



Education and Culture DG



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# Communication on Sport (2011)

Developing the European Dimension in Sport



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# Foreword

by Commissioner Androulla Vassiliou



In December 2009, the Lisbon Treaty entered into force, including, for the first time, specific provisions on sport. The new provisions bear witness to the fact that sport is part of the everyday life of the vast majority of European citizens and that the EU now has a competence to support, coordinate and supplement sport policy actions by EU Member States.

The Communication on “Developing the European Dimension in Sport” is the first policy document of the European Commission on sport in the framework of the new Treaty. It contains proposals developed in line with the EU’s new responsibilities, building on the experience gained in implementing the 2007 White Paper on Sport and the ongoing Preparatory Actions – financial incentive measures – in the field of sport. The Communication presents the Commission’s proposals for EU-level cooperation in sport for the coming years and puts forward measures to enhance the societal, economic and organisational dimensions of sport.

The Communication is the result of a wide consultation with sport stakeholders and Member States and also reflects the active contribution of the European Parliament to the debate. It re-affirms our respect for the autonomy of sport governing structures and the competences of the Member States, in line with the principle of subsidiarity.

I have strived to present an EU agenda for sport with actions that have clear EU added value, complement Member State actions and help to achieve the goals set out in our Europe 2020 Strategy for growth and employment.

This new initiative demonstrates my determination to strengthen sport in Europe through action at EU level, to foster debate on European sporting issues, to address the challenges that sport

is facing, and to further develop the European dimension in sport.

Action at EU level will encourage stronger links between organisations and actors in and outside sport, including public authorities at all levels, national and international sport organisations, sport-related organisations, and educational bodies, in an effort to address challenges that cannot be adequately dealt with by Member States acting alone. The Commission's proposals will also enhance the exchange of know-how and good practices in different areas relating to sport and physical activity.

The Communication is accompanied by a Staff Working Document on free movement and sport which provides an overview of the impact of EU

law on the free movement of both professional and amateur sportspeople. I am convinced that this document will constitute useful guidance to sport organisations in carrying out their activities in compliance with EU law.

This Communication also includes a wide range of proposals and actions which must now be further developed and implemented. It launches a policy process involving EU institutions and Member States as well as, most crucially, sport organisations which are the driving force of European sport.

I am confident that in a spirit of teamwork we will maintain sport high on the EU policy agenda for the benefit of European citizens.

# Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions

## Developing the European Dimension in Sport

### 1. Introduction

EU-level cooperation and dialogue on sport have been greatly enhanced thanks to the 2007 White Paper on Sport<sup>1</sup>. Almost all actions in the accompanying “Pierre de Coubertin” Action Plan have been completed or are being implemented. The White Paper includes a description of the specificity of sport and the application of EU law in areas such as the Internal Market and competition to the sport sector. Through the implementation of the White Paper on Sport, the Commission has gathered useful evidence regarding themes to be addressed in the future. This Communication does not replace the White Paper but builds on its achievements.

In a number of areas, the White Paper remains an appropriate basis for EU-level activities in the field of sport. These areas include, for example, the promotion of voluntary activity in sport, the protection of minors, and environmental

protection. The White Paper has also created a structured dialogue with sport stakeholders, including an annual EU Sport Forum, and has served as a basis for mainstreaming sport-related activities into relevant EU funds, programmes and initiatives. The fact that certain topics are not elaborated upon in this Communication does not imply that they are no longer priorities for the Commission, but rather that the White Paper remains a sufficient basis for addressing them in the coming years.

Different aspects of the sport sector are covered by different Treaty provisions, as explained in the White Paper. In addition, the Lisbon Treaty gives the EU a supporting, coordinating and supplementing competence for sport which calls for action to develop the European dimension in sport (Article 165 TFEU).

As the structure of the White Paper, based on three broad thematic chapters (the societal role of sport, the economic dimension of sport and the

<sup>1</sup> COM(2007) 391, 11.7.2007.

organisation of sport) and reflecting the Treaty provisions on sport, has been found useful by sport stakeholders and has become a widely accepted tool for framing EU-level activities and discussions, this structure is maintained in this Communication. Each chapter concludes with an illustrative, non-exhaustive list of possible issues for the Commission and the Member States to address within their respective spheres of competence.

### **1.1. EU-wide public consultation**

While preparing this Communication, the Commission consulted with a wide range of stakeholders to identify key themes to be addressed at EU level, including consultations with Member States and key sport stakeholders (EU Sport Forum, bilateral consultations), an on-line consultation and an independent expert group<sup>2</sup>. It has also taken account of the results of a study on “The Lisbon Treaty and EU Sports Policy” commissioned by the European Parliament<sup>3</sup>.

Consultations with the Member States revealed a high level of consensus that the following topics should be priorities in the EU agenda for sport: health-enhancing physical activity; the fight

<sup>2</sup> The results of the public consultation have been published on the following website: [http://ec.europa.eu/sport/library/doc/a/100726\\_online\\_consultation\\_report.pdf](http://ec.europa.eu/sport/library/doc/a/100726_online_consultation_report.pdf)

<sup>3</sup> <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=32471>

against doping; education and training; voluntary activity and non-profit sport organisations; social inclusion in and through sport, including sport for people with disabilities and gender equality in sport; sustainable financing of grassroots sport; and good governance.

In addition to these issues, the non-governmental sport sector raised the following topics: participation levels in sport; the availability of sport and physical activity at all levels of education; recognition of voluntary activity; the fight against violence and discrimination; stable funding; and the need for support for networking and exchange of good practice at EU level.

### **1.2. The EU's added value in the field of sport**

The Commission respects the autonomy of sport governing structures as a fundamental principle relating to the organisation of sport. It also respects the competences of the Member States in this area, in line with the principle of subsidiarity. Nonetheless, implementation of the White Paper has confirmed that, in a number of areas, action at EU level can provide significant added value.

EU action aims at supporting Member States' actions and complementing them where appropriate to address challenges such as violence and intolerance linked to sport events, or the lack of comparable data on the EU sport sector as a basis for policy-making. At the same time, EU action can help address transnational challenges encountered by sport in Europe such as a coordinated approach

to the challenge of doping, fraud and match-fixing or the activities of sports agents.

EU action also contributes to the overall goals of the Europe 2020 Strategy by improving employability and mobility, notably through actions promoting social inclusion in and through sport, education and training (including through the European Qualifications Framework) and European guidelines for physical activity.

In all of the areas elaborated in this Communication, EU action can serve to provide a platform for exchange and dialogue among sport stakeholders, spreading good practice and promoting the development of European networks in the field of sport. In parallel, EU action contributes to the dissemination of knowledge about EU law in the sport sector, thus ensuring greater legal certainty for European sport.

Currently, the Commission provides support for projects and networks in the field of sport either through sport-specific incentive measures, notably the Preparatory Actions in the field of sport, or through existing programmes in various relevant fields. These include life-long learning, public health, youth, citizenship, research and technological development, social inclusion, fight against racism, environmental protection and others.

While the continuation of incentive measures in support of the actions identified in this Communication will be part of the discussions accompanying the preparation of the next Multiannual Financial Framework, the proposals in this document will be supported in the short term through ongoing and future Preparatory Actions and special events in the field of sport.

## 2. The Societal Role of Sport

Sport has a strong potential to contribute to smart, sustainable and inclusive growth and new jobs through its positive effects on social inclusion, education and training, and public health. It helps limit the rise in social security and health expenditure by improving the health and productivity of the population and by ensuring a higher quality of life through old age. It contributes to social cohesion by breaking down social barriers, and it improves the employability of the population through its impact on education and training. Voluntary activity in sport can contribute to employability, social inclusion as well as higher civic participation, especially among young people. On the other hand, sport is confronted with a number of threats from which athletes, particularly young athletes, and citizens need to be protected, such as doping, violence and intolerance.

### 2.1. Fight against doping

Doping remains an important threat to sport. Use of doping substances by amateur athletes poses serious public health hazards and calls for preventive action, including in fitness centres. Doping prevention and doping sanctions remain within the remit of sport organisations and Member States. The Commission supports the fight against doping and the important role of the World Anti-Doping Agency (WADA), national anti-doping organisations (NADOs), accredited laboratories, the Council of Europe and UNESCO. The Commission welcomes the fact that NADOs are increasingly organised as independent bodies. It also encourages Member States to

adopt and share national anti-doping action plans aimed at ensuring coordination among all relevant actors.

Many stakeholders call for a more active EU approach in the fight against doping, for example by joining, to the extent that the competences in this area entitle the Union to do so, the Anti-Doping Convention of the Council of Europe. There is a need to assess the implications of the competence conferred upon the Union in Article 165 TFEU in relation to the EU's representation in WADA's governing structures.

The Commission underscores the need for anti-doping rules and practices to comply with EU law in respecting fundamental rights and principles such as respect for private and family life, the protection of personal data, the right to a fair trial and the presumption of innocence. Any limitation on the exercise of these rights and freedoms must be provided for by law and respect the essence of those rights and the principle of proportionality.

The Commission encourages the existing trend across EU Member States to introduce criminal law provisions against trade in doping substances by organised networks, or to reinforce existing provisions.

### 2.2. Education, training and qualifications in sport

Time spent on sport and physical activity in education could be improved at low cost both outside and inside the school curriculum. The quality of physical education programmes and

the qualifications of teachers involved remain a concern in a number of Member States. Cooperation between sport organisations and educational institutes is beneficial for both sectors and can be supported by universities.

Following the European Council's call in 2008 to address the question of "dual careers"<sup>4</sup>, the Commission emphasises the importance of ensuring that young high-level athletes are offered quality education in parallel to their sport training. Young athletes, in particular those coming from third countries to train and compete in Europe, face multiple risks linked to their vulnerability. The quality of sport training centres and their staff should be sufficiently high in order to safeguard the athletes' moral and educational development and professional interests.

Member States and the sport movement recognise the need for better-qualified staff in the sport sector. The high level of professionalism and diversity of professions in sport, combined with increasing mobility within the EU, underline the relevance of including sport-related qualifications in national qualification systems so that they can take advantage of referencing to the European Qualification Framework (EQF). More transparency is needed regarding the validation and recognition of qualifications gained by volunteers, as well as regarding qualifications required for regulated sport-related professions.

<sup>4</sup> European Council Declaration on Sport, December 2008.

### **2.3. Prevention of and fight against violence and intolerance**

Spectator violence and disorder remain a Europe-wide phenomenon and there is a need for a European approach comprising measures designed to reduce the associated risks. In cooperation with the Council of Europe, EU action has so far focused on providing citizens with a high level of safety through policing at international football events. A wider approach covering also other sport disciplines, focused on prevention and law enforcement, will require stronger cooperation among the relevant stakeholders, such as police services, judicial authorities, sport organisations, supporters' organisations and public authorities.

As shown by a recent report of the EU Fundamental Rights Agency<sup>5</sup>, racism, xenophobia and other forms of intolerance continue to pose problems in European sport, including at amateur level. Member States are encouraged to ensure the full and effective transposition of Council Framework Decision 2008/913/JHA on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law and to support activities targeted at fighting against these phenomena.

<sup>5</sup> Racism, ethnic discrimination and exclusion of migrants and minorities in sport: comparative overview of the situation in the European Union (2010): [http://fra.europa.eu/fraWebsite/home/home\\_en.htm](http://fra.europa.eu/fraWebsite/home/home_en.htm)

## **2.4. Enhancing health through sport**

Physical activity is one of the most important health determinants in modern society and can make a major contribution to the reduction of overweight and obesity and the prevention of a number of serious diseases. Sport constitutes a fundamental part of any public policy approach aiming at improving physical activity. In 2008, EU Sport Ministers informally endorsed EU Physical Activity Guidelines recommending how policies and practices at EU, national and local levels can be used to make it easier for citizens to be physically active as part of their daily lives. A number of Member States have used them as a basis for national policy initiatives.

Health and physical activity are so closely intertwined that enhancing physical activity is a key part of the 2007 White Paper “A Strategy for Europe on Nutrition, Overweight and Obesity related health issues”<sup>6</sup>. To implement this strategy, several Member States have shown willingness to invest in physical activity as a means to improve health, and various organisations have committed themselves to projects promoting exercise for better health.

There are large differences in physical activity levels and public approaches between Member States and the concept of health-enhancing physical activity (HEPA), covering a variety of sectors as diverse as sport, health, education, transport, urban planning, public safety and working environment, poses considerable challenges. Physical activity could be further

encouraged in national educational systems from an early age. Transnational exchange of good practice to support the design and implementation of national physical activity guidelines has high EU added value and should be further developed.

## **2.5. Social inclusion in and through sport**

Persons with disabilities have the right to participate on an equal basis with others in sporting activities. The EU and its Member States have signed the UN Convention on the Rights of Persons with Disabilities, which includes the obligation to take appropriate measures to make these rights effective. It is important to ensure full implementation of the provisions of this Convention.

Women are under-represented in some areas of sport. In accordance with the Strategy for Equality between Women and Men 2010-2015, the Commission will encourage the mainstreaming of gender issues into sport-related activities.

Sport enables immigrants and the host society to interact in a positive way, thus furthering integration and inter-cultural dialogue. Sport has been increasingly included in specific programmes for immigrants, but national approaches differ considerably. Sport can also be a vehicle to promote social inclusion of minorities and other vulnerable or disadvantaged groups and contribute towards better understanding among communities, including in post-conflict regions.

<sup>6</sup> COM(2007) 279 final, 30.5.2007.

## THE SOCIETAL ROLE OF SPORT

### ***Fight against doping***

- *Commission:* propose a draft mandate for negotiations on EU accession to the Anti-Doping Convention of the Council of Europe.
- *Commission:* examine the most appropriate way to reinforce measures against trade in doping substances by organised networks, including if possible through criminal law.
- *Commission:* support transnational anti-doping networks, including networks focusing on preventive measures targeting amateur sport, sport for all and fitness.

### ***Education, training and qualifications in sport***

- *Commission:* support innovative initiatives under the Lifelong Learning Programme relating to physical activity at school.
- *Commission and Member States:* develop European guidelines on combined sports training and general education (“dual careers”).
- *Commission and Member States:* support the inclusion of sport-related qualifications when implementing the European Qualifications Framework. In this context, promote the validation of non-formal and informal learning gained through activities such as voluntary activity in sport.

### ***Prevention of and fight against violence and intolerance***

- *Commission and Member States:* develop and implement security arrangements and safety requirements for international sport events, including pan-European training and peer review projects for police officers regarding spectator violence.
- *Commission:* support activities aimed at fighting against racism, xenophobia, homophobia and related intolerance in sport.

### ***Enhancing health through sport***

- *Commission and Member States:* based on the EU Physical Activity Guidelines, continue progress toward the establishment of national guidelines, including a review and coordination process, and consider proposing a Council Recommendation in this field.
- *Commission:* support transnational projects and networks in the area of health-enhancing physical activity.

### ***Social inclusion in and through sport***

- *Commission and Member States:* develop and disseminate standards for accessibility of sport, leisure and recreation organisations, activities, events and venues through the European Disability Strategy.
- *Commission and Member States:* promote the participation of people with disabilities in European sporting events as well as the organisation of disability-specific events, in particular through supporting transnational projects and networks. In this context, support research related to specialised sport devices for persons with disabilities.
- *Commission:* support transnational projects promoting women's access to leadership positions in sport and access to sport for women in a disadvantaged position. In this context, include sport in the database and network of women in leadership positions.
- *Commission:* support transnational projects promoting social integration of vulnerable and disadvantaged groups through sport and related exchange of good practice.

## 3. The Economic Dimension of Sport

Sport represents a large and fast-growing sector of the economy and makes an important contribution to growth and jobs, with value added and employment effects exceeding average growth rates. Around 2% of global GDP is generated by the sport sector.<sup>7</sup> Major sport events and competitions provide strong potential for increased development of tourism in Europe. Sport is thus a contributor to the Europe 2020 strategy. Comparable data are needed as a basis for evidence-based policy-making. Notwithstanding the overall economic importance of sport, the vast majority of sporting activities takes place in non-profit structures based on voluntary activity. The sustainability of financing for such structures can be a cause for concern and financial solidarity between professional and grassroots sport should be reinforced.

### 3.1. Evidence-based policy-making in the field of sport

Policy-making to implement the sport provisions in the Lisbon Treaty needs a sound evidence base, including comparable EU-wide data on social and economic aspects of sport. The Commission is facilitating cooperation at EU level to measure the economic importance of sport through a Sport Satellite Account.<sup>8</sup> Enhanced cooperation

<sup>7</sup> World Economic Forum, Davos, 2009.

<sup>8</sup> A satellite account is a statistical framework to measure the economic importance of a specific industry (in this case, the sport sector) in the national economy. A Sport Satellite Account filters the National Accounts for sport-relevant activities to extract all sport-related value added.

for better knowledge of sport in the EU should involve academics, the sport industry, the sport movement and national and European public authorities.

### 3.2. Sustainable financing of sport

Exploitation of intellectual property rights in the area of sport, such as licensing of retransmission of sport events or merchandising, represents important sources of income for professional sports. Revenue derived from these sources is often partly redistributed to lower levels of the sports chain.

The Commission considers that, subject to full compliance with EU competition law and Internal Market rules, the effective protection of these sources of revenue is important in guaranteeing independent financing of sport activities in Europe. The licensing of sport media rights should respond to different market demands and cultural preferences while ensuring that Internal Market and competition law is respected.

The collective selling of media rights is a good example of financial solidarity and redistribution mechanisms within sports. Collective selling of media rights inherently restricts competition within the meaning of Article 101(1) TFEU. However, collective selling may bring about advantages which may outweigh the negative effects. Joint selling can therefore meet the criteria for an exemption under Article 101(3) TFEU if certain conditions are fulfilled. The Commission recommends sport associations to establish mechanisms for the collective selling of media

rights to ensure adequate redistribution of revenues, in full compliance with EU competition law while maintaining the right of the public to information.

Gambling activities (including sport betting and lotteries) run by private operators or by the State directly or indirectly contribute to the financing of sport in all EU Member States. The contributions can include financial links between State-run lotteries and the sport movement, fiscal contributions providing financing to sport, the exploitation of specific rights and sponsorship deals.

Sport stakeholders perceive challenges with regard to continued income streams from gambling activities into sport. Calls to ensure sustainable funding for sport from private and public sources and financial stability of the sport sector should be taken into account when further addressing the provision of gambling services in the Internal Market. Regulatory approaches vary among Member States in areas relating to intellectual property rights and gambling activities, in particular regarding the extent of property rights for the organisers of sport competitions in relation to the events they organise, as well as the issue of image rights in sport.

To better understand these issues, the Commission has launched an EU study on the funding of grassroots sport. The study should show the real importance of the different funding sources for grassroots sport, such as public subsidies (state, regional and local authorities), households' contributions, and contributions of voluntary activity, sponsorship, media revenue and revenue from the organisation of gambling services. The outcome of the study will inform decisions on whether any action is needed in this area, and of what kind.

### **3.3. Application of EU State aid rules to sport**

Sport is financed in various ways by public authorities in all EU Member States. Some measures, such as very small amounts of aid falling under the *de minimis* Regulation, may remain outside the scope of Article 107(1) TFEU. When the conditions set out in this Article are met, State aid is in principle incompatible with EU law, unless one of the derogations in Article 107 TFEU is applicable. Although State aid to sport is not covered as such by the General Block Exemption Regulation, it might fall under certain provisions of this Regulation, in which case it can be considered compatible without any need for prior notification to the Commission. Otherwise, a new aid needs to be notified in advance to the Commission pursuant to Article 108(3) TFEU and can only be awarded after the Commission has issued a favourable decision. There have only been a few decisions concerning State aid to sport and, as in other sectors in a similar situation, stakeholders have repeatedly called for further clarification regarding the financing of infrastructure and sport organisations.

### **3.4. Regional development and employability**

EU funds could be used for projects and actions in support of sustainable sport structures. For instance, in order to take full advantage of the value of sport as a tool for local and regional development, urban regeneration, rural development, employability, job creation and labour market integration, the Structural Funds can support investments in line with the priorities set in the Operational Programmes. Regional stakeholders (municipalities and regions) play a crucial role when it comes to sport funding and access to sport and should be increasingly involved in the related EU-level discussions.

## THE ECONOMIC DIMENSION OF SPORT

### *Evidence-based policy-making in the field of sport*

- *Commission and Member States:* produce Satellite Accounts for Sport compatible with the agreed European definition.
- *Commission:* support a network of universities to promote innovative and evidence-based sport policies.
- *Commission:* study the feasibility of establishing a sport monitoring function in the EU to analyse trends, collect data, interpret statistics, facilitate research, launch surveys and studies, and promote exchange of information.

### *Sustainable financing of sport*

- *Commission:* ensure that intellectual property rights that might arise in the coverage of sport events are taken into account in the implementation of the Digital Agenda initiative.
- *Commission:* launch a study to analyse sport organisers' rights and image rights in sport from the perspective of the EU legal framework.
- *Commission and Member States:* in cooperation with the sport movement, explore ways to strengthen financial solidarity mechanisms within sports while fully respecting EU competition rules.
- *Commission and Member States:* based on the results of the EU study on the funding of grassroots sport, consider best practice among existing funding mechanisms for transparent and sustainable financing of sport.

### *Application of EU State aid rules to sport*

- *Commission:* monitor the application of State aid law in the field of sport and consider guidance if the number of sport-related State aid cases increases.

### *Regional development and employability*

- *Commission and Member States:* fully exploit the possibilities of the European Regional Development Fund to support sport infrastructure and sustainable activities in sport and outdoors as a tool for regional and rural development, and of the European Social Fund to strengthen the skills and employability of workers in the sport sector.

## 4. The Organisation of Sport

### 4.1. Promotion of good governance in sport

Good governance in sport is a condition for the autonomy and self-regulation of sport organisations. While it is not possible to define a single model of governance in European sport across different disciplines and in view of various national differences, the Commission considers that there are inter-linked principles that underpin sport governance at European level, such as autonomy within the limits of the law, democracy, transparency and accountability in decision-making, and inclusiveness in the representation of interested stakeholders. Good governance in sport is a condition for addressing challenges regarding sport and the EU legal framework.

### 4.2. The specific nature of sport

The specific nature of sport, a legal concept established by the Court of Justice of the European Union which has already been taken into account by the EU institutions in various circumstances and which was addressed in detail in the White Paper on Sport and the accompanying Staff Working Document, is now recognised by Article 165 TFEU. It encompasses all the characteristics that make sport special, such as for instance the interdependence between competing adversaries or the pyramid structure of open competitions. The concept of the specific nature of sport is taken into account when assessing whether sporting rules comply with the requirements of EU law (fundamental rights, free movement, prohibition of discrimination, competition, etc.).

Sporting rules normally concern the organisation and proper conduct of competitive sport. They are under the responsibility of sport organisations and must be compatible with EU law. In order to assess the compatibility of sporting rules with EU law, the Commission considers the legitimacy of the objectives pursued by the rules, whether any restrictive effects of those rules are inherent in the pursuit of the objectives and whether they are proportionate to them. Legitimate objectives pursued by sport organisations may relate, for example, to the fairness of sporting competitions, the uncertainty of results, the protection of athletes' health, the promotion of the recruitment and training of young athletes, financial stability of sport clubs/teams or a uniform and consistent exercise of a given sport (the "rules of the game").

Through its dialogue with sport stakeholders the Commission will continue its efforts to explain, on a theme-per-theme basis, the relation between EU law and sporting rules in professional and amateur sport. As requested by Member States and the sport movement in the consultation, the Commission is committed to supporting an appropriate interpretation of the concept of the specific nature of sport and will continue to provide guidance in this regard. Regarding the application of EU competition law, the Commission will continue to apply the procedure as foreseen in Regulation (EC) No 1/2003.

### **4.3. Free movement and nationality of sportspeople**

The organisation of sport on a national basis is part of the traditional European approach to sport. While the Treaty prohibits discrimination based on nationality and enshrines the principle of free movement of workers, the Court of Justice has taken into account the need to preserve certain specific characteristics of sport in past rulings dealing with the composition of national teams or deadlines for transfer rules for players in team sport competitions.

In the area of professional sport, rules entailing direct discrimination (such as quotas of players on the basis of nationality) are not compatible with EU law. On the other hand, rules which are indirectly discriminatory (such as quotas for locally trained players), or which hinder free movement of workers (compensation for recruitment and training of young players), may be considered compatible if they pursue a legitimate objective and insofar as they are necessary and proportionate to the achievement of such an objective.

Based on Article 45 TFEU, the free movement rules apply only to workers and professional players in the framework of an economic activity. However, the free movement rules apply also to amateur sport as the Commission considers that following a combined reading of Articles 18, 21 and 165 TFEU, the general EU principle of prohibition of any discrimination on grounds of nationality applies to sport for all EU citizens who have used their right to free movement, including those exercising an amateur sport activity.

The Commission has launched a study to assess the implications of the Treaty provisions on non-discrimination on grounds of nationality in individual sports. Guidance on free movement is provided in a Staff Working Document accompanying this Communication. Additional guidance can be found in the Communication from the Commission on “Reaffirming the free movement of workers: rights and major developments”, adopted on 13 July 2010<sup>9</sup>.

### **4.4. Transfer rules and the activities of sport agents**

After discussions with the Commission in 2001 in the context of an antitrust case, a set of rules was included in the FIFA Regulations on the Status and Transfer of Players. Transfers of players regularly come to public attention because of concerns about the legality of the acts and about transparency of financial flows involved. The Commission considers that the time has come for an overall evaluation of transfer rules in professional sport in Europe.

The independent study on sport agents carried out on behalf of the Commission in 2009 gives an overview of the activities of sport agents in the EU. The main problems identified are of an ethical nature, such as financial crime and exploitation of young players, thus threatening the fairness of sporting competitions and the integrity of sportspeople. The study also identifies discrepancies in the way the activity of agents is regulated by public authorities and private bodies in Europe.

<sup>9</sup> COM(2010) 373.

#### **4.5. Integrity of sporting competitions**

In team sports, club licensing systems offer a valuable tool to ensure the integrity of competitions. They are also an effective way of promoting good governance and financial stability. The Commission welcomes the adoption of measures aimed at enhancing financial fair play in European football while recalling that such measures have to respect Internal Market and competition rules.

Match-fixing violates the ethics and integrity of sport. Whether related to influencing betting or to sporting objectives, it is a form of corruption and as such sanctioned by national criminal law. International criminal networks play a role in match-fixing associated with illicit betting. Due to the worldwide popularity of sport and the trans-frontier nature of betting activities, the problem often goes beyond the remit of national authorities. Sport stakeholders have been working with public and private betting companies to develop early warning systems and educational programmes, with mixed results. The Commission will cooperate with the Council of Europe in analysing the factors that could contribute to more effectively addressing the issue of match-fixing at national, European and international level. Integrity in sport is also one of the issues that will be addressed in the forthcoming Commission consultation on the provision of online gambling services in the EU.

#### **4.6. European social dialogue in the sport sector**

Social dialogue is a cornerstone of the European social model and gives employers, athletes and sport workers the opportunity to shape labour relations in the sport sector through an autonomous dialogue in the general EU legislative and institutional framework. A European social dialogue committee was launched in the sector of professional football in 2008. Work in this committee has progressed towards the establishment of minimal contractual requirements for football players.

In addition, several potential European social partner organisations have expressed their interest in creating a social dialogue committee for the whole sport and active leisure sector. The Commission encourages this development and invites social partners to further consolidate representativeness at EU level. It will propose a test phase to facilitate the introduction of such dialogue.

<b>THE ORGANISATION OF SPORT</b>
<b><i>Promotion of good governance in sport</i></b>
<ul style="list-style-type: none"> <li>• <i>Commission and Member States:</i> promote standards of sport governance through exchange of good practice and targeted support to specific initiatives.</li> </ul>
<b><i>The specific nature of sport</i></b>
<ul style="list-style-type: none"> <li>• <i>Commission:</i> provide assistance and guidance, on a theme-per-theme basis, relating to the application of the concept of the specific nature of sport.</li> </ul>
<b><i>Free movement and nationality of sportspeople</i></b>
<ul style="list-style-type: none"> <li>• <i>Commission:</i> issue guidance on how to reconcile the Treaty provisions on nationality with the organisation of competitions in individual sports on a national basis.</li> <li>• <i>Commission:</i> assess the consequences of rules on home-grown players in team sports in 2012.</li> </ul>
<b><i>Transfer rules and the activities of sport agents</i></b>
<ul style="list-style-type: none"> <li>• <i>Commission:</i> launch a study on the economic and legal aspects of transfers of players and their impact on sport competitions. In this context, provide guidance on transfers of players in team sports.</li> <li>• <i>Commission:</i> organise a conference to further explore possible ways for EU institutions and representatives of the sport movement (federations, leagues, clubs, players and agents) to improve the situation with regard to the activities of sports agents.</li> </ul>
<b><i>European social dialogue in the sport sector</i></b>
<ul style="list-style-type: none"> <li>• <i>Commission:</i> support social partners and sport organisations to create an EU-level social dialogue for the whole sport and leisure sector and to discuss new relevant items such as contractual stability, education and training, health and safety, employment and working conditions of minors, the role of agents or the fight against doping.</li> </ul>

## 5. Cooperation with third countries and International Organisations

The Lisbon Treaty calls on the Union and the Member State to foster cooperation with third countries and the competent international organisations in the field of sport. In view of the continental organisation of sport and the renewed

consensus on enlargement, cooperation with European third countries, in particular candidate countries and potential candidates, and the Council of Europe should be a priority.

### COOPERATION WITH THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS

- *Commission:* identify the scope for international cooperation in the field of sport with a focus on European third countries, in particular candidate countries and potential candidates, and the Council of Europe.

## 6. Conclusion

In the Commission's view, the complexity of the proposals in the field of sport requires the continuation of informal cooperation structures between the Member States in order to ensure the continued exchange of good practice and dissemination of results. The Commission will continue to provide support for informal working groups in the field of sport which the Member

States wish to continue or establish and which will continue to report to EU Sport Directors.

The European Parliament and the Council are invited to support the proposals made in this Communication on sport and to indicate their priorities for future activities.

# Commission Staff Working Document

## SPORT AND FREE MOVEMENT

In recent years the impact on sport, and in particular on football, of the EU rules on free movement has been a highly topical issue, particularly as sport is increasingly taking on a European dimension. With the entry into force of the Lisbon Treaty, sport has now become a field in which the EU can contribute to the promotion of European sporting issues and encourage cooperation between the Member States (Article 165 TFEU).

Article 165 TFEU provides the EU with a ‘soft-law’ competence (encouraging cooperation between the Member States and supporting and supplementing their action) in the areas of sport, education and youth. As far as sport is concerned, Article 165 calls on the Union to:

- promote European sporting issues, taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function;
- develop the European dimension in sport by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportspeople and sportswomen;
- foster cooperation with third countries and international organisations.

At the same time, the Treaty forbids any discrimination on grounds of nationality (Article 18 TFEU) and grants every citizen of the Union the right to move and reside freely within the territory of the Member States, subject to those limitations and conditions that are laid down in the Treaties themselves and in the measures adopted to give them effect (Article 21 TFEU). As regards workers, the Treaty states that freedom of movement of workers should be secured within the Union, and that such freedom entails the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment (Article 45 TFEU).

A combined reading of fundamental provisions in the Treaty on non-discrimination on the grounds of nationality and on free movement and of Article 165 TFEU – with its obligation for the EU to develop the European dimension in sport and to promote the openness of competitions – entails that the general rule of non-discrimination applies to both professional and amateur sport: in the first case, players are protected principally as workers; in the second as European citizens who have the right to move freely around Europe.

The objective of this Staff Working Document is to provide an overview of the impact of EU law on the free movement of professional sportspeople<sup>1</sup> and

<sup>1</sup> This overview remains of a general nature since sufficient details on this topic are provided in Annex II of the Staff Working Document accompanying the White Paper on Sport – SEC(2007) 935. Issues which were not (or only marginally) addressed in the White Paper and its accompanying Staff Working Document, such as UEFA’s home-grown players rules and the ECJ ruling on the *Olympique Lyonnais* case, are discussed in more detail.

to outline the Commission's position on the impact of the new Treaty provisions in the field of sport on the free movement of amateur sportspeople.

### 1. Impact of EU law on free movement of professional sportspeople

Sport is subject to the Treaty provisions and the secondary law on free movement of workers in so far as it constitutes an economic activity within the meaning of the Treaty. The Court of Justice of the European Union (ECJ) has confirmed on several occasions that professional and semi-professional sportsmen are workers by virtue of the fact that their activities involve gainful employment<sup>2</sup>. The Communication from the Commission on "Reaffirming the free movement of workers: rights and major developments", adopted on 13 July 2010<sup>3</sup>, offers an overall picture of the rights of EU migrant workers and updates the previous 2002 Communication<sup>4</sup> taking into account legislative and case law developments.

Rules governing sport are often issued by sports associations, which are not governed by public law. This circumstance cannot provide a justification for not applying the rules on free movement. The ECJ has clearly stated that Article 45 TFEU not only applies to the action of public authorities, but also to rules of any other nature aimed at regulating gainful employment

in a collective manner<sup>5</sup>. Rules laid down by sports associations which determine the terms on which professional sportsmen can engage in gainful employment fall within this category.

The fact that professional sportspeople fall within the scope of Article 45 TFEU implies that any direct discrimination on grounds of nationality is prohibited, and that any indirect discrimination and obstacles impeding the exercise of the right to free movement which are not justified, necessary and proportionate to the legitimate aim pursued must be abolished.

Although there had been previous judgements of the Court regarding the application of rules on the free movement of workers to professional and semi-professional sportspeople, the effects and implications of EU law on sporting activities were fully revealed in the judgment of 15 December 1995 in the *Bosman* case<sup>6</sup>. This judgement provided indications not only as regards the scope of free movement provisions, but also as regards direct discrimination (nationality quotas) and obstacles to free movement (transfer rules) in the field of sport.

The Commission Staff Working Document accompanying the White Paper on sport<sup>7</sup> already presented a comprehensive picture of the case law concerning the limited and proportionate restrictions to the principle of free movement that can be accepted. The following guidance can be derived from that case-law.

<sup>2</sup> Cases 36/74 *Walrave*, 13/76 *Donà*, C-415/93 *Bosman*, C-176/96 *Lehtonen*, C-519/04 *Meca-Medina* and C-325/08 *Olympique Lyonnais*.

<sup>3</sup> COM(2010) 373.

<sup>4</sup> COM(2002) 694.

<sup>5</sup> Cases 36/74 *Walrave* and C-415/93 *Bosman*, joined cases C-51/96 and C-191/97 *Deliège* and case C-325/08 *Olympique Lyonnais*.

<sup>6</sup> C-415/93, *Bosman*.

<sup>7</sup> SEC(2007) 935, 11.7.2007.

### *Direct discrimination*

Rules leading to direct discrimination on grounds of nationality are not compatible with EU law. Direct discrimination may, for instance, take the form of a complete ban on the participation in sporting competitions of EU citizens from other Member States<sup>8</sup>. It may also stem from the introduction of quotas based on nationality. The ECJ has held that the fact that such rules or quotas may not concern the employment as such of EU players but rather the extent to which their club may field them for an official match is of no relevance in order to determine the discriminatory nature of the rules. In so far as participation in official matches constitutes the essential activity of professional players, any rule limiting such participation also restricts the employment opportunities of the players concerned<sup>9</sup>. The only grounds for exceptions in cases of direct discrimination are those listed in Article 45 TFEU (public policy, public security or public health).

Nonetheless, the ECJ established an exception to the general principle of non-discrimination as regards rules or practices excluding foreign players from certain matches for reasons which are not of an economic nature and relate to the particular nature and context of such matches, and which are therefore of sporting interest only, such as, for example, matches between

the national teams of different countries. However, this exception must remain limited to its own subject matter and it cannot be invoked to claim the exclusion of the whole of a sporting activity from the scope of the Treaty<sup>10</sup>.

### *Indirect discrimination*

Indirect discrimination occurs when rules apply criteria of differentiation other than nationality but lead, in fact, to the same results as direct discrimination.

In this case, only rules that are necessary, proportionate to the achievement of legitimate objectives, and do not discriminate directly on the basis of nationality, may be compatible with Article 45 TFEU. For instance, rules such as UEFA's 'home-grown players' which aim to encourage the recruitment and training of young players and ensure the balance of competitions, can be compatible with EU free movement provisions (i) in so far as they are able to achieve efficiently those legitimate objectives, (ii) if there are no other measures available which can be less discriminating and (iii) if the rules in question do not go beyond what is necessary to the attainment of their objectives. The Commission will nevertheless monitor the application of these rules closely on a case by case basis in order to verify that the criteria are met.

<sup>8</sup> Case 13/76 *Donà*. In this case, only football players affiliated to the Italian federation could take part in matches, whilst affiliation was only open to players having Italian nationality.

<sup>9</sup> Cases C-415/93 *Bosman* and C-176/96 *Lehtonen*.

<sup>10</sup> Cases 13/76 *Donà*, C-415/93 *Bosman* and C-176/96 *Lehtonen*.

### **Home-grown players rules and quotas of players in club competitions**

On 28 May 2008 the Commission published an independent study carried out on its behalf to examine the effects of UEFA's rules setting a minimum number of "home-grown players" for clubs participating in its football competitions. On the basis of the results of the study, the Commissioners responsible for free movement of workers and for sport considered that the approach followed by UEFA in adopting these rules complied *prima facie* with the principle of free movement of workers while promoting the training of young European athletes.

'Home-grown players' are defined by UEFA as players who, regardless of their nationality or age, have been trained by their club or by another club in the same national association for at least three years between the age of 15 and 21. The UEFA rule does not contain any conditions based on nationality. It applies in the same way to all players and all clubs participating in competitions organised by UEFA. Its aim is to encourage clubs to establish efficient training centres with a view to ensuring the creation and maintenance of high-level talent pools of future professional players.

The objectives underlying UEFA's home-grown players rules, namely promoting the recruitment and training of young players and ensuring the balance of competitions,

can be considered legitimate objectives of general interest. The provisions of the rules appear to be inherent in and proportionate to the achievement of such objectives. However, since the rules risk having indirect discriminatory effects and since their implementation has been gradual over several years, the Commission will carry out further analysis on the rules in 2012.

It should be noted that UEFA's home-grown players rules have not been examined from the angle of EU competition law. Similar schemes aimed at establishing quotas of locally trained players for clubs participating in team sports competitions have been brought to the attention of the Commission since the adoption of UEFA's rules. Each scheme needs to be examined taking into account the specific provisions of the scheme itself, the characteristic of the sport discipline concerned and the general context in which the scheme is proposed.

Rules leading to direct discrimination on grounds of nationality are not compatible with EU law. The same is true for rules based on criteria directly linked to nationality. For example, rules establishing quotas of players in clubs based on eligibility to play for the national team of the country where the club is located, when the main criterion for such eligibility is nationality, are not compatible with EU law.

### *Obstacles to free movement – transfer rules*

Provisions such as transfer rules which, even if applied without regard to nationality, restrict the freedom of movement of sportspeople who wish to pursue their activity in another Member State constitute obstacles to free movement<sup>11</sup>. Restrictive transfer rules may also run the risk of infringing EU competition law. They can be deemed compatible with EU law only in so far as they pursue a legitimate aim compatible with the Treaty and are justified by reasons of public interest. Such measures must also be inherent and proportionate to the aim pursued<sup>12</sup>. By way of example, the ECJ in the Lehtonen case implied that limited and proportionate restrictions on labour mobility may be justified in order to ensure certain important characteristics of sporting competition such as transfer windows. It should be reminded that EU free movement rules apply to workers regardless of their age, also including sportspeople who are engaged in professional activities before the age of 18, in conformity with relevant EU labour law provisions, in particular the Directive on the Protection of Young People at Work<sup>13</sup>.

<sup>11</sup> Cases C-415/93 *Bosman* and C-176/96 *Lehtonen*.

<sup>12</sup> Case C-415/93 *Bosman*.

<sup>13</sup> Council Directive 94/33/EC of 22 June 1994 on the Protection of Young People at Work.

#### **The ECJ's *Olympique Lyonnais* ruling**

The judgement of the Court in the case *Olympique Lyonnais* (case C-325/08), delivered on 16 March 2010, is of particular interest as it is the first ruling covering a sport-related case adopted after the entry into force of the Treaty on the Functioning of the European Union (TFEU). The ruling provides further insight into the Court's interpretation of the issue of free movement of professional sportspeople. The focus of the ruling concerns limitations to the rules on free movement of workers laid down in Article 45 TFEU, arising from training compensation schemes. The *Olympique Lyonnais* ruling confirms most of the elements and the legal reasoning developed by the Court in the *Bosman* ruling, at a distance of 15 years.

According to the Court, Article 45 TFEU does not rule out schemes which, in order to attain the objective of encouraging the recruitment and training of young players, guarantees compensation to the club which provided the training if, at the end of the training period, a young player signs a professional contract with a club in another Member State, on condition that the scheme is suitable to ensure the attainment of that objective and does not go beyond what is necessary to attain it.

In the *Olympique Lyonnais* ruling, the Court confirmed an important point raised in the *Bosman* ruling, namely that the recruitment and training of young players is to be considered a legitimate objective of general interest. The Court also provided additional guidance for assessing whether training

compensation schemes can be considered as suitable to attain this objective: according to the Court, such schemes must be related to the actual cost of training. This was not the case of the scheme discussed in the main proceedings, since it linked the payment to potential damages suffered by the clubs and was thus unrelated to the actual training costs.

The Court offered another important element in order to assess whether training compensation schemes are inherent and proportionate to their legitimate objective: when carrying out this assessment, account should be taken of the costs borne by the clubs in training both future professional players and those who will never play professionally. The Court affirmed hereby the principle that training costs may be calculated on the basis of the so-called “player factor”, i.e. the number of players that need to be trained in order to produce a professional player.

In the *Olympique Lyonnais* ruling, the Court also made reference for the first time to the provisions on sport laid down in Article 165 TFEU. In particular, the Court mentioned two elements included in the Treaty as being constitutive of the EU’s action in the field of sport: the social and educational function of sport as well as its specific nature. These two aspects are interlinked, the social and educational values of sport being among the characteristics which make sport special and set it apart from other sectors of the economy.

### *Equal treatment clauses in agreements with third countries*

The ECJ has also ruled on the application to sporting activities of the non-discrimination principle set out in certain Agreements between the European Union and third countries. The case-law of the ECJ<sup>14</sup> shows that, as long as such Agreements include equal treatment clauses prohibiting discrimination on grounds of nationality with regard to the working conditions and the remuneration of workers who are legally employed in a Member State, professional sportsmen from those third countries cannot be subjected to discrimination on grounds of their nationality when they play in a Member State. Rules that limit the opportunities of professional sportsmen from such third countries to take part in certain matches (as part of their professional activity), in comparison with sportsmen who are EU citizens, involve discrimination and run counter to the equal treatment clauses in the Agreements. This means that players who are nationals of a country which has concluded such an Agreement with the EU cannot be excluded on the basis of their nationality from a team sent out on the field. Such clauses do not, however, amount to the conferral of a right of free movement within the EU.

<sup>14</sup> Cases C-438/00 *Kolpak*, C-265/03 *Simutenkov* and C-152/08 *Real Sociedad de Fútbol SAD and Nihat Kahveci*.

### **EU Internal Market rules concerning freedom to provide services and freedom of establishment**

Besides the provisions concerning free movement of workers, the EU Internal Market *acquis* includes rules on the free provision of services and on freedom of establishment which are equally of relevance for the sport sector. Articles 49 to 62 TFEU cover the right of establishment and provision of services. The two relevant pieces of EU legislation applicable in these fields are Directive 2005/36/EC of 7 September 2005 on the Recognition of Professional Qualifications<sup>15</sup> and Directive 2006/123/EC of 12 December 2006 on Services in the Internal Market<sup>16</sup>.

EU rules on establishment and provision of services apply to sport-related professions such as coaches, trainers and instructors. These professions are characterised by a high level of international mobility and by the fact that their regulation varies greatly across Member States: professions in sport are sometimes regulated in some Member States and not in others. Besides the issue of public regulation, international sport federations often have their own system of qualifications and

<sup>15</sup> OJ L 255, 30.9.2005, p. 22.

<sup>16</sup> OJ L 376, 27.12.2006, p. 36.

diplomas. This complex situation can be confusing for sport professionals. In order to increase legal clarity and improve the framework facilitating the mobility of sport professionals, it could be envisaged to improve the transparency of some of the professions included in the list of sport-related regulated professions established by Directive 2005/36/EC. More transparency in this field could also be achieved on the basis of developing a professional card or a passport for professionals in the context of temporary mobility and faster recognition of qualifications and work experience, as proposed in the Single Market Act.

Another sport-related profession which is subject to EU rules on free provision of services and freedom of establishment is that of sport agent. According to the result of an independent study carried out on behalf of the Commission in 2009<sup>17</sup>, no major obstacles exist for the free provision of sport agents' services across the Internal Market. However, the complexity of the legal framework may require that additional guidance be provided to the relevant stakeholders (agents, players and clubs).

<sup>17</sup> The study is available on the Commission's website: [http://ec.europa.eu/sport/library/doc/f\\_studies/study\\_on\\_sports\\_agents\\_in\\_the\\_eu.pdf](http://ec.europa.eu/sport/library/doc/f_studies/study_on_sports_agents_in_the_eu.pdf)

### *Specificity of sport and free movement of professional sportspeople*

Free movement of workers is a fundamental principle of EU law and a provision with direct effect. Any exception from a fundamental principle can only be justified within the limits set by the Treaty itself. In the realm of sport, this entails taking into account the specific nature of sport, which is now recognised by Article 165 TFEU. However, the specificity of sport<sup>18</sup> cannot be used as an excuse for making a general exception to the application of free movement rules to sports activities. Exceptions from the EU's fundamental principles must be limited and based on specific circumstances.

## **2. The provisions of the Lisbon Treaty on sport and their impact on free movement of amateur sportspeople**

### *The right to free movement and non-discrimination on grounds of nationality*

The principle of non-discrimination on grounds of nationality is enshrined in Article 18(1) of the Treaty and applies in all situations which fall within the scope *ratione materiae* of EU law. This includes the exercise of the right to move

<sup>18</sup> The concept of specificity of sport is defined by the Commission in section 4.1 of the White Paper on Sport – COM(2007) 391 – and in section 4.2 of the Communication which is accompanied by this Staff Working Document.

and reside freely in another Member State, as conferred by Article 21(1) of the Treaty<sup>19</sup>.

This principle has been further specified in Article 24(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States<sup>20</sup>. All Union citizens residing on the basis of this Directive in the territory of the host Member State must enjoy equal treatment with the nationals of that Member State within the scope of application of the Treaty.

### *Free movement and amateur sport*

A combined reading of Articles 18 and 21 TFEU with Article 165 TFEU leads to the conclusion that the general EU principle of prohibition of any discrimination on grounds of nationality can be applied to sport for all EU citizens who have used their right to free movement. This means that this principle is applicable to amateur as well as professional sport. National legislation must not establish additional obstacles and place certain nationals of a Member State at a disadvantage simply because they have exercised their freedom to move and reside in another Member State, thereby restricting the freedom conferred by Article 21 TFEU on every citizen of the Union<sup>21</sup>.

<sup>19</sup> Case 184/99 *Grzelczyk*, paragraphs 31 to 33.

<sup>20</sup> OJ L 158, 30.4.2004, p. 77.

<sup>21</sup> Cf. case *Grunkin Paul*, C-353/06 (paragraph 21).

### *Discrimination in amateur sport*

While membership in sport clubs is generally open to all irrespective of their nationality, there is evidence that in many Member States participation in competitions can be restricted on grounds of nationality. Instances of direct discrimination can be found at all levels in both individual and team sports, when for example “quota systems” are imposed on the participation of “foreigners”, irrespective of their eventual status of EU citizens, or when only nationals are allowed to participate in an event, or more often, a series of sporting events. Requiring a certain number of years of residence in the host country as a condition for participating in sporting events on the same footing as nationals is also a restriction that EU citizens are often confronted with when practising sport in another Member State.

Obstacles to the free movement of citizens can also stem from practices in the country of origin. It is often the case that amateur athletes, when they move to another Member State, need the express agreement of the club or federation in their Member State of origin in order to be able to continue their practice in the host country. The refusal by a national federation to agree on the transfer of athletes or to do so within a reasonable period of time – or the imposition of fees to grant the agreement – will usually not be in accordance with the right to free movement.

### *Equal treatment of all citizens*

The exercise of the right to move and reside freely in another Member State is safeguarded if the citizens of the Union are able to practice sport as amateurs irrespective of their nationality. This means that, in exercising that right in another Member State, EU citizens are in principle entitled, pursuant to Articles 18 and 21 of the Treaty, to treatment no less favourable than that accorded to nationals of the host State. Any hindrance to the mobility of amateur sportspeople constitutes therefore, in principle, an obstacle to the free movement of EU citizens which may violate Union law. In accordance with Article 24(1) of Directive 2004/38/EC, subject to such provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of the Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. Family members who are not nationals of a Member State and who have the right of residence or permanent residence also benefit from this right.

In addition, amateur sportspeople may be protected from discrimination on the grounds of nationality also under Regulation 1612/68/EEC on freedom of movement for workers, since access to the practice of sport constitutes a social advantage in the sense of Article 7(2) of Reg. 1612/68 as

interpreted by the ECJ in a series of rulings<sup>22</sup>: the Court has looked in particular into whether the granting of an advantage to a worker and his/her family members would facilitate their integration into the host state and has concluded that the notion of social advantage covers all advantages, financial as well as non-financial<sup>23</sup>. Migrant workers and members of their families are therefore covered by the provisions of this Regulation when practising sport at amateur level.

#### *Specificity of sport and free movement*

Free movement is a fundamental principle of EU law. Any derogation from this fundamental principle can only be justified within the limits set by the Treaty itself. In the realm of sport, this entails taking into account the specific nature of sport – which is now recognised by Article 165 TFEU. Exceptions from the EU's fundamental principles must be limited and based on specific circumstances. The specific nature of sport cannot be assessed in an abstract manner and should be addressed through a theme-by-theme approach.

The criteria already identified in the field of professional sport apply to amateur sport as well. Those sports rules that can constitute

discrimination on grounds of nationality or hindrance to free movement must take the following criteria into account in order to comply with EU law on free movement:

- the legitimate objectives pursued by the rules;
- the need for such rules to achieve those objectives;
- their proportionality.

The White Paper on sport already presented a comprehensive picture of the case law on the limited and proportionate restrictions to the principle of free movement that can be accepted on the basis of the above-mentioned criteria.

As concerns more directly amateur sport, and in analogy with what has been already established in the realm of professional sport, it can be concluded that quota systems constitute direct discrimination on grounds of nationality and are generally in breach of EU law. The refusal to agree to the transfer of an amateur athlete to the federation of another Member State is also to be considered a violation of EU law.

<sup>22</sup> (C- 249/83 *Hoeckx*, C-85-96 *Martinez Sala* on the income of the migrant worker, as well as non financial advantages (C-59/85 *Reed*, C-137/84 *Mutsch*).

<sup>23</sup> The Commission has considered that the practice of amateur sport constitutes a social advantage in the sense of Article 7(2) of Regulation (EEC) No 1612/68 in its reply to written question from the European Parliament no. E2254/08.

Some exceptions can, however, be envisaged regarding the composition of national teams for international competitions and the designation of national champions in individual sports. As stated above, on the basis of the ECJ's case law, rules that exclude non-national sportspeople from national teams can be considered as rules that do not infringe the Treaty's free movement provisions.

However, these exceptions must, as always, be interpreted restrictively: any provision that prevents an EU citizen from enjoying to the full his/her right to move and reside freely in another Member State must not exceed what is strictly necessary to the achievement of its specific aim, even when that aim is a legitimate one.

The same legal reasoning applies to the organisation of individual national championships aimed at selecting national champions and at granting titles, medals and records exclusively to sportspeople who are nationals of the Member State where such championships are organised. The objective of awarding the title of national champion in each individual discipline could be considered as legitimate and proper to the organisation of sport on a national basis; the granting of medals and national records could be considered as being of a purely sporting nature. On the other hand, the participation in such competitions of EU citizens who have exercised their freedom of movement to another Member State should in principle be guaranteed.

In practice, due account should be taken of the specific characteristics of each discipline. In fact, there are competitions in individual sports meant to designate a national champion and which are organised in knock-out tournaments with multiple and successive rounds of single-elimination matches. In this case the competition could be distorted by the premature elimination of national athletes at the hands of EU citizens who might not qualify for the title of national champion. In such cases, limited restrictions to the general principle of guaranteeing the general openness of competitions can be justified, but only in so far as they are necessary and proportionate to the legitimate objective of designating a national champion.

It is up to national federations to design rules that take account both of the fundamental rights of EU citizens and of the legitimate objectives of specific sport competitions. The guiding principle must always be that of ensuring wide access of all EU citizens to competitions. By way of example, in a recent case concerning a combat sport and following a dialogue with the Commission, the competent authorities decided to allow unrestricted access of EU citizens to all the competitions they organised. Other ways to achieve the same objective that were discussed included the adoption of second-chance formats or 'repechage' rounds, or a shift to a round-robin or a ranking system.

In a case concerning another individual sport, a national federation argued that it organised each year a large number of individual tournaments as well as individual and team championships. Access to individual tournaments and team championships was opened to foreigners without any restriction in the vast majority of competitions organised each year. Only individual championships aimed at determining the national champion and select the players who would join the national team for the world championships were restricted to national citizens. Taking into account the specific characteristics of the organisation of the relevant discipline in the country in question, and given the large possibilities to have access to the relevant activities and competitions, the Commission deemed that the restrictions to participate in individual competitions pursued a legitimate aim and that the concerned measures were necessary and proportionate to achieve it.

In 2010, the Commission launched a study to analyse all aspects of access to individual competitions. The final results of the study were made available in January 2011.<sup>24</sup> On the basis of the results of the study, the Commission intends to provide further guidance to Member States and sport stakeholders in order to help them maintain the specific features of the organisation of sporting competitions while fully respecting the EU's fundamental freedoms.

<sup>24</sup> [http://ec.europa.eu/sport/news/news982\\_en.htm](http://ec.europa.eu/sport/news/news982_en.htm)

### **3. Dialogue and monitoring**

As guardian of the Treaties, the Commission will continue to monitor closely the activities of the national and international governing bodies for sport and is already engaged in a constructive dialogue with them with a view to striking the right balance between the specificity of sport and full compliance with EU law as interpreted by the ECJ in the area of free movement. The Commission will also provide guidance and better explain the existing rules to Member States and sport stakeholders so as to help them address possible legal difficulties stemming from actions or rules in the field of sport<sup>25</sup>.

As regards the application of EU law, the Commission works in close partnership with the Member States who have primary responsibility for its application. In a spirit of cooperation, a series of tools operating at the point closest to the citizen have been developed together with the Member States. The SOLVIT problem-solving network allows Member States to work together to find solutions to cross-border problems in the functioning of the Internal Market that arise for citizens or organisations due to bad application of EU law.

<sup>25</sup> In particular, following the modernisation of EU competition law, the Commission does not issue any individual exemptions or provide further guidance on competition law issues except for specific circumstances provided for in Regulation (EC) No 1/2003.

In cases where there is incompatibility between national law and EU law, the EU Pilot project<sup>26</sup> allows more rapid answers to citizens' complaints by starting a dialogue between the Commission and the concerned Member State. The citizen at the origin of the complaint is kept duly informed of the stages of the procedure as well as of its outcome, which can be, depending on the specifics of the case and the subject matter, a solution to the problem, the correction of an infringement, if appropriate through the opening of an infringement procedure for non-compliance with EU law, or the advice to have recourse to the national tribunals, which can in many cases offer a more direct route to the solution of the problems encountered by citizens.

<sup>26</sup> The EU Pilot project has been operating since April 2008 with the aim of providing quicker and fuller answers to questions, and solutions to problems arising in the application of EU laws – particularly those raised by citizens or businesses – requiring confirmation of the factual or legal position in a Member State. It is designed with a view to improved communication and cooperation between Commission services and Member State authorities on issues concerning the application of EU law. EU Pilot has meanwhile been extended to cover 23 Member States.

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