFA

The Union of European Football Association

## **CHAPTER 1**

### **Introduction**

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#### **The EU and Players' Agents: A paradox within a paradox**

The EU's relationship with sport represents a paradox (Garcia 2008) that scholars aim to explain (Brown 2000; Parrish 2003a, 2003b; Takorski et al. 2004; Garcia 2008). The apparent paradox results from the fact that the EU has managed to develop a policy related to sport despite the lack of competency in the field up until the Lisbon Treaty. The EU is required to act within the limits of powers conferred by its Treaties (Article 5 of the Treaty on European Union (TEU)) which meant that the EU had no direct authority to develop any kind of policy on sport related issues. Hence, the development of the EU sports policy needs to be explained.

Despite the lack of direct competency, EU sports policy has developed under two policy strands: the single market regulation of sport and the socio-cultural regulation of sport (Parrish 2003a, 2003b). The notion of the single market regulation of sport is based upon negative integration through the application of the EU law, particularly internal market and competition rules, to sport as far as it constitutes an economic activity. The socio-cultural regulation of sport, on the other, is based upon positive integration and recognizes the socio-cultural characteristics of sport in Europe and attempts to balance the EU's market model of regulation of sport with one that promotes its socio-cultural qualities.

Within this context of EU sports policy, the regulation of players' agents and the EU's involvement on the issue represents a paradox within a paradox. This is

due to the fact that the initial incursion of the EU with the regulation of players' agents was from a single market perspective and both the Commission and the General Court confirmed that rules of FIFA in governing the profession of players' agents were compatible with EU internal market and competition rules (*Laurent Piau v Commission* [2005] ECR II-209, Case C-T193/02, hereafter referred as Piau). The Competition Directorate General (DG) within the Commission and the General Court, formerly known as European Court of First Instance (CFI), were the main policy actors that examined the compatibility of FIFA's regulatory framework with EU law under the complaint initiated by Laurent. Nonetheless, despite those decisions, the EU's interest on the issue has persisted. In particular, the Member States, the Education and Culture DG in the Commission and the Committee on Culture and Education in the European Parliament have focused on the regulation of players' agents. Their efforts led to the impact assessment under the White Paper on Sport in 2007 (European Commission 2007a), the parliamentary resolution in 2010 (European Parliament 2010) and the EU Expert Group' analysis between 2011 and 2013 (Council of European Union 2013). This research aims to understand and explain the EU's interest on the issue. In particular the research examines the causal drivers of the EU's intervention into the regulation of players' agents in the context of the socio-cultural regulation of sport.

### **Why the EU and Players' Agents?**

There are several justifications for the choice of players' agents as a policy issue to be analyzed in the context of the socio-cultural regulation of sport within the EU sports policy subsystem. Firstly, there is scarce academic attention to the

regulation of players' agents from a policy-making perspective (Parrish 2007). The literature on players' agents is generally limited to either the legal analysis of the decisions by the Commission and the General Court at European level or the descriptive accounts of the regulatory framework that governs the agents' activities at international and national level. These limits and gaps of the existing literature are presented in Chapter 3. The research for the first time examines players' agents in the context of public policy making at European level. The research also develops a socio-cultural perspective on the regulation of players' agents through analyzing the activities of the EU policy actors of the socio-cultural advocacy coalition (the Education and Culture DG, the Parliamentary Committee on Culture and Education, and the Member States)<sup>1</sup> within the EU sports policy subsystem. Moreover, the literature on the regulation of players' agents lacks a theoretical approach. There is only one study (Holt et al. 2006) which has developed a theoretical perspective on the issue so far. This research also aims to fill this gap and develops a theoretical approach, by utilizing the Advocacy Coalition Framework (ACF) as a theoretical framework, which also contributes to understanding of EU policy making in the field of sport in relation to players' agents.

Secondly, the intervention by the EU, as a public authority, into the regulation of players' agents, which is a governance issue for football, also requires a justification. Sports governing bodies traditionally enjoyed autonomy to regulate their sports and the principle of sporting autonomy, the principle that

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<sup>1</sup> Hereafter the Education and Culture DG, the Parliamentary Committee on Culture and Education and the Member States are referred as "the EU policy actors" of the socio-cultural advocacy coalition with the EU sports policy.

recognizing the sports governing bodies' authority to regulate their own sport, is also widely recognized and respected by the EU. Accordingly, sport governance structure at European level comprises the autonomy and diversity of sport organizations within a pyramid structure of competitions from grassroots to elite level. Within this framework, FIFA developed the regulatory frameworks that have been governing the activities of players' agents. The historical background of these regulatory frameworks is outlined in Chapter 2. Nonetheless, the autonomy of sport is now constitutionally recognized under Article 165 of the Lisbon Treaty. Therefore, it is important to understand the motives of the EU in involving with the issue in order to justify the intervention.

Thirdly, the regulation of players' agents, as a policy issue, provides the right context for the analysis of the socio-cultural regulation of sport within the EU sports policy subsystem. The issue had been initially confined within the boundaries of the EU's single market regulation of sports (Parrish 2002a, 2002b, 2003a, 2003b). In this context, the investigation by the Competition DG and the *Piau* judgment of the General Court is presented in Chapter 2 in order to provide necessary background context of the EU' single market approach. However, since the preparatory phase of the White Paper on Sport following the Nice Declaration in 2000 up until 2015, the issue has dominantly been within the socio-cultural realm of the EU sports policy. The time frame of a decade or more and the activities of the EU policy actors on players' agents postulate the contextual components to investigate the policy making in the context of socio-cultural regulation of sport.

Finally, I had been a licensed players' agent since 2008 and actively involved in deals with clubs, players and other players' agent. I have been registered as an intermediary following changes to the regulatory framework by FIFA in April 2015. Being an active agent enabled me to experience some of the problems associated with the activities of players' agents including the exploitation of minor players and financial irregularities in transfer payments. In addition, I was able to observe some of the deficiencies of a licensing based regulatory framework, such as the lack of supervision and monitoring by football governing bodies and an incoherent transposition of FIFA' regulations at national level. Accordingly, my first hand experience and an insightful understanding of European transfer and player market provide a unique perspective for the analysis of the EU's involvement on the issue.

### **Research Questions**

This research investigates the EU's involvement with the regulation of players' agents within the wider context of the EU sports policy subsystem. The core research question is: to what extent does the socio-cultural regulation of sport actually underpin the EU's involvement with the regulation of player's agents?

In doing so, the research takes Parrish's analysis of EU sports policy (Parrish 2003a, 2003b), especially the socio-cultural advocacy coalition with its actors and beliefs system within the EU sports policy subsystem, as a main point of departure. The research adopts two key assumptions from Parrish's research. The first assumption is that the socio-cultural advocacy coalition operates within the subsystem with the objective of translating their policy core beliefs into



policies at European Union level. The second assumption is that the EU policy actors of the socio-cultural advocacy coalition, who are the Education and Culture DG, the Parliamentary Committee on Culture and Education and the Member States<sup>2</sup>, referred as “the Maximalists” by Parrish (2003a, p.69), hold strong policy core beliefs in relation to the socio-cultural regulation of sport. Based upon these two key assumptions, as a result, the research conceptualizes the socio-cultural regulation of sport as policy core beliefs of the EU policy actor. This conceptualization is fully elucidated in Chapter 3. The research investigates the extent of the role played by policy core beliefs of the actors in the case of the regulation of players’ agents at European level. The concept is used as an analytical tool in a form of policy core beliefs which represents the socio-cultural coalition’s basic normative values and causal perceptions. Consequently, the adoption of two key assumptions from Parrish’s research and the conceptualization of the socio-cultural regulation of sport as the policy core beliefs of the EU policy actors also underpin the theoretical choice of the research. The Advocacy Coalition Framework (ACF) is utilized as a theoretical framework of the research (Sabatier 1988, 1998; Sabatier and Jenkins-Smith 1993, 1999; Sabatier and Weible 2007; Jenkins-Smith et al. 2014).

The research then develops and investigates three sub-questions, derived directly from theoretical assumptions of the ACF. Policy core beliefs are central

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<sup>2</sup> For the purposes of research, the Member States are taken from the work of Parrish (2003a). Parrish defines the Member States in the discourse of development of EU sports policy. Those that supported socio-cultural agenda and located within the maximalists include all states except Britain, Denmark and Sweden (Parrish, 2003a, p.69). In the context of regulation of players’ agents, although it is difficult to determine the individual position of each Member State, all Member States have been present involving in a number of activities (through Presidency meetings and European Sport Forum) as well as in the configuration of new council post-Lisbon. Therefore, the research adopts a holistic approach and refers to all Member States.

for these questions. The questions represent three research dimensions taken into account in deducing policy core beliefs of the EU policy actors within the socio-cultural advocacy coalition operating within the EU sports policy subsystem in relation to the regulations of players' agents: coordinated activity, selective perception by policy core beliefs, and policy preferences.

- RQ1: Is there a non-trivial degree of coordinated activity amongst the EU policy actors of the socio-cultural advocacy coalition in relation to the regulation of player's agents within the subsystem?

The first dimension of research concerns coordinated activity. The sub-question aims to deduce policy core beliefs by investigating coordinated activity amongst the EU policy actors with regards to the regulation of players' agents. The question derives from the theoretical assumptions of the ACF related to coordinated activity. The ACF sees coordinated activity as a necessary component for the formation and identification of advocacy coalitions within subsystems and assumes that the policy actors with congruent policy core beliefs coordinate their activities in order to develop and implement a common strategy to translate those beliefs into public policy (Sabatier 1988; Sabatier 1998; Sabatier and Jenkins-Smith 1999). In other word, according to the ACF, coordination occurs between policy actors who share similar policy core beliefs (Sabatier and Jenkins-Smith 1998, p.103; Matti and Sandstrom 2011, p.388). Therefore, RQ1 is based upon the theoretical hypothesis that the EU policy actors are likely to coordinate their activities in relation to the regulation of players' agents with each other as a result of their shared policy core beliefs (the socio-

cultural regulation of sport). Therefore, the research aims to identify coordinated activity amongst the EU policy actors which should be present. The research's analysis on coordinated activity is presented in chapter 5. Coordinated activity has also been one of the most criticized aspects of the ACF that the research aims to clarify and hopefully this will enhance the research's contribution to knowledge.

- RQ2: Do policy core beliefs of the EU policy actors perform selective perception in the process of policy-oriented learning, in particular to policy analysis and information, related to the regulation of players' agents?

The second dimension of research examines selective perception performed by policy core beliefs. The sub-question aims to deduce policy core beliefs of the EU policy actors by examining selective perception performed by policy core belief in the process of policy-oriented learning, especially in relation to the acquisition of information and relevant policy analysis, with regards to the regulation of players' agents. The sub-question is based upon the ACF's theoretical assumption related to the function of policy core beliefs in selecting and interpreting information on specific policy issues. The ACF assumes that the policy actors use selective perception to select information and other variables to confirm their policy core beliefs and also interpret them in accordance with their pre-existing core beliefs (Sabatier 1988; Freudenburg and Gramling 2002; Sabatier and Weible 2007; Weible 2008; Matti and Sandtrom 2013; Jenkins-Smith et al. 2014). Selective perception performed by policy core beliefs is a result of the model of

the individual used by the ACF, who is instrumentally rational but has cognitive limitations in processing information (Sabatier 1986 & 1987; Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007 & 2014). Therefore, RQ2 is based upon the theoretical hypothesis that the EU policy actors are likely to select information in their policy analysis that confirms their policy core beliefs (the socio-cultural regulation of sport). Based upon the ACF's theoretical assumptions, the EU policy actors' policy core beliefs should also perform selective perception in relation to the regulation of players' agents and the research investigates this and presents its findings in chapter 6.

- RQ3: What are the policy preferences of the EU policy actors in relation to policy instruments to regulate players' agents at European level and to what extent do the policy preferences reflect the policy core beliefs of the actors?

The third dimension of the research analyses policy preferences of the EU policy actors in relation to policy instruments to regulate players' agents at European level. The sub-question aims to deduce policy core beliefs of the EU policy actors from their policy preferences. The fundamental assumption of the ACF behind the sub-question is that advocacy coalitions play a central role in policy design within subsystems and engage in a non-trivial degree of coordination to translate their policy core beliefs into actual policies. The end result of the policy process is policy outcomes (policy instruments) that reflect their policy core beliefs (Sabatier 1988; Weible and Sabatier 2005; Matti and Sandstrom 2011, 2013). Therefore, RQ3 is based upon the theoretical hypothesis that the EU

policy actors' policy preferences in relation to policy instruments to regulate players' agents are likely to reflect their policy core beliefs (the socio-cultural regulation of sport) or to be in accordance with their policy core beliefs. The research investigates this theoretical correlation between the EU policy actors' preferred methods for regulating player`s agents and their shared policy core beliefs.

### **Research Design and Methodology**

This research is theoretically driven and, in this sense, deductive in nature. "A deductive approach is concerned with developing a hypothesis (hypotheses) based on existing theory, and then designing a research strategy to test the hypothesis" (Wilson, 2010, p.7). The main research question investigated is theoretically underpinned resulting from the conceptualization of the socio-cultural regulation of sport as policy core beliefs of the EU policy actors, which finds a conceptual meaning under the ACF. Then, the sub-research questions are developed through hypotheses derived from the ACF's assumptions where policy core beliefs, as a theoretical concept, are central.<sup>3</sup> The aim of the research is to deduce policy core beliefs of the EU policy actors of the socio-cultural advocacy coalition by investigating their patterns of coordinated activity, selective perception performance by their beliefs and their policy preferences with regards to the regulation of players' agents, as a policy issue. Therefore, the research is closer to the theory before research model (Berg 2007, p.23).

The research also follows deductive reasoning approach. The direction of

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<sup>3</sup> There are number of studies follows the same methodological approach. They also develop and test hypotheses from the ACF's assumptions. For some of these studies see Weible and Sabatier (2009), Ingold (2011), Henry (2011), Matti and Sandstrom (2011, 2013).

reasoning circulates around the cycle linking theory, hypotheses and observations/data of pattern with each other (May 2011). In this context, the stages of the research are as follows;

- a) The analysis of the existing literature in order to develop a theoretical perspective on the topic: The research examines the existing literature and locates the conceptual meaning of the socio-cultural regulation of sport as policy core beliefs within Parrish's research on the EU sports policy. This conceptual meaning is adopted and has two functions for the research: guiding the theoretical choice of research and assisting in the development of hypotheses that are the basis of the sub-research questions. The review of literature is presented in chapter 3.
- b) Formulating sub-research questions (based upon theoretical hypotheses) in operational terms: The formulation of the sub-research questions is based upon the theoretical assumptions of the ACF where the policy core beliefs are central. The conceptualization, therefore, enables the research to focus on the specific query and extraction of specific conclusions. The theoretical framework with its core concepts presented in chapter 4.
- c) The testing of the hypotheses through the application of relevant research method by observing specific patterns within the activities of policy actors (Chapter, 5, 6 &7).
- d) Examining the outcomes and thus confirming or rejecting the theory (Chapter 8).

The theory-based analysis of the research has a dual objective: to explain the EU policy making in the context of the EU sports policy in relation to players' agents

(the first objective of the research) and to contribute the theoretical advancement of the ACF through testing its hypotheses (the second objective of research). The research takes into account the literature on the wider EU sports policy and locates the regulation of players' agents within it. Then, the research analyses the regulation of players' agents from the socio-cultural perspective which is a more specific and defined strand of the EU sports policy. This represents the research's specific focus within the wider literature in the field of EU sports policy. At the same time, the research has a specific focus with regards to the theory, the ACF. A specific focus is on the concept of policy core beliefs and related theoretical concepts within which policy core beliefs are central: coordinated activity, selective perception and policy preferences. These concepts convey three dimensions of the research for deducing policy core beliefs and the findings represents the research's contribution to literature on the ACF. This dual objectivity and findings represent the originality of research and its contribution to knowledge.

In doing so, the research analyses primary and secondary documentary sources as primary sources for data/observations. Table 1 outlines the sources that are examined in the process of research.

**Table 1: Documentary Sources**

Primary Sources	Secondary Sources
<ul style="list-style-type: none"> <li>• European Council Conclusions</li> <li>• Official Documents/Reports Originates from the Council Presidencies</li> <li>• Presidency Conclusions of EU sports ministers and Directors’ Meetings</li> <li>• Official Documents of Working Groups</li> <li>• Official Documents of the European Commission</li> <li>• Official Documents/Reports Originates from the European Commission</li> <li>• European Parliament resolutions</li> <li>• Verbatim Reports of Debates in the European Parliament</li> <li>• Parliamentary Questions to the Council and the Commission</li> </ul>	<ul style="list-style-type: none"> <li>• Scholarly Journals and Books</li> <li>• Chapters and Contributions to Collective Books</li> <li>• Law Reviews</li> <li>• Doctoral Dissertations</li> <li>• Reports of Conferences and Research Institutes</li> </ul>

The choice of primary sources at European level is guided by the research’s focus on the EU policy actors of the socio-cultural advocacy coalition. Table 2 lists the type of primary source, the specific policy document, the year and the originator of the document used for this research. The official EU documents originated from these actors are examined and reviewed by the research. These documents are sources that provide *“historical and context surrounding a specific setting”* and are also *“rich in portraying the values of beliefs of participants in the settings”* (Marshall and Rossman 1999, p.116). Moreover, these documentary sources satisfy the four criteria in assessing the quality of evidence from these kinds of documentary sources: authenticity, credibility, representativeness and meaning (May 2011). The authenticity of documents is assessed through *“judgment of authenticity from the internal evidence of the text comes only when one satisfied*



*that it is technically possible that the document is genuine*" (Calvert 1991, p.121). The credibility of documents *"refers to the extent to which the evidence is undistorted and sincere, free from error and evasion"* (Scott 1990, p.7). The documentary sources of the EU policy actors clearly satisfy both criteria as they are available through official EU portals and produced by the actors.

The document's representativeness has been referred to as typicality meaning that whether *"there is a typical document or a typical method of representing a topic which we are interested"* (May 2011, p.208). Although typicality varies from research to research and untypical documents may also be useful for analysis, the interest of this research in terms of typicality of document relates to the EU policy documents representing the views of the policy actors. These documents, as a primary documentary source, have been also used by several scholars (Parrish 2003a; Garcia 2007; Takorsky et al. 2004) in analyzing EU sports policy or, in broader terms, the EU's relationship with sport. Therefore, the representativeness of those documents is also without any problem.

Finally, there is a document's meaning that is referred as the clarity and comprehensibility of a document to the analyst. In this connection, two questions are of concern: *"what is it and what does it tell us"* (Scott 1990, p.8). However, these questions are not easy to answer and necessitate studying documents, especially the text of documents, within its social context (May 2011, p.208). The contextualization of the regulation of players' agents within the EU's socio-cultural regulation of sport enables us to understand the meaning despite the use of words varies and meanings may change. Furthermore, the research adopts the method of qualitative content analysis, explained below, aiming at extracting

the right meanings from the documents investigated.

The research utilizes the content analysis, as a method, to analyze the documents. Content analysis, as a method, can take both quantitative and qualitative form whilst comprising three stages: stating the research problem, retrieving the text and interpretation and analysis (Ericson et. al. 1991, p.50). Although for the identification of the relevant documentary sources at European level, i.e the official EU policy documents, some form of quantitative analysis is undertaken, the general nature of analysis is qualitative. Quantitative content analysis seeks *“to show patten of regularities in content through repetition”* (May 2011, p.209) and the primary sources were determined through analysis of the contents in search of text related to the regulation of players’ agents. Through this investigation the research has compiled the documentary sources to be analyzed at the European level, as presented in Table 2. Nonetheless, quantitative analysis is limited in examining the overall meaning of text and also the frequency of words and phrases occur in a text may not offer any form of explanation (May 2011, p.210). Therefore, the research adopts qualitative content analysis in order to engage in meaning construction. *“In the process, the analyst pick out what is relevant for analysis and pieces it together to create tendencies, sequences, patterns and orders. The process of deconstruction, interpretation, and reconstruction breaks down many of the assumptions dear to quantitative analysts”* (Ericson et. al. 1991, p.55). This process also enables the researcher *“to consider not only in which meaning is constructed, but also the ways in which new meanings are developed and employed”* (May 2011, p.211).

Additionally, the ACF scholars also view the content analysis of relevant

documents as a most promising method to investigate the theoretical aspects of the framework, especially the content of beliefs systems and policy change (Sabatier 1988, p. 147). Sabatier and Jenkins-Smith devoted a whole chapter to the content analysis method for future use of the ACF (Sabatier and Jenkins-Smith 1993, pp. 237-256). Therefore, this scholar guidance also led the research to adopt the method of content analysis of the documentary sources for the purposes of research.

This research has also a longitudinal component in examining the EU's intervention into the regulation of players' agents. The research primarily investigates policy-making within the EU and the period extends over a decade from the Nice Declaration in 2000 until 2015. The focus on a timespan of a decade or more is one of the basic premises of the ACF (Sabatier 1988, p.131) and derives from the importance of the enlightenment function of policy research (Weiss, 1977). The long-term perspective is important for understanding the strategic behavior and learning of coalition actors as well as assessing the success or failure of public policy (Jenkins-Smith et al. 2014, p.193). The research's longitudinal component therefore has a theoretical underpinning. As a result, the research also takes a long-term perspective and analyses the discourse of the EU's intervention into regulation of players' agents over a period longer than a decade (from 2000 to up until 2015).

**Table 2: Primary Sources**

<b>The Nice Declaration in 2000 to the White Paper on Sport in 2007</b>			
<b><u>Primary Sources</u></b>	<b><u>Documents</u></b>	<b><u>Time Frame</u></b>	<b><u>Policy Actors</u></b>
European Council Conclusions	Rolling Agenda on Sport	2004	The Member States
European Council Conclusions	Report of EU Sports Minister Meeting	Dec 2005	The Member States
Official Documents of the European Commission	Report of Consultation Meeting with Sport federation - Sport Governance in Europe	Sep 2006	The Education and Culture DG
Official Documents/Reports Originates from the Council Presidencies	Report -European Independent Sport Review	Nov 2006	The Member States
Official Documents of the European Commission	Report of Online Consultation	Feb 2007	The Education and Culture DG
Official Documents of Working Groups	Report of Meeting of Member States Working Group on White Paper	Mar 2007	The Member States
Official Documents of the European Commission	The White Paper on Sport	July 2007	The Education and Culture DG
European Parliament resolutions	Resolution on future of European Football	Mar 2007	The Committee on Culture and Education
Verbatim Reports of Debates in the European Parliament	Report of Parliamentary Debate	Mar 2007	The Committee on Culture and Education
<b>The Aftermath of the White Paper on Sport</b>			
<b><u>Primary Sources</u></b>	<b><u>Documents</u></b>	<b><u>Time Frame</u></b>	<b><u>Policy Actors</u></b>
Presidency Conclusions of EU Sports Ministers and Directors' Meetings	Report of Meeting of EU Sports Ministers	Oct 2007	The Member States
Official Documents of the European Commission	Report of Consultation Meeting on the White Paper on Sport	Oct 2007	The Education and Culture DG
Official Documents of Working Groups	Report of Meeting of Member States Working Group on White Paper	Jan 2008	The Member States
Presidency Conclusions of EU sports Ministers and Directors' Meetings	Report of Meeting of EU Sports Directors	Feb 2008	The Member States
European Parliament Resolutions	Resolution on the White Paper on Sport	May 2008	The Committee on Culture and Education
Verbatim Reports of Debates in the European Parliament	Report of Parliamentary Debate	May 2008	The Committee on Culture and Education

Official Documents/Reports Originates from the Council Presidencies	The Presidency Programme	July 2008	The Member States
Official Documents/Reports Originates from the European Commission	Study on Sports Agents	Nov 2009	The Education and Culture DG
Parliamentary Questions to the Council and the Commission	Oral Question on Players' Agents	March 2010	The Committee on Culture and Education
Verbatim Reports of Debates in the European Parliament	Report of Parliamentary Debate	June 2010	The Committee on Culture and Education
European Parliament Resolutions	Resolution on Players' Agents	June 2010	The Committee on Culture and Education
<b>The Aftermath of Lisbon Treaty</b>			
<b><u>Primary Sources</u></b>	<b><u>Documents</u></b>	<b><u>Time Frame</u></b>	<b><u>The EU Policy Actors</u></b>
Official Documents of the European Commission	Developing European Dimension of Sport	Jan 2011	The Education and Culture DG
European Council Conclusions	The EU Work Plan for Sport 2011-2014	June 2011	The Member States
Official Documents/Reports Originates from the European Commission	Report of Conference on Sports Agents	Nov 2011	The Education and Culture DG
Verbatim Reports of Debates in the European Parliament	Report of Parliamentary Debate	Feb 2012	The Committee on Culture and Education
European Parliament resolutions	Resolution on Developing European Dimension of Sport	Feb 2012	The Committee on Culture and Education
Official Documents/Reports Originates from the Council Presidencies	Expert Group Report on Sports Agent	Dec 2013	The Member States

### **Limits of the Research**

There are some limitations of the research that need to be outlined from the outset. Firstly, this research focuses on the EU policy actors (the Education and Culture DG, the Committee on Culture and Education, and the Member States) of the socio-cultural advocacy coalition. The primary objective of the research is to understand the motivations of EU's intervention into the issue and analyse these by utilizing the ACF. In this context, coordinated activity, selective perception and policy preferences of the EU policy actors are investigated in order to deduce

their policy core beliefs. Policy core beliefs are central to the ACF's model of individual and represent cognitive characteristics of policy actors in guiding their behaviours, perceptions and preferences (Sabatier 1988; Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007; Weible et al. 2012; Jenkins-Smith et al. 2014). For this reason, in order to explore these concepts it is required to narrow the scope of policy actors to be analysed and also to focus on individual policy actors. In the case of this research, those actors are the EU policy actors. Moreover, the EU policy actors are the Maximalists within the socio-cultural advocacy coalition who hold strong policy core beliefs about the socio-cultural regulation of sport (Parrish 2003a, p.69). This is one of the key assumptions the research has adopted from the existing literature (Parrish 2003a, 2003b). Therefore, the research concentrates on these actors, so that their policy core beliefs can be deduced from the investigations related to their coordinated activity, selective perception and policy preferences.

In addition, the regulation of players' agents, as a policy issue, provides a case study context for the research in exploring the motivations of the EU on the issue. The research aims to examine potential explanations previously advanced within the EU sports policy literature or to investigate findings from a previous case study examining similar phenomena in a new context (Gerring 2007). In the terms of this research, the objective is to explore the existence of policy core beliefs (the socio-cultural regulation of sport) hold by the EU policy actors in the context of regulation of players' agents. Hence, it aims to advance the theoretical understanding of EU sports policy previously developed by Parrish (2003a).

Therefore, this approach also justifies the limits of the research in relation to the EU policy actors.

There is also the time frame. The research investigates the post-Nice period from 2000 to 2015. The reason for not investigating the pre-Nice period is the existence of a rich literature analyzing the EU sports policy during that period. Additionally, this research is complimentary to the existing literature on the EU policy making in the field of sport and in particular builds upon Parrish's research which carries out an extensive analysis of the pre-Nice period. However, in order to provide a historical contextual background in chapter 2, there are some analyses of the pre-Nice period in the context of the single market regulation of sports.

### **Thesis Structure**

Following this introduction, **chapter 2** provides the necessary contextual background in order to fully understand the following chapters. Chapter 2 locates players' agents within the European player market through outlining a brief historical background, their core activities and their socio-economic weight in numbers. The chapter then explains the historical development of the regulatory framework that governs activities of players' agents through locating it within the governance framework of football. The EU's earlier intervention in the context of single market regulation is presented next. Finally, the chapter concludes by presenting the new regulatory framework adopted by FIFA (the concept of intermediaries).

**Chapter 3** presents the literature review of the research. The objective of the review for the research is to conceptualize the socio-cultural regulation of sport as policy core beliefs. Therefore, the chapter postulates the analysis of the literature locating the socio-cultural regulation of sport in different conceptual meanings. The chapter then locates the socio-cultural regulation of sport within the wider literature of EU sports policy and outlines the adoption of key assumptions from Parrish's research resulting from the conceptualization of the socio-cultural regulation of sport as policy core beliefs.

**Chapter 4** outlines the theoretical framework of the research, the ACF. The chapter begins with a general conceptual outlines of the framework and then, moves on to present the key concepts used by the research: coordinated activity, selective perception and policy preferences.

**Chapter 5** focuses on coordinated activity amongst the EU policy actors. The chapter first analyses coordinated activity during the period from the Nice Declaration in 2000 to the White Paper on Sport in 2007. During this period a minimum level of activity is identified and presented. Then, it moves on to examine the aftermath of the White Paper on Sport and outlines a strong coordinated activity within the EU policy actors. The chapter concludes with analysis of coordinated activity in the post-Lisbon era.

**Chapter 6** considers selective perception performed by policy core beliefs. The same periods, from the Nice Declaration to the White Paper on Sport and the



aftermath of the White Paper, are examined. The chapter presents the evidence of selective perception.

**Chapter 7** moves on to analyze policy preferences of the EU policy actors in relation to policy instruments to regulate players' agents at European level. The chapter presents the change in the preferences of the actors. Then, it investigates the factors that affecting policy making within the EU sports policy subsystem, in particular the constitutional limits of the EU as relatively stable parameters.

Finally, **chapter 8** concludes the thesis through presenting the research's findings with regards to the EU policy making and the theoretical advancement of the ACF. The chapter is structured around this duality of findings.

## **CHAPTER 2**

### **Players' Agents and the EU: A Historical Background**

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#### **Introduction**

This thesis intends to explain the motives of the EU in intervening into the regulation of players' agents, in particular to understand the extent of socio-cultural regulation of sport underpinning such intervention. In order to achieve this objective it is, first of all, necessary to understand the nature of players' agents activities in socio-economic terms providing insights into their presence in the European player market. There is also a necessity to explain the historical evolution of the regulatory framework governing their activities including the impact of the EU's intervention on the issue from the single market perspective. The historical context aims to provide basic information in order to understand the following chapters.

In doing so, the chapter firstly highlights the role and socio-economic dimension of players' agents in European football. Secondly, it examines the historical development of FIFA's regulatory framework governing players' agents through locating the discourse within the wider structure of football governance. It then moves on to analyze the impact of the EU's single market approach on the regulation regulatory framework and contextualizes them in the context of the EU sports policy. The problems within the activities of players' agents and the new regulatory framework, the concept of intermediaries, are analyzed in the final parts of this chapter.

## **Players' Agents: the Definition and their Socio-economic Presence in European Football**

Historically, the origins of players' agent profession in European football can be traced back to the late 19<sup>th</sup> century and the profession has gone under a significant evolution since then. In the days of amateurism and the early case of professionalism in European football during the 1880s, the visibility and role of players' agents was limited and confined to assisting clubs to discover new talents. Then, clubs lacked the organizational structures and scouting networks to source players and players' agents were able to exploit the incapability of early professional clubs. As a result, in early days, players' agents represented clubs rather than players (Banks 2002). This also resulted from the "retain and transfer" system that operated in European football under which clubs were able to exercise a greater degree of control over players' movements. Under the system, players were purely deemed to be a commodity without any rights on their employment prospect with another club and they were generally negotiating their playing contracts without any professional advice. By the mid-1950s, players' agents had started to represent and support players' interests as European football went through a number of developments. With the growing success of football and increased match day revenues, European clubs looked for players abroad in order to be more competitive which led to the expansion of the transfer market, whilst players also demanded better employment terms with their existing clubs as the possibility of offering their services somewhere else grew. Additionally, players' rights were enhanced due to unionization efforts and the increasing powers of players' unions (Holt et al. 2006; Holt 2007). In this context, players' agents offered their services to players who held stronger

bargaining power and became marketable beyond national borders. As a result, they became an influential figure within the European transfer market offering services both clubs and players. In 1994, FIFA formally recognized the role of players' agents in football and regulated their activities through a licensing based regulatory framework, which was also adopted by all national football federations, marking the evolution of the activity of players' agents into a profession.

The profession of players' agents has undergone a further transformation during the last two decades. Combined impact of the increased freedom of movement of players, due to the Bosman ruling of the CJEU in 1995, and an exponential revenue growth in football industry, as a result of the de-regulation in the European broadcasting market, was the development of a truly European player market (Holt 2007; Poli 2010). Within this complex market players relied on players' agents to fully exploit their bargaining power and the transfer freedom that they enjoyed (Poli 2010). Clubs, on the other hand, required the services of players' agents in particular to selling their players while they were still under contract in order to avoid losing them once they became free agents. At the same time, clubs were also forced to offer improved terms for players that they wanted to retain prior to the expiry of their contracts. The situation had further strengthened the bargaining position of players resulting in increased salaries and longer playing contracts that have eventually become almost a norm in European football (Poli 2010). The end result was that players' agents became a dominant figure in the European player market with some substantial earnings

from negotiating playing contracts on behalf of players and sourcing players for clubs (KEA et al. 2009; Poli 2010).

The developments also led players' agents to transform their structures and the services offered to their clients. In order to improve on services they offered, players' agents formed larger companies offering multiple services extending beyond the negotiation of contracts and the sourcing players (KEA 2009; Poli 2010; Poli and Rossi 2012). The services diversified to cater for the every day needs of their clients, in particular for players in order to allow them to fully focus on their game. The services extended to the negotiations of players' marketing and commercial contracts. Image rights of players had become one of the key elements that were negotiated by agents with clubs, whilst commercial contracts related to sponsorship endorsements had also been negotiated. Additionally, the diversity of services offered included services related to legal counseling and dispute resolution, career and post-career planning, financial and marketing planning, and personal care.

The different nature of services offered by players' agents was highlighted in the empirical study undertaken by Poli and Rossi (2012). The study focused on players' agents domiciled within countries hosting the big five European leagues: England, Spain, Germany, France and Italy. Agents were asked to respond to a questionnaire about their services for players and clubs. With regards to services for players, 98% of the respondents identified the negotiation of their players' contracts as their main core activity. 65% of the respondents, on the other hand, also assisted players in their marketing and endorsement contracts, whilst 51%

indicated that they also provided legal counseling and dispute resolution. Almost half of respondents, 48% and 46%, specify respectively career and post-career planning and personal care amongst the services provided to players (Poli and Rossi 2012, p.56). In relation to services offered to clubs, 71% of players' agents responded to assist clubs in the intermediation for transferring players. The 65% of the respondents indicated that they also helped clubs to scout professional players and half of the respondents scout young players on their behalf (Poli and Rossi 2012, p.59). The study highlighted the diversity of services offered by players' agents.

The number of licensed players' agents has also drastically increased over the last two decades. The increase was due to the soaring players' salaries as a result of spending powers of clubs due to substantial revenue growths (Poli 2010; Poli and Rossi 2012). There were only 613 licensed players' agents worldwide in February 2001, whereas by September 2007 the numbers reached over 4,000 (Poli 2010, p.206). In December 2011, there were 6,082 licensed players' agents operating worldwide (Poli and Rossi 2012, p.2). In Europe, players' agents are present in each of the 27 Member States (KEA et al. 2009, p. 36) and football is by far the sport with the highest number of agents in Europe (KEA et al. 2009, p. 40). In 2009, there were 2,913 in Europe and the highest concentration of players' agents has been within Italy, England, Spain, Germany and France, referred as "*the Big Five*" in European football (KEA et al. 2009, p. 41). In 2009, there were 563 licensed players' agents in Italy, 560 in England, 558 in Spain, 259 in Germany and 253 in France (KEA et al. 2009, p. 41). These numbers represented 75% of the total number of players' agents in Europe (KEA et al.

2009, p. 41). In 2012, the total number of players' agents domiciled within these countries represented 41% of the total numbers worldwide (Poli and Rossi 2012, p.2). Meanwhile, the yearly turnover of players' agents operating just within the EU was estimated to be around €200 million (KEA et al. 2009, p. 4) whereas it is believed that this is a modest estimation and it may be twice as much, up to €400 million (Poli and Rossi 2012, p.15).

### **FIFA Players' Agents Regulations: Establishing a Regulatory Framework**

The first FIFA regulations on players' agents that established the regulatory framework based on licensing needs to be contextualized within the wider football governance structure. Resembling a hierarchical pyramid, from the bottom-up, the structure is formed by clubs, the national associations, the continental federations and the global governing body, FIFA. The structure establishes a single governing body for each national territory, a single confederation in each continent and a single worldwide federation (Holt 2007; Arnout 2010). There is a hierarchical competency to regulate football within the system. FIFA makes the rules at international level and ensures the applicability at all levels through a membership mechanism that also creates contractual chains for jurisdictional competency to sanction any regulatory breach. The national associations and the continental federations are members of FIFA who agree to comply with its internationally applicable rules and regulations as well as enforcing them within their territory. On the other hand, clubs and players are not formal members of FIFA, albeit clubs generally agree to abide by rules and regulations whilst playing contracts incorporate provisions compelling players to comply with them. The integration of all participants as stakeholders through

one framework based on a vertical hierarchy ensures that FIFA, continental federations and the national associations monopolize the regulation and organization of football.

When FIFA took the decision to regulate players' agents, it represented a challenge as agents sit outside the governance structure. They are not direct members of FIFA and there is no natural contractual link with FIFA. Players' agents would not require an approval of any football governing body in order to carry out their activities which are peripheral and lie outside the direct responsibility of those bodies. Yet, the activities of the players' agents have a direct impact on the members of governing bodies, ie; clubs and players, which compelled FIFA to regulate with the objective of protecting the proper functioning of competitions and their image in the eyes of the public (KEA et al. 2009).

In this context, in 1994, FIFA established the regulatory framework based on licensing to govern the activities of players' agents in order to bring them under the realm of the governance structure. Under the framework, the accession to the profession became subject to a license requirement. Clubs and players were obliged only to use licensed players' agents during transfers and contract negotiations. By doing this, effectively players' agents were obliged to enter into contractual ties with governing bodies through the grant of a license allowing the imposition of regulatory obligations. FIFA adopted the regulations setting out principles determining how a licensed players' agent should operate and required the national associations to adopt their own regulations incorporating



those principles. The transposition of FIFA regulations into the national association law aims to achieve coherent application worldwide. The candidates who did not satisfy certain criteria or were not prepared to comply with FIFA's and the national associations' regulations were not allowed to obtain a license and the validity of a license was subject to continuous compliance.

The original regulations, FIFA Players' Agents Regulations 1994, establishing the license based framework were first adopted by the FIFA Executive Committee at a meeting held on 20 May 1994, which were amended on 11 December 1995, and came in to force on 1 January 1996. Under the regulations, the license was to be issued either by FIFA for all types of transfers or by the national associations for domestic transfers. Only natural persons were allowed to enter into the profession. The close relatives of the players and qualified lawyers, legally authorized in compliance with the rules in force in his country of domicile, were defined as exempt individuals with a right to exercise the profession without license (FIFA 1994, Article 1). The regulations laid down a procedure to obtain the license. The candidates were required to submit a written request to relevant associations and to attend an interview to ascertain their knowledge regarding football regulations and civil law (FIFA 1994, Article 2). After the interview it was the responsibility of the competent national association who decided the admissibility of the candidate into the profession. If there were no objections against the grant of the license, as a next step, the candidate had to deposit a bank guarantee of 200,000 Swiss Franc (CHF) (FIFA 1994, Article 9). Upon receipt of the bank guarantee FIFA issued the license that was personal and non-transferable (FIFA 1994, Article 11).

The original regulations also provided provisions governing the relationship of licensed players' agents with their principals, i.e. players or clubs and laid out sanctions for regulatory breaches. Licensed players' agents had rights to contact any player not contracted to a club or to represent the interest of any player or club requesting him to negotiate or/and conclude contracts on his/their behalf. Players' agents were required to enter into a written representation contract to exercise the rights which cannot be more than a maximum period of two years and renewable (FIFA 1994, Article 13). In the case of infringement of the regulations, licensed agents could be subject to a number of sanctions including a fine and the withdrawal of the license (FIFA 1994, Article 15). Clubs and players were prohibited from using the services of unlicensed agents (FIFA 1994, Article 16 & 18) and could also be liable to sanctions such as disciplinary suspensions for the player and a ban on all national and international footballing activity for the clubs (FIFA 1994, Article 17 & 19). The Players' Status Committee was the designated body within FIFA for the supervision of the regulations.

### **The EU & Players' Agents: The Single Market Perspective**

The decision by FIFA to regulate the activities of players' agents also coincided with some important developments that were eventually to become catalysts for the transformation of the governance structure in football. The changing media landscape was the initial factor that triggered the traditional hierarchical nature of the governance structure to come under pressure (Holt 2007; Arnout 2012). At the beginning of 1990 the television industry was de-regulated in the EU through a number of competition law measures ending monopoly of public service broadcasters (Garcia 2008). The development of pay television

technologies resulted in increased revenue growth and changes in consumption (Holt 2007). The development was closely associated with an increased demand to view and to broadcast games that featuring best teams in the world. The financial power of the broadcasters ensured a surge of alternative leagues, UEFA's Champions League being the prime example (Holt 2007). Consequently, clubs and the leagues sought greater autonomy to exploit their market power and emerged as powerful stakeholders contesting their lack of participation in the governance structure (Holt 2007; Arnout 2012).

In the discourse of the transformation of football governance, the EU became a key terrain for the stakeholders to challenge the decisions of governing bodies (Foster 2000; Parrish 2003a, 2003b). The commercialization and commodification of football ran parallel to the completion of EU's Single European Market project and the EU had desired to see all commercial entities respecting the economic basis of the Union (Takorski et al. 2004). The EU was particularly concerned with the rules and regulations of governing bodies interfering with the competition and free movement rules (Parrish 2003a, 2003b). Referred to as the single market regulations of sport (Parrish 2003a, pp. 8-12), the EU institutions, particularly the European Commission and the European Court of Justice, dealt with a significant number of cases resulting from the EU's internal market competences (Parrish 2003a). In particular, the Competition DG took the view that the organization and operation of sport may fall within the scope of EU competition law and there were significant numbers of complaints to the Commission, as it was a cheaper and easier option and in the form of private right action, against governing bodies for acting in anti-

competitive manner (Foster 2000). In this connection, the Competition DG examined various aspects of football including the applicability of revised transfers rules following the *Bosman* ruling the ECJ (*Jean Marc Bosman v. Union Royale Belge Sociétés de Football Association*, case C-415/93 [1995] ECR I-4921, hereinafter *Bosman*), ticketing arrangements for major international football events and sports broadcasting rights (Parrish 2000). As a result, the EU established a supervisory role offering governing bodies a degree of *supervised authority*, or *conditional autonomy* as defined by Weatherill (2009a), in exchange for greater stakeholder representation within governance structure (Garcia 2009).

The initial incursion of the EU with the regulation of players' agents was in the context of the single market regulation of sport. The authority of FIFA to regulate players' agents and the compatibility of its original regulations with EU law came under scrutiny, firstly before the Commission and then the General Court. On 20 February 1996, Multiplayers International Denmark lodged a complaint to the Commission alleging that the regulations were contrary to Articles 101 and 102 TFEU (formerly Article 81 and 82 of EC Treaty) (Piau, para.9). French national, Laurent Piau, submitted another complaint on 23 March 1998. In his complaint, Mr. Piau alleged that the original FIFA regulations were contrary to the provisions of the EU's free movement rules related to services, in particular Article 59 TFEU (formerly Article 49 of EC Treaty). His challenge was based firstly on the fact that opaque examination procedures, the requirement of a bank guarantee, and controls and sanctions imposed under the regulations constituted restrictions on access to the profession (Branco Martins 2007).

Secondly, he complained that no legal remedy was available against the decisions of governing bodies or against the sanctions imposed under the regulations (Branco Martins 2007). Finally, he also alleged discriminatory nature of the regulations against the national of the Member States (Branco Martins 2007).

The Commission examined the regulations by FIFA and sent a statement of objections to the governing body on 19 October 1999 (Piau para. 10). The Commission concluded that the regulations by FIFA constituted a decision by an association of undertakings under Article 101 TFEU. The restrictions under the regulations related to the licensing requirement, being only open to natural persons, the prohibition on using unlicensed agents, and the compulsory bank guarantee requirement were questioned by the Commission (Piau para.10). On 4 January 2000 FIFA responded the statement and disputed the classification of the regulations as a decision by an association of undertakings. FIFA argued that the restrictions were aimed at the legitimate justification of raising ethical standards for the profession and could be exempted under Article 101(3) TFEU (Piau, para.11).

The complaints led to amendments to the regulations by FIFA. Following the statement of objections by the Commission, there was a hearing held at the Commission attended by FIFA, the representatives of Mr. Piau and FIFPro. The hearing was instrumental for FIFA to decide on the amendments. On 10 December 2000, FIFA adopted its new regulation on players' agents (FIFA Players' Agents Regulations 2001) which came into force on 1 March 2001. The objective of the amendments in the new regulations was to remove the alleged

infringements of EU law under the original regulations. Under the amended regulations, the profession was still subject to a license issued for an indefinite period and also was still reserved for natural persons only (FIFA 2001, Article 1 & 2). The procedure to obtain a license was revised. Instead of the interview, the candidates were required to undertake a written examination, consisting of multiple-choice questions, to assess their knowledge of law and sport and they needed to satisfy the requirement of having an impeccable reputation (FIFA 2001, Article 2, 4 & 5). The candidates needed to take out either a professional liability insurance policy or to deposit a bank guarantee for the amount of 100.000 Swiss CHF prior to the issue of the license (FIFA 2001, Article 6 & 7). The players' agents were also required to sign a new code of conduct, annexed to the regulations, outlining set of rules and responsibilities to be followed by players' agents (FIFA 2001, Article 8). Clubs and players were still prohibited from using the services of unlicensed players' agents whilst players' agents were prohibited to approach any player contracted with any club. The written representation contract was still required to enter into a relationship with either club or player, which can only be signed for two years and can be renewed, and there was a standard contract annexed to the regulations which players' agents were required to use in their activities. The contract was to be signed by both parties in quadruple and lodged with the national association and FIFA whilst both parties kept a copy too. Under the representation contract, players' agents' remuneration must be stipulated, if the contract is silent it is fixed at 5%, based upon the player's basic gross salary and either payable in a lump sum or periodic installments (FIFA 2001, Article 12). In terms of sanctions, the system sanctions for players' agents, clubs and players remained in place (FIFA 2001, Article 15,17

& 19). The Players' Status Committee and the competent national association were given authority to deal with the disputes (FIFA 2001, Article 22).

Following the adoption of the new regulations by FIFA, the European Commission wrote to both parties, Mr. Piau and Multiplayers International Denmark, advising them that the main restrictive aspects of the original regulations by FIFA were eliminated and continuing with the proceedings represented no community interest (Piau, para. 19). On 28 September 2001, Mr. Piau responded to the Commission and maintained his complaint (Piau, para. 21). He alleged that the restrictions were still remaining under the new regulations in relation to the requirements of a written examination and professional indemnity insurance. In addition, some new restrictions were imposed with respect to professional conduct, the standard written contract and the establishment of the level of remuneration. Mr. Piau claimed that these restrictions were neither compatible with Article 101(1) TFEU nor could be covered by an exemption under Article 101(3) TFEU. Furthermore, he also argued that the Commission failed to examine the regulations with regards to Article 102 TFEU (Piau, para. 21). On 15<sup>th</sup> April 2002, the Commission rejected Mr. Piau's complaint by issuing its decision arguing that the most important restrictive measures were removed under the new regulations and the remaining ones could be exempted whilst Article 102 TFEU was not applicable to the case (Piau, para. 22). For the Commission, FIFA's aims of extending good practice, raising professional standards and protecting its members from unqualified and unscrupulous individuals prevailed over competition considerations (KEA et al. 2009). Mr. Piau still was not satisfied and appealed to

the General Court on 14 June 2002 (Piau, para. 23).

In the *Piau* case the General Court upheld the decision of the Commission and rejected the appeal by Mr. Piau (Piau, para. 106). In reaching the decision, the Court initially assessed the nature of FIFA and its regulations from the competition law perspective to determine whether FIFA constituted an association of undertakings and its players' regulations a decision by an association of undertakings in order to establish the applicability of Article 101 and 102 TFEU to the case. On this point, the Court established that FIFA's members are national associations consisting of groupings of football clubs who practice football as an economic activity. As a result, football clubs are also undertakings with regards to Article 101 TFEU and the national associations are associations of undertakings within the meaning of that provision (Piau, para. 69). The Court concluded that FIFA is also an association of undertakings as the body is the group of national associations who are its members (Piau, para. 72). With regards to the concept of a decision by an association of undertakings, the Court classed FIFA's regulations as a decision of an association of undertakings due to the fact that the occupation of players' agent is an economic activity involving the provisions of services (Piau, para. 73). Furthermore, for the Court the regulations are binding on the national associations who are members of FIFA and compelled to adopt similar regulations and the regulations are the reflection of FIFA's effort to coordinate the conduct of its members in relation to the activities of players' agents (Piau, para. 74).



The General Court, then, moved onto assess the lawfulness of the Commission's decision against Mr. Piau's complaint and based its analysis on three considerations by the Commission in reaching its decision: the repeal of the most restrictive provisions contained in the original regulations; the eligibility of the provisions of the amended regulations for an exemption under Article 101(3) TFEU; and the inapplicability of Article 102 TFEU. The Court underlined the fact that there was no manifest error by the Commission in establishing that the amended regulation by FIFA actually removed the most restrictive provisions of the original regulations (Piau, para. 99). According to the Court, the Commission was right in considering that the written examination under the amended regulations offered satisfactory guarantees of objectivity and transparency; the requirement of professional liability insurance was not disproportionate; and the provisions regulating the remuneration of players' agents was not a price fixing from the perspective of competition law (Piau, para. 90). Furthermore, for the court, the standard contract annexed to the regulations, the two-year limitation on the duration of representation contract and the sanctions regime lacked any anti-competitive effect (Piau, para. 91-95).

In the view of the Court, the actual principle of the license, as required by FIFA and a condition to carry out the profession of players' agent, constituted an obstacle for accessing to an economic activity at European level and inevitably effects competition (Piau, para. 101). Nonetheless, the Court concluded that restrictions that have arisen as a result of the compulsory nature of license might benefit from an exemption under Article 101 (3) TFEU. In reaching this conclusion, the Court noted that there is a general lack of legislation in the EU,

apart from France, governing the activities of players' agents. Additionally, the profession of players' agent does not have an internal organization and certain activities of players' agents could have harmed players and clubs financially and professionally. The court also emphasized that competition is not eliminated by the licensing system since it appears that the system results in a qualitative selection rather than a quantitative restriction on access to the profession (Piau, para. 102). With regards to consideration of the inapplicability of Article 102 TFEU, the Court established that Article 102 TFEU was applicable as FIFA holds a collective dominant position on the players' agents' market but concluded that the position was not abused by FIFA (Piau, para. 117). According to the Court, the removal of the most restrictive provisions from its original regulations and the enjoyment of the license system from the exemptions consequently led to a conclusion of an absence of infringement under Article 102 TFEU (Piau, para. 119).

The *Piau* judgement marked the end of the EU's intervention into the regulation of players' agents from the single market perspective. The judgment was particularly significant for FIFA as it confirmed the compatibility of FIFA's agents regulations with the EU law and also recognized the regulatory power of FIFA to govern activities of players' agents. Following the *Piau* judgement, FIFA undertook another revision to its regulations in 2008 in order to provide more control over the activities of players' agents. Various requirements established by the regulations 2001 remained in power. However, an important change was made in relation to the renewal of licenses. The validity of licenses were limited to 5 years instead of an indefinite period and players' agents were required to

take the exam in order to renew their license. If they fail to pass the exam then, their license would be suspended until the examination was passed (FIFA 2008, Article 17). These regulations remained in power until FIFA' established a new regulatory framework in 2015.

### **The Problems Associated with Players' Agents**

The problems associated the activities of players' agents have been observed and reported despite FIFA's efforts to improve the regulatory framework governing them. Football was identified as the most vulnerable sector for financial crime, in particular for money laundering (FATF 2009, p.8). There are certain mechanics in European transfer market indicate the instances of money laundering (FATF 2009, p.22). Players' agents are considered to be central to these mechanics due to their influential role in transfers (FATF 2009, p.22). Overvaluation of the price of the player is a technique to extract an additional value from criminal activities. The excess proceedings of individual transfers are later distributed amongst the representatives of clubs, managers, players and players' agents, hidden payments known as "*bungs*", in order to facilitate future transfers involving same individuals and clubs. 13 people were convicted of hidden payments, including six players' agents, by a criminal court in France at the end of a trial in June 2006 where player transfers by French football club, Olympique de Marseille, were investigated between 1997 and 1999 (KEA et al. 2009, p.113). In the UK an independent inquiry, the Quest Inquiry, was commissioned by the Premier League to investigate a number of transfers possibly involving irregularities such as unauthorized and fraudulent payments (KEA et al. 2009, p.115). There were 362 transfer deals involving Premier League clubs investigated. The final report

highlighted irregularities in these transfers, in particular related to the conduct of players' agents within 17 transfers (Duthie et al. 2008, p.694, KEA et al. 2009, p.116).

The other potential mechanic for money laundering is the ownership of the players. Known as either "*talent pool*" or "*third-party ownership*" where the players' economic rights are owned by third-party investors rather than clubs is a relatively recent development in football (KEA et al. 2009). The third-party investors generally invest in certain percentage of players' economic rights for the return of investment during the future transfer of those players. The classic example of potential money laundering is when the club officially declares only half of the player's economic value in the transfer. As a result, if the player is later transferred to another club for a higher value, all parties gain from the transaction. The club will be able sign more players, the investors will launder half of their money and gain a significant return for their investment whilst the agent involved usually will get a large commission (FATF 2009, p.24).

The protection of minor players who have been subject to trafficking and exploitation over the years has become an emerging sporting and social issue in the world of football that also involved players' agents (KEA et al. 2009, pp. 126-132). The increase in players' salaries in Europe was the main factor for European clubs to source a cheaper labour supply from non-European territories, in particular Africa and Latin America (KEA et al. 2009, p.130). The success of African and Latin American players in European football also led the European clubs to headhunt young players from those continents. The young

players have also been eager to move to the lucrative European leagues with a prospect of better lifestyle and higher earnings have also contributed to the problem. Players' agents have been generally involved in trafficking of these players into Europa (KEA et al. 2009, p.121). Players' agents played an introductory role in arranging trials for those players with European clubs who were otherwise very unlikely to offer trials. However, when the chances of getting contracts for the clubs were gone those players have been very vulnerable to exploitation in a foreign country without any money and not able to speak the language and generally ended up on the streets abandoned by players' agents. 20,000 African boys were estimated to be living in the streets of Europe after failing to secure contracts with European clubs following their trials (Weir 2009, p.46). The failure in trials meant that those players were ashamed to go back to their families and communities. They ended up either working illegally without a work permit to make some money to send their families or living in destitution on the street.

Inducement to breach contract undermining the contractual stability for players and clubs is another problem in European football that players' agents have been involved in. Two types of inducement were observed within the activities of players' agents: inducement to breach the playing contract of the player without the knowledge and consent of the club holding his registration, known as "*tapping up*" and inducement to breach the agency contract of a player signed with another agent, known as "*poaching*". A high profile tapping up case in English football in 2005 highlighted the role of players' agents within such activity. The Premier League Disciplinary Commission found the agent of Ashley

Cole, then a player of Arsenal, guilty of misconduct for making arrangements for Cole to meet with the representatives of Chelsea Football Club in order to discuss his transfer to Chelsea at the expiry of his contract with Arsenal (*Football Association Premier League Ltd. v Ashley Cole, Chelsea Football Club and Jose Mourinho*, 1<sup>st</sup> June 2015). The English Football Association viewed this case most seriously as it involved two of leading clubs of English football and an international player and suspended the agent's license for 18 months combined with a fine (Duthie et al. 2008, p. 703). Another high profile case in the UK, the *Proform* case (*Proform Sports Management Limited v Proactive Sport Management Limited and Paul Stretford*, HHJ Hodge Chancery Division [2006] EWHC 2812 (Ch) [2006] All ER (D) 38 [2007] 1 All ER (Comm) 356 [2007] 1 All ER 542), involving the player Wayne Rooney and his agent, Paul Stretford, illustrated poaching activity. Proform Sports Management Limited signed a two-year representation agreement in December 2000 with Wayne Rooney when he was 15 years old. Prior to expiry of his contract in September 2002 Rooney signed an eight-year representation agreement with Proactive Sports Management Limited where the principal agent was Paul Stretford. Proform initiated legal proceedings against Proactive and Paul Stretford for inducing Wayne Rooney to breach his contract with them. Although the court ruled in the favour of Proactive, the English Football Association initiated disciplinary proceedings against Paul Stretford and charged him with the breach of regulations related to prohibition of enticing a player away from another agent.<sup>4</sup> These examples illustrated the problem of inducement within the activities of players' agents.

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<sup>4</sup> Extensive analysis of the case can be found in Duthie et al. (2008).

Finally, there were a significant number of unlicensed players' agents active in the player market. FIFA acknowledged the fact that only 25% to 30% of international transfers are organized through licensed agents (Villiger 2011). As FIFA and national associations were not able to impose any sanctions on these unlicensed agents, eventually FIFA decided to move away from the licensing based regulatory framework and to establish a framework within which the activity rather than individuals is to be controlled (Villiger 2011).

#### **FIFA's 2015 New Regulatory Framework: The Concept of Intermediaries:**

There are several shortfalls identified within the current licensing-based regulatory framework that create regulatory deficiencies that undermine the effectiveness of whole system. The enforcement has been a particular problem for FIFA and the national associations due to their restricted jurisdictional reach. Players' agents are not direct members of FIFA and the national associations and FIFA aimed to overcome the lack of a contractual link for effective enforcement by establishing the license-based system. By using its direct contractual relationship with clubs and players, FIFA obliged them to work with licensed players' agents and aimed to create a regulatory hook for players' agents through the grant of a license. Nevertheless, it meant that FIFA has no power regarding players' agents operating without a license. As a result, unlicensed agents are able to operate in the player market and it is literally impossible for FIFA and the national associations to impose any disciplinary sanctions on them.

The other problem identified is in relation to the transposition of FIFA's agent regulations into the regulations of national associations (Parrish 2007). The pattern of transposition has been rather inconsistent and conflicting since the national associations are also allowed to derogate from any provisions of FIFA regulations that are contrary to legislation in force in the territory of the association. The associations, who are based in non-interventionist systems which are characterized by a degree of autonomy for governing bodies and a lack of legislation in the field of sport, simply incorporate the regulations by FIFA regulations into their own. Some associations in interventionist systems also have legislation applicable to players' agents alongside the national association law and FIFA regulations (Branco Martins 2009). France has been one of the prime examples of this. There is a piece of legislation, adopted in 1992, governing the profession of sports agent which is enforced in addition to individual regulations by sports governing bodies (Verheyden 2007). Consequently, there are conflicting provisions within these different regulations causing incoherency and uncertainty in practice which directly impact on the effectiveness of the regulatory system.

On 3 June 2009, FIFA decided to conduct an in-depth reform of the licensing system through a new approach based on the concept of intermediaries during its 59<sup>th</sup> Congress in order to overcome the deficiencies of the licensing-based regulatory system (EPFL 2009). Through the new system FIFA aims to establish an overarching regulatory framework for an efficient control of the activity rather than regulating access to the profession. The new framework supersedes the license-based regulatory framework and abandons the license requirement.



The framework lays down minimum standards and requirements as well as a registration system for intermediaries who represent players or clubs in the conclusion of employment contracts or transfer agreements. In FIFA's view, the new system is considered to be more transparent and simpler to administer and implement which would also lead for a better enforcement at national level (Villiger 2009).

The new system is also a result of an extensive consultation process involving all stakeholders in football (FIFA 2015b). FIFA's Committee for Club Football established a sub-committee who was mandated to develop the new system. The sub-committee undertook a lengthy and extensive consultation process with representatives of member associations, confederations, clubs, FIFPro and professional football leagues. The draft regulations on the concept of intermediaries were analysed within the framework of a number of working groups, including the Players' Status Committee and the Legal Committee (FIFA 2015b). The new Regulations on Working with Intermediaries were approved by the FIFA Executive Committee on 21 March 2014 and the 64<sup>th</sup> FIFA Congress on 11 June 2014 approved the amendments to the FIFA Statutes and Regulations Governing the Application of the FIFA Statutes necessary for the implementation of new regulations. The new regulations came into force on 1 April 2015 allowing the member associations enough time to adapt to the system.

Under the new system, FIFA keeps the concept of intermediary much broader than the notion of players' agent. An intermediary is defined as *"a natural or legal person who, for a fee or free of charge, represents players and/or clubs in*

*negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement” (FIFA 2015a, p.4).*

As opposed to the licensing system under which the profession was only open to natural persons, legal persons can also act as an intermediary now. Intermediaries offering agency services free of charge are also incorporated into the definition of intermediary, whereas under the previous system the regulations are only applicable if a fee is paid.

The new system abolishes the licensing requirement but replaces it with a registration system. Intermediaries are no longer required to hold a license to represent players or clubs and the requirement to obtain professional indemnity insurance or, alternatively, a bank guarantee is abolished too. Instead, intermediaries must be registered in the relevant registration system each time they are individually involved in specific transactions. The registration system is implemented and managed by the national associations (FIFA 2015a, Article 3.1). In order to register, the intermediary must have an impeccable reputation that needs to be ascertained by the national associations, who also establish that the intermediary has no contractual relationship with leagues, associations, confederations or FIFA that could lead to a potential conflict of interest (FIFA 2015a, Article 4). All intermediaries execute the registration through the completion of mandatory intermediary declaration (FIFA 2015a, Article 3.2). By signing the declaration, the intermediary confirms to adhere to the applicable statutes and regulations of FIFA and those of the confederations and the national associations when carrying out its activities. Once registered, the submission of a signed declaration must be made each time for each transfer agreement with

which the intermediary is involved (FIFA 2015a, Article 3.5). The signed declaration needs to be submitted to the association of the club with which the player signs his employment contract, or in the case of the representation of a club, the club needs to submit the declaration to the association of the club with which the player in question is to be registered (FIFA 2015a, Article 3.3 & 3.4).

With the objective of regulating the intermediation activity rather than individuals, the new regulations bring stringent disclosure requirements for the parties that are involved in the transactions, in particular for clubs and players. Players and clubs are required to act with due diligence in the selection and engaging process of intermediaries requiring them to ensure that the intermediaries sign the relevant intermediary declaration and the representation contract concluded between the parties (FIFA 2015a, Article 2). Players and clubs are also required to disclose, to their associations, the full details of any and all agreed remunerations or payments of whatsoever nature that they have made or that are to be made to the intermediary (FIFA 2015a, Article 6.1). The associations are also required to publish annually, at the end of March each year, the names of all intermediaries that they have registered, the transactions in which those intermediaries were involved, and the total amount of all remunerations or payments actually made to intermediaries by their registered players and by each of their affiliated clubs (FIFA 2015a, Article 6.3). This is to ensure that disclosure of such information will create better transparency and accountability of actions that will help to provide oversight by adopting a structured approach.

Furthermore, for the sake of transparency, players and clubs are required to enter into a representation contract outlining the nature of their legal relationship and incorporating minimum details of that relationship (FIFA 2015a, Article 5). Under the representation contract, the parties need to specify the nature of the legal relationship with the player or the club, whether being a consultancy service, the conclusion of a transfer agreement or employment contract, or any other legal relationship (FIFA 2015a, Article 5.1). There are also minimum details that must be stipulated under the contract including the names of the parties, the scope of services, the duration of the legal relationship, the remuneration due to the intermediary, the general terms of payment, the date of conclusion, the termination provisions and the signatures of the parties (FIFA 2015a, Article 5.2). However, there is no standard contract annexed to the new regulations that needs to be used by intermediaries and no restriction on the duration of the contract for its validity is stipulated under the new regulations (FIFA 2015a, Article 5).

The new system also establishes a stricter approach in relation to the payments being made to intermediaries. In doing so, FIFA seeks to prevent financial irregularities and to bring more transparency. A limit of 3% of a player's basic gross salary, for the entire duration of the relevant employment contract, or of the eventual transfer fee paid by the club, in the event of conclusion of a transfer agreement, is recommended to be paid to intermediaries as commission (FIFA 2015a, Article 7.3). Clubs will make sure that none of the payments which should be made between two clubs involving in the transfer such as solidarity payment or training compensation, is either paid to intermediaries or paid by

intermediaries. This also includes, but is not limited to, owning any interest in any transfer compensation or future transfer value of players. The assignment of claims is also prohibited (FIFA 2015a, Article 7.4). Payments to intermediaries are to be made exclusively by the client of the intermediary, either being a club or a player. In addition, intermediaries are prohibited from receiving any payment if acting on behalf of minor players (FIFA 2015a, Article 7.8). The changes to the payments and particular commission cap is one of the most significant changes under the new system which FIFA aims to control the level of commission received by the intermediaries and bring more transparency.

The new system also aims to avoid conflicts of interest between the intermediaries and their principals. Players and clubs are required to use “reasonable endeavors” to ensure that no conflicts of interest exist or are likely to exist prior to engaging the services of an intermediary (FIFA 2015a, Article 8.1). However, as a general rule, it would be deemed that there is no conflict of interest if any actual or potential interest is disclosed in writing by the intermediary and the express written consent of all parties involved is obtained prior to the start of the negotiations (FIFA 2015a, Article 8.2). Players and clubs are also allowed to engage the services of the same intermediary within the scope of the same transaction as long as they give their express written consent and inform each other in writing about which party to remunerate the intermediary (FIFA 2015a, Article 8.3). The relevant national associations will be also informed of the agreement in relation to conflicts of interest and all relevant documents to be submitted within the registration process (FIFA 2015a, Article 8).

Under the new system, the national associations are responsible for the imposition of sanctions on any party under their jurisdiction violating the applicable provisions. The associations have the obligation to publish accordingly and to inform FIFA of any disciplinary sanctions taken against any intermediary. Then, the FIFA Disciplinary Committee can extend the sanction imposed to have worldwide effect in accordance with the FIFA Disciplinary Code. FIFA is also responsible for the monitoring of national associations in implementing the new system. The FIFA Disciplinary Committee is to deal with the situation if the principles under the new regulations are not complied with in accordance with the FIFA Disciplinary Code (FIFA 2015a, Article 9).

FIFA, through the new system, aims to overcome the deficiencies of the previous license-based system (Eppel and Miller, 2014). In order to tackle the issue of unlicensed agents, FIFA have completely shifted its approach and instead of regulating individuals, the activity of intermediation is regulated. Furthermore, FIFA have also shifted the responsibility of liability onto clubs and players, who are members and legally bound by its regulations. By placing the onus of due diligence onto clubs and players through requiring them to use reasonable endeavours in the selection and engagement of intermediaries, FIFA would be able to sanction any wrong-doings. FIFA have also introduced the registration and disclosure requirements in order to improve transparency and the control of activities.

Conversely, the new system has already come under scrutiny and is not without any challenge and criticisms. Seen as the de-regulation of the players' agent

profession, it is claimed that the new system provides a platform for unqualified and potentially insalubrious individuals to enter into the European player market (Eppel and Miller 2014; De Marco 2014). FIFA, although abolishing the payments under the representation contracts with minor players, removes the restriction on the duration of representation contracts, which was a maximum of two years under the old system, as well as the restriction on the age of player with which the intermediary can enter into a representation contract. De Marco (2014) argues that allowing the intermediaries to enter into a contract with players at any age which could last for a period beyond the minor's 18<sup>th</sup> birthday defies the objective of protecting young players and would be an issue in the future.

In addition, the Association of Football Agents (AFA) has lodged a complaint before the European Commission challenging FIFA's recommended 3% cap. The pending complaint is on the grounds that it infringes competition law and considered as price-fixing (De Marco, 2014). According to Turner (2013) "*when applying Article 101 TFEU, it may be found that the proposed cap affects trade between member states, as it is sufficient for there to be a direct or indirect, actual or potential, effect on the pattern of trade between member states; has an appreciable effect on trade, as it affects the whole of the relevant market; and has the effect (if not the object) of distorting competition as a form of price fixing*". Therefore, the Commission's decision on the complaint is significant for the future of the new regulatory regime and could pave the way for further intervention into the issue from the single market perspective.

## **Conclusion**

This chapter outlined the role of players' agents in the European player market, the historical evolution of FIFA's regulatory frameworks for agents and also located the incursion of the EU with the issue in the context of the single market regulation of sport. In particular, the EU has been an important actor in shaping the regulatory framework and also the development of the profession. As the EU became an avenue for unsatisfied stakeholders to challenge the decisions of the governing bodies, the regulations of FIFA came under the scrutiny of EU law. Additionally, the EU's single market approach to sport resulted a development of sport related case law that had a profound impact on sport. The *Bosman* judgment caused the transformation of labour relationships in football and revolutionized the player market within which players' agents blossomed and the problems in their activities led to questioning the efficacy of the license-based framework by FIFA. The *Piau* judgment of the CFI seemed to mark the end of EU's intervention into the issue, at least, from the single market perspective.

Nonetheless, the EU's intervention into the regulation of players' agents has not stopped there. In particular, the problems with the activities of players' agents raised questions about the effectiveness of FIFA's licensing based regulatory framework and also led to increased calls on the EU to regulate players' agents by taking European level action. As a result, the EU, in particular the Education and Culture DG within the Commission, the Parliamentary Committee on Culture and Education, and the Member States, has again been focusing on the regulation of players' agents. In the White Paper on Sport (European Commission, 2007a), the European Commission decided to carry out an impact assessment in order to



assess the necessity of EU level action. In this connection, the Commission launched an independent study on sports agents (KEA et al. 2009) in 2009 as an initial stage of its impact assessment. The European Parliament adopted a resolution on players' agents (European Parliament 2010). There was a conference on agents, as a next step of the impact assessment, organized by the Commission in 2011 bringing together all stakeholders with a view to discussing possible solutions to the problems identified and the role of the EU in this particular context (European Commission 2011c; 2011d). The Expert Group on Good Governance was also set up under the scope of the EU's first Work Plan for Sport (Council of European Union 2011) and given a mandate to carry out action related to the agents by delivering follow up work on the Commission's conference. Therefore, how can this regulatory interest of the EU on players' agents at European level be explained? To what extent is this regulatory interest actually underpinned by the EU's socio-cultural regulation of sport? This is what this research aims to investigate. In order to proceed with this quest, the next chapter aims to conceptualize the socio-cultural regulation of sport within the existing literature on players' agents and the EU.

## **CHAPTER 3**

### **The Socio-cultural Regulation of Sport: Developing Theoretical Perspective and Key Assumptions**

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#### **Introduction**

This research concerns the EU's involvement into the regulation of players' agents and its particular objective is to explore to what extent the socio-cultural regulation of sport under the EU sports policy actually underpins this regulatory involvement. This chapter examines the existing academic literature on the regulation of players' agents and the EU sports policy. The review of literature aims to illustrate the gaps within the literature that the research intends to fill and to develop a conceptual understanding of the EU's socio-cultural regulation of sport that will be adopted for the purposes of the research. Developing a conceptual meaning is particularly important so as to clarify a key concept of the research and which also defines the territory of the research and justifies the research's theoretical and methodological choices.

The chapter commences with the examination of the academic literature on the regulation of players' agents and the EU in pursuit of highlighting the existing gaps. Then, a wider literature related to regulation, sport and the EU's regulation of sport is to be considered within which the conceptual meaning of the EU's socio-cultural regulation of sport to be located.

#### **The Regulation of Players' Agents and the EU: The Review of Literature**

The academic literature on the regulation of players' agents and the EU is rather limited and contains several gaps that this research aims to address. Firstly,

there is a lack of theoretical analysis of the regulation of players' agents within the existing literature. The only study to develop a theoretical perspective on the issue is by Holt et al. (2006). The study used the principal-agent (PA) analysis, as a theoretical framework, to investigate the impact of conflict of interest within the activities of players' agents, in particular with players, and to develop theoretical propositions to resolve the issue (Holt et al. 2006, p.12). Imperfect information available to the player (as a principal) about the activities of players' agent (as an agent) and the salaries in the player market was an underlining reason for the conflict interest (Holt et al. 2006, p.17). As a result, the study argued that the players' agents' ability to use information for their own benefit causes the potential conflict of interest (Holt et al. 2006, pp.18-26). Then, there were recommendations about measures related to a better disclosure of information and transparency and a tougher enforcement mechanics involving more effective sanctioning to overcome the issue (Holt et al. 2006, pp.30-31). Despite the study was a starting point to develop a theoretical perspective related to the regulation of players' agents, it had very narrow scope: the conflict of interest. Moreover, the study did not scrutinize the EU's intervention into the regulation of players' agents apart from a mere mentioning of the impact of the *Bosman* judgment on the European player market and the activities of players' agents.<sup>5</sup> This research aims to fill this gap through developing a theoretical perspective on the EU's intervention into the players' agents.

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<sup>5</sup> This analysis of *Bosman* judgment under the study was only one paragraph. See Holt et al. (2006) p. 2.

Secondly, there is an extensive literature examining FIFA's regulations of players' agents and these regulations' transpositions by national football federations into national regulations. Yet, this literature is very descriptive and rarely extends beyond the content analysis of the specific regulations implemented by national federations. One of the most comprehensive empirical studies on various regulations governing the activities of players' agents was by Siekmann et al. (2007). The regulations of 40 different countries were examined.<sup>6</sup> The key contribution of these analyses to our understanding was to illustrate considerable variations in the pattern of regulations in different territories which impacted on the efficient control of players' agents' activities, in particular the problems of enforcement and sanctioning. The problem with the descriptive nature of the literature, on the other hand, is that it does not lead to a critical scrutiny of the ways of improving the regulatory framework. Nevertheless, there was a general consensus was on the ineffectiveness of regulations. Nonetheless, the literature neither considered the role of the EU in regulating players' agent nor developed a theoretical approach. This research extends beyond these analyses and brings the EU into consideration.

Thirdly, there is a lack of investigation about the EU's involvement into the regulation of players' agents in the context of EU sports policy which this research concerns. A scarce literature analyzing players' agents from a European perspective had a focus on the EU's single market approach to the issue. The application of the EU law to the FIFA's players' agents regulations, in particular

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<sup>6</sup> To date, this study still remains the most comprehensive in terms of analysis of regulations of players' agents in different countries. A broad scope of the study was captured by its title: *Players' Agents Worldwide*.

their compatibility with the EU competition law, was considered. The study by KEA et al. (2009), commissioned by the Education and Culture DG, was the most comprehensive study examining European dimension of players' agents and developed a European outlook.<sup>7</sup> The study carried out a demographic analysis of players' agents within the different Member States whilst illustrating the socio-economic weight of the players' agents industry in Europe. There were also analyses of the EU's intervention into the regulation of players' agents from an economic perspective, in particular in the context of competition law and internal market rules. Nevertheless, the study did not consider players' agents from the EU's socio-cultural perspective. Branco Martins (2005) also focused on the EU and players' agents from the single market perspective and thoroughly scrutinized the *Piau* judgment of the CFI. Yet, Branco Martins (2005) aimed to highlight the erroneous nature of the Courts' legal analysis within the judgment, whereas there was no attempt to locate the issue in the context of the EU sports policy. This research aims to develop a socio-cultural perspective on players' agents and analyze the issue within the wider context of the EU sports policy.

This research aims to investigate the regulation of players' agents in the context of the EU's socio-cultural regulation of sport. In their study, Holt et al. (2006, p.12) claimed that there was a lack of academic research on players' agents and since then a number of studies have emerged. However, they are limited in their nature, as outlined above. Due to the limitations of the existing literature, therefore, it is also futile to try to locate the conceptual meaning of the EU's

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<sup>7</sup> Although the focus of the study is not limited to players' agents and rather on sports agents in Europe, it clearly acknowledges that football is the sport by far the largest number of official agents operates in Europe (KEA et al. 2009, p.4) and the majority parts of the study relates to the examination of players' agents in Europe.

socio-cultural regulation of sport. In order to develop a conceptual perspective it is necessary to examine wider literature and a logical starting point would be to consider the literature on regulation.<sup>8</sup>

### **Regulating Sport in the Public Interest**

In a search for the conceptual meaning of the EU's socio-cultural regulation of sport, the regulation theories may offer a good starting point for a conceptual insight. Defined as a set of propositions or hypotheses aiming to explain the emergence of regulation, the regulation theories are based upon a key dichotomy regulation between *public interest* and *private interest* (Cave and Baldwin 1999; Ogus 2004; Morgan and Yeung 2007). The public interest theorists<sup>9</sup> view the accomplishment of public interest as the main driver of regulation. The public interestedness of regulation is seen as a motivation to pursue collective goals with the objective of promoting the general welfare of the community (Cave and Baldwin 1999; Feintuck 2010). The assumption is that society's general welfare is enhanced by the correction of market failures and, hence, in public interest. The private interest theorists who have developed a diverse set of economic and private interest approaches to regulation challenge these perspectives. They argue that there is always a regulatory capture by the actors that holding economic power who are more interested in their private interest. The private interest overrides the public interest and this is inline with observed patterns within a number of regulatory systems that examined (Stigler 1971).

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<sup>8</sup> The examination of literature on regulation is due to the fact that the socio-cultural regulation of sport in the EU is a regulatory concept and about regulation of sport at European level. Therefore, a broad understanding of regulation may help to the efforts of conceptualization.

<sup>9</sup> For a good summary on the public interest theories of regulation see Hantke-Domas (2003).

The key dichotomy between public and private interest also postulates the basis for the objectives of regulatory interventions. Ogus (2004) argues regulatory interventions are either in the pursuit of public interest or the regulatory sphere is captured and the subsequent intervention is in the pursuit of private interest. Defining the boundaries of distinction for regulatory objectives also paves the way for identifying corresponding regulatory models that can most efficiently be deployed to realize those objectives. According to Cave and Baldwin (1999), it is difficult to identify what constitutes a successful regulatory intervention if the substantive regulatory objectives are not clearly defined and outlined. This also creates a problem with defending the regulators and policy-makers that are charged with the pursuit of those objectives. Feintuck (2010) argues that although regulatory failures can arise from a variety of sources, the absence of clearly defined regulatory objectives can be a fundamental issue.

The public interest theories of regulation categorize regulatory objectives under two headings; in terms of economic efficiency and those encompassing other political goals extending beyond the market. Those political goals are premised on non-market values which are perceived as valuable to the whole society and extend beyond goals that are measured in economic terms (Morgan and Yeung 2007). The economic version assumes allocative efficiency as an ultimate economic value and defines the general welfare of society exclusively in terms of efficient resource allocation (Ogus 2004). The economic version, based upon a welfare economics approach and the market model, is a pre-dominant theoretical proposition and sees the regulation aimed at curing imperfections within the market, referred as market failures. However, Feintuck (2010, p.40)

criticizes the failure to identify and to articulate clearly defined basic values that inform a legitimate justification of regulatory intervention from the perspective of the public. According to Feintuck (2010, p.42), the economic conception of regulation is rather limited in encompassing properly a range of social and political values that regulation may aim at and which the political version of public interest theory tries to address. The political version attempts to incorporate non-economical values into the equation aiming at a broader perspective in considering regulation rather than remaining limited concepts of monopolies, information deficit, public goods, etc. (Cave and Baldwin 1999; Ogus 2004).

Sunstein (1990) identifies a number of substantive non-economic values extend beyond the market to justify regulation and corresponding regulatory methods that are to protect and promote those values. Sunstein sees the prevention of harm to future generations, the achievement of public-interested redistribution, the reduction of social subordination and the promotion of diversity of experience as the non-economic form of justifications for regulation. These justifications are not compatible with economic analyses and the mechanics of the market model are not appropriate to achieve them. In the context of the promotion of diversity of experience, some regulatory programmes can be seen as an attempt to foster and promote diverse experience. For example, the regulation of broadcasting can be understood in these terms, ensuring a diversity of programming through subsidizing public broadcasting and a high quality programming available to a wider society which is not available in the market place. With regards to social subordination, anti-discrimination law



targets behaviours and beliefs that have adverse effects for members of disadvantaged groups in society and aims to eliminate or reduce social subordination of those social groups. The problem of irreversibility, defined as the continuation of certain conduct causing an outcome from which current and future generation will not be able recover or only at very high cost, is also seen as justification for regulation motivated by a belief in obligations owed by the present to future generations. As markets' focus is the preference of current costumers, they fail to take into account the effects of transactions on future generations. The protection of endangered species, animals or nature stems from this belief in obligations.

There are a number of reasons that the conceptual insight developed by the public interest theorists of regulation could encapsulate some aspects of the EU's socio-cultural regulation of sport. Firstly, sport became a growing social and cultural phenomenon for European society in addition to its significant economic dimension. The socio-cultural functions performed by sport have a potential to deliver collective goals that enhance the general welfare of the society, which could arguably be the public interested nature of sport, i.e. general public benefiting from sport due to the enhancement of society's welfare in relation to health, education and culture. Nicholson et al. (2011, p.2) assert that sport is supposed to be essential for social inclusion, social connectedness, community strengthening, and community well-being which are deemed to be for the benefit of the general public. This view is also shared by the Education and Culture DG at European level. The Education and Culture DG (2007a, p.2) acknowledges the essential role played by sport in bringing the European society closer, particular

in the formation of European citizenship as a site for social cohesion and integration, which extends beyond its economic dimension. Sport also facilitates the development of important values such as team spirit, solidarity, tolerance and fair play that contribute to personal development and fulfillment that in turn contributes the general well-being of European society (European Commission 2007a, p.2). In addition, alongside those socio-cultural functions performed by sport, the Education and Culture DG emphasizes the health-promotion role of sport, seen as a contributor to the improvement of the public health of European citizens, and its educational role in a number of ways to educate and train children, young people and adults (European Commission 2007a, pp.3-4). The Education and Culture DG also considers the potential of sport in contributing to smart, sustainable and inclusive growth, as part of its Europe 2020 Strategy aiming to achieve economic growth and employability, and creating new jobs through its positive effects on social inclusion, education and training and public health (European Commission 2011a, p.3).

Secondly, Parrish (2001, 2003a) identifies two intertwined political factors, rather than economic ones, that contributed to the development of the EU's socio-cultural regulation of sport; the growth of the EU's political interest in sport in pursuit of promoting social progress and European solidarity and the politicization of the EU's single market regulation of sport. Parrish traces back the birth of a socio-cultural sporting agenda to the 1984 Fontainebleau Summit where the member states recognized the necessity of re-launching European integration as political integration stagnated and the legitimacy of the EU in the public eye faltered. The result of the summit was the establishment of the

Adonnino Committee mandated with the preparation of a report on measures that could strengthen the image of the EU in the minds of its citizens. The Committee's report made a number of short and long-term proposals that contribute to the establishment of a *people's Europe*. Amongst those the Committee recommended the use of sport in promoting the idea of a people's Europe which Parrish (2001) considers the beginning of the socio-cultural dimension of sport asserting itself into the EU sport policy.

To Parrish (2003a), although the acceptance of the Adonnino Committee's recommendation did more for the commitment to the concept of a people's Europe than the development of the EU sports policy, the spirit of Adonnino remained within the EU and the European Parliament emerged as a natural home for such a movement. Parrish sees the European Parliament as having a strong socio-cultural tradition within the EU by acknowledging that above all sport is a social pursuit and can be used for political purposes. In particular, the Committee on Culture and Education within the European Parliament is a strong proponent of giving the socio-cultural qualities of sport a higher priority at European level (Parrish, 2000). Two reports prepared by the Committee, the 1994 Larive Report on the European Community and Sport (European Parliament 1994) and the 1997 Pack Report on the Role of European Union in the Field of Sport (European Parliament 1997), underlined the socio-cultural qualities of sport. The Pack report considered sport as constituting *a basic cultural and social phenomenon* (emphasis added) and, therefore, crucial to European society for the fact that it promotes personal development and a well-balanced personality. The European Parliament also successfully exploited its

legislative powers to incorporate an amendment into the Television Without Frontier Directive in 1997 that ensured public viewing of major sporting events on television. Parrish, Gardiner and Seikmann (2000) claim that, for Parliament, the access to the major sporting events was important for society and views the amendment as recognition of sport's social role in addition to its economic significance in Europe.

Parrish (2003a) argues that the EU's political interest in sport, using sport as the one of the tools to achieve politically motivated social and cultural aspirations, led to discontent amongst the proponents of the idea, particularly the Committee on Culture and Education of the European Parliament and some of the member states, towards the EU's single market approach to sport which was considered to paying insufficient attention to sport's social cultural significance. Consequently, the earlier relationship of EU with sport became politicized.

There were also a number of developments that took place in the field of sport that the EU viewed as a risk to its socio-cultural values for the European polity which contributed to the politicization of the single market approach to sport (Takorsky et al., 2004; Borja 2007; Van den Bogaert and Vermeersch 2006). As sport became internationalised, its increased growth in popularity and commercialization led to an unprecedented growth in its economic dimension. Nonetheless, the EU saw that these developments also led to a number of challenges and threats to the sport in Europe, which were emphasized in its policy documents. The Commission's Education and Culture DG (1999) viewed the rapid commercialization of sport at European level as a threat to the

European Model of Sport, and its grassroots structure. In particular, the commercially strengthened stakeholders within sport's governance structures were deemed to be a specific threat due to the possibility of creating breakaway leagues which would effect harmonious development of European sport and its positive influence on society.

The commercialization and internationalization of sport also contributed to the juridification of sport at European level, defined by Foster (1993) as the application of the EU's free movement and competition rules to sport, and an increased the number of conflicts involving the EU law. Earlier decisions of the CJEU in *Walrave* (*Walrave and Koch v. Association Union Cycliste Internationale* [1974] ECR 1405, Case 36/74, hereafter referred as *Walrave*) and *Bosman* clearly illustrated the growing relationship between the EU and sport; yet, the relationship was confined within the narrow boundaries of regulating sport as an economic activity within the single market. Particularly following *Bosman*, the relationship between EU competition law and sport was considered to be confusing and involving a great uncertainty. Parrish (2003a) considers the *Bosman* judgment of the CJEU as the confirmation of the EU's market-based definition of sport at the expense of the social definition and inconsistent with the Adonnino agenda. As a result, Parrish argues that there was a danger for the socio-cultural functions of sport which became suppressed by the commercial and legal developments. This was something to be addressed at European level.

These developments resulted in calls for a more coordinated approach to sport by the EU in order to protect the socio-cultural functions of sport from the

excessive commercialization. At the Amsterdam Summit in June 1997, the Heads of States and Government attached a non-binding Declaration on Sport to the Amsterdam Treaty that emphasized the social significance of sport, in particular its role in forging identity and bringing people together. The institutions of the EU were urged to recognize sports' social significance. However, Crolley et al. (2002) see the Nice Declaration, during the Nice summit in 2000, within which the Member States more fully appreciated the socio-cultural importance of sport for Europe. The declaration emphasized the need for the EU to become involved in the social, educational and cultural functions inherent in sport and urged sport federations to take actions to incorporate all communities into sport. Parrish (2000, 2003a) also considers the Parliament's Committee on Culture and Education as an advocate for a more coordinated approach to sport involving the recognition of the socio-cultural qualities of sport along side its economic dimension. Parrish claims that both reports, the Larive Report and the Pack Report, underlined the socio-cultural qualities of sport and a desire to balance the single market regulation of sport with the promotion of those qualities.

Finally, the result of the EU's political interest in sport and the politicization of the single market regulation of sport has led to a distinctive sport policy position, which can be viewed as a regulatory mechanism, with a view to protecting and promoting the socio-cultural values of sport involving a more coordinated approach to reconcile the conflict between the single market and the socio-cultural approach to sport (Parrish 2000, 2003a; Takorski et al. 2004). A more coordinated approach under the EU sports policy recognizes the socio-cultural qualities of sport and requires those qualities to be taken into account when EU

law is applied, albeit recognizing that sport is still subject to EU law which lies in the heart of the single market approach (Garcia and Weatherill 2012; Parrish 2003a). Although the EU initially did not have a competence on sport under its founding Treaties to establish a common sport policy, the first attempt to develop a new approach to coordinate both the single market and the socio-cultural approaches was made by the Commission's Helsinki Report on Sport (European Commission 1999) which was prepared for submission to the Helsinki European Council with a view to safeguarding current sport structures and maintaining the social functions of sport. Viewed by Parrish (2002, 2003a) as the establishment of an embryonic EU sports policy, the document outlined the new approach involving preserving the traditional values of sport, while at the same time assimilating a changing economic and legal environment. The Nice Declaration in December 2000 reveals a similar tone to the Amsterdam Declaration and the member states called on the institutions *to take account of the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured* (emphasis added). Today, under the Lisbon Treaty, sport is brought within the explicit reach of the founding Treaties for the first time and its specificity and socio-cultural functions are constitutionally recognized. Article 165 of the Lisbon Treaty enables the EU to contribute to the promotion of European sporting issues, while taking into account the specific nature of sport, its structures based on voluntary activity and its social and educational functions. The wording of the Article, according to Garcia and Weatherill (2012), represents a consolidation and the single market

regulation and the socio-cultural regulation of sport can exist alongside each other.

The other distinctive feature of EU sports policy is a legal order, Weatherill (2006) claims, developed within the jurisprudence of the CJEU and the decisional practice of the Commission. This legal order extends beyond a mere application of law to sport by dealing with sport disputes in a way that permits regulatory (single market) and political (socio-cultural) policy objectives to co-exist. Viewed by Parrish (2003a, 2003b) as a distinctive body of sports law, EU sports law, the legal order establishes and applies a discrete legal doctrine based upon the separate territories approach; the territory for sporting autonomy and a territory for legal intervention which provides the definition of respective territories for the EU institutions, namely the CJEU and the Commission, and the sport governing bodies (Parrish 2002, 2003a; Weatherill 2007). Established under its first ever sport ruling of the CJEU, *Walrave* judgment in 1974, and also evolved through subsequent judgments, sport falls within the scope of its Treaties if a sporting practice exerts economic effects (legal intervention), yet, it does not automatically render it incompatible with it. Then, it is responsibility of sport governing bodies to justify the measure or the practice by illustrating legitimate objectives, the so-called sporting exception as developed by Parrish and Miettinen (2008). The measure or practice also needs to be necessary and proportionate to achieve those objectives aimed (sporting autonomy). Through the separate territories approach, EU law is able to take into account specific characteristics of sport, including its socio-cultural functions, whilst a case by case analysis of sporting practices, confirmed in the *Meca-Medina and Majcen*



*(Mecca Medina David Meca-Medina and Igor Majcen v. Commission of the European Communities Case C-519/04 P, [2006] ECR I- 6991, hereafter referred as Meca-Medina)* ruling of the CJEU, is required rather than any general possibility of exemption for the sport governing bodies. Weatherill (2007) defines the position as conditional autonomy within which the governing bodies still need to ensure that the restrictions imposed by their practices are limited to what is necessary to ensure the proper conduct of competitive sport.

It seems that the EU's socio-cultural regulation of sport sits comfortably in the conceptual framework developed within regulation literature. In particular, the socio-cultural functions of sport for European policy can be considered to be in the public interest. Therefore, the coordinated EU sport policy and an embedded distinctive legal order ensuring the co-existence of the EU's single market and socio-cultural approach to sport could be seen as the right regulatory method in order to protect sport's socio-cultural functions. Nonetheless, the flaw of conceptualizing the EU's socio-cultural regulation through the insight within the regulation literature lies in its mainstream critique; a difficulty of comprehensively defining public interest and that renders it ill equipped to deal with the complexities of the EU's socio-cultural regulation of sport for the purpose of the research.

Feintuck (2012), in his attempt to understand and define the concept of public interest in regulation, claims that public interest often appears to be an empty vessel which is filled with different content at different times. Therefore, for

Feintuck, the problem in using public interest is that it can never be certain to what extent the use of the concept can fulfill the expectations of its content. For this reason, Feintuck observes that public interest sometimes defined as *“goal, process or myth”* or *“that vague, impalpable but all-controlling consideration”* and an apparent lack of agreement as to its meaning casts doubts as to whether its use can add anything meaningful to academic debate. Cave and Baldwin (1999) acknowledge the dominance of the economic approach to explain the emergence of regulation over the public interest approach for the underdevelopment of public interest concept and claim that *“an agreed conception of the public interest may be hard to define”* (Cave & Baldwin 1999, p.20). Ogus (2004) also emphasizes that *“any attempt to formulate a comprehensive list of public interest goals which may be used to justify regulation is futile, since what constitutes the “public interest” will vary according to time, place, and the specific values held by a particular society”* (Ogus 2004, p.29). As a result, the public interest theory of regulation is considered to be flawed and incomplete.

Weatherill (2009b) and Garcia (2009) observe the difficulty of defining a single model of sport for Europe, the concept of a European model of sport, has been particularly problematic for the Commission which resonates with difficulties in defining public interest for regulation. Both, Weatherill and Garcia highlight the differences in the language used by the Commission in the Helsinki Report and the White Paper on Sport. Weatherill (2009b) particularly criticizes the Commission for assuming that there is a single phenomenon of sport at European level and claims that there are distinct features and distinct issues

requiring different regulatory responses. With regards to the Helsinki Report, Weatherill argues that the Commission was rather over ambitious in reconciling the economic dimension of sport with its socio-cultural dimension due to the fact that sport embraces such a wide range of phenomena, including leisure time of running in the park to a high-end Formula One Grand Prix. Weatherill further asserts that professional sport has nothing to do with the socio-cultural function of sport as outlined in the Helsinki Report and it is rather a tension within sport which involves two quite distinct types of activity, that both happening to fall under the very loose and wide label of sport.

In contrast, Weatherill views the structure of the White Paper, in particularly the separation between the economic dimension and the societal role of sport, as an indication of a concern by the Education and Culture DG in relation to the varied nature of sport in Europe. Weatherill considers that the Commission re-assesses its position with regards to the European model sport by accepting the model cannot operate as one size fits all and avoid making remarks about the generality of its apparent common features. In his view, this is reflected with the Commission's acceptance that promotion and relegation is limited to certain team sports, although this is one of the main characteristics of the model. Garcia (2009) supports the arguments developed by Weatherill and sees the White Paper on Sport as a demise of the European model. According to Garcia, the Commission's admission of the unrealistic nature of trying to define a unified model of organization of sport represents a departure from its previous policy position under the Helsinki Report. Garcia considers that the Commission

acknowledges the transformation of the governance structure of European sport over the last two decades which in his view became more horizontal involving stakeholder network than the old pyramidal and vertical structure. As a result, Garcia argues, the position taken by the Commission is supervisory, offering governing bodies' autonomy subject to behaving within the limits of EU law. Both arguments, by Weatherill and Garcia, recognize the difficulty in rigidly defining European sport in terms of its nature and as a model in order to justify regulatory intervention.

### **The EU's Regulation of Sport Under the EU Sports Policy**

Foster applied the theoretical insight developed with the literature on regulation to sport (Foster 2000a). Based upon the dichotomy between self-regulation, where the governing bodies may act in private interest, and statutory regulation, to protect a wider public interest, Foster examines five different models of sport regulation and proposes appropriate regulatory methods depending upon the adopted regulatory model. Within the pure market model, sport is seen as a pure business and the sport governing bodies have broad functions. However, in order to maximize the profits a loose regulatory framework is implemented and the public interest is ignored. The form of regulation is determined through the market and contract based legal instruments are predominant. In the defective market model, competition policy is the regulatory tool to ensure competitive balance. The consumer welfare model requires a protective legislation in order to protect weaker parties, such as fans, players, clubs or to allow a greater protection for a wider public interest. In the natural monopoly model, private

monopoly by single seller, it is a single governing body in sport, likely to ignore public interest and competition law is not the appropriate mechanism. Finally, in the socio-cultural model, sporting values are dominant and profits are secondary. The focus is on the socio-cultural significance of sport. The autonomy of sport is particularly important to maintain those specific characteristics that contribute to the socio-cultural values of sport. In order to protect the best interest of sport and to tame the commercial interest to preserve the values of the model, Foster proposes supervised self-governance as a regulatory method. This model enables sports governing bodies to regulate their own sport without external interference, whilst ensuring the autonomy is supported by an internal constitutionalism, due process and good governance.

The characteristics of the socio-cultural model and the proposed supervised self-governance by Foster resemble to the EU's socio-cultural regulation of sport and Foster also considers the ways sport could be regulated by the EU (Foster 2000b). Although his analysis is confined only into the activities of the Commission and the application of competition law to sport, Foster argues that the assumption of a free market model, seen as the pure market model, by European competition law is not appropriate for sport. According to Foster, sport is not a free market but rather the sports governing bodies are natural monopolies and sports fans are also not normal consumers that operate in a free market as their behaviour is not economically motivated. Therefore, Foster proposes an alternative model that requires modification of EU competition law in such a way that those specific characteristics of sport and its socio-cultural

values are recognized. Foster defines this as supervised autonomy under which the Commission is able to treat sport differently by drawing a distinction between sporting activity in strict sense performing socio-cultural functions that need protection and economic activities generated by sporting activity that are subject to the application of competition law. Foster's concept of supervised autonomy has resonance with Weatherill's conditional autonomy and the both concepts, more importantly, represents the current policy position of the EU on sport.

Parrish (2003a) examines Foster's analysis in relation to the EU sports policy and identifies a relevance as both policy strands, the single market regulation and the socio-cultural regulation of sport, could be located on Foster's regulatory spectrum. According to Parrish, when the EU sports policy is placed towards the market end of the spectrum, the single market regulation of sport finds its explanation. The application of free movement and competition law to sport aiming to correct market failures and distortions resulting from the excessive commercialization of sport is a reasonable justification for the EU's regulatory interest in sport. However, Parrish sees the more coordinated policy position towards the socio-cultural end of Foster's regulatory spectrum ensuring sport's specific characteristics and socio-cultural values are recognized and protected. In this connection, theoretical perspectives explaining the EU policy making and the EU sports policy may assist to conceptualize the EU's socio-cultural regulation for this research.

Although there is no grand or unified theory of European policy making, the EU integration theories could be investigated as policy making at European level, particularly the EU sports policy, directly concerns the European integration (Parrish 2003a; Takorski et al. 2004; Garcia 2008; Meier 2009). After all, both the EU's single market and the socio-cultural approach to sport have underpinned by negative and positive integration, defined as a twin engines of European integration. Negative integration, defined by Beunanno and Nugent (2013) as the removal of barriers to the internal market and its proper functioning in the pursuit of an economic unity, reinforced the EU institutions, especially the CJEU and the Commission's Competition DG, to act as "*agents of integration*" supporting the application of EU law to sport. In particular, the CJEU did not agree to accept a general sporting exemption or the autonomy of sport and expanded its integrationist judicature into the sport domain by establishing the subjectivity of sport to EU law as long as it constituted an economic activity (Meier 2009; Van den Bogaer and Vermeersch 2006). Conversely, positive integration, motivated towards social unity as a polity, underpinned the socio-cultural regulation of sport at European level as the EU sees sport possessing socio-cultural qualities that can be used to promote European integration (Parrish 2003a, 2003b; Takorski et al. 2004).

When EU integration theories are considered, a good starting point for analysis is considering two main theories that shape the debate about the European integration; neo-functionalism and intergovernmentalism. Firstly, from a neo-functional perspective, Cram (1997) explains political integration as a process

initiated by political and economic elites who become aware that substantial policy problems can no longer be adequately dealt with at the national level and supranational actors are given authority to define policies. Upon transfer of competency, a spill-over mechanic is triggered. The functional spill-over is the pressure created by the integration of one sector for further sectoral integration due to the interdependent characteristics of modern economies. The functional spill-over is later complemented with political spill-over, defined as convergence of the expectations and interests of political elites in response to the activities of supranational institutions. As a result of the process, supranational institutions become political arenas where political behaviours and policy outcomes are shaped. Additionally, supranational institutions work as the agents of integration and create competency creep. In this connection, at the European level, the Commission, the CJEU and the European Parliament are deemed as the main actors that affect policy making through a process of supranational institutional creativity.

From the neo-functional perspective, it is easier to explain the involvement of the EU with sport in terms of the single market. Meier (2009) characterizes it as almost a classical neo-functional tale of spill-over of EU law into a policy domain that the member states did not envisage. Meier argues that the conflict between the labour market regimes operated by the sport governing bodies and the EU law related to free movement was the factor that triggered the spill-over. The process was advanced by the fact that the supranational actors, namely the CJEU and the Commission, initially did not recognize the argument of specificity of sport by the governing bodies and did not hesitate to apply the EU law to their



rules and sporting practices. According to Parrish (2003a), a number of closely related policy sectors where the EU is involved also increases the possibility that new policy sectors are also drawn into the integration process. For this reason, Parrish claims that the proximity of sport to many of the fundamental economic activities of the EU increased its potential to be caught within the scope of free movement rules.

Nonetheless, in terms of the socio-cultural regulation of sport, the neo-functional perspective fails to provide a convincing explanation. Firstly, the theory over-emphasizes the role of supranational actors in shaping the policies and fails to explain the role played by the member states. Parrish (2003a, 2003) emphasizes the instrumental role of the member states benefitting the socio-cultural agenda under the EU sports policy by the adoption of the Amsterdam and the Nice Declarations and to Presidency decisions as soft-law instruments. Within both declarations, the member states urged the institutions to take into consideration the socio-cultural characteristics of sport when dealing with sport and also to clarify the legal framework applicable to it. Secondly, although the Lisbon Treaty provides a new competency for the EU on sport, it does not really reflect a functional spill-over in the true of resulting in a strong and encompassing competency towards the EU institutions. Garcia and Weatherill (2012) see the new competency rather as a compromise between the sport governing bodies and the supranational actors, yet claim that it does not in any way suggest a full authority transfer to the EU institutions. The soft competency goes as far as to provide supporting and complementing authority, whereas

sport has still constitutionally remained within the regulatory remit of the member states and the sport governing bodies which contradicts the theoretical prepositions of the neo-functionalism.

Marovcsik (1993, 1995) explains intergovernmentalism, on the other hand, as an alternative approach to neo-functionalism resulting from empirical observations about the member states' constant efforts to protect their sovereignty and to prevent uncontrolled transfer of competency to the EU institutions. Furthermore, motivated by protecting national self-interest the intergovernmental meetings also echoed the dominance of national preferences. Therefore, intergovernmentalism sees the member states in control of the integration process and policy-making. The member states, deemed as '*principals*', only transfer limited powers to supranational actors, acting as '*agents*', with a view to ensuring that the commitments of all parties will be enforced. Supranational institutions are viewed as having little influence in shaping the policy outcomes and they are rather used to facilitate intergovernmental bargains and to improve the efficiency of decision making.

Intergovernmentalism offers a better explanation in relation the socio-cultural regulation of sport, but fails to explain it fully. For Meier (2009), although the member states failed to reverse spill-over of EU sports law, they managed to influence the development of the EU sports policy through soft law instruments which led to mediation between the single market and the socio-cultural approach. Parrish (2003a) also claims that intergovernmental interventions

inspired the EU institutions to develop a separate territories approach as a legal order when EU law is applied to sport. Nevertheless, Parrish also criticises intergovernmentalism for overestimating the role of member states within the EU and particularly in policy making. He argues that the member states do not dominate the EU policy making and, due to the EU's complex and multi-layered nature, the involvement of the member states in the development of the socio-cultural regulation of the sport represents only the tip of the iceberg. According to Parrish, the European Parliament's Committee on Education and Culture has been equally very influential in the development of a socio-cultural agenda which intergovernmentalism underestimates. Therefore, Parrish claims that intergovernmentalism has only some explanations in accounting for policy decisions and its scope is limited.

In order to develop a theoretical framework to examine the development of EU sports policy and law, Parrish (2003a) identifies the features of an analytical toolkit required. First of all, an approach has to be able to capture the real nature of EU governance. As EU is becoming a more flexible and multi-layered organization under which not only the member states and the supranational institutions but also a number of interest groups are able to shape policy development, the power of policy making is rather dispersed rather than monopolised as claimed by neo-functionalists and intergovernmentalists. Moreover, the construction of policies is no longer confined into the traditional forums, but alternative forums have emerged. The development directly contradicts with the intergovernmentalists' claim that the role of

intergovernmental decisions is central to policy making. Overall, an approach, Parrish claims, must be able to encapsulate the role of these alternative policy and institutional venues and the part played by the policy actors within them. Secondly, an approach must also avoid the narrow analysis of purely state-mindedness or institutional-mindedness which is portrayed under neo-functionalism and intergovernmentalism. Parrish sees both state actors and non-state actors to be important for policy development. Finally, an analytical tool kit has also to be able to capture a historical approach which is able to understand the discourse of policies and in particular when a policy change occurs. For Parrish, both neo-functionalism and intergovernmentalism attempt to explain the process of European integration but are ill equipped to deal with the modern complexities of EU governance in order to explain the policy making at European level.

Parrish (2003a, 2003b) recognizes the limitations of a perspective based either on actor-based or institution-based approach for studying European integration and policy making at European level and develops a theoretical framework, actor-centred institutionalism, that cuts across the actor versus institutions dichotomy by drawing insights from both perspectives (Parrish 2003a, 2003b). In construction of the framework, Parrish uses the theoretical insights developed by the Advocacy Coalition Framework (ACF) in order to analyze the role of key policy actors. Parrish takes an institutional turn within the ACF which he considers necessary in order to analyze the role of the institution in shaping policy evolution. Parrish adopts the theoretical perspective of new institutionalism which widens the definition of an institution in contrast to old

institutionalism, not limiting it to purely formal administrative, legal and political dimensions of institutions, but also incorporating the importance of informal arenas such as; informal rules, norms, symbols, beliefs and code of conducts. The framework enables Parrish to analyze actors and institutions in terms of how they relate to each other and in bringing down the boundaries between them.

By applying the framework to the EU policy making, Parrish (2003a, 2003b) asserts that strategically minded policy actors within the EU's multi-level governance system use the prevailing institutional structure in order to realize their policy preferences. In doing so, Parrish accepts the assumption that the EU has multi-level governance within which decision making and influencing capabilities are shared by a number of actors at different levels and neither member states nor the EU institutions are able to control policy development. Within this multi-level system, there are various policy subsystems in operation composed of a set of actors who are involved in dealing with a policy problem. Within these policy subsystems there are numbers of advocacy coalitions, consisting of a like-minded actors aiming to redirect policies in line with their particular belief systems by using different institutional venues.

Parrish (2003a, 2003b), through the framework, develops a theoretical perspective on the EU sports policy and concludes that there was a change in the nature of the EU sport policy shifting the single market model regulation of sports toward a socio-cultural model. According to Parrish, the policy change is

the outcome of two competing advocacy coalitions, the single market advocacy coalition and the socio-cultural advocacy coalition, operating with the EU sport policy subsystem. These coalitions possess different beliefs systems towards the regulation of sport at European level and try to stir the direction of the EU sports policy in line with their belief systems. The single market coalition is motivated with negative integration and views sport as an economic activity and subject to EU law. For the coalition, the application of the EU law to sport should only take the specificity of sport into account as far as it does not undermine the fundamentals of the single market. Conversely, the socio-cultural coalition is motivated by positive integration and considers sports beyond economic activity and possessing socio-cultural characteristics. In order to translate these beliefs into policy outcomes, the coalitions exploit a number of institutional venues available within the governance system of the EU. Parrish (2003a) argues that both coalitions are evenly matched in terms of institutional venues within their disposal and the socio-cultural coalitions use those institutional venues in order to politicize the single market regulation of sport which is an essential prerequisite for policy change. In this connection, Parrish claims that the Commission's right to initiate legislation and policy, the Parliament's enhanced budgetary and legislative powers and the member states' ability to amend the Treaties and to agree politically soft law instruments are the main venues facilitating policy change. Parrish further asserts that the result of the competition between these two coalitions is mediation resulting in the construction of separate territories approach, as a distinct legal approach to sport, which Parrish views as an essential characteristic of the EU sport policy. Parrish claims that such construction also implies the birth of EU sports law and

represents the change within the EU sport policy from the dominant single market approach to the socio-cultural approach.

Within the theoretical and empirical analysis of Parrish, there is a comprehensive conceptualization of the EU's socio-cultural regulation of sport composed of a number of conceptual components including the socio-cultural advocacy coalition as policy actors, the socio-cultural characteristics of sport and corresponding socio-cultural model of sports regulation as the beliefs system, and the separate territories approach as the policy outcome. The research adopts this conceptualization and incorporates two key fundamental assumptions from Parrish's analysis; the existence of *the socio-cultural coalition* within the EU sport policy subsystem and the socio-cultural regulation of sport as the *policy core beliefs* of the coalition actors. With regard to the coalition, the research assumes that the socio-cultural coalition operates within the sport policy subsystem and particularly focuses on the analysis of the EU policy actors of the coalition, namely the European Commission, the Parliament and the Member States, related to the regulation of players' agents. According to Parrish, they are the three key actors of the socio-cultural coalition, albeit there are a number of actors outside the governance structure of the EU operating within the sport policy subsystem as interest holders. Additionally, Parrish (2003a, 2003b) argues that the socio-cultural coalition is a coalition of convenience due to differences in the secondary aspects of the coalition's belief systems and identifies three broad schools of thought; the maximalists, the moderates and the minimalists. Parrish (2003a) considers that the EU actors of the coalition, in particular the Committee on Culture and Education within the Parliament, the

Education and Culture DG within the Commission, and the Member States excluding Britain, Denmark, and Sweden, are the Maximalists believing in sport's important socio-cultural functions in people's lives and the requirement of harnessing those socio-cultural characteristics of sport for pro-integrative purposes. According to Parrish (2003a), this belief also constitutes policy core beliefs of the maximalists that binds the coalition together and also shapes their perceptions towards policy issues and the policy outcomes. This research focuses on the maximalists within the socio-cultural advocacy coalition in order to analyze the EU's intervention into the regulation of players' agents.

There are various reasons for the adoption of two assumptions in terms of this research. Firstly, the adoption of two assumptions enables to define the nature of the research as a policy analysis study with a particular focus on the EU sports policy. The research is also related to policy discourse analysis of the EU's intervention into a specific policy issue, i.e. the regulation of players' agents. In doing so, the research addresses a gap, depicted by Houlihan (2005) within the policy analysis studies, by extending analysis into sport which has been so far marginalized whilst other policy areas such as the environment or social welfare have historically been subject to extensive analysis. Houlihan criticizes the fact that there has not been a strong academic interest in the analysis of public policy for sport, albeit over the last two decades intervention into sport by public authorities has been increasing. In his empirical analysis, Houlihan identifies only 3% of the academic work published within the nine major English language journals from January 2001 to September 2003 used the extensive array of concepts, analytical framework and theories developed in mainstream policy



analysis to understand sport policy making and the role of public authorities (Houlihan 2005, p.164). Additionally, to date, Parrish's study is deemed to be the only comprehensive attempt at theoretical examination of EU sports policy and law (Garcia 2008). Nonetheless, apart from Parrish himself (Parrish 2008, 2011), there has not been an academic work that advancing his analysis in the field of the EU sports policy which the research aims to carry out. Both, Houlihan (2005) and Parrish (2011), recognize the ACF's ability in explaining policy stability in terms of dominant coalitions and the persistence of the belief systems, particularly deep core and policy core beliefs. Parrish (2011) even asserts that the EU sports policy subsystem is a maturing subsystem rather than nascent one and, after more than a decade after the publication of his seminal work, the research puts these claims to the test by considering the activities of the socio-cultural coalition within the EU sport policy subsystem with regards to the regulation of players' agents.

Additionally, the adoption of the assumptions also informs the choice of the theoretical framework for the research. The research utilizes the ACF as a theoretical framework as the coalitions and the policy core beliefs are the key conceptual components within the ACF. Houlihan (2005) sees the ACF as the most promising framework for the analysis of sport policy. In comparing four meso-level frameworks for policy analysis, Houlihan claims that the ACF has a broader focus and the potential to explicate aspects of the policy process beyond the analysis of agenda setting. Houlihan is also convinced with the fact that the ACF has been widely applied across a number of different policy sectors in different countries and gone under a substantial refinement. Nonetheless,

Houlihan acknowledges that the ACF is rarely applied into the sports policy. The ADF's application to sport is limited to the works of Parrish (2003a, 2003b) and Green and Houlihan (2004). The research also attempts to advance the application of the ACF into the sports policy area as all three studies see the ACF a valuable starting point for the development of analytical frameworks to consider the sport policy area.

## **Conclusion**

This chapter has highlighted the gaps within the existing literature on the regulation of players' agents and the EU and also located conceptual meanings for the EU's socio-cultural regulation of sport for the purposes of research. The purpose of the conceptualization is to justify the research design and methodology as well as to illustrate the theoretical link to the ACF. In doing so, the conceptual components within the regulation literature are analyzed, especially the conceptual framework under the public interest theories provided a useful tool. Nevertheless, the problematic nature of developing comprehensive meaning for public interest renders the concepts ill-equipped to be used for the purpose of the research. Therefore, a narrower literature on the regulation of sport is examined. Foster's application of theoretical insights from regulation identified the socio-cultural model of regulation and the corresponding regulatory mechanism within the regulatory spectrum which have resemblances with the EU's socio-cultural regulation of sport. Foster also investigated how the EU can regulate sport and for Parrish the question goes into the heart of debate about the European integration and policy making. Consequently, the conceptual

meaning for the purposes of the research is located within the analysis of Parrish related to the EU sports policy and law.

The research adopts two key assumptions from Parrish's work; the socio-cultural advocacy coalition operating within the EU sports policy subsystem and the socio-cultural regulation of sport as the policy core beliefs of the coalition. Within the socio-cultural coalition, the research concentrates on the maximalists as they hold protectionist views about the socio-cultural functions of sport and aim to strengthen those functions through specific policy instruments available to them at European level. Furthermore, within the maximalists group those are the only EU actors providing a refined focus for the research. The policy core beliefs of the coalition enable the research to develop sub-research questions incorporating some key functions performed by the policy core beliefs within the advocacy coalitions to investigate the extent of the EU involvement into the regulation of players' agents. This also represents the actual theoretical link between the research and the ACF. Therefore, the thesis moves onto to analyze the ACF as a theoretical framework in the next chapter.

## **CHAPTER 4**

### **Theorizing public policy process: the Advocacy Coalition Framework**

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#### **Introduction**

Parrish's empirical analysis of EU sports policy, in particular the socio-cultural advocacy coalition within the EU sports policy subsystem, the actors' policy core beliefs and the change in the direction of the EU sports policy (Parrish 2001, 2003a, 2003b), begs a number of questions that this research concerns. Has the socio-cultural coalition been maintained and stabilized within the subsystem? What are the actions of the socio-cultural advocacy coalition on policy issues since the Nice Declaration in 2000? How do the policy core beliefs of the coalition actors affect their behaviours? How does their policy analysis related to their identification of issues and problems operate? How are policy preferences and policy outcomes shaped by the coalition actors' policy core beliefs and what exogenous factors create opportunity and constraints on the actors' preferences in relation to policy instruments implemented within the subsystem? These questions directly relate to overall public policy processes and the research investigates these questions by focusing on the EU policy actors of the socio-cultural coalition in the context of the regulation of players' agents, as a policy issue, within the EU sports policy subsystem.

In doing so, the research utilizes the Advocacy Coalition Framework (ACF) as a theoretical framework for the analysis of the EU sports policy process. Two important premises of the research underpin this theoretical choice: the contextualization of the socio-cultural regulation of sport as the policy core

beliefs of the EU policy actors and two key assumptions adopted from the analysis of Parrish, as outlined in chapter 3. Policy core beliefs, as a theoretical concept, find a conceptual meaning with the ACF. The research focuses on the aspects of that meaning in order to guide some of the core theoretical assumptions and concepts to base upon its sub-research questions.

Moreover, the two key assumptions adopted from the work of Parrish are that: the socio-cultural advocacy coalition operates within the EU sports policy subsystem and the socio-cultural regulation of sport is the policy core beliefs of the EU policy actors that this research focuses on. On these assumptions, there are three sub-research questions developed by the research in investigating the EU's involvement into the regulations of players' agents within the EU sports policy subsystem. These questions are derived from the theoretical hypothesis of the ACF and relate to the role of policy core beliefs (i) as endogenous drivers in guiding actors' actions in relation to coordinated activity within the socio-cultural advocacy coalition (Chapter 5), (ii) as perceptual filters performing selective perception in relation to information and policy analysis in the process of policy-oriented learning (Chapter 6), and (iii) as a motivator for shaping the policy preferences of the EU actors in relation to policy instruments, who are driven to translate those policy core beliefs into policies (Chapter 7).

This chapter, therefore, analyzes some of the core concepts used within this research whilst underlining the theoretical contribution of the research in advancing the ACF. It commences with a conceptual background of the ACF, with particular emphasis on the ACF's model of individual and policy core beliefs

within the ACF's belief systems. It then proceeds to examine those core concepts of the ACF that the research investigates in the context of the EU sports policy subsystem and in relation to the regulation of players' agents, namely coordinated activity amongst actors of advocacy coalitions, selective perception by policy core beliefs in acquiring information and policy analysis, and policy preferences and exogenous factors affecting them.

### **The Conceptual Background and Theoretical Assumptions**

The overall objective of this research is to analyze the process of the EU sports policy. There have been a number of theories developed by public policy scholars over the years to improve our understanding of public policy making (Sabatier and Weible 2014).<sup>10</sup> In particular, during the 1980s there was a shift in understanding policy process from a linear progression involving a set of rational, separated and functionally sequential stages, defined as *the stages heuristics* model by Jones (1977), to a dynamic process incorporating several policy actors, actions, ideas within which policy outcomes are primarily the result of an interconnected process of negotiation, coordination and resource mobilization amongst a number of actors from different organizations (Matti and Sandstrom 2013). The development was the result of the growing discontent with the stages heuristic's explanatory powers related to public policy making (Fenger and Klok 2001) and was seen as a shift from government to governance and broadly described as the policy network approach. The approach brings

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<sup>10</sup> Some of the predominant theories of public policy analysis include the Institutional Analysis and Development (IAD) Framework by Kiser and Ostrom, the Multiple Streams Approach by Kingdon, Punctuated Equilibrium Theory by Baumgartner and Jones, as well as the Advocacy Coalition Framework (ACF) by Sabatier. For more on these theories see Sabatier and Weible (2014).

together a range of interlinked concepts for illuminating negotiation, facilitating resources and coalition building amongst actors within a policy subsystem (Weible and Sabatier 2005).

Amongst those theories, the ACF has become one of the most utilized theoretical frameworks for the analysis of the public policy process (Jenkins-Smith et al. 2014; Capano 2009; Sotirov and Memmler, 2012), considered to be the most promising (Fenger and Klok 2001; Matti and Sandstorm 2013) and the most successful (Nedergaard 2008) in explicating the public policy process. Sabatier, the founder of the framework, recognized the shortcomings of the stages heuristic and claimed that the model had outlived its use (Jenkins-Smith and Sabatier 1994, p.197). The ACF was developed to overcome the limitations of the stages heuristic by Sabatier and colleagues (Sabatier 1988, 1998; Sabatier and Jenkins-Smith 1993, 1999; Sabatier and Weible 2007; Jenkins-Smith et. al. 2014) with the aim of providing a coherent understanding of the major factors and processes affecting overall public policy processes involving problem definition, policy formulation, implementation and revision in a specific policy domain, over period of a decade or more (Sabatier 1998). Additionally, Sabatier and colleagues were motivated to develop theoretical insights about the role of scientific and technical information in the process. They also aimed to understand policy change over time that went beyond traditional analysis of government institutions, historically defined as “the iron triangle” of executive, legislative and judiciary, and a limited form of political behaviors, namely voting and lobbying (Sabatier, 1998; Jenkins-Smith et. al., 2014). The research also aims to benefit

from the explanatory powers of the ACF in illuminating the EU's intervention into the regulations of players' agents.

The ACF sees policy subsystems as the primary unit of analysis for understanding the public policy process (Sabatier 1988, 1999; Sabatier and Weible 2007; Jenkins-Smith et al. 2014). The nature of policymaking in modern societies is complex, both substantially and legally, and it necessitates that the participants specialize in a specific policy area. The specialization takes place within policy subsystems that are characterized by a policy topic (e.g., sport), territorial scope (e.g., the EU) and the actors who regularly seek to influence policy within a subsystem (Sabatier 1998, p.130). The set of relevant subsystem actors is not limited to the traditional notion of iron triangles and extends to include a variety of public and private organizations, including actors at various levels including governments, interest groups, nongovernmental organizations, journalists, researches and policy analysts (Sabatier 1988; Sabatier and Weible 2007). All of these actors play important roles in policy formulation, implementation and evaluation. Although the extent and consistency of participation in the subsystem and influence of the actors differs, the actors are actively concerned with policy problems within a specific policy subsystem. Policy subsystems could be operational at local, national or supranational level (Weible et al, 2012). The focus of this research is the EU sports policy subsystem.

The ACF adopts a model of the individual with characteristics that are key factors that shape the public policy process (Hecl, 1974; Sabatier 1988; Sabatier and Weible 2007). The model of the individual draws heavily on work in cognitive



and social psychology rather than on work in economics (Sabatier and Jenkins-Smith 1999; Rozbicka 2013; Sotirov and Memmler 2012). Although the ACF assumes that actors are instrumentally rational, that is that they are motivated to use information and other sources in pursuit of realizing their goals, their goals are usually complex (Weible et. al. 2012, p.5). Actors have bounded rationality (Simon 1985) meaning that they are limited in their cognitive abilities to process stimuli, such as information and experience (Sabatier and Jenkins-Smith 1999; Weible et al. 2012; Jenkins-Smith et. al. 2014). As a result, actors use a heuristic, defined as any methodological approach to problem solving (Sabatier 1986a, 1986b), to overcome the limitations of their cognitive abilities so as to assist them in their reasoning, allocating attention and understanding the complexities of the world. A heuristic enables actors to focus on some information and ignore others and allocate their attention efficiently (Weible et al. 2009; Weible et al. 2012; Schlager 1994).

A common heuristic used by the ACF is belief systems that are organized into a hierarchical tripartite structure (Sabatier 1988; Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007; Weible et al. 2012; Jenkins-Smith et al. 2014). Deep core beliefs sit at the highest/broadest level and operate across most policy subsystems as they are not policy specific. They involve general normative and ontological assumptions about human nature, fundamental values such as liberty and equality, welfare of different groups, and the role of governments versus markets. Deep core beliefs are deemed to be the product of childhood socialization and, hence, very resistant to change, almost akin to a religious conversion (Sabatier, 1988). Policy core beliefs are at the next level and

represent basic normative commitments and casual perceptions. They are bound by scope and topic to an entire policy subsystem and hence have territorial and topical components. Policy core beliefs can be normative or empirical. Normative policy core beliefs may involve basic orientation and value priorities for the policy subsystem. Empirically, they include basic perceptions concerning the general seriousness of the problem and its primary causes, strategies for materializing core values within the subsystem and basic policy instruments to be used, termed as policy core preferences (Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007; Jenkins-Smith et. al. 2014). Policy core beliefs are less rigidly held than deep core beliefs. Although particularly normative ones are also resistant to change over time, because most policy core beliefs comprise empirical elements that may change over a period of time with the accumulation of evidence. Finally, there are secondary beliefs that are relatively narrow in scope. They are empirical beliefs that relate to a subcomponent of a policy subsystems or specific instrumental means to achieve preferred outcomes in policy core beliefs, such as the seriousness and cause of problem in specific locales, information concerning programme performance and most decisions concerning administrative rules, budgetary allocations, statutory interpretations and even statutory revisions. Due to their narrower scope, less evidence is required to change secondary beliefs making them most susceptible to change in the light of new information or evidence (Sabatier and Jenkins-Smith 1999).

The ACF combines the cognitive characteristics of actors with network structure analysis to simplify the analysis within subsystems for behaviours of the policy actors (Sabatier and Weible 2007; Ingold 2011; Jenkins-Smith et al. 2014) and

develops the concept of “advocacy coalitions”. The ACF sees the unit of advocacy coalitions as the most useful for analyzing the behavior of a number of actors (Sabatier 1993). The ACF organizes policy actors within policy subsystems into one or more advocacy coalitions based on shared beliefs and a nontrivial degree of coordinated activity (Sabatier and Weible 2007). The ACF argues that actors seek their allies with people who share congruent policy core beliefs and also engage in a nontrivial degree of coordination to form advocacy coalitions to translate those beliefs into policies. Hence, Sabatier (1993, p.25) defines these coalitions as consisting of *“people from a variety of positions (elected and agency officials, interest group leaders, researchers, etc.) who share a particular belief system – that is, a set of basic values, causal assumptions, and problem perceptions- and who show a nontrivial degree of coordinated activity overtime”*.

In the context of this conceptual background, some of the key concepts used throughout the research find their theoretical meanings which also justifies the choice of the ACF as a theoretical framework. After all, this research is about the EU sports policy and its focuses are the EU sports policy subsystem, the socio-cultural advocacy coalition operates with the subsystem and the EU policy actors within the coalition (the Education and Culture DG, the Parliamentary Committee on Culture and Education and the Member States).

Additionally, the characteristics and functions of policy core beliefs in the context of ACF enables us to draw hypotheses that the sub-research questions are constructed upon and also underlines the importance of conceptualization of

the socio-cultural regulation of sport as policy core beliefs of the EU policy actors. Firstly, given limited cognitive abilities, the ACF assumes that actors use selective perception understood through their core beliefs, particularly policy core beliefs that function as a set of perceptual filters, to screen their belief system from challenge (Sabatier 1998; Sabatier and Jenkins-Smith 1999; Freudenburg and Gramling 2002). Selective perception makes actors prone to biased assimilation of stimuli: actors are more likely to select stimuli that confirm their beliefs and less likely to select stimuli that disconfirm their beliefs. Based upon these assumptions, the research also assumes that the EU policy actors are likely to select stimuli that confirm their policy core beliefs and the relevant sub-research question is developed (RQ2).<sup>11</sup>

Secondly, policy core beliefs also have implications for coalition dynamics. They impact on the formation and stability of coalitions within subsystems (Sabatier 1988, 1998; Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007). Actors' interpretation of stimuli in a way that support their policy core beliefs leads to the same information to be perceived in very different ways by actors holding different beliefs (Munro et al. 2002; Norhstedt and Weible 2010; Henry 2011). Different interpretations of information cause distrust amongst actors (Sabatier 1999; Weible and Sabatier 2005). The ACF also assumes that, borrowing from prospect theory (Quattrone and Tversky 1988), actors also value losses more than gains which implies that defeats are remembered more

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<sup>11</sup> The sub-research question (RQ2) is "Do policy core beliefs of the EU policy actors perform selective perception in the process of policy-oriented learning, in particular to policy analysis and information, related to the regulation of players' agents?". It is based upon the hypothesis that "the EU policy actors likely to select information in their policy analysis that confirming their policy core beliefs (the socio-cultural regulation of sport)".

than victories. The interaction of the state of distrust with a tendency to remember losses leads to the production of a devil shift: a tendency to see the opponents more powerful than they are, less trustworthy and more evil. As a result, actors form coalitions with others that they share congruent policy core beliefs.

In addition, policy core beliefs' resilience to change also affects the stability of coalitions within the subsystem. The instrumentally rational actors seek to use information and other sources to achieve their goals (Sabatier 1998, p.108) whilst considering their ultimate goals to be more important than the contingent means to achieve those goals. For this reason, the ACF implies that policy actors make concessions on secondary beliefs, as their instrumental beliefs, prior to altering their policy core beliefs as ultimate ends. As a result, policy core beliefs remain stable over time providing stability to the coalitions (Sabatier and Jenkins-Smith 1999). A number of studies that applied the ACF in natural resources policies identified the correlation between the coalition stability with policy core beliefs stability (Burnett and Davies 2002; Meijerink 2005). Moreover, selective perception performed by policy core beliefs in screening out dissonant information and interpretation of information differently also creates group cohesion and group thinking contributing to the stability of coalition. The 'devil shift' makes conflict resolution amongst advocacy coalitions within the policy subsystem harder and coalitions have a tendency to remain differentiated and stable in composition over time. Zafonte and Sabatier (1998) view, for these reasons, policy core beliefs as the principle "*glue*" of the coalitions that holds them together within the policy subsystem (Zafonte and Sabatier 1998; Sabatier

and Jenkins-Smith 1999). Sabatier and Jenkins-Smith (1999, p.123) also conclude that *“the three hypothesis concerning coalitions are based on the premise that the principal glue holding a coalition together is agreement over policy core beliefs”*. In the context of these theoretical insights, consequently, the research’s assumptions, adopted from the analysis of Parrish, related to the existence of the socio-cultural coalition within the EU sport policy subsystem and the hypothesis of coordinated activity under the sub-research question (RQ1) find their theoretical underpinning.<sup>12</sup>

Finally, the ACF sees public policies as the translation of the belief system of actors and conceptualizes them the same way as beliefs system. Public policies incorporate implicit theories about achieving their particular objective (Majone 1980; Sabatier 1988), even though they can be defined and conceptualized in a number of ways (Birkland 2010). In doing so, these policies incorporate value priorities, perceptions of causal relationships, perceptions related to the magnitude of the problem and also perceptions of the efficacy of policy outcomes. According to Jenkins-Smith et al. (2014, p.192), *“this interpretation of policy provides insight into why coalition actors advocate so intently over time and how they interpret public policies as bolstering or being antithetical to their belief system”*. On the assumption that policy actors are motivated to translate their beliefs into policies, the ACF is then able to map beliefs and policies on the same canvas providing a vehicle to assess the influence of those actors on policies over

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<sup>12</sup> The sub-research question (RQ1) is “Is there a non-trivial degree of coordinated activity amongst the EU policy actors of the socio-cultural advocacy coalition in relation to the regulation of player’s agents within the subsystem?”. It is based upon the hypothesis that “the EU policy actors are likely to coordinate their activities in relation to the regulation of players’ agents with each others as a result of their shared policy core beliefs (the socio-cultural regulation of sport)”.

time (Sabatier 1988; Sabatier and Jenkins-Smith 1999). In this connection, the ACF assumes that policy preferences and policy outcomes are shaped by policy core beliefs and can be conceptualized and measured hierarchically like belief systems (Sabatier 1988, 1998; Sabatier and Jenkins-Smith 1999, Sabatier and Weible 2007, Jenkins-Smith et al. 2014). This theoretical insight underpins the hypothesis related to policy preferences of the EU policy actors in relation to policy instruments for the regulation of players' agents and enables to develop related sub-research question (RQ3).<sup>13</sup>

The conceptual background of the ACF and the key theoretical assumption outlined are fundamental for the research in making the choice of the ACF as a theoretical framework where the crucial concepts find their theoretical meanings. There are three research dimensions that are taken into account for the deduction of the EU actors' policy core beliefs. The first dimension concerns the study of coordinated activity. The second dimension is selective perception performed by policy core beliefs in policy analysis and the acquisition of information related to players' agents in the context of policy oriented learning. The third dimension is the EU policy actors' policy preferences related to policy instruments at European level to regulate players agents. This chapter now proceeds to analyze these concepts (coordinated activity, selective perception and policy preferences) with the theoretical literature of ACF.

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<sup>13</sup> The sub-research question (RQ3) is "What are the policy preferences of the EU policy actors in relation to policy instruments to regulate players' agents at European level and to what extent the policy preferences reflect the policy core beliefs of the actors?". It is based upon the hypothesis that "the EU policy actors' policy preferences in relation to policy instruments to regulate players' agents are likely to reflect their policy core beliefs (the socio-cultural regulation of sort) or to be in accordance with their policy core beliefs".

### **Coordinated Activity: Policy actors' Behaviour**

Coordinated activity is the important component of advocacy coalitions, alongside shared policy core beliefs, and Sabatier and Jenkins-Smith (1999) consider coordination as a necessary condition to identify coalitions within subsystems. On the assumption that policy core beliefs are the most important type of beliefs in shaping the political behaviour of actors in policy subsystems, the ACF assumes that actors, who are concerned with a policy issue and share congruent policy core beliefs, engage in a nontrivial degree of coordinated activity in order to develop and implement a common strategy to translate their beliefs into policies (Sabatier 1988; Weible and Sabatier 2005; Matti and Sandstrom 2011, 2013; Calanni et al. 2014). In other words, coordinated activity occurs between actors with similar policy core beliefs in a coalition (Sabatier 1999; Fenger and Klok 2001; Weible and Sabatier 2005). Calanni et al. (2014, p.904) emphasize the fact that *"policy core beliefs are the foundation for forming coalitions, establishing alliances and coordinating activities among subsystem members"* (Calanni et al. 2014, p.904), whilst Sabatier (1993, p.155) argues that *"due to the nature of these beliefs, they can help to unite allies and divide opponents"*. Therefore, on the assumption that the EU policy actors hold strong policy core beliefs and as they are part of the socio-cultural advocacy coalition, the research aims to identify the pattern of coordinated activity amongst the actors in relation to the regulation of players' agents within the EU policy subsystem.

The ACF scholars have attempted to develop and refine the concept of coordinated activity over the years (Zafonte and Sabatier 1998, 2004; Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2005; Matti and Sandstrom 2011,



2013). Zafonte and Sabatier (1998, p.480) define coordinated activity as *“the spectrum of activity in which one party alters its own political strategies to accommodate the activity of others in pursuit of similar goals”*. This definition could include a number of interactions involving information exchange, monitoring and aligning political behavior alongside developing, communicating and implementing a common strategy of actions. Weible and Sabatier (2005, p.185) consider *“coordinated activity implying some degree of working together such as; developing joint strategy or synchronizing shared action to influence policy process”*. In addition, Zafonte and Sabatier (1998) differentiate between strong and weak coordination. Strong coordination involves frequent interactions, the development of a common plan of action, the communication of the plan to relevant coalition members, and the monitoring acceptance and implementation of the plan combined with sanctioning for noncompliance. In contrast, weak coordination simply involves the monitoring of each other’s political behaviour and then altering individual actions in order to achieve complimentary political strategies related to a common goal. On the assumption that the actors share policy core beliefs and the existence of an element of trust, such alteration of behaviour by the actors should not be very difficult. Any elaborated decision making or monitoring is not required for weak coordination (Zafonte and Sabatier, p.480).

Nonetheless, the ACF’s hypothesis, an implicit assumption that shared policy core beliefs are sufficient for coordinated activity which termed as belief homophily hypothesis (Calanni et al. 2014; Jenkins-Smith et al. 2014), has been a long lasting and most criticized aspect of the ACF (Schlager 1995; Schlager and

Blomquist 1996; Kubler 2001; Fenger and Klok 2001; Henry 2011; Sotirov and Memmler 2012). Both Schlager (1995) and Kubler (2001) argue that the ACF scholars focus too much on explaining the structure, content, stability and evolution of belief systems, whilst failing to explain how collective action problems are eliminated by the coalition actors. In particular, Schlager (1995) emphasizes the problematic nature of collective action and questions how shared policy core beliefs overcome information cost, distributional problems and the temptation of free-ride. According to Schlager (1995, p. 262), *“actors’ success in resolving these problems affects the level of coordination they achieve, the level of influence they exert on policy decisions, and their ability to realize (from their perspective) policy outcomes”*. Therefore, Schlager argues that the ACF scholar should pay more attention to collective action problems and coordinated activity within the framework.

Additionally, Schlager (1995) also points out the necessity of considering characteristics of an issue or problem situation that is supportive of cooperation and coordination in order to overcome some of these collective action problems. Borrowing from the theoretical insight developed by the Institutional Analysis and Development Framework (IAD) (Kiser and Ostrom 1982; Ostrom 1990, 2005, 2007), Schlager suggests that repeated interactions, experience of relatively low information costs, and belief that coalition actors treat each other at least fairly likely to affect the development of minimal level of coordination amongst coalition actors. Schlager argues that consensus on a common definition of a policy problem and the policies to address the problem only represent a minimal level of coordination. In particular, repeated interactions

enable the acquisition of information, which at the same time lowers the information cost, and the context within which actors can change or alter each other's preferences. Alterations of preferences lead to congruent goals of actors that support the emergence of coordination. In conjunction with the possibility of alteration of policy preferences, repeated interaction also elevates shared understanding of the problem and agreeable policies to address it. Schlager (1995) also adds that, for a greater level of coordination, strategies to coordinate the actions and activities of the coalition actors must be agreed and adopted. The importance of identification of factors affecting coordinated activity and also definitional elements related to the level of coordinated activity guide the research's analysis in investigating coordinated activity amongst the EU policy actors in chapter 5.

In response to criticism of the belief homophily hypothesis and collective action dilemmas, the ACF scholars have made efforts in terms of empirical and theoretical work to clarify and elaborate on the issues (Sabatier and Jenkins-Smith 1999; Weible and Sabatier, 2007) which the research also aims to contribute. Sabatier and Jenkins-Smith (1999, p. 139) acknowledge the fact that *“repeated interaction and low information cost are important for developing a shared perspective on the policy problem, for developing a coordinated lobbying strategy, and enforcing that strategy, and fair policies are necessary to resolve distributional conflicts amongst members”*. Nevertheless, they also argue that Schlager's analyses are based upon the IAD's rational choice individual model, rational and self-interested with limited information capabilities, and hence, overestimates the impediments to coordinated activity. In contrast, the ACF's

model of individual is not preoccupied with enhancing their self-interest and behaviors are guided through policy core beliefs (Sabatier and Jenkins-Smith 1999, pp.138-141). Due to shared policy core beliefs, high trust and willingness to distribute cost fairly, the ACF assumes that the cost of involvement in coalitions is relatively low (Sabatier and Weible 2007). In addition, devil shift exaggerates the perceived benefits of participating in coalitions and leads coalitions' actors to overestimate the cost incurred by their opponents for success which reduces the threshold for coordination (Sabatier and Jenkins-Smith, 1999). Zafonte and Sabatier (1998) argue that in the context of frequent interaction within the organizational structures of the policy subsystem the obstacles to collective action are lowered which also fosters coordination amongst the actors sharing congruent policy core beliefs. The characteristics of the ACF's model of individual and shared policy core beliefs also underpin the research's investigation of coordinated activity amongst the EU policy actors.

A number of scholars also attempt to empirically assess the role of policy core beliefs in determining policy network structures and coordinated activity within coalitions (Zafonte and Sabatier 1998, 2004; Weible 2005; Weible and Sabatier 2005; Matti and Sandstrom 2011, 2013; Henry 2011; Ingold 2011). Zafonte and Sabatier (1998) identified, in analysis of San Francisco Bay/Delta Water policy subsystem, subsystem wide scope, salience and source of long-term conflicts are the critical attributes of the policy core beliefs that make them the glue of coalitions and they are beliefs that are most strongly related to indicators of coordinated activity. Zafonte and Sabatier (2004) examined the automotive pollution control subsystem. Although the study has produced no evidence for

support of belief homophily hypothesis, Zafonte and Sabatier (2004) concluded *“the core members of each coalition (environmental groups and Big 3 automaker) clearly coordinated their strategies when not prohibited by law”* (Zafonte and Sabatier 2004, p.100).

Weible (2005) analyzed the California Marine Life Protection Act (MLPA) policy subsystem to assess whether congruent policy core beliefs or perceived influence, developed under the Resource Dependency Theory (RDT), are the best indicators for policy network structures, with a particular focus on coordination, within the subsystem. Weible (2005, p.470) concluded that *“beliefs are more important than perceived influence in explaining coordination”* and *“stakeholders coordinate with affiliations of similar policy core beliefs than with affiliations of dissimilar beliefs”*. Weible and Sabatier (2005) also analyzed the MLPA policy subsystem, but examined the extent to which policy core beliefs predict network structures. They also differentiated between ally networks, coordination networks and advice/information networks. The coordination networks were defined to be *“consisted of actors who periodically coordinate their behavior in pursuit of common objectives”* (Weible and Sabatier 2005, p.182). Weible and Sabatier (2015, p. 193) also concluded that especially the structure of coordination and ally networks is extremely close to the predictions of policy core beliefs. They also proposed a good test of coordination which *“would involve corroborating evidence of joint behavior between stakeholders”*(p.195).

Matti and Sandstrom (2011 & 2013) investigated the correlation between beliefs and coordination within the Swedish Carnivore Management subsystem. Matti

and Sandstrom (2011) also based their analysis on two variable rationales of coordination; shared beliefs of the ACF and perceived influence of the RDT. Matti and Sandstrom (2011) additionally tested the predictability of shared beliefs, that is without specifying any level of abstraction, and the policy core beliefs for coordination. Their analysis also confirmed *“perceived belief correspondence, and not perceived influence has significant affect on the coalition structure”* and corresponding policy core beliefs drive coordination amongst coalition actors (Matti and Sandstrom 2011, p.402-403). They also concluded that deep core beliefs seemingly have no effect on the structure of coalitions. Inspired by their findings, Matti and Sandstroms (2013) differentiated between normative and empirical policy core beliefs and investigated to what extent normative policy core beliefs rather than an empirical one and secondary beliefs determine coordination. Matti and Sandstrom (2013, p.253) concluded that *“policy core beliefs in general, and normative policy core beliefs in particular, constitutes defining element of coalitions”*. Secondary element requires further testing and refinement and findings are not conclusive.

These findings by the ACF scholars (Zafonte and Sabatier 1998, 2004; Weible 2005; Weible and Sabatier 2005; Matti and Sandstrom 2011, 2013) are significant for the research. Firstly, they are the empirical evidence basis that supports the ACF's belief homophily hypothesis, i.e. the actors coordinate their activities with those they shared congruent policy core beliefs, which also underpins the sub-research question (RQ1). The findings underline the importance of shared policy core beliefs in relation to coordinated activity which the research aims to investigate within the EU sports policy subsystem. Secondly, especially Zafonte

and Sabatier's (2004) finding with regards to the core actors of the coalition and coordinated activity provides empirical imputes for the research. The EU policy actors are the focus of the research and core members of the socio-cultural advocacy coalition and the investigation of coordinated activity amongst these actors with regards to the regulation of players' agents with the EU policy aims to build upon Zafonte and Sabatier's theoretical analysis. Finally, although these studies focused on the role of policy core beliefs in relation to coordinated activity, this research investigates coordinated activity on the basis of explicit assumption of policy core beliefs of the EU policy actors which represents the originality of the research. The research aims to deduce policy core beliefs by identifying coordinated activity which based upon the existing empirical evidence within the exiting ACF literature should be present amongst the EU policy actors with regards to the regulation of players' agents.

Moreover, the research addresses the gap within the ACF literature related to coordinated activity and represents a contribution to the theoretical advancement of the ACF as the public policy process framework. Despite the efforts of the ACF scholars in developing and refining the notion of coordinated activity, the concept still remains one of the underdeveloped areas within theoretical emphasis of the ACF and requires attention (Sabatier and Jenkins-Smith 1999; Jenkins-Smith et al. 2014). Through examining the applications of the ACF between 1987 to 2006 Weible et al. (2009) illustrates the gap in the literature as none of the studies tested at all hypothesis that deal with coordination and collective actions of coalitions. The research, in Chapter 5, investigates coordinated activity amongst the core members of the socio-cultural

advocacy coalition, i.e. the EU policy actors, within the EU sports policy subsystem. This analysis will not only contribute by determining the causal drivers behind the EU's involvement into the regulations of players' agents, but also advance one of the key hypothesis for the ACF: the belief homophily hypothesis.

### **Selective Perception: Perceptual Filtering by Policy Core Beliefs**

Policy-oriented learning is another important concept under the ACF which is affected by policy core beliefs. The framework has particular interest in understanding the learning within the process of policy development, especially in relation to policy change (Sabatier, 1988; Sabatier and Jenkins-Smith, 1993; 1999). Influenced by the analysis of Heclo (1974), Sabatier and Jenkins-Smiths (1999, p.123) defines policy-oriented learning as *“relatively enduring alternations of thought or behavioral intentions that result from experience and/or new information and that are concerned with the attainment or revision of policy objectives.”* Considering learning is about knowledge, that is processed information and not the same as information, and meaningful to knowledgeable agents, this definition of policy oriented-learning transcends an information-based view of learning and incorporates values, meaning and frames and it is also more conducive to analysis. Within the ACF, policy-oriented learning rather relates to substantive learning involving increased knowledge of problem parameters including the severity of the problem, its causes and effective factors, and changing perceptions related to policy effectiveness and the possible impacts of alternative policies (Sabatier and Jenkins-Smith, 1999). Policy-oriented learning is also deemed to be adaptive learning involving the



interpretation of mistakes, making strategic adjustments and testing new strategies for related policy goals (Weible, 2008). Policy actors experiment with a variety of instruments and other mechanisms to achieve their policy goals and dissatisfaction of a specific mechanism's ability to achieve strategic objectives generally leads to reexamination of the strategy (Jenkins-Smith and Sabatier, 1993).

In the real world, however, knowledge does not suddenly appear and become universally accepted (Weible et al., 2012; Heikkila and Gerlak, 2013). Hence, policy-oriented learning involves policy analysis and information concerning the seriousness and primary causes of the problem that used by actors in advocacy fashion (Sabatier and Jenkins-Smith 1993; Jenkins-Smith and Sabatier, 1994). Jenkins-Smith and Sabatier (1993, p.45) identify four principles that govern the role of information and formal policy analysis in the process of policy-oriented learning. Firstly, analysis usually results from either threats to core values or perceived opportunities to realize core values. Secondly, information about the problem plays an important role for policy actors about the extent of a given situation affecting their values and interests. Thirdly, once actors develop a perspective on a policy issue, analysis is used in an advocacy fashion, i.e; to justify and elaborate that policy position. Finally, it is a prerequisite for actors to engage in analytical debate to translate their beliefs into policy. This involves efforts to convince other actors about the soundness of their perspectives on the problem and mechanisms as policy alternatives.

Sabatier (1988) and Jenkins-Smith and Sabatier (1993) also depict a scenario for the process of policy-oriented learning involving policy analysis, information and consequential analytical engagement. The process commences once some actors perceive a problem that affects their core values and initiates an analysis of information concerning the seriousness of the problem and its causes. Learning about causal factors affecting the problem and acquired knowledge leads actors to propose their policy preferences to accomplish their policy objectives related to the problem in line with their policy core beliefs. Actors who feel aggrieved by the proposed policy preferences tend to challenge either the validity of data concerning the seriousness of the problem or the causal assumption about the validity of technical information or the efficacy of policy preferences to overcome the problem. A response by the original actors to those challenges initiates a political and analytical debate. Policy brokers mediate the process to keep the level of conflict low and the result tends to be the adoption of a policy preference. If policy analysis provides reasonable evidence about the seriousness of the problem, identifies likely causes and convinces actors that that the proposed policy preferences could address the problem, a more substantial policy preference will emerge. Nevertheless, in a new policy area, knowledge about the seriousness of the problem and causal factors tend to be uncertain and political sources of actors are sufficiently modest that the initial policy response would involve *“significant research component, but little coercion”* (Jenkins-Smith and Sabatier 1993, p.47).

The principles governing the role of policy analysis and information and the scenario of the process of policy-oriented learning underpin the analysis of the

research in chapter 6. The scenario provides the contextual framework of analysis within which the research examines the EU policy actors' policy analysis and the acquisition of information related to the regulation of players' agents. In this context, the research also investigates the role of policy analysis and information in shaping the policy position of the EU policy actors on players' agents. Additionally, the research within this context aims to identify selective perception performed by policy core beliefs of the EU policy actors in influencing policy analysis, the acquisition of information and subsequent policy development with an objective of deducing policy core beliefs from their observed performance as perceptual filters.

Selective perception performed by policy core beliefs is important for the process of policy-oriented learning in the ACF. Although the ACF assumes that policy-oriented learning is instrumental, that is policy actors seek to better understand the world in pursuit of further advancing their policy objectives (Sabatier 1988; Sabatier and Jenkins-Smith 1993; Jenkins-Smith and Sabatier 1999), learning is also a cognitive activity and shaped by policy actors' cognitive biases and constraints within which policy core beliefs become perceptual filters performing selective perception (Sabatier 1988; Freudenburg and Gramling 2002; Sabatier and Weible 2007; Weible 2008; Matti and Sandstrom 2013; Jenkins-Smith et al 2014). Policy core beliefs perform perceptual filtering in the acceptance and processing of information acquired by actors (Sabatier 1999) and Sabatier and Jenkins-Smith (1999,p. 145) argue that *"this is even more true of policy core beliefs than of secondary aspects"*. In this connection, such cognitive limitations manifest themselves in cases of selective perception that

underpinned by policy core beliefs. Firstly, actors are more likely to select information that confirms their policy core beliefs leading to the biased assimilation of actors, the tendency to accept information confirming their existing core beliefs and screen out dissonant information suggesting invalidity (Sabatier and Jenkins-Smith 1999; Sabatier 1999). Secondly, actors also interpret information that confirms their policy core beliefs (Nohrstedt and Weible 2010). Thirdly, the selection and interpretation of information in a way that inline with the actors' policy core beliefs also cause distrust and subsequent devil shift leading to the polarization of actors and coalitions (Nohrstedt and Weible 2010).

Selective perception, performed by policy core beliefs, is a fundamental characteristic of the ACF's model of the individual and has significant repercussions for the dynamics of coalitions with subsystems. Policy-oriented learning is not problematic within a coalition. Policy actors are more willing and open towards information and knowledge exchange with the others in the same coalition than the other in rival coalitions (Sabatier 1988; Sabatier and Jenkins-Smith 1999; Weible 2008; Rozbicka 2013). This process of cognitive analysis creates an in-group coherency and when combined with the distrust of opponents contributes to the stability of the coalition (Sabatier and Jenkins-Smith 1993). In addition, the advocacy style of formal policy analysis and information used against opponents creates an analytical debate which can result in conflict. This conflict might lead to isolation for divergent coalitions and prevents member defections across coalitions (Sabatier and Jenkins-Smith 1999). The combined impact of in-group coherency and lack of member defection cause an enhanced stability of the coalitions within subsystems.

Selective perception also impacts on learning by policy actors and consequential policy change. Learning is more frequent in secondary beliefs than in policy core beliefs due to combined effect of selective perception and biased assimilation (Sabatier and Jenkins-Smith; 1993; Sabatier 1998; Weible et al. 2008). Due to selective perception, as information remains dissonant to policy core beliefs, policy core beliefs also are resistant to change, especially normative ones, and the time period of a decade or more (the enlightenment function) is required to accumulate evidence to change them. Conversely, due to their empirical nature, secondary beliefs are more easily changed in the face of evidence, which also enables the ACF to differentiate between minor change (secondary beliefs) and major change (policy core beliefs)(Jenkins-Smith and Sabatier, 1993; Nedergaard, 2008; Sotirov and Memmler, 2012).

This research takes into consideration the analysis of selective perception within the existing ACF literature and facilitates them to develop the hypothesis to construct the sub-research question (RQ2) and also investigates selective perception to deduce policy core beliefs of the EU policy actors in the socio-cultural advocacy coalition.

There is a rich literature that examines the process of policy-oriented learning. In contrast, the literature on selective perception is very limited and the research aims to fill this gap. The existing literature on policy-oriented learning is based upon the assumption that learning is not problematic within coalitions. Therefore, their focus is on across coalition learning and, in particular investigating the conditions conducive for that learning, (Barke 1993; Olson et al. 1999; Elliott and Schlaepfer 2001; Meijerink 2005; Larsen et al. 2006) and also

on learning in secondary and policy core beliefs (Sabatier and Brasher 1993; Elliot and Schlaepfer 2001). The ACF identifies at least three conditions that affect learning across coalitions; level of conflict (Meijerink 2005), analytical tractability of the issue (Elliott and Schlaepfer 2001), the existence of a professional forum (Sabatier 1988; Barke 1993; Olson et al. 1999; Jenkins-Smith and Sabatier 1993). The findings of research are rather mixed with regards to support for conditions conducive for across coalition learning. Some research concludes that across coalition learning is likely to occur when there is intermediate level of conflict (2005), with tractable issues (Elliott and Schlaepfer 2001), and in professional forums (Barke 1993, Olson et al. 1999). Conversely, other research shows that forums do not always facilitate across coalition learning (Munro 1993). The analysis of learning within secondary and policy core beliefs also produces mixed results (Jenkins-Smith and Sabatier 1993; Sabatier and Jenkins-Smith 1999; Sabatier 1999). The nature of policy core beliefs, being primarily normative and largely beyond direct empirical challenge, and their resistance to change, which will require accumulation of considerable evidence over a decade or more (the enlightenment function), are two primary reasons that learning takes place in secondary beliefs which are more susceptible to change on the basis of empirical evidence (Jenkins-Smith and Sabatier 1993). A good number of studies have identified learning at both secondary and policy core beliefs (Sabatier and Brasher 1993; Elliot and Schlaepfer 2001). Despite the focus on policy-oriented learning, literature analyzing selective perception by policy core beliefs is very limited and addressing this gap in the literature is the one of the objective of this research.

Additionally, there is only one study analyzing policy core beliefs as perceptual filters performing selective perception by Freudenburg and Gramling (2002) and the study's findings illustrate the importance of developing a better understanding of selective perception within the ACF. Dramatic impacts of selective perception on policy process are highlighted within the analysis of the study. Through examining the federal outer continental drilling program in the US over a period of 35 years Freudenburg and Grambling (2002) identified that it was actually selective perception performed by the policy core beliefs of dominant pro-development advocacy coalition led to the demise of their policy output. The actors of the pro-development advocacy coalition had screened out information challenging their policy core, and combined with their shared commitment to policy core beliefs too, virtually resulted in an unwillingness to accept very relevant scientific information. Defined as self-negating belief by Freudenburg and Grambling (2002), eventually President Bush, who was considered to be an actor within the pre-development advocacy coalition, called for the National Academy review of the scientific information. The review ultimately undermined the coalition's policy core beliefs and the result was a divergent policy outcome from policy core beliefs. Freudenburg and Grambling (2012, p. 38) even claim that *"there is a need to recognize that a shared (policy core belief) belief may provide not just glue that holds a coalition together, but all the substance that keeps the members' eyes shut"*. Additionally, Freudenburg and Grambling (2002) consider that the self-negating beliefs may likely become evident when a dominant advocacy coalition appears to be most firmly in control and seems to be acting in accordance with their policy core beliefs. Therefore,

the findings of this research related to selective perception improve the theoretical understanding of selective perception as a concept within the ACF.

Furthermore, the analysis of the research on selective perception contributes an explicit gap within the ACF's literature that is also acknowledged by the ACF scholars. Jenkins-Smith et al. (2014, p.205) recognize the area of policy-oriented learning as an understudied area in the ACF and urge scholars to undertake re-examination of the concept and its theoretical implications. Moreover, Jenkins-Smith et al. (2014, p.207) also emphasize the importance of expanding the understanding of science and policy analysis in the policy process. Henry (2011, p.379) views *"understanding which types of beliefs are more or less prone to biased assimilation is an important area for future research"*. Therefore, this research aims to contribute the development of understanding primarily related to selective perception, but also policy analysis and the wider concept of policy-oriented learning.

### **Policy Preferences: The Reflection of Policy Core Beliefs**

The theoretical means of policy preferences in relation to policy instruments, as policy outcomes at operation level, in reflecting policy core beliefs are based upon some of the key theoretical assumptions of the ACF. The ACF assumes that those preferences are a translation of policy core beliefs and can be conceptualized and measured hierarchically like belief systems (Sabatier 1988, 1998; Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007; Jenkins-Smith et al. 2014). Additionally, there is an assumption that policy actors engage in coordinated activity, who are concerned with a policy issue and share



congruent policy core beliefs, in order to develop and implement a common strategy to translate their policy core beliefs into policies (Sabatier 1988; Weible and Sabatier 2005; Matti and Sandstrom 2011, 2013; Calanni et al. 2014). In the context of on-going policy process, Jenkins-Smith and Sabatier (1993, p.44) claims that *“policy-oriented learning is an ongoing process of search and adaptation motivated by the desire to realize core policy beliefs”*. Therefore, these assumptions are the spine of the hypothesis that underpins the sub-research question (RQ3) and the research aims to examine the policy preferences of the EU policy actors related to the instruments at European Union level to regulate agents in order to deduce their policy core beliefs.

Policy preferences generally represent the secondary aspects of actors' belief system, although the ACF differentiates subsystem-wide policy proposals, defined as policy core policy preferences (Sabatier 1998; Sabatier and Jenkins-Smith 1999). Policy core policy preferences are beliefs that *“(i) are subsystem-wide in scope, (ii) are highly salient, and (iii) have been major source of cleavage for some time”* (Sabatier and Jenkins-Smith 1999, p.134). Policy core policy preferences are normative beliefs. When translated to secondary beliefs, these preferences become narrower in scope and relate to specific instruments or proposals dealing with only a territorial or substantive subcomponent of a policy subsystem (Sabatier and Weible 2007, p.195). The EU policy actors' policy preferences related to policy instruments in regulating players' agents are not subsystem-wide and rather issue specific (players' agents). Therefore, they have a nature of secondary beliefs. However, the translation of policy core policy preferences into secondary beliefs clearly underlines the importance of those

preferences in reflecting policy core beliefs and this is what the research aims to deduce through analysis in chapter 7.

Policy preferences are also important to explain policy change within a subsystem. As preferences relate to the secondary aspects of the belief systems of policy actors, they enable the ACF to make a clear distinction between minor and major policy change (Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007; Capano 2009). According to Sabatier and Jenkins-Smith (1999, p.147) *“major change is change in the policy core aspects of a governmental program, whereas minor change is change in the secondary aspects”*. Jenkins-Smith et al. (2014) see change in policy core beliefs indicating a major change in the directions or goals of the subsystem, as a major policy change, whereas change in secondary aspects, ie; change in means for achieving policy goals, is evidenced for a minor change (p.201). Additionally, the hierarchical structuring of beliefs also grounds on their susceptibility to change and minor policy change is likely to be not as difficult as major policy change (Sabatier, 1998). Gathering empirical evidence over a period of time on specific policy issue may lead to change in secondary aspects of beliefs system, conversely policy core beliefs are rigidly held and selective perception screens out dissonant information making a major policy change very unlikely (Jenkins-Smith et al. 2014). Therefore, policy-oriented learning, which may take ten years or more (enlightenment function), may not be sufficient to change the policy core beliefs of the actors and it necessitates external perturbations or shocks affecting the subsystem to generate a major policy change (Nohrstedt 2009; Nohrstedt and Weible 2010; Albright 2011).

The research aims to deduce policy core beliefs from the EU policy actors' policy preferences rather than investigating policy change within the EU sports policy subsystem. Yet, the change in preferences of the EU policy actors may represent a minor policy change within the wider context of EU sports policy subsystem. The emergence of FIFA's new regulatory framework (the concept of intermediaries) also represents a plausible question in the context of theoretical analysis: whether the new framework represents the policy core beliefs of the EU policy actors and constitutes a form of policy change or whether it represents the maintenance of the status quo by football governing bodies in regulating players' agents which may undermine the EU policy actors' policy core beliefs. These questions are also examined in chapter 7 as they are interlinked to the explanatory power of policy preferences for policy core beliefs.

The focus on policy preferences also necessitates an analysis of the factors affecting overall policy making within subsystem, in particular to explain the change in preferences and the emergence of alternative instruments. In this connection, the ACF identifies two exogenous factors, one relatively stable and the other more dynamic, that impact on policy making in policy subsystems by creating the constraints and opportunities of subsystem actors (Sabatier, 1998; Sabatier and Jenkins-Smith, 1999, Sabatier and Weible, 2007). The stable exogenous factors rarely change over a period of decade or so, thus they are seldom the subject of coalitions' strategies and provide impetus for behavioral and policy change within the subsystem. Yet, *"these factors can certainly limit the range of feasible alternatives or otherwise affect the resources and beliefs of subsystem actors"* (Sabatier, 1988, p.135). These relatively stable parameters

include the basic constitutional structure, socio-cultural values and structures, natural resources of a political system, and basic attributes of the problem area. In this connection, the research examines the stable parameters affecting the EU sports policy subsystem so as to illuminate the reasons behind the specific policy preferences of the EU policy actors.

On the other hand, the dynamic exogenous factors, on the other hand, are more likely to change over the course of a decade or so. They include changes in socio-economic conditions, changes in systematic governing coalitions, and policy decisions from other subsystems. Their susceptibility to change makes these dynamic factors critical in affecting major policy change. In fact, the ACF hypothesizes that for major policy change, a change in one of these exogenous dynamic factors is a necessary condition.

## **Conclusion**

This chapter has presented the theoretical framework that underpins this research. There are a number of reasons justifying the choice of ACF as a theoretical framework by this research. Firstly, the assumptions adopted from the analysis of Parrish (2003a, 2003b) on the EU sports policy led to the ACF as the socio-cultural advocacy coalition and the socio-cultural regulation of sport as policy core beliefs have their conceptual meanings within the framework. Secondly, the theoretical assumptions of the ACF also led to the development of hypotheses that underline three research dimensions in deducing policy core beliefs in the context of the EU sports policy subsystem: coordinated activity, selective perception and policy preferences. Thirdly, the ACF is considered to be

the one of the most promising, elaborated and useful theoretical lenses to analyze the public policy process. Additionally, the ACF is also deemed to be a promising framework to analyze the EU policy process (Zahariadis 2013, p.809; Rozbicka 2013, p.849), which is in general terms, what this research is doing. For these reasons, the research utilizes the ACF as its theoretical framework.

The research's sub research questions are aiming to deduce policy core beliefs of the EU policy actors, defined as the maximalists by Parrish (2003a) of the socio-cultural advocacy coalition within the EU sports policy by analyzing theoretical concepts of the ACF where policy core beliefs perform an important role. In relation to coordinated activity, it is the necessary condition of advocacy coalitions and actors coordinate their activities with the actors on the basis of shared congruent policy core beliefs. Policy core beliefs perform selective perception, acting as perceptual filters, in processing and interpreting information within policy analysis of policy-oriented learning process. Actors are also motivated to translate their policy core beliefs into policies and, for this reason, policy preferences correlate with policy core beliefs. These propositions are investigated in the context of the regulation of players' agents within the EU sports policy subsystem. The initial analysis of the coordinated activity of the maximalists in the subsystem will be presented first in the next chapter.

## Chapter 5

### The EU Policy Actors and Coordinated Activity

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#### Introduction

The regulation of players' agents, as a policy issue, was initially confined to the activities of the single market advocacy coalition within the EU sports policy subsystem. The complaint by Laurent Piau to the Commission was the catalyst for the activities at European level and eventually led to a decision by the Competition DG, FIFA's amendments to its regulations and the judgment by the General Court. Particularly, following the amendments by FIFA, the Competition DG was satisfied that the restrictive aspects of the regulations were eliminated and declared that continuing with proceedings represented no community interest (Piau, para 22). The Working Group on the follow-up to the Nice Declaration, established in the tenth European Sport Forum in 2001 to carry out the work on the implementation of the Nice Declaration, even expressed their satisfaction of the fact that the issue of players' agents *"have been dealt with in a way which respects Community Law, and uniqueness of sport and in line with the spirit advocated by the Nice Declaration"* (European Council 2001, p.1). Therefore, why the socio-cultural advocacy coalition, particularly the Education and Culture DG, the Committee on Culture and Education and the Member States (hereafter together they are referred as *"the EU policy actors"*) became involved with the issue at European level requires an explanation from the perspective of EU sports policy. How did the issue move onto their policy agenda? What have been the activities of these actors over the years that ensured the regulation of players' agent is dealt with within the subsystem in accordance with their policy core beliefs?

This chapter analyses those activities of the EU policy actors of the socio cultural advocacy coalition related to the regulations of players' agents in the period of over a decade after the Nice Declaration and particularly investigates how the policy actors coordinated their activities in order to develop a policy position that corresponds with their policy core beliefs (The chronological outline of activities are in Table 3). Based upon the assumption that the EU policy actors hold strong policy core beliefs related to the socio-cultural regulation of sport (Parrish, 2003a and 2003b) and the ACF's theoretical assumption that actors with congruent policy core beliefs coordinate their activities (Zafonte and Sabatier 1998, 2004; Sabatier and Jenkins-Smith 1999; Weible and Sabatier 2005; Matti and Sandstrom 2011, 2013), firstly, the period from the Nice Declaration to the White Paper on Sport (European Commission 2007a) is examined. During this period, the research identifies that there is a minimal degree of coordinated activity amongst the EU policy actors related to players' agents involving interactions and policy analysis which shaped their issue preferences for the White Paper. Secondly, the aftermath of the White Paper is examined and a strong coordination (Zafonte and Sabatier 1998; Schlager, 1995) involving not just repeated interactions and policy analysis but also a common plan of action, in form of impact assessment, is identified. Finally, the actors' activities in the post-Lisbon era are considered.

### **From the Nice Declaration to the White Paper on Sport**

Coordinated activity at European level is rather complex and there are a number of characteristics of EU policy making that affect the level of coordination. Schlager (1995) argues that those characteristics of the situation could be either

supportive or detrimental to the coordination amongst the members of the advocacy coalition and need to be carefully analyzed. A dispersed power of policy making between the EU institutions and the Member States (Parrish 2003a) influences policies impacting upon the activities and the context of coordination within which policy actors develop strategies for coordinating or synchronizing their activities to affect the policy (Sabatier 1998). Additionally, resources at the disposal of policy actors are the basis of their activities and provide the platform for frequent analytical interactions on policy issues involving information exchange and analytical debates that are critical components of coordinated activity (Zafonte and Sabatier 1998; Schlager 1995). With regards to sport, the Education and Culture DG has a privileged position in relation to policy initiative as it holds the sole right of legislative initiative meaning that policy must be drafted by the Education and Culture DG with the associated right to amend or withdraw its policy proposal (Wallace et al. 2005). Policy documents (Communications), consultations, conferences and studies are sources available the Education and Culture DG to develop the EU sports policy. The Member States influence EU policy making by providing the basis of legal context for EU action on sport through Declarations and Treaty Articles. Prior to the new competency on sport under the Lisbon Treaty, the Amsterdam Declaration and the Nice Declaration were important soft law measures providing legal context for guiding the EU activities on sport. Additionally, the institutional framework in the context of political cooperation between the Member States and with the EU institutions is important as it provides the framework to coordinate their activities on policy issues. Prior to the Lisbon Treaty, political cooperation was confined within an informal framework outside



the formal Council structure. After the new competency, there is a formal setting under the new Council configuration related to sport. The key sources of the Member States at their disposal are Ministerial and Sports Directors meetings, Presidency Conclusions, Rolling Agendas and resolutions of the Council. The Committee on Culture and Education influences the EU sport policy through its legislative, scrutiny and budgetary powers. In particular, the Committee provides input through parliamentary debates, questions and resolutions and those affect its activities. The Committee's key resources are, therefore, resolutions and parliamentary reports (Parrish 2003a).

The EU policy actors developed a minimum level of coordinated activity (Schlager 1995; Zafonte & Sabatier 1998), involving repeated interactions and policy analysis, particularly involving information exchange, in relation to the regulation of players' agents during the period from the Nice Declaration in 2000 to the White Paper on Sport in 2007. The Nice Declaration was the basis of legal context for EU action on sport due to the lack of an explicit competency for sport under the Treaties. The Declaration provided orientation for addressing sport's specific characteristics and its social function at European level (Parrish 2003a; Takorski et al. 2004; Van den Bogaert and Vermeersch 2006).<sup>14</sup> Motivated to embrace the full potential of sport and develop more coordinated and effective EU action concerning the implementation of principles and values under the Nice Declaration, particularly relating to the protection and promotion of its socio-

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<sup>14</sup>The relevant part of the Declaration reads "... Even though not having any direct powers in this area, the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and solidarity essential to the preservation of its social role may be respected and nurtured."

cultural role (European Commission 2007b, p. 58-59), there was a decision by the EU policy actors on the development of EU policy initiative, in the form of a white paper, at European level (European Commission 2007b). The Education and Culture DG developed a framework to identify the topics to be addressed under the policy initiative which became a consultation exercise involving interactions not only between the EU policy actors but also the wider EU sport movement through consultations, meetings, and conferences. The interaction with the EU sport movement, particularly with sport governing federations, the issue of players' agents was mooted as a topic where European level action might be necessary. The Member States also adopted, upon a proposal by the Education and Culture DG, a Rolling Agenda for sport defining their priority themes for the EU policy initiative on sport. The context of the Member States' input was further developed through the informal meetings of EU Sports Ministers and EU Sports Directors under EU Presidencies and the Independent European Sport Review, the report initiated under the UK Presidency, was an important contribution to the process. The Committee of Culture and Education contributed to the process by adopting its own report in the future of football on Europe. The result of coordinated activity by the EU policy actors for the period leading to the White Paper on Sport was that repeated interactions and information exchange enabled them develop a shared understanding around the issue of players' agents as a policy problem (Schlager 1995). Repeated interactions and the development of shared understandings also shaped their issue preferences for the White Paper (Schlager 1995) and the regulation of players' agents and assessing the necessity of European level action became a policy issue for the EU policy actors under the policy document.

In the process of preparing the White Paper on Sport, the Education and Culture DG launched a consultation exercise, titled the EU & Sport: Matching Expectations, involving the broader European sport movement (European Commission 2007b, p.111-112). The objective of the framework was to identify concrete topics of direct practical relevance to the stakeholders and where the EU involvement could have added value to their existing activities. The topic of the debate within the framework was related to the priority items of the political Rolling Agenda for Sport, adopted by EU Sports Ministers in 2004. This ensured a parallelism of discussions on sport between governmental (the Member States) and non-governmental stakeholders. In this context, there were a number of activities organized by the Education and Culture DG. Two consultation conferences took place in June 2005 and 2006 with the representatives of the European sport movement.<sup>15</sup> Recognizing the need to meet with European sport federations at the highest level, there was a meeting took place in September 2006 focusing purely on governance issues in European sports.<sup>16</sup> There were also bilateral consultations on the issues related to the White Paper involving meetings and contacts with a large number of organizations that attended at the consultation conferences (European Commission 2007b, p.113-115).<sup>17</sup> The Education and Culture DG also ran an eight week on-line consultation process

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<sup>15</sup>The first conference was organized on 14-15 June 2005 and there were three workshops focusing on the social function of sport, volunteering in sport and the fight against doping. The second consultation conference was placed under a broader title of “the role of sport in Europe” and took place on 29-30 June 2006. There were also three workshops on the thematic structure of the White Paper on Sport: the societal role of sport, the economic impact of sport, the organization of sport.

<sup>16</sup>There were representatives of more than 30 sports federations in Europe attended the meeting, including UEFA and FIFA.

<sup>17</sup>Football stakeholders involved in these bilateral consultations included FIFA, UEFA, the European Professional Football Leagues (EPFL), FIFPro, G-14 and Premier League.

open to interested organizations and individuals in Europe between February and April 2007 (European Commission 2007b, p.115-124).

The meeting with European sport federations, titled Sport Governance in Europe, and the online consultation were particularly instrumental in putting the regulation of players' agents within the agenda of the Education and Culture DG (European Commission 2006). In the meeting with sports federations the Commissioner responsible for sport, Jan Figel, was present and the chair was the Director General of the Education and Culture DG and the Director responsible for sport (European Commission 2006, p.1). Focusing purely on governance issues and providing a direct opportunity to discuss one of the core themes of the White Paper, the federations particularly emphasized the specificities of their respective sport and outlined the ways in which the EU could help in promoting good governance in sport whilst respecting their autonomy (European Commission 2006, p.2). Football federations particularly insisted upon the specificities of football and its problems compared to the other sports. Within this context, some sport federations identified the issue of players' agents as an area where possible EU action could promote good governance in European sport (European Commission 2006, p.3).<sup>18</sup> The online consultation targeted all interested organizations and individuals on sport and sport organizations accounted for 59.2% of the overall respondents and included being either a sport club or sport federation (European Commission 2007b, p.115). Many respondents mentioned that the EU and sport share a number of common

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<sup>18</sup>The other areas identified were the protection of minors in sport, betting in sport, doping, preservation of the rights of sportspeople and of equal access to sport practice and the promotion of sport in schools and for young people.

concerns, such as the exploitation ("trafficking") of young players, the activities of players' agents, corruption and money laundering, violence at sporting events, racism and other discrimination, and doping (European Commission 2007b, p.124). 67.7% agreed that the EU should explore the need for action as regards the profession of agents in the field of sport (European Commission 2007b, p.123).

The Member States developed a close cooperation with the Education and Culture DG in the preparatory process of the White Paper in the context of informal framework and aligned their activities (European Commission 2007b, p.125 and p.58). The Member States desired to give sport a high profile within European policy making and especially to enhance its specific characteristics and the social function of sport in Europe as per the Nice Declaration. The Rolling Agenda for Sport, adopted upon a proposal by the Education and Culture DG in 2004, provided a better focus for the debates and allowed for continuity and progress by identifying the priority themes of the Member States for the White Paper (European Commission 2007b, p.58 and p.122). The discussions and debates took place during informal meetings of EU Sports Ministers and EU Sports Directors. There were ministerial meetings organized by the Presidencies of Luxembourg (Luxembourg, April 2005), the United Kingdom (Liverpool, September 2005) and Germany (Stuttgart, March 2007). There was also a Ministerial Conference organized jointly by the Finnish Presidency and the Education and Culture DG within the framework of the EU & Sport: Matching Expectations and took place in Brussels on 27-28 November 2006. During the conference the ministers endorsed their support for the White Paper by the

Education and Culture DG and expressed their desire to remain closely involved in the preparatory process.

In addition, EU Sports Ministers at the Ministerial Conference decided to set up an ad-hoc Member States Working Group on the White Paper during the German Presidency. The Group had a meeting on 7<sup>th</sup> March 2007 and discussed concrete, practical topics interest to the Member States, thus providing informal input and concrete ideas for the White Paper (European Commission 2007e, p.127).

The Independent European Sport Review (Arnaut, 2006), also known as the Arnaut Report, was the most important work originating from the activities of the Member States within which the policy analysis related to the regulation of players' agents within the context of the Nice Declaration was carried out. The Review was the part of the Member States' ongoing works in the field of sport with a particular objective of supporting practical effects of the principles set out in the Nice Declaration (Arnaut 2006, p. 21). In this context, the regulation of players' agents in Europe was also examined. The decision to commission the Review was taken during the meeting, arranged by the UK Sport Minister Richard Caborn and attended by the Ministers of France, Germany, Spain and Italy and football governing bodies<sup>19</sup> in Leipzig on 8 December 2005. The meeting particularly focused on exploring how the principles related to the specific characteristics of sport could be effectively implemented by the football governing bodies, the EU institutions and the Member States, so that its social

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<sup>19</sup> Football governing bodies represented by Messrs. Blatter (FIFA President), Johansson (UEFA President), Grondona (FIFA Senior Vice-President, CONMEBOL) and Hayatou (CAF President).

and cultural functions were protected and promoted. With reference to players' agents, it was conceived that the issue is amongst a range of problems faced by European football that are generally harmful to sport and recognized that only a holistic approach involving football governing bodies, the EU and the Member States would be truly effective (Arnaut 2006, p.147). In this connection, the decision for the Review was taken and the terms of reference of the Review agreed (Arnaut 2006, p.149-154). With regards to the regulation of players' agents, the authors were mandated to look into "*the arrangements by which the football authorities oversee (i) the activity of agents and intermediaries in respect of both the transfer of players' registrations and player contract arrangements; and (ii) the system of player registration and movement*" (Arnaut 2006, p.152). The former Portuguese Sport Minister, Jose Louise Arnaut, was appointed the chairman of the Review on 8 September 2006 to produce the report on these specific terms of reference.

The Review was another consultation platform providing an opportunity for the stakeholders, the Education and Culture DG and the Parliament to interact on the issue of players' agents and to exchange information. During the preparation phase of the Review, a consultation meeting took place, in form of a public hearing, in Brussels on 29<sup>th</sup> March 2006 which attended by a number of football stakeholders<sup>20</sup>, the members of the Parliament and the Education and Culture DG's Sport Unit. In addition, the Chairman of the Review also held one to one

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<sup>20</sup>Stakeholders attended the meeting include Independent Football Commission (UK), Deputy Chief Executive of the English Players Association and FIFPro, the English Football Association, Spanish Professional Football Leagues, European Professional Football Leagues, G-14 EU Affairs External Advisor, UEFA Vice President, Celtic Chief Executive and Licensed Players' Agents.

meetings with the representatives of the football family<sup>21</sup>, specific key stakeholders groups<sup>22</sup>, the representative of the Presidencies<sup>23</sup>, the Commissioners and the members of the Parliament.

The Review analyzed players' agents in the context of the specificity of sport and governance issues. It also made a recommendation in relation to an alternative European level instrument to regulate their activities which represented the policy preference of the Member States. The regulation of players' agents was considered to be inherent to the proper regulation of sport and compatible with the EU law (Arnaut 2006, p.47). Noting the problematic nature of regulation and supervision of players' agents and ongoing challenges in connection with their activities (Arnaut 2006, p. 46), the Review specifically urged the football governing bodies to reinforce the control and examination of players' agents aiming for transparency in their dealings (Arnaut 2006, p.88). In this connection, it was recommended that a regulatory system be administered by the UEFA and amendments to the existing system be agreed in consultation with the European Commission (Arnaut 2006, p.89). The Review also acknowledged a possible necessity of legislation at European level, potentially in form of a directive to achieve an effective regulation for players' agents (Arnaut 2006, p.120). The analysis and recommendations under the Review also made available to the FIFA Task Force for the Good of the Game, the group that commissioned by FIFA to work on the improvements to the governance of football. The Member States

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<sup>21</sup> They were the FIFA President, UEFA Executive Committee and CEO, and National Associations.

<sup>22</sup>European Club Forum involving 102 Clubs from all 52 members of UEFA, European Professional Football League with 14 Professional European League, FIFPro and G14 were the stakeholders that meetings were held with.

<sup>23</sup>The representative of Presidencies included the UK Presidency, Austrian Presidency, Finland Presidency as well the European Commission and the members of the European Parliament.



Working Group on White Paper also took into the consideration the analysis and the recommendations under the Review. The regulation of players' agents was a policy issue that put forward by the Group for the inclusion into the White Paper during the group meeting in March 2007 (Arnaut 2006, p.4).

The resolution on the future of European football adopted by The Committee on Culture and Education (European Parliament 2007a), as its own initiative, was the input of the Committee into the White Paper and outlined the policy preference of the Committee with regards to regulation of players' agents. The procedural context of the resolution led to a close interaction between the Committee and the Education and Culture DG involving a parliamentary debate and follow up report by the Education and Culture DG on the issues addressed under the resolution. The report prepared by the Committee's members, Ivo Belet acting as a rapporteur, had an overall objective of indicating the policy areas where action at European level could provide added value for Europe's most popular sport, football. The Committee asked the Education and Culture DG to establish an action plan for European sport in general and football in particular setting out issues for the Commission to deal with and the instruments to be adopted (European Parliament 2007a, para. 9). The regulation of players' agents was identified as a pressing policy issue to be addressed at European level and the Committee required football governing bodies at all levels in conjunction with the Commission to improve the regulatory framework governing their activities. The Committee also urged the Education and Culture DG to support the efforts of UEFA in the regulation of players' agents and if necessary to propose a directive regarding to players' agents which would set

out strict standards and examination criteria for anyone wanting to enter to the profession, transparency in transactions, and minimum harmonized standards for agents' contracts. The Committee even considered a potential directive to introduce players' agents licensing system and register at European level (European Parliament 2007a, para.41).

The result of an intensive consultation exercise was the White Paper on Sport, the first comprehensive policy initiative on sport by the Education and Culture DG, adopted on 11 July 2007 (European Commission 2007a).<sup>24</sup> The document aimed to give strategic direction on the role of sport in Europe, to elevate the visibility of sport in EU policy making, to encourage debate on the specific problems of sport and to increase the public awareness in relation to the needs and specificities of the sport sector (European Commission 2007a, p.2). Structured around three thematic sections, the White Paper covers a number of policy issues. The *"social role of sport"* focuses on the topics around what sport represents as a social phenomenon and particular attention is given to the issues of health and exercise, coordinating action in supporting anti-doping measures, developing the role of sport in education and training, promoting volunteering and citizenship, using sport as a tool for social inclusion and integration, and combating racism and violence. The *"economic dimension of sport"* considering the contribution of sport to the growth and creation of jobs in Europe and the document proposed moving towards evidence based policy on sport, in particular by seeking specific information and studies on its impact. The

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<sup>24</sup>The White Paper on Sport was a communication by the Education and Culture DG and accompanied by the Staff Working Document, the Action Plan, the Executive Summary for Impact Assessment and the Impact Assessment.

*“organization of sport”* analyzes the role of each stakeholder (public or private) in the governance of the sport movement in Europe, with particular focus on the question of good governance and the relationship between EU law and the regulatory autonomy of the sport governing bodies. In relation to those policy issues, the Education and Culture DG also incorporated a detailed Action Plan, named after Pierre de Coubertin, containing a number of concrete actions to be implemented and supported in the field of sport (European Commission 2007c). The Action Plan was to guide the Education and Culture DG in its sport related activities over the years.

The Education and Culture DG considered the issue of players’ agents under the *“organization of sport”* in the White Paper and decided to carry out an impact assessment in order to provide a clear overview of the activities of players’ agents in the EU and to evaluate whether EU-level action was necessary (Action 41) (European Commission 2007a, p.14). Noting the increased activities of players’ agents over the years as a result of the development of a truly European player market and increase in players’ salaries, the Education and Culture DG underlined in the reports the bad practices within the activities of players’ agents involving the instances of corruption, money laundering and trafficking underage players. On the other hand, it was also observed that the activities of players’ agents are almost always of a cross-border nature due to the integrated nature of the European players’ market, thus creating a difficulty for regulation. Hence, players’ agents were subject to different regulations in different Member States, whilst international federations also introduced their own regulations (European Commission 2007a, p.15; European Commission 2007b, p.49).

Acknowledging the repeated calls made, particularly by the Committee on Culture and Education and the stakeholders, on the EU to regulate players' agents by adopting an EU legal instrument, the Education and Culture DG committed to carry out an impact assessment to evaluate the situation (European Commission 2007a, p.15; European Commission 2007b, p.5).

### **The Aftermath of the White Paper on Sport**

The impact of the White Paper on Sport was that it provided the right context for a strong coordination, as defined by Zafonte and Sabatier (1998) or a greater level of coordination by Schlager (1995), amongst the EU policy actors on players' agents. In particular, the document not only led to a coordinated approach to sport at European level by the Member States, the Commission, the Parliament and stakeholders, but also the Action Plan provided a common plan of action that guided their activities. According to Zafonte and Sabatier (1998), the development of a common plan of action to pursue their policy objectives and communication of it to coalition members are prerequisites for a strong coordination and goes beyond a weak coordination. Schlager (1995, p.261) views the plan of action as a strategy used by the coalition members to coordinate their activities which also must be agreed and adopted for a greater level of coordination. A common plan of action for players' agents was agreed upon by the Education and Culture DG, in the form of impact assessment, and communicated to policy actors. The Education and Culture DG presented the White Paper to the Member States and the European Parliament (European Commission 2007a, p.19).

Additionally, the White Paper also strengthened political cooperation between the EU policy actors, in particular between the Education and Culture DG and the Member States, by making it a part of the Action plan (Action 51) (European Commission 2007a, p.19, European Commission 2007b, p.6). In this connection, the Education and Culture DG committed to carry on close cooperation within the context of the existing informal frameworks including ministerial meetings with EU Sport Ministers and at administrative level by EU Sport Directors. The implementation and evaluation phase of the White Paper also provided the context for the monitoring of activities that also indicate a strong coordination (Zafonte and Sabatier 1998). The Education and Culture DG committed to report on the progression of the Action Plan through the mechanism of the Rolling Agenda (Action 52) (European Commission 2007a, p. 19, European Commission 2007b, p.6). For this reason, building upon the Rolling Agenda in 2004, the Education and Culture DG asked the Member States to jointly define priorities for sport policy cooperation. The Education and Culture DG also pledged to monitor the progress made under each Presidency and to report to the Member States and the Committee on Culture and Education (European Commission 2007e, p.40).

The Member States praised the White Paper as an important European initiative aiming at placing sport as a high priority in European policies and declared the regulation of players' agents, particularly the identification of possible solutions at European level to eliminate improper practices in their activities, amongst the priority items for the Member States' Rolling Agenda in the implementation phase of the Pierre de Coubertin Action Plan (Council of European Union 2007,

p.3; Council of European Union 2008a, p. 3). During the informal meeting of Sport Ministers under the Portuguese Presidency, the EU Sport Ministers expressed their support for the White Paper to strengthen political cooperation at European level based upon an ongoing reinforced agenda under the Action Plan. The Ministers emphasized the importance of close coordination between the Member States and the Education and Culture DG in ensuring efficient and timely implementation of the actions, particular in relation to priorities including players' agents (Council of European Union 2007, p.3).<sup>25</sup> With the objectives in mind, the Ministers took the decision to review the Member States Rolling Agenda of 2004 on sport, to reflect the priorities in coordination with the White Paper.

The review of the Rolling Agenda was undertaken during the Slovenian Presidency and in the EU Sport Directors meeting at Brdo, Slovenia on 4<sup>th</sup> and 5<sup>th</sup> February 2007. The review was thematic in accordance with the White Paper and, known as "*Ljubljana priorities*", the progression on players' agents including the identification of possible European level solution for tackling bad practices became the key priority of the Member States alongside the elimination of discrimination of EU nationals in access to sport under the heading of the "*organization of sport*". The Sport Directors also underlined the importance of the Member States Working Group on the White Paper to ensure a close coordination between the Education and Culture DG and the Member States for the implementation of the Action Plan. The Directors also urged the Education

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<sup>25</sup> The other priority areas include; protection of minors, sport financing, exploitation of audio-visual rights, sport betting, national teams, protection of local youth training, and the fight against doping.

and Culture DG to organize working level meetings of the Member States Working Group twice a year, 3-4 weeks ahead of each meeting of the Sport Directors and to report on the results of these meetings to the EU Sports Directors (Council of European Union 2008a, p.3). The EU Sports Directors also called on future Presidencies to focus on identified priorities and follow a coordinated approach.

In accordance with the Slovenian Presidency conclusions on sport, under the French Presidency from July to December 2008, the regulation of players' agents became a priority issues within the Presidency's work programme in the field of sport and received a special attention. The Presidency assisted the study commissioned by the Education and Culture DC as a part of the impact assessment under the Action Plan to map out the activities of agents within the Member States. During the informal ministers meeting in Biarritz on 27<sup>th</sup> and 28<sup>th</sup> November 2008, EU Sports Ministers praised the work by the Presidency and recognized it as an contribution made to the impact assessment related to players' agents (Council of European Union 2008b).

In response to the White Paper on Sport, the Committee on Culture and Education adopted a resolution in May 2008, again through its own initiative, within which the White Paper, and the Action Plan in particular, was broadly endorsed. The Mavrommatis Report (European Parliament, 2008), prepared by the Committee's rapporteur Manolis Mavrommatis, followed the findings and recommendations of the Belet Report of 2007 related to players' agents. The Committee made reference to the increased activities of players' agents as a

result of the development of a truly European market for players and the rise in the level of salaries in European football (European Parliament 2008, para. AF), but also emphasized that a high degree of internationalization of player market has led to cross-border corruption that requires attention (European Parliament 2008, para. AG). Whilst condemning the bad practices in the activities of players' agents resulting in instances of corruption, money laundering and the exploitation of underage players, for the Committee, cross-border corruption represented a European dimension of the problem and therefore, once again urged the Education and Culture DG to support the regulatory efforts of the sport governing bodies by, if necessary, presenting a proposal for a directive concerning players' agents (European Parliament 2008, para. 100).

The Education and Culture DG launched an independent study on sports agents (KEA et al. 2009) in January 2009 as an initial stage of the impact assessment under the Action Plan and the study was published in November 2009. The study was an important component of policy analysis for the EU policy actors and contributed to their ongoing learning on players' agents. Although under the White Paper the Education and Culture DG only decided to carry out impact assessment with an objective of providing a clear overview of the activities of players' agents, the terms of reference for the study extended beyond players' agents to the analysis of the situation regarding sports agents in all sports. The specific objectives of the study were; to chart the current situation regarding sports agents in the EU; to identify and analyze the problems within the activities of sports agents; to identify private and public stakeholders involved in the regulation of sports agents and the relevant laws and regulations governing their



activities; and to assess to what extent these laws and regulations are adequate to deal with the problem posed by the activities of sports agents (KEA et al. 2009, p.17).

The study was important for policy analysis and learning of the actors and its findings represented an important input into the analytical debate on the issue. The study concluded that football is by far the sport with the largest number of agents in Europe and players' agents are active in all Member States (KEA et al. 2009, p.4). The complex and incoherent nature of the regulation of agents' activities was highlighted by the study. It was noted that there are different regulations applicable in different Member States alongside specific regulations adopted by international sports federations. The scope of these regulations varies considerably which creates regulatory problem. Additionally, the study identified the problems with the activities of agents that give rise to ethical issues, such as dual representation and conflict of interest; secret commission payments in connection with transfer deals; the exploitation of young players; unregulated recruitment amongst academies; and lack of transparency. These problems mostly have a cross-border dimension due to the integrated and international nature of the player market in Europe. For these reasons, the study concluded that there is a need to improve the regulatory framework, but viewed this as a responsibility of sport governing bodies. The EU could play a role in encountering the problems within the activities of agents by assisting sport governing bodies through facilitating structured dialogue and coordinating action.

The results of the study, especially the findings relating to criminal activities carried out in connection with sport where the involvement of players' agents cited, led to analytical interaction (Sabatier and Jenkins-Smith 1993, p.46) between the Committee on Culture and Education and the Education and Culture DG. Doris Pack, then the Chair of the Committee on Culture and Education, submitted an oral question on players' agents to the Education and Culture DG on 10<sup>th</sup> of March 2010 (European Parliament 2010) followed by a debate.<sup>26</sup> The parliamentary debate was held on the 15<sup>th</sup> June 2010 and attended by the Commissioner responsible for sport, Androulla Vassiliou and a number of members of the Committee on Culture and Education<sup>27</sup>, including Ivo Belet of the Committee who was the rapporteur for the parliamentary report of 2007 on the future of professional football in Europe. The Committee members particularly underlined the problems identified by the study, particularly focusing on the dealing of players' agents with underage players, and reiterated its calls on the Commission for EU legal initiative to govern the activities of players' agents. Doris Pack also tabled a motion for resolution at the same procedural file and the resolution was adopted by the Parliament on 17<sup>th</sup> June 2010. The Education and Culture DG responded to the resolution by the Committee on 21<sup>st</sup> September 2010 (European Commission 2010). In its response, the DG confirmed its consensus on the points raised by the Committee and confirmed the ongoing analysis on the regulation of players' agents in the form of impact assessment to

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<sup>26</sup>The procedure followed was pursuant to Rule 115(5) of Rules of Procedures for the European Parliament.

<sup>27</sup>The members that attended the debate on behalf of the Committee on Culture and Education were; Doris Pack (the chair of the Committee), Ivo Belet (the member of the Committee), Mary Honeyball (the member of the Committee), Emma McClarkin (the member of the Committee), Marie-Christine Vergiat (the member of the Committee), Sean Kelly (the member of the Committee), Piotr Borys (the member of the Committee), Emine Bozkurt (Substitute member of the Committee), Iosif Matula (Substitute member of the Committee).

assess what type of action might be needed at European Level (European Commission 2010).

### **The impact of the new competency under the Lisbon Treaty**

The Lisbon Treaty, for the first time, incorporated a specific competency for sport under Article 165.<sup>28</sup> The fundamental characteristic of Article 165 of TFEU is that the competency provided is only a soft law competency for the EU meaning that only action of a complementary, coordinating and supporting nature can be implemented (Gardiner et al. 2012). Article 165 (1) requires the EU to contribute the promotion of European sporting issues, 165(2) refers to the EU actions to be aimed at developing the European dimension in sport and 165 (3) expects the EU and the Member States to foster cooperation at an international level in the field of sport and education.<sup>29</sup> The measures that can be taken by the EU are limited to the promotion and fostering of cooperation meaning that legislative measures may not be adopted seeking to harmonize the actions of the Member States. Additionally, the actions at European level need to

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<sup>28</sup>The final text of the Treaty agreed on the European Council meeting on 18<sup>th</sup> and 19<sup>th</sup> November 2007 in Lisbon following the drafting work of Intergovernmental Conference under the Portuguese Presidency and it was signed by all Member States in Lisbon on 13 December 2007. The Treaty was ratified by all Member States and entered into force on 1 December 2009.

<sup>29</sup>Full text as reads;

Article 165 (1): *“The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.*

Article 165 (2): *“Union 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”.*

Article 165 (3): *“The Union and the Member States shall foster cooperation with third countries and the competent international organizations in the field of education and sport, in particular the Council of Europe”.*

Articles 165 (4): *“In order to contribute to the achievements of the objectives referred to in this Article: a) The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting with the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonization of the laws and regulations of the Member States; b) the Council, on proposal from the Commission, shall adopt recommendations.*

be related to the development of the European dimension of sport which is required to provide an added value to the actions of the Member States. Prior to the Lisbon Treaty, the EU was not granted competency to operate a direct sport policy, under the principle of conferral, and was only able to exert influence over sport via other competencies (Parrish 2003a; Takorski et al. 2004; Van den Bogaert and Vermeersch 2006). The new competency for the first time enables the EU to develop a direct supportive and complementary sport policy through funding programmes on a number of sport related policy issues and to develop the evidence base research on a number of those issues.

The inclusion of sport in the Lisbon Treaty led to a strengthened political cooperation between the EU and the Member States in an effort to further the European dimension in sport in line with Article 165. In this connection, the European Council modified the list of Council configurations in order to reflect the changes made by the Treaty and incorporated policy on sport in the Education, Youth, Culture and Sport configuration. The Education and Culture DG's communication in sport in 2011, titled *Developing the European Dimension in Sport*, and the Council's resolution on EU Work Plan for Sport (2011-2014) provided the framework and principles for European cooperation on sport policy. The Member States, the Education and Culture DG, the Presidencies of the Council were asked to work together along agreed guiding principles, to focus on priority themes and to implement specific actions. In particular, the Work Plan aimed to promote a cooperative and concerted approach among the Member States and the Education and Culture DG delivering added value in the field of sport at the European level and to address transnational challenges using a

coordinated EU approach (Council of European Union 2011, para 9). In this regard, the Work Plan and the actions determined by the Education and Culture DG within its communication provided the framework for all policy actors to cooperate in a coordinated way. Furthermore, the Work Plan also outlined work methods in order to support political cooperation, in particular to implement plans of actions. The methods include the establishment of informal expert groups to report on priority teams, Presidency conferences, informal meetings of EU Sport Ministers and EU Sport Directors, and studies and conferences organized by the Education and Culture DG (Council of European Union 2011, Section 3).

Within this context, both the Education and Culture DG and the Council incorporated the regulation of players' agents into the framework of activities. Within the communication, the Education and Culture DG underlined the cross-border nature of the activities of players' agents and viewed the associated problems as a transnational challenge. In this connection, the issue of players' agents was considered as an area that an action at EU level can significant added value (European Commission 2011, p.3 and p.12).<sup>30</sup> Reiterating that the White Paper still remains an appropriate policy document for EU level activities related to sport and the new communication builds upon the achievements of the White Paper and do not replaces it (European Commission 2011, p.2), the Education and Culture DG decided to organize a conference in order to further explore

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<sup>30</sup>The Commission made reference to the findings of the study on agents in 2009 and considered that the main problems identified include financial crimes and the exploitation of young players were ethical in nature threatening the fairness of sporting competition and the integrity of sports people. The Commission therefore shows a European dimension could be developed by illustrating the link between the problems related to the activities of agents and the impact upon the sport.

possible ways for EU institutions and representatives of the sport movement (federations, leagues, clubs, players and agents) to improve the situation with regard to the activities of sports agents (European Commission 2011, p.13). The Council, under the Work Plan<sup>31</sup>, also recognized the themes identified by the Education and Culture DG within the White Paper and its new communication to serve as a basis for future cooperation noting both documents viewed players' agents within the organization of sport. The Council prioritized the issue of players' agents under the theme of the integrity of sport for the Education and Culture DG and the Member States to work on (Council of European Union 2011, Section 2). In order to address the issue, the Council agreed to establish an informal Expert Group on Good Governance that was mandated to carry out action relating to players' agents, especially carrying out follow up work on the conference to be organized by the Education and Culture DG.

The conference was organized by the Education and Culture DG on 9<sup>th</sup> and 10<sup>th</sup> November 2011 as a part of the ongoing impact assessment. Building upon the 2009 study on agents, the conference became another platform providing a set up to carry out policy analysis involving information exchange, in particular on best practices in place at national and international level (European Commission 2011c). The conference was attended by Androulla Vassiliou, the European Commissioner responsible for sport, Ivo Belet, the member of the Committee on Culture and Education and Jacek Foks, the representative of the Polish EU Presidency in addition to a number of stakeholders including FIFA, UEFA, FIFPro

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<sup>31</sup>Recognizing the need for reinforced cooperation at European level for sport under the new competency, the Work Plan was prepared during the Hungarian EU Presidency in conjunction with the Education and Culture DG and the Member States setting out guiding principles and priority areas for developing European dimension of in sport.

the European Professional League Association (EPFL), the European Club Association (ECA), and the European Football Agents Association (EFAA). The main points of discussion included the new regulations of FIFA on working with intermediaries, the findings of the study on agents, the general position of stakeholders on the issue, the regulatory position in sports other than football and possible solutions to regulatory problems (European Commission 2011d).

The Committee on Culture and Education, meanwhile, adopted another resolution in order to contribute to the progression made on players' agents in the context of ongoing impact assessment. The Fisas Report, prepared by the Committee's member Fisas Aixela Santiago acting as a rapporteur, expressed the need for concerted action between sport governing bodies and public authorities for the regulation of players' agents by effective sanctioning those who infringe the rules (European Parliament 2011, para A0). In this context, the Member States were asked to supplement the existing regulatory provisions (European Parliament 2011, para. 77) and sport governing bodies to cooperate with Member States' authorities to eradicate corrupt practices by players' agents (European Parliament 2011, para. 78). The Committee also called upon the Education and Culture DG, in cooperation with sport governing bodies, to draw up and implement European licensing and registration system accompanied by a code of conduct and a sanctioning mechanism (European Parliament 2011, para. 75). The Committee proposed that sport federations set up a non-public European register of agents which would list the names of the players they represent and the Committee viewed such initiative as important to improve transparency and the protection of minor players (European Parliament 2011,

para. 76). The report represents another significant contribution to the issue by the Committee and outlined measures for the Education and Culture DG, the Member States and stakeholders to adopt.

The Expert Group on Good Governance held meetings<sup>32</sup> to discuss the regulation of players' agents as mandated under the EU Work Plan for Sport. The meetings were a platform where the EU policy actors and stakeholders engaged in analytical discussions around the issue and the result was recommendations by the Group into the ongoing works of the EU policy actors. The meetings were organized by the Education and Culture DG and attended by the representatives of Member States and a number of stakeholders. Recognizing that the issue became a pressing topic that needs to be carefully examined as a result of significant role played by players' agents in European transfer market and the economic importance of transfers in football (Council of European Union 2013, p.2), the meetings particularly focused on the FIFA's decision to reform the licensing system and its new proposed regulatory framework. These meetings and subsequent recommendations represented significant inputs for policy analysis, especially for the new regulatory framework by FIFA.

## **Conclusion**

The Education and Culture DG, the Committee on Culture and Education and the Member States, the Maximalists of the socio-cultural advocacy coalition, engaged in an intensified degree of coordinated activity over the years in relation to the

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<sup>32</sup>The Group had 3 meetings on the issue of agents. The first meeting was on 9<sup>th</sup> April 2013, the second one was on 18<sup>th</sup> July 2013 and the final one was 7<sup>th</sup> November 2013. The recommendations were published in December 2013.



regulation of players' agents. The characteristics of the EU policy making impacted on their activities providing a supportive environment for coordination. The legal context of the activities were defined by the Member States, initially through non-binding but highly influential declarations on sport, in particular the Nice Declaration, and then the new competency under the Lisbon Treaty. The legal basis of the EU actions in the field of sport provided guiding principles in accordance with the policy core beliefs of the EU policy actors; the protection and promotion of socio-cultural values of sport at European level. The Rolling Agendas of the Member States added further impetus to the activities of the policy actors which set out priority items to be taken into account for the EU sports policy. The EU policy actors also exploited the resources available at their disposal at institutional level to steer the direction of the policy in line with their policy core beliefs. Those sources were the basis of their activities but also provided the institutional context for coordination involving repeated interactions and analytical policy debates allowing them to exchange information and develop policy preferences with regards to players' agents. In particular, the Education and Culture DG used policy documents, consultations, conferences and studies to develop understanding of problem parameters and to examine the possibility of European level action. The Member States, meanwhile, used soft law resources at their disposal including Treaty declarations and resolutions following the Lisbon Treaty. Although their activities prior to the new competency were under the informal framework outside the formal structure of the Council, the new configuration under the post-Lisbon era reinforced coordination at European level. The Committee on Culture and Education particularly focused on putting

impetus to the Education and Culture DG for European level action through reports, resolutions and parliamentary debates providing platform for interactions and policy analysis.

A minimum degree of coordinated activity, or weak coordination, amongst the EU policy actors was evident during the period from the Nice Declaration of 2000 to the White Paper on Sport in 2007. The activities purely involved interactions and information exchange between the actors. The consultation framework established by the Education and Culture DG and the activities of the Member States under the framework of the Rolling Agenda aimed at identifying policy issues for addressing specific characteristics and social function of sport at European level. During the consultation process, the regulation of players' agents was identified as a topic, especially by the European sports federations, where that European level action may provide an added value to the regulatory efforts of the football governing bodies. The Independent Review by the Member States and the Belet Report by the Committee on Education and Culture also provided analytical debate for EU action and even more the Belet report called upon the Education and Culture DG to propose a directive specific to players' agents. As a result, the regulation of players' agents moved into the policy agenda of the EU policy actors and under the White Paper on Sport the Education and Culture DG decided to carry out the impact assessment to analyze the possibility of European level action. The White Paper on Sport added an impetus to the activities of the EU policy actors and a stronger coordination observed on the issues not only involving interaction but also a common plan of action, in form of impact assessment, guiding the activities of the policy actors. In particular, the

issue became a priority item for the Member States following revision of the Rolling Agenda. The new competency under the Lisbon Treaty reinforced European level cooperation and the Work Plan of the Council for sport and the Education and Culture DG's communication provided further impetus to the activities on players' agents at European level.

**Table 3**  
**Players' Agents: The EU Policy Actors and Coordinated Activity**

<b>The Nice Declaration to the White Paper on Sport</b>			
<b><u>Policy Actor</u></b>	<b><u>Date</u></b>	<b><u>Resources (Activity)</u></b>	<b><u>Input into Policy re Players' Agents</u></b>
Member States	2004	Rolling Agenda	Priorities in re the White Paper
Education and Culture DG	2005	<u>Consultation Framework</u> - The EU and Sport: Matching Expectations	Commenced dialogue with the Members States and EU sports movement
Member States	Dec 2005	<u>EU Sports Minister Meeting</u> with football governing bodies	Decision for an independent report (European Independent Sport Review)
Education and Culture DG	Sep 2006	<u>Consultation Meeting</u> with sport federation - Sport Governance in Europe	The issue of players' agents discussed
Member States	Nov 2006	<u>Report</u> -European Independent Sport Review	Policy analysis on players' agents
Education and Culture DG	Feb-Apr 2007	<u>Online Consultation</u>	Players' agents are area where European level action required
Member States	Mar 2007	<u>Meeting</u> - Member States Working Group on White Paper	Reference to the issue of players' agents
Education and Culture DG	July 2007	<u>Policy Document</u> – the White Paper on Sport	Decision to carry out an impact assessment
The Committee on Culture and Education	Mar 2007	<u>Resolution</u> – on future of European football	Policy analysis on players' agents
The Committee on Culture and Education	Mar 2007	<u>Parliamentary Debate</u>	Policy analysis on players' agents

### The Aftermath of the White Paper on Sport

<u>Policy Actor</u>	<u>Date</u>	<u>Resources (Activity)</u>	<u>Input into Policy re Players' Agents</u>
Member States	Oct 2007	<u>Meeting</u> of EU Sports Ministers	Decision to Revise the Rolling Agenda
Education and Culture DG	Oct 2007	<u>Consultation Meeting</u> – on the White Paper	Interaction with sport movement, the Member States and the Parliament
Member States	Jan 2008	<u>Meeting</u> - Member States Working Group on White Paper	Work on the Member States' priorities
Member States	Feb 2008	<u>Meeting</u> of EU Sports Directors	Ljubljana Priorities – players' agents are prioritized by the Member States
The Committee on Culture and Education	May 2008	<u>Resolution</u> – on the White Paper	Policy analysis on players' agents
The Committee on Culture and Education	May 2008	<u>Parliamentary Debate</u>	Policy analysis on players' agents
Member States	Jul-Dec 2008	<u>Presidency</u>	Work on the study on sports agents
Education and Culture DG	Nov 2009	<u>Study</u> – on sports agents	Policy analysis on players' agents
The Committee on Culture and Education	March 2010	<u>Oral Question</u> – on players' agents	Policy analysis on players' agents
The Committee on Culture and Education	June 2010	<u>Parliamentary Debate</u> on players' agents	Policy analysis on players' agents
The Committee on Culture and Education	June 2010	<u>Resolution</u> – on players' agents	Policy analysis on players' agents

<b>The Impact of Lisbon Treaty</b>			
<b><u>Policy Actor</u></b>	<b><u>Date</u></b>	<b><u>Resources (Activity)</u></b>	<b><u>Input into Policy re Players' Agents</u></b>
Member States	Dec 2009	<u>Treaty</u> - Lisbon Treaty	New competency on sport
Education and Culture DG	Jan 2011	<u>Policy Document</u> – Developing European Dimension of Sport	Decision to organize conference on players' agents
Member States	June 2011	<u>Policy Document</u> - The EU Work Plan for Sport 2011-2014	Decision to establish Expert Group to carry follow up work on the Conference
Education and Culture DG	Nov 2011	<u>Conference</u> – on sports agents	Policy analysis on players' agents
The Committee on Culture and Education	Feb 2012	<u>Parliamentary Debate</u>	Policy analysis on players' agents
The Committee on Culture and Education	Feb 2012	<u>Resolution</u> – on Developing European Dimension of Sport	Policy analysis on players' agents
Member States	Dec 2013	<u>Expert Group Report</u> –on sports agent	Recommendations related to players' agents

## **Chapter 6**

### **Selective Perception: Policy Core Beliefs, Information and Policy Analysis**

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#### **Introduction**

Theoretical analysis of the ACF pays special attention to policy-oriented learning within the activity of public policy making (Sabatier 1988; Jenkins-Smith and Sabatier 1993; Sabatier 1998; Sabatier and Weible 2007). The process of learning involves acquiring new information related to policy issues including problem parameters, the factors affecting these issues, the effectiveness of alternative policy instruments and their impacts on the issues. The model of the individual chosen by the ACF, which is instrumentally rational but also with cognitive limitations particularly in processing information and policy analysis (Sabatier 1986, 1987; Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007, 2014), impacts on learning; actors are guided by heuristics in order to make sense of acquired information. The role performed by the belief systems of the actors, as common heuristics, in the context of policy-oriented learning is that beliefs, especially policy core beliefs, perform perceptual filtering in selecting and interpreting information (Sabatier 1988; Freudenburg and Gramling 2002; Sabatier and Weible 2007; Weible 2008; Matti and Sandstrom 2013; Jenkins-Smith et al 2014). In other words, the policy actors use selective perception to select information and other variables to confirm their policy core beliefs whilst dismissing information challenging those beliefs (Freudenburg and Gramling 2002; Norhstedt and Weible 2010; Heikkila and Gerlak 2013). The impact of such selective filtering is significant with regards to the process of learning, but also on the dynamics of advocacy coalitions, causing a resistance to belief change and also stability to the structure of coalition (Sabatier 1988, 1998;

Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007). Thus, the beliefs of actors involved in public policy making shape that policy and selective perception means that the policy is more likely to develop so as to confirm the beliefs rather than to challenge them.

This chapter examines the EU policy actors' (The Education and Culture DG, the Parliamentary Committee on Culture and Education and the Member States) selective perception in processing information in the context of policy core beliefs (the socio-cultural regulation of sport) within policy analysis of the regulation of players' agents and the process of policy-oriented learning at European level. In other words, the chapter investigates to what extent the pre-existing policy core beliefs of the actors affect the selection and interpretation of acquired information related to players' agents. In doing so, the chapter aims to deduce policy core beliefs by evidencing selection and interpretation of particular information by the EU policy actors that confirm their policy core beliefs.

The chapter firstly commences by analyzing the period between the Nice Declaration in 2000 and the White Paper on Sport in 2007. During the period policy-oriented learning related to the problems associated with players' agents was evident and that learning stimulated policy analysis as the actors perceived the problems as threats to their policy core beliefs. As a result, they sought further information on the issue whilst also developing a policy position. The components of that policy position and the conceptual relationship of selective perception with that position are examined in detail. The chapter then moves on



to examine the aftermath of the White Paper on Sport and identifies that the Education Culture DG's decision to carry out an impact assessment on the regulation of players' agents caused a conflict between the EU policy actors, in particular between the Education and Culture DG and the Committee on Culture and Education in the Parliament. The conflict relates to the secondary aspects of the actors' beliefs system (policy instrument). The result of the conflict was an analytical debate between the Education and Culture DG and the Committee on Culture and Education. In the discourse of analytical debate, selective perception guided the actors to select specific information to elaborate and to justify their specific policy position (the overall findings of the research in relation to the evidence of selective perception on the issue of players' agents are presented in Tables 4 and 5). These findings add also to our understanding of the scenario depicted by Jenkins-Smith and Sabatier (1993, p.45) for the process of policy-oriented learning and the role played by policy analysis and information which represents the original contribution of the research.

### **Learning Related to the Problems and Developing a Policy Position**

The preparatory phase of the White Paper on Sport provided an institutional context for policy-oriented learning by the EU policy actors with regards to the regulation of players' agents as per coordinated activity investigated in chapter 5. In particular, the interaction with sport governing bodies involving an exchange of information on the issue was instrumental for that learning in understanding problems related to the activities of players' agents and developing policy perspectives. The consultation process, entitled the EU and Sport: Matching Expectations, enabled the Education and Culture DG to interact

with the wider European sport movement, as well as with the Member States and the Committee on Culture and Education, and to acquire information with regards to players' agents. The meeting with the European sport federations in September 2006, which was also attended by FIFA and UEFA<sup>33</sup> and purely focused on governance issues of sport in Europe, was an important platform to discuss the regulation of agents with football governing bodies. For the Member States<sup>34</sup>, the working process for the European Independent Sport Review (Arnout 2006) had a similar impact on their learning. Football was the subject matter of the Review and there were a number of consultation meetings with football governing bodies and relevant stakeholders, facilitating interaction and information exchange.<sup>35</sup> The Committee on Culture and Education in Parliament had also learned about players' agents through engaging with the consultation processes<sup>36</sup> and various internal and external reports on the EU and sport. In particular, the working paper, entitled Professional Sport in the Internal Market (European Parliament 2005), commissioned by the Committee on Internal Market and Consumer Protection, and the Stevens Report<sup>37</sup> commissioned by the Premier League in the UK were very influential for the Committee. Within this

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<sup>33</sup> The meeting was one of the largest meetings attended by 30 federations and their representatives including the International Olympic Committee, the European Olympic Committee, International Basketball Federation, FIFA and UEFA.

<sup>34</sup> The review is considered to be the right policy document reflecting the beliefs and perceptions of the Member States, although prepared by independent group of authors. The reason for this is that firstly, the final and complete version of the Review incorporated thoughts and feedbacks of the EU Sports Ministers following their meeting in Brussels on 19 September 2006 (Arnout 2006, p.14). Furthermore, the Review clearly states that the Terms of References were drafted in consultation between UEFA and under the UK Presidency, involving some of the Member States. The EU Sports Ministers were part of the governance of the report (Arnout 2006 p.149).

<sup>35</sup> In particular, the Review purely focused on football as a case study for analysis and also involved the representatives of five big Football leagues in Europe (England, Spain, France, Germany and Italy) where there is a large concentration of players' agents' activities and their numbers are the highest.

<sup>36</sup> The members of the European Parliament attended a majority of the consultation meetings.

<sup>37</sup> "Inquiry into Alleged irregular Payments from Transfer Dealing" was an inquiry carried out by Quest Limited on behalf of the Premier League and the final report was published in June 2007. The report was generally referred as "Stevens Report".

context, the EU policy actors became aware of the problems associated with the activities of players' agents which stimulated policy analysis and led to the development of a policy position.

The policy position of the actors on the issue was in line with their policy core beliefs. The significant components of the policy position were their perceptions of the problems associated with their policy core (the problems with the activities of players' agents are detrimental to the socio-cultural values and its role in Europe) and their perspectives on their secondary beliefs (in order to tackle the problems there is a need for a more effective regulatory framework governing players' agents and it requires action at European level possibility through the adoption of a European legal initiative in form of a directive on players' agents). The policy position was the result of the process of policy-oriented learning, particularly related to the problems, involving the acquisition of information from sports governing bodies, and from internal policy analysis.

The policy position became evident within a number of policy documents at European level. The Member States, through the Independent European Sport Review (Arnaut 2006), made reference to a number of on-going challenges in connection with the regulations of players' agents. These included dealing with non-licensed agents, tackling the involvement of several agents working on the same transaction and regulating payments to agents for the protection of players and clubs (Arnaut 2006, p.46). According to the Member States, these were *"pressing concerns for the efficient administration and financial well-being of football and for the image of the game"* (Arnaut 2006, p.46). They proposed a

European players' agents directive to be implemented to provide the tools for the effective regulation of players' agents at European level (Arnaut 2006, p.120 &131). The Committee on Culture and Education, additionally, focused on the economic reality surrounding the activities of players' agents and called upon the Education and Culture DG to support the efforts of football governing bodies in regulating players' agents by presenting a legislative proposal for a directive (European Parliament 2007, para. 44). The Education and Culture DG, in the White Paper on Sport, underlined the bad practices in the activities of players' agents and claimed that *"these practices are damaging for sport in general and raise serious governance questions"* (European Commission 2007a, p.15) and committed itself to carry out an impact assessment to establish the necessity of European level of action (European Commission 2007a, p.16). Consequently, it became evident that the EU policy actors were determined to find a solution to the problems of players' agents at European level.

The impact of selective perception in the process of learning (Sabatier and Jenkins-Smith 1999; Freudenburg and Gramling 2002; Sabatier and Weible 2007; Norhstedt and Weible 2010), i.e. perceptual filtering performed through the policy core beliefs of the EU policy actors in acquiring information and engaging in policy analysis, was multifaceted. Firstly, the actors, by selecting particular information related to the problems that were perceived as threats to their policy core meant that they developed a policy position corresponding with their policy core beliefs, i.e. sport in Europe has socio-cultural values and functions that need to be protected and promoted. Secondly, the actors also selected information to support their policy position, in particular related to

secondary aspects of their belief system in support of European level action. In this connection, the actors focused on information contained within the reports and written submissions by the sport governing bodies and stakeholders, including the UEFA's strategic policy document, Vision Europe (UEFA 2005), and the Stevens Report by the Premier League. Conversely, the analysis of the regulation of players' agents from a single market perspective received very little attention and any such information was also selected in a way to support their policy position. The findings of the CFI in the *Piau* case and the analysis in the report by the Committee on Internal Market and Consumer Protection were either totally ignored or selected in such ways as to support their policy core.

Both, the Member States and the Education and Culture DG, highlighted the factors that contributed to the increasing activities of players' agents, which echoed the analysis of UEFA in Vision Europe. UEFA emphasized the shifting bargaining power between clubs and players within which players became more powerful as a result of the liberalization of the player market following the *Bosman* judgment. The shift in bargaining power meant that players were able to negotiate higher salaries, which in turn contributed to the increase within numbers of players' agents entering into the profession with a view to operating in a lucrative European player market (UEFA 2005, p. 21). However, UEFA also underlined the lack of effective regulations for players' agents by claiming that *"this area has been more or less unregulated in European football to date, despite the existence of regulations"* and *"vast sums of money have been effectively 'lost' to football"* (UEFA 2005, p.21). According to UEFA, under normal circumstances, players' agents in professional football would be properly regulated, act ethically

and would not distort sporting values.<sup>38</sup> The Member States also emphasized that the increased commercial revenues and consequential increase in salaries paid to players, combined with de facto liberalization of the European player market, actually created another service industry, i.e the profession of players' agents, in European football (Arnaut 2006, p.18 and p.46). They also emphasized the danger of compromising important sporting values and undermining the social function of sport against an overly commercial approach to it (Arnaut 2006, p.19). The Education and Culture DG made reference to the development of a truly European market for players and the rise in the level of salaries for players which meant that players and clubs sought the services of players' agents for negotiating the contracts in an increasingly legal environment (European Commission 2007a, p.15; European Commission 2007e, p.49). These analyses within the official policy documents of the EU policy actors illustrate that the analyses by UEFA found their way into those documents.

The EU policy actors particularly selected the problems related to the activities of players' agents and highlighted the role played by players' agents with regards to some of the other problems within European football including corruption, money laundering and the exploitation of minors. According to the actors, these problems constituted criminal activities and significantly impacted upon the socio-cultural values of sport (European Commission 2007e, p.51; European Parliament 2007a, para. E). The Member States considered the regulation of players' agents as a notorious problem at European level and particularly

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<sup>38</sup> In Vision Europe, UEFA also list a number of socio-cultural values of football that the body believes in and stands for. According to UEFA, football is entertainment, it is educational, it is part of European culture, it keeps people healthy and fit, it is a valuable activity for society (UEFA 2005, p.11).

underlined regulatory problems based upon a written submission by the French Football League during the consultation period.<sup>39</sup> Unlicensed agents, the work of a number of agents on the same transfer and irregularities of payment to agents were considered to be on-going challenges in connection with the regulation of players' agents (Arnaut 2006, p. 46).

With regards to money laundering, both the Member States and the Education and Culture DG, noted the risk that sport was being used for such criminal activities, and money flows on transactions in football involved a particular risk of money laundering. Amongst those transactions, player transfers and payments to players' agents were deemed to be particularly problematic (Arnaut 2006 p.90; European Commission 2007b p.47 and p.51-52). Higher financial demands by players were considered to be encouraged by players' agents contributing to the financial problems of clubs (Arnaut 2006, p.82). In connection with the exploitation of players who were minors, there were concerns that the exploitation was an ongoing phenomenon in European football. There were reports in relation to several European countries, including Belgium, France, Switzerland and Italy, that international networks formed and operated by players' agents were trafficking young players from Africa and Latin America to Europe. When the clubs did not select those players, they were abandoned by players' agents without any proper work papers and left exposed to further exploitation (Arnaut 2006, p.91; European Commission 2007b, p.50).

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<sup>39</sup> Footnote 53 of the Review indicated that the relevant section is based upon a written submission by French Football League (Arnaut 2006, p.46). France traditionally follows an interventionist approach to support in order to uphold its socio-cultural values and protect public interest and the statement was a clear reflection of that.

The Committee on Culture and Education particularly pointed out the economic reality surrounding the activities of players' agents and took into consideration the analysis and recommendations of the Stevens Report in the UK (European Parliament 2007b, para.3). The Stevens Report was a result of an independent inquiry commissioned by the Premier League in March 2006, following reports of corruption and fraud in English football.<sup>40</sup> Lord Stevens was appointed in particular to investigate any irregularities, in the form of unauthorized or fraudulent payments to managers, clubs or players' agents, in player transfers involving Premier League clubs. There were a total of 362 transfer deals examined as a part of the procedure and there were 17 transfers in which irregularities were observed, these involved 15 players' agents.<sup>41</sup> At the end of the investigation the football governing bodies, particularly FIFA and the English Football Association, were urged to investigate the matters further and there were 38 recommendations made in order to improve the financial transparency of transfers. The majority of recommendations were eventually incorporated into the new regulations of players' agents adopted by the English Football Association (KEA et al. 2009, p. 160&161). The Committee on Culture and Education particularly selected these findings and recommendations of the

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<sup>40</sup> The inquiry was the result of a number of reports in English media with regards to financial irregularities in English football. For instance, Swedish football coach Sven Goran Eriksson, who was the head coach of English National Team during 2002 and 2006 World Cups, hinted that he knew coaches that accept payments to facilitate transfers. The BBC programme, "Panorama", also revealed corruption in English football. Through use of hidden cameras, the programme showed meetings between players' agents, players, managers and senior club officials. For more details on these reports, see KEA, *Study on sports agents in the European Union: A study commissioned by the European Commission*, (2009), p. 115.

<sup>41</sup> Some of these transfers involve a high profile players including striker Didier Drogba, from Olympique de Marseille to Chelsea, goalkeeper Petr Cech, from Stade Rennais to Chelsea, and defender Jean-Alain Baumsong, from Rangers to Newcastle United. For details, see KEA et al. (2009), p. 115.



Stevens Report to support its policy position regarding the policy preferences for a directive.

The EU policy actors also recognized a critical need for more effective regulation of players' agents in Europe in order to overcome the problems. The Member States and the Committee on Culture and Education emphasized the need to reform the existing regulatory system and the necessity of European level action. The Member States believed that without reforming the existing regulatory system European football would continue to suffer significant damage to its reputation in Europe (Arnaut 2006, p.88). The Committee on Culture and Education claimed that the lack of clear standards for players' agents has had an enormous impact on football, and indicated this is in itself warranted new legislation to be considered (European Parliament 2007b, p.2). In doing so, both the Member States and the Committee on Culture and Education particularly focused on specific stimuli that supported their proposed policy instrument in accordance with their policy core beliefs.

The Member States, especially taking into consideration submissions by the G-14<sup>42</sup> and the necessity for more rigorous forms of regulatory enforcement, expressed the possibility of a system involving a stronger role for UEFA, particularly in overseeing adequate enforcement of the regulations (Arnaut 2006, p.47). Underlining the General Court's recognition of the regulatory

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<sup>42</sup> G-14 was a group of some of the European leading clubs representing European clubs. In financial terms it covered 35% of the professional football market in Europe at the time. It was also the only international club organization in the EU and which eventually became the European Club Association (ECA). For more information on G-14, see European Parliament (2005), p.93.

functions of football governing bodies under the *Piau* judgment, football authorities were urged to reinforce the control and examination of players' agents whilst taking greater care in monitoring and enforcement. Evaluating the investigation undertaken by the Commission and the legal analysis under the *Piau* judgment, the Member States underlined the need to reform the system in dialogue with EU institutions, preferably through formal consultation between UEFA and the Commission (Arnaut 2006, p.89).

The Member States and the Committee on Culture and Education also proposed a European players' agents directive as a tool for adequate regulation of players' agent at European level and to support the efforts of football governing bodies, particularly UEFA.<sup>43</sup> The proposed directive would include provisions on strict examination criteria and standards for acquiring the status of players' agent, transparency in transactions particularly focusing on remunerations, minimum harmonized standards for agency contracts including length of contract, method of termination and non-competition clause, an efficient monitoring and disciplinary system for European sport governing bodies, the introduction of an agent licensing system, no dual representation and payments to agents by players (Arnaut 2006, p.120 & 131; European Parliament 2007a, para. 44).

Nonetheless, both the Member States and the Committee on Culture and Education ignored some of the analysis of UEFA in Vision Europe and the General Court's finding under the *Piau* judgment, which was also contained in the report,

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<sup>43</sup> Under the Review, reference was made to the existing directive for commercial agents, the Council Directive 86/653 of 18 December 1986, and argued that a similar tool should be employed in the case of players' agents.

Professional Sport in the Internal Market, of the Committee on the Internal Market and Consumer Protection. UEFA analyzed the division of competences between FIFA and the confederations with a view to defining more clearly the tasks and competences, so as to complete them in the most efficient way for football. Noting that there was already areas of overlapping work underway at European level, including cross-border competitions and match agents, UEFA clearly indicated that the regulation of players' agents was within the competency of FIFA (UEFA 2005, p.33). However, the Member States and the Committee on Culture and Education clearly ignored the position of UEFA on players' agents and instead supported the idea of a system that involved a stronger role for UEFA. The Member States even claimed that the system should be administered by UEFA in Europe (Arnaut 2006, p.89). Consequently, this analysis by the Member States and the Committee on Culture and Education highlight the fact that they clearly dismissed the position of UEFA with regards to the regulation of players' agents so as to support their policy position, in particular their policy preferences for more effective regulation in Europe.

Additionally, the report of the Committee on Internal Market and Consumer Protection carried out extensive analysis of the existing regulatory framework from a single market perspective, especially focusing on the findings of the General Court under the *Piau* case, which was also completely ignored by the Committee on Culture and Education. The report particularly outlined FIFA's lack of regulatory authority to unilaterally draft the regulations applicable to players' agents, due to it not having the formal authority over players agents'; players' agents are not members of FIFA but of the national associations instead.

The report further stated that there is also no reason for FIFA to regulate players' agents on the basis of specificity of sport.<sup>44</sup> The implications of this analysis for UEFA is that its status is one of a private entity and it lacks legislative power to regulate players' agents. This actually undermines the role of UEFA in regulating players' agents as proposed by the Member States and the Committee on Culture and Education. The report further argued that the profession of agents would fall under the services directive<sup>45</sup>, meaning that players' agents would be able to freely perform their activities in the Member States regardless of the FIFA regulations. Viewing players' agents as private employment agencies, the report also stressed that players' agents needed to be consulted in the discussions concerning their regulation and that the IAFA<sup>46</sup>, the collective organization representing players agents, could be involved in dialogues (European Parliament 2005, p.50). Hence, the report recommended the regulation of players' agents to be considered under the social dialogue<sup>47</sup> at EU level involving all stakeholders, including the representatives of players' agents (European Parliament 2005, p.75). Yet, the Member States and the Committee on Culture and Education ignored these analyses in order to support their policy position related to European level action.

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<sup>44</sup> This analysis related to the specificity of sport and the regulation of players' agents was taken from the Piau judgement.

<sup>45</sup> The Services Directive (2006/123/EC) was then at proposal stage and adopted in 2006 and implemented by all Member States in 2009. For more details on the directive see [http://ec.europa.eu/growth/single-market/services/services-directive/index\\_en.htm](http://ec.europa.eu/growth/single-market/services/services-directive/index_en.htm).

<sup>46</sup> IAFA (International Association for Football Agents) was established by Rob Jansen, a players' agent, in order to represent the agents. The association was eventually re-branded as the European Football Agents Associations (EFAA) and recognized by the European Commission as a stakeholder in the process of social dialogue. For the objectives of the EFAA in relation to the regulations of players' agents, see Branco Martins (2007).

<sup>47</sup> The social dialogue is embedded in the Treaty articles 137 and 138 and brings together workers, employees and the social partners to discuss and create a regulatory framework for the economic sector that they operate. For further details see, European Parliament (2005), pp.68-71.

On the other hand, the Education and Culture DG focused on a competition law analysis of the regulation of players' agents and the complexity of the regulatory scene in order to justify its decision for the impact assessment. Although acknowledging the impact of bad practices in the activities of players' agents on the values of sport at European level (European Commission 2007e, p.49), noting the analyses within the European Independent Sport Review and Stevens Report (European Commission 2007e, p.52) and repeating calls from the European Parliament and stakeholders for an EU legislative initiative, the issue required further examination and more information so as to be able to assess the necessity of European level action (European Commission 2007a, p. 16; European Commission 2007e, p. 50). The Commission highlighted the complexity of the existing regulatory framework applicable to players' agents. It pointed out that different regulations govern their activities in different Member States. Some Member States (France and Belgium) have adopted specific legislation on players' agents whereas the general law on employment agencies with specific reference to players' agents is applicable in other Member States. Additionally, sports governing bodies also introduced their own regulations. For the Education and Culture DG, this complexity required further analysis.

In addition, The Education and Culture DG brought in EU competition law analysis with regards to the compatibility of sports governing bodies' regulations with EU competition law so as to support its position with regards to impact assessment. As opposed to the analysis under the European Independent Sport Review (Arnout 2005), where the regulation of players' agents were considered to be inherent to the proper regulation of sport and compatibility with EU law,

the Education and Culture DG expressed the view that regulation was not likely to be considered inherent in the pursuit of a legitimate sporting objective. Nevertheless, by making reference to the findings of the General Court in the *Piau* case as regards to the qualitative nature of restrictions under FIFA regulations, the Education and Culture DG confirmed that these restrictions might possibly be justified under Article 101(3) (European Commission 2007e, p.49). The Commission stated that the restrictions imposed by the rules, albeit being on a sport-related profession, are unlikely to be inherent in the pursuit of a legitimate objective and recognized that they are subject to EU law. Nevertheless, it further recognized that it could be justified under Article 101 (3) or Article 102 by making reference to the *Piau* case (European Commission 2007b, p.49). For these reasons, the impact assessment to establish whether EU-level action is required was considered to be the right tool at this stage.

A significant impact of selective perception performed by the policy core beliefs of the EU policy actors on the regulation of players' agents was that the issue moved onto the agenda of the socio-cultural coalition under the White Paper on Sport in 2007. The actors developed a policy position by carefully selecting information related to problems within the activities of players' agents. They perceived problems as threats to their policy core and engaged in policy analysis in order to underline the necessity of European level of action. These findings of the research on the impact of selective perception by policy core beliefs in the context of policy-oriented learning correlate the theoretical assumptions of the ACF. These findings of the research are presented below in Table 4.

**Table 4**  
**Players' Agents: The Evidence of Selective Perception on Policy**

<b>The Nice Declaration to the White Paper on Sport</b>	
<b><u>Selective Perception by Policy Core Beliefs</u></b>	<b><u>The Evidence Related to Players' Agents</u></b>
<p><u>Selection</u> of particular stimuli related to the problems within the activities of players' agents</p>	<ul style="list-style-type: none"> <li>➤ The Actors perceive the problems as threats to their policy core beliefs, i.e. detrimental to socio-cultural role of sport in Europe.</li> <li>➤ Threats stimulate policy analysis on the issue which leads to seeking further information and development of a policy position.</li> <li>➤ <u>Policy Position</u>: "The problems are detrimental to the socio-cultural role of sport in Europe and a European legal initiative is required to tackle them".</li> </ul>

Conversely, the decision to require an impact assessment by the Education and Culture DG represented a conflict between the EU policy actors in relation to their preferred policy instrument for the regulation of players' agents. The Member States and the Committee on Culture and Education favored a European legal initiative at European level and called upon the Education and Culture DG to present a proposal to that effect. However, the Education and Culture DG was not prepared to come up with such proposal, but rather preferred to carry out the impact assessment. The nature of this conflict related to the secondary beliefs of the EU policy actors (policy instruments) rather than their policy core beliefs. It led to an analytical debate amongst them, particularly between the Education and Culture DG and the Committee on Culture and Education, so as to

support their secondary core beliefs with regards to players' agents in the aftermath of the White Paper on Sport. This chapter now proceeds to analyze selective perception in the context of analytical debate.

### **Impact Assessment: An Analytical Debate and Further Learning**

The process of impact assessment advanced the EU policy actors' learning on players' agents and involved further policy analysis particularly related to several policy instruments to achieve a more effective regulation. The study on sports agents published in 2009 and the conference on the issue in 2011, both commissioned and organized by the Education and Culture DG, were important sources of information and analysis on various aspects of the issue. The study examined the activities of sports agents, the social and economic weight of the agents market, the regulations that govern their activities with a focus on specific actors and regulations and the necessity of European regulatory framework. The conference became a forum involving not only the EU policy actors, but also the representatives of various sports governing bodies and stakeholders, to exchange views and best practice in place at national and international level. The focus of the conference was on several policy instruments at their disposal to regulate players' agents, including FIFA's new regulatory framework for players' agents (the concept of intermediaries) and the potential standardization work in relation to players' agents by the European Committee for Standardization.

The impact of the conflict on the European-level legal initiative was that it caused an analytical debate between the Education and Culture DG and the Committee on Culture and Education. Not satisfied with the decision of impact



assessments, the Committee on Culture and Education engaged in an analytical debate at parliamentary level, in order to advocate for a legal initiative to regulate players' agents at European level. The analysis of the study as regards to the problems within the activities of players' agents was a catalyst for the debate. Following the publication of the study in 2009, therefore, the chair of the Committee, Doris Pack, presented an oral parliamentary question to the Education and Culture DG to respond. The Committee, focusing on the negative findings of the study, asked how the Education and Culture DG aimed to address these problems and what instruments were at its disposal for resolving them, as well as what role the Education and Culture DG intended to take in regulating players' agents. The debate on the oral question took place on 15<sup>th</sup> June 2010 at the Parliament and was attended by the members of the Committee and then the Commissioner for Education, Culture, Youth and Sport, Androulla Vassiliou. The result of the debate was a parliamentary resolution where the Committee once again called upon the Education and Culture DG to present a proposal for a legal initiative to regulate players' agents at European level.

Selective perception performed by the policy core beliefs, in analytical debate and in a conflict situation, led to the selection and interpretation of information in order to support their policy position with regards to the secondary aspects of the belief systems of the actors (policy instruments), i.e. a European legal initiative. In particular, the Committee on Culture and Education, according to Parrish (2003a, pp.68-69), a strong proponent of the socio-cultural regulation of sport at European level, especially selected the findings of the study about the problems within the activities of players' agents to initiate the parliamentary

debate and passed a resolution where the problems related to activities of players' agents and their impact on the socio-culture role of sport were particularly underlined. Furthermore, the Committee carefully interpreted the analysis of the Court in the *Piau* judgment and used those analyses in advocacy fashion to extend their policy position related to players' agents.

The findings of the study were carefully outlined by the members of the Committee during the parliamentary debate. With regards to problems concerning the activities of players' agents<sup>48</sup>, the study documented particular issues around financial crimes and the exploitation of young players. The study noted that the activities of players' agents, particularly in major sports where they handle huge financial operations, are liable to give rise to problems (KEA et al. 2009, p.98). In this connection, the study highlighted a number of mechanisms in player transfers that give rise to the possibility of a high risk of fraud. In particular, at elite level these transfers involve substantial sums of money where a single transaction spread over several financial years making it extremely difficult to control (KEA et al. 2009, p.111). These mechanisms included overvaluation of the transfers and secret payments (termed as "*bungs*"), collusion networks facilitated in exchange for the payments of bribes, and the use of talent pools operated by players' agents in football providing opportunities for money laundering (KEA et al. 2009, p.111-112). The study also highlighted the role of players' agents in the trafficking of young players and explained the problem in an extended real-life scenario in football (KEA et al.

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<sup>48</sup> Although the study is on sports agents, the term "players' agents" is used due to the fact that all sections quoted are clearly related to players' agents and stated within the study.

2009, p.121-122). The study noted that there are a number of different actors involved in the problem, including the exporting clubs and managers, recognized training centers and European clubs alongside players' agents (KEA et al. 2009, p.122-123).

During the parliamentary debate, the members of the Committee on Culture and Education particularly selected the problems highlighted by the study and also underlined the detrimental impact that these problems are having on the socio-cultural role of sport in Europe which was also reflected in the parliamentary resolution.<sup>49</sup> Doris Pack, then the chair of the Committee and the person who initiated the oral question for the Education and Culture DG, particularly pointed to the findings of the study with regards to connections between players' agents and criminal activities. She claimed *“such connections damage the integrity of sport and are inconsistent with its social role”* (emphasis added). She further asserted that *“against this background, we need a European legislative initiative”* and hoped that the resolution *“will encourage the Commission to get to work on this issue”* (emphasis added). Additionally, Ivo Belet, the member of the Committee and the rapporteur of the Parliamentary report in 2007, also highlighted the finding of the study and emphasized that *“an European initiative is indeed required”* to overcome human trafficking and financial malpractice in European football. To further support the proposed European legal initiative, Ivo Belet reiterated previous calls by the Committee in the report in 2007 and even by the sector itself and considered *“that we respond to their calls in the interests*

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<sup>49</sup> The minutes of the parliamentary debate is accessible at <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20100615&secondRef=ITEM-019&language=HR&ring=B7-2010-0343>

*of sport and of its extremely important social role*" (emphasis added). Statements both by Doris Pack and Ivo Belet clearly evidence the role performed by their policy core beliefs in shaping the policy position of the Committee and also selecting critical information in supporting that position.

The parliamentary resolution was also significant as a mechanism that demonstrates selective perception performed by the policy core beliefs. The Committee not only, for the first time in an official document, clearly stated the negative impact of problems on sport's socio-cultural role in Europe, but carefully selected the complexity of regulations of players' agents and the finding of the Court in the *Piau* judgment to support the necessity of an EU initiative at European Level. The Committee began by expressing concerns about the findings of the study with regards to criminal activities linked them to the activities of players' agents and expressed its belief that "*this development is detrimental to the image of sport, its integrity and ultimately to its role in society*" (emphasis added) (European Parliament 2010, para. 3). The Committee then moved on to talk about the finding of the study in relation to the existing regulatory frameworks and particularly its shortcomings in dealing with problems. In this connection, the Committee underscored the findings that the basic objective of those regulations by sport federations was to control access to the profession and govern its exercise. However, the Committee also underlined limited powers held by sports governing bodies in supervising and sanctioning players' agents, as there was a lack of any means of direct control over those who were not their members. Therefore, they were not entitled to impose any civil or criminal penalties on them (European Parliament 2010, para.8). The Committee also

stated its belief that FIFA's then proposed de-regulation of the players' agents market, without setting a robust alternative system, would not be an appropriate as a response to tackle the problems (European Parliament 2010, para. 10).

With regards to the *Piau* judgment, the Committee pointed out that the General Court recognized FIFA's entitlement to regulate players' agents only in so far as the objectives of the regulation were to raise professional and ethical standards in the activities of players' agents with a view to protecting players (European Parliament 2010, para. 14). Conversely, the Committee also underlined that the Court in principle also recognized that the regulation of players' agents constitutes policing of an economic activity and one that touches on fundamental freedoms which fall within the competence of public authorities (European Parliament 2010, para. 13). In its view, for these reasons, the Committee was convinced that, also due to the cross-border nature of the activities and the diversity of national regulations that are applicable to players' agents, only the joint efforts of sports governing bodies and public authorities could achieve effective controls and the enforcement of sanctions at European level (European Parliament, 2010, para. 15).

The Committee also highlighted the diversity of regulations applicable to the activities of players' agents. Noting the extensive regulations by sports governing bodies at international and national levels, but noting very limited specific pieces of legislation adopted by the Member States, the Committee considered that the diversity of regulations caused confusion and created loopholes affecting the proper monitoring and control of players' agents' activities. The Committee

therefore believed that a coherent EU-wide approach is required and reiterated its call for an EU initiative concerning the activities of players' agents (European Parliament 2010, para. 16-18).

The conference on sport agents, in November 2011, became another forum within which the Education and Culture DG and the Committee on Culture and Education alongside sports governing bodies and other stakeholders, engaged in the on-going analytical debate with a view to identifying a policy instrument for more effective regulation of players' agents.<sup>50</sup> Ivo Belet attended the conference on behalf of the Committee and Jacek Foks, the representative of the Polish Presidency, represented the Member States. The content of the presentations<sup>51</sup> made by both Ivo Belet and Jacek Foks were further examples of selective perception by their policy core beliefs. They both focused on the problems within the activities of the players' agents to support the calls for European-level action.<sup>52</sup>

Ivo Belet, in his presentation, particularly quoted the sections from the parliamentary resolution of 2007 to reiterate the Committee's calls on the

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<sup>50</sup> The conference was attended by the European Commissioner, Androulla Vassiliou, MEP Ivo Belet, Jacek Foks, Laurent Hanoteaux of French Ministry of Sports, Marco Villiger and Omar Ongaro from FIFA, Emanuel Macedo de Medeiros of the European Professional Football Leagues, Rob Jansen and Roberto Branco Martins of the European Football Agents Association, Michele Centenaro of the European Club Association, Philippe Piat and Theo van Seggelen of FIFPro, Darren Baily of English Football Association, Holger Hieronmus of Dutch Football Association as well as the representatives from KEA who had conducted the study for the Education and Culture DG, the representatives of the European Committee for Standardization.

<sup>51</sup> The presentations by the attendees and the relevant reports on the conference can be accessed at [http://ec.europa.eu/sport/events/2011/conferences\\_sport\\_agents\\_2011\\_en.htm](http://ec.europa.eu/sport/events/2011/conferences_sport_agents_2011_en.htm). (Accessed 05.03.2015).

<sup>52</sup> The notes of the speeches and presentations of the conference also can be accessed [http://ec.europa.eu/sport/events/2011/conferences\\_sport\\_agents\\_2011\\_en.htm](http://ec.europa.eu/sport/events/2011/conferences_sport_agents_2011_en.htm). (Accessed 05.03.2015).

Commission to take action at European level. The Committee's request from the Education and Culture DG to represent a proposal for a directive was particularly underlined. Belet further pointed out the findings of the study in relation a number of dubious practices related to agents' activities, particularly payments for secret commissions and the exploitation of young players. Belet also added that *"in the Parliament of course we are particularly concerned about the finding of the study with regards to criminal activities carried out in connection with sport; the study is clear: some professional sport and more specifically players' agents activities are affected by organized crime, which naturally is sad and unacceptable"*. The concluding remarks for his presentation were related to the new report by the Committee on the Economic Dimension of Sport within which the Committee once again called upon the Education and Culture DG to draw up and implement a European licensing and registration system accompanied by a code of conduct and a sanctioning mechanism. Belet's closing remarks were related to the Committee's policy position and called upon the Commissioner to keep up the work to reach a deal with all stakeholders to make considerable progress towards higher standards of integrity and better governance.

Jacek Foks, on the other hand, focused on illustrating the link between the problems of players' agents and the integrity of sport. The protection of integrity of sport was the one of the main priorities of the Polish Presidency and Foks stressed that certain types of activities of players' agents could be seen as a threat to the integrity of sport. In this connection, he considered particularly the activities of unlicensed agents; financial irregularities inclusive of non-transparency of transactions, tax evasion and money laundering; and criminal

activities of human trafficking constituted threats to the integrity of sport. He also expressed his concerns about how these activities tended to lead to corruption in sport, including match-fixing, and emphasized necessity of action at European level.

**Table 5: Players’ Agents: The Evidence of Selective Perception on Policy**

<b>The Aftermath of the White Paper on Sport</b>	
<b><u>Selective Perception by Policy Core Beliefs</u></b>	<b><u>The Evidence Related to Players’ Agents</u></b>
<u>Selection</u> of particular stimuli related to the problems within the activities of players’ agents	<ul style="list-style-type: none"> <li>➤ Creates conflict amongst the actors, particularly between the Committee on Culture and Education and the Education and Culture DG, in relation to preferred policy instruments.</li> <p style="margin-left: 20px;">The Committee prefers a European legal initiative.</p> <p style="margin-left: 20px;">The Education and Culture DG prefers impact assessment.</p> <li>➤ Causes an analytical debate involving the actors and facilitates further learning on the issue.</li> <li>➤ Facilitates the use of policy analysis in advocacy fashion to elaborate and justify the policy position in relation to preferred policy instruments.</li> <li>➤ Promotes learning related to secondary aspects of the beliefs system of the EU policy actors, i.e.; learning related to policy instruments.</li> </ul>

**Conclusion**

The analyses of the research on selective perception by policy core beliefs of the EU policy actors finds evidence that the actors particularly selected specific information related to the problems within the activities of players’ agents in order to develop their policy position on the issue and later to support the



secondary aspects of their belief systems representing the component of their policy position. During the preparatory phase of the White Paper on Sport, the actors acquired information on the issues within the activities of players' agents and perceiving them as a threat to their policy core led to policy analysis and the development of their policy position. This finding also confirms the role of policy analysis and information depicted by Jenkins-Smith and Sabatier (1993). The impact of the selective perception at this stage was that the actors particularly selected information about the problems in order to support their policy position in accordance with their policy core beliefs, in particular to support European level of action to achieve a more effective regulatory framework. However, the conflict on the secondary aspects of their belief system was caused by the decision of the Education and Culture DG on the impact assessment. The result of that conflict was that the analytical debate initiated by the Committee on Culture and Education which also led to further learning by the actors in relation to possible policy instruments at European level to govern players' agents. The analytical debate was significant to examine selective perception amongst the actors and particularly the members of the Parliamentary Committee who clearly focused on the findings of the study and selected relevant parts of the *Piau* judgment to support their policy position and used those in an advocacy fashion. In particular, the statements by Doris Pack and Ivo Belet, both members of the Committee, during the parliamentary debate were a clear illustration of selective perception. Both statements purely mentioned the problems and their impact on the social role of sport in Europe.

## **Chapter 7**

### **Policy Preferences: The Constraining Impact of the EU's Constitutional Limitations**

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#### **Introduction**

One of key assumptions of the ACF is that the policy actors are motivated to translate their policy core beliefs into public policies and, therefore, their policy preferences are also shaped and in line with their policy core beliefs (Sabatier 1988 & 1998; Sabatier and Weible 2007; Ingold 2011; Jenkins-Smith et al. 2014). To map beliefs and policies on the same canvas enables the framework to analyze the influence of several policy actors over time (Sabatier 1988, p. 132). The end result of the policy process is one or more governmental programmes, which in turn produce policy instruments at operational level impacting upon targeted problem parameters (Sabatier 1988, p.133). These theoretical assumptions have important implications for the preferences of the EU policy actors related to policy instruments in regulating players' agents at European level. So far, the research has identified coordinated activity amongst the EU policy actors on the issue of players' agents, as analyzed in the chapter 5, and also the development of policy positions within which the actors emphasized the necessity of regulation at European level in order to particularly tackle the problems related to the activities of players' agents to protect the socio-cultural role of sport in Europe, as outlined in the chapter 6. As a result, the outcome of the actors' activities on the issue would be assumed to be a form of policy instrument that was preferred by the actors at European level which also would be in line with their policy core beliefs. Nonetheless, FIFA's new regulatory framework to regulate players' agents, the concept of intermediaries, came into

force on 1<sup>st</sup> April 2015 and represents a theoretical paradox. This is somehow in contrary with the policy core beliefs of the EU policy actors but also with the theoretical assumptions of the ACF and, therefore, requires an explanation.

This chapter aims to understand this theoretical paradox by analyzing the policy preferences of the EU policy actors and the exogenous factors that affecting policy making within the subsystem that impact on those preferences. Firstly, the actors' preferences for adequate policy instruments to regulate players' agents at European level are examined and the research identifies that there has been a change in their preferred policy instruments. Initially, the EU policy actors had developed a policy position, which was outlined in the chapter 6, that perceived the particular problems within the activities of players' agents as being detrimental to the socio-cultural role of sport in Europe and the EU action was considered to be necessary, in a form of a EU legal initiative. Nonetheless, by the time FIFA undertook the reforms of licensing system, the EU policy actors had changed their preferences completely and became supportive of self-regulation and the rights of sports governing bodies to regulate players' agents. This is somehow in contradiction with their policy core beliefs and requires a theoretical explanation. The chapter then moves on to outline the constitutional context of the EU policy-making in the field of sports and argues that the limitations embedded within this constitutional context have actually shaped the EU's actions, and limit its preferences of policy instruments, with regards to the regulation of players' agents. Within those analyses, the research argues that the constitutional limitations of the EU are the exogenous factors, as outlined within the ACF that they affect the sports policy subsystem and the advocacy coalition,

impacting upon policy instruments that the EU could adopt in regulating players' agents. Then, it moves on to examine how the emergence of FIFA's regulatory framework can be explained or to what extent the ACF is able to explain the lack of European level policy instrument as a result of the process following the impact assessment. Finally, the chapter sets out the evidence of that impact through the methodical investigation content of policy documents within the discourse of the EU's policy-making on the issue of players' agents.

### **Policy Instruments: The EU's Changing Preferences**

During the preparatory phase of the White Paper on Sport, the EU policy actors have developed a policy position on the regulation of players' agents in line with their policy core beliefs<sup>53</sup>. Their preferences in relation to policy instrument was a European level action aimed at tackling particularly bad practices within the activities of agents. Perceiving those practices as being detrimental to the socio-cultural role of sport in Europe, the policy actors recognized the need for more effective regulation at European level. In this regards, the Member States and the Committee on Culture and Education were a strong proponent of the EU legal initiative. Both actors envisaged a European regulatory system that was to be administered by UEFA in Europe in order for better monitoring and enforcement of the rules (Arnaut 2006; European Parliament 2007a). Under the Independent European Sports Review, it was considered that *"it may be appropriate to examine a system involving not only EU legal initiative but also with a stronger role for the European governing body (UEFA in the case of football) in particular to oversee an effective enforcement of the rules"* (Arnaut 2006, p. 47). With this

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<sup>53</sup> This policy position was explained in detail in Chapter 6.

objective in mind, they also considered the revision of the licensing system which was to be undertaken through a formal consultation process between UEFA and the European Commission at European level (Arnaut 2006, p. 89; European Parliament 2007a, para. 44). In this connection, the Committee on Culture and Education called upon *“the Commission to support UEFA’s efforts to regulate players’ agents, if necessary by presenting a proposal for a directive concerning players’ agents”* (European Parliament 2007a, para. 44). The directive was considered to be an appropriate legal tool at the disposal of the EU and would include several provisions related to a strict examination criteria, transparency in the transactions, minimum harmonized standards for agents contracts, the prohibition of dual representation, the regulation of payments to players agents, and the efficient monitoring and disciplinary system by European sports governing bodies (Arnaut 2006, p.131; European Parliament 2007a, para. 44). The proposed directive by both actors, the Member States and the Committee on Culture and Education, as their preferred policy instrument, was a reflection of their policy core beliefs and in line with their policy position.

Conversely, the Education and Culture DG was rather conservative about the EU action on the issues and preferred to carry an impact assessment in order to assess any proposed solution at European level. In the White Paper on Sport, the calls of the Member States, the Committee and some of the stakeholders for the EU legal initiative were acknowledged (European Commission 2007b, p.49), yet the Education and Culture DG claimed that there was a need for further analyses of the extent of the problems within the activities of players’ agents in order to make a decision on the form of EU action on the issue. For these reasons, the

commitment to carry an impact assessment to gather more information on the issue and to analyze the possible options at European level was made was made (European Commission 2007b, p.50).

The decision of impact assessment instead of the proposal of directive on players' agents caused a conflict between the EU policy actors. Particularly the Committee on Culture and Education was not particularly pleased with the decision of impact assessment. The Committee repeated its calls on the Commission and urged them *"to support the efforts of sports governing bodies to regulate players' agents, if necessary by presenting a proposal for a directive concerning players' agents"* (European Parliament 2008, para. 100).

In addition, the Committee, in order to advocate for the EU legal instrument on the issue, engaged in an analytical debate with the Education and Culture DG following the publication of the study on sports agents in 2009 through a parliamentary debate. The Member States also emphasized their desire to make progress on the regulation of players' agents, particularly in relation to the identification of possible European solutions for tackling bad practices within their activities. The Committee's persistence on the EU legal initiative was the reflection of their strong policy core beliefs. <sup>54</sup>

During the discourse of the impact assessment, the publication of the study on sports agents in 2009, which was the initial step of the impact assessment

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<sup>54</sup> This is inline with the finding of Parrish in relation to the policy core beliefs of the Committee on Culture and Education. Parrish argues that the Committee is the one of the strongest proponent of the socio-cultural regulation of sport with the European policy subsystem.

undertaken by the Education and Culture DG, coincided with the decision of FIFA to conduct in-depth reform of the licensing system through a new approach based on the concept of intermediaries during its 59<sup>th</sup> Congress on 3 June 2009. The decision was an important one by the football's world governing body as it acknowledged that the licensing system was not effective to overcome a number of problems within the activities of players' agents. The objective of reforming the licensing system was aimed at overcoming those deficiencies with the regulatory system. FIFA's Committee for Club Football established a sub-committee with a mandate to develop the new system and to undertake a lengthy and extensive consultation process with representatives of member associations, confederations, clubs, FIFPro and professional football leagues in order to ensure the input of all stakeholders. The new regulatory system was also to be analyzed within the framework of a number of working groups, including the Players' Status Committee and the Legal Committee.

The conference organized by the Education and Culture DG, as the second step within the on-going impact assessment, in November 2011 became a platform for FIFA to present its efforts on the new regulatory system to the EU policy actors and other football stakeholders at European level. Although some of the stakeholders expressed their concerns about the new regulatory system<sup>55</sup>, particularly considering it as the de-regulation of the players' agents sector, the representatives of FIFA rejected that notion. Marco Villiger, then the Director of Legal Affairs and the one of the executive responsible for the adoption of the new

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<sup>55</sup> Particularly the European Professional Football Leagues (EPFL) and the European Football Agents Association (EFAA) outlined their concerns in relation to FIFA's new regulatory framework and deemed it to be the de-regulation of agent profession.

regulatory system, particularly focused on the shortcomings of the licensing system and the ongoing consultation process with the key stakeholders under the leadership of FIFA (European Commission 2011d, p.1). Additionally, Omar Ongar, then FIFA's Head of Players' Status and Governance, underlined the difficult position of FIFA in regulating players' agents as divergent views of all stakeholders were required to be taken into account. Ongar also dismissed the recommendations related to regional regulatory frameworks, implemented in the case of basketball, and emphasized that only an inclusive approach was acceptable to FIFA (European Commission 2011d, p.4). Both representatives clearly highlighted FIFA's determination to overhaul the licensing system and move ahead with the new regulatory system.

At the same time, the proceedings of the conference highlighted the changing preferences of the EU policy actors, in particular of the Education and Culture DG and the Committee on Culture and Education, with regards to the regulation of players' agents at European level. First, the EU policy actors seemed to be distancing themselves from the idea of a regulatory role on the issue but rather preferring sports governing bodies to regulate. The representatives of both actors stressed the recognition of sports governing bodies' right to self-regulate on the issue. Androulla Vassiliou, then the European Commissioner responsible for sport, welcomed the efforts of FIFA on the new regulatory system and emphasized that the preference of the Commission on the issue is to facilitate a dialogue amongst the stakeholders and promoting cooperation between them instead of taking a regulatory role (European Commission, 2011d, p.1). Gregory Paulger, then the Director for Youth and Sport at the Education and Culture DG,



also stressed the fact that the Education and Culture DG respects the right of self-regulation by the European sports movement (European Commission, 2011d, p.6). Ivo Belet, representing the Committee, also underlined that the Committee *“continue to support self-regulation”* and *“it has never been”* their or ambition try to govern sport. In addition, Belet stressed that their objective is limited *“to assist with regards to those aspects of the context of players’ agents that clearly cannot be solved at a national level”* and *“most efficient way to achieve those improvements to the system naturally is by means of self-regulation”*.<sup>56</sup> These statements explicitly illustrated the shift in preferences of the EU policy actors. Especially, the shift in the Committee’s preferences, from being the proponent of direct legislative intervention to one that respects self-regulation, is significant.

The change in preferences was also apparent in the choice of specific policy instruments that emerged during the conference. On behalf of the Education and Culture DG, Gregory Paulger did not make any commitments to any form of regulatory action at European level. He only revealed the possibility of a recommendation on the basis of Article 165 TFEU as a way of bringing the different approaches in the Member States closer together (European Commission, 2011d, p.6). Ivo Belet, on the other hand, quoted the parts of the new resolution, which was to be adopted the following day from the Conference, to set out the preferences of the Committee on players’ agents. Within the resolution, considering the profession of players’ agents should be a regulated activity and subject to and adequate official qualification, the Committee called

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<sup>56</sup> These statements are taken from the speech given by Ivo Belet during the conference which is accessible from:  
[http://ec.europa.eu/sport/events/2011/conferences\\_sport\\_agents\\_2011\\_en.htm](http://ec.europa.eu/sport/events/2011/conferences_sport_agents_2011_en.htm) (accessed 20.07.2015)

upon the Education and Culture DG to draw up and implement “a *European licensing and registration system*” accompanied by a code of conduct and a sanctioning mechanism (European Parliament, 2011, para. 75). The Committee also requested sports governing bodies to establish a European register of sports agents in which agents would list the names of the players that they represent (European Parliament, 2011, para.76). These measures, conversely, are clearly very different than the calls made by the Committee for the European directive on players’ agents within the earlier resolutions.

Another possible policy instrument considered by the Education and Culture DG was the possibility of working with the European Standardization Organization (CEN) with a view to helping to define and raise the quality level of the services provisions of sports agents.<sup>57</sup> According to the Education and Culture DG, some of the substantial problems with the activities of players’ agents, such as the protection of minors, the transparency of financial transactions, the level of fees and dual representations, could be addressed with some form of standardization and approximation and the model could be an opportunity for European and international standardization in the field of players’ agents (European Commission, 2011d, p. 6). The European Standardization Organization is a private non-profit organization whose members are the National Standardization Bodies of the Member States and recognized by the European authorities as one of the three competent standardization bodies for the EU.<sup>58</sup> The CEN develops standards established by all interested parties in a specific

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<sup>57</sup> Although the conference was on sports agents, the Education and Culture explicitly indicated the main focus of the discussion was players’ agents in football.

<sup>58</sup> Under Directive 98/34/EC.

field which are then transposed in national standards to achieve harmonization in the internal market.

The Member States were also supportive of self-regulation by sports governing bodies in relation to players' agents and considered that they are the best placed to adopt appropriate mechanisms. In particular, the recommendations of the Expert Group on Good Governance, published in December 2013 following an extensive consultation process involving the Member States, the football stakeholders, the Commission and the Parliament, were reflective of the Member States' views on the issue. Building upon the study on sports agents and the conference in November 2011, the Expert Group also deemed that *"the relevant sporting bodies are best placed to introduce any needed changes in the supervision of the profession of agents, in accordance with good governance principles such as democracy and inclusion of stakeholders"* (Council of European Union 2013, p.4). The Group also underlined that in spite of different regulations applicable to players' agents in various Member States, only minor problems were identified in relation to the provisions of services without major obstacles and, for this reason, there was no need for public authorities to adopt new rules or change their existing rules concerning players' agents (Council of European Union 2013, p.4). The Group also recommended that the objectives of the mechanisms for the supervision of sports agents should be towards increasing transparency in the transactions involving agents (thus covering club-agent, player-agent, club-player and club-club transactions) and strengthening the necessary protection of the youngest players, in particular when those players are involved in international transfers. The overall goal of such mechanisms should be to set

higher standards for the activity of agents, to establish clear and universal rules, whilst taking into account the diversity existing in sporting structures, and to ensure an efficient monitoring, enforcement and compliance framework, with dissuasive and proportionate sanctions as well as equitable disciplinary measures in place (Council of European Union 2013, p.5-7). These remarks are also clearly very different than the ones under the European Independent Sport Review (Arnout 2006) under which a case for the European Directive for players' agents was made.

Eventually, whilst the EU action has been pending on the issue, the new regulatory framework by FIFA came into force on 1<sup>st</sup> April 2015. Under the new system FIFA aimed at establishing an overarching regulatory framework for an efficient control of the agency activity rather than regulating the access to the profession. The new framework superseded the licensing-based regulatory framework and the license requirement is abandoned. The framework lays down minimum standards and requirements as well as a registration system for agents, who are called intermediaries now, who represent players or clubs in the conclusion of employment contracts or transfer agreements. FIFA considers the new system to be more transparent and simple to administer and to implement which will result in a better enforcement at national level.

So, how can this change in the preferences of the EU actors in relation to policy instruments and the emergence of FIFA's new regulatory framework be theoretically explained? The ACF has particular focus on policy change and differentiates between major and minor policy change (Sabatier 1998; Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007; Jenkins-Smith et al. 2014).

Change in the policy core beliefs indicates major change in the direction or the objectives of the subsystem, and defined as major policy change, whereas change in secondary aspects of the belief systems, in other words change in means for achieving those objectives, is evidence for minor policy change (Sabatier and Jenkins-Smith 1999, p. 147-148). Policy instruments represent secondary aspects of the belief systems and the ACF views policy-oriented learning to be a source of minor policy change (Sabatier 1998, p.118). Therefore, policy-oriented learning, in particularly policy analysis and exchange of information, related to players' agents could be the explanation for the change in the preferences of the EU policy actors. However, as illustrated, the change of policy instruments actually occurred in the course of impact assessment, when the process of learning on the issue was taking place, and undermines the explanatory powers of policy-oriented learning. In addition, the ACF also identifies two sets of exogenous factors, the one quite stable and the other more dynamic, that affect the constraints and opportunities of the policy actors within the subsystem (Sabatier 1988 & 1999; Norhstedt 2005; Sabatier and Weible 2007). For this reason, these factors could have an explanatory power that is required to be examined.

### **Defining the EU's Constitutional Limitations**

The ACF makes a distinction between policy subsystems and the broader political environment that affects policy making at subsystem level (Sabatier 1988 and 1999, Weible et al. 2009, Jenkins-Smith, et. al., 2014). The broader political environment is defined by relatively stable parameters and external events that are exogenous to policy subsystems and both can substantially alter

the constraints and opportunities confronting the actors within the subsystem (Sabatier 1988, p.136). The relatively stable parameters include basic attributes of the problem area, basic distribution of natural resources, fundamental socio-cultural values and social structures, and basic constitutional structures (rules). These factors are reasonably hard to change over the course of time and they rarely become the subjects of coalitions' strategies. Nevertheless, they can certainly limit the range of feasible alternatives available to policy actors (Sabatier 1988, p.135). The external events, on the other hand, are more dynamic and can vary substantially over the course of a few years or a decade. These includes changes in socio-economic conditions, changes in public opinion, changes in systemic governing coalitions and the impact of policy decisions from other subsystems. The ACF argues that these events continuously challenge the subsystem actors to understand how to anticipate and to respond to them consistent with their policy core beliefs (Sabatier 1998, p.103). These events are also a critical pre-requisite for major policy change (Sabatier 1998; Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007). Therefore, understanding the factors that affecting the EU sports policy subsystem can offer an explanation for changes in the preferences of the EU policy actors in relation to policy instruments.

In the context of the broader political environment as defined by the ACF, and also taking into the analyses of the research so far on the EU's activities with regards to the regulation of players' agents, the constitutional context of the EU seems to be a correct parameter to be analysed at this stage. This is because of the fact that the principle of conferral, embedded with the Treaties, requires the

EU to act upon within the limits of its powers. The principle is now located in Article 5 TEU since the entry of force of the Lisbon Treaty and sport was not a conferred competence for the EU prior to that. The lack of legislative competency on sport immediately reveals the limitation of the EU in the field of sport, particularly in relation to the governance of sport, which forced the EU to develop an indirect sport policy since its first incursion with sport in 1974. Although the Lisbon Treaty for the first time brings sport within explicit reach of the Treaties establishing the EU, it is considered to be a declaration of peace between the EU and sport governing bodies in regulating sport and the constitutional limitations of the EU in the governance of sport prevails (Garcia and Weatherill 2012, p.251). Furthermore, the new competency under the Lisbon Treaty could be potentially considered to be a major policy change under the ACF, yet it is argued to be not so new after all (Weatherill 2010) and unlikely to alter the EU's existing approach to sport (European Parliament 2010b, p. 61). Therefore, it is important to analyse the constitutional limitations of the EU in the field of sport which also constrains the EU's actions and its preferences with regards to the regulations of players' agents.

The constitutional limitations of the EU's action in the field of sport, particularly in the governance of sport in Europe, manifest themselves within the historical discourse of the EU's relationship with sport. Up until the Lisbon Treaty, the EU did not possess legislative competency on sport as it was not mentioned in the Treaties. As a result, the EU derived powers to oversee sporting practices and rules of sports governing bodies from the broad functional reach of the relevant provisions of EU law, namely internal market and competition rules (Weatherill

2009a). In particular, the CJEU and the Commission, developed EU law in its application to sport recognizing the autonomy of sport governing bodies in regulating their sports but only as far as EU law respected. This conditional autonomy, an autonomy conditional upon respecting EU law (Weatherill, 2007), was based upon the notion that sports governance would not be rigidly held to be exempted from EU law, particularly as an economic activity which can have a damaging impact on the achievements of the Treaties in relation to the internal market.<sup>59</sup> The principle of sport being subject to EU law as far as it constitutes an economic activity was established by the CJEU in its first ever ruling on sport in 1974, *Walrave and Koch*, but at the same time allowed sport governing bodies to show why sport is different from other industries to justify a special treatment from the EU, especially in application of the EU law. The specificity of sport, developed and argued by sports governing bodies, arguing that sport has a specific nature and is different from other industries became the line of defence for sports governing bodies in protecting their autonomy from the EU's interventionist approach (Weatherill 2010; Garcia and Weatherill 2012; Parrish, 2003a & 2003b). This legal model allows the cohabitation of sporting regulations and EU law and Parrish claimed that European sports law as a distinctive body emerged from this approach based upon the separate territories principle permitting the autonomy of sport and legal intervention to live together (Parrish 2003a & 2003b). As a result, sports governing bodies, to a certain degree, enjoyed autonomy to govern their sport at European level whilst the EU's actions in the field of sport were constrained.

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<sup>59</sup> Ken Foster defines this as supervised autonomy, whereas Weatherill calls it conditional autonomy.



Nonetheless, sports governing bodies, although enjoying conditional autonomy, aimed at gaining full autonomy through achieving an exemption for their activities from EU law via an article under the EU Treaties. The negotiations of the Lisbon Treaty provided a right institutional context for sport governing bodies to ask the EU for an exemption. They engaged in an intensive lobbying strategy facilitated within the multi-level nature of the EU (Garcia 2007; Garcia and Weatherill 2012). This was not the first time sports governing bodies pushed for full autonomy. Both at Amsterdam and at Nice the non-binding declarations on sport were outcomes of the process of Treaty reforms, although sport-governing bodies had not been able to convince the EU to provide them an exemption from EU law and full autonomy in governing their sports (Weatherill 2010). During the Convention on the Future of Europe, opened in February 2002 and stretched to the middle of 2003, there was a general agreement that the EU should acquire some formal competence in the field of sport (Garcia and Weatherill 2012, p.244). Both the Member States and the Education and Culture DG during this period supported and worked in favour of an article on sport (Garcia and Weatherill 2012, p.245-247). The subsequent intergovernmental conference agreed the text of the Treaty establishing Constitution in the late 2004 establishing sport as an area of “*supporting, coordinating or complementary action*”. Despite the rejection of the Treaty establishing a Constitution in referenda in France and Netherlands during 2005, the new article on sport has been rehabilitated into the Lisbon Treaty, which was agreed in 2007, and remained untouched providing for the first time legislative competency to the EU on sport.<sup>60</sup>

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<sup>60</sup> The Article reads as Under Article 165 of the Lisbon Treaty for the first time the competency

Despite providing legal competency, the influence of the Lisbon Treaty on the governance of sport was considered to be trivial (Weatherill 2010 and 2011; Garcia and Weatherill 2012; European Parliament 2010). Falling short of granting sport an exemption from the Treaty, the text of Article 165 TFEU provides the next best solution for sport governing bodies by constraining the EU's interventionist tendencies on the governance of sport (Garcia and Weatherill 2012, p.251). There is nothing in the realm of Article 165 TFEU that suggests a powerful role in regulating sports governance. Instead it only provides a supporting competence for the EU on sport and even an enhanced level of autonomy for sports governing bodies through constitutionally recognizing the specific nature of sport in Europe. Therefore, the Lisbon Treaty empowers sports governing bodies in regulating their sports whereas the EU's ability to regulate sport in Europe is further constrained.

The inclusion of sport in the Treaty is in no way to advance the EU into a primary position in the regulation of sport (Weatherill 2011; Garcia and Weatherill 2012). In this connection, with regards to the type of competency, Article 165 TFEU creates soft legislative competency which is the weakest type of the three principal types of competence laid down under the Lisbon Treaty. Embedded

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on sport is given. Article 165 (1) of TFEU stipulates "The Union shall contribute to the promotion of European sporting issues, while taking into account of *the specific nature of sport*, its structures based on voluntary activity and its social and educational function". The Article 165 (2) provides that "Union action shall be aim 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". Article 165 (3) states that "The Union and the Member States shall foster cooperation with third countries and the competent international organizations in the field of education and sport, in particular the Council of Europe". Article 165 (4) allows the EU to adopt incentive measures and recommendations whilst excluding any harmonization of the laws and regulations of the Member States. For the first time sports finds itself with the constitutional framework of the EU.

under Article 6(e) the competency allows the EU to support, coordinate or supplement the sports-related actions undertaken at Member States. Additionally, Article 5 of TEU stipulates that the competences of the EU is governed by the principle of subsidiary, meaning that when areas do not fall within the EU's exclusive competency the EU can only act if, and in so far as, the objectives of the proposed action cannot be sufficiently achieved by the Member States. Article 5 of TFEU even reinforces the scope of competency. For these reasons, Article 165(4) expressly excludes any harmonising legislation and allows the Parliament and Council to adopt only incentive measures and recommendations. As a result, the Treaty constrains the actions of the EU in the field of sport and not in any way suggests that the EU play a prevailing role in regulating sport.

The Lisbon Treaty also offers a greater level of autonomy for sport governing bodies in regulating their sports and intends not to prejudice their legitimate autonomy and discretionary decision-making power (Weatherill 2010). Historically sports governing bodies made claims of autonomy as regulators of their disciplines around the argument of the specificity of sport. Yet, the EU, particularly the CJEU and the Commission, have considered the strength of sport's autonomy claims and generally reached their own conclusions which have been less persuasive than the need for sporting autonomy claimed by the governing bodies (Weatherill 2010). Despite their argument, sports governing bodies failed to keep the EU out of sport and settled for the second best (Weatherill 2010; Garcia and Weatherill, 2012). They have successfully negotiated a text that enhanced their autonomy. For the first time, Article 165

TFEU requires the EU to take into account the specific nature of sport, its structure based on voluntary activity and its social and education function when contributing the promotion of European sporting issues. The explicit recognition of sport's specific nature strengthens the argument for an enhanced autonomy and provides the first line of defence for sport governing bodies in the post-Lisbon era (Garcia and Weatherill 2012, p.252.). Conversely, for the EU the recognition of the specific nature of sports means another constraint for the possible EU actions in regulating sport and dictates a softer approach to the decisions made by sports governing bodies who have a greater understanding of what really is specific about their respective sport.

The analysis illustrates the constitutional limitation of the EU in the field of sport. The EU institutions, particularly the CJEU and the Commission, historically recognised and respected the autonomy of sports governing bodies in governing their sports although this autonomy has been conditional upon respecting the EU law. Additionally, the lack of legislative competency on sport meant sport has been the primary responsibility of the Member States and sports governing bodies. Despite for the first time the Lisbon Treaty changing things for the EU by providing legislative competency, in practice the change is minimal and not profound in terms of the governance of sport. The competency given is supporting and very limited in scope in relation to regulating sport and the principle of subsidiary is embedded within the Treaty. Furthermore, the Treaty requires the EU to take into consideration sport's specific nature when supporting the activities of the Member States and sports governing bodies whilst also respecting the rule-making power of governing bodies. Therefore, the

next step is to investigate the evidence highlighting the constraining impact of these constitutional limitations on the EU policy actors' actions in relation to the regulation of players' agent and particularly to show the impact on the changing preferences related to policy instruments.

### **The Constraining Impact of the EU's Constitutional Limitations: the Evidence**

The constitutional limitations on the EU's actions in relation to the governance of sport by the EU policy actors were recognized prior to the Lisbon Treaty. Although Weatherill claims that the Commission was anxious to spell out the limits and deficiencies of the EU competency (Weatherill 2010, p.3), the Education and Culture DG, in the White Paper on Sport, recognized the limits of the EU actions in the governance of sport. From the outset in its first page, the White Paper pointed out *"sporting organizations and the Member States have primary responsibility in the conduct of sporting affairs, with a central role for sports federations"* (European Commission 2007a, p.2). The Education and Culture DG further reiterated later in the document that *"governance is mainly the responsibility of sports governing bodies and, to some extent, the Member States and social partners"*, and *"most challenges can be addressed through self-regulation respectful of good governance principles, provided that EU law is respected"* (European Commission 2007a, p.13). These statements are in line with the principles outlined under the Nice Declaration and the Lisbon Treaty, recognizing the autonomy of sports governing bodies and the subsidiary principle. The Education and Culture DG also outlined the role that the Commission can play in governance of sport in Europe. Accordingly, the

Education and Culture DG considered taking a role of encouraging the sharing of the best practice in sport governance and also to help to develop a common set of principle for good governance in sport, such as transparency, democracy, accountability and representation of stakeholders (European Commission 2007a, p.12). This is a clear outline of intention by the Education and Culture DG that it prefers to play a facilitator role than a regulator role.

Moreover, the Education and Culture DG clarified the notion of specificity of sport. This was considered to be approached through two prisms. The first one deals with the specificity of sporting activities and of sporting rules, such as separate competitions for men and women, limitations on the number of participants in competitions or to preserve a competitive balance between clubs taking part in the same competitions. The other one consists of the specificity of the sport structure including the autonomy and diversity of sports organizations, the organization of sport on a national basis, and the principle of a single federation per sport (European Commission 2007a, p.13). The Education and Culture DG also underlined that the specificity of sport to be recognized by the EU, yet it cannot be construed so as to justify general exemption from the application of EU law. The Commission recognized the autonomy of sports governing bodies in running their sport, but no exemption was provided.

Knowing the constitutional limitations on a possible EU legislative action with regards to the regulation of players' agents, the Education and Culture DG was very careful in its analysis of the issue within the White Paper to justify its decision to carry out an impact assessment instead. Firstly, players' agents as a

policy issue was placed under the theme of “*the organization of sport*” on which the Education and Culture DG clearly wanted to take a supportive and encouraging role as opposed to a regulatory one. Additionally, some of the bad practices within the activities of players’ agents were considered to be raising serious governance questions which the Education and Culture DG explicitly stated to be the responsibility of sports governing bodies and to some extent the Member States earlier in the document (European Commission 2007a, p.15). In the Staff Working Documents, accompanying the White Paper on Sport (European Commission 2007b), a careful analysis of *Piau* judgment was undertaken and the General Court’s findings related to the compatibility of the FIFA’s regulations with EU competition law was particularly underlined. The document also highlighted the diverse regulations applicable to the agents at national level. With these considerations in mind, the Education and Culture DG, acknowledged the calls for EU legislative action but committed to impact assessment claiming that there is a need for further information related to the extent of the issue as well as analyzing the impact of any proposed solution at EU level.

The conference organized by the Education and Culture DG became to explain the constitutional limits of the EU’s actions in the field of sport. Jan Figel, then the European Commissioner in charge of sport, in his key speech for the opening of the conference explained the political context for launching the White Paper process and also the future framework for sport provided by the inclusion of sport in the Lisbon Treaty. Figel pointed out that the principle of subsidiarity and the autonomy of sport organizations to govern their sport were fully respected.

Underlining the lack of specific legal competency for sport, the White Paper actions were built upon a mixture of soft provisions not on regulatory or legislative measures and the Commissioner emphasized that the Education and Culture DG could not go beyond the limits of existing EU competences. The Commissioner also outlined the key objectives of the White Paper and in relation to players agents it was to encourage debate on specific problems in the field of sports governance.

The process of analytical debate between the Committee on Culture and Education and the Education and Culture DG, caused by the conflict about preferences related to policy instruments and particularly the decision of impact assessment<sup>61</sup>, enabled the Education and Culture DG to explain the constitutional limitations with regards to EU action, in particularly in relation to the proposed EU legal initiative. Not satisfied with the decision of the impact assessment the Committee adopted the resolution in response to the White Paper on Sport in May 2008 (European Parliament 2008). Within the resolution, the Committee repeated its calls on the Education and Culture DG to support the efforts of sports governing bodies to regulate players' agents, if necessary, by presenting a propose for the directive concerning players' agents (European Parliament 2008, para. 100).<sup>62</sup> In contrast, the Committee, by taking into consideration particularly the new competency under the Lisbon Treaty, requested the Commission in, exercising the new competency, to take into account the principle of subsidiarity, to respect the autonomy of sports organizations and the

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<sup>61</sup> The conflict and analytical debate fully explicated within the Chapter 6.

<sup>62</sup> The Committee used the exact wording of the previous resolution in 2007 on the future of football in Europe.



relevant governing bodies with due regard to the specificity of sport (European Parliament 2008, para 3.). The contradiction in relation to the limits of the EU action on the issue and still requesting EU legal initiative in the form of a directive, illustrates the strong policy core beliefs held by the Committee in relation to the regulation of players' agents and especially its will to overcome the problems within the activities which the Committee deemed to be detrimental to the socio-cultural role of sport in Europe.

In response to the resolution, The Education and Culture DG affirmed that the principle of subsidiarity must be fully respected when any actions are taken at European level and confirmed that the specificity of sport and the autonomy of sport governing bodies would be fully respected (European Commission 2008, point 8). With these principles in mind, the Commission's response to the Committee's calls for a directive on players' agents was very conservative and stated that *"It will evaluate the situation of players' agents in order to assess whether it is appropriate for the EU to intervene in this area and look at the options available"* (European Commission 2008, point 8) (Emphasis added). This was a slightly different reasoning for the assessment than the one under the White Paper. The emphasis was on the appropriateness of the EU intervention rather than the necessity of the action indicates the mindfulness of the Education and Culture DG about the limits on the EU action particularly for the adoption of any legal instrument to regulate players' agents.

The deliberation process of the Committee's resolution on players' agents in June 2010 clearly illustrated the change in preferences of the Committee in relation to

policy instruments whilst the Education and Culture DG was more explicit in outlining the constraining impact of the constitutional limitations, particularly of the new competency under the recently enacted Lisbon Treaty. Although the majority of the resolution's text was in line with the Committee's earlier resolution in 2007 and 2008, the Committee this time instead of requesting a proposal on a directive on players' agents used the generic term of "*European initiative*" without specifying what it would be (European Parliament 2010, para.18). In response to the Committee's resolution, the Education and Culture DG was quick to point out the Committee's changing preference. In its analysis of the overall text of the resolution, the Education and culture DG highlighted that the Committee was "*stopping short of asking for a Directive to regulate agents*" and instead "*the European Parliament calls for a generic EU initiative*" (European Commission 2010, point 6) (Emphasis added). In reply to the Committee's call on the generic initiative, the Education and Culture DG was reluctant to make any commitments to any EU action on the issue and stressed that an internal analysis of the results of the study on sports agents were currently being undertaken with a view to assessing which type of action might be needed at EU level. Additionally, once again the Education and Culture DG underlined the fact that any decision on the regulation of players' agents was to be taken by "*giving due consideration to the new legal framework represented by the entry into force of the TFEU and to the instruments the Treaty offers in the area of sport*" (European Commission 2010, point 6). In other words, the Education and Culture DG was simply pointing out the importance of the new legal competency under the Lisbon which would impact on what action the EU can take on the issue. There

was also an emphasis on limited instruments available to the EU due to the complementary nature of new competency.

Following the Lisbon Treaty, the Education and Culture DG once again outlined the limits on the EU's actions in the field of sport in its new communication, *Developing the European Dimension in Sport*, in January 2011 (European Commission 2011a). Highlighting the soft competency given under the Lisbon Treaty, the Education and Culture DG stressed its respect for both the autonomy of sport governing structures as a fundamental principle relating to the organization of sport and also the competences of the Member States in the field in line with the principles of subsidiarity. In this connection, to develop the European dimension in sport, EU action would aim at supporting the Member States' actions and complement them. Additionally, such action can help addressing transnational challenges encountered by sport in Europe including the regulation of players' agents (European Commission 2011a, p.3). For this reason, in line with the Education and Culture DG's role as a facilitator for a dialogue on the issue of players' agents, as outlined under the White Paper, the decision to organize a conference as a next step in impact assessment was taken (European Commission 2011a, p.13). The decision of the conference was another indicator of the Education and Culture DG's preference for a dialogue to identify potential solutions to the issue.

The Committee on Culture and Education, meanwhile, also became fully aware of the limits on the EU action and completely adjusted its preferences. During the conference, Ivo Belet, representing the Committee, explicitly stated that *"in order*

*to avoid any confusion, let me repeat: we continue to support self-regulation in sport, and it has never been our intention or ambition to try to govern sport. Our only role in this respect is a serving one*" (Belet speech 2011, p.2). The statement was completely the opposite of the earlier calls on the Education and Culture DG for an EU legislative initiative. Taking into consideration the limits of the EU's new competency, in particular the principle of subsidiarity, Belet further stated "*we want to assist with regards to those aspects of the context of players' agents that clearly cannot be solved at a national level*" (Belet speech, 2011, p.2). Dropping its legislative calls, the Committee in its new resolution, adopted in February 2012 in response to the communication by the Education and Culture DG, called on the Commission to draw up and implement a European licensing and registration system accompanied by a code of conduct and a sanctioning mechanism. The Committee further considered that the agent profession should be a regulated activity and subject to an adequate official qualification and agents' fiscal residence should be within the EU territory in the interest of transparency (European Parliament, 2012, para.75). The Committee also called upon the Member States to supplement existing regulatory provisions governing players' agents with deterrent sanctions and to implement these sanctions rigorously (European Parliament 2012, para.77), whilst asking sport governing bodies to enhance transparency with regards to players' agents activities and cooperate with Member States' authorities to eradicate corrupt practices (European Parliament 2012, para.78).

The Education and Culture DG, mindful of the constitutional limitations on EU action, once again was quick to undermine the requests made by the Committee.

In response to the resolution, the Education and Culture DG pointed out that the specific request to draw up and implement a European licensing and registration system were not considered to be legally feasible on the basis of Article 165 TFEU (European Commission 2012, p.2). Furthermore, in response to any action intended to be taken, the Education and Culture DG explicitly stated that no commitments can be made on the feasibility of proposals exceeding the competence of the Commission and the EU on the regulations of agents (European Commission 2012, p.2). The Education and Culture DG once again illustrated the constraining impact of Article 165 on the EU action on the issue.

## **Conclusion**

The adoption of FIFA's new regulatory system for agents and the lack of any form of EU legislative initiative represented a theoretical paradox that this chapter aimed to explain. This theoretical paradox is based upon two prisms. Firstly, the ACF assumes that the policy actors are motivated to translate their policy core beliefs into actually public policies and the end results of the process are policy instruments that are in line with the actors' beliefs. The implication of these assumptions is, therefore, that the policy preferences of the policy actors in relation to policy instruments would also reflect their policy core beliefs, and, as a result, practically those beliefs can be deduced from the policy preferences of the actors. Secondly, the research so far have evidences both coordinated activity and selective perception in the context of EU policy making with regards to the regulation of players' agents. The research so far has argued that the EU policy actors within the socio-cultural advocacy coalition have coordinated their activities on players' agents, as a policy issue within the EU sports policy

subsystem. Additionally, the actors developed a policy position through selective perception performed by their policy core beliefs, in particularly selecting stimuli that confirmed their beliefs. Their policy position is that the problems within the activities of players' agents are detrimental to the socio-cultural role of sport in Europe and, therefore, it necessitates EU legal initiative to tackle the problems at European level. In line with this policy position, the output of the process at European level would be some form of EU legislative action, namely the European players' agents directive. Nonetheless, contrary to both prisms, the emergence of FIFA's new regulatory framework which has been supported by the EU policy actors represents the theoretical paradox that is required to be explicated.

With this objective in mind, the research initially outlined the change in the preferences of the EU policy actors with regards to policy instruments to regulate players' agents in Europe. The change was significant as the EU policy actors, in particularly the Member States and the Committee on Culture and Education, initially called upon the Education and Culture DG to present a proposal for EU directive on players' agents in order to overcome the problems within their activities. Especially, the Committee on Culture and Education was a strong proponent of the EU legal initiative which reflected the strong policy core beliefs held by the Committee, as argued by Parrish. However, particularly after the inclusion of sport in the Lisbon Treaty, the EU policy actors changed their preferences and became supportive of self-regulation and the efforts of sports governing bodies on the issue. The Education and Culture DG preferred to take a facilitator role instead of a regulatory role and the decision to organize the

conference, as a part of the ongoing-impact assessment, with sports governing bodies and relevant stakeholders was a clear reflection of that role. Both the Member States and the Committee on Culture and Education also supported self-regulation and the efforts of sport governing bodies, in particularly the efforts of FIFA, and the end result was the FIFA's new regulatory framework.

The research then analyzed the constitutional limits of the EU policy-making in the field of sport and investigated the impact of those limits on the policy preferences of the EU policy actors in the context of the regulation of players' agents. The ACF defines the broader political environment by exogenous factors, the one stable and the other one dynamic. The research argues that the constitutional limits of the EU are the relatively stable parameters that constraints the preferences of the EU actors in relation to the regulation of players' agents. These limits includes the autonomy of sports governing bodies in regulating their sports and the principle of subsidiarity that makes the Member States and sports governing primary responsible for sport in Europe. Despite the new competency given under the Lisbon Treaty, the effect of the competency in relation to the governance of sport is trivial. The Lisbon Treaty actually enhances the autonomy of sport governing bodies in regulating sport by requiring the EU to take into consideration specific nature of sport when contributing to the actions of the Member States and sports governing bodies. As a result, the research illustrates how these constitutional limitations actually forced the EU policy actors to prefer self-regulation instead of the EU legal initiative to regulate players' agents at European level.

## **Chapter 8**

### **Conclusions**

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This research aims to explain the EU's intervention into the regulation of players' agents. There were several reasons for researching the EU and players' agents. First, and foremost, the initial incursion of the EU with the regulation of players' agents was from the single market perspective. The Competition DG and the Court of First Instance had scrutinized the compatibility of FIFA's regulations of players' agents. Both institutions have confirmed the eligibility of FIFA to govern the activities of players' agents and the compatibility of regulations with the EU law. Yet, the EU has not stopped there. The issue found its way into the White Paper on Sport in 2007 and several policy documents emerged during the last decade analyzing the regulation of players' agents at European level. This involvement represents a paradox in the context of EU sports policy that the research has intended to explicate. Additionally, the EU has traditionally recognized and respected the autonomy of sports governing bodies in governing their sport. In this context, players' agents have been subject to the regulatory framework established by football governing bodies. As a result, the EU's intervention, as a public regulator, into the issue that has conventionally been confined within the regulatory sphere of football governing bodies was plausible and required an elucidation. These were considerations that originated this research.

In a broader context, the research has investigated the EU policy making in the fields of sport through locating the regulation of players' agents within the socio-cultural strand of the EU sports policy. This contextualization was the result of



identifying the conceptual meaning of the EU' socio-cultural regulation of sport within the wider literature of the EU sports policy. In particular, in the process of literature review in chapter 3 Parrish's analysis on the development of EU sports policy postulated a conceptual insight and led to the adoption of the research's two key assumptions: the existence of the socio-cultural advocacy coalition within the EU sports policy subsystem and the socio-cultural regulation of sport as policy core beliefs of the EU policy actors. Parrish explains the development of EU sports policy as the result of negotiations between two advocacy coalitions that operates within the EU sports policy subsystem (Parrish 2003a, 2003b). The single market coalition advocates for a regulatory approach to sports as an economic activity, whereas the socio-cultural coalition focuses on the socio-cultural elements of sport (Parrish 2003a, pp.65-71). Moreover, Parrish identifies the belief systems of each coalition and views the socio-cultural regulation of sports as policy core beliefs of the actors of the socio-cultural coalition (Parrish 2003, pp.66-67). The concept of policy core beliefs within the analysis of Parrish provides the conceptual meaning of the socio-cultural regulation of sport that the research used.

This conceptualization has also underpinned the research's theoretical and methodological choices. With regards to the theory, the research has utilized the Advocacy Coalition Framework (ACF) which is outlined in chapter 4. The decision is based upon the fact both advocacy coalitions and policy core beliefs are the key aspects of the framework. The ACF is developed to examine the public policy process (Sabatier, 1988; Sabatier and Jenkins-Smith 1999; Sabatier and Weible 2007, 2014). In doing so, public policies are deemed to be the

translation of the belief system of policy actors and they are conceptualized the same way as belief system (Majone 1980; Sabatier 1988). Policy core beliefs are theoretically located within the concept of belief systems. The ACF also combines the belief systems of actors with network structure analysis to simplify the analysis within policy subsystems (Sabatier and Weible 2007; Ingold 2011; Jenkins-Smith et al. 2014) and develops the concept of advocacy coalitions. These two ACF's concepts are central to the research's two key assumptions and justify the theoretical choice of the research. Methodologically, the research has used primary documentary sources to carry out content analysis in order to deduce the policy core beliefs of the EU policy actors. Content analysis, as a research method, was considered one of the most appropriate methods in investigating the aspects of ACF (Sabatier 1988, p. 147). Therefore, the research had adopted the same method.

The research has developed three sub-research questions to investigate the EU's socio-cultural regulation of sports as the EU's policy actors' core belief. These sub-research questions are based upon the hypotheses of the ACF within which policy core beliefs are central. The sub-research questions represent three research dimensions of this research and aim to deduce the EU policy actors' policy core beliefs (the socio-cultural regulation of sport) through analysis of: coordinated activity, selective perception and policy preferences. The sub-research questions are;

- RQ1: Is there a non-trivial degree of coordinated activity amongst the EU policy actors of the socio-cultural advocacy coalition in relation to the regulation of player's agents within the subsystem?

- RQ2: Do policy core beliefs of the EU policy actors perform selective perception in the process of policy-oriented learning, in particular to policy analysis and information, related to the regulation of players' agents?
- RQ3: What are the policy preferences of the EU policy actors in relation to policy instruments to regulate players' agents at European level and to what extent do the policy preferences reflect the policy core beliefs of the actors?

This research is a deductive study and its theoretical analysis has a duality which represents the research's original contributions to knowledge under two strands. Firstly, the research contributes to our understanding of the EU policy making in the field of sport through examining a specific policy issue, the regulation of players' agents, in the context of EU sports policy. In doing so, the research's findings advances the existing theoretical literature related to the broader theme of the EU's relationship with sport (Parrish 2003a, 3003b; Garcia 2008). Additionally, the research for the first time develops a socio-cultural perspective on players' agents at European level. Secondly, the research also contributes to the theoretical advancement of the AFC through examining some of the key concepts of the framework in the context of the EU policy making. In this connection, the research's analysis contributes to clarifying the concept of coordinated activity which is the one of the most criticized aspects of the ACF (Schlager 1995; Kubler 2001; Fenger and Klok 2001). Furthermore, the examination of selective perception adds to the very limited literature on the topic.

This concluding chapter now proceeds to summarize the findings of the research related to three sub-research questions in the light of evidence presented in chapter 5, 6 and 7 in order to expand on the research's originality. With this objective in mind, the summary is divided into two broader headings in relation to the research's original contributions to knowledge: the understanding of the EU policy making in the field of sport and the theoretical advancements of the ACF.

### **The EU and Players' Agents: Understanding of the EU Policy Making in Relation to Players' Agents**

From the perspective of EU sports policy, the research investigated three research dimensions to deduce the EU policy actors' policy core beliefs. The first research dimension is coordinated activity and the research has identified the degree of coordinated activity between the EU policy actors in relation to the regulation of players' agents in chapter 5. The presence of coordinated activity combined with the assumption of the existence of the socio-cultural coalition theoretically underline that the socio-cultural regulation of sport, as the policy core beliefs of the EU policy actors, underpins the EU's intervention into the regulation of players' agents. In other words policy core beliefs are deduced from the existence of advocacy coalition and coordinated activity as both congruent shared policy core beliefs and a nontrivial degree of coordinated activity are the necessary components of the advocacy coalition.

The research identified a gradually intensifying degree of coordinated activity between the EU policy actors in relation to the regulation of players' agents.

There was a minimum degree of coordinated activity involving interactions and information exchange during the preparatory phases of the White Paper on Sport. The institutional context in the form of a consultation framework facilitated the interaction of the EU policy actors with each other and sports governing bodies. The EU policy actors also exploited the resources available at their disposal at institutional level to steer the direction of the policy in line with their policy core beliefs. The consultation framework was particularly important in bringing players' agents, as a policy issue, to the attention of the EU policy actors. During the consultation process the EU policy actors also learned about the problems within the activities of players' agents and deficiencies of the FIFA's licensing based regulatory framework to tackle those problems. The EU policy actors also exploited the resources available at their disposal at institutional level to steer the direction of the policy in line with their policy core beliefs and those sources were the basis of their activities. As a result of these activities, the regulation of players' agents moved into the socio-cultural policy agenda of the EU sports policy and the Education and Culture DG decided, in the White Paper on Sport, to carry out the impact assessment to analyze the possibility of European level action.

In the aftermath of the White Paper on Sport, the activities of the EU policy actors in relation to regulation of players' agents intensified and there was a stronger coordination or a greater level of coordination between them. The activities not only involved repeated interactions through use of institutional resources, but also there was a common plan of action on the issue of players' agents guiding their activities. The Action Plan under the White Paper on Sport

provided a plan of action and the study on sport agents, published in 2009, and the conference in 2011 were the result of that. The Member States also revised the Rolling Agenda in 2008. Players' agents and the identification of possible European level solution for tackling bad practices within the their activities became the key priority of the Member States. The Committee on Culture and Education also intensified their activities. Especially due to the Committee's dissatisfaction with the decision of the impact assessment under the White Paper on Sport, the Committee engaged in analytical debate with the Education and Culture DG which led to an intensified interaction. The Lisbon Treaty reinforced European level cooperation further and the Work Plan of the Council for sport 2011-2014 and the Education and Culture DG's communication in 2011 provided further impetus to the activities on players' agents at European level.

These initial findings of the research on coordinated activity between the EU policy actors fits well with Parrish's analysis of the EU sports policy. The findings reinforce Parrish's findings in relation to the evolution of EU sports policy. Parrish argues that the members of socio-cultural advocacy coalition were unhappy with the economic single market approach of the single market advocacy and consequently coordinated their activities to seek greater protection for sport from the application of EU law (Parrish 2003a, p.207). This research focuses on the EU policy actors of the socio-cultural advocacy coalition and identifies coordinated activity with an objective of finding solutions to the problems of players' agents at European level. Additionally, Parrish identifies resources (institutions and institutional venues) available to policy actors at European level (Parrish 2003a, pp.72-76) and these resources were used to

influence the direction of the policy and to coordinate sporting activity at European level (Parrish 2003a, p.72). The resources at the disposal of the EU policy actors were also the basis of coordinated activity in relation to the regulation of players' agents. Therefore, although the research has a much narrower focus of analysis in terms of the policy issue (the regulation of players' agents) and policy actors (the EU policy actors), the research's findings reaffirm Parrish's finding in relation the EU sports policy, in particular the socio-cultural advocacy coalition and the beliefs system of the EU policy actor.

The second research dimension is selective perception, perceptual filtering performed through the policy core beliefs of the EU policy actors in acquiring information and engaging in policy analysis, and the research identified selective perception performed by policy core beliefs of the EU policy actors in Chapter 6. Selective perception was investigated in the context of policy-oriented learning in relation to players' agents. As selective perception directly relates to policy core beliefs, selective perception combined with the assumption of the EU actors' policy core beliefs (the socio-cultural regulation of sport) theoretically concludes that the socio-cultural regulation of sport underpins the EU's intervention into the regulation of players' agents.

Selective perception of the EU policy actors' policy core belief in selecting and interpreting information within policy analysis related to players' agent was instrumental for developing their policy position on the issue. The institutional context during the preparatory phase of the White Paper on Sport enabled the EU actors to learn about the problems of the activities of players' agents through

interaction and information exchange with each other and sports governing bodies. This learning was the catalyst for the development of the policy position. The EU policy actors' policy position was in line with their policy core beliefs. The key components of the policy position were the actors' perceptions of the problems integrated with their policy core beliefs (problems with the activities of players' agents are detrimental to the socio-cultural values and its role in Europe) and their perspectives on their secondary beliefs (in order to tackle the problems there is a need for a more effective regulatory framework governing players' agents and it requires action at European level possibility through the adoption of a European legal initiative in form of a directive on players' agents).

The impact of selective perception in this learning process was multidimensional. Firstly, the EU policy actors particularly selected information related to the problems of players' agents which they perceived as threats to their policy core beliefs. Consequently, this led to the development of policy position on players' agents. Secondly, the actors also selected information to support their policy position. In this connection, information contained within the reports and written submissions of the sport governing bodies and the stakeholders were considered, whereas the analysis of players' agents from a single market perspective received was given very little attention and selected in a way to support their policy position.

Despite developing a policy position with regards to players' agents, there was a division between the EU policy actors in relation to their preferred policy instruments to regulate players' agents at European level. In particular, the



decision of impact assessment by the Education and Culture DG in the White Paper on Sport instead of proposing a legal initiative (directive) evidenced this division and resulted in a conflict. The conflict was related to the actors' secondary aspects of their belief systems (policy instrument). The impact of the conflict was an analytical debate between the actors, especially the Committee on Culture and Education engaged debate with the Education and Culture DG at parliamentary level, in order to advocate for a legal initiative to regulate players' agents at European level.

The function of selective perception in a conflict situation and in analytical debate is to select and interpret information in order to advocate a policy position. In the context of analytical debate between the EU policy actors, this meant that the actors selected and interpreted information in order to support their policy position related to the secondary aspects of belief systems (policy instruments), i.e. a European legal initiative. At this stage, the strong policy core beliefs of the Committee on Culture and Education became evident. During the parliamentary debate, the statements of some members of the Committee explicitly highlighted the detrimental impacts of players' agents' problems on the socio-cultural role of sport in Europe. Moreover, in the Parliamentary resolution in 2010, the Committee selected specific information about the problems of players' agents from the study on sports agents and interpreted the findings of the Court in the *Piau* judgments in such a way as to support the Committee's policy position in relation to their preferred policy instrument (a legal initiative) at European level.

These findings are in line with Parrish's analysis about the Committee. Parrish (2003a, p.68) claims that the European Parliament generally has a strong socio-cultural tradition. The Committee within the Parliament has the spirit of Adonnino and holds strong policy core beliefs related to socio-cultural function of sport in Europe (Parrish 2001, p.193). Therefore, Parrish places the Committee with the Maximalists within the socio-cultural advocacy coalition (Parrish 2003a, p.69). In correlation, the research identifies policy core beliefs of the Committee acting as a strong perceptual filter in selecting and interpreting information so as to support the Committee's policy position. The Committee was a strong proponent of the European legal initiative as its members viewed the problems of players' agents as detrimental to the socio-cultural values of sport in Europe.

The policy preferences of the EU policy actors in relation to policy instruments to regulate players' agents at European level are the third dimension of this research. In this connection, the emergence of FIFA's new regulatory framework, the concept of intermediaries which came into force on 1<sup>st</sup> April 2015, represented a theoretical paradox. The research assumes that, in accordance with the theoretical assumptions of the ACF, the policy preferences of the EU policy actors would be in line with their policy core beliefs as the actors are motivated to translate them into policies. Additionally, in chapter 5 and 6, the research identified coordinated activity amongst the EU policy actors on the issue and evidences the development of a policy position at European level through selective perception. As a result, the adoption of the new regulatory framework somehow contradicts with the policy core beliefs of the EU policy

actors and also undermines the research's findings in relation to coordinated activity and selective perception which, therefore, requires an explanation.

With this objective in mind, in Chapter 7, the research focused on policy preferences of the EU actors and identified a change. During the preparatory phase of the White Paper on Sport, policy preferences reflected the actors' policy position. Perceiving the problems within the activities of players' agents as being detrimental to the socio-cultural role of sport in Europe, the actors recognized the need for a more effective regulation at European level. In this connection, especially the Committee on Culture and Education and the Member States became a strong proponent of the EU legal initiative. Therefore, the Education and Culture DG's decision of impact assessment in the White Paper on Sport in 2007 caused the conflict between the actors as the decision was contrary to their policy core beliefs. Nonetheless, during the conference in 2011, the change in the actors' preferences was evident. Firstly, the actors seemed to distance themselves from the idea of a regulatory role on the issue, but preferring sports governing bodies to regulate instead. The statements by both the representatives of the Education and Culture DG and the members of the Committee on Culture and Education highlighted this change. Especially, the change in the Committee's preference was significant as the Committee has traditionally been a strong proponent of direct legislative intervention at European level. Furthermore, another possible European instrument emerged during the conference which was the possibility of working with the European Standardization Organization (CEN) with a view to help in defining and raising quality level of the services provisions of agents. This change of preferences theoretically was a minor

change as it related to secondary beliefs of the EU policy actors and needs to be explicated.

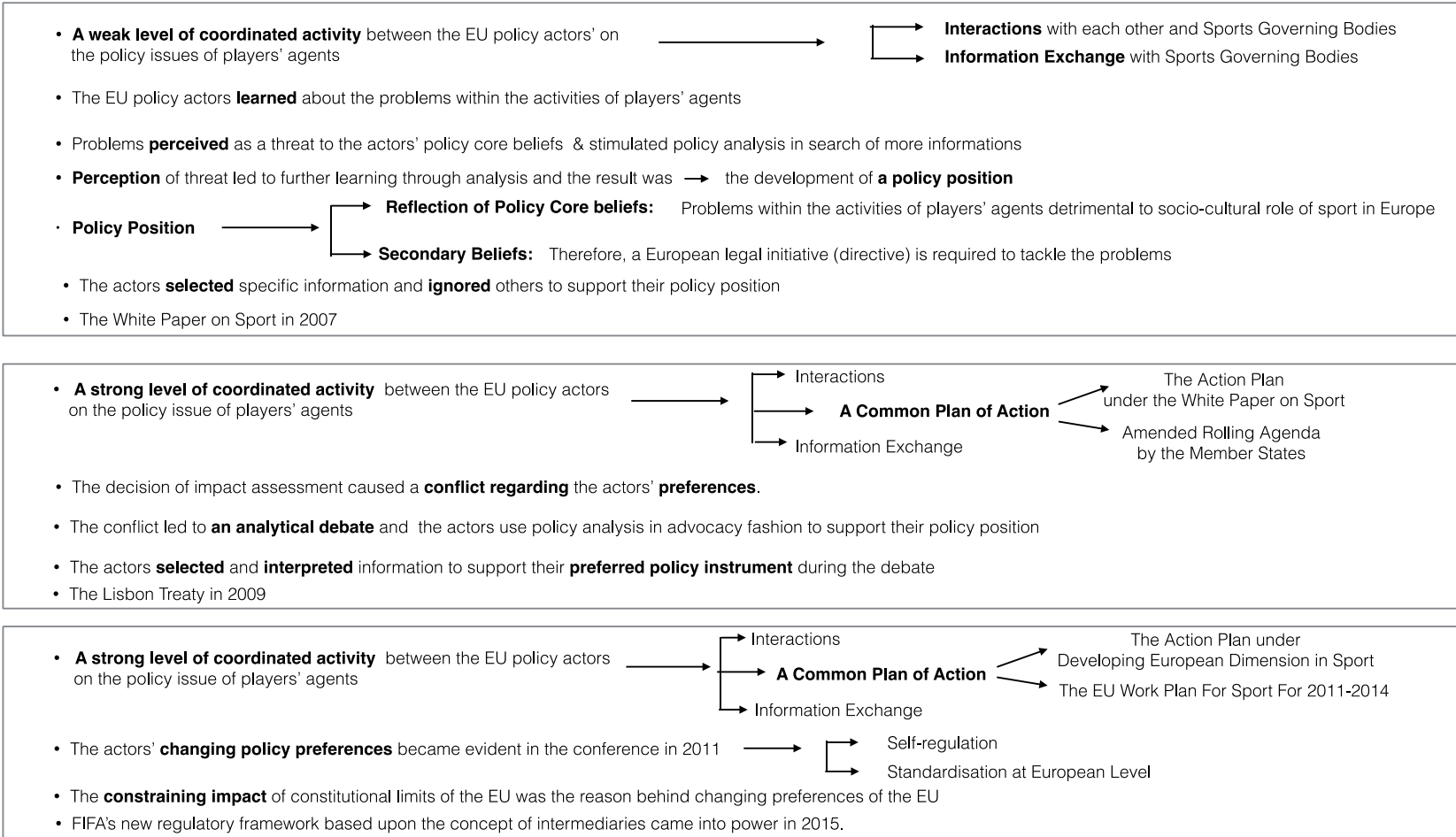
The research identified that the policy preferences of the EU policy actors were actually affected by the constitutional limits of the EU's policy making in the field of sport. Defined as relatively stable parameters by the ACF, these constitutional limits constrained the preferences of the policy actors. The factors are exogenous to policy subsystems. The research ascertained that there are two important limits of the EU policy making that are now constitutionally recognized: the recognition of the autonomy of sports governing bodies in governing their sports and the principle of subsidiarity that makes sport a primary responsibility of the Member States and sports governing bodies in Europe. Despite the new competency given under the Lisbon Treaty, the effect of the competency in relation to the governance of sport is trivial as claimed by Weatherill (2010,2011) and Garcia and Weatherill (2012). An actual impact of the Lisbon Treaty is that the autonomy of sport governing bodies was enhanced in regulating sport as the EU is required to take into consideration the specific nature of sport when contributing to the actions of the Member States and sports governing bodies. Furthermore, the principle of subsidiarity is also underlined. As a result, the research evidenced how these constitutional limitations actually forced the EU policy actors to prefer self-regulation instead of the EU legal initiative to regulate players' agents at European level. Therefore, the emergence of FIFA's regulatory framework found a theoretical explanation under the research.

This research aimed to deduce policy core beliefs of the EU policy actors within the socio-cultural advocacy coalition operating under the EU sports policy subsystem. In doing so, three research dimensions were examined in relation to the regulation of players' agents: coordinated activity, selective perception and policy preferences under chapter 5, 6 and 7. Although each chapter could contribute to our understanding of the EU policy making in the field of sport, how the research's finding could holistically presented. After all, the ACF conceptualizes public policies in much the same way as belief systems which enables the ACF to be able to map beliefs and policies on the same canvas (Sabatier 1988, p.132). In this connection, therefore, the Table 6 below maps the findings of the research out in order to conclude the contribution of the research into the our understanding of the EU sports policy in relation to the players' agents.

Figure 1: The Understanding of the EU Sports Policy in relation to Players' Agents

Time Frame  
 ↓  
 2000 - 2007  
 ↓  
 2007 - 2010  
 ↓  
 2010-2015

The Process of EU Policy Making in the Field of Sport



## **The Theoretical Advancement of the Advocacy Coalition Framework**

This research also contributes to the theoretical advancement of the ACF, i.e. our understanding of the ACF as a theoretical framework, through clarifying two key concepts of the ACF: coordinated activity and selective perception. Despite the ACF having become one of the most promising and utilized theoretical frameworks to analyze public policy process (Jenkins-Smith et al. 2014; Capano 2009; Sotirov and Memmler, 2012), coordinated activity has been the one of the most criticized aspects (Schlager 1995; Schlager and Blomquist 1996; Kubler 2001; Fenger and Klok 2001; Henry 2011; Sotirov and Memmler 2012). Scholars particularly criticized the focus of the ACF in locating the role of beliefs system for their formation of advocacy coalitions within subsystems whilst neglecting to explain how actors overcome the problems related to collective action. Additionally, the belief homophily hypothesis, which is based upon the assumption that shared beliefs are the key components of coalition, (Calanni et al. 2014; Jenkins-smith et al. 2014), required testing. This research, by identifying coordinated activity between the EU policy actors on the issue of players' agents, strengthens the explanatory power of shared policy core beliefs in formation and stability of advocacy coalitions under the ACF. Selective perception, on the other hand, has been central to the ACF's model of individuals and its impact on the process of policy-oriented learning and subsequent policy change is paramount. Nonetheless, there is a very limited literature on selective perception, actually only one study by Freudenburg and Gramling (2002) specifically focused on the topic which highlighted the importance of selective perception in policy making process. This research also fills this gap in the

literature through examining and identifying the role of selective perception by the EU actors' policy core beliefs in relation to the regulation of players' agents.

In relation to coordinated activity, the research identified a gradually intensifying coordinated activity between the EU policy actors. The findings on coordinated activity correlates with the ACF scholars' analysis on coordinated activity between policy actors. Firstly, the research identified the elements of coordinated activity between the EU actors that fit well with the analysis of Zafonte and Sabatier (1998). Zafonte and Sabatier (1998) clarified the concept of coordinated activity and defined it as "the spectrum of activities" involving a variety of interactions including information exchange, monitoring and aligning political behavior, and also developing, communicating and implementing common plan of action. The research identified particularly a strong coordination between the EU policy actors following the adoption of the White Paper on Sport (European Commission 2007a). The Action Plan (European Commission 2007c) provided a common plan of action in the form of impact assessment, combined with the amendments to the Rolling Agenda by the Member States. The process of impact assessment created also contextual framework for further interaction and information exchange between the EU policy actors.

Secondly, Schlager (1995, p.262) identified additional characteristics of the situation alongside shared policy core beliefs that affect the degree and longevity of coordination. Amongst those characteristics, repeated interactions are important to promote communications amongst policy actors and the acquisition



of information about the problem leading to a common understanding of the problem and acceptable policies for its resolution. The findings of the research certainly correlate to Schlager's analysis. In particular, repeated interactions within the consultation framework, not only with each other but also with sports governing bodies, during the preparatory phase of the White Paper on Sport were instrumental for the EU policy actors especially to understand about the problems with the activities of players' agents. The understanding of the problems led to the stronger coordination following the adoption of the White Paper on Sport within which the EU policy actors developed the common plan of action on the issue. Repeated interactions and information exchange moved into the context of impact assessment after the White Paper. Furthermore, Schlager (1995, p.262) argued that repeated interactions not only supports the acquisition of information, but it also postulates a context within which policy actors can change and shape each other's preferences. Sharing preferences so that actors' goals are congruent support coordinated activity amongst the actors. In this connection, despite the EU policy actors had a division in preferences in relation to actual policy instruments to regulate players' agents, their shared preference with regards to the regulation of players' agents was congruent. As the actors developed an understanding of the problem, the research identified that they developed a policy position and within that their policy preference was the necessity of a more effective regulation for agents at European level so as to tackle the problem which are considered to be detrimental to the actors' policy core, i.e. the socio-cultural role of sport in Europe. Therefore, findings of the research also relate to the analysis of Schlager.

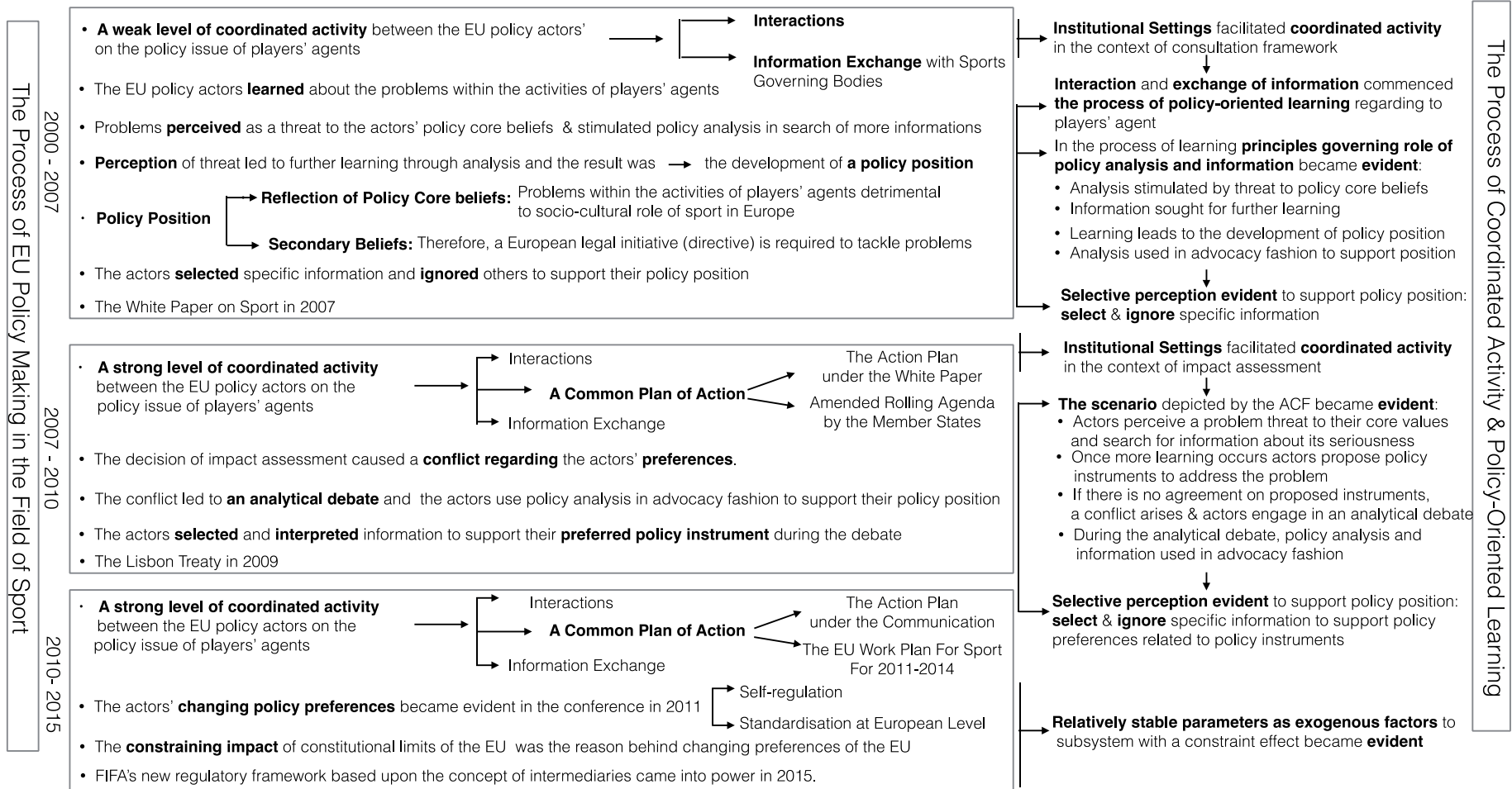
Finally, the research focuses on examining coordinated activity as opposed to empirically measuring policy core beliefs as the drivers of coordination between the actors. This approach represents the originality of the research as the majority of the literature on the components of advocacy coalitions within the ACF focus on the role of policy core beliefs in the formation of the coalitions, i.e. the belief homophily hypothesis. There are a number of studies investigating an empirical justification of the hypothesis through analyzing policy core beliefs (Sabatier and Weible 2005; Matti and Sandstrom 2011, 2013). However, none of these studies focused actually on the concept of coordinated activity. Their assumption is that the actors will coordinate their activities with others that hold congruent shared beliefs. In contradiction, this research assumed that the EU policy actors already hold congruent policy core beliefs and, hence, aimed to identify coordinated activity. Overall, these findings of the research contribute to our understanding of the concept of coordinated activity within the ACF.

In relation to selective perception, the research's original contribution is to fill the gap in the literature and clarify the concept of selective perception. Firstly, the research located selective perception within the scenario depicted by Jenkins-Smith and Sabatier (1993, p.45) for the process of policy-oriented learning. The research identified that the EU policy actors became aware of the problems within the activities of players' agents initially through interaction with sports governing bodies. The actors perceived these problems as being detrimental to their policy core beliefs (the socio-cultural regulation of sport) which led to policy analysis and learning. Eventual conflict on their preferences related to their preferred policy instrument caused an analytical debate. In this

context, selective perception performed by policy core beliefs was to support their policy position in relation to the regulation of players' agents. Furthermore, the research's investigation also evidenced the principles of policy analysis and information in the process of policy-oriented learning as outlined by Jenkins-Smith and Sabatier (1993, p.45). According to Jenkins-Smith and Sabatier, policy analysis and information is governed through four principles. Policy analysis is stimulated by threats to policy core beliefs and such threats lead policy actors to seek further information on the issue which also facilitates learning. In this context, the actors develop a policy position and then analysis and information is used in advocacy fashion to support this position. The research evidenced these principles in the process of the EU actors' learning in relation players' agents. Learning about the problems with the activities of players' agents stimulated the analysis and search for more information by the EU policy actors as they perceived these problems detrimental to their policy core beliefs. A further learning led to the development of their policy position and analysis then used in advocacy fashion to support their position. These findings of the research in the process of policy-oriented learning and the impact of selective perception are the research's original contribution to understanding of the ACF.

The Table 7 summarizes the findings of the research in relation to the ACF and relates them to the research' finding on the EU sports policy on players' agents.

Figure 2: The Understanding of the EU Sports Policy in relation to Players' Agents Theoretical Advancement of the ACF



To conclude, this research investigated the EU's intervention into the regulation of players' agents from the perspective of the EU's socio-cultural regulation of sport. In doing so, the focus has been on the EU policy actors of the socio-cultural advocacy coalition operating within the EU sports policy subsystem. The research identified that over the years the EU policy actors coordinated their activities in relation to the regulation of players' agents and selected and interpreted information in line with their policy core beliefs. The identification of coordinated activity between the actors and the evidence of selective perception indicate their policy core beliefs. However, their policy preferences with regards to policy instruments and the emergence of the FIFA regulatory framework may indicate the contrary. However, the research also identified that rather than the policy core beliefs it was the constitutional limitation of the EU that impacted on the policy preferences of the EU policy actors. On this basis, the research argues that it was actually the socio-cultural regulation of sport that has driven the EU's intervention into the regulation of players' agents.

### **Possible future avenues for research**

This research has focused on the EU policy actors of the socio-cultural advocacy coalition within the EU sports policy subsystem. This is due to the research's objective to understand the motivations of EU's intervention into the regulation of players' agents. Nonetheless, the policy actors of the socio-cultural advocacy coalition are not limited to the EU policy actors. There are a number of sports governing bodies, stakeholders and the representative of players' agents involved. Therefore, it would be interesting to analyse beliefs systems of these actors in relation to the regulation of players' agents. Once these actors from

sport is articulated better, this would also pave the way for further analysis around potential players' agents subsystem within the wider EU sports policy subsystem. The understanding of potential players' agents subsystem would also fully explain the motives behind FIFA's new regulatory framework and make propositions for future direction of regulation in this field.

In addition, this research represents a theoretical contribution to the EU policy making in the field of sport. The regulation of players' agents, as a policy issue, provides the right context for further theoretical analysis. The ACF, as a theoretical framework, has a number of aspects that need to be explored. These aspects can be investigated in the context of regulation of players' agents.

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