# **GOVERNANCE IN EUROPEAN FOOTBALL: THE ROUTE FROM SELF-REGULATION TO CONTROLLED AUTONOMY**

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Abstract. This article examines the concept of governance in its broadest sense, with particular reference to the context of sport and its applicability to European football. To facilitate comprehension of the research problem, the structure of European football's governance network, its primary stakeholders, and the decision-making process within the network are also described. The paper then proceeds to examine the principal factors and occurrences that have led to the diminution of European football's autonomy and its transition from self-regulation to a state of controlled autonomy. In order to achieve this objective, the research examines the influence of significant European Union court cases and public authority decisions on the aforementioned process. The objective is to provide a theoretical justification for the key factors and major events that occurred in a specific sequence and resulted in a transformation of governance in European football from self-regulation to controlled autonomy. The methodology employed in this study comprises an analysis and systematization of European Union legislation and court judgments, as well as an examination of scientific and academic publications and Internet resources. This is followed by a comparison and contrast of the findings, which are then subjected to a systemic analysis. The results of the study indicate that the accelerated commercialization of European football has resulted in a number of commercial disputes between European clubs, players, and football governing bodies, which are represented by non-governmental organizations. This resulted in the judicial scrutiny of certain football regulations, which in turn drew the attention of public authorities. This led to the interference of European Union authorities in the autonomy of football by adopting decisions that affected the level of autonomy of international organizations that govern European football. In conclusion, the transformation of governance in European football from self-regulation to controlled autonomy was primarily the result of a series of conflicts of interests on commercial grounds between European clubs, players, and football governing bodies. These conflicts gave rise to interference in football matters from European courts and public authorities.

Keywords: FIFA, UEFA, football federation, sports autonomy, football management.

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#### УРЯДУВАННЯ У ЄВРОПЕЙСЬКОМУ ФУТБОЛІ: ШЛЯХ ВІД САМОРЕГУЛЮВАННЯ ДО КОНТРОЛЬОВАНОЇ АВТОНОМІЇ

Анотація. У статті досліджується, що означає концепція врядування у широкому розумінні, у контексті спорту і як вона застосовується до європейського футболу. Для кращого розуміння проблематики дослідження описано структуру європейської футбольної мережі врядування, її основні зацікавлені особи і процес прийняття рішень у мережі. Розкрито головне досліджуване питання, які основні чинники та події у хронологічній послідовності їх настання призвели до зменшення незалежності європейського футбольного врядування та її еволюції від саморегулювання до контрольованої автономії. Із цією метою проаналізовано основні судові справи Європейського Союзу та рішення органів державної влади, що поступово вплинули на цей процес. Мета – теоретично обґрунтувати ключові чинники та основні події у хронологічній послідовності їх настання, що призвели до трансформації врядування у європейському футболі, - від саморегулювання до контрольованої автономії. Методи: аналіз і систематизація законодавства та судових рішень Європейського Союзу, наукових і академічних публікацій та Інтернет-ресурсів, порівняння і співставлення, системний аналіз. Результати: установлено, що швидка комерціалізація європейського футболу викликала низку конфліктів комерційного характеру між європейськими клубами, гравцями та керівними органами у футболі в особі неурядових організацій. Це призвело до судового оскарження певних правил, що регулюють діяльність у сфері футболу, та привернуло увагу державних органів із подальшим утручанням у футбольну автономію шляхом прийняття відповідних рішень на рівні Європейського Союзу та звуження саморегулюючої влади міжнародних організацій, що управляють європейським футболом. Висновки: трансформація врядування у європейському футболі від саморегулювання до контрольованої автономії сталася, передусім, у зв'язку із серією конфліктів інтересів із комерційних підстав між європейськими клубами, гравцями і футбольними керівними органами, що призвело до втручання у футбольні справи з боку європейських судів і органів державної влади.

Ключові слова: ФІФА, УЄФА, футбольна федерація, автономія спорту, управління футболом.

**Introduction.** Governance as a concept has been attracting attention of scientific and academic community for a long time. The term "governance" is relatively not new, it is used in society for a long time and has actually become widely acceptable, but still there is no commonly recognized definition of this term. Although there is a significant scientific and practical interest to the concept of governance, a consensus on the exact and clear content of this term has not been achieved yet [7]. According to H. K. Colebatch (2014) "Governance has been widely adopted as a concept, but without much clarity about its meaning (or perhaps because of this)" [4, p. 307].

Governance may to certain extent be considered as the double concept of government: the governing body tries to

Furman D. Governance in European football: the route from selfregulation to controlled autonomy. Sport Science Spectrum. 2024; 2: 9–13 DOI: 10.32782/spectrum/2024-2-2

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establish and control its sphere of influence, but it must also respond to reactions, adapt its efforts and cooperate with other organizations and social groups, where it comes to the point that the government's sphere of influence is subject to contestation and negotiation [18]. Society is becoming more complex, fragmented and multilayered, for the effective functioning of which in many areas of activity, including sports, governance networks are emerged, which include various types of organizations and groups representing the commercial sector, civil society and the state [19, 22, 26]. The main feature of such networks is a decrease of government's interference and an increase of self-regulation, when various citizens, non-governmental volunteer organizations and other

Фурман Д. Урядування у європейському футболі: шлях від саморегулювання до контрольованої автономії. Sport Science Spectrum. 2024; 2: 9–13 DOI: 10.32782/spectrum/2024-2-2 groups of people are more and more involved into the regulatory activity [22]. In such networks representatives of public authorities and civil society interact with each other establishing certain behavioral rules in order to increase the efficiency of the network as a whole.

All above fully relates to the governance in football, which due to its sporting specificity and regulation primarily by non-governmental organizations enjoys certain level of autonomy from public authorities. A number of foreign researches cover the issues of European football's governance investigating its main models such as autonomous self-regulation and controlled autonomy (controlled governance) with different methods of control including regulation through the enforcement of private rights by the courts, agenda-setting governance and multilevel governance [17, 19, 20, 22]. Therefore the above issues do not require any further investigations. At the same time changes in European football in the chronological sequence of key factors and major events that have led to transformation of its governance from self-regulation to controlled autonomy in the "cause and effect" order are not fully investigated and require further analysis.

Development of European football's governance is also important for Ukrainian football because the latter is a part of European football community. Ukrainian national teams and clubs participate in European football competitions and are directly affected by the governance models and regulatory frameworks established by the Fédération Internationale de Football Association (FIFA) and the Union of European Football Associations (UEFA). Understanding major events in the governance of European football is crucial for Ukrainian non-governmental football associations and football clubs to effectively regulate domestic football affairs and successfully compete on the European stage respectively.

**Objective** – to theoretically justify key factors and major events in chronological sequence of their occurrence that resulted in transformation of governance in European football from self-regulation to controlled autonomy.

**Methods:** analysis and systematization of European Union's legislation and court judgments, scientific and academic publications and Internet-resources, compare and contrast, systemic analysis.

Results of the research. Similar to governance in its wide sense, governance in sport also remains conceptually undeveloped and without exact meaning of its content [4, 7]. At the same time, a defining feature of sport is the need to keep balance between cooperation and competition. On one hand, athletes and sporting teams strive to win a competition. But on the other hand, they need to follow certain rules and cooperate among each other to assure that competitors are more or less equal and uncertainty of the competitions' results is secured. Exactly governance serves to this ultimate aim, shaping and maintaining a balance between competition and cooperation. Therefore governance in sport specifically covers two main issues: the organization of athletes, teams, clubs – on one side, and the organization and regulation of a particular sport itself with the purpose to ensure fare cooperation and competition between the contestants – on another side [18].

The combination of these two levels is possible subject to existence of certain level of sport autonomy that means

independence of sport governing bodies from the government institutions in adoption of rules and regulations pertaining to creation of a competitive and balanced environment in the sphere of sport. Therefore governance in sport is largely considered as a combination of self-regulation and public administration, the degree of influence of which varies depending on a particular sport, a certain period of its development and those problematic issues that require attention [3, 9, 20, 21].

Football in terms of governance is not an exception - it enjoys certain degree of autonomy with self-regulation of its matters. The word "autonomy" comes from a combination of the Greek words "auto" and "nomos" and means "those who make their own law", which is self-explanatory. At the same time the concepts of autonomy and governance remain major issues in many recent debates about sport [2]. The governance of European football is based on the pyramidal-hierarchical structure. FIFA is at the top of this pyramid, below there are continental federations such as UEFA in Europe, then the turn comes to national and regional football associations, and finally clubs, players and grassroots organizations are at the lowest tier. Each level maintains a hierarchical relationship with the tiers above and below having its own rights and scope of competence. In practice such arrangement grants UEFA vast control over all major decisions with regard to European football. Consequently, all fundamental decisions or regulations that relate to European football must be adopted or approved respectively on the basis of "top to the down" principle of competence, which bind upon the subjects of lower tiers within this institutional network [6, p. 305]. Such pyramidal structure with top-down subordination corresponds to the European sport model established in the European Union [9, 12].

Under the hierarchical structure and a vertical chain of decision-making process in football the upper governing bodies have authority over the lower levels. When FIFA makes a decision, it goes down to UEFA and then to the national football associations primarily with mandatory effect. Professional clubs and players, siting the base of the pyramid, must adhere to the regulations set by these higher governing bodies in order to participate in their competitions. Such vertically binding mode of football self-regulation attracted a number of conflicts between clubs and players on one side, and football's governing organizations on another, because those at the lower levels felt adversely affected by the upper levels' decisions and began questioning the legitimacy of the adopted rules [20], especially when commercial interests of professional clubs and players were concerned. Ultimately main problematic issues, which the most negatively impacted the interests of professional footballers, were challenged in the courts.

In 1963 George Eastham, a professional player at Newcastle United Football Club (United Kingdom), successfully challenged in the High Court of England and Wales the English transfer system that existed at that time, according to which the English football club had the right to refuse the player in the transfer to another club without paying transfer compensation even after the expiration of the contract. The court decided that the transfer system of England in terms of such retention of players is unjustified [28].

In 1976 Gaetano Dona, a commercial agent for Italian Football Club Rovigo, successfully challenged the Italian Football Federation's national quota system in the European Court of Justice, according to which only players with Italian citizenship could participate in competitions of professional and semi-professional football teams in Italy. The Court found that the rules of sports organizations restricting the right of professional and semi-professional players with the nationality of one European Union (EU) country to participate in football matches of another EU country on the grounds of nationality contravene EU law on free movement of workers and services within the EU [8].

In 1995 Jean-Marc Bosman, a professional player at Belgian football club Liege, successfully challenged two systems of professional football in the European Court of Justice: the transfer system regarding the mandatory payment of transfer compensation upon transfer to another club after the expiration of the contract, and the system of national quotas. The reason for initiating this case was that the Belgian Football Association refused to give J. M. Bosman the transfer certificate necessary for his transfer to the French club Dunkerque after the end of the contract with Liege, since the new club refused to pay Liege transfer compensation. The court has decided that EU law makes it impossible to apply the rules established by sports associations, according to which a professional football player who is a citizen of one EU country, cannot at the end of his contract with the old club transfer to a new club in another EU country if the new club does not pay a transfer fee to the old club. The court has also decided that EU law makes it impossible to apply the rules established by sports associations, according to which football clubs can field a limited number of professional players, who are citizens of the other EU countries, to the matches they organize (Bosman judgment) [10].

Football related court decisions gave rise to the commencement of regulation of sport in general, and football – in particular, by the European public authorities:

1) in December 2000 the European Council adopted Nice Declaration on Sport, which declares support for the independence of sports organizations and their right to organize themselves through appropriate associative structures, and recognizes the task of sporting organizations to organize and promote their particular sports and sporting rules, but with due regard for the national and EU legislation [15];

2) in March 2007 the European Parliament adopted a resolution on the future of professional football in Europe, where it emphasized that economic aspects of professional sport are subject to the EU law, and that football should ensure the uncertainty of competitions results, which could serve as an excuse to introduce specific regulation of football events, but such feature does not guarantee automatic exemption from EU competition rules for any economic activity generated by professional football [16];

3) in July 2007 the European Commission adopted the White Paper on Sport, which emphasizes that competition law and regulation of the EU internal market are applicable to sports to the extent that sport is an economic activity, and that sport is also subject to other important aspects of the EU law, in particular the provisions on EU citizenship [11].

Since that time recognizing of European professional football as to some extent an economic activity has been finalized. Consequently, although authority of football governing bodies to regulate football matters remained, it was put into certain frames to the extent that autonomous self-regulation was substituted by controlled autonomy. Moreover, new cases attempting to further narrow the model of European football's governance due to conflict of interests on commercial grounds emerge:

1) One recent issue relates to the European Super League that was created by 12 leading European clubs in 2021 as alternative to UEFA competitions [23, 27]. As FIFA and UEFA prohibit creation of new football championships outside the FIFA and UEFA competitions without their prior approval, the issue was challenged. In December 2023 the European Court of Justice has issued preliminary ruling in the case [13] and commented in the press release: "the FIFA and UEFA rules making any new interclub football project subject to their prior approval, such as the Super League, and prohibiting clubs and players from playing in those competitions, are unlawful. There is no framework for the FIFA and UEFA rules ensuring that they are transparent, objective, non-discriminatory and proportionate" [5].

2) Another recent issue relates to the "home-grown player" rule introduced by UEFA for the 2006/07 football season as a consequence of Bosman judgment and finally implemented for the 2008/09 season. According to this rule in order to participate in UEFA club competitions a football team must have 8 "home-grown" players in its squad (4 players must be "clubtrained", and remaining 4 – national "association-trained") [25]. The issue was challenged, and in December 2023 the European Court of Justice issued a preliminary ruling stating that such rules may be adopted provided that those rules are suitable for ensuring, in a consistent and systematic manner, the attainment of the objective of encouraging, at local level, the recruitment and training of young professional football players, and that they do not go beyond what is necessary to achieve that objective [14].

**Discussion.** The conducted research demonstrates that sports organizations historically had significant autonomy with regard to the regulation of their sports. This autonomy allowed them freedom to establish the rules and principles of sports while safeguarding its core values from external influences. However, in recent times, this autonomy has faced growing challenges in national and European courts, as well as through alternative arbitration requests submitted by various interested third parties [1]. A number of court verdicts challenged certain sports rules and were regarded by sports federations as encroaching on their autonomy and the specificity of sport [3].

Following court judgments, growing commercial nature of football attracted attention of European public authorities, which became questioning the autonomous status of football. The main concern of public authorities was whether football is a non-commercial volunteer activity or it bears a commercial nature. The governments at central and local levels became considering that if such activity tended to be a commercial one, it had to be governed by economic laws of the market and comply with the principles and laws of competition.

On the other hand, European governing bodies used to have limited competences in sport matters due to established autonomous status of sports at the European level. Therefore the EU did not have ability to intervene too strongly into the

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sector, and a difficult balance had to be found between recognizing total autonomy and establishing an extensive government intervention [22]. Such balance was found by adopting respective regulations at the European Union level declaring the autonomous status of football, but in compliance with the applicable legislation in respect of economic activity generated by professional football.

Further down the conducted research allowed determining key factors and a sequence of major events in the evolution of European football's governance that caused its transformation from autonomous self-regulation to controlled autonomy. This shift occurred due to various reasons including bribery scandals, match fixing and corruption, especially amongst the international sport organizations including FIFA that resulted in questioning the legitimacy of sport governance model [24]. At the same time the research demonstrates that such transformation was mainly driven by the conflicts of interests on commercial grounds due to rapid commercialization of football in the following sequence:

1) From the very beginning of its development football used to enjoy wide autonomy in the regulation of its own activities. Football governing bodies were traditionally wary of any external regulation, whether from governments or courts [19]. The highest governing bodies of football such as FIFA and UEFA regulated football and football events autonomously through self-governing network with its own rules and regulations. It looked like football fell out of the scope of guidance by public authorities, to a certain extent avoiding usual compliance with governmental regulations and enjoying a sort of special status [22];

2) Gradually football has begun increasingly commercializing, and the economic component became prevailing over the sporting one. Under such circumstances the highest governing bodies of football utilized their self-regulatory power and tried to find a balance between these two components adopting specific commercially-driven regulations;

3) Mandatory decisions of the upper governing organizations began adversely affecting commercial interests of clubs and players more and more often. That caused a number of conflicts of interests between the upper and lower levels of the European football pyramid, which gave rise to challenging adopted rules in the courts;

4) Commercially-driven rules of FIFA and UEFA, aimed to keep competitive balance between commercial and sporting components in professional football, attracted public attention since they were challenged in the courts, which resulted in the launch of respective regulation by European public authorities with regard to economic activity generating by European football.

There are two core systems in European professional football – transfers and nationality quotas of footballers. The transfer system regulates the terms under which a player can move from one club to another. Those times football clubs were entitled to compensation for a player's transfer to another club even if the contract with the previous club had expired irrespectively of the moving player's age. Such system was designed to compensate the club for the costs that it incurred in training and educating of the players and also to encourage clubs to invest in training of players. On the other hand, this principle restricts players in their free movement from one club to another after the expiration of the contract with the previous club. Nationality quotas fix the maximum number of players of another citizenship that a club can simultaneously field in the same game. Nationality quotas exist to keep the quality of national teams' players and to secure interconnection of national fans with their club [20]. These two systems became the first issues that were successfully challenged.

Bosman judgment was the one significantly effecting regulation not only in football, but also in the entire sport. Although it was adopted with regard to football, the entire sports movement perceived it as governmental intrusion into the autonomy of national and international sports organizations. Many years have passed since this judgment, but the autonomy of non-governmental sports organizations continues to be a pertinent topic, along with the related concepts of independence and self-regulation within the sports movement, all of which are closely connected with the issue of governance [3]. As a result of Bosman judgment, in February 1996 UEFA abolished national quotas for players with EU citizenship to participate in European club matches. The transfer system as challenged by Bosman remained in force for a while, but gradually under pressure from the European Commission, it has also undergone changes in 2001 [20].

That was the way how European football, which takes its origin as a self-regulated activity through European football governance network, gradually transformed to controlled autonomy. The traditional self-regulatory model, where football associations and clubs were enjoying a high degree of autonomy from public authorities, is increasingly being supplemented or even replaced by more controlled model.

Conclusions. It is determined that European football was developing autonomously for a long time, not attracting the attention of public authorities and managing its activities through self-regulation. Gradually football has begun commercializing, trying to balance between the specificity of sport (the need to maintain the uncertainty of the results of matches and the competitive balance between football clubs) and the economic component. That has caused a series of conflicts between clubs, players and football governing bodies, which extended far beyond football governance boundaries involving European courts and European public authorities. As a result, European football governance has been transformed from autonomous self-regulation to controlled autonomy, whereby football governing bodies has to regard the EU legislation, especially competition regulations, because professional football is now considered as economic activity. That led to significant changes in European football governance network, which now includes not only clubs, players and non-governmental football organizations but also European public authorities. Besides, European public authorities have become top-level decision makers and stakeholders of European football governance network together with FIFA, UEFA and national football associations, which are non-governmental organizations.

**Conflict of interests.** The author declares that there is no any conflict of interests.

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## ІНФОРМАЦІЯ ПРО АВТОРА

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