

'Good' Policy Theory and the EU's Sports Policy

Is the EU's Sports Policy a 'Good' Policy?

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Since the 1970s, sport has been on the agenda of the European Union, but no coherent approach has so far developed. Rather, issues that are 'inherent to sport' were said to fall out of Community law anyway; while sporting matters that fell under Competition Law and Single Market Policies, most notably, were indeed subject to EU jurisdiction.

In recent years, however, excluding purely sporting matters from the scope of Community law per se has dissolved into an approach, especially by the European Courts, to consider each and every case individually. Now, it is indeed possible that the European Courts rule a matter that would have formerly been outside of Community law to be subject to the jurisdiction of EU law – this is the so-called case-by-case approach. This has been facilitated by the recent developments in the EU's involvement in sport; most notably the White Paper of 2007 and the Reform Treaty.

This research will take these developments as a starting point to see whether the current approach can be called 'good'. In order to do so, a theory about what constitutes a 'good' policy will be built; revolving around the specific criteria of the formulation of a policy in a certain way, the feasibility of a policy, and the satisfaction of stakeholders.

In the end, it will be seen that the EU's involvement in sport indeed can be said to fulfill these three criteria and can therefore, on basis of this theory, be called a 'good' policy.

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1. Introduction

In recent years, the European Union's (EU) actions have more and more had an effect on the people living in its area. Most notably, the free movement of people, services, goods and capital is something whose benefits (and possibly downsides) have been felt by 'regular' people and not only those interested in European Union politics. Another example is the introduction of the common currency: It is now possible to pay with the Euro in almost every Member State of the EU.

These examples show that there are actions the EU takes in certain fields whose effects can be felt by basically every individual living in the EU area.

But this is not the case for each and every action the EU takes. Indeed, there are policy fields where EU actions do not have a direct effect on the public in general. This research will look at one of these fields: The sport sector. While 38% of European citizens say they go in for sports,¹ they can hardly be said to be affected by EU actions in this sector, as they more or less participate on an amateur level. Professional athletes, however, do have to face the effects that EU actions, and most notably rulings by the European Courts, have on them. The most prominent example is probably the *Bosman* case of 1995 that was afterwards argued to have changed the world of football forever.

But the EU did not start involving in sport only in 1995. In fact, the first sport-related cases were brought before the ECJ in the 1970s. In the judgments of these cases, the European Courts up until quite recently took the stance that as long as a sporting matter does not have an economic effect, it falls outside of the scope of Community law. Sport was said to be 'special' and issues other than the economic ones did not fall within EU jurisdiction. Such 'purely sporting matters' were to be dealt with by the respective sporting bodies; most importantly the sporting associations of the respective sports.

This approach has been replaced by the so-called case-by-case approach that will be of importance in this research. However, it is still not definitely clarified "(...) whether sport is 'special', whether it deserves specific treatment under European law and to what extent and why."²

EU involvement in sport has thus existed for already 40 years now; however, a coherent approach has yet to be developed. Two recent developments might help to find a remedy: In 2007, the European Commission issued a White Paper on Sport including an Action Plan; and the Reform Treaty will give sport Treaty status for the first time ever in an EU Treaty.

¹ Special Eurobarometer 2004

² Siekmann: 37

This “culmination of a long process”³ serves the occasion for this research: It will ask whether the current European Union’s Sport Policy is a ‘good’ policy. Three sub-questions will in the end lead to the answer:

First of all, it will be seen whether sport and the EU have a connection at all. This is done by explaining the relation of sport to existing EU policies. As will be seen, there are indeed policy fields that have an effect on sport in the EU. This will be done in chapter 3.

Secondly, in order to be able to conclude whether the sport policy is ‘good’, a theory about what constitutes a good policy is needed. This will be done in three connected parts in chapter 4: Since sport’s stakeholders will be considered highly important, a definition of the term will be given. This will be followed by an explanation of Lindblom’s (1959) theory of good policy, from which an own theory will be derived; and an explanation of two other criteria for good policy.

Thirdly, the then-following fifth chapter will apply these criteria to the EU’s sports policy and will, by dint of examples from sport, see whether they can be said to be fulfilled or not. This application will serve as the background to answer the main question: Is the EU’s Sports Policy a ‘good’ policy?

In the end, the conclusion will pick up the theoretical findings and the evaluation of them again and recapitulate what the research was about. Because an answer will be found to the question whether the sport policy can be said to be ‘good’ or not, there will also be some glance into the future and the direction of where sport in the EU is going.

1.1 Definition of “Sport”

The White Paper on Sport gives a clear definition for the term “sport”. According to the Council of Europe and picked up by the Commission, sport is “all forms of physical activity which, through casual or organized participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels”.⁴ With this definition, it is clear that sport has both a professional as well as an amateur level: It is not just the professional sport that is watched by many people on television, but it also has the social role of ‘improving physical fitness and mental well-being’ and ‘forming social relationships’. This research, however, will mainly focus on the professional side although there are references to and overlaps with the amateur level.

³ Siekmann: 42

⁴ European Commission 2007 (c): paragraph 1

1.2 Definition of “EU SportsPolicy”

At this point, it needs to be noted that there technically is no EU sport policy⁵ and that “despite a high level of involvement in sport, the EU formally has no legal competence to develop a common sports policy”.⁶ The Commission even goes as far as to say that there “(...) can be no question of large-scale intervention or support programmes or even of the implementation of a Community sports policy.”⁷ However, even though the current approach to sport might not be a concrete policy, because a “general set of ideas or plans”⁸ constitutes a policy, it can be treated as such within the scope of this research. In this context, ‘policy’ does not have to be a defined action in a policy area that exists already, but can also be like the somewhat careful approach to sport that characterizes the EU’s current approach.

1.3 Importance of Research

The question whether the EU’s Sports Policy is ‘good’ is relevant for its policy-makers, critics, Member States, all kinds of stakeholders, and for the society at large. There are three reasons for this.

First of all, sport positively influences social life in terms of team spirit, solidarity, tolerance, fair play, personal development and active citizenship.⁹ Because these characteristics can be said to be important for example in children’s education, there is a relevance for society. In addition, the society also benefits from sport in terms of employment. “(...) [T]he number of jobs created directly or indirectly by the sport industry has risen by 60% in the past ten years to reach nearly 2 million”¹⁰; and sport provides jobs for players, managers, trainers, organizers, journalists, sports cloth designers and the hotel and transport industries.¹¹

Secondly, (professional) sport has become ever more international. Thinking of common issues that would best be attacked from a common level, especially doping, corruption, and violence come to mind. These are also among the issues that EU citizens identify as negative aspects of sport.¹² As these issues spread ever more with the growing internationality of sport, the question is relevant for

⁵ Croci: 140

⁶ Parrish (b): 249

⁷ European Commission 1999: 6

⁸ Newton and van Deth: 263

⁹ European Commission 2007 (c): paragraph 1

¹⁰ European Commission 1999: 4

¹¹ Blanpain: 1

¹² Special Eurobarometer 2004

stakeholders from the international sports world that want to see 'clean' sports without doping, corruption, violence and the like.

Thirdly, the case of sport is one example of many for the relation of the EU to stakeholders. As the EU's competences are not (yet) definitely defined, stakeholders and the EU are reliant on a well-working relationship that all actors benefit from. In this research, stakeholders will play an important role in that their satisfaction with a policy is crucial in order to make a policy come about. Hence, studying this topic renders some insights into the relation of the EU to sport's stakeholders.

In addition, the theory of a 'good' policy could be used to check any other policy field as well. Hence, the theoretical part of this research could provide the basis for any other research that sets out to check whether a certain policy is 'good'.

2. Research Methods

2.1 Data Collection

Due to the study being a literature study, data were taken from official EU documents, books, and articles; and due to the nature of the research topic, data were not detected by means of interviews, questionnaires or the like. Rather, the focus was put on the indicated documents.

2.2 Literature

A short comment needs to be made about the literature read in preparation for this research, especially about the articles. Some of them have not been published in official journals, but have rather only been published online, for example in the online journal *Entertainment and Sports Law Journal*. The danger that information in these issues might not be reliable simply because any person can upload his or her work to this journal has been taken into consideration when reading the articles. However, articles used from this journal do make references to sources that are reliable in any case, and have therefore been approved of.

Another remark needs to be made about Lindblom's article. Having been written in 1959, it is rather old. However, this research uses it as a background to build a theory about what constitutes 'good' policy. Therefore, its age does not impair its truths; on the contrary, it shows that its truths still apply. Notwithstanding, Lindblom's theory will be evaluated critically; shortcomings will be detected; and a mix of his two criteria will be used for the analysis.

2.3 Data Analysis

The data were read and analyzed bearing in mind the overall topic of 'sports'. A theory about 'good' policy was built. No computer program was needed due to the study being a literature study.

3. The Relation of Sport to Existing EU Policies

This research is not supposed to give a historical overview of the EU's relation to sport; this would be too much for its scope. It suffices to know that although the EU does not have Treaty competences in sport (yet), it has been involved since the 1970s, and has linked sport to the development of the Single European Market.¹³ In the absence of direct competences for sport, other European policy areas have given the background for EU intervention.¹⁴ "(...) [C]riminal law, contract law, the law of torts, public law, administrative law, property law, competition law, EU law, company law, fiscal law and human rights law, have been applied to sporting contexts involving public order, drugs, safety, disciplinary measures, conduct and wider issues relating to restraint of trade, anti-competitive behaviour and the commercial exploitation of sport."¹⁵

Even though this is not the only argument for why sport and EU policies meet in some ways, especially important in this respect is the EU's Competition Policy. This policy was not initiated with sport in mind. Originally, it is designed to forbid "(...) the prevention, restriction or distortion of competition within the common market (...)"¹⁶. This is the case because anti-competitive practices "(...) might choke off the competitive dynamics generated by the completion of the single market."¹⁷ Thus, it calls companies, or 'undertakings' as the EU calls them,¹⁸ to be fair. As Competition Policy affects all other common policies,¹⁹ the EU's Sports Policy needs to be in line with it as well.

Although sport is not about 'undertakings' in the actual sense of the word, clubs can be considered companies since they, as the *Bosman* ruling clarified, are employers of their athletes. This makes clubs undertakings as well. Furthermore, the example of football shows that umbrella organizations are undertakings as well. "(...) [A]s a grouping of clubs, national football associations are associations of undertakings in terms of Article 81 of the EC Treaty. (...) This in turn makes FIFA, a grouping and emanation of national football associations, subject to Article 81 of the EC Treaty as an association of

¹³ Parrish (b): 247

¹⁴ European Commission 2007 (c): paragraph 1

¹⁵ Parrish (a): 21

¹⁶ Art. 81 EC

¹⁷ Moussis:235

¹⁸ Lindström-Rossi et al.

¹⁹ Moussis: 236

undertakings.”²⁰ Hence, EU Competition Policy can be applied to the realm of sport as well, since sport associations can be treated just the same as are any other undertakings.

The connection of sport to EU policies is therefore justified. However, one should not forget that due to the Lisbon Treaty not yet being ratified, a specific treaty article for sport does not exist yet. Applying Competition Policy (or any other EU policy for that matter) to sport, therefore, does not change the fact that sport actually has an unclear legal basis.²¹

Even though sport can at times be said to fall within certain policies, however, it is not *per se* subject to Community law. This is the case because sport is ‘special’. To stay with the example of Competition Policy, “[t]he laws of free economic competition cannot be applied as such, because a football club needs viable competitors of a comparable strength for having an exciting competition”.²² This so-called specificity of sport will reoccur below in section 5.2. What is important to keep in mind here is that while on the one hand, sport can indeed be subject to Community law, it is special at the same time and does not always fall under the EU’s jurisdiction.

On all accounts, this chapter shows that the research does have its rightfulness to ‘check’ the relation of the EU to the sport sector; as sport can be, but not always is, part of many areas that fall under Community law. The most obvious policy that has an effect on sport is Competition Policy; but it is not the only one: Free movement of persons, services and capital are just as important in this regard.²³

Having clarified the connection between the EU and sport, I will now turn to the theoretical part of this research. In order to be able to analyze the EU’s current approach to sport and to see whether it is ‘good’, a theory needs to underlie the analysis. This is what the following chapter will provide: A theory about what constitutes a ‘good’ policy will now be given.

4. ‘Good’ Policy Theory

The theory will consist of three criteria that will all use the concept of “stakeholders”. Therefore, the term will now be defined before turning to the three criteria themselves.

²⁰ Lindström-Rossi et al.: 73

²¹ Arnaut: 99

²² Blainpain: 4

²³ Wathélet: 52

4.1 Definition of “Stakeholder”

In order to give a definition as exact as possible, it is easiest to examine who *cannot* be called a stakeholder. “Excluded from having a stake are only those who cannot affect the firm (have no power) *and* are not affected by it (have no claim or relationship).”²⁴ The term ‘firm’, in this regard, can be substituted by ‘EU’ to make it more explicit. Here, I assume that the relation of actors to a firm is comparable to the relation of actors to the EU.

Following this definition of who is *not* a stakeholder, those who indeed are stakeholders include every actor that can affect a course of action or are themselves affected by this course. In order to either affect or be affected, stakeholders have to have certain characteristics. These are power, legitimacy, and urgency.²⁵ This is to say that all those that are affected by or can affect a course of action, firstly, need to be able to impose their will in the relationship; secondly, need to be socially accepted; and thirdly, need to be concerned with an urgent matter that is important to them.²⁶ If an actor fulfills these criteria, he can be considered a stakeholder for the respective matter. These matters can be from basically every field. In this respect, stakeholders can be persons, groups, neighborhoods, institutions, societies, or natural environments.²⁷

If the matter is ‘sport’, there are many actors that have an interest, that are affected or that want to be able to affect. Narrowing it down to the relation of the EU and sport, the most obvious stakeholders become apparent when thinking of the *Bosman* case and the troubles ensuing it: The associations of the various kinds of sports, and the professional athletes. But there are also other actors that can have an influence. Starting at the bottom with the many supporters and amateur athletes, the list can be carried on from clubs, experts, regional and national associations and interest groups to international organizations and even the Member States. These are all actors that obviously have an interest in sport. Disregarding the fact that they could like or dislike a policy, they would show an interest in a Sports Policy simply because they would either be affected or could affect the EU issuing this policy.

However, one should also not forget actors that are affected although they do not have an interest and therefore do not see the necessity of a policy. As an example, imagine that the EU initiates a policy in sport that costs a lot of money. As sport as such does not have its own allocated money, suppose that the EU cuts the money for, say, policies in education. This does certainly not seem realistic as both sport and education come from the cultural realm; however, it clearly shows that

²⁴ Mitchell et al.: 856

²⁵ Mitchell et al.: 865 ff.

²⁶ Mitchell et al.: 865 ff.

²⁷ Mitchell et al.: 855

actors from the field of education would not be happy as they would be negatively affected even if they do not have the slightest interest in a Sports Policy.

This shows that a stakeholder does not need to come from the direct field of sport. It may very well be that other actors are implicated in the matter although they formally do not have an interest to be involved.

Hence, in this research, a stakeholder is every actor that is affected if the EU introduces a policy; and every actor that can affect the EU in its decision making. A stakeholder's characteristics are power, legitimacy, and urgency. If these characteristics were absent, he would not be able to either affect or be affected.²⁸

Having defined what a stakeholder is, I will now turn to give a theory about 'good' policy. Basically, this theory will be concerned with stakeholders, as they will be identified as an important indicator in evaluating whether a policy is 'good' or not. It will especially show their role in policy making.

When just thinking about what a 'good' policy looks like without considering a theoretical background, the situation could look like this: There is a problem in a certain field, and a lot of actors are interested in it. This problem needs a solution; and since there are likely to be more than just one solution possible, the actors should debate and then as many of them as possible should agree upon a single solution. Letting the majority decide makes the decision as democratic as possible. The solution, in this respect, is a policy addressed at the problem.

The following section 4.2 and its sub-sections will show how such a policy is found. Depending on the complexity of the problem and of the amount of actors involved, it is not always easy to choose one policy alternative over other alternatives.

Two methods to decide for a policy will be described; they will be taken from Lindblom (1959). His descriptions lead to the answer of how in general a 'good' policy can be found. Each description will be followed by an explicit listing of advantages and disadvantages.

This will be followed by a focus away from general truths towards a method that will be helpful when centering on the EU. To do so, Lindblom's criteria will be mixed. Mixing the advantages of each method yields a third method that specifically fits the EU and its relation to sport, but at that point will still be kept general. This third method will be the first criterion on the way to 'good' policy.

²⁸ What needs to be said here is that for example supporters in sport do not fulfill the criterion of 'power' since they are not organized. (Independent European Sport Review: 64). However, as they clearly are affected and are a huge group, they should not be left out when talking about stakeholders.

The then-following section 4.3 will show two more criteria. While many might be possible; and while these criteria might differ from topic to topic, this research will only take two into consideration. Examining more than that would go beyond its scope.

The first criterion, then, will be to see whether a policy is feasible at all. If for example the legal background is not given; or scheduled money is not available, the policy is not feasible. Therefore, before implementing a policy, policy makers need to check whether their alternative can be implemented the way they would like to implement it, thus whether the policy is 'workable' after all.

The second criterion is related to stakeholders. Basically, no matter where and no matter in what field policy is made, there are actors that have an interest in the policy: They might want to stop the policy from being implemented; or they might lobby to have it implemented more quickly; or they might just want to take part in the decision making. In any case, there are stakeholders involved.

Because they are an important factor in policy making, their support for and agreement to a policy are crucial. In the following, this will be called the satisfaction of stakeholders. Their satisfaction with a policy is important because of two reasons. Firstly, it is important in order to make a policy come about. Secondly, if stakeholders are satisfied, welfare is likely to be high. Or, to put it differently, if there is a change from the current policy to a new policy that more stakeholders are happy with, welfare increases.

Hence, the satisfaction of stakeholders will be the second criterion here.

The criteria for 'good' policy in this research thus are the following: Firstly, the third method derived from Lindblom gives a hint as to how to find a certain policy out of many alternatives. Secondly, this alternative needs to be feasible. Thirdly, it needs to satisfy the stakeholders. Their satisfaction is important for the becoming and the obtaining of a policy.

4.2 Good Policy According to Lindblom (1959)

Lindblom uses two distinct methods to describe the way to a 'good' policy: The so-called root and branch methods. They will now be consecutively described. After each description, the advantages and disadvantages of the respective methods will be depicted. At the end, the advantages of both methods will be mixed in order to have a simplified, yet clear-cut description of how a 'good' policy can be found.

4.2.1 The Root Method

The meanings of the names of both methods can be taken literally.

Indeed, if you picture a tree, the root is the beginning of it. It helps the tree grow. In the same sense, acting from the root method is the beginning of a policy. One could say that because there is the need to act on a certain matter, a solution needs to 'grow'; and to do so, a root needs to be given. Just like the root of a tree, a policy is started fresh by giving it a root. It starts "(...) from fundamentals anew each time, building on the past only as experience is embodied in a theory, and always prepared to start completely from the ground up."²⁹

However, often there are more than just one policy alternative. Then, the decision for one of these alternatives can be made "(...) if it can be shown to be the most appropriate means to desired ends."³⁰ The question then is what constitutes an appropriate means, or what means would not be appropriate. I argue that there is no general answer to this question because a means always depends on the goal that is to be achieved. The goal then depends on the policy field – it might be sport, as is the case in this research; but it might also for example concern agriculture, education or any other field in which the need for a policy arises. Therefore, 'appropriate' is too general a term to concretely define it here.

However, how the 'appropriate' means is found in a given policy field is alleageable. The search for it is alleviated by the claim of the root method that policy makers compare values of each policy alternative and take into consideration all information there is about the alternatives. Values, in this respect, are the characteristics of a given alternative.

For example, if a policy concerning inflation is to be implemented, the values might be full employment, reasonable business profit, protection of small savings, or prevention of a stock market crash.³¹ Hypothetically comparing these values and relying on theoretical generalizations that can be made, then, policy makers decide for the policy alternative that maximizes the one value that is worth most to them.³² If policy alternative X maximizes full employment while policy alternative Y maximizes the protection of small savings and their preference is full employment, they will decide for policy alternative X as it maximizes their preference.

This alternative is the most appropriate means to reach a certain end. The end, or goal of the policy, is the first thing to be clarified. Only then do policy makers think about values and means. In the example given above, the end is a policy with regard to inflation.

²⁹ Lindblom: 81

³⁰ Lindblom: 81

³¹ Lindblom: 79

³² Lindblom: 79

In short, the root method tackles a given problem by starting completely fresh, taking the past into account only insofar as it might have helped the theory to occur;³³ weighing values or even arranging them according to preferences; and to decide for the one that maximizes the preferred value. This is also shown in its second name: rational-comprehensive method. Decisions taken are *rational* decisions; they are chosen for because they are said to be the most promising (“appropriate”) one. And because every information and expected effect is taken into account, the method is very broad, or *comprehensive*.

4.2.2 Advantages and Disadvantages of the Root Method

The root method on first sight seems easy, and indeed it sounds quite logical, as the explanation in the previous section 4.2.1 shows. Advantages are therefore quite easy to find.

One advantage it offers is its ability to “(...) always [be] prepared to start completely from the ground up”.³⁴

Imagine an issue that needs quick addressing. If the policy is decided for by using the root method, the policy is initiated specifically for this issue; it is the root and everything else grows with it. The policy is the beginning of addressing the issue. Following this logic, it is likely that actions are not hindered by past experiences – in a way, one could thus say that policies are ‘innovative’ rather than being influenced by experiences that have already been made.³⁵ In addition, the method is likely to provide for quick and spontaneous action, as a new policy is the first action to be taken without having to ‘grow’ from something (this will reoccur in the branch method below). This is also likely to make the policy very specifically fit to the problem, rather than addressing it quite broadly.

However, there are also disadvantages to this method. The first that needs to be mentioned in this respect is tied in with the advantage just described. While it might be an advantage if policy makers are able to decide for an innovative solution, at the same time, there is a danger that failures and adversities are ignored. These, however, might be guidelines as to what not to do, or which way not to go, in order to achieve a certain goal. In the same sense, past successes can also be a guideline for

³³ That is to say that the root method does not necessarily take the past into account. If the general theory it uses as some kind of guideline uses past experiences, then so does the root method. If the general theory is something that has just been thought of without looking at the past, then the root method does not look at the past either.

³⁴ Lindblom: 81

³⁵ This is of course subject to the claim that policy makers rely on theory, which could be regarded as being one facet of ‘past’.

a successful way of addressing issues. If these are not taken into consideration, policy makers might disregard important insights that only past experiences can illustrate.

Hence, even if acting quickly might be required sometimes, and even if sometimes an innovative policy might be a good thing, there also is a danger if policy makers do not consider past experiences.

A second disadvantage arises out of the claim of the root method to ponder all information and consequences. This is a disadvantage that Lindblom himself recognizes as well.

As was explained in the previous section, in order to decide for one alternative, all consequences they each have need to be taken into consideration. However, policy makers do not have the intellectual capacities, the sources of information, the time and the money to really consider *all* possible alternatives and to evaluate *all* values correctly.³⁶ This makes this method generally inappropriate for complex policy questions,³⁷ as it is impossible to ponder each and every consequence of the various alternatives. Not every consequence can be preconceived before deciding for an alternative, simply because values always have aspects and consequences that policy makers just cannot know.

In addition to the intellectual restraints, policy makers might also face institutional restraints. "(...) [T]heir prescribed functions and constraints – the politically or legally possible – restrict their attention to relatively few values and relatively few alternative policies among the countless alternatives that might be imagined."³⁸

Hence, there might be policy issues that need addressing, but cannot be tackled by using the root method simply because the issue is too complex for the root method to solve. This can occur if for various reasons policy makers do not have all the information needed. However, if there is all the necessary information and no restraints, the root method is likely to be able to address an issue quickly and spontaneously.

Again, this is not necessarily needed for every issue; sometimes not looking at past experiences might be a disadvantage for the quality and success of a policy.

4.2.3 The Branch Method

In understanding Lindblom's second method, the branch, or successive limited comparisons method, it is again helpful to imagine a tree: The tree has already grown, the tree trunk is there, and there are branches going off into all directions. Following the logic of the root method that it is the beginning

³⁶ Lindblom: 80

³⁷ Lindblom: 81

³⁸ Lindblom: 80

of a policy, the branch method therefore relies on something existent; the 'trunk' is already given. Metaphorically speaking, the trunk has grown as policies succeeded one another, and it provides for past experiences. The branches grow anew, but do grow out of the trunk – the policies might be new in a way, but are still somewhat influenced by the past.

This method, in contrast to the root method, is indeed suited for complex policy questions since it does not need a specification of goals first, as does the root method.

Rather, the first step is to clarify values. Recall from section 4.2.1 that values are for example full employment, reasonable business profit, protection of small savings, or prevention of a stock market crash if the policy concerns inflation. Policy makers then need to find their preferred value: They need to weigh the given values according to their preferences. So far, this process is similar to the root method; however, in the branch method, policy makers do not know where the policy to-be is headed.

They need to make "(...) specific marginal or incremental comparisons"³⁹ of the values. It is likely that the respective actors will weigh the values differently: There might be two policy alternatives, X and Y, that are likely not to differ in fulfilling objectives *a*, *b*, *c*, *d* and *e*. (*a* might be full employment; *b* might be reasonable business profit; *c* might be the protection of small savings; and so on.) However, policy alternative X seems to fulfill objective *f* better than does Y; and Y is likely to do better on achieving objective *g* than is X. Weighing and comparing *f* and *g*, then, the policy maker bases his decision on a comparison of marginal values.⁴⁰ By doing so, all actors involved in the policy making process find their preferred policy alternative.

This seems similar to the root method; however, keep in mind that the policy makers here did not specify the goal of the policy before weighing values and finding their preference.

That said, the question is which step the policy makers take next. 'Normally', one would think that once they clarified their preferences, they would agree on a goal they want to achieve. Rather, in the branch method, the next step is to find agreement on a policy. If the policy makers can find agreement, this proves a policy to be 'good'.⁴¹

However, in contrast to the root method which finds the 'appropriate' policy by taking into consideration all information, the branch method does not necessarily find the appropriate one.⁴² Because it relies on all actors involved agreeing, the policy is not found by excluding other alternatives due to their congruity; but rather by debate and consultation among all actors that

³⁹ Lindblom: 82

⁴⁰ Lindblom: 84 ff.

⁴¹ Lindblom: 81

⁴² Lindblom: 81

possibly all favor different alternatives. It is therefore not the appropriateness of a policy, but the agreement of all actors to it, that is important in deciding for it.

In conjunction with this, it needs to be said that actors do not necessarily have to agree on the same means. Agreement on a policy, Lindblom argues, is possible even if there is no agreement on values (such as full employment, reasonable business profit, etc. in the example above).⁴³ This is possible because as long as actors can make use of the same alternative for their own intentions, agreement is possible: “(...) [W]hen one administrator’s objective turns out to be another’s means, they often can agree on policy.”⁴⁴ What this statement shows is that even though actors might not be at one about values, they might still find agreement since the policy might be a means for one actor and an end for the other at the same time. Of course, this presupposes that at least one actor indeed knows his goal; and the branch method actually claims that policy makers do *not* specify their goals in advance. An example for how one actor’s means could be the other’s ends will be shown in section 5.3.

The aim of this method is thus for the actors to weigh the characteristics of the given policy alternatives in order to be able to decide for a course of action. The goal of the policy is only of secondary importance as its primary aim is to find a way that results in agreement among the actors. “Agreement on policy thus becomes the only practicable test of the policy’s correctness.”⁴⁵ As was already indicated in the introduction to this chapter, agreement among actors on a policy is crucial in order for them to be ‘satisfied’ with a policy. Section 5.2 below will focus explicitly on this.

4.2.4 Advantages and Disadvantages of the Branch Method

Just like in the root method, advantages and disadvantages crop up in the branch method as well. This section will now identify these.

The branch method claims that while it is not goals that need to be known in advance, it is the values of the various policy alternatives that need to be clarified before a policy can be implemented. Clarifying these can be difficult because “(...) on many critical values or objectives, citizens disagree, congressmen disagree, public administrators disagree.”⁴⁶ While one can conclude from this argument that ideally all actors involved in the decision on a policy should agree to it, I argue that this is hardly possible. It seems difficult, if not impossible, to find a policy that really all actors involved can agree

⁴³ Lindblom: 83

⁴⁴ Lindblom: 84

⁴⁵ Lindblom: 84

⁴⁶ Lindblom: 81

upon. If you imagine the example of policy making in a government where the opposition might be of a completely different opinion than is the governing party (or parties), it is obvious that there are supporters and disputants of basically every matter that is debated.

Therefore, I argue that the 'second best' situation is desirable: As was described earlier in the introduction to this chapter, *as many actors as possible* should agree to a policy. This is a departure from Lindblom who states that "[a]dministrators cannot escape these conflicts by ascertaining the majority's preference (...)"⁴⁷. This research, however, will take the majority's preference as a hint towards what is a 'good' policy and thereby depart from Lindblom.

Without wanting to go too deep into it at this point, the term 'majority' needs to be defined. As the introduction to this chapter explained, agreement to a policy is important for two reasons: Firstly, it makes a policy come about in the first place. Secondly, it influences welfare – the more stakeholders are satisfied, the higher the degree of welfare.

If 'majority' now means a majority of stakeholders *involved*, thus the ones that are affected or are able to affect policy making, a majority is needed in order to make the policy come about.

If it however means that it is not only the involved stakeholders that are taken into consideration, but also others – for example the ones that do not have anything to do with the matter; or the society or individual people in general – the agreement is needed in order to have a high degree of welfare.

These thoughts will reoccur later in section 4.3.2. It would not fit to go too deep into it at this point. What is important to keep in mind is that this research departs from Lindblom by arguing that it is not *all*, but a *majority* of stakeholders that need to agree to a policy.

Another shortcoming within the branch method stems from the need to weigh values.

The alternatives that actors are supposed to assess in order to find their preference might consist of more values than just one, and it might be difficult for them to decide on an alternative. This problem does not occur in the root method because there, policy makers ideally have all information on all alternatives and their respective values. However, the branch method does not take this information as given. Then, "[a] simple ranking of [values] is not enough; one needs ideally to know how much of one value is worth sacrificing for some of another value."⁴⁸ Deciding for one alternative might therefore be a somewhat superficial decision because for example intensity of feeling of one stakeholder for one alternative has not been made allowance for.

⁴⁷ Lindblom: 81

⁴⁸ Lindblom: 82

Another shortcoming with regard to the values is that no goal is specified. One alternative's values might be better suited for reaching one goal, while another alternative's values might lead to another goal.

Think of the example given repeatedly in the previous sections: The values are full employment, reasonable business profit, protection of small savings, and prevention of a stock market crash. However, in the branch method, the policy makers do not specify the goal of implementing a policy with regard to inflation, as they would in the root method; they only know the values without clarifying the goal in advance. Policy alternative X, for example, might ensure a reasonable business profit, while alternative Y prevents the stock market from crashing. This is what the policy makers know. Now they have to weigh X and Y: Is their priority to ensure a reasonable business profit; or do they first and foremost want to prevent a stock market crash? By weighing these values, they decide for either X or Y. Both alternatives have in common that they can result in a policy addressed at inflation. However, they can also result in something else, for example in a general stabilization of the economy not specifically owing to anti-inflation actions. What is more, policy alternative X might be better suited to reach a general stabilization of the economy than is Y; or the other way around.

Thus, the goal remains unclear; and the policy alternatives might differ in their success for different goals. Policy makers, however, are neither aware of the goal nor of the expected success of an alternative.

Deciding for one alternative, then, might firstly exclude one goal from the very first if the values are mutually exclusive; and it might secondly make it harder to the single policy maker to decide. He might know where the alternatives *could* lead to, but he does not know for sure; and he does not know which goal is desirable to achieve in the end. Hence, he can be torn between two or more policy alternatives that can lead to different goals.

In conjunction with this, it is imaginable that if it is hard for one policy maker to find his preference, it might be even harder to find agreement with other actors who might think differently and who might be just as convinced of the correctness of their preference.

However, the branch method does not only have disadvantages. It actually directly responds to the root method's shortcoming.

Contrary to the root method, policy is made based on past experiences: Just like the branches of a tree, the decision for a policy can be seen as growing from something that is already there; decisions are "successive". Just like section 4.2.2 criticized the root method not to take into consideration past experiences, the branch method can be praised for indeed doing so: "If [the policy maker] proceeds

through a *succession* of incremental changes, he avoids serious lasting mistakes in several ways.”⁴⁹ Because one policy succeeds another, past experiences are taken into account; resulting in examples of failures and successes and showing what not to do and what indeed to do. Policy makers are unlikely to decide for a policy that has proved not to work in the past. This excludes policy alternatives that do not promise success from the beginning and at best increases the quality of remaining policy alternatives.

On the other hand, this advantage can also be turned the other way around. While the root method starts completely new once an issue is identified, the branch method is unable to do so. Its relying on past experiences and successions are likely to limit its capability to react spontaneously if a new problem arises. Policies are more of a “chronological series”⁵⁰ and are likely to allow for little range and innovative solutions. In a way, policies can be said to be deadlocked because a direction is already given in some way – the tree trunk is already there and it is stable; the general direction is predetermined. Divergence is only possible in a limited way. This criticism is exactly what the root method was lauded for.

4.2.5 Mixing Root and Branch

In order to find a way of policy making that specifically fits the EU in connection with sport, Lindblom’s root and branch methods will now be mixed. For the purpose of doing so, the respective advantages and disadvantages that were devised in the previous sections are helpful: A mix out of the findings of each method will make for a third method that will be a useful guide for the upcoming evaluation of the EU’s sports policy in section 5.

The root method’s main advantage was identified to be the fact that it is “(...) always prepared to start completely from the ground up.”⁵¹ Thus, if the need for action arises, policies were said to be likely to be ‘innovative’ and quickly implementable. This was said to be due to its taking into consideration the past only insofar as it takes theoretical generalizations into account. It does not use the past as a guideline of what to do and is therefore likely not to be hindered by past experiences.

The danger that was identified to tag along with this advantage was that it might sometimes be advisable to indeed rely on past experiences, either in the form of failures or in the form of successes, in order to have some kind of guideline of what policy does or does not promise success. The root method, however, does not provide for a cure of this danger.

⁴⁹ Lindblom: 86

⁵⁰ Lindblom: 86

⁵¹ Lindblom: 81

This is where the advantage of the branch method comes into play. Its arising from a 'tree trunk' provides for a relying on past experiences, rather than starting completely new, as does a 'root'. What follows is a third method that emerges from Lindblom's two methods: The challenge is for policy makers to know when to act rather spontaneously and address an issue with an innovative solution; and when to consider past experiences and compare the current situation to past situations in order to find some guideline. The finding of a policy then follows the policy process described in the respective methods.

Defining just *how* policy makers can know when to start as a 'root' or as a 'branch' goes beyond the limits of this research. What is important to keep in mind is that there are issues that need quick and specific action that can be provided for by the root method; and there are issues that are better addressed by first looking at past experiences and having some kind of guideline so as not to fall into the trap of failures that have already been made in the past.

4.3 Other Criteria for 'Good' Policy

Now that Lindblom's criteria for 'good' policy have been explained and have been mixed to build a third method, two other criteria need to be added. They were already mentioned from time to time during the previous sections, but it is only now that they need to be explained in full detail. They have not been taken from the literature, but can nevertheless be consistently linked back to Lindblom and his root and branch methods.

4.3.1 The Feasibility of a Policy

The first of these criteria is rather obvious. Just as Lindblom acknowledged that there might be institutional restraints that detain policy makers from thinking of each and every possible policy alternative (see section 4.2.2), it is the feasibility of a policy that determines whether it is 'good' or not. Indeed, if a policy is not feasible, it is unlikely to be implemented in the first place. In a way, this criterion is the first obstacle that a policy-to-be has to overcome – if it does not overcome, it does not stand the test of feasibility simply because the premises are not given for such a policy. A policy thus has to be feasible, otherwise it cannot be called 'good'. Feasibility, in this respect, is the consistency of a policy with all political, legal, financial etc. circumstances in a political surrounding.

This criterion can be the first or the second step of policy making, depending on whether policy makers use the root or the branch method. When acting from the root method, it is the first step because the goal of the policy is the first thing to be defined; and policy makers see whether the policy they think of is likely to be feasible to achieve this goal or not.

When acting from the branch method, the test whether a policy is feasible is likely to be the second step – policy makers might agree to a policy, according to Lindblom’s description, and then discover that for example the legal background is not given; or that money that was budgeted is not available. They cannot check the feasibility beforehand because they do not know towards which goal the policy is headed. It is only after the formulation of a policy that they can evaluate the feasibility. That is to say that a policy by all means needs to suit the premises it is supposed to be implemented in. If this is not the case, the policy is not feasible and will not be implemented. This can happen even if policy makers have already agreed upon it, as is the case in the branch method.

4.3.2 The satisfaction of Stakeholders

The second criterion here is the satisfaction of stakeholders. The branch method argues that they all need to agree to a policy. This research departs from Lindblom as it argues that it is not agreement of *all* actors involved, but of a *majority*, that is important in policy making. While section 4.2.4 already gave some insight into the complexity of the concept of ‘majority’ and the consequences that different definitions of the term bring with them, it will now explained in more detail here.

As the introduction to this chapter explained, stakeholders may have different reasons for involving in policy making: They might try to lobby for a certain policy or they might try to stop a policy from being implemented. Agreement of stakeholders to this policy, or as this research calls it, *satisfaction* of them, is important for two reasons: Firstly, without a majority of them agreeing to a policy, the policy will not come about. Following democratic rationales, a minority of people cannot (democratically) change the current situation.

This argument for including stakeholders in the policy process and satisfying them with a policy they agree to relates to stakeholders that are involved in the policy process. It does not look at the society as a whole, for example, or at stakeholders that do not have a say in policy making. Arguing for the inclusion of stakeholders in order to make a policy come about ignores the fact that other, non-influential stakeholders might think differently. Indeed, this view is only concerned with the launching of a policy. Looking back at Lindblom’s criteria, this approach seems to fit the branch method, as it is about finding agreement among stakeholders. Of course, agreement among stakeholders is some kind of welfare, but only among themselves. It does not necessarily mean that the general public’s welfare increases as well.

Another aspect is important when talking about stakeholders that are involved in the policy process: They can provide for expertise.

To give a short example, think of a given government. It acknowledges a problem and would like to address it with a policy, but it does not have any experts that know enough about this problem itself. It is then well advised to include external experts in the formulation of the policy, since these experts are able to give good advice on the matter. This also fits the branch method's claim to use past experiences, even if it is not the government's own experiences that help in finding the policy.

The second possibility looks as follows. If involved stakeholders as well as non-influential ones (such as the society in general that does not even need to have a specific interest in the policy) are made allowance for, the importance of their satisfaction is not about implementing the policy anymore. Rather, the focus then lies on the welfare of them all. If a new policy is implemented and a majority of individuals concerned (that might or might not be interested in the matter) and stakeholder groups concerned are satisfied with it, the overall degree of welfare is likely to increase. This approach fits the root method, as this method claims to take information about all alternatives and their values into account and can therefore be argued to be a way to increase welfare. If a policy maker ponders each and every aspect of all policy alternatives in order to know all the consequences before deciding for one, he is likely to know about the effects for welfare as well. When arguing like this, it does not matter whether the people concerned do also have an interest in the policy. As long as they are concerned, they are factors in 'measuring' welfare.

Thus, the satisfaction of stakeholders can be argued to be important in two ways: Firstly, if it relates to stakeholders involved, it is important in order to make a policy come about. Secondly, if it relates to every single individual concerned, it is important in order to obtain or at best increase welfare.

Due to the rather limited scope of this research, the former of these arguments will be important for the remainder of this paper. Welfare is a crucial aspect in policy making, especially when it comes to EU policies: There are 493 million citizens concerned.⁵² However, this research needs to focus on the satisfaction of sport stakeholders rather than on the general public in order to reach its goal of evaluating the EU's sports policy. Therefore, it will be the majority of involved stakeholders and their part in EU policy making that will be important here.

In summary, the following three criteria make a policy 'good' in general.

Depending on the issue, a policy needs to be implemented either quickly and without being constrained by past experiences; or policy makers need to look at past failures and successes before deciding on a policy. They need to know when to use which approach.

⁵² European Commission 2007 (b): 9

Then, a policy needs to be found feasible. Feasibility, in this regard, means that for example the legal background needs to fit, or the budgeted money really needs to be available. This step can be the first or the second in the policy making process, depending on the method the policy is initiated from. If a policy maker starts from the root method, checking the feasibility is likely to be the first step because the goal is known and the policy can be evaluated according to its expected ability to reach this goal. If a policy maker starts from the branch method, he cannot check the feasibility of a policy because he does not know the goal. Therefore, it is only after formulating the policy that it can be tested for its feasibility.

Finally, a policy needs to find agreement among a majority of involved stakeholders in order to make it come about. While non-involved stakeholders and welfare are also aspects that play a role, for this research, it is only involved stakeholders and the successful emergence of a policy that are taken account of.

5. 'Good' Policy Theory and the EU's Sports Policy

Having defined these general criteria, I will now turn to look at the EU's Sports Policy. In order to do so, general happenings in the field of sport on the EU level will be looked at from the view of the three criteria of 'good' policy theory.

5.1 The Feasibility of a Sports Policy

As the previous sections already showed, the feasibility of a policy is clearly dependent on its institutional surroundings. In the case of the EU and sport, the legal surrounding is especially important, as competences are not always clearly defined: The primary responsibility concerning certain matters is not always clear-cut, as "(...) there is freedom of association, there is autonomy for the organisers of sports, and the principle of subsidiarity fully plays. But it is equally self-evident that everyone, sports organisers included, have to obey the law, certainly the rules of public order and mandatory law."⁵³ Hence, there are matters that are to be dealt with by certain stakeholders from the field of sport, such as sport associations; and there are also matters that indeed fall within the jurisdiction of the EU.

Therefore, a sports policy on EU level has to be suited especially to the limited EU competences.

⁵³ Blanpain: 2

One can argue that sport “(...) has to be seen in the particular context of the European integration process”.⁵⁴ Then, it is first and foremost the economic integration that is a concern for the EU; and it is in economic matters in sport that the EU is allowed to interfere in.

This used to be the approach up until quite recently. In cases with economic repercussions the EU involved, most notably by means of its Courts. The *Bosman* case, for example, allowed an athlete to transfer to another club at the end of his contract without his new club having to pay a fee to his old club. EU competences were also present in cases concerning the single market – the ECJ established that athletes are workers and may “work” (thus play) for clubs in Member States other than their own accordingly. Purely sporting matters, on the other hand, did not fall within the scope of EU law. An obvious example of something purely sporting is, at least on first sight, doping: Its existence has an influence on the organization of sporting competitions; and according to the principle of subsidiarity, this is a matter for sport associations.⁵⁵

With sport becoming ever more international and bringing with it ever more problems, however, this approach has started to be dissolved, and the EU has more recently taken the stance that “(...) the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down.”⁵⁶ That is to say that although a matter might seem purely sporting on first sight, this does not per se exclude it from Community law, nor are the persons or bodies concerned excluded from it.

What can be observed is thus the following: Up until recently, responsibility for issues from the field of sport was clearly defined. If a matter had economic aspects to it, then it was subject to Community law. If it was purely sporting, it was a matter for the sporting bodies. However, this has recently changed into a new approach that does not necessarily exclude purely sporting matters from the scope of EU law. This approach is called the case-by-case approach. “(...) [I]n determining whether a certain sporting rule is compatible with EU Competition Law, an assessment can only be made on a case-by-case basis (...).”⁵⁷ Again, this does not only hold for Competition Law, but also for other EU policy fields.

⁵⁴ Hendrickx: 19

⁵⁵ Lindström-Rossi et al: 72

⁵⁶ Blanpain: 6

⁵⁷ Siekmann: 45

This complexity shows that formulating general guidelines when sport is subject to EU law and when it is not is not possible.⁵⁸ It is therefore not possible at this point to give a clear definition of when a sports policy is feasible on the EU level and when it is not.

The case-by-case approach that has recently been taken by the ECJ, then, is helpful here. It is a way to consider all cases, but not assume EU responsibility for all of them. One case might fall under EU law, another might be better handled by sporting bodies. For the EU and its involvement in the sport sector, this is the best test of feasibility: Should the ECJ rule that a matter is out of reach for the EU, it is probably wise for the EU not to initiate any policies in this area. Should the ECJ be of the opinion that a matter is indeed subject to EU law, further policies, based on the case judged by the ECJ, are possible. They are then feasible because they are congruent with EU law and thus fulfill the first criterion of a 'good' policy.

Of course, this is all very theoretical and simplified. However, it does show how the EU can fulfill one of the criteria for 'good' policy: By using the case-by-case approach in the sport sector, the feasibility of a policy (and its congruity with EU circumstances) is evaluated.

5.2 The Satisfaction of Sport Stakeholders and the Specificity of Sport

When it comes to the satisfaction of stakeholders, it needs to be said that they play a crucial role in the relation of the EU to sport. As section 4.3.2 clarified, this research needs to focus on involved stakeholders in order to reach its goal of evaluating the EU's sports policy. Therefore, talking about stakeholders from now on implies that they are indeed involved. Thus, the focus lies on making a policy come about rather than on the welfare of all people concerned.

The previous paragraph about the feasibility of sports policy in the EU clarified that there are two different ways for the EU to engage: On the one hand, if the sporting matter has an economic aspect to it, the matter is not out of reach of EU law. On the other hand, purely sporting matters can be completely out of the scope of EU law. With the case-by-case approach, it is then decided who is responsible – a certain stakeholder or the EU. There is no general guideline when a matter is to be handled by a given stakeholder and when it is to be handled by the EU.

So to speak, the EU does not have 'non-stop' competences in the field of sport; in matters where it does not have any competences, it has to rely on a functioning cooperation with the stakeholder (or stakeholders) that holds the primary responsibility.

⁵⁸ Siekmann: 45

If the EU now wants to implement a policy concerning a matter out of its reach, according to the claim that a majority of stakeholders need to be satisfied in order to make this policy come about, the EU has to ensure this satisfaction: A negatively affected stakeholder is unlikely to want to cooperate. Therefore, a 'civil' relationship of the EU to sport's stakeholders is crucial.

The time following the famous *Bosman* ruling was a time when the relationship to one of the stakeholders, the UEFA, was not too good. The European Court of Justice (ECJ) saw a breach of single market freedoms and judged accordingly. What followed was that the EU and the UEFA were not on good terms with each other; leading the UEFA to call the ruling "a ferocious attack to football" and to accuse the EU of having no idea about football.⁵⁹ While the EU, by means of the ECJ, simply judged according to the law, at the same time, the EU's predicament was pointed up: It has to ensure that stakeholders obey to the treaties, especially when sporting matters involve economic matters that the EU has competences in; but it also has to acknowledge that sport is 'special': "(...) [T]he rules and regulations of sports organisations without which a sport cannot exist or which are necessary for the organisation of sport or competitions may be completely beyond competition law."⁶⁰ This is the case not only for competition law, but may also appear for example in fields concerning single market freedoms.

The question then is how the EU can satisfy sport's stakeholders. It is likely to want to be on good terms with them even if there currently is no policy to be debated – for the possibility of a future policy, one can imagine that the EU wants to have a 'civil' relationship.

There might be many ways how the EU can satisfy the stakeholders in the various policy fields; and there might be more than just one way to be on good terms with stakeholders in sport. However, one of these ways seems most important to me, which is why it will be explained in more detail here.

Organizational sporting rules, thus non-economic issues, are rules that are important for the setup of sports. Without establishing that national football leagues consist of a certain amount of participating teams, for example; or without the rule only to let country nationals play for a national team, the various kinds of sport could not function well. These are rules that have been established by sport associations and their respective governing bodies; and they have in most cases existed like that for many years or even decades.

⁵⁹ García: 5

⁶⁰ Siekmann: 41

Therefore, “[t]he Community Courts and the Commission have consistently taken into consideration the particular characteristics of sport setting it apart from other economic activities that are frequently referred to as the ‘specificity of sport’.”⁶¹ Adhering to this ‘specificity’, this research argues, is one way for the EU to satisfy sport’s stakeholders; even though acknowledging that respect for it cannot wholly guarantee satisfaction.

The specificity of sport comes into play when the EU has to evaluate whether an organizational, or non-economic, sporting rule does or does not fall under Community law. Section 5.1 about the feasibility of an EU policy in sport already clarified that there are matters that although being of a sporting nature, they do not necessarily fall out of the scope of EU law. The specificity of sport, then, is able to give some kind of guidance: Four features give hints of aspects which the EU should ‘keep out’. Issues falling under these features might in some cases seem to breach Community law, especially Competition Law. However, their being special excludes them from being challenged.

Firstly, it is obvious that all sports are about athletes competing with each other. In fact, sport would lose its force of attraction if it were not for these competitions. Therefore, the “interdependence between competing adversaries is a feature specific to sport and one which distinguishes it from other industry or service sectors.”⁶² Competition on the field or track, therefore, is natural for sport and not something that breaches EU competition rules.

Secondly, contrary to other sectors, sport needs the participating actors to have some degree of equality, and it needs more than just one actor in order for there to be competition. Otherwise, again, attraction would be lost. In order to have exciting competitions, there need to be viable competitors of a comparable strength.⁶³ Therefore, “[i]f sport events are to be of interest to the spectator, they must involve uncertainty as to the result.”⁶⁴ Unlike other sectors, there thus needs to be more than one actor; and weaker competitors should not be driven out of the ‘market’ (thus the league or whatever frames the competitions take place in). This way of organizing sport maintains the existence of competition.

Thirdly, the pyramid structure that characterizes the organization of European sport typically makes for a national, European and worldwide association for each sport (see figure 1). “The Community Courts and the Commission have both recognized the importance of the freedom of internal organization of sport associations.”⁶⁵ As long as their statutes do not breach Community law, these organizations are thus autonomous and have their own hierarchy.

⁶¹ European Commission 2007 (a): paragraph 3.4 a)

⁶² European Commission 2007 (a): paragraph 3.4 a)

⁶³ Blanpain: 4

⁶⁴ European Commission 2007 (a): paragraph 3.4 a)

⁶⁵ European Commission 2007 (a): paragraph 3.4 a)

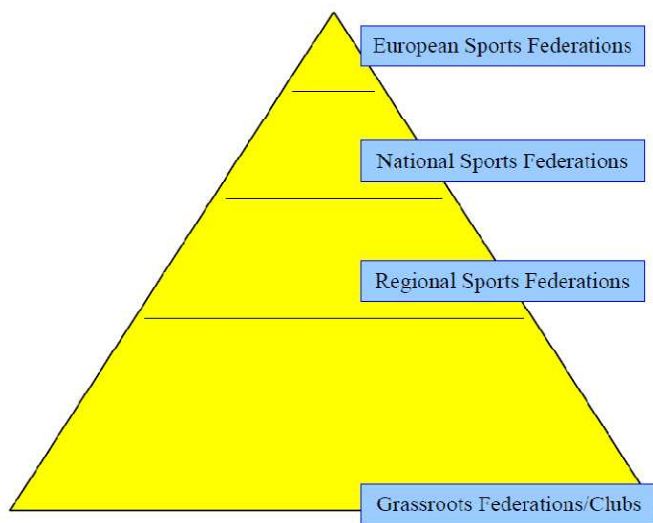


Figure 1: The Organization of Sport in Europe - The Pyramid Model⁶⁶

Finally, sport does not only have a professional side. In fact, professional and amateur sports are interdependent; professional sports strengthen amateur sports in that financial resources are redistributed. These redistributions help sport to fulfill its “(...) important educational, public health, social, cultural and recreational functions.”⁶⁷

Of course, one needs to take into account that these four features do not provide for impeccable rulings and decisions: Many stakeholders have many different opinions and interests; and what satisfies one stakeholder does not necessarily satisfy another as well. But for the specific case of sport, there are unlikely to be stakeholders that are not satisfied by dealing themselves with issues that the EU does not have competences in.

Assuming that sport’s stakeholders are indeed satisfied, a huge advantage for the EU is their expertise. Section 4.3.2 already hinted at it to be of importance; this will now be illustrated by means of an example.

Imagine that the EU wants to involve in an anti-doping policy. Doping being an organizational matter, it has to be a policy not only implemented solely by the EU; but rather in cooperation with the sporting bodies. Even if the idea for the policy might emanate from the EU, including the National Anti-Doping Agencies (NADAs) or the World-Anti Doping Agency (WADA) next to the ‘regular’ sporting bodies in the policy process makes sense since they are able to provide for special expertise

⁶⁶ European Commission 2000: 3

⁶⁷ European Commission 2007 (a): paragraph 3.4 a)

and experience that the EU naturally does not have itself, and that also 'regular' sporting associations do not necessarily own. For example, it is likely that the German Anti-Doping Agency has more expertise than the 'regular' Olympic Committee in the anti-doping fight, although the Olympic Committee is just as interested in fighting doping as is the Anti-Doping Agency.

The satisfaction of stakeholders in sport on EU level is thus of importance because the EU thereby ensures a functioning cooperation with the stakeholders. Due to limited capacities to act in non-economic matters, this cooperation is of great significance. The EU needs the stakeholders in order to make a policy come about – in line with the third method, it needs a majority of them supporting the policy. A second advantage is the provision of expertise.

It is thus the respect for the specificity of sport that satisfies stakeholders; and it is the satisfaction of stakeholders that makes a policy come about. As the EU itself has the standard of continuing to recognize the specificity,⁶⁸ I conclude that the satisfaction of stakeholders is indeed given. Naturally, this is very general and it might be that there are indeed stakeholders that would like to see more EU involvement; and there might be stakeholders that would like to see no EU involvement at all. However, based on the assumption that the stakeholders are happy as long as they can deal themselves with issues that are specific to sport and thus fall within their range of activities, they are likely to be satisfied with the current EU approach. In order to make policies on EU level come about, it is a majority of these stakeholders that is needed.

5.3 The Formulation of a Policy According to the Third Method in Sport on EU Level

Now that the criteria of feasibility of a policy and the satisfaction of stakeholders have been given examples for, I will turn to give an example also for the third criterion: The third method that was derived from Lindblom's root and branch methods.

Recall that this third method claimed that policy makers be aware of the need either to act quickly, without being constrained by past experiences; or to act rather cautiously and using past experiences as some kind of guideline of what proved to be a 'good' policy and what did not. The former is a characteristic of the root method; the latter is a characteristic of the branch method.

⁶⁸ European Commission 2007 (c): paragraph 4.1

Sport faces many problems. To only name a few, there are the exploitation of young players, doping, racism, violence, corruption and money laundering.⁶⁹ Two examples from these issues are helpful in explaining the appearances of the root and branch methods.

The exploitation of young athletes is a relatively new issue that can serve as an example for when to use the root method. Young athletes especially from Africa and Latin America have become victim to European agents taking them to Europe to participate in try outs of European clubs, but leaving them alone in a foreign country in case the clubs do not select them.⁷⁰ Such a newly arisen issue is likely to be best handled if action is not hindered by past experiences. This is to say that for an issue that appears on the policy agenda quite suddenly, action is at best started completely 'fresh'. (It is also highly likely that if the matter really is completely new, there even is no past experience to orientate.)

In addition, a delicate matter such as this example involving youngsters is probably urgent and should therefore be addressed as quickly as possible. Again, looking at past experiences before acting would slow down the action and would impede it. Such an issue needs to be addressed by starting as a 'root', a 'tree trunk' has not grown yet.

On the other hand, an example for the branch method and the need to look at past experiences is the case of doping. For many decades now, sport has had to face this problem. Just think of the Tour de France, where every year cyclists are suspected of using doping and, in many cases, are afterwards found guilty; or track and field championships; to only name two examples of many. With new substances being constantly developed, the issue needs to be addressed again and again. By using insights of what kind of policy has worked in the past and what kind did not lead to a success, the fight against doping is likely to be made more efficient, as unsuccessful policies are not considered anymore. In such a case, it is useful to look at the 'tree trunk' before acting.

Although not explicitly reoccurring in the third method derived from Lindblom's two, another characteristic of the branch method can also be seen in sport that is worth mentioning here: Section 4.2.3 argued that a policy can be decided for even if there is no agreement on means: One actor's goals can be another's means. While this seems strange, the following example from the sport sector clarifies it. Imagine the following situation.

⁶⁹ European Commission 2007 (c): paragraph 1

⁷⁰ European Commission 2007 (a): paragraph 4.5

One stakeholder, a sport association, would like to improve the fight against doping. In order to do so, the association implements a certain policy that is presumed to be successful. Because it acts according to the branch method, it has already excluded policies that did not prove successful in the past beforehand. The goal of the new policy is the elimination of doping, or at least its containment. Another stakeholder, the EU, would then become active in the fight as well and join the sport association in the policy. The EU, however, does so with a different intention. Its goal is not to eliminate doping – section 5.1 showed that doping does not fall under EU law – but it could for example be part of an information campaign of how to lead a healthier life; it could be the means to the end of improving health among EU citizens; it could be used to fight general drug trafficking; or it could be included in an educational policy. Many areas can be thought of that an anti-doping policy would fit in.

What this example shows is that two (or more) actors can indeed agree on a general course of action while having different ambitions with the policy. Although for one actor (here: the sport association) the policy is a goal and for the other one (here: the EU) it is a means, they still find agreement and can work together. To stay with this example, the EU could use the association's expertise if it can provide some; and the sport association would maybe get some EU money, or benefit from EU involvement in some other way.

It is rather hard to say whether the EU does indeed use the third method in its involvement in sport. Due to its limited competences, it cannot simply decide either to act spontaneously or deliberately: So to speak, its hands are tied when it comes to non-economic matters that the ECJ judges to be outside of EU law.

What can be observed, however, is that sport indeed provides for matters that need to be tackled quickly – such as the exploitation of youngsters – and matters that need considerate action, aligned with past experiences – such as the anti-doping fight. If the EU acknowledges so, then one can conclude that the third criterion is fulfilled as well; one can assume that the EU's policy makers know when to address a matter quickly and when to be guided by past experiences.

Whether or not this assumption is true will probably be seen in the next years: I presume that sport will occur ever more often on the agenda of the ECJ; and that the EU's interest to involve in sport will increase more and more. Whether or not it fulfills the third criterion then remains to be seen. For now, we have to rely on having faith in EU policy makers to know when to use which method. In any case, sport is likely to provide issues for both methods.

5.4 Is the EU's Sports Policy a 'Good' Policy?

After having given a theory about 'good' policy and having applied this theory to the EU's involvement in sport, the main question of this research can now be answered: Is the EU's Sports Policy 'good'? The answer stems from the previous three sections that showed in how far the three criteria of good policy are visible (or could be visible) in the sport sector.

The first criterion that was evaluated was the feasibility of a sports policy. Section 5.1 argued that the case-by-case approach that has recently been taken by the European Courts is the proof that policies that are to be initiated on the EU level are indeed feasible: Due to the Courts considering each and every case, but ruling only on those that they account to fall within EU law, cases that do not fall within the EU's legal surroundings remain a matter for sport's stakeholders from the very beginning. Hence, the case-by-case approach provides for a test of feasibility – if the ECJ rules a matter to be outside of Community law, it is wise for the EU not to try to initiate any policies within this area since it knows that the matter does not fall within its sphere of activity. This criterion can therefore be said to be fulfilled: If a sporting matter becomes an EU policy, it is feasible to be so.

The second criterion was the satisfaction of stakeholders. Section 5.2 described not the only, but in my view the most important way to satisfy stakeholders from the sport sector: Respect for the specificity of sport. This specificity consists of four features; and this research argued that as long as the EU adheres to its standard of not involving in these features, stakeholders are likely to be happy with the current approach. Since it is made clear in the White Paper on Sport that the EU has the intention to keep respecting the specificity,⁷¹ it can be concluded that the second criterion of satisfying stakeholders is fulfilled as well.

The third criterion claimed policy makers to know when to act with and when to act without looking at past experiences. Evaluating this criterion is kind of superficial without looking in detail at the policy making process within the EU. What can be stated without doing so, however, is that sport provides for issues that are likely to need quick addressing (such as the exploitation of young athletes), and for issues that are best tackled by taking into account past experiences (such as the reoccurring problem of doping). Since both kinds of action are required within the general field of sport, EU policy makers are likely to know when to act quickly and when to act more deliberately.

With the little limitation that this conclusion might be based on the wrong assumptions, then, I conclude that the third criterion of knowing when to act in what kind of way is fulfilled as well.

⁷¹ European Commission 2007 (c): paragraph 4.1

All three theoretical criteria are thus fulfilled in the sport sector on the EU level, and this can only mean that the EU's current approach of how to deal with sport and its stakeholders indeed is 'good'.

6. Conclusion

This research took a modified version of Lindblom's theory, the feasibility of a policy, and the satisfaction of stakeholders to be criteria for a 'good' policy. After explaining these criteria in general, they were applied to the sport sector on EU level; several examples from sport were used to illustrate in how far the theoretical findings can be seen also in reality. In the end, these examples helped find the conclusion that the EU's current approach to sport is indeed 'good'.

This conclusion was based on the evaluation that all three criteria are fulfilled. The first of these criteria, the formulation of a policy according to a third method derived from Lindblom's two methods, was said to be fulfilled because sport calls for different actions that the EU is assumed to be aware of.

The second criterion was the feasibility of a policy. The case-by-case approach was argued to exclude policies that do not fit the legal background of the EU from the outset. Hence, it was said, as only policies are formulated that do indeed fit the surroundings of the EU, the feasibility of a given sport policy is confirmed.

The third criterion, the satisfaction of stakeholders, was explained to be fulfilled by respecting the specificity of sport; and leaving to the respective stakeholders the features that make up this specificity. While of course it can be argued that this is very general and stakeholders do not always have the same opinion on something, for the scope of this research, it gave an answer.

Apart from the fact that respecting the specificity of sport is not an inerrant guarantee to satisfy stakeholders, however, another demur should be mentioned as well: The question is whether sport deserves being treated special. What about other fields, such as aeronautics, forestry, health energy, waste or telecommunications – they could be called 'special' as well.⁷²

But for now, the EU treats sport as being special; and for now, it can be concluded that the EU's sport policy indeed is a 'good' one based on the three criteria of 'good' policy theory.

This does sound very nice and one might think that everything is fine the way it is. However, one needs to be careful not to overestimate the findings of this particular research. First of all, the three criteria that were used here are neither the only ones, nor are they necessarily the best ones that

⁷² Wathelet: 64

could have been used. It might be that another research using different criteria might come to a completely different conclusion. Secondly, the examples such as the exploitation of young athletes or doping showed that the EU's current approach is good in order to address these specific issues. However, things might look differently if the theory were applied to different examples. Another flaw is that the current approach might be enough for now, but not necessarily in the future. "Corruption, money laundering and other forms of financial crime are unwelcome realities and must be addressed in a comprehensive policy document on sport."⁷³

On the other hand, if this research is right in calling the EU's Sports Policy a 'good' one, the future looks very promising. Although there might be arguments between the stakeholders and the EU at times, the current approach seems to me to be the one that best unites both sport's economic aspects and its specificity. I agree to the argument that "(...) sport has to be let living alone in its difference but needs a control when it comes to be in some way 'involved' in segments that must have a law control."⁷⁴ EU involvement in sport is indispensable because of its economic aspects, but at the same time, its special status remains; even though, as shown above, this specificity is subject to demur.

Recently, this approach has worked quite promising; and if it is to continue working successfully, sport can benefit from EU involvement just as much as the EU can benefit from involving in sport.

⁷³ Velázquez Hernández: 84

⁷⁴ Crespo Pérez: 107

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