

Institution: Edge Hill University		
Unit of Assessment: C18 Law		
Title of case study: Defining the autonomy and specificity of sport in EU law: Shaping the adoption of globally applicable football agent regulations and the EU's approach to nationality-based eligibility rules in European sport.		
Period when the underpinning research was undertaken: 2003-2019		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Richard Parrish	Role(s) (e.g. job title): Professor of Law	Period(s) employed by submitting HEI: 1994-
Period when the claimed impact occurred: 2014-2020		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact</p> <p>The EU has acknowledged that sport has a “specific nature” (Article 165 Treaty on the Functioning of the EU). However, it is not always clear how far EU law affords sports bodies autonomy to devise sporting rules designed to protect this specificity. Professor Parrish’s highly distinctive body of work has provided an evidence base informing the approaches of national and international sports bodies and EU institutions to this question. Specifically, his work on the regulation of football agents significantly contributed to the adoption of new global football agent regulations and informed the EU’s perspective on the scrutiny of the sector. Likewise, his work on nationality discrimination in sport has helped alter the EU’s approach to this issue whilst setting the boundaries for sports bodies on questions of nationality-based eligibility rules. In these areas, the European Commission considers that Parrish’s work has left a “long-lasting impact” (Source 1). Impacts claimed are: (1) Providing expertise informing the adoption of FIFA’s global football agent regulations and informing the European Commission’s approach to the scrutiny of football agent regulations applicable in Europe (impacts 1-3 below) & (2) Informing the approach of the Court of Justice of the EU and the European Commission to their assessment of nationality-based rules in sport, thus significantly impacting on sporting practices across Europe (impacts 4-5 below).</p>		
<p>2. Underpinning research</p> <p><i>Research on EU sports law:</i> Parrish has built an influential body of literature exploring the boundaries of the ‘autonomy’ and ‘specificity’ of sport in EU law. His “truly ground-breaking” (<i>Journal of European Affairs</i>, 2004 2(2)) monograph <i>Sports Law and Policy in the European Union</i> (reference 3.1) was the first book to capture this debate within a theoretical framework and his later monograph <i>The Sporting Exception in European Union Law</i> (reference 3.2) examined how certain sporting practices that give rise to restrictive effects could be accommodated within EU law. His work resulted in him being asked to provide high-level advice to the EU institutions on their approach to the sports sector (Source 1, para.1) and his contribution to the discipline was acknowledged with his 2016 award of Jean Monnet Chair of EU Sports Law and Policy.</p> <p><i>Research on sports agents:</i> Parrish’s 872-page <i>Players’ Agents Worldwide: Legal Aspects</i> (reference 3.3) was the first book to provide a comprehensive comparative perspective on the legal and regulatory position facing football agents across 40 countries. The book highlighted varying regulatory practice across the countries examined, with an attendant lack of uniformity. In 2015, FIFA replaced its Player Agent Regulations (PAR), the system on which the 2007 book was based, with the Regulations on the Working with Intermediaries (RWWI). Within this entirely new regulatory system, Parrish observed some regulatory flaws in the approach and sought to provide an evidence-base to inform new thinking on the issue. After being asked by the European Commission to chair a meeting of sports stakeholders to discuss agent regulation (in Malta in March 2017), Parrish secured EU funding to provide further evidence on the efficacy of the RWWI and options for reform. Between 2018 and 2019, he led the EUR211,000 study, <i>Promoting and Supporting Good Governance in the European Football Agents Industry</i> (reference 3.4). The study was the product of extensive research including a mapping exercise covering the regulations and legal context of 31 countries, consultation with an extensive network of national experts and wide stakeholder consultation via a questionnaire and the staging of six regional stakeholder seminars. The outputs from this study, details of which are provided below (Interim Report 2018 and Final</p>		

Report 2019) build substantially on Parrish's earlier underpinning research and made influential and evidenced recommendations on regulatory reform, many of which were incorporated into the proposals agreed by FIFA's Football Stakeholders Committee and the FIFA Council in 2019. The study also informed European Commission strategy on potential regulatory interventions in the sector.

Research on nationality discrimination: In 2010, Parrish co-authored a study for the European Commission entitled, *Study on the Equal Treatment of Non-nationals in Individual Sports Competitions* (reference 3.5). The study, awarded by competitive tender, was funded by the EU following a commitment made by the European Commission in its 2007 White Paper on Sport to examine the pattern of nationality discrimination in individual sports across the EU. Parrish acted as 'High-Level EU Sports Law Expert'. Following extensive research including widescale stakeholder consultation, the study advanced new arguments that deviated from an orthodox understanding of the application of EU law (discussed below), yet which nine years later were endorsed by the Court of Justice of the European Union (CJEU) in case C-22/18. In 2013, Parrish, acting in the capacity as 'High-Level Legal Expert', also co-authored the European Commission's second major study into discriminatory practices in European Sport - *Study on the Assessment of UEFA's Home-Grown Player Rule*, (reference 3.6). This legal study, evidenced with econometric analysis and stakeholder consultation, highlighted how UEFA's flagship rule gave rise to indirect nationality discrimination, which was capable of being justified under EU law, subject to proportionality control. The study was described as "a thoroughly impressive piece of work" (Stephen Weatherill (2017), *Principles and Practice in EU Sports Law*, Oxford, p.197). The European Commission stated, "[t]he political and policy debates were significantly informed by findings and recommendations of these studies" (Source 1).

3. References to the research

- 3.1 Parrish, R. (2003), *Sports Law and Policy in the European Union*, Manchester: Manchester University Press, pp.271.
- 3.2 Parrish, R. & Miettinen, S. (2008), *The Sporting Exception in European Union Law*, International Sports Law Series, Den Haag: TMC Asser Press, pp.295.
- 3.3 Parrish, R. et al, (eds) (2007), *Players' Agents Worldwide: Legal Aspects*, Den Haag: TMC Asser Press, pp.872.
- 3.4 Parrish, R. et al (first published 2018 and updated 2019), *Promoting and Supporting Good Governance in the European Football Agents Industry*, pp.139 & accompanying document *National Association Intermediary Regulations*, pp.199, EU Erasmus+ funded study published by the European Commission Representative in Croatia.
- 3.5 Parrish, R. et al (2010), *Study on the Equal Treatment of Non-nationals in Individual Sports Competitions*, report for the European Commission, pp.246.
- 3.6 Parrish, R. et al (2013), *Study on the Assessment of UEFA's Home-Grown Player Rule*, Study for the European Commission, EAC/07/2012, with the University of Liverpool, pp.138.

4. Details of the impact

Parrish's underpinning research (references 3.1, 3.2 & 3.3) were significant factors in his appointment to a senior advisory role in the EU and through this he was central in establishing both agent regulation and nationality discrimination in European sport as priority themes for the EU (Source 1, para.1). Following the adoption of the EU's first competence for sport in 2009 (Articles 6 and 165 TFEU), in 2010 European Commissioner Vassiliou appointed Parrish to a Group of (ten) Independent European Sports Experts to advise the Commission on priorities in the field of sport prior to the adoption of the EU's Communication on Sport in 2011 (Com (2011) 12 final, 18/01/2011). In its final report for the Commissioner, published in 2010, the group highlighted the "general lack of transparency regarding financial flows, especially in connection with transfers" and it stated that "the EU should promote self-regulation by both sport organisations and associations of agents". In relation to discriminatory practices in European sport, the group highlighted "the principle of equality in sporting competitions" and that "more stringent measures should be adopted to fight racism and discrimination in sport". Parrish's role in the group was fundamental to these issues being prioritised, as evidenced by his underpinning research that advocated greater

EU action in the areas of agent regulation and nationality discrimination in sport. The 2011 Communication on Sport acknowledged the contribution of the group (at p.4), endorsed its findings and prioritised, inter alia, “transfer rules and the activities of agents” and “free movement and nationality of sportspeople” (Source 2).

The Regulation of Football Agents

In November 2017, FIFA committed to conduct a review of the transfer system and the regulation of agents operating within it. This resulted in FIFA, throughout 2018/19, working with the football stakeholders to set the principles underpinning new transfer and agent regulations. Initially, this work was carried out by FIFA’s Task Force Transfer System with the principles of the new regulations being approved by FIFA’s Football Stakeholder Committee (Sept 2018) and ultimately endorsed by the FIFA Council (Oct 2019). Three impacts are claimed in relation to this process.

Impact 1: Informing FIFA’s global reforms: In order to provide evidence-based decision-making, FIFA distributed reference 3.4 to members of its Task Force. Parrish and Cattaneo (project RA and submitted to this UoA) also held discussions with FIFA in Zurich on the substance of the Report (09/18). Reference 3.4 highlighted a number of flaws in the RWWI including a lack of regulatory consistency, questionable standards of professionalism and a general absence of effective dispute resolution and stakeholder consultation. It then made recommendations on agent reform including: a return to a licensing system including examination and education requirements for agents; better regulation of agent payments, including a possible fee cap, a ‘player pays’ model and the introduction of a ‘clearing-house’ for the payment of agent fees; greater stakeholder involvement in the reform process; and stronger dispute resolution and sanction procedures. Following the conclusion of the Task Force process, these recommendations were accepted by FIFA’s Football Stakeholder Committee and the FIFA Council (Source 4). According to the European Football Agents Association (EFAA), the body representing agents in the discussions, the study “resulted in a change of approach” and “[w]ithout your evidence EFAA would have struggled to persuade FIFA to change its mind and reform the system”. EFAA stated that “FIFA acted on a large number of the recommendations made in your report” and that the changes “will improve professional standards in the industry” (Source 5). FIFA stated that the study “greatly assisted” it by “providing ideas and evidence on what the existing problems were, what could be achieved and how” with FIFA noting that “[w]e agree with the vast majority of the recommendations made in your study and this provided FIFA and the stakeholders with much needed evidence for us to proceed with many far-reaching changes to our regulations”. The research “helped us address two of the most challenging aspects of agent regulation, namely remuneration and representation restrictions”. Based on the research, the changes to the regulations “will greatly enhance standards of professionalism, ethics and compliance” (Source 3). In its final evaluation of the project, the European Commission noted that the study had a “big impact at European level since the research presented several recommendations which have been agreed in principle by the FIFA”.

Impact 2: Supporting football stakeholders: In line with his previous research findings (references 3.1, 3.2 & 3.3), reference 3.4 argued for stakeholder participation as a means of promoting good governance, a feature absent in previous iterations of the agent regulations. Parrish put in place a strategy facilitating this. He staged six EU funded stakeholder events across Europe throughout 2018 and 2019 at which the key stakeholders, including FIFA, met. The 2018 Interim Report acted as the basis for discussion. Members of the Task Force routinely attended the events, thus informing their Task Force discussions. These events contributed to better mutual understanding between FIFA and EFAA, resulting in agreement on some key principles between the parties (such as a return to a licensing system and better dispute resolution) and much more formal dialogue between FIFA and EFAA during the reform process. FIFA “welcomed [the] recommendations on inclusive stakeholder involvement in the preparation of the new regulations and particularly the importance of discussions with agents themselves” and it observed that the stakeholder seminars organised by Parrish throughout the reform process “brought together the main stakeholders

from football and this encouraged dialogue, understanding of the issues and ultimately this will improve compliance with the new regulations” and this “has made for better decision making in this area” (Source 3). The European Commission commented that the six regional seminars “helped bring stakeholders together and fostered better mutual understanding” (Source 1). EFAA stated, “...as a result of your report, FIFA has taken its first ever steps at entering genuine discussion with agents... the focus in your report on good governance requirements in EU law changed FIFA’s approach” (Source 5). It continued, “[t]oday both the European Commission and FIFA recognise EFAA as a critical body within professional football, and your work [references 3.1 and 3.2] has been fundamental to this. This is why between 2018 and 2020 we invited you to participate in our events in Paris, London and Zurich. At those events your explanation of the political and legal context within the EU has helped determine our strategy” (Source 5). Consequently, it is claimed that the underpinning research that focussed on the importance of inclusive stakeholder participation as an essential feature of good governance contributed to better regulation of the agents industry. This benefitted key stakeholders, notably football clubs and players (who tend to be young and vulnerable to exploitation) as they are better protected from poor industry practice, particularly arising from conflicts of interest and excessive fee demands by agents. Professional agents and agencies benefit from the protection qualitative entry requirements (licensing) imposed on those wanting to enter the profession and ethical standards are enhanced through the ongoing education requirement. Our strategy helped build trust between stakeholders and the underpinning research enhanced the quality of debate amongst them, resulting in changes in attitude and informed decision making at FIFA level.

Impact 3: Informing the EU’s approach to agent regulation: Initially in its 2007 White Paper on Sport, the Commission highlighted that it faced “repeated calls” for it to adopt legislation to regulate the activities of agents (at s.4.4). Parrish’s research and expert advice resulted in the Commission favouring enhanced self-regulation. In 2017, Parrish chaired a meeting of sports stakeholders at the European Sport Forum in Malta to discuss the regulation of sports agents. He then spoke at Commission events in Brussels (09/18 & 12/19), Bucharest (04/19) and at a meeting of EU Sports Directors at the Austrian Presidency meeting (12/18). These appointments were made as a result of “[t]he quality of Professor Parrish (sic) work and the level of his expertise on EU sports law and policy” (Source 1). Regarding his work on agents, “the quality of his research was a valuable contribution that allowed the Commission to build a better understanding of professional football ecosystem and advancing discussions with football stakeholders on a bilateral basis or through Social Dialogue committee setup at EU level on professional football” (Source 1). The research on agents “informed Commission’s views and helped it in dealing with the global governing body (FIFA) that later decided to take a more proactive approach on regulating football agent activities,” (Source 1). The study also informed debates in national contexts as witnessed by the reference to it in chapter 5 of the German Bundestag report, *Möglichkeit von Gehaltsobergrenzen im Fußball für Spieler und Berater sowie der Deckelung von Ablösesummen* (Possibility of Salary Caps in Football for Players and Consultants as Well as the Capping of Transfer Fees), 21/07/20.

Nationality Discrimination in European Sport

Impact 4: Nationality discrimination in individual sports: Reference 3.5 was important and ground-breaking research in that, for the first time, the nationality-based eligibility regulations of 26 Olympic sports across all 27 Member States of the EU were systematically examined, legally assessed and recommendations made. The study identified widespread sporting practice that was potentially in conflict with EU law. In particular, many sportsmen and women were being denied access to sporting competitions on account of their nationality, a characteristic protected under EU law. The orthodox interpretation of EU law asserted that individuals are able to rely on EU non-discrimination laws when carrying out economic activity. The research argued that due to EU citizenship rights and the adoption of Article 165 TFEU (the sports competence), economic activity does not necessarily need to be present for EU citizens to be entitled to equal treatment with nationals. Therefore, it was argued, national sporting competitions and championships should, in principle, be ‘open-

access' unless the specific nature of sport could be invoked to justify the proportionate exclusion of non-nationals. This claim also ran counter to EU law orthodoxy which stated that directly discriminatory measures, such as nationality restrictions, cannot be justified under EU law beyond the expressly stated Treaty derogations. The recommendations were, therefore, ground-breaking. Eventually, in Case C-22/18 *TopFit e.V. Daniele Biffi v Deutscher Leichtathletikverband e.V. (TopFit)*, the approach was tested by the Court of Justice of the European Union. In the case, an Italian national living in Germany was prevented from competing in the German amateur athletics championships on the same basis as Germans. The Advocate General (AG) recommended an orthodox approach by requiring economic activity to be present before individuals could avail themselves of Treaty protections but reference 3.5 was cited at paragraphs 32, 44 and 77 of the AG Opinion as the study's arguments were reviewed. However, the CJEU departed from this reasoning and followed the argument expressed in reference 3.5 that the athlete in question is protected from discriminatory nationality measures adopted by both states and private bodies, such as sporting entities, under EU citizenship rights regardless of the level of economic activity being carried out (the athlete in question was an amateur). The Court then agreed with the reasoning that the specific nature of sport could be invoked to grant limited exceptions to this principle, thus endorsing the argument expressed in reference 3.5 that measures that directly discriminate on the grounds of nationality should, in principle, be capable of justification under EU law. In doing so, the Court of Justice "outlined similar arguments as in the non-nationals study" (Source 1). The significance of this impact lies both in the doctrinal developments stemming from this approach and also the impact the judgment has had on sporting practices across Europe.

Impact 5: Nationality discrimination in team sport: A second major enquiry into nationality discrimination in European sport, this time team sport, was launched by the European Commission in 2012 and published in 2013 (reference 3.6). The study assessed the legality, under EU law, of UEFA's home-grown player rule, first introduced into European football in the 2006/07 season. The study argued that the rule gave rise to the prospect of indirect discrimination on the grounds of nationality, but that the rule pursued legitimate sporting objectives. The study claimed that the proportionality of the rule was questionable, even though the rule did not give rise to manifestly restrictive effects, but that the Commission should not adopt a negative decision on the compatibility of the rule with EU law. The study contributed to the Commission's assessment not to adopt infringement actions against UEFA and it has informed the approach of the Commission to disputes arising out of the use of home-grown player rules in European sport. In 2014, in a 'reasoned opinion' under its infringement procedures, the Commission requested that Spain alter the rules on the composition of basketball teams as the quotas resulted in indirect indiscriminate towards players from other Member States. In line with the finding from the 2013 study, the Commission accepted as legitimate the objectives put forward by Spain to justify these rules, but it considered that Spain failed to demonstrate the appropriateness and proportionality of the quotas for each competition. In arriving at that position, the Commission used UEFA's quota as a reference point. It noted that whereas 32% of squad places in football are reserved for home-grown players, in Spanish Basketball the quota ranged between 40% and 88% (Source 6).

5. Sources to corroborate the impact

1. Testimonial: Head of Unit (Sport), European Commission.
2. <https://op.europa.eu/en/publication-detail/-/publication/db29f162-d754-49bc-b07c-786ded813f71>
3. Testimonial: Chief Legal & Compliance Officer, FIFA.
4. <https://www.fifa.com/who-we-are/news/reform-proposals-concerning-football-agents-regulations>
5. Testimonial: General Counsel, European Football Agents Association (EFAA).
6. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_293.